

## Norris Legal Consulting – American Law Specialists

In partnership with the Chamber, our objective is to provide Chamber members with information on the complex US legal landscape, which might assist in US-NZ business relationships, and to assist NZ businesses expanding into the lucrative US markets. In our monthly column, we write about legal issues which we deal with in our representation of NZ businesses doing business in and with the US, however, we are also open to suggestions on topics about which members are interested in learning. So, please feel free to email us with your comments, questions and any suggested topics at [info@nz-uslegal.co.nz](mailto:info@nz-uslegal.co.nz).

### US INTELLECTUAL PROPERTY PROTECTION

Understanding the protection afforded to your intellectual property by US law is of key importance when doing business in the United States. Many a hopeful entrepreneur has found his or her ideas stolen or their intellectual property copied because they did not take the necessary steps to protect themselves. These unfortunately regular and costly scenarios are doubly true for New Zealand businesses launching into the US market.

Generally, intellectual property rights are not rights that are self-activated by mere creation of the intellectual property. To secure one's intellectual property rights, one must take steps to protect their intellectual property both domestically and internationally. International intellectual property protection must include US intellectual property protection if one is taking an idea or product into the US market. Intellectual Property in the US is protected under four categories: (1) Patents; (2) Copyrights; (3) Trademarks; and (4) Trade Secrets.

A US patent can be granted for an original invention, and grants the owner of the patent the right to exclusively exploit the patent for 20 years after the date the patent is granted. Unlike New Zealand, patents are available for software only under certain specific circumstances. The US Supreme Court has recently affirmed this in *Alice Corporation v. CLS Bank*, where it found that a patent for software is available when it does not include claims for “abstract ideas” and mere “business methods”. It is important to remember that patent rights are territorial. This means that your New Zealand patent does not provide you with patent protection in the United States. If you want patent protection in the US, you must obtain a US patent.

Copyright law in the United States covers original works of authorship including literary, dramatic, musical, and artistic works, such as poetry, novels, movies, songs, computer software, and architecture. Copyright does not protect facts, ideas, systems, or methods of operation, although it may protect the way these things are expressed. In the US, a copyright exists from the moment a work is created, much like in New Zealand. However, unlike New Zealand, US copyright protection extends for 70 years after the death of the author or 120 years from the date of creation if it is the work of a business (i.e., a work created by an employee or a work for hire). The US and New Zealand are signatories to several treaties which provide for respect of each other's copyright laws. While registration of your copyright is not required for protection under US law, registration of your copyrighted work is recommended, as this triggers additional infringement claim rights.

Under US law, a trademark may be granted for the use of any word, name, symbol, device, or combination thereof, used to distinguish your goods and services. In order to obtain trademark protection under US law, you must be the first to use the mark. In order to register your trademark in the US, you must accomplish interstate sales generally. However, if you already have an existing trademark in New Zealand, you can obtain an international registration of that mark under the Madrid Protocol.

Finally, US law protects trade secrets from misappropriation. Generally, what this means is that you can make a legal claim against any wrongfully disclosing party who was given your trade secrets under a duty of confidentiality or who used improper means to acquire your trade secrets. This is the category of legal protection which your business must carefully take advantage of by drafting confidentiality provisions into your contracts with US businesses and US agents.

Protecting your New Zealand intellectual property in the US can be a complicated and lengthy process and this is often seen as a hindrance to entering the US market. However New Zealand businesses can take preemptive protective measures for their intellectual property by ensuring that they utilize the protections afforded by a well-crafted, detailed and enforceable Non-Disclosure/Confidentiality Agreements drafted by a US lawyer, among other contractual agreements.

The United States has a strong tradition of intellectual property protection. Nevertheless, New Zealand businesses must take careful steps to make sure that they are not exposed to infringement and to zealously protect their intellectual property by taking advantage of the US intellectual property laws.

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