



## Philadelphia Freedom

In the 1960's, Philadelphia banned commercial bonding and adopted a 10% court deposit system. Since that time, the city's FTA rate has soared, tens of thousands of fugitives have run free, and a reported *one billion dollars* – yes, \$1,000,000,000 — of bail forfeitures from defendants remain uncollected.



In 2008, after extensive efforts and despite the chorus of naysayers, Lexington National, and its long time producer ABC Bail Bonds, convinced local officials to allow us to post bonds in Philadelphia. Since then, Lexington National has been the *only* insurance company writing bonds in Philadelphia. In August 2010, the Pennsylvania Senate held a hearing to examine whether bail bond rules in Philadelphia should be revised to enable the commercial bonding industry to help improve the Philadelphia criminal justice system. Brian Frank was asked to testify and his testimony was summarized in the *Philadelphia Inquirer* as follows:

Brian J. Frank, president of a leading national bail insurer, said private firms kept in close touch with defendants and their families to make sure that the accused showed up for trial, even equipping some with electronic monitors. Frank said the industry did this not out of altruism, but because the firms are on the hook when defendants run. 'We could not have thousands of fugitives or else we would be broke,' said Frank, of Lexington National Insurance Corp. of Baltimore. [Frank] said professional bail agents would outperform Philadelphia's government-run bail system, which has permitted tens of thousands of criminal defendants to skip court without consequence and amass uncollected bail of \$1 billion by the court system's own calculation.

Jonathan Yellin, President of ABC Bail Bonds, has also been intimately involved in bringing commercial bail back to Philadelphia. Because the court clerks and sheriff's department had never dealt with bail bonds, Jonathan provided answers and advice on the logistics and protocol to be used in posting bail. Through solid business practices and hard work, Jonathan has proven, to many local officials, that commercial bail is good for Philadelphia. Let freedom ring. ■

## What Rights Do You Have in A Brand Name?

by Ned Himmelrich, Esq.

**A**fter your phone number, your business name may be your most important asset.

Naming your company is often based on your location, your name or a quality of your service you try to promote. Whether you are starting a new business, are creating a new brand identity for a different location, or have discovered someone in your region opening a competing business with a similar name, you should be aware of the strength of and rights in your brand name. You also should know what types of filings are effective to solidify your rights in a brand name and what rights you have without even filing.

The paradox in naming a company is that the names which seem most appropriate, such as those describing some aspect of your business, are also names you are least able to protect, and are the names others are most likely to use in competition with you. Trademark law dictates that a word that describes some feature of your business is not protectable. Thus, two establishments in Birmingham can be "Birmingham Bail Bonds," two entities owned by Barry can be "Barry's Bail Bonds," and two high quality establishments can be "Best Bail Bonds." The exception to this is when one entity has been using a descriptive name for a long time – usually at least five years — and customers recognize the name as referring to the particular establishment. Under this "secondary meaning" the name is protectable despite its descriptive nature.

In choosing a new name, you can avoid these issues about unprotectable brand names by choosing a stronger name that either has nothing specifically to do with bail bonds, or suggests some link with the services you offer, but does not obviously describe them. A good suggestive name could be "Roam Around Bail Bonds" and the best and strongest name is something arbitrary such as "Aardvark Bail Bonds."

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Many business owners do not realize that they have a trademark without any type of registration. Trademark rights are based primarily on use of a mark in commerce. Merely using a protectable trademark in a geographic territory gives you the right to stop others from using a similar name for similar services in that territory. Your rights to stop infringers are as strong in state and federal court as if you had registered the mark. The major benefit of federal registration is to expand your territory nationwide, although having a website does not automatically give you nationwide reach for your brand, unless you have clients throughout the country. However, federal registration will generally allow you to stop infringement throughout the country, so long as you registered your mark before the infringers use, and you operate in the infringer's region.

Businesses, however, often confuse state corporation filings with trademark protection. Just because you file your corporate name with a secretary of state does not mean you have established trademark rights in that name. The corporate filing is a separate action by which the state recognizes your business as a separate legal entity. Only by using a name in the

marketplace do you gain trademark rights in your brand. Thus, an entity that forms a corporation as XYZ, Inc. but does business as "All Hail Bail Bonds" has no ability to stop someone from operating as XYZ Bail Bonds, but can stop a competitor from using All Hail Bail Bonds.

In some states, the regulations regarding fictitious name filings prohibit you from having the exact name as another entity, although minor variations — which would still be trademark violations — are still allowed. In other states, no such rule exists and parties fight out disputes in court. In states with statutes that address this issue, "Houston Bail Bonds" could stop a different "Houston Bail Bonds" via the statute, but could not stop "Houston Loan and Bail Bonds" without long-term usage and then the application of trademark law.

The bottom line is — if you get in to a trademark dispute — contact an attorney who specializes in that area of the law so you receive good advice. ■

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## Did You Know?

**T**here are more than 20 cities across the United States named "Lexington". Here is a short list of states with a familiar name:

Kentucky (the largest 'Lexington'), Massachusetts (the oldest 'Lexington' where the Battles of Lexington and Concord took place — the first battles of the American Revolutionary War), Alabama, Georgia, Illinois, Indiana, Maine, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New York, North Carolina, Ohio, Oklahoma, Oregon, South Carolina, Tennessee, Texas, and Virginia. ■

Source: Wikipedia

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### Important Note

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# Top Five Mistakes Bail Company Owners Make With Their Websites (And What to Do About It)

by Dan Kaplan and Eric Kronthal

**A**fter years in the business, we've seen business owners time and again assume their tech guys or vendor is doing everything needed to generate as many leads as possible from their websites. This is usually because most owners don't have a background in online marketing and don't fully understand how to get more business from their websites.

Here are the five most common mistakes, followed by five concrete things you can do to ensure your website is capturing as much market share as possible.

## **1. If your IT people are running your site, something's wrong.**

Your website is a marketing tool and you should drive all decisions. Of course, your tech guys should advise you and possibly build your site, but not make the decisions. Your website is a marketing function.

## **2. If you don't personally know how many leads came in from your site last month, something's wrong.**

You should be provided regular monthly updates showing how well your website is attracting business. A good place to start would be to ask to see trends for number of leads, number of visitors, and top 10 keywords.

## **3. If you rank high for search terms with your brand or company name but not your products and services, something's wrong.**

Anyone can rank high in search engines for their company name, but that will only attract people who already know who you are and what you do. New prospects will find you only if

you rank high for keyword terms related to your products and services.

For bail companies, ranking high in the local pin map results for terms like "bail bonds," "bail bondsmen" (intentionally misspelled), and bail [your town name here]" is especially important. The pin maps give local search results and are the most relevant to people looking in your location for your services.

## **4. If you don't have a telephone number prominently displayed on every page, something's wrong.**

You'd think this was a no brainer, but how many times have you been on a website and yelled at the screen: "How do I just TALK to someone?" Don't make users look for a way to contact you. Placing a telephone number in a prominent position (like the upper right corner) of every page is vital.

## **5. If you don't think your company can grow its business online, something's wrong.**

Marketing on the web has become a dogfight. Knock your competition off page one and they're going to put resources into getting back, at your expense. Recent reports show that 750 million people age 15 and older conducted 61 billion annual searches.

Commit to your website and reap the rewards. Next installment: *How-to Improve your Local Pin Maps Search Results.* ■

*Co-owners of PeriscopeUP, Dan Kaplan and Eric Kronthal build and promote top-performing websites that help clients get more leads and sales. Contact Dan or Eric at [info@periscopeup.com](mailto:info@periscopeup.com), 410-404-1665 or 866-446-1972 to grow your business online or get a free website evaluation. [www.periscopeUP.com](http://www.periscopeUP.com).*



## Employee Spotlight: **Tess Isaac**

by Maryanne Arthur

**W**ith the birth of her daughter, Shayla, Tess Isaac had a revelation. She did not want to return to her demanding, yet unfulfilling, job as Assistant Director of Medical Assistance in Maryland. Instead, Tess wanted a change—a more exciting job—and she was willing to start all over again in a new career.

After interviewing with Lisa Slater and landing a receptionist position with Lexington National in 2007, Tess admits: "Boy, this was it!" She revels in the fact that: "Each day is different. You never know what will come."

As the first point of contact for everyone who called or visited the office, Tess quickly learned the intricacies of the bail bond business. Her bubbly personality and adeptness to tackle new challenges soon led her to other bail work—enter-

ing reports, and handling exonerations and transfer bonds. By 2009, she joined the transfer bond team, led by Jarre Weinstein. Primarily, Tess reconciles premium reports, processes bail bond reports, enters exonerations, replenishes powers, and facilitates transfer bonds. She still spends loads of time on the phone. Only now, people ask for her—instead of asking to be transferred to someone else. And, Lexington National is so confident in Tess' ability to resolve agent issues that the company just named her the newest member of its after-hours team. Tess will take home the company after-hours phone one week each month to address urgent calls from agents across the country.

During her quiet time at home, Tess relishes spending time with six-year old Shayla. Together, they share walks around a local pond, backyard gardening and a passion for shopping. "My life is very content," Tess affirms. ■

## Tennessee Agents: **Keeping it in the Family**

by Maryanne Arthur

**M**arc Spears grew up in the bail bond business. His father, Tim BeShea, and family friend “Uncle” Leroy, managed Unchained Bail Bonds since the late 1970’s. After college in 1995, Marc joined their staff full-time as an agent. Today, he manages the day-to-day operations of the company. Recently, Marc shared details of his bail bond experience and relationship with Lexington National. Here are highlights of that conversation:



to transfer departments, everyone is diligent in helping us from the beginning to end of any issues. It’s a great relationship.

### **How do you obtain new business?**

We do radio and Yellow Book ads. We belong to the local Tennessee Association of Bail Agents. And, we support our local high school. But, mostly, we benefit from word-of-mouth referrals and repeat business. Since the time my dad and Uncle Leroy established Unchained Bail Bonds, our company has grown to 30 employees in five different locations across the state.

### **Who are the family members in your business?**

My dad, *Tim*, still comes to work every day. He is the rock of this company. I wouldn’t have it any other way.

### **Describe your relationship with Lexington National?**

I met Randy Parton in 2004. My father met him years before at a Las Vegas convention. We were impressed with the outstanding efficiency with which Randy, Brian Frank and others run Lexington National. We are thankful for working with them. Anytime we need anything, they are so helpful. From the legal

### **What part of your business makes you most proud?**

*Clients really like us.* We are well-established in Tennessee. Our business is centrally located between the courthouse and jail. And, we are accessible 24 hours a day. For any and all legal or bonding issues, clients know they can count on us. ■

*Marc Spears is the manager of Unchained Bail Bonds, a company established by his father Tim BeShea in the late 1970’s. Spears and BeShea are members of the Tennessee Association of Professional Bail Agents. They can be reached at 865-637-2711 or tybeshea@gmail.com.*

## **American Bail Coalition Continues to Support Bail Industry**

**T**he American Bail Coalition is a national organization made up of ten bail insurance companies, including Lexington National. The Coalition’s goals are to educate local government on the benefits of commercial bail and to promote the private bail bond industry for the benefit of its independent bail bond producers.

### **Current ABC projects and successes include:**

- **California Bill 1369**

The Coalition and its members worked with local bail bond associations, various sheriffs, and legislators to revise this bill aimed at reducing jail overcrowding. The bill originally allowed jail release at the sheriff’s discretion on electronic monitoring only, even if the judge ordered bail. The final version of the bill provided that, unless a misdemeanor defendant is held for 30 days, he could not be released on electronic monitoring unless it was in conjunction with a reduced bail bond. The Bill was then vetoed by the Governor.

- **Federal Pre-Trial Services**

The Coalition’s lobbyist continues to work with members

of Congress to include *Citizens Right to Know* language in any federal funding of Pre-Trial Services so that legislators and the public can understand the cost and efficacy (or lack thereof) of PTS programs. In addition, the Coalition has contacted the Department of Justice Inspector General regarding the Bureau of Justice Assistance’s support for Pre-Trial Justice Institute and the pre-trial service community lobbying against commercial bail in the wake of a critical Inspector General report about BJA’s mishandling of re-entry grants.

- **Commercial Bail in Oregon**

Lobbyist and Coalition members continue to educate Oregon politicians of the benefits of returning commercial bail to Oregon.

- **National Public Radio Interview**

The Coalition provided important facts to an NPR reporter who was doing a story on pre-trial services. This information resulted in the reporter providing the commercial bail side of the story. ■

# Out and About at the annual Ohio Bail Agents Association meeting



**Ohio General Agent Mary Smith**



**Mark Holtschneider and Ohio Supreme Court Justice Maureen O'Connor**



**Ohio DOI lawyer Keith Blosser and Ohio agent Rod Gibbs**



**Ohio agent David Williams and Ohio General Agent Don Castle**



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# Legal Beat: **Recent Cases Impacting the Bail Industry**



by Mark Holtschneider, Esq.

## **Lack of Notice to Surety Cured with Notice Two Years Later – Minnesota**

The defendant failed to appear in June 2007. A notice was sent to the bondsman, but not the surety. A show cause hearing was set for December 2008. The bondsman and the surety moved to reinstate and discharge the bond because the notice required by Minn.R.Gen. Prac. 702 was not given to the surety and the bondsman. In February 2009, nearly two years after the FTA, the trial court reinstated the bond because the surety was not given notice but refused to discharge it. Instead, the court gave the surety and agent 30 days to request a hearing. The court denied a renewed motion to discharge and entered an order forfeiting the bond. The surety and agent appealed.

The Court of Appeals held that the trial court's reinstatement and 30 days notice cured any prejudice to the surety from the initial failure to notify it. At the second hearing, the trial court properly applied the Shetsky factors and did not abuse its discretion in refusing to discharge the bond. *State v. Padilla* (Minn.App. 2010)

**Lesson Learned** – In Minnesota and some other states, the failure of a court to give prompt notice to the surety of an FTA does not automatically discharge the surety. Rather, in these states, the court can cure the lack of notice by simply sending late notice to the surety. Consequently, if you write bail in Minnesota or a state that has similar laws, you should make every effort to follow the status of court cases, particularly on your larger bonds, so that you know when an FTA has occurred.

## **Immigration Bond Appeals are under Arbitrary and Capricious Standard - Federal**

The Department of Homeland Security declared various immigration bonds breached and the surety appealed the rulings through the appropriate administrative appeals. After losing those appeals, the surety filed suit in federal court. The surety argued that the agency's breach decision should be reviewed by the court without any deference to the agency's decision. The federal court, however, held that it would only review the agency's decision on an "arbitrary and capricious" standard. As such, the court would give great deference to the agency's decision and the surety could only win if the court found that the agency's breach decision was not reasonable or was made without adequate consideration of the facts. *U.S. v. Gonzales & Gonzales* (N.D. Cal. 2010).

**Lesson Learned** – Immigration bonds are very different than bail bonds. A bail bond forfeiture is decided by a court. An immigration bond breach is decided by a U.S. agency with only limited appeal rights. This is one more reason why immigration bond underwriting must be so strict.

## **Federal Judge Can Accept Unsecured Bond without Proof of Solvency– Federal**

A Magistrate Judge in federal court set a \$100,000 unsecured bond and required three of the defendant's family member to be co-signers on the bond. The Government argued that under Federal Rule of Criminal Procedure 46(e), all sureties on an appearance bond must demonstrate assets adequate to cover the bond amount. The Magistrate Judge held that she could order an "unsecured" appearance bond pursuant to the catch-all provision of the Bail Reform Act, 18 U.S.C. §3142(c)(1)(xiv): "any other condition that is reasonably necessary" to assure the defendant's appearance and community safety. As such, the defendant was released without any evidence that the co-signers could pay \$100,000 in the event of a bond forfeiture. *United States v. Powell* (N..D.Cal. 2010).

**Lesson Learned** – This case provides another example of why very few federal bail bonds are written. Federal Magistrates and Judges have very broad discretion when setting bonds and deciding on release conditions. Unsecured bonds and Pre-Trial Release supervision (at taxpayer expense) are the norm.

## **Oral Premium Receivable Agreement Enforced in Part – Connecticut**

The bondsman wrote bonds totaling \$215,000. The defendant's father paid him \$6,500 before the bonds were posted. The bondsman argued that the defendant owed him an additional \$9,150, which was never paid. The Indemnity agreement and promissory note entered in to evidence at trial were not complete and made reference to security for appearance rather than premium amounts. The documents did not state an unpaid premium balance. The defendant admitted that he had agreed to pay \$2,650 in additional premium. The court held that because the bondsman's records were so incomplete, there was no written or oral agreement to enforce. The judge did, however, award the bondsman \$2,650 based on the theory of unjust enrichment. *Arroyo v. Bajramj* (Conn.Super. 2010).

**Lesson Learned** – A fully completed premium receivable note must be executed each time you agree to take premium over time. The note should specifically refer to payment of premium, the payment plan, and the award of attorney's fees to the bondsman if he is required to sue to enforce the note. The agreement should be signed and witnessed. If you do not get the premium payment plan in writing, you risk your ability to collect the unpaid premium. In addition many states have specific regulations related to the content of premium receipts and unpaid premium promissory notes. Consequently, you should make sure your forms comply with state law. ■

# How-to Select the Right Outdoor Advertising for Your Business

by Maryanne Arthur

**C**onvinced that your bail bond business is ready for outdoor advertising? Last issue, we reviewed the many advantages to this type of advertising, including affordable rates, lasting impact, 24/7/365 availability, targeted messages and advanced technology. Now, let's take a look at which outdoor opportunities might be right for your business.

According to entrepreneur.com, outdoor advertising is "any advertising done outdoors that publicizes your business' products and services." This could include advertising messages on all sorts of things, such as billboards, bulletins, posters, commuter rails, malls, airports, park benches, taxis, trolleys, buses, stadiums, walls and, of course, the sign posted outside your business.

## Here are a few things to consider when choosing an outdoor advertising medium:

**Geographic Location.** The three best places to advertise a bail business are: (1) near the jail, (2) near the court, and (3) where most of your customers live and shop. Search these areas for billboards, park benches, or good places to park a movable sign.

**Budget.** How much money have you allotted for advertising? Where can you advertise to get the best return on your investment? Many outdoor advertisements are simple two-color pieces that boast a company name and phone number without expensive design/artwork costs. A strategically-placed park bench costs far less than a full size highway billboard, and can be equally successful.

**Frequency.** What is the length of time your advertisement will remain posted? Outdoor advertising companies offer various schedules, such as weekly, monthly or annual, for clients to choose from. Choose the one that offers the greatest reach (total number of viewers) for the longest time and the best cost. Marketing studies prove that repeat messages are more successful than one-time hits.

**Consistency.** Do you have a company logo and tagline? Stick to it. Keep your message consistent on all marketing materials, even outdoor advertising. If you need some creative ideas about eye-catching messages, drive around town and make note of the signage that draws (or repels) your attention. Most likely, you will find that simple, clear language and design make a lasting impact.

**Maximize your business resources.** Have a sign outside your place of business? How about a company car? Both of these are perfect for communicating your message to a target audience. Make your signage bright and conspicuous to attract attention and let people know your line of business. Consider using magnetic signs on company cars as free advertising (after the initial purchase) wherever you go.



Imagine the creative possibilities! ■

*Owner of Just Write, LLC, Maryanne Arthur helps businesses create effective communications that boost sales and build lasting relationships. Contact Maryanne at 410-256-4490 or [www.justwritesolutions.com](http://www.justwritesolutions.com).*

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# Studying Your Options?

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We are bail bondsmen and the Frank family has operated retail bail bond offices for over 60 years. While some insurance companies juggle bail bonds with construction bonds, court bonds and homeowners insurance, we focus only on BAIL BONDS. It's simply what we do.

We welcome agents who want to work with a surety that understands them and is devoted solely to bail. We'll help you write more bail and be more profitable. We do that every day.

Join our family of agents across the country and watch your bail bond business grow.



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