VALLEY LAWYER

MAY 2019 • $5

A Publication of the San Fernando Valley Bar Association

Lawyer Moms: Poise, Professionalism and Keeping It Real

Trademarks: How to Protect Digital Products and Services

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CONTENTS

MAY 2019

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On the cover (left to right): *Holden and Ruth Moghaddam (top); Amanda Moghaddam (bottom); Peta-Gay Gordon; Onai Gordon (top); Joanna Sanchez with Naya (bottom); Joy Kraft Miles and Marcia Kraft (top); Hannah Sweiss with Sanna and Nylae; and Heather Glick-Atalla, husband Nabil, Nathan (left) and Brandon (right).*

FEATURES

DEPARTMENTS

VALLEY LAWYER

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Printing Southwest Offset Printing

"My Babies!"

YI SUN KIM
SFVBA President

ykim@gblawllp.com

THIS MONTH'S COVER STORY reminded me of when I watched our Board of Trustees being installed last October, and I spontaneously exclaimed "My babies!" I thought I should finally explain my sudden colloquial response.

By then, I personally knew and respected each person standing on stage. I knew their individual qualifications, life experiences, non-profit work, and unique personalities. Seeing them stand together made me realize that I hit the jackpot. I was anxious and insecure entering into this position, but at that moment, I felt there's no way I can fail with this group.

As to why I said "babies"—I hope none took offense—it was because of the excitement, freshness, and positivity they had as they gathered for the first time. I saw enormous potential and immediately felt responsible and obligated to nurture their talents, ideas, and good intentions. There was such an eagerness and sincerity of spirit, and I committed to do all I can to support and materialize their efforts.

Now in the second half of our term, I'm even more grateful to our trustees who remain optimistic and willing to serve. They actively participate, contribute valid and well-thought out points, share creative ideas, and take the initiative to investigate and develop new programs. They do so with civility, good nature, and humor. A lot occurs behind the scenes before any program comes to fruition, and our trustees are particularly diligent about developing sustainable benefits and programs before you even see it.

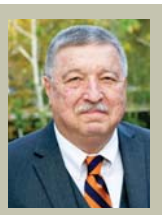
This was also an opportune year to be the first President with Rosie Soto Cohen as Executive Director. I rely on her institutional knowledge from her years of service. But in this new capacity, especially with our new offices, she has been particularly motivated, committed, and open to explore new ideas, willing to do what is difficult, make new impressions, and revitalize our association.

These next few months, you will see that we are forging stronger ties with Neighborhood Legal Services to promote pro bono opportunities. We are providing up-to-date information from the courts with increased participation at bench bar meetings. Substantive new programs are being carefully developed to address every practice and type of attorney, including new lawyers, women lawyers, trial lawyers working with expert witnesses, and attorneys who desire to network, volunteer, interact with other bar associations, participate in community events, and collaborate with community leaders. These programs will go beyond my term, because I am not the one shouldering all of the work, such that the SFVBA will continue to be a source of value, benefit and opportunity to you.

The only downside is that we will continue this path without Catherine Carballo-Merino, our Attorney Referral Consultant. She is hard working, intelligent, and easy to work with, and provided tremendous value to the ARS. Her monthly columns in this magazine were exceptional and perfectly highlighted our amazing ARS panelists. We wish her the very best in what is guaranteed to be a bright future.

Motherhood and the Law

MICHAEL D. WHITE
SFVBA Editor



michael@sfvba.org

TEXTBOOK DEFINITIONS CAN be such dry, analytical things. Look up the word 'mother' in the dictionary, online or print and you'll find that "a mother is the female parent of a child. Mothers are women who inhabit or perform the role of bearing some relation to their children, who may or may not be their biological offspring."

Sounds like something written by a commercial real estate appraiser, doesn't it—clinical at best and certainly not something rolled out by the good people at Hallmark, back in Kansas City. That is because it really was not meant to be anything other than a classification, not a personalization, of what a mother is.

In this issue, you will get the chance to hear from several women, who just so happen to be lawyers and mothers—each, in itself, challenging positions of responsibility, duty, trust, and commitment. All of them, each with their own personalized management techniques that address every issue from depositions and feeding schedules to court appearances and runny noses.

They, and all the others like them, are truly remarkable women who are committed with more than equal energy, not only to their careers, but to their families and their children. They work hard both in the office and out. They are steadfast in their dedication and allegiance, both to the law and their loved ones. And they get it all done and we honor them.

Next time you have reason to check your dictionary, lookup the word 'commitment' and write the name of one such woman in the margin nearby as a reminder that there is more to a definition than mere words on a page.

This month's MCLE article is a deep dive into the curious world of trademarks by attorney Morgan R. Travers, while financial planner John Horn walks us by the hand down the path from piggy bank savings to retirement and attorney Benjamin S. Seigel clarifies some of the complex legal issues that impact the fashion, apparel, and textile industries.

As you have no doubt noticed, we have expanded our Member Focus section from two to four 'get to know you' SFVBA member profiles. It is fascinating to get the back story on different people and learn more about who they are, where they come from, and whet drew them to the law.

One of this month's profiles the remarkable story of attorney Steven M. Sepassi, who has earned, not only a JD, but a BS, MS and a PhD in Engineering.

Funny thing. During a recent visit to the SFVBA offices, he—with three degrees, including a Doctorate, in engineering—and I couldn't figure out how to get the Keurig coffee machine to work. Rosie to the rescue. Laughs all around.

CALENDAR

MAY 2019

SUN	MON	TUE	WED	THU	FRI	SAT
			1	**2** Membership & Marketing Committee **6:00 PM** **SFVBA OFFICES**	**3** Inclusion & Diversity Committee **12:00 NOON** **SFVBA OFFICES**	4
5	**6** VBN VALLEY IAR NETWORK **5:30 PM**	**7** SFVBA Hosts City Council District 12 Candidate Forum **6:30 PM** **SFVBA OFFICES** Sponsored by the Attorney Referral Service of the SFVBA, The Reape-Rickett Law Firm and Kyle M. Ellis, Esq.	8	9	**10** Bankruptcy Law Section Bankruptcy Attorney Fees Opening the Floodgates **12:00 NOON** **SFVBA OFFICES** Shai Oved, Esq. and the Honorable Robert Kwan moderate a discussion re attorney fees and nondischargeability by Panelists David Golubchik, Esq. and Benjamin Nachimson, Esq. Bankruptcy Law Legal Specialization. (1.25 MCLE Hours)	11
12 Happy Mother's Day	13	**14** Probate & Estate Planning Section Be Careful of Boilerplate: Pitfalls of Standard Estate Planning Language **12:00 NOON** **MONTEREY AT ENCINO RESTAURANT** Attorneys Sarah Broomer and Stefanie Cutler give the litigator's point of view and discuss how boilerplates can lead to unwanted litigation. (1 MCLE Hour) Board of Trustees **6:00 PM** **SFVBA OFFICES**	**15** VCLF Board Meeting **6:00 PM** **SFVBA OFFICES**	16	17	18
19	**20** Family Law Section Using Dissomaster for Support under the New Tax Laws **5:30 PM** **MONTEREY AT ENCINO RESTAURANT** Judge Jonathan L. Rosenbloom, attorney Dan Davisson and Lynda Schauer, CPA will outline the latest changes. Approved for Family Law Legal Specialization. (1.5 MCLE Hours)	**21** Taxation Law Section Taxation Issues in Forensic Accounting Examinations **12:00 NOON** **SFVBA OFFICES** Certified Fraud Examiner Chris Hamilton will discuss examination of books and records to uncover tax motivated irregularities. (1 MCLE Hour) San Fernando Valley Bar Association Community Blood Drive Give blood. Help save lives. Encino-Tarzana Library 12:00 PM to 6:00 PM See ad on page 21	**22** Business Law and Real Property Section Office Leasing—The Tenant's Perspective Sponsored by MAZIROW COMMERCIAL, INC. Tenant Representation and Trusted Advisor **12:00 NOON** **SFVBA OFFICES** Sheryl Mazirow sponsors and leads the discussion. Free to SFVBA members! (1 MCLE Hour)	23	24	25
26	27	**28** Editorial Committee **12:00 NOON** **SFVBA OFFICES**	29	**30** DINNER AT MY PLACE 6:30 PM Valley Village See ad on page 36	31	

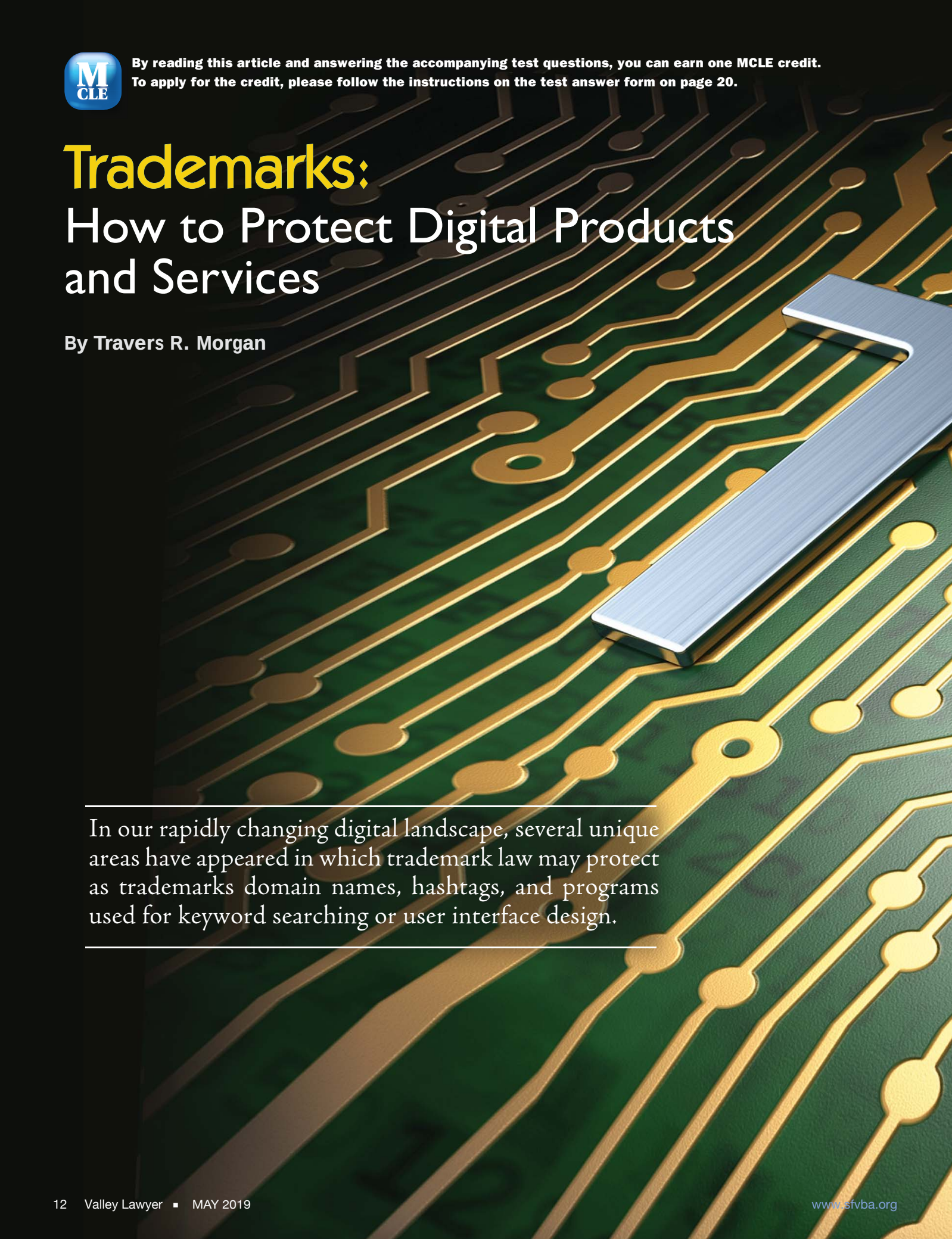
SUN	MON	TUE	WED	THU	FRI	SAT
						1
2	3 VBN VALLEY BAR NETWORK 5:30 PM	4	5	Membership & Marketing Committee 6 6:00 PM SFVBA OFFICES	7	8
9	10	Probate & Estate Planning Section 11 A View from the Bench 12:00 NOON MONTEREY AT ENCINO RESTAURANT The must attend meeting of the year, the Probate Bench Officers update the group. (1 MCLE Hour) Board of Trustees 6:00 PM SFVBA OFFICES	12	13	 14 Membership Appreciation Party 6:00 PM SFVBA OFFICES	15
16 Happy Father's Day	17	Taxation Law Section 18 Foreign Investors in US Real Estate 12:00 NOON SFVBA OFFICES Kevin Moore will discuss the optimal tax efficient strategies through which foreign investors can invest in US real estate and discuss income, estate and gift taxes. (1 MCLE Hour)	VCLF Board Meeting 19 6:00 PM SFVBA OFFICES	20	21	22
23	Family Law Section 24 Grandparents' Rights 5:30 PM MONTEREY AT ENCINO RESTAURANT Approved for Family Law Legal Specialization. (1.5 MCLE Hours)	25 Save the Date! SFVBA ANNOUNCES ITS INAUGURAL SUMMER BLOCK PARTY Thursday, July 18 6:00pm – 9:00pm Woodland Hills Country Club Food, Drinks, Prizes, Raffle & Fun FREE To SFVBA Members! More information coming soon!	26	27 DINNER AT MY PLACE 6:30 PM Topanga 	Inclusion & Diversity Committee 28 8:15 AM SFVBA OFFICES	29
30						

The San Fernando Valley Bar Association is a State Bar of California MCLE approved provider. Visit www.sfvba.org for seminar pricing and to register online, or contact Linda Temkin at (818) 227-0495 or events@sfvba.org. Pricing discounted for active SFVBA members and early registration.

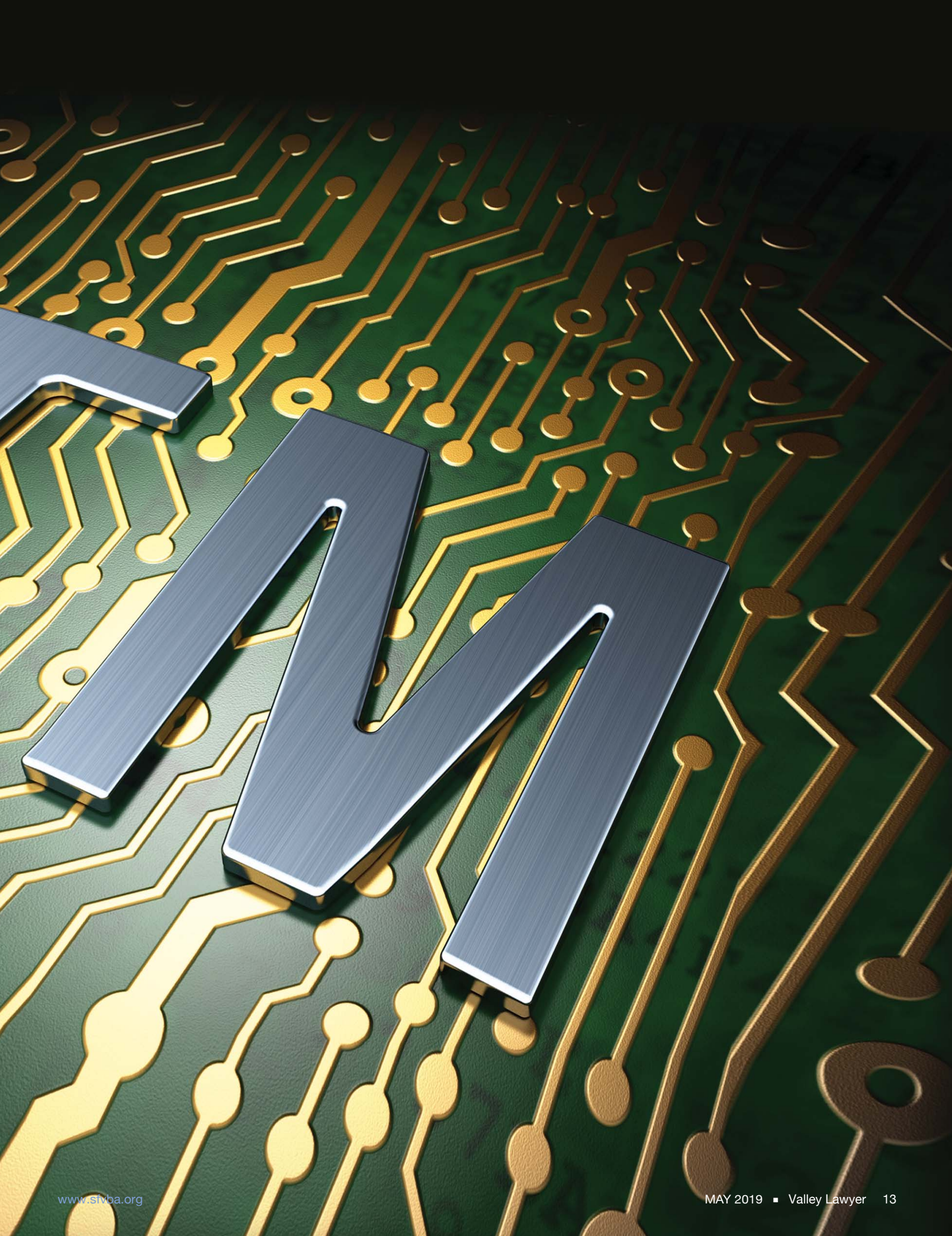
By reading this article and answering the accompanying test questions, you can earn one MCLE credit. To apply for the credit, please follow the instructions on the test answer form on page 20.

Trademarks: How to Protect Digital Products and Services

By Travers R. Morgan



In our rapidly changing digital landscape, several unique areas have appeared in which trademark law may protect as trademarks domain names, hashtags, and programs used for keyword searching or user interface design.



WHAT FOLLOWS HERE IS A WALK-THROUGH of several of the unique areas of trademark law for digital products and services: first, trademarks and their applicability to domain names and associated issues; second, the unique area of keywords and the interesting trademark issues that have arisen in association with them; third, the concept of trade dress based on web and software based user interfaces; fourth, hashtags and whether they are protectable under trademark law; and, finally, a brief note about the Madrid Protocol and why it may be even more important to trademarks in a global information age.

What is a Trademark?

A trademark is defined as "a word, phrase, symbol, and/or design that identifies the source of goods or services being offered to consumers."

The underlying goal of trademarks is to help people associate goods or services with a specific entity or person who is the source of those goods. When services are being offered instead of goods, this type of intellectual property is known as a service mark. People generally think of things like a business logo or a name associated with trademarks.

However, in our rapidly changing digital landscape, several unique areas have appeared in which trademark law may protect as trademarks, domain names, hashtags, and programs used for keyword searching or user interface design.[1]

Can You Trademark a Domain Name?

Just as with any other type of trademark, a person or entity may register a domain name as a trademark as long as it is used to identify the source of goods or services.

In other words, the actual domain name must be used as a trademark. For example, if the company actually uses the name with the appended *.com* for advertising their goods or services, it may be protectable.

However, if a company does not use the *.com* in its name it may not be able to protect the domain name as a registered trademark. Some examples of domain names that have been registrable trademarks are *Hotels.com*[2] and *Booking.com*.[3] Take note that these domain names are actually advertised as the name of the business in their commercials and advertising.

Both the Sixth Circuit Court of Appeals and the Ninth Circuit Court of Appeals have reiterated a similar standard for determining whether a domain name may be registrable as a trademark. At the Sixth Circuit Court of Appeals, the court stated that when a domain name is used only to indicate an address on the internet and not to identify the source of specific goods and services, the name is not functioning as a trademark.[4]

In effect, the branding of the business needs to be centered around the actual top-level domain name such as a *.com, .net, .org, .biz,* etc. As stated above in the *Hotels.com* and *Booking.com* examples, the branding for these businesses is synonymous with the .com top level domain.

In the Ninth Circuit Court of Appeals, the court determined in *Brookfield Communications v. West Coast Entertainment* that registering a domain name does not create an initial date of use for a trademark unless it is used as a trademark, i.e. to identify the goods and services.[5]

Similar to the Sixth Circuit decision above, the *Brookfield* decision reiterates that the domain name must be what is used to identify the goods or services for a business. Also, this decision goes a step further to help understand priority and what constitutes "use" in association with domain names.

In *Brookfield*, the issue was who had priority to the name *MovieBuff*. The plaintiff had created a software program of that name that was a database full of entertainment industry information.

In 1993, the plaintiff began advertising the *MovieBuff* software and eventually registered it as a trademark. Later, the plaintiff attempted to register *MovieBuff.com* as a trademark. However, the defendant had already registered the domain name with an online domain name registry back in 1991.

As stated above, the court found that registering a domain name such as *MovieBuff.com* with a domain name registry without use of such a domain name in association with goods or services does not constitute the use required under trademark law.

Therefore, even though the defendant was the first to register the name *MovieBuff.com* with a registry, that did not secure trademark rights because the plaintiff had begun to use the name in commerce in association with their goods and services first. This is one reason why it is important to file an intent-to-use application first so an early priority date can be obtained even if plans calls for selling the product or service at a later date.

The *Brookfield* case likely would have gone the other way if the defendants had filed an intent-to-use application with the United States Patent and Trademark Office (USPTO) when they originally registered the domain name with a domain name registry because they did so two years before the plaintiff began using the name *MovieBuff*.

Travers R. Morgan is currently Cislo & Thomas LLP's Data Privacy Officer and practices in the areas of data privacy, patent, copyright, and trademark law. He is admitted to practice in the State of California and before the U.S. Patent and Trademark Office. He can be reached at tmorgan@cislo.com.

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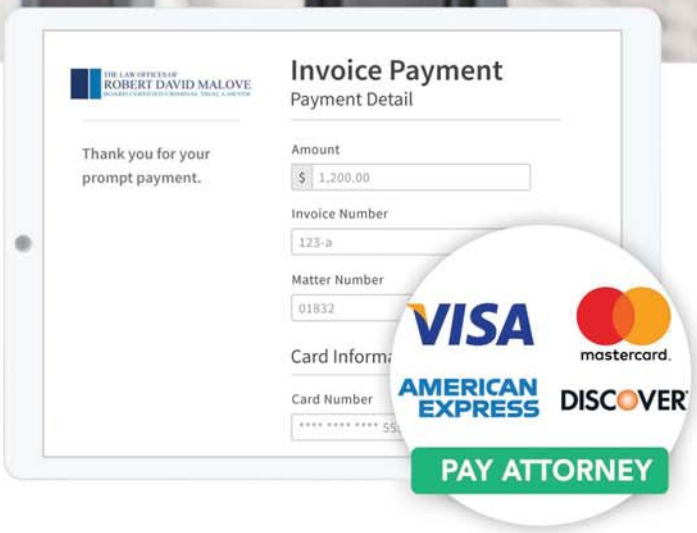

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Trademark Issues with Keyword Advertising

A keyword is a term that is used online in search engine optimization as well as online advertising techniques.

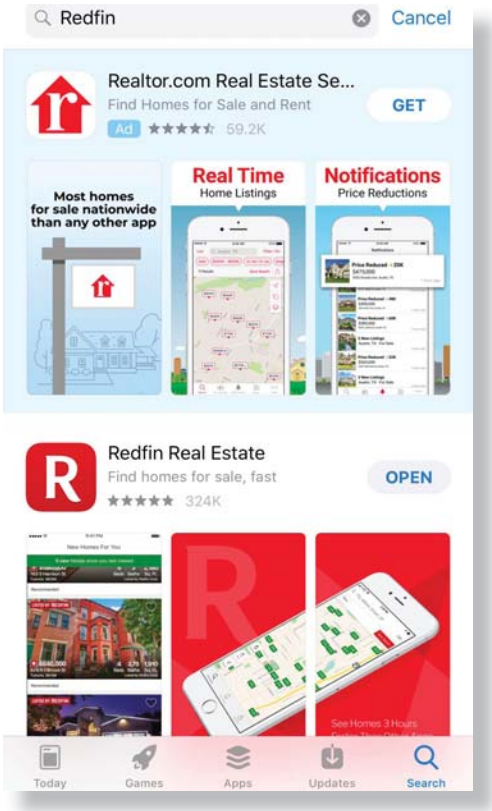
The keyword is a word or phrase that describes the content of your page. If you are a law firm and want to use keywords to drive potential clients to your website, you may pick specific search terms that you think people may type into a search engine that are associated with your website and/or relate to your services.

An example of this could be when the phrase "How to file a trademark?" or the word "trademark" is entered on Google, you may want that person to be directed to your website.

Luckily, you can pay Google to advertise your website when someone types in those similar words or phrasings. However, with every leap ahead in technology, someone thinks of a tricky way to use the system in a new, unique way.

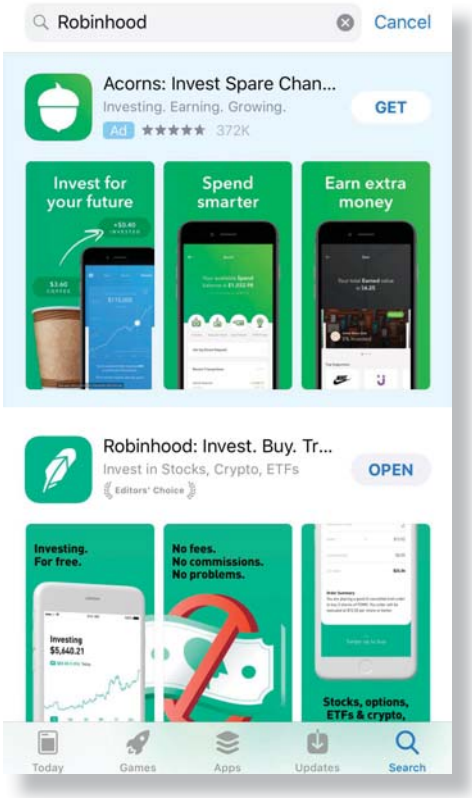
A common technique for businesses is to use keywords that describe a competitor rather than one of their own goods or services for its advertising campaign.

For example, below is the image of a mobile app utilized by Redfin, the real estate services provider, found during an iPhone search in Apple's App Store:



A look at the search bar shows that the user was looking for a specific business, in this case, Redfin. However, what shows up first in the search results is an application made by Realtor.com, a competitor of Redfin. Redfin's actual application is the second result in the list.

Acorns is another example of search results in which a keyword search brings up a competitor's site, rather than the site more directly associated with the keyword.



This is not an uncommon technique as a growing number of companies like Redfin and Acorns are paying to use a competitor's trademark as a keyword. When a user types in the competitor's trademark as their keyword search then they likely think they are going to find results for the specific source of goods or services. However, in each of these situations, the user is presented with a competitor's application as the first result.

How Do Courts Deal with This Problem?

This development proves frustrating to businesses that have cultivated substantial goodwill based on its trademarks, but then see competitors swoop in under a 'false flag' and try to lure their customers away.

Whether or not this is permitted under trademark law typically comes down to what is known as the "likelihood of confusion." Specifically, the likelihood of confusion may exist through what is called "initial interest confusion."[6]

As described in the above examples, this type of confusion happens as the customer is initially searching for a product or service as opposed to when the customer is purchasing either the product or the service.

In terms of the above, the customer is initially searching for Redfin, which they likely know is a real estate service firm, but are presented with *Realtor.com* as the first result. Similar to that example, in the case of *Multi Time Machine*, the watchmaker *Multi Time Machine (MTM)* sued *Amazon.com* for trademark infringement because *Amazon.com* users were searching for MTM watches while results for competitors would appear based on *Amazon.com*'s behavioral search algorithm.

The court in *Multi Time Machine* stated that even if the customer is no longer confused at the time of purchase, initial interest confusion still constitutes trademark infringement because it capitalizes on the goodwill associated with a mark.

The Ninth Circuit Court of Appeals determines likelihood of confusion by customers using a test that considers what are known as the *Sleekcraft Factors*, namely:

- The strength of the mark;
- The proximity or relatedness of the goods;
- The similarity of the marks;
- Any evidence of actual confusion;
- The marketing channels;
- The degree of consumer care;
- The defendant's intent; and,
- The likelihood of expansion.[7]

However, in the area of internet commerce and the doctrine of initial interest confusion, the issue of a likelihood of confusion often boils down to proper labeling.[8]

The court in *Multi Time Machine, Inc. v. Amazon.com., Inc*. stated that labeling of search results that feature a competitor's product is important and must be considered as a whole.

In *Multi Time Machine*, the court distinguished the search results that appeared when a customer searched for MTM watches from the results of competitors such as *buy.com* and *overstock.com*. When searching on sites like *buy.com*, the results clearly informed customers that they did not carry MTM watches when displaying competing results, however, *Amazon.com* did not display such a disclaimer. The court found that a jury could infer that this lack of labeling by *Amazon.com* may give rise to initial interest confusion.

The reason the *Multi Time Machine* case is important is because it goes beyond the issue of properly labeling results as a competitor, which was the standard for dispelling a likelihood of confusion before this case. This case appears to have added an additional layer of labeling required in the search engine context.

Normally, the search platform and the competitor are not liable for trademark infringement when there is proper labeling, that is, when the result is labeled with the competitor's mark that differs from the searched for trademark. Now, it appears that search engines may also need to further dispel a likelihood of confusion by stating that there were no results found for a search of that kind.

As a result, because trademark law is often very fact specific and technology continues to evolve at such a rapid rate, it is important for business owners to consider whether consumers would likely be confused as to the source of products listed on any new platform presented to them.

In the Redfin example, it is likely that Apple attempted to dispel a likelihood of confusion by labeling the *Realtor.com*.

result as an advertisement and by placing all of its advertisements in a blue frame as opposed to the typical results that are displayed in a white frame.

Website Trade Dress or User Interface Design

In the past, trade dress was only considered applicable to the packaging of a product, but more recently, trade dress has expanded to the actual design of a product.

Trade dress may then be defined as the "total image and overall appearance" of a product, or the totality of the elements, and "may include features such as size, shape, color or color combinations, texture, graphics."[9]

Take, for example, the iconic Coca-Cola bottle.

Virtually everyone knows its distinctive shape and even without seeing a label or knowing what it contains, most people would conclude that the source of the product in the bottle is the Coca-Cola Company. The trade dress therefore acts as an identifier of source, as with a trademark.

Trade dress protection has expanded as technology has changed to include products that encompass both physical and digital elements. It is no longer the case that products necessarily must be physical, because products can come in many digital forms from smartphone and tablet apps to websites and computer software.

To properly protect the subject matter of websites and software applications, the courts have determined that both "the look and feel" of websites may be protected under the concept of trade dress.

The test as to whether the look and feel of a website or software interface constitutes enough to be protected as trade dress balances on these elements:

- The look and feel is inherently distinctive or has acquired secondary meaning.
- The look and feel must be non-functional.
- There is not going to be a likelihood of confusion between the look and feel of the product and competing products.[10]

Therefore, to fully protect its branding, a business should consider registering its trade dress over the actual look and feel of its digital presence online and its software applications.

Are Hashtags Protectable as Trademarks?

Hashtags are tools used to categorize searchable content online. They are used in a variety of ways, but are most often found on social media websites. Hashtags always begin with the "#" symbol and are followed by a word that describes something a user of the site may be looking for.

If a researcher were on Instagram searching for a photo featuring a specific kind of content, they would use a hashtag.

For example, if someone wanted to find pictures of Mt. Whitney, they may enter *#mtwhitney* in the search bar to find photos of the mountain and conditions of the trail that people have posted recently.

This type of search may also be used in the context of a business' branding. If someone were to search for *#starbucks* they would likely expect to find pictures or information about Starbucks coffee. Businesses often use hashtags to develop a brand and increase their online presence to expand their customer base.

The USPTO provides guidance in its publication, *Trademark Manual of Examining Procedure*, regarding hashtags and whether someone may obtain trademark protection for one. The agency says that a mark consisting of or containing a hashtag is registrable as a trademark if

it functions as an identifier of the source of the applicant's goods or services.

However, the USPTO also warns that the hashtag symbol itself does not typically carry any source identifying weight because it is merely used as a search tool to categorize content online.[11]

A technique that may be used to obtain a trademark over a hashtag search term is to disclaim the hashtag symbol or the actual word hashtag in connection with the mark attempting to be protected. Therefore, if a mark consists of the hashtag along with a word that is distinctive for the goods or services, the hashtag should be disclaimed.

Essentially, what the USPTO is saying is that businesses are really trademarking the word attached to the hashtag itself, which should be something that helps customers associate the goods or services with the business' brand or the "source of goods or services."[12]

The Madrid Protocol

This agreement provides the owner of a trademark a cost-effective and efficient way to protect their mark in several countries by filing a single application. The owner of a trademark can procure protection in multiple countries by filing one consolidated application with the USPTO.[13]

An additional benefit is that the countries that an applicant applies to must communicate a provisional refusal within one year that may be extended, with some exceptions, for up to 18 months. However, if a country does not provide a provisional refusal within the applicable time limits, the mark will be considered protected in that country.[14]

This type of application is especially useful in the ever-changing digital world. When an internet or software-based business launches today, its reach is instantly global. This means that it is critical to seek protection in multiple countries to prevent others from stealing a mark or benefiting from customer goodwill generated by the work invested in creating a global digital identity.

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[1] *Basic Facts About Trademarks* (2018), https://www.uspto.gov/sites/default/files/documents/BasicFacts.pdf (last visited April 2, 2019).
[2] (Reg. No. 88135570).
[3] (Reg. No. 79114998).
[4] *Data Concepts v. Digital Consulting*, 150 F.3d 620 (6th Cir. 1998).
[5] *Brookfield Communications v. West Coast Entertainment* 174 F.3d 1036 (9th Cir. 1999).
[6] *Multi Time Machine, Inc. v. Amazon.com, Inc.*, 804 F.3d 930 (9th Cir. 2015).
[7] *AMF, Inc. v. Sleekcraft Boats*, 599 F.2d 341 (9th Cir. 1979).
[8] *Network Automation, Inc., v. Advanced Sys. Concepts, Inc.*, 638 F. 3d 1137, 1145 (9th Cir. 2011).
[9] *Two Pesos, Inc. v. Taco Cabana, Inc.*, 505 U.S. 763; TMEP §1202.02.
[10] *Click Billiards, Inc. v Sixshooters, Inc*., 251 F.3d 1252, 1258 (9th Cir 2001); *Ingrid & Isabel, LLC v. Baby Be Mine LLC* 2014 US List LEXIS 140553, *72 (ND Cal, Oct 1, 2014).
[11] TMEP § 1202.18.
[12] *Id.*
[13] *Madrid Protocol* (2009), https://www.uspto.gov/trademark/laws-regulations/madrid-protocol (last visited April 2, 2019).
[14] *Frequently Asked Questions: Madrid System*, https://www.wipo.int/madrid/en/faq (last visited April 2, 2019).

Test No. 127

This self-study activity has been approved for Minimum Continuing Legal Education (MCLE) credit by the San Fernando Valley Bar Association (SFVBA) in the amount of 1 hour. SFVBA certifies that this activity conforms to the standards for approved education activities prescribed by the rules and regulations of the State Bar of California governing minimum continuing legal education.

1. A trademark protects the creative expression in a word, phrase, symbol, and/or design.
❑ True ❑ False

2. When services are being offered instead of goods, a mark describing the source of the services is known as a service mark.
❑ True ❑ False

3. If a business' customers do not associate a top-level domain such as .com in association with the business' products or services, the business will likely not be able to register a trademark over its domain name.
❑ True ❑ False

4. Registering a domain name with a domain name registry counts as an initial date of use when challenging priority with another trademark holder.
❑ True ❑ False

5. Initial interest confusion happens as a customer is initially searching for a product or service as opposed to when the customer is actually purchasing the product.
❑ True ❑ False

6. If a customer is no longer confused at the time of a purchase, initial interest confusion still constitutes trademark infringement.
❑ True ❑ False

7. The test for likelihood of confusion in the Ninth Circuit is known as the *Sleekcraft Factors*.
❑ True ❑ False

8. In the area of internet commerce and the doctrine of initial interest confusion, the issue of likelihood of confusion often comes down to the strength of the mark from the *Sleekcraft Factors*.
❑ True ❑ False

9. The court in *Multi Time Machine* stated that labeling of search results that feature a competitor's product is a secondary consideration in determining trademark infringement.
❑ True ❑ False

10. The court in *Multi Time Machine* distinguished *Amazon.com's* search results from competitors by showing that *Amazon.com* did not clearly inform customers that it did not carry MTM watches when the competitors did provide such a disclaimer.
❑ True ❑ False

11. Trade dress was originally only considered to be applicable to packaging of a product.
❑ True ❑ False

12. Trade dress may be defined as the total image and overall appearance of a product and may include features such as size, shape, color or color combinations, texture, and graphics.
❑ True ❑ False

13. The look and feel of a product or service may not be protected under trade dress.
❑ True ❑ False

14. The features of a digital product or service may be protectable under trade dress law if those features are functional.
❑ True ❑ False

15. If a hashtag functions to identify a business' goods or services, it may be registrable with the United States Patent and Trademark Office.
❑ True ❑ False

16. The hashtag symbol in a business' mark carries source identifying weight according to the *Trademark Manual of Examining Procedure*.
❑ True ❑ False

17. A technique for obtaining trademark protection over a hashtag mark is to disclaim the hashtag symbol or the word hashtag in connection with the mark.
❑ True ❑ False

18. The Madrid Protocol gives trademark owners the ability to file one consolidated trademark application at the United States Patent and Trademark Office to protect their marks in several countries.
❑ True ❑ False

19. Countries must provide a provisional refusal under the Madrid Protocol within 24 months.
❑ True ❑ False

20. Under the Madrid Protocol, if a country does not provide a provisional refusal within the applicable time limits the mark will be considered abandoned.
❑ True ❑ False

MCLE Answer Sheet No. 127

INSTRUCTIONS:

1. **Accurately complete this form.**
2. **Study the MCLE article in this issue.**
3. **Answer the test questions by marking the appropriate boxes below.**
4. **Mail this form and the $20 testing fee for SFVBA members (or $30 for non-SFVBA members) to:**

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ANSWERS:
Mark your answers by checking the appropriate box. Each question only has one answer.

1.	❑ **True**	❑ **False**
2.	❑ **True**	❑ **False**
3.	❑ **True**	❑ **False**
4.	❑ **True**	❑ **False**
5.	❑ **True**	❑ **False**
6.	❑ **True**	❑ **False**
7.	❑ **True**	❑ **False**
8.	❑ **True**	❑ **False**
9.	❑ **True**	❑ **False**
10.	❑ **True**	❑ **False**
11.	❑ **True**	❑ **False**
12.	❑ **True**	❑ **False**
13.	❑ **True**	❑ **False**
14.	❑ **True**	❑ **False**
15.	❑ **True**	❑ **False**
16.	❑ **True**	❑ **False**
17.	❑ **True**	❑ **False**
18.	❑ **True**	❑ **False**
19.	❑ **True**	❑ **False**
20.	❑ **True**	❑ **False**

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Lawyer Moms:
Poise, Professionalism and Keeping It Real

By Michael D. White

"There are a lot of attorneys who are new moms in our own association that I am grateful to have for support. Connecting with others who are going through what you are is really helpful. I reach out and they're there for me. That's really important."
– Joanna M. Sanchez

THE AUTHOR F. SCOTT FITZGERALD FAMOUSLY WROTE THAT, "THE TRUE TEST OF A FIRST-RATE INTELLIGENCE is the ability to hold two opposed ideas in mind at the same time and still retain the ability to function." Taking that almost to the extreme, performance artist Erich Brenn regularly appeared on television's Ed Sullivan Show back in the 1960s with a dizzying routine that left the audience cross-eyed.

Brenn's routine consisted of spinning five glass bowls on four foot-long sticks all the while spinning eight plates on the tables holding the spinning glass bowls. At the same time, he would race to the opposite side of the stage balancing a tray carrying glasses and eggs and in one swoop remove one of the trays causing an egg to fall into each glass.

Over the years, the madcap Austrian came to be known as the 'Master of Multi-Tasking.'

Blend creating Facebook-worthy birthday parties, grocery shopping, carpooling, changing dirty diapers, doctor's visits, and all the rest associated with raising youngsters with juggling conference calls, taking depositions, making court appearances, meeting with clients and all the rest associated with practicing law and you have a non-stop whirlwind that makes Erich Brenn look like he is standing still.

Maintaining a Balance

The rigors of law school are compelling enough, but starting a family at the same time can be, to say the least, challenging in the extreme.

For example, attorney Hannah Sweiss was five months pregnant she when enrolled in the evening program at Southwestern School of Law. "I was able to balance it all because of the support I got from my family around me. When you don't have any other choice, you just do it."

Sweiss found that she "needed to give my 110 percent to law school when I was there or else I could not do it at all. Having a baby during law school helped me to prioritize and concentrate on completing what needed to be done. It helped prepare me for life now, trying to balance the demands of work and life at the same time."

An associate at the firm of Lewitt Hackman in Encino, she had her second daughter in September of last year.

"When I'm at work, I focus on work, but when I leave the office, I try to put that focus on my family as much as I can. It's not an easy thing. It's not a perfect balance to be sure, but I'm very fortunate in that if I have to leave for my older daughter's softball games or whatever, I can. When you have young kids, you try to handle everything."

It Really Does Take a Village

SFVBA Trustee Amanda M. Moghaddam spent the last six years at Nemecek & Cole before recently joining the in-house legal team at the Lawyers' Mutual Insurance Company.

A California Bar-certified specialist in the area of legal malpractice law, she was born and raised in Georgia and graduated from Kennesaw State University before she and her husband moved out to California after they got married.

The mother of two—six-year-old Holden and five-month-old Ruth—Moghaddam, with family back in Georgia, says, "My 'village' includes my colleagues, my friends, my co-workers and I have to keep an open dialog with others to see what can be accomplished on any given day and what's too much. It's evolving and I'm getting better at it," she says.

The "village" that Moghaddam relies on also nurtures Joanna M. Sanchez, attorney and mother of 14-month-old daughter, Naya. An associate with the Law Offices of Robert Gantman in Encino, she practices in the area of family law.

"I have a lot of help," says Sanchez. "There's no secret about it. My husband, my mom…we have a nanny, they all pitch in so I can do all of the after-hours stuff that the profession demands. There's no one person. They all help; it would be impossible if they weren't there."

Also, "there to help," are a network of fellow attorney's called Law Mamas, a nation-wide online support group comprised of women lawyers with newborns or toddlers, as well as other attorney-moms within the SFVBA.

"There are a lot of attorneys who are new moms in our own association that I am grateful to have for support," she says. "Connecting with others who are going through what you are is really helpful. I reach out and they're there for me. That's really important."

"Being a new mom," adds Sanchez, "can be really isolating and nobody tells you that and having a support group, whether it's your family or a professional network, can go a long way in helping you get everything you need to do done."

A Learning Curve, Juggling Priorities

"I'm on a learning curve. So just when I think I know what's going on, I realize I really don't," says Peta-Gay Gordon, an attorney with the firm of Oldman Cooley in Encino and the mother of nine-month-old son, Onai.

Her formula: "Getting it done however I can and trying to take some time for myself and just trying to make every day work."

One thing she has learned since giving birth to her son is that it's counter-productive "to be too hard on yourself. But that's easier said than done."

Hannah Sweiss, with two daughters—Sanna and eight-month-old, Nylae—feels that being a mom, particularly one with small children, has helped make her a better lawyer.

Sweiss, educated in both Egypt and Southern California, is an associate attorney in the employment and business and

civil litigation practice groups at the firm of Lewitt Hackman in Encino.

"Especially in the area of law I practice in, I've seen employers have to balance a lot of things to be successful," she says.

Being both a mom and an attorney, she says, "has helped me learn how to manage the multiple parts of my life—my career, my family, and other different kinds of issues," she says. "I can't just focus on one at a time, so I've learned to solve problems without losing focus on any one of them."

It's important, says SFVBA Trustee Heather Glick-Atalla, mother of two sons Nathan, four and Brandon, one, "to keep from trying to do everything."

A sole practitioner and a Certified Specialist in Estate Planning, Trust, and Probate Law, she's found that she has the latitude to be "very picky" about what cases she takes on. "I've found that when I'm working I can concentrate on that, and when I'm home, I can focus on what's going on there. I could probably take on more of a work load if I wanted to, but I don't."

Like Gordon, "I don't have it all figured out, but it's working," she says.

> "Connecting with others who are going through what you are is really helpful. I reach out and they're there for me. That's really important."

Setting Boundaries, Getting Organized

Prior to becoming a mom, Peta-Gay Gordon had "always put my clients first, but I've come to see that it's possible to put family and yourself first and still be dedicated to your clients. More often than not, we are always doing better than we think we are."

It's helpful to remember, she says, "that there are other people out there going through the same thing."

After maternity leave, Gordon now works out of her office at Oldman Cooley four afternoons a week "with no set hours and the opportunity to get some work done at home. That gives me the chance to be more flexible and organized."

"It's remarkable," says Heather Glick-Atalla, "how much you can accomplish if you keep things organized. It's easy to get lost in the crush of things that need to get done and get stressed. By going one-by-one, baby steps, and prioritizing with the hardest thing at the top of the list, I've found that everything eventually does get done."

"The most important thing for me is to set boundaries and limitations and organize myself in such a way that I'm able to have conversations with colleagues," says Amanda M. Moghaddam. "It's an evolving process, but it goes a long way in being able to get what needs to be done completed."

Setting an Example

Joy Kraft Miles is a graduate of Southwestern Law School and holder of a Master's degree in Education from the University of California, Los Angeles. Prior to going into the law she taught high school history and art history in the Los Angeles Unified School District for eleven years.

Earlier this year, Miles' mother, San Fernando Valley attorney and past SFVBA Trustee, Marcia L. Kraft, passed away after a storied legal career spanning 30-plus years.

A self-described "tough, New York, Jewish, woman lawyer, who didn't quite fit in with the fresh-out-of-law-school corporate types," Kraft struggled to raise a family on her own while attending law school. Early in her career, she saw the value in mentoring young attorneys just starting out on their own.

First on the list of those who benefited from her mentoring was her own daughter, who remains strongly influenced by her mother.

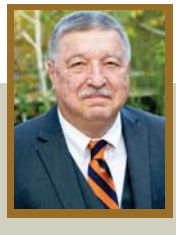
"My mom had a very hard life and she instilled in me an empathy for people going through difficult times," says Kraft Miles, who is married with two children. "She loved people and seeing both her own struggle through some very tough, challenging times."

Her mother, she says, "was and always will be a constant example of strength and perseverance, not only to me, but to her many clients and fellow lawyers. She earned her success and she continues to be an inspiration. She is the kind of example I hope to be to my children."

Editor's Note: The Who and Why

All of the attorneys interviewed for this article—Peta-Gay Gordon, Amanda Moghaddam, Joanna M. Sanchez, Heather Glick-Atalla, and Hannah Sweiss—not only served as SFVBA trustees during the same term last year, but are new mothers successfully stabilizing the challenging roles of both their family and professional responsibilities.

We spoke with attorney Joy Kraft Miles to discuss the example her own mother, the late Marcia Kraft, had had not only on her earlier decision to pursue a career in the law, but on her commitment to public service and devotion to her own family.



Michael D. White is editor of *Valley Lawyer* magazine. He is the author of four published books and has worked in business journalism for more than 40 years. Before joining the staff of the SFVBA, he worked as Web Content Editor for the Los Angeles County Metropolitan Transportation Authority. He can be reached at michael@sfvba.org.

Off the Rack: Apparel Industry Trends & the Law

By **Benjamin S. Seigel**

COPYRIGHTS AND trademarks—critical components of any effective apparel marketing strategy—have been the subject of several recent decisions handed down by the United States Supreme Court as well as several federal circuit courts across the country.

Earlier this year, the Ninth Circuit Court of Appeals blocked the *Jumpman* logo copyright infringement lawsuit brought by renowned photographer Jacobus Rentmeester.

The artist is claiming that sports apparel marketer Nike's logo of the silhouetted figure of Michael Jordan infringed upon the photo of Jordan he shot for *Life* magazine during the 1984 Summer Olympics.

Rentmeester is seeking a rehearing by the full Ninth Circuit, and if unsuccessful, he plans to appeal to the U.S. Supreme Court.

Recently, the First Circuit Court of Appeals ruled in favor of fashion giant Guccio Gucci in a case regarding the bankruptcy of a company that had licensed the Gucci trademark.

The Bankruptcy Code is mute on whether or not a trademark licensee can continue to use a trademark when the licensor files for bankruptcy, while other cases have found justification for continued use of a trademark in such situations.

However, many bankruptcy practitioners are urging Congress to deal with the issue so the holder of a trademark license can continue to use the trademark under specific conditions. The issue has recently been taken up by the U.S. Supreme Court with oral arguments heard in February 2019.

A Dimensional Decision

Three years ago, the U.S. Supreme Court issued its decision in *Star Athletica, LLC v. Varsity Brands, Inc.*[1]

The case involved cheerleading uniforms manufactured by Varsity Brands, a maker of sports-related apparel. The Memphis-based company sued competitor Star Athletica for trademark infringement charging that it replicated a copyrighted Varsity Brands design on uniforms it manufactured.

Star claimed that the trademark was not infringed upon because the copyrighted design could not be separated from the usual components of the uniforms based on its interpretation of a section of the Federal Copyright Act.

The Court rejected Star's position and held that a design on a useful article is eligible for protection "if the feature can be perceived as a two- or three-dimensional work of art separate from the useful article and would qualify as a protectable pictorial, graphic or sculptural work either on its own or in some other medium if imaged separately from the useful article." The Court held that Varsity's copyright had been infringed upon by Star.

The Slants and the Redskins

A few months later, on June 19, 2017, the Supreme Court decided the case of *Matal, Interim Director, United States Patent and Trademark Office v. Tam*.[2]

The case concerned a dance-rock band's application for federal trademark registration of the band's name, The Slants. The United States Patent and Trademark Office (USPTO) denied the application stating that "slants" is a derogatory term for persons of Asian descent.

Curiously, the members of the band are Asian Americans who believed that using the slur as the name of the group, they would help "reclaim" the offensive term and drain it of racist potency.

The USPTO denied the application based on a provision of federal law prohibiting the registration of trademarks that "may disparage or bring into contempt or disrepute any persons, living or dead."[3] The Court held that this provision violated the First Amendments' Free Speech Clause.

Commentators have indicated that this decision will bear directly on the controversy surrounding the Washington Redskins football team name.[4] The curious have asked what effect, if any, the decision will have on fashion. Will brand names of clothing be given the same treatment as that given to The Slants?

The Question of Bankruptcy

Long a significant component of fashion apparel merchandising, the use of trademarks has given rise to several issues that have plagued intellectual property lawyers since the enactment of bankruptcy laws in the U.S. that raise the question: if a trademark licensor files for bankruptcy does the licensee continue to have the right to use the trademark?

That question may soon be answered by the U.S. Supreme Court when it rules on the case of *Mission*

Products vs. Tempnology, LLC.[5] Oral arguments were heard on February 20, 2019, challenging the Court to decide what it means to "reject" a trademark license agreement in bankruptcy.

The Bankruptcy Code provides that rejection constitutes a breach of the contract as of the day before the bankruptcy petition was filed.

One side of the issue argued that the same general contract principals should apply outside of bankruptcy and that the licensee could continue using the mark.

The opposing view holds that trademarks in bankruptcy must be accorded different treatment because the use of the trademark imposes an affirmative obligation on the part of the licensor to continue to police the trademark, which requires it to perform under the contract which has been breached.

NAFTA, Tariffs and Sales Taxes

Other areas of the law have had, and will continue to have, an effect on trends in the textile and apparel industries, particularly the impact of revisions to the 1994 North American Free Trade Agreement (NAFTA), and tariffs imposed on imported and exported goods, and the sales tax charged on internet sales.

On November 30, 2018, the United States inked an agreement with Mexico and Canada embodied in an updated and revised trade pact—the United States-Mexico-Canada Agreement (USMCA).

The trade pact is felt by many to be a mutually beneficial win for North American workers, farmers, ranchers, and businesses, including the textile and apparel industries. Requiring ratification by the three signatory countries, the agreement also calls for improved Rules of Origin and intellectual property regulations that will, in turn, have a direct effect on the U.S. textile and apparel industries.

The imposition of tariffs on goods imported from China, a major exporter of wearing apparel to the U.S., has a direct effect on the price of clothing charged to American consumers.

Recently, President Trump stated that he is delaying plans to raise tariffs on $200 billion worth of Chinese goods because talks aimed at addressing U.S. trade concerns have made "substantial progress." The President added that he would delay the planned March 1 increase in tariffs on many Chinese products, including apparel.

> "Many bankruptcy practitioners are urging Congress to deal with the issue so the holder of a trademark license can continue to use the trademark under specific conditions."

State sales tax imposed on goods, including apparel, has been another subject of controversy when dealing with sales made via the internet. The issue was at least partially decided by the U.S. Supreme Court in its 5-4 decision in *South Dakota v. Wayfair, Inc*.[6]

In its simplest terms, prior to the Wayfair decision sales tax could be imposed on goods shipped from a state. So, for example, if goods were shipped from a state with lower sales tax than the state where the supplier was headquartered, the sales tax from the shipping state could be levied.

Attorney Adam Bergman, in a June 26, 2018 magazine article, interpreted the decision, writing that, "In other words, the Court is saying that the physical presence tests an inadequate solution to address the administrative compliance costs facing companies that do business in multiple states."[7]

Referring to the overruled case of *Quill v. North Dakota*,[8] the Court's opinion stated, "Modern e-commerce does not align analytically with a test that relies on the sort of physical presence defined in *Quill*…Further, the real-world implementation of the Commerce Clause doctrines now makes it manifest that the physical presence rule as defined by *Quill* must give way to the 'far-reaching systemic and structural changes in the economy' and 'many other social dimensions' caused by the Cyber Age."

As a result, brick-and-mortar retailers must now compete with internet vendors on payment of sales tax. It has been reported that Amazon, the world's leading online merchant, has been collecting sales tax since April 2017.

Business Reorganizations

One other legal trend in the apparel industry bears mention regarding the reorganization of retail apparel businesses.

Over the last few years, scores of apparel retailers have sought ways to continue in business in spite of online competition offered by Amazon and other internet-based retailers.

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Some have chosen Chapter 11 bankruptcy as a way to reorganize by selling the business or downsizing to consolidate the number of retail outlets, keeping only the most profitable ones, while others have filed Chapter 7 bankruptcy resulting in complete liquidation. Still others have looked to other methods of reorganization, such as out-of-court workouts and refinancing.

Another option has been an Assignment for the Benefit of Creditors (ABC). Most states have such an option, though each state's provisions vary.

In California, the process is without court supervision and is put under the direction of an Assignee selected by the entity to be reorganized. In an ABC there can be an immediate sale of assets upon the filing.[9]

For a retailer, this option is often the most attractive choice. A buyer is lined up and all terms of a sale are worked out prior to making the ABC and when it is made, the assignee immediately sells the assets pursuant to the pre-arranged sale agreement. The most serious difficulty that could arise is that a group of creditors files an involuntary bankruptcy proceeding.

However, if it can be shown that the sale allows the creditors to realize more than would be obtained in a liquidation bankruptcy, a Bankruptcy Court will uphold the sale.

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[1] *Star Athletica LLC v. Varsity Brands, Inc*. 137 S.Ct. 1002 (2017).
[2] *Matal v. Tam*, 137 S. Ct. 1744, 1765 (2017).
[3] Lanham Act, § 2(a), 15 U.S.C. Sec. 1052.
[4] *Pro Football, Inc. v. Amanda Blackhorse*, 112 F.Supp.3d 439 (E.D. Virg. 2015) vacated and remanded 709 Fed Appx. 182 (4th Cir).
[5] *Mission Product Holdings, Inc. v. Tempnology, LLC* (*In re Tempnology, LLC*), 879 F.3d 389 (1st Cir. 2018).
[6] *South Dakota v. Mayfair, Inc.*, 138 S. Ct. 2080 (2018).
[7] "Dissecting the Supreme Court's Internet Sales Tax Decision," Adam Bergman, *Forbes Magazine*, June 26, 2018. https://www.forbes.com/sites/greatspeculations/2018/06/26/dissecting-supreme-courts-internet-sales-tax-decision/#66ec7d103fbe.
[8] *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992).
[9] California Code of Civil Procedure, § 493.010-493.060, § 1800-1802.

Financial Planning:
It's Never too Late

By John Horn

MOST INDIVIDUALS WANT TO BASE THEIR financial future on investing, not retirement planning. Fortunately, investing is just a small part of the big picture for two reasons. First, a low-cost, well-diversified portfolio should allow most investors to keep up with the market. Factors like time horizon, health status and risk tolerance all weigh into the portfolio design, but they are just inputs on a mixing board. How the instruments are played make up the actual sound of the band.

The second reason is much more personal. Most of us do not review our portfolios before bedtime and sleep more soundly on days that ended with positive returns. What keeps us up at night is uncertainty; the big picture. How will we put the kids through college? Will I outlive my retirement savings?

Our concerns are for the future which is always in front of us. We cannot control or predict it, but we can do things today that will expand our options as the future unfolds.

When it comes to financial matters, factors of wealth are often the divisor of choice. Although the richest one percent certainly have different problems than the rest of us, we all have financial concerns that can keep us up at night.

For most, these arise from where we are in our life cycle.

Your 20s

The 'twenty-somethings' who make up the so-called Millennial Generation are grappling with their first taste of financial responsibility. They are worried about being on their own or trying to get there, finding a job and covering basic expenses.

Many in this age group are burdened by student loan obligations coming due that put them in a hole before they even get started with their careers. And heaven help recent law school graduates who have the double whammy of starting out with a six-figure debt balance and an entry level position or solo practice. So how do you eat that elephant? One bite at a time.

The utilization of 'FinTech'—new technologies that automate delivery and use of online financial planning information—can dramatically help the young lawyer begin tackling their student debt and paying back repeated loans from the Bank of Mom and Dad. Companies like SoFi.com and Credible.com help finance student debt and lower monthly obligations, while apps like Yahoo Finance and Mint.com can make budgeting easy.

More on budgeting. It is critical to always know where your money is going so it can be put to its best use. A budget can also help build a six-month emergency fund and even

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start a retirement account. It may seem premature, but if your money doubles every 10 years, a $1,000 investment in one's 20s becomes $32,000 by age 70.

The road to independence also includes learning about taxes, insurance, and what types of information, such as credit scores, are important.

Your 30s

Time and circumstances pass quickly. Lawyers in their 30s now have 10 years of experience in the workplace. They often know whether they are on the partner track, destined to go solo, or will end up teaching yoga on the Westside. They form new relationships both personally and professionally and experience significant lifestyle changes. These changes are the new sources of worry from career path to relationships, from having children to buying a home.

Lawyers in their 30s become more aware of the financial differences between themselves and their classmates and colleagues. They should avoid the temptation to finance a lifestyle on credit that puts their future financial well-being at risk. Money spent on unnecessary lifestyle expenses—read: more and more flashy stuff—is better invested in oneself and advancing one's career.

Because of these changes the 30s are a time of serious financial adjustments. A well-crafted budget should reflect new expenses, increase the emergency fund, with documents such as beneficiary designations updated. The addition of new family members creates the need for personal insurance which is often inexpensive relative to the problems it solves.

A term life insurance policy should cover all long-term obligations (a mortgage and student loans, for example), while disability coverage can provide income replacement in the event of injury or illness.

Your 40s

The midpoint between law school and retirement, the 40s are a very important decade. Lawyers with 20 years in the workforce have room to reflect and still have time to catch up. At this point, sleep can be burdened by the tug-of-war between financial obligations such as lifestyle 'creep,' the costs of raising a family, and savings commitments.

Whether on track or not, peace of mind can come from taking stock of where you are right now. Educate yourself or consult a fee-based advisor so you don't have to guess at your savings target. It is much easier to prepare to work longer when you are in your 40s than your 60s.

Sleeping better in your 40s involves three primary strategies: first, plan for the unexpected by being smart about insurance. Consider converting a portion of your term life policy to a permanent policy that locks in premiums and builds cash value. Second, prioritize your budget. For example, there are lots of ways to pay for your kid's college education, but no one will offer to fund your retirement. Thus, you have to get in the habit of paying yourself first.

Finally, when it comes to investing don't let emotions guide your decisions. Don't treat your retirement account like an ATM. Keep future taxes in mind while investing, by understanding the tax deferral differences in qualified accounts like 529, Roth and HSA plans.

Your 50s

Lawyers in their 50s wonder how they got there so fast. These may be their peak earning years, but they are also starting to feel their age.

For many, it is also the time for a wake-up call of sorts as they begin to think of their own retirement. The concerns of this age group arise from the scope of inter-generational responsibilities. Children grow up and parents age, both very quickly. Where does that leave us as it relates to our future?

The answer: To combat the uncertainty, connect with your future self. To find your bearings, ask "What will my next phase look like?" But, lawyers tend to say "I got this" as they often struggle to tackle the problem. Most, however, should look at all the support options available from qualified professionals. In effect, despite other challenges, lawyers still have to keep the kids on track to graduate on time and move toward financial independence. More importantly, they must also have the often difficult and awkward conversations with elders about healthcare options and estate plans.

Financial strategies at this stage are meant to make the most of the time left until retirement. Bonuses, inheritances, and windfalls should be saved rather than spent. People in their 50s are also eligible to make "catch-up" contributions to their retirement accounts. Portfolio performance can be easily improved by digging into the fees that are being paid in investments and to advisors.

Finally, look to investments that will create future income streams such as deferred annuities and rental properties.

Your 60s

Retirement can come at any age, but for many lawyers this is the home stretch. The kids are grown, priorities shift, and we are ready to do something else with our time and money. It is the ticking of the retirement clock that now disrupts sleep as we worry about the health of our parents and our own future selves, the adequacy of accumulated retirement assets and the potential end of a professional career that was meant to carry us across the finish line.

Financial decisions made by people in their 60s are more likely to involve health considerations as longevity comes into play. Accordingly, it is important to have a thorough evaluation of your health as the result will have an impact on your options. For example, the time might right to consider Long Term Care, which has improved considerably, but which requires a measure of health for coverage.

While working, it is important to put as much money as possible in qualified accounts by taking full advantage of catch-up contributions and any available employer match.

Figure out Social Security strategies well in advance to plan income flows accordingly. When the clock to retirement gets to five years or less, reduce your portfolio risk significantly as contributions are far more important than returns.

Retirement and Beyond

Experience teaches that retirement means something different for everybody.

Health, wealth and a myriad of factors shape what is possible. For some, health expenses are a worry, while others are concerned about outliving their money. Regardless, our financial situation is always a factor.

It is useful to plan for two aspects of retirement. One involves lifestyle considerations such as vacations, grandchildren, and activities of interest. These often occur earlier in retirement and should be budgeted for and not financed. Healthcare and related longevity issues are the other consideration forcing one to figure out how they want to be taken care of and who will be tasked with carrying that out. A portion of assets can then be spent early to mitigate those inevitable future expenses.

In retirement, we no longer collect a paycheck, but we still need cash flow. On the expense side, a lifestyle may need to be adjusted to meet financial reality. That calls for anticipating and planning for the fact that expenses will increase during the first few years of retirement as free time for other activities fills the gap caused by the elimination of work duties.

According to the Social Security Administration, a 65-year-old male has roughly a 50 percent chance of living until age 85, a 25 percent chance of living until 90, and a 10 percent chance of living until 95. That 20-40 year investing horizon suggests that a portion of assets should still be invested aggressively for the long-term while near-term assets remain conservative to mitigate short term risk. The four percent withdrawal rule to draw down assets remains a good guide to plan cash flows, while taxes, liquidity, and other factors should dictate from where the money is drawn.

For those worried about longevity, cash flow can be improved by continuing to work part-time or creating cash flow from an existing asset such as renting a room, a car or a home. An immediate annuity can turn a lump sum into lifetime payments, or a longevity annuity will defer the payments until later in life allowing for greater spend down now. Longevity insurance is also available.

With so much information to unpack, here are three themes to take away. First, the financial decisions that must be addressed constantly change priorities as we age. Next, there are many means that can be simultaneously applied to address both the present and a likely future, and, lastly, it is never too early or too late to improve an existing financial situation.

Member Focus

Without its individual members no organization can function. Each of the San Fernando Valley Bar Association's 2,000-plus members is a critical component that makes the Bar one of the most highly respected professional legal groups in the state. Every month, we will introduce various members of the Bar and help put a face on our organization.

Matthew A. Breddan

Attorney at Law
Calabasas

Originally from New York, Breddan moved to California in 1983. After finishing high school in Woodland Hills, he attended California State University, Fullerton, where he obtained a bachelor's degree in criminal justice.

Initially intent on a career in law enforcement, Breddan decided to go to law school in his junior year in college "because I knew I wanted a family and realized this was a far safer career path."

After earning his J.D. from the University of La Verne College of Law, he began his legal career working for others, until he hung up his own shingle focusing on all aspects of family law, "from nuts to bolts," in addition to serving as a family law mediator for the Los Angeles County Superior Court in Van Nuys, San Fernando and Pasadena.

His most memorable career moment? "It was reuniting a father with his child after he was wrongfully accused of abuse. He wept afterward and asked if he could hug me. This was many years ago, and we are still in touch to this day."

"It's my goal to achieve the best possible results for my clients and in the process, assuring that the children are not used as pawns, or bargaining chips to accomplish a goal or agenda of either party."

Deborah Davis

Attorney at Law
Encino

Born in New York and raised in suburban Washington, D.C., Deborah Davis moved to Los Angeles in 1991 after graduating from Brooklyn Law School and the University of Maryland at the urging of family and friends who cautioned her about the deteriorating condition of the Bedford-Stuyvesant section of New York City, where she and her family lived at the time.

She arrived in Los Angeles just in time for the worst storm to strike the Southland in several decades, the riot that followed the decision in the controversial Rodney King case, and the great Northridge earthquake of 1994. "I also had a radio stolen out of my car soon after I got here," she remembers, laughing.

But, she stayed anyway, initially practicing family law part-time, while juggling the responsibilities of raising her own family of five children. Over the years, part-time gave way to a full-time practice now two decades old.

"I always wanted to practice family law," she says, admitting that she had given some thought of going into social work. "I've tried to make people's lives better. It can be frustrating because sometimes you have to acknowledge that even the best job you do isn't always going to get people where they want and need to be."

But, she adds, "Sometimes, you wind up doing really wonderful things and you feel like you've accomplished something genuinely good."

Steven M. Sepassi

Attorney at Law
Encino

Arriving in the U.S. in 1975, 17-year-old Steven M. Sepassi had his eye on the goal of obtaining an education in civil engineering and returning to his native Iran with his brother to start an engineering design and construction firm.

The Iranian Revolution of the late '70s compelled Sepassi to take another path. Enrolled at the University of Missouri, he wound up on a winding course that would lead him, eventually, to the San Fernando Valley and a career in the law.

Earning both his Bachelor's and Master's degrees in engineering at Mizzou, he headed west to Los Angeles to earn a Doctorate in Engineering from USC while working for a company that produced software for NASA.

Five years at Rockwell Aerospace in Downey followed, but he left the company when it relocated to Seal Beach and an even longer commute to Orange County from Woodland Hills would have meant even more time away from his family.

A spell in the real estate and mortgage field got Sepassi thinking about going into the law.

Engineering and the law are not that far apart, says Sepassi. "When I was at Rockwell, we were supporting the people who were building systems and plotting vehicle entry and re-entry modes that astronaut crews depended on for their lives. That's part of what I've carried over into my law practice. You have to pay attention to details in cases that directly impact people's lives."

Shai Oved

Attorney at Law
Canoga Park

A self-described "Valley Guy", attorney Shai Oved's family settled in the San Fernando Valley at the age of four.

"We came from Israel where my father was involved in the construction industry," he says. Graduating from Taft High School in Woodland Hills, Oved attended UCLA as a freshman and was a senior in his second year there due to Advanced Placement classes at Taft and college-level courses at nearby Pierce College at the same time.

The summer between his two years at UCLA, he took 20 units, studied for the LSAT and was accepted to Whittier Law School at the age of 20 after completing his undergraduate work *cum laude*. He was, at the time, the youngest person ever admitted to Whittier Law.

Receiving his J.D. at 23 was an interesting experience. "At the time, I thought, 'I'll be a real attorney when my first client is younger than I am."

A California Bar Certified Specialist in the area of bankruptcy, Oved also holds an LLM in Taxation from Golden Gate University College of Law.

"I like working in the law because I like to help people get through whatever process or procedure needs to happen to get them through their often scary situations," says Oved. "At the end of the day, I want them to feel that I've had a positive impact on them and that I've helped them get through their problem without my having to be a shark."

The Thrill of a Lifetime:
Joining the United States Supreme Court Bar

By Barry P. Goldberg

MOST LAWYERS WILL NEVER have the opportunity to argue a case before the Supreme Court of the United States (SCOTUS).

However, Valley lawyers should still become members of the Court at some point during their careers. While it is true that "membership" is largely symbolic, it can provide surprising satisfaction and benefits. At a minimum, the impressive admission certificate ranks alongside a law school diploma and a license to practice in the State of California.

Also, when in Washington, D.C., a member has access to the Supreme Court library and is entitled to preferred seating near to the front of the courtroom to hear oral arguments—a real plus as the lines to hear oral arguments are often very long.

The only thing that can compare with appearing before the Supreme Court to be sworn in, is moving a colleague's admission by addressing the Chief Justice and the other justices in open court.

That said, it is relatively simple to apply and be admitted remotely and the instructions are surprisingly easy to follow. All of the information needed to apply is available at https://www.supremecourt.gov/filingandrules/supremecourtbar.aspx.

Under Rule 5.1., to qualify for admission to the SCOTUS Bar, "an applicant must have been admitted to practice in the highest court of a State, Commonwealth, Territory or Possession, or the District of Columbia for a period of at least three years immediately before the date of application; must not have been the subject of any adverse disciplinary action pronounced or in effect during that three-year period; and must appear to the Court to be of good moral and professional character."

The applicant must also have two members of the Supreme Court Bar as sponsors. Since a list is not posted, it is important to ask around to see who you know that are members. Next, go on the California State Bar website and request a Certificate of Good Standing, which is required as an enclosure to the application.

The Certificate is inexpensive to obtain and arrives in just a couple of days. The decision then will be whether to gain admittance by actually appearing before the Court or by written motion. Written motions are by far the most common.

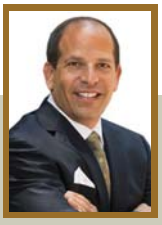
If an in-person admission can be arranged, it is worth the trouble. However, the logistics are not always easy to organize. For one, an applicant must have a sponsor who is a member of the SCOTUS Bar also appear and move the admission on a date when the court is in session.

Because this requirement can be difficult to carry out, many applicants assemble a "group" to be admitted *en masse*. From time to time, the ABA and other national, regional and local bar associations will plan visits to Washington D.C. for that purpose.

Admission in Court can take place on either an argument day before the entire Court with the Chief Justice presiding, or on a non-argument day with one of the justices hearing and deciding on motions for admission.

On argument days, groups are limited in size to 12 applicants. On non-argument days, the group can have as many as 50.

For group admissions, applicants and their guests are met by a Clerk of the Court who explains the procedure, provides the sponsor with a script that is not to be embellished, otherwise the Chief Justice may take the motion under advisement rather than grant it outright. The group is then ushered into the full courtroom immediately before the justices take the bench and seated in the front rows before the Bar.



SFVBA President-Elect **Barry P. Goldberg** has been admitted to practice before the U.S. Supreme Court since 2017. He practices in the area of personal injury law and can be reached at bpg@barrygoldberg.com.

The Chief Justice calls the sponsor by name to the lectern and then each group one at a time. They rise, individual names are called and the movant/sponsor states that the applicants meet the requirements and moves their admission.

Regarding individuals with sponsors, the Court Clerk meets with the individuals in the Clerk's office and presents the motion script—which is pre-printed with both the sponsor's and the applicant's name—to the sponsor. The individual applicant attorneys are the first item on the Court calendar and are recognized by the Chief Justice individually. The thrill of having the Chief Justice and justices look you straight in the eye and recognize your admission is truly a once in a lifetime experience for any lawyer.

After the individuals and groups have been admitted, the attorneys and guests are given an opportunity to leave the courtroom or remain for one or both arguments. Most choose to stay and hear the Court in action. The elegant skills of the lawyers arguing the cases and the Justices firing questions back and forth add to the immersive atmosphere and create a day to remember.

Because the courtroom has a capacity of only about 400, and seats are set aside for the media and guests of the justices, admission day may well be an applicant's only opportunity to actually witness the Court in action, close up and firsthand.

All in all, a truly memorable experience to last a lifetime.

Attorney Barry P. Goldberg (right) recently appeared before the U.S. Supreme Court in Washington, D.C. to successfully sponsor attorney Constantine M. Boukidis for admission to argue cases before the Court. Long-time friends, both were classmates at Loyola Law School. Boukidis left private practice about 15 years ago to become a testifying economist with WVM Analytics in Los Angeles. He continues to maintain his active license to practice law and recently gave a presentation to the SFVBA on forensic economics.

NEW MEMBERS

The following joined the SFVBA in February and March 2019:

Suzanne G. Bruguera
Palos Verdes Estates
Alternative Dispute Resolution: Arbitration and Mediation

Peyman Cohan
Cohan-Horn
Beverly Hills
Financial Management Services

Richard S. Conn
Musick Peeler & Garrett LLP
Los Angeles
Probate

Faisal M. Gill
Los Angeles
Criminal Law

John A. Kelly
Goldfarb, Sturman & Averbach
Encino
Estate Planning, Wills and Trusts

Lydia G. Liberio
Huntington Beach
Alternative Dispute Resolution:
Arbitration and Mediation

Alexandra A. Mateus
Pasadena
Criminal Law

Deborah Anne Ortega-Barczak
Woodland Hills
Law Student

Jeremy H. Rothstein
G&B Law, LLP
Encino
Bankruptcy

Solomon Salehani
Goldfarb, Sturman & Averbach
Encino
Litigation

Kevin M. Salute
Tarzana
Employment Law

Emma Samyan
Los Angeles
Bankruptcy

David B. Simpson
Valencia
Alternative Dispute Resolution: Arbitration and Mediation

Nazely Stepanyan
Hermosa Beach
Personal Injury

David Allen Swire II
Volchok, Volchok & Swire
Northridge
Family Law

Gina R. Tennen
Liberty Bell Law Group
Woodland Hills
Criminal Law

David R. Weinstein
Encino
Bankruptcy

Amanda Wilbur
Granada Hills
Law Student

SFVBA Inclusion & Diversity and Membership & Marketing Committees

DINNER AT MY PLACE

A member benefit to help members get to know each other in an intimate setting, spur referrals, and become more involved with the SFVBA!

May 30, 2019
6:30 PM • Valley Village

VBN
VALLEY BAR NETWORK

LAUNCHED IN 2016, VALLEY BAR NETWORK (VBN) has grown to a dynamic group of more than 50 attorney and other professionals. The meetings, usually held in the evenings on the first Monday of the month, are fun and informal, but provide a low-key structure to facilitate networking and information exchange.

VBN get-togethers "provide a great opportunity to visit, exchange leads, share anecdotes and hear guest speakers," says SFVBA Past President and VBN founder, Alan Kassan.

"Most people don't realize that networking is a 'long game,'" he says. "You can't just show up to a few networking events and hope people will suddenly start sending you all kinds of business. It takes time to build trusting relationships, and to get to know people well enough that you feel comfortable referring business to them."

Proactive marketing, Kassan adds, "has become an essential part of building and maintaining a successful law practice. The key, I think, is not to follow the pack or do what every other lawyer is doing. Distinguish yourself in whatever way possible, and then find more creative ways to tell the world about you. As website is not enough; and marketing on Google and/or Facebook, alone, aren't going to cut it anymore."

One of the genuine benefits of socializing with VBN, he says, is seeing the advantages there are "in building a trusted group of business associates. You become a more valuable resource for your clients, when you are able to refer them to other trusted and capable business people."

VBN dues are competitively priced for a networking group of such caliber. VBN is looking to involve extraordinary attorneys with a background in any one of the following practice areas: intellectual property, criminal law, juvenile dependency, special education law, lemon law, Social Security Disability and SSI, and ethics inquiries. For more information, email Alan E. Kassan, VBN Chair at akassan@kantorlaw.net.

Referring the Best Attorneys Since 1948

The Attorney Referral Service of the SFVBA is a valuable service, one that operates for the direct purpose of referring potential clients to qualified attorneys. It also pays dividends to the attorneys involved. Many of the cases referred by the ARS earn significant fees for panel attorneys.

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PURCHASING REAL PROPERTY is not only considered a sign of stability and maturity, it is a serious financial venture, which is why one should always think about the legal implications of doing so.

Susan, unfortunately, did not as she—and her boyfriend—bought a San Fernando Valley home together in 1995.

Susan had entered into the unmarried cohabitant relationship without a contract. After a few years, her then boyfriend, Erick, decided to leave, but not before he drafted an agreement stating that he would receive 50 percent of the proceeds from the sale of the home if the home went into foreclosure. Susan signed the document thinking that, either way, she would lose the home.

> "It definitely was not fair for [him] to then dump the whole thing on [her]."

Miraculously, even without Erick's income, Susan was able to single-handedly save the home from foreclosure. Equity grew and things seemed to be going well, until Erick returned attempting to collect. He wanted to force the sale of the home so he could enforce the agreement to collect 50 percent of the proceeds.

Susan objected and, following a visit to the Van Nuys courthouse, she was referred to the ARS. Experienced attorney Carol L. Newman took the referral without hesitation.

According to Newman, who was featured in this column in the November 2017 issue of *Valley Lawyer*, "My client wasn't even on the title in that case."

Susan, she says, was trying to get on the title…in this case, it was clearly co-owned from the beginning…but that doesn't mean [they] get 50 percent of the proceeds of the sale."

Initially, Susan wanted to buy out Erick because she didn't want to lose her home, but having to deal with serious financial issues at the time, she wasn't able to. Reluctantly, she agreed to put the property up for sale and the litigation continued regarding the splitting of the proceeds.

"So we argued, "that it definitely was not fair for [him] to then dump the whole thing on [her]. Make [her] go through extraordinary lengths to keep the property, and then take advantage of this alleged agreement to say [he's] entitled to half the proceeds when [he's] done nothing to keep the property from being foreclosed."

Newman provided proof to the court that Susan had paid for the majority of the mortgage, property taxes, insurance, and improvement to the home.

The case seemed to be headed for trial, but days before the trial date, both parties agreed to settle. Erick got more than Susan wanted him to receive, but she was still able to get the lion's share of the proceeds.

In a follow-up survey conducted by the ARS, Susan strongly praised Newman's services and found her fees to be reasonable.

VALLEY COMMUNITY LEGAL FOUNDATION
OF THE SAN FERNANDO VALLEY BAR ASSOCIATION

Constitution and Me
Volunteers—Spring 2019

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Amy Lewis
Joy Kraft Miles
Sarah Reback
Grace Rodriguez
Marlene Seltzer
Laurie Shahar
Don Sherwyn
Garry Williams

EDUCATING OUR KIDS BEGINS WITH YOU

Thanks to our dedicated volunteers and generous sponsors for making VCLF's inaugural Spring 2019 presentation of *Constitution and Me* a great success! VCLF's interactive constitutional law program presented high school students with a hypothetical case involving issues of free speech, cyberbullying, and safety in the school environment.

Using actual Supreme Court case summaries, and with the guidance of volunteer judges and attorneys, students at three Valley high schools participated in a spirited debate on the issues during three weekly sessions, culminating in a mock Supreme Court argument.

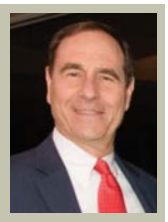
With continued help from the bench, sponsors, and the bar, this well-received program will resume this Fall.

FUNDED BY DONATIONS FROM PEOPLE LIKE YOU

To donate to the VCLF or to learn more, visit
www.thevclf.org
and help us make a difference in our community.

Students Participate and Learn

Mark S. Shipow
President



mshipow@socal.rr.com

IT IS WITH A GREAT DEAL OF pride in the Valley Community Legal Foundation's Education Committee, Board, and its many volunteers and sponsors that I report to you on the progress of our high school constitutional law program—*The Constitution & Me* (*True Threats v. Pure Speech: Drawing the Line between Safety and Freedom*).

For the past three months, Valley-area judges and lawyers have engaged students at Monroe, Taft and Canoga High Schools in Socratic conversations about how our Constitution protects—or does not protect—free speech in a school environment. The program is not yet concluded, with a few classes and the essay contest still in progress, but it is clear the program has been a huge success.

As expected, the program has been highly interactive with students fully engaged in the free speech debate and very proactive in their thinking about the issues. Of great significance, they have grappled with how these sorts of events should be handled in real life.

In the process, they have developed their reading, speaking and analytical skills, gained additional experience in interpersonal and teamwork skills, and had the opportunity to interact with positive role models from the Valley legal community. And we have been told that the program materials were so well-received that at least one teacher is using them in all her government classes.

The success of the program has been confirmed by teachers at all of the high schools involved. We have received comments that the program "was a wonderful experience and opportunity for my students" and that it gave students "the opportunity to think critically about the fictitious case and the precedent that might be applied" in real life, and that students "appreciated the opportunity to apply their learning to a practical situation."

What better confirmation is there that we have motivated students to become interested in the law and to think about key social issues of our time?

We are making a difference, and we are doing genuine good! As a result, students have asked when we are going to offer the program again, and have asked that the program extend over four sessions instead of only three.

How we answer this request depends in large part on you.

We have had the benefit of many volunteers thus far. In addition to VCLF Board members, it is important to acknowledge the volunteer judges and attorneys who attended training sessions and have brought this program alive for the students—Judge Firdaus Dordi, Judge Michael Amerian, Judge Diego Edber, Judge Theresa Traber and Judge David Yaroslavsky, and the following attorneys: Tina Alleguez, Michelle Diaz, Michael Garcia, Jana Garrotto, Ruhandy Glezako, A. Hillary Grosberg, Morgan Halford, Rand Harris, Wayne Jeffries, Amy Lewis, Joy Kraft Miles,

Sarah Reback, Grace Rodriguez, Marlene Seltzer, Lauri Shahar, Donald Sherwyn and Garry Williams. (Apologies if anyone's name was inadvertently omitted.)

Our volunteers certainly have been appreciated. As one teacher told us: "You have all been role models to my students concerning the need to continue to be involved within the community as adults." Thanks also go to the law firm of Lewitt Hackman, particularly firm shareholder Kira S. Masteller as the point person, for making their office available for the training sessions, and providing food and parking. In order to run the program again, we will need more volunteers. Please do your part.

The program, and particularly the essay contest, have been made possible by the many donations we have received.

VCLF appreciates those who already have become Supporters.

Please join this distinguished and generous group of individuals, law firms and others who believe in the importance of VCLF and its programs, and desire to help us in continuing to "do good." Donations may be made by check to VCLF, or directly online at www.thevclf.org.

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THURSDAY MARCH 28, 2019

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Contact SFVBA Member Services Coordinator Sonia Bernal at (818) 227-0032 or sonia@sfvba.org to sign up your firm today!

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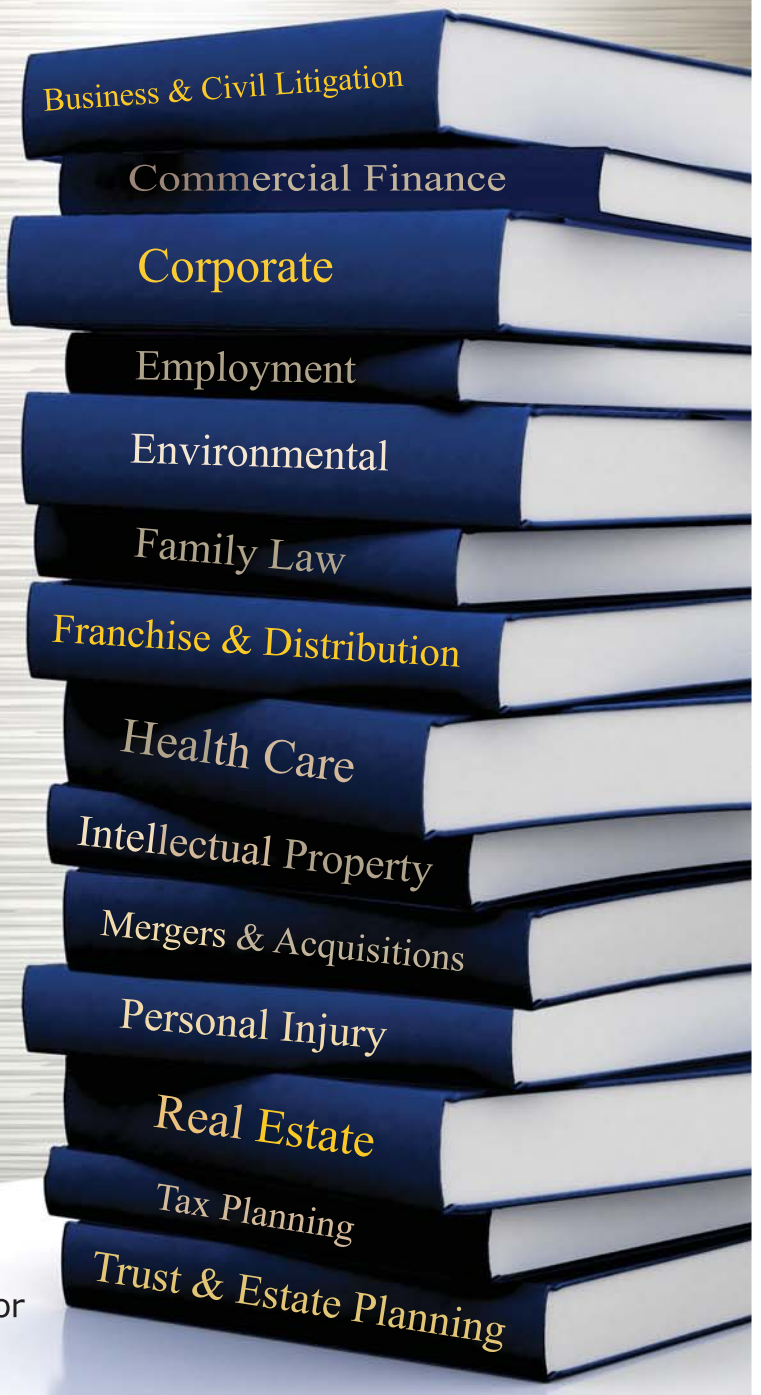

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