

A stylized, three-dimensional logo consisting of the letters 'H' and 'P' in a dark, glossy, black font. The letters are rendered with a slight shadow, giving them a 3D appearance as if they are floating or resting on a surface.

HARRISON PENSA

In any case.

INTELLECTUAL PROPERTY

- Confidentiality
- Copyright
- Moral Rights
- Trade-Marks
- Trade Secrets
- Patents

CONFIDENTIALITY

- Fiduciary
- Contractual
- Describe or mark
- Restrict disclosure, perhaps use

COPYRIGHT

- Protects expression, not idea
- Code, brochures, manuals
- Automatic – registration not needed
- Marking with © not required, but suggested
- Registration has some advantages
- U.S. registration required to sue for infringement

MORAL RIGHTS

- Identity of author
- Reputation of author
- Applies to code in Canada, not in U.S.
- Can be waived, not assigned
- Include waivers in all agreements with programmers and content creators

TRADE-MARKS

- Common law – passing off
- Registered trade-mark
- TM vs. ®
- Word mark vs. Design Mark
- Registration by country
- Registration by use
- Domain name issue
- Strong vs. weak trade-mark
- Can lose if use improperly or don't use

WHEN TO REGISTER A TRADE-MARK

- Use more than 2 years
- Invest effort & money in marketing or advertising
- Credibility or market image

TRADE SECRETS

- Keep an innovation secret
- Works well if can't be reverse engineered
 - e.g. formulas for Coke and KFC

PATENTS

- Exclusive right to make or sell an invention
- 20 years from filing
- New (or improvement to) and useful art, process, machine, manufacture or composition of matter

PATENTS

- Novel
- Non-Obvious (to person of ordinary skill in the art in view of prior art)
- Useful (some utility or 'real world' value)
- Cannot disclose before filed (1 year grace period in Canada and U.S.)
 - e.g. demo, trade show, published thesis, marketing material

WHEN TO PATENT

- To protect ability to make or sell a core product or service
- Inhibit competition
- Create license revenue
- Insurance against infringement claims
- Attract financing

PRACTICAL TIPS

- Silence is Golden
- Use confidentiality language
- Use “©” liberally
- Document ownership / licensing of creative works
- Obtain moral rights waivers

PRACTICAL TIPS

- Use “TM” on logos, marks
- Adopt strong marks – avoid obvious, but weak marks
- Protect trade-marks in agreements – control use
- Register trade-marks to protect branding
- Registrability search before adopting significant marks

PRACTICAL TIPS

- Consider patent potential before disclosure
- Consider whether expense of patent provides a worthwhile business advantage
- Consider all forms of possible intellectual property protection
- Provisional patents can provide 12 months to refine or consider it worthwhile patenting

David R. Canton
Barrister, Solicitor & Trade-mark Agent
Harrison Pensa LLP

Visit me at my blog at:
www.canton.elegal.ca

(519) 661-6776
dcanton@harrisonpensa.com
www.harrisonpensa.com
www.legallandmines.net

© 2008 Harrison Pensa LLP

MERITAS
LAW FIRMS WORLDWIDE



HP
HARRISON PENSA
In any case.