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## The Strong Firm in the News

**May 7, 2011 – The Strong Firm is the "Official Law Firm" of CB&I Triathlon.** The Strong Firm is the proud sponsor of the CB&I Triathlon as the event's official law firm. In addition to providing monetary support and ongoing risk management guidance for the events, The Strong Firm will be providing Polar branded water bottles for all participants to encourage proper hydration.

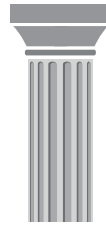
**May 1, 2011 – The Strong Firm Hires Matthew Larkin as Law Clerk.** The Strong firm is pleased to announce the recent addition of Matthew R. Larkin as a Law Clerk. Larkin is scheduled to receive his Juris Doctorate from the South Texas College of Law in May 2012.

**April, 2011 – Eric Thiergood Elected Director and Treasurer of The Woodlands Bar Association.** The WBA is a non-profit organization made up of attorneys living and practicing in and around The Woodlands area. WBA membership includes judges, solo and private practice attorneys, attorneys from small to large law firms, and corporate and "in-house" attorneys. Thiergood looks forward to giving back to The Woodlands and the WBA by serving as a Director and as the organization's Treasurer. Regarding his election to the Board and as an officer, Thiergood said, "I could not have been more pleased. The WBA is made up of fantastic local attorneys from every type of practice. I look forward to working with the Board of Directors and the WBA as a whole and serving this great community."

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# STRONG • POINTS • NEWSLETTER

Summer 2011

## Oil and Gas Transactions: What \$100 per Barrel Crude Does to "Grease" Oil and Gas Deals

**By: Bret L. Strong**

The ongoing strife in oil producing countries has once again affected the price of crude oil, pushing the price to above \$100.00 a barrel. Having worked in the oil and gas business for over 25 years, I have seen my fair share of ups and downs related to the pricing environment. While it is hard to predict where oil prices are going in the long-term, this most recent run-up in prices has our exploration and production clients busy making deals to find and produce a currently very precious commodity.

### Areas Are Getting HOT for Acquiring Oil and Gas Leases

Always the first step in the exploration for oil and gas, we have seen a significant increase in activity associated with the acquisition of oil and gas leases from landowners. Certain areas in Texas and Louisiana have seen lease bonus payments (the amount paid to a landowner when they sign an oil and gas lease) double and triple overnight as oil companies competitively lease in areas where drilling wells for crude oil at its current price makes good business sense.

### Independents Acquire Declining Properties

In the current pricing environment, small independent producers are willing to take on more potential risk for the short-term gain associated with fields currently producing relatively small amounts of oil. Larger oil companies often take these opportunities to shed their balance sheets of liabilities associated with abandonment of small fields and wells by selling off to smaller companies, who are better able to economically work-over and produce declining wells, stretching the economic life and producing those harder to get barrels. Strong due diligence, title work, representations, warranties and indemnifications in acquisition documents become critical to making these deals work for all parties.

### Service and Technology Companies Get Busy

Coupled with the increased technical requirements of obtaining drilling permits offshore as a result of the Deepwater Horizon disaster last year in the Gulf of Mexico, higher crude oil prices also drive the demand for additional oil well service equipment and personnel, as well as new and innovative technology in the oil and gas sector. Many equipment manufacturers and service companies are seeing an increase in activity in order to meet the demand of a rising price environment and need for safer technology, from safer and more efficient production and drilling systems, to software systems to operate and analyze data, the service sector is busy trying to meet this increased demand.

The attorneys at The Strong Firm P.C. are all well-versed in oil and gas transactions and have a long history of working in the oil and gas exploration and production business, and with the service, equipment and technology providers serving the industry. Give us a call when you need legal assistance in any type of oil and gas transaction.



**BRET L. STRONG**  
bstrong@thestrongfirm.com

The founder and managing  
shareholder of The Strong Firm P.C.

# “Marking” Your Territory: Enforcing Your Trademark Rights Against Infringers

By: **D. Joe Griffin**



**D. JOE GRIFFIN**

jgriffin@thestrongfirm.com

Joe became an Associate Attorney in 2010 after graduating from the University of Houston Law Center. His areas of practice include: business law and contracts; corporations, LLC's and partnerships; business and investor immigration; real estate; trademarks; and estate planning and probate.

Having lived in Argentina, as well as in Mexico City D.F., Joe is fluent in Spanish and conversational in Portuguese.

Trademark registration is an important step in protecting your business name and reputation and not only sends a positive message to those with which you do business but also grants a bundle of rights not otherwise available, including (i) official notice to the public of your ownership of the mark; (ii) the exclusive right to use the mark nationwide on or in connection with the goods/services listed in the registration and a legal presumption of the marks validity; (iii) the ability to file suit in federal court against infringers or in other actions associated with the mark; (iv) the ability to register the mark in foreign countries based on the U.S. registration; (v) the ability to record the U.S. registration with the U.S. Customs and Border Protection (CBP) Service to prevent importation of infringing foreign goods; and (vi) the right to use the federal registration symbol ® and being listing in the United States Patent and Trademark Office's online database (see <http://www.uspto.gov/faq/trademarks>).

While the rights and benefits that flow from trademark registration are indispensable for most businesses, other rights are available to those who have not yet taken this step through what is known as a common law trademark. Common law trademark rights can be established through use of a non-registered mark in commerce and to enforce those rights the individual would have to establish that the mark has become well known in the community and establish “secondary meaning.”

The Texas Anti-Dilution Act (see Tex. Bus. & Com. Code § 16.29) permits the owner of a valid common-law mark to seek injunctive relief against an act likely to injure a business reputation or to dilute the

distinctive quality of a mark or trade name. In addition to these statutory claims, Texas state and federal courts have long recognized claims for common-law trademark and trade name infringement and unfair competition (see, e.g., *Gracia v. Beck*, 286 S.W.2d 234, 235 (Civ. App.--Austin 1955, no writ).

Trademarks are designed to not only protect the goodwill associated with the name or mark but also consumers who are likely to be confused by conflicting marks. The likelihood of consumer confusion plays a pivotal role in any legal action taken against an infringer. One can establish likelihood of confusion through a number of ways, the most important of which is actual confusion, as Texas state and federal courts view evidence of actual confusion as the most probative evidence of likelihood of confusion. Thus, if you find customers, vendors, suppliers, or others frequently asking if your business is the same as or affiliated with another business, actual confusion is likely occurring and you may have enforceable trademark rights worth protecting.

While a solid case for infringement may exist, it is important to know that the remedies available for said infringement most often come in the form of injunctive relief. This is because Texas Courts consider that the paramount interest in trademark infringement and unfair competition cases is to stop the infringer from trading on its goodwill, using its name or mark, or passing off its goods or services as those of the plaintiff (see *Qaddura v. Indo-European Foods, Inc.*, 141 S.W.3d 882, 889 (Tex. App.--Dallas 2004, pet. denied)). While money damages have traditionally taken a back seat to injunctive relief, many individuals are

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## Entity Formation as a Way to Shield from Liability

By: **Mariana Grijalva**



**MARIANA GRIJALVA**

mgrijalva@thestrongfirm.com

Mariana became an Associate Attorney in 2011 after graduating from South Texas College of Law.

Her areas of practice include: international business investment and transactions; business law and contracts; corporations, LLC's and partnerships; and real estate.

She holds a BBA in International Studies and Business Administration from The University of St. Thomas. She is fluent in Spanish and conversational in French.

Whether it is in the form of owning a business or property, it is always advisable to think of ways to protect ourselves when we make any investment. Unfortunately, we live in a world where lawsuits are becoming increasingly common. At the time of making an investment, individuals should consider ways in which they can protect themselves against the liabilities that may come with owning and operating these investments. One of the most common and efficient ways to protect ourselves is by creating an entity that can act as a shield from liability when it comes to our businesses or investment properties.

Once the decision is made to form an entity, the next step is to decide what type of entity is better for the type of investment that we are making. The choice of the type of entity for a particular situation is a very important one. Depending on the circumstances surrounding the investment, some types of entities may be better choices than others to serve as a protection to shield yourself and your partners from liability that may arise out of the particular investment or business at hand. There are several different options, including Limited Liability Companies (LLCs), Corporations, Professional Associations, Limited Partnerships and

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# Purchasing Real Estate Prior at a Foreclosure Sale

By: **Eric R. Thiergood, Sr.**

Second Installment of a Series "Purchasing Properties in the Various Stages of Foreclosure":

In Texas, foreclosures may occur through a "judicial foreclosure" or via a "non-judicial foreclosure" which, as the name implies, is handled solely by the lender completely apart from the courts, but within terms of the deed of trust and of the Texas Property Code, Title 5, Section 51 (the "Code"). Since non-judicial foreclosures are by far the most common type of foreclosures in Texas, this article will focus exclusively on purchasing properties via a non-judicial foreclosure.

## The Notice

A foreclosure commences with the trustee (a person appointed by the lender in the deed of trust) notifying the borrower of his or her default under the note and deed of trust and of trustee's intent to sell the property through a Notice of Trustee's (or Substitute Trustee's) Sale (the "Notice"). This Notice is sent to the borrower and is posted at the County Courthouse in the county in which the property is located at least 21 days prior to the trustee's sale, also called a foreclosure sale (the "Sale"). The Notice must provide the date, time, and location of the Sale. According to the Code, the Sale must take place on the first Tuesday of the month. The Sale must take place between 10:00 am and 4:00 pm Central, and must take place at the County Courthouse, unless an alternative location is designated by that county's commissioners. The Notice can be viewed at the Courthouse and, depending on the county, may be viewed online. A number of "foreclosure lists" are also commercially available via the internet and typically consist of a compilation of the Notices filed. Prior to purchasing such lists, you should insure that the list contains only current properties to be sold.

## The Day of the Sale

The number of foreclosure sales that will take place in a particular month varies greatly on the county. Montgomery and Fort Bend counties currently average 20 to 50 foreclosure sales a month while Harris and Dallas counties tend to average between 350 and 500 sales a month. The number of foreclosure sales are significantly lower, typically up to 3 times lower, than the number of Notices posted that month, because the borrower can, and often will, redeem or cure the default under the note, may make an alternative arrangement with the lender (such as a Deed in Lieu of Foreclosure) prior to the sale or may file bankruptcy which typically serves to temporarily postpone the Sale. On the day of the Sale, there will

be a number of trustees on the steps of the County Courthouse handling sales for several lenders, each lender with multiple sales. It is important to locate the trustee(s) who will be selling the property or properties in which you are interested in as different properties may be sold by different trustees and these sales may take place simultaneously.

## The Auction

The sale occurs through a public auction which commences with the trustee reading the Notice and announcing the terms of the Sale. Generally, the Sale is "cash only" to the highest bidder. The trustee may allow the highest bidder a short time after the bidding ends to obtain a cashier's or certified check and tender payment for the Property. However, bidders should clarify with the trustee how much time, if any, will be permitted. If the highest bidder fails to tender payment in the time allotted, the sale will be rescinded, and the Property will again be auctioned to the highest bidder. The Trustee, on behalf of the Lender, may bid on the Property as well.

## The Conveyance and Due Diligence

After the Sale, the Trustee will convey the Property to the Buyer via a Trustee's Deed "as is" without any expressed or implied warranties, except as to warranties of title, and at the purchaser's own risk. The Sale should eliminate any junior or secondary liens on the property. However, the purchaser takes the Property subject to any superior liens and most often to certain tax indebtedness. It is not uncommon for junior liens to remain attached to the property, in which case, the purchaser must often bare the expense of removing these liens. Additionally, the original owner may still occupy the Property, and the purchaser must contend with having them lawfully removed through an eviction. The eviction process is controlled by Chapter 24 of the Code and will undoubtedly present additional expenses to the purchaser. For these reasons and others it is critical that a potential purchaser of a property at a foreclosure sale conduct proper due diligence as to any liens on the property or person residing at the property prior to purchasing the property at a foreclosure sale.

If you are a lender and considering foreclosing on property the attorneys at The Strong Firm are happy to help you navigate the complicated process.



**ERIC R. THIERGOOD, SR.**  
ethiergood@thstrongfirm.com

Eric joined the Strong Firm P.C. in 2005 after graduating from South Texas College of Law. He is licensed to practice law in the State of Texas and in the United States Federal District and Bankruptcy Court for the Southern District of Texas. Having lived in Asturias, Oropesa Del Mar and Madrid, Spain, Eric is completely fluent in Spanish and uses these skills in his work with some of the firm's international Spanish-speaking clients.



The Strong Firm P.C.  
10003 Woodloch Forest Dr. • Suite 210  
The Woodlands, Texas 77380

Phone (281) 367-1222  
bstrong@thestrongfirm.com  
Fax (281) 210-1361

[www.thestrongfirm.com](http://www.thestrongfirm.com)

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To retain our services, please contact us and we will send you an written engagement letter for your consideration and execution in order to hire our firm and create the attorney-client relationship. Please do not send confidential information to us until such an attorney-client relationship has been established.

# The Strong Firm



From left: **Meghan Leheny**, legal assistant; **Mariana Grijalva**, attorney; **Melanie Edleston**, office manager; **Bret L. Strong**, attorney, founder, and managing shareholder; **Eric R. Thiergood, Sr.**, associate attorney; **Alicia Lightsey**, paralegal; **D. Joe Griffin**, associate attorney.

## We provide legal services in the all of the following areas:

- Business Law and Contracts
- Financing, Trademarks, and General Corporate
- Corporations, Partnerships, and LLCs
- Real Estate
- Business Disputes
- Wills, Probate, Trusts, and Estates
- Mergers, Sales and Acquisitions of Businesses
- Oil, Gas and Energy
- International Business Investment



## “Marking” Your Territory: Enforcing Your Trademark Rights Against Infringers

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more cognizant of intellectual property rights and with the help of a knowledgeable attorney, seeking and receiving money damages is not out of the question, especially if actual confusion can be shown or if it can be shown that the infringement was willful. At The Strong Firm P.C. we have the knowledge and tools needed to analyze your individual trademark rights and potential remedies and to tailor an approach which works for your individual situation. The significant time and investment in the good will of a business is worth protecting.

## Entity Formation as a Way to Shield from Liability

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General Partnerships. All of these entities have different benefits and entail different obligations and formalities that have to be followed. It is important to consider the different benefits and requirements that are offered by each of the entity structures to find the right combination that will allow for the best protection with the desired flexibility in operating and managing the investment.

At The Strong Firm, P.C. all of our attorneys are experienced in the process of entity formation and can help you decide on the type of entity that is best suited to shield you from liability as you begin your new business or purchase an investment property. Additionally, we can aid with the process of forming an entity from beginning to end, from making the necessary filings with the Texas Secretary of State, to drafting the necessary corporate documents to structuring the selected entity in a manner that fits your specific needs, to assembling a corporate book to keep the company records.