



## BL Speer & Associates

ATTORNEYS AT LAW

protecting the technological and creative arts

### INTELLECTUAL PROPERTY SYNOPSIS

**QUESTION:** Can I patent a trademark for a copyright?

**ANSWER:** No, you cannot, because patent, trademark and copyright are three distinct intellectual property rights.

#### ⚡ PATENT ⚡

- (1) **Definition.** There are three types of patents:
  - (a) **Utility:** One may get a utility patent for any new and useful process (ex., how to make an aluminum can), machine (ex., the aluminum can making machine), article of manufacture (ex., the aluminum can) or composition of matter (ex., a metal alloy, such as steel); or any new and useful improvement thereof (ex., a pop-top versus a pull-tab aluminum can).
  - (b) **Design:** One may get a design patent for any new, original and ornamental design for an article of manufacture (ex., silverware pattern).
  - (c) **Plant:** One may get a plant patent for any distinct and new variety of plant, which is asexually reproduced, including cultivated spores, mutants, hybrids, and newly found seedlings, other than a tuber propagated plant or a plant found in an uncultivated state (ex., a newly grafted rose plant).
- (2) **Term.**
  - (a) **Utility & Plant:** 20 years from filing date.
  - (b) **Design:** 14 years from issuance date.
- (3) **Marking.**
  - (a) U.S. Patent No. 5,123,546 (utility).
  - (b) U.S. Patent No. D654,321 (design).
  - (c) U.S. Patent No. PP12,345 (plant patent).
  - (d) U.S. Pat. Pend. (pending application).

#### ⚡ TRADEMARK ⚡

- (1) **Definition.** A trademark may consist of words, phrases or designs or combinations thereof which indicate the source or origin of a particular good or service.
- (2) **Term.**
  - (a) **Federal Registration:** 10 year term, subject to renewal and continuous use.
  - (b) **State Registration:** Usually a 10 year term (varies from state to state), subject to renewal and continuous use.

(c) **Common Law Usage:** As long as the trademark is continuously used.

#### (3) **Marking.**

- (a) TRADEMARK® (federal registration).
- (b) TRADEMARK™ (state registration and/or common law usage).

#### ⚡ COPYRIGHT ⚡

#### (1) **Definition.**

- (a) Copyright protection is for **original works of authorship** fixed in any tangible medium of expression.
- (b) **Works** of authorship **include:**
  - (i) Literary works;
  - (ii) Musical works, including any accompanying words;
  - (iii) Dramatic works, including any accompanying music;
  - (iv) Pantomimes and choreographic works;
  - (v) Pictorial, graphic and sculptural works;
  - (vi) Motion pictures and other audiovisual works;
  - (vii) Sound recordings; and
  - (viii) Architectural works.
- (c) The copyright owner has the **exclusive right to:**
  - (i) Reproduce the work;
  - (ii) Prepare derivative works;
  - (iii) Distribute copies;
  - (iv) Perform the work publicly; and
  - (v) Display the work publicly.

#### (2) **Term.**

- (a) **Individual Work:** Life of author plus 70 years;
- (b) **Anonymous Work, Pseudonymous Work or Work for Hire:** First to expire of 95 years from publication or 120 years from creation.

#### (3) **Marking.**

- (a) © 2010 Author Name
- (b) © 2010 Singer Name

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