



*Emerging Enterprise
Center*



It's All in the Name

with Joshua S. Jarvis

Moderated by Dave Pierson

What's Your Name?

- Your business
- Your identity
- Your brand
- Your image
- Your reputation
- Your presence

What's Your Name, Legally Speaking?

- Your incorporated company name
- Your Doing-Business-As (DBA) name
- Your trademark
- Your domain name/website/e-mail address
- Your social networking usernames

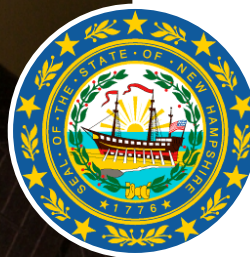
A Cautionary Tale



Y2K Established in 2000

newfusion

Located at
www.newfusion.com



Incorporated in NH

A Cautionary Tale, Cont'd

- College friends decide to start a business, find that newfusion.com is available
- newFusion incorporates and begins developing websites for small businesses
- newFusion receives demand letter from New Fusion Media to cease and desist use of the newFusion name and trademark
- newFusion brainstorms new names, spending time and money it doesn't have

A Cautionary Tale, Cont'd

newFusion goes out of business.

A Cautionary Tale, Cont'd

Where did it all go wrong?

- Brainstormed, chose a name, went with it
- Assumed that domain name created rights
- Assumed that incorporation created rights
- Didn't run any actual "clearance"
- Built up goodwill on borrowed time

The Elements of Naming – Trademarks

1. Trademarks

- An indicator of source → a **brand**.
- A word, a drawing, an animation, product packaging, etc.
- Complex body of law

The Elements of Naming – Trademarks

Acquiring Trademark Rights

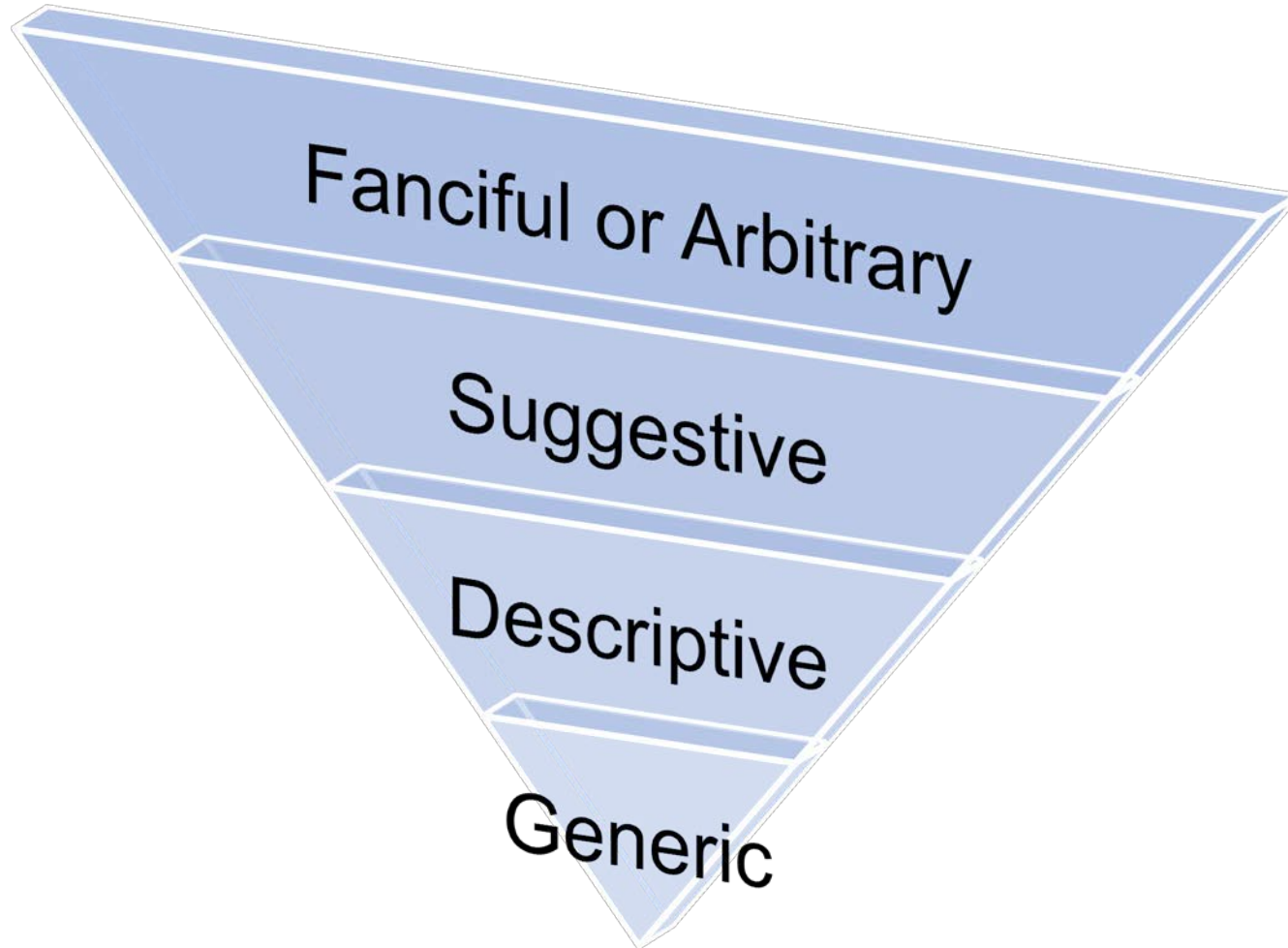
- In the U.S., trademarks rights based on use
- Legal right to exclude others: in a conflict between confusingly similar marks, the first user typically has priority
- Federal trademark registration provides significant benefits over unregistered rights
- Intent-to-Use application is key

The Elements of Naming – Trademarks

Choosing a Trademark

- Your trade name can be your core trademark
- Clearance is key
 - USPTO website (www.uspto.gov/trademarks/)
 - Google searching
 - Full clearance searches
 - If possible, consult an attorney

The Elements of Naming – Trademarks



The Elements of Naming – Trademarks

2. Incorporated Company Name (your “Trade Name”)

- Needs to be available in your state of incorporation
- Basic availability search
- Establishes a business entity
- Can potentially happily coexist with identically-named business entities in other states

3. Doing-Business-As (DBA) Name (a/k/a a “Fictitious Name”)

- May be required if you are operating using a business name other than your officially registered business name
- Required in many states, but not all
- Required for doing business, collecting money, business banking, entering into contracts with sophisticated entities, etc.

The Elements of Naming – Trademarks

4. Domain Names

- Often considered intellectual property, but really not
- Typically available on a first come, first served basis
- Key asset and driver of naming decision
- New top-level domains coming that will “free up” space
- Relationship to trademarks

5. Social Networking Usernames

- Facebook, Twitter, Pinterest, YouTube
- Private entities grant permission
- Not a right, but a privilege: can be taken away as quickly as they are registered
- Relationship to trademarks

A Cautionary Tale Revisited

What should young Josh Jarvis & friends have done?

- Brainstorm names and conduct trademark clearance
- Check domain name availability
- Consider ITU trademark application
- Incorporate company
- Conduct business, build goodwill, profit

Questions?



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Julia Huston, Partner in Foley Hoag LLP's Intellectual Property Department and Chair of the firm's Trademark and Copyright...[MORE](#)
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Joshua Jarvis specializes in intellectual property matters, with an emphasis on trademark and copyright prosecution and policing, including U.S...[MORE](#)

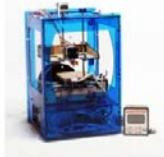
WINTER . . . I MEAN PRINTER . . . IS COMING: Game of Thrones Alleges Copyright Infringement by 3D Printer iPhone Dock

Posted on February 22nd, 2013 by David Klutt



The inner twelve-year old boy in me doesn't know which is cooler: the throne made entirely from swords for HBO's *Game of Thrones* series, or the fact that 3D printer technology can now replicate that throne in my home at the touch of a button. It's an interesting time to be a twelve-year old boy. It may be an even more interesting time to be an intellectual property lawyer because, like the imminent clash in *Game of Thrones* between the Seven Kingdoms and the evil forces beyond the Wall, promised by the catch-phrase "Winter is Coming," the intellectual property battles over 3D printer technology are almost upon us.

For those of you who still march in the army of *Ned Ludd*, a brief introduction. 3D printer technology (sometimes known as "additive manufacturing") works something like this. You create a digital model of any object, either from scratch or by using a 3D scanner. Your computer then sends the model to the 3D printer, which spews out sequential layers of liquid or powdered material that eventually build up (over several hours or even days) and solidify into a real 3D object. The theoretical capabilities of such devices are mindboggling, including obvious applications like architectural models and toys, but also custom chemical compounds and complex mechanical devices such as the open-source "Wiki Weapon," a working deadly firearm. As of this writing, you can buy one of these printers on Amazon.com, such as the one pictured above, for under \$1,000.



Earlier this year, Fernando Sosa, a design entrepreneur, created a 3-D printed iPhone dock modeled after the *Game of Thrones* throne and put it up for sale on his website (<http://nuproto.com>). As reported in *Wired*, HBO's inner twelve-year old boy was not amused, and sent a polite but firm cease and desist letter to Sosa, implying copyright and trademark violations. HBO rejected Sosa's subsequent attempts to obtain a license.

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Foley Hoag Venture Perspectives

NEW YORK AND NEW ENGLAND ON VENTURE STATISTICS - A QUICK PREVIEW
We are about to publish our first review of New York transactions. Here is the sneak preview:

With respect to Series A deals, New York and New England each had 22 deals in Q1. According to us, there were 223 Series A deals nationally. So, NY and NE collectively represented approximately 20% of the national market. With respect to later stage transactions, there were 25 NY deals and 43 NE deals. Again, according to us there were 368 deals nationally. So collectively NY and NE represent about 18% of the market. I imagine that the relatively smaller number of later stage deals in New York reflects a number of things. One might be that the boom in NY deals is relatively recent so there may not be as many companies in the pipeline that are ready for a second or later round investment. Another might be that the mix of investment opportunities in New York is

Firing someone: If you are successful, at some point you are going to have to do it.

POSTED BY DAVE BROADWIN ON OCTOBER 24, 2012

I can't say how often I have been called the first time an entrepreneur has to fire someone. BTW, I get that call from seasoned execs as well. Nobody likes to do it and everyone is nervous that they will mess up in light of all the applicable laws.

One of my partners, Jonathan Keselero, who practices in the Employment area, developed a nice simple termination checklist that I have found useful. One thing about this list is that it applies to situations where the employee is an "employee at will." If there is an employment contract, you will also need to review the contract to make sure you meet its requirements as well. Here is the list, with some additions from me:

EMPLOYMENT TERMINATION CHECKLIST

- Have a good reason for the termination, and make sure that the reason is consistent with the documentation.
- Provide the employee with a truthful explanation for the decision. For example, if the employee is being terminated for poor performance, do not characterize the termination as a layoff.
- Don't be gratuitously cruel. You should inform the employee of the reason for the termination, but you do not need to convince him that you are right or win a debate.
- Conduct the termination in a private and respectful way.
- If you any concerns about litigation, two people from the company should be present at the termination meeting, and both should take detailed notes.
- Pay: be prepared to pay all compensation due, including unused but accrued vacation pay.
- Explain that the employee will receive notice about continuing group health coverage under the Comprehensive Omnibus Budget Reconciliation Act of 1986 ("COBRA"). Explain that all other benefits will cease as of the termination date.
- Provide state-issued information about filing for unemployment, even if you think the employee is not eligible.
- Collect all company property from the employee. Consider having the employee sign an acknowledgment form that he has returned everything.
- Allow the employee to collect any personal belongings before leaving the work premises.
- Block the employee's access to the Company's premises and electronic access to the Company's computer systems and email.
- If the employee is listed on your company website, remove him from the site.
- Remind the employee of any restrictive covenants (by this I mean noncompetes, nonsolicit, confidentiality and inventions agreements) and provide an additional copy.
- Think about how you intend to communicate the employee's departure to customers and other employees, if at all. Who needs to know and why? Make sure you have a legitimate business reason for the communication.
- Think about whether you are willing to give the employee a reference.
- Inform the employee about options that may be exercised (or restricted stock that may be repurchased by the Company). Be prepared to repurchase restricted stock (if you intend to). The repurchase agreement may not be "self-executing" with the result that you may have a time frame for acting.

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