

Newsletter

January 1999

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Our office will be closed for the following holidays the first quarter of 1999:

January 18, Martin Luther King Jr. Day

February 15, Presidents Day

Our next newsletter will be mailed out the beginning of April 1999.

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Remember if you have an article that you would like to contribute to our newsletter just fax it to us for our review. We must receive the article no later than March 15th for our April newsletter. ♦

THREE OFFSHORE TRAPS TO AVOID

Most havens are reasonably safe and offer a valuable bundle of benefits to their depositors. Still, move cautiously. There are any number of scams and booby-traps to snare you:

- Some offshore banks are notoriously weak financially. This means you must investigate the financial condition of any bank you're considering.



Review the bank's most recent financial statements. Your money is not necessarily safer in an American bank. In fact, the failure rate among American banks is considerably higher than among foreign banks. The big difference: American accounts are insured up to \$100,000. Foreign accounts are uninsured. Moreover, banks in foreign countries are not always as highly regulated as U.S. banks. Investigate carefully! How can you locate offshore banks-get the facts and figures to evaluate each?

- Hold your deposits in U.S. currency. Most foreign banks automatically keep your account in U.S. dollars. This allows you to avoid the risk of currency devaluation that occurs when your funds are in the currency of the offshore haven.
- Avoid offshore business trusts that promise financial privacy and a safe haven from the IRS

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WHAT'S IN A BUSINESS NAME?

By Missy Armstrong

A business name creates an instant image, it's the first opportunity to make a memorable impression. If you have a client who is going to open a business, suggest some research for a good name.

Your client may be very enthusiastic, but it's not beneficial to list too much information about a business in it's name. Long names can be annoying and hard to locate. A name is used only to identify a business, an easily forgotten point by new entrepreneurs. A logo tells something about the business by word or symbol.

A good experiment is to ask your client to pretend they are writing themselves a check in the name of their choice. This act can easily eliminate the ridiculous. Three good questions to use as a guide are: Will this name stand the test of time? Does the name offend anyone? Does it have a broad market appeal?

The average person takes in about three words. Initials are not good because the customer doesn't know that they stand for.

"A" is always a plus at the beginning of a name. The "A" can move a business ahead of it's competition in the telephone book and alphabetical publications.

A good business name requires more than ego. The right name can become a financial asset to the owner. As with all things of value it should be protected. This explains why a business needs to trademark it's name and logo. ♦

NEW CALIFORNIA FRANCHISE TAX FEE

Commencing January 1, 1999, certain "qualified new corporations" are entitled to a reduced prepaid minimum tax of \$300.00 This applies to the filing of Articles of Incorporation or Statement and Designation by Foreign Corporation forms.

To be a "qualified new corporation", a corporation must meet **both** of the following conditions:

(1) The corporation reasonably estimates that, for

the income year, it will have gross receipts, less returns and allowances reportable to California state, of less than one million dollars (\$1,000,000.00). The determination of gross receipts of a corporation is made by including the gross receipts of each member of the commonly controlled group, as defined in California Revenue and Taxation Code section 25105, of which the corporation is a member. "Gross receipts, less returns and allowances reportable to this state" means the sum of the gross receipts from the production of business income, as defined in Revenue and Taxation Code section 25120(a), and the gross receipts from the production of nonbusiness income, as defined in Revenue and Taxation Code section 25120(d); **and**

(2) The corporation reasonably estimates that, for the income year, it will have a tax liability under Revenue and Taxation Code section 23151 that does not exceed eight hundred dollars (\$800.00).

"Qualified new corporations" are generally subject to a \$300.00 prepaid minimum tax and may file Articles of Incorporation and Statement and Designation by Foreign Corporation forms with the Secretary of State with the \$300.00 prepaid minimum tax amount.

EXCLUSION: THE REDUCED PREPAID MINIMUM TAX OF \$300.00 DOES NOT APPLY TO ANY CORPORATION IF 50% OR MORE OF THE CORPORATION'S STOCK IS OWNED BY ANOTHER CORPORATION. IF 50% OR MORE OF THE CORPORATION'S STOCK IS OWNED BY ANOTHER CORPORATION, THEN THE CORPORATION IS NOT SUBJECT TO THE EXCEPTION FOR "QUALIFIED NEW CORPORATIONS" AND THE \$800.00 PREPAID MINIMUM TAX APPLIES.

NOTE: Where the \$300.00 prepaid minimum tax is paid but either the gross receipts limitation or tax liability limitation applicable to a "qualified new corporation" is not satisfied, an additional tax in the amount of \$500.00 will be due to the Franchise Tax Board by the original tax return date. See Revenue and Taxation Code section 23221(e). ♦

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If you can build a business up big enough, it's respectable.

Will Rogers

“INTERNET” IS TRADEMARKED

Internet, Inc. a Delaware corporation located in Reston, Virginia filed a federal trademark application with the U.S. Department of Patents and Trademarks on May 19, 1988. They were issued their registration certificate on October 10, 1989. Their description of services is: communication services, namely providing electronic data transmission services in the electronic banking field and retail marketing field.

For this reason the U.S. Patent and Trademark Office will not accept any applications that contain the word “Internet” either in the mark itself or in the description of the mark. When preparing a trademark application, internet services are described as “a global computer information network”. ♦

**If Your Time Is Limited,
Trying To Reach Someone
By Phone Can Be
Frustrating. We Know This
First Hand.**

**If You Know The Information
We Need To Perform Your
Service, Just FAX Us.**

**The FAX Works 24 Hours A
Day. Don't Forget To
Include Your VISA,
MASTERCARD Or
AMERICAN EXPRESS
Number.**

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Business is never so healthy as when, like a chicken, it must do a certain amount of scratching for what it gets.

Henry Ford

and other creditors. Trusts do not give you the same protection as recognized, chartered banks. Business trusts not only cost you considerably more, but you'll also be more easily spotted by the IRS.

- Learn as much as you possibly can about offshore havens. It will give you greater confidence in this very important asset protection strategy-and will also help you avoid costly mistakes.

The purpose of a foreign account is not necessarily to avoid taxes, but to give you greater privacy and asset protection.

PRACTICAL POINTERS ON THE USE OF PERSONAL NAMES AS TRADEMARKS.

Surnames. Using your surname (last name) as a trademark has a few drawbacks you might want to consider. You may want to sell the business someday, and it will be necessary, as a practical matter, to sell the name with it. This means a stranger will be operating under your name. And perhaps worst of all, the sale of your business may prevent your children or other relatives from capitalizing on the family expertise by opening their own similar business under their own name. Finally, marks that are “primarily surnames” do not qualify for federal registration, absent a showing of secondary meaning or perhaps an association with another term that makes the combination inherently distinctive as a whole, such as *Warner's World* for a line of stores specializing in 100% cotton products.

First Names and Nicknames: First names are generally even weaker as trademarks than surnames, because most are so much more common. But, for the same reasons, they have fewer of the disadvantages that go with selling the business. And they can also become unusual simply with the addition of an unusual modifier, like *Trader Vic's* or *Aca Joe*.

As with surnames, anyone can use their first name or nickname on a business unless it's too close to a famous one. For example, “Sony” Florendo can't call her restaurant *Sony's*, and Mayo Priebe can't call her drugstore *Mayo's Drugs*. *Sony Corp* and the *May Clinic* objected and won, even though there was little likelihood of confusion between the local businesses

and their more famous namesakes. Perhaps the judge felt that these were really attempts to capitalize on the more famous trademarks or that the second uses diluted the original marks. But one is tempted to conclude that the size and wealth of the complaining parties was a significant factor.

Initials. Use of initials won't change the strength or weakness of the trademark if they are part of what is essentially a first or last name. For example, the owners of *P. T. Damm's* (as a trademark for a national clothing chain) won't infringe on the rights of others using the *Damm* name. On the other hand, until the company develops a lot of public awareness of the name as a mark (that is, it acquires a secondary meaning), they probably can't stop anyone else from using the same or similar trademark, except in the retail apparel business. But if another *Damm* opened up a competing clothing store, even without secondary meaning, *P. T. Damm* could probably stop them under unfair competition laws, as well as under trademark laws, once secondary meaning is shown.

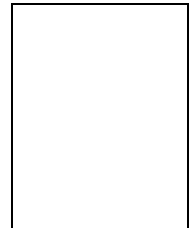
A trademark consisting completely of letters that aren't a person's initials is not inherently weak. Rather, its

trademark strength depends on the strength of the words the initials represent. If the initials do not stand for anything and are an uncommon arrangement of letters, the mark can be distinctive as it is from the outset. For instance, ABC is not considered distinctive because it is in such common use (except, of course, in the media world, where the network initials have secondary meaning), but XQE may be. ♦

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Notwithstanding all the megamerging in recent years and the ongoing giantness of the likes of General Motors, small businesses continue overwhelmingly to be America's biggest business. They make up 99.8% of the U.S.' business concerns. Over three-quarters of the dollar volume generated by construction and wholesaling comes from small businesses; they provide nearly half of the volume generated by the service industries, and account for 43% of our gross national product. And of the projected 3 million new jobs that will have been created by the end of this year, two-thirds will be in companies with fewer than 100 employees. Malcom Forbes (1986)

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