

**Protecting Intellectual Property in the Equine World**  
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## **Overview**

Intellectual property is most simply defined as property that one cannot build a physical fence around. Most of us understand and appreciate that the term "real property" refers to the land, or the land and structures built upon the land. In most, if not all instances, it is possible, and advisable, to build a fence around a particular parcel of real property to protect and maintain the value of the land, the structures, and the horses and other livestock on the land.

But what about property that a person or company owns and wants to protect, but that one literally cannot build a fence around? Such property is referred to as "intellectual property." This type of property is often defined as a product of the mind that has commercial or other value. Examples of this type of property include literary or artistic works such as books, songs and software, as well as names, brands, symbols, trademarks and inventions. We can and should protect this property in other ways.

## **Trade Names, Trademarks and Logos**

One can easily appreciate the value in a good name. Without a doubt, a person's, company's or facility's name is connected with the underlying reputation of that person, company or facility. For example, a name or trademark that is associated with high quality horses and breeding, training, farms and ranches, equine products or other equine-related services is quite a valuable asset that should be protected in order to maintain and grow that value. Similarly, logos (which may be used with or without a name), are also symbols of the quality of horses, breeding, training, farms and ranches, equine products, and other services offered.

With proper steps, one can both enhance the value of one's names and logos and also provide protection against harm resulting in confusion and/or weakening caused by other parties using the same or similar names or logos. Such steps may include obtaining state and/or federal registrations for one's names and logos, and using proper notification to the public, including to your competitors, of your rights in such names and logos. In addition, prior to choosing a new name or logo, it is advisable to conduct research to make certain that such name or logo will not conflict with the rights of others.

## **Promotional and Website Considerations**

All promotional materials, including websites, brochures, business cards, letterhead, advertisements in periodicals, banners and other signage at events should reflect your name, and wherever possible should contain appropriate notices of ownership of trademark and copyright. Further steps to protect your name and trademark rights

include taking action as soon as possible when you become aware of another person, company or facility using the same or confusingly similar name or logo. However, prior to communicating with another party which you believe is infringing your rights, it is highly advisable to consult an attorney knowledgeable in this area to avoid adverse consequences.

Hiring others to assist you with marketing projects such as designing and/or operating your website and in designing and preparing other marketing material, as well as with facility designs, needs to be done in such a way as to maintain your rights. For example, a mistake commonly made when engaging another party to produce logos, websites, architectural plans for stables and other structures is failing to have a written agreement that provides which party actually owns the intellectual property embedded in the product being produced. It is not correct to assume that because you paid for it that you own it. Therefore, it is highly advisable that you enter into a contract with any third party you engage to provide services that might include intellectual property. That contract should contain appropriate terms so that any intellectual property created as a result of the services will be assigned to and owned by you.

You should take care in displaying materials on your website such as photos, drawings and articles that you have not completely originally created or for which you have not obtained express written permission to use in the way you are using it. For example, a photo that appears in a magazine is typically subject to copyright ownership rights by the photographer and/or the publisher of the magazine, which would preclude you from posting it on your website or reproducing it or using in any other way. If you display a photo of another's product and there is a trademark on that product, you could potentially be held liable for trademark infringement. Links on your websites to other websites can also subject you to liability, in some cases due to the appearance of a false association between the owners of the two websites.

Another consideration with respect to websites is to be certain that you have an adequate "terms of use" policy to which the user of the website must agree. Particularly with respect to interactive websites, it is critical to require users to review and then click on a button to confirm that the user agrees to the terms of use. Failure to require this could subject the website owner to liability to the user or to third parties. In addition, collecting information provided by users of the website, including, but not limited to, credit card information, requires that you obtain, store and use this information in accordance with applicable law.

## **Livestock Branding**

Many owners choose to brand their horses and cattle as a clear means to identify the livestock should it be lost or stolen. Most states, including Arizona, have specific laws regarding the choice and registration of brands. For example, the state of Arizona requires that your brand be registered, and once registered the brand must be re-registered every five years. A new brand must meet certain requirements, including that it not be similar to another brand in use in Mexico or in any of the states bordering Arizona

(California, Nevada, New Mexico, Utah). When selling a brand, it is important that your sale agreement convey the registration, the physical branding devices, and all other rights in the brand. In Arizona and in many other states, once the brand is transferred, the transfer must be filed with the appropriate state agency. Because the transfer does not extend the expiration period, you must keep track of this and renew at the appropriate time. You should be familiar with and follow your state's applicable law.

## **Patents**

Yet another form of intellectual property that may arise in the equine industry involves inventions, which may be protectable by patent, if the invention is novel (new) and unobvious. For example, devices such as muck rakes, feeding bin holders, tractor accessories, dietary supplements, bits, saddle pads, chemical compositions for repelling flies, a new way of attaching a lead line to a halter, grooming tools, etc., may be patentable if they meet certain criteria. Patents provide a legal means to exclude others from making, using or selling the invention claimed in a patent. However, owning a patent does not necessarily give the owner the right to manufacture, use or sell what has been invented, because there may be other patents that would be infringed upon by such manufacturing, use or sale. A further consideration with respect to patent protection, is that in the U.S., in order to obtain patent protection, an application for patent must be filed no later than one year after the invention is publicly used or displayed, sold, offered for sale or described in a written publication. However, most foreign countries do not provide this one-year grace period; therefore, if patent protection outside of the U.S. is desired, it is important to file a patent application as soon as possible after the invention is conceived.

## **Summary**

In summary, the above information is just a thumbnail sketch of intellectual property issues that might affect anyone in the equine industry or any horse owner. This Article is not intended to provide or replace specific legal advice, and we encourage you to obtain legal advice.

*Fennemore Craig's Equine Law Practice combines attorneys with experience in unique aspects of the equine industry, many of whom own horses and participate in various equine disciplines, together with the legal services needed by today's equine businesses. Susan Stone Rosenfield is a member of Fennemore Craig's Equine Law Practice and Intellectual Property Law Practice, is a Registered Patent Attorney, and has extensive experience representing small and large companies in the agricultural and equine areas. She is chairperson of the Intellectual Property Section of the Arizona State Bar.*

*If Fennemore Craig, P.C. is able to assist you, our website address is [www.fclaw.com/equine-law/](http://www.fclaw.com/equine-law/).*