

Many small businesses and independent contractors have obtained either common law or Federally registered copyright and trademark protection on creative works, web sites and domain names. The intellectual property has the potential to become an extremely valuable business or personal asset. Yet in today's digital age, so many start-ups and contractors simply do not have the financial viability to sustain their small business. These people often end up filing for chapter 7 bankruptcy. Chapter 7 bankruptcy is a liquidation of all assets that a individual, married couple or business owns, in an attempt to satisfy the debts owed to secured and unsecured creditors. Many businesses and contractors want to try and save their intellectual property rights by transferring those rights to family members, so that they can try again to generate profits in a business setting. This practice begs the question; can you transfer intellectual property rights to a family member to avoid loosing the asset in a bankruptcy? Recently a bankruptcy court in the First Circuit heard a case where a Chapter 7 trustee had moved to avoid a pre-petition transfer of property from the debtor to the debtor's daughter. The bankruptcy court's decision finding the transfer voidable was affirmed in light of the fact that the property in question was not recorded until after the filing of the bankruptcy petition. *In Re: Garrido Jimenez, Freddy V.* Appealed from the U.S. Bankruptcy Court for the District of Puerto Rico (Docket No. PR 06-044) (June 19, 2007).

In my hypothetical, it would seem to follow that if a business or contractor did in fact transfer an asset including their common law copyright or trademark for good and valuable consideration, and then file for bankruptcy; they could protect their asset. However, the issue to consider is whether the family member can transfer the intellectual property back to the original creator subsequent to its assignment, and if so at what point in time would the transfer be acceptable?

The problem with a transfer to a family member then back to the debtor is that it raises the presumption that it was a fraudulent transfer. Although intentions may be in the best light, the idea that a person is freely transferring property while dealing with creditors does not sit well with anyone: bankruptcy attorneys, trustees or the Feds in general. However, if property is provided to family member in the ordinary course of business for services rendered, for example, car repairs, construction, and etc. Then, a debtor may do so as long as it is a normal business transaction—nothing like \$10,000 for an oil change etc. However, intellectual property in many situations can qualify as exempt property, under chapter 7, especially where it is difficult for the property to be liquidated, it depends on the type and characteristics.

The bottom line is a debtor can transfer the rights to his or her trademark or copyright to a family member, so long as the property transfer takes place prior to filing for bankruptcy, and it does not appear that the transfer could have been conducted for the sole purpose of alienating a creditor.