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WFJ Celebrates 75th Anniversary!

On Thursday, October 11th 2007, WFJ celebrated it's 75th Anniversary of the firm by hosting an open house at our Minnesota office.

The event was well attended by both longstanding clients and those we have recently established relationships with. The firm was originally founded by Clarence J. Wagner in 1932. His daughter and grandson also attended and were introduced to all by Chairman of the firm, Alan Falconer.

WFJ has grown to 35 attorneys and more than 70 em-

ployees with offices in Minneapolis, MN and Milwaukee and La Crosse, WI.

Although the firm has remained focused on matters involving commercial law and credit/collection matters (especially contract and collection matters in the construction industry) the scope of our practice has grown.

Over the past 15 years, the areas of practice and geographical reach have expanded to include personal injury, civil and commercial litigation,

business services, general corporate work, family and criminal law, and estate planning.

We would not have achieved this growth, without the loyalty of our clients and long standing relationships. Our clients are also our friends and neighbors, and we very much appreciate the trust and confidence placed in us. Thank you for celebrating this milestone with us!

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E-BUSINESS AND INTELLECTUAL PROPERTY

Technology change drives commerce. Commerce, in turn, drives business and legal developments. Business leaders are forced to cope with the increasingly rapid pace of change and forced to navigate issues involving intellectual property more and more often. How effective a company integrates its strategic business decisions with changing technology and its management of key intellectual property issues is often the difference between commercial success

and failure. The challenge is this: how to take advantage of new economic forces such as the Internet and minimize the risks of doing business online.

We are a client-driven law firm. We seek to understand our clients' business challenges and develop proactive solutions. We are seeing an increased focus on e-commerce – doing business using the Internet and using

automated electronic methods for such disparate functions as linking procurement systems more closely with suppliers and out-sourcing customer service overseas. We are seeing our clients face the challenges of an increasingly brand-conscious customer base and seeing how the Internet is affording their competitors greater opportunities to infringe their intellectual property rights.

In response, we are commit-

ting to be a strategic resource for our clients for e-Business and intellectual property issues that our clients are facing more often during the various stages of their businesses – whether during start up, day to day operations, or during mergers, acquisitions, and divestitures.

The rest of this article will be devoted to introducing general concepts in e-Business and intellectual property law. Expect future issues to contain checklists and in-depth discussions on hot topics such as; how to use a license agreement effectively, how to avoid traffic diversion from your website, and how to effectively use non-compete agreements to protect your company's valuable intellectual property.

WHAT IS E-BUSINESS?

The term e-Business was first used by Lou Gerstner, former CEO of IBM. In broad terms, e-Business refers to conducting business using electronic business methods. Whether through email or through an extranet such as the WFJ Extranet we offer to our clients, e-Business is designed as a way to more efficiently conduct business than traditional methods. With change can come new risks, and e-Business is no exception. Ask yourself what is your company doing to protect the confidential information of its customers that it stores and maintains? Ask yourself if the privacy notice on your company's website complies with federal laws and the laws of the states in which your customers reside? Ask yourself how migrating to an electronic contracting process affects the enforceability of your contracts? These are the type of e-Business issues that we will address in future issues.

WHAT IS INTELLECTUAL PROPERTY?

Intellectual property refers to a per-

son's legal rights with regard to a creation, intellectual work, or invention. To the degree that a person has rights regarding an intellectual work, that person has the right to exclude others from using or benefiting from that work.

The realm of intellectual property is often broken down into discrete categories. The following is a brief description of some of the categories of intellectual property law that we believe a business person is increasingly likely to encounter: trademarks, copyrights, trade secrets/confidential information, patents, and publicity and marketing rights.

TRADEMARKS

How does your company manage and police its goodwill? In today's increasingly brand-aware society, trademark law is assuming a more central role in commercial transactions. In its simplest form, a trademark or service mark is used to distinguish the product or services that your company offers from those products or services offered by a competing business. A trademark is the heart of your company's brand – its appeal in the marketplace and emotional appeal to your clients. The value of a brand can represent significant assets and may be worth more than all the combined brick and mortar assets of your company. We are not talking about a small asset on your company's books. Think about the value behind the Coca-Cola brand which was recently estimated to be worth sixty-eight billion dollars. (Interbrand, Best Global Brands 2006) We realize that a comparison with a commercial Goliath can be daunting, but putting the numbers aside, ask yourself if your company should also be concerned about the value of its brand? If so, what can you do to maximize the value of your brand? How does your company prevent competitors from inappropriately

benefiting from your company's goodwill?

COPYRIGHTS

Copyright law protects the exclusive right of original works of authorship that are fixed in a tangible medium for a period of time from being copied or used by others. Often one thinks about a book, record, movie, or other artistic work when one thinks about copyrights. The truth is that copyrights affect many core aspects in business transactions. For example, a software engineer has copyrights to the code that she writes as soon as that code is put down in tangible form. A question may arise regarding the ownership of that copyright based upon how the software engineer was compensated and who asked him/her to create the software program. What happens if the software engineer subcontracted the coding to a third party? Who has the rights to the software programs then? The above is a typical example of how questions regarding the ownership of intellectual property can lead to legal disputes.

TRADE SECRETS AND CONFIDENTIAL INFORMATION

Trade secret laws are used to protect confidential information that has commercial value. With the onset of USB flash drives, in only a few minutes a disgruntled employee can misappropriate shocking quantities of valuable business information for their own benefit or to pass on to a competitor. Acknowledging this risk and taking affirmative steps to protect trade secrets is essential. One of the best ways a business can protect itself is to craft appropriate contracts and protocols to protect such sensitive information as customer lists, secret formulas, financial information, and know-how.

PATENTS

Patent law protects the exclusive law of

a patented invention and confers a limited monopoly on the patent holder for a period of time. The three general types of patents are utility, design, and plant patents. The common misconception is the successful filing of the patent application will lead to a marketable business idea. Rather, a patent provides the patent holder with the right to exclude others from making, using, selling, offering for sale, or importing the patented invention for the term of the patent. Often the most strategic decision a business person can make is determining if and when to seek patent protection.

PUBLICITY AND MARKETING

How can your company control its positive public image in the commercial marketplace and on the Internet? In your commercial contracts, do you

require consent for the contracting party to reference your name or trademark publicly? What are the specific restrictions that you place on a contracting party with regarding publicity and marketing rights? Can a contracting party post their relationship with your company on their website? Can they use your company as a reference account? Can they disclose to third parties the specific terms of their contract with you, and if so, could your strategic information fall into the hands of a competitor? We will discuss these issues and others as part of our focus on e-Business and intellectual property law.

Throughout its 75 years, Wagner, Falconer & Judd, Ltd. has responded to the changing needs of its clients. Join us as we carry this tradition forward to help our clients grow their businesses

and make strategic decisions during the Internet Age. For assistance with e-Business and intellectual property issues, please contact John D. Schragger of Wagner, Falconer & Judd, Ltd. He can be reached at 1700 IDS Center, 80 South Eight Street, Minneapolis, Minnesota 55402, (612) 339-1421, or via email to jschragger@wfltd.com.

Important Change in Consumer Products Laws

Congress is looking to change the operating rules for the Consumer Product Safety Commission ("CPSC"). This agency oversees the compliance of most consumer products ranging from toasters and hair dryers and other small electronic appliances to children's toys and chemical products such as Elmer's Glue and Wite-Out correction fluid. The CPSC Act impacts both manufacturers and retailers. Some within the industry view the changes as problematic and over reaching. Below is an overview of some of the portions of planned changes and comments regarding their impact on industry.

The act incorporates a new whistleblower protection with a 15-25% monetary reward (percent of penalty awarded) for employees who disclose their employer's violations. Industry commentators believe federal law already safeguards these communications and the provision for "penalty sharing"

may lead to situations where the employee attempts to blackmail the employer with confidential information. In house counsel may be concerned it will lead to internal communication silos where management will rely on a few executives to make decisions without the benefit of group input. In house attorneys also fear the attorney client privilege will get watered down as lawyers are forced to communicate with a very narrow group for fear of being pitted against the employee.

Another provision requires all products to be approved by an outside testing agency. There are those who question whether the CPSC has the resources to oversee such an effort and feel the private sector is capable of weeding out unworthy testing agencies. Others believe the legislature is unfairly using the mistakes made by a few companies to condemn all internal testing by industry with one broad brush.

The legislature is also looking to increase penalties for violations. Some penalty enhancement seems justified for violations made by a company and its senior management but the raising of the fine from \$1.25M to \$100 million seems completely unwarranted. Perhaps adapting the fines to match the gravity of the offense and the size of the company would be sensible.

Companies who manufacture or retailers who sell these types of products should be aware of the CSPC statutes and discuss the impact these changes could have with their management. For more information please contact Gary J. Van Domelen, Chair Business Services Group (608) 785 -0707.

Estate Planning— The Benefits of a Directional Letter

In our Summer 2007 newsletter, we published an article titled “The importance of Estate Planning” (This can be viewed on our site www.wfjlt.com)

Every person or couple developing an estate plan has a unique set of circumstances and needs that will change over their lifetimes. We encourage you to share your planning at some level with your designated executor, trustee or personal representative, and/or your children. How else will they know how to follow your wishes and properly manage your estate in the event of your death or incapacity?

One method is a directional letter that you can update periodically that can contain key information such as the following:

1) Location of your last will and testaments and any trusts

2) Location of your durable financial power of attorney

3) Location of your healthcare medical directive

4) Name and location of your attorney

5) Name and location of any safety deposit boxes and who has legal and key access

6) Location of a current list of all significant assets and liabilities

7) Location of key documents such as a marriage license or child guardian agreement

8) List of all insurance policies including life, health and disability and location and name of agent

9) Name and location of any investment advisor and account location

10) Name and location of your accountant

11) Bank savings and checking account

locations and account numbers

12) Name and location of your primary physician

13) Any specific burial location or instructions.

The list and information you want to communicate can easily be tailored to your personal circumstances. A directional letter is not a substitute for a proper will, trust, health care directive, or other important estate planning document. The letter will not determine how your estate is managed but it can serve as a helpful set of Map Quest directions to quickly lead your family to the paperwork and people who can carry out your wishes and minimize confusion during a difficult time for your family.

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