

*Using Patents and Trade Secrets
to Protect Innovation in Mental
Wellness Targeting Supplements
and Functional Foods*



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Intellectual Property types

- Patents
- Trademarks
- Copyrights
- Trade Secrets
- Licensing



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THE BASICS:
Patent Requirements

- Patent eligible
- New
- Useful
- Non-Obvious (not lacking an inventive step)



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Mental Wellness formulations

- Ashwagandha (extracts vs. semi-synthetic derivatives)
- L-Theanine (chewing gum)
- Mushroom species (extracts and blends)

Classes of protection include compositions, methods of making and methods of use



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Patent vs. Trade Secret Protection Decision Process

	Patents	Trade Secrets
What is protected?	Inventions	Any information you do not want your competitors to know
What are the requirements?	The invention must be new, useful, and non-obvious	The trade secret must, in fact, be a secret and maintained as such through appropriate business practices.
How long does protection last?	20 years from filing and a minimum of 17 years	Indefinitely
What are the costs?	Filing, prosecution, maintenance, and enforcement	Establishing procedures and keeping key employees
How long does it take to secure rights?	Two to five years	As long as it takes to establish and maintain internal company procedures
How can competitors defeat my rights?	<ul style="list-style-type: none"> • Invent and file first • Challenge the validity of my patent • Design around my patent • Invent and publish 	<ul style="list-style-type: none"> • Hire away key employees • Reverse-engineer the product • Patent my trade secret • Independently develop
How can I defeat my own rights?	<ul style="list-style-type: none"> • Publicly use the invention for more than one year before filing a patent application • Sell (or offer to sell) the invention more than one year before filing the patent application 	<ul style="list-style-type: none"> • Accidentally disclose a trade secret • Fail to retain key employees • Try to get U.S. and foreign patents and have patent application published by USPTO



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- Trade Secrets are protected by federal and state laws:
 - Defend Trade Secrets Act (federal)
 - “Uniform” Trade Secrets Acts (various state versions)
- “Trade Secret” (generally):
 - It must be comprised of “information”
 - It must not be “generally known”
 - It must derive “independent economic value from the fact it is a secret”
 - It must be the subject of “reasonable” efforts to maintain its secrecy



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- Trade secret information can be a formula, pattern, compilation, program, device, method, technique, or process.
- Examples of potential trade secrets:
 - Lists of customers, suppliers, vendors, and their preferences
 - Research and development data and results
 - Formulas
 - Algorithms/software
 - Manufacturing processes
 - Recipes
 - Financial data, pricing, profit margins



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- A novel combination of publicly known elements may qualify as a trade secret (e.g., a unique compilation of publicly available data)
- A trade secret must be the subject of efforts that are “reasonable under the circumstances” to maintain its secrecy
 - Confidentiality agreements?
 - Scope of who has access?
 - Restricted access?
 - Passwords?
 - Under lock?
 - Follow procedures



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Questions?

Feel Free to Contact Us:

William@amintalati.com

George@AminTalati.com

www.AminTalati.com



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