

Trademarks Made Simple: A Guide for Businesses

The world of trademarks is one in which every business, large and small, needs to be well-versed in order to successfully compete in the global – or local – marketplace. Trademarks are a form of intellectual property. Intellectual property (“IP”) is a unique type of property or asset, which may be different from what you normally picture when you think of property or assets. Intellectual property includes trademarks, copyrights, patents, and trade secrets. A trademark protects your brand, identifying the source of your goods or services, and distinguishing them from those of your competitors or other companies. Below is a quick and easy overview of what constitutes a trademark, how to obtain protection for your trademarks, and why trademark use and protection is vitally important to any business.

Q: What is a trademark?

A: A trademark is a brand name – something that tells the consuming public that you, or your company, are the source of particular goods or services. A service mark, in turn, is a trademark used for a service, such as banking or financial

services. Examples of trademarks can be found in commercials, advertisements, product packaging and labeling, to name just a few. A trademark includes any word, name, symbol, picture, drawing, design, or any combination of these, used to identify and distinguish your goods or services, and to indicate the source of your goods or services. More importantly, your trademark is also a symbol of your goodwill, as it tells the consumer that the goods or services are of a certain quality and standard, and the consumer will know what to expect from your goods or services. Trademarks can capture a customer’s attention, and make your business, products, and services stand out. In addition, trademarks can make it easy for customers to find you, as they distinguish your business from your competitors’. Trademarks are protected by law, both in the United States and internationally.

If a trademark has an ® next to it, this is the notice symbol for registered trademarks. This notice symbol is not to be used unless the mark is federally registered with the United States Patent and Trademark Office. If a trademark has a

™ next to it, this is the notice symbol for unregistered trademarks (*i.e.*, common law trademarks). This can be used on marks that are pending for registration, or marks where registration has not been sought.

Examples of famous trademarks include McDonalds® (as well as the “Mc” prefix and the Golden Arches), JPMorgan Chase®, Cisco®, Starbucks®, Kodak®, and Apple®.

Q: How do I obtain trademark rights?

A: Trademark rights begin as soon as you use your trademark in commerce! These are called common law trademark rights. Such common law rights, however, are limited only to your own geographic area (and any area of natural expansion). That is why filing for a federal trademark registration is important – a federal trademark registration expands those rights nationwide, and puts the entire country on notice of your mark.

Q: Why is protecting my trademarks important?

A: Your trademarks are among your most valuable assets. Put simply, your brand is your reputation. And as your reputation grows, your brand and trademarks become even more valuable. Many companies, regardless of their size, make significant investments to develop, promote and protect their trademarks. It is therefore essential to protect

your trademarks in order to avoid brand confusion by the purchasing public, and to maintain your investment. If a competitor attempts to sell products or services using something “confusingly similar” to your trademark, you have the legal right to enforce your trademark and protect your business, and stop the infringement. ■

For more information – including information related to trademark prosecution and portfolio management, trademark litigation, and trademark transactional services – contact Brian Gaynor at brian.gaynor@piblaw.com or Anthony Santoriello at anthony.santoriello@piblaw.com

Massachusetts Appeals Court Affirms Trial Court’s Dismissal of Borrower’s Quiet Title Action

On October 26, 2017, in *John H. Ray, III v. JPMorgan Chase & Co., et al.*, Docket No. 16-P-1193, the Massachusetts Appeals Court affirmed the lower court’s order granting judgment on the pleadings in favor of JPMorgan Chase Bank, N.A. (“JPMorgan”) and dismissed the plaintiff’s quiet title action.

In 2006, John Ray (“Ray”) gave a mortgage to secure a loan that enabled him to acquire an investment property in Massachusetts. After defaulting on the mortgage loan, JPMorgan conducted a foreclosure sale in 2014. Following the foreclosure sale, Ray filed suit against JPMorgan in the Massachusetts Superior Court, challenging the foreclosure sale and alleging defects in the process. JPMorgan and Ray settled the matter out of court, with an agreement that included a mutual release.

Immediately after executing the settlement agreement, Ray requested that JPMorgan discharge the mortgage on his property. Ray asserted that the mutual release left him with unencum-

bered title to the property. JPMorgan declined to do so, as Ray had no right to the property at that point. Ray promptly filed a second lawsuit, this time in the Massachusetts Land Court. Ray claimed that because he executed the settlement agreement before JPMorgan delivered the deed to the property to the purchaser at the foreclosure sale, Ray’s right of redemption never terminated. According to Ray, the mutual release terminated JPMorgan’s interest in the property – leaving Ray with a windfall. In support of his argument, Ray cited to a 1924 case that stands for the proposition that a mortgagor should receive any residual funds after a debt to the mortgagee has been satisfied (*Schanberg v. Automobile Ins. Co.*, 285 Mass. 316).

JPMorgan filed a motion for a judgment on the pleadings. The trial court granted the motion, and Ray appealed. On appeal, the Massachusetts Appeals Court rejected Ray’s argument, and affirmed the trial court decision. The Appeals Court held that judgment was properly granted to JPMorgan, as Massachusetts law does not require

the delivery of a deed to complete a foreclosure sale. To the contrary, Massachusetts applies the “gavel rule,” which provides that, once a foreclosure auction is completed, a mortgagor’s right of redemption is extinguished and the foreclosing mortgagee holds legal title. Thus, the fact that JPMorgan did not deliver a deed to the purchaser was irrelevant; Ray’s equitable rights to the property were terminated at the time of the foreclosure sale, and no further action was required to complete the foreclosure.

The Appeals Court also found Ray’s appeal to be frivolous. The Appeals Court affirmed the trial court ruling that the plain language of the settlement agreement did not transfer the property to Ray, and that the doctrine of *res judicata* barred Ray from litigating the claim that the delivery of the deed invalidated the foreclosure. ■

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PIB Obtains Favorable Ruling in New York's Appellate Division Regarding JPMorgan Chase's Standing in Contested Foreclosure Action Involving Washington Mutual Bank Loan

On October 25, 2017, in *Wells Fargo Bank, NA, as Trustee for WaMu Mortgage Pass-Through Certificates Series 2004-PR2 Trust v. Kevin Fortmeyer et al.* (Index No 5445/2013), New York's Appellate Division, Second Department, affirmed the trial court's finding that the plaintiff trustee had standing to bring the subject foreclosure action. In its Decision and Order, the Second Department reconfirmed JPMorgan Chase Bank, N.A.'s acquisition of all of Washington Mutual Bank's loans and loan commitments.

In 2004, defendants Kevin and Michelle Fortmeyer ("Borrowers") executed a note to Washington Mutual Bank, FA ("WaMu"), secured by a mortgage on the Borrowers' property. On September 25, 2008, WaMu closed and the Federal Deposit Insurance Corporation ("FDIC") was appointed as Receiver for WaMu. The same day, JPMorgan Chase Bank, N.A. ("Chase") entered into a Purchase and Assumption Agreement with the FDIC (the "P&A Agreement"). As the Second Department recognized, under

the P&A Agreement, Chase acquired all of WaMu's loans and loan commitments. See 2017 WL 4799339, at *1 (citing *JPMorgan Chase Bank, N.A. v. Schott*, 130 A.D.3d 875 (2d Dept. 2015); *JPMorgan Chase Bank, N.A. v. Russo*, 121 A.D.3d 1048 (2d Dept. 2014); *JPMorgan Chase Bank, N.A. v. Miodownik*, 91 A.D.3d 546, 547 (1st Dept. 2012)).

On June 30, 2009, Chase assigned the note and mortgage to the plaintiff trustee.

On May 3, 2013, plaintiff commenced a foreclosure action against the Borrowers, and ultimately moved for summary judgment. On May 14, 2015, the Hon. Thomas Adams (Supreme Court, Nassau County), granted plaintiff's motion for summary judgment, struck the Borrowers' answer, and granted plaintiff an order of reference. Borrowers then appealed.

On appeal, the Second Department held that, in order for a plaintiff to establish its *prima facie* entitlement to

judgment as a matter of law in a foreclosure action, a plaintiff must produce the unpaid note, the mortgage, and evidence of a borrower's default. Further, when the borrower challenges plaintiff's standing to foreclose, the plaintiff must in fact prove its standing in order to be entitled to relief. As applied to this case, the Second Department found that the plaintiff trustee had in fact established its *prima facie* entitlement to judgment as a matter of law, by producing the note, mortgage, and evidence of default. Further, the Second Department found that the plaintiff trustee established that it had standing to foreclose at the time the complaint was filed. In opposition, Borrowers failed to raise a triable issue of fact. ■

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