



Editor: Diane Slomowitz

BE PROACTIVE TO PREVENT EMPLOYEE THEFT



By Jacob A. Manian

Running a small business is hard enough without having to worry about trusted employees stealing from your company.

Unfortunately, employee theft is a reality which all small business owners must confront.

According to a recent study done by the Association of Certified Fraud Examiners ("ACFE"), the median loss in the United States related to one workplace fraud incident is \$120,000.00.

Companies that lack anti-fraud

controls suffer even greater losses.

While no system of internal controls can guarantee protection against employee embezzlement, a few basic measures can reduce the likelihood and magnitude of employee theft.

Separate Duties. Many small businesses have one person fulfill all accounting or bookkeeping functions.

This invites trouble because no one is watching the gatekeeper.

Since most embezzlements involve forged or unauthorized checks, a good practice is to have different employees responsible for recording and processing a transaction.

Requiring two signatures on every check also adds a second layer of accountability.

Review Bank Statements. With all the responsibilities heaped on business owners, the thought of spending time reviewing bank statements seems daunting.

However, getting in the habit of reviewing payroll or office expenses can help detect out of the ordinary transactions.

This also warns employees wrongful conduct will be scrutinized.

Talk to Your Bank. Meet with your bank's branch manager to discuss your regular banking practices.

This will hopefully help the bank identify odd banking occurrences, such as delayed deposits or deposits reduced by cash returned to the person making the deposit.

In such situations, your bank should notify a top level designated person of the occurrence.

Get Insurance. Many business owners do not consider insuring against employee theft.

Given the statistics, however, it is worth sitting down with your carrier to discuss specific available crime policies or theft riders.

Continued on page 3

FUTURE FOS LAWYER BORN!



FOS congratulates associate Bailey Larsen and her husband, Daniel, on the birth of son Decker. Decker joins twin sisters Harper and Zoey in the Larsen family takeover.

FOR SALE BY OWNER? DON'T FORGET THE CONTINGENCIES

Clients frequently contact FOS to discuss purchasing a home or vacation property that is for sale by owner.

Often, the parties know each other and/or simply want to avoid paying a broker's fee. Whatever the reason, most parties will use the Wisconsin Residential Offer to Purchase form.

While the buyer likely has a good handle on deal points like price, earnest money, and what personal property (if any) is included, particular

Continued on page 3

AN "OLDER WORKER" IS HOW OLD?

Most employers know that special rules apply to separation agreements and older workers, if your business has 20 or more employees and is going to let an employee go.

BUT—those rules mean older workers, right? Like those in their 60s? Or 50s?

Nope. The law protects those 40 years old or older from age discrimination.

With the average retirement

age creeping ever higher, most would not view a 40-year old as an "older worker" needing specific protection against age discrimination.

The law may not have caught up with times, but employers must keep up with the law.

Make sure your separation agreements are enforceable against all departing employees (not only 39-year old spring chickens).

FEAR THE... TRADEMARK DISPUTE?



By Laurna A. Kinnel

While the Milwaukee Bucks were unable to beat the Toronto Raptors in the NBA Playoffs this year, the team will not have an easy off-season.

Instead, the Bucks will be actively defending against a trademark opposition claim filed by the makers of Jägermeister liqueur.

Jägermeister alleges, among other things, that the new Bucks logo is so similar to Jägermeister's many registered "deer head" trademarks that the Bucks logo is "likely to cause confusion, mistake

and deception as to the source or origin" of the Bucks goods.

This, Jägermeister argues, will cause injury and damage to the goodwill and reputation symbolized by Jägermeister's own marks.

A basketball logo confusingly similar to a liqueur trademark? And causing injury?

How can this be?

Registered trademark owners can file an action with the USPTO Trademark Trial and Appeal Board ("TTAB"), seeking to prevent a new trademark from being registered.

The TTAB functions similarly to a court, but can only decide whether or not a trademark

may be registered (not whether a party can legally use a trademark in connection with its goods or services).

The TTAB may cancel a trademark registration or refuse to register a pending trademark application.

The key in these proceedings is usually the likelihood of confusion issue.

However, likelihood of confusion is often in the eye of the registered trademark owner.

Comparing the Bucks and Jägermeister marks highlights both their similarities and notable differences:



Bucks Logo



Jägermeister Logo

Are individuals likely to confuse the basketball team with the alcoholic beverage (at least before they've consumed a few)?

Probably not.

So why file a TTAB action to block the Bucks from registering its trademark?

To preserve intellectual property rights, of course.

But also, for leverage.

Jägermeister's attorneys

Continued on page 3

FOS IN THE NEWS



FOS shareholder **Laurna Kinnel** was elected President of the Milwaukee Young Lawyers Association at its annual meeting on May 18, 2017.



FOS shareholder **Matthew O'Neill** has been certified to the Wisconsin Pro Bono Honor Society, based on his volunteer legal representation of, among others, incarcerated persons.



With FOS shareholder **Thomas Shannon** serving as Chair, the Cornerstone Project's capital campaign for St. Charles

Parish in Hartland, Wisconsin has exceeded its \$12 million goal.



FOS's **Bruce O'Neill** was remembered at the Milwaukee Bar Association's May 19, 2017 Memorial Service. Before his death from ALS in September, 2016, shareholder Bruce was a preeminent litigator.



After a 1½ week trial, FOS shareholder **Jacob Manian** won a unanimous not guilty verdict for a client charged with felony embezzlement of almost \$400,000.

MANIAN CHIEF SCOUT



FOS shareholder Jacob Manian participated in the 2017 Boy Scout Law Merit Badge Clinic on April 29, 2017 at the Milwaukee Bar Association.

The event was a resounding success, as dozens of Wisconsin scouts spent the day learning about the law.

The day culminated with Attorney Manian conducting a mock jury trial, with scouts playing the roles of attorneys, witnesses, bailiffs and even the judge. The remaining scouts served as jurors.

To earn their Law Merit Badges, the scouts completed a worksheet covering the day's legal areas and issues.



DON'T BE INSECURE—KNOW YOUR LIEN'S PRIORITY



By Michael G. Koutnik

A business owner financing the sale of assets.

A landlord fronting a tenant money for a new pizza oven.

A farmer selling a tractor to his neighbor on credit.

These three have at least one thing in common: each is acting as a lender.

And as a lender, each wants to ensure the security of the loan.

That way, if the other party defaults, the lender can recover or offset its losses.

When a lender provides funds that the borrower uses to acquire an asset (the landlord's

loan to its tenant for a new pizza oven), the lender will frequently take and perfect a "purchase money security interest" in the acquired good.

This security interest is often viewed as the gold-standard of security interests.

This is because, in the landlord's case, for example, it puts the landlord's interest before all the tenant's other lenders as to the pizza oven.

But is that always the case?

Lenders, including those described above, should know that some types of liens may trump a security interest that would otherwise stand in first place.

One example is a lien imposed by state law. In Wisconsin, for example, a mechanic who

is not paid for repairing the tractor, which is then sold by our farmer, may have security for its debt.

The mechanic's debt may be secured by a mechanic's lien that is superior to the farmer's security interest.

The same is true for other businesses, including warehousemen, towing companies, fabricators, and hospitals.

Similarly, wage liens, certain income tax liens, and personal property tax liens may jump over the priority of an existing security interest.

Even a purchase money security interest.

Given these potential priority issues, parties extending credit—especially those who do so only occasionally—must be

sure to engage in proper due diligence.

A first step of due diligence would be to perform lien searches with the Wisconsin Department of Financial Institutions, county register of deeds, clerk of courts, other relevant agencies and, if appropriate, a title company.

Another step could be to include representations by the borrower in the loan documentation as to the presence or absence of liens.

Lien priority can be an unwittingly complicated issue.

Knowledge, however, is power.

Your FOS attorneys can help make sure you are properly secured.

Prevent Employee Theft,

Continued from page 1

It is easy for busy businesses to push internal audits and implementation of safeguards to the bottom of the list.

However, implementing basic proactive controls can drastically reduce the chances of employee theft.

FOS's attorneys can work with you to prepare anti-theft policies and procedures.

They are also available to provide an in-house preventative workshop for your business.

Fear The...

Continued from page 2

acknowledge that its action was part formality to preserve its intellectual property rights. The parties have also been working towards settlement.

That settlement may include restrictions on how and on what products the Bucks may use its logo.

This may provide Jägermeister with assurances that its intellectual property rights are not in jeopardy.

Cheers to an amicable resolution.

FSBO Tips

Continued from page 1

attention should be paid to the contingencies that are typically included in the contract.

One contingency that should be included in nearly every offer is the inspection contingency.

Even if the parties know each other well, a professional inspection of the property should be performed before purchasing.

Sometimes an owner is not aware of a problem or its impact—like that crack in the basement wall.

If financing is used, the buyer determines acceptable financing terms and includes them in the financing contingency.

If the buyer cannot obtain the listed terms, he or she can walk away from the deal.

Many offers have an appraisal contingency. Its timing needs to work together with the financing contingency. Otherwise, the contract may require a decision on financing before the appraisal is finished.

Your FOS lawyer can help you understand these and other contingencies in an offer to purchase.



622 N. Water Street
Suite 500
Milwaukee, WI 53202
Phone: 414-273-3939
Fax: 414-273-3947
www.foslaw.com

Fox, O'Neill & Shannon, S.C. provides a wide array of business and personal legal services in areas including corporate services, litigation, estate planning, family law, real estate law, tax planning and employment law. Services are provided to clients throughout Wisconsin and the United States. If you do not want to receive future newsletters from Fox, O'Neill & Shannon, S.C. please send an email to info@foslaw.com or call us at (414) 273-3939.

Address label

IN THIS ISSUE

Page 1 Employee Theft/Future Lawyer/Sale By Owner/Older Worker

Page 3 Don't Be Insecure—Know Your Lien's Priority

Page 2 Trademark Dispute/FOS In News/Manian Chief Scout

Page 4 Plan Ahead to Avoid School Year Custody Disputes

This newsletter is for information purposes only and is not intended to be a comprehensive summary of matters covered. It does not constitute legal advice or opinions, and does not create or offer to create any attorney/client relationship. The information contained herein should not be acted upon except upon consultation with and the advice of professional counsel. Due to the rapidly changing nature of law, we make no warranty or guarantee concerning the content's accuracy or completeness. This communication may be considered advertising for legal services in some jurisdictions.

PLAN AHEAD TO AVOID SCHOOL YEAR CUSTODY DISPUTES



By Lauren E. Maddente

The snow has melted. The rain finally stopped and the sun is shining (we hope). The pools will open soon.

The kids are almost out of school and will be free for the summer, causing the annual household chaos.

The last thing you want to think about is the next school year. After all, September seems so far away.

But, if you share custody of your child or children, now is

the time to confirm future plans, parental obligations and payment responsibilities.

This is especially true if this last school year did not go as smoothly with your former spouse as you had hoped or expected.

Perhaps, for example, there were disputes about the payment or reimbursement for variable expenses such as school supplies, field trip expenses or extracurricular activities.

Or perhaps your child recently showed interest and promise in a new (and expensive) extracurricular activity. Who

will take him or her there? And who will pay the costs?

Or maybe your child will be transitioning into middle or high school. Are both parents in agreement about what school is best for your child?

These negotiations and ultimate decisions do not happen overnight. In fact, they can be quite time consuming, and may require budgeting or advance payments. That is why it is important to start thinking about and planning for these matters now.

Hopefully, many issues can be resolved within any existing shared custody agreement.

Sometimes, however, disputes regarding even these agreements arise.

Litigation, of course, is available as an unfortunate last result when discussions and negotiations fail. Aside from the financial and emotional cost, litigation is time-consuming, taking weeks or months before final orders are issued.

The best course is to come to an agreement. And now is the time to begin the process.

The attorneys at FOS can help you plan for the next school year so that you can start the fall with ease.