

# Differences between Patents, Copyrights, and Trademarks

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## **Summary**

*This white paper distinguishes between copyrights, patents, trademarks, service marks, and logos, trade dress, and trade secrets to provide an introduction of the various methods available to protect intellectual property and generally what the protection affords the intellectual property owner.*

Intellectual property (IP) is generally intangible property resulting from some degree of creativity. The various forms of IP are distinct and offer different protections under patent, trademark, trade dress, trade secret, copyright, and other related laws.

## Copyrights

A copyright prevents others from copying, making derivative works of, performing, distributing, or selling copies or counterfeits of original works of authorship, such as music, lyrics, books, plays, poems, paintings, sculpture, photographs, architectural designs, and software. The creator of the work is generally considered to be the author of the work and is the owner of the copyright. An author of a work need not register the work with the U.S. Copyright Office to be protectable under copyright law. The work is generally protectable for the life of author plus 70 years.

## Patents

A patent gives the inventor exclusive rights in the invention for a period of time, so that he or she can profit from the invention before the right to exploit it is available to the general public. Patents can be granted for plants and other life forms, designs of manufactured products, machines, processes, and combinations of matter. A patent protects inventions or discoveries and grants the patent holder (or patentee) the exclusive right to make, use, and sell inventions, including new and useful processes, machines, certain designs, and certain varieties of plants, for a period of 20 years (excluding design patents).

## Trademarks, Service Marks, and Logos

A trademark, service mark, or logo prevents others in the marketplace from using a confusingly similar name, symbol, or device to indicate the source of its goods or services. A trademark protects words, phrases, symbols, or designs identifying the source of the goods or services of one party and distinguishing them from those of others. Trademarks are generally protectable as long as they are used in commerce to indicate the source of the goods or service.

## Trade Dress

Trade dress protection is similar to trademarks and can be used to identify and promote the non-functional aspects of a product or service. For example, the shape, color, and design of a product or its packaging can be trade dress. Likewise, the decor and color scheme of a restaurant or store also can be trade dress. Trade dress is generally protectable as long as it is used in commerce to indicate the source of the goods or service.

## Trade Secrets

A trade secret is any formula, process, design, or compilation of information which is not generally ascertainable, by which a company can obtain an economic advantage over competitors or customers. A trade secret remains enforceable as long as reasonable efforts have been taken to keep it "secret."

If you are interested in additional information on the topic of various types of intellectual property, or if you have any questions, please contact a K&K attorney. K&K offers an array of services in the areas of intellectual property including patents, trademarks, copyrights, trade secrets as well as intellectual property litigation and enforcement. Further information on these and other services is available at [www.kk-llp.com](http://www.kk-llp.com).

#### ***About Klemchuk Kubasta LLP***

*Klemchuk Kubasta LLP is an IP boutique law firm offering a full array of intellectual property related services, including litigation and enforcement of all forms of intellectual property, as well as registration and licensing of patents, trademarks, trade dress, and copyrights. The firm also provides legal services relating to trade secrets, unfair competition, domain names, e-commerce, privacy policies, Internet law, commercial litigation, and business litigation. Located in Dallas, Texas, Klemchuk Kubasta LLP supports a diverse client base ranging from individuals and startups to established market-leading companies. Through its Virtual IP Counsel<sup>SM</sup> and Virtual General Counsel<sup>SM</sup> programs, the firm also has experience with technology incubators and pre-first round financing technology start-ups. Klemchuk Kubasta LLP also serves as local counsel for IP and commercial litigation cases pending in Texas, including the federal courts in the Northern and Eastern Districts of Texas. Additional information about the firm and its attorneys may be found at [www.kk-llp.com](http://www.kk-llp.com).*

#### ***About Darin M. Klemchuk***

*Mr. Klemchuk, an intellectual property trial lawyer, focuses his practice on patent, trademark, copyright, trade secret, and other intellectual property litigation and enforcement. In addition, Mr. Klemchuk has extensive experience representing clients in commercial and business disputes, particularly software development, trade-secret, and non-compete disputes. Named by D Magazine as one of the "Best Lawyers in Dallas," in Intellectual Property for the third year in a row (2007-09), Mr. Klemchuk also focuses on intellectual-property licensing and technology agreements and serves as local counsel for out of state plaintiffs and defendants involved in patent, trademark, copyright, IP, and commercial litigation in the state and federal courts in Dallas, Texas. Learn more about*

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#### ***About Kelly J. Kubasta***

*Mr. Kubasta, an intellectual property attorney, has substantial experience in all aspects of IP, with a particular emphasis on patent, trade dress, trademark, and unfair competition litigation. Mr. Kubasta is also skilled in counseling clients on strategic development and utilization of IP assets; negotiating and drafting technology transfer agreements such as software, dealer/franchise, and co-branding agreements; developing and maintaining patent, trademark, and copyright portfolios; constructing Internet e-commerce policies; and resolving domain name disputes through ICANN or the ACPA. In addition, Mr. Kubasta serves as local counsel in patent, trademark, trade dress, copyright, and unfair competition litigation in the federal courts in Dallas, Texas. Learn more about*

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