

Intellectual property

How to ensure you're protecting all of your company's IP assets

Traditionally, businesses protect their intellectual property (IP) with patents and trademarks.

These patents are generally utility patents, which protect the function or use of a product. Trademarks protect the name or logo under which a product or service is sold.

A more meaningful protection for businesses could include design patents and trade dress, says Barry A. Winkler, an attorney in the Intellectual Property Group at Brouse McDowell.

"These protections are issued much more quickly and with far less expense than utility patent applications.

Design patents protect the decorative appearance of a product. Trade dress can protect the product packaging or product configuration," Winkler says.

"For example, Volkswagen protected the shape of the Beetle and Apple protected the shape of the iPod by using both a design patent and trade dress. While using either a design patent or trade dress alone will provide some protection for the appearance of a product, using both provides even broader protection."

Smart Business spoke with Winkler and Jennifer L. Hanzlicek, an attorney in the Intellectual Property Group at Brouse McDowell, about how design patents and trade dress can address areas of IP that are often overlooked.

What are the key differences between design patents and trade dress?

Although there is some overlap between design patents and trade dress, there are differences in the scope, timing and duration of the protection provided. A design patent protects a product's

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FOLLOW UP: Contact Barry Winkler or Jennifer Hanzlicek for additional information about design patents and trade dress.

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appearance no matter what the product does, whereas trade dress protects the appearance only for the specific goods and services represented by the product.

As for timing, a design patent can be filed and issued before the product is used or even manufactured. Trade dress cannot be registered until the product is in use. Currently, a design patent is in force for 14 years after it is granted, but trade dress can last indefinitely as long as it continues to be used with its specific goods and services.

Design patents and trade dress can also protect virtual designs that exist in cyberspace, including the color scheme. Design patents protect Google's teardrop-shaped marker icon on its maps, Samsung's app icons and Nike's animated user interface. Apple's graphical user interface for the iPhone is protected by both a design patent and trade dress registration.

Should you seek both design patents and trade dress protection?

The benefits of using both design patents and trade dress can be demonstrated in the life cycle of a product.

When the design of a new product is complete, you can apply for a design patent to protect the ornamental design

before you launch your product. The design patent protects your design for several years as you begin to manufacture and sell your product. Simultaneously, you can apply for trade dress protection for a product's unique product configuration or product packaging. The trade dress protection then extends beyond the life of the design patent and continues until you cease selling the product.

The number of design patent applications continues to rise as businesses realize the benefit of protecting their product designs. In recent years, design patents have been more aggressively asserted by manufacturers in place of or alongside trade dress claims, including the recent *Apple v. Samsung* disputes.

Business owners could be foregoing meaningful protection by failing to pursue design patents and trade dress registrations. Taking these measures can offer increased IP protection, keeping competitors from copying the design and appearance of your products and product packaging. When used together, this powerful combination can provide armor for your product, from the finished design through manufacturing and launch, and continuing with sales until the product is no longer in demand. ●