

Protect your farm by protecting your intellectual property first



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Protecting generations of unique agricultural processes and long-developed consumer goodwill requires today's farmers to take a hard look at what intellectual property laws can do for them.

Not long ago, needing intellectual property protection may not have occurred to farmers across the United States. However, the necessity of protecting unique varieties, equipment, methods, trade secrets, and brands has come increasingly to the forefront of the agriculture industry.

Individual and industrial consumers are now highly informed and seek trusted sources of quality products. To meet increased marketplace scrutiny, farmers have built and implemented complex growing and collection equipment and methods, bred the best varieties, and developed brand recognition in the marketplace to signal to consumers that their plants not only pass the test, they set the standard. In a competitive and global market, farmers must protect their intellectual property.

Consider the repercussions of not protecting your IP:

Farmer Sam owns Sam's Sprouts and employs Sandy, a long-term, trusted employee who has learned Sam's business from top to bottom. Sandy is highly informed

about Farmer Sam's equipment and methods, has direct access to customer and supplier lists, and complete access to Farmer Sam's plants.

Eventually Sandy becomes quietly frustrated with working for Sam and decides to start her own business. She takes cuttings of Sam's best varieties, instructions for building and operating unique equipment, new methods for crop collection, and lists of Farmer Sam's best customers and suppliers. She opens Sandy's Sprouts at the other end of town, using signage and package markings very similar to Sam's.

Sam is furious, feeling betrayed as his former trusted employee benefits from his unique knowledge, processes and plants. Unfortunately, he never explored the need or implemented safeguards to protect his intellectual property. Once intellectual property theft occurs, it's very difficult to protect a claim. To avoid Sam's fate, farmers should be aware of intellectual property protection laws and regulations important to the farming industry. They include: (1) federal and state trademarks; (2) plant patents; (3) utility patents; (4) design patents; (5) copyrights; (6) the Plant Variety Protection Act; and (7) state and federal trade secret laws.

Using any one, or a combination of, these intellectual property laws before Sandy started taking and using Sam's intellectual property, could have helped him stop or prevent the theft. It's important to recognize and act upon the need for IP protection before the theft occurs.

How do you know if you need IP protection? Ask. Meet with a trusted intellectual property law advisor to identify what property needs protection and the most effective way to provide it.

Partner Kelly Lusk chairs the Intellectual Property Team at Dunn Carney LLP, a full service law firm providing legal counsel in ag, intellectual property, employment, business, real estate and succession planning.

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