

Introducing—Above All Personnel

Is Your Company Name Trademarked?

by Ron Ameln

The to-do list to start a business seems to get larger and larger. Everything from writing a business plan and obtaining a federal identification number to printing up business cards—all must be completed. With the list so long, many business owners don't bother to register their name as a trademark with the federal government.

In fact, if business is done locally and the company isn't building the newest widget, many see it as an unnecessary task.

Think again.

Not registering your company name as a trademark could become a costly mistake, according to area trademark attorneys. "Some businesses don't think they have anything to trademark, but your name is your trademark," said Annette Heller, Trademark & Copyright Attorney.

"Most businesses think if they register their fictitious name with the (Missouri) Secretary of State's Office, that's it," said Douglas Warren, of Douglas Warren Attorney At Law. Warren said conducting a search of current trademarks and then registering your company name as a trademark should be one of the first duties as a business owner. "Not doing this can become a big pitfall for businesses," he said.

Some local businesses are learning this lesson the hard way.

Take Sue Huber, for example. In 1995, Huber decided to take her years of experience in the staffing industry and live the American dream.

She opened Pride Personnel and it wasn't long before she had a host of clients. Over the years, the firm has become the source of staffing for area firms—both large and small. The company specializes in personnel with expertise in customer service, secretarial, computer software, data processing, clerical, accounting, general office and telemarketing.

Everything was going great for Huber. Until she received a registered letter on Mar. 16, 2004. The letter, from an attorney representing a California company, demanded that Pride Personnel change its name because a similarly, not identically named company had a registered trademark.



(pictured, from left to right) Shannon Mitchell, Teri Moody, Conni Nutis, Sue Huber, TK Koeln, Chris Schierhold.

The California Corporation had a Mar. 6, 1995, trademark request-filing date and was registered on Nov. 5, 1997. On Nov. 5, 1995, Pride Personnel was registered through the Missouri Secretary of State as a fictitious name.

After the shock set in, Huber contacted a trademark attorney and was informed that if she contested the change, the case would go to litigation. Huber said such litigation would cost in excess of \$60,000, as well as a tremendous amount of time and stress. Because federal registration surpasses any state registration, she was told her chances of winning were 20%.

With the odds stacked against her, Huber decided to bite the bullet and change the name. Pride Personnel is being phased out in favor of the firm's new name, Above All Personnel.

This was no easy decision. After all, Huber's firm had just moved into its South Big Bend Boulevard offices last year. In order to gain price breaks on printed materials such as business cards, invoice forms, stationery, etc., the company purchased boxes of printed items—all of which now must be thrown out. The company also purchased a sign at its office, which is now useless. Huber estimates the cost of the name change, which includes printed materials, legal fees and signage to reach over \$30,000, and that figure does not include her countless hours of time dealing with the problem.

Sometimes, the most valuable property a small business has is the name or logo used to identify its products or services. Huber, like many entrepreneurs, never realized she needed a federal trademark.

Pride Personnel, which Sue Huber began in 1995, is changing its name to Above All Personnel. Because a California firm's federal trademark name was similar to Pride Personnel, Huber and her staff were forced to change its name to Above All Personnel. Over the years the firm has become the source of staffing for area firms, both large and small. The company specializes in personnel with expertise in customer service, secretarial, computer software, data processing, clerical, accounting, general office and telemarketing.

"In today's world, I strongly recommend performing the search and applying for the trademark," said Heller, speaking in general terms. She had no involvement or knowledge of Huber's case. "Today, with the Internet, people can find your name pretty easily, and websites give you exposure throughout the world. Even if you are just doing business locally, a website gives you national exposure."

The first step in adopting a trademark is to search the database at the U.S. Patent and Trademark Office (PTO) to determine that your mark will not infringe on someone else's mark. This can be done on the PTO's website at www.uspto.gov, but it isn't easy.

Determining whether two or more marks are confusingly similar in the public mind can be difficult. You may be more likely to avoid litigation problems down the road by hiring an attorney that specializes in trademark law to conduct the search.

As Huber discovered, you can also register trademarks in most states, but your registration will protect you only in that state. The federal registration covers the entire country.

Heller advises business owners to seek an attorney to help them with the process. "You can certainly do a preliminary search on your own, but an attorney can give you an opinion on the risks and any possible challenges," she said.

Huber is taking a positive approach to the new name. She is in the process of getting Above All Personnel registered federally as a trademark. "I don't think we will lose any of our current business because of the name change," she said. "Heck, this could end up helping our business in the long run. That's the attitude I'm taking."