

Protecting Your Company's Internet Presence



Carla G. Testani

A company's name and logo make its products and services distinguishable from any other business and may be protected by a trademark registered with the United States Patent and Trademark Office (USPTO). A trademark is considered property of the business and has a tangible value, as it is used by the public to associate a particular good or service with its source. Often, business

owners spend a great deal of resources developing their mark in traditional commerce while leaving its online identity an afterthought. Ignoring a business's internet presence could potentially result in dilution or loss of the mark on the World Wide Web (WWW).

Internet domain names are commonly referred to as "website addresses" and begin with "www." However, an actual website address is a sequence of numbers (i.e. 123.12.123.45) and a domain name is the way for internet users to easily recall or access a unique numerical address. In order to obtain a website address, an individual or company applies through a domain name supervisor, such as GoDaddy.com and Gozerdomains.com, who is authorized by The Internet Corporation for Assigned Names and Numbers (ICANN) to correspond with a specific numerical sequence on the WWW. Purchasing a domain name through a domain name supervisor is fairly inexpensive, but does not automatically afford special rights in the name unless it is used in commerce and/or subsequently registered as a trademark.

An internet domain name may be registered with the USPTO if it is functioning both as domain name (address) and also as a trademark. The mark should have a distinctive component and be used as a source indicator apart from just being listed in the address line of the browser. However, in order to receive protection for an internet domain name, just as with a traditional trademark, the name must be distinctive, famous, or take on

secondary meaning, as opposed to merely a generic (i.e. "wolf") or descriptive (i.e. "red") term.

Before beginning to use a mark, a business should determine whether another business already uses an identical or similar trademark on or in connection with the same or related goods or services, regardless of whether or not the business has an internet presence. Also, before devoting time or resources to marketing a name, a company should check to see if a specific desired domain name is actually available. However, even if a particular domain name is already taken, it may not necessarily be in use. The owner of the name may be willing to abandon the name or sell the rights to the name.

There are a number of problems that could arise if a thorough clearance check is not performed prior to successfully securing a domain name. Sometimes, the domain name contains another company's existing trademark. While this registration may be a defensible and legitimate use of the name, if the owner is found to have registered the domain name in bad faith, he or she may face significant penalties if an infringement action is brought. Other examples of bad faith registration include: a competing business registering a similar mark with an intent to profit from a consumer's confusion, third party registration with the primary purpose of selling, renting or otherwise transferring the domain name registration to a business' competitor, or a company registering its main competitor's mark to prevent the competition from utilizing the name online.

The Anticybersquatting Consumer Protection Act (ACPA) was passed to provide trademark owners with effective ways to combat cybersquatters and other entities from infringing, diluting or unfairly competing with a registered domain name. Additionally, ICANN has implemented a Uniform Domain Name Dispute Resolution Policy (UDRP) as a streamlined, cost-effective way to resolve disputes about domain names. However, unlike tradi-

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tional trademark and unfair competition claims brought under federal trademark statutes, consumer protection is not the main purpose of the ACPA. In fact, the mere act of registering a domain name may violate the ACPA even if the domain name is never used or made available over the Internet.

As competition forces companies to put more and more information, products, and services onto the Internet, Internet domain name disputes will inevitably become more common.

Whether avoiding an infringement on someone else's mark or defending against others claiming your business' identity online, early consultation with legal counsel is critical to protecting valuable assets of a company.

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Intellectual Property: The Most Overlooked Asset of a Company



Gerald C. Davis

When evaluating the worth of a company, it is important to recognize the value of all assets and liabilities in determining the company's value. However, most overlooked are the intangibles – that is, assets that do not have a physical shape, but nonetheless contribute to the earning power of the company. The true value of a company is its ability to generate earnings and

earnings are a function of the productive use of a company's assets deployed to maximum advantage.

Intellectual property is the most overlooked asset of the company, which can include its name, its reputation, its identity to the market and customer base, and its ability to charge a fair price for its products or services based on special recognition afforded the company by its customers and business

prospects. Intellectual property, therefore, is an attempt to monetize intangible business assets in a way that they are not confused with other vendors or suppliers, and give the company a special recognition not enjoyed by competitors or other vendors, to avoid commoditization pricing in its sales. A commodity treats every item of the same class, type and kind as identical, and therefore the only difference is price, while intellectual property affords the vendor special recognition, pricing and competitive advantage which avoids commoditization in the sale of its products.

Gerald C. Davis

Gerald C. Davis is a partner in our Livonia office where he concentrates his practice on corporate and business law, leveraged buy-outs, company reorganization and refinancing, analyzing investments for joint ventures, intellectual property, and drafting loan agreements. He may be reached at (734) 261-2400 or gdavis@cmda-law.com.

The Importance of Federal Registration



Patrick R. Sturdy

Business owners and individuals should be concerned with protecting their brand identity, which means taking active steps to protect their trademark. The best avenue of protection is Federal Registration of the business or individual's trademark with the United States Patent and Trademark Office.

The right to use a trademark does not come from Federal Registration, instead, the first business or individual to use a distinctive trademark in commerce has the right to use the mark and exclude others from using a confusingly similar trademark. However, this right of use is limited to the geographic location in which the trademark is being used. Registration provides nationwide priority over the trademark. Federal registration

also creates a public record of the trademark and puts others on notice. Federal registration can create presumptive evidence of trademark ownership and exclusive right to use the trademark throughout the United States. Federal registration can also provide the basis of obtaining registration in foreign countries. Also, Federal registration provides the ability to file a suit related to the trademark in a federal court and recover the defendant's profits and up to three times your actual damages, as well as your attorney fees if the court finds the case to be exceptional.

Patrick R. Sturdy

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CMDA's 50th Anniversary Client Appreciation Event

Thank you to clients and friends for attending CMDA's 50th Anniversary Client Appreciation Event at the VisTaTech Center at Schoolcraft College. We enjoyed catching up with clients, reminiscing with former employees, and showing our appreciation to each and every client who has put their trust in us over the past 50 years.



Jeff Clark (CMDA), Louise Dushesneau (MMRMA), Mike Ellis (MMRMA), Patrick Sturdy (CMDA), Lily Cavanaugh (Redford Twp.), Owen Cummings (CMDA)



Owen Cummings and Marlene McClorey



Tim Young (CMDA), Judge Tim Kenny, Jeff Clark (CMDA)



Terry Emery (DTE Energy), Tim Young and Bob Hahn (CMDA)



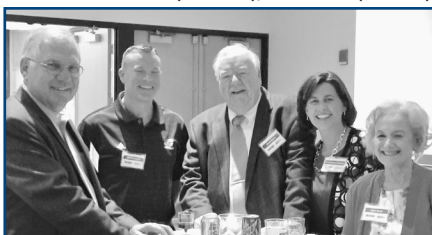
James Lossia, Paul Mongiello (MMRMA), Chief Curtis Caid (Livonia), Ed Salah (CMDA)



Jeff Clark (CMDA), Judge Connie Kelly, Kevin Kelly (Wayne Co.), Ron Acho (CMDA)



Talat Karmo, Fred Najor, Judge Geno Salomone, Ron Acho (CMDA)



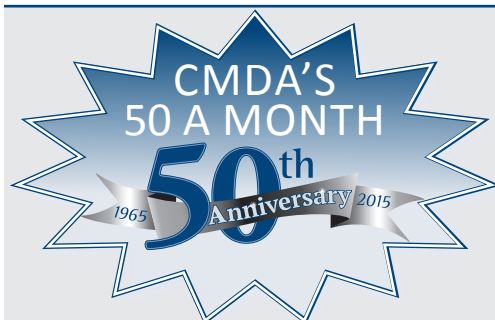
David Zick (Group Associates, Inc.), Rick McGuirk (United Apartments), Gerald Davis and Linda Davis Friedland (CMDA), Julie Davis



Tim McClorey and Paul Mongiello (MMRMA), Chris Schultz (CMDA)



Chris Schultz (CMDA), Maria Martinuzzi and Kathy Raymor (Lis, McCallion, Raymor & Co., P.C.)



To commemorate CMDA's 50th Anniversary, every month throughout 2015 we are donating 50 (or more) items to a local charity. In July, we are collecting food and supplies for PBJ Outreach, Inc., which is a non-profit organization focused on feeding and clothing the poor and marginalized living in the Detroit metropolitan area. Please stop by our Livonia office if you are interested in donating. Thank you for your support.

JULY

Donation: Food and Supplies
Recipient: PBJ Outreach Inc.

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Our Vision
To meld our legal expertise, professional support staff, technical resources and variety of locations to deliver first rate legal services at a fair value to a full range of business, municipal, insurance and individual clients.



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