



ICS Law Group, PC
370 Mallory Station Road
Suite 512
Franklin, TN 37067

ICS Law Group, PC
370 Mallory Station Road
Suite 512
Franklin, TN 37067

Tel: 615.224.1290
Fax: 615.523.1541

www.ICSlawgroup.com

Contact Us:

Linas Sudzius
linas.sudzius@icslawgroup.com

Gweyn Colaberdino
gweyn.colaberdino@icslawgroup.com

Gaylord Gardner
gaylord.gardner@icslawgroup.com

Mary Snipes
mary.snipes@icslawgroup.com

Lindsey Vanbeusekom
lindsey.vanbeusekom@icslawgroup.com

Robert Gardner
robert.gardner@icslawgroup.com

Editor
Gaylord Gardner

Publisher-in-Chief
Linas Sudzius

Design & Layout
www.323design.com

www.ICSlawgroup.com

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"We Make Business and Estate Planning Simple."

ICS LAW BRIEF

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Charitable Giving Opportunity for Seniors Extended

By Linas Sudzius

The federal government recently extended a charitable giving opportunity that originally expired in 2007. In 2008 and 2009, some of our senior clients will be able to make tax-favored charitable donations from their IRAs.

Prior to 2006, if a person wanted to make a charitable distribution using IRA money, he'd have to take a taxable distribution from the IRA and write a check to the charity. Many taxpayers who did that were unable to claim a full charitable deduction for the money donated, because they didn't itemize their deductions or because they otherwise failed to qualify for the deduction.

Through the end of 2009, taxpayers who are older than 70 ½ may donate money to charity directly from their IRA account. The distributions to charity will be tax-free. Taxpayers are allowed to donate up to \$100,000 per year from their IRAs.

Since the distribution will not be included in taxable income, individuals will not be able to claim a tax deduction for the charitable contribution.

One other positive result of implementing the strategy is that amounts sent directly to charity also qualify for meeting minimum distribution requirements. Clients ought to seriously consider using IRA money instead of just writing a check if they are

- Older than 70 ½,
- Already supporting a charity with financial contributions, and
- Facing the prospect of taking otherwise unneeded distributions from an IRA.

This special opportunity is for a limited time, so if you meet the characteristics above, take advantage while you can.



Note: The information contained in this newsletter is for general technical guidance and is not intended for specific application. This newsletter is not intended to be legal advice and should not be used as a substitute for legal consultation. If legal advice is needed, independent legal counsel should be sought.

Guest Column:

The Secret to Success for Your Website

By Kirk Johnson, Owner, 323 Design

Each issue, we invite trusted business colleagues to write a short article on a relevant topic.

Every week I talk to business owners who contact our firm because they want a professional looking website that will also produce revenue. Let's look at three keys to your websites success:

The Look of the Website

When it comes to websites, the old saying of "You never get a second chance to make a first impression" is a fact lost on many business owners. Most people searching for a service or product online will compare 5-10 different websites before making a decision of who to contact. Many times the website that looks the most professional and up to date will be the one that gets the business. If your site looks unprofessional compared to your competition, you may want to consider a redesign.

Getting Lost in Search Engines

Every business wants to show up on the first page of Google search engine results, but few businesses actually know how to get there. If your business is not showing up on search engines then you are missing out on opportunities. It is

important to hire a professional web design firm to navigate you through this territory and optimize your site for search engine success.

Less Truly is More

We see a lot of business owners who try to overwhelm people with information on their website. However, if your website is used effectively to whet the appetite of a potential client they are more likely to call and seek out additional information. In our society people have less and less time to read, so keeping website designs attractive, easy to navigate, and free of clutter is the best way to attract end users to your business.

Kirk Johnson is the owner and creative director at 323 Design. He can be reached at 615-299-7312 or by emailing him at kirk@323design.com.

His company website is www.323design.com.

Our firm aids those who are considering starting a business and assists existing business owners with their continuing legal needs, such as contract review, contract drafting, franchising agreements, and consultation. In addition, our firm specializes in estate planning and management. For additional information or to set up an appointment, please call our office at (615) 224-1290.

How Do I Protect My Trademark?

By Gaylord Gardner

Does your business have a trademark? Has your business taken steps to protect its trademark? In fact, what the heck is a trademark and when does it need protecting?

New and established business owners know that their businesses have intellectual property that needs protection. Intellectual property might be a process, a method, or an idea. Other times it is the identity or logo of the business itself that requires protection. The area of law that protects business identities and logos is commonly referred to as trademark law.

What Is a Trademark?

A trademark is a device that a business uses to identify and distinguish its goods from the goods of another business. A trademark can be a

- Word,
- Phrase,
- Symbol,
- Design, or
- A combination of words, phrases, symbols or designs.

Occasionally a shape, a sound, or even a color can be considered a trademark. A service mark is the same as a trademark, except that it is used by a business to identify and distinguish the source of a service rather than a product. For the remainder of this article “trademark” shall refer to both trademarks and service marks.

Examples of words that act as trademarks are Coca-Cola, Nike, and Google. Examples of symbols that act as trademarks are Polo's polo player emblem and Apple Computer's apple. Shapes such as the Coca-Cola bottle can also be considered trademarks. The sound played in movie theaters right before a THX certified movie is considered a trademark. In rare instances color can be a trademark. The shade of the color blue used for Tiffany & Co. boxes is an example of a color that is considered a trademark.

The purpose of this article is not to discuss in detail what trademarks warrant protection and what trademarks do not. It is advisable that business owners seek the advice of an attorney in order to determine whether the protections described in this article are available for their business's trademarks.

Protections for Trademarks

Trademarks are protected by both state and federal law. In order to be protected, the trademark must be distinctive in identifying a good or service provided by a company from the goods or services provided by another company.

First Use

Generally, the first person to use a trademark to sell a good or service acquires the right to sell that good or service using that trademark. In other words, there are no steps that a business has take in order to acquire rights in a trademark except to be

the first to sell a good or service using that trademark. However, this protection is limited to the geographic area where the trademark is actually used to sell a good or service.

It is very possible for two companies to have the right to sell the same good or service under the same trademark in different parts of the country. For example, Company A may provide IT services in Tennessee under the name “Gary's IT Service and Consulting” and Company B may provide IT services in California under the name “Gary's IT Service and Consulting.” Therefore, Company A will likely be able to prevent Company B from providing IT services in Tennessee under the name “Gary's IT Service and Consulting.”

A business's ability to establish the first date that it sold a good or service under a trademark is important. For corporations and limited liability companies where the trademark is the business name, the state formation documents may help establish a date when a trademark was first used.

State Registration

For all types of trademarks, most states have a simple trademark registration process that allows businesses to register their use of a trademark and to establish a date when a trademark was in actual use.

Federal Registration

Federal law provides businesses the ability to register their trademarks with the United States Patent and Trademark Office (“USPTO”). Registration is available to a business using a trademark in interstate commerce, which means that the business sells goods or services using the trademark in more than one state.

There are benefits from having a federally registered trademark. Federal registration of a trademark gives the trademark holder additional rights such as

- The ability to recover profits, damages and costs for infringement by another person or company,
- The ability to recover attorneys' fees from an infringer,
- The right to use the ® symbol in connection with the trademark,
- The right to sue for infringement in federal courts, and
- The ability to have the customs service block the importation of goods bearing an infringing mark.

In order to register a trademark with the USPTO, the business claiming ownership of the trademark must file an application. The USPTO uses multiple classes in which to designate the goods and services that are sold under a trademark, and the application must list what classes are claimed by the applicant. Therefore, it is possible for more than one business to have similar registered trademarks in different classes.

Once the application is received by the USPTO it will be reviewed by an examining attorney. It is the examining attorney's job to determine if the trademark meets the USPTO's requirements for registration and whether there is a likelihood of confusion with

other trademarks. The examining attorney can either accept or reject the application. If rejected, there is a process for appealing the rejection. If the application is approved, the application is published to the Official Gazette which lists all new trademark applications registered with the USPTO. Once a trademark is published in Official Gazette, third parties may object to the application. If the application is not challenged, then the trademark is registered.

It is not the purpose of this article to discuss the registration standards of the USPTO and therefore, it is advisable that business owners seeking to register a trademark with the USPTO seek the advice of an attorney.

What Should I Do to Protect My Trademark?

What steps a business should take to protect its trademark is a complicated question. Here are some rules of thumb used by our firm:

1. Start Up - First Use Protection

For a start up business with limited money that has just begun to market a good or service under a trademark, it is often advisable to wait to register a trademark with the USPTO. Start up businesses are often changing and tweaking their business models. It could potentially be a waste of time and money to register a trademark with the USPTO because of the possibility that the business may abandon the trademark later.

Since there are “first to use” protections provided by the law, it may be advisable to wait until the business has an established business model and has settled on a trademark before registering that trademark with the USPTO.

2. Concerned Business Owner - State Protection

If a trademark is used exclusively in one state, federal registration is not an option. If there is a concern about establishing when a trademark was first used, it is sometimes a good idea to file a state registration, which is cheaper and less complicated than a federal registration. Additionally, adding the TM to the trademark is a way for businesses to claim trademark rights in a trademark.

3. Established Businesses - Federal Protection

For well established businesses, waiting is not always the best option. For example, is the business planning on spending large amounts of money on a new product line utilizing a new trademark? In these types of cases, it is usually better to file for a trademark application before the product launch in order to make certain that the trademark is available. The USPTO permits businesses to file an intent-to use application which allows a businesses to ensure that a trademark is available before large sums of money are spent on marketing.

Each business and its trademark needs are unique. Therefore, it is always a good idea for a business to get the advice of legal counsel regarding what steps to take in order to protect its trademark.

ASSET PROTECTION TRUSTS

On January 29, 2009 at 12:30 pm the ICS Law Group will present “The Asset Protection Trust (APT).” There will be a detailed discussion of what an APT is, how it works, when to use one and when other asset protection strategies may be more appropriate.

To sign up for the session please call our office at (615) 224-1290 or email our office at lindsey.vanbeusekom@icslawgroup.com

