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INVENTION MARKETING ASSISTANCE FRAUD: INDEPENDENT INVENTORS BEWARE!

In order to be commercially viable, new inventions require marketing and protection.

Protection is most often obtained through patents. A good patent attorney can help you with that (and naturally, we recommend Olive & Olive, P.A.!).

As for marketing, one of the most common means of gaining commercial exposure is by licensing one's invention to an existing company or business that agrees to pay royalties for the right to develop and market the invention.

Unfortunately, an interested company can be very difficult to find. As an alternative, sometimes inventors will enlist the services of invention promotion firms. And often, that's the wrong thing to do.

This article is intended to alert inventors to the pitfalls that can arise when dealing with invention promoters, and give tips on avoiding them. Here's what's covered:

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Read the details, below:

A. What Are “Invention Promotion Firms?”

Invention promotion firms claim to provide inventors with assistance in bringing their ideas to the marketplace. For substantial fees, these companies offer a variety of services such as evaluation of the merit of an inventor’s idea, attempts to generate manufacturer interest, marketing campaigns, and sometimes assistance in obtaining patent protection. These firms appear to offer great services, and they appeal to the average, enthusiastic inventor who is desperately seeking guidance in commercializing an invention. While there are some legitimate companies in the invention promotion industry, many if not most invention promotion firms prey on independent inventors by engaging in the unethical practice of invention marketing assistance fraud.

B. What Is “Invention Marketing Assistance Fraud?”

Invention marketing assistance fraud occurs when an invention promotion firm intentionally misleads an inventor about the market potential, the possibility of financial success, and the patentability of an invention. These firms charge inventors exorbitant fees to perform various services that they imply will result in the invention’s commercial success.

Unfortunately, in terms of developing and marketing someone’s invention, these firms often do virtually nothing worthwhile for the fees they charge. Thousands of unsuspecting inventors invest their faith, trust, and money in dishonest promotion firms who intend to swindle them out of their money by exploiting their enthusiasm for their idea. As a result, many inventors not only lose substantial amounts of money, but in some instances, even lose the rights to their inventions. Invention promotion companies typically engage in the same deceptive practices and follow a routine methodology:

C. Catchy Advertising—the Bait

Typically, large-scale invention promotion firms advertise their services through national newspapers, magazines, radio and television. These companies tailor their advertisements to lure independent inventors by offering to provide them with free information on how to successfully bring their invention to the market. Unfortunately, the information an inventor receives by contacting the invention promotion firm largely focuses on the promotion firm itself, and triggers a series of follow-up phone calls and other contacts designed to persuade the inventor to become a customer.

D. The Initial Consultation—the Hook

In most instances, inventors who contact a promotion firm for free information are later contacted by a salesperson (who typically uses some other title to describe his or her role), who will ask them to reveal information about themselves and their idea. Typically they will ask for a basic drawing of the invention. To further entice the inventor, some companies offer to do a “free” preliminary review of the invention, promising to give the inventor a realistic and accurate opinion of the invention’s potential. Virtually every inventor receives positive feedback regarding the product or idea during this initial consultation, whether the consultation is simply informal discussions with the salesperson (who typically uses some other title to describe his or her role), or results in a written document.

E. The Market Report—Creating a Sense of False Hope

After the initial consultation, most invention promotion firms tell inventors that before the company can accurately advise them on the invention's marketability or even work on developing the invention, some type of market report or package must be compiled. These companies use a number of deceptive titles to characterize these reports such as "feasibility report," "new product report," "market analysis," "product analysis," "market evaluation," and "preliminary review." These reports are often 25-50 pages in length, although they vary by company. They often are hardbound, looking very impressive. They describe the idea or invention. They discuss uses and benefits, manufacturing or production considerations, proposed pricing and cost estimates, packaging considerations, distribution channels, target markets, and promotional possibilities. The reports allegedly project the marketability and commercial success of the product or idea, and they cost the inventor hundreds of dollars to prepare. Virtually all of these reports proclaim that the invention is marketable and the salesperson reassures each inventor that the invention will reap profits.

Unfortunately, these reports are disingenuous and have little merit. The reports contain general information about the marketplace and a brief description of the invention, which was of course provided by the inventor. Such reports are typically computer generated fill-in-the-blank documents. At specific locations, a computer program inserts the name of the inventor and the name of the invention. Lastly, the phony report is packaged in an attractive binder and submitted to the customer, giving a false sense as to the legitimacy of the company. Most likely no real independent research was conducted in regard to the invention. In a majority of cases, the inventions have little or no market potential. These reports are tools used by invention promotion companies to manipulate the sensibilities of a customer who is eager to develop an invention, and to dupe the inventor into entering a service contract with the firm.

F. The Service Agreement

Based on the phony reports, the promotion firm will offer to enter into a written service or representation agreement with the inventor. The company agrees to develop and market the invention by acting as the inventor's exclusive marketing and licensing agent. In return, the inventor is required to pay thousands of dollars in upfront service fees, and is often required to agree that the company will receive a percentage of future royalties earned from the invention. But in actuality, very few ideas generate royalty revenue for promotions firms. The requirement for future royalties is included primarily to make the inventor believe that the company has faith in the idea, thus reinforcing the inventor's confidence that the company's marketing efforts surely will be successful, that commercialization will be successful, and that there will be future royalties. The reality is that the bulk of such promotion firms' revenue comes directly from the inventors' own payments. In a federal case in Pennsylvania, the court found that less than one percent of the defendant-promotion firm's revenues came from royalty income.

In order to evade government regulation, some of these firms now divide the work into two phases: the "evaluation" and the "marketing" phases. They claim that each phase is performed by a different company. The "evaluating" company collects a high fee but makes no marketing claims for itself—all its marketing claims relate to what the allegedly unaffiliated company can do. Do not be deceived, because in our experience and as government investigations have found time after time, these are often closely related companies, with

overlapping ownership, all working to take your hard-earned money without giving any significant value.

G. Lack of Promotional Efforts

Invention promotion firms typically do little of value in terms of promoting their clients' inventions. The focus of their promotional efforts typically is a mass-mailing to a list of manufacturers selected based on industry codes, using a form letter that varies little from invention to invention. Some of the promotion firms don't even bother to do the mailing themselves: they provide the inventor with postcards and form letters along with pre-addressed envelopes which the inventor must stuff and mail. The promotion firms usually make no attempt to follow-up with the manufacturers unless the manufacturers contact them, which is rare.

Some invention promotion firms tout their "trade show" activities. Typically, this involves including the client's invention as one page (or part of a page) in a large book, along with other inventions. If a manufacturer happens to stop by and page through the book, the invention might be seen. The chance of such contact resulting in a license is infinitesimal.

These fraudulent promotion companies have little desire or incentive to bring new inventions to the marketplace. Their primary goal is to collect money from inventors. Once the company receives the upfront fees, they move on to the next unsuspecting victim.

H. Loss of Patent Rights

Another popular method many invention promotion firms use to attract inventors is to guarantee a patent for their ideas. So as to create a false sense of security with their clients, the companies who offer to obtain patent protection will promise to refund all fees paid to the company in the event the United States Patent and Trademark Office refuses to issue a patent for the invention. The tactic is so common that the United States Patent and Trademark Office lists it in the "Top Ten" warning signs of invention scams.

To avoid having to pay refunds, the firms can either continue attempts to prosecute patents, regardless of how meritless, or can file applications to obtain patents that are likely to be issued, but are worthless to the inventor—for example, a "design patent" that protects a particular shape of an invention in situations where the value (if any) of the invention lies in how it operates. Such design patents can easily be avoided by those who want to use the underlying idea.

Our firm has even seen an invention promotion company tell a client, in order to persuade the client that her invention had merit and value, that she merely needed to modify the appearance of her product slightly in order to obtain a patent, when in fact, the basic idea of the invention was clearly old and unpatentable. The suggested modification would have added nothing of value to the client and would only have helped line the pockets of the invention promotion company.

On the other hand, some invention promotion companies tell their clients that their ideas do not need to be patented, or leave the impression that it's fine to wait. A cardinal rule in patent law is that if an inventor describes the invention in a printed publication, uses the invention publicly or offers it for sale, the inventor *must* apply for a patent within one year. Otherwise, any

right to a patent will be lost. The promotion companies are aware of this fact but some withhold that information from their clients or disguise it so that it is incomprehensible.

A common service contract with an invention promotion company lasts for two years. By the end of that term, the invention has probably been described in a printed publication (the form letters prepared by the invention promotion firm) and offered for sale (because the letters have been mailed). If a proper application hasn't already been filed, all potential patent rights in the disclosed invention have been lost.

I. Do all Invention Promotion Firms Engage in Marketing Assistance Scams?

No, not all invention promotion companies practice marketing assistance fraud; however, the honest companies are few in number and are difficult to find. The promotion firms that engage in this unethical practice operate on a large-scale. They use the millions of dollars they swindle from clients to fund nationwide advertising campaigns. These campaigns are vital to the success of the companies because it is through catchy advertising via radio, television, magazines and newspapers that they are able to lure a majority of unsuspecting inventors.

Conversely, legitimate invention promotion firms are typically much smaller in size. They do not misrepresent or exaggerate an invention's market potential, and as a result, they represent a small number of inventors. Consequently, legitimate promotion firms often do not generate as much revenue as the fraudulent firms and cannot afford to participate in national ad campaigns.

J. How Can I Protect Myself and My Invention?

Because thousands of inventors have fallen victim to the scams of unscrupulous invention promotion firms, the Federal Trade Commission has taken action. Since the early 1990s, the FTC has investigated the industry and has prosecuted many companies who have engaged in these unfair and deceptive practices. The FTC posts lists of the companies it has prosecuted, and those it is investigating.

Laws exist as well that require invention promotion firms to provide relevant information to their prospective customers. One of our firm's attorneys was instrumental in getting legislation passed in North Carolina to address this problem. The North Carolina Invention Development Services Act requires invention developers to provide the following information during the first meeting they have with a consumer or in the first written communication they have with their prospective client:

- The average fee they charged customers who signed contracts with them during the past six months;
- The total number of customers who signed contracts with them, and of those, the number who received more money as a result of the invention developer's work than they paid to the invention developer; and
- A warning that failure to properly protect patent, trademark and copyrights can result in loss of rights, and a disclosure that unless the invention developer is an attorney or a registered patent agent, then that person is not qualified to give advice about those rights.

The North Carolina law also requires similar, but even more specific, disclosures in any contract with an invention development firm, including a large warning on the cover page of the contract and numerous requirements as to the types of disclosures that must be made and the size of the type in which they must be made. In addition, invention development firms are required to post a bond in order to do business in North Carolina. And, when invention development firms violate the law, the inventor can cancel the contract and can sue and collect treble damages as a result of the dishonest activities.

Federal safeguards also are available. With the leadership of states like North Carolina and others, Congress finally enacted the American Inventors Protection Act (AIPA) to give additional Federal protection for inventors. The AIPA requires invention promotion firms to disclose the following information in writing before allowing inventors to enter into a contract for promotion services:

- The total number of inventions the company has evaluated in the last five years;
- Of those inventions, how many received positive evaluations and how many received negative evaluations;
- The total number of customers who have signed service contracts with the promotion company in the last five years;
- The total number of those customers who have received a net financial profit as a result of the promotion company's services; and
- The total number of customers who have been able to license their inventions to manufacturers.

The AIPA also gives inventors a right to sue promotion firms that engage in invention marketing assistance fraud resulting in financial harm to the inventor.

If you are interested in employing the services of an invention promotion firm, it is imperative that you do your research, know your rights, and ask the necessary questions so as to avoid significant loss of money, or permanent loss of rights to your invention. In fact, by visiting www.ftc.gov/search, you can conduct your own search of companies who have been investigated or fined by the Federal Trade Commission, by inputting search terms such as "invention" and looking at the results.

K. For More Information

For additional information on how to protect yourself against invention marketing assistance fraud, you may want to visit the following websites:

- The Library of Congress's guide to finding business information:
www.loc.gov/rr/business/guide/guide1/
- The FTC's blogpost on invention promotion services:
www.consumer.ftc.gov/articles/0184-invention-promotion-firms
- The Patent Office's article on complaints it has received against invention promotion firms, and how to file complaints:
www.uspto.gov/web/offices/com/iip/complaints.htm

- An outdated, but nonetheless fascinating, list that includes many of the firms who repeatedly have been investigated by the FTC and others (and a few who claim they should not be included): www.inventored.org/caution/list

Good luck, and don't be scammed!!!

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