The New Battle for Intellectual Property in the Day of the Internet and Knowledge Economy

There is a popular misperception among a lot of small and closely-held business owners regarding their business name. State law demands that any corporation formed within that state must have a name unique from others within the state. Therefore, many business owners mistakenly assume that their name registration confers unlimited rights to that name. This is simply not true and can unfortunately lead to expensive legal issues.

In order to correct this misconception, it is important for business owners to have a basic understanding of certain intellectual property terms. A trade name is essentially the name used by an entity to conduct business and is defined as a name which by user and reputation has acquired the property of indicating that a certain trade or occupation is carried on by a particular person. Using a tradename does not necessarily grant you any trademark or service mark rights, unless the name is being used in a manner that fits within the definition of those terms. A trademark is defined as a distinctive mark, motto, device, or emblem, which a manufacturer stamps, prints, or otherwise affixes to the goods he produces, so that they may be identified in the market, and their origin be vouched for. Additionally, a service mark is a mark of identification or a brand that is associated with a service the way a trademark is associated with goods.

The ease of finding this information online, coupled with electronic filing procedures, has greatly added to the volume of trademarks and intellectual property filings. There are more trademarks being filed today and more litigation over the use of those trademarks than ever before. The area of intellectual property has exploded in the past ten years.

Adding to the scope of the litigation is that not long ago, in the late eighties and early nineties, the world largely existed with very limited means of communication. Communications were mainly done by landline telephone, bills were paid through the mail, and when a relative or friend moved away you rarely heard from or saw them again. The Yellow Pages (in physical book form) was the Google of its day. If you wanted a phone number, that was your source and it only covered your local area.

Since then, the Internet has come of age and has brought the world into an era of knowledge and countless forms of convenience. Bills are paid online and two way video communication is free. If you need a number, Google will find almost anyone or any business you want to call.

This is another reason why there is more litigation regarding intellectual property and trademarks. For example: if a small to midsized business had a company in Illinois, such as Ben’s Pizza perhaps, in the eighties, another company known as Ben’s Pizza (in California) would never have the knowledge the two coexisted. Now, with the use of Google and other search engines, the two can learn of potential conflict in no time. This search revealed 584,000 hits and according to a USPTO search, only one “Famous Ben’s Pizza of Soho” related trademark exists on record. Does the owner of this trade mark, NAP, Inc. have some work to do? There are potentially thousands of conflicts in intellectual property that exist right now. If you are in business and incorporated or organized in any particular state, I challenge you to run a name search on any search engine.

How many other companies are using your identical or name eerily similar to the one that you choose?

If you have concerns regarding your intellectual property rights, or need to have your business appraised for other business related matters, the experts at The Center are always available to help at (618) 997-3436 or visit us online at taxplanning.com.
THE BUSINESS SUCCESSION CRISIS

MONDAY, NOVEMBER 21 @ 11 AM CST

"According to Forbes, only 30% of businesses are successfully passed from the first generation to the second. Only 9% make it to the third and virtually zero to the fourth."

Join us on November 21 at 11 am to find out why business succession is in crisis and what you as a business owner can do!

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