In many instances, discussions of new products, ideas, recipes and enterprises generally include discussions of patents and trademarks. In most cases, trying to protect a food recipe is a lost cause. Most food scientists can duplicate a recipe with supreme accuracy by making small changes to justify a different product. However, protecting a product name or label design should be considered. In the early stages of a product’s life, you don’t know the future success it might experience. A trademark can help decrease the chances of a competitor marketing a product with your logo or name. A trademark can protect the name or logo and prevent the use of the identical or similar name or logo by another company. A brief description of patents and trademarks is provided here. However, specific questions and concerns toward patents and trademarks should be addressed to the U.S. Department of Commerce, Patent & Trademark Office at 1-800-786-9199. Patents, copyrights, and trademarks are often confused. Although there may be some resemblance by the rights of these three kinds of intellectual property, they are different and serve different purposes.

What is a Patent?

A patent is a property right granted by the Government to an inventor. The patent is issued through the Patent and Trademark Office and protects the inventor from others making, using or selling the invention. A patent does not grant the right to make or sell an invention, it prevents others from doing so. Most patented ideas have a term of 20 years from the date on which the application for the patent was filed. The right provided by the patent is only valid in the United States and its territories.

Only the inventor may apply for a patent, with certain exceptions. If a person who is not the inventor should apply for a patent, the patent, if it were obtained, would be invalid. A person
applying for a patent who falsely states that he/she is the inventor is subject to criminal penalties. If the inventor is dead, the application may be made by legal representatives, that is, the administrator or executor of the estate. If an inventor refuses to apply for a patent or cannot be found, a joint inventor or a person having a proprietary interest in the invention may apply on behalf of the non-signing inventor. If two or more persons are jointly responsible for an invention, they apply for a patent as joint inventors. A person who makes a financial contribution is not a joint inventor and cannot be included in the application as an inventor. It is possible to correct an innocent mistake in erroneously omitting an inventor or in erroneously naming a person as an inventor. The patent law specifies the general field of subject matter that can be patented and the conditions under which a patent may be obtained. In the language of the statute, any person who “invents or discovers any new and useful process, machine, manufacture or composition of matter, or any new and useful improvement thereof, may obtain a patent,” subject to the conditions and requirements of the law. The word “process” is defined by law as a process, act or method, and primarily includes industrial or technical processes. The term “manufacture” refers to articles which are made, and includes all manufactured articles. The term “composition of matter” relates to chemical compositions and may include mixtures of ingredients as well as new chemical compounds. These classes of subject matter taken together include practically everything which is made by man and the processes for making the products.

A preliminary search can be performed through The Scientific and Technical Information Center of the Patent and Trademark Office to determine if the invention or a similar invention has been included in prior patent (http://www.uspto.gov/web/menu/search.html). A patent attorney or agent may be hired to perform the preliminary search. It is important to remember that these are preliminary searches and the search may not be as complete as the search conducted by the Patent and Trademark Office during the examination. It is not uncommon for a patent examiner to reject a claim on the basis of prior patents or publications that were not revealed in the preliminary search.

What is a Copyright?

A copyright protects the writings of an author against others copying the work. Works protected by a copyright may be literary, dramatic, musical and artistic creations. A copyright provides the author protection for the expression of the work rather than of the subject matter. A description of a machine could be copyrighted as a writing, but the copyright would not prevent others from writing another description or from making and using the machine. Copyrights are technically granted to works automatically. A copyright can be claimed when a work is created and a copyright notice is included on the item. A copyright notice should be placed anywhere on the item that it can be readily seen and should include one of the approved copyright symbols, the year of first publication and the name of the copyright owner. Registration of a copyright is not required but can be done through the Copyright Office in the Library of Congress. Information concerning copyrights may be obtained from the Register of Copyrights, Library of Congress, Washington, D.C. 20559. (Telephone 202-707-3000). Copyrights are generally good for 50 years after the author’s death.
What is a Trademark?

A TRADEMARK can be a word, phrase, symbol, design or combination thereof which identifies and distinguishes a product or item from others. A service mark is the same as a trademark except that it identifies and distinguishes a service rather than a product. Normally, a trademark appears on the product or on its packaging, while a service mark appears in advertising for the services. Marks are used to indicate the source or origin of the items they protect. Marks protect against others using a confusingly similar mark but not to prevent others from making the same goods or from selling them under a non-confusing mark. There are separate procedures for federal and state trademark registration. The procedure relating to the federal registration of trademarks and some general information concerning trademarks is given in a separate pamphlet entitled “Basic Facts About Trademarks” available from the Patent & Trademark Office in Washington D.C.

Federal Patent & Trademark Office - A complete list of fees levied by the Federal Patent & Trademark Office can be obtained from the office at http://www.uspto.gov/web/offices/ac/qs/ope/fees.html, 1-800- 786-9199 or (703) 557-3158. As of October 1, 200, the basic filing fee for a patent was $790 for Utility applications, $320 for Design applications or $490 for plant applications. The application for registering a federal trademark is $750 or $325 for a small entity (independent inventor, small business or non-profit organization).

Federal trademark rights can exist indefinitely if the mark is used on its products or services. A Federal Trademark lasts for 10 years and can be renewed every ten years. There is one catch, between the fifth and sixth year after the mark was initially registered, an affidavit must be filed containing certain information to keep the registration alive. Failure to file the affidavit will result in the cancellation of the trademark registration. More detailed information of federal trademarks may be obtained at http://www.uspto.gov/web/offices/tac/doc/basic/basic_facts.html.

A federal trademark entitles the owner to use the mark nationwide. To search pending and registered trademarks visit http://www.uspto.gov/main/trademarks.htm and follow the instructions.

State Trademark Registration - Information concerning state Trademark registration can be obtained from the Secretary of State Office. For more information on Trademarking and Service Marking in Georgia, visit the following web site: http://www.sos.state.ga.us/corporations/tmfaq.htm or call at (404) 656-2861 or FAX (404) 657-6380.

Georgia’s designated Patent and Trademark Depository Library can be found at The Price Gilbert Memorial Library at the Georgia Institute of Technology. A state trademark registration only ensures against the same mark being registered in the state. There is $15.00 fee to register a trademark in Georgia and has to be renewed every ten years. The state and federal trademark offices do not communicate registrations. Therefore, for the best protection, a trademark should be registered with the state and federal offices. To search Georgia’s Trademark and Service Mark database visit the following web site: http://www.sos.state.ga.us/corporations/marksearch.htm.