Intellectual Property Basics: ICYMI Webinar Recap

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As part of the Morse Women Attorneys Webinar Series, Erin Bryan and Stacey Friends presented on the basics of intellectual property (IP), focusing on the patent, trade secrets, trademark, and copyright essentials everyone should know. Here are a few takeaways from Erin and Stacey's webinar.

Erin started the presentation with an overview of patents. Patents concern processes, machines, or compositions related to scientific, engineering, and industrial applications. A patent is essentially the right to exclude others from using or selling an invention for a set period of time. To successfully file a patent application, an inventor must show that it is new, useful, and non-obvious. If an invention is already patented, described in print, or publicly disclosed, it will likely not be considered novel so inventors should be aware of any public disclosures or offers of sale before filing a patent application. Inventors should also be aware that patent protection varies country by country and familiarity with local laws is vital for products that will be launched internationally.

In addition, Erin discussed trade secrets, which covers confidential information not widely known and that a business takes reasonable steps to protect, such as a customer list. Both state and federal law are relevant to trade secret protection. Many states have passed a version of the Uniform Trade Secrets Act, while at the federal level the Economic Espionage Act, Computer Fraud and Abuse Act, and Defend Trade Secrets Act are all relevant. Erin also mentioned that businesses should be wary of indiscriminately marking all documents as "confidential" as it may negatively impact trade secret protection. Instead, companies should carefully consider what needs protection and take deliberate steps such as restricting access, providing notice to employees, and putting in place confidentiality agreements.

Stacey addressed copyrights, which concern original works of authorship (including everything from books, arts, and games to even software code). It is hugely important to remember that copyrights must be "fixed in a tangible medium of expression." In other words, it has to be written down. An idea alone cannot be copyrighted. Copyright protection lasts much longer than other types of IP and is calculated as 70 years plus the life of the author. A beneficial aspect of copyright law for authors is that protection of their art or code is automatic upon creation. However, registration of a copyright is helpful and is required if an author needs to sue another party for copyright infringement.

And last but not least, Stacey also explained how trademarks function to protect brand names, logos, and other symbols that identify a business' goods and services and differentiate those goods and services from competitors. Trademarks can be acquired by simply being the first party to use a given name or mark in the market. And similar to copyright protection, although registration is helpful and recommended, registering a trademark is not explicitly required. Moreover, trademark protection is indefinite but only if one continues to use the mark in interstate commerce. Also, periodic renewals are necessary to maintain a trademark

registration. Trademark rights can also be lost if a trademark becomes so generic, a process known as “genericide”, as to lose its distinguishing features (good examples of this include Xerox and Band-Aids). With proper use and maintenance, trademark protection can last in perpetuity.

If you have any questions about patents, trade secrets, copyright protection, trademarks, or anything else related to IP, contact Erin Bryan or any member of the Morse IP team!

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