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CYBERCRIME IS COMING TO YOUR COMPANY



The threat that a cybercrime will be committed against your company is real and the chance that it will happen is very high. CYBERSECURITY is one of the most serious economic and security challenges that your business faces today.

In order to protect your “trade secrets” and important business information from cyber attacks you must prepare for a cybercrime to be committed against your company and to deal with a cybersecurity breach.

If the Office of Personnel Management of the Federal Government, JP Morgan/Chase Bank, the U.S. Army, the State of Texas, Anthem, J.C. Penney, Heartland, Target, The Federal Reserve Bank of St. Louis and SONY Entertainment, with some of the most secure data security systems in the world, can have their data security systems compromised, then how safe can your system be from cybercriminals?

Most companies whose security systems have been breached share the same weaknesses: they were NOT prepared for a cyber attack; they failed to limit data access to those who truly need it; they failed to make sure their data security controls were working; they failed to monitor their databases; and, they failed to use encryption or, they failed to use it properly.

In order to protect your company, you must have a better understanding of cyber risks. To accomplish that you need: (1) better insight into what is happening on your networks; (2) better policies & procedures regarding data security; (3) better training of your employees about data risks; (4) not to assume your network is secure; (5) not to rely on “off-the-shelf” tools to secure your network; and, (6) to understand that not just your website, but all your services must be secure.

Cybersecurity must constantly be on your agenda. You must carry on an evolving dialogue to address constantly changing cyber threats. You must identify persons in management to take responsibility for cyber security in your company. You must focus on which information and data is most valuable to protect and consider how much of your information is outside your company – in the hands of customers, vendors, and suppliers. You must identify promises you’ve made to partners, employees, customers, vendors and suppliers and others to protect their data and information. You must identify steps necessary to keep data and information secure, including use of the latest technology to protect your company’s valuable data and information. Your strategy must evolve to changing business processes and you must manage your vendor relationships to insure the protection of data and information. Your company and your industry must work together with appropriate entities to reduce cybersecurity threats.

On the other hand, there are consequences for inaction, such as: (1) increased chance of data breach; (2) loss of valuable Company IP, confidential information, proprietary information and trade secrets; (3) necessity to notify victims of data breach whose information was lost/stolen; (4) necessity to notify victims under state statutes and under federal privacy acts, such as HIPPA and GLBA; (5) remediation costs; (6) damage to reputation; (7) business disruption; (8) loss of customers; (9) decline in revenue; (10) brand dilution; and, (11) potential for litigation, civil penalties, and fines.

You must recognize that cybersecurity continually evolves and make trade-offs between business opportunities and risks. You need a cybersecurity plan and for that you should seek assistance of learned counsel – at Friedman & Feiger.

Sincerely,

Larry Friedman can be reached at (972) 788-1400 or email him at lfriedman@fflawoffice.com

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In The Spotlight



Daniel L. Tatum



Daniel L. Tatum practices in the areas of Health Law, Regulations and Compliance, Contract Negotiations, and Business Start-ups. He is highly-respected for his in-depth experience representing healthcare provider organizations. He has dedicated years of counsel and study specializing in HIPAA, Stark and Anti-kickback compliance.

Known as an accomplished health law attorney, his keen attention to detail and superior communication skills collaborate to achieve

successful development, execution and continuation of healthcare provider entities, healthcare-related businesses and internal programs, policies and procedures.

Daniel earned his undergraduate degree from Washington & Lee University and his JD from the University of Houston Law Center. He is a member of the American Health Lawyers Association, the Texas Health Lawyers Association and the Dallas Bar Association Health Law Section. He is a Life Fellow of the Texas Bar Foundation.

Daniel is admitted to practice before the U.S. District Courts of the Northern and Eastern Districts of Texas, the U.S. Fifth Circuit Court of Appeals and all Texas State Courts.

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The Texas Citizens Participation Act **By Brian Shields**

The Texas Citizens Participation Act (more commonly known as the Texas Anti-SLAPP statute) is a relatively new area of law in Texas. Signed into effect in June 2011, the Anti-SLAPP statute provides an avenue for the quick dismissal of suits that are brought in response to an individual's exercise of certain First Amendment rights, including, the right of free speech, the right to petition, and the right of association. Specifically, the statute permits a party to seek dismissal of the suit within 60 days of receiving service and also suspends discovery in the case until the court rules on the defendant's motion to dismiss.

Defendants in defamation cases most frequently pursue Anti-SLAPP dismissals, arguing that the suit is brought in response to their exercise of free speech. The Anti-SLAPP statute provides a definition for the "exercise of free speech" for purposes of the statute. It is a "communication made in connection with a matter of public concern." A "matter of public concern" includes an issue related to: a) health or safety; b) environmental, economic, or community well-being; c) the government; d) a public official or public figure; or, e) a good, product, or service in the marketplace.

Anti-SLAPP law is still developing in Texas due to the statute's relatively recent enactment. And, despite the definition provided in the statute, debate arose as to whether or not the statute applied to communications that were made in private. The Texas Supreme Court recently issued a decision, *Lippincott v. Whisenhunt*, in which they clarified the statute's requirements. The Court held that the plain language of the statute imposes no requirement that the communication be public for the statute to apply. The Court's ruling maintains the statute's broad application.

Another aspect of the Anti-SLAPP law that has produced different interpretations is the evidence allowed by the statute. In an Anti-SLAPP dismissal, the moving party bears the initial burden of proof and must show by a preponderance of the evidence that the legal action is in response to the moving party's exercise of the statute-specified rights. This burden is low and requires only that the moving party show that their proposition is more likely than not to be true. If the moving party is successful, the burden then shifts to the non-moving party, who must establish by clear and specific evidence a prima facie case for each essential element of the claim.



The definition of "clear and specific evidence" has sparked disputes among appellate courts. Some courts interpreted "clear and specific" to require direct evidence of each element of the claim unaided by inferences, while other courts interpreted the statute to allow the court to draw rational inferences from circumstantial evidence.

The Texas Supreme Court clarified this issue as well in its recent decision, *In re Lipsky*. In *Lipsky*, the Court held that the use of circumstantial evidence is permissible in Anti-SLAPP dismissals noting that a plaintiff "must provide enough detail to show the factual basis of the claim." This is an important decision in the area of Anti-SLAPP as it lowers the evidentiary burden previously required by many appellate court districts, including Dallas.

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Upcoming Events

Friedman & Feiger Calendar

- [June 14, 2015](#) Friedman & Feiger sponsors the 20th Anniversary of Paws Cause, 6 pm—9 pm, SPCA of Texas, Jan Rees-Jones Animal Care Center, 2400 Lone Star Drive.
- [June 18, 2015](#) Marcos Ronquillo speaks on the accomplishments of Adelfa and Bill Callejo at the State Bar of Texas Annual Meeting in San Antonio, Texas.
- [September 17, 2015](#) Larry Friedman speaks on Cybersecurity at the Texas Lawyer Conference, 9:30 am, CityPlace Conference Center, 2711 North Haskell Avenue.
- [September 19, 2015](#) Friedman & Feiger sponsors The Fur Ball benefiting the SPCA at The Omni Hotel, 555 South Lamar.
- [September 22, 2015](#) Friedman & Feiger sponsors The Runway Report Luncheon & Fashion Show benefiting Kidney Texas at Brookhollow Country Club, 8301 Harry Hines Blvd.
- [September 30, 2015](#) Janelle Friedman and Yvette Feiger host an Essential Energy reception for women business leaders, with Facebook's Kim Garrett at Dec on Dragon Street, 1414 Dragon Street, 6 pm—8 pm. RSVP: clegrand@fflawoffice.com

Contact for Info: jfriedman@fflawoffice.com

Sponsored by Friedman & Feiger, LLP, Taya Kyle spoke to a standing-room-only crowd of Dallas female business leaders at an Essential Energy reception at Highland Park Village Theater.

Taya is a beacon of light for women and families because of her tenacity and strength enduring the heartbreak of losing her husband, Chris Kyle, a Navy Seal known as the most lethal sniper in American history. In 2014, Clint Eastwood directed American Sniper, based on the New York Times best selling book. Taya was involved in making the film and was played by Sienna Miller. Warner Brothers released the movie in January 2015. The film has been nominated for six Academy Awards including best picture and best screenplay and won the Academy Award for Best Sound Editing.



Yvette Feiger, Taya Kyle, Janelle Friedman

Taya's inspiring message centered on God, country and family. She advised women to recognize every day that trouble may be coming and stressed the importance of a woman knowing exactly who she is. She spoke of the necessity of forgiveness of others saying that "just because you forgive someone doesn't mean the other person doesn't need to be held accountable and face consequences." Taya is the author of a new book, American Wife, which is currently on the New York Times Best Sellers Book List.

The next Essential Energy reception will be held 6 pm to 8 pm on September 30th featuring Facebook's Kim Garrett at Dec on Dragon Street. Please RSVP: clegrand@fflawoffice.com.

Intellectual Property 101 By Richard Bobowski

The legal meanings of the words "trademark," "patent" and "copyright" are often confused. In casual conversation, the interchanging of the words might be inconsequential; however, when evaluating how to protect an organization's intellectual property assets, the distinction becomes important. Therefore, the following summarizes the basic differences between trademarks, patents and copyrights.



Trademarks and Service Marks

Words, phrases, logos and even unique packaging (Coca-Cola's glass bottle, for example) are trademarks (associated with goods) and service marks (associated with services). Trademarks and service marks (or, generally, "Marks") are important to their users because they are usually intended to distinguish their product or service from the competition's. Many Marks will not be accepted for registration with the United States Patent and Trademark Office ("USPTO") because of similarities with existing registrations or other reasons. However, the inability to secure USPTO registration does not prevent a user of a Mark from claiming common law rights in the Mark. This claim is indicated by placing "TM" next to the Mark when it appears on packaging and promotional materials.

Marks can also be registered with the Texas Secretary of State pursuant to Chapter 16 of the Texas Business & Commerce Code and Chapter 9 of the Texas Administrative Code. The analysis applied to accepting or rejecting applications for state registration in Texas was recently changed to more closely resemble the USPTO standards. A state registration might be preferred by a strictly local business that desires some additional protection of its trademarks.

A trademark is distinguishable from a tradename. A tradename (or "assumed name") is a name under which a business is operated that is different from the legal name of the business. Although a tradename can also be a Mark, a tradename is simply established by its use and the filing of Certificates of Assumed Name. For example, a company might be incorporated as American Dining Services, Inc. and do business under the name "Joe's Diner." Joe's Diner would be the "assumed name" of the company.

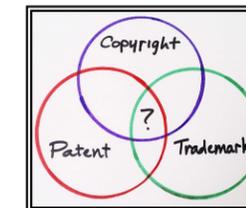
Patents

Patents relate to ideas and inventions. A "utility patent" covers the functional aspects of a new and useful process or an improvement to an existing process. There are also "design patents", which cover the physical, non-functional appearance or ornamental design for articles. For example, a unique wheel design for a sports car might be the subject of a design patent.

Because of the technical nature of patent applications, patent applicants desiring to use an attorney to prosecute a patent application must use an attorney who is registered with the USPTO. The application process also does not move quickly, hence the frequent use of "patent pending" on product labeling and marketing materials.

Copyrights

As described by the United States Copyright Office, copyrights protect "original works of authorship fixed in a tangible medium" and encompass written works, artistic works (including music and movies) and architecture. Computer software is also protected by copyright.



Registration is not required for copyright protection, as such protection exists as soon as the material is created and "tangibly expressed." Registration is required, however, to pursue a claim of infringement in court, and, provided that the registration occurs within five years of the material's publication, the registration constitutes prima facie evidence in any infringement litigation.

Consequently, when evaluating IP assets of a business or organization, the first step is to determine in which category each asset falls and then pursue the available and feasible methods by which the asset can be protected from infringement.

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