
The Dangers of Self-Help Services in Intellectual Property Law

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The Internet has made black letter law increasingly more accessible to the average person. Instead of finding a cubicle at a local law library, anyone with an internet connection can perform a quick internet search to locate the correct body of law with relatively high success. Now more than ever, savvy businesspeople may see potential cost-savings in pursuing intellectual property protections for their inventions, brands, and artistic works on their own, without the advice of an attorney. Self-help services have recognized this growing demographic of *pro se* businesspeople and created an industry around providing legal forms (many of these documents can be downloaded from official government websites free of charge), with the intent that the applicant will fill out the forms, file the forms, and then pursue the desired legal outcome with varying amounts of assistance along the way depending on the provider.

Acquiring trademark, patent, or copyright protections without having to pay an experienced attorney is an attractive proposition to many, but the potential (and often realized) pitfalls that accompany self-help services should be acknowledged with caution.

A. Trademarks

A trademark protects branding and may be any word, phrase, design, or a combination of these elements that identifies an entity's goods or services. The process for obtaining a trademark registration begins, statutorily, by filing a trademark application with the United States Patent and Trademark Office. Even in this early stage, there are plenty of pitfalls for the unsuspecting. Failing to perform necessary trademark clearance checks, incorrectly selecting which classes of goods and/or services are applicable to the mark, selecting the incorrect filing status, and wrongly selecting which entity will apply for the registration are all sure-fire ways to get in trouble early. However, this is just the beginning, as during the examination process numerous pitfalls open up when responding to the Examiner's likely rejection of a *pro se* applicant's trademark application.

Through and through, not only can money be wasted, but so can an applicant's time; it can take anywhere from twelve to eighteen months for a trademark to get allowed or rejected by the USPTO. If an applicant ends the process with a rejection, the applicant is at risk of an opportunistic competitor registering the same mark and limiting where the applicant may use the mark in commerce.

B. Patents

Patents protect inventions that are useful, novel, and non-obvious by granting the patentee a limited monopoly of twenty years from the filing date of the first application. In terms of being amenable to self-help, trademarks are green slopes whereas patents are double-black diamond slopes. Patents are notoriously difficult to draft because of the highly technical writing required, sometimes referred to colloquially as "Patentese," and the manner in which patents should be drafted to encompass the patentee's invention and possible competing iterations of the invention that competitors might use to operate outside of the patentee's limited monopoly. Patents also have stricter filing requirements than trademarks. For example, public disclosures of the invention more than a year before the first filing of a patent application can forever bar a patentee from acquiring an enforceable patent on a disclosed invention. Much like trademarks, patents have an examination process that has numerous pitfalls and many of these pitfalls are unique to patent prosecution.

The stakes during the patent prosecution process are significantly higher than trademarks in terms of cost and time. Patent applications are generally much more expensive than trademarks and it can take two to three years before the USPTO renders a decision as to either reject or allow the patent. Finally, if a patentee's prosecution of their patent ends in a rejection and the patentee chooses to do nothing else, unlike trademarks, the patentee generally cannot file a new application on the same invention.

C. Copyrights

Finally, a copyright is a collection of rights which spring into existence when someone creates an original work of authorship like a literary work, film, song, computer code, painting, or photograph by fixing the work in a tangible medium of expression. In terms of the three main bodies of intellectual property, copyrights are the most self-help friendly, but at the cost of the protection being the narrowest of the three. Registering a copyright with the United States Copyright Office affords the owner additional protections including bringing suit against infringers and opting for statutory damages and attorney's fees in suits involving infringing uses after registration. Regardless, having an attorney experienced in copyright registration eliminates much of the guesswork and stress that accompanies such filings.

D. Pitfalls After Acquisition

For trademarks and patents, in addition to the above listed pitfalls, there are a few final hurdles that come even after the respective trademark and patent certificates have been obtained. For both trademarks and patents, maintenance fees (renewal fees for trademarks) must be paid at certain stages during the lifetime of the respective intellectual property. Missing the deadlines for these fees can result in abandonment of the trademark registration or patent. For trademarks, mark owners must regularly demonstrate to the USPTO that they are still using their mark in commerce in order to maintain their registration. In addition, the validity of trademarks and patents can be challenged post grant by interested third parties or even the USPTO itself in the case of trademarks.

E. Final Remarks

For those who have already begun marching down the self-help pathway and have reached an impasse with the Patent and Trademark Office or the Copyright Office or those currently considering using self-help for their intellectual property needs—or any legal need for that matter—more often than not, the best way a person can help themselves is by getting in contact with an experienced attorney.

If you need any assistance obtaining a trademark, patent, or copyright for your business or have questions about meeting your intellectual property needs, please contact Blake Hurt at bhurt@tuggleduggins.com (336.271.5252), Reinier Smit at rsmit@tuggleduggins.com (336.271.5266), or Connor Christensen at cchristensen@tuggleduggins.com (336.271.5254).

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