

excerpt from article entitled "All Great Businesses Begin with a Good Idea: U.S. Patent and Trademark Law Protects Intellectual Property" published in the December 2011 issue of Commerce Magazine

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**Wilentz, Goldman & Spitzer, P.A.**

*By Brett R. Harris, Esq.,  
Shareholder*

Trademarks are not only of interest to commercial ventures but can be valuable assets for charitable organizations, too. Our firm was retained last year to represent The Makers of Memories Foundation, Inc. (MMF) as it sought to expand its charitable activities and fundraising efforts. Since 2006, MMF has used the mark "MAKERS OF MEMORIES" in connection with its charitable foundation, which supports families that have been impacted by domestic violence, with a particular focus on children. The MMF's activities are conducted through partnerships with domestic violence shelters, social service agencies, schools and service organizations. The MMF raises funds from independent and family foundations and from individuals through mass public appeals, marketing campaigns and an annual gala.

During the firm's customary screening process, a federal registration of "MAKING MEMORIES FOUNDATION" was identified in the name of Making Memories Breast Cancer Foundation of America, Inc. (BCFA), an Oregon foundation whose mission is to grant wishes for terminally ill breast cancer patients, to advance the awareness of breast cancer, and to educate the public about the vast resources and support available to breast cancer patients and their families. The BCFA raises funds through corporate sponsorships, individual and family donations and family memorials. In addition, the BCFA raises funds through its various programs, one of which is Brides Against Breast Cancer, where the BCFA accepts donations of new and used wedding gowns and resells them at exceptional savings from retail prices.

Both marks are used in class 45 for charitable services, but given the different focus of the organizations and targeted beneficiaries, dissimilar nature of the entities with whom the organizations partner and disparate channels of fundraising activities, the foundations have determined that their discernible marks are not likely to cause confusion, mistake or deception as to the source or sponsorship of each of their services. Through counsel, a Trademark Coexistence Agreement has been successfully negotiated. ■