

Q. What is intellectual property?

A. Intellectual property is “property (as an idea, invention, or process) that derives from the work of the mind or intellect; also, an application, right, or registration relating to this.” Merriam-Webster’s Collegiate Dictionary at 650 (11th ed. 2003). United States and state law recognize property rights in different forms of information, including (i) copyright which protects expressive information, (ii) patent which protects technological information, (iii) trademark which protects symbolic information, (iv) trade secret law which protects proprietary information such as formulas, patterns, compilations, devices, methods, techniques or processes, and (v) the Semiconductor Chip Protection Act of 1984 which protects the layout and design of semiconductor chip products.

Depending on the type of intellectual property, different formalities may need to be observed in order to protect those rights. For example, under patent law an inventor may be precluded from obtaining a patent if the subject matter of the claimed invention was publicly used or on sale in the United States by anyone, including the inventor, more than one year before the effective filing date of the U.S. application, or if the subject matter of the claimed invention was patented by anyone, anywhere in the world, more than one year before the effective filing date of the United States application. 35 U.S.C. § 102(b). In contrast, registration is not required for copyright or trademark, although there are certain advantages to doing so. Under trademark law, the failure to use a mark, or the improper use of a mark, may jeopardize one’s trademark rights. Under trade secret law, the failure to take reasonable steps to protect the secrecy of information that is the subject of trade secret may vitiate any protections that may otherwise apply.

Because we live in an “information age,” intellectual property is increasingly becoming more and more valuable. For example, a 2007 study found that 60% to 80% of the market capitalization of public companies was due to intangibles such as their brand names. Indeed, the value of the Coca-Cola brand and other intangibles was estimated at an astounding 79% of the Coca-Cola Company’s market cap. In other words, only 21% of the Coca-Cola Company’s market value was in its hard assets. See *Competing for Customers and Capital*, Victor J. Cook, Jr., available at http://www.customersandcapital.com/book/2007/04/cocacolas_other.html (last visited July 2, 2008).

Attorneys specializing in intellectual property can advise businesses on what intellectual property assets they may have or need to protect, implement strategies to protect the value of those assets, and help companies realize the commercial value of those assets. Importantly, attorneys can help businesses comply with their internal business policies and risk tolerance in navigating third party intellectual property rights.

Last updated July 2, 2008.



Allen M. Lee Mr. Lee’s practice focuses on business, corporate and intellectual property matters, including the creation, protection and exploitation of intellectual property assets. He counsels clients on business formation, general corporate matters, trademark, copyright, trade secret, patent, licensing, internet and domain name issues, among other things. For more information contact: Allen M. Lee, a Professional Law Corporation, Tel: (650) 254-0758, Fax: (650) 967-1851, Email: allen@allenmlee.com, Internet: www.allenmlee.com.