

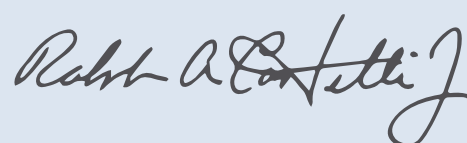
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You've been served and unfortunately, it's not a ribeye! When you or your small business is served a subpoena, Brian Rolfe breaks down what to do in critical, digestible bites (although we would all prefer the steak). Also in this issue, Ron Nixon looks at the benefits of registering trademarks. Mark Filipp summarizes Michigan's new Paid Medical Leave Act which became effective March 29th. In recent firm news, we are excited to welcome Morgan D. Schut, Esq. to our team. The firm is honored to continue its work with Common Ground to provide assistance with suicide prevention and crisis assistance.

Best Wishes,



Trademarks: The Importance of Registration

RONALD S. NIXON



Everyone has an idea of what a trademark is: a symbol, word, name, or design used to differentiate one seller's goods or services from those of another. A Whopper®

is not just any hamburger with cheese, lettuce, pickles, onions, tomatoes, and mayonnaise; it is a particular style of hamburger available from only one source, Burger King®. The latter mark is itself a type of trademark called a "service mark" and it used to identify services rather than goods, and, in the case of Burger King, a particular style of restaurant services.

Trademarks themselves would be meaningless if the law did not protect them by preventing others from selling similar goods and services with confusingly similar marks. The ability to protect a trademark arises as soon as the owner of the mark first uses it in commerce to identify its goods or services. Subject to complexities of law

beyond the scope of this article, once Burger King offered its first Whopper for sale, it could prevent others from selling hamburgers called Whoppers in the same market area where its burgers were sold.

One way to let others know that you are claiming protectable rights in a mark is to use the designation "TM" (or "SM" for services marks) near the mark. However, if you want to use the designation "®" with your mark, you must register it with the United States Patent and Trademark Office ("USPTO"). Using that symbol with a mark that is not registered (even for one for which an application for registration is pending) is against the law.

So, what does the "®" symbol mean practically? If trademark rights exist upon first use in commerce, why would anyone need to register a mark with the USPTO? Registration offers several substantial and procedural rights that are not available to owners of common law trademarks. A few of the important benefits are the following:

Federal Question Jurisdiction.

Federal registration provides protection under the Lanham Act, a federal statute, which gives you direct access to federal courts without meeting the requirements of diversity jurisdiction, such as that the dispute be worth at least \$75,000 and between parties from different states. Additional remedies may also be available in federal court that are not appropriate under state law, such as treble damages and attorney fees in some cases. Decisions under the Lanham Act are also numerous, and a robust body of precedent interpreting a statute generally provides greater certainty of your legal rights.

Proof of the Validity and Ownership of the Mark.

Registration provides rebuttable proof of the validity and ownership of a mark. After five years, the registration may become conclusive evidence of the mark's validity and ownership, severely limiting the defenses available to an infringer.

Nationwide Notice of the Mark.

If a common law trademark owner uses the mark in a specific geographic area of the country but has plans to expand to other areas, users in those areas may acquire superior rights to the mark even if they began using their mark later. Registration puts others on notice nationwide that if they adopt a similar mark they may be subject to assertion of the registrant's rights. The application filing date also provides nationwide constructive

notice of the date of first use, the practical effect of which is that no other evidence is necessary to establish priority over an infringer who begins using a mark after the filing date.

Thus, the benefits of registration are substantial.

If you offer a product or service under a mark that you want to protect, please call me to discuss how I can help you. I can also be of assistance in selecting a new mark to determine whether it may

be problematic in the long run because others are using or have registered it. Once a unique trademark is found, an application for registration may be filed up to three years before you begin using it in commerce. Filing such an "intent to use" application will solidify your rights before expending large sums of money in printing or advertising.

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Law Day 2019: "Free Speech, Free Press, Free Society"



Pictured above is associate Morgan Schut, a board member of the Detroit Bar Association's Barristers' Section, working with students from Cornerstone High School. Their mock oral argument won the day in front of retired judge, the Hon. Robert Colombo, Jr.

Law Day was established in 1958 by President Eisenhower and is celebrated annually to recognize America's commitment to the rule of law. The Detroit Bar Association, the Barristers' Section, and the Third Judicial Circuit Court host a program for Detroit high school students from public, private and charter schools. The program prepares a mock trial problem, offers essay and scholarship opportunities, and invites the participating students to the Coleman A. Young municipal center for the day to interact with judges and attorneys to learn more about careers in the law.

Michigan's Paid Medical Leave Act

MARK R. FILIPP



Michigan's new Paid Medical Leave Act was signed into law in December 2018 and was effective March 29, 2019. Although there are many unanswered questions concerning this law, the fundamental aspects of the law are straightforward.

Beginning March 29, 2019, employers with 50 or more employees are required to provide eligible employees 1 hour of paid leave for every 35 hours worked (up to a maximum of 1 hour per calendar week), up to a maximum of 40 hours per calendar year, for medical reasons of the employee

and family members. Generally, all employees, including newly hired employees, are entitled to the benefit, except exempt employees, temporary employees (hired to work less than 25 weeks in a calendar year) and part-time employees hired to work less than 25 hours in a work week. Eligible employees can carry-over from year to year up to 40 hours of earned but unused paid leave but there is no requirement for payment in lieu of taking the paid leave, including upon separation of employment. Also, the law provides for use in a minimum of 1-hour increments, unless Company policy provides otherwise.

As an alternative, an employer will be

deemed compliant with the new law if the employer provides at least 5 days of a paid time-off benefits, (i.e., vacations, PTO, sick days or the like) at the beginning of a benefit year for use that includes use for paid medical leave described under Michigan's new law. Under the alternative method, allocation of a pro-rata amount for new hires is required.

Most affected employers will only need to make minor adjustments to their policies to comply with the new Act. Please call if you would like to discuss.

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You've Been Served (With a Subpoena)! Now What?

BRIAN H. ROLFE



In litigation, a party will often use a third-party subpoena to obtain documents from individuals, businesses, or other entities that are not parties to the lawsuit.

Those that receive subpoenas often wonder whether they should respond, how to respond, what, if any concerns they should have, and what, if any, precautions they should take. There are several critical steps you should take to ensure you will comply with the subpoena.

Engage an Attorney

If you are a business and do not have an in-house legal department, or you're an individual without counsel, you should strongly consider engaging an attorney. An attorney will help guide you through the process and can be particularly helpful for businesses where the subpoena requests the production of documents that may be proprietary and/or confidential. An attorney can also assess whether you have any legal jeopardy; sometimes subpoenas will be used as a tool to determine whether a lawsuit should be filed against a non-party.

Businesses: Notify Anyone Else of Importance

You should notify your attorney, or retain one, with litigation experience and you should notify any high-level corporate officers and executives. In addition, if any documents are in the possession of a partner, parent, or subsidiary, you should notify that company of receipt of the subpoena.

Businesses: Issue a "Litigation Hold" Notice

When a business is served with a subpoena, a "litigation hold" notice to its employees or others with custody or control should be issued. This "litigation hold" is in writing and provides notice that any documents or other information that may be responsive to the subpoena must be preserved.

Begin Collecting Documents

A business should: 1. Identify all individuals who may have responsive documents, and 2. Instruct individuals on how to search for and collect documents. The collected documents should then be safely maintained to ensure they are not lost or destroyed.

Review the Documents Collected for Responsiveness, Privilege and Confidentiality

Once all responsive documents are gathered they should be reviewed to determine:

1. If a document is responsive. If a document is not responsive to a request in the subpoena (i.e., it does not relate to any request in the subpoena), you have no obligation to — and should not — produce it.
2. If a document is privileged. If it is a communication between you and an attorney for the purpose of rendering legal advice, or it is a document you prepared at the direction of an attorney for purposes of litigation — you have no obligation to disclose it — because it is a privileged communication.

3. If a document is confidential. If it contains sensitive financial information or trade secrets — you may request that the party that served you with the subpoena sign a confidentiality agreement that restricts disclosure of the document to anyone else.

Determine How to Respond to, or Challenge, the Third-Party Subpoena

Once the documents have been collected and reviewed, you must determine how to respond to the subpoena. There are a few options: 1. Comply with the subpoena and provide the requested documents, 2. Object to the subpoena, 3. Move to quash the subpoena, 4. Move for a protective order, or 5. Contact the party that served the subpoena to attempt to resolve the requests informally.

Consequences of Not Complying with a Subpoena

If the third-party subpoena for documents you received is valid, and there are no grounds for challenging, you must comply with it and respond with the production of documents requested. If you do not comply, you may be held in contempt of court or fined or imprisoned.

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Firm News

Attorney Morgan D. Schut Joins Kemp Klein

Kemp Klein Law Firm welcomed Morgan D. Schut as an associate attorney in May. Ms. Schut's practice includes complex business litigation and a full range of corporate services to a variety of business clients, including early stage formation and business strategy, regulatory compliance, real estate transactions, and exit planning consultation. Ms. Schut enjoys working directly with business owners to understand their operational needs and identify cost-effective solutions to resolve and prevent conflict.

Attorney Brian R. Jenney Elected to Board of Directors

We are pleased to announce that attorney Brian R. Jenney was elected to the firm's board of directors in May. Mr. Jenney focuses his practice on estate planning and administration. Jenney helps families and individuals with elder law and special needs issues, guardianships and conservatorships, wills, trusts and related tax issues.

Suicide Prevention with Common Ground

We are proud of our partnership with Common Ground and their work to provide crisis assistance, most notably their commitment to suicide prevention. Last year, over 200 community members attended Survivors of Suicide group meetings. The meetings are facilitated by a professional Suicide Prevention Specialist and connect survivors with their peers. For more information call (248) 451-2613. The Kemp Klein Foundation, founding benefactor for Common Ground's Legacy Society, helps to fund programs like the Survivors of Suicide series.