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"Providing Legal Advice and Strategies for More Than 50 Years"

March, 2019

What is March Known For?

In recent history March has become known as the most unproductive work month of the year because of March Madness Basketball Betting.

Professional Baseball's spring training happens every March as well and further contributes to unproductiveness at work. There is nothing better than "disappearing" out of the office for a few hours to enjoy a beautiful afternoon spring training baseball game with friends for a cold beer and a hot dog.

Additionally, March 17th is the day that everyone is Irish, at least for the day. Happy St. Patrick's Day to all of our amazing and loyal clients!

Furthermore, March is known to come in like a lion and go out like a lamb.

Last but not least, March is an excellent time to remind you to get your 2018 taxes filed. If you cannot pay your taxes this year, call us. Failure to File and Failure to Pay are two of the most common penalties the IRS assesses. The

longer you wait, the more it costs. Call us for an appointment we are here to help.

Inweekly Power List

On Wednesday, March 13, 2019, our Founding Attorney was named to the 2019 *Inweekly* Power List. The power list includes the most influential people in the greater Pensacola area. The issue will be published on March 28, 2019

CONGRATULATIONS CHARLES S. LIBERIS



Liberis Law Firm Team Member Highlight

This month we highlight Kaylan Walden. Kaylan joined the Liberis Team in 2012. Her Titles are Office Manager and Licensed Closing Agent. Kaylan is the amazing powerhouse behind the Liberis Law Firm. Kaylan is the Firm's go-to-girl! "Just ask Kaylan" is our mantra.

Kaylan was born and raised in Pensacola. She has been happily married for ten years and has two great boys, Braxton 7 and Colton 6.

Kaylan graduated from Pensacola State College in 2004 with a degree in elementary education. Kaylan is also a licensed closing agent.

Her favorite quote is, "Don't cry because its over. Smile because it happened."

Theodor Seuss Geisel a/k/a Dr. Seuss.

NEWSLETTER PUBLICATION

A number of our clients requested that we recommence our Newsletter and we were happy to oblige.. The newsletter will be published on an irregular basis as we come across topics of interest that relate to our clients.

PROTECTING YOUR BUSINESS BRAND ON THE INTERNET



A Story about Cyber-Squatting

By R. Douglas Goldin

As a business, we want our customers to hear our name or see our logo and associate them with a level of credibility, quality, and satisfaction. Businesses use unique designs, signs, symbols, and words in creating an image that identifies a business's product or corporate identity from its competitors. When you see the Nike swoosh it invokes an idea of youth, stylish, athletic shoes, and clothing.

Over time, Nike's brand has grown to stand for certain benefits and value. In the past, we were able to control the ideas of our business through traditional paid advertising in newspapers, magazines, television commercials, etc. But now some 30 years into the internet age, controlling your business brand has become a daily task and sometimes a herculean event.

Now, as a business you must deal with how your website is ranked on Google, reviews written on Yelp, or a post on Facebook, Twitter, or Instagram that may or may not be good for your brand. A brand that you built over time can be destroyed in minutes. It is important for businesses to think: how can we legally protect my brand before issues arise?

I recently had a client who sells boats. We will call his company "Boating" (note I have changed name, industry, and facts to not identify the company). Boating has been in business for 30 years and built its business brand through word of mouth and highly visible store locations. Boating did not have a website or any social media. Boating never needed a website, so it had not purchased its domain name (e.g. www.boating.com).

A competitor of Boating let's call the competitor, Hijacker, decided to purchase the domain name for Boating and other names that sounded similar (e.g., Fla-Boating.com, Boatingforsale.net, etc.). This is called "Cyber-squatting" which is the registering, selling or using a domain name with the intent of profiting from the goodwill of someone else's trademark.

Hijacker attempted to use Boating's domain name to hurt Boating's business brand by pointing these domain names to an adult themed website. Customers and potential customers would search the term Boating or its

location on Google. These customers would click the link provided by Google with the intent of shopping for a new boat, but the customer would land on an offensive website. Even though Boating never needed a website, its domain name was active on Google and its business brand was being associated with adult videos.

Boating's website was hijacked for almost six weeks before it learned of the ongoing slander of its brand name. Hijacker would not take down the domain names or sell the domains to Boating. Nor would the web-hosting company remove the domain names because Boating could not prove it owned the brand or any trademark associated with its brand name.

A domain name usually costs around \$10, but when someone else owns the name it can cost thousands of dollars. In the case of Boating, it took six months to obtain the needed trademarks for the web-hosting company to take down the hijacked domain names. The total process to register Boating's trademarks and obtain an injunction cost Boating approximately \$20,000 in legal fees and costs.

To protect your business from cyber-squatters, I recommend the following:

- 1. Domain Names.** Buy all domain names that a customer could use to find you. As an example, my last name is spelled Goldin, but many customers may spell it Golden. So, I would buy Goldinlaw.com, Goldinlaw.net, Goldin.legal, Golden.com, etc. Taking the time to spend as little as \$10 per year can save your company from spending thousands in legal fees to a lawyer or even worse paying exorbitant cyber-squatting fees to someone holding *your* domain name hostage.
- 2. Fictitious Name.** If your company uses a fictitious name (i.e., Scott Boating doing business as Boating Superstore, make sure you have the fictitious name registered with the State of Florida or in any other state your company does business.
- 3. Trademark.** The most effective way to protect against Cyber-Squatting is trademarking your business name with the State of Florida and the U.S. trademark office. You can obtain the trademark *faster* in Florida than the U.S. trademark office. Trademark is a generally a word, phrase, symbol, or design, or combination thereof, that identifies and distinguishes the source of the goods of one party from those of the other. There is also Service Mark which is the same as a trademark, except that it identifies and distinguishes the source of a service rather than goods.

Before filing a trade/service mark application, the client should consider (1) whether the mark that the client wants to register is registrable, and (2) how difficult it will be to protect the mark based on the strength of the mark selected. Before filing the non-refundable Federal Trademark application, it is very important to determine whether the client's proposed mark is likely to cause confusion with another mark.

The level of protection varies on the type of the mark.

1. **Generic Mark.** If the trademark is generic, it is not subject to trademark protection (i.e., bicycle, bath tub, shower, Florida, United States, State, etc.).

2. **Descriptive Mark.** This type of mark describes the goods or services as opposed to merely stating what they are. Descriptive marks are protectable as a trademark only after acquiring "secondary meaning" (recognition) in the relevant marketplace. An example of a descriptive mark is Creamy for "yogurt" or World's Best Bagels for "bagels." These marks are weaker and harder to protect.

3. **Suggestive Mark.** These marks are slightly more cerebral than descriptive, but still identify the goods or services on its face (think Facebook®, "Quick n' neat" for pie crust or "Glance a Day" for calendars). The suggestive marks are protectable.

4. **Arbitrary Mark.** Is a mark that is not normally associated with the item. Examples of these are Apple® for computers or Banana for tires. An arbitrary mark is protectable, and subject to a greater scope of protection than suggestive marks. Arbitrary is a strong mark.

5. **Fanciful Mark.** A fanciful mark is made up words. An example of a fanciful mark would be Google® or Exxon®. Fanciful marks afford the greatest scope of protection.

Obtaining a trademark can be daunting but is a must for a business wanting to protect its brand. Please contact our office so that we can review your business brand and help you protect your business brand for years to come.

Doug Golden represents individuals and small businesses with their corporate, construction, real estate, probate, creditor's rights, and community association litigation needs. Please contact Doug should you require assistance in any of these areas. 850-438-9647 and dgoldin@liberislaw.com.



DOMESTIC, FOREIGN, AND HYBRID ASSET PROTECTION TRUSTS

DAPT - FAPT - HDAPT

By Charles S. Liberis

After the economic downturn of 2008, *Asset Protection* became the focus of real estate investors and other high net worth individuals.

The common thread among the various asset protection trusts is that the Grantor also wants to be a discretionary beneficiary of the Trust that the Grantor funded with the Grantor's assets.

DAPT

This Firm has always found that a Domestic Asset Protection Trust (DAPT) was not only necessary, but a complement to proper estate planning.

Although many attorneys are of the opinion that DAPTs can be challenged, our research shows that no non-bankruptcy creditor has successfully challenged and obtained access to assets in a properly structured DAPT.

FAPT

In high risk situations, particularly where there is a risk of an involuntary Bankruptcy we always recommend the use of a Foreign Asset Protection Trust (FAPT). We generally recommend Nevis as the jurisdiction of formation and administration because of its:

- strong and judicially upheld trust laws
- nonrecognition of foreign judgments
- Use of English as the official language
- lowest cost foreign jurisdiction for formation and administration

Because of the expense in organizing and managing the FAPT as well as the ongoing and expensive IRS reporting requirements that we discussed in our February Newsletter many clients have asked us about a “middle-ground”.

HDAPT

Enter the Hybrid Domestic Asset Protection Trust (HDAPT). Domestically based and administered by a bonded and insured trust company with strong trust laws such as in Nevada or South Dakota thereby avoiding the cost and expense of the FAPT. The primary difference in a hybrid trust is that the Grantor is not initially a beneficiary of the trust.

These trusts are generally set up where there exists a strong trusting relationship with the spouse. In order to protect the grantor in the event of a divorce there is a strong definition of a spouse. A spouse is defined as "the person to whom the grantor is married to and living with at the time of the trust formation and in the future and from whom the Grantor is not estranged". This gives the grantor access to the trust through a subsequent spouse in the event of the death of the current spouse or in the event of a divorce or separation.

For additional flexibility we provide:

- for a Trust Protector who, among other powers, has the power to name the grantor as a beneficiary in the future; and
- the trust is pre-qualified as a Nevis trust. In the event of creditor threat, jurisdiction can be immediately transferred to Nevis by the trust protector.

Charles S. Liberis has been structuring both domestic and foreign asset trusts for over 30 years. Charles practices in the areas of Business, Real Estate Law, and Estate Planning. He has extensive experience in International Business Transactions and Foreign Asset Protection Trusts. Please contact Charles should you require assistance in these areas. Charles can be reached at 850-438-9647 and cliberis@liberislaw.com

FOREIGN INVESTMENTS THAT DO NOT REQUIRE REPORTING

We received a number of inquiries in response to our February Newsletter article covering foreign investment reporting requirements titled, ***Let's Talk International Taxes FBAR & FATCA.*** By Kelly J. Gwin.



The basic question asked repeatedly was, "What foreign investments do not require reporting under the current regulations?"

REAL ESTATE. Real estate owned in your personal name or jointly with another is non-reportable. However, if the real estate must be held in a corporation or entity, such as in Costa Rica, that entity becomes a financial asset subject to reporting on form 8938.

Also remember that if you have a vacation home in a foreign country and rent the home you must report the income. In addition, if you have a bank account in that country to receive rents and from which you were paying the expenses of the foreign real estate, that bank account also becomes reportable if at *any* time more than \$10,000 is held in that account.

This reporting requirement cannot be avoided by having multiple bank accounts with smaller amounts as the \$10,000 threshold applies to aggregated bank accounts. If you own foreign real estate in your personal name that you also rent, you can avoid utilizing a foreign bank account by having the rental agent pay all of the expenses and remit the net income to your US bank account.

UNSECURED LOANS TO FOREIGN PERSONS OR ENTITIES. You do not need to report loans to foreign persons or foreign entities so long as that entity is not a financial institution. You *do* need to report the interest income from that loan on your US tax return.

IRA EXCEPTION. Your IRA and certain other retirement plans can hold an account at a foreign brokerage firm bank or other financial institution without having to meet the foreign reporting requirements.

GOLD and PRECIOUS METALS. You can store gold and precious metals in a private safety deposit box or at a private vault without your holdings becoming subject to FBAR reporting.

What is *not* clear is whether gold and precious metals stored with a financial institution is reportable. If you are interested in the names of reputable, bonded, private depositories please contact us.

By Charles S Liberis

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