

Is your intellectual property safe?

Inadequate protection could rock your world.

A BDN Aerospace Marketing White Paper

I think we can all agree that most any company would kill to have a brand name like Fender. Iconic products. Cult following. And a cool factor that's off the charts. It's brand heaven.

Heaven can wait?

But heaven turned to hell when Fender lost a landmark trademark case that effectively allows other guitar makers to replicate the distinctive body shapes of the Stratocaster, Telecaster and Precision Bass electric guitars and basses. How could this happen?

Uh-oh.

Well, Fender never actually trademarked its two-dimensional body shapes. Company attorneys sought to rectify the situation in 2003, filing applications with the U.S. Patent and Trademark office. Then in 2004, a group of large and small guitar manufacturers and retailers, in a "David v. Goliath" action, formally opposed the applications.

Finally, after five years of litigation and 20,000 pages of evidence, the United States Trademark Trial and Appeal Board — in a precedent-setting decision — overwhelmingly ruled in favor of the small manufacturers.

This was not music to Fender's ears. Any company is now free to produce sub-par knockoffs, and there's nothing Fender can do about it. The ultimate cost to the company is incalculable.

So What?

Why should you care about what happened to a guitar company? Well, aerospace companies have intellec-



Fender Instruments didn't realize they needed to protect the shape of their guitars, and they subsequently lost the exclusive right to the shape in the courts.

tual property (IP) too. In many cases, it's the foundation of the business.

Let's say you have a proprietary design for your company's best-selling product, a unique aircraft component. What would happen if the product design or name was hijacked by a competitor, and you had no recourse because you lacked basic protection? This is any company's worst nightmare.

It Pays to Protect Yourself

The upside to covering your assets is considerable.

A case in point: In 2007 and 2008, U.S. District Court awarded Innova-

tive Solutions \$23 million against Kollman Inc., an Elbit Systems Ltd. subsidiary, as part of an intellectual property case that alleged misappropriation of company trade secrets relating to commercial air data computers, despite signed non-compete agreements. Ultimately, Elbit indicated that the ruling affected its second-quarter earnings to the tune of \$10 million. Innovative Solutions walked away with a \$23 million windfall. Nice.

The Basics

Aerospace giants like Boeing spend millions to protect their brands and

“Oh, and if you don’t use your mark properly, you can lose it. Be vigilant!”

IP. But smaller firms are unlikely to have an in-house legal department, so Marketing should have a basic understanding of the law.

IP categories are generally classified as trade secrets, proprietary data, industrial property rights, copyrights, trademarks and patents. Here are some basic definitions to get you started.

Mark

Any word, name, symbol or device that is used in trade to distinguish a product or service is legally defined as a mark (trademark is for products; service mark is for services). Ownership rights are implicit by first commercial use, and registration is not required — but it is strongly recommended. Having a unique and identifiable name for your product is a huge competitive advantage.

You may want to start by contacting your attorney or by searching trademark databases. Sources include the Patent and Trademark Office’s Trademark Electronic Search Service or a company that specializes in trademark searches. A search won’t guarantee that the government will approve your mark, but it will reduce the chances of the most common ground for denial, which is the potential for confusion with an existing mark.

Did you know? Anyone claiming rights to a mark may use “TM” (trademark) or “SM” (service mark) symbols, which declare ownership. The circle-R, ®, may only be used for marks that have been registered with the Patent and Trademark Office. Oh,

and if you don’t use your mark properly, you can lose it. Be vigilant!

Copyright

This is the exclusive reproduction right granted to the creator of an artistic or literary work. Copyright is implicit in the act of creation and it belongs to the creator unless a work for hire agreement is in place. No publication or registration is required, but doing so will make it easier to seek court enforcement of your copyright. Without registration, only “actual damages” can be sought in court, while registering can additionally allow for punitive damages. Find out more, or start copyrighting, at www.copyright.gov.

BDN sees copyrights violated on a regular basis, especially in the areas of photography and music. Just because you find something on the Internet does not mean that you can use it legally, and violating a copyright, registered or not, is not only dishonest, it can be costly. But that’s a subject for another White Paper.

Did you know?

If you claim copyright ownership, you may automatically use the © symbol. How easy is that?

Patent

A patent grants ownership exclusivity to the creator of a physical expression of a unique idea, such as an invention or device. Patents must be granted by the U.S. Patent and Trademark Office. If your business creates inventions on a regular basis, it is important that

IP CHECKLIST

Get smart

This article is the tip of the iceberg. Surf the net. Or buy a book. Take stock at your company. Find out what is protected and what is not.

Take action

Talk to your lawyer. Or engage an intellectual property attorney. The investment could really pay off.

Respect others

Please don’t trample on someone else’s IP rights. It could cost you. Seriously. And it’s tacky.

Use NDAs

Non-disclosure agreements are pretty standard in aerospace. Find a template and get started.

Double check

Copyrights, trademarks and patents last for decades, but they do eventually expire and require renewal to maintain your legal rights. 📅

Note: This article is based on U.S. law and business practices only. International regulations are different. This information should not be construed as legal advice. It is for general information only.

you define ownership. Does your business own the inventions or do the employees who create the inventions own them?

Find out more at: www.uspto.gov/main/patents.htm

The Bottom Line

How you protect – or don’t protect – your intellectual property can dramatically impact the value of your company, and the level of success it can achieve.

Don’t take it lightly, because you’ll ultimately have to face the music — just like our friends at Fender. 🎸