

# (Not So) Common Sense Advice on Exiting Your Business



by Benjamin J. Comin

There is a wave of aging baby boomers who are expected to exit their businesses in the next two decades. It has been reported that 70% of privately owned businesses are expected to change hands during that time period. This increase in businesses available for purchase, allowing buyers to be more selective, will have the unfortunate effect of leaving some business owners with only one exit option – closing their doors. In light of these coming changes, it is important that owners have a well thought out exit strategy and invest the time and resources to exit on the best terms possible.

## Start with the End in Mind

You should think of your exit plan as a process, not a single event. The purpose of the process is to extract the most value out of your business and provide the lifestyle you want. Start by thinking about what you want your life to look like after your exit. From there you can work backward to determine the right time to exit, who potential buyers might be, and how much value can be realized.

Some of you reading this may be thinking, "I don't need a process. I just need to sell my business." It sounds simple enough until someone asks, "...for how much?" The most frequent reason that business acquisitions fall through is because of a valuation gap between buyer and seller. Business valuation is complicated, inexact, and, for business owners, can be emotionally charged. The exit planning process helps you identify and develop the fundamental value of your business, identify potential acquirers who will value your business the most, and strategically position you to extract the maximum value when you exit the business.

## Plan Early

A common mistake owners make is to get so caught up in the day-to-day running of their businesses that they forget to look down the road and figure out how and when they want to get out. They wait until they "feel ready" to sell before doing anything about it. Unfortunately, by the time a business owner feels ready, it may be too late to do anything of real value.

Planning early gives you, the owner, time to seriously think about your business with the advice and input of trusted advisors, and, most importantly, to figure out what you want to do with your life after you leave the business. Obviously each unique business and owner will have different requirements in the amount of time needed, so generalizations are not very helpful. To help you determine if you are in the right ballpark, I will simply tell you that the best exits I have been involved in were the products of a year or more of concerted planning, not months.

## Invest in Your Plan

As the saying goes, don't be penny-wise and pound-foolish. Your business likely represents the single most valuable asset you have or will ever own. Getting sound advice from your accountant, attorney, wealth manager, banker, etc., is a good investment of your time and money. Once an owner decides to exit, their full-time job going forward is to execute the exit plan. If done poorly, there may be a decline in business value as the owner becomes preoccupied with selling the business and neglects its operations. If done well, the value of the business can be increased and more value extracted by the owner.

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Property Value Alert



The Firm Welcomes Five Attorneys



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# Legal Matters

Issue 2, 2014

## WHAT'S IN A NAME?

by Patricia Lee



So, you want to start a new business? Excellent!!! As you join the proud ranks of the exclusive "Eat What You Kill" club, you'll naturally flow through several steps as you ramp up. Business plan? (check), Funding? (check), Officers and Directors? (check), Incorporation (check), business name? (check). But wait! Not so fast. While picking out your business name is sometimes the most pleasurable part of starting your own business (akin to naming your first born baby), you should really understand and appreciate the strength and protectability of your name/logo/mark as you begin to brand your company.

The best way to protect your name is to register it with the United States Patent and Trademark Office, ("USPTO"), which you can do at [www.uspto.gov](http://www.uspto.gov). But before you waste your time (and non-refundable money) to do so, you'll need to do some research to see if anyone else is already using your name. The quickest and easiest way to do this is to simply Google it. If someone is already using your name to sell the same or similar goods or services, don't use the name. You should also search the USPTO to see if your name, or a similar name, is already registered for the same or similar goods/services.

If you find that no one is using the name or logo, you should then consider the strength

of your mark. There are four categories of distinctiveness, listed in ascending order of strength: (1) generic – marks that suggest the basic nature of the product or service; (2) descriptive – marks that identify the characteristic or quality of a product or service; (3) suggestive – marks that suggest characteristics of the product or service and require an effort of the imagination by the consumer in order to be understood as descriptive; and (4) arbitrary or fanciful – marks that bear no relationship to the product or service, and the strongest category of trademarks.

**Generic Marks:** Generic marks will not be subject to protection because the name of the good or service being offered. To offer trademark protection would therefore deprive competitors of the ability to use common industry lingo to reference the good or service. For instance, if you own a day spa, you would not be able trademark the name "Day Spa," because that name is generic. Can you imagine if everyone was precluded from using the term "Day Spa?" It would have a crippling effect on commerce, and therefore is not afforded trademark protection.

**Merely Descriptive Marks:** This category of trademark will also not be afforded protection because it merely describes an aspect of your goods and services. Going back to the example of the day spa, if you wanted to trademark, "The Very Relaxing Day Spa," you would not be able to, because the words "Very Relaxing" merely describe the type of day spa you are running.

Continued inside...

Exiting your business is a big step. Make sure it is a good one. ■



# Welcome FIVE

ATTORNEYS TO ITS LAS VEGAS OFFICE



**LYNN N. HUGHES** is an associate in the Firm's trust and probate litigation section and family law section. He joined the Firm after running his own estate planning and probate practice for many years. His experience and professionalism are well known and appreciated by his clients, as well as opposing counsel. Lynn is admitted to practice in Nevada.

Lynn has been a longtime Las Vegas resident, having moved to Las Vegas in grade school. He earned a bachelor's degree at the University of Nevada, Las Vegas in 1994. He then attended the Indiana University School of Law, Indianapolis, earning a law degree in 1997.

He worked as an associate for distinguished law firms in the Las Vegas Area, gaining valuable experience and learning the various areas of the law, including family law, probate, estate planning, insurance defense, construction defect and complex litigation, legal malpractice, and medical malpractice defense. Lynn opened the Hughes Law Office



**BRANDON J. TROUT** joined the Firm's commercial litigation group as an associate after graduating from Vanderbilt Law School, where he served as the Senior Technology Editor for the Vanderbilt Journal

in 2006, practicing specifically in family law, custody, divorce, guardianship, and estate planning and probate.

Lynn has valuable judicial insight and experience as a substitute Pro-Tem Judge for Clark County. He is the primary Pro-Tem Judge for the Clark County Guardianship Court, serving there for approximately four weeks each year. He is also a Pro-Tem Judge in the Abuse and Neglect Court in family court. He has been a Pro-Tem Hearing Master in the Small Claims Court and in the Clark County Traffic Court for many years. Lynn also serves as a Volunteer Family Court Settlement Master, serving to mediate and arbitrate family court cases and resolve the issues between the parties outside the courtroom.

Personally, Lynn has been married for over 20 years and has a family of four children. He is active in the Church of Jesus Christ of Latter-Day Saints and in the Boy Scouts of America. Currently, Lynn serves as the president of his neighborhood association, and does what he can to serve the members of the neighborhood and surrounding area. He is also an avid car enthusiast, building cars and attending shows with his children, when he can. ■

of Entertainment and Technology Law. He previously graduated from Brigham Young University with a degree in Business Management – Finance. Brandon is admitted to practice in Nevada. He lives in Las Vegas with his wife and two children. He enjoys spending his free time with his family, maintaining his aquariums, woodworking, and tinkering with electronics. ■



**MICHAEL D. FALATER** is an associate of the Firm, practicing in the areas of insurance defense, construction law, appellate litigation, personal injury, family law, products liability, medical malpractice, and healthcare professionals advocacy.

Raised in Phoenix, Arizona, Mike graduated from Brigham Young University with a degree in Urban, Rural, and Environmental Planning and a minor in Communications. Mike earned his Juris Doctorate from the S.J. Quinney College of Law at the University of Utah in 2011. During law school, Mike was a Legal Extern for

Justice Ronald Nehring of the Utah Supreme Court, a William H. Leary Scholar and a Lionel Frankel Fellow. He was also an articles editor for the Utah Law Review.

Prior to joining Hutchison & Steffen, Mike worked at a litigation firm in Las Vegas, where he defended employers, hospitals, and transportation companies. He has also defended individual insureds in simple to complex motor vehicle accidents. Mike is admitted to practice in both federal and state courts in Nevada.

In his spare time, Mike enjoys reading comic books and spending time with his wife and four daughters. He also is a volunteer scoutmaster for a local Boy Scout troop and a youth soccer coach. ■



**AMANDA L. IRELAND** is an associate practicing primarily in business law and commercial litigation. Originally from England and New Zealand, Amanda graduated from Massey University New Zealand with a Bachelor of Business Studies.

Before she became a lawyer, Amanda worked as a journalist and public relations executive in the healthcare and hospitality industries in New Zealand, England, and the United States.

After a break to raise two children, Amanda returned to school and graduated from Uni-

versity of Nevada, Las Vegas in 2009 summa cum laude with a B.A. in Economics and the Nevada Centennial Medallion for the highest GPA. Amanda received her J.D. from the William S. Boyd School of Law where she was a member of the Nevada Law Journal, President of the Boyd Chapter of the American Constitution Society, and co-founded the Health Law Society. Amanda also published her Student Note on labor law and administrative rule-making in the Nevada Law Journal and earned CALI awards for Advanced Legal Analysis & Writing and Energy Law. Amanda clerked for the Honorable Judge Nancy Alf in the Eighth Judicial District Court and is admitted to practice in Nevada. ■



**JOSHUA O. IGELEKE JR.** is an associate with the Firm practicing primarily in business law, commercial litigation, real estate law, and employment law. Raised in Las Vegas, he graduated from Eldorado High School with High Honors. He attended Texas Christian University in Fort Worth, Texas, where he graduated Cum Laude with a Bachelor of Business Administration as a double major in E-Business and Entrepreneurial Management.

In his most recent position, Joshua bridged his relationship building skills with his passion for sports as an account executive for IMG College where he spearheaded the contract negotiations for UNLV Athletics' corporate

sponsorships. While at IMG College, Joshua returned to school and graduated from the University of Nevada, Las Vegas' William S. Boyd School of Law and the Lee School of Business with both a Juris Doctorate and Master of Business Administration, respectively, in 2014. During law school, Joshua won first place at the Boyd School of Law In-House Negotiation Competition, mediated domestic disputes at the family court through the school's mediation clinic, obtained membership into the honorary Boyd School of Law Society of Advocates, led the Sports and Entertainment Law Association as President, and was selected by his peers to be the student speaker at the convocation ceremony. Joshua received the Dean's Award at graduation for his contributions to the law school community. He is admitted to practice in Nevada. ■

# Taxes

## Property Value Alert

Do you own any commercial or residential property in Clark County? Are you paying too much in property tax? Sometime in early to mid-December, Clark County property owners will be receiving a "Notice of Value" card in the mail, informing the owner of what the Clark County Assessor has valued their property at for tax purposes. Because the Notice of Value arrives during the holiday season, many people are distracted, or just don't have time to address an over-assessed property. Unfortunately, there is a short window in which to appeal your property's valuation (by January 15th). Let Hutchison & Steffen assist you in the process, and help identify if you are being over-taxed. This year, our experienced team of real estate professionals will be partnering up with a licensed appraiser to provide you with the best opportunity for success in your tax appeal. Contact one of our real estate attorneys after you receive your Notice of Value to learn about the new programs we have developed to help you reduce your property tax burden. ■

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**Suggestive Marks:** Here, you will find your sweet spot. A suggestive mark merely "suggests" your goods and services, without blatantly coming out and saying it. This category is most useful to the new business owner because you want your consumer to view your mark, and have some idea of what you are selling, without coming right out and saying it. So, revisiting our day spa concept, one could conceivably register the names, "Oasis" Day Spa or Skin "Apeel" Day Spa (an actual registered mark). The first, "Oasis" gives the sense of relaxation, while the second suggests some kind of skin care. Both marks would likely register.

**Fanciful Marks:** These marks are the strongest of all marks because they bare no rational relationship to the goods or services being offered whatsoever, and are often times made up words. If you were to call your new Day Spa, "Sugars" or "Crummies," these words would not evoke or even suggest a Day Spa, and would therefore be offered the most protection of any of our other examples (assuming of course, no one is already using these names).

The take away from all of this is to just make sure that you invest the time and resources to research your mark before you spend hundreds of thousands of dollars in branding. Nothing breaks your heart more than to find a logo you love, print it on everything associated with your business (including your marquee), only to later learn that all was for naught. Rebranding can sometimes be cost prohibitive and what started out as a killer idea, turns out to be just a killer of your business. ■

