



Legal Aspects of Starting a Business

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My Background

- B.B.A. from Southern Methodist University
- J.D. from Baylor School of Law
- Admitted to Texas Bar in May 1994
- Large firm trained attorney
- Small firm practice



My Law Office



Myths About Lawyers

- A lawyer can work on any type of legal matter
- Lawyers just fill in the blanks on a form

Choosing an Attorney

- www.TexasBar.com
- www.avvo.com
- Referrals from friends or colleagues

What to Look for in an Attorney

Stu's Views

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"Daddy says you're as real as
an honest lawyer.
What does that mean?"

What to Look for in an Attorney

- Integrity
- Experience in the area
- Common business sense
- In your price range
 - Hourly rate
 - Expenses

Working with Your Attorney

- Be open and honest
- State your expectations
- Ask for an estimate of costs
- Call in advance of needing something
- Call before you take an action such as firing an employee or terminating a contract
- Let your attorney draft the contracts

Choice of Entity

- To form or not to form
 - Benefits
 - Protection from personal liability (may still have some)
 - Serious about your business
 - Disadvantages
 - Texas franchise / margin tax
 - Corporate formalities
 - Increased legal and accounting expenses
- Where to form – Texas, Delaware, or Nevada?

Corporation v. LLC

Terminology Comparison

Corporation

LLC

Shares

Units of Membership Interests

Shareholders

Members

Directors

Managers

Officers

Officers (optional)

Cert. of Formation

Cert. of Formation

Bylaws

None

Shareholder Agr.

LLC Agr. or Operating Agr.

Assumed Names

- A name under which the entity is doing business other than the registered name
- Don't file if have an entity and doing business under entity name
- Penalty is that you can't sue
- May have personal liability

Assumed Names – Where to File

- Entities:
 - file only with Texas Secretary of State
 - No longer need to file in County
 - \$25 fee
- Sole Proprietorship and General Partnerships:
 - File with County in which you have principal place of business
 - ≅ \$25 fee

Minimizing Liability

- Form an entity
- Insurance
 - Commercial Umbrella Coverage
 - Worker's Compensation
 - Director & Officer Liability
 - Key Man Life & Disability Insurance
- Work with your attorney

Sign-In Forms

- Just a quick reminder to complete the sign-in form for SBDC records
- Please also complete an evaluation of the class and put it at the registration table when you leave

Intellectual Property - Trademarks

- Words, designs, slogans, or symbols used to **identify the source** (trade dress is total image of a product or its packaging)
- Choosing a Business or Product Name
 - Search Registered Trademarks
 - www.uspto.gov
 - State trademark searches
 - Search Common Law Trademarks
 - Google, Bing, DuckDuckGo, Dogpile, Yippy searches
 - www.anywho.com – state by state search



Intellectual Property - Trademarks

- Protecting Trademarks
 - State common law
 - ABC™
 - Assumed name filings don't protect trademarks
 - State registration – varies with each state
 - Federal registration
 - \$225, \$275, or \$325 filing fee per class, depends on filing method
 - Duration & Use – 5 years, 10 years with renewal, indefinite with continuous use
 - You must keep a trademark calendar and chart to keep track of the TM's you have and time periods for renewal
 - Send cease and desist letters to possible infringers

Intellectual Property - Trademarks

- Finding Infringers
 - Google Alerts – daily key word search
 - Copyscape.com – finds duplicate content of your site
 - TinEye.com Alerts – finds uses of your photos
- Send cease and desist letters to possible infringers
- Prove infringement with archive.org

Intellectual Property - Copyrights

- Original works of creation (includes books, music, architectural drawings, software, etc.)
- Protects the particular form of expression, not the idea that is the subject
- Protection
 - Requires reduction to tangible form
 - © [year created] [owner] (all rights reserved*)
*optional

Intellectual Property - Copyrights

- Federal Registration – \$35 - \$85 filing fee
 - Presumption of validity / ownership
 - Right to bring Federal action
 - Award of damages without actual loss
- Duration & Use
 - 70 years + life of author
 - If work for hire – 95 years from publication or 120 years from creation
- Work for Hire – when in doubt get an assignment
- HINT – You should always be in doubt & get one!

Work for Hire – Indep. Contractors

- Work must be specifically ordered or commissioned (paid to create something new)
- Prior to commencing the work, both parties must agree in writing that the work will be a work for hire
- Work must fall within one of nine narrow statutory categories of commissioned works listed in the Copyright Act (translation, contribution to a motion picture or other audiovisual work, contribution to a collective work such as a magazine, as an atlas, as a compilation, as an instructional text, as a test, as answer material for a test, as a forward, afterward, chart, illustration, editorial note, bibliography, appendix and index)

Work for Hire - Employees

- Work created by an employee within the scope of their employment is automatically considered a work for hire
- The work does not have to fall within the 9 categories

Intellectual Property - Patents

United States Patent [19]

Brown et al.

[11] Patent Number: 5,094,343

[45] Date of Patent: Mar. 10, 1992

[54] COMBINATION BEVERAGE TRAY AND SUN VISOR

[76] Inventors: Harry Brown, 876 Peninsula; Andrew Primack, 2426 Michigan Dr., both of Claremont, Calif. 91711

[21] Appl. No.: 492,630

[22] Filed: Mar. 13, 1990

[51] Int. Cl.³ A42B 1/20; A42B 1/22

[52] U.S. Cl. 206/216; 206/564; 229/103; 229/904; 2/196; 2/177

[58] Field of Search 2/184.5, 209.3, 171, 2/183, 209.1, 196, 177; 40/329; 229/904, 103; 206/232, 216, 427, 564, 607

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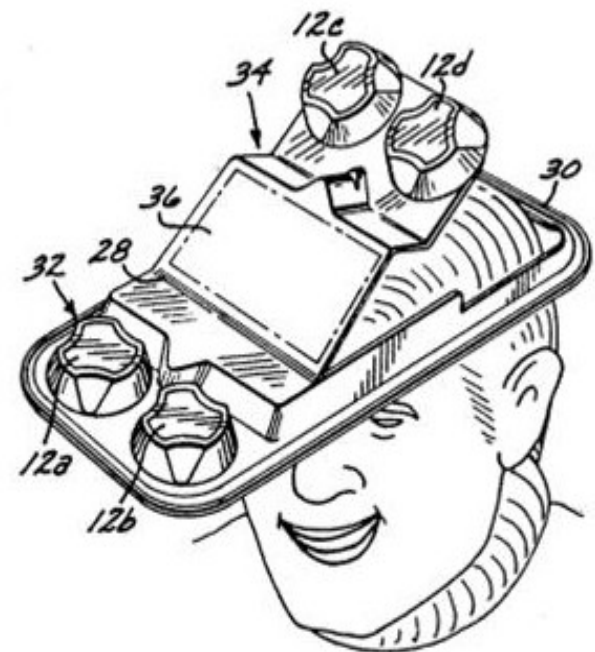
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Primary Examiner—Paul T. Sewell
 Assistant Examiner—Jacob K. Ackun, Jr.
 Attorney, Agent, or Firm—Fulwider, Patton, Lee & Utecht

[57] **ABSTRACT**

A combination beverage tray and sun visor comprised of a beverage tray having raised side walls and including a pre-formed perforation along a portion of the junction of the base of said tray and the side walls wherein the base may be separated from the sidewalls thereby forming an opening which allows the beverage tray to be converted into a sun visor and worn upon one's head.

11 Claims, 1 Drawing Sheet



Utility Patents

- Protects ideas (new and non-obvious in light of prior publications, other patents and earlier commercial activities)
- For 20 years from date of application, excludes others in the US from making, using, selling, offering for sale and importing
- Time limits
 - In US – filed within 1 year of 1st public use or publication
 - Foreign – filed before any public use or publication
- Expensive & time consuming
- May be best to be first to market

Design Patents

- Protects a new, original, non-obvious, and primarily ornamental design for an article of manufacture
- Protects appearance, not the function
- Easier and less time to get than utility patents
- For 15 years from date it is issued, you may exclude others from making, using, or selling the design
- Cheaper to obtain & no maintenance fees

Intellectual Property - Patents

- Texas Inventors Association
- www.TxInventors.com
- Meet at Maribelle M. Davis Library in Plano
- Excellent resource for inventors!

Intellectual Property – Trade Secret

- Any formula, pattern, compilation, program, device, method, technique, or process that
 - Is not generally known or ascertainable
 - Has economic value
 - Is maintained in secrecy
- Duration & Use
 - Forever if use vigilance to prevent disclosure or theft



Intellectual Property – Trade Secret

- Protection
 - Confidentiality Agreements
 - Non-Competition Agreements
 - Employment & Independent Contractor Agreements

Financing the Business

- Check your credit rating for accuracy
- 3 Bureaus - Experian, TransUnion, & Equifax
- 75% of all credit reports have at least one error on them
- Get your credit rating as high as possible
- Bad personal credit = bad business credit
- A+ credit is 720 or above

Financing the Business

- The Three F's
- Angel Investors
- Venture Capital
- Bank Loans
- Factoring
- Percentage of gross profits



Questions?

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