

VENABLE

Protecting Your Brand and Innovation

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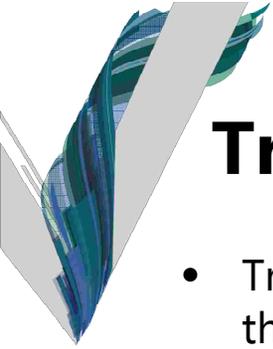
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Introduction

- The nutraceutical industry continues to generate thousands of new products, new formulations and new ideas. As a result, the protection and strategic use of your nutraceutical **brands** and **innovation** (intellectual property) is key for business success.
- Your intellectual property covering new products can be protected in different ways to offer a competitive advantage.
 - Trademarks and Trade Dress
 - Trade Secrets: Formulas and Methods
 - Patents



Trademarks and Trade Dress

- Trademarks identify and distinguish the goods and services of one company from those of others, and indicate the source of the goods and services.
- A trademark may include any word, name, symbol, device or any combination thereof. Common law trademark rights begin as soon as a mark is used, but to maximize protection, file a federal trademark application as soon as your company decides which brand name or logo it intends to use.
- Beyond brand names, logos and slogans, consider taking steps to protect the **trade dress** of your product and packaging. Trade dress is the “look and feel” of a product that identifies the source of the product and distinguish it from others.
- The goodwill you develop in your company’s name and products can be a potent marketing tool. If consumers associate your brand and trade dress with high quality, they are more likely to be repeat customers, and to try other goods and services your company offers.



Trade Secrets: Formulas and Methods

- Formulas, methods of manufacture, processes and certain other information that is economically valuable because it is not generally known, may be protectable trade secrets.
- Trade secrets in the nutraceutical industry may include the exact formulation of a supplement, a method of extracting a natural product, a compilation of supplier, distributor or consumer data, or similar information.
- In order to protect a trade secret, reasonable measures must be taken to maintain its secrecy. Once the information is made public, it is no longer a trade secret.
- Trade secrets can be protected by compartmentalizing functions within the business (e.g., sourcing, manufacturing, sales and distribution) and ensuring information is only provided on a “need to know basis” to your employees. Make sure that your employees, suppliers and distributors safeguard your information via non-disclosure agreements with all parties with whom you do business.



Patents

- While protecting your trademarks and trade secrets can provide an edge over your competitors, this generally does not provide you with the ability to prevent others from marketing a competing product.
- Patents can provide this advantage. The owner of a U.S. patent is granted the right to exclude others from making, using, offering for sale, selling or importing the patented invention in the U.S.
- Similar patent rights can be pursued in other countries through each country's patent office. In exchange for these benefits, the patent owner makes a public disclosure of the invention.



Patents

- Utility patents protect new and useful processes, articles of manufacture, compositions of matter and any new and useful improvement thereof.
- The components of nutraceutical formulations are typically substances that are known. The individual components would not be considered new, and as such they would not be eligible for patent protection. If the known component is recommended for a new use, however, it may be possible to secure patent coverage for the new method of using the component.
- In some circumstances, it may be possible to secure protection for known uses. One example would be a formulation for a known component with a known use, in combination with an ingredient that unexpectedly increases the efficacy of the known component. If the combination is new, and unexpected results are observed for the new combination, then patent protection may be possible.



Patents

- Examples of other protectable inventions include:
 - a new method of administering or taking a supplement (e.g., taking a particular dose of the supplement at certain time intervals for an unexpected increase in efficacy), or
 - a new and useful feature in the delivery system of the supplement (e.g., delivery via a liquid formulation rather than a tablet).
- The method of manufacturing could be new and useful, particularly if the method includes a new purification step or method of producing the supplement.
- Similarly, the method of packaging could be protectable if it includes a new and useful step, such as a step to increase the efficiency of the process or the shelf-life of the product. Functional aspects of the packaging may be protectable as well. Ornamental aspects are protectable through use of design patents.



Strategic Use of Intellectual Property Protection to Build Competitive Advantage

Protectable Aspect of Your Business or Product	Intellectual Property Right
Brand	Trademark and Trade Dress
Innovation	Patent (Design/Utility)
Formula and Methods	Trade Secret
Content	Copyright