Legislative and Regulatory Updates

Trade Secrets: Foreign Counterfeit Merchandise Prevention Act
On January 3, 2013, House Bill H.R. 22, the Foreign Counterfeit Merchandise Prevention Act, was introduced by Representative Ted Poe (R-TX-2) to enhance the enforcement tools available to U.S. Customs and Border Protection (CPB) for interdicting counterfeit merchandise. This bill, which currently has 14 cosponsors, would rule out application of the Uniform Trade Secrets Act as a barrier to enforcement, and allow CPB to share trade secrets or other confidential or proprietary information with respect to detained or seized goods presented for import or export as necessary to protect against copyright and trademark infringement. On January 25, the bill was referred to the House Judiciary Subcommittee on Crime, Terrorism, Homeland Security, and Investigations. Representative Howard Coble (R-NC-6), cosponsor and Chairman of the House Subcommittee on Courts, Intellectual Property and the Internet, has indicated that he would like the bill marked up as soon as possible, and we are expecting a hearing during the summer or early fall. For the past several years, INTA has been advocating for a change to this Act to allow brand owners direct contact with CBP officers and to assist with increased enforcement.

Customs Reauthorization Bill: Trade Facilitation and Trade Enforcement Reauthorization Act of 2013
Customs reauthorization legislation supported by INTA is moving in the Senate. On March 22, 2013, Senate Bill S. 662, entitled the Trade Facilitation and Trade Enforcement Reauthorization Act of 2013, was introduced by Senator Max Baucus (D-MT) and referred to the Senate Committee on Finance. The bill reauthorizes Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE) and directs them to dedicate resources to customs facilitation and trade enforcement. It will enhance CBP's commercial operations, ensuring compliance with customs and trade laws. The bill should also help to stop the importation of pirated and counterfeit products. The Committee on Finance held a hearing on May 22 that featured statements by witnesses from Procter and Gamble and the National Electrical Manufacturers Association focusing on improved IPR enforcement. Both Chairman Max Baucus and Ranking Member Orrin Hatch (R-UT) spoke in strong support of enhanced CBP anticounterfeiting capabilities. The bill now awaits last-minute edits and final action by the committee.

Sequestration
In the United States federal budget, the sequester or sequestration refers to budget cuts to particular categories of federal spending that began on March 1, 2013. This is a United States government-wide challenge. The Office of Management and Budget (OMB) has determined that the USPTO has to make cuts as a result of sequestration even though the agency's appropriated budget is based on projected fee collections. INTA has sent a letter to Acting Secretary Rebecca Blank requesting that the Department of Commerce take the appropriate steps to safeguard the funds provided by trademark owners and ensure that the USPTO has the full benefit of those resources to the extent provided by statute. Sequestration is directly affecting the trademark community, as the USPTO-led plans and initiatives for electronic updates and programs have been slowed.
USPTO
INTA has been partnering with the USPTO on joint roundtables around the country for the past year and a half to allow users the opportunity to speak directly with the office. Our next luncheon roundtable discussion will occur September 19, 2013, in Richmond, VA. The roundtables provide an opportunity for the trademark community to converse with USPTO management regarding the agency’s key projects and initiatives. The roundtables are also designed to help the USPTO better understand the needs of those using its services and to offer insights into the USPTO operations. Topics covered will include: recent developments at the USPTO (e.g., performance and quality results, post-registration specimen pilot, electronic Official Gazette, TTAB metrics); customer suggestions for improvement; end-to-end electronic processing; and practice tips.

Presidential Nominees for U.S. Trade Representative and Secretary of Commerce
On May 2, 2013, President Obama nominated Michael Froman, a White House international economics advisor, to be the United States Trade Representative (USTR). The deputy USTR, Ambassador Miriam Shapiro, will become acting USTR until Froman is confirmed. The USTR helps to develop and recommend United States trade policy and has been relevant to INTA efforts particularly with regard to anticounterfeiting measures.

On May 2, 2013, President Obama also nominated Penny Pritzker to serve as the next Secretary of Commerce. Pritzker, an early Obama campaign fundraiser, is a trustee at Stanford University, cofounder of the investment firm Artemis Real Estate Partners and a board member of Hyatt Hotels Corporation. Pritzer testified before the Senate Commerce, Science and Transportation Committee during a May 23 confirmation hearing.

Trans-Pacific Partnership Trade Agreement (TPP)
On November 12, 2011, the leaders of nine Trans-Pacific Partnership countries (Australia, Brunei Darussalam, Chile, Malaysia, New Zealand, Peru, Singapore, United States and Vietnam) announced their achievement of a plan to work toward a 21st-century TPP agreement, with the goal of enhancing trade and investment among the TPP partner countries. In early 2013, Canada and Mexico were added as negotiating countries for the TPP. The 17th round of negotiations was held in late May in Peru. Washington insiders believe that the TPP will be extremely difficult to conclude owing to its high level of ambition, varying perspectives and diverse membership. On April 24, 2013, the USTR notified Congress that the President intended to commence negotiations with Japan. A hearing is scheduled for July pertaining to Japan’s inclusion in the TPP. If Japan joins, it is highly unlikely that the parties will meet their completion date of October 2013. Senate Finance Committee Chair Max Baucus (D-MT) has indicated an interest in introducing a bipartisan Trade Promotion Authority (TPA) bill that will accelerate congressional movement on and approval of trade agreements. A copy of INTA’s Model Free Trade Agreement was submitted to the USTR as a means to ensure adequate and effective protection of trademark rights during negotiation of the TPP. The USTR has indicated that most, if not all, of INTA’s minimum set of baseline standards have been considered in its negotiations.
Trans-Atlantic Trade & Investment Partnership (TTIP)
The Obama administration has placed the TTIP at the center of trade priorities. The first round of negotiations with the 27-nation European Union may commence as early as July. However, the TTIP raises its own set of challenges. First, Europe continues to suffer in a serious recession, with GDP contracting 0.6 percent in 2012 and forecast to fall further in 2013. Second, while the US-EU economic relationship is deep and important, many of the issues that must be settled in a comprehensive full trade agreement will certainly be difficult to resolve. At the same time, both the EU and the United States are committed to maintaining and promoting a high level of intellectual property protection, including enforcement, and to cooperating extensively. One of the main objectives of this partnership is to continue to strengthen intellectual property rights. On May 16, 2013, the House Ways and Means Subcommittee on Trade held a hearing on the benefits of expanding US-EU trade. The focus of the hearing included (1) tariff barriers to trade; (2) regulatory barriers, including barriers to U.S. agricultural exports; (3) opportunities for regulatory cooperation and coherence; (4) services and investment barriers; and (5) ways to strengthen cooperation between the United States and the EU with regard to third-country issues. There were no IP-related issues raised during the hearing.

Internet Governance Bill
Internet legislation passed in the House of Representatives on May 14, and the bill has now been referred to the Senate Committee on Commerce, Science and Transportation. House Bill H.R. 1580, which affirms the policy of the United States regarding Internet governance to keep the Internet stable, secure and free from government control, was introduced by Representative Greg Walden (R-OR-2). INTA is a founding member of the Intellectual Property Constituency (IPC) of ICANN (the Internet Corporation for Assigned Names and Numbers), and has been a leading voice for trademark owners in the evolution of cyberspace and in ensuring the proper oversight and management of the Internet’s domain name system.

Non-Disparagement of Native American Persons or Peoples in Trademark Registration Act of 2013
INTA is monitoring the progress of this legislation. In 1992, in Harjo v. Pro-Football, Inc., seven Native Americans petitioned the Trademark Trial & Appeal Board (TTAB) to cancel the six federal registrations belonging to the Washington Redskins. In 1999, the TTAB held that the word “redskin” may in fact disparage Native Americans and cancelled the registrations. On appeal, a federal court reversed the TTAB’s decision, holding that there was not enough evidence to show the Redskins name was disparaging and that petitioner’s appeal was barred by the equitable doctrine of laches. In 2009, a federal court of appeals upheld that decision, and the Supreme Court denied certiorari. In 2006, in Blackhorse v. Pro-Football, Inc., a new group of young Native Americans petitioned the TTAB to cancel the registrations for the offending trademarks. The TTAB held a hearing on March 7, 2013, and a final decision is pending. On March 20, 2013, House Bill H.R. 1278, the Non-Disparagement of Native American Persons or Peoples in Trademark Registration Act of 2013, was introduced by Representative Eni F.H. Faleomavaega (D-American Samoa). This bill, which currently has 13 cosponsors, would amend the Lanham Act to conclusively presume that a mark that uses the term “redskin” or any derivation of that term consists of matter that may disparage persons, and requires the USPTO Director to cancel the registration for a mark containing the term. This bill was referred to the House Judiciary Subcommittee on Courts, Intellectual Property and the Internet on April 15, 2013. INTA has not taken a formal position on this legislation but continues to monitor its status.
No Stolen Trademarks Honored in America Act

INTA is monitoring the progress of this legislation. On February 15, 2013, Representative Darrell E. Issa (R-CA-49) introduced House Bill H.R. 778, the No Stolen Trademarks Honored in America Act. This bill, which has five cosponsors, would amend the Department of Commerce and Related Agencies Appropriations Act and prohibit any U.S. court from recognizing, enforcing or otherwise validating any assertion of rights by an individual of a mark, trade name or commercial name that was used in connection with a business or assets that were confiscated by the Cuban government unless the original owner expressly consents. The prohibition applies only if the individual asserting the rights knew or had reason to know at the time of acquiring the rights asserted that the mark or name was the same as or substantially similar to the mark or name used in connection with the business or assets that were confiscated. On April 15, 2013, the bill was referred to the House Subcommittee on Courts, Intellectual Property and the Internet. The Senate companion bill, S. 647, with one cosponsor, was introduced by Senator Bill Nelson (D-FL) on March 21, 2013, and was referred to the Senate Committee on the Judiciary. INTA has not taken a formal position on this legislation, but continues to monitor its status.