



WAGNER, FALCONER & JUDD, LTD.
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**WAGNER, FALCONER & JUDD, LTD.
ANNOUNCES 2008 BUSINESS SYMPOSIUM**

In 2007 WFJ presented our first Business Symposium. The goal of the program was to provide an opportunity for our clients to listen and learn from interesting speakers and have a chance to meet other business professionals who work with WFJ. The reviews from last year confirmed that the attendees enjoyed the program and wanted us to focus this program on Credit and Collection topics.

After hearing the feedback we lined up a terrific program and group of talented speakers for our second Business Symposium. The program will be held Friday, June 13, 2008 on the 50th floor of the IDS Center in Minneapolis, the same

building that is home to our Minnesota office.

Our Keynote speaker this year is Professor John Coleman, PhD. Professor Coleman is a renowned author and speaker who teaches at the Fuqua School of Business, Duke University. Before joining the faculty at Duke Professor Coleman served as an economist with the Board of Governors with the Federal Reserve System. In that capacity he worked directly with Alan Greenspan and current Chairman Ben Bernanke. We look forward to Professor Coleman's observations about the economy, the value of the US Dollar and its impact on our

business climate.

We will also have a series of topical breakout sessions during the morning followed by our afternoon program featuring a "Collection Mock Trial." This is a popular program the firm presented for the NACM several years ago and features client witnesses, an interactive trial and the audience as a jury.

WFJ will apply for both legal and credit continuing educational credits. There is no cost for the program but space is limited so please contact Jazmin Thomas at 612-339-1421 if you would like more information or plan to attend.

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Protecting Your Valuable Trademarks

In the Winter 2008 issue of our newsletter, we wrote about how selecting and developing an effective trademark for your business can drive sales and increase brand awareness. We discussed the business and legal concerns involved with picking a trademark to represent your product, service, or business name. In this issue, we will explore the options available to protect your valuable trademarks.

The operative question for any business is to figure out how much protection is necessary. There are

three choices: common law rights, state registration, and federal registration.

Common Law Rights.

The default protection for a trademark has its origins in common law. In the United States, common law protection starts with the actual use of a trademark in commerce. What this means is that doing business using your trademark will give you certain rights to that trademark in the geographic area that you are selling your product or

service. For example, let's say that you decide to make your millions selling pizzas under the trademark "Peter's Perfect" pizzas. If you can prove that you distribute your Peter's Perfect pizzas throughout a tri-county area, then your common law protection to use the trademark "Peter's Perfect" in conjunction with the sale of pizzas will extend to that tri-county area.

These rights attach to the first business to use a particular

trademark associated with a product or service in a particular area. So, if someone outside the tri-county area in which you distribute your “Peter’s Perfect” pizzas also decides to use that same word trademark in connection with the sale of pizzas and that person operates in a different area of the country, then that person could also gain common law rights to the name “Peter’s Perfect” with regard to the sale of pizzas. Sound confusing? It can be.

●**Practice Pointer:** If you intend to claim common law trademark rights, you should insert the ™ symbol (or the SM symbol if you sell a service instead of a product) immediately at the top right-hand corner of the trademark. What are the costs associated with using the ™ symbol? Some ink and perhaps re-printing your sales material. What are the benefits of using the ™ symbol? You are bolstering your right to claim the exclusive use of the trademark within the area you are actively engaged in commerce with that trademark. If you intend to seek additional trademark protection (such as a Federal registration), you should use the ™ symbol while your application is pending before the United States Patent and Trademark Office (USPTO).

State Registration

The rights gained by registering your trademark on a state level will vary based upon the state in which you choose to register your mark. In general, the duration of registration will also vary. Ten (10) years is the typical duration for the length of a state trademark registration. Why does a business

choose to register a mark on the state level instead of federally? There can be several reasons. First, depending upon the nature of the mark, federal registration may not be an option. Second, state registration is a simple, expeditious, and inexpensive process when compared to federal registration. A major benefit of state registration is that it creates a public record of your trademark rights that indicates the date you first used your mark in commerce. Another benefit is that state registration will expand the area of protection from the actual area you are engaged in (in our pizza example, the tri-county region), to a statewide basis.

Federal Registration

Registering your trademark with the USPTO offers many benefits and is often the best decision for a business that intends to sell a product or service in more than one state. Once a mark is registered with the USPTO, the owner of the trademark has national protection.

Going back to our pizza example, even though you may only sell your Peter’s Perfect pizzas in a tri-county region in your state, if you attain a Federal trademark for “Peter’s Perfect” in connection with the sale of pizzas you will have greater protection. You can stop any other business in the United States from using that mark in connection with the sale of pizzas regardless of where you actually sell your pizzas. An additional benefit of Federal registration is the right to bring an infringement action concerning the trademark in Federal court and seek enhanced damages in the event someone is infringing your feder-

ally-registered mark.

One of the reasons why a Federal registration is substantially more expensive than a state registration is that the Federal registration process is substantially more involved than registering a trademark on a state level. To avoid the risk of inviting an infringement action as a result of your Federal trademark application, it is a highly recommended business practice to conduct a comprehensive nationwide trademark search before filing a Federal trademark application.

●**Practice Pointer:** You should use the federal registration symbol “®” only after the USPTO actually registers your mark and not while an application is pending. The “®” symbol should only be used in connection with the goods and/or services listed in the Federal trademark registration. While you technically do not have to use the “®” symbol with your federally-registered trademark, it is highly recommended as the proper use of the “®” symbol can help you claim that any party infringing your mark had prior notice of your registration.

Take-Away

Once you are aware of your options in protecting your valuable trademarks, it becomes a business decision as to amount of time and money to invest in protecting your trademark. For any questions regarding this article or for assistance with trademarks in general, please contact John Schragger of Wagner, Falconer & Judd, Ltd. He can be reached at 612-339-1421 or via email at jschragger@wfiltd.com.

Don’t Be Surprised:

How to Avoid Franchise or Dealership Counterclaims When Pursuing a Collection

Collecting on past due accounts is an important part of every business. However, not all debtors are created equal. Dealers, distributors, franchisees and sales representatives are among a special group of debtors that are often provided extra protection under franchise and dealership laws. These laws often prohibit franchisors from terminating relationships at will, despite verbal or contractual agreements to the contrary. These laws can also impact a franchisor’s unilateral decision to cease or significantly

reduce product supply. If the protections of franchise and dealership laws are ignored, a franchisor may find itself facing a counter-suit and the very real threat of significant damages.

The following are a few practice tips to consider before altering a relationship with a debtor:

Determine what state law applies

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Before it is possible to determine if the franchise or dealership laws apply to your relationship, it is important to determine which state’s laws apply. There are several key laws that should be examined: a) your home state; b) the debtor’s home state; c) the state chosen in the contract; and d) the state where business transactions occur.

Just as all debtors are not created equal, the same holds true for states. For example, in

states that legislate how the relationship is to be run, such as Wisconsin and Minnesota, extreme financial consequences for terminating or failing to renew a relationship without good cause exist. This has resulted in many unsuspecting franchisors being responsible for extensive damages to debtors who have brought counterclaims.

Unfortunately, making this determination is not easy. We strongly recommend that you contact us if you suspect you are involved in a relationship that may trigger these laws.

Categorize your relationship with the debtor

Once you have determined which state law applies, it is important to determine how the state looks at your relationship. States classify these relationships differently. This results in a relationship being classified as a franchise or dealership in some places and not a franchise or dealership in others.

The title a franchisor gives its debtor is irrelevant. The courts will take very little notice of the fact that you never classified yourself in a franchise or dealership arrangement. Rather, the courts will closely look at how the relationship was conducted in order to determine if the debtor is protected by franchise and dealership laws. Please see our

winter newsletter for an overview of how to determine your classification.

Termination or non-renewal

When a debtor chooses to bring a counterclaim against a franchisor, it is frequently for improper termination or a failure to renew the relationship. As was noted above, the franchise and dealership laws often dictate how and when a termination may occur. Therefore, when a debtor ceases paying for services or goods, it is logical to want to cease doing business with them. Although this is an extremely logical approach, this approach may cause significant damage if the relationship is protected by franchise and dealership laws.

As a result, it is very important to know which laws will apply and how, under these laws, you can terminate or fail to renew the relationship. Until you are certain that you are not prevented from terminating a relationship, it is strongly recommended that you continue the relationship as it was before the debtor breached the agreement. By continuing the relationship until a proper determination can be made, a franchisor will often have eliminated the likelihood of a successful counterclaim.

Document. Document. Document

The importance of documentation can not be overstated. Throughout the entire relationship with a debtor, closely document all transactions and correspondence. This may be the very place you will be able to prove your actions are justified. Although this sounds like a simple suggestion, in the hustle of day to day business, this can be overlooked. As such, it is strongly recommended that franchisors take a few extra moments to clearly document all aspects of the relationship.

Although the scope of these laws can be extensive, with the proper knowledge and understanding on how these laws affect your business and your relationship with the debtor, you can avoid unnecessary expenses and costly damages. Please feel free to contact us with any questions or concerns you may have about how your company may be impacted by franchise and dealership laws.

For any questions regarding this article or for assistance, please contact Gary Van Domelen of Wagner, Falconer & Judd, Ltd. He can be reached at 608-785-0707.

Why Do You Need An Estate Plan?

Estate planning is one of the most important steps any person can take to make sure that their final wishes are honored, and that loved ones are provided for in their absence. An estate plan empowers you to clarify your intentions, protect your family, and make your own decisions about how your estate will be handled. The reason for an Estate Plan is unique to each person's circumstances. Here are a few reasons why an Estate Plan may be important to you.

1. an estate plan can be used to plan for family members, such as an elderly parent or grandchild, whose life might become more difficult without you;
2. an estate plan can pass assets more efficiently and promptly to beneficiaries and can be used to avoid the probate process;
3. an estate plan can help you prepare for your own incapacity or incompetence by

executing a Health Care Directive and Durable Power of Attorney;

4. an estate plan can be used to support a religious, educational or other charitable cause during your life or upon your death and at the same time take advantage of tax laws designed to assist the philanthropist in making private charitable donations;

5. an estate plan can reduce the amount of estate tax that may become due upon your death, thus maximizing the amount that can be transferred to your beneficiaries; and

6. an estate plan can provide for an orderly succession of your business and ensure the business continues smoothly upon your death.

A great deal of personal information is required to put together an estate plan and providing this information will ensure that your wishes are carried through and that the

most comprehensive estate planning options have been reviewed and discussed with you.

An estate plan is an ongoing commitment and will change as your life changes. To begin an estate plan, it is important to first understand your goals and objectives. The second step is to implement a plan, using different techniques, to reach your goals.

ESTATE PLANNING MISTAKES TO AVOID

An Estate Plan is not just for wealthy individuals and those with a taxable estate. Although many individuals today have enough money to live comfortably and establish an estate plan to avoid estate taxes, estate planning is used for others too, such as distribution of your assets accord-

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ing to your wishes and not the mandate of the State. Here are some Estate Planning mistakes to avoid:

1. Assume you **do not** need an estate plan because you do not have a taxable estate.

Estate tax planning is one reason for establishing an Estate Plan and with the estate tax laws currently in flux, whether your estate is large enough to owe estate taxes may depend on the year in which you pass away. However, anyone who owns property or has money has an estate and a final disposition of that property must be made upon your death. Estate planning can ensure your assets are controlled according to your wishes and distributed accordingly upon your death. Establishing an estate plan can also help minimize the financial burden of your death upon your beneficiaries.

2. Not having a Will.

If an individual dies without a Will they are giving their beneficiaries and loved ones no guidance about how to care for their property. As a result, the government decides how the property should be handled and distributed.

By establishing a Will, you are taking control and directing how your assets will be distributed after you have passed away.

3. Leaving your entire estate to your spouse.

Many couples leave all assets to one another; however, you may want some assets to pass directly to children, especially in situations where spouses have children from different relationships. If you have children from a previous relationship and you leave everything to your spouse, your spouse is not legally bound to make a distribution to your children from that previous relationship. Instead the surviving spouse may distribute assets only to the surviving spouse's children. In addition, there are reasons to distribute assets directly to the children, if you believe that the surviving spouse will remarry and leave all assets that were owned together to the new spouse and distribute nothing to your descendants.

4. Failing to consider the benefits of charitable contributions.

If you were unable to fulfill your philanthropic goals during your lifetime, your estate is an excellent way to fulfill those goals upon your death. Fulfilling charitable goals upon

your death could also have tax benefits.

5. Failing to update estate strategies periodically.

Your life today is different than it was fifteen years ago, even five years ago. Your particular circumstance at any given time is different than it was sometime ago. Regular reviews are an important aspect of your estate plan to keep you on top of your goals.

This article has raised some estate planning issues that are important for everyone to consider. Everyone has different circumstances. We encourage you to contact us today to discuss the specifics of your particular needs and the type of estate plan that would be right for you.

For any questions regarding this article or for assistance, please contact Naomi Baldwin of Wagner, Falconer & Judd, Ltd. She can be reached at 612-339-1421.

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