

# Legal Briefing

## IP Law 101

By David C. Baker, Esq.

What is "IP" anyway? The term "intellectual property" or "IP" generally refers to the expression of ideas created by the human mind, including inventions, literary and artistic works, and symbols, names, images, and designs used in commerce. Most of us have heard the related terms such as "copyright, trademark, patent, trade secrets, and even trade dress," but lack a clear understanding of these terms and their implications for every day business.

IP can take many forms, but are often divided into two categories:

**Industrial property:** Including inventions (the subject of patents), trademarks, industrial designs, and geographic indications of source.

**Copyright:** Including literary and artistic works such as novels, poems, plays, films, musical works, and artistic works.

It is important to understand the differences between these types of IP because the methods for protecting, enhancing and enforcing the rights related to IP differ significantly. For example, patents and trademarks can be registered at the Federal level in the United States with the Patent and Trademark Office (or "PTO") while copyrights can be registered with the Copyright Office. Trade secrets



and trade dress, on the other hand, are usually not registered with any governmental agency.

Registration is not a requirement for purposes of ownership, but registration is a prerequisite to enforcement through legal proceedings (for copyrights) and a requirement for statutory relief (for patents, trademarks, and copyrights). While aspects of registration can be deceptively simple, the repercussions of incorrect or inadequate registration can be far-reaching and commercially debilitating.

Oftentimes, the timely advice of competent IP counsel can be the difference between a million dollar idea and a disaster.

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## Welcome Aboard! Todd Picker Joins HK&C as Senior Attorney



HK&C is pleased to announce the recent addition of Todd Picker to the firm's litigation department. Mr. Picker has over

twenty years experience and his practice encompasses complex business and insurance disputes, including unfair competition and business practices cases, trade secrets disputes, insurance bad faith and coverage litigation (commercial and personal lines), employment litigation, non-medical professional errors and omissions cases (legal malpractice, insurance agent malpractice, and real estate broker errors and omissions) as well as personal injury cases.

Prior to coming to HK&C, Mr. Picker was in private practice in Orange, California. He has written many industry publications and is a graduate of the University of the Pacific, McGeorge School of Law in Sacramento, California.

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### Affected by the Market Downturn?

Hart, King & Coldren has skilled litigators who are adept in all aspects of real estate litigation process, from counseling and case assessment through settlement negotiations and trial. The HK&C Real Estate Department represents the interests of residential and commercial property owners, developers and managers. We assist our clients with creditor bankruptcy, commercial collection, judicial foreclosure on deeds of trust, property tax appeals and direct and inverse condemnation issues. For more information, please call Bill Hart or Rob Coldren at 714-432-8700 or via email at [whart@hkclaw.com](mailto:whart@hkclaw.com) or [rcoldren@hkclaw.com](mailto:rcoldren@hkclaw.com).

# Planning a Wedding? Prenuptial Agreement, too?

by *Rachelle E. Menaker, Esq.*



*No bride and groom  
want to think that  
their marriage will  
end in divorce.*

Most see marriage as a loving contract between each other for life. In the eyes of the law, however, marriage is also a contract between two people - not about love, but about financial rights and obligations.

Why get a prenuptial agreement? A prenuptial agreement isn't a well-planned "exit strategy" or lack of trust in the relationship, but simply a protection against unforeseen circumstances. Without a prenuptial agreement, the end of a marriage can be a litigation nightmare especially if either party has come to the marriage with assets, debts and/or children from a prior marriage. When California law decides issues relating to divorce, often it isn't what the parties expected, and the legal battle that may ensue can be very expensive and emotionally draining.

California law includes a number of limitations on what can or cannot be done in a premarital agreement,

therefore, it is wise to have a carefully drafted and executed agreement prepared by an experienced attorney to ensure that the agreement will be enforceable in the event the marriage ends. Note: Both parties must have separate counsel sign off on the agreement. A carefully prepared prenuptial agreement can save thousands of dollars in legal expense, and lessen hostility and frustration for all involved parties.

*Rachelle E. Menaker is a Partner with Hart, King & Coldren in the transactional practice group. Her practice focuses on negotiating, drafting and review of assorted business contracts including prenuptial agreements and "cohabitation agreements" - for couples choosing to live together. She may be reached at 714-432-8700 x. 359 or email [rmenaker@hkclaw.com](mailto:rmenaker@hkclaw.com).*

## HK&C Obtains Substantial Verdict for Franchise Client

On behalf of one of HK&C's franchisee clients, attorney Brian Kinder recently obtained a substantial jury verdict against a Southern California-based franchisor. After a month long trial, the jury returned a verdict finding that the franchisor had violated the California Franchise Investment Laws ("CFIL") and committed fraud against HK&C's client. The jury not only awarded our client contract damages, but also issued a significant punitive damages award against both the franchisor as a company and the founder of the company as an individual.

The result is significant because disputes between franchisees and their franchisors generally present unique challenges not present in other types of business litigation. For instance, litigation of this sort usually finds that the corporate franchisor is better funded than the individual franchisee. Also, while the outcome of the case is obviously important to the individual franchisee, the outcome is sometimes of even greater importance to the corporate franchisor who may fear that any negative result could set precedent as well as inspire other franchisees to sue. Finally, if a franchisor or any officer of the company is found to have committed fraud, then that result must be disclosed in their Franchise Disclosure Document ("FDD") for a ten year period - a situation that the franchisor wants to avoid at any cost.

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