

Are You Protecting Your Property on the Internet?

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An Internet presence is no longer an alternative for a business. It is in most cases a necessity. In the frenzy to set up a website, a business often overlooks the need to protect its property. A business would not dream of spending time and money to set up a bricks and mortar site without insuring it and protecting its inventory, cash and other tangible property. Online, however, protection of intangible assets often is overlooked.

Trademarks and copyrights are types of intellectual property that add value to a business. It is important for a business to develop a policy to protect these valuable assets online. Domain names also are valuable property that can mean the difference between success and failure for an online business.

Copyright

Copyright protects an original work of an author fixed in any tangible medium of expression such as written, pictorial, graphic and sculptural works. Copyright law provides that a copyright automatically comes into existence at the moment an author creates an original work and fixes it in a tangible form. The author is not required to do anything to claim copyright in an original work; however, there are advantages to marking the work (with Copyright or © followed by the year of creation and the author's name) and to registering the work with the U. S. Copyright Office so these actions should be considered.

The ever-evolving scope of information available online raises a host of issues under copyright law. A common problem is the situation that arises when a business logically assumes that, if it hires an independent contractor to design a website, the business owns the rights to the website. Unfortunately, that is not always true. To the surprise of many businesses, in the absence of a written assignment of rights, the independent contractor owns the copyright. Thus, a business should make sure that any contract for the development of a website states that the independent contractor relinquishes all rights to the created website, including copyright.

Trademark

A business that spends significant amounts of time and money marketing its products or services to consumers should be interested in protecting the goodwill that results. Goodwill often is represented by product names, logos and slogans. To the extent that any of these items are distinct enough to distinguish the products of one business from those of another, they qualify as trademarks.

Without delving into the details of and distinctions between the types of trademarks (common law, state and federal), suffice it to say that ownership of a trademark can be lost if it is not used correctly. The marking ® next to the trademark announces to others that the trademark is federally registered and improves an owner's opportunity to collect damages if it ever is required to file suit against an infringer of the owner's trademark. In order to protect its property, a business owner should be diligent in marking its trademarks on the Internet in order to warn against potential infringement.

Domain Names

Domain names are particularly valuable business assets. Domain names identify an Internet address such as www.hahnlaw.com. The right domain name may determine which site a customer visits first when searching for a particular product or service. Whether a potential customer quickly can locate a particular business' site, rather than that of a competitor, may be the difference between success and failure.

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If the name a business wants to register is already taken, the business may try to buy the name from the registrant of the domain name. Unfortunately, it often is difficult to negotiate the purchase of a domain name. Some generic domain names, such as “business.com”, have sold for millions. This type of generic domain name belongs to the first registrant or the person who is willing to pay the most to purchase it from the registrant.

A different situation arises when the registered domain name a business desires is not generic, but is identical or similar to a trademark of the business. Those who register a domain name to which they have no legitimate right, hoping to sell it at an inflated price to the rightful owner, are called cybersquatters. A more recent variation is that of typosquatters, registrants of common misspellings of popular trademarks.

There are two options available to a business that wants to fight for a domain name in which it believes it has trademark rights. The first is the pursuit of legal action under the federal Anticybersquatting Consumer Protection Act (ACPA). Many businesses have brought actions under the ACPA in an attempt to persuade a court to transfer a domain name to them as the rightful owner.

The second option available to a trademark owner is to commence arbitration pursuant to the Uniform Dispute Resolution Policy (UDRP) adopted by the Internet Corporation for Assigned Names and Numbers (ICANN) which is the global entity with responsibility for managing the Internet’s domain name system. ICANN has the power to cancel, suspend or transfer a domain name based on a decision determined through the UDRP. The principal benefits of the UDRP are that it generally is less costly and can be completed in as little as one month. Tens of thousands of domain names have been transferred by ICANN. This has proven to be a quick and inexpensive method for a business to fight cybersquatters and, ultimately, obtain a desired domain name based on its trademark rights.

Conclusion

A smart business will recognize the value of its trademarks, copyrights and domain names and will take action to acquire, register and protect these intangible assets on the Internet, just as it would any other valuable assets of the business.

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