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From intellectual property and estate planning to employment law and more, the attorneys of **Semanoff Ormsby Greenberg & Torchia, LLC** help clients safeguard their future amid the uncertainty. page 74

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Solving Real-world Problems

From intellectual property and estate planning to employment law and more, the attorneys of **Semanoff Ormsby Greenberg & Torchia, LLC** help clients safeguard their future amid the uncertainty.

by **BILL DONAHUE** | photography by **JODY ROBINSON**

At some point, almost every business owner will encounter intellectual property (IP) issues. It's one of the reasons Alexis Dillett Isztwan finds IP such a fascinating and important area of the law.

Isztwan is an IP attorney and a member of Semanoff Ormsby Greenberg & Torchia, LLC (SOGT), a full-service law firm with offices in Huntingdon Valley and Chalfont. She works with clients on both sides of IP issues—those wanting to protect and enforce their IP rights, and those looking to benefit from using the IP rights of others without violating someone else's rights.

"To me, IP presents a way to address real-world problems clients face, in that it enables me to help protect something valuable to their businesses," says Isztwan, who started her career as a commercial litigator. "IP can also be a confusing area of the law, so it's helpful to get guidance. You could end up losing the rights to something vitally important if you're not careful."

Isztwan cites four kinds of intellectual property: a patent, or the right granted to the maker of an invention to exclude others from making, selling, or using the invention for a certain period; a trademark, meaning a

word, logo, or design that serves as a brand recognized by consumers and acts as a symbol of the goodwill the owner has built among consumers; a copyright, which protects original works of authorship such as works of art, software source code, books, and music; and a trade secret, which protects information—a manufacturing process, a recipe, a software algorithm, etc.—that derives its value from being kept secret.

She estimates that more than half of her practice involves technology licensing representing both technology owners and clients licensing technologies essential to their businesses. When a business engages a contractor to develop a software application, for example, the contractor retains ownership in the copyright absent an assignment of those rights to the business even when the business has paid fees to have the software developed. Although the business would have an implied license to use the software, without full ownership in it, the business faces a situation where it has no control over what the contractor does with that IP right, such as licensing it to others; the software IP is not an asset owned by the business that could be transferred to a buyer in the sale of the business.

"Some businesses are proactive and recognize the need to protect their IP from the outset, others only become aware when an issue arises," she adds. "For example, when the ultimate goal is to sell a business, the potential buyer's due diligence may uncover that the seller has not protected its IP rights or that there are gaps in the chain of ownership. Sometimes these issues are fixable retroactively, but when you're negotiating after the fact, you may have lost some leverage, and in some instances the party

who owns the IP may demand additional compensation to assign the IP. It's critically important to clarify IP ownership rights upfront. In the context of a sale where IP is in the forefront of the transaction, the buyer is not going to be too happy and may choose to walk away or lower the purchase price."

She suggests the growth of the technology sector and the ubiquity of the internet have placed the need for IP protections front and center. As a result of IP's ever-changing nature, business owners who never imagined they would need the guidance of an IP attorney now find themselves reaching out to someone like Isztwan.

"Even in a business where IP is not the main component, IP issues can arise in daily business operations," she says. "You may have someone who's running your website or social media accounts post a photo or artwork they found on the internet, or create a video using a couple seconds of someone's song as background music. The next thing you know you receive a nasty letter from an attorney. There are companies that scour the internet to enforce the rights of their clients. Their demands can be incredibly excessive, particularly financially, plus you'll likely end up paying a lawyer to negotiate a less costly resolution. Even if IP is not the thrust of your business, anyone can fall victim if you're not trained in what's permissible to use."

Focused on the Future

Jocelin A. Price may not be an IP attorney, but IP certainly figures into her area of expertise. As an attorney in the Trusts and Estates Practice at SOGT, Price helps clients take the necessary precautions to safeguard their assets—IP included—after they have left this world for the next.

"Whether someone has IP interests, a business, or other assets in need of protection, every person should think about estate planning," Price says. "Sitting with an attorney to put your thoughts down on paper can help you outline what you would like to happen to those assets rather than have them go into intestacy [in the event of the asset holder's death]. Different estate planning documents control different assets, so working with a trusts and estates attorney can save family members a lot of time, money, and frustration."

Price suggests the duration and severity of the pandemic has intensified interest in estate planning. Existing clients have called with an urgency to update their plans. Likewise, clients who rely on SOGT for legal guidance in other areas of practice have inquired about wills, powers of attorney, and advance health care directives.

The pandemic also caused unprecedented situations; Price met with some clients in the office parking lot to sign wills and other essential estate planning documents. Now, with most people having largely returned to



Michael J. Torchia

their pre-pandemic routines, Price suggests taking a closer look at any arrangements people may have made in haste.

"We've seen cases in which people completed documents elsewhere that weren't executed properly with all the formalities required," she says. "So, if something was done as a bandage at the height of the pandemic, it's probably a good time to revisit those documents to make sure they were done correctly."

A Guiding Light for Employers

Likewise, Michael J. Torchia has had to contend with an abundance of pandemic-specific change. As an attorney who practices employment law, Torchia sees it as his ongoing responsibility to protect employers from running afoul of the law despite the "chaos and confusion" caused by COVID-19.

"Employment laws are often confusing and contradictory, so employers have a difficult time keeping up with laws in the best of circumstances," says Torchia, a managing member with SOGT. "Add on top of that, there is the patchwork of emergency laws and new statutes like the Families First Coronavirus Response Act, the Family and Medical Leave Act expansion, and Paycheck Protection Program loans that were directly tied to keeping employees on the payroll. We have been very busy since the start of the pandemic, and things have not slowed down."

In addition to working with clients directly, Torchia has conducted multiple webinars to help employers understand their responsibilities and potential liabilities. He also became a mainstay in the media as an informed voice who could explain the impact of new laws and provisions as they came.

While one of his goals is to prevent employers from violating employees' rights, he also reminds employers that they have rights, too. Their approach to the vaccine is a good example.

"Employers have much more freedom than they think," he says. "There are issues we have to talk about, like medical and religious exceptions, but generally employers can mandate the vaccine. You might have people quit. You might have people get upset. But this is not a new issue. For years, some businesses have mandated the seasonal flu vaccine, for example; it's just now you hear about it because the COVID vaccine is new and controversial, and it affects nearly every business."

Torchia suggests employers can expect further changes in the months and years ahead. His best advice to employers: Stay flexible, and seek guidance when needed.

"It's an unusual time, so let's have some patience and not take a hard line on internal policies," he says. "As attorneys, it's our job to help clients triage and prioritize. Rather than telling a business owner, 'Here are 21 new things you have to do this month,' I'll say, 'Here are the two most important things you need to do this month.' We're here to make sure they stay on the right side of the law, but we also respect that they have a business to run." ■



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