

## **A Trademark More Valuable Than A Patent?**

Patents are not right for every product or every business! Contrary to popular belief, patents are NEVER required in order to run your business. They are merely business tools that should be strategically employed to increase the value or strategic position of your business.

There are three specific instances that come to mind in which patents are just not the right strategy:

- 1) The product is exactly the same as an expired patent;
- 2) The product is very similar to an existing patent or patent application; or
- 3) I saw the product in China and I want to patent it in the US.

In the first situation, a patent would not be available.

In the second situation, while a patent may be available, it likely would not make sense due to the limited scope of the resulting patent.

In the third situation, you would not be entitled to a patent. Only inventors are entitled to file for patent protection in the US. You may be able to strike a deal with the Chinese inventor, but since you did not create the idea you would not be entitled to a patent.

In all three situations, trademark protection would be available to you and, assuming that your product is not infringing an existing U.S. patent, you would be able to make use and/or sell the product in the United States.

The good news is that trademark protection is relatively inexpensive and fast when compared to patent protection. Trademark protection will only protect the name that you choose for the product or service, but when it comes to consumer products the name is usually the most important thing. For example, when you go out to buy facial tissue, what name comes to mind—Kleenex®. When you go out to buy dark brown cookies with a cream filling, do you look for Oreo® cookies or Hydrox® cookies. Why do people select the brand name versus the generic product? It's all about the name and brand loyalty.

Moreover, trademark protection in some sense is slightly broader than patent protection. While patent protection only protects against products/services that are described by the claims, trademark protection extends to any name/logo for the product/service that would be likely to cause confusion in the marketplace. For example, if you owned Oreo® of a brand of cookies, you would likely be able to stop someone from using D'Oreo as a name for competing cookies.

So, in cases where patent protection may not be available or may not make sense, trademark protection may be an excellent alternative. Additionally, even if patent protection is available and makes sense, if you have a consumer product then it will need a name otherwise consumers won't know what to look for in the stores.

In short, trademark protection is a good idea whether your product is patentable or not or, as your product needs a name if consumers are going to buy it. Moreover, having a definite trademark will help focus your marketing and branding efforts and be an overall asset to your business.

For more information about filing for trademark protection [click here](#) (link to TM basics on website) or contact us to schedule your free 30-minute initial consultation.