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- **Established in 1977**
- **General Practice Law Firm**
- **16 Attorneys**
- **21 Support Staff**
- **Multiple Office Locations**



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# Protecting Trademarks and Copyrights

Presented by GKH Attorneys  
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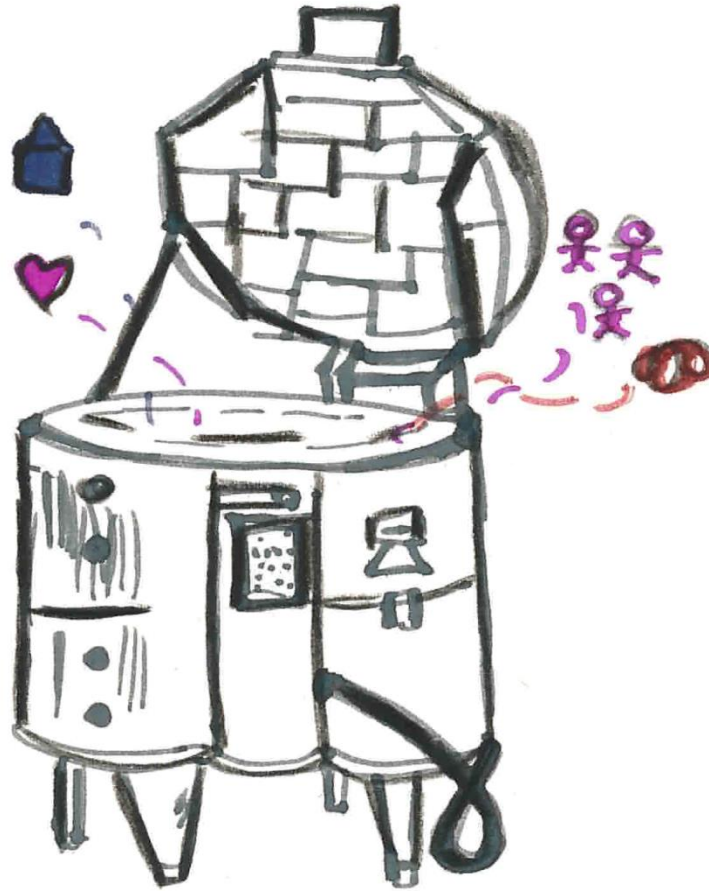
# Case Study – A Hypothetical

- Well known and nationally recognized Ceramic Artist out of Lancaster, PA with Ceramic Design Studio called “Ceramavis Studio Works”. Offers online classes via the internet and has a traveling ceramic studio that tours the nation.
- Slogan is “Envision your life in our clay”.
- Logo is kiln with the lid open and ceramic works extending out of the lid including a home, people, and an animal.

# Case Study – A Hypothetical

- Developed a new specific type of clay material that contains certain glass particles and thus has a proven faster drying time.
- Works of art, particularly a ceramic piece, that will be displayed in front of a NYC opera house. Developed molds that a competitive business is now using to create own sculpture.

# Ceramavis Studio Works



# Intellectual Property Defined

- Black's Law Dictionary: "A category of intangible rights protecting commercially valuable products of the human intellect."
- Rationale for protection
- Goodwill generally



# Intellectual Property Types

- Trademarks – Your brand
- Copyright – Your works
- Patent – Your inventions
- Trade Secrets – Your valuable business secrets

# Patents

- What it protects
- Criteria for Patent
- Rationale for filing
- Costs
- Method of applying and procedure

# Trademarks

- Black's Law Dictionary: "A word, phrase, logo, or other graphic symbol used by a manufacturer or seller to distinguish its product or products from those of others."
- Key elements: Asset types protectable, owner and product(s)
- Standard character mark v. Design mark
- Trademark v. Service mark

# Trademark Registration

- Benefits of federal registration at the USPTO
- Conducting a name search
- Federal, State, and Common Law rights
- Commercial Use/Interstate Commerce

## Some Benefits of Federal Trademark

- Exclusivity to use that mark in a given commercial niche in the entire United States
- Statutory damages plus attorneys fees if willful
- Constructive notice of claim of ownership and evidence of ownership

## Some Benefits of Federal Trademark

- Jurisdiction of federal courts may be invoked
- Evidences rights for the purposes of scrutinizing debt or sale of those rights
- Superior status for website recognition

# Trademark Clearance Process

- Steps
- Search
- Costs
- Timing

# Test – Likelihood of Confusion

- Factors
- How applied
- Federal v. Common law



# Conducting a Search for Name/Slogan

- Rationale
- Steps
- Analyzing results

# Possible Hurdles/Business Names

- Ceramic Vision For Today
- Visions of Ceramics Dance Studio
- Works of Ceramics by Vissy

# Possible Hurdles/Slogan

- “Vision your life in a day”
  - used by craft store
- “Vision a life of a clay for everyday and everywhere”
  - used by an art museum

# Trademark Application

- Application process
- Registration steps
- Standard for evaluation
- Post registration
- In use v. Intent-to-use

# Copyrights

- What can be protected
- What is not copyrightable?
- Rationale for filing with US Copyright Office
- Clearance process – 5 Ws
- Registration
- Post-Registration – giving notice

# Copyrights

Copyright notice

samples (even absent registration):

© 2017 Gibbel Kraybill & Hess LLP  
(for a new Work)

© 2013 Peter J. Kraybill  
(from prior creation of Work)

# Post Registration – Trademark Infringement

- Company named Viscerama Works is using this name – No federal mark
- Company named Viscerama Work is using the name – now seeking federal registration

# Post Registration – Trademark Infringement

- What is it?
- How do you monitor it?
- Procedural steps required
- Penalties for infringement



# Copyright Infringement

Another PA company has replicated your mold and is attempting to reproduce ceramic sculpture

- What is copyright infringement?
- How do you prove it?
- Penalties for infringement?
  - Was the Copyright already REGISTERED?

# Proving Copyright Infringement

Access

Similarity

Facts & Circumstances

Validly copyrighted underlying Work

# Copyright Infringement Online

## Digital Millennium Copyright Act

Online service providers – safe harbor

Takedown Notice

Criminal or Civil penalty?

# Copyright Infringement & Fair Use

...Litigation ensues. Def defends on “fair use”

Is it “fair use”? - noncommercial, educational purpose, news, parody, satire, criticism, comparative advertising, de minimus use

17 USCA §107, note 4 factors: nature, amount, substantiality, and effect on market

Overall cost ...war of attrition/pyrrhic victory vs. royalty fee

# Copyright Strategies

**Copyright holders want:**

- control
- compensation

Strategy: neither make empty threats nor allow impunity for infringers

# Copyright Strategies

## Copyright users want:

- no liability
- reasonable terms of use

Strategy: ONLY use, copy or create derivative works if possessing:

- written permission
- from the copyright holder
- of 100% of rights to the work  
(i.e. a written license agreement)

# Copyright Strategies

## Copyright users --

If you want to use a work and do not know whether it is copyrighted, assume that it is copyrighted and not public domain.

Don't use it until you clear the rights or get a written license for your specific use!

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# QUESTIONS & ANSWERS

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