Intellectual Property Law

in Regards to Trademark Infringement, Copyright Laws, and Trade Secrets

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Intellectual property law is a rather new concept in the area of business law. Krush, Lant, Majeske, Olver, and Plant (2013) define intellectual property as “patents, copyrights, trademarks, and trade secrets” (p. 127). Intellectual property law protects intellectual property from misappropriation and infringement. That is, it protects peoples’ intangible rights from misuse by others. As computer usage increased, so did the demand for intellectual property protection. The internet brings people all over the world together and people and businesses want to make sure that their products and secrets are not being exposed online. Businesses’ reputations and well-beings are at stake. Intellectual property law aims to protect them. Some infringements on intellectual property are excused if they are being used for research, academics, criticism, or journalism. These infringements are considered fair use. Over the years since the introduction of intellectual property law to the business world, there have been several cases testing the line between fair use and misuse.

Trademarks are considered intellectual property. Krush et al. (2013) defines trademark as “a distinctive mark, symbol, name, word, motto, or device that identifies the goods of a particular business” (p. 139). Trademark infringement is a crime where someone uses another’s trademark without his permission. In a case of trademark infringement, the owner of the trademark can collect up to treble damages (Krush et al., 2013, p. 141). To acquire a trademark, one must have it registered with the U.S. Patent and Trademark Office. Once registered, the trademark is valid for ten years. After the original ten year period has ended, the owner may renew the registration. The registration may be renewed for an unlimited number of ten year periods. Renewals are usually granted unless the trademark has become a generic name (Krush et al., 2013). Trademarks are a valued part of many major corporations. In 2011, a calculation by Brand Finance revealed the top ten most valuable trademarks to belong to Google, Microsoft, Walmart, IBM, Vodafone, Bank of America, GE, Apple, Wells Fargo, and AT&T (Stonefield, 2011). In the number one spot, Google’s trademark value in 2011 was $44.3 billion and in the number ten spot, AT&T’s trademark was valued at $28.9 billion (Stonefeild, 2011). Google’s overall market cap was at $164 billion (Stonefeild, 2011). Therefore, 27% of Google’s overall value is in its trademark. With this said, it is easy to see why businesses would want to protect their trademarks from infringement.

Another form of intellectual property is copyrights. According to Krush et al. (2013), copyright is “a legal right that gives the author of qualifying subject matter, and who meets other requirements established by copyright law, the exclusive right to publish, produce, sell, license, and distribute the work” (p. 134).Unlike a trademark, one does not have to go to a specific place to register a copyright. Copyrights become registered to the author of an original work as soon as it is created in a tangible form (Krush et al., 2013, p. 135). Copyrighted works can be used by people other than the original owner under the fair use doctrine when used for research, scholarship, criticism, or journalism. If copyrighted material is used by someone without the owner’s permission for other reasons, then copyright infringement has been committed. Copyright infringement is punishable by up to five years in federal prison (Krush et al., 2013, p. 136). In 2000, an MP3 sharing website called Napster unintentionally crossed the line between fair use and infringement. Napster was created in 1999 by eighteen year old Shawn Fanning. A year later, Metallica sued Napster for copyright infringement (Farlex , 2013). Napster defended that it had operated under the fair use doctrine and had made no profit to constitute as infringement. Still, the Ninth Circuit concluded that Napster’s operation was considered copyright infringement (Farlex, 2013). Businesses and people must be careful to not commit copyright infringement. To do this one must be aware of his rights under the fair use doctrine, since like Shawn Fanning, one could infringe on another’s copyright without knowing and get into serious legal trouble.

Trade secrets are a third form of intellectual property protected under intellectual property law. As defined by Krush et al. (2013), trade secret is “a product formula, pattern, design, compilation of data, customer list, or other business secret” (p.128). Trade secrets operate a bit differently than trademarks and copyrights. Trade secrets do not have to be registered. If a trade secret were to be patented, then it would be exposed to the public twenty years later (Watson, 2010). Since trade secrets are meant to be secret, many persons will opt to not get them patented. The way for businesses to protect their trade secrets is to keep them out of the public’s eye. If the public happens to stumble upon them on their own, however, they may use the trade secret as their own. One way to legally discover a trade secret is through reverse engineering. In reverse engineering, one may deconstruct a rival’s product or recreate it through trial and error (Krush et al., 2013, p.128). Stealing a trade secret, however, is illegal and punishable by law.

In America, trade secrets have piqued the nation’s interest from the start. For some companies, the rumors behind a trade secret help to increase a product’s popularity. McManus (2011) and Watson (2010) compiled lists of the most famous and sought after trade secrets. Three trade secrets near the top of the lists are WD-40, McDonald’s Big Mac special sauce recipe, and KFC’s fried chicken recipe. The proper name for WD-40 is Water Displacer- 40th attempt (Watson, 2010). The 40th attempt, as well as the previous 39 attempts, remains a secret (Haas & Halligan, 2010). The chemist who created the product in 1953 did not have it patented; neither did his successors. The formula has remained in a bank vault for years, excluding when the company’s CEO brought it out while armored and riding on a horse for the company’s 50th birthday (McManus, 2011). Both the WD-40 formula and the KFC fried chicken recipe are so secret that their ingredients are separated and mixed in different cities before going to another location to create the final product (McManus, 2011). McDonald’s Big Mac special sauce recipe is so secret that for a time McDonald’s didn’t even know it. Sometime in the 1980s the secret recipe got lost after the fast food chain decided to switch the special sauce out for a cheaper alternative (McManus, 2011). WD-40 and KFC are famous for their safe guarding and McDonald’s is infamous for its lack thereof, but perhaps the most famous trade secret of all is the secret formula behind Coca-Cola.

The company behind Coca-Cola chose to not get the secret recipe patented. Some suggest that this decision was driven by the fact that cocaine was in the beloved soft drink, and the company did not want that secret to leak out to costumers. The more accepted reason is that Coca-Cola did not want its competitors to find out the secret formula. In 2006, Pepsi was presented with an opportunity to buy trade secrets from three Coca-Cola employees. The employees illegally stole trade secrets from the Coca-Cola Company and tried selling them to Pepsi. Pepsi did not bite. Instead, Pepsi got in contact with Coca-Cola who then contacted the FBI. The three disloyal Coca-Cola employees were sentenced to serve five to eight years in federal prison, as well as pay $40,000 in restitution (Associated Press, 2006; Dorin, 2007; Harlan, 2006). Since then, Coca-Cola has been more careful about protecting its secret formula. When SunTrust, the bank that has housed the secret formula since 1925, began selling large amounts of its shares in Coca-Cola stock, the company decided to relocate the formula. In 2011, the company moved the secret formula to a new vault in the World of Coca- Cola museum in Atlanta, Georgia. The move marked the 125th birthday of the company (Allen, 2011; Brehm, 2012; Cannold, 2011; Corporate, 2011; Weber, 2011). Even if the Coca-Cola secret recipe was to be revealed, no one would be able to reproduce it. One ingredient would always be missing. Coca-Cola still uses coca leaf extract in its formula. This extract can only be made by the Stepan Company in New Jersey, the only company in the United States that is allowed to process cocaine. The company has a loyalty to Coca-Cola and would not do business with one of its competitors (Watson, 2010). The rest of the formula is believed to be published in Mark Pendergrast’s *For God, Country and Coca-Cola* in 1993, though the Coca-Cola Company has labeled his ingredient list to be false (Mikkelson, 2011). Regardless, America continues to be awed by the 127 year old mystery.

Intellectual property, such as trademarks, copyrights, and trade secrets, is an important factor in business success. A significant percentage of the value of many successful businesses is due to intellectual property. The infringement of a business’s intellectual property can be detrimental. That is why intellectual property law is so important. The threat of large fines and prison time should deter competitors from committing infringement. The best way to avoid intellectual property law violations is through education. The public should be informed of the laws behind trademarks, copyrights, and trade secrets. Companies should also educate their employees on the importance of intellectual property to the business. That would help to prevent what the Coca-Cola Company faced in 2006. Intellectual property laws in compliance with public and employee education will help keep intangible rights protected in America.

References

Allen, G. (2011, Dec 9). *Bad News Pepsi! After 90 Years Coca-Cola’s Secret Recipe is Finally*

*Out of the Bank Vault for Museum Display…but Rivals Still Won’t Get a Peek at the*

*Ingredients.* Retrieved from http://terblogging.blogspot.com/2011/12/bad-news-pepsi-

after-90-years-coca.html

Associated Press (2006, Jul 6). *Pepsi Alerted Coca-Cola to Stolen-Coke-Secrets Offer.*

Retrieved from http://www.foxnews.com/story/0,2933,202439,00.html

Brehm, B. (2012, Mar 28). *Discover Coca-Cola’s Secret Formula at this Interactive Exhibit by*

*Second Story.* Retrieved from http://entertainmentdesigner.com/news/museum-design-

news/discover-coca-colas-secret-formula-at-this-interactive-exhibit-by-second-story/.

Cannold, J. (2011, Dec 8). *Coke’s Secret Formula Gets Closer to the Public.* Retrieved from

http://money.cnn.com/2011/12/08/news/companies/coca-cola-secret-formula-

revealed/index.htm

Corporate. (2011, Dec 8). *Coca-Cola Moves Its Secret Formula to The World of Coca-Cola.*

Retrieved from http://www.coca-colacompany.com/press-center/press-releases/coca-cola-

moves-its-secrets-formula-to-the-world-of-coca-cola.

Dorin, R. (2007, May 23). *Two Ex-Coke Workers Sentenced in Pepsi Plot Deal.* Retrieved from

http://www.cnn.com/2007/LAW/05/23/coca.cola.sentencing/

Farlex. (2013). *Napster and Intellectual Property.* Retrieved from http://legal-dictionary.the

freedictionary.com/Napster+and+Intellectual+Property

Haas, D.A. & Halligan, R.M. (2010, Feb 19). *The Secret of Trade Secret Success.* Retrieved from

http://www.forbes.com/2010/02/19/protecting-trade-secrets-leadership-managing-

halligan-haas.html

Harlan, C. (2006, Jul 7). *Trade Secret Plot Pulls Coke, Pepsi Together.* Retrieved from

http://www.post-gazette.com/stories/business/news/trade-secret-plot-pulls-coke-pepsi-

together-441097/

Kursh, S.R., Lant, T.K., Majeske, K.D., Olver, J.M., & Plant, R. (2013). *Pearson Custom*

*Business Resources*. Boston, MA: Pearson Learning Solutions.

McManus, M.R. (2011). *10 Trade Secrets We Wish We Knew.* Retrieved from

http://www.howstuffworks.com/10-trade-secrets.htm/printable

Mikkelson, B. (2011, Jun 4). *Have a Cloak and a Smile.* Retrieved from

http://www.snopes.com/cokelore/formula.asp

Stonefield, S. (2011, Jun 15). *The 10 Most Valuable Trademarks.* Retrieved from

http://www.forbes.com/sites/stonefield/2011/06/15/the-10-most-valuable-trademarks/

Weber, H.R. (2011, Dec 8). *Coca-Cola Moves Top-Secret Formula for 1st Time Since 1925.*

Retrieved from http://usatoday.30.usatoday.com/money/companies/story/2011-12-

08/coca-cola-formula/51738380/1