

FALL 2010

GTLABA President Shelley A. Kester's Message:

Financial Jeopardy

I am grateful for the opportunity to serve as your Bar President. Each of us has a Bar Association that we can be proud of. We are more than a social club that gets together twice a year to have a good time. We make a difference in our community through education about the law and legal profession, by providing continuing legal education opportunities for our members at affordable rates close to home, by supporting pro bono services and fostering networking opportunities and a collegial Bar.

Your membership of \$125, when broken down by broad expense categories is spent approximately as follows: Dinners (\$26); Postage, phone, fax (\$12.31); Staff (\$73.08); Law Day (\$8.46); Law Library (\$7.69); CLE (\$1.92); Website (\$2.30); Newsletter (\$3.00); Legal Clinic (\$19.23); Overhead (\$8.94); Travel (\$3.65) = TOTAL: **\$166.58**, far exceeding the current membership rate of **\$125**.

By comparison, other local bar association membership fees are as follows: Genesee (\$190); Grand Rapids (\$215); Ingham (\$125); Kalamazoo (\$100); Macomb (\$130); and Washtenaw (\$150). These are much larger associations, so per member costs are more dilute, and the largest are able to offer services and benefits far beyond what we are currently able to offer.

I start my term with some economic news that, given Michigan's economic climate, may not be surprising, but in another sense, is a cold, hard reality that I believe should be shared with the Membership.

Our Bar Association is in financial jeopardy. Revenues are down and expenses are not adequately supported by bar dues. Your Bar Association's budget is approximately \$52,260/year. With 270 paying members, our budget suggests a membership fee of \$194 per person. Our current dues, alone, are not sufficient to make our budget work.

A closer look at the reasons for the change in our economic circumstances reveals the following:

- Interest income on the money market account is down significantly, e.g. \$1,740 was earned in 2006; less than \$400 was earned last year.
- Copier income is also down: \$3,600 was generated in 2006, but only \$2,400 was earned last year, as fewer lawyers are using the library, and those that do are not necessarily copying or printing.

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- Dinners, an important social part of membership, are also more expensive. We spent \$5,200 in 2006 and nearly \$7,000 last year. A large part of this is due to members who register for events but do not attend. Nearly \$900 was wasted on May's Spring Dinner on no-shows alone.
- Historically, the Bar Association has made an annual donation of \$5,000 to the Pro Bono Clinic. Given the association's current financial picture, the Bar can no longer continue this level of financial support without additional fund raising efforts dedicated for this purpose.

On the positive side, membership and newsletter expenses have stabilized. Bar Membership will likely reach 270, up 20 from 2007. Newsletter expenses have been offset by increased ad rates, and this year, we are cutting costs by reducing the length of the newsletter to eight pages. Despite continual rate increases, postage costs have been cut by 66% since 2007, and telephone/fax charges will drop by close to 33% this year.

Our Bar Association website is professional, and the association is well served by executive director, Jill Porter, who has reassigned non-income producing duties to an assistant in an effort to save costs. The Bar is truly blessed to have the professional services of Jill Porter whose presence (even if it's only for 15 hours per week) is integral to the health and professionalism of our Bar Association.

The Bar Association is in the process of establishing an Affiliate Program Partner program which should bring in more income via hurdle fees, increased print and electronic advertising and event sponsorships.

Finally, the Board of Governors is establishing a committee to investigate and make recommendations to the Board for improving the overall fiscal health of the Bar Association. **Every Bar Member is encouraged to email suggestions and ideas for increasing revenue and decreasing expenses, including the idea that bar tabs (the other kind) be reduced, to Deborah Rysso, at drysso@rizzolawonline.com.**

I have come to the conclusion that a strong Bar Association is important, because it serves as a reflection of the professionalism and quality of its members. We need your attention and support to preserve your Bar Association. Thank you for permitting me to be the bearer of the facts. I ask that each of you to renew your membership now if you haven't already done so and encourage non-members to join. If you are presently unable to renew,

please contact Jill Porter to make arrangements so that you can stay connected until you are able to pay your dues.

Note: The bar association budget and accepted monthly financial reports are available on the GTLABA website in the members section. Please feel free to contact the association's treasurer, Corey Wiggins (coreyjjwiggins@aol.com) or director, Jill Porter (jporter@gtlaba.org) with any questions you might have.

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Intellectual Property: A Primer for Creative Entrepreneurs

Lawrence R. LaSusa



Intellectual property is the last field of law that most lawyers and business owners ever master. In today's internet and digitally driven global economy it should be the first and foremost. Our nation's focus has moved away from relying on natural resources and manufacturing. We have entered a time of economic revolution in

which success rests upon our ability to harness and leverage intellectual potential, human resources and great ideas. Your rights in intellectual property are designed to protect you and your business from unfair competition. This article discusses some basic steps to starting to understand the vast and complex area of intellectual property (IP).

1. Educate yourself

IP takes many forms: trademarks, trade secrets, copyrights, and patents. As a business owner who invests time and money in researching and developing your business you need to know what kind of property you are seeking to protect. Each one of these IP forms has boundless permutations and nuances; however, here are some basic descriptions. A trademark is a name, slogan, symbol or design used to identify your business and products in the marketplace. Generally speaking, it needs to be unique and not merely descriptive.

Trade secrets cover a wide range of commercial and technical information and have no precise definition. A trade secret is really any valuable formula, pattern, device, process or other information you use in your business that gives you an advantage over competitors who do not know or use that information. The key to being a "trade secret" is that the information must be secret.

Trade secrets do not include information that can be readily ascertained or acquired by the general public or competitors without significant difficulty. Some things that are typically considered trade secrets are pricing formulas, customer lists, and specialized software programs, devices, manufacturing methods, techniques, or testing processes. Copyrights are the set of exclusive rights granted to the author or creator of an original work to copy, distribute and adapt the work. These rights can be licensed, transferred and/or assigned.

Copyrights apply to a wide range of works that are in a substantive form and fixed in a medium. (e.g. songs, stories, films, paintings, software programs, etc.)

Finally, patents, like copyrights, grant the inventor the exclusive right to manufacture sell and distribute the product, design or process. Yes, patents can apply to processes. For ex-

ample, American Express holds many business process patents and makes a fortune by licensing them.

2. Inventory your business for IP assets

Start by reviewing your marketing materials and website. The goal is to uncover any IP assets used or owned by your business, and then identify how important they are to your continued and future business. Create a catalogue of all registered trademarks, copyrights, patents and licenses. Then look at and catalogue any of the same types of IP that are being used but are not registered, as well as any trade secrets or business processes and inventions that are not yet patented. This type of audit can help create an IP licensing revenue stream, as well as identify any IP that your competitors may be infringing upon.

3. Protect your IP

Here is what most lawyers won't tell you: registration is not always necessary and limits the useful life of your IP. Trade mark registration does not override common law rights that attach at first use. Once registered, your great idea becomes public knowledge and the protection of it has a limited shelf life. Trade secrets are no longer secret. Coke never patented its formula for that reason. Copyrights only last the creator's lifetime plus 70 years. Patents are only good for 14 or 20 years.

The best way to protect your trade secrets is to disseminate that information only on a "need-to-know" basis. Have employees (and independent contractors or vendors) sign non-disclosure agreements or covenants not to compete before they are hired, or even after they are hired as a condition of their continued employment. Be vigilant about protecting your rights. Courts frown on infringers but take no pity on those who are tardy in standing up against infringement. Send a "cease and desist" demand letter at the first sight of infringement. Then stay on top of the infringer to ensure compliance. Lastly, don't forget you really have a business and legal cost/benefit analysis to make: do you license or litigate?

The bottom line is simple: If you do your homework in advance, you may be able to avoid the expense of an infringement lawsuit. But, if you have to use the courts, your preparation and better understanding of IP will help you work with your attorney to decide whether a lawsuit is likely to produce cost effective results, and ultimately will help you to negotiate the best possible arrangement to pursue your matter to successful conclusion.

Lawrence R. LaSusa is a principal attorney of LaSusa Law Offices, PLC and has extensive business and litigation experience. Mr. LaSusa can be reached at info@lasusalaw.com or 231-392-9616. © 2010 by Lawrence R. LaSusa This article was originally published in the August 2010 issue of the Traverse City Business News.

Young Lawyers Update

By John Di Giacomo

The Grand Traverse-Leelanau-Antrim Bar Association (GTLABA) Young Lawyers group continues to hold monthly networking events sponsored by local law firms.

The GTLABA Young Lawyers group has also created a Facebook group to better inform our members of upcoming events and continuing legal education opportunities. The use of Facebook to connect with its members has allowed the GTLABA to expand its upcoming events to lawyers both young and young at heart. Members can join the GTLABA group at <http://bit.ly/djg42S>.

Several attorneys from the GTLABA Young lawyers group, as well as Judge Haley, also recently participated in the United Way's Day of Caring event, where they put their muscles to work to prepare a new building and to build new art racks for Andre's Place, a art outreach program for the emotionally and cognitively challenged.

If your law firm is interested in sponsoring an event, future bar night or assisting with the YLA Facebook group, please contact John Di Giacomo at john@traverse-legal.com or at (231) 932-0411.

CLE Committee Chair Sought

The GTLA Bar Association seeks a new Chair for its Continuing Legal Education (CLE) Committee. The Chair will implement and promote CLE programs for members of the bench and bar. The CLE Committee is also looking for your input into what programs you like, would like to see more of, or if you are interested in presenting a CLE program. For more information contact Larry LaSusa at llasusa@lasusalaw.com.



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Bar Association Newsletter

Editors & Committee Co-Chairs: Aaron Bowron and Corey Wiggins. Published Quarterly. Kindly mail articles and information to GTLABA by **December 20, 2010**, for publication in the winter issue. Questions or comments should be directed to Aaron Bowron at legaloil@aol.com or Corey Wiggins at coreywjiggins@aol.com.

Developing and Managing A Firm's Marketing Budget

Ursula Rozanski



Marketing is essential to building a law firm's client base, and it is an integral component of the firm's business plan. Critical Success Factors (CSF) for developing a firm's seamless marketing strategy include: (1) developing the marketing success measurement metrics, (2) understanding the target markets and competitors, (3) developing the marketing budget, (4) developing the brand or image, (4) planning and scheduling the promotional opportunities, (6) developing the marketing collateral, (7) identifying the fee-free promotional opportunities, (8) identifying the fee-based promotional opportunities (9) updating the brand and marketing collateral as required, and (10) managing the overall marketing budget, plan, brand and collateral on a consistent basis (accountability) as an important part of the firm's business strategy and future growth plans.

As you may imagine, each of the aforementioned Critical Success Factors can contain enough information to fill numerous articles, become a project, and/or provide the basis for a white paper. The intent of this article is to provide an overview of the 3rd CSF - developing the marketing budget.

The Marketing Budget - A marketing budget must be based upon a tangible number such as the annual collected - revenues for an existing firm (based upon a 1 or 2 year collected-revenue history) or the projected-revenues for a recently established firm. Basing the marketing budget on a financial business goal allows the firm to initially set the marketing investment amount with some level of confidence. Once the marketing budget is developed in this manner, it can be adjusted as revenues are collected to dynamically bring it in line with the firm's ability to invest in marketing.

Guidelines to consider when developing the firm's marketing budget include: (1) Setting aside from 3% to 10% of forecasted or actual annual revenues and allocate these funds to the marketing budget. (2) Setting aside 15% of the calculated annual marketing budget as a marketing budget "reserve", to be used in the event of unforeseen marketing opportunities that have a high probability of meeting or exceeding one of the firm's marketing success measurement metrics. (3) Setting the percentage of revenues allocated to the firm's marketing budget higher if the firm is newly established or has updated its image ("brand") recently, and set it lower if the firm is well established with a well known and well "differentiated" (from the competition) brand. (4) Developing and setting success measurement metrics for the marketing budget that are realistic and support the firm's tactical and strategic objectives. Metrics can include: the number of new clients, incremental revenues, new services, new demographics, etc. (5) Scheduling the marketing budget reviews to occur on a monthly, or at a minimum, on a quarterly

basis. This will allow for adjustments to be made to the marketing budget amount that are based upon known tangible variations such as forecasted revenues versus actual collected revenues, as well as allow for similar adjustments to be made to the marketing success measurement metrics. The more consistently that this is done, the higher the accuracy and the greater the control the firm can exert over its marketing investments. (6) Loading the marketing budget information into a tracking and management tool that is readily accessible and easy to use for updating purposes. (7) Contacting sales representatives from different advertising media and promotional outlets to compare their package deals, pricing, frequency, geographic area, and circulation or estimated audience if planning media buys (i.e. ad placement, TV promotions, etc.). (8) Developing the marketing budget as a part of the overall marketing strategy (including the marketing plan, and the marketing collateral) well in advance of starting or expanding the firm. (9) Considering the following dynamics which affect any marketing planning activities: the competition's marketing tactics, the market the firm is trying to capture, how well the firm's core competencies presently fit the firm's target market(s), the strength of the firm's brand or image in the firm's target market(s). (10) Committing the time required to manage (take accountability for) the firm's marketing budget, plan, brand and collateral so that it reflects the firm's current brand state. This step provides another check and balance that can keep the firm's marketing strategies cohesively supporting its business strategies. (11) Tracking the time that is invested by the firm's owner's and designates to develop and deploy the firm's marketing strategy. This investment of time is a "hidden-cost" and should be included in the firm's marketing budget. At the initial stages of the firm's marketing plan development and use (first 6 - 12 months), this investment of time will be higher, but should ramp down in time as: (a) the dynamics of the plan become familiar, (b) the marketing success measurement metrics become more predictable, and (c) the adjustments to the marketing budget and its reserve become less frequent.

The 12-Month Marketing Plan - Once the firm has developed a "high-confidence" marketing budget, the next step is to develop the "12 Month Marketing Plan". The 12-Month Marketing Plan identifies the how, when, why, what, how much and the where of the firm's marketing strategy and investments into a scheduled and readily manageable format. Our next article in the "Marketing" series will cover the process for developing, deploying and managing the 12-Month Marketing Plan.

Ursula Rozanski is Managing Principal/President of Rozanski & Associates, Inc., a Michigan-based management consulting / resources provision firm for solo and small to medium enterprises (www.rozanskiandassoc.com), and in particular professional services firms. The company was established in 1995 and incorporated in 2001. Ursula can be reached via email at urozanski@rozanski-andassoc.com, or by phone at 989-225-2570. © 2010, Rozanski & Associates, Inc., All rights reserved.

In Memoriam Stuart D. Hubbell

The GTLA Bar Association extends its deepest sympathies to the family, friends and colleagues of Stuart D. Hubbell who passed away in September.

Stuart practiced law in the area for many years and was a mentor to many GTLABA members, including his sons. His charitable nature and guidance will be greatly missed.

Notables

Jo L. Bullis, Executive Director of the Women's Resource Center and long-time GTLABA board member, was named one of *Michigan Lawyers' Weekly* "Women in Law." This award was bestowed on women whose careers demonstrate a commitment to civic and pro bono work and mentoring. Jo was the only attorney north of Grand Rapids to be included in the list of twenty.

James Olson, of Olson, Bzdok & Howard, was selected to receive a State Bar of Michigan Champion of Justice Award for his environmental work including the *Michigan Citizens for Water Conservation v Nestle Waters North America* case and his current work, formally and legally codifying that the Great Lakes are held in the public trust for current and future generations.

From the State Bar—TAON Rule Changes

New Michigan Rule of Professional Conduct 1.15A, also known as the Trust Account Overdraft Notice (TAON) Rule took effect on September 15, 2010. Michigan lawyers need to know about the most serious consequences of a trust account overdraft - financial institutions will be required to report overdrafts to the Attorney Grievance Commission. A brief summary of the requirements of the TAON Rule is provided below:

- * Financial institutions doing business in Michigan must submit a signed agreement to the State Bar of Michigan to obtain approval to maintain lawyer trust accounts as defined by MRPC 1.15(a).

- * Lawyers must confirm that their financial institutions are on the list of approved financial institutions posted on the State Bar's website at http://www.michbar.org/opinions/TAON_list.pdf.

- * No further action is required by lawyers for their pre-existing IOLTA accounts; these accounts have already been identified as lawyer trust accounts by financial institutions when opened by lawyers.

- * Lawyers must contact their financial institutions to change the name on their non-IOLTA accounts to include the term "trust" or "escrow," if not already included in the account name.

- * Lawyers may download a form from the State Bar's website and submit the completed form to their approved financial institutions for each non-IOLTA trust account and provide a copy to the State Bar.

- * Lawyers must continue to safeguard client and third party funds held in trust to avoid all overdrafts to their IOLTA and non-IOLTA accounts.

- * Approved financial institutions maintaining lawyer trust accounts must submit overdraft reports within five banking days of any overdrafts to the Grievance Administrator of the Attorney Grievance Commission.

86th District Court Taking Bids for Court Appointed Attorney Contracts

Bids are being accepted for 2011-2012 contracts in Grand Traverse, Antrim and Leelanau counties. Bids are due by 5:00 p.m., Wednesday, **November 17, 2010**.

Bid packets are available in the following manner:

On the web: www.grandtraverse.org (go to Courts, 86th District, QuickLinks, Requests for Bids, Proposals and Qualifications) or, by contacting the Court Administrator, Carol Stocking, at the Hall of Justice, 280 Washington Street, Traverse City 49684, cstockin@grandtraverse.org, or by calling 922-4502.

Golf Outing Wrap Up



The Grand Traverse-Leelanau-Antrim Bar Association held its 27th Annual Golf Outing on September 9th at Elmbrook Golf Course in Traverse City.

In a closely-contested game settled by a playoff round, the winner of the Jack Roney Memorial Cup was the foursome of Greg Jenkins, Brian Johnson, Ralph Munch and Kevin Endres. The runner-up team consisted of Jennifer Jones, Mike Richey, Troy Stewart and Josh Reynolds.

This year's outing raised over \$7,500 for Conflict Resolution Services, Inc. of Traverse City. "This has truly been an amazing year for us, and we are so grateful to the GTLA Bar Association," said Jennifer Kowal, Program Director at CRS.

Kudos to first year golf outing organizers, Mike Swogger and Jeff Noorman, as well as CRS and the GTLABA for making this tradition both fun and profitable!

Heard in the Halls



The Law Office of **Maura N. Brennan, PLC** has moved to a new location at 236½ E. Front St., Suite 21, Traverse City, MI 49684. She can be reached at (231) 421-5580 or Mbrennan3@earthlink.net and found on the web at www.MauraBrennanLaw.com.

Chris Bzdok, Gerald Chefalo, Mike Richey and Karrie Zeits were among the "40 Under 40" recipients selected by the *Traverse City Business News*. The 40 Under 40 list, published every September, highlights the forty most influential individuals in the region under age 40.

Larry LaSusa recently gave a presentation to the CPA Law Forum of Traverse City at the Traverse City Golf and Country Club, entitled "Intellectual Property: A Primer for Creative Entrepreneurs". It focused on the value of informing clients about identifying and protecting intellectual property to leverage an increase in the value of their business.



John A. Scott and Diane Kuhn Huff have changed the name of their Traverse City law firm to Scott & Huff, P.C., to recognize Diane becoming a shareholder in the firm. They focus

their practice on estate planning, probate and trust administration, elder law and real estate. The office remains

located at 1000 S. Garfield, Suite 3, Traverse City, MI 49686. John is a regular speaker for the Institute of Continuing Legal Education and is the Michigan Chairperson of the American College of Trust and Estate Counsel. Diane is a member of the Elder Law and Disability Rights Council of the State Bar of Michigan and the President of the School Board of Woodland School.

Three attorneys from **Smith Haughey Rice & Roegge's** Traverse City office have been selected for inclusion in the 2011 edition of *The Best Lawyers in America*. They are Mark P. Bickel (bet-the-company), Todd W. Millar (insurance law) and Ronald A. Schuknecht (bankruptcy and creditor-debtor rights law).


Kennard R. Weaver is running for NMC Trustee in this November's election. He is a retired Senior Partner of Baker & Daniels and has served on many nonprofit and for profit boards of directors.



Shawn Worden has started his own firm, 360 Law. He is providing legal services in the areas of Commercial Litigation, Personal Injury Litigation, Business & Personal Law, Municipal Law, Health Care Counsel, Estate Planning and Criminal Defense. His firm is located at 109 S. Maple, Traverse City, MI 49684, and he can be reached at 231-932-0360 or shawn@threesixtylaw.com.

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