

## Patent Protection for Board Games

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Question: “I have an idea for a new type of board game. What should I do to protect and possibly market my idea?”

Answer: Board games may be protected by patents, trademarks and copyrights.

A board game may be patented as long as it is new, useful and not obvious, the three criteria for patentability. A board game is not new if it has been sold in the United States or made public more than one year before a patent is applied for. The “useful” criterion is easily met if the game is educational, for enjoyment or serves some other purpose. The game must also not be obvious in view of other games. Keep in mind that not only is the structure of the game, that is, the board and playing pieces and their interaction, patentable subject matter, but also the method of playing the game may be patentable. A “design patent” may also be obtained for the ornamental, non-functional features of the game.

The board and the playing pieces may also be copyrighted if they involve an original work of art or authorship. For example, the ornamental shape of the playing pieces or the layout and artistry of the board may be copyrighted. Also, the instructions sheet or manual and the box cover design may be copyrighted.

The mark or name which you use in connection with the board game, like the marks MONOPOLY, LIFE, CAREERS or STRATEGO, may be trademarked. You may obtain a New York State trademark registration if you plan just to sell your game in New York. However, you may obtain nationwide protection for your mark by registering it federally if you plan to sell your game in more than one state. Consult your patent attorney for more detailed guidance on protecting your board game before you proceed.

You may wish to manufacture and market your game yourself, or sell or license your rights in your game to a game manufacturer who has a well-established distribution chain. Oftentimes, a retailer will test the market by purchasing a minimal number of your product to see how well they sell. Such an arrangement with the retailer may be by consignment, where a retailer may return those games he does not sell and pays only for what he does sell. This arrangement further reduces the risk on the retailer and may induce him to try an unknown product.

Alternatively, you may wish to approach toy and game manufacturers to see if they are interested in marketing your game. If patent protection for the game has not yet been secured and your game is still secret and not publicly disclosed, then it would be advisable to have a confidentiality or non-disclosure agreement in place with the toy manufacturers before you reveal your game to them. Again, consult you patent attorney for further advice in this regard.