

NOZZLE & WRENCH

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MARCH 2023

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- >> The Garageman's Lien In Maryland
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This week bills will be starting to cross over, senate to house and house to senate and we will start getting a better idea on bills fate.

KIRK'S CORNER

Looking for Big Foot



By Kirk McCauley,
Director Of Member
Relations &
Government Affairs

This month's going to be a little short on content as the legislative session is keeping me busy but remember you can tune in every Friday at 9am via zoom. Swapna sends out links every week. I will answer legislative questions or any topic that is affecting your business. Any Questions about membership or WMDA Events Swapna will be there to answer.

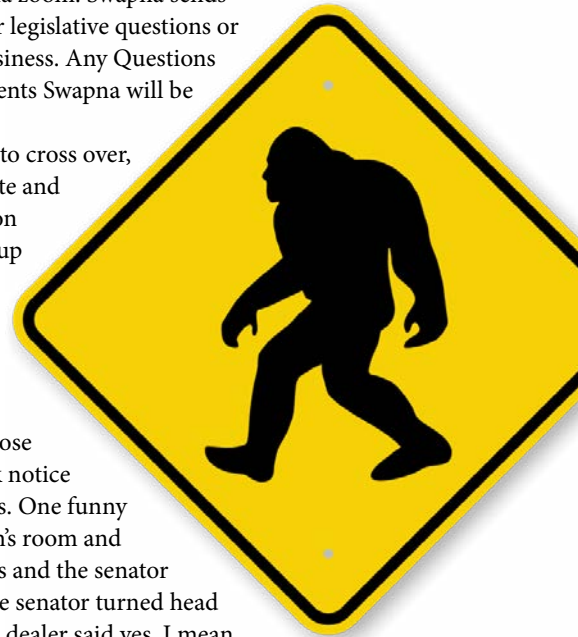
This week bills will be starting to cross over, senate to house and house to senate and we will start getting a better idea on bills fate. Voting session will pick up and some bills will live and some

will die and some will never get a vote. If a chairman of committee decides not to vote a bill, its like looking for Big Foot, it disappears.

Tobacco Flavor Bill SB 259 had a hearing on February 16th and the turnout of dealers was outstanding. We had close to 40 dealers and suppliers there to testify. Legislators took notice and I heard more than one comment, in the following days. One funny story developed as a very prominent dealer was in the men's room and found himself next to a senator also taking care of business and the senator said what side are you on and the dealer said favorable. The senator turned head toward him and said you mean unfavorable don't you. The dealer said yes, I mean unfavorable, and they both burst out laughing.

The next day that dealer called me and described the senator and where his seating was in committee, and I told him his name and by the way you have a couple of locations in his district. The dealer sent him an email and said you remember me from the men's room LOL, and I just realized I have locations in your district, and would appreciate your support. We support community events and would be happy to help you in any endeavors you undertake in the communities you represent.

This type of interaction with legislators is priceless and shows the humanitarian side of businesses by being part of the community you do business in. I will let you know as soon as this bill gets voted on or maybe it will get Big Footed and disappear.



Continues on page 4

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Training day is March 25 at ATI facility in Linthicum. Good round up of classes Craig Van Battenburg on EV/Hybrids/Tesla, Steve Dawson on ADAS, Tom Rayk on basic electrical, refresher course on Maryland inspection and much more. ADAS is something you need to know. Advanced Driver Assistance System are popping up more and out of warranty. You need to learn ADAS not only to take care of your customers but to protect your shop from inadvertently affecting parts of the system when doing repair work.

PEV, HEV, and PHEV are the flavor of the year, and we will see more moving into the market as batteries improve and cost comes down. I have said this before, but shops will get busier with customers hanging on to internal combustion engine cars waiting for not only EV batteries to improve but infrastructure to improve. Power plants and charging outlets will have to be improved to accommodate the sales of EVs we see states like Maryland pushing zero emission vehicle sales by law. My point is you need to address maintenance and repair on EV vehicles like you would any other new system on vehicles. You need to train your technicians now so they can keep up as technology changes. "Build It and They Will Come", well manufactures are building, and they will be coming, be prepared. Sign up for Training Day 2023

I will update bills on Friday the 10th at 9am via zoom. ■



2023 WEEKLY LEGISLATIVE HOUR

WITH KIRK MCCAULEY (ONLINE)

EVERY FRIDAY UNTIL APRIL 14
9AM VIA ZOOM

Insurance



Sandi Weaver
BA Auto Care, Inc.

Last week DDM Insurance sent an email to WMDA/CAR letting us know some insurance companies (see notice sent via WMDA Connect Daily Digest) in Maryland will no longer be providing insurance for Kia and Hyundai vehicles. This is due to large amount of theft of these vehicles and the theft of the catalytic converters.

Can you imagine being told your vehicle is no longer covered? Meaning you can't drive the vehicle because Maryland requires all licensed vehicles to have insurance or the MVA will give you a nice fine. While there are still other insurance

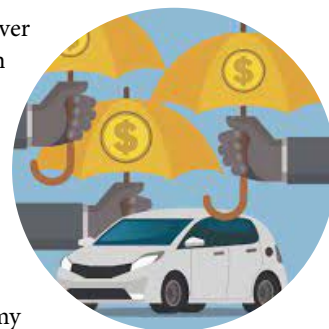
companies who will insurance Kias and Hyundais, I'm sure it won't be cheap and who knows who long it will be before more companies decided they also won't cover them?

Is there something the insurance company which doesn't cover these vehicles could require that will prevent theft? We know alarms don't do much to deter theft but what about a secondary device that needs to be activated in order to the start the vehicle. We used to have a few customers who had these; hold a certain window switch up to the start it. I feel insurance companies should educated their customers and offer suggestions of ways to protect their investment.

The same with catalytic converters, insurance companies will cover the theft at least twice but won't pay a few hundred dollars to put on a shield or cage. We work on a lot of Toyota Prius and in 2021 our area started to get hard, including our two loaner vehicles, we looked into anti-theft shields. Once we found a good brand, we installed them on our two vehicles and sent a letter to all our Prius owners letting them know we now offer this service. We have one customer who didn't want to pay for the shield after his converter was stolen. A month later, it was stolen again, still didn't want to pay for the shield. I get it, why should I have to pay for something my insurance will cover? Well, now we know we might lose coverage.

Besides educating our customers, how do we help?

Thank you DDM for informing WMDA/CAR of this issue so we could let our members know. ■



Is there something the insurance company which doesn't cover these vehicles could require that will prevent theft?

*Kia and Hyudai vehicles are being stolen, and sabotaged (catalytic converters) at such a high rate, that some insurance companies have simply **stopped quoting them, or insuring them at all**. See below from a large carrier called NatGen, and also The Hartford.

Effective March 9, 2023, all new auto business written in the above listed brands on NatGenAgency.com will experience the following updates:

- The following models will be ineligible for new business:
 - Kia models (Optima, Soul, Sorento, Forte and Sportage) between 2011 and 2021.
- Would unintentionally stop the following:
 - Kia Borrego from 2011.

– Kia K5 from 2021.

– Kia Telluride from 2020 and 2021.

Note: an underwriter can override these specific exceptions.

– Hyundai models (Elantra, Sonata and Tucson) between 2015 and 2021.

Would unintentionally stop the following:

– Hyundai Nexa for model years 2019, 2020 and 2021.

Note: an underwriter can override these specific exceptions.

Could be important for the Garage/Gas Station owners to be aware of this – so that they are **extra cautious to take preventative measures when working on those types of cars**.

*Information provided by Day Deadrick & Marshall Insurance, a WMDA Associate Member.

SCOTUS Rules Executive Making Over \$200K is Owed Overtime



Christine V. Walters, J.D.,
MAS, SHRM-SCP, SPHR
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Every two week pay period, an employee was paid his daily rate times the number of days he had worked in the pay period, earning more than \$200,000 per year. Despite those earnings, he filed a lawsuit asserting he was improperly classified as exempt and should have been paid overtime for all the hours he worked over 40 in each work week. No way? Way!

On February 22nd, the U.S. Supreme Court ruled the employee was *not* properly classified as exempt from the overtime requirements of the Fair Labor Standards Act (FLSA).

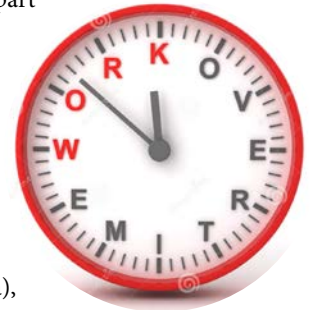
To be properly classified as exempt, an employee must meet three tests: (1) a minimum salary level; (2) a salary basis test; and (3) one of three primary duties tests: executive,

administrative or professional. The parties did not dispute that this employee met the duties and minimum salary test. The sole question in this case was whether the employee was paid on a salary basis.

An employee can be paid on a salary basis in either of two ways. The first and commonly used is “if the employee regularly receives each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of the employee’s compensation, which amount is not subject to reduction because of variations in the quality or quantity of the work performed. Subject to [certain exceptions], an exempt employee must receive the full salary for any week in which the employee performs any work without regard to the number of days or hours worked.” Sec. 541.602(a)

The second salary basis test (Sec. 541.604(b)) includes employees whose pay is calculated on a daily or hourly basis, so long as the employee is still paid in accordance with Sec. 541.602(a), guaranteeing a minimum salary on at least a weekly basis.

This employee was paid for each day he worked and not others. The court found that does not comport with the requirement to pay “a predetermined amount, without regard to the number of days...worked.” As a result, SCOTUS wrote, “The answer is no.” The employee was not paid on a salary basis, so he could not be properly classified as exempt.



Lessons learned?

- **Review your pay practices.** For any employee classified as exempt, ensure they are paid a guaranteed minimum salary, regardless of hours worked, and not subject to deductions except for five (5) limited [exceptions](#).
- **Know your state rules!** There are at least 20 states that have rules regarding employee classification that are stricter than the federal rules.
- **Stay tuned.** The U.S. Department of Labor has announced it plans to issue a proposed rule to increase the minimum salary test and one or more of the duties tests.
- **Join us!** In the interim, join the March 22nd webcast, “[Employee Classification: Exempt or Non-Exempt](#)!” ■

The parties did not dispute that this employee met the duties and minimum salary test. The sole question in this case was whether the employee was paid on a salary basis.

WMDA/CAR

TRAINING DAY 2023



CAR
Council of Automotive Repair

SATURDAY, MARCH 25, 2023 • 9 a.m.–4 p.m.

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Location: Automotive Training Institute (ATI), 705 Digital Drive, Suite V, Linthicum Heights, MD

ALL-DAY SESSIONS 9 a.m.–4 p.m.

- 1 ADAS – Understanding the Systems and How to Make Money**
Presenter: Steve Dawson
- 2 Electric Vehicles**
Presenter: Craig Van Batenburg

MORNING SESSIONS 9 a.m.–12/1 p.m.

- 3 Youth Apprenticeship Program**
Presenters: Stephanie Discepolo & Sheila Jackson (9 a.m.–12 Noon)
- 4 Gasoline Direct Injection**
Presenter: Tom Rayk (9 a.m.–1 p.m.)
- 5 Mastering Your Phone**
Presenter: Geoff Berman (9 a.m.–1 p.m.)

AFTERNOON SESSIONS 1 p.m.–4 p.m.

- 6 Protect Your Biggest Business Investments®—Your Legal Bootcamp!**
Presenter: Ruy Garcia-Zamor
- 7 Maryland State Inspectors**
Presenter: Bill Lasner

See reverse side for session descriptions
REGISTER TODAY!

Attendee 1: _____ ALL DAY # _____ MORNING # _____ AFTERNOON # _____
Attendee 2: _____ ALL DAY # _____ MORNING # _____ AFTERNOON # _____
Attendee 3: _____ ALL DAY # _____ MORNING # _____ AFTERNOON # _____

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Email: ssripada2@wmda.net

Training Day 2023 Session Descriptions

ALL-DAY SESSIONS – 9 a.m.-4 p.m.

1. ADAS – Understanding the Systems and How to Make Money



Presenter: Steve Dawson, Hunter Engineering

An Introduction to ADAS system, how they work, how to calibrate and how to charge accordingly. Many shops are not fully understanding the impact of calibrations, they also are not researching repair plans that require post repair calibrations, such as many AC condenser/radiator replacements. In this program we will review the operations a functionality of ADAS systems as well dig into repair procedures for many common repairs you are completing today that require a post repair calibration. We will also discuss the necessary documentation for your protection. This class would be ideal for Shop Owners, Service Writers, Technicians will gain as well in sight on what repair procedures effect ADAS systems and that are required for a complete repair.

2. Electric Vehicles



Presenter: Craig Van Batenburg, ACDC

PART 1: Heat Pumps and HVAC in Electric Vehicles
9 a.m.-10:20 a.m.

This class will get you up to speed on heating and cooling for passengers, batteries and other hot and cold parts of a modern electric vehicle. Previous knowledge of conventional

A/C systems is expected. Your instructor, Craig van Batenburg, drives 5 EVs and PHEV, Nissan Leaf, Chevy Volt, Kia Niro EV, Tesla Model 3 and Zero SR/F motorcycle. The A/C system in the motorcycle is very basic.

PART 2: Grid Charging Electric Vehicles 10:30 a.m. –12 Noon

The 3 levels of charging will be explained. The SAE J1772 standard and DC fast charging will be taught. You will know how to test with a break-out-box the low voltage communication between the on-board charger and the EVSE. If an EV will not charge what do I do?

PART 3: Tesla Model 3 and S. Getting Started 1 p.m.-4 p.m.

We will explain the Model 3 and S. You will learn about "Tool Box", Service Mode Plus, parts ordering from Tesla, and lots more. Tesla does not have enough service centers to fix their EVs. Great time to get involved. ACDC have both Model 3 and S at our training center.



REGISTER TODAY!

www.wmda.net

MORNING SESSIONS – 9 a.m.-12/1 p.m.

3. Youth Apprenticeship Program 9 a.m.-12 Noon

Presenters: Stephanie Discepolo & Sheila Jackson

In this session we will discuss the youth and registered apprenticeship programs and its benefits and how shops owners can get involved.

4. Gasoline Direct Injection 9 a.m.-1 p.m.



Presenter: Tom Rayk, Automotive Video Innovations (AVI)

Gasoline direct injection is one of the best engineering changes to extend the life of the ICE engine. Along with this new technology comes service opportunities. This session will address GDI issues along with system types and diagnostics. Master your GDI diagnostic and service skills. GDI System

Types, Low Pressure Fuel Systems, High Pressure Fuel Systems, Carbon Buildup Issues, Specific GDI Diagnostic Procedures, No Start Diagnostics, Common Failures, and Scan Tool Diagnostics. *For Technicians*

5. Mastering Your Phone 9 a.m.-1 p.m.



Presenter: Geoff Berman, Automotive Training Institute (ATI)

In this course, you will learn how to be prepared as well as how to better prepare your customer to spend more money. You will learn how to better use the tools you already have to absolutely help you sell more.

What's in it for you?

- Get more sales from the time you are spending selling
- Make your job easier
- Increase profit for everyone

Most business do ok over the phone but very few take the time to hone this skill into a profit center. An underutilized phone creates a huge revenue loss in any business. In this class you will learn the pitfalls that most fall into and what you can do about it. You'll likely be surprised because it is much easier than you might think. Let face it. The job of your advertising is to get the phone to ring, not to get the car in the door. That's the job of whoever answers the phone. This session will uncover the 18 components to an exceptional phone experience, which will have you converting more first time callers in no time, while at the same time maximizing you advertising dollars and making the shop even profitable. *For Service Advisors*

AFTERNOON SESSIONS – 1 p.m.-4:00 p.m.

6. Protect Your Biggest Business Investments® — Your Legal Bootcamp!



Presenter: Ruy Garcia-Zamor

Take advantage of this excellent opportunity to attend a legal bootcamp which is focused on you and helping your businesses prosper. Ruy Garcia-Zamor is the founding partner of Garcia-Zamor IP Law and has more than 25 years of experience as a Maryland attorney. Intellectual property includes, business legal matters, patents, trademarks, copyrights, and more. During the seminar an orientation will be provided for various legal structures, patents, trademarks, copyrights, important considerations for your website etc. Best of all, there will be an opportunity to ask questions at the end of the seminar. Bring a business card for Mr. Garcia-Zamor and grab a seat! Whether you think your service or repair station has potential legal issues or whether you have another business or idea for which you need advice, this is the seminar for you.

7. Maryland State Inspectors



Presenter: Bill Lasner, Secure Streets

This class is for current state inspectors who need a refresher, get updates or ask questions that they have.



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The Garageman's Lien In Maryland

Brought to you by James L. Parsons, Jr., Lynott, Lynott & Parsons, P.A.

What remedies are available to a repair shop owner in Maryland when a customer consents to a vehicle repair but then refuses to pay for it? The repair shop owner may rely on a “garageman’s lien,” a pre-judgment remedy codified in the Commercial Law Article (“CLA”) of the Maryland Code (Md. Code Ann., Com. Law §16-201-16-209).¹

The starting point for the creation of the garageman’s lien is in Section 16-202 of the CLA, which provides, in relevant part:

(c)(1) Any person who, with the consent of the owner, has custody of a motor vehicle and who, at the request of the owner, provides a service to or materials for the motor vehicle, has a lien on the motor vehicle for any charge incurred for any:

- (i) Repair or rebuilding;
- (ii) Storage; or
- (iii) Tires or other parts or accessories.

In addition, Section 16-203 of the CLA allows the shop owner to retain possession of the vehicle until the charges giving rise to the lien are paid, or the lien is “otherwise discharged” in accordance with the statute.

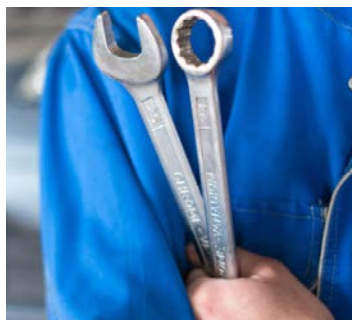
As stated in the case of *Allstate Lien & Recovery Corp. v. Stansbury*, 126 A.3d 40 (Md. 2015), the drafters of the law envisioned that a garageman’s lien would operate as follows:

- (1) The owner in possession of the motor vehicle takes it (or has it towed) to the garage and requests that it be repaired. § 16-202(c)(1).
- (2) The garage performs the requested repairs, creating a lien in favor of [the] garage for the repair bill, and bills the owner. § 16-202(c)(2)(i).
- (3) The owner fails to pay the bill.
- (4) The garage stores the vehicle, creating a lien in favor of the garage for storage costs. § 16-202(c)(1)(ii).
- (5) The garage retains possession of the vehicle until either the charges are paid or the lien is otherwise discharged. § 16-203(a).
- (6) The garage, within 30 days of the creation of the lien, sends notice of the lien to all holders of perfected security interests. § 16-203(b)(1)(i).
- (7) If the bill remains unpaid for 30 days, the garage, at its option, may initiate a public sale of the vehicle. § 16-207(a).
- (8) The garage sends notice, at least 10 days prior to sale, to the owner, all holders of perfected security interests, and the Motor Vehicle Administration. § 16-207(b)(2).
- (9) The garage publishes notice once a week for the two weeks immediately preceding the sale in one or more newspapers of general circulation in the county where the sale is to be held. § 16-207(b)(1).



The statute also provides that an owner of a vehicle that is subject to a garageman’s lien may file an action of replevin to attempt to try to recover the vehicle.

¹ The District of Columbia and Delaware have similar garageman’s lien laws. See, D.C. Code §40-102; Delaware Code, Title 25, §3901 et seq.



- (10) The garage sells the vehicle. § 16–207.
- (11) Proceeds of sale are applied as follows:
§ 16–207(e)(1)(i).
 - i. Expenses of the sale. § 16–207(e)(1)(ii).
 - ii. Third-party storage fees. § 16–207(e)(1)(ii).
 - iii. The lien claim for garage repair and storage bills. § 16–207(e)(1)(iii).
 - iv. Any purchase money security interest. § 16–107(e)(1)(iv).
 - v. Any remaining secured parties of record. § 16–207(e)(1)(v).
 - vi. Any remaining balance to the owner. § 16–207(e)(4).

Allstate, 126 A.3d 40, 48–49 (footnotes and citation omitted).

The statute also provides that an owner of a vehicle that is subject to a garageman's lien may file an action of replevin to attempt to try to recover the vehicle. CLA § 16–208. A replevin action is a court proceeding where a person seeks to recover property to which he or she claims entitlement to possession. If the charges for the repairs are disputed, the filing of a replevin action by the owner of the vehicle

will stay the execution on the lien by the repair shop. If a replevin action is filed, the court will first schedule a “show cause” hearing to determine whether the owner is entitled to possession of the vehicle before the trial. If the amount of the charges giving rise to the lien is disputed, the owner may immediately repossess the vehicle by filing a corporate bond for double the amount of the charges claimed. CLA § 16–206(b)(1). The bond provides the repair shop with a source of funds to recover should the repair shop prevail on its claim for the repair charges owed. If the repair shop does not file suit within six months after the bond is filed, then the bond will be discharged.

At the trial on the replevin action, the court will determine the amount of the lien claim, along with the amount of the expenses properly incurred by the repair shop, including storage and advertising. The burden of proof is on the repair shop to establish the amount of the lien claim. If the judgment at trial is in favor of the repair shop, the repair shop can also recover its reasonable attorney's fees. CLA § 16–208.

In the *Allstate* case referenced above, the repair shop owner sought to charge the vehicle

owner a \$1,000 “processing fee” in addition to the costs of repair to redeem the vehicle prior to the sale at auction. The Court held that if an owner attempts to redeem the vehicle by paying the repair charges prior to the sale by auction without filing an action for replevin, the repair shop may only charge for the repair, parts and accessories, and storage, and may not charge for costs, expenses, or processing fees incurred prior to the sale. Those costs and expenses are only recoverable in the event of a sale at auction, or in the event that the owner files a replevin action and a judgment is entered in favor of the repair shop pursuant to CLA § 16–208.

To invoke the provisions of the garageman's lien statute, a repair shop should comply with applicable laws and regulations related to automotive repairs and be prepared to prove the amount of the charges incurred for repairs, parts and accessories, and storage. Assuming that these business practices are followed, the garageman's lien statute will provide an effective means of protection to repair shop owners when customers fail or refuse to pay for automotive repairs. ■

*Simply put,
for an ongoing
business it is not
uncommon that
the cost of properly
trademarking its
brands eventually
pays for itself.*

A Necessary Expense: Why Every Small Business Needs to Trademark its Brands

Brought to you by Garcia-Zamor Intellectual Property Law, LLC.



Ruy Garcia-Zamor,
Attorney at Law

Small business owners frequently write off obtaining a federal trademark registration as an unnecessary expense. Many believe that a trademark is a luxury, one only large, litigious companies can put to proper use. This is certainly an easy mindset to fall into, especially for business owners who have worked hard to limit themselves to “must buy” expenses, but to do so is to mischaracterize what a trademark really is. This failure to obtain trademark registration for critical branding, such as the company and/or product names, keeps small businesses from obtaining benefits they have already earned and really deserve.

A trademark is not only an offensive tool, an additional means to bring law suits against competitors, but also a defensive tool that can protect you from law suits and ensure that you have the greatest advantage possible if you end up in the court room. Equally critical is that federally registered trademarks can result in lowering your legal expenses in the event you end up in court. Simply put, for an ongoing business it is not uncommon that the cost of properly trademarking its brands eventually pays for itself.

It's no secret that branding is a very important aspect of building a small business. The establishment of a strong brand creates an identity for your business for clients and potential clients alike to make use of your services or purchase your goods. But it is important to remember that branding comes with a significant risk. The greater your brand has been built up, the greater the incentive for competitors to attempt to piggy-back on the consumer good-will you have earned.

In the intellectual property field, we have encountered first hand countless horror stories of stolen branding and copycat naming. One such story involved a software company which failed to obtain trademark protection for the name of the company, their brand, and a competitor stole the domain name for the company name. The company whose name was stolen relied heavily on the internet for soliciting customers, and because they lacked the resources to bring a lengthy law suit based on their prior common law trademark rights (priority you're given for using a name first but which lacks many critical and valuable advantages of federal trademark protection), they had no choice but to change their name and begin the branding process all over again. This software company lost valuable time, resources, and consumer good will, all from a problem which could have been avoided if a federal trademark registration had been obtained prior to the establishment of the brand.

With the proliferation of Internet company reviews, having a federal trademark registration can really protect your business from copiers (regardless of whether they





TRADEMARK

are accidental copiers) even if they are in another state. For example, imagine that Mr. Frank Barber opens a men's hair salon called "All the Cuttings" in Ohio but decides against obtaining a federal registration. Years later Ms. Cindy Dye opens up a woman's hair salon in Texas called "All the Cuttings". Unfortunately, customers of Ms. Dye are unhappy and make many negative postings about "All the Cuttings". Some potential customers of Mr. Barber may decide not to visit his salon due to online reviews without realizing that they apply to another store. Even worse, although Mr. Barber opened his shop years prior to Ms. Dye, a court could still decide that Ms. Dye has rights to the name in Texas which prevents Mr. Barber from stopping the operation of Ms. Dye's salon to stem the tide of negative online reviews. This could make selling Mr. Barber's salon to an investor for possible expansion or franchising problematic and may even prevent a sale to a subsequent owner who only wants to maintain Mr.

Barber's current operations. If Mr. Barber had obtained a federal registration in a timely fashion he would have been able to force Ms. Dye to change her salon's name – even if Mr. Barber did not find out about her salon until it had been in business for years.

The United States Patent and Trademark Office lists numerous benefits of trademark registration, including the presumption of notice to infringers, the presumption of validity of the registration, and the ability to recover money damages from infringers. What all this legalese means, in practice, is that trademarks registrants often do not even need to take

infringers to court to stop them from infringing. Instead, because these legal benefits carry a significant advantage should the infringement suit go trial, trademarks registrants are often able to stop infringers through nothing more than a cease-and-desist letter.

Trademark protections also extend to domain names, adding further protection to the branding of trademark registrants. In the above example, the software company struggled because it could not afford to try to have the domain name taken from the infringer. For holders of federal trademark registrations, domain names will be enforced

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as if they are an infringing use of the trademark, and so a cease-and-desist letter will often be enough to stop an infringing domain name registration. If the infringer refuses, a trademark registrant would be able to bring a trademark infringement suit or could even bring a less costly arbitration suit (a Uniform Domain Name Dispute Resolution Policy dispute) with ICANN, the company responsible for assigning internet protocol numbers and managing all domain names. A federal trademark gives companies several options on protecting potential domain names for their brands that would otherwise be very difficult to enforce.



As you have seen, trademark protection can allow your brand to be more secure by threatening infringers as needed and by lowering legal costs when protecting your brand – whether by stopping third parties from copying or defending against allegations that you are not entitled to your brand. Additionally, the trademark application process can in some instances help protect your from infringing other trademarks. Although small business owners may not consider it when selecting a brand name, selecting a brand name always raises the possibility that you may be infringing the use of a previous user, who would attempt to sue you as a competitor attempting to piggy-back on their mark. Should this happen, you might open yourself up to lawsuits, and either be forced to rebrand or to pay monetary damages. Applying for a federal trademark can be

a good way to avoid such a risk, even if you expand nationwide. The USPTO thoroughly searches its entire trademark database when reviewing an application, and publishes the trademark to allow senior users to protest your application. This allows you to know if other users exist, and allows them to stop registration without making you defend your mark in federal court. While there may still be some senior users with common law rights, a trademark registration can help lessen fears that a senior user will surface and sue, though that remains a small possibility. Even if such a user did surface, they would likely be restricted by a court to a small geographic area, and so they would not be able to halt your use.

With these guarantees, your brands and company can be made much more valuable. This can create another significant benefit, as trademarks can be freely bought and sold, both within the same industry or to users in other industries. Should, for example, a foreign company want to use your mark in the US because they use it abroad, or should another US company want to take over your brand and the established consumer good will, you would be able to sell it for a significant sum. Essentially, federal trademark protection turn your brand into a significant legal asset, which can increase in value and increase your company's worth.

In addition to the benefits listed above, it should also be noted that a federal trademark registration has some more narrow advantages as well. These advantages are designed to benefit companies doing business internationally, and so include the right to file a trademark in other countries and the ability to deposit a copy with United States' customs officials to prevent

importation of counterfeit goods. For most small business owners, these benefits may seem insignificant, but they can offer further protection should your company continue to grow.



To obtain a trademark, we recommend clients consult with us prior to selecting a mark, as we can help ensure that the mark is trademarkable and will be afforded strong protection. However, we typically help clients who have already selected and perhaps have even begun using their mark. It is never too late to seek trademark protection for a mark, but it is best to get protection as soon as possible for your brand. We apply for the application directly with the USPTO, and guide our clients through the entire trademark process, both in obtaining a trademark and in maintaining the mark after registration.

With the advice of experienced counsel, the trademark process can be a relatively straightforward process. Compared to other types of legal protections it can also be a relatively inexpensive process which ensures that your brand and your business can be protected from lawsuits and infringement. At this point you are aware of experienced counsel that can make the trademark process accessible and assist in preparing the most advantageous federal trademark application for your brands. For all of the above reasons, federal trademark registration should be considered a necessary purchase for every forward-thinking small business.

For more information, please go to www.garcia-zamor.com. ■



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DETAILS TO COME – BE ON THE LOOKOUT

LEGISLATIVE UPDATE

Right to Repair Update



By Roy Littlefield IV

Right to repair remains a top priority for SSDA-AT members and a national law would provide for much needed clarity and direction in vehicle repair. SSDA-AT has supported efforts on both the state and federal levels in recent years.

Modern cars and trucks contain advanced technology that monitors or controls virtually every function of the vehicle including: brakes, steering, air bags, fuel delivery, ignition, lubrication, theft prevention, emission controls and soon, tire pressure. Car and truck owners, as well as the facilities that repair these vehicles need full access to the information, parts

and tools necessary to accurately diagnose, repair or re-program these systems.

Recently, Right to Repair legislation was reintroduced in the House. U.S. Representatives in the 118th Congress by Representative Neal Dunn (R-FL-02), and co-sponsored by Representative Brendan Boyle (D-PA-02), Representative Warren Davidson (R-OH-08), and Representative Marie Gluesenkamp Perez (D-WA-03).

The Right to Equitable and Professional Auto Industry Repair (REPAIR) Act, H.R. 906, will ensure consumers have access to data relating to their motor vehicles, critical repair information, and tools, and to provide them choices for the maintenance, service, and repair of their motor vehicles.

Congressman Dunn is a member of the House Energy and Commerce Committee, which has responsibility for consumer protection matters, where the bill has been referred.

“When it comes to repairing their automobiles, consumers deserve options,” said Dunn. “The REPAIR Act would give owners, including the rural communities in my district, secure access to critical data so the service center of their choosing can replace parts and repair their vehicles. I am proud to support competition in the vehicle repair industry and this important legislation.”

New vehicles require access to critical parts, tools, and repair and maintenance data to properly service and complete repairs and routine maintenance.

SSDA-AT members need the repair and maintenance data that is now being wirelessly transmitted from vehicles via telematics systems in a cloud-based format.

The REPAIR Act will accomplish this by:

- Preserving consumer access to high quality and affordable vehicle repair by ensuring vehicle owners and their repairers of choice have access to necessary repair and maintenance tools and data as vehicles continue to become more advanced.
- Ensuring access to critical repair tools and information---all tools and equipment, wireless transmission of repair and diagnostic data and access to on-board diagnostic and telematic systems needed to repair a vehicle must be made available to the independent repair industry.
- Ensuring cybersecurity by allowing vehicle manufacturers to secure vehicle-generated data and requiring the National Highway Traffic Safety Administration (NHTSA) to develop standards for how vehicle-generated data necessary for repair can be accessed securely.



“When it comes to repairing their automobiles, consumers deserve options...”

GOVERNMENT AFFAIRS

- Providing transparency for consumers by requiring vehicle owners be informed they can choose where and how to get their vehicle repaired.
- Creating a stakeholder advisory committee and providing them with the statutory authority to provide recommendations to the FTC on how to address emerging barriers to vehicle repair and maintenance.
- Providing ongoing enforcement by establishing a process for consumers and independent repair facilities to file complaints with the FTC regarding alleged violations of the requirements in the bill and a requirement that the FTC act within five months of a claim.

The REPAIR Act will reduce the repair access barriers when working on EV's.

Other Efforts

- In November 2020, Massachusetts voters overwhelmingly voiced their support for Ballot Question 1, also known as Right to Repair, with 75% of the vote, which preserves their right as vehicle owners to have access to and control of their vehicle's mechanical data necessary for service and repair at the shop of their choice. The lawsuit against the right to repair law is still pending. The most recent development occurred on Jan. 11 when the parties agreed to a joint stipulation and proposed scheduling order for "(a) conducting the additional document discovery ordered by the Court and (b) briefing

that motion for a protective order." The law has been held up by a federal judge for three years citing numerous reasons for delay.

- In May 2021, the FTC released a report highlighting the barriers auto manufacturers have instituted to block consumers' Right to Repair. In the report, the FTC supported expanding consumer repair options and found "scant evidence" for the repair restrictions imposed by original equipment manufacturers. In a subsequent policy statement on the report, the FTC noted that these repair restrictions create hardships for families and businesses and that the Commission was "concerned that this burden is borne more heavily by underserved communities, including communities of color and lower-income Americans."
- In July 2021, President Biden issued an executive order encouraging the FTC to address anti-competitive repair restrictions.
- In 2022, SSDA-AT joined efforts with the Maine Right

to Repair Coalition who has collected more than 70,000 signatures on a petition that supports the right for independent repairers to access the vehicle diagnostic data they need to complete repairs. The goal is to get a right to repair referendum in front of voters on the November ballot.

- In 2023, SSDA-AT is supporting HB 1193 in Maryland. The bill titled: Consumer Protection-Motor Vehicles-Right to Repair addresses the right to repair issue on the state level by requiring a manufacturer that sells motor vehicles with telematics systems to install an open data platform in certain motor vehicles. The bill has a hearing in the House Economic Matters committee on March 8th at 1 pm.

Passing the REPAIR Act will be a focus and top priority for SSDA-AT in the 118th Congress.

SSDA-AT is actively recruiting members in the House of Representatives to join as a co-sponsor to the bipartisan legislation. ■



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Taxpayers Can Now Upload More Documents to IRS



By Roy Littlefield III

The Internal Revenue Service announced that taxpayers who receive certain notices requiring them to send information to the IRS now have the option of submitting their documentation online through IRS.gov.

This new secure step will allow taxpayers or their tax professional to electronically upload documents rather than mailing them in, helping reduce time and effort resolving tax issues.

In this stage of the ongoing effort, nine notices will be available for this feature. This potentially can help more than 500,000 taxpayers each year who receive these notices, which include military personnel serving in combat zone areas and recipients of important credits like the Earned Income Tax Credit and Child Tax Credit.

“This capability is another step forward by the IRS to help taxpayers and improve service,” said IRS Acting Commissioner Doug O’Donnell. “This provides immediate benefits to taxpayers, who have nearly instant confirmation that documents were received by the IRS. In turn, this will dramatically speed up the resolution of issues by removing a time-consuming step in the process. This means people can have their issues resolved much faster, including getting refunds to affected taxpayers faster. We will continue to look at improvements like this as we work to transform the IRS following passage of the Inflation Reduction Act last year.”

Initially, the online correspondence feature will be available to taxpayers who receive one of nine IRS notices. For the most part, the IRS sends these notices to individual tax filers claiming various tax benefits, such as the Earned Income Tax Credit for low- and moderate-income workers, the Child Tax Credit for families with dependents, the Premium Tax Credit for those who obtain health coverage through the Health Insurance Marketplace and members of the military claiming combat zone tax benefits.

Taxpayers receiving these notices can respond securely to IRS online, regardless of whether they have an IRS Online Account.



IRS Created the Document Upload Tool

IRS information technology specialists developed a prototype for the Document Upload Tool in 2021. Since then, the IRS has been testing this feature on a limited number of exam-related notices, and 38% of the responses to these notices have used the agency’s secure electronic communications rather than traditional mail.

How it Works

Language on the notice informs the taxpayer to, “Send us your documents using the Documentation Upload Tool within 30 days from the date of this notice.” It includes

This provides immediate benefits to taxpayers, who have nearly instant confirmation that documents were received by the IRS.



the link and a unique access code.

1. The taxpayer can open the link in any browser and then input their unique code, their first and last name and their Social Security, Individual Taxpayer Identification or Employee Identification number.

2. The taxpayer can then securely upload scans, photos or digital copies of documents (maximum of 15MB per file, up to 40 files).

3. The taxpayer receives a confirmation that the IRS received their documents, and the IRS employee assigned the case can manage the transmitted documents.

What Notices Qualify?

Taxpayers who receive one of the following notices with the link and access code can choose to upload their documents:

1. CP04, relating to combat zone status.
2. CP05A, information request related to a refund.
3. CP06 and CP06A, relating to the Premium Tax Credit.
4. CP08, relating to the Child Tax Credit.
5. CP09, relating to claiming the Earned Income Tax Credit.
6. CP75, relating to the EITC.
7. CP75a, relating to the EITC.
8. CP75d, relating to the EITC and other credits.

Future expansion planned

In the coming months and years, the IRS plans to expand this capability to dozens of other notices. In addition, the IRS

will offer digital correspondence on a variety of other taxpayer interactions. During live interactions such as phone calls with taxpayers, IRS employees will be able to grant upload access by providing the link and unique access code.

With Secure Digital Correspondence, Everybody Wins

For taxpayers and tax

professionals working with the IRS, this new capability reduces the correspondence burden, ensures tax compliance and improves the customer experience. For IRS employees, this reduces paper correspondence, decreases processing time and speeds case resolution.

For more information, see the fact sheet Resolving cases with secure digital correspondence for taxpayers on IRS.gov. ■



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