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BUSINESS NOTES
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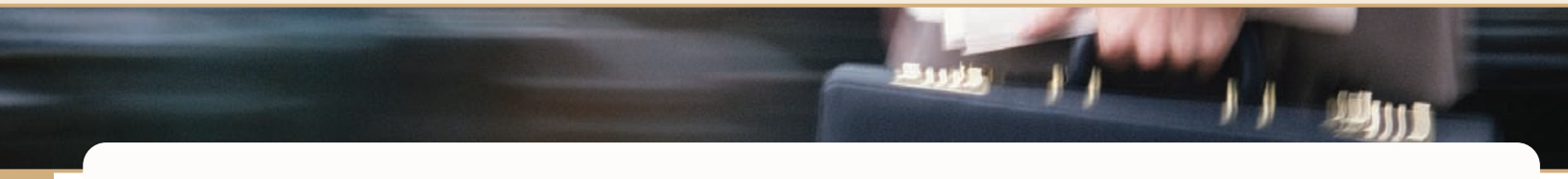

MAINTENANCE AND PROTECTION OF YOUR TRADEMARKS

When a business selects a trademark under which a product or service will be sold, it hopes to develop brand loyalty among its customers and have them come to know the trademark in the market place. As part of the strategy to create a brand, it is prudent to seek federal trademark registration for the name in order to help protect the business' rights to use the trademark. Once a trademark registration has been obtained, it is important that the owner of the trademark take certain steps to protect the trademark and the value it represents.

Subsequent to registration, the Patent and Trademark Office ("PTO") requires that periodic forms be filed to keep the mark "alive". It is suggested that the mark owner create a calendar system to track the various filing deadlines for the marks. While many law firms will track the deadlines, due to the long time periods that are involved it is always prudent to have the owner of the marks keep track of the dates.

The owner of the trademark should monitor the use of their marks to make sure they are actually used in association with the products or services for which the federal registration was filed. This becomes particularly important if a number of marks are owned in a portfolio of trademarks. Without use of a mark, you may loose all rights in a mark. There is a presumption under federal law that if you do not use a mark for a three-year period, you are deemed to have abandoned the mark. While this presumption is rebuttable, it is not something you want to try to rebut at an infringement trial. Best practice is to ensure that each mark in a trademark portfolio is used in commerce each year.

If a trademark is registered for a product, the mark must be used in association with the sale of the product "in commerce". This means the mark must be attached to the product itself (for instance a label sewed to a piece of clothing) or affixed to packaging. If the mark is registered for a service, advertising of the services offered using the mark will be sufficient.

Also, as part of maintenance of your marks, you should make sure you always use a "®" symbol in association with your registered marks (and only your registered marks), and a "TM" next to your unregistered marks, for example: Coke®, or WidgetTM.

Third, you should monitor the use of your marks by competitors and third parties. It is important to take action against all infringers as soon as possible. If you turn a blind-eye to one infringer, or you let someone infringe a mark for too long, the legal doctrine of estoppel and latches may prevent you from enjoining that party from use of the mark, and may destroy your rights in the mark as to the world.

Diligence in the protection and maintenance of your trademarks can save money in the long-run and may help you avoid future costly litigation, as well as protect the name by which your customers have come to know your products and services.

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EFFORTS TO MAINTAIN SECRECY TO BE SCRUTINIZED

The Uniform Trade Secrets Act, La. 51:1431, et seq., provides a cause of action for misappropriation of a trade secret. However, it is important to recognize that these are specific terms which must be satisfied in order to trigger the remedies provided in the Act.

A trade secret is defined as information, including a formula, pattern, compilation, program, device, technique or process that (a) derives independent economic value from not being generally known to and not being readily ascertainable by a proper means by other persons who can obtain economic value from its disclosure or use and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. Both elements must be satisfied in order to be a trade secret and possibly have protection of the Act. For example, a formula, process or customer list that is not to be generally known and derives economic benefit there from may satisfy the first element of the definition. However, reasonable steps must be taken to keep it secret like limiting access to only key personnel and requiring confidentiality agreements in order to be cloaked with the benefits of this Act. For example, a court held that the identity of clients did not constitute a trade secret since the computer in which the information was allegedly kept had no access code to restrict entry and there was no evidence of any contractual agreements regarding confidentiality of business information or restricting competition.

The second question key definition is misappropriation. This term is defined as the acquisition of a trade secret of another person who knows or has reason to know that it was acquired by improper means or disclosure or use of a trade secret of another without express or implied consent by a person who used improper means to acquire knowledge of the trade secret, or at the time of disclosure knew or had reason to know that his knowledge was derived from a person who had utilized improper means to acquire it. In any action, a plaintiff will have to prove that the party receiving the information wrongfully breached a duty of trust or confidence by disclosing or using the information to the injury of the plaintiff.

Thus, how any supposed trade secret is handled is very important. Evidence regarding use of confidentiality agreements, where the secret information is retained, the process whereby the supposed defendant acquired it, will all be subject to scrutiny by any Court in determining whether a claim is actionable. Businesses should consider whether their efforts to maintain secrecy are reasonable before any supposed misappropriation occurs so as to be covered by this Act.

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