

# PROTECTING YOUR IDEA

## Trademark - Name Registration - Patents

### Business Name

- Organizations transact business under what is known as a "Trade Name" such as "Mel's Diner" or "Easy-as-Pie Plumbing."
- State Nomenclature: "dba" refers to "doing business as" and is often used by corporations who operate a subsidiary business under a different name.
- All business (trade) names, in general, must be registered with the North Dakota Secretary of State.
- One who has registered a trade name with the state may institute a civil suit denying anyone else the right to use that name.
- Trade name registration requires 1) the trade name to be registered, 2) the name and address of the owner (individual or corporation), 3) address of the principal place of business, and 4) the nature of the business.
- Trade name: No trade name may be the same as or deceptively similar to any other trade name, domestic or foreign business name. A similar name may be used if written permission to do so is obtained from the original name source.
- Registration fee: \$25. This registration remains in force for five years.

### Patent

- A patent is a grant from the U.S. government allowing the inventor the right to exclude all others from making and selling the product for a certain period of time. (Issued by the Patent & Trademark Office)
- The patent is good for twenty years provided maintenance fees are paid at periodic intervals.

#### Patent Types:

1. Utility patent: a product that serves a unique function, such as a can opener, is eligible for a utility patent. Generally, the focus is on the "functionality" of the product.
2. Design patent: a design patent generally "enhances" a functional item, such as a new tread design for an automobile tire. Design patents are also awarded for "ornamental" improvements.
3. Plant patent: a patent granted for the development of a new and distinct variety of asexually reproduced plants.

### Trademark <sup>TM</sup>. (Issued by the Patent & Trademark Office of U.S. Government)

- Trademark law covers any written or artistic matter which includes a symbol, work, shape, or design, and you use this mark as a brand name, service mark (i.e., "Tool Crib of the North"), or trade dress.
- Trademark allows businesses to distinguish their products and/or services from those offered by competitors.
- Trademarks may be lost if they become generic and enter the public domain (i.e., aspirin, cornflakes, dry ice, escalator, kerosene, lanolin, linoleum, nylon, raisin bran, thermos bottle).
- Off limits: Trademarks may not be granted for 1) a person's likeness (without that person's consent), 2) descriptive words, 3) generic words (i.e., digital), 4) geographical locations, governmental emblems, 5) immoral, scandalous, or deceptive matter, 6) marks that may cause confusion, and 7) personal names.

### Copyright -- ©. (Register with Library of Congress)

- Copyright protects original works of authorship fixed to any tangible medium of expression, including among others: 1) architectural design, 2) articles and books, 3) graphics, 4) motion pictures, 4) cartoons, 5) computer software programs, 6) music, and 7) sound and video recordings.
- Copyright grants an individual exclusive rights to reproduce, adapt, revise and translate as well as distribute, sell, display and license their works. Others cannot copy, use or sell the original creation without permission.
- By federal law, a copyright is established upon creation of the work. It is useful to indicate copyright by using the copyright symbol (©), date of creation, and holder of copyright on work copyrighted. You can also register the copyright with the Library of Congress, but it is not necessary to establish a copyright. It does provide advantages in litigation about copyrighted material.

### Trade Secrets

- Trade secrets include techniques, designs, materials, processes and formulas that give your company an advantage.
- Trade secrets can be used in the same way as a patent. However, there is no time limit on trade secrets. They last as long as the business can keep them a secret.
- Example: Coca-Cola has kept its formula secret much longer than would be allowable under a patent.

### Processes

The State of North Dakota has a simple form for processing your Business/Tradename Registration. Requests can be made by calling:

**701-328-4284 or <http://www.discovernd.com/sec>.**

The process for obtaining a patent or trademark can be a long and expensive. Information on the process can be obtained at the *US Patent and Trademark Depository Library in the Chester Fritz Library at UND*.

Call **701-777-4888** or

<http://www.und.nodak.edu/dept/library/Collections/Patents/patents.htm>