



## TRADEMARK LAW 101

Many individuals and business owners use words or logos which help define or identify their businesses. The protection of those marks against use by others is the subject of state and federal trademark law.

In general, a trademark is a word, phrase or logo that identifies and distinguishes the goods of one party from those of others. A servicemark is a word, phrase or logo that identifies and distinguishes the services of one party from those of others. Any time you claim rights in a mark, you should use the <sup>TM</sup> (trademark) or <sup>SM</sup> (servicemark) designation next to the mark. This use states to the public at large that you are claiming a proprietary right to the mark. You may use the <sup>TM</sup> or <sup>SM</sup> designation regardless of whether or not you plan to register the mark under state or federal law.

An owner of a mark may register it in each state in which the mark is used. However, if the mark is used in interstate commerce, it is recommended that the mark be registered under federal law with the United States Patent and Trademark Office (USPTO). Federal registration provides several advantages including: notice to the public of claim of ownership of the mark; a legal presumption of ownership of and the exclusive right to use the mark; and the ability to bring an action in federal court for infringement. Federal registration also allows the owner of the mark to use the federal registration symbol ® with the mark.

The mechanics of determining whether or not a mark may be registered and how to best federally register a mark can be complex. For example, a mark generally cannot be registered if it is generic, merely descriptive or confusingly similar to another mark which has already been registered. A search of the USPTO website can generally be helpful to avoid filing an application for a mark that is similar to another mark already in the registration process. A search report can also be purchased from the USPTO or private search companies. While more expensive, such reports are also more comprehensive and may enable one to determine the similarity of marks being utilized by others.

The application process consists of completing a formal application form, paying a filing fee and the presentation of a drawing of the mark and a specimen which shows the mark as it is or will be used in interstate commerce. While the application process itself is not generally complex, it can be time consuming, depending on the USPTO Trademark Examining Attorney's position with respect to and comments concerning the initial application and any subsequent amendments. Unfortunately, a Trademark's Examining Attorney's comments can be very subjective and different Examining Attorneys will respond differently to similar applications.

If you decide to prepare and submit your own application, beware that the USPTO has made it clear that you must comply with all requirements of the federal trademark statutes and rules. Accordingly, it may be desirable to employ an attorney who is familiar with trademark matters to work on your behalf. At the very least, it is advisable to have a knowledgeable attorney review your documents prior to submittal.

Attorneys at Stewart, Shortridge & Rothman, P.C. have many years of experience in the law related to trademarks and servicemarks. We welcome any opportunity to address your concerns in this regard.

About the author: Barry Rothman specializes in business and transactional law with particular expertise in intellectual property, trademarks and servicemarks, corporations, employment, franchises and real estate.

## W I N T E R 2 0 0 6

We published an article in our Spring 2005\* newsletter summarizing the impact of HIPAA (the Health Insurance Portability and Accountability Act of 1996) on estate planning. It also identified elements of a valid HIPAA authorization and encouraged readers to contact us in relation to their own estate planning documents. Many clients responded and are now protected by a current HIPAA Authorization and Release; many remain vulnerable.

For those who still question the need for this authorization, here is a common example of how the unmet HIPAA rules and regulations can gum up your life even on a mundane level. My wife and I have twin daughters attending college out of town. Last school break, one of the girls had medical tests run at our family doctor's office and had to return to school before results were back. She asked her Mom to follow up with the doctor's office on her behalf.

The outcome of this story is predictable. Our daughter, who is over 18 years old, did not file a HIPAA Authorization and Release with her doctor's office; and, our previous years of association with the physician, on her behalf, carries no weight in light of the new law and stiff penalties for failure to comply.

Fortunately, the result of our oversight was mere inconvenience, not tragedy. But, what if your loved one is incapacitated and you have no authorization to obtain medical information on their behalf? All your best efforts in estate planning are out the window at that moment.

I cannot say it strongly enough; if you have not done so already, you should update your estate planning documents to include a HIPAA Authorization and Release. If your documents were prepared more than 18 months ago, they probably do not include this authorization. It is neither complex nor expensive to have this single document created; having one when you really need it is priceless.

Best regards,

*Bob Stewart*

\*For a copy of the Spring 2005 newsletter, visit our website at [www.ssr-law.net](http://www.ssr-law.net) and click on the "News" tab; or, call us for a reprint.



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## THE UNIFORM TRANSFERS TO MINORS ACT

When one makes a gift to a minor, there is always the concern that it will not be used or properly managed as intended. For this reason, many individuals prefer to make such gifts in trust, whereby a fiduciary is entrusted with the responsibility of overseeing the administration. A common misconception is that such protection would be burdensome and costly. On the contrary, we can provide convenient and valuable solutions to such issues using well crafted estate planning documents.

One of the least expensive and most flexible alternatives in gifting to a minor is through the Uniform Transfer to Minors Act (UTMA). The UTMA allows a donor to create a custodial account for a minor whereby the donor can transfer a broad range of assets including money, securities, bonds, mutual funds, annuities and life insurance policies, or even real estate, fine art, patents and royalties.

The custodian appointed to manage this account will have a legal fiduciary responsibility to handle the asset in a prudent manner for the benefit of the minor until the minor reaches the age of custodian termination (which is age 21 in Colorado).

While a simple solution, one must remain cognizant of the estate tax laws when applying UTMA as an estate distribution vehicle. For instance, if the donor and the custodian are the same person, the IRS may take the position that since the donor has continued to exercise control over the assets, a true gift was never actually made. The IRS may then attempt to require the assets held in the UTMA account be included in the donor's estate for Federal estate tax purposes.

If you have a child, grandchild or other minor to whom you would like to transfer assets, we would be happy to meet with you to discuss all of the options applicable to your circumstances.

About the author: James F. Booth, Jr. holds a Masters of Law in Taxation (LL.M.) from the University of Denver Graduate Tax Program. His areas of practice include Business Law; Transactions; Tax; Wills, Trusts and Estates; Real Estate and Corporate and Partnership Law.

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This publication provides general information and should not be used or taken as legal advice for specific situations which depend on the evaluation of precise factual circumstances. Use of any information herein does not create an attorney-client relationship. The law is constantly changing and there are exceptions to almost every rule of law. You should not rely on the information provided in this newsletter without seeking legal counsel.