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Dos and Don'ts for Maker's Markets: Intellectual Property ("IP") Considerations for Crafters, Vendors, and other Small Businesses During the Holiday Season

DISCLAIMER: This outline is a general guide. Be sure to contact an attorney if you have questions or specific issues that need to be addressed.

Nothing marks the holiday season like a holiday market! Local vendors and artisans use holiday markets to sell unique goods and experiences that make for great gift-giving and a fun holiday activity. Even with the merriment of the holidays, it is important to consider how intellectual property rights, especially the rights of others, can affect your holiday business plans.

This guide provides a few key considerations for your holiday business.

- 1. DON'T Sell Trademarked Trinkets.** It's so common to see your favorite characters and mascots redesigned for the holiday season. Holiday-themed characters make great gifts (who doesn't love to see their favorite characters in an ugly sweater?) and it has become so easy to find these reimagined characters in craft markets everywhere. Still, it is important to remember that more often than not, the characters are protected under intellectual property laws, and because someone else has the legal rights to them, recreating and selling goods featuring these characters creates an infringement risk. For example, Philadelphia Eagles holiday items are very popular and include all sorts of things like mugs, menorahs, ornaments, and holiday home décor. However, the Philadelphia Eagles own trademark rights for marks including EAGLES, GO BIRDS, and the Eagles logo for various goods and services, including clothing and accessories. Those trademark rights are exclusive to the Philadelphia Eagles, which means no one else is allowed to use the marks for similar goods or services without permission. Without permission, recreating the trademarks and selling them—even in small craft markets—is trademark infringement.
- 2. DON'T Offer Photo Shoots with Copyrighted Characters.** Family photos are popular during the holiday season and make for another great gift idea. But photographers need to beware of copyright infringement when designing their photo shoots. Grinch-themed photo shoots have gone viral in recent years, putting a twist on the typical holiday photos. In some cases, however, [photographers have received cease-and-desist letters](#) demanding that they stop using the Grinch for the photos. This is because Seuss Enterprises owns intellectual property rights in the Grinch character, and many photographers have not obtained a license before featuring the green grump in their photo shoots. Aside from the risk of a costly lawsuit, using someone else's protected work and/or characters can negatively affect small businesses and vendors who might be forced to cancel reservations, redesign their products or services, or shut down their business altogether.
- 3. DO Stay on Theme Without Risking Infringement.** There are still plenty of ways to make the most of the holiday as a vendor. While many holiday characters are protected under intellectual property laws, there are

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still emblems of the holiday season that vendors can use and rely on in their businesses. Some aspects of the holidays simply cannot be protected under intellectual property laws and therefore, are free for makers to use in their creations. These include things like generic images of stars, snowmen, dreidels, snowflakes, reindeer, trees, and even the names of the holidays. All of these can be used for your holiday goods without creating a risk of infringement, especially if you design them yourself!

4. **DO Consider Intellectual Property Protection for Your Own Business.** While businesses tend to see an uptick in sales during the holiday season, many work to offer their products and services year-round. Beyond holiday markets, it is important to consider the aspects of your business that are eligible for intellectual property protection. This could be brand names, character designs, literature, and even video content. To learn more about potential areas of intellectual protection for your business, please [contact Trellis Legal](#) for our IP Audit service! With our IP audit, we review your website, marketing materials, products, and other aspects of your business and assess intellectual property considerations. Our audit service includes up to two hours of review, a written assessment, and a 30-minute consultation to discuss our findings. From there, you can use the results of the audit to make thoughtful decisions about your business's intellectual property goals, even beyond the holiday season!

Additional Resources:

- **Read some additional related Trellis resources:**
 - [Blog: Special Considerations for Your Holiday Booth](#)
 - [Resource: Breaking Down Types of IP](#)