

Social Media, Intellectual Property and Protecting Your A\$\$ets!

Article

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Social media is in the middle of many things we do these days. Thus, intellectual property law gets pulled right in and failure to take basic steps to protect your assets can be detrimental to your intellectual property rights. Intellectual property (IP) is a group of legal rights that provide protection over information and things people create or invent, often involving the human mind. The key types of IP, defined by the US Constitution, Federal, and State law, are: Copyright, Trade/Service Mark, Trade Secret and Patent. This article focuses on three well-known intellectual property types, their interaction with social media, and identifies some best practices every business should take to operate in social media without creating unnecessary intellectual property risks.

Copyrights

Copyrights arise from **original works** of authorship once they are **fixed in a tangible medium of expression**. Common works are expressed as written text like emails, social media sites and social posts, 2-D and 3-D artwork live and online, streaming music, podcasts, and all these in digital to hardcopy formats and everything in between.

Best practices for copyrights in social media are:

1. Have permission to use other's work. Just because you found it on the internet rarely means it is free for you to use. Better yet, to best avoid infringing on other's work, link to their work, don't make a copy on your site, and give credit to the owner.
2. Use takedown notices to prevent infringement of your rights in social media. However, be aware of fair use rights, for you and others, before automatically demanding a takedown of the work.
3. Know the use policies for the social media platforms you use. Often, mere use of the platform binds you to the terms of that platform. This can grant the platform, and its users, a right to use your work for free on that platform, and sometimes elsewhere, yikes!

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Trademarks

Trademarks are **any indicia** affixed to goods, while service marks are **any indicia** used to sell or advertise services, and both **identify the source of the goods/ services**. It is the goodwill and product/service expectation associated with a mark that brings value to its owner.

Best practices for use of marks in social media are:

1. Monitor the use of your mark and make sure others are not so close they are “confusingly similar” to cause you to be confused with you competitor. If someone is too close, a warning letter needs to be sent or you could lose your mark by diluting it with other’s use
2. Avoid misusing your mark by properly using the mark as an adjective and not a noun. KLEENEX is not the generic name for those white soft flexible sheets you sneeze into, facial tissue is. So, it is, “pass me a KLEENEX facial tissue, please.”
3. There is “fair use” of another’s mark, but it is a narrow exception, and you should be wary of using another’s mark (and vice versa) when a commercial purpose is involved.

Trade Secrets

Last, and certainly not least, are trade secrets. A trade secret is any information **not generally known to the public** (i.e., it does not have to be unique information, but the fact your company knows it is not generally known to others) that **gives economic benefit to its owner** and the owner **takes reasonable efforts to maintain its secrecy** (i.e., it must be at least confidential information). Typical types of trade secrets are customer lists, ingredient lists, lists of procedures to perform services or make goods, machine operating instructions, and competitive intelligence.

Best practices for trade secrets in social media are:

1. Have clear internal policies for what employees can and cannot post in social media as relates to work information, and ensure they know and understand the policies.
2. Help employees know what trade secrets they encounter in their work as well as the sensitivity and confidentiality of this information. Each person needs to know what is a trade secret, generally, not its details unless that is part of their job.
3. Control access to trade secrets to those employees (and authorized third parties) who have a need to know it and ensure they follow use restrictions for the information.

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The little things matter. Regular, small reminders via short videos go a long way to educating employees when they are surfing social media. Enable your employees to do the right thing and ask us how else we can assist you to do so.

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