

How to protect firm's technological innovation ?

Trademarks, copyrights and trade secrets

Trademarks

A trademark is a word, phrase, symbol, design, or other indicator that is used to distinguish the source of goods from one party from the goods of others.

<https://www.youtube.com/watch?v=J-PYuZOPrZl>


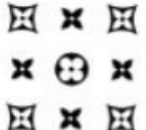









Trademark: the Louis Vuitton example

Louis Vuitton has used its Toile Monogram Design for over 120 years and has obtained nine trademark registrations which incorporate aspects of the design.

This case is interesting because Louis Vuitton is not asserting infringement of a single mark, but of nine separately registered marks. The complaint separates these asserted marks into three groups: the Toile Monogram Design Trademark, comprising four separate marks; the LV Design Trademark, comprising two separate marks, and the Flower Design Trademarks, comprising three separate marks.

Trademark: the Louis Vuitton example

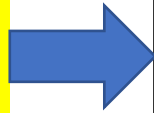
Mark	Reg. No.	Reg. Date	Class & Goods
<i>The TOILE MONOGRAM Design Trademark</i>			
	4,192,541	08/21/2012	<i>Inter alia</i> , IC 025: Clothing, namely, underwear, shirts, tee-shirts, pullovers, skirts, dresses, trousers, coats, jackets, belts for clothing, scarves, sashes for wear, gloves, neckties, socks, bathing suits; footwear; headwear
	3,107,072	06/20/2006	<i>Inter alia</i> , IC 025: Clothing and undergarments, namely, belts, scarves, shawls, jackets, sashes for wear, bathing suits, shoes, boots
	2,399,161	10/31/2000	IC 025: Clothing and underwear, namely, shirts, polo shirts, t-shirts, waistcoats, raincoats, skirts, coats, trousers, dresses, jackets, shawls, stoles, scarves, neckties, gloves, ties, belts, bathing suits, shoes, boots and sandals, hats
	1,770,131	05/11/1993	IC 025: Clothing for men and women, namely, shawls, sashes, scarves; headgear

<i>The LV Design Trademark</i>			
	1,794,905	09/28/1993	<i>Inter alia</i> , IC 025: Clothing for men and women; namely belts, shawls, sashes, scarves; footwear headgear
	2,361,695	06/27/2000	IC 025: Clothing, namely, sweaters, shirts, sweatshirts, polo shirts, t-shirts, suits, waistcoats, raincoats, skirts, coats, pullovers, trousers, dresses, jackets, shawls, stoles, scarves, neckties, pocket squares, pocket handkerchief squares for wear, gloves, ties, belts, bathing suits, shoes, boots and sandals, hats
<i>The FLOWER Design Trademarks</i>			
	2,181,753	08/18/1998	<i>Inter alia</i> , IC 025: Clothing and underwear, namely, shirts, waistcoats, raincoats, skirts, coats, pullovers, trousers, dresses, jackets, shawls, stoles, scarves, neckties, pocket squares, belts, shoes, boots and sandals
	2,773,107	10/14/2003	<i>Inter alia</i> , IC 025: Clothing, namely, shirts, T-shirts, belts, scarves, neck ties, shawls, skirts, raincoats, overcoats, trousers, jeans, pullovers, frocks, high-heeled shoes, low-heeled shoes, boots, tennis shoes; hats
	2,177,828	08/04/1998	<i>Inter alia</i> , IC 025: Clothing and underwear, namely, shirts, waistcoats, raincoats, skirts, coats, pullovers, trousers, dresses, jackets, shawls, stoles, scarves, neckties, pocket squares, belts, shoes, boots and sandals

The service mark

A service mark is basically the same as a trademark, but distinguishes the provider of a service rather than a product. Often the term *trademark* is used to refer to both trademarks and service marks.

Some of the service marks owned by InterContinental Hotels Group, its subsidiaries or affiliates:



Trademarks and service marks

- Trademarks and service marks can be embodied in any indicator that can be perceived through one of the five senses.
- Most marks are embodied in visual indicators, such as words, pictures, and slogans.
- However, marks are also registered that use other senses such as sound (e.g., tones that are associated with a particular company or brand) or smells (as in fragrance).
- Trademark rights may be used to prevent others from using a mark that is similar enough to be confusing, but they may not be used to prevent others from producing or selling the same goods or services under a clearly different mark.

Major International Trademark Treaties

Almost all countries offer forms of trademark registration and protection. National or regional offices maintain a Register of Trademarks that contains information on all trademark registrations and renewals.

To eliminate the need to register separately in each country (or region), the World Intellectual Property Organization administers a System of International Registration of Marks governed by two treaties:

- the Madrid Agreement Concerning the International Registration of Marks
- the Madrid Protocol

Countries that adhere to either the treaties are part of the Madrid Union. As of April 2014, there were 91 member countries of the Madrid Union.

Copyright

<https://www.youtube.com/watch?v=psUEVRtYzpA>

- Copyright is a form of protection granted to works of authorship.
- The authors of original literary, dramatic, musical, artistic, and certain other intellectual works can obtain copyright protection.
- Like trademarks, the rights of copyright protection are established by legitimate use of the work.
- This protection is available whether or not the work is published and prevents others from producing or distributing that work.

Copyright

The owner of the copyright has the exclusive right to:

- Reproduce the work in copies or phonorecords.
- Prepare derivative works based upon the work.
- Distribute copies or phonorecords of the work to the public by sale or other transfer of ownership, or by rental, lease, or lending.
- Perform the work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works.
- Display the copyrighted work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work.
- Perform the work publicly by means of a digital audio transmission (in the case of sound recordings).

Copyright Protection around the World

Copyright protection varies from country to country.

Most countries offer copyright protection to both domestic and foreign works, and there are international copyright treaties for simplifying the process of securing such protection.

- One of the most significant is the Berne Union for the Protection of Literary and Artistic Property
- Other treaties include the Universal Copyright Convention (UCC);
- the Rome Convention for the Protection of Performers,
- Producers of Phonograms and Broadcasting Organizations;
- the Brussels Convention Relating to the Distribution of Program-Carrying Signals Transmitted by Satellite;
- the World Intellectual Property Organization Copyright Treaty.

TRADE SECRETS

Rather than disclose detailed information about a proprietary product or process in exchange for the grant of a patent, inventors or firms often will choose to protect their intellectual property by holding it as a **trade secret**.

A trade secret is information that belongs to a business that is generally unknown to others.

Trade secrets need not meet many of the stringent requirements of patent law, enabling a broader class of assets and activities to be protectable.

TRADE SECRETS

If you possess valuable information on **technology** or on **any other aspect of your business**, you can protect it as a trade secret if the following conditions are met:

- the information is not known either by the public at large or by the experts of the sector in question
- the information has commercial value
- you have taken steps to keep the information secret:
for example, you keep it in safe storage and you have signed non-disclosure agreements with anyone that has access to it or with whom you have shared the information

What information can be covered by a trade secret?

Trade secrets can include a vast amount of information and know-how that is not protectable or cannot be protected properly through patents, such as:

- early-stage inventions
- manufacturing processes
- lists of suppliers and clients

Information protected by trade secrets can be strategic for the **long-term**, like recipes or chemical compounds, or for **shorter periods**, such as the results of a marketing study, a brand name, price and date of launching of a new product or the price offered in a bidding procedure.

How trade secret protection works

- The fact that a firm have a trade secret **does not mean** that it has exclusive rights over the information in question. If someone else develops the same information, he can use it freely.
- However, the firm protected against dishonest behaviour: for example, if someone **accesses** the documents related to the secret information without authorisation, **copies** them for their personal use or **gives** them to someone else.
- You are also protected if someone breaches a non-disclosure agreement and makes the information available to someone else.
- In situations of dishonest behaviour, you are entitled to **damages** and **other remedies**.
 - For example, a court order can prohibit the use of the trade secret by the person who had acquired the trade secret unlawfully.

TRADE SECRETS

The Uniform Trade Secret Act states that no individual or group can copy, use, or benefit from a trade secret without the owner's authorization if they meet *any* of the following conditions:

- They are bound by a duty of confidentiality (e.g., employees, lawyers).
- They have signed a nondisclosure agreement.
- They acquire the secret through improper means such as theft or bribery.
- They acquire the information from someone who did not have the right to disclose it.
- They learn about the secret by mistake but have reason to know that the information was a protected trade secret.

Mixing patents and trade secrets for complex innovations



Complex innovations

A “complex innovation” is an innovation that can be fragmented into a set of sub-innovations.

Although the possibility exists to patent each sub-innovation, innovators may decide to keep some or all of them secret.

Such patent-secret mix is common in the food industry where recipes, lists of ingredients or formula are kept secret, while cooking, manufacturing or packaging processes are patented.