

# Business Basics: Protecting Your Intellectual Property



QUEEN'S CHAPTER

## Intellectual Property is Important!

Have a great idea for a business? **Know your rights!**

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Business names, slogans, and logos are all forms of Intellectual Property that can help create value for your business.

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##### **BUSINESS BASICS**

So you're thinking of starting something? An overview of the basic business structures used in Canada.

## Starting a business?

This question is only the beginning. Most individuals who have a brain for business don't know that they also have fundamental intellectual property rights. Intellectual property is the creative engine that fuels new ideas in business - and if you know your rights, you have a clear-cut advantage.

### **Copyrights? Trademarks? Patents? What's the difference?**

This guide will offer an overview of the different types of Intellectual Property available to prospective businesspeople.

### **What type of business is best? How should I name it?**

The guide will show you the different ownership structures of business enterprises, and will describe how to register and appropriately name your business.

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# Q&A

## TRADEMARKS and YOU: What's in a name?

### What is a Trademark?

A registered trade-mark is a vital way to protect your corporate reputation. There are 3 types of trade-marks:

- (1) Ordinary marks identify the goods or services of one person or organization
- (2) Certification marks identify goods or services that meet a defined standard (e.g. Woolmark standard for clothing)
- (3) Distinguishing guise – shaping of goods or their containers, or style of packaging that distinguishes your product (e.g. butterfly-shaped candies)

### Do I have to register my Trademark?

You are not required to register your trademark. Using a mark for a certain amount of time gives you ownership under common law. However, if you don't register your trademark, you won't have clear evidence of ownership. If there is a dispute over trademark, you will have to prove your ownership. If the trademark is registered, it is valid for 15 years. This means you have indisputable ownership for 15 years.

### What can be registered as a Trademark?

Most distinguishing characteristics can be registered as Trademarks. However, some things cannot be registered, such as:

- names and surnames
- clearly descriptive marks (e.g. "sweet" for ice cream, "juicy" for apples)
- "deceptively misdescriptive" marks (e.g. "air express" for ground transportation)
- words that denote a geographical location commonly known to be the place of origin of such goods or services (e.g. "Italy" for pasta)
- words or designs that one might confuse with pre-registered trade-marks
- words or designs that nearly resemble a prohibited mark

### Who can apply for registration?

Companies, individuals, partnerships, trade unions, and lawful associations may register their marks for their goods or services

### How long do registered Trademarks last?

Your registration is valid for 15 years. It may renewed every 15 years thereafter for a fee.

### How much does registration cost?

The cost of registering a trademark depends on the individual applicant's requirements. In some cases, only a filing fee and a registration fee may be required. However, other fees may also apply. If you appoint a trademark agent to represent you, additional fees will be required for his or her services.

### Where do I find more information on Trademarks?

Go to CIPO's website at <http://www.ic.gc.ca/eic/site/cipointernet-internetopic.nsf/eng/home> for more information, including:

- instructions on getting started, including a tutorial on consulting the Canadian Trademarks Database, access to the Canadian Trademarks Database, and online and printable sample forms;

# Q&A

## **COPYRIGHT and YOU: Your creativity is valuable.**

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### **What is a Copyright?**

Copyright is the exclusive right to copy a creative work or allow someone else to do so.

#### **What is covered by copyright?**

Copyright applies to all original, dramatic, musical, artistic and literary works (including computer programs). It also applies to performances, communication signals and sound recordings.

#### **How do I obtain a copyright?**

Copyright in a work exists automatically when an original work or work in other subject matter is created.

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### **Do I have to do anything to be protected?**

No. Since copyright exists automatically, the owner is protected under copyright common law. Registration in the Copyright Office does not preclude or enhance protection. However, it is still a good idea to register your copyright and to indicate notice of copyright on your works.

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### **How long do Copyrights last?**

The general rule is that copyright lasts for the life of the author, the remainder of the calendar year in which the author dies, and for 50 years following the end of the calendar year.

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### **What are the benefits of Copyright registration?**

Registration gives you a certificate that states you are the copyright owner. You can use this certificate in court as evidence of ownership. Being on the Copyright Register also helps with finding an owner when permission to use a work is sought.

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### **How do I register a copyright?**

You file an application with the Copyright Office along with a prescribed fee. An application form and instructions for filling it out are available from the Copyright Office or by visiting CIPO's website ([www.cipo.ic.gc.ca/copyrights](http://www.cipo.ic.gc.ca/copyrights)). Electronic filing is possible.

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### **Do I need to mark my work with a notice of Copyright?**

This isn't necessary to be protected in Canada; however, you may mark your work with the symbol ©, the name of the copyright owner and the year of first publication. Some other countries require this marking to be protected. Even though it is not always required, marking is useful since it serves as a general reminder to everyone that the work is protected by copyright.

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### **Will the Copyright Office prevent others from infringing my rights?**

No. The responsibility for policing your copyright rests with you.

# Q&A

## PATENTS and YOU: The Engine of Innovation.

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### What is a patent?

Patents are government granted rights. A patent gives an inventor a monopoly over the production, sale and use of their idea for a specific time period to allow for the inventor to profit financially from their creativity. A patent stops others from making, using, or selling your invention for a maximum of 20 years.

Patents cover new inventions, or any new and useful improvement of an existing invention. This can include everything from improvements to established processes to new compositions of matter. The rights given by a Canadian patent extend through Canada, but not to other countries. You must apply for international patent protection separately.

### What's the difference between Patents and Trade Secrets?

Keeping the details of your new invention a secret does not constitute the same kind of protection afforded by a patent. Trade secrets, which are similar to patentable inventions, lack the legal protection of patents. A patent protects your invention against any other independently created inventions that may be similar to your own.

### What can you patent?

There are three basic criteria for patentability. They are:

1. **Novelty:** invention must be the first in the world
2. **Utility:** the invention must be functional and operative
3. **Ingenuity:** the invention must show that

The invention must also be one of the following:

- A product (ex. A door lock)
- A composition (ex. Chemical lubricant for door locks)
- An apparatus (ex. A machine for making door locks)
- A process (ex. A method for making door locks)
- an improvement made to on any of the above.

In order for an idea to be patentable, the invention must show all three components of novelty, utility and ingenuity.

Novelty: you must be the original inventor of your idea, and your idea must be the first of its kind in the world

Utility: patents cannot be obtained for ideas that do not work, or have no useful function.

Ingenuity: your new invention must be a development or improvement on an existing technology that would not have been obvious to a person of ordinary skill in the technology involved.

### How much do Patents cost?

Three types of fees must be paid in order to obtain or maintain a patent.

1. Filing fees:
2. Examination fees:
3. Grant of Patent fees:

### How do I protect my Patent rights?

Patent infringement happens if someone makes, uses or sells your patented item without your permission. You can sue to recover damages in court if your patent has been infringed.

# Q&A

## INTELLECTUAL PROPERTY and its MANY FORMS

### What is an Industrial Design?

An industrial design is the visual features of shape, configuration, pattern or ornament (or any combination of these features) applied to a finished article made by hand, tool or machine. For example, the shape of a table or the shape and decoration of a spoon may be industrial designs. An industrial design must have features that appeal to the eye. To be eligible for registration, your design must be original.

For more information, please visit [http://www.cipo.ic.gc.ca/eic/site/cipointernet-internetopic.nsf/wvwpj/2010guidedi-2010guideid-eng.pdf/\\$FILE/2010guidedi-2010guideid-eng.pdf](http://www.cipo.ic.gc.ca/eic/site/cipointernet-internetopic.nsf/wvwpj/2010guidedi-2010guideid-eng.pdf/$FILE/2010guidedi-2010guideid-eng.pdf)

### What is an Integrated Circuit Topography? (ICT)

Semiconductor integrated circuits are at the heart of modern technology, communications, entertainment, manufacturing, medical and space technologies, and also are now found in items as ordinary as household appliances. The Integrated Circuit Topography Act and Integrated Circuit Topography Regulations refer to “microchips,” a form of integrated circuit, as “integrated circuit products.”

### What are Plant Breeders' Rights?

Plant Breeders' Rights (PBR) are a form of intellectual property rights by which plant breeders can protect their new varieties in the same way an inventor protects a new invention with a patent.

With the grant of a Plant Breeders' Rights for a new plant variety, the owner obtains the exclusive rights to

produce for sale, and to sell, reproductive material of the variety. The owner is then able to protect the variety from exploitation by others and can take legal action against individuals or companies that are propagating and selling reproductive material without permission.

The holder of the rights may also take action to prevent another person or business from using the approved denomination (variety name) of the protected variety when selling propagating material of another variety of the same genus or species.

For more information, please visit <http://www.inspection.gc.ca/english/plaveg/pbrpov/guidee.shtml>

### Confused? Don't be. Recall...

Industrial designs are the visual features of shape, configuration, pattern or ornament (or any combination of these) applied to a manufactured article.

Patents cover new inventions (process, machine, manufacture, composition of matter) or any new and useful improvement to an existing invention.

Trademarks are words, symbols or designs (or any combination of these) used to distinguish the wares or services of one person or organization from those of others in the marketplace.

Copyrights provide protection for literary, artistic, dramatic or musical works (including computer programs) and three other subject matters known as: performances, sound recordings and communication signals.

Integrated Circuit Topographies refer to the three-dimensional configuration of electronic circuits embodied in integrated circuit products or layout designs.

# Business Basics

## WHAT IS RIGHT FOR YOU?

### Forms of Business

#### Ownership:

There are three basic forms of business ownership in Canada, each with its own unique benefits. They are sole proprietorships, partnerships and corporations. Followed is a brief discussion of each:

#### Sole Proprietorship

A sole proprietorship is a business that is unincorporated with a single equity investor who is known as the “sole proprietor.” The business is not a separate legally recognized entity from the sole proprietor. Therefore, all agreements with banks, lessors, suppliers or customers are made with the sole proprietor in person and not the business. Not being a separate legal entity can have major implications, including the sole proprietor’s being personally liable for loan agreements made for the business. This means that the sole proprietor faces unlimited liability: he/she is personally liable for everything in the business. Moreover, because the business is not a separate legal entity, there is no distinction between assets used to carry on business and those held for personal use. If the company should default on payments, banks may take personal assets to satisfy the debt. A sole proprietorship ends with the sole proprietor’s death.

#### Partnership

A partnership is a type of business organization that is unincorporated and has more than one equity investor. Each investor is known as a “partner,” and normally each partner has a say in how the business is run. Partners are considered to be agents for one another and therefore may act on each other’s behalf. A partnership is not a separate legal entity; therefore the partners, and not the business itself, enter into contracts. Like a sole proprietorship, this means that partners are personally liable for the business and therefore face unlimited liability. Just as for a sole proprietorship, there is no distinction between assets owned by business and assets owned by the partners. Partners may hire a manager / managing team and decide to limit their roles to supervising the managers. The partnership ends when any one of the partners dies or becomes bankrupt, unless a written agreement provides otherwise.

#### Corporation

A corporation is a separate legal entity from its owners (who are equity investors and are known as “shareholders”). A corporation can have multiple equity investors, but could also have only one investor. Each shareholder has a bundle of legal rights he/she can enforce

against the corporation (e.g.) the right to a share of the company’s profits. Unlike sole proprietorships and partnerships, a corporation can enter into contracts on its own for which the corporation itself is liable and not the shareholders. In this way, shareholders face only limited liability; a shareholder’s liability is limited to the amount of his/her investment in the business. Furthermore, a corporation has legal title to business assets. A corporation has a perpetual existence, in that the corporation will still exist even if its shareholder dies. Shares can be sold and transferred on death. Even if a shareholder sells his/her shares, any assets of the corporation still belong to corporation. One benefit of forming a corporation is that owners may take advantage of the small business tax deduction (which is really a lower tax rate for companies meeting the criteria set by the Income Tax Act).



**Corporations are unique among the three forms of business ownership in Canada, due to their management structure.** There are several pieces to a corporation’s management structure. Shareholders elect a board of directors who direct the actions of the company. The Board elects officers who manage the daily business of the corporation, or they can choose to delegate this further

## MONEY MATTERS

### IDEAS INTO ACTION

A company needs capital (money) to operate. The sources of capital may include:

- ➔ **Personal investment** – the owner's own cash or assets is typically the first funding that the company obtains. It is normally a condition to obtaining a loan from an institution.
- ➔ **Banks** – the bank will normally ask the owner to s be a guarantor of loans to his or her company.
- ➔ **Government grants/subsidies** – please see this webpage [http://www.ic.gc.ca/eic/site/icl.nsf/eng/h\\_00073.html#finding](http://www.ic.gc.ca/eic/site/icl.nsf/eng/h_00073.html#finding) for more information, but be aware that most have very specific eligibility requirements.



to people they may hire (i.e.) employees. Employees may be hired either by the board of directors or by officers.

Shareholders can be directly involved in management by electing themselves directors, appointing themselves officers, and by hiring employees to help them carry on the business. They can also elect other people as directors to help them manage the business. A shareholder could also be an officer without being a director. Moreover, shareholders may even be employees in their own company, as they would be contracting with the corporation (which is a separate legal entity) as their employer.

### **Something important to know about: The Limited Liability Corporation**

Unlike sole proprietorships and partnerships, a company is recognized as a separate legal entity apart from the owners. A company can enter into contracts with other persons and is liable in the event that it breaches those contracts. A company can also borrow from other persons or buy goods on credit, and thus a corporation can have creditors. Since it is a separate legal entity, it can own assets that are used in the business. Moreover, a company can be liable for torts (wrongs) arising from carrying on the business.

In Canada, a company may have one or more shareholders. The liability of the shareholders in a company is typically limited to the amount of their investment. If the business fails, the shareholders will lose

only up to the amount of the money they invest in the company, but their personal assets will not be affected. However, it is important to understand that limited liability does not imply that owners are always fully protected from personal liabilities. Courts can and sometimes will pierce the corporate veil when some type of fraud or misrepresentation is involved.

For a company with only one shareholder, the owner is usually the director of the company as well. There are specific statutory requirements that make a director personally liable in certain circumstances. For example, directors are is liable for unpaid wages of employees. Also, environmental law provide that directors may be liable for any pollution caused by the company.

There can be tax advantages to operating a business through a corporation. The owner of the company often needs the assistance of accountants to deal with matters in accounting and tax.

A company may need premises from which to operate its business. If the owner of the company needs to lease premises, the landlord will often ask for a personal guarantee from the owner.

Every year, thousands of Ontarians launch their own business and enter the challenging and rewarding world of entrepreneurship, with high hopes and unbridled enthusiasm. Small businesses represent a hugely important segment of our economy. There are costs and challenges at beginning of the business, but operating a business can be very rewarding in the long term. ♦



## WHAT'S IN A NAME?

### The Business Names Act

Who needs to register under the Business Names Act?

- Sole proprietorships carrying on business under a name other than the individual's full name;
- partnerships carrying on business under a firm name other than the full names of the partners;
- corporations carrying on business under a name other than their corporate name;
- an existing general partnership or limited partnership registering a business name different from the registered firm name;
- limited liability partnerships;
- extra-provincial limited liability partnerships; and
- extra-provincial limited liability companies.

#### ***Where can I register a business name and obtain a Master Business Licence?***

You can register a business name on the ServiceOntario's website.

Upon registration you will receive a Master Business Licence (MBL) which can be used as proof of business name registration at financial institutions and to facilitate other business-related transactions with the Ontario government.

#### ***Do I have to renew my registration?***

A business name registration is valid for five years, after which time it must be renewed.

#### ***Restrictions on Business Names***

- When choosing your business name, remember that certain words or expressions cannot be used.
- Words or expressions, in any language, that are obscene or objectionable in nature.

- Words that imply the business is a different type of organization, use numbers or words that imply the business name is a corporate name and words that imply it is a not-for-profit organization if it is carried on for profit.

- The words "college," "institute," or "university," if it would suggest the registrant is a postsecondary educational institution, without the written consent of the Ministry of Training, Colleges and Universities.

- You may not use the words "Limited", "Limitée", "Incorporated", "Incorporée", "Corporation", or the corresponding abbreviations "Ltd.", "Ltée", "Inc." or "Corp.", unless the word "limited" is used in the name of a limited liability partnership, extra-provincial limited liability company or in the name of a limited partnership formed under the Limited Partnerships Act.

- Words that imply the business is connected with the Crown, the Government of Canada, of a province or of a territory, a municipality, or an agency of the Crown, government or municipality, without written consent of the appropriate authority.

- Names of individuals unless they have or had a material interest in the business activity and have given their written permission. If the individual is deceased and his or her name is used within 30 years of the date of death, the written consent of the estate or the estate trustee (i.e. the executor or administrator) must be obtained.

- Business names must be registered in the Roman alphabet (English, French, Spanish, Italian, Latin, etc.) and may contain numerals.

The following marks may also be included in the name, but may not be used as the first character: @ ! " # \$ % & ' ( ) \* + , - . / : ; > = < ? [ ] \ ^ ` ' .