

#### **Once I get a trademark, my brand is safe.**

It may be. But consider what happened to Tracey Deschaine, who runs a restaurant called Dixie Picnic in Ocean City, N.J. When Ms. Deschaine opened her business in 2006, she secured trademarks on her business name and logo and on the name of her signature item, “upcakes,” which are upside-down frosted cupcakes. The problem, she says, was that even though she had obtained the trademarks, someone monitoring the activity on the United States Patent and Trademark Office’s Web site had spotted her application and secured upcakes.com as the Web address, or U.R.L., before she could.

“I had no idea that even though I have a trademark, someone else could just go register the U.R.L.,” she said. “I wish I had planned ahead and bought the site before I did that.”

#### **What are the differences between first-party and third-party IP?**

Generally, first-party IP is defined as the intangible assets of a company and its employees: patents, goodwill, knowledge, trade secrets, etc. Third-party IP is when you have infringed upon someone else’s IP and need to defend yourself. First-party is an offensive action, and third-party is a defensive action.

The easiest example scenario to consider would be an image or symbol that is patented. If you want to use the Nike Swoosh, for example, in your marketing materials, but you didn’t receive permission from Nike, you would be slapped with an infringement claim immediately.

#### **Having a patent gives me the right to produce something.**

This is a very fundamental misunderstanding. Actually, what a patent does is give you the right to prevent someone else from producing what your patent covers. “Having a strong I.P. position helps ensure that other people pay you for your innovation like they would a toll on a road,” Mr. Kocher said.

But even if you do have a patent, there’s no guarantee that someone won’t try to get around it. There’s also no guarantee that you will win if you fight that person. But if you have your I.P. ducks in a row and a commitment to do whatever you can to defend those rights, you do have a fighting chance — even in a fight against a much larger company.

Consider the example of Cryptography Research, a 20-employee technology firm in San Francisco that specializes in data security. Beginning in 2004, the company made the decision to pursue litigation against the credit card giant Visa, which Cryptography asserted was infringing on its patents covering smart cards. To pursue the case against Visa, however, Cryptography’s founder, Paul Kocher, knew he needed a serious war chest in addition to his patent portfolio.

That’s why he decided to sell off another piece of his business, patents covering technology that protects Blu-ray discs from piracy, to Macrovision, which is now known as Rovi, in 2007 for \$45 million. “All of a sudden we became a formidable opponent for someone who thought we couldn’t fight,” Mr. Kocher said. In the end, the gamble paid off, as the two companies settled out of court, with Visa’s agreeing to license the technology from Cryptography.

**These scenarios are not intended to be interpreted as coverage positions. Coverage for any given claim is based upon its facts and the specific terms and conditions of the policy.**

### Q&A

#### **For small-business owners, it's not worth the time or effort to secure intellectual property rights**

Daniel Lubetzky, chief executive of New York City-based Kind Snacks, had high hopes when he and his company attended the Natural Products Expo West in Anaheim, Calif., in March. And who could blame him, since his Kind Plus bars had been named the best new product at the Natural Products Expo East last October?

But it didn't take long before Mr. Lubetzky knew something had gone wrong: He kept hearing how one of his competitors had copied the packaging, look and feel of his bars. Fortunately for Mr. Lubetzky, he had secured crucial components of intellectual property like trademarks, trade dress (the look and feel of a product) and Web addresses after founding his company. Unlike a patent, which can cost up to \$25,000 to secure, trademarks and Web addresses can be obtained relatively cheaply and without the aid of a lawyer.

With the legal documentation to back up his intellectual property rights, Mr. Lubetzky sent the offending company a cease-and-desist letter, which achieved the desired result. "Too many entrepreneurs forget there is more to I.P. than just patents," said Mr. Lubetzky, who happens to be a lawyer.

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