

Pro Bono for Small Businesses -- the U.S. and Russian Perspectives

In the past, pro bono trademark assistance has generally been limited to non-profit clients. Recently, though, more and more legal aid organizations and law firms are assisting for-profit start-ups and small businesses on a pro bono basis. Is this a good idea? Is it even really pro bono?

The practical reality is that start-ups and small businesses are often owned by individuals who, if they were seeking legal assistance personally, would qualify for legal aid. For example, consider a domestic violence survivor who is newly on her own and wants to open a bakery. Perhaps someday she might become the next Mrs. Fields, but for now she has few or no assets and perhaps a small business loan. Many legal aid agencies would accept the business entity as a pro bono client.

For example, at Lawyers for the Creative Arts (LCA) in Chicago, Illinois, the pro bono eligibility limit for individuals is \$35,000 in household income. When evaluating for-profit groups or business entities, LCA looks at the total revenue for the group and/or the household income for each individual who is part of the group. If each individual owner meets the \$35,000 household eligibility limit, LCA will recommend pro bono assistance,

Private lawyers may be reluctant to provide pro bono assistance to for-profit entities because of the proverbial slippery slope: if the firm helps some start-ups, will it be besieged with requests to handle other for-profit entities' work for free? How will it decide which organizations to help for free and which ones to charge? One solution is to accept only those for-profit pro bono clients who have been referred by a legal aid organization that has screening guidelines. That approach gives a law firm a standard response to those who seek free assistance: simply tell them that if the local screening agency says that they qualify for assistance, then the law firm can accept them as a pro bono client. As part of the engagement, the firm could structure the relationship so that if the small business ever exceeds the financial threshold of the legal aid organization's guidelines, it will become a paying client of the firm. This is a positive outcome for everyone because it means that the small business will have grown, the firm will have helped it get off the ground, and the firm will now have a revenue generating client.

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The abovementioned practice and problems regarding providing pro bono assistance to small businesses, including in the sphere of trademark law, is widely propagated in the U.S. and the UK, but to a considerably lesser extent implemented in European countries. This is historically associated with a high degree of private initiative and minimization of government involvement

in Anglo-Saxon law. In comparison to Europe, especially to Central and Eastern Europe, historically the concept of a "social state" didn't exist in the U.S. and the UK.

For example, in Russia, the practice of providing pro bono assistance was only developed a few years ago, and even so, pro bono assistance has been provided only to non-profit organizations that have a few trademarks. Firstly, this is due to the fact that the law firms in Russia who have adopted the philosophy of providing pro bono assistance into their legal practice are a very small proportion of all of the law firms in Russia. Secondly, very few non-profit organizations are aware of the possibility of obtaining pro-bono assistance. Currently, there are no specific regulations in Russia about rendering pro-bono assistance in legal services, which, among other uncertainties, may result in considerable tax risks for those who are involved.

Therefore, the difficulties and problems of assisting for-profit start-ups and small businesses on a pro bono basis is not an international dilemma. However, difficulties and problems of providing pro bono assistance for small businesses is likely to be an issue which will be addressed by other European countries, including Russia, in the near future.

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