

Music Trades

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MKG'S LEGAL ADVICE FOR THE INDUSTRY

A NAMM-member law firm is helping music companies navigate the intellectual property universe

THERE'S A BIG DIFFERENCE between having an idea and owning an idea. Over years spent around the music products business, experts from Connecticut-based MKG Intellectual Property Law have learned two things about this industry: It's great at the "having," and a little shakier at documenting the "owning." By way of music industry experience, MKG has served clients on four continents in segments from percussion instrument designs to global distribution. Along the way, it's gotten to know the small businesses and the laid-back, artistic vibe that make music a fun business to work in—and also sometimes a mismatch for the formal paperwork that secures intellectual property. But having even a little of that paperwork, says MKG's Mark Kasulen, is the best way to make sure working in the music business stays fun. Three years ago, the firm decided to bring its message to the industry at large by becoming a NAMM member, taking part in multiple industry forums on copyrights, patents, trademarks, and how they apply to music businesses. In the coming year, they're planning to expand on that with an educational web series developed through NAMM University. If there's just one thing

they hope music companies learn from their efforts, it's that IP protection can be as simple as a one-page document. For even the smallest company, though, that one page can be a lifesaver.

"We all hope we're going to be successful," says Kasulen, MKG's director of business development. "So when the little guy comes up with a genius idea that ultimately does become successful, he'll own it—and maybe at that point he's not so little anymore."



MKG Managing Partner
Michael Kinney.

As attorney and MKG Managing Partner Michael Kinney says, much of the firm's educational work is about dispelling common myths that hold back companies from protecting their IP. In this business of musician-entrepreneurs where the average company is too small for an in-house legal department, many think it will be too expensive or time-consuming. Others don't realize they have assets—such as original designs, logos, or written content—that would qualify for IP protection. And still others simply don't imagine anyone wants to steal their ideas. "So they don't immediately see the value and benefit of IP protection," says Kinney, "and only seek counsel *after* they have learned of a copier."

While some of these issues are probably as old as human innovation itself, they've been magnified by two related developments: technology that makes duplication easy, and the increasingly global scope of almost every kind of business. Combined, they can spawn problems companies didn't even know they were at risk for. For instance, says Kasulen, it's not uncommon for manufacturers to trust a foreign distributor to secure trademarks or domain names within its own country: Because the distributor knows the local terrain and legal procedures, it can simply look like the most logical choice. The problem is that if the companies ever part ways, it may turn out that the distributor owns the local rights to the assets it registered. "When the relationship ends," says Kasulen, "business is business."

The obvious argument for getting IP protection early, *before* problems arise, is that anyone would rather avoid a land mine than step on one. As Kinney notes, though, there are other reasons to secure assets right off the bat. In many cases, inventors forfeit their patent rights if they disclose the invention publicly, even in something as casual as a social media post, before seeking protection. Copycats in foreign markets may also seize on any lag-time by appropriating designs or content before they're secured there. "Sometimes even a short agreement drafted by an attorney can save companies thousands of dollars," says Kinney. When it comes to choosing an attorney, he adds, companies should

realize they have options—and overpaying for more complexity than they wanted shouldn't be one of them. The right firm, says Kinney, should be able to work within a budget to draw up only those protections that are needed. More than that, it should be able to tailor its work to the style and culture of the business—not, for instance, trying to force a relaxed, rock 'n' roll company into a corporate mold. "The music industry is unique," says Kinney. "There is a high level of artistic influence at all levels of the business, and the right legal counsel is one who appreciates the company's unique approach. Law firms that are NAMM members understand the industry and are, in our view, in a better position to do that."



Attorney Bob Rispoli (left) and Director of Business Development Mark Kasulen have taken leading roles in MKG's work within the music industry.

Kasulen, who spent five years early in his career working in Japan, likes to sum up his view of the industry with the Japanese term "GO-EN," which translates to "good relations." His take is that legal protection isn't the enemy of business friendships and collegial dealings—it's actually what makes them possible. "Defining your ideas, and a few mutually understood ground rules, allows you to share your success with the companies that sell or license your product while maintaining a great relation-

ship," says Kasulen. "It just requires a little paper these days."

MKG's team will be at the NAMM show and welcomes the opportunity to review your IP needs with you in person. Please contact Mark Kasulen at kasulen@mkgip.com.

www.mkgip.com



WHAT'S YOURS IS YOURS WE HELP YOU PROTECT ITSM

Our MKG legal team is ready to help you protect your ideas, products and brands around the world. We provide legal support that matches your business strategy. Please contact **Mark Kasulen**, our **Director of Business Development**, to begin working with us. kasulen@mkgip.com

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