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2003: A New Year

THE BASICS OF EMPLOYEE COMPUTER USE

BY: MARCY R. FROST



From traditional manufacturing to high technology firms, from restaurants to offices, almost every employer provides computer access to some or all of its employees. Along with that access, it is important to provide employees with a clear use policy.

Computer use policies at a minimum should address harassment and privacy issues. An employer who does not may find itself among the growing number sued by employees on computer-related claims.

Harassment Issues

Computer usage can rise to the level of impermissible harassment in a number of ways. E-mail "jokes" distributed to a friend or across the system, obscene screensavers and inappropriate Internet sites visible to others have all formed the basis of claims of workplace harassment.

Computer-based harassment is not limited to sexual harassment, but can also involve material offensive because of its racial, age, sexual orientation or religious overtones. A policy prohibiting the use of the company's computer systems to distribute or display offensive material is critical for two reasons. First, it informs employees that the company considers conduct involving the computer to be the same as other forms of communication or conduct for purposes of its harassment policies. Second, the very existence of the policy will help the employer establish that it was not negligent in its approach to computer communications and took appropriate steps to protect employees from electronic harassment.

Privacy Issues

The growing concern about privacy also presents new challenges to employers. Employees should be informed that whatever they do on the computer is subject to monitoring and access by their employer. Such a policy serves as an important deterrent to computer misconduct. A clear statement that employees do not have a right to privacy in their computer communications and usage also is important to proving that any employee expectation of privacy was unreasonable.

Other Issues

Computer use policies can perform a variety of other functions:

- Remind employees that business e-mails should be crafted with the same care as printed memoranda — if it would be inappropriate in a memorandum that could be filed away, it is inappropriate in an e-mail.
- Establish limits on personal use of e-mail or internet access.
- Inform employees of policies relating to passwords and other security measures.
- Establish procedures for loading or downloading programs onto the system.
- Prohibit the distribution of chain e-mails or the opening of attachments.

An effective computer use policy is just as important as effective hardware and software. Moss & Barnett can assist you in developing a policy that fits your company's computer system and employee use philosophy.

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IS PLEASED TO CONGRATULATE

EDWARD L. WINER,

CHAIR OF THE FAMILY LAW GROUP, FOR BEING HONORED BY

WORTH MAGAZINE AS ONE OF THE

TOP TEN

DIVORCE LAWYERS IN THE US.

PROTECT YOUR BUSINESS WITH AN ANTENUPTIAL AGREEMENT

BY: EDWARD L. WINER



Divorce or the death of an owner can have a devastating impact on businesses, including professional practices. A litigated probate proceeding or a divorce may result in costly disputes over the value of the business, with the risk that an unwanted value may be established by an outside appraiser. Tension between owners and employees, disruption of the business, litigation costs, and invasion of individual and business privacy may also result. Even a business owned before a marriage may be subject to these negative factors.

In the typical divorce the business will be appraised, co-owners and employees may become witnesses, the financial records and other important documents relating to the business will be obtained and scrutinized by the divorcing spouse's attorneys and experts and may be filed with the Court, exposing sensitive, private and proprietary information to the public. To complicate matters further, a buy-sell or similar agreement, which determines the value of the various owners' interests, may not be accepted by the court handling a divorce.

An antenuptial agreement can prevent many of these problems and is a vital tool to protect businesses. These agreements are generally enforceable in Minnesota if properly drafted and may prevent the business from being subjected to discovery, evaluation and possible sale in divorce and probate litigation. Antenuptial agreements in effect serve as "no trespassing" signs, protecting a business from intrusions by outsiders. An antenuptial agreement essentially allows parties to create their own private law instead of following state law and allowing a judge to exercise broad power over the value and disposition of property. Such agreements may also be utilized to protect intellectual property such as artwork, computer programs and hardware configurations, books and inventions. In addition, they can protect various other assets, such as real estate (lake homes, premarital houses, buildings occupied by businesses, etc.).

The Moss & Barnett Family Law and Estate Planning Groups are experienced in the sensitive negotiation, preparation and implementation of antenuptial agreements. Many of our clients have been protected by properly prepared antenuptial agreements.

THE MADRID PROTOCOL WILL IMPACT YOU

By: GLEN SCHUMANN



On November 2, 2002, President Bush signed the Madrid Protocol Implementation Act ("Madrid Protocol"), to become effective on the later of one year from enactment or after President Bush deposits the instrument of accession with the World Intellectual Property Organization ("WIPO"). The Madrid Protocol could impact every trademark application filed in the US and all of the signatory foreign countries of the Madrid Protocol. It is likely that

trademark searches will become more extensive, more costly and that trademark registrations will be even more competitive, although the cost of international registrations (certainly renewals) should become less expensive.

The Madrid Protocol has its roots in an 1891 treaty known as the "Madrid Agreement Concerning the Prevention of False or Deceptive Indications of Source" to which the US was not a party. This "Madrid Agreement" created a single registration system under which marks registered in any of the signatory countries automatically obtained registration in other signatory countries. These marks were registered with an office of the WIPO and could only be filed and registered in the French language. For practical and philosophical reasons, the US resisted being a party to the Madrid Agreement.

To address the perceived shortcomings in the Madrid Agreement, the Madrid Protocol was created in 1989. The Madrid Protocol created an independent, international registration arrangement that acts as a supplement to the Madrid Agreement. Some of the advantages of the Madrid Protocol include:

1. the application may be filed in English;
2. the applicant may base an application for international registration on a pending national *application* or registration;
3. each national office has 18 months (or longer in the case of a third party action to oppose registration — an "opposition") to notify the WIPO of objections to the international registration;
4. international applications may be converted to national applications in the event the home state registration is cancelled within the first five years following registration, while maintaining the original priority filing date. After the first five years, the international registration is independent of the home application or registration.

The US Patent and Trademark office now has a year to promulgate rules and regulations before the Madrid Protocol becomes effective for the US.

The main advantage of the Madrid Protocol is to permit multi-nation registrations based on a single filing with a single priority date. A "Madrid Application" is based on a national application filed in a Member State. The Member States have agreed to prosecute applications at costs not to exceed those established under the Madrid Protocol, presumably resulting in savings to the applicant (by avoiding the need for local counsel and individual national applications in each of the Member States).

Madrid Protocol registrations have a term of ten years; renewal only requires a single filing with WIPO. In addition, assignments, name changes or other filings that might otherwise affect multiple filings due to numerous national filings can be simply accomplished by a single filing with WIPO.

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There are potential disadvantages of the Madrid Protocol. First, it creates a two way street — it will be easier for applicants in foreign countries to file in the US, as well as for US applicants to file abroad. Applicants in foreign countries appear to have an advantage over applicants in the US — most foreign countries allow an applicant to claim a broader description of goods or services than in the US. Since the description of goods or services cannot be enlarged from that presented in the national (home state) application, a more limited description of goods or services in the US will result in a more limited scope of goods or services claimed in other Member States; a broader description of goods or services in a national application of a foreign Member State potentially allows broader protection in the US. As a result, it may be advisable to base a Madrid Application on the national application of a US foreign subsidiary to maximize the description of your goods or services.

Madrid Protocol article continued from page 3

There is also concern that the already crowded US register will become even more crowded. Further, searches will likely have to be expanded to include the WIPO database. In the foreseeable future, these searches may have to be expanded yet again to take into account the database of the European Community, another one-stop filing source for fifteen European countries. The European Community may soon be joining the Madrid Protocol, adding its register of marks to the already crowded US and WIPO registers. This will certainly complicate and drive up the cost of trademark searches. Coincidentally, full searches are viewed by some US courts as *mandatory* in order to avoid charges of *willful* infringement of a previously registered mark.

Time will tell how well this system works for trademark owners in the US. Our view is that for marks used exclusively in the US, the Madrid Protocol will increase competition in an already crowded field; for mark owners hoping to expand their coverage worldwide, the Madrid Protocol should be a welcome avenue for accomplishing this goal.

“CLEARLY THERE ARE
ADVANTAGES
AND DISADVANTAGES
TO THE
MADRID
PROTOCOL”

Regardless of the intended geographical scope of use of a mark, *now* would be a good time for owners of unregistered marks used in the US or marks presently under consideration to apply for US registration. The US trademark register could be more crowded and competitive at this time next year, and future full trademark searches will likely be more involved and costly.

CONGRATULATIONS



Moss & Barnett congratulates shareholder Charles Parsons on being awarded the VanValkenburg Award for outstanding service to the community. Chuck won the award for his leadership of the Minnesota State Bar Section of Real Property, his unstinting and long-standing devotion to the Legal Aid Society, which he serves this year as president, and for his volunteer work through his church. Way to go Chuck!

NEW LAW WILL LIMIT UNWANTED E-MAIL SOLICITATION

By: BRIAN T. GROGAN



Effective March 1, 2003, a new Minnesota law will curtail the proliferation of "spam" e-mail messages which currently overload many e-mail accounts with unwanted solicitations. The law targets mass e-mail distribution, particularly those with adult content. The law prohibits e-mails promoting goods or services unless: 1) the sender has permission to send the message to the recipient, 2) the point of origin of

the e-mail is not misrepresented, and 3) the message does not contain false or misleading information in the subject line.

The law will not affect commercial electronic mail messages where: 1) the recipient consents to receive or has solicited messages from the initiator, 2) an organization uses electronic mail to communicate exclusively with its members, 3) an entity uses electronic mail to communicate exclusively with its employees or contractors, or 4) a business or personal

relationship between the initiator and the recipient exists. For purposes of this last exemption, a business relationship is considered to exist, whether or not consideration has been exchanged, on the basis of an inquiry, application, purchase, or use by the recipient regarding products, information, or services.

Additionally, promotional e-mails sent through internet service provider ("ISP") facilities in Minnesota to a resident of this state must contain the letters "ADV" in the subject line of the message. The subject line of adult oriented e-mails must contain the letters "ADV-ADULT" as the first characters.

Finally, an entity sending a commercial e-mail message must include in its e-mail transmission a toll-free telephone number, valid sender operated return electronic mail address, or another easy to use electronic method which will permit the recipient to notify the sender not to transmit further unsolicited messages.

Violators of this law are subject to damages of up to \$25 per message or \$35,000 per day, including costs, disbursements and attorney's fees.

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KCCO AM 950
AS MOSS & BARNETT
BRINGS YOU THE NEW SERIES THE
"BUSINESS OF LAW,"
WITH HOST RITA MALONEY,
FRIDAY'S AT 7:23 A.M.



2003: A NEW YEAR

By: DAVE F. SENGER
CHAIRMAN OF THE BOARD



As we begin a new year, the lawyers and staff at Moss & Barnett extend our warmest greetings and sincere gratitude for the relationships we have with our clients, referral sources and other friends.

We enjoyed much success during 2002. We added eight talented lawyers to our team, representing one of the best recruiting years ever at Moss & Barnett. Our competent and experienced administrative staff continues to allow

Moss & Barnett to maintain one of the best efficiency ratings of mid-size and large law firms in the Twin Cities area, while investments in new technology allow us to remain on the cutting edge in providing high-quality services to our clients.

We congratulate Susan Rhode and Curt Smith on their re-election to the Board of Directors of Moss & Barnett. Susan and Curt join Tom Shroyer, Rick Johnson, Rick Kelber and myself on the Board.

Tom Shroyer (President and Chief Executive Officer), Rick Johnson (Chief Financial Officer) and myself (Chairman), continue to function as the Management Committee, overseeing the operations of the firm. However, our very capable staff allows us to maintain very active practices.

We continue to take great satisfaction in helping our clients achieve their personal and business objectives.

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