

The Firm's legal insights, news, and recent announcements

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A lawsuit alleging the holiday of Christmas violated the U.S. Constitution was met with a poetic ruling by a Judge.

Winters & King Attorneys are Martindale-Hubbell AV Preeminent

Learn about how some Firm attorneys are awardees of the highest peer rating standard.

DID YOU KNOW?

The term "bar" means more than just the examination to become a lawyer. The term dates back to medieval Europe, and describes a physical *bar* separating spectators from trial participants (like the attorneys or judge) in a courtroom.

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Premises Liability: Keeping Your Patrons and Company Safe During the Winter

By: Shareholder Spencer C. Pittman

Winter has arrived, which means ice, snow, and slippery surfaces. Premises owner/occupants can be liable for people who trip, slip, or fall if certain corrective action is not reasonably taken. What action(s) should be taken, and what are your obligations to correct dangers and defects?

Premises liability holds owners/occupiers of property legally responsible for injuries that occur on premises due to unsafe conditions. Owners/occupants have a duty to maintain their premises in a reasonably safe condition to prevent harm to those who enter the property. Premises liability cases typically arise from accidents such as slips and falls, dangerous conditions on the property, or in some circumstances, inadequate security. A principal question in premises liability is whether the owner/occupant owes a "duty of care" to individuals who enter their premises. A breach of this duty of care can give rise to civil liability for the resulting damages.

Who owes a duty and to whom? People entering premises can be classified as an invitee, licensee, or trespasser. *Invitees* enter premises for the benefit of the owner/occupant, such as entering a store to buy goods or for food at a restaurant. *Licensees* enter premises with permission but not for the owner/occupant's benefit, such as social guests or a spouse at a company Christmas party. *Trespassers* enter premises without permission.

Different duties of care are owed to each of these classifications, and you should understand what duty you owe to your patrons/guests so you can take appropriate preventative action. Invitees are owed the highest duty of care. An owner/occupant must use reasonable care to keep and maintain the premises in a reasonably safe condition for *invitees*, which includes reasonably inspecting and correcting known and unknown dangers. The owner/occupant of premises must protect *licensees* only from known dangers/hazards on the premises (*i.e.*, there is no duty to search out and correct existing dangers/hazards). With limited exceptions, no duty of care is owed to *trespassers*. One such exception is that an owner/occupant must reasonably protect against "attractive nuisances," which are things that may draw attention to trespassing children. Examples include an unfenced pool, machinery, or an open fire pit.

To minimize liability, you should address potential hazards promptly and provide adequate warnings, such as "caution" signs. For invitees, you can manage risks by establishing protocol for routine inspections for dangers in need of correction, especially in high-traffic areas. Also, check with your insurance carrier agent/broker to ensure your business's general liability insurance coverage will cover premises liability to mitigate potential financial liabilities associated with premises liability claims.

Jurisdictions may have their own specific laws and standards regarding premises liability. If you have questions or concerns about premises liabilities or are subject to a premises liability claim, contact Shareholder Spencer Pittman at spencer@wintersking.com.



Copyright or Trademark- What is the Difference?

By: Attorney Alyssa LaCourse

Intellectual property can be protected with a trademark or copyright registration but it is important to know the difference so your copyright or trademark registration is lawful and enforceable.

A copyright protects original works of authorship as soon as an author fixes the work in a tangible form of expression. A fixed original work of authorship means the author cannot have copied the work from elsewhere, has a modicum of creativity, and the work is tangibly storable (e.g., a book, art, or sound recording). A copyright prevents others from copying the creation without permission. A copyright is protectable the moment it is created through the natural right of “common law,” but registered copyrights afford greater protection and more severe penalties for infringement. A copyright provides owners with certain exclusive rights, like the right to reproduce the work, prepare derivatives, distribute copies, or publicly display or perform the work. Generally, copyright protection lasts the life of the author or creator of the material *plus* seventy years.

Trademarks protect words or logos (called marks), and are divided into the protection of either goods or services. Trademark protection prevents others from using a similar mark with related goods or services. The first to use a distinctive mark in commerce has trademark protections, and similar to copyrights, federal trademark registration is not a prerequisite to this protection. However, common-law trademark rights are restricted geographically. Federally registered trademarks enjoy a number of significant advantages such as: nationwide use and notice, thus nationwide protection; and the possibility of achieving incontestability status after five years of registration, which enhances trademark rights. Some marks are not registrable, such as generic or descriptive terms, a confusingly similar term to a currently registered mark, geographically descriptive terms, surnames, or functional marks.

In summary, trademarks protect names, logos, or slogans whereas copyrights protect original works, such as a book, art, or film. For help deciding which intellectual property protection is right for you or to begin the process securing a registered copyright or trademark, contact Alyssa M. LaCourse at alacourse@wintersking.com.



Ganulin v. U.S. (the Christmas lawsuit)

In 1999, Richard Ganulin sued the U.S. claiming the federal holiday (and day off) of Christmas violated the U.S. Constitution by subsidizing Christian beliefs and celebrations. The U.S. filed a motion to dismiss. The Court granted the motion to dismiss with the following explanation in poetic form:

“The Court will address plaintiff’s seasonal confusion erroneously believing Christmas merely a religious intuition.

Whatever the reason constitutional or other, Christmas is not an act of Big Brother!

Christmas is about joy and giving and sharing, it is about the child within us, it is most about caring!

One is never jailed for not having a tree, for not going to church, for not spreading glee!

The Court will uphold seemingly contradictory causes, ... decreeing “the Establishment” and “Santa” both worthwhile “Claus(es)!”

We are all better for Santa, the Easter bunny too, and maybe the great pumpkin, to name just a few!

An extra day off is hardly high treason. It may be spent as you wish, regardless of reason.

The Court having read the lessons of “Lynch” refuses to play the role of the Grinch!

There is room in this country and in all our hearts too, for different convictions and a day off too!”

Ganulin v. U.S., 71 F. Supp. 2d 824, 825-826 (1999).

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