

Intellectual Property

Consider the COKE Bottle. How many billions of dollars has been spent developing the brand and image to what it is today? The Coca-Cola Company will not allow anyone else to trade off their name. There have even been rumours of “Coke” inspectors, who travel the country asking for a COKE at restaurants and fast-food chains and checking that what they receive is “the real thing”. *Ask for a COKE next time you go to a Non-COKE outlet, e.g. KFC, and see what the response is.*

Protecting Your IP



Types of IP assets:

- a) Trade mark – the words COKE and COCA-COLA, the COKE bottle shape
- b) Registered Design – product shape, configuration, pattern and ornamentation (e.g. the bottle shape)
- c) Copyright – the layout of the writing on the COKE bottle, the shape of the COKE bottle
- d) Trade Secret – the recipe for the beverage
- e) Patent – a new invention like a new product or process (e.g. a new bottle closure)
- f) Company name – legal identity (e.g. The Coca-Cola Company and Coca-Cola Amatil (NZ) Ltd)
- g) Domain name - www.coke.co.nz

Copyright

Copyright protects the expression of your idea. The form in which the idea is expressed is protected but not the idea itself. For example, copyright protects the written words and pictures in a promotional brochure from copying, but not the message and information itself. Copyright exists automatically, from the time of creation, in original works that fall within one of the following categories:

- Literary works including instruction manuals and advertising material
- Dramatic works including scripts
- Musical works including music scores and arrangements
- Artistic works including plans, photographs, drawings and models
- Sound recordings
- Films including videos and DVDs
- Broadcasts including radio and television
- Cable programmes
- Published editions.

Note 2: Disclosure in a material form which is named, dated and marked CONFIDENTIAL is recommended over oral or other disclosure

Copyright does not last for ever. The length that copyright lasts depends on the work involved and when it was created. The general rule for literary, dramatic, musical or artistic works is that copyright will last for the lifetime of the author plus fifty years. For sound recordings and films, it lasts for fifty years from the end of the calendar year in which it was made, or made available to the public, whichever is later. For “commercialised” products, it lasts for sixteen years. Other types of works will have different periods of protection. Once copyright expires, the works falls into the “public domain” and can be freely used.

A copyright notice is the best way to inform others that a work is protected and consent is required to copy it. A copyright notice contains the © symbol, the name of the copyright owner and the year the work was first created. There is no formal registration system for copyright in New Zealand. If students use the copyright notice, others cannot say that they were not aware that there was copyright in the work.

New Zealand is a party to various international agreements on copyright. Participation in these agreements means that when an original work is created in New Zealand, it is automatically protected here and under the copyright laws in countries that are party to these agreements. Original works created in other member countries are also protected in New Zealand under these international agreements.

Exceptions to Copyright

- Incidental copying
- Fair dealing, e.g. using it in the news or a review of work
- Education, (can copy up to 3 pages or 3%, whichever is the least)
- Back up copy of a computer program (where not expressly prohibited in sale contract)

Ownership of Copyright

The author of a work is the first owner of copyright in the work unless the work is done by an employee in the course of his/her employment or the work was done under commission. In these situations for the majority (but not all types) of works the employer/commissioner is considered the first owner. Therefore if you are using someone to produce your product or part of it then it is important to clarify in a contract with that person that the intellectual property, including the copyright, belongs to your company.

Patents

A patent is an exclusive right granted by the Government for a new invention. The owner of the patent (patentee) may then exclude others from commercialising (i.e. making, selling, importing or using) the invention for up to twenty years.

New products, machines, electronics, compositions, processes and software may be patented. To obtain a valid New Zealand patent, your invention must be new and not be obvious compared to what is already known or used up to date the application for patent protection is filed.

Note 2: Disclosure in a material form which is named, dated and marked CONFIDENTIAL is recommended over oral or other disclosure

A patent application must include a signed application form, patent specification and the prescribed fee. The patent specification is a written description of the invention, often including drawings and tables, to show how it is made and works. In New Zealand, you have the option of filing a patent application with either a provisional specification or a complete specification in the first instance. A provisional specification broadly describes the invention and how to perform it.

If you file an application accompanied by a provisional specification, you have 12 months in which to either file a complete-after-provisional specification or apply for an extension of time (up to three months). A complete specification accurately describes the invention and the best known method of carrying it out, and ends with one or more “claims” which define the scope of the invention.

Intellectual property law is complex and we recommend that students get contact a patent attorney before they disclosure information about their new invention to potential business partners and customers. A list of registered patent attorneys can be found on the Intellectual Property Office of New Zealand website:

www.iponz.govt.nz

Resources

Every country has its own set of intellectual property (IP) laws. IP information retrieved from the worldwide web or library might not apply in New Zealand, or the information could be outdated.

Here are some useful websites you can visit to find out more about IP business assets:

Patents, trademarks and designs	www.iponz.govt.nz
Plant variety rights	www.pvr.govt.nz
Company names	www.companies.govt.nz
“Dot NZ” domain names	www.dnc.org.nz
Copyright	www.med.govt.nz
New Zealand Registered Patent Attorneys	www.iponz.govt.nz ; www.nzipa.org.nz
International IP protection	www.wipo.int/sme/en/index.html

You should also check out the resource folder on the Young Enterprise Trust website www.yetrust.co.nz/

Note 2: Disclosure in a material form which is named, dated and marked CONFIDENTIAL is recommended over oral or other disclosure

Confidential Disclosure Agreement

A Confidentiality Disclosure Agreement is a contract between you and another person you intend to tell secret information to. Under the Agreement the person agrees, insofar as the information is not already public, to keep the information disclosed to them secret and not use it themselves. Download this from the Teacher Resource Centre or Class of 2015 facebook.

CONFIDENTIALITY DISCLOSURE AGREEMENT dated

PARTIES

..... of ("Discloser")

..... of ("Recipient")

1. The Discloser wishes to discuss certain ideas with, and disclose certain information to, the Recipient. The parties agree to deal with that information on the terms of this agreement.
2. The Recipient:
 - (a) agrees to keep confidential all information it receives about the Discloser and the Discloser's products and technology whether or not that information is in writing ("Confidential Information");
 - (b) will not tell anyone about the Confidential Information, or disclose the Confidential Information to anyone except for any employees of the Recipient who need to know it for the purposes of discussions with the Discloser; and
 - (c) will only use the Confidential Information for the purpose of discussions with the Discloser.
3. The Recipient's obligations under clause 2 do not apply to any Confidential Information that:
 - (a) the Recipient already knew before it was received under this agreement;
 - (b) is independently developed by the Recipient without using any of the Discloser's Confidential Information;
 - (c) is disclosed to the Recipient by a third party who owed no obligations of confidence to the Discloser;
 - (d) is or becomes part of the public domain other than because the Recipient breached this agreement; or
 - (e) is required by law to be disclosed.
4. The Recipient will return all Confidential Information to the Discloser when requested by the Discloser and, in any event, on completion of the parties' discussions.
5. This agreement is governed by New Zealand law.

SIGNED

..... by:

Signature

Name

..... by:

Signature

Name

Note 2: Disclosure in a material form which is named, dated and marked CONFIDENTIAL is recommended over oral or other disclosure