

IP is Everywhere, Even at the State Fair

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For many Minnesotans, the Minnesota State Fair is an annual tradition filled with fun, fellowship, and, most of all, food! For the Fair-loving intellectual property attorneys at Gray Plant Mooty, they see another layer of intrigue: the quintessential trademarks, copyrights, trade secrets, and patents behind the scenes that make it all work.

IP examples are everywhere, from your favorite branded food vendors, to trade secret processes for just how to keep those foods on a stick. Even the slogan *The Great Minnesota Get-Together* is a registered trademark, owned by the Minnesota State Agricultural Society for use with "conducting state fairs."

As you walk around the Fairgrounds this year, we invite you to ponder the intellectual property behind it all. Here are some examples of trademarks, copyrights, trade secrets, and patents to look for at *The Great Minnesota Get-Together!*

What's in a Name? Trademarks.

When inventing a new Fair food, naming a new product, or starting a new business, proprietors often choose a distinctive name as a brand.

Trademarks identify the source of particular goods and services, and protect consumers from confusion with other brands on similar goods in the marketplace. Trademarks also provide assurance of consistent quality of the goods — you know what to expect from a certain brand. While there is only one source for a bucket full o' cookies at the Fair (*Sweet Martha's Cookie Jar*), there are a few competing brands for other foods. Which is your favorite?

- *Tom Thumb Donuts vs. Tiny Tim Donuts*

- *Pronto Pups vs. Poncho Dog*

- *Mouth Trap Cheese Curds vs. The Original Deep Fried Cheese Curds*

Sadly, *The Original Deep Fried Cheese Curds* closed in 2017 after operating the stand since 1975 — but you can still find Fairgoers who are passionate about these curds.

In the United States, trademark rights are created through use of the trademark; formal registration is not required, although it does convey certain benefits. Look around the Fair for the familiar ™ and ® symbols — the ™ just signifies that the owner claims trademark rights, while the ® symbol denotes a federal registration.

You will also see a few trademarks from long-standing Minnesota companies on display at the Fair, including:

- **CHS** Miracle of Birth Center, showcasing live births of nearly 200 animals, from chicks to calves
- **Compeer** Arena, busy every day with competitions and exhibitions, from cattle to goats to the ever-popular llama costume contest
- **Kemps** Little Farmhands exhibit, providing children a farm-to-table experience of planting and harvesting crops
- **Cambria** Kitchen, a sleek and modern demonstration kitchen in the Creative Activities Building, showcasing top chefs and industry professionals

Creative Works and Copyrights

Creativity abounds on the Fairgrounds, not just at the Creative Activities Building where needlework, woodwork, and other handcrafts from your fellow Minnesotans are on display. Copyright law protects creative works, including graphic art, sculpture, music, and literary works, and grants the creator of a work the exclusive right to display, perform, reproduce, and create derivative works. Formal registration is not required for copyright protection, but registration confers benefits and is required to sue for infringement.

Copyright-protected works are all over the Fairgrounds, including:

- Musical compositions performed on the Grandstand Stage and classic karaoke tunes at the Giant Sing Along
- Painting, photography, and other artworks in the Fine Arts Center, Creative Activities Building, and Education Building
- Crop Art in the Agriculture Horticulture Building (look for entries from Darlene Thorud, successor to the legendary Lillian Colton who was "Queen of Crop Art" until she passed away in 2007 at age 95)
- Princess Kay and the Dairy Princesses sculpted in butter in the Dairy Building

Patently Fair

Minnesota has a rich history of inventors and inventions (think *Scotch* tape, *Rollerblade* inline skates, *Tonka Trucks*, cardiac pacemakers) and our state is home to a wide range of companies that rely on patent protection to protect new innovations (3M, Medtronic, Honeywell).

Patents are rights granted by the government to exclude others from making, using, or selling an invention. The invention needs to be novel, non-obvious, and useful. Patents are granted for a limited period of time (currently 20 years) in exchange for public disclosure regarding the invention.

The patent rights have long expired on the Faribault, Minnesota-invented *Tilt-A-Whirl* ride (patented in 1930), but you can still enjoy a spin at the Kidway. More recent patented inventions can be found at the Fair, including:

- *Sling Shot* human bungee ride in the Midway
- *ShamWow!* absorbent towel and other products sold at the Merchandise Mart
- Technology innovations in *Toro* lawn mowers and *Polaris* ATVs and snowmobiles displayed in the area formerly known as Machinery Hill

Dippin' Dots ice cream was protected by a patent, but those patent rights were invalidated in 2007 on technical grounds, because the product had been sold for more than a year before the patent application was filed.

The Trade Secrets of Success

Minnesota Fairgoers have also likely seen, and tasted, *Sweet Martha's Cookie Jar* cookies. With overflowing cups and buckets, up to 3 million chocolate-chip cookies are sold each day of the 12-day Fair run. This cookie business is one of the highest-grossing vendors at the Fair and reported more than \$4.7 million in sales in 2018. Yet, might part of the secret to Sweet Martha's success be attributed to trade secret protections in the delicious cookie recipe and behind-the-scenes processes?

A trade secret is non-public information that derives economic value because of its secrecy. Common types of trade secrets include recipes, formulas, and manufacturing and operational processes.

We can't say for sure (it's secret!), but other trade secrets at the Fair may include:

- Recipes for craft beers enjoyed at the Agriculture Horticulture Building
- How to deep-fry a candy bar or keep spaghetti and meatballs on a stick
- How to grow a giant pumpkin weighing as much as the biggest boar in the swine barn (both can exceed 1,400 pounds)

To protect information as a trade secret, it is critical to take reasonable measures to keep the information confidential, including non-disclosure agreements with employees, suppliers, and consultants. In some cases, employees may only know their part of the manufacturing process, in order to limit access to the entire process.

IP at the Fair and Everywhere

So while you're walking around at *The Great Minnesota Get-Together*, see if you can spot some of the intellectual property protections behind it all, which help businesses thrive and keeps millions of people returning to the Fair year after year.



If you have questions about IP, any time of year, reach out to a member of the Intellectual Property Team at Gray Plant Mooty.

About Gray Plant Mooty

Gray Plant Mooty is a leading corporate law firm with one of the top franchise practices in the world. The firm's attorneys and staff are recognized for providing exceptional service and value to clients globally. The full-service law firm has offices in Minnesota, Washington, D.C., and North Dakota. Learn more at **www.gpmlaw.com**.