



**International Trademark Association**  
*Representing the Trademark Community since 1878*

**Alan C. Drewsen**  
*Executive Director*

**BY EMAIL**

July 29, 2005

Mrs. Regina K. Vargo  
Assistant U.S. Trade Representative for the Americas  
Office of the United States Trade Representative  
600 17<sup>th</sup> Street, NW  
Washington, DC 20508

Dear Mrs. Vargo:

**RE: U.S.–Andean FTA**

The International Trademark Association (INTA) wishes to express its support of the Administration's continued efforts to incorporate measures advancing the protection of trademark and related intellectual property rights during the negotiation of Free Trade Agreements (FTAs) and, in particular, the U.S. – Andean FTA.

INTA is a 127-year-old not-for-profit membership association of more than 4,800 trademark owners and professionals, from more than 180 countries, dedicated to the support and advancement of trademarks and related intellectual property as elements of fair and effective national and international commerce. INTA members share a common interest in the protection and development of trademark law and rely on INTA to represent their trademark interests in government affairs and to help promote those interests throughout the international trademark community.

Based on the provisions contained in the final text of FTAs previously negotiated between the United States and other trading partners including, Singapore, Chile and CAFTA, there are key measures of interest to INTA that we understand are likely to be considered during the negotiations with the Andean nations. These include adherence to the Madrid Protocol and Trademark Law Treaty (TLT), and measures to prohibit mandatory recordal of trademark licenses. Such measures are extremely vital to the further protection of trademarks. Their significance is explained in greater detail in the following paragraphs.

Following the United States accession to the Madrid Protocol in 2003, INTA launched a major campaign to advocate the adoption of the Protocol by the countries of Latin America. Although there are presently 66 contracting parties to the Madrid Protocol worldwide, French Guiana and Cuba are the only Latin American member countries. The Madrid Protocol is significant because it provides companies, both large and small, with the ability to increase protection of their trademarks in as many Protocol countries as desired by filing a single application in a single language – English, French or Spanish – upon payment of a single set of fees. Adoption of the

Protocol in Latin America would be beneficial to American companies who want to protect their marks in the region with greater efficiency. It would also be important for Latin American exporters who wish to increase protection of their marks in multiple jurisdictions with minimal cost.

Without the Madrid Protocol, small companies wishing to sell their products in foreign markets are often left with an unacceptable choice: avoid overseas markets altogether or leave themselves vulnerable to pirates or opportunists who will register the owner's mark in a foreign country and then seek to extort money from the legitimate trademark owner for the right to use its own mark in that country.

Another problem for trademark owners is that the registration procedures in many Latin American countries are so onerous that they actually become an impediment to the protection of a company's trademarks. Simplification and standardization, an aim of the TLT, will help alleviate the hurdles trademark owners must deal with when filing applications in non-TLT member countries. Accession of the TLT helps streamline and harmonize trademark office procedures, thus enabling trademark owners and practitioners to focus on protection and defense of marks, while reducing (if not eliminating) unnecessary and time-consuming paperwork. Of equal importance, the TLT reduces costs. This is especially critical for small and medium-sized business owners who are working on limited budgets and have few resources. In consideration of the U.S.-Andean FTA, INTA requests that the USTR advocate for the inclusion of provision that sets a reasonable date for the Andean nations to adhere to both the Madrid Protocol and the TLT.

Finally, among the greatest challenges for trademark owners are the burdensome licensing recordation requirements of many Latin America countries. Compliance with mandatory license recording requirements is costly and may be unaffordable for small businesses. Further, for multiple licensors, such as franchisors and trademark owners with a continuous program of expanding product lines, compliance with recordation requirements has become a never-ending task. Failure to record can result in the loss of trademark rights. Accordingly, INTA strongly supports inclusion of provisions in FTAs that reflect the WIPO Joint Resolution on Licensing.

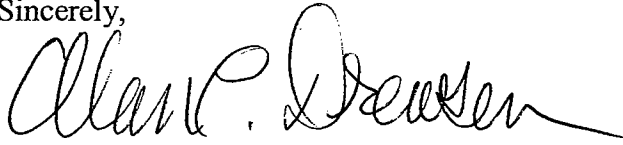
As the trade talks between the United States and the Andean Community intensify, INTA sees the negotiation of the U.S.-Andean FTA as an important opportunity to advance the protection of trademarks through the required accession to the Madrid Protocol and the Trademark Law Treaty by individual Andean nations. INTA applauds the United States Trade Representative's continued efforts to incorporate provisions in FTAs regarding accession to these treaties and to limit recordal requirements, as well as a number of other provisions crucial to the advancement of trademark harmonization.

In order to provide the USTR with concise information on matters of importance to trademark owners, enclosed is a copy of INTA's Model FTA, which recommends a set of guidelines to be used in consideration of trademark-related provisions in FTAs. Additionally, enclosed is a paper entitled, *Madrid Protocol Misconceptions*, which addresses many of the common criticisms of the Protocol. We hope you will find these papers useful in furthering trademark harmonization with the Andean Community and other future free trade partnerships.

International Trademark Association

If you have any questions or need further information, please contact Caren Fitzgerald at (212) 642-1740 or by email at [cfitzgerald@inta.org](mailto:cfitzgerald@inta.org).

Sincerely,

A handwritten signature in black ink, appearing to read "Alan P. Dawson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Enclosures

cc: Victoria Espinel  
Brian Peck