

INTA Bulletin

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The Growth of the Trademark Administrator Position

Although the position of the trademark administrator was traditionally a U.S. phenomenon, more and more countries are finding a need for specialized trademark administrators and paralegals. This need is a consequence, in varying degrees, of economic pressures for law firms and corporations to operate in a cost-effective manner, coupled with new developments in trademark practice.

Mergers, acquisitions and downsizing have significantly affected trademark portfolios, as well as the intellectual property job market. In

response to an unpredictable business environment, the type of work being delegated to paralegals is expanding. As evidenced by a recent INTA survey, stressful economic downturns have encouraged recruiting for trademark administrators, and the demand has increased primarily for in-house positions. Likewise, law firms and their clients may, in some cases, wish to opt for lower billing rates rather than the more expensive



option of working with an attorney. In many situations, a senior paralegal working under supervision could service the firm's clientele very effectively.

Rhonda Steele, marketing property manager for Mars, Incorporated for the Asia Pacific

Region and a vice president of INTA, is a paralegal whose extensive experience gained from more than 20 years in the field allows her to manage a wide geographical spread and extensive portfolio of brand names without the need to

be legally qualified with a professional license. "Trademark administrators are an untapped resource for many corporations and law firms, especially when they are working on the management of international portfolios," she says. "Because the local attorneys provide the local legal advice, an experienced trademark administrator can add significant value to the process by

SEE **GROWTH** ON PAGE 10

Update on Trademark Legislation in the Caribbean

Recently, the Caribbean islands have been a hotbed of trademark law activity. Sweeping new trademark laws were put into force in 2003 in St. Kitts-Nevis and St. Lucia, while new trademark laws went into effect in 2002 in Anguilla. In 2001, new trademark regimes were put into operation in both Belize and Jamaica. Currently, draft trademark acts are circulating in St. Vincent and Turks & Caicos Islands. In addition, the latter recently amended its laws to permit registration of service marks.

Service Marks

Service marks can now be registered in numerous Caribbean jurisdictions, owing to enactment of service mark provisions in all of the new trademark acts as well as longstanding provisions in other jurisdictions for registration of service marks. The Caribbean jurisdictions that now allow independent applications for service marks are Anguilla, Barbados, Belize, Jamaica, St. Kitts-Nevis, St. Lucia, Turks & Caicos Islands, and Trinidad & Tobago.

On the other hand, service marks can be registered in the following jurisdictions only if the subject service mark has already been registered in the United Kingdom: Antigua & Barbuda, British Virgin Islands, Cayman Islands, Dominica, Grenada, Guyana, Montserrat and St. Vincent.

It is only in the Bahamas that service marks cannot be registered in any way.

U.K. Registrations

Recent changes in trademark

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Association News

I Met My Spouse at an INTA Annual Meeting

We all agree that the INTA Annual Meeting is a professionally rewarding event. Most would add that it is also an illuminating educational experience. Many would even submit that it is a meeting place for good friends, a sort of yearly "high school reunion" for vocationally kindred spirits. But when one thinks of romance, the Annual Meeting is not necessarily the first thing to come to mind.

Perhaps that impression deserves reconsideration. It appears that the Annual Meeting is actually a place where love can, and sometimes does, blossom. We were fortunate to learn of some fellow practitioners who were touched by kismet at the Annual Meeting, and we are delighted to bring their stories to you for Valentine's Day.

Charles Webster and Kay Rickelman met in May 1993 at the INTA (at that time the USTA) Annual Meeting in New Orleans. It was the first INTA meeting for both of them, as well as Charles' first visit to the United States. On his way to the New Orleans meeting, Charles visited associate firms in New York, San Francisco and Chicago, including a meeting with Kay's fellow director, Lew Steadman, Jr. of the Chicago firm Hill Steadman Simpson. Lew briefly introduced Kay and Charles in Kay's office, and as Kay and Lew had previously arranged an Annual Meeting dinner in New Orleans and had a spare place open, it was offered to Charles. Charles and Kay then continued bumping into each other throughout the meeting, at the opening reception, the Hill firm's private reception, a talk about dilution, the closing reception and various other ad hoc meetings, not to mention jazz at Preservation Hall and coffee at Café Du Monde. Having established a common love for trademark law and a mutual attraction, Charles visited Kay in

Chicago after the meeting. Kay, in turn, visited South Africa, and they promptly became engaged in September 1993. They were married in Chicago in April 1994 and Kay moved to South Africa. Charles practices as a partner at Spoor & Fisher, Pretoria, and Kay is the firm's foreign trademark advisor. They attend INTA meetings regularly to maintain contact with all their friends and acquaintances in the trademark world.

Apparently, love was in the air at the 1993 Annual Meeting. A mutual friend introduced Louis Ebling and Gretchen Blum, both in attendance in New Orleans for their fourth Annual Meeting. Upon meeting, they sat together for a few sessions and got



along famously. After running into each other by chance the next day, they embarked on a marathon first date, spending much of the free time they had in the remaining days together. When the Annual Meeting was finished, Louis called Gretchen in the hopes of continuing their relationship. By June, the two were enjoying a full-blown romance, and on a romantic trip to St. Thomas the next month, Louis proposed and Gretchen accepted. Since Gretchen lived and worked



Love was in the air at the 1993 Annual Meeting in New Orleans for Kay and Charles (above) and Louis and Gretchen (below)

in Cincinnati, and Lou in Chicago, they both searched for employment in the other's city, intending to see who would be in a position to relocate first. Luckily, by the end of 1993, Louis was ready to move to Cincinnati. After working out the logistics of where they would reside, they were married in May 1994. Gretchen and Louis have two children, Margaret and Karl, and they both practice at Greenebaum Doll & McDonald PLLC in Cincinnati, Ohio, USA.

As we know, people come to INTA meetings from a variety of backgrounds, from every country in the world and for myriad reasons. For many, INTA is a wonderful place to meet like-minded professionals that they would not ordinarily have the opportunity to encounter for geographical or cultural reasons. But in the midst of all these sessions, panel-discussions and breakfast meetings, you just never know – sitting across from you or right next to you could be Mr. or Ms. Right.

By Seana H. Smith, King & Spalding, New York, New York, USA

If you have an interesting INTA-related story, or know of someone else who may have one, contact us at bulletin@inta.org.

It appears that the Annual Meeting is actually a place where love can, and sometimes does, blossom.

Atlanta

126th Annual Meeting

✓ CHECKLIST

Always a question when going on business trips, **packing is essential to maximizing your INTA Annual Meeting experience.** Some essential items that will need to be included in your luggage include:

✓ Business Cards

Have plenty of these with you. Business cards allow new acquaintances to better remember who you are, and in some business cultures, it is considered rude not to present your card when meeting someone new. For more on business card etiquette, visit www.executiveplanet.com.

✓ Registration Credentials

If you register before the early bird registration date, (March 12, 2004), you will receive your registration credentials in the mail before the meeting. Make sure to bring them with you. Having all of your credentials with you will save you time and hassle at the meeting.

✓ Tickets, Photo Identification and Passport

Don't forget the basics. Although rules vary in different locations, generally countries will not allow passengers on a plane without photo identification and/or a passport.

✓ Clothing

Think ahead when packing clothing. Check the weather report for that week (www.weather.com) and pack appropriately. Although INTA suggests a business casual dress code, you may want to pack a few suits for more formal meetings, and alternatively, casual wear if you plan to spend some time sightseeing. Above all, wear comfortable shoes. The meeting venue is very large and you will be walking a lot.

✓ Bag and Schedule

Take a bag large enough to accommodate a small notebook, your schedule and any materials you may pick up during the day. It is also a good idea to keep a spare copy of your schedule in your room, just in case.

Visit www.inta.org/atlanta
for complete
program details

INTA Bulletin Board

Charles Oppenheimer retired from Schering-Plough HealthCare Products in Kenilworth, New Jersey, USA, after 32 years of service to the firm.

Henrik af Ursin joined Heinonen & Co., Attorneys-at-Law, Ltd. in Helsinki, Finland.

Jaime Castillo Trigueros and **Tanya I. Escamilla L.** became associates in the firm of Calderon y De La Sierra y Cia., S.C. in Mexico.

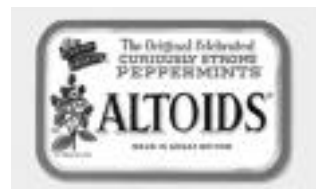
Jessica Yelas, Rajdave Dhaliwal, Sarah Butt, Dan Wadsworth and **Andrew Baker** joined A.J. Park in New Zealand.

William G. Pecau joined Steptoe & Johnson LLP as a partner in the firm's Washington, DC, USA office.

The "INTA Bulletin Board" announces news of a professional nature about individuals who belong to INTA companies. To submit an item for consideration, send a message to bulletin@inta.org.

Trademark Trivia

How did ALTOIDS mints get their name?



Smith & Company, a 19th century confectionery firm in London, United Kingdom, created a lozenge intended to relieve intestinal discomfort. They called it "Altoids," from the Latin "alt" (to change) and the Greek "oids" (taking the form of). Smith & Company also created several other product names ending in "oids," such as "Benoids" ("for delicate throats and chests"), "Zenoids" (for "an easy digestion"), "Cyphoids" (to "defend your throat") and "Notoids" ("antiseptic voice and throat pastilles").

Source: www.altoids.com; Editor: Elaine Czach, INTA, New York, New York, USA

Law and Practice

BRAZIL

Trademark L.A. GEAR

In a case of first instance, a Brazilian court ordered the PTO to publish the allowance of an application, circumventing an administrative process that would have taken at least two years. The ruling resulted from a dispute that began when *Faster Indústria de Calçados Ltda.* (“Faster”) filed an application to register L.A. GEAR, which was not registered in Brazil by its U.S. owner, L.A. Gear, Inc.

The Brazilian PTO rejected *Faster*’s application based on the fact that another company had registered the “LA” mark. *Faster* then filed a lawsuit requesting that the court determine the registration of L.A. GEAR in its name. Two years later, L.A. Gear, Inc. filed a declaratory lawsuit requesting a declaratory order that L.A. Gear, Inc. was the only possible owner of the L.A. GEAR mark, and to order the PTO to register the mark in its name.

During the course of the lawsuits, the L.A. GEAR application was transferred to L.A. Gear, Inc. Consequently, L.A. Gear, Inc. replaced *Faster* as the plaintiff of the first lawsuit.

On October 23, 2003, the Federal Court of Rio de Janeiro rendered a final decision on the case. Regarding the declaratory lawsuit, the court declared that L.A. Gear, Inc. was the only possible owner of the mentioned trademark. Regarding the lawsuit originally filed by *Faster*, the judge ordered the Brazilian PTO to resume the analysis of the trademark application from the first procedural step and in due time register L.A. GEAR in the name of L.A. Gear, Inc.

Resuming the analysis of the case from the first procedural step would mean a delay of years to register the trademark. Therefore, L.A. Gear, Inc. filed a motion requesting that the court order the PTO to publish the allowance of the application, rather than publishing it for opposition purposes, which is the first procedural step.

The judge granted L.A. Gear, Inc.’s motion and ordered the PTO to publish the allowance of the application, thus saving at least two years in administrative proceedings. This decision was published on October 29, 2003 and is still subject to appeal.

Contributor: César D. Carvalho, Veirano & Advogados Associados, Rio de Janeiro, Brazil; Verifier: Rodrigo Borges Carneiro, Dannemann Siemsen Bigler & Ipanema Moreira, Rio de Janeiro, Brazil

CROATIA

New Legislation

New legislation on Structure and Activities of Ministries and State Administrative Organizations was published in the December 22, 2003 edition of the *Official Gazette* of the Republic of Croatia.

This new law affects the merger of the State Intellectual Property Office of the Republic of Croatia with the State Office for Standardization and Measurements (which was, until December 22, 2003, a separate state administrative body), to form the new State Office for Intellectual Property, Standardization and Measurements. The competence of this administrative body regarding intellectual property rights, including trademarks, remains unchanged.

This unanticipated development results from the newly elected government of the Republic of Croatia and its attempt to reduce state administration.

Source: Official Gazette; Contributor: Tanja Rajic, L.M., PRODUCTALtd., Zagreb, Croatia; Verifier: Jadranka Bibic, PRODUCTALtd., Zagreb, Croatia

FRANCE

Protection of Figurative Trademarks

In a decision rendered on June 13, 2003, the Paris Court of First Instance partially cancelled six international and French figurative trademark registrations, filed in the name of Philips, for lack of distinctiveness. All six registrations featured the Philips three-head electric shaver design and designated goods in class 8. The marks were cancelled specifically in respect to “electric razors and electric shears, parts and accessories of the above-cited articles.”

The action for cancellation was brought by Remington, which argued that the figurative trademarks depicting the triangular, three-head face of the Philips shaver did not satisfy distinctiveness requirements of article L.711-2 of the French Intellectual Property Code. Directly inspired by article 3.1 paragraph e) of E.C. Directive 89-104 on Trademarks (the “Directive”), article L.711-2 states that: “signs exclusively consisting of the shape imposed by the nature or function of the product or which give the product its substantial value” will not be deemed distinctive. The French law notion of “functional” has the same meaning as the Directive’s criterion of “the shape of goods which is necessary to obtain a technical result.”

Drawing on case law from the European Court of Justice (ECJ), the Paris Court examined the claim to establish whether the contested trademarks were composed of a purely functional form. The deci-

sion supports the ECJ’s position that the existence of a multitude of forms capable of producing the same technical result does not render a purely functional form distinctive, and adds that such a figurative mark would be deemed distinctive only if it included other, non-functional elements, which are significant enough in the eyes of the consumer, to distinguish the concerned products from those of competitors.

After examining the elements that made up the figurative marks, the Paris Court decided that the equilateral triangle-shape arrangement of the three heads and the shape of the head contour were purely functional. Furthermore, the shape of the edge of the shaver’s front plate, albeit of an arbitrary and aesthetic nature, was too minor a detail, in relation to the predominantly functional characteristics of the trademark, to render the mark distinctive overall. Several of the cancelled registrations had enjoyed protection in France since the late 1970s. The decision is a clear sign of the Paris Court’s intention to align its case law on functional marks with the course set by the ECJ.

Contributor: Rebecca Delorey, Gilbey de Haas, Paris, France; Verifier: Gilles Ringeisen, Cabinet Plasseraud, Paris, France

HONG KONG

Three-Dimensional Trademarks

Since the new Hong Kong Trade Mark Ordinance came into effect on April 4, 2003, a trademark is defined under Hong Kong law to mean “any sign which is (a) capable of distinguishing the goods or services of one undertaking from those of other undertakings, and which is (b) capable of being represented graphically. The word “sign” is not defined. This has led both practitioners and proprietors to hope that the interpretation of “sign” will be broad and consequently applicable to any graphic representation or function providing the necessary distinctive characteristic of the goods or services of the applicant.

On December 13, 2003, the *Hong Kong Intellectual Property Journal* published online a trademark application for a three-dimensional pill shape. The type designation of the mark is stated to be “ordinary” and the Journal states, “The applicant claims the shape of a tablet with an embossed star as an element of the trade mark.”

Tablets are now clearly open to new designer interpretations of well-argued distinction - a far cry from the days when pills were seen as indistinctive objects of purely utilitarian function and interest. However, “embossed star” could be seen as too general a description. Clearly, this issue will be worth watching.

Contributor: Angus Forsyth, Stevenson, Wong & Co., Hong Kong SAR; Verifier: Ruby Yeung, Ruby Yeung & Co., Hong Kong SAR

ITALY

New Italian Financial Law and the MADE IN ITALY Trademark

The Italian Financial Law for 2004 (Law No. 350 of December 24, 2003, published in the Italian *Official Journal* No. 299/2003), entered into force on January 1, 2004. It includes several provisions concerning intellectual property and indications of origin, the main points of which can be summarized as follows:

The indication MADE IN ITALY is given protection under the Italian Criminal Code, which provides penalties of imprisonment for a maximum of one year or a maximum fine of approximately 1,000 euros (approximately US \$1,250) for the importation, export or sale of products containing false or misleading indications regarding Italian origin. In particular, the application of MADE IN ITALY to products that cannot be considered as originating in Italy pursuant to EU legislation concerning the origin of goods, or the adoption of any other signs that may induce the public to believe that Italy is the origin of the products, even if adopted in combination with express indications of a foreign origin, will be a criminal offense.

The new law also provides that the term MADE IN ITALY can be regulated as a trademark in its own right to protect those products wholly produced or originating in Italy. The rules governing use

PERU

Partial Cancellations Now Available

Partial cancellation actions may now be filed in Peru.

Although Andean Community Decision 486 came into effect on December 1, 2000, the Peruvian Trademark Office believed its provisions regarding partial cancellations should not be applied until December 1, 2003, since these cancellations are based on three years nonuse and were not provided for in the prior legislation (Andean Decision 344). Andean Decision 486 allows the filing of “partial” cancellations on the basis of nonuse of some of the products/services protected by a registration.

In cancellation proceedings, the burden of proof is inverted, so that the trademark owner must submit evidence of use. Evidence of use in any of the Andean Community member countries (Bolivia, Colombia, Ecuador, Peru and Venezuela) is sufficient. The use must be within the three years immediately preceding the filing date of the cancellation action. Use must be consistent with the nature of the products or services in regards to the amount and manner of use and the modality under which they are commercialized in the market. The availability of partial cancellation actions is likely to result in more cancellations being filed.

Contributor: Claudia Fernandini, Clarke, Modet & Co., Lima, Peru; Verifier: Alfredo Valencia, Valencia Law Office, Lima, Peru

of the term will be contained in a Governmental Regulation to be adopted in 2004.

A promotional campaign fund to support and publicize the MADE IN ITALY term has been established by the Italian Productive Activities Ministry, with 20 million euros (approximately US \$25 million) being provided for the first year of the campaign.

The Italian Ministry of Agricultural and Forest Policies is responsible for supervising the trademark NATURALMENTEITALIANO (“NaturallyItalian”), which will protect those Italian agricultural and foodstuffs products that qualify as “quality products.”

Within the framework of the new provisions, the law also provides for the establishment of offices either at the Institute for Foreign Trade or at Italian diplomatic missions, to monitor, consult and provide legal aid to businesses in relation to trademarks, patents, counterfeiting and unfair competition. In addition, in an aim to improve intellectual property right protection, the new law has established a fund for the provision of legal aid to enterprises engaged in international trade and has instituted an anticounterfeiting national committee at the Ministry of Productive Activities.

Contributor: Laura Liberati, Studio Legale, Macchi di Cellere Gangemi, Rome, Italy; Verifier: Alessandro Masetti, Nunziante Magrone, Studio Legale Associato, Rome, Italy

POLAND

Calvin Klein Succeeds in Polish Cancellation Proceedings

Calvin Klein Inc. has succeeded in its efforts to cancel a Polish trademark for CALVIN registered by Calvin Corporation of Thailand for footwear in class 25.

The Polish Patent Office refuses to grant protection for trademarks if there are prior similar trademark registrations destined for goods of the same kind in the name of different entrepreneurs. As a rule, the similarity between trademarks is assessed on the basis of elements that are common for the marks in question and not on the differences existing between them.

On September 27, 1996, Calvin Corporation Ltd., Thailand filed an application for registration of a word and device trademark CALVIN for footwear in class 25.

Calvin Klein Inc., a U.S. company, is the owner of two Polish trademark registrations: CALVIN KLEIN, with priority from May 17, 1988 registered in classes 3, 18, 24 and 25, and CK CALVIN KLEIN, valid from August 18, 1995 and registered in classes 18 and 25. The trademarks are in use in Poland and are considered well known. Moreover, the company has prior rights in its company name.

As a result, Calvin Klein Inc. filed a request for cancellation of the Polish trademark CALVIN registered in the name of Calvin Corporation Ltd., Thailand.

At the hearing on July 3, 2003, the Polish Patent Office acting in *inter partes* proceedings decided that the trademarks are similar according to Article 9.1(1) of the Law on Trademarks. The Office also decided that the trademark CALVIN had been registered in bad faith, and infringed the principles of social co-existence (Article 8.1 of the Law on Trademarks), as well as Calvin Klein Inc.'s rights in its company name (Article 8.2 of the Law on Trademarks).

The decision confirms that registration of a trademark is not acceptable when it aims to take advantage of a famous mark or undermines the reputation of such marks even if it concerns different kind of goods. Moreover, the right to a company name, resulting from the fact that it was the first on the market, has priority over the protection resulting from a later trademark registration.

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KOREA

Introduction of "Dead Copy" and Anticybersquatting Provisions

In December 2003, the Korean National Assembly approved several revisions to the Unfair Competition Prevention and Trade Secret Protection Law (UCPA). The revisions most notably include new remedies against Internet domain name cybersquatting, and provide a new cause of action against "dead copy" product design infringement. These new provisions are expected to take effect by mid-2004.

The first revision prohibits the act of registering, maintaining, transferring or using a domain name that is similar to another party's name, trade name, trademark or any other identifier widely known in Korea for the purpose of: (1) selling or renting the domain name to the rightful owner; (2) interfering with the rightful owner's registration and use of the domain name; or (3) obtaining commercial gain.

A major significance of the above provision is that the same remedies previously required to seek domain name deregistration under the Uniform Domain Name Dispute Resolution Policy (UDRP) or equivalent administrative procedures may now be sought in a civil action based on the UCPA, in addition to the existing remedies of injunctive relief and damages.

The second revision concerns the issue of "dead copy" prohibition. Specifically, any act of assigning, renting, displaying, importing or exporting a product that imitates the appearance of another party's product (e.g., the shape, pattern, color, or combination of such attributes) is now deemed to be illegal. However, this provision does not apply if: (1) the imitation product is manufactured more than three years after the date of manufacture of the original product; or (2) the product shape is commonly used for the subject goods.

Since the original product design need not be famous nor a source-identifier, the above revision provides significant new benefits for plaintiffs seeking to take action against imitation products. All civil remedies available under the UCPA, including injunctive relief and damages, are also available for this new claim.

Contributor: Jay J. Kim, Kim & Chang, Korea; Verifier: Joong-hyo Kim, Choice Kim International Property Law, Korea

SPAIN

Designation of Spanish Community Trade Mark and Design Courts

The Spanish Judicial Demarcation Act (Law 38/1988, of December 28) was amended by the Spanish Parliament on December 26, 2003, and came into effect on January 16, 2004. Under the amendment, the Commercial Courts of First Instance of Alicante, Spain have been appointed Community Trade Mark and Design Courts, while the Alicante Court of Appeal has been appointed as the Spanish Community Trade Mark and Design Court of Second Instance.

These designations have worldwide significance because, under Article 93.3 of Council Regulation (EC) No. 40/94 of December 20, 1993 on the Community Trade Mark, and Article 82.2 of Council Regulation (EC) No. 6/2002 of December 12, 2001 on Community Designs, the above-mentioned courts have international exclusive jurisdiction to deal with proceedings concerning Community Trade Marks and Designs if none of the involved parties are domiciled or have a place of establishment in the European Community.

Proceedings will be conducted in Spanish by a qualified Spanish attorney-at-law in accordance with the Spanish Procedural Act (Law 1/2000, of January 7, 2000).

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RUSSIAN FEDERATION

Customs Code Protects Trademark Owners' Rights

The Customs Code ("Code") and the Regulations on Protection of Intellectual Property by Customs Service ("Regulations") became effective in the Russian Federation on January 1, 2004. The Code includes special provisions aimed to protect trademark owners rights. The Regulations further explain the relevant legal proceedings.

Under the Code, the trademark owner/licensee/authorized representative ("rights holder") has the right to file a letter with the Customs Service ("customs") requesting the inclusion of its trademark in the customs Register ("Register") to assist customs with the identification of unauthorized imports of products bearing the trademark.

The process begins with submitting a letter to customs along with other supporting documentation confirming ownership and rights to the trademark and providing other additional information that would help customs to identify counterfeit or gray market goods.

The rights holder must indicate the period for which the relevant trademark should be listed in the Register, up to a maximum of five years.

There is no official fee for listing the trademark in the Register, but the rights holder must provide an undertaking or an insurance warranty that it would reimburse the damages to the party whose goods are held by customs if goods are proven not to be counterfeit or gray market goods. The minimum amount of the undertaking or insurance is 500,000 RUR (approximately US \$17,500).

On receipt of the letter and supporting documentation and information, the trademark and rights holder will be entered into the Register. This will give customs a legal basis for holding "problem" goods at the border and contacting the rights holder. The rights holder will have ten working days to apply to the relevant law enforcement agency to protect rights after the receipt of the relevant customs notice.

This term is subject to extension for up to ten additional working days, should the application to the law enforcement agency be filed. Upon the issuance of the relevant law enforcement ruling, the "problem" goods could be either confiscated or destroyed. Eventually, the rights holder has the right to file a request to release the "problem" goods that have been held by customs.

These provisions do not apply to goods imported by a private person and claimed to be for personal use.

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UNITED STATES

Did Ty Tamper With Trademark Suit?

The Court of Appeals for the Seventh Circuit, in *Ty Inc. v. Softbelly's, Inc.*, No. 03-1592, 2003 U.S. App. LEXIS 25883 (7th Cir. Dec. 22, 2003), reversed and remanded for a new trial the district court's judgment for plaintiff Ty Inc. in its trademark infringement suit against Softbelly's, Inc. for use of the name "Screenie Beanies." The Seventh Circuit found that the district court erred when it excluded Softbelly's evidence of genericness of the term "beanies" and sustained an objection to testimony suggesting Ty might have tampered with a witness.

Ty manufactures BEANIE BABIES toys in the shape of animals that are filled with bean-like materials. Softbelly's SCREENIE BEANIES products are similar to Ty's products, but have a chamois belly and are used for cleaning computer screens. The issues at trial were whether: (1) the term "beanies" has become generic; (2) the mark SCREENIE BEANIES creates a likelihood of confusion with the BEANIE BABIES and BEANIES marks; and (3) SCREENIE BEANIES dilutes the BEANIE BABIES and BEANIES marks.

At trial, Softbelly's inadvertently omitted documents to prove the genericness of the term "beanies" from the exhibit list attached to the pretrial order. The district court's sanction for the omission was exclusion of this evidence. On appeal, the circuit court found that the district court's sanction was so excessive that it made the trial a "farce" and was "tantamount to entering judgment for Ty."

Furthermore, the Seventh Circuit determined that it was an error to prevent cross-examination of Ty's founder at trial regarding his potential witness tampering. One of Softbelly's witnesses, a Ty competitor for whom Ty's founder previously had worked, was prepared to testify that the word "beanie" had been used by other manufacturers of plush beanbag animals prior to Ty's first sales of BEANIE BABIES toys. However, once trial began, and after receiving a phone call from Ty's founder, the witness refused to testify. At trial, the district judge sustained Ty's objection to Softbelly's questioning of Ty's founder as to whether he told the witness not to testify.

Based on the foregoing district court errors, among others, the Seventh Circuit remanded for a new trial on all issues presented to the lower court.

Contributor: Jessica S. Sachs, Thompson Hine LLP, Dayton, Ohio, USA; Verifier: Leigh Ann Lindquist, Sughrue Mion, PLLC, Washington, DC, USA

www.inta.org/europe

Visit
the INTA website for the
February 2004
Europe Update

Update on Trademark Legislation in the Caribbean

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legislation in Belize, St. Kitts-Nevis and St. Lucia dictate that a U.K. registration can no longer be used as the basis for a trademark application. For many years, it has been impossible to use a U.K. registration as the basis for a trademark application in Bahamas, Barbados, Jamaica and Trinidad.

On the other hand, a U.K. registration can be used as an alternative to filing a local application to register a mark in Anguilla, Antigua & Barbuda, British Virgin Islands, Dominica, Guyana, Montserrat and Turks & Caicos Islands.

Furthermore, a U.K. registration must be used as the only basis for registering a mark in the Cayman Islands, Grenada and St. Vincent.

The only exception to the above is the Cayman Islands, where a Community Trade Mark (CTM) or U.K.-registered mark can be used as the basis for applying to register a mark. Cayman is the sole jurisdiction in the Commonwealth Caribbean, thus far, to recognize a CTM as the basis for applying to register a mark, although Anguilla has established a framework within its new trademark act for CTM recognition, once regulations have been adopted.

Paris Convention Priority

Paris Convention priority is now available in Anguilla, Bahamas, Barbados, Belize, Dominica, Grenada, Jamaica, St. Kitts-Nevis, St. Lucia and Trinidad & Tobago. However, Dominica has not yet enacted implementing legislation.

Classification System

The British classification system of 1938 still applies to local trademark applications, that is, applications that are not based on U.K. registrations, in Antigua & Barbuda, Bahamas, British Virgin Islands, Dominica and Montserrat. In all of the other jurisdictions, where the Nice Convention classification has been adopted, the 8th Edition now applies, except in Trinidad & Tobago and Turks & Caicos Islands.

Madrid Protocol

Thus far, only Antigua & Barbuda has joined the Madrid Protocol. Implementation is still in process.

Use and Renewal

In the Commonwealth Caribbean, renewal of a trademark registration does not require any declaration regarding use – except in Barbados and now in Belize, both of which require a specific assertion as to use. In none of the Caribbean jurisdictions is prior use necessary to register a mark, and all of the countries and territories retain the doctrine of according priority of right to the first to use, rather than the first to file. The common law right to bring an action for “passing off” has been retained in all of the Commonwealth Caribbean jurisdictions.



Reform and Processing

Most extensive in reforming and modernizing its trademark and IP laws has been Belize. The Belize Intellectual Property Office launched its official website on February 13, 2003, with publication at www.belipo.bz of all of Belize's trademark and IP legislation, the bi-weekly *Intellectual Property Journal*, articles on various IP topics and an FAQ section.

Barbados' registry has made great strides in clearing up its trademarks backlog, but still lagging are the Bahamas, whose trademark legislation dates from 1906 and whose registry continues to insist, for example, on receiving a separate signed authorization from both the assignor and the assignee for

every separate class registration. Amazingly efficient, on the other hand, is Montserrat, which continues to function well despite hosting an active volcano – the most dynamic geological phenomenon in the hemisphere.

Another “challenged” jurisdiction is Dominica, which retains an outdated system and is backlogged. However, in November 2004 Dominica will obtain specialized training in London for its principal trademark official, for whom arrangements have been made and financed by the Technical Assistance Subcommittee of INTA's External Affairs Committee. The training in London is being provided by Keith Farwell, a trademark partner of Phillips & Leigh, member of the CIPA Publications Committee and editor of the CIPA/ITMA trademark training manual series. (CIPA, the Chartered Institute of Patent Agents, and ITMA, the Institute of Trade Mark Attorneys, are the two U.K. professional bodies representing trademark attorneys in the United Kingdom.)

Caribbean Court of Justice, Caribbean Union, and FTAA

On the judicial horizon it is proposed to abolish appeals to the Privy Council in London and to replace that court of final appeal with a new Caribbean Court of Justice. Eight common law nations have now ratified the treaty to establish the court, which was provoked in part by the Privy Council's record of overturning controversial death penalty judgments.

Commonwealth Caribbean leaders have also agreed to work toward establishing a European Union-style commission to oversee what they envision may become a 15-member single market economy, allowing the free movement of goods, services and professional workers. Also on these nations' international agenda is the matter of FTAA, the Free Trade Agreement of the Americas, which, theoretically, will debut in 2005.

By George C. J. Moore, Caribbean Trademark Services, West Palm Beach, Florida, USA

In the News

"In the News" is a compilation of articles about trademark law and business abstracted from news publications from around the world. In this issue, items in the news include the following:

Hasbro May Have to Live With Ghettoopoly

Hasbro, the world's second largest toy company and owner of the MONOPOLY trademark, filed suit this past October against David Chang, claiming trademark infringement, tarnishment and unfair competition for his board game "Ghettoopoly," which mimics Hasbro's famous MONOPOLY board game in a crime-ridden, urban setting. In addition to the suit Hasbro filed against Chang, civil rights activists and critics have rallied against the game.

Unfortunately for Hasbro, a court previously found MONOPOLY to be generic and would not grant the company a monopoly on the term "opoly." Accordingly, there are now 88 trademark registrations for games using the term "opoly," which are owned by Hasbro and other third parties. Late For The Sky Productions, a Cincinnati-based toy company, owns 200 titles using the term "opoly," such as Cat-Opoly and Dog-Opoly. However these games do not mimic the MONOPOLY game, nor have they been criticized for any controversial content. According to Late For The Sky Productions spokeswoman Shannon Edwards, "We don't use any of their trademarked and copyright-

ed terms." And, in an effort to distinguish their games from Hasbro's MONOPOLY board game, the Cincinnati company will not use the design pattern on certain spaces and has created customized tokens for each game.

Compared to the famous MONOPOLY top hat and thimble game tokens, green and red houses and get out of jail free cards, players of Chang's Ghettoopoly game buy stolen property and crack houses, and get extra points for getting their entire neighborhood hooked on crack. Ghettoopoly players have a "Ghetto Stash" for money, "Hustle Cards" and malt liquor game tokens.

While respecting Chang's right to express himself, Adora Obi Nweze, president of the Florida NAACP, publicly rallied against Ghettoopoly, saying that the game denigrates the so-called subculture of the African-American community. She is disturbed that someone would market this type of game to teens in that community. Critics and civil rights protestors have raised such an uproar that retailer Urban Outfitters has decided to discontinue selling the game.

Chang said that his game is not racist

because it depicts ethnic groups other than African Americans, including Asians, Hispanics, Italian-Americans, Irish-Americans and other European-Americans. "I think before you pass judgment on my game you should see it for what it is. It is just a game," he said. He indicated that it is not so different from the other forms of entertainment already out there in the media "that also need to be banned." Attorneys have defended Chang, stating that the game is a lawful parody.

Hasbro spokesman Mark Morris said, "He's making the unlawful use of Hasbro's intellectual property to make a statement about something else. Hasbro's reputation, and the distinctiveness of the MONOPOLY trademark, does get tarnished."

David Schlitz of the Burns, Doane, Swecker & Mathis law firm in Alexandria, Virginia, said, "A jury of ordinary people hearing this may be repulsed by it."

Source: www.themiamiherald.com, October 24, 2003; Editor: Candida J. Hinton, Major League Baseball Properties, New York, New York, USA

No Strings Attached, or Trademarked, Either

Madonna, Elton John and other celebrities may be wearing the red string bracelets popularized by the Kabbalah Centre International for warding off negativity, but that fact hasn't persuaded the U.S. Patent and Trademark Office (USPTO) to register KABBALAH RED STRING as a mark.

On February 10, 2003, the Centre, which owns several U.S. word- and design-mark registrations for religious articles and various other goods, filed a federal intent-to-use application to register the word mark KABBALAH RED STRING for use with unspecified religious articles. In August, USPTO Examining Attorney Henry Zak issued an Office Action preliminarily denying the application on the grounds that, among other reasons, the Centre needs a distinctive mark to identify the goods in question.

The Centre has until April 2004 to respond to the Office Action. To date, there is no indication as to whether Madonna or Elton John will get tied up in this legal controversy over red string.

Source: "U.S. Won't String Along," *The National Law Journal*, December 15, 2003; Editor: Timothy J. Lockhart, Wilcox & Savage P.C., Norfolk, Virginia, USA

U.S. Deputy Commissioner Retires After 33 Years of Federal Service

On December 31, 2003, U.S. Patent and Trademark Office (USPTO) Assistant Commissioner for Trademarks Anne Chasser announced the retirement of Deputy Commissioner for Trademark Operations Bob Anderson.

Anderson is known to U.S. trademark professionals as a hard-working and accomplished leader of the USPTO's trademark operation. He was with the Office when it instituted the 3/13 pendency rules in 1984, and ushered the Office into the age of computers, beginning with the introduction of electronic searching in the mid-1980s. Under Anderson's leadership, the USPTO developed what has become the gold standard for electronic filing of trademark applications.

In 2001, Anderson received the highest award conferred on federal career executives, the Presidential Rank Award for Distinguished Service, topping off a career of excellent service.

Source: December 31, 2003, USPTO Announcement; Editor: Fred Carl III, Bayer Corporation, Pittsburgh, Pennsylvania, USA

The Growth of the Trademark Administrator Position

CONTINUED FROM PAGE 1

using acquired knowledge to both ensure that the local attorney has responded to the original instructions and by acting as the conduit through whom the advice can be translated into common business language.” An experienced trademark administrator is keenly aware of the distinction between the common business language of the trademark owner and dispensing legal advice. Paralegals do not give legal advice and many have chosen not to pursue a law degree because paralegal work is “just as rewarding” and the opportunity to contribute to the success of a trademark in the real world is equally present.

Barbara Cookson, a partner at Nabarro Nathanson in the United Kingdom, says, “Law firms tend to focus on selling people’s advice and personal opinions under the brand name of the law firm.” Therefore, the value of a good administrator to the law firm is in his/her ability to organize and maintain trademark portfolios while developing good relationships with co-workers and clients, rather than in delivering legal advice. Cookson compares law firms to corporations and concludes, “Corporate employers tend to focus more on an internal assessment of a candidate’s ability to communicate with other departments and their knowledge of trademark practice.”

Law firms and corporations employing trademark administrators need skilled individuals who think strategically and have the initiative to keep up with new trademark developments. Some employers evaluate a paralegal based on the years of trademark experience and involvement with

INTA as the basis for hiring. Other employers rely on certification as a basis for identifying desirable candidates, while others may simply conduct an interview focusing on the candidate’s general intelligence and disposition as a match for a

specific position. Nonetheless, it is critical that trademark administrators continue their education and develop good working relationships to add value to themselves and their employers.

Although many jurisdictions do not require certification as a prerequisite for employment, others are moving toward developing certification programs for paralegals. Grace Jennings, trademark administrator at Thomson & Knight in Austin, Texas, and chair of the INTA Trademark Administrators Committee, is a paralegal with more than 13 years of experience. Jennings coordinates the filing administration and maintenance of both U.S. and international portfolios, and has extensive experience in docketing, prosecution

and trademark protection. She also conducts educational seminars and workshops for the firm’s clientele to introduce them to trademark concepts and add value to the firm. According to Jennings, “Paralegal certification will assist all employers, including law firms and corporations, in finding skilled paralegal candidates, and will facilitate improvement of paralegal skills.” Jennings indicated the

An experienced trademark administrator is keenly aware of the distinction between the common business language of the trademark owner and dispensing legal advice.

advantages that the certification program offers for employers. “If someone holds the advanced certification, an attorney may feel more comfortable shifting some of the work to the administrator.”

In exchange for providing business and paralegal acumen, job commitment and longevity, many trademark administrators are seeking reciprocal rewards from employers in areas of growth, stimulation and continuing professional development. Rhonda Steele has describes the balance sought by trademark administrator candidates, saying, “There is no doubt that using the services of an experienced trademark administrator can help with containing the cost pressures we are all under these days. However, it is important that employers put back into the relationship to ensure that both sides benefit. It is as important to ensure that trademark administrators are provided

with opportunities to acquire the requisite technical skills. For many, the decision not to become legally qualified is a conscious one, but that doesn’t mean that opportunities to provide breadth of experience should not be offered.”

INTA is keeping pace with employer demand for skilled trademark administrators. The Education Subcommittee of INTA’s Trademark Administrators Committee added content to the INTA website targeted to developing trademark administrators and paralegals. (See www.inta.org.) In addition to introducing recent information on trademark practice and country guides, the section hosts slide presentations on topics including

global trademark practice and the correct use of trademarks. INTA is also preparing for the upcoming U.S. Trademark Administrator certification program. These improvements are evidence of the growing opportunities in the field.

By Candida J. Hinton, Major League Baseball Properties, New York, New York, USA

“Paralegal certification will assist all employers, including law firms and corporations, in finding skilled paralegal candidates, and will facilitate improvement of paralegal skills.”

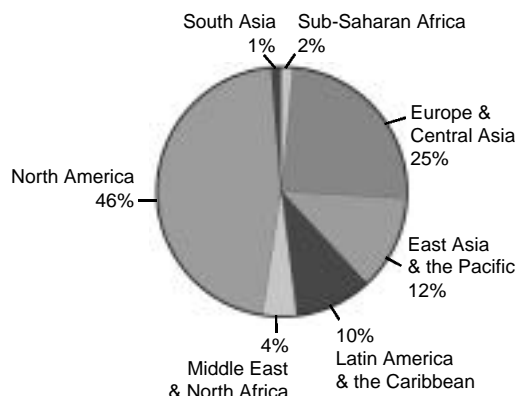
– Grace Jennings, Chair, INTA Trademark Administrators Committee

Welcome New Members

Twenty-one INTA members joined the Association in **December 2003** and **January 2004**. Following is a list of these members. For full contact information, visit the online *INTA Membership Directory* on the Members Only Site of the INTA website at www.inta.org.

Abu-Ghazaleh Intellectual Property, Pudong Shanghai, China, People's Republic; **Abu-Ghazaleh Intellectual Property (AGIP)**, Amman, Jordan; **Alford Consulting**, Washington, DC, USA; **Allied IP Attorneys**, Libya; **Anderson & Associates**, Temecula, California, USA; **Arjo Wiggins**, Cedex, France; **Avvocati Associati Franzosi Dal Negro Pensato Setti**, Milano, Italy; **Baker & McKenzie**, Shanghai, China, People's Republic; **Bogdan Rokicki - Patent, Trademark & Law Office**, Warsaw, Poland; **Brandstorming**, Paris, France; **Chadha & Chadha, Intellectual Property Law Firm**, New Delhi, India; **Corporate Law Group**, New Delhi, India; **Daly & Figgis Advocates**, Nairobi, Kenya; **Dastani & Dastani, PIPLC**, Sadeghieh, Tehran, Iran; **Farrer & Co.**, London, UK; **Fedorova & Partners**, Kiev, Ukraine; **Fry Heath & Spence, LLP**, London, UK; **Fuhrer Marbach & Partner**, Beru, Switzerland; **Grant Prideco, Inc.**, Houston, Texas, USA; **Grau, Baylos & Angulo**, Barcelona, Spain; **Greenberg Traurig LLP**, Santa Monica, California, USA; **H.B. Fuller Company**, Saint Paul, Minnesota, USA; **Hablutzel & Associates**, Chicago, Illinois, USA; **Hulsey Grether Fortkort Webster, LLP**, Austin, Texas, USA; **Infobase Europe SA**, Heisdorf, Luxembourg; **IPR Group Ltd. Patent and Trademark Attorneys Bureau**, Kiev, Ukraine; **Law Offices of Darren M. Geliebter, P.C.**, New York, New York, USA; **LF, LLC**, Wilmington, Delaware, USA; **Loeb & Loeb**, Chicago, Illinois, USA; **Logitech Inc.**, Fremont, California, USA; **Med-E.R.R.S.**, Huntingdon Valley, Pennsylvania, USA; **Milbank Tweed**

Members by Region



Hadley & McCoy, London, UK; **Morocco Intellectual Property Services**, Casablanca, Morocco; **Morrison & Foerster LLP**, Washington, DC, USA; **Naifeh-Guillot**, Dallas, Texas, USA; **Olarte Raisbeck & Frieri**, Bogota, Colombia; **PalmOne, Inc.**, Milipitas, California, USA; **Pareja Abogados Asociados**, Guayaquil, Ecuador; **Patrix AB**, Gothenberg, Sweden; **PICA Corporation Inc.**, Aylesbury, Buckinghamshire, UK; **Poyner & Spruill**, Raleigh, North Carolina, USA; **Ragdoll Limited (U.S.)**, New York, New York, USA; **Rockwell Automation, Inc.**, Milwaukee, Wisconsin, USA; **Roll International Corporation**, Los Angeles, California, USA; **Saifam Limited**, Mombasa Coast, Kenya; **Salih El Amin Intellectual Property**, Dubai, United Arab Emirates; **Scandaglia & Ryan**, Chicago, Illinois, USA; **SETO Administrative Law Office**, Osaka, Japan; **Shanghai Hengfang Intellectual Property Consulting Co., Ltd.**, Shanghai, China, People's Republic; **Sportman's Market, Inc.**, Batavia, Ohio, USA; **The Gallup Organization**, Irvine, California, USA; **The Hearst Corporation**, New York, New York, USA; **Torres & De Hoyos Koloffon**, Nuevo Leon, Mexico; **Torys LLP**, New York, New York, USA; **Townsend and Townsend and Crew LLP**, San Diego, California, USA; **Tyco International Ltd.**, Princeton, New Jersey, USA; **Tyco International Services AG**, Schaffhausen, Switzerland; **U Myint Lwin Law Office**, Yangon, Myanmar; **Ulmer & Bene LLP**, Cleveland, Ohio, USA; **Unipath LTD**, Bedford, UK; **Wachovia Corporation-Legal Division**, Charlotte, North Carolina, USA; **Wella Aktien Gesellschaft**, Darmstadt, Germany; **Wilkinson & Grist Beijing**, Beijing, China, People's Republic; **Williams Powell**, London, UK; **WJB Chiltern plc**, London, UK; **World Research Group**, New York, New York, USA; **Zhihuigu IPS Co. Ltd**, Beijing, China, People's Republic



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Mark Your Calendars

February 16 – 24, 2004

Trademark Administrators Roundtable on the Madrid Protocol
Various cities in the United States

February 23 – 24, 2004

Advanced Trademark Symposium, *Charleston, South Carolina, USA*

March 7 – 9, 2004

INTA/ASIPI Conference 2004, *Buenos Aires, Argentina*

April 7 or 8, 2004

Workshop on Electronic Filing: What, Why and How
New York, Chicago, Dallas, San Francisco

April 12 – 23, 2004

Roundtable on the Role of Trademarks in Business Transactions
Various cities in the United States

May 1 – 5, 2004

126th Annual Meeting, *Atlanta, Georgia, USA*

June 14 – 25, 2004

Trademark Administrators Roundtables
Various cities in the United States

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