

TRADEMARKS

What is a Trademark?

A trademark is a word, name or symbol used to identify your goods or services to distinguish them from those sold by other people. It indicates who made the product and, through advertising, should guarantee the quality of the items with the mark on them. A trademark allows the holder to prevent anyone from using a trademark that is substantially similar for the same goods or services. Remember, a trademark identifies a product or service; a trade name identifies the business. A trademark will NOT prevent new businesses from registering the same name with the Department of Revenue or the Secretary of State. The business owner must pursue private legal action to enforce his/her rights to the registered trade name.

Trademarks, trade secrets, copyrights and patents are all ways to protect your work. This chapter will help you determine which type of registration you need and where it can be registered.

additional paperwork and fees when it is placed into use.

What are the Terms of the Trademark?

Trademarks registered in Colorado are valid for ten years and may be renewed for an additional ten-year term, as long as the goods and services are still being used in the business.

Trademarks registered with the federal government are valid for ten years. Between the fifth and sixth year, you must file an “affidavit of use” to certify that you are still using the trademark in commerce. Every ten years you may file an “affidavit of renewal.”

information. A trade secret may be kept forever as long as the information is kept in confidence and is not available through a public source. A trade secret may apply to an idea, its description or any product or service that holds value as a result of it being held in confidence and thereby creating an advantage over those who do not have access to the secret. A trade secret represents a limited form of protection in that anyone is free to independently discover the secret or to determine the secret through analysis on any product in which the secret may be obtained.

Where do I Register a Trade Secret?

A trade secret is not registered with the government. It requires the existence of an in-house trade secret program. The program must include guidelines on who may have access to the information and controls to prevent unauthorized disclosure. The proper maintenance of a trade secret program may be expensive.



COPYRIGHTS

We all have options! Business owners must determine the best method for protecting their ideas, products and inventions. These types of protection or registrations are not required but are optional!

How are Trademark Rights Established?

In Colorado, you may not register the trademark until you have actually used it in your business. On the federal level, you may file based on a good faith or bona fide intention to use the mark. However, it will require

TRADE SECRETS

What is a Trade Secret?

A trade secret is a property right recognized by the government with regard to confidential

What is a Copyright?

Copyright is a form of protection provided by the laws of the United States to the authors of “original works of authorship,” including literary, dramatic, musical, artistic, and certain other intellectual works. This protection is available to both published and unpublished works. Section 106 of the 1976 Copyright Act generally gives the owner of a copyright the

exclusive right to do and to authorize others to do the following:

- To reproduce the work in copies or phonorecords
- To prepare derivative works based upon the work
- To distribute copies or phonorecords of the work to the public by sale or other transfer of ownership, or by rental, lease, or lending
- To perform the work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, motion pictures and other audio visual works
- To display the copyrighted work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work
- In the case of sound recordings, to perform the work publicly by means of a digital audio transmission

Where Do You Register a Copyright?

You can receive an application form and more information by contacting the Copyright Office – Library of Congress, 101 Independence Ave. S.E., Washington, DC 20559-6000, (202) 707-3000 or by visiting the U.S. Copyright Office website at www.copyright.gov.

PATENTS

What is a Patent?

A patent is a government granted property right to control a technology for a period of 20 years. It allows you exclusive rights to exclude others from making, using, offering for sale or selling the invention in the United States, or importing it into the United States. Patents may be issued for items that are new, useful and non-obvious.

What Can Be Patented?

A patent may be granted for any machine, process, and/or composition of material or design that is novel, non-obvious and useful.

A machine is defined as any piece of equipment, whether mechanical, electrical or hydraulic. A process is defined as any method or procedure for obtaining a given result. A composition of matter includes any combination of matter in the form of a chem-

ical compound, a metal alloy or a ceramic composite. A design would involve a shape or arrangement.

Novelty means that the item is one of a kind, never previously constructed or conceived. Non-obvious means that the item represents a leap forward beyond the expected progress within a field of science. Useful means that some benefit must be derived from the item.

Where Do You Apply For a Patent?

A patent is obtained by application to the federal government. The application is a statement of the invention and how it works with any diagrams or artwork. The application must include a claims description with enough detail to allow anyone trained in the appropriate field of science to reproduce the item.

Before requesting a patent, you must search the list of existing patents to see if someone else already has patented a similar invention. The Denver Public Library, Business and Government Documents Section, 10 W. 14th Ave. Parkway, Denver, CO 80204, (720) 865-1111, has lists of all existing patents. Only attorneys or agents registered with the U.S. Patent and Trademark Office may represent inventors before the office. You may receive an application form by contacting The U.S. Commissioner of Patents & Trademarks at (703) 308-4357 or 1-800-786-9199 or download it online at www.uspto.gov/. Along with the written application, you must submit:

- A description of the invention
- A drawing
- An oath testifying you are the original creator of your invention
- An application fee (which varies depending on the type of patent)

How Much Will it Cost to File a Patent?

The time and expense required to obtain a patent may be great relative to its value. The average time to obtain a patent following the submission of the application is about 24 months. The average cost for filing a patent may range as high as \$5,000 to \$10,000. Although the monopoly control of the patent has potential for large financial gains, a patent does NOT guarantee commercial potential or profits.

WHERE DO YOU REGISTER A TRADEMARK?

Trademarks are registered with the Colorado Secretary of State if your mark is used in Colorado. If your trademark will be used in more than one state, it may be registered with the United States Patent and Trademark Office.

Colorado

Colorado Secretary of State Division of Commercial Recordings
1700 Broadway, Suite 250
Denver, CO 80290
(303) 894-2200
TDD (303) 869-4867
www.sos.state.co.us

Federal Government

United States Patent and Trademark Office
1-800-786-9199
TDD (703) 305-7785
www.uspto.gov/

What is the Term of a Patent?

Patents are granted for 20 years, except for certain ornamental designs that may be issued for a term of 14 years. The patent grants the holder the right to exclude anyone else from using the technology for the life of the patent.

Where do I Get Additional Information About Patents?

- “General Information Concerning Patents” is available from the U.S. Government Bookstore by calling (866) 512-1800 or online at www.bookstore.gpo.gov.
- “Management Aids, #6.005, Introduction to Patents,” is available from the U.S. Small Business Administration by writing or calling the SBA, 721 19th Street, Suite 426, Denver, CO 80202, (303) 844-2607. Or from their website at www.sba.gov.
- United States Patent and Trademark Office General Information Seminars, Washington, DC 20231 www.uspto.gov.