

USING INTELLECTUAL PROPERTY TO GAIN A COMPETITIVE ADVANTAGE IN THE MARKETPLACE
用知识产权在市场上获得竞争优势

There are many ways to gain a competitive advantage in the marketplace. For example, a company might be the “first mover,” have superior channels of distribution or the ability to manufacture at a lower cost. Intellectual property (IP) protection, which includes patents, trademarks, copyright and trade secrets, can likewise provide a competitive advantage in the marketplace.

在市场上获得竞争优势有很多途径。举例来说，一个企业可能是先行者，有良好的发货渠道或者有低成本生产的能力。知识产权保护，包括专利，商标，著作权和商业秘密也一样可以给企业在市场上带来竞争优势。

One form of IP protection is the U.S. patent, which applies to an invention that is new, useful and non-obvious. In order to be considered new for patent purposes the invention cannot have been used commercially, offered for sale or disclosed publicly more than one year before the patent application was submitted. The United States Patent and Trademark Office (USPTO) accepts and reviews patent applications. Once a patent is issued, it gives the owner the right to prevent others from making, using, selling, offering for sale or importing the invention to the U.S. for 20 years from the date of filing. If the owner discovers that someone may be infringing upon the patent, the owner may take steps to prove infringement and enforce the patent. For a patent to be infringed upon, every element listed in a patent claim must be found, literally or equivalently, in the infringer’s device or method.

知识产权保护的其中一种方式是美国专利，其保护新颖的，实用的和非显而易见的发明创造。为符合专利的新颖性要求，该发明创造不可已用于商业用途，承诺销售或者在提交专利申请一年前已公布于众。美国专利和版权局接受和审议专利申请。一旦一项专利被核准后，专利权人享有排除他人制造，使用，销售，承诺销售或者进口该发明创造到美国的权利 20 年，从申请提交之日起算。如果所有人发现有人可能正在侵权，所有人可采取相应步骤执行其专利权。认定专利侵权行为，在被控侵权产品或方法中应当找到与专利权利要求中记载的每一个必要技术特征相同的或实质性相同的对应特征。

Another form of IP protection is the trademark, which functions to protect any distinct word, symbol or device used to identify the source of goods or services. This category includes company names, brand names, logos and even some colors and sounds. The USPTO receives and processes applications for federal registration of a trademark. In addition, a trademark can be registered with the Secretary of State’s Office for state protection. Unlike a patent, a trademark does not need to be registered to be enforced, though it is recommended. Registration with the USPTO provides nationwide protection, whereas a non-registered trademark would enjoy protection only a limited geographic area and only in certain cases. Trademarks also differ from patents in that there is no time limit to how long they can be enforced. As long as the trademarked name, phrase, logo, etc. is used continually it remains protected. In addition to continual use, registered trademarks require renewal with the USPTO or Secretary of States Office from time to time to maintain the registration. Similar to patents, trademark protection gives the

owner the right to prevent others from infringing on the mark. Since the trademark serves as an identifier of the source of goods or services, trademark infringement occurs when another mark is similar enough to an existing mark that the public is likely to confuse the two. If the rightful owner of the trademark is able to prove the infringing mark is likely to be confusing, then the infringing mark may no longer be used.

另一种知识产权保护方式是商标，商标保护用以区别商品或服务来源的有显著特征的字母，标记或图案，包括企业名称，品牌名称，标识，甚至色彩和声音。美国专利和商标局接受和处理联邦商标登记。另外，一个商标也可以在各州的州务卿办公室登记以获得州法的保护。不像专利，商标不需要登记就可执行，尽管登记是强烈建议的。美国专利和商标局的登记给予一商标全国性的保护，而未登记的商标只能在特定的区域或者某些案件中获得保护。商标和专利的不同还在于其保护期限不受限制。只要商标化的名称，词组，标识等等被持续使用，其将永远受到保护。除需要持续使用之外，登记的商标需要定期在美国专利和商标局和州务卿办公室续展注册以维持登记状态。类似于专利，商标权给予所有人排除侵害的权利。因为商标是商品或服务来源的识别符，当另外的标识和现有的商标非常相似以致公众会混淆两者的时候，商标侵权就发生了。如果权利人可以证明侵权标识容易引起混淆，那么该标识就不能再被使用。

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Trade secrets are a type of intellectual property held by virtually all companies in some form or another. A trade secret can be any valuable information not generally known or easily obtained. However, in order for the information to qualify as a trade secret, the company must use reasonable efforts to keep the information secret. For

example, if a trade secret is disclosed to employees then the company must give notice to those employees that the information is confidential and is not to be disclosed. The more valuable the secret is, the more effort is required to keep it secret. Trade secrets can be as common as a company's client lists or as famous as the secret recipe for Coke and the Colonel's Original Recipe for KFC. There is no formal system for registering company secrets; they are simply held and protected by companies. As long as the information is kept secret there is no time limit on how long it can be enforced. Companies have the right to sue others who improperly acquire the trade secret or those who breach confidence regarding the trade secret. However, trade secret protection does not prevent the practice of reverse engineering.

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As businesses strive to identify and create competitive advantages, they should be sure to carefully examine their intellectual property. Intellectual property that is adequately protected and effectively utilized can provide a powerful competitive advantage in the marketplace.

在企业逐步鉴别和创造竞争优势的过程中，他们需要仔细审查他们的知识产权。充分保护和有效使用知识产权可以在市场上给企业带来强有力的竞争优势。

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