

Ask the Expert:

# Is it better to brand or patent IP?

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**Q**uestion: What are the pros and cons of trade marking or branding IP vs. patenting it?

**A**nswer: A trademark is a "thing"—similar to a word, design, sound, color—that distinguishes one company's products or services from the same or similar products or services offered by a competitor.

A trademark does not protect a company's goods or services per se but only prevents another company from selling the same or similar goods or services under a mark that is confusingly similar to a company's trademark. Thus, a competitor can sell the exact same product but must do so under a different name (e.g., Pepsi sells cola under the Pepsi mark and Coke sells cola under the Coke mark).

Trademarks can be renewed forever as long as they are in continuous use. A patent, on the other hand, protects an invention and has nothing to do with whether a product incorporating the invention is commercially available or what name may be used to market the product. A patent allows the owner to stop others from making, using or selling the patented invention. The term of a patent is 20 years from the application filing date.

In summary, a trademark protects the name of a product whereas a patent protects the product itself.



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