GI Standards: Switzerland and Colombia Fight for Heritage

Panelists from Colombia and Switzerland spoke yesterday about the challenges of protecting geographical indications in the face of multiple threats. Ed Conlon reports.

Felix Addor (Swiss Federal Institute of Intellectual Property), who opened the discussion in CSA21 Geo-Branding: The Global Interplay Between Geographical Indications and Trademarks yesterday morning, described how free riders have been increasingly taking advantage of the Swiss indication of source and diluting the concept of “Swissness,” but the authorities are fighting back.

Mr. Addor recalled seeing so-called “Swiss cosmetics” on Las Ramblas—Barcelona’s buzzing central street popular with traders and tourists—but he questioned whether these goods were truly Swiss.

In January 2017, the Institute sought to strengthen protection for the ‘Swiss cross’ and ‘Made in Switzerland’ designation by introducing new “Swissness” legislation.

According to the Institute: “The core of the bill establishes precise rules in the Trade Mark Protection Act concerning the conditions under which a product or service may be labelled as being Swiss. “Anyone who fulfills these criteria may opt to use the ‘Made in Switzerland’ designation without authorisation. If these rules are complied with, not only services can be endorsed with the ‘Swiss cross,’ but goods also.”

The legislation sets different rules for three distinct types of hypermarket chain Leclerc uses one for selling wine, Sony has since employed it for marketing purposes again, and Seat allows its car dealership network in Spain to use one for their individual minisites.

Back in 2012, nearly 600 brand owners applied for domain names under the .sony TLD after the Bond film Spectre was released in late 2015. At www.assistmoneypenny.sony, Sony asked players to “find and capture the bad guys” who wanted to capture Moneypenny, who is secretary to M, Bond’s boss.

Slowly but surely, dot brand domains are having a noticeable impact. French hypermarket chain Leclerc uses one for selling wine, Sony has since employed it for marketing purposes again, and Seat allows its car dealership network in Spain to use one for their individual minisites.

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Slowly but surely, dot brand domains are having a noticeable impact.
BRANDS

NetfIux: Challenging Convention

With its 20th birthday approaching, Netflix has transformed from renting DVDs to providing original and third-party content online.

Ali Buttars, Trademark Specialist at the company, tells Ed Conlon how trademarks fit into the ever-expanding business model.

It’s almost 20 years since Netflix was founded. Starting life as a DVD rental service, the California-headquartered company was officially founded by businessmen Reed Hastings and Marc Randolph in August 1997.

Where rival rental service Blockbuster failed, Netflix succeeded by making the leap into online content. In 2007 the company began expanding into streaming services across the United States. By 2010, it had gone international.

Today, the Netflix brand has become synonymous with online film and television services, and the company’s forecast revenue for 2017 is just over US$ 8 billion.

With figures like that and a history dating back two decades it might surprise some that the company had not, until last year, set up a centralized intellectual property team.

Ali Buttars, Trademark Specialist, Content and Brand IP at Netflix, says that today the company supplies original content to more than 190 countries in 23 languages.

Netflix’s leap into producing its own content is a recent venture. The company started making its own shows in 2013 and this business move prompted the company to turn its attention to protecting its newly created IP.

“While our house brand enjoys a high degree of fame, a great deal of attention is devoted to our shows and films,” Ms. Buttars explains.

Ms. Buttars, who joined the company earlier this year, says: “My primary focus is to develop and manage the trademark clearance, prosecution, and consumer-friendly enforcement strategies around our house and title brands.

“Our goal is to create thoughtful efficiencies that will allow us to scale as our global footprint and content offerings grow. Efficiency avoids undue process—a core value of the Netflix culture.”

Customers First

Although the need to protect Netflix’s IP is clear, the company’s customers’ needs are the main focus of its business strategy.

Considering what consumers want is at the forefront of the company’s thoughts when assessing IP.

“Our whole business is built on this idea, and nearly every decision made in the company at every level is viewed through this lens,” she explains.

“In many ways, that makes us totally aligned with the most important role that trademarks play: helping consumers.”

This approach has cultivated an authentic and positive relationship with subscribers, she adds, noting that “it’s our team’s job to be respectful of our customers’ desire to engage with our IP, and in many instances, encourage them to do so if they are passionate about it, because that can amplify our brands.”

She acknowledges, however, that as is the case with all other film and entertainment companies, copyright is “just as important” as trademarks and is “one of our greatest assets.”

Despite its loyal fan following, Ms. Buttars stresses that Netflix will not hesitate to take action to root out bad actors who may use the company’s IP to commit fraud or scam people.

In April, the company was targeted by a hacker or hacking group known as “thedarkoverload,” who got hold of several episodes of the popular prison drama series Orange is the New Black that had yet to be aired.

The episodes, which were hacked from a post-production house, were leaked after Netflix refused to meet an undisclosed ransom demand.

But the hack did not have its desired effect. The hacker/s did not get their money and, according to media reports, the stunt was seen as a failure.

The episodes, the reports said, likely have been viewed by only a small number of non-Netflix customers, while the company’s loyal following preferred to watch episodes directly as they aired—perhaps a vindication of the consumer-focused mentality Netflix adopts.

Future Focus

As the company grows (it has more than 100 million subscribers) and understandably becomes the focus of
more media attention, what are the IP team’s efforts currently focused on?

One area Ms. Buttars highlights is the creation of more original local content, unique to certain jurisdictions. Mexican political series Ingobernable, Las Chicas del Cable, a Spanish drama focusing on four women hired as operators of a phone company, and Ojja, an upcoming South Korean-American feature length film, are some recent examples.

Netflix is reaching new audiences, Ms. Buttars says, and there are various topics to be considered.

“It’s my job to collaborate with many other stakeholders including creative, marketing, and localization teams, who all have different perspectives, goals, and risks, and bring my perspective to the conversation so that we can collectively make the best decisions,” she says.

“Laws vary on a country-by-country basis and those differences inform how we scale our original content. We try to balance our customers, where they are, and what they love against risk. The difficulty lies in finding the right balance.”

She adds that one of the biggest challenges is knowing when and how to localize content and the brands that arise from it.

“It’s our team’s job to know how to create strategies to scale fast and partner with our globalization teams and linguists to best serve our global customers. We look at whether it is a series or single title, and whether there are business plans to use the English title with a localized title supporting it, or vice versa. We also take into consideration local cultural sensitivities and tastes.

“We constantly try to find ways to challenge conventional wisdom.”

As productions become increasingly international, the need for understanding the nuances of international copyright law also grows, Ms. Buttars says.

“We carefully review our original content to ensure that it does not infringe third-party rights. But we always do so in a manner that allows our show runners and filmmakers to fulfill their creative visions,” she says.

From its humble beginnings to the powerhouse it is today, Netflix has been on quite a journey. It survived the shift from hard copy rentals to online streaming and has since managed to evolve into a production and content creation company in its own right. With revenues high and subscribers ever increasing it shows no sign of slowing down. Even cyber attacks struggle to bring it down.

The secret to its success? Knowing, understanding, and engaging with what its customers want.

GIs: Switzerland and Colombia Fight for Heritage (continued)

Goods: natural foodstuffs, and industrial.

The rules require, for example, that at least 60 percent of the manufacturing costs of industrial products must occur in Switzerland; for foodstuffs, at least 80 percent of the weight of the available raw materials in Switzerland must actually originate in the country.

Switzerland is home to many famous names and brands, including sportsman Roger Federer and companies Credit Suisse and Nestlė, and these and many more were displayed in a video montage during Mr. Addor’s presentation.

Protecting Your Reputation

He said the Swiss label stands for reliability, tradition, quality, and exclusivity, and “people have the expectation that these products come from Switzerland.”

But with copycats and free riders taking advantage of the “good reputation of Swissness,” there has been a dilution of the Swiss label. In light of these problems, the new rules seek to strengthen the Swiss brand and preserve its value, Mr. Addor said.

He added that the new criteria are flexible, but stressed the three key principles at play: 1) fair competition is ensured and deceptive practices prevented; 2) use is free and voluntary (but the rules must be respected); and 3) no registration or authorization is required.

The Institute has created a national register for geographical indications (GIs) of non-agricultural products, on the basis of a “geographical trademark”—which aims to facilitate enforcement of Swiss designations in Switzerland and abroad.

The enforcement system includes state chemists and customs remedies, and the Institute can take civil and administrative action.

When enforcement abroad is required, Switzerland’s global embassies inform the Institute of potential infringement before it notifies the relevant industry federations. For example, the Swiss chocolate industry might object to a mark in a foreign country; in Chile it has already had success using this process.

“But that is not always enough,” Mr Addor noted, stating that in China the Institute has launched 350 trademark oppositions, with the majority still pending. To date, he said, it has lost 12 cases and won 50.

The session also heard from Esteban Rubio (Federacion Nacional de Cafeteros de Colombia [The National Federation of Coffee Growers of Colombia], Colombia). The federation represents 560,000 coffee growers, 96 percent of which are small companies. According to Mr. Rubio, the federation uses several tools to ensure Colombian coffee is “100 percent Colombian,” even though it is hard to reach that goal.

These tools include registering trademarks, certification marks, GIs, appellations of origin, and exclusive origin trademarks.

“We are trying to ensure that each time you drink a Colombian coffee it was cultivated and produced in Colombia.”

The Chair of INTA’s Geographical Indications Committee, Eric De Gryse (Simont Braun, Belgium), closed the session, highlighting four major challenges facing GIs in the future: genericness; registration/certification; collective use; and protecting against misuse.
Maintaining a Life of Luxury

Luxury goods companies can be particularly vulnerable to attempts by counterfeiters to trade off their brands, often online. Sarah Morgan and Naomi Jeffreys explore some of the problems they face and how they are responding.

Online shopping has offered brands numerous opportunities to market their goods. But the opportunities bring copious threats.

“The extraordinary growth in e-commerce over the past five years has fundamentally changed the landscape for the sale of genuine and counterfeit products alike,” explains Jeremy Newman (Rouse, United Kingdom).

This changing counterfeiting scene is bad news for luxury brands, according to Justin Pierce (Venable, USA), who believes the trend will only continue to proliferate.

“We have seen statistics from various international organizations indicating that the import of counterfeited goods is a business worth US $500 billion a year,” he says.

Counterfeits are a significant challenge to novel and innovative brands, according to Mr. Pierce, because they allow the manufacturers of fakes to enter the market at a low cost and without much investment, immediately diluting the value of the brands they imitate.

Another challenge for brands is unfair competition. Unlike counterfeiters, the brands have invested significant amounts into research and development, advertising, purchase and manufacture of high-quality materials, and further investments in sales and marketing, says Mr. Pierce.

Counterfeitors essentially take a “free ride” on a brand owner’s superior product.

Proactive, Not Reactive

To stay ahead of brand owners looking to enforce their rights, counterfeiters constantly come up with different ways to sell their goods.

One way this is done is through micro-shipments.

“We’ve seen statistics showing that customs seizures of infringing goods shipped via container ships are decreasing, while it appears that micro-shipments and direct-to-consumer shipments continue to increase,” Mr. Pierce explains.

How are luxury trademark owners attempting to keep up with this proliferation of counterfeiters?

“Some luxury brand owners engage in mass-defendant suits that target infringers by going after unnamed ‘John Doe’ defendants or various online-based vendors who are often identified only by a username or web address,” says Mr. Pierce.

Gucci, Chanel, and Louis Vuitton have all filed suits against unknown counterfeiters in the past year.

In December, Gucci claimed that the “recent explosion” of online counterfeiting has required it to expend “significant time and money” to protect itself and consumers from the “ill effects of confusion and the erosion of the goodwill connected to Gucci’s brand.”

Chanel targeted nearly 90 online counterfeiters in a trademark infringement suit, alleging that the counterfeiters had sold fake bags, top, cases for telephones, and protective covers for portable electronic devices online.

“The goal of these types of lawsuits is simply to remove sites, or where possible, to seize funds from e-commerce accounts that may be connected to those sites and their illegal transactions,” Mr. Pierce explains.

Brand owners are turning to outsourced technology-based online monitoring and takedown solutions, as “fewer rights holders are able to keep pace with the growth in e-commerce through in-house ‘self-help’ alone,” says Mr. Newman.

There’s also been a move away from merely monitoring and issuing takedowns to a more strategic approach to online enforcement, becoming proactive rather than just reactive.

Mr. Newman explains: “This means developing strategies that don’t merely aim to reduce the visibility of online infringements, but actually try to deter key infringers.”

Rights holders have invested in more sophisticated monitoring, which essentially “joins the dots looking for clusters of activity relating to a single target,” he adds.

“They’re also seeking to take deterrent action closer to the source,” says Mr. Newman.

Mr. Pierce adds that major brands are making increased efforts on initiatives designed to work with e-commerce platforms instead of suing them.

“A number of brands use e-commerce platforms as distribution channels for certain products and may have business arrangements with the major platforms. You won’t find many big businesses that are willing to sue the platforms in order to stop the sale of infringing goods,” he explains.

Instead, the brands are looking for more ways to work with the platforms and provide information that will allow the platforms to delist sellers of infringing goods.

Mr. Newman agrees, explaining that right holders are also taking strategic approaches to engagement with e-commerce stakeholders to help further differentiate genuine from infringing products online.

Working with China to Curb Counterfeits

China is the manufacturing hub of the world, and as a result has long struggled with counterfeit issues. The U.S. Chamber of Commerce Global Intellectual Property Center estimated that US $396.5 billion counterfeit goods are produced in China and Hong Kong SAR, China each year.

To further complicate matters, China is now the largest e-commerce marketplace in the world, says Mr. Newman.

“Last year, Chinese consumers accounted for nearly half of all e-commerce sales worldwide. China’s e-commerce landscape is arguably more advanced than that in the United States and Europe, with bundled services (such as WeChat) having no direct equivalent in the United States or Europe,” he explains.

“Five years ago, counterfeiters were offered so blatantly on major Chinese e-commerce websites that it was a challenge to find genuine products,” says Mr. Newman.

That picture is changing, with rights owners and platforms becoming more active in dealing with the most blatant infringements.

China-based e-commerce platform Alibaba Group has attempted to reform how it handles counterfeiters, forming an anticonteuring committee with international brands, including Louis Vuitton, Samsung, and Mars, in January.

The partnership has around 20 members and leverages big data and the latest in anticounterfeiting technology to continue the global fight against fakes.

Jack Ma, the Executive Chairman and Founder of Alibaba, has also urged Chinese legislators to toughen laws and penalties for counterfeiting in the country.

However, the platforms are facing a fight: infringers are continuing to adapt their business models to minimize the risk of detection and deterrent enforcement, says Mr. Newman.

“A recent trend has shown a move away from more traditional e-commerce platforms to WeChat, by far the most...”
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Dot Brand Domains: A Work In Progress (continued)

their own name as a TLD and the term “dot brand” was coined. Today, more than 120 are active, according to The Dot Brand Observatory, which is sponsored by domain registry Verisign, while there are hundreds more operational second-level domains underneath these TLDs.

“A quiet evolution is already in progress, with existing dot brand operators becoming active and embracing their new Internet space,” says Martin Sutton, Executive Director of the Brand Registry Group, an industry association whose members include Amazon, Sony, and Microsoft.

Since 2016, when many of the dot brands were delegated to the Internet, the numbers have grown steadily, says Mr. Sutton.

But he adds that brands typically migrate their online services to the new domain while retaining their existing sites.

“This should not be a surprise, as brands do not wish to see any detrimental impact to their online presence.

“Differences arise when new products or services are launched primarily using dot brand domains, or when the company has a strategy to completely transition into its dot brand space.”

One company that sees the benefit of a dot brand is Weir Group, a Scottish engineering company.

“It does not own www.weir.com but now controls its own brand space on the Internet with its website www.globalweir,” says Mr. Sutton.

Others, including Barclays and Abbott, have used their new TLDs but not completely shifted their digital operations, while some dot brand applicants may ultimately ignore them.

According to The Dot Brand Observatory, .seat—which is owned by the Volkswagen Group—has the highest number of active second-level domains, at 90, while Citic Group Corporation owns 145 lower-level addresses for .citic, of which 32 are active.

Mr. Sutton points out that the volume of domain names is insignificant, because one domain can attract millions of online users.

“In the case of business-to-customer services, we have already seen online users transition to dot brand domains without any adverse impact, providing the general public with visibility of new online services, we have already seen online users transition to dot brand domains without any adverse impact, providing the general public with visibility of new online services,” he says.

“The financial services industry has made significant steps towards migrating traffic away from legacy TLDs to their dot brands following the migration of their online banking services.”

A New Model

Mr. Sutton predicts that brands will adapt to using their registries over time, and as new models emerge, we should start to see alternative use cases evolve, “but this innovation is likely to take some time.”

Innovation was one factor considered important for companies to secure a dot brand. In the buildup to the Internet Corporation for Assigned Names and Numbers (ICANN) revealing the TLD applicants in the summer of 2012, many marketing and brand protection companies were touting the benefits of the dot brands.

The main suggested benefit, according to Mr. Sutton, was brand protection, with others including control over digital assets and authenticity.

Asked whether these benefits have been realized, he notes that applicants who primarily wanted to protect their brand have accomplished that goal and may not have developed their plans to activate their registry at this stage.

For the other benefits, it is probably too early to tell whether they have been realized, he continues.

“Based on the activated dot brands, we know they are working effectively. In some specific cases, the benefits have already been realized whereby the brand did not have the prime .com previously, so they have leapfrogged to operating their own digital footprint.”

Dot brands also face challenges which mean some will take a lot longer to activate, he adds, in part because they have to restructure their existing online footprint into a very different model.

Challenge is nothing new for the dot brand applicants, who successfully fought for a different registry model within the ICANN setup to recognize that their businesses are not geared towards selling domains.

“There was conflict with the existing ICANN registry agreement, which was entirely focused on operating an open registry, selling and distributing domains,” Mr. Sutton says.

Now the focus must turn towards activation, he adds. For large organizations, this means engaging, encouraging, and coordinating with multiple internal stakeholders.

But this a major challenge in itself, “particularly when the original internal sponsors of the dot brand registry moved on or out of the organization during the lengthy application phase and before delegation,” Mr. Sutton says.

A Second Round?

“Brand owners are definitely interested in a second application window,” Mr. Sutton confirms.

“We should not be surprised if lesser-known companies take advantage of this in the future, especially if they have experienced problems to secure their brand within a prominent legacy TLD and wish to avoid problems in the future when launching new products and services.”

Although the launch date of the next round has not yet been officially confirmed, Mr. Sutton says 2019 is not unrealistic and that companies need to plan internally and budget before then.

“Planning for the next application window is underway, and for brands interested in finding out more or potentially applying, the time to start engaging is now,” he concludes.

Have any comments?
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Dot Brands and Domain Disputes: A Sneak Preview

Trademark owners interested in the new gTLD program and domain name disputes at WIPO should attend two relevant sessions during the Annual Meeting. Ed Conlon previews them, with the help of two of the speakers.

Nearly 600 companies applied for their own “dot brand” generic top-level domain (gTLD). Today at 2:00 pm, you can find out how some of these businesses are using their Internet real estate during an exciting panel discussion covering a range of dot brand issues.

The session—CSU50 Dot Brands and You: Should You Apply in Round Two?—is moderated by Roland LaPlante (Afilias, USA) and will include contributions from Amil Garg (Dabur India Limited, India) and Gretchen Olive (CSC Digital Brand Services, USA).

We put some questions to Mr. LaPlante ahead of the discussion.

How are dot brand and legacy Internet presences being integrated?

Generally, dot brands are starting in a new place (e.g., specific promotion program sites) and then traffic is slowly being transitioned to the dot brand. Only a few are moving entirely to a dot brand, for example, .cern. Keep in mind that no-one is abandoning their .com just yet—nor should they—but the adoption by some major brands is real evidence that dot brands will be major competitive tools and not just for defense. Usage will expand rapidly.

What benefits were expected and have they been realized?

The main benefits are branding, control, and security, and all three are being realized by those with the vision to begin fully integrating this asset into the marketing and business mix.

What advice should be given to potential new applicants?

First, watch the current dot brands and learn how they are leveraging the asset. Second, begin preparing now for the next round of applications. It takes time to teach your team about this new concept, so get your sponsors and other teammates in place.

When is a second round likely to happen?

A second round will definitely happen and is under active discussion at the Internet Corporation for Assigned Names and Numbers (ICANN). Timing has still to be determined—some proponents are pushing for 2019, while others think that later is more likely.

Since dot brands pose the lowest security and stability risks, there is a strong argument for a dot brand-only round, which could happen earlier than a general round.

What is the most innovative use of a dot brand that you have seen?

BNP Paribas is leveraging its dot brand to launch a range of different campaigns (e.g., cib.bnpparibas for its corporate and institutional banking segment).

Audi is enabling individual audi sites for each dealer in Germany. The Audi implementation gives the firm greater leverage over the dealers, as the audi team can take a dealer site entirely off the Internet if the dealer fails to meet its obligations to Audi. This gives Audi greater control over its trademarks and brand, while extending its branding into its web address.

Abbott Labs is running lifetothefullest.abbot as a consumer campaign; BMW offers a futuristic vision in a site called next100.bmw. The Australian Football League has play.afl running. Every day, more sites appear.

When filing a case before WIPO, and when ruling on a domain name dispute, Uniform Domain-Name Dispute-Resolution Policy (UDRP) parties and panelists routinely consult and cite this authoritative resource, which is being updated for the first time since 2011.

Talking registrants through the changes are Brian Beckham (WIPO, Switzerland); David Bernstein (Debevoise & Plimpton LLP, USA); Erik Wilbers (WIPO, Switzerland); and Tony Willoughby (WIPO UDRP panelist, United Kingdom).

We put some questions to Mr. Beckham ahead of the discussion.

What can we expect WIPO Overview 3.0 to be published, and how different will it be from the current version?

It will be shared publicly at the Annual Meeting, and at around the same time, it will be published on WIPO’s website.

The jurisprudential developments reflected in WIPO Overview 3.0 are mostly of an iterative nature. In a few limited areas where panels had held sometimes divergent views, there is now a well-accepted consensus. Readers will also appreciate a more straightforward reporting style. The companion WIPO UDRP resource, the Legal Index, has also been thoroughly updated to include the most relevant and cited cases in over 200 case categories organized by keyword/topic.
Can you outline some of the key updates in WIPO Overview 3.0?

One concerns procedure. Notable areas include discussion of (i) UDRP case standard settlement practice; (ii) case consolidation scenarios; (iii) requirements for refiled cases; (iv) the impact of court proceedings on UDRP cases; and (v) a more detailed discussion of reverse domain name hijacking scenarios. According to WIPO, this is where the UDRP is used in bad faith to “attempt to deprive a registered domain name holder of a domain name.”

Do you have any tips for trademark owners filing cases with WIPO in 2017?

We caution parties not to take anything for granted, no matter how many cases they have filed or defended. If a case is worth filing, it is worth doing right, and that is precisely what WIPO’s UDRP resources aim to assist with.

More specifically, at first instance this means always providing clear evidence of trademark rights (including any licenses or assignments), such as a registration certificate (as distinct from a list of registrations) or indications of common law trademark rights.

Filing parties should provide specific evidence (e.g., dated screenshots, including those showing any changes in use over time) showing a respondent’s bad faith; this may include a need to provide translations, if relevant.

In cases of consolidation, filing parties should be prepared to provide sufficient indications of common (respondent) control.

How has the new gTLD program affected the updated Overview, if at all?

Cases involving new gTLDs constitute an increasing share of WIPO’s domain name caseload (roughly from 5 percent, to 10 percent, to 15 percent over each of the past three years, respectively), contributing to record WIPO filing in 2016 (3,036 cases). However, their jurisprudential relevance has been somewhat limited.

In specific early cases, WIPO panels considered the relevance of the new gTLD itself under the first element standing test for confusing similarity (e.g., www.nike.shoes v www.nike.web v www.nike.horse). As more panels considered this topic, the consensus view among WIPO UDRP panels is that in principle, new gTLDs are viewed no differently from other TLDs for the purposes of the first element standing test, but they may be particularly relevant under the second and third element (e.g., in showing evidence of targeting a complainant in bad faith, or in potentially showing legitimate co-existence).

Maintaining a Life of Luxury (continued)

Invest the resources and energy necessary to truly address the brand protection challenges they are facing,” says Mr. Pierce.

Recent Wins For Luxury Brands

1. Richemont obtains injunction

Luxury goods group Richemont, which owns Cartier and Montblanc, obtained a permanent injunction against a number of online counterfeiters in February 2017.

2. Coach cleared in defamation suit

In April 2017, Coach was cleared in a defamation lawsuit brought against it by an online retailer who was accused of selling counterfeit Coach handbags.

3. Man sentenced for counterfeit Burberry sales

A man who sold counterfeit Burberry, Gucci, Louis Vuitton, and Chanel products online was jailed for two-and-a-half years in September 2016.

4. Gucci grabs US $9 million verdict in counterfeiting claim

In April 2017, Gucci America, the U.S. arm of the luxury brand, won a US $9 million verdict and a permanent injunction against online counterfeiters.

5. Customs seize fake Salvatore Ferragamo shoes

In August 2016, U.S. Customs seized 7,800 pairs of counterfeit Salvatore Ferragamo shoes with an estimated retail price of US $4.2 million.
Africa: Protection and Enforcement

There is much to discuss on the topic of IP in Africa, from design enforcement and the Madrid System controversy to the .africa gTLD. Ed Conlon and Sarah Morgan find out more.

For 170 years, textile manufacturer Vlisco has been “romancing the men and women of Central and West Africa” and is embraced as “the very fabric of life in many societies,” according to its website. Accompanying this text is a picture of seven African women all wearing traditional dresses in different styles and colors, with two windmills in the background. Despite its base in the Netherlands, Vlisco specializes in designing and producing fabrics for a host of African countries, saying its fabric is “seen by many as African.”

The company will be represented on a panel discussion tomorrow at 3:30 pm by Monique Gieskes, Regional Director DRC Cluster of the Vlisco Group. The session—RM50 Regional Update: Protection and Enforcement Strategies in Africa—will also hear from Godfrey Budeli (Adams & Adams, South Africa); Vanessa Ferguson (Kisch IP, South Africa); and Darren Olivier (Adams & Adams, South Africa).

Mr. Olivier says the discussion will blend fashion and IP in order to review some of the pitfalls facing trademark and design owners operating in Africa. It will look at registration strategies on a continent that provides many opportunities, not least because “there are a billion-plus people and a growing middle class who have an affinity for brands, not just in fashion.”

Africa’s IP system is fragmented to some degree; sitting alongside national laws and regimes are two distinct IP jurisdictions: the African Regional Intellectual Property Organization (ARIPO) and the Organisation Africaine de la Propriété Intellectuelle (OAPI), although they do sometimes work together. With 19 member states, ARIPO typically represents English-speaking nations, while the mother tongue of OAPI’s 17 members is often French. Together they represent around two-thirds of the countries in the African Union.

Across Africa, design enforcement has been neglected, says Mr. Olivier, in part because of the lack of education around it. He stresses that companies have been “missing a trick” and they should be using the system more, based on a number of decisions illustrating that design enforcement is “alive and well and is a strategy that one should consider.”

He will provide examples in the panel session, but notes that the most active country in design enforcement is Kenya. Adding Egypt, Nigeria, OAPI, Rwanda, and South Africa to the list, he says “there are court decisions to be found in these countries and mostly, they are pretty good.” On the other hand, Angola for example, can be “tricky and take a long time, and in some countries there has never been a decision.”

Mr. Olivier says there are significant differences in design legislation across the continent, with these differences typically stemming from each country’s Western heritage. This means, for example, that the English-speaking countries’ laws have more in common with those of the United Kingdom. In addition, there can be a 10 to 20-year lag between the adoption of laws in Europe and implementation in the nations that follow European law.

Mr. Olivier wants to “debunk” designs, as they are “not a tricky thing,” and believes education is important for achieving this.

“Because very few registries do novelty checks (which can cause delays), it can be easy to quickly protect market share via a design as opposed to, for example, a trademark or other forms of IP protection which take longer to obtain. Even if the lack of a novelty check may clutter the registers with weak designs, the advantage to the public is the availability of a quick, low-cost form of protection,” he explains.

However, despite some positive instances of design enforcement, companies should not approach design enforcement as they would in Europe, where there is growing case law and a history of legislation to aid the enforcer and defendant. “Generally speaking, the lack of jurisprudence in Africa means that it’s hard to predict the outcome of decisions,” he says.

Mr. Olivier will also speak to a number of trademark decisions across the continent in an effort to persuade investors that brands are protectable.

Using the Madrid System

One of the main trademark enforcement lessons is to have the “proper tools,” says Ms. Ferguson.

“During the session I will focus on the Madrid System in Africa as a tool to ensure proper enforcement. I will outline the summary of Madrid and what it offers Africa, and then look at Africa’s national and regional systems.”

A single registration covering multiple jurisdictions is definitely attractive to brand holders seeking to protect their rights in Africa. Madrid does indeed have a place in Africa, Ms. Ferguson argues, “but the big question is where the Madrid System works and where it doesn’t.”

Madrid is currently available in 37 of the 54 African countries.

“During the session, I will be looking at three main categories: countries where Madrid is implemented and functioning; countries where it’s uncertain whether it’s fully functional or there are questions over enforceability issues; and why there are some countries that have not as yet implemented Madrid,” she explains.

Madrid is functioning and works well in some African countries, for example Botswana, Kenya, Egypt, Mozambique, and Madagascar, Ms. Ferguson says. South Africa, Ms. Ferguson’s home country, is one of 17 nations which have not as yet implemented the Madrid System, although this is on the cards. During the session she will be focusing on some of the factors affecting the implementation and functioning of Madrid in Africa.

Ms. Ferguson goes on to say that AOP’s accession is “quite a controversial area” since the organization joined in March 2015. There are broadly two strands to this
HARMONIZATION

controversy, the first being that there are concerns about the competence of the Administrative Council in enforcing the international system, she says. “The other view is that sovereign states should be acceding to Madrid, not OAPI. There has been a lot of talk from the opposing movements and we will have both sides in the audience. There seems to be a murmuring that a court decision will be needed for clarification.” As well as providing practical tips on when a party should use the Madrid System, when a national trademark is more advantageous, and when the two systems suit specific brands, Ms. Ferguson will review the African countries that have not implemented the system. She will assess the steps being taken to change this and how the World Intellectual Property Organization is “looking at ensuring there is a place for Madrid in Africa, which it definitely should have,” she concludes.

Developing .africa
While the session will not be reviewing the .africa generic top-level domain (gTLD) per se, the launch of this new web address and the opportunities it provides for brand owners should not be forgotten. After five years of legal obstacles, including a dispute brought by DotConnectAfrica Trust, the Internet Corporation for Assigned Names and Numbers delegated the management of the .africa gTLD to Registry Africa, a wholly-owned subsidiary of South-Africa based ZA Central Registry (ZACR).

In April, the .africa domain launched its sunrise phase, allowing IP owners to apply for domain names matching their trademarks. Once this period closes on June 2, the landrush phase will follow and anyone will be able to apply for premium .africa domain names.

During the landrush period, which ends on June 30, there will be four phases, each of which will last seven days, with five days for applications and two days for delegations and auction.

Next comes the general availability period, which will begin on July 4, when the public will be able to apply for .africa domain names.

Because the domain is still in the early stages of launch, it’s difficult to say what impact .africa will have on the wider economy, according to Alison Simpson, Product Manager for Domain Management at MarkMonitor. Ms. Simpson believes this will be one of the more complex launches because of the phases in the landrush period, but that this will not necessarily restrict interest in the gTLD. Africa-based owners will take priority during the sunrise phase, with the registry placing a “special emphasis” on securing the rights of IP owners, Internet users, and the broader African community during this period, according to ZACR.

As African trademarks take priority, brand owners may decide to submit an African trademark now to the Trademark Clearinghouse in order to ensure they are higher up the list in terms of priority, Ms. Simpson suggests. “We haven’t seen this happen yet but it does bring up the question of whether brand owners will change strategies,” she explains.

Overall, a gTLD represents a real opportunity to expand a brand’s global presence online. “If a brand owner is actively doing business in the country or has a presence there, they should definitely consider securing their domain,” advises Ms. Simpson. While Vlisco continues to romance the men and women of Africa, will trademark owners be similarly lovestruck with the .africa domain? Only time will tell.

Brand owners may decide to submit an African trademark now to the Trademark Clearinghouse in order to ensure they are higher up the list in terms of priority.

In an uncertain legal environment, we are one law firm that is not content simply to accept the status quo. We work constantly to influence the evolving body of Mexico’s intellectual property laws, with the goal of ultimately bringing them in line with international standards. While we continue to make great strides in this regard, clients from all over the world rely on us to prosecute, manage, and defend their IP portfolios under the laws that exist today. In other words, we work effectively within the system, even as we seek to change it.
No Perfect Compensation Structure, Says Panel

Similarities and differences in the compensation structure that European law firms use were covered yesterday during a panel discussion. Sarah Morgan reports.

As law firms increasingly turn from a lockstep compensation structure, based on seniority, to a merit-based system, it’s clear there is no perfect model for the approach, a panel discussion found yesterday.

Spain used to follow a lockstep structure, but is beginning to follow the merit-based U.S. approach, explained Jordi Guell Serra (CURELL SUNOL, Spain).

He was moderating the session CSA20  The Ownership and Operation of Law Firms in Spain and the Broader EU—What Can Others Learn from Their Experience?

The United Kingdom has made the same switch, moving at pace from a traditional lockstep structure to a merit-based system.

“The troubling question is how do you reward fairly and equally? You can measure numbers, but that doesn’t necessarily represent the whole deal,” said Mark Foreman (Osborne Clarke, UK).

Mr. Foreman added that this shift towards the new structure will continue and will be one of the biggest challenges for managing partners and executive committees.

“If Italian law firms had to give everybody an employment contract, they would go out of business,” said Ms. Holden, adding that much like in Spain, individual practitioners there are “free” professionals.

If Italian law firms had to give everybody an employment contract, they would go out of business.

Uncertainty In The Wake Of Brexit

Brexit will have far-ranging consequences, not least in the legal sector. When the United Kingdom leaves the European Union on March 29, 2019, the legal profession may be thrown into some disarray.

Mr. Foreman said that after Brexit, although U.K. lawyers can still qualify in the United Kingdom as overseas lawyers, whether they will be able to live in the country is unknown.

Because of this uncertainty, Imogen Fowler (Hogan Lovells, Spain), a U.K.-qualified lawyer, has now become qualified in Ireland.

Outsourcing

Ms. Fowler also discussed outsourcing, adding that it is becoming more frequent and was advantageous for her practice.

She explained that a number of her clients who don’t like the outsourcing trend have two reasons for their dislike.

Liability concerns are top of the list, as there’s a “concern that if you’re outsourcing to some entity that isn’t a law firm, there’s not the same kind of liability,” said Ms. Fowler.

Second is the rules on conflicts. Lawyers are held to strict rules, but clients may be worried about who controls the entities that work is being outsourced to.

According to Mr. Nentwig, in Germany there is a tendency to source prosecution.


The other reason, said Mr. Nentwig, is the development of legal technology, such as software-based solutions, which give clients the possibility to outsource a lot of their prosecution work and trademark searches.

One concern is attorney-client privilege—when a client decides to outsource, is the privilege lost?

Mr. Nentwig explained that based on case law, for information to fall under the privilege, the outsourcing must somehow be integrated into the structure of the law firm.

Julia Holden (Trevisan & Cuonzo Avvocati, Italy), brought an Italian perspective.

“Coming from the United Kingdom, I recall that all associates had employment contracts. It is different in Italy, where associates are effectively self-employed, although salaries are generally fixed by the law firm,” she said.

“If Italian law firms had to give everybody an employment contract, they would go out of business,” said Ms. Holden, adding that much like in Spain, individual practitioners there are “free” professionals.

Join us as we explore how sustainability, corporate social responsibility, and integrity affect your bottom line.

For more information, visit: www.inta.org/2017Berlin

The conference will be preceded by a one-day workshop, Free Trade Zones: Commerce vs. Counterfeits, part of INTA’s 2017 Free Trade Zones workshop series. To learn more, visit www.inta.org/2017FTZ.
On March 16, 2017, Pakistan amended its Customs Rules, 2001 (CR’01) to incorporate a new chapter that deals with border enforcement of intellectual property rights. This statutory upgrade has simplified the procedure for action against imports of counterfeit goods, which are already prohibited under Pakistan’s Trade Marks Ordinance, 2001 (TMO’01), read with the Customs Act, 1969 (CA’69).

CR’01 and CA’69 Scope
CA’69 expressly prohibits imports of counterfeit goods, and CR’01 has clarified that this prohibition does not apply to parallel imports and de minimis imports. Under a memorandum of understanding with the Intellectual Property Organization of Pakistan, Customs already have access to a national database of registered trademarks, so there is no formal requirement for separate recordation of trademarks with the Customs, because details of registered trademarks are automatically available to them.

Notice to Customs Against Suspect Goods
TMO’01 and CR’01 prescribe a formal application by a right holder for initiating an enforcement action before the Customs for seizure of imported goods suspected of being counterfeit. CR’01 further maintains that a right holder may commence a court action for trademark infringement within ten days of submitting the notice.

Indemnification and Bank Guarantee
TMO’01 provides that the notice to Customs shall be accompanied by a standing indemnity bond to Customs. This must amount to 25 percent of the value of the consignment (and at a minimum be US $5,000) so that it can be used by Customs in the event of a Customs decision adverse to the right holder. It can also be used if a stay is vacated, an application for a writ petition/special leave is dismissed, or if there is any further court order which results in any loss/liability to Customs. The amount can also be used for compensation for any losses suffered by the importer of goods if the notice of a right holder is ultimately found to be baseless, and for payment of expenses on account of investigation, warehousing, maintenance, disposal of goods, etc, incurred after detention by Customs.

Forfeiture of Goods
TMO’01 maintains that Customs shall detain the suspect goods to alert the right holder about imported goods suspected of being counterfeit. If the given goods are counterfeit then Customs will release the goods to the importer if: (a) Customs are satisfied that there are reasonable grounds for believing that the given goods are counterfeit; (b) the right holder does not commence court action within the statutory timelines; or (c) there is no court order approving/endorsing seizure within 21 days of the commencement of court action.

Release of Goods
TMO’01 provides that upon receipt of the notice, Customs shall detain the suspect infringing goods, notify the importer of such detention, and then examine the given goods in the presence of the right holder and importer. If the given goods are indeed counterfeit then Customs will issue a formal order about their forfeiture. If the importer voluntarily accepts that the given goods are counterfeit, Customs will also issue a formal order about their forfeiture.

Alerts by Customs
CR’01 creates a prerogative for Customs to formally initiate the enforcement action with Customs and complete the formalities of filing the prescribed application, along with the mandatory indemnity bond and bank guarantee. However, if the right holder does not opt for initiating an enforcement action then the Customs will release the suspect counterfeit goods.

CR’01 also creates a prerogative for Customs themselves to seize and forfeit imported goods suspected of being counterfeit when such goods are also suspected of not meeting the required health and safety standards.

Companies operating in Pakistan should take note of the amended Customs Rules, which contain important updates on intellectual property, says Junaid Daudpota, Managing Partner at Daudpota International.

Junaid Daudpota is the Managing Partner at Daudpota International. He handles a wide variety of matters relating to trademark prosecution and enforcement in a number of countries in the Middle East and South Asia. He co-heads the firm’s IP practice. He can be contacted at: junaid@daudpota.com
Startups: How to Protect Your Innovations
How can technology startups protect their IP? An INTA panel explored how companies just starting out can make the most of their IP.

Peter Pollard (Fireball Patents, the Netherlands), who moderated yesterday’s session CSA51 Cost-Effective Use of Patents: Protecting Inventions with Smaller Budgets, discussed why some startup companies were shunning patents.

Some startup companies only use open source and don’t file any patents, while others want their technology to be copied. Cost is also a major factor.

Marieke Westgeest (Markenizer BV, the Netherlands) added that when the average client comes into a firm, they know that trademarks and designs cost hundreds of euros.

But patents cost thousands of euros, so Ms. Westgeest ensures she discusses with clients the high costs. “Many times, that’s the end of the game,” she said.

One alternative to patents is trade secrets. Within two years, all E.U. member states will have harmonized trade secrets legislation, but protection will be granted only if the information has commercial value because it’s secret and because reasonable efforts have been made to keep it secret.

Reasonable efforts include using non-disclosure agreements for external business discussions, secrecy clauses in employment contracts, and having a proper system to handle the documents.

A recent example of trade secrets litigation comes from the Waymo v. Uber dispute in the United States.

In May, Uber was ordered to return files to Waymo, formerly Google’s self-driving car division, by a judge who said Uber knew, or should have known, that an executive it hired had taken information from Waymo.

Descriptions of the inventions (trade secrets) had been blacked out in the lawsuit, explained Mr. Pollard.

To protect a trade secret, owners can file at the Benelux Intellectual Property Office. Ms. Westgeest added that this filing is accepted by judges in all E.U. countries as evidence.

Another avenue for startups is design patents, panelists said.

In China, Japan, and Korea, design patents are faster and cheaper to obtain than patents, said Hui Wang (Chofn Intellectual Property, China).

According to Mr. Wang, there’s no novelty search or substantive examination and design patents can usually be registered within six months.

China leads the way for the number of design patent registrations, contributing 60 percent of the worldwide total in 2015. High government subsidies drove the filing of design patents, said Mr. Wang, with clothing and shoe manufacturers topping the board.

Although most of the top filers in China are clothing companies, Citic Diecastal, which is in the automotive industry, received 1,122 design patents last year.

In the United States, Samsung placed first on the recipients list with 1,426 design patents received in 2015, explained Eric D. Morehouse (Kenealy Vaidya, USA).

“U.S. design patents are very inexpensive compared to utility patents,” he said, adding that prosecution of design patents is also comparatively cheap.
**Tapas Bars Not to Miss in Barcelona**

At the end of a long day at the Annual Meeting, why not explore Barcelona’s tapas bars to help you unwind? Uldduz Larki lists some of the best places to visit.

**Quimet i Quimet**
Carrer del Poeta Cabanyes 25, Poble Sec
Quimet i Quimet has been rated highly by many food and travel sites. This tapas bar, which started out as a wine shop, is a charming spot in El Poble Sec. Quimet i Quimet is known for its foods preserved through methods such as canning and jarring. These are also displayed for sale on the shelves behind the bar. It serves over 80 tapas, montaditos, which are small sandwiches, and other foods.

**La Esquinica**
Passeig de Fabra i Puig, 296, 08031
La Esquinica has been around for over 45 years and is also known as “the Mecca of tapas.” The restaurant offers more than 50 assorted tapas, with the patatas bravas, a native potato dish, being most customers’ favorite. As reviewed by patrons on TripAdvisor, La Esquinica is a “lovely restaurant away from tourists” and provides “great food, great service, and a fun atmosphere.”

**L’Òstia**
Plaça de la Barceloneta, 1-3, 08003
More than just a tapas bar, L’Òstia also serves fried and grilled specialities, casserole, and many more dishes. This restaurant is informal, and invites anyone at any time of day as it also serves breakfast. Jaime Muedra and partner Sebas Matarrodona, who founded the bar, had earlier travelled around Spain to capture flavors of traditional tapas.

**La Cova Fumada**
Carrer del Baluart, 56, 08003
La Cova Fumada, meaning “the smoked cave,” is one of the well-known tapas spots in Barcelona. With an old-school atmosphere to this place, the restaurant serves its very own original “potato bombs.” These were invented in the 1950s by Maria Pla, grandmother of the current owners. The potato bombs are simply small balls made of mashed potatoes with some pork inside, rolled in breadcrumbs and egg, then deep-fried in olive oil. Besides the potato bombs, La Cova Fumada also serves classic tapas as well as fresh seafood.

**Ziryab Fusion Tapas Bar**
Carrer dels Ases, 16, 08003
If you want a kick of Arabian flavor to your tapas, Ziryab Fusion is the right place for you. Besides the restaurant’s dynamic wine list with wines from the Catalonia region to the Lebanese-Syrian border and even Morocco, Ziryab serves tapas which are all made fresh and in house. Ziryab has mixed the traditional tapas with Middle Eastern flavors to create new flavorsome dishes. The restaurant claims to cook in a healthier and lighter way than regular deep-fried tapas.

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**VOXPOP!**
What is going to be the most important topic or focus area of this year’s INTA?
“I’d like to see how we are dealing with Brexit,” I’d like to see if INTA takes a stance on the regulatory changes which are obviously going to impact the European system. Also, Trump is leading the United States into a slightly different direction from a commercial point of view. We’d like to see whether this has an impact on global IP practices.”

Fred Hathaway, Dickinson Wright PLLC, United States

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**Tapas and Trademarks**

The Trademark Administrators Brunch will provide a lively discussion on working with trademark professionals globally, writes TMA Brunch Subcommittee member Ingrid Jahr of Kuhnen & Wacker, Germany.

Bienvenidos! Please join us in Barcelona, Spain, on Sunday, May 21, 2017 from 11:30am to 1:30pm, for the Trademark Administrators Brunch. Imogen Fowler (Hogan Lovells, Spain) will moderate an entertaining and practical panel discussion on how best to work and communicate with trademark professionals around the world, while respecting their unique languages, cultures, and customs. The speakers will provide useful examples, such as how a common word in one language can have a very different (and sometimes humorous) meaning or connotation when translated in another language, awareness of the importance of cross-cultural communication, and dealing with different communication styles. The international panelists are Mercedes Bullrich (Mitrani, Caballero, Ojiam & Ruiz Moreno, Argentina); Ali Buttars (Netflx, Inc., USA); Kim den Hertog (Adidas International Marketing BV, Netherlands); Joy Harrison-Abiola (Adepeter Caxton-Martins Agbor & Segun, Nigeria); and Mark McVicar (Winkler Partners, Taiwan).

There will also be time for networking, catching up with friends and colleagues, and enjoying delicious tapas.

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**Trademark Administrators Brunch**
May 21, 2017 from 11:30am to 1:30pm
Hall 8.0-C1
Advanced registration for this event is required
Cybersquatting, online counterfeiting, and phishing are just three of the major enforcement challenges on the Internet.

“It is so easy to launch new sites that even when we have success at shutting down bad ones, replacements pop up almost immediately,” explains Lori Schulman, INTA’s Senior Director of Internet Policy.

Although cybersquatting has always been a problem, the scale of the new generic top-level domain (gTLD) program has given cybersquatters more opportunities to procure names than ever before.

John McElwaine, Chair of INTA’s Internet Committee, says: “In addition to run-of-the-mill cybersquatting, there are other types of mischief in the new program, such as the introduction of bulbs and feedback.”

Ms. Schulman concurs, adding that brand owners are not only concerned about cybersquatting but also about names being reserved by registries before they are offered to the public, and brand owners being offered their own trademarks as part of domains for prices that are far above market price.

The number of Uniform Domain Name Dispute-Resolution Policy (UDRP) complaints filed has also ticked up with the introduction of 1,200 new gTLDs, adds Paul McGrady, Vice Chair of the Internet Committee.

“Behind every UDRP complaint there are probably ten demand letters that have been resolved informally. We’re not hearing from our members that the new program has lessened their burden or lightened their budget. We’re hearing the opposite,” says Mr. McGrady.

That’s not to say the UDRP has not been a remarkable success, he adds, explaining that the policy has provided a safety valve that otherwise would have boiled over into endless litigation.

While the UDRP has been a good reactive mechanism, there’s nothing proactive that prohibits cybersquatting. There’s room to enhance the mechanism in an attempt to cut down the number of infringements.”

Mr. McElwaine agrees, stating that the UDRP is working well, but it’s only addressing a slice of what’s going on and there can always be improvements when dealing with protecting consumers’ and brand owners’ interests.

To calculate the real cost to its members of the introduction of 1,200 new gTLDs, INTA is assisting the Internet Corporation for Assigned Names and Numbers (ICANN) with a study looking at the costs and impact of the program.

“I’ve always said that because of the cost of dealing with cybersquatters, the branding community has been asked to underwrite the domain name industry,” says Mr. McGrady, adding that he is looking forward to the results of the survey, to see whether it supports his hypothesis.

A Multifaceted Approach

The next challenge for the Committee concerns examining all the rights protection mechanisms (RPMs) covering the new gTLDs.

All RPMs including the UDRP are under review by ICANN, and the Committee’s goal is to advocate for improvements where it can, while also ensuring that hard-fought protections are not eroded by opening up issues that were resolved long ago.

INTA is taking a multifaceted approach to the reviews, working with other international organizations that have a stake in protecting brand owners’ interests.

There’s now an entire subcommittee—the RPM Review Subcommittee—that looks solely at the topic.

“The importance of these reviews cannot be overstated,” explains Mr. McGrady.

“Whether we strengthen consumer protection or we lose ground will affect consumers and the budgets of our members. If we lose ground our members will have to pour even more resources into stopping people who want to use the Internet to commit fraud,” he says.

The Committee also has to be careful to avoid the risk of ‘volunteer fatigue’, given the volume and pace of thousands of members in a more direct fashion, not just through public comments. One of the Committee’s core objectives is focusing on the representation of trademark owners’ interests in the multistakeholder policy process at ICANN.

In October last year, ICANN’s contract with the U.S. Department of Commerce, National Telecommunications and Information Agency to perform the Internet Assigned Numbers Authority (IANA) functions ended. ICANN is now overseen by a multistakeholder community.

“With the development of ICANN’s by-laws, and it’s still intensely engaged in work on reforming ICANN’s internal processes to incorporate into the policy process,” says Ms. Schulman, who adds that she is particularly proud of the Internet Committee’s rapid response to the transition.

The Committee sometimes had turnaround periods of 48 hours or less to review, analyze, and form a response to proposed accountability measures that were critical to brand owners, she explains.

INTA was one of only a few organizations whose comments were incorporated into ICANN’s final by-laws, and it’s still intensely engaged in work on reforming ICANN’s internal processes to incorporate into the policy process.

Committee has increased the breadth of its coverage and what used to be four or five Subcommittees has transformed into 11 of them.

Each Subcommittee operates independently, with every Chair being given the opportunity to set their own goals and adjust them as necessary.

“It’s not so much about chalking up the wins; we’re playing the long game. Some of the projects such as the RPM review can take more than two years,” says Mr. McElwaine.

Representation is Key

The main achievement this term, according to Mr. McGrady, is the development of INTA’s independent voice in the Web arena and communicating the concerns of tens of thousands of members in a more direct fashion, not just through public comments.

The Internet has always been a challenge for IP owners, mostly on the infringement and cybersquatting side.

The new gTLDs and the challenges they pose for trademark owners are keeping INTA’s Internet Committee busy. Sarah Morgan talks to the Committee’s Chair and Vice Chair, John McElwaine and Paul McGrady, and INTA Senior Director of Internet Policy Lori Schulman, to find out more.
ensure transparency, predictability, and accountability.

According to Mr. McGrady, one of the reasons the Committee is so big is because there’s so much work to be done within ICANN to protect consumers.

“Our volunteers are just as committed to making the Internet a safe place as those who are committed to making it unsafe,” he adds.

The Committee represents trademark owners’ interests in the multistakeholder policy process at ICANN.

But, Mr. McGrady adds, the Association is specifically talking consumer protection:

“Trademarks found in domain names lead either to the safety of a genuine website or to a fraudulent website.”

The bulk of the Internet Committee’s work focuses on ICANN, says Ms. Schulman, as that’s where it can most directly affect contract provisions and policy guidelines when it comes to delegating and administering domain names at the top and second levels.

But that’s not all—INTA has expanded its involvement in Internet governance across the globe by contributing to the Internet Governance Forum (IGF), the World Summit on the Information Society (WSIS), and IGF-USA programs. The global IGF and WSIS are United Nations initiatives that look at Internet governance from a global, public policy perspective.

Keeping an Eye on the Future

“We don’t know what the future holds but one of the important things we’ve done is try to understand all the different actors and policy-making bodies that will shape the future of IP on the Internet,” says Mr. McElwaine.

INTA is keeping a close eye on what is happening on social media platforms and mobile applications.

The Internet Committee recently updated its directory of social media policies and encourages all INTA members to look at these policies, which outline the voluntary efforts that social media platforms are undertaking to ensure proper trademark use and address possible abuse, on their sites.

Along with the IANA transition and RPM review, the Subsequent Procedures Working Group is considering how the next round of new gTLD applications will be handled.

“We want to make sure that further delegations take into consideration any roadblocks that were identified in the first round,” says Ms. Schulman.

This would include how geographic names are considered and whether the applications should be bunched in rounds or considered on a rolling basis.

“The Internet has always been a challenge for IP owners, mostly on the infringement and cybersquatting side,” adds Mr. McGrady.

“Industries which are fully or at least mostly dependent on the Web for delivery of their product bore the brunt in terms of trust for the early Internet,” he says.

But with the emergence of new technologies, a new group of brand owners that have been substantially protected in the past are being pulled into the infringement front line.

Mr. McGrady provides the example of 3D printing: “If you’re buying flame-retardant pyjamas from Walmart, you can trust the retailer and the brand. Now imagine a world where you can use a 3D printer to create pyjamas you believe come from a trusted manufacturer, but don’t.”

“Our fight is far from over—this is just the warm-up round.”

Have any questions?
Reach out to the Internet Committee’s Chair, John McElwaine: john.mcelwaine@nelsonmullins.com

UNO Pizzeria & Grill Expands India Footprint

Amitabha Sen & Co., New Delhi, has advised UNO Pizzeria & Grill on its franchising agreement and protecting its diverse Intellectual Property Rights in India. The Boston-based chain, known for its Chicago style deep-dish pizza, will open 60-70 outlets across the country.

Amitabha Sen & Co. was represented by Dr. Amitabha Sen, Ms. Aditi Pandey, Ms. Nishtha Arora, Ms. Malayshree Sridharan, Mr. Nihit Nagpal, Mr. Puneet Dhawan, Ms. Pragati Aneja, and Ms. Garima Yadav. Pizzeria Uno Corporation was represented by Senior Vice-President and General Counsel Mr. George W Herz II. The team recently concluded the deal in London with Tastetaria Private Limited, India.

www.asenco.in
Panama Supreme Court: Meet the President

José Eduardo Ayú Prado Canals talks to Naomi Jeffreys about life at the helm of Panama’s Supreme Court of Justice.

With a postgraduate degree in copyright and related rights, the President of Panama’s Supreme Court of Justice, José Eduardo Ayú Prado Canals, has a head start when dealing with IP cases.

His main responsibilities as President are “to lead the Supreme Court, as well as its Criminal Cases and General Affairs Chamber,” he says.

Before becoming President, he held positions including Circuit Prosecutor, Specialized Prosecutor, and Director of the Judicial Technical Police.

Since 1997, the country of four million people has had two First Instance Courts and one Court of Appeals specializing in solving IP disputes, including trademark-related ones.

The Supreme Court, which handles a variety of cases, has itself ruled on a number of important trademark and IP disputes, but rulings issued by the Court of Appeals are “in most cases final,” so it’s quite rare to have a Supreme Court ruling on these particular cases, he says.

The Criminal Chamber of the Supreme Court does, however, often review cases related to trademark infringement activities. These are mostly acts of counterfeiting that take advantage of Panama’s strategic geographical position and its transport facilities, the President says.

Although most trademark cases in Panama are heard by specialist courts, Mr. Ayú Prado Canals recalls a case decided at the Supreme Court in December 2010.

In the dispute, British American Tobacco (BAT) v. Government of Panama, the Administrative Chamber of the Supreme Court upheld Executive Decree 230, which in part says that tobacco product packages must contain images approved by the Ministry of Health occupying 60 percent of the space designated for the additional health warning.

BAT Panama argued that Decree 230 illegally expanded the scope of Law 13, which takes measures to control tobacco products, in areas that related to smoke-free environments, by banning tobacco advertisements, promotion and sponsorship, as well as enforcement mechanisms.

As a result of this ruling, the Decree “basically limits the ability of tobacco companies to publicly display their trademarks, citing public health issues and the smoking prevention and tobacco control laws.”

Trade Agreement
On October 31, 2012 the United States-Panama Trade Promotion Agreement (TPA) entered into force.

The TPA is a comprehensive free trade agreement that eliminates tariffs and removes barriers to U.S. services, including financial services, according to the Office of the United States Trade Representative (USTR) website.

It also includes important disciplines relating to IP, trade, investment, telecommunications, and trade facilitation.

Mr. Ayú Prado Canals says that because of this agreement, “our country had to make several changes to its Industrial Property Law and thus its trademark-related articles.”

These changes were made to facilitate trademark applications, including those for multiclass and nontraditional marks, he explains.

The new law has changed the trademark use concept “in order to grant priority to those who prove trademark use in Panama.”

Under the old law, a party could claim priority by proving trademark use in a foreign country, he says.

On whether the country has any major trademark developments in the pipeline, Mr. Ayú Prado Canals says that the executive branch of Panama is preparing a decree to further regulate IP law.

Panama’s IP laws have undergone major changes in order to meet the requirements of our main trading partner, the United States. “That regulation surely will make our country’s trademark legislation more specific and better for trademark holders,” he says.

Foreign Affairs
The Supreme Court has a wide reach and “always” collaborates with foreign authorities.

Mr. Ayú Prado Canals explains that because of this agreement, “our country had to make several changes to its Industrial Property Law and thus its trademark-related articles.”

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“Panama’s IP laws have undergone major changes in order to meet the requirements of our main trading partner, the United States; it is safe to say that our trademark law complies with international standards and, by doing so, can stand among the best in the region,” says Mr. Ayú Prado Canals.

In the TPA Agreement, Panama also agreed to “make all reasonable efforts” to ratify the Madrid System.

He notes that this step has already been taken by Latin American countries such as Cuba (1995), Colombia (2012), and Mexico (2013).

“There is room to further improve our trademark law by allowing international application filings,” he concludes.

As a country that links Central and South America and is a key conduit for international trade, it’s no surprise that when it comes to IP, Panama is taking a firmly global approach.

Visit the Pro Bono Clearinghouse at the INTA Information Booth!

INTA is proud to announce that it recently launched a pilot program to establish a global Pro Bono Clearinghouse. The purpose of the clearinghouse is to bolster the protection of trademarks by matching eligible individuals and nonprofit organizations needing trademark legal assistance with trademark attorneys prepared and able to assist. The Pro Bono Committee is actively recruiting potential clients to participate in the program. To learn more about the program while in Barcelona, please visit the Pro Bono Clearinghouse at the Information Booth in the Hall 8 lobby. A member of the committee will be at the booth today from 9.00am to 5.00pm—and each day of the conference—to answer all of your questions. The committee members can also provide more information on the many benefits this clearinghouse will bring, not only to the trademark community as a whole, but to INTA members, including:

- Business development opportunities;
- Talent recruitment and retention opportunities;
- Training and professional development opportunities; and
- Network building.

If you cannot visit us at the INTA information booth in the Hall 8 Lobby, but want to learn more or are aware of any individual or nonprofit organization that may be in need of free legal services, please see below.
Get to the Exhibit Hall!

Plan your visit to the Exhibit Hall before you arrive! Be sure to schedule time to visit the Exhibitors and get on-the-spot answers to your questions from product experts.
AFFILIATE RECEPTIONS

1. Birch, Stewart, Kolasch & Birch — Catamaran Eco Slim
2. Crowell & Moring — Hotel OMM, Roof Terrace
3. Dennemeyer & Associates — Boo Beach Club
4. Marks & Clerk — Bestial Restaurant
5. Vivien Chan & Co. — Mandarin Oriental
6. Venable — L’Aquarium Barcelona

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<td>Global Advisory Council - China</td>
<td>12:15</td>
<td>13:15 PM</td>
<td>Fira Gran Via</td>
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...means something entirely different

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