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If You Stopped Using Your Old Trademark, Do You Still Own It?

How do you keep your business's trademark from trademark poachers? Continuity of use.

Vote the Firm as "Best in the World" and Shareholders Spencer Pittman and Mike King as "People of the Year"

The Firm and Shareholders were nominated for awards in the Tulsa World. Vote between July 15 and Aug. 3!

The \$80 Million Couch Will

Proper planning is important to ensure your estate is passed on in accordance with your wishes. A valid and enforceable Will is one of the key steps.

Meet The Staff – Legal Assistant, Jessi Romero

Corporate Assistant Jessi Romero is an integral part of the Firm's corporate filings and compliance.

DID YOU KNOW?

A person can represent themselves *pro se* in Court. But in most jurisdictions, including Oklahoma, a corporation may not represent itself. It must have legal counsel in Court.

CONTACT US

WINTERS & KING, INC.
CityPlex Towers
2448 E. 81st St., #5900
Tulsa, OK 74137
Phone: 918.494.6868



If You Stopped Using Your Old Trademark, Do You Still Own It?

By: Attorney Paige Hulse

Most business owners assume trademark registration means the name is theirs for good. But a recent court battle proves that brand protection does not work the way most people think it does. If you have invested in a name, this recent case reveals the one business habit that should not be ignored.

If you let a trademark registration lapse, is the name (or mark) still yours or is it up for grabs? A recent court fight between Nike and a company called Total90 shows how much can ride on the answer. Nike let its "Total 90" trademark registration expire in 2019. A new company later registered "Total90" betting Nike had walked away for good. When Nike brought Total 90 back for a soccer line in 2025, the newer company sued claiming Nike had lost its rights. Here's the twist: the court sided with Nike because Nike could show *it never fully stopped using the name*—the brand had not vanished from shelves. That was enough. In the U.S., trademark rights come from *using* a name in the marketplace, not just from the registration certificate. Even light, sporadic use can keep your trademark rights alive (as long as you can prove it!).

The takeaway: do not assume a lapsed registration means you have lost a name. Protecting a trademark from lapsing is easy and very cost effective: filing the proper renewal paperwork 5-years post-registration (and then, every 10-years thereafter) saves precious time and resources when it comes to protecting the brand identity you invested in. Also, if someone else moves in on a name you have rights to, do not wait. The company that sued Nike waited nearly a year after first raising concerns, and that delay hurt its case.

How do you build a record to protect your brand? Track any business using a name or logo close to yours, noting where they are located and what they sell or what services they provide. Log when you first spotted each instance. Save copies of related communications. Looping in an attorney to sort out real threats from harmless overlaps and to decide when a cease-and-desist letter is warranted may save time and also open up the door to a potential licensing strategy.

Bottom line: protecting a brand is not a one-time filing. It's an ongoing habit, and the businesses that keep at it are the ones that hold onto their names when it matters most. If keeping up with the trademark record isn't something you have time for, contact Attorney Paige Hulse at phulse@wintersking.com or 918-494-6868 to take on the monitoring and record-keeping for you so nothing slips through the cracks.

Vote the Firm as "Best in the World" and Shareholders Spencer Pittman and Mike King as "People of the Year"!

Winters & King is a top-5 finalist in Tulsa World's "Best in the World" contest and Shareholders Spencer Pittman and Mike King are finalists for "People of the Year" contest! Scan the QR code to the right and cast your vote DAILY from July 15 through August 3 (voters can cast one vote per day, per email address). These nominations reflect the Firm's commitment to providing excellent services to its clients and the continued support of its valued clients and community. Thank you for your support!





The \$80 Million Couch Will

By: Attorney Laura Smittick and Intern Milly Jackson

If you have multiple wills as a part of your estate plan, each one appearing valid, which one controls? What if one will be signed and dated and another will be unsigned but dated after the first one? Proper estate planning and following the rules for enforceable wills is imperative to ensuring your estate is passed on in accordance with your wishes. The story of Aretha Franklin paints this picture.

Aretha Franklin (a/k/a the “Queen of Soul”) passed away in 2018 at the age of 76, leaving behind four children and an ~\$80 million estate. Originally, it was believed Aretha had no will, and Aretha’s cousin was appointed as the personal representative to oversee the division of her assets. However, shortly after Aretha’s passing, two separate wills were found. The first, from 2010, was found in a locked cabinet. This will was notarized, signed multiple times throughout the document, and appointed her son (Ted) as the executor of her estate. The second will, from 2014, was found beneath the cushions of Aretha’s couch. This will was scrawled on pages of a notebook, signed once, and included several cross outs and rewrites. The second will originally appointed Ted as the personal representative, but Ted’s name was crossed out and replaced with Aretha’s son, Edward. Also, the second will favored Aretha’s son, Kecalf, by giving him and his children Aretha’s primary home.

Aretha’s children began to argue over which document truly reflected their mother’s wishes. Ted, named in the first will as the personal representative of the estate, argued the will that was notarized, locked in a secure cabinet with other formal documents, and signed multiple times throughout the document, should be considered the controlling will. Aretha’s other sons, Kecalf and Edward, argued the second will found in the couch cushions should be the controlling will because it was dated later, written in her handwriting, and signed. Ultimately, the court determined the second will was controlling. Edward was named as the personal representative of Aretha’s estate, and Kecalf and his children inherited Aretha’s home.

What should have been a simple expression of Aretha’s wishes devolved into a hostile legal battle that lasted an expensive five years and a fractured family. This example is a cautionary tale of what can happen if you do not take steps to properly establish an estate plan. If you are ready to protect your estate from a long and expensive probate process, contact attorney Laura Smittick at lsmittick@wintersking.com.

Meet The Staff – Legal Assistant, Jessi Romero

Jessi Romero serves as the corporate legal assistant in the Firm. Jessi handles all aspects of the Firms’ corporate filings for both for-profit and not-for-profit entities. Jessi has been a valuable member of the Firm since 2022.

What do you find most rewarding about your job? “I am the one who sets up the new legal entities. I love most that there are so many nonprofits out there, doing so much good, and I get to be a tiny part of that. I also love the people. We have the absolute best clients!”

How does your role contribute to helping clients? “Oftentimes I am working with clients to set up their first business, church, or ministry. When the work seems overwhelming or they are unsure about next steps, I get to be there to help them through that process and help it feel a little less overwhelming. I take a lot of pride in knowing our clients trust us to help them on their new journey.”

What is one thing that clients might not realize about your work done behind the scenes? “My role deals with a lot of deadlines; deadlines to keep businesses in good standing, deadlines to get tax exemptions for our nonprofit clients, deadlines for all kinds of filings. I work hard to stay on top of things for every client.”

What is a typical day like for you at the Firm?

“Emails, phone calls, hard work and lots of laughs! We have a dedicated group of assistants that are very committed to our firm, our attorneys and, most importantly, our clients. But we also make time to have fun. I couldn’t work with a better group of people so a typical day for me is full of laughs and fun.”

