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IP SYMBOLS: WHAT THEY MEAN, WHY THEY MATTER AND WHAT THEY PROTECT

Intellectual property generally refers to the rights and interests of the owners and creators of original materials and inventions. Protection of IP has become vitally important in business. IP intensive industries account for over 40 percent of the United States GDP, equating to nearly $7.8 trillion dollars and 47.2 million jobs. The most common areas of IP are patents, trade secrets, trademarks and copyrights.

A patent refers to the exclusive rights granted to the inventor of a new product or process. The inventor applies for a patent with the U.S. Patent and Trademark Office. A patent owner often will mark a product with the patent number, "patent", or the abbreviation "pat" to notify others of their patent rights, but otherwise, there is no particular symbol used to identify a patent. Some products are marked with a "patent pending" notation; however, this simply means that a patent application has been submitted to the patent office and offers no form of actionable patent rights. The owner of a patent must diligently monitor the marketplace to identify "copycat" products that may infringe on the patent.

A trademark is any word, phrase, symbol or design that identifies the source or owner of goods or services. Ownership of a trademark arises from using the

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mark, even if it is not registered. The owner of an unregistered trademark has certain common law rights from using it, but those rights are limited, and may be enforceable only in the geographic area in which the goods or services are provided.

If the owner of the trademark uses it in interstate commerce, the owner can apply to register the mark with the U.S. Patent and Trademark Office. Registering a trademark offers significant advantages. Among other things, registration lists the mark in the national database of registered and pending trademarks, allows the owner to purse infringement actions in federal court, and a registered mark may achieve presumptively incontestable status after five years of continuous use.

Trademarks are identified by one of three symbols: "®", "™", or "℠". These symbols are not interchangeable. The "®" symbol may only be used in connection with a registered trademark. The "®" symbol provides nationwide constructive notice of the owner's claim to the mark and enhances an owner's rights by eliminating a number of defenses to claims of infringement. Conversely, the "™" symbol identifies an unregistered trademark. The "℠" symbol is used for an unregistered "service mark," which is a trademark used in connection with services rather than products. Although the "™" or "℠" symbols do not identify a trademark as registered, they do put others on notice that the owner is claiming rights to the trademark.

A copyright is an original work of authorship that is a product of creative expression and is fixed in a tangible medium. Common examples of works that may be protected by a copyright include literary pieces, images, art, songs, movies and software. Copyrights are most commonly identified by the "©" symbol, although sometimes the word "copyright" or an abbreviation "copr." is used instead of the symbol. The "℗" symbol also may be used to denote a phonogram copyright for sound recordings. The name of the owner of the copyright and the year it was first published should follow the copyright symbol. Use of the symbol is not required but, again, it puts others on notice that a copyright is claimed in the material.

These symbols identify important IP rights. When you see an IP symbol know that others are claiming an interest in the associated invention, mark, or material. In order to protect your IP and to notify others of your rights, it is important to know what they mean, why they matter and what they protect.

Read the full article on cbalaw.org

EDUCATION & EVENTS

- Thursday, July 21 • 12 – 1:30 p.m.
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Register now on our website!

- Wednesday, July 27 • 5 - 7 p.m.
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All classes listed are offered by the Columbus Bar Association through Zoom. To register, call 614-221-4112 or enroll online at www.cbalaw.org.

U.S. SUPREME COURT DECISION HAS IMPORTANT IMPLICATIONS FOR ARBITRATION AGREEMENTS

In the recent case of Morgan v. Sundance, Inc., the U.S. Supreme Court declined to enforce an arbitration provision after the employer delayed too long in moving to compel arbitration. Resolving a split amongst federal courts of appeal, the Supreme Court held that arbitration agreements are to be treated like any other contract, and that a party may not rely upon a lack of prejudice to the other side to avoid a waiver of its right to arbitrate.

Background
Robyn Morgan signed an agreement with her employer, Sundance, Inc., to arbitrate disputes between the parties. Despite this agreement, she filed a lawsuit against Sundance in federal court alleging overtime pay violations under the Fair Labor Standards Act. Eight months after the lawsuit was filed, Sundance moved

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to compel arbitration of Morgan's claims. In response, Morgan argued that Sundance waived its right to arbitrate by waiting too long to file its motion and, therefore, her case should proceed in federal court. Notably, prior to filing its motion, Sundance had filed an answer with affirmative defenses that did not mention the arbitration agreement and participated in mediation.

The Eighth Circuit rejected Morgan's waiver argument and granted Sundance's motion to compel arbitration. It reasoned that Morgan failed to show she was prejudiced by Sundance's delay. The Eighth Circuit was one of nine federal courts of appeal that imposed this prejudice requirement when analyzing whether a party waived its right to arbitrate.

The Supreme Court's Decision
Overturning the Eighth Circuit's decision and allowing Morgan to proceed with litigation, the Supreme Court held that the Federal Arbitration Act (policy favoring waiver is not a green light for federal courts to "invent special, arbitration-preferring procedural rules." The Court reasoned that, outside the arbitration context, "a federal court assessing waiver does not generally ask about prejudice." Because waiver is defined as "the intentional relinquishment or abandonment of a known right," it is the actions of the party who holds the right that is the focus, not the impact (prejudice) on the opposing party.

What this means for employers
When faced with litigation, employers must act early if they want to enforce an agreement to arbitrate. It is imperative, therefore, that all parties involved in the execution of arbitration agreements, including legal counsel and human resources personnel, be up to date and have clear communication about the existence and location of those agreements.

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