

Richard Gearhart Talks the Importance Of Intellectual Property Protection With Patents, Trademarks, and Copyrights

PAYCHEX
Business
Series

Coronavirus



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Full transcript

Gene Marks:

Hey, everybody. I'm your host, Gene Marks, and this is season two of the Paychex Business Series podcast. I'm a certified public accountant, a regular business columnist for a bunch of publications you probably know, like *The Hill* and *The Washington Times* and *The Guardian* and the *Philadelphia Inquirer*. But most importantly, I'm a small business owner of a financial and technology management services company. And I've teamed up with Paychex, the leading provider of human resources, payroll, benefits, and insurance services to bring you real life stories and advice from real life business owners and experts.

Now last season we talked about the challenges associated with COVID-19, and this season we're focusing on moving forward, innovating and navigating the road to recovery. And there is a road to recovery and some interesting things going on regarding startups in this COVID economy. And to discuss that topic with me, I've got Richard Gearhart here. Richard is the Founding Partner of Gearhart Law, which is in Summit, New Jersey. He is also the host of the very entertaining Passage to Profit inventors show on iHeart Radio.

Richard Gearhart:

Well, thank you, Gene.

Gene Marks:

Yeah, we talked a couple of times already and had a great time. And I guess, Richard, this show itself, I mean, you're an intellectual property guy, so you like to have inventors on this show because you know there's people or [crosstalk 00:01:24] of intellectual property advice, right?

Richard Gearhart:

You got that right, Gene. And you've always been the perfect guest, our listeners love you. You are so informative and you're fun to listen to too. So thanks so much for being on Passage to Profit.

Richard Gearhart:

And of course, Gearhart Law does intellectual property, which are patents, trademarks, and copyrights, and sometimes trade secrets too. So we're very much involved in the innovation space and we try to help entrepreneurs and small businesses protect their ideas and their brands. So, innovation is very key to our firm and moving it forward.

Gene Marks:

You know, one of the biggest bright spots, if you can say there are any bright spots in what's been going on in 2020, is that as so many people have been forced to work from home. And a lot of people unfortunately have been out of work. There has been this surge in new businesses started up and the Census Bureau, they had reported just a few weeks ago about a significant increase in new business filings that were going on around the country.

Now, if you're starting up a new business, that means you've got an idea for the business. Some of those ideas might be old-school, some of them though might be innovative. And if you've got the idea, you're going to need some type of intellectual property advice. So I'm going to start with my first question for you, Richard, which is, I have an idea. I don't know nothing about protecting my intellectual property. And I hear patents, I hear trademarks, I hear copyrights. Can you break down what that means?

Richard Gearhart:

Oh, absolutely. Patents protect technology and inventions, trademarks protect brands, copyrights protect original works of expression. So for example, music, books, movies, anything that is creative in nature.

Gene Marks:

If I'm starting a business and I've come up with an idea, does that necessarily mean it should be patented, trademarked, and copyrighted? And do ideas usually involve all three?

Richard Gearhart:

Often they can involve all three, and patents may not be necessary for every type of business. Trademarks are usually something that an entrepreneur should consider. And the important point is though to check with an intellectual property professional who can give you advice onto whether it makes sense to pursue patents if you have a new product, or a trademark if you're starting a new business.

And one of the reasons for this is that you want to make sure that somebody else hasn't already filed a patent or filed a trademark that could block you going down the line. And so too many times entrepreneurs get started, they get focused on their product, they get focused on their marketing strategy, but they forget to check to make sure that they're free and clear to move forward with their project. And so checking first makes a lot of sense when you don't have a lot of investment in the branding or you don't have a lot of investment in the product. And if tweaks need to be made, then you can work with an intellectual property professional to help that.

Gene Marks:

We all know that this stuff is really necessary, and yet it frightens us because we hear attorney and already we're thinking we're going to be billed with 1,500 bucks an hour.

Richard Gearhart:

Well, that's true. And it is important to get advice from an attorney and it's just part of cost of doing business. So for example, most intellectual property professionals that deal with entrepreneurs are probably charging less than a thousand dollars to do an intellectual property trademark search, and probably a little bit more than that for a patent search. And if you compare the cost of doing that search and getting good direction and advice, compared to the cost of say, finding out three years later that somebody else has the name because they sent you a cease and desist letter, which means that you've invested three years of branding or sales, then it's probably better to avoid it in first place and go on another path.

So it's really like an insurance policy. If you are able to check ahead of time, then that greatly reduces your risk in the future. And wasting a lot of time and effort.

Gene Marks:

What I hear about patents and copyrights and trademarks, I think, as a small business owner, even if we come up with an idea, how do we even defend ourselves against the bigger corporation that steals that idea or somebody else? Are we really protected by this stuff?

Richard Gearhart:

Well, yes. And so part of it is what happens after the trademark or patent is granted. But what a lot of people don't realize is that the intellectual property system works mostly in the background. So for example, if an entrepreneur comes to me and they want to trademark their new business, and it's called Randy's Candy or something, we'll do a trademark search. And if somebody else already has the mark Randy's Candy, we'll explain to the client that, "Well, somebody else has got that mark, and you're taking a risk."

And so then the client goes back and they think about it. And usually they might make a change to Randy's Delicious Candies or Randy's Toffee or something, and they'll take steps to avoid using the mark. So the trademark owner doesn't really know that that's happening because it's happening with another attorney, and it's client confidential when a third party comes to check it out. But what it does do is it has the effect of steering, at least honest business people, away from using your mark or your name onto something else.

And of course not every entity is always honest. There are certainly cases where large companies just try to use their resource advantage against smaller businesses, but most of the activity takes place behind the scenes. And you avoid having somebody use your name or your invention, simply by having it on file and hoping that other attorneys are steering people away from those same projects.

Gene Marks:

It's funny, I was recently giving a talk on ransomware, because I do some technology work. And how, if you take certain steps like upgrading your computer's operating system, it protects you from it. None of this is guarantee that you're not going to be attacked by ransomware, but the malware makers, they tend to avoid headaches. If they see that ... They come across a business that have taken some precautions, they're like, "Well, I don't want to waste my time on those guys. I'm going to go to somebody that hasn't taken any precautions." It's just lower hanging fruit. Is that the same case in this world?

Richard Gearhart:

That's a perfect analogy, Gene. And in fact, it's like getting the home protection systems and putting the sign out in front of your lawn.

Gene Marks:

Yes, right.

Richard Gearhart:

Right. It's sort of, yeah, a burglar could probably break in, but why would they do that if they could go down the street and deal with the house that doesn't have an alarm system. And so it gives at least that disincentive. Now, if there's something really valuable there, are you going to be able to keep somebody out completely? Well, sometimes yes, sometimes no. But it's definitely a discouragement for anybody who's looking to take your ideas or your brand

Gene Marks:

Ever since I was a little kid, I live in Philly, and I used to go to a lot of Phillies games with my grandfather. And we used to drive down Broad Street, and I'm not going to name this business, but anybody in Philly will probably recognize it who's been down this road. But there is this business, it's actually a dry cleaners, and they named their business literally, Richard, after a Disney character.

Richard Gearhart:

Oh my gosh.

Gene Marks:

And their sign is this giant sign of the Disney character. And it's still there, I mean, and it's been there ... And I'm a 150 years old, that thing has been there for every year when I was a little kid. Are they crazy? I mean, if you came across a company like that, you would be giving them some pretty specific warnings, right?

Richard Gearhart:

Yeah. I mean, it depends on the facts and when they started using it. Sometimes you can use the same name for a different type of business, but most of the Disney marks are so famous that they get broader coverage because of their fame. But if it's a more ordinary term, a more ordinary company, then they don't get that famous treatment, and then it becomes how similar are the marks and how similar are the goods and channels of trade in which those marks travel.

Gene Marks:

Got it.

Richard Gearhart:

So if that person, and it sounds like it's a small business-

Gene Marks:

Yeah.

Richard Gearhart:

... so it may not be on Disney's radar. So, that would be a positive for them.

Gene Marks:

Sure.

Richard Gearhart:

But yeah, it's actually fairly complicated, the law is complicated. There's federal trademark registrations, there's common law registrations. There's a lot more to it than just comparing names. And so we always recommend get a professional involved when you're getting started and hopefully they'll steer you clear.

Gene Marks:

Is there anything a startup owner can do on their own, Richard, where they could at least do some checking first, do a little bit of research. So that even if they do then take the next step and go to a professional, they're just a little bit more intelligent about what they got or what their exposure is.

Richard Gearhart:

Absolutely. That's a great point. And we always tell our clients, whether it's a patent for an idea or a software, or whether it's a trademark, that you check first. So the first place to go is online and see if who, if anybody else, is using the name. Secondly, you can also check the trademark office. There's a website, it's T-E-S-S. And if you just type that into your Google search bar, it'll come up. And there's also ways to check patents at the U.S. Patent Office, which it's a little bit more complicated to do the patents because just the way the website is set up, but you can do some checking yourself.

And we always tell clients that you should do your own preliminary search. If you find something that's close, we can give you advice about whether it's a real problem. If you find nothing, I still recommend going ahead with a professional search anyway, because we look at it a little bit differently than the average business person. We know what to look for, we know what's similar and what's not. And so based on that, it's always a good idea to have it double-checked. But certainly if you find something that's right on top of you, then you might not need to look for a different mark.

Gene Marks:

As an intellectual property law firm, do you guys make your money mostly from people that come in doing these searches? Do you make it more so from helping people apply for patents or trademarks, or defending them? How does an intellectual property law firm really stay in business?

Richard Gearhart:

I would say, we're active in all of those areas. We do a lot of searching, we do a lot of application filing. We also do a lot of litigation when it comes to defending our clients' rights. Almost all of them are entrepreneurs, and so there are ways to defend lawsuits if it comes down to that. But I would say our prices, the way we try to approach things, is we try to keep our search fees reasonable and establish a relationship with the client. Once they talk with us and work with us for a little bit, I think they realize the value that we add.

And then once we get into the project, we obviously try to be profitable at every stage of the process, but that's where it gets a little bit more involved and a little bit more expensive. But we do work on flat fee basis for everything that we do for the entrepreneurs. So you have cost certainty. We quote a specific price for the search, then we quote a specific price for the application. These are the government fees. This is the process, how you can expect it to work. And we present you with a budget from start to finish. And that's usually an estimate, but we're usually not off more than five or 10%.

Richard Gearhart:

We have over 2,100 clients that we've been serving for the last 15 years. And I would say that the vast majority of them are entrepreneurs or solopreneurs, people just starting out. And maybe this is their first project, or maybe they have a small business and they want to trademark. We're very geared toward working with that class of clients, as opposed to larger firms who will be more reluctant to work with you, and who might deprioritize you if they have a larger case coming in the door or something. So our heart is with entrepreneurship and we have a wonderful client retention rate too. So I think entrepreneurs appreciate it.

Gene Marks:

You mentioned that you have about 2,100 clients and you've been serving these clients over the years. This speaks to the fact that you have ongoing relationships with these clients, I guess. So what should I be prepared for me? I mean, this doesn't seem like something I just file once and then I'm done, or I do a search and then I'm done and that's it. It seems like if I have something that is trademarkable, a brand I want to protect, a technology that I might want to protect, I have to have a continuing relationship with you. Does that make sense?

Richard Gearhart:

Yes, absolutely. And that's the way the system work. It's similar for patents and trademarks. But we do a search, if the search turns out okay, then we proceed to the next step, which is file an application with the Patent and Trademark Office. There's a period of time there where the Patent and Trademark Office review the application, there's actually quite a backlog at the Patent and Trademark Office.

Eventually, depending on a whole number of factors, from eight months to two years, we would get a response back from the examiner, who takes your piece of intellectual property and compares it to all the other intellectual property that's out there. And they'll typically write a response back to us saying, "Well, we're not ready to allow this yet because of this, this, this, this, and this." And then part of our job is to negotiate with the Patent and Trademark office in order to get the patent or trademark allowed.

And so that requires legal arguments, usually discussions with the examiner. There's a lot of smaller steps in between, but that's essentially the boiled down process. And so based on that, we would have lots of contacts with our clients while that is happening. We also help clients with license agreements, business agreements, non-disclosure agreements, all of those kinds of things too. So we're a resource for entrepreneurs when it comes to the legal piece of starting a business.

So yes, the relationship is continuing and we're with you there every step of the way to explain how it all works, and so that you can make the right decisions for your company.

Gene Marks:

You can turn this question around if you want and make it more positive if you want, Richard, but I just got to throw it out and ask you. Without naming names, who are your worst clients? What is it about clients of yours that you just have a difficult time doing business with that makes your job harder? And how can I avoid being that guy?

Richard Gearhart:

Well, thank you for asking that question. It's a lot of things. But I think if the personalities aren't fitting correctly, and we consider ourselves to be a very honest firm, integrity is important to us. If our values don't match with our client and they want us to do things that we don't feel comfortable with, it's usually not a good fit.

Richard Gearhart:

And eventually everybody knows that and we go our separate ways and that's fine. We're supportive if there's a transition, but it really comes down to using the intellectual property system correctly. And so we want to maintain our reputation as a firm of high integrity.

Gene Marks:

Richard Gearhart is the Founding Partner of Gearhart Law, an intellectual property law firm based in New Jersey, but with clients all around the country. He is also the co-host of the Passage to Profit inventors show on iHeart Radio, which I strongly ... Richard, when is the show aired?

Richard Gearhart:

Well, we air on WOR 710, 11 o'clock on Sunday nights, but we also have podcasts available on all the major podcasting platforms. And we also appear on the iHeart app as well, which reaches many millions of people. So there's lots of different ways to find us. If you're in the New York area, you can listen to us live, otherwise you can catch one of our podcasts. And we also have a YouTube channel as well, Passage to Profit Show, on YouTube.

And so we'd also like to ask any listeners who are interested also to follow us on Instagram, Facebook, and Twitter too. So we're reachable in any number of ways, and we're always looking for new presenters. So if there's anybody in your audience would like to present an idea on the show, we'd be happy to meet them and work with them if it works out properly.

Gene Marks:

And I strongly recommend doing this. I had a great time when you show the couple of times I was on and look forward to coming back. As much as I look forward to having you back, Richard, on this podcast as well.

Richard Gearhart:

Nothing would make me happier, Gene.

Gene Marks:

I'm glad to hear that. It was very informative information on filing for a patent and things you need to know about protecting your intellectual property.

For more great podcast episodes from the Paychex Business Series Podcast and other information to help you run your business, please visit paychex.com/worx, W-O-R-X. Again, Richard, Richard Gearhart of Gearhart Law. Thank you very much for joining me today, it was really a lot of fun to talk with you. I'm Gene Marks, thanks for listening. And we'll see you all again soon. Take care.