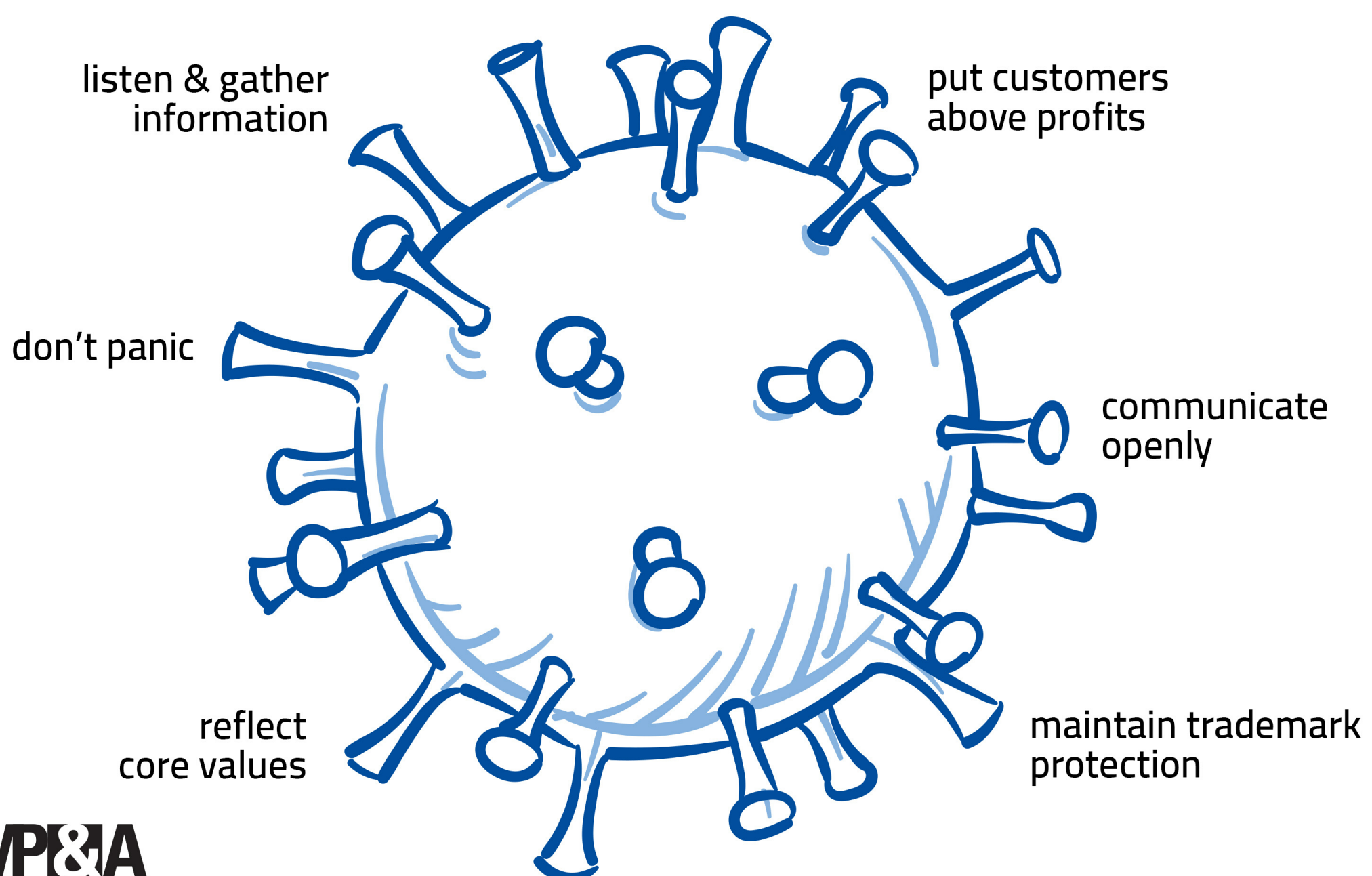


BRAND MANAGEMENT TOOLS DURING AND AFTER A CRISIS

8 TIPS FOR THE AGE OF CORONAVIRUS
(AND ANY CHALLENGING TIME)

KEEPING A BRAND CENTERED IN A TIME OF CRISIS



EMPI&A

Erik M Pelton & Associates, PLLC

Making trademarks bloom since 1999.®

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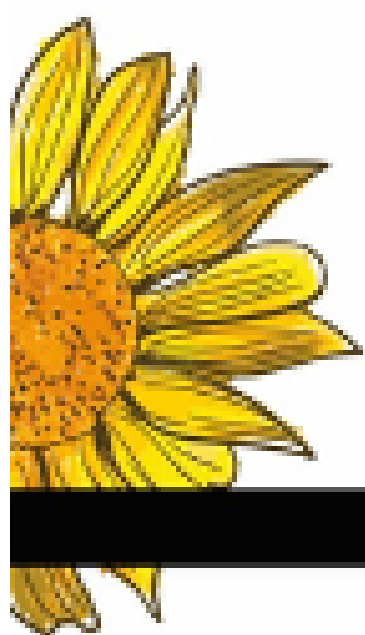
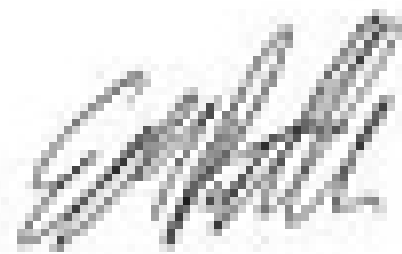
BY ERIK PELTON®
MAY 2020

8 TIPS FOR THE AGE OF CORONAVIRUS (AND ANY CHALLENGING TIME)

As I write this in May of 2020, the coronavirus health and economic crisis is impacting brands big and small around the world and across all industry sectors. While all face tremendous and new challenges, many businesses are weathering the storm steadily and even strengthening their bond with customers, while others are struggling to find footing, adapt, or communicate effectively with their customers.

I have worked with many brands over 20 years in all types of challenges and crises, from bankruptcy to litigation to floods and hurricanes. I have witnessed brands handle the challenges head on - some with success and some with difficulty.

This e-book takes the best of what I have learned and observed about brand management in a crisis – from the last few months and from my 20 years of advising and counseling thousands of brands. I hope you find it valuable for managing your business during uneasy and unsteady waters, and that you find something helpful to navigate your brand toward the rainbow at the end of the storm.



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1. BRAND MANAGEMENT CHECKLIST FOR A TIME OF CRISIS

These five tips are key to successfully managing through challenging times:

Stay true to core values. I have a mission statement and a list of values that I made many years ago for our law firm, and I re-visit it from time to time to help reinstall our guiding principles. Now is the time when these values are tested; business owners and brand managers should look to them and focus on the core mission and core principles because during times of crisis, anything else doesn't really matter.

Communicate openly. Be open and honest with your employees, with your vendors, and with your customers. Share what the business is going through and what your challenges are. There will be financial implications, delays, interruptions, or other impacts on every business; communicating openly avoids taking anyone by surprise.

Put customers and employees ahead of revenue. Many businesses will see a drop in revenue for some time. Focusing on revenue — rather than caring for the health of the community, customers, and employees — may be shortsighted. I've witnessed this firsthand as my wife decided to preemptively close one of her restaurants and move the other one to a "to go"-only model prior to the state issuing "stay home" orders. Closing the restaurant was traumatic, emotional, and difficult because there are so many employee livelihoods and families that are affected. But she knew it was the right thing for the customers, the employees, and the community as a whole; the ensuing outpouring of support has been overwhelmingly positive.

Be proactive. Look forward, but don't rush to make a pronouncement before all the facts are known. When making an announcement or a communication, acknowledge that the situation is fluid and changing all the time, and include in any such communication the time and date so that if circumstances change, it will be clear the communication was made based on the information available at that time.

Be available for customers. Make sure customers know that you are there for them and are listening to them. Let them know how to contact someone with questions. Make a FAQ on the website if necessary, and use social media to let customers know that you want to hear their concerns and so that you can help them.

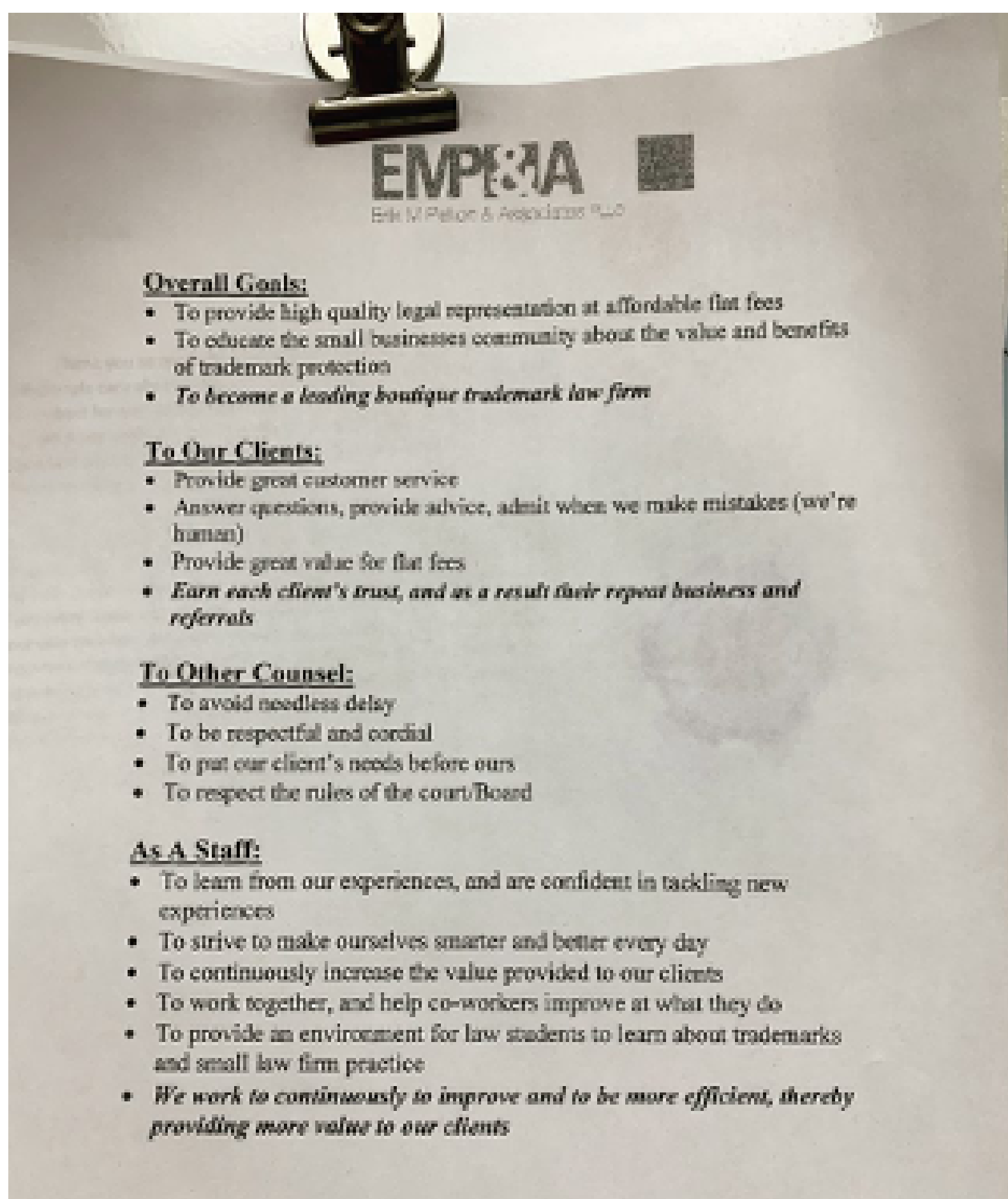
It takes many years to build a solid reputation, but one poor decision or a series of poor decisions in a short amount of time can ruin a reputation. In a crisis, the stakes and pressures are increased further. Since the coronavirus pandemic began, many brands have sent mixed messages, strayed from their traditional values, or communicated poorly, and the damage may take a long time to undo. Those organizations that manage their brand effectively in the storm will be most prepared to thrive when the rainbow appears.



2. REFLECT THE CORE VALUES OF YOUR BUSINESS

When dealing with a crisis for a business and a brand, staying true to your core values is fundamental to staying on course in choppy waters.

At EMP&A, we have always posted our core values for all to see. Core values are even more important to review, remember, and build upon during times of stress and crisis. This goes for any business; the reason you have core values is that they are unwavering, and they can help guide you in difficult times. If you haven't already, I recommend you refresh your memory and that of your staff regarding your business' core values; they provide a steady hand when what once seemed an unlikely challenge is suddenly at your doorstep.



3. CORONAVIRUS TRADEMARK APPLICATIONS ARE MOSTLY A WASTE OF MONEY

In the first few weeks of March 2020, dozens of trademark applications were filed with the U.S. Patent and Trademark Office (USPTO) featuring Coronavirus or COVID-19 as the mark. (See search results below for marks featuring "CORONAVIRUS" or "COVID.") Nearly all of them will be rejected and are a waste of time, money, and resources.

Such applications are unlikely to ever get registered or approved by the USPTO because they:

- Almost certainly fail to function to indicate the source of an actual product or service, which is the real job of a trademark;
- Feature widely used messages, which are barred from registration under TMEP Sect. 12.02.04(b);
- Are likely to be used ornamentally on the front of a shirt or mug or sticker and don't truly identify who makes the product; and
- Violate the public interest by using a common term or phrase.

Even if these four points don't disqualify the applications, nearly all of them will be at risk of facing a "likelihood of confusion" refusal with one that was filed earlier (if any get registered).

This is not to say that it is impossible to have real brands and creative marks arise from this pandemic. For example, SOCIAL DISTANCING could be a creative mark for online dance instruction; CORONAPOCALYPSE could be a creative name for a podcast.


Past examples from situations when numerous applications were filed featuring terms that became part of the social and cultural lexicon are illustrative:

- BOSTON STRONG saw about a dozen trademark application filings. None were registered.
- COVFEE tweet from President Trump yielded more than three dozen trademark applications filings at the USPTO. None were registered.

Finally, even if I'm wrong and some of these marks become registered, good luck enforcing them. One of the key functions of a trademark registration is to enable the owner to stop others from using something confusingly similar. I cannot foresee a court entertaining a serious argument to try to enforce one of these common phrases to stop someone else. Additionally, profiting in such a manner from this pandemic is unlikely to be well received by the court.


4. EVEN A GLOBAL PANDEMIC DOESN'T STOP TRADEMARK SCAMMERS

Amidst the global COVID-19 coronavirus pandemic, I received this trademark scam offer from IPS Intellectual Property Services:




IPS
Intellectual Property Services

REGISTRATION OF THE INTERNATIONAL TRADEMARK
RENEWAL



RU 2020/09

Contract Number: 6200902589
Sent Date: 09/09/2020

ERIK M. PELTON & ASSOCIATES, PLLC
PO BOX 100637
ARLINGTON, VA 22210-0637


Applicant

IPS office s.r.o.
Lidicka 700/19
602 00 Brno
Czech Republic

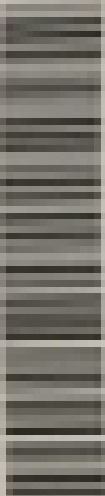
Tax number: 08029026

Provider

REGISTRATION DETAILS
Trade-/Service-/mark

PELTONISMS

Registration Number: 5,714,434
Published: 2019/04
International Class: Int. CL: 45
Mark type: Service Mark, Principal Register



Renewal Fee for 62009025892,329.00 USD
Processing Fee27.00 USD
Total Registration Fee2,356.00 USD

Registration of the International Trademark

The trademark application has been published in the official Gazette, which is edited by United States Patent and Trademark Office (USPTO). This publishing forms the basis of our offer. Please note, registration is not affiliated with the publication of the official International Patent Application registration and is not a registration by a government entity. By signing this Agreement, the Applicant signs a binding "IPS Registration" service provided by the provider specified in the registration. By paragraph 3 and undertakes to pay the provider the price stated on this form. Given that this form is exclusively an offer for the conclusion of a contract, the contractual relationship created by this contract arises at the moment of the delivery of this contract to the provider. Effective delivery is deemed to be the delivery of the contract to the address of the provider and the delivery of the contract to the email address of the provider. By signing this contract, the Contracting Authority agrees that the contractual relationship is governed by the General Business Terms and Conditions of the Provider, which are listed on the other side of this form and are governed by the Act No. 89/2012 Coll. Civil Code. The Applicant declares that he has read and read these General Business Terms and the scope of the service provided, and he further declares that they agree with their wording.

Sign the document within 14 days and send it back by e-mail to office@ipservices.biz
or by mail to: IPS office s.r.o., Lidicka 700/19, 602 00 Brno, Czech republic.

Applicant

Provider

Date

Full name

Signature

IPS office s.r.o.
Lidicka 700/19, 602 00 Brno
Czech Republic
IC: 08029026

IPS office s.r.o., Lidicka 700/19, 602 00 Brno, Czech Republic, Tax number: 08029026, www.ipservices.biz, info@ipservices.biz

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These scammers will stop at nothing. This offer is bogus and a scam:

- It has limited or no real value.
- There is nothing for “renewal” despite the heading. It is not from any government agency (but is made to look like one).
- It is outrageously priced.
- It is not clear what service is being offered (presumably their own directory/registration, which is worthless and never consulted by anyone).
- It claims their database has three million records. These are presumably found in public records.
- The agreement with IPS is governed by the law of the Czech Republic.
- And the cost is \$2356 for this worthless service!

Similar scams preying on trademark applicants and registrants whose data is publicly available in the USPTO database continue as well – check *Is This A Trademark Scam?* at www.isthisatrademarkscam.com for details.

Let’s hope the USPTO and other authorities will shut this down ASAP. But given that many other scams preying on trademark owners have been around for a while and continue unabated, I am not too optimistic.

5. INSPIRING SMALL BUSINESS ADAPTATIONS IN THE MIDST OF CORONAVIRUS

Even in this time of great crisis, many businesses are pivoting, adapting, changing, and growing.

Over two decades, I have worked with thousands of businesses, many of them small businesses. I am inspired by the way that many of my clients have rapidly implemented new ways of service and new tools, despite the economic and health crisis that is impacting their business, their staff, and their customers.

For example, a small business that I know and love is my wife's restaurant, Lazy Mike's delicatessen. As with restaurants all over the country, they have had to adapt to new protocols and shift to takeout only, to limit the number of customers coming in to the restaurant, to clean at extensive intervals, and to place signs and traffic flow markings to ensure that people are distancing themselves. That's an easy example that you've probably seen yourself if you've picked up takeout at a restaurant.

A client and friend of mine is a real estate agent, and she was telling me that home showings have essentially gone from big, in-person catered events where people would walk in and pass through with no appointment needed, to open houses now almost exclusively done virtually and sometimes by appointment with time in between to clean thoroughly.

My gym, Functional Fitness VA, has transitioned to online classes. They had to figure this out within a matter of days, as they had never offered online classes before. Not only are they now hosting live classes via Zoom – sometimes with larger attendance than their in-person classes would have – but they're also posting videos daily with short workout tips that anybody can implement and that don't require fancy, sophisticated, or heavy gym equipment.

Another client is a professional comedian; her big show, Social Media Meltdowns, was in pre-production before the pandemic hit. Comedy, of course, is traditionally done in a club, with an audience and live laughter and reactions. But comedians are having to adapt just like musicians and other entertainers and performers, and Social Media Meltdowns is now an online YouTube video production that is still very funny.

OnYourMarq is a running enthusiast apparel and brand client. They shifted from hosting a race event to having a virtual fundraiser that centered on encouraging participants to run on their treadmills or in their neighborhoods to raise funds for important charities and causes to help fight COVID-19. This adaptation was a great way to pivot, bring their community and fans together, and to make a virtual yet productive event given the limitations of social distancing.

Musician clients of mine, The Grandsons, have been giving concerts online. One of them even did a “tour” at an assisted living facility, on an iPad being wheeled through the halls. Masseria, a Michelin star restaurant, has transitioned to takeout delivery for the first time, as there is now a bigger market for gourmet takeout meals. And believe it or not, the chef – a renowned Michelin star winner – has been delivering takeout himself.



Businesses of all types are finding opportunities to be creative, create new content, and find new ways of delivering to their customers and making lemonade from the lemons. We will eventually return to more familiar ways of work, and then we'll have these new business models on top of the old ones; perhaps that is a silver lining in the long term. I encourage you to think creatively about how you can adapt your business in these times to provide for your clients and customers, which is the essence of service and one of the keys to managing a brand in a crisis.



6. TRADEMARK REGISTRATION: MORE VALUABLE IN A CRISIS

During any time of crisis, a trademark registration is even more valuable.

Why? Because the impact of having to spend money and/or time on defending a trademark claim, or on changing a brand name, is even greater when a business is in crisis and is managing cash flow difficulties and complex ramifications for customers, clients, employees, and operations.

A trademark registration is the foundation of protecting a brand and is always tremendously valuable – particularly for small businesses – for multiple reasons:

- Trademark registration records appear in USPTO Trademark Electronic Search System (TESS) searches 24 hours a day, 7 days a week when others are seeking to clear a new name.
- Having a trademark registration is a valuable tool in making a complaint regarding a social media username infringement with sites such as Twitter and Facebook.
- Trademark registration can help block a domain name from being used.
- A trademark registration can be renewed forever provided the mark is still used in commerce.
- Use of the ® registration symbol helps show customers the value and protection of the brand.
- Obtaining a registration may be more difficult, given the sheer number of existing registrations (more than ever before), so successfully completing the registration process is valuable.

- Trademarks are more frequently recognized as valuable and separate assets in a business' portfolio. A trademark registration is a separate tangible asset that can be transferred, licensed, and/or assigned a value on a balance sheet.
- The internet has lowered the barriers to starting a new business. More people are starting businesses, whether as their primary job or on the side, than ever before. Finding a good and protectable brand name is becoming increasingly difficult. Those who have protected trademarks are generally in a better position than those who do not.
- Brands are more prevalent in all aspects of our lives – online and in person – than ever before. Our culture is more obsessed with brand than ever before.
- More consumer and business traffic than ever before has moved online. Proper trademark registration makes protecting a brand online – on social media, Amazon, and elsewhere – much easier and more effective.
- ***And now, in a time of crisis, the risk of having to spend time and money defending a trademark dispute is more costly. Having a properly protected trademark helps minimize that risk.***

7. THREE IMPORTANT BRAND PROTECTION STEPS WHEN STARTING A BUSINESS

Even in times of crisis, new businesses are launched every day. In fact, many new businesses are being sparked as a result of this crisis — new ways to connect online, new telehealth products, new drone and 3-D printing technologies and uses, and much more. Here are three basic trademark tips for anyone starting a business right now:

Conduct a thorough trademark clearance search before choosing a brand name. Before searching, brainstorm properly to develop creative and bold brand names.

- How to brainstorm and whiteboard a new brand name
- A trademark protection case study — from brainstorming to registration
- Proper trademark protection begins before use and before USPTO application: clearance search and analysis
- Conducting a search

Apply to register as soon as possible with the USPTO. The name does not yet have to be in use; in fact, where applicable, it is even better to apply based on "intent to use" while the business is in development.

- What is an "Intent to Use" Trademark Application?
- The long and winding road to trademark registration.



Use the trademark – and the appropriate symbol – properly. Make it stand out with bold or italics or colors and use TM or SM while registration is pending.

- Which is the proper trademark symbol to use?
- What is the proper way to use a trademark?

These tips are critical to make sure that the brand is built on a strong foundation, with solid legal protections.

8. THE RAINBOW AFTER THE STORM

THE RAINBOW AFTER THE STORM

Despite mother nature's strength and power,
every storm is followed by a rainbow.

**THE STRONGEST BRANDS ARE
WEATHERING THE STORM OVERHEAD,
WHILE ALSO PREPARING FOR THE
BETTER WEATHER TO COME.**



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