



EXPECT THE BEST

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# Protecting Your Competitive Advantage: Your IP Toolkit

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# WHAT IS IP

▶ In the business context:

Tools to assist a business to protect their competitive position in Canada and around the world

# The Tool Kit

- ▶ Trade-Marks
- ▶ Patents
- ▶ Designs
- ▶ Copyright
- ▶ Trade Secrets
- ▶ Plant Breeder's Rights
- ▶ Integrated Chip Topographies

# APPLICABILITY

- ▶ What do I *CARE* about IP? I'm not a mega-company, nor do I deal with high-tech stuff.

# IP is everywhere:



Barbie



- ▶ IP can be strategically used as a market tool



## BENEFITS

- ▶ Prevent competitors from copying key aspects of your business (i.e. to stop infringers)
- ▶ Prevent customers from sourcing your products or services from others
- ▶ Prevent departing employees from competing with you
- ▶ Ability to license rights to others

## **BENEFITS (continued)**

- ▶ **Use of proper notices will deter honest competitors**
- ▶ **Asset that may affect investment or financing**
- ▶ **Market awareness by monitoring what others are protecting**



# What is a trade-mark?

▶ Word(s) KODIAK

▶ Word & design



▶ Design

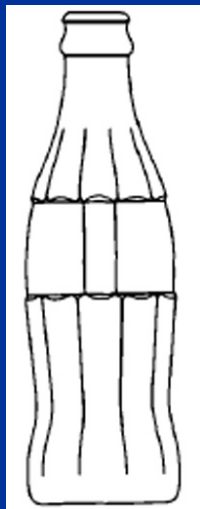


# What is a trade-mark?

## ▶ Slogan

“ALL THE REST IS JUST TELEVISION”

## ▶ Shape



# What is not a trade-mark

- ▶ A business name isn't necessarily a trade-mark
  - ▶ Product or Service
- ▶ A business name registration is not equivalent to a trade-mark registration
- ▶ Descriptive words
- ▶ Name of the goods or services

# Trade-Marks

## ▶ Guidelines

- ▶ Use it or your rights may be lost
- ▶ The trade-mark mark should be identified as a mark by:
  - ▶ The <sup>TM/MC</sup> whether registered or not or the ® can be used if registered
  - ▶ Different style lettering, such as bold face, italics or capital letters.
  - ▶ Notice

# Trade-Marks

- ▶ **Guidelines (continued):**
  - ▶ Used as an adjective rather than as a noun or verb
  - ▶ Distinguished from a trade-name or corporate name

# Patents

- ▶ The exclusive right to make, use or sell an invention in Canada 20 years from the date the application was filed

## “invention” has the following characteristics:

- ▶ *subject matter*: art, process, machine, manufacture or composition of matter, or any new and useful improvement to one of the above categories;
- ▶ *new*: the exact same thing has not been previously known anywhere in the world;

## “invention” has the following characteristics (continued):

- ▶ *useful* namely it has a practical application, and it works for its intended purpose; and
- ▶ *unobvious* meaning the differences between what was known (the prior art) and the invention must be sufficient to warrant protection.



# Patents

## ▶ Guidelines


- ▶ You must file for protection
- ▶ Should file before any public disclosure or sale of the invention
- ▶ Should indicate the invention is “patent pending”

# Designs

The visual features of shape, configuration, pattern or ornament or any combination of those features applied to a manufactured article made by hand, tool or machine

# Designs

## ▶ Guidelines

- ▶ You must file for protection to obtain rights
- ▶ You must mark the product or its packaging with notice:  name

# Copyright

It is the exclusive right to produce or reproduce an original work:

- ▶ literary
- ▶ dramatic
- ▶ musical
- ▶ artistic

# Copyright

## ▶ Guidelines

- ▶ Copyright arises automatically
- ▶ Register before commencing legal action
- ▶ Use copyright notice:
  - ▶ © Year of Publication, Name of Owner, All Rights Reserved
- ▶ First owner is the author. Exceptions: employee - in the course of employment, photographs - ordered
- ▶ Assignment must be in writing

# Trade Secrets & Confidential Information

- ▶ Any confidential information used in a business that gives a competitive advantage, and that can be kept a secret
- ▶ Specific product information or Business information
  - ▶ customer lists, supplier lists, pricing,
  - ▶ business plans, pattern, formula, device,
  - ▶ compound, process

# Trade Secrets & Confidential Information

## ▶ Guidelines

- ▶ You must take steps to protect it
  - ▶ employment agreements
  - ▶ consulting agreements
  - ▶ prevent unauthorized access
- ▶ Once its out of the bag its gone

# ENFORCEMENT & ISSUANCE

- ▶ **ongoing evaluation necessary:**
  - ▶ scope of registered rights
  - ▶ geographic coverage
  - ▶ competitor activity
- ▶ **right holder must monitor and pay annual maintenance fees**
- ▶ **patent and trade-mark office will not protect against infringement**
- ▶ **right holder is responsible for monitoring infringement and enforcing rights**



# INTERNATIONAL PROTECTION

- ▶ Your Canadian patent and trade-mark application will not protect you around the world!
- ▶ Canadian Patent and TM laws do not apply in other countries
- ▶ Copyright is international, but enforcement is not
- ▶ Exporters beware!

# CONCLUSION

- ▶ **Be Proactive - delay can result in a loss of rights**
- ▶ **Get Advice - IP Audits**

# QUESTIONS

▶ THANK YOU