The Raise of “multilatinas”

Joe Ferratti, the New President of the International TradeMark Association (INTA), in an Interview from New York with Marcasur, Offered His View about the Situation of Intellectual Property (IP) in Latin America and the Plans of the Organization.

From Ferratti’s point of view, the ‘multilatinas’ are growing in the region and that means a great opportunity for investors and brands.

What are your main goals as President of INTA?

The ones that I would like to highlight are certainly getting into the new Strategic Plan 2018 to 2021, which has to be passed and implemented. In addition, last year under Ronald Van Tuijl’s leadership, they had in-house practitioners and the Presidential Task Force that did a tremendous work. I think it is important to assimilate all the learning from that report this year, and implement the positive things that they found out there.

For example?

One of the things that the Presidential Task Force is interested in this year regards brand restrictions. Another important goal is the opening of INTA’s new representative office in Santiago de Chile; an example of the importance of this region for our organization. That office is going to focus in a very close interaction with all the members in Latin America and the Caribbean, more enhanced policy engagement to develop stronger relationships with the local and regional Trademark Offices and other associations in the region, and to make sure there are more educational programs in the region. I think it is necessary to reach out and touch members in that way.
“MULTILATINAS CORPORATIONS ARE EXPANDING AND COMPETING IN MARKETS DOMINATED BY MULTINATIONALS FROM ASIA, EUROPE Y EEUU.”

His background

Joe Ferretti is Vice-President & Chief Counsel, Global Trademarks for PepsiCo, Inc. He leads a team of professionals who are responsible for all trademarks, copyright and domain name work for the company, globally.

Ferretti joined PepsiCo after spending 13 years at the Oklahoma law firm of Crowe & Dunlevy, where he was a partner and chair of the firm’s IP group.

He holds an L.L.M. in Intellectual Property from the University of New Hampshire, Franklin Pierce Center for Intellectual Property.

In his role as President of INTA, he is Chair of the Board of Directors and Executive Committee.

Which are the main trends or landscape for the Latin American legal market in the upcoming years? How do you deal with the counterfeit problem?

I think recognizing the significant increase of counterfeit merchandise in the region is relevant, as well as the need to intensify our support for intellectual property rights enforcement on a regional basis.

It is important to encourage support of IP enforcement and IP related agencies throughout the governments in the region.

In particular, online counterfeiting poses additional risks.

Another topic we see in Latin America is the opening of Cuba. This country poses significant opportunities for various industries such as agribusiness, mining, pharmaceuticals and, of course, the tourism sector. Since they removed a number of tourism restrictions, Cuba’s GDP is growing at around 4%, so many businesses are looking to expand their brands there, particularly resulting from the growth in the tourism field.

Ensuring proper enforcement of IP rights by Cuban officials is going to be crucial to facilitate an open economy.

Which are the main challenges for Latin America?

Let me be clear. I don’t think counterfeiting is a bigger problem in Latin America than in other regions at all. Nevertheless, addressing counterfeiting is important to understand the impact that it has on economies. In that regard, in Hong Kong INTA just issued a report on the effects of counterfeiting. I would think that the report, although not focused in Latin America, certainly is of interest for the Latin American IP community.

Just to give you some facts, the global economic value of counterfeit and pirated products in 2013 is between 0.9 and 1.1 trillion US$. Our report, which is online in INTA’s website, projects that it will be between 1.9 to 2.3 trillion US$ by 2022. There is a significant impact on employment. There is an estimated two to 2.6 million jobs lose globally in 2013, and projects 4.2 million to 5.4 million by 2022.

Do you think that there are real opportunities to grow and develop in this region?

I certainly think so. One example is the rise of the ‘multilatinas’. In recent decades, Latin America has seen a huge growth in regional companies that have developed into multinationals.

These companies, known as ‘multilatinas’, are expanding into the global economy competing and challenging market domination of multinationals from Asia, Europe, and the US. That certainly indicates growth.

Also, there is growing innovation in Latin America. Disruptive innovation is becoming a growing trend, which transforms all market scenes including this region that is likely to be a driver of innovation with a young population, middle class in expansion and the growth in technology. Those are all promises of change.

Which are the main conclusions of the Trademarks Latin America Study regarding the impact on the economy, published by ASIPI-INTA this year? (1)

There have been similar studies in the European Union and the United States, to demonstrate the economic potential of intellectual property, and how efficient systems registering or strengthening trademarks contribute to economic activity, employment and commerce.

The ASIPI-INTI Study underscores the huge potential for economic growth that can be unlocked by promoting trademarks within the business community in this region. By further developing national trademark systems and trademark intensive industries, we are looking to use the study to raise awareness of the value of trademarks to a country’s economy and to its people, and use that to help support lawmakers in developing related legislation.

You said that the new Presidential Task Force will be focused on brand restrictions in packaging. What are you going to do in that regard?

I’m glad you asked. Over the years, we have seen a number of laws that were introduced that result in brand restrictions and have taken various shapes and forms. Whether it is plain and standardized packaging, whether it is preventing use of logos, what do we have? These laws are all of different types but they’ll go to the same common element that is restrictions on brands.

I think that is one of the biggest threats that exist today to trademarks, because it takes rights from intellectual property owners, and it hurts groups of people. It hurts companies because they are not able to communicate effectively their brand to
their consumers. Moreover, it hurts consumers because it makes it much harder for them to differentiate between the products that they are really looking for, so it harms both groups at the same time.

**Who integrates the Task Force?**

The Task Force is made up of trademark ‘superstars’; it’s being led by Katherine Bergpark, who’s a former INTA president, as well Bernhardt Doodle, who is extremely versed on brand restrictions. It is a group of the brightest from all regions of the world and their mission will be to examine what is happening with these laws and determine what response INTA can make here. INTA is looking how it can be more proactive in this regard. We want others to join us to ensure that these laws restricting brands do not negatively impact trademark owners and consumers in the way that we are starting to see.

**A message for young leaders**

‘My advice for emerging leaders in the legal profession in Latin America is the same to those in other parts of the world. I think that trademarks practitioners need to think holistically about the brands’.

‘The concept of brand is expanding a lot to include all sort of motional and social attributes. This is a fundamental shift for the trademark industry and we need to adapt to it. When we work with trademarks today, it is important to consider all of the associations that go along with the brand. I mean, there are things like consumer loyalty, concerns for our environment, or our communities. At the end of the day, this brand attributes impact in our drive and purchasing decisions. As lawyers, we have to protect both, trademarks and brands’.

"**CUBA’S GDP IS GROWING AT AROUND 4 %, AND MANY BUSINESSES ARE LOOKING TO EXPAND THEIR BRANDS INTO THIS COUNTRY**"

We look forward to the final report of the Task Force in September at the Board Meeting. And just to mention, Latin America is represented by Francisco Carey in Chile.

INTA’s next annual meeting will take place in Barcelona, in May. Which are the main topics to Latin American lawyers?

It will be an outstanding meeting with more than 300 educational offerings and many table topics. But relating to the Latin American lawyers particularly, there are a couple of things that I would highlight. One is the ‘International Course on Trademark Law and Practice’, that will be on Saturday. It’s a full day course that has been designed to provide comparative analysis on trademark law and practice in countries around the world.

The other one is the regional update on Monday, which is going to be ‘The Impact of Absence of Local Use in Trademark Protection’ in Latin America. That will be a very important topic to learn about acceptable use in the different markets of this region, and how trademark owners can make sure to gather and secure evidence of admissible use. They’ll find out about regulations that exist, and the speakers will certainly explain how the case laws develop in this area.

**There will be another topic about trademark litigation in emerging markets…**

Yes, emerging markets present clear opportunities for brands, low cost production, high yield investments, and attractive populous territory for expanding sales. Beyond the traditional difficulties in international trademark enforcement, emerging markets will present these unique procedural challenges to trademarks rights holders, and the session will address these challenges.

I would like to add two subjects. One is Contracts with Vertical Restraints. In that, we will have IP experts to discuss how trademarks owners protect their distribution networks, enforcement rights, the value of trademarks rights once the products are already in the markets, and then defending the distribution strategies in the face of various anti-competition issues.

**INTA’s Brands and Fashion took place in NYC in March. Why was this event so attractive?**

The topic is particularly relevant for Latin America. Over the last ten years, the fashion industry in that region is on the rise and according to the projections it is expected to double in the next decade.

Latin America fashion designers are arguably ready to finally get their well-deserved time in the spotlight of the global fashion...
industry. International brands are launching and growing in these evolving economies and local brands are expanding into foreign markets.

INTA’s Brands and Fashion event intended to engage brand owners in the fashion industry about all these opportunities. Not just the opportunities but also the challenges that face both major fashion houses and the young entrepreneur designers who are just starting in the business.

How do you see the field of trademarks in five or ten years?

Trademarks are going to continue to play the extremely relevant role that they play today in society. They help protect consumers in promoting global economic growth.

As we talked earlier about laws that restrict brands, brands and trademarks enable consumers to make quick, confident and safe purchasing decisions. I think it will also continue to promote freedom of choice. That’s where I see brands and trademarks in five or ten years.

Fabiana Culshaw