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Accountant: Dave den Boer
Certified Financial Planner:
Andrew van der Woerd
Lawyer: David A. van der Woerd
Real Estate Agent: Judy Schenk

Staying a Step Ahead— Protecting Your Trademarks

by David A. van der Woerd

What makes a business successful? Good management, effective planning and proper capitalization are all essential ingredients. But success in this fast-paced business world may require something more. Equally important could be the message your business conveys to the marketplace or the image it projects. Even if your business excels in the product lines it offers or services it supplies, it may need more to succeed in today's world of commerce.

Branding is a way businesses distinguish themselves from their competitors. Your company's brand, or trademark, distinguishes you and your products and services from your competitors' and establishes your identity in the marketplace. Most businesses, knowingly or otherwise, invest huge sums of capital to establish and promote their brands. Every time your business puts its trademark on letterhead, invoices, packaging, promotional materials and the like, it is investing in its trademark. Yet surprisingly many businesses don't protect their trademarks the way they could.

A trademark is the word, symbol or design used by your business to distinguish its products or

services from its competitors. Trademarks have come to represent not only the actual products and services of your business, but also the reputation of your business. They are the intellectual property of your business, that trigger impressions in the minds of your consumers. They are much more than the corporate names or trade names that businesses operate under or register with the provincial or federal governments.

Leaving your trademarks unregistered leads you exposed to legal challenges. **Some businesses misinterpret that registering a corporate name or trade name (as opposed to registering a trademark) is all the protection they need.** While this is prudent, this does not provide trademark protection, or even ensure that your business owns its name or that others cannot take it away at a later date, even if searches were conducted before the name was registered. So if someone later registers a trademark that is the same as the registered trade name or corporate name, or the unregistered trademark you are using, you could end up in court in a lengthy expensive legal dispute over who



David A. van der Woerd is a barrister and solicitor at the firm of Ross & McBride practising in Estate, Corporate, Commercial, and Real Estate. Mr. van der Woerd was appointed Deputy Small Claims Court Judge in Hamilton in 1994 and has been on the wills and estates section of the Hamilton Law Association. He is also a registered trademark agent.

owns the trademark, wasting time, energy and money, instead of doing business.

One effective way to protect your business identity is by registering your trademarks. Registration is *prima facie* evidence of ownership and gives you legal title to your intellectual property in much the same way as a deed is title to your home. It verifies the exclusive rights that you have established through the use of your trademark. So in a dispute with a competitor, the competitor starts out behind the eight ball and you're a step ahead, because the legal burden automatically shifts to your competitor to disprove your ownership in the trademark. This can be a huge tactical advantage in a court battle.

The registration process may provide other benefits, such as you may find out if your business is unknowingly using someone else's mark or learn more about your competitors and the products and services they offer. It could give you the tools to ward

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Judy Schenk has been a licensed realtor for over 25 years and affiliated with Re/Max since 1986. She enjoys leading clients to the perfect house. You will be

able to contact her at (905)333-3500.

PRIVACY ACT LEGISLATION IN JANUARY

by Judy Schenk

The third part of the Personal Information Protection and Electronic Documents Act (PIPEDA) to protect the personal privacy of every individual will take effect January 1, 2004.

Every business in Ontario will be required to comply with (PIPEDA or the Privacy Act) and that includes real estate firms, realtors and real estate boards.

PIPEDA is designed to provide people with the right of privacy regarding personal information that is collected, used or disclosed by an organization, association, partnership or person. The Act is taking effect in three stages spread over three years.

Stage One

On January 1, 2001 the Act was applied to personal information about customers or employees (except personal health information) that is collected, used or disclosed by *federal works, undertakings or businesses* in

the course of commercial activities. (Federal works, undertakings and businesses include organizations such as the banks, telephone companies, cable television and broadcasting companies, firms engaged in inter-provincial transportation, and air carriers.)

The Act also applies to personal information that is shared or disclosed for profit or any kind of benefit across the borders of Canada or a province, where the information itself is the subject of the transaction.

Stage Two

As of January 1, 2002 the Act covers *personal health information* collected by those organizations mentioned in the first stage. Personal health information is information about an individual's mental or physical health, including details about any tests, examinations and health services provided.

Stage Three

Now on January 1, 2004 the Act will cover the collection, use or disclosure of personal information in the course of any commercial activity within a province, including provincially regulated enterprises such as retail stores. The federal government may exempt organizations and/or activities in provinces that have their own privacy laws that are substantially similar to the federal law.

The Act will apply to all personal information in all interprovincial and international transactions by all organizations in the course of their commercial activities.

Realtors collecting information about a consumer will be required to

inform that person of how the information will be used and will need to obtain the person's consent for the collection, use and distribution of the information. The consumer will have the right to access their personal information held by a realtor or his or her firm and to have it corrected if necessary.

What is personal information?

Part 1 of PIPEDA defines *personal information* as information that *identifies* an individual. Generally, personal information is data that permits someone to learn something related to a person; and permits the identification of that person. The Act states that personal information is information about an *identifiable individual*.

Examples of personal information are: name, age, weight, height, medical records, income, purchases, spending habits, race, ethnic origin, colour, blood type, DNA code, fingerprints, marital status, religion, education, address and phone number.

Personal information does not include the name, job title or business address or telephone number of an employee of an organization.

Starting in January 2004 individual realtors and real estate firms as well as all other businesses in Ontario will need to comply with the Act. The realtors or businesses must obtain the consent either expressed or implied (expressed consents can be written or verbal) to collect, use or disclose information of an individual.

The Privacy Act will have a definite impact on the way realtors do business, and how businesses operate.



David M. den Boer
CHARTERED ACCOUNTANT

241 Bonaventure Dr., Hamilton, ON L9C 4R1
Tel: (905)389-2670 Fax: (905)389-4642
E-mail: dmdenboer@mountaincable.net

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Managing Debt

by Dave den Boer

Debt is a reality for most businesses. When properly managed, debt can be a fundamental building block for increasing inventory, expanding into new markets, or financing new equipment.

Growth often requires the business to obtain a bank loan, a line of credit, trade credit or some other form of financing. With the current low interest rates, owner/managers may be taking on new debt to improve cash flow, improve operations, or build a credit history for possible future loans.

Before seeking a loan or other financing, take the time to review the company's current financial situation and the outlook for the future. You need to: 1) ensure you are taking on debt for the right reasons at the right time; 2) assess the impact of the new debt on the future cash flow; 3) determine whether you need short-term or long-term financing; and 4) consider leasing rather than buying.

Vehicle Debt

With car dealers advertising 0% financing and other buying incentives, a new vehicle looks like an attractive option. However, you may be tempted to buy a higher priced vehicle than you can reasonably afford.

When you purchase a vehicle for company use, you need to consider the impact on tax planning in view of the restrictions on the capital cost allowance, your personal use of the vehicle and other factors. Effective

for 2003 and subsequent years, a reduced stand-by charge or taxable benefit is available where the car is used more than 50% for business purposes and the personal use is less than 20,000 kilometres per year.

Leasing is sometimes the better option as it preserves the availability of working capital and debt.

Line of Credit Debt

Most businesses have a line of credit that moves up and down based on cash flow needs. A line of credit offers working capital as needed, can be paid down without penalty when excess cash is generated, and is usually provided at a reasonable interest rate.

Ideally, a line of credit should be considered a current liability that will be repaid within the operating business cycle. If your line of credit needs to be used throughout the year, this financing source is

Next to an operating line of credit, a commercial term loan is an important and basic form of financing for many businesses. These loans are available for the purpose of purchasing medium or long-term assets, working capital or debt consolidation. Without term loans, most businesses would have a hard time growing.

You need to evaluate this debt in relation to profitability, impact on cash flow and business cycles. Ensure the term of the loan does not exceed the useful life of the asset or its capacity to produce profits.

Accounts Payable Debt

Most businesses use the net 30 or 60 day time-lag provided by their suppliers to help their cash flow. However,

Dave den Boer is a chartered accountant who has been operating his own accounting office since 1994. He enjoys providing personal tax, accounting, and consulting service to small businesses and charities.



it is important not to miss the accounts payable due date. Late payments can result in interest charges, lost cash discounts, and could damage your relationship and credit arrangements.

Bad Debt

The appeal of credit card debt is its widespread acceptance as a means of payment. However, if the balance is not repaid quickly, it becomes very expensive.

Careful tax planning, regular payment of instalments and timely filing of tax returns are critical to sound business operations. If your business owes taxes, contact the tax authority to make repayment terms.

Conclusion

Before you apply for financing, analyse the capacity of your business. Your chartered accountant can help you prepare reliable projections showing how the required financing can be repaid from future cash flows. Advice can also be given on which sources of financing are the right solutions for your business needs.



ROSS & M^CBRIDE
LAW FIRM

DAVID A. VAN DER WOERD

Commerce Place, 1 King St. West
Mail: P.O. Box 907, Hamilton, Ontario L8N 3P6
Phone: 905-526-9800 • Fax: 905-526-0732
Email: dvanderwoerd@rossmcbride.com
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Keys To Retirement Planning

by Andrew van der Woerd

Those who fail to plan, plan to fail is a commonly heard saying in management circles. This saying is also applicable to retirement planning. Nobody, with the exception of those who are or will be extraordinarily financially blessed, or those who expect to work forever, can afford to ignore the need to plan ahead. A prudent plan would take into consideration the following four keys to establishing and achieving a retirement strategy.

1) Estimate Total Retirement Income

An individual should determine how much income is receivable from government programs (such as the Canada Pension Plan and Old Age Security program), employment programs (company pension plan, deferred profit sharing plans, Group RRSP) and other sources (rental income, investment income, part time employment, etc.). This *gross* amount must be adjusted to reflect the income tax that would be deducted, thereby revealing the *net* income one would expect to receive.

2) Estimate Expected Retirement Income Needs

A chosen retirement lifestyle and

expected retirement age will play a big role in determining need. Some people have very defined retirement aspirations. Others, who are unsure, should assess their current financial situation and make adjustments for changes in expected expenditures as a way to establish a reasonable indication of their retirement income needs. For many, post-retirement expenses will be reduced for things such as clothing, travel (commuting), food consumption, etc. Others may expect to spend more on things like health-care, vacationing/travel, hobbies, or restaurants, etc.

3) Establish A Savings Objective

A savings objective is established by comparing the difference between the first and second keys, a comparison of the desired after-tax retirement income and the anticipated available after-tax retirement income. The after-tax income deficit becomes the savings objective for achieving a desired retirement lifestyle.

4) Establish a Retirement Program or Investment Strategy

This final step is the process of achieving the savings objective. Here one

Andrew van der Woerd, Certified Financial Planner and Fellow of the Canadian Securities Institute has served individuals, families and businesses since 1994.



must determine the amount of current income to set aside for future use, and the amount of time these savings need to be invested based upon prudent growth rates. Because of the power of compound growth over long time-frames, the earlier this process is conducted, the easier it is to make the necessary adjustments that will enhance the probability of achieving one's desired retirement lifestyle. Once the amount is established, one must determine which investments are most suitable for the situation.

Retirement planning is actually a fairly simple process. It does however require one to think ahead, to chart a course of action, and to regularly monitor the process to improve the odds of success. Such action, I believe, is not only prudent, but also part of fulfilling ones responsibility of stewardly handling resources.

Trademarks *continued from page 1* off those who may be tempted to copy or imitate the marks of your successful business. Even if you are using the trademark in only one part of Canada, the geographical area where your business operates, if you have expansion plans in mind, registration is something you should consider.

In today's competitive world, there's no telling where the next threat to your business lies. With the advent of the computer in the business world, image and branding is more and more

important to the success of your business. Entering into the battlefield of commerce without full battle gear

David van der Woerd is a trademark agent and partner with law firm Ross & McBride LLP (www.rossmcbride.com).

If you have questions you would like addressed, talk to David at: Ross & McBride LLP 1 King Street West, P.O. Box 907 Hamilton, ON L8N 3P6 905-572-5803 (direct line) 905-526-0732 (fax) dvanderwoerd@rossmcbride.com

could leave you exposed to unforeseen attacks and lead to disastrous results. The Hamilton area has recently experienced remarkable growth of new businesses. That's great, but with more and more businesses popping up each day, the odds of your business having a conflict with a competitor increases with that growth. Registration of your trademarks may be the armour your business needs to put you ahead of your competition and allow you to withstand the challenges that your business faces each day.