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209 kalamath street, unit 9, denver, colorado 80223-1348 usa
main phone 303-271-9468
website www.jacksonip.com

roger a. jackson
registered patent attorney
email roger@jacksonip.com

Who owns an Idea?

General Legal Rule;
Ideas are free unless strapped down by contract or patent.

Real World Rule;
An idea is owned by whoever expresses / executes that idea most successfully.

Definitions;
Trade Secret-
Contract ownership (can be pre-patent / but trade secret can be perpetual, i.e. never having a patent) ownership is asserted via maintenance-must keep secrecy & value. Multiple parties can own same trade secret (assuming independent creation), can be a new use of something existing in the public domain, can be a new compilation of items in the public domain. Trade Secret is killed by (1) public exposure, (2) reverse engineering, or by a (3) patent. In essence a trade secret is a very fragile way of idea ownership and must be protected against the three killers above.

Copyright-
Only protects an expression of an idea, the idea itself is not protected. Two alike copyrights can exist (again assuming independent creation), have long life-over 100 years possible, but narrow coverage (again only the expression not the idea). Copyright only covers non-utilitarian-not solely functional items-little cross over with a patent.

Patent-
Absolute strongest legal protection for an idea, a patent kills a trade secret, a patent kills an independent creation, patent drawbacks include short life at 20 years and limited subject matter-must be utilitarian.

Tangible-
An item that has a singular physical presence, allowing much easier ownership determination, i.e. a hair dryer, a car, a house, and the like.

Intangible-
An item without a singular physical presence-like an idea that can exist simultaneously in multiple places-much more difficult to determine ownership.

Cautions;
Just because you thought of an idea (an independent creation) in no way means you own the idea if:

(a) It's already patented somewhere in the world.
(b) It's already in the public domain anywhere in the world.
(c) Anywhere you work as an employee for can probably claim ownership.
(d) You have a contractual obligation.
(e) You use anyone else's resources (phone, computer, office, materials, etc.) in relation to the idea.
(f) You create the idea as an independent contractor-limited use.
(g) Have casual discussions with others about your idea-bringing in unwanted partners-see Facebook case (Social Network movie).

Basic advice;
Always, always, and always have a written agreement alluding to who owns what in a creative endeavor, wherein the agreement must show compensation for the waiving of ownership rights.

Facebook Case;

1. Winklevoss & Narenda (have idea for social networking site) contact Zuckerberg (programmer) to create code for site.

2. No written agreement or compensation from and between Winklevoss / Narenda to Zuckerberg other than oral promise to compensate Zuckerberg if site later prospered.

3. A few months later Zuckerberg dropped Winklevoss / Narenda site coding project and started his own social networking site which matured into Facebook.

4. Winklevoss / Narenda site languished and never became a business.

5. Winklevoss / Narenda sue Zuckerberg for ownership of Facebook.

6. Discuss Issues, Rules, Analysis, & Conclusions.

7. Did Winklevoss / Narenda have a trade secret?

    a. No-no evidence of NDA-thus trade secret is killed as there were no restrictions on public disclosure.

8. Did Winklevoss / Narenda have a Copyright?

    a. Remember copyright does not protect the idea, only the singular expression, thus any change in the Zuckerberg site in relation to the Winklevoss / Narenda site (and they were different) renders copyright useless in this case.

9. Did Winklevoss / Narenda own any of Zuckerberg code created?

    a. Zuckerberg was not an employee of Winklevoss / Narenda, thus Zuckerberg owns all code he creates. Zuckerberg could be called an independent contractor of Winklevoss / Narenda-however no compensation was paid-thus no independent contractor contract. Note that a loose unspecific oral promise of possible compensation later if the Winklevoss / Narenda site prospered is too open ended to form a legal contract.

Moral of the story is that Winklevoss / Narenda lose legally to Zuckerberg.

You may sympathize with Winklevoss / Narenda in their loss and it may well be that they gave Zuckerberg the initial idea for a social networking site-however, legally Winklevoss / Narenda would be trying to claim Zuckerberg's imagination and execution in the formation of Facebook of which Winklevoss / Narenda had no contribution to. After all, Winklevoss / Narenda failed to execute their site into a business of which they were free to do but did not.

The failure of Winklevoss / Narenda was to not strap the idea down with a legal contract.

Don't feel bad for Winklevoss / Narenda-the actual case settled for nuisance value-they were compensated well-the real world has multiple considerations other than legal-i.e. to get the litigation off of the books prior to entering the public stock market was worth much more to Facebook than the Winklevoss / Narenda settlement cost.