

PODCAST TRANSCRIPT

CPP Ep. 19 Intellectual Property: Protect Your Programs, Books, and Content

Camille McDaniel, LPC (00:04.046)

Welcome back, welcome back, whether you have been with us before or whether you are brand new. This is going to be a wonderful episode. I think so many of you all need to know, especially for my clinicians who have created programs, have books or looking at different streams and all of the wonderful things, you need to protect your intellectual property and the information that you've created. And so today,

We are going to be talking with attorney Faith Mitton. She is someone that I had talked to many years ago. She's wonderful, very knowledgeable, very kind, and I'm glad that she was able to take time to speak with us today. Let me introduce you all to Faith. As I said, Faith is an attorney. She's a trademark attorney, and she represents businesses of all sizes from many different industries, okay? So she serves clients from all over the United States.

across the globe basically with her law practice. And as the managing attorney at Mitten Law, she diligently supports her clients in crafting and implementing well-designed legal strategies to protect their names, their taglines, their logos, all the things that represent their businesses' unique brand identity.

Faith is an alumni of Howard University and she's a graduate of Harvard Law School as well as a member of the New York State Bar. She manages a team of legal and administrative professionals to support her clients in protecting their intellectual property. And we will get her to give us more information about contacting her, but the main thing is that you can reach her through her website. So if you want to learn more about Faith, her practice, her services,

you can go to mittenlaw.com. That's m-i-t-t-o-n-law.com. And now let's welcome Faith. Welcome Faith. Thank you so much for taking the time today.

Faith Mitton, Esq. (02:09.338)

Absolutely. Thank you so much for having me, Camille. I'm really happy to be here.

Camille McDaniel, LPC (02:13.656)

Well, then let's jump right on in because I know, like we said, there were a lot of questions, but we're good. We'll get to as many as possible. The main thing is that we just would like for faith to give us direction. So I'm not going to rush through the questions. We'll get to as many as we can. And so let me just jump right in and ask you the first question that I wanted to ask, which was, can you tell us a little bit about what is intellectual property? Why is it even important for us as clinicians to protect?

Faith Mitton, Esq. (02:43.118)

Yeah, absolutely. Intellectual property is just another way to describe the legal protections that are available for the fruits of our creativity, our creative genius. And the reason why this kind of

protection exists in the first place is because the powers that be, the legal infrastructure that exists in our country wants to incentivize people to create things, right? Creation.

and innovation is how our economy grows, the heart society improves itself. And so in order to incentivize people to create things that will be beneficial to our entire country and to our community as a whole, we give them certain protections as creators. And so there are different types of protections for different types of intellectual property. The three main types are trademarks, copyrights, patents.

and it's important for you to know what the distinctions between these things are so that you know what protection to pursue and when based on what you have created. think though, the most important takeaway that I want folks to know about what intellectual property is, is that it is not synonymous with ideas, meaning that ideas and concepts in and of themselves are not intellectual property because

you know, two people in two different parts of the world can have the same idea at the same time. How do we determine who owns that idea? Right? It's impossible. So what intellectual property does is protects the expression of an idea because each expression is going to be different based on your background, your experience in the world, how you express your idea will be different. And so the type of expression that's required for each different type of intellectual property

varies, right? But the point to drive home is that just having an idea by itself isn't IP, is not intellectual property. So we want to be careful how you share your ideas, right? And make sure that you're taking the appropriate legal steps to protect them, to transform them into intellectual property so that you can get the protection that you need.

Camille McDaniel, LPC (04:49.835)
Okay.

Camille McDaniel, LPC (04:58.786)
That's important. Okay. And you mentioned something that I think also trips us up a little bit because you mentioned like copyrights, trademarks, patents, you know, what is the difference between these?

Faith Mitton, Esq. (05:11.962)
Yeah, so they're all types of IP, but they protect different things in different ways. So I'm a trademark attorney, so I'll start with trademarks, right? I love talking about it. So trademarks provide legal protection for the brand identity of a business. It is the way that people come to know a business as the source of a product or a service. So examples of things that are registered as trademarks include names, taglines, logos.

Camille McDaniel, LPC (05:20.344)
guess.

Faith Mitton, Esq. (05:38.458)
But the trademark universe is pretty huge, as I say all the time, and there are many non-traditional types of trademarks as well. Non-traditional trademarks could include building designs and colors and sounds and smells. But the point is that a trademark helps people to identify a business as a source of a product or a service and to distinguish that business from any competitor. So it's about ensuring that you keep a spotlight, essentially, on your brand.

and that people know that it's you because with a trademark, you are able to shut down, or I should say with the trademark registration, you're able to shut down infringement of your brand

by competitors. And in terms of the expression that's required to create a trademark, what I mean by that is you must begin using your trademark in public, in the sale and the marketing of your services, to connect the services to whatever brand identity that you have chosen, right?

Camille McDaniel, LPC (06:21.134)
pepe

Faith Mitton, Esq. (06:36.538)

There are trademarks that come into existence automatically when you begin using something in public that's called a common law trademark. But those rights are really limited. And if you want broader protection, particularly protection that covers you in the entire country, you'll want to register a federal trademark. Copyrights are a bit different than trademarks in the sense that copyrights don't protect brands, they protect creative works. So the expression I'm talking about here is more like

the expression of artistry or of expertise, right? So the things that you might consider registering a copyright for could include books, articles, infographics, courses, recordings like this, for example. These kinds of expressions of expertise can be protectable with a copyright. Now, like trademarks, copyrights can also come into existence automatically when you...

whatever the creative work that you have made is in some sort of tangible format, right? But the limitations of a common law copyright are pretty significant in that you're not gonna be really able to stop someone from infringing on your copyright just with a common law copyright alone, right? You'll wanna register that copyright with the copyright office. Patents are different from both trademarks and copyrights in the sense that there's no common law patent, right? The only way to get patent protection

Camille McDaniel, LPC (07:37.464)
Thank

Faith Mitton, Esq. (07:59.308)

is to register that patent with the United States Patent Treatment Office. For those of us who are in the mental health profession, right? There may not be tons of protection available for a patent because patents really are for inventions that are novel and non-obvious. And those two requirements, there are many more for patents, but those two requirements kind of, you know.

eliminate the possibility of seeking patent protection for certain things that you create like therapeutic modalities and sources of treatment, unless there's some sort of technological component to it. So what I mean by that is not like, well, I created a website for my treatment process. No. What I mean is like creating new software or a new device and incorporating that into your treatment modality.

Camille McDaniel, LPC (08:43.972)
Okay.

Okay.

Faith Mitton, Esq. (08:53.902)

for that kind of thing, there may be patent protection, but just creating certain guidelines and a framework, that kind of thing really isn't patentable. So you'd be really looking for protection by a trademark or copyright in that instance. So that was a whole bunch. To summarize the types of IP that are available and the protections that are available, but I did want to at least lay that out as a foundation for our conversation.

Camille McDaniel, LPC (09:09.144)
That was great.

Camille McDaniel, LPC (09:19.352)
That's a good one and I think that does lay a good foundation because first of all,

Like I said, in mental health, like that's not our specialization. That is not anything that we are looking up. I mean, it is something that we definitely hear. We need to protect our ideas or we need to protect our work. So we need to, you know, but it really does help be, make it very clear what types of protection you're actually going to need, especially with the patent, which I wasn't really as familiar with the idea that it had to be like, you know, kind of novel, not really something that you see everywhere. So if you had created something that might go like an app.

that is going to help people with some type of disorder, know, or some program or some tool, you know, then you may be able to seek a patent for that. That was, that's really good helping us to understand what goes under the umbrella of IP. Yeah, so that.

If we had created some type of evidence-based model or let's say we create some program that is being used in communities, then what would be like the first step that we need to take in order to even protect it?

Faith Mitton, Esq. (10:29.092)

Right, that's a great question. think figuring out how to protect what you've created kind of starts with identifying what it is that you've created, right? As we talked about, there are trade marks, copyrights and patents. So what is it ultimately that you are seeking to protect, right? Are you wanting to protect the actual written documents that you have created or designed? Or are you seeking more so to protect

the identity of your brand, the particular brand of therapy that you offer. There are many mental health professionals who have registered trademarks for their work, whether they're doing it on an individual basis or sort of on a larger basis that incorporates other people, which I'll talk about more maybe towards the end of our conversation, but what are you seeking to protect, right?

Camille McDaniel, LPC (11:24.324)
Okay.

Faith Mitton, Esq. (11:24.482)

and what is your ultimate goal? Are you trying to just train people or do you want to create a platform that people can use as a way to identify the type of service that is offered and the parameters of that service so that people can readily look for it when they need that service, right? If you're looking for that kind of thing, that's trademark territory. If you want to protect the content, that's copyright territory.

If you are protecting like some sort of new technology, that's patent territory, right? So first, got to identify what you want to protect. Then you want to carefully document your creation process because the information, the evidence of your creative process and the data that is a part of that process is going to be really, really crucial when it's coming time to seek a registration for whatever it is that you want to protect. So.

you definitely want to carefully note when you started creating things, what, anything, was your inspiration? Because we want to make sure that we're not stepping on anyone else's toes regarding their IP. when did you begin using it? When did you launch it publicly? Like all of that,

as part of your creation process needs to be carefully documented because when you hire an attorney and I would strongly encourage you to hire an attorney.

Camille McDaniel, LPC (12:34.404)
over and out.

Faith Mitton, Esq. (12:42.82)
they're going to be asking for this information from you to be able to advise you as well as to prepare whatever kind of legal filings are necessary to protect your IP.

Camille McDaniel, LPC (12:52.452)
Nice, okay, so, and definitely, I I would not even try to attempt to try to navigate all of this without an attorney's help, because there just sounds like there's so many different.

Nuances, I want to say, like you just gave an example. All right, so if you are trying to do this, then you're talking about a trademark. If you're trying to do this with the content, then you're talking about a copyright. And so I wouldn't even want to go into guessing because your stuff would not be protected and potentially you can lose out later on as it relates to your business. So let me then ask, let's say I have a program.

that I'm offering. know I was before the show, was telling you an example of a buddy of mine who's a clinician, but let's say there's a program I'm offering through the court systems. It's something that I've put together myself. And now I want to, because it's just so much to this program, I want to license it out for other people to be able to use it. Cause they are like, this is a great program for the community. We see that it actually is quite helpful, has a little bit of evidence behind it. We want it for our county. It's like, great.

You know, let me license this program save myself like, you know, some some sweat and tears from doing this all over again What does that look like if I came to you as the you know as the my trademark attorney like where where am I supposed to go with? Licensing my work to other people

Faith Mitton, Esq. (14:12.228)
Alright.

Faith Mitton, Esq. (14:25.198)
Yeah, licensing is a fun but incredibly complex area of law when it comes to IP, right? And, you know, so I'm happy to just provide a summary of some things to consider. But I do want to give the caveat that this is definitely an area where you need to be looking for attorneys who have specific experience in this, not just a general business attorney.

Camille McDaniel, LPC (14:31.524)
Great.

Camille McDaniel, LPC (14:50.244)
Okay.

Faith Mitton, Esq. (14:50.35)
Not as a general practice attorney. You want someone who understands IP and has the appropriate experience in that area. But when it comes to licensing your program, there are different components to it, like I mentioned before, right? So maybe if you've had some tech component to it, you're looking at a patent. Patent licenses are a monster. I won't really talk about that, right? But in the trademark and copyright world, licenses are available too.

copyright licenses are a bit more straightforward than trademark licenses, but they are limited to the creative work that you want to distribute or have people use, right? So as the owner of a copyright, you have a bundle of rights, as we like to say as lawyers. So these rights include the right to reproduce the content, which is to make copies of it, the right to distribute it and give it out to other people and increase access to it.

the right to adapt it or to modify it, to create derivative works of it, the right to publicize it, publicly perform it, and publicly display it. Those last two tend to be for people who are in the art field, right? There may be some applications for others, but those tend to be art related. So in the case of someone who's in the mental health profession, you're looking, okay, if I'm gonna license my work and essentially create a program where other people can buy into it, purchase it.

perhaps, and then be able to teach it, you're looking at a copyright license maybe for the to reproduce, distribute, and maybe not adapt the work, right? With a copyright license, which is kind of, it's kind of the what happens when someone purchases an educational program, right? When you buy a course online, what you're essentially receiving is a license to use that course and the material from that course.

from the person who created it, right? And with that kind of intellectual property, as I mentioned earlier, the protection or the license is limited to the work itself. And there may be a concern just for professionals if you've created a program. I wanna ensure not only that I train people, that people learn what this program is, but I want them to have to...

Faith Mitton, Esq. (17:15.798)

adhere to certain standards in the delivery of the service, right? Now, if that's the case, we're leaving copyright world and we're going into trademark world, right? Because when it comes to being able to control someone's, how they perform a service, trademarks are all about quality control and that's specifically the area of trademark licensing.

Camille McDaniel, LPC (17:18.948)

Okay, yes.

Camille McDaniel, LPC (17:39.436)

Okay.

Faith Mitton, Esq. (17:40.548)

to be able to say, hey, this is what you have to do because at its heart, trademark law is all about consumer protection. And for someone to license their trademark to somebody else and give them the right to use it, there needs to be a level of consistency in the quality, regardless of who's performing the service. So whether it's the initial creator of the trademark or someone who they've given the right to use the trademark to, quality must be the same. And that has to be built into the trademark license.

Trademark licensing though can be quite terrible in some respects though, because if you're not careful in the creation of a trademark license, right? And remember trademarks are about the brand of the type of therapy that you offer, right? So good example of that is dialectical behavior therapy. There's a trademark registration for that. And know there are people who are trained in that area of that particular modality, but.

when it comes to a trademark license and you want people to be able to provide this particular brand of therapy to somebody else, there is the risk that you could inadvertently create a franchise because all franchises include or incorporate a trademark license, but not all trademark licenses are franchises. And why it's a risk that you want to avoid having

come to fruition is because franchise law is much more complicated and creates a lot more financial and other kinds of responsibilities aside from trademark law. And you don't want to unintentionally become a franchisor because that opens you up to penalties from the government as well as having your licensees who are now franchisees to sue you for not

complying with the very, very stringent requirements of franchise law. So with trademark licenses, you have to be careful in how you set them up because if there is a trademark license, control over quality and the exchange of a fee, you're looking at potentially those three things being the foundation for creating a franchise. So be careful about that. Maybe you don't want to do a trademark license. You may choose to...

Camille McDaniel, LPC (19:55.812)

Wow.

Faith Mitton, Esq. (20:02.308)

take another path like other mental health clinicians have taken, like DBT, where you, instead of having a trademark license, you have a certification mark. A certification mark is a specific type of trademark, a subset of trademarks, where instead of you ensuring quality and having the responsibility to monitor how the service is delivered, as a certifying organization, your responsibility is to provide training to

whomever is eligible for that training, ensure that they pass an exam and then say that, okay, these people have met the requirements for this organization to bear this trademark, to be a certified whatever provider, right? And in so doing, you don't assume the responsibility to maintain quality control, but you are still policing who is able to use that trademark by ensuring that no one who doesn't undergo your specific system

for vetting is able to use that trademark or really to be a part of that certification mark, right? Which is a subset of general trademark law. So there are different ways that you can configure a setup and there are others that I haven't even talked about here, right? But you just want to carefully consider the strategy for yourself because what might work for one will not work for all. And I just have to say there is no one size fits all approach to licensing.

These things are very proprietary, very custom. And so you want to make sure that you carefully create a strategy with your legal.

Camille McDaniel, LPC (21:36.628)

Okay, see I almost feel like as I listen to this, I am like all of the reasons why you are not going to attempt to do this yourself. my goodness. And the franchise one that really blew me away because I didn't even realize that that would potentially be a thing. So in that I almost saw that as kind of answering my question because I was going to say what are some of the

misunderstandings that people make to prevent them from kind of protecting their intellectual property or their curriculum. And the other thing I was also wondering is what are some misunderstandings that people have when thinking about contacting a trademark eternity? One of the things that I know that some people have is like, well, I could look it up. mean, like, yeah, it might be a lot, but I heard something or a buddy told me something. And after listening to you describe that in such great detail.

I'm like, absolutely not, absolutely not. but let me ask, go back to the other question, like what are some of the common misunderstandings that people make that kind of stop them from protecting their property, their intellectual property, whether it's a program or whether it's curriculum or anything else that you've heard of?

Faith Mitton, Esq. (22:36.922)
Hmm.

Faith Mitton, Esq. (22:55.93)
Yeah, I think probably the biggest one is that I have an unlimited amount of time to seek protection. I can get protection whenever I want. whenever it suits my budget or my schedule, then I'll look into protecting what I've created. I have to say with trademarks specifically, that is not true at all.

don't have an unlimited amount of time. And I always tell people that I consult with that trademarks are time sensitive, not because there's, you know, some, you know, bomb that's about to explode, right? But because in trademark law, there is a concept of confusing similarity, right? And that means that we won't allow trademarks to coexist if they can cause confusion. And many people mistake that to mean, okay, well, if my trademark is identical to somebody else's,

then it can't be approved. But identicalness is not the standard. It's confusing similarity. There are trademarks that don't look alike at all, but are still confusingly similar. The example I always give is Red Bull for energy drinks pursued and was successfully able to stop someone from registering pink cow for beverages. They don't look alike. They don't sound alike, but they were still confusingly similar. So you don't have an

a definite amount of time to pursue trademark protection because if someone is able to register a confusingly similar mark before you or even apply for one before you, then that can forever prevent you from getting your trademark registered. And even if you are able, there are very many complexities in trademark law that might permit you to still get your trademark registered. You're going to have to go through litigation. It's going to be very expensive. You will spend tens of thousands, hundreds of thousands of dollars, potentially millions trying to defend your trademark.

Is that worth it for, you know, just to delay seeking protection? It's almost always beneficial when you have an initial idea regarding a brand that you want to protect to seek legal counsel and get that protection as soon as you possibly can.

Camille McDaniel, LPC (25:06.902)
Awesome. wow. Okay. So then, last question I'll ask you is if you happen to go through the steps to protect whatever your creation or whatever your brand, let's say someone else copies it or uses it improperly, what do you do?

Faith Mitton, Esq. (25:31.416)
Yeah, you definitely have options, right? Particularly if you have taken the steps to register either your copyright or your trademark, right? Remember, copyrights cover content, trademarks cover the brand. With trademark infringement, that occurs when someone creates a confusingly similar brand, even if they weren't aware of you, right?

So someone is out there promoting something, a particular brand of therapy that looks too close to yours or has a similar meaning. You may be able to shut that down either by, depending on what the circumstances are, can sue them for trademark infringement, but if they apply for an app to register their trademark, you can stop their application from being approved. You can send cease and desist letters. There are many potential avenues that you can pursue even getting their branded social media.

handles taken off from those platforms because of infringement on the trademark, right? So there are different options you can pursue. Copyright on the other hand, copyright infringement requires the person does know who you are. It requires an actual copying of your work and a misuse of your work. And so this is why it's really important when you're trying to figure out a program and a license for that program to have a clear way to identify who the users are, the end users are of your program so that if it ends up

someplace where it's not supposed to be, you can do some tracking and figure out where the leak was, right? So in that respect, you can also, if you have a copyright infringement issue, you can sue for copyright infringement, sent these into CIS letters, get infringed content moved from the internet, right? There are different opportunities that you can pursue to protect your IP. But the most important thing to understand is the differences when infringement occurs for a trademark versus a copyright.

to of course seek legal counsel at that point to figure out has infringement actually occurred because sometimes what we think is infringement actually isn't.

Camille McDaniel, LPC (27:30.66)

Well, thank you so much. my goodness, my mind feels like it's going to explode all the information. Faith, you gave us more than I expected. I mean, I know I had questions, but I thank you so much for being able to give such detailed and thorough answers about this to help us just.

navigate where to start, what to look for, even in the professional that we choose, not just any attorney will do, having to make sure they have the right specialties and knowledge in the area.

and all of the different ways that we can protect our information. And I know that it goes into, it sounds like it goes into the weeds, because there's just so much when it comes to that. But thank you so much for taking the time to sit with us and to explain what is your level of expertise and all the knowledge in this area. So for everyone who is listening to this podcast, again, as I said in the beginning, we're speaking with Attorney Faith Minton. She's a trademark.

attorney and if you are in need of any type of services to protect your programs, your content, your curriculums, your books, your whatever it is that you're creating, you can reach out to Faith at mittenlaw.com. Again, that's m-i-t-t-o-n law.com. Faith, thank you so much for joining and sitting and talking with me today.

Faith Mitton, Esq. (29:01.242)

Absolutely, it was a pleasure to be here. Thank you, Camille.