He added that when it comes to winning the loyalty and trust of Gen Z, brands must demonstrate a strong “commitment to social values such as environmental protection, equal rights, and philanthropy.” This is why one of the three pillars of INTA’s 2018-2021 Strategic Plan is to reinforce consumer trust and why Mr. Lossignol has why this generation buys counterfeits, given it is set to be the largest group of consumers worldwide by 2020. The Gen Z study, which surveyed more than 4,500 respondents aged 18 to 23 years old in 10 countries, found there were two main factors influencing the purchasing.

Mr. Lossignol unzip his French football team jacket to reveal his bright red Manchester United football shirt. He said: “Manchester United is not just a football club. It’s also a brand. And all brands have dreams. Brands are inspirational. They represent a lifestyle for their customers—or fans—to aspire to.”

Mr. Lossignol used his passion for Manchester United to illustrate why we come to love and become loyal to brands: “We believe in their dreams.” This message directly coincides with INTA’s Gen Z Insights: Brands and Counterfeit Products study, released on May 16, which found that the next generation of consumers believes brands should do good in the world. “For years, we’ve witnessed the rise of socially conscious, belief-driven consumers, and brand owners have taken heed of their calls. But this relationship between brands and consumers, centered on the expectation of doing good, runs deeper than this ... it’s built on trust,” Mr. Lossignol said.

He added that when it comes to winning the loyalty and trust of Gen Z, brands must demonstrate a strong “commitment to social values such as environmental protection, equal rights, and philanthropy.” This is why one of the three pillars of INTA’s 2018-2021 Strategic Plan is to reinforce consumer trust and why Mr. Lossignol has.

Changing Behaviors: Gen Z and Counterfeits
INTA’s new study of Gen Z demonstrates that brands have work to do in order to educate this increasingly influential cohort on the importance of buying genuine products, as Saman Javed finds out.

Last week, INTA released, Gen Z Insights: Brands and Counterfeit Products, a multi-country research study exploring Gen Zers’ relationship with brands and their attitude toward counterfeit products. In Session CSU23 Gen Z Insights: Brands and Counterfeit Products yesterday, panelists explored the attitudinal study in detail and discussed how brand owners can respond to the findings. Scott Phillips, Managing Director at Epsilon Economics (USA), who was also the study’s Project Team Leader, said it was critical for brands to understand why this generation buys counterfeits, given it is set to be the largest group of consumers worldwide by 2020. The Gen Z study, which surveyed more than 4,500 respondents aged 18 to 23 years old in 10 countries, found there were two main factors influencing the purchasing.

To Dream the Impossible Dream
INTA’s 2019 Annual Meeting kicked off with messages of aspiration, and a call to arms to do good. Sarah Morgan reports.

“W hen I was a kid I had a dream," began INTA President David Lossignol, Global Head of Trademarks, Domain Names and Copyright at Novartis Pharma AG (Switzerland), as he kicked a football on stage during the Opening Ceremony at the Association’s 2019 Annual Meeting yesterday. “My childhood dream was about my home country France winning the FIFA World Cup.”

That dream has twice become a reality for Mr. Lossignol (in 1998 and 2018). But while Mr. Lossignol loves his national team, his passion is for UK football club Manchester United, a revelation to registrants who witnessed
To Dream the Impossible Dream (continued)

INTA Looks into the Future

INTA CEO Etienne Sanz de Acedo, entered the stage following a video in which eight university students—all belonging to Gen Z—shared their views on how the actions and values of brands influence their purchasing decisions.

The message from young people was clear, Mr. Sanz de Acedo said: “Brands must lead in dealing with critical issues facing humanity and the planet.” He told attendees that brands and trademark professionals globally, Mr. Lossignol announced the Unreal Challenge—“an opportunity for the entire INTA community to significantly reduce the demand for counterfeits and support the incredible work of the Unreal Campaign Committee.”

“The challenge for you,” he said, “[is to] become a volunteer and give a student presentation … Imagine what we can accomplish if all 35,000 of us sign up.”

As a direct outcome of the Gen Z study, INTA has expanded the target age group for the Unreal Campaign, from 14 to 18 year olds to include those up to 23 years of age which, as Mr. Lossignol noted, creates even more opportunities for members to take on the challenge by going not only into high schools, but into colleges and universities too.

He concluded: “A world without counterfeits is not an impossible dream, if we work together.”

INTA members swarm to sign up to take The Unreal Challenge.

“Tackling the proliferation of counterfeiting is an ‘impossible undertaking if we only address the supply. It is critical but we must also fight this battle on the demand side,” said Mr. Lossignol.

“We have an opportunity here to make counterfeiting socially unacceptable on a global scale,” Mr. Lossignol declared. “We need to change perceptions and attitudes towards IP and counterfeit goods. This is especially true for the younger generations, set to become the consumers of the future.”

This ties into INTA’s Unreal Campaign, a consumer campaign that raises awareness among young consumers about the dangers of counterfeit goods and the importance of trademarks and brands. This is accomplished largely through educational presentations in schools around the world.

As a call to action for brand professionals globally, Mr. Lossignol entered the stage following a video in which eight university students—all belonging to Gen Z—shared their views on how the actions and values of brands influence their purchasing decisions.

The message from young people was clear, Mr. Sanz de Acedo said: “Brands must lead in dealing with critical issues facing humanity and the planet.” He told attendees that brands and trademark professionals must adapt to the challenges faced by society in order to maintain the confidence of young people – the next generation of consumers.

Emphasizing his point, Mr. Sanz de Acedo cited the Gen Z Insights study, which revealed that 76 percent of respondents said they would prioritize being an ethical shopper, while 85 percent said brands should aim to do good in the world.

He also touched upon a number of global trends that are altering the environment in which brands are operating, including changing consumer and employee behaviors, and emerging technologies and innovation.

Referring to an article by the late Sidney Diamond, the first trademark law specialist to serve as Commissioner of Trademarks and Patents for the US Patent and Trademark Office,
Mr. Haddad, a professional athlete, holder of three world records, motivational speaker, environmental advocate, and social entrepreneur, was paralyzed at the age of six in a Jet Ski accident. More than 75 percent of his body is completely paralyzed. “From this young age, I woke up to a reality that walking in my case was an impossibility. At this young age, I woke up to a reality of life imprisonment,” he said.

But, Mr. Haddad explained, the element of choice gave him the power to break his own barriers and face his fears. “Choice gave me the power to connect to the outer world from prison to taking my first step and starting to believe in myself and believe in my capabilities as a person,” he added.

In 2013, Mr. Haddad initiated the Cedar Walk, and walked 19 kilometers with a cedar tree on his back from Bcharre to the Cedars Forest of Tannourine in Lebanon. He planted the tree upon reaching the finish line. “With each and every tree that we plant, we are planting a new future for our children and our children’s children,” he said. “If we don’t act now [on climate change] we have a very big problem to face in this coming millennium.”

Three years later, Mr. Haddad became a United Nations Development Programme Climate Change Champion, to advocate the UN’s 2030 Agenda and raise the issue of climate change all over the world. “If we don’t meet this vision, humanity will be facing a catastrophic position,” he said, adding that he has pledged, together with a group of supporters, to walk 100 kilometers at the North Pole to raise international awareness for climate change.

He closed with a powerful call to arms: “INTA is leading in intellectual property—you are the center of trust and brand loyalty. It’s time for us together to work on a social development program and lead by example. Ladies and gentlemen, if I, Michael Haddad, am standing here in front of you, advocating for climate change and development goals, imagine what you standing on your feet could do.”

Welcome to Boston!

Time years ago, when INTA last graced Boston with its presence, 8,400 registrants attended the Annual Meeting. What a difference nearly a decade can make, noted the 2019 Annual Meeting Project Team Co-Chairs in their welcome remarks at the Opening Ceremony.

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Noted Co-Chair Ronald van Tuyl, Intellectual Property Director, Trademarks at JT International S.A. (Switzerland): “This is INTA’s biggest Annual Meeting so far with 11,343 registrants. It’s an impressive change.”

Co-Chair Cynthia Johnson Walden, Principal at Fish & Richardson P.C. (USA), pointed out that the waterfront area near the Boston Convention and Exhibition Center, where the Meeting is being held, has been substantially built up since INTA’s last Annual Meeting here.

Ms. Walden, a Bostonian, advised registrants to enjoy the local cuisine. “Boston is full of fabulous restaurants. Get some fresh seafood ... and stop by Mike’s Pastry for cannoli,” she said.
changing their views based on new things they learn. In addition, 52 percent said they would buy fewer counterfeit products in the future.

Matthew Kuykendall, Senior Corporate Counsel at Sony Interactive Entertainment (USA), said these findings indicate that Gen Zers may be open to education about the negative impact of counterfeiting, and are willing to re-evaluate their behavior based on new information.

Brands can accomplish this by “educating their consumers directly,” Mr. Kuykendall said. For example, he cited a cosmetics brand that maintains a section on its website specifically designed to help consumers identify counterfeit products and unauthorized sellers.

For many Gen Zers, Ms. Mai noted, brands are “an extension of who they are,” and they choose a brand based on how well it reflects their morals and values.

The study also explored Gen Zers’ knowledge of intellectual property (IP) rights, finding that 96 percent strongly respect the value of ideas and creations, and 85 percent have at least some knowledge of IP.

Ms. Recknagel said that members of Gen Z tend to make a distinction between different types of counterfeit products. As long as a product is of high quality, she said, GenZers “are more...
inclined to go for the counterfeit item because it allows them to express their individuality.” She noted that GenZers perceive a difference between buying “fakes”, which they define as low-quality knockoffs, and “replicas” which they perceive as superior in quality.

Notably, the findings indicate 81 percent of respondents recognize fake goods as unsafe, and 77 percent cite the quality of counterfeit products as usually not good enough. Other drivers away from counterfeits include proceeds supporting organized crime, and an adverse impact on the environment.

“For beauty and cosmetics, Gen Z have concerns about detrimental physical effects of using counterfeit cosmetics on the skin and potentially causing harm to the body,” Ms. Mai said. “For consumer electronics, Gen Z thought it was better to purchase genuine products because of quality concerns,” she noted.
A Wake-Up Call for Brands

As public pressure for action to protect the environment grows, brands have a large role to play in securing the future of the planet. Sarah Morgan reports.

If you haven’t heard of Greta Thunberg, where have you been? In August last year, the Swedish schoolgirl stood outside the Swedish Parliament, undertaking a solitary protest called Skolstrejk för klimatet (school strike for the climate).

She’s now the figurehead of the worldwide school strike for climate movement and a role model for student activism. Her protest comes amid a bleak vision of the future: last year, carbon emissions from fossil-fuel use hit a record high, with energy demand growing at its fastest pace in a decade.

It’s in the context of this desire for change and a growing consensus that everybody, from governments to brands to individuals, needs to act now that is driving “save the environment” movements in all corners of the world.

“Whatever your career, wherever you are, you can make a difference. To make the world a better place does not take great effort; it simply takes conscious, committed, and consistent effort to do good wherever we can, however we can, and whenever we can,” says Susan Heaney, Director of Marketing and Company Engagement at the Rainforest Alliance (USA), an international non-governmental organization (NGO) focused on climate change, deforestation, and animal and plant extinction, among other issues.

According to a 2018 survey by Nielsen (USA), 81 percent of global respondents of all age groups feel strongly that companies should help improve the environment. While the passion for corporate responsibility is driven by millennials, Gen Z, and Gen X, the older generations are not far behind.

“Brands are key to making the world a better place because we live in a society in which brands and consumers are engaged in a cycle of mutual influence,” says Ms. Heaney. “Consumer preferences drive brand attributes, while brand offerings determine consumer options. With the right decisions on both sides of the equation, this can be a virtuous circle.”

More than half (61%) of consumers are likely to switch to a brand that is more environmentally friendly than their current preference, according to a report on sustainable packaging in the United Kingdom and United States, published by GlobalWebIndex earlier this year.

There’s a stark warning here: do better or lose your customers. Companies need to take a holistic view across the entire product lifestyle and their business, advises Ms. Heaney.

“A major global tea brand is packaging 100 percent Rainforest Alliance Certified tea in biodegradable and compostable tea bags, bringing product sustainability full circle,” says Ms. Heaney.

How do we tackle this crisis? Well, it takes everyone doing their part.

In the mainstream consciousness, we see new initiatives aimed at stopping single-use plastics such as food wrappings and straws.

GlobalWebIndex’s report found that 42 percent of consumers say products that use sustainable materials are an important consideration for their day-to-day purchases, while 53 percent have reduced the amount of plastic they use in the past 12 months.

Governments are making efforts too. In March, the European Parliament voted to ban single-use plastic cutlery, straws, cotton buds, and stirrers—a prohibition that will come into force by 2021.

And brands are playing a role. In 2017, many of the world’s largest packaging producers, brands, retailers, and recyclers, as well as governments and NGOs—275 in all—signed the New Plastics Economy Global Commitment.

The commitment aims to create a circular economy for plastic in which it never becomes waste. It is led by the Ellen MacArthur Foundation (United Kingdom), a charity founded in 2010, in collaboration with UN Environment, with the aim of accelerating the transition to a circular economy.

In March, four of the signatories, Diageo (United Kingdom), Nestlē (Switzerland), The Coca-Cola Company (USA), and Unilever P.L.C. (United Kingdom and Netherlands) launched the Africa Plastics Recycling Alliance to tackle the current challenge of plastic waste in Sub-Saharan Africa in a way that creates jobs.

Gabriel Opoku-Asare, Head of Society, Africa, Diageo (Ghana), says: “The alliance is focused on driving progress through existing and new country level partnerships. We knew what we had to do was to revive coalitions, declare plans, and actively engage with NGOs to set and achieve targets.”

The alliance stems from the four multinationals’ work in Ghana, where the recycling industry is in the early stages of development. The Ghana-based pilot project, a facility built out of concrete blocks that are made by mixing mortar with plastics, is nearing completion and is expected to create millions of jobs, according to Mr. Opoku-Asare.

“This is just the beginning of the journey. We’re looking to see how we can really change the face of plastic waste across Africa,” he says.

More Than Packaging

Less talked about, but just as damaging, is the disposal of menstrual products. Last year, the European Commission found that menstrual products are the fifth most common type of waste washing up on beaches.

Tampons mostly consist of cotton and rayon, but have components made of polyester materials, with many wrapped in plastic applicators. Sanitary pads can be made up of 90 percent plastic.

This is where Wuka (United Kingdom), a brand that creates reusable period pant, comes in. Rubina Raut, Chief Executive, founded the company in 2017 through crowd-funding platform Kickstarter (USA), with sustainability at the core of the brand.

“Unfortunately, many people still don’t know about the damage that is being done to the environment when these products are discarded, or they’re reluctant to talk about it. This is coupled with the fact that many women are unaware of alternatives to single-use products,” says Ms. Raut.

She returned to her Nepalese roots earlier this year when attending a child
and adolescent health conference in the country, where, she says, waste management is seen as a problem. “We realized that many girls cannot even afford underwear, let alone menstrual products. In addition to donating over two dozen pairs of WUKA, we’ll also be providing regular underwear to girls and women in remote villages,” Ms. Raut says.

“Even if 100 percent of the products and packaging we use are recyclable and made from recycled content, is this the best thing we can do for the environment? The answer is no,” says Anthony Rossi, Vice President of Global Business Development at TerraCycle.

Instead of tackling the recycling of single-use products, Loop is attempting to go to the root cause of waste: disposability. Mr. Rossi adds: “Distilling down to its simplest form, Loop is offering brands the opportunity to move from a linear supply chain to a truly circular one.”

Launched earlier this year in the United States and France, Loop has approximately 250 products on its roster, including Procter & Gamble’s PANTENE shampoo and conditioner and Nestlé’s HAAGEN-DAZS ice cream. Once consumers are finished with the product, they send the empty packaging back to Loop. Loop then cleans the packaging and returns it to the manufacturers to be refilled.

It didn’t take much convincing the brands to take part, because “everybody knows this is the direction we should be moving in,” Mr. Rossi says. “Making the world a better place means providing a realistic option for consumers to make the world a better place, without their having to sacrifice so much.”

Fashion Trends

Every second, the equivalent of one garbage truck of textiles is put into a landfill or burned, according to the Ellen MacArthur Foundation.

The foundation provides other sobering statistics. An estimated US $500 billion in value is lost every year due to clothing that’s barely worn and rarely recycled; and clothes release an estimated 10 million tons of CO2 emissions each year due to their supply chain to address the industry’s environmental impact. It estimates net-zero emissions by 2050.

Mr. Mostert adds: “The fashion industry has an outsized impact on the environment, but initiatives such as these mean there is an equally significant opportunity to move the needle on climate change.”

One of the signatories, adidas Group (Germany), said it was committed to “reducing the absolute energy consumption and CO2 emissions, transitioning to clean energy and looking into energy harvesting opportunities to help mitigate climate change.”

In addition to signing the charter and agreeing to reduce greenhouse gas emissions by 30 percent by 2030, the sportswear brand has introduced initiatives in its own operations and its supply chain, and through various partnerships.

The Rise of the Civic CEO

The task before us is huge but the initiatives are exciting, brands are on board, and consumer willingness is driving it. Mr. Opoku-Asare says: “With 30,000 employees, we have the force to do good in society but we know we can’t do it alone. Collaborating with governments is key to stopping the crisis and creating jobs along the way.”

And, while traditionally reluctant to take a stance on hot-button politics, CEOs of brands, both big and small, are standing up. Across the world they’ve been taking sides on divisive topics, including climate change as well as non-environmental issues such as gun control and immigration.

“Employees and consumers alike expect that business leaders should make a positive impact on the world—they want them to be champions of social purpose both inside and outside of the organization,” says Mr. Opoku-Asare.

And it looks like the civic CEO is here to stay—76 percent of respondents in the 2019 Edelman Trust Barometer believe that CEOs should take the lead on change rather than waiting for government to impose it.

Mr. Opoku-Asare adds: “CEOs who take public positions on specific issues that align to the values of the organization may win the hearts and minds of their employees and community.”

But he warns that every CEO must consider the potential impact of their public position on the company’s reputation and commercial ambitions. A Weber Shandwick (USA) study of 500 communications and marketing executives in the United States, United Kingdom, and China found that 73 percent believed there was a moderate to big risk to a company’s reputation if a CEO speaks out.

Ms. Britton stresses that with the advent of social media, it is easier than ever for consumers to judge a brand’s performance on CSR commitments. This is especially true of the more media-literate younger generations.

“It is in this climate that any brand owner that pushes CSR as part of its branding needs to make sure they deliver on it,” she says.

“If they don’t, more brands will become vulnerable to accusations of ‘greenwashing’—making bold claims about their efforts on environmental sustainability which, on closer inspection, are less impressive than they sound.”

With so many environmental issues to tackle, brands have enormous opportunities to walk the walk and do their share to make the world a better place.

**Beyond the Environment**

**Brands are also taking up causes that go beyond the environment.**

In the fashion world, Autumn Adeigbo, Founder of Autumn Adeigbo (USA), has put corporate social responsibility at the top of the agenda at her startup.

The ethical fashion entrepreneur, who spoke at INTA’s 2019 March Conference: The Business of Brands, developed her colorful, women-focused fashion brand with the vision of positively impacting the lives of women in Africa and the United States.

“We started with a laissez-faire approach, with a percentage of our sales being put into the establishment of micro-entrepreneurships for women in Africa,” says Ms. Adeigbo.

“But I wanted to produce the garments on the African continent.”

In August 2014, she piloted a program in Cape Coast, Ghana, training eight women to produce the brand’s garments with intensive hands on coaching. She paid them fair trade wages, increasing their income an average of 91 percent.

Two years later, the brand branched into Nigeria, paying four women 259 percent above the fair trade wage minimum.

Apparel maker Patagonia (USA) spearheaded the nonpartisan Time to Vote campaign last year, enlisting almost 150 other companies to provide commitments to help employees and customers vote in the midterm elections.

At the National Basketball Association (USA), one of the world’s largest sporting brands, the league is seeking to “use the power of our brand and the celebrity of our players to address important social issues,” according to Todd Jacobson, Senior Vice President for Social Responsibility.

Mr. Jacobson highlights the NBA’s partnerships with Discovery Education and healthcare consortium Kaiser Permanente as initiatives “that would not exist without the NBA’s strategic focus on community.”
Shape Up or Lose Out on the Next Generation

Depending on your perspective, millennials are either avocado-eating dilettantes or the future of political activism. Whatever the case, brands need to adapt and engage, finds Sarah Morgan.

In yesterday’s session, CSU20 Brand Meaning and Valuation in the Age of Millennial Consumerism, panelists made it clear that brands must adapt their game plans to appeal to millennials and their successors, Gen Z.

There are increasing global societal expectations on brands and companies. People are looking behind the brands to understand the companies,” said Carol Gstalder, Senior Solutions Consultant at HEART-MIND STRATEGIES, LLC (USA). “It’s not just in terms of do I want to buy your products and services, but what kind of community member are you and what kind of employer.”

She added that many organizations and brands are becoming more transparent in their activities.

The definition of corporate social responsibility (CSR) has evolved over the years, moving from a time when companies would put some money toward causes when times were good, to CSR becoming a “business imperative,” according to Ms. Gstalder.

Marc Lieberstein, Partner at Kilpatrick Townsend & Stockton LLP (USA), and panel moderator, added:

“[Younger consumers are] reading the label to see if it makes them feel good and connected to the brand. It’s a whole different level to what we used to do.” In previous generations, he said, consumers “weren’t thinking underneath the label.”

He explained that although millennials and Gen Z are sometimes assumed to not be political, this is simply untrue.

“They get out on the street. In Europe, Greta [Thornburg, the Swedish schoolgirl who is now the figurehead of the worldwide school strike for climate movement] was able to get two million teenagers on the street within three months,” he said.

“It’s clear that millennials really do value authenticity and truthfulness in brands. Quoting statistics from Nielsen’s (USA) “The Sustainability Imperative” report, Ms. Gstalder noted that two-thirds of global consumers are willing to pay more for sustainable goods. With Millennials and Gen Z, this increases to three out of four. There’s a “willingness to pay more for a promise of sustainability,” she said.

Going Viral

Millennials were the first generation born in an era when almost every household had a personal computer, making them digital natives adept at using social media, according to Mr. Gerosa. This forces brands to move away from traditional approaches.

David Haas, Managing Director at Stout Rius Ross (USA), a self-described Baby Boomer, said that while “the traditional old-fashioned way of measuring your performance in the marketplace was pushing your message out there, doing some advertising, and seeing what happened with your sales dollar,” these days brands have access to almost immediate feedback in terms of messaging activities, and can use this data to enhance engagement with consumers and measure brand performance.

Gulf Cooperation Council (GCC)

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Hiring Is Easy, Retention Is Not

Hiring diverse individuals is the easy part of the equation. Encouraging people to stay and thrive in their environment is the trickier part. Sarah Morgan reports.

For Brent A. Hawkins, Partner at Morgan, Lewis & Bockius LLP (USA), who spoke yesterday at CSU02 The Times They Are a Changin’: Maximizing the Perspectives Around Us, the focal point of diversity efforts should be on retention and opportunity.

“It’s easy to think about recruitment: that’s the lazy perspective. People want to feel like they’re part of something. But, how do [diversity committees in law firms] make an environment where people can thrive and are exposed to the same opportunities [as everyone else]?” Lisa M. Thomas, Partner at Sheppard Mullin Richter & Hampton LLP (USA), added: “We often get lost in the world of creating committees and having an infrastructure. It is so important to remember why we’re doing that—retention. It doesn’t matter how well we improve on recruiting if we can’t keep the goals and don’t hold itself accountable to the broader objective, it’s difficult to be effective,” added Mr. Hawkins. “The participation of leadership, allies, and people who are not typically in the diversity arena is critically important to achieving the objective but also to holding the enterprise accountable to the goals.”

The panelists agreed it’s absolutely vital to have leadership buy-in—fostering diversity in both recruitment and retention is much easier with the support and involvement from senior management.

“If the organization doesn’t recognize the goals and doesn’t hold itself accountable to the broader objective, it’s difficult to be effective,” added Mr. Hawkins. “The participation of leadership, allies, and people who are not typically in the diversity arena is critically important to achieving the objective but also to holding the enterprise accountable to the goals.”

The participation of leadership, allies, and people who are not typically in the diversity arena is critically important to achieving the objective but also to holding the enterprise accountable to the goals.

Jennifer Mikulina, Partner at McDermott Will & Emery LLP (USA), and panel moderator, cited her firm’s women’s initiative as an example of senior leadership’s participation. The initiative has a number of male senior leadership’s participation. The women’s initiative as an example of accountability and being backed up with robust action.

Ms. Mikulina said: “It’s really difficult when you’re tasking something so large to people who [also] have a day job,” since people who take the lead on diversity issues in their organization don’t normally get to reduce their regular workload.

Ms. Thomas echoed those sentiments, saying that while the opportunity to participate in diversity efforts is “phenomenal,” it becomes a problem “if you’re doing that to the detriment of getting your work done.”

“I have seen people get really excited about diversity initiatives to the detriment of their growth as a substantive lawyer,” Ms. Thomas added.

Ms. Liburd pointed out that in January, U.S. in-house counsel at more than 170 companies published an open letter to law firms, urgently demanding information on the diversity of law firms soliciting their business, according to Ms. Liburd. “It’s easy to think about recruitment: that’s the lazy perspective. People want to feel like they’re part of something. But, how do [diversity committees in law firms] make an environment where people can thrive and are exposed to the same opportunities [as everyone else]? It’s easy to think about recruitment: that’s the lazy perspective. People want to feel like they’re part of something. But, how do [diversity committees in law firms] make an environment where people can thrive and are exposed to the same opportunities [as everyone else]?”

Ms. Liburd pointed out that in January, U.S. in-house counsel at more than 170 companies published an open letter to law firms, urgently demanding information on the diversity of law firms soliciting their business, according to Ms. Liburd. “It’s easy to think about recruitment: that’s the lazy perspective. People want to feel like they’re part of something. But, how do [diversity committees in law firms] make an environment where people can thrive and are exposed to the same opportunities [as everyone else]?”

Some legal departments now require information on the diversity of the law firms soliciting their business, according to Ms. Liburd. “I’ve seen many in-house departments [set out the] criteria they expect a firm to meet, and firms will put that pitch together, but when it comes to doing the work, those are not the [same] attorneys doing it,” she warned.

That’s why it’s imperative for in-house legal departments to ensure that the people included in a pitch are actually doing the work.

Ms. Liburd said that in-house departments should make it clear to law firms that they will only get the business when their teams are genuinely diverse. “You need to be prepared to walk away” if firms don’t meet expectations, she said.

Law firms have their own nuances. “No matter how cohesive we are as a brand and firm, ultimately we are made up of bunch of partners with their own practices and own way of doing things,” said Mr. Hawkins.

He concluded: “Institutionally, we buy in as a notion to the idea of diversity. We know our clients are demanding it, but how do we get the partners to act on that broad ideal? That’s the biggest challenge.”

Accountability

While committees are a good start, law firms and legal departments need to push further in their diversity efforts.

Education is key to ensure firms are achieving their diversity goals, according to Mr. Hawkins. “You have to make everybody feel like there’s an important goal and not feel demonized that they’re the ones preventing ‘us’ from reaching objectives,” he said.

Beyond education, Monique E. Liburd, Trademark Counsel at Google (USA), recommended including in this work those who are typically less involved in diversity efforts.

Ms. Liburd said: “It’s really difficult...
Insight into Co-branding and Influencers

Jessica Elliot Cardon, Deputy General Counsel at Quality King Distributors/Perfumania Holdings, Inc. (USA), and Chair of The Trademark Reporter Committee, follows up on a commentary she wrote on co-branding for The Trademark Reporter (September-October 2018 issue) by providing additional thoughts on pairing up with influencers.

What prompted you to write a commentary on co-branding, which was published in The Trademark Reporter? It evolved from my own experiences in the fashion industry and seeing the evolution of how we were growing a young brand in a traditional fashion space but also using influencers to get brand exposure. That was my first introduction to what influencers are doing, and raises questions such as: What are the benefits? What is the return on my investment?

The use of influencers exploded before questions such as these had really been addressed, and we are now seeing some lessons emerge. For example, while micro-influencers have a smaller audience, there are really solid conversion rates; people actually buy products because they believe in the authenticity of the influencer.

One thing I looked at was who are the bigger influencers, and how are they growing their own brand? At the same time, traditional co-branding has really changed. For example, Apple co-branded with Hermès, and luxury brands co-branded with retailers. People were looking for ways to bring their brands to a new audience to get excitement about their brand.

The context is that today’s consumers aren’t as brand loyal, so you need to find ways to generate that loyalty. It’s a challenge for a fashion brand to last beyond 10 years now, and influencers can help with that. I think there’s going to be a lot more of it.

Saul Lefkowitz wrote a great article in the 1980s that talked about co-branding, or double trademarking as he called it, and it seemed a good time to look at that topic again. It’s yet another way that what we thought about trademark law has changed and the principles have expanded. I think consumers understand co-branding when a fashion brand pairs up with a designer or influencer.

Are there risks, and how can they be minimized? The risk is that you may be pairing up with someone who has not properly protected their trademark or name. That’s a difficulty when any influencer or celebrity tries to protect their name. Fashion model Gigi Hadid, who has tested the trademark use of her full name and her nickname Gigi, is an example of that. It’s also a challenge for an influencer to show use of their name as a trademark, when it’s intertwined with co-branding. You need to find good examples of use on the Internet. There can also be problems if consumers are misdirected when they have comments or complaints.

What are the implications for trademark practitioners? A lot of trademark practitioners have some concerns with using influencers, as it’s a bit of a free-for-all regarding compliance. You worry that if you don’t do things correctly, you could lose the money invested in the campaign.

The other problem is a lot of the marketing teams feel that flagging something as “promoted” or as a paid ad is not authentic, but in fact I think the consumer feels the opposite: they know there are relationships between influencers and brands.

As long as the influencer is picking brands that are authentic, it is better to be open than to try to hide it. Failing to disclose it can be less authentic for both the influencer and the brand. Consumers want authenticity above all.

How are consumers different now? For one thing, they don’t go to the mall. Meal times are different, we commute more, we can’t leave work behind because of digital devices, and we feel like we have less time off. Digital has changed everything. So we all shop more online and get things sent to us.

Are there other changes coming in the industry? One thing is sustainability. I think we will see people investing in better-made, longer-lasting clothing and moving away from fast fashion. There may be more of a 1950s mentality where you take better care of what you have invested in.

A few leading brands are pushing this now, but it will take a while: there are buy-back and recycling programs. Consumers were very trend-oriented for a long time, but are now realizing some of those trends are short-lived.

That will affect trademarks as people will pursue tag lines that support that messaging, and a more traditional speak about the product. Trademark options are already limited so people will have to be creative. There are only so many ways you can say that.

Are there lessons for other industries too? Embrace the use of influencers! You can see people in the technology space doing that, and the gaming industry is also working with gamers. You will see it in other industries too. It’s a change from a celebrity-endorsement model to using everyday people who have platforms.

But it will become harder for brands to identify which influencers are in fact authentic. Some are students who are making content for their social feeds, which are essentially fake endorsements, where no one has actually partnered with them. Again, that taps into the theme of authenticity: what is your real brand message as an influencer and as a brand?

The legal uses will be a lot more complicated—including using influencers not from your home country. You need to understand the local rules. For example, in Germany the influencer must use German hashtags for paid ad disclosures. That could get really complicated and could become the stickiest issue. You need to make sure you comply with local advertising rules.

For more on brands and influencers turn to p20.
### Representative offices also in:

**India:**
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The Unreal Campaign: Combating Counterfeits

Since being founded in 2012, the Unreal Campaign has gone from being a pilot project to a full-fledged initiative with an established INTA Unreal Campaign Committee, and has directly educated more than 40,000 teenagers across the world. Aislinn Burton catches up with the Committee leadership to learn more about the successes, challenges, and future of the campaign.

Educating young consumers is critical in the fight against the criminal networks manufacturing counterfeits.” So says Daniela Rojas, Foreign Legal Consultant at Pirkey Barber (USA) and Chair of INTA’s Unreal Campaign Committee.

Young people are not only the “big consumer group of tomorrow;” they are also increasingly seeking to be socially responsible, notes Ms. Rojas. Through INTA’s Unreal Campaign, they can learn about the importance of trademarks and brands, and the dangers of counterfeiting, enabling them to make smart and conscientious decisions in their own purchasing.

A Global Effort
Due to the global nature of counterfeiting, the Unreal Campaign stretches across the world. Representatives of the campaign have now presented on the dangers of counterfeiting in 38 countries, in six different languages, according to Ms. Rojas. The 45-minute presentations are primarily made in schools by INTA members.

In 2018 and 2019 alone, more than 85 direct engagement events reached more than 8,000 young people across 23 different countries, including seven (Ecuador, Madagascar, Paraguay, Trinidad and Tobago, Turkey, Uruguay, and Venezuela) in which the Committee had not previously engaged.

Ms. Rojas says that, in addition, more than 480,000 consumers have been reached by the campaign’s online presence.

The Unreal Campaign Committee has developed a volunteer toolkit for INTA members interested in getting involved in the project. The toolkit includes outreach materials to use to contact schools and other youth institutions to arrange a visit, and a step-by-step guide on how to conduct a student presentation.

The presentation has been customized to resonate with students in each region, and includes marks that are well known in each continent. It has been translated into five languages other than English.

Following all on-site and digital interactions, the Unreal Campaign aims to collect feedback about the engagement of young people to inform future work.

“What is incredible about the campaign is that not only are we helping to create better, smarter consumers who at the same time will create a better, more socially responsible society, but we are also learning from our interactions with young consumers,” Ms. Rojas says.

The success of the presentations is clear: after the program, students are more socially responsible, notes Ms. Rojas. “We want to see the number of manufactured and sold counterfeit goods decrease.”

Despite the campaign’s extensive successes to date, there remains more to do.

“We need to continue growing the campaign’s footprint in new countries and cities around the world,” Ms. Rojas says. “We want to see the number of young consumers reached grow exponentially and, at the same time, the number of manufactured and sold counterfeit goods decrease.”

The Future

Brand representatives can aid the Unreal Campaign by donating samples of real branded goods and counterfeit versions, which students can compare during presentations. The campaign also needs the products to photograph for its online “Spot the Fake” challenges, which have proved very popular on social media.

“We want to make sure we are educating teenagers that it’s not just luxury goods that can be counterfeited,” he says. “It can also be products that they come into contact with on a regular basis—whether it’s their sports jerseys, favorite shampoo, or favorite pair of sneakers.”

Get Involved!

Visit inta.org/Unreal, or contact Catherine Shen, INTA’s Unreal Campaign Associate, at cshen@inta.org

“Within the INTA community there are still many members who are not aware of the Unreal Campaign or are not aware of the different possibilities to help.

“Outside of the INTA community, the challenges are many, from trying to gain more online engagement through social media, to obtaining more positive responses from schools because it is not always easy to convince teachers to allocate one hour of time to us for a presentation,” he explains.

Ms. Rojas and Mr. Litta would like to see more INTA members volunteering to give presentations on behalf of the campaign, and they are also keen for more of the Association’s member community to interact digitally and spread awareness of the fight against fakes online.

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Lorenzo Litta, Partner at Spheriens (Italy) and Vice Chair of the Unreal Campaign Committee, says that there are challenges and opportunities both within and outside the INTA community.
The Rise of the Machines

Artificial intelligence has great potential as a powerful tool to serve—not replace—trademark attorneys, as Rory O’Neill finds out.

“I don’t think any of us got drawn into the trademark profession because we like looking at 1,000-page PDFs,” said Makalika Naholowaa, Head of Trademarks at Microsoft Corporation (USA) at yesterday’s session CSU57 How to Fit the AI in TM: Keeping Up with the Joneses and the Jetsons.

With the advent of artificial intelligence (AI), such laborious tasks could soon be a thing of the past—but only if trademark professionals are willing to embrace change. This was the view of the panel assembled to discuss how AI is likely to transform the work of trademark professionals in the coming years.

As moderator Tiffany Valeriano, Director at Corsearch (Germany), noted, 84 percent of companies on the Fortune 500 list in 1955 were not on the list in 2018. What explains the drop off? According to Ms. Valeriano, one likely explanation is that “they weren’t able to adapt to certain transformations in today’s economy.”

Adjusting to the rapid development of AI will be crucial to both brand owners and trademark practitioners, according to the panel, which was keen to assuage some of the lingering fears many hold about the technology.

“Legal has been a bit behind in terms of adopting AI and adopting legal technology, and now we’re finally getting to that place where we’re ready to take that next step,” said Nicole Arbiv, Onboarding Director at LawGeex (Israel).

“We’re here to augment your role, to help you do more strategic legal work and save you time doing this redundant work,” she added.

LawGeex, which offers AI-powered contract review services to lawyers, is just one of many AI applications designed to automate the more tedious aspects of practicing law.

According to Michael Edward Williams, Vice President at Brandsymbol (USA), the branding agency has seen no evidence that AI poses a threat to the work of human professionals. Much of Brandsymbol’s work focuses on creating names for new pharmaceutical products, Mr. Williams explained. The firm uses a program based on the same AI-algorithms used by the U.S. Food and Drug Administration in order to identify similarities between current and proposed drug names.

But even with the aid of AI, the task “still requires the human element to go through each name and consider whether it’s even a viable candidate,” he said.

As Ulrich Hildebrandt, Partner, SKW Schwarz Rechtsanwaelte (Germany) explained, there are many responsibilities of a trademark lawyer for which AI is no substitute.

For example, there are many “hidden factors” when considering the likelihood of confusion between marks, Mr. Hildebrandt said.

Theoretically, there could be an AI solution to read all decisions, but, he explained, such determinations often involve weighing the balance of justice in a particular case.

So what are the next steps toward embracing the benefits of AI on an industrywide scale? According to Ms. Naholowaa, one of the most important tasks in the next five years will be codifying the ethics surrounding the use of AI so that people “feel more safe adopting it.”

The benefits will be worth it, she suggested. Thanks to her team’s embrace of AI-powered aids, “the people that I work with are happier because they can get their jobs done better.”

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Frontier Spirit: Fighting Counterfeits Online

Counterfeiters operating in the online space are becoming ever more sophisticated, but brands are fighting back, reports Saman Javed.

"The Internet has acted as a catalyst in the sale of counterfeit goods, providing a smokescreen behind which counterfeiters operate," said moderator Hemant Singh, Founder and Managing Partner at Intel Advocare (India), yesterday in Session CSU21 Combating Counterfeits and Piracy on the Internet Highway and in Digital Media, which brought together legal counsel from various platforms to discuss how they combat the widespread problem.

In an online environment, “the anonymity of the seller, the worldwide reach to the markets, and the inability of consumers to examine physical products means consumers are far more easily deceived,” Mr. Singh cautioned.

Annabelle Daniel Varda, Legal Director and Head of Trademarks at Google (USA), explained how the company combats counterfeiters on its Google Ad services. According to Ms. Varda, Google takes a three-pronged approach, combining machine learning, human review, and takedown notices. “The most effective method is machine learning, because the system improves its own behavior over time,” she said.

Ms. Varda described Google’s machine learning systems as “risk models” designed to assess data linked to an advertiser’s account for any possible malicious activity. Tell-tale signs of fraudulent activity include: the use of a proxy email address to render the source’s IP address untraceable, online activity conducted at times atypical for the supposed time zone of the source, and data oncoming from geographical locations where abuse is more common.

“Part of the machine learning’s success is that bad actors tend to use the same techniques irrespective of the area or industry they operate in,” Ms. Varda said. She strongly encouraged brand owners to use Google’s takedown notice forms to report any Google Ads containing promotions for suspected counterfeit products. “These advertisers are likely using a new or unfamiliar tactic we haven’t seen before and hasn’t been detected by machine learning. We also feed this information back to our risk models to help them learn,” she said.

Jeni Zuercher, Leader of Brand Global Protection at YETI (USA), said the brand’s priority when it comes to counterfeiters is to “curtail them quickly and impactfully.”

“One thing that I constantly say about counterfeiters is that they are clever, well-funded, and unethical,” Ms. Zuercher said. “We are the ones that aren’t as well-funded, but we can be clever.”

One approach YETI employs is to work closely with the platforms on which counterfeiters may be sold, she said, adding that it is better to be an “adversary without being an enemy” when dealing with such platforms.

Brands and platforms need to work collaboratively, she continued. “If you say, ‘I want to protect the consumer as much as you do,’ it is a lot easier for any platform to understand where you are coming from.”

Ms. Zuercher also encouraged brands to be as transparent as possible with platforms. For example, if a brand only has one distribution facility, this information should be shared with the platform, which might then be able to identify counterfeit products based on their origination from a different location.

Working with law enforcement is another important part of an effective anticounterfeiting strategy, the panelists said. Ms. Zuercher explained that YETI recently filed an action with the U.S. International Trade Commission against multiple platforms that had failed to combat counterfeiters and trademark infringement of its products. At the time the suit was filed, she said, the company was submitting takedown notices against 12,000 accounts weekly. Since filing suit, the numbers have decreased.

Also speaking on the panel, Stephen Coates, Senior Legal Counsel at Amazon.com, Inc. (USA), discussed the company’s efforts to fight counterfeiting of its smart devices, such as the Ring doorbell. Ring, Amazon’s video doorbell, captures an image of a person at the door, and sends it through a mobile application to a homeowner’s phone.

Mr. Coates said Amazon has seen an increase in social media advertising of Ring counterfeiters in recent years. This includes Instagram accounts impersonating Amazon’s Ring, as well as a mobile application that mimicked Amazon’s app and promised a free Ring doorbell to those who downloaded it.

He noted that Amazon was receiving complaints from users who had downloaded the app and wanted a free Ring “but we weren’t involved. It was an instance of actual confusion.”

Another potential risk was that the app developer could collect user information and access user accounts, he added. According to Mr. Coates, “The ability to protect customers from downloading apps and software that contains malware will be important for the future.”

IONA’s Unreal Campaign is the Association’s consumer awareness campaign that educates young consumers about the value of trademarks and brands and the dangers of counterfeit products. For more information and to sign up for the Unreal Campaign Challenge, visit us at the Unreal Campaign Booth next to the Information Desk located at the NE Lobby A/B1 of the Boston Convention and Exhibition Center.

www.inta.org/unreallcampaign
Spreading the Word About IP

Intellectual property (IP) offices around the world employ a variety of different approaches to making the public aware of the importance of IP, as Sarah Morgan finds out.

Kareem Abdul-Jabbar played in the U.S. National Basketball Association (NBA) for 20 seasons, retiring in 1989. Seven years later, former players, coaches, and others voted him one of the competition’s 50 greatest-ever players. As a registered trademark owner, bestselling author, and businessman with a high profile in a basketball-hungry nation, he seems like a good pick for extolling the virtues of intellectual property (IP) to the public.

It was no surprise then that the U.S. Patent and Trademark Office (USPTO) chose him as the keynote speaker at its 2018 National Trademark Exposition, a biennial event where attendees can learn about the role of trademarks in the economy and society. The family-friendly exposition is the USPTO’s main event for educating the public about the importance of trademarks.

The USPTO also spreads the word through other channels, including a video on counterfeiting that highlights the pervasive harm caused by counterfeit goods. “It shows that counterfeiting reaches into all aspects of our daily lives, threatens our health and safety, and negatively impacts U.S. jobs and the overall economy,” says Mary Boney Denison, Commissioner for Trademarks at the USPTO. The video also includes practical tips on how to spot counterfeit goods and avoid buying them, she adds.

Over in South Africa, the country’s IP Office—the Companies and Intellectual Property Commission (CIPC) at the Department of Trade and Industry—targets its outreach campaigns mainly toward young people and small enterprises. “We focus on products that are harmful and affect public health,” explains Amanda Lotheringen, Senior Manager, Intellectual Property Enforcement (Copyright).

Ms. Lotheringen highlights the “Be Your Own, Buy Your Own” campaign, launched in 2016, as one of its most successful. It plays on national conservation efforts surrounding the “Big Five” game animals—the lion, leopard, rhinoceros, elephant, and Cape buffalo—by identifying five major IP areas in urgent need of awareness raising: music, film, software, gaming, and publishing.

Similar to the USPTO’s use of a basketball star, CIPC’s campaign is a reminder of how IP offices can opt to link to familiar faces or local issues when seeking to educate the public about IP.

In Chile, the Instituto Nacional de Propiedad Industrial (INAPI) interacts with farmers, artisans, universities, and small businesses to talk about IP. “Today, industrial property offices do not only relate to the traditional users of the system, such as agents, companies, and inventors, but also relate to new actors,” notes Esteban Figueroa Nagel, INAPI’s Acting National Director.

INAPI’s new Technology and Innovation Support Center is a free resource dedicated to training related to innovation. “Industrial Property Tuesdays” are a particular highlight: people attend to learn about the basic concepts of protecting IP.

“We decided from the beginning that our approach would be fact-based. Going back a few years, there was relatively little data that was generally accepted as being impartial and credible,” explains Christian Archambeau, Executive Director of the EUIPO.

This led to the EUIPO’s publication for the first time of numerous statistical reports and studies on issues such as the relationship between IP infringement and loss of revenue and jobs.

One of the EUIPO studies that has highlighted the challenges in bridging the gap between IP rights owners and the general public is the IP Youth Scoreboard. Published in 2016 and set to be updated in September 2019, the report focuses on 15 to 24 year olds, trying to better understand their attitudes toward IP.

Among other findings was that 12 percent of young people had intentionally bought a counterfeit product online in the previous 12 months.

The report reveals that young European citizens feel there is a lack of information about IP and that what is available is not communicated effectively to their age group.

“We need to try to break through this barrier, employing the facts in a convincing and engaging manner and hopefully also getting the message across through the education system at the earliest possible age,” says Mr. Archambeau.

It’s clear that IP offices need to do more to engage with young people. In India, INTA is working alongside the Department of Industrial Policy and Promotion (DIPP) and its Cell for IPR Promotion and Management (CIPAM) on a children’s IP awareness and education campaign. The campaign
is part of the government of India’s National IPR Policy objectives, and to date, INTA volunteers have taught more than 1,000 children in the country about the value and impact of IP.

As part of the collaboration, CIPAM has launched a competition for students to encourage creativity and understanding of IP. This year, entries can be in the form of short films or comic books on the subject of “IP in Daily Life.” Winning entries will be rewarded with cash prizes as well as recognition for the students’ educational institutions.

For Đinh H, Director General of the National Office of Intellectual Property of Vietnam (NOIP), incorporating IP into training, and information sharing is vital. These programs can “gradually build respect” and foster a culture of IP protection in society.

But, for the NOIP, aligning cooperation among enterprises, associations, and state management agencies in outreach activities is one of the biggest challenges the Office faces in raising IP awareness, he adds. “Developing outreach programs on IP needs close collaboration among competent agencies and associations, especially consumer protection associations,” Mr. Phi says.

NOIP is currently implementing projects to raise awareness and, with support from the World Intellectual Property Organization, is drafting its national IP strategy until 2030, which includes activities for supporting IP and building an IP culture for society. The Saudi Authority for Intellectual Property (SAIP) has also taken this idea on board. On World Intellectual Property Day this year (April 26), the SAIP launched the “I Respect Intellectual Property Rights” campaign. It staged events in shopping malls across Saudi Arabia to promote awareness of IP rights.

“In addition to having our own campaigns, we have partnered and cooperated with different entities to deliver our message, which is to respect IP rights,” says Mohammed Alowaisem, SAIP’s Executive Director of Corporate Communications.

For example, the Office partnered with the Saudi Professional League (SPL), the top division football league in Saudi Arabia, to host one of the league’s most important matches, which drew more than 70,000 attendees and millions of off-site viewers.

Since, in cooperation with the SPL, the Authority prepared several video and text messages, which will be displayed on the screens of the stadiums at selected matches in the future. Interactive pavilions will also be situated outside the stadium, so sports fans can get to know IP.

**Where Is the Victory?**
The SAIP measures the success of its efforts by tracking how many people have visited its website, communicated with the Office, and engaged on its social media channels.

In much the same way, NOIP measures the success by looking at the participation of the public and agencies in outreach activities.

But, as Ms. Boney Denison points out, it’s hard to measure the small victories of anticyterfeiting efforts. “To us, if a consumer thinks twice about purchasing something because they believe it’s a counterfeit, we’ve made an impact,” she says.

Ms. Boney Denison believes there are more challenges with respect to counterfeiting awareness rather than overall awareness of the value of trademarks.

“Another of the biggest challenges in addressing counterfeiting awareness is the fact that it touches upon such a vast array of goods because trademarks are present in just about every aspect of our daily life, so there is an inherent challenge in developing consumer awareness campaigns that cast a very wide net within the consumer population,” she says.

CIPC is exploring a unique way to measure the impact of its efforts. It is exploring the possibility of driving an awareness campaign that uses 3D barcode scanning on consumer products. The campaign will be run across industry sectors, including tobacco, clothing, pharmaceuticals, and fast-moving consumer goods, and will also be linked to an awards program that incentivizes consumers to buy originals, Ms. Lotheringen explains.

**INTA and China Trademark Association Sign Cooperation Agreement**

The signing ceremony took place during INTA’s Annual Meeting. INTA and CTA have a long history of cooperation, and this agreement will help to broaden and deepen this well-established relationship. For many years, INTA and CTA have exchanged high-level delegations to attend each other’s respective meetings.

As part of this exchange, during the Annual Meeting, Mr. Ma and CTA members will be speaking at Session CT53 Update on Trademark Law in China on Tuesday at 3:30 pm. Additionally, INTA’s President will be speaking at the CTA Trademark Festival, July 5-8 in Yinchuan, China.
Comparative Advertising in Russia

Proving unfair advertising in Russia requires a subtle understanding of the law, explains Ilya Goryachev, Gorodissky (Russia).

Having a developed trademark registration system, accompanied by effective legislative enforcement remedies, Russia represents a large and attractive consumer market for various industries. The exclusive right to a trademark under Russian law expressly names the ability to use a trademark in advertising.

In its turn, the primary advertising legislative act—the Federal Law of 13.03.2006 N 38-FZ “On advertising” (the Advertising Law)—sets the general requirements for advertising.

In particular, Subsection 1 Section 2 Article 5 of the Law bans unfair advertising in the form of advertising that contains incorrect comparisons of the advertised product with the goods in commerce produced by other manufacturers or sold by other sellers. That said, “correct” comparative advertising is in fact allowed under the Russian advertising regime, while “incorrect” comparisons may give rise to liability.

The advertising regulator in Russia is the Federal Anti-Monopoly Services of the Russian Federation (FAS), but courts also consider disputes involving trademark use in advertising.

Legislative and Practical Balance

The Advertising Law does not set boundaries where correctness ends and incorrect advertising starts. In this regard, the Resolution of the Plenum of the Russian Supreme Commercial Court of 08.10.2012 No. 58 provides the milestone guidance on dealing with comparative advertising:

- The advertiser is responsible for ensuring plausibility not only for the information referring to its own activity (goods) featured in the advertising materials, but also for plausibility of the information referring to the competing activity (goods).
- Comparison on the basis of disparate criteria is not allowed.
- Partial comparison is not allowed.

The resolution also highlights that the information in advertising shall also conform to the criteria of plausibility, also for the purpose of forming a true impression of the goods, their quality, and consumer characteristics.

Further, when exploring the notion of incorrect comparison, it is advisable to take account of provisions of unfair competition (Article 14.3 of the Federal law of 26.07.2006 No.135-FZ “On competition protection”), as well as the recommendations of the FAS of 24.12.2015 No. 1А/74660/15. The above provisions and recommendations allow the conclusion that an incorrect comparison takes place when it:

- Is accompanied with use of the words “best”, “first”, “number 1”, “the only”, “the most”, and other words and expressions creating impression of advantages, without providing specific characteristics or criteria of comparison having objective evidence, or the above use with inclusion of words, being false, imprecise, or distorted;
- Lacks indication of specific characteristics or criteria under comparison;
- Does not produce results which can be tested objectively; and
- Is based on solely insignificant or incomparable facts and contain a negative attitude toward the competitor and/or its products.

Liability Risks

The maximum administrative fine for incorrect advertising for a company may reach up to RUR 500,000 (less than US $7,500) under Section 1 Article 14.3 of the Russian Code of Administrative Offences, in the form of an administrative fine. Moreover, the FAS will be entitled to issue an injunction against further airing or promoting the advertising materials held to be in breach of the Advertising Law. Depending on the amount spent on the advertising material at issue, such an injunction may be even more sensitive than the administrative fine.

The trademark owner may also consider a trademark infringement dispute (including a claim of compensation) as well as a court case with the claim that the advertising is illegal.

Third-Party Trademarks in Advertising

Cases of comparative advertising involving a third-party trademark are not rare before the FAS and Russian courts.

Among cases in recent years, the Russian manufacturer of kvass—a traditional Russian beverage—used an advertisement that showed a chart of four trademarks, with one trademark owned by the advertiser and three trademarks owned by competitors.

The chart listed the countries of incorporation of the trademark owners: Russia, the United States, Denmark, and the Seychelles. The chart was designed to resemble football team results and was accompanied with the question: “For which team will you vote? Which kvass to buy?”

The Russian subsidiary of the U.S. company, whose trademark was mentioned in the advertising, filed a complaint to the FAS. The complaint was based on the indication that, in reality, the mentioned trademark was registered by a Russian subsidiary of the U.S. company, thereby indicating that the United States was the trademark owner’s country of incorporation was incorrect.

All four brands of kvass mentioned in the advertising were indeed produced in Russia. However, in advertising its own brand, the advertiser highlighted the advantages of its kvass in comparison with the other brands, implying that its competitors manufactured in other countries. The advertising content suggested that the advertised brand, manufactured in Russia, was superior to the three competitors.

In 2015, the FAS considered the complaint and also engaged the expert commission, which unanimously considered the advertising to be in breach of the Advertising Law on the basis of incorrect advertising. An injunction was ordered against further promotion of the advertising.

Another interesting case in which comparative advertising was considered involved a Russian subsidiary of multinational fast-moving consumer goods producers.

The dispute arose out of the use of the slogan “Pure Flavour. No Magic” in the advertising of bouillon cubes. A competing Russian company considered that the word “magic” was similar to its trademark “MAGGI” and filed a lawsuit.

However, in 2012 the courts established that the slogan did not infringe trademark rights because the mere consonance between the word “magic” and the trademark of the plaintiff did not amount to incorrect comparison between two competing products. Expert opinions and social survey reports were also used in this case.

Practical Issues

When evaluating whether comparison is justified and supported with objective evidence on the basis of comparable criteria, it is important to consider every case of advertising on an individual basis.

Specific attention needs to be paid when using results of professional awards and other recognitions as evidence of advantage in comparisons, since not all of them may be considered as objective.

Furthermore, from the trademark owner’s perspective it will be necessary to carefully evaluate whether trademark use was indeed done by the defendant, whether the mere mention of the trademark for informational or comparative purpose was in good faith or bad faith, and whether such mention constituted a trademark infringement.

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The Anxiety of Influence: How to Avoid the Pitfalls

For many brands, influencers have proven a shortcut to huge exposure and high impact, but there are dangers associated with their use—and brands need to be thoughtful about when and how they engage with them, as Saman Javed reports.

In 2016, dozens of so-called influencers flooded their followers’ Instagram feeds with square, orange tiles, each tagged with the words “Fyre Festival”–a music festival set to take place in 2017.

These orange squares, coupled with images of bikini-clad models partying on an undisclosed island, were just enough to capture the attention of thousands, who bought into the idea that the creation and distribution of content=product=product of the moment to create a huge buzz and promote the festival without disclosing that they had been paid hefty sums for doing so. According to court records, Ms. Jenner was paid a fee of $275,000.

“Tapped into a cultural zeitgeist relevant to them, using ‘it’ girls of the moment to create a huge buzz and generate ticket sales,” says Pien van de Zuiden, head of the agency Imagency (Netherlands).

In 2017, social media was awash with unsuspecting festival-goers who had arrived at the island only to find the event was the opposite of what they had been promised. Many blamed the influencers, some of whom had failed to follow the U.S. Federal Trade Commission (FTC) guidelines requiring endorsers to disclose when a post is an ad, and promoted the festival without disclosing that they had been paid.

“We consider influencer marketing in China to be about three to five years ahead of the rest of the world because of technology advances,” says Elijah Whaley, Chief Sales and Marketing Officer at influencer marketing platform PARKLU (China).

“Taps into a completely different marketing and business model in China as compared to the rest of the world,” Mr. Whaley says. “At this point, the platforms themselves are more sophisticated here.”

He gives the example of the highly popular Chinese video-sharing app Douyin, one of the platforms PARKLU uses when creating influencer-based social media campaigns for brands.

While Douyin allows influencers to link their content to every e-commerce site in China, it also has its own native e-commerce feature that allows influencers to create their own stores and promote products for sale through the app.

In 2017, Douyin was launched overseas as TikTok, though without the e-commerce features available in China. “There’s a huge gap. On TikTok you can create awareness around a product, but users must leave the app to make a purchase,” Mr. Whaley says.

In China, creating content that your followers can relate to is the key to building trust and influencer marketing success.

Polar Opposites: Africa

The situation is different in Africa. Moses Kemibaro, founder of digital marketing agency DotSavvy (Kenya), says influencers first gained popularity five years ahead of the rest of the world because of technology advances.

“In Africa,” he says, “the situation is different. Another major aspect driving influencer marketing in China is the idea that the creation and distribution of content is an ‘exchange of value’ and a ‘gift.’

“This also creates a sense of indebtedness which you don’t commonly see, or is not as strong, in Western countries,” Mr. Whaley says.
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The Anxiety of Influence: How to Avoid the Pitfalls (continued)

Mr. Benjamin says many brands protect their trademarks by putting a contract in place with an influencer before working with him or her. The contract includes stipulations about how the influencer may use the brand’s trademarks.

“Given that the brand’s trademarks are the significant asset in selling its product, it wants to ensure that whatever agents it works with, including influencers, abide by its terms,” Mr. Benjamin says.

He adds that if an influencer misuses a brand’s trademarks, the brand has two options.

“Sometimes the brand has to respond publicly and forcefully in repudiating the influencer. Other times, the brand chooses to simply quietly terminate its relationship with the influencer and not bring additional attention to the issue,” Mr. Benjamin said.

Deciding which option to pursue is “balancing act” by the brand, he says, since sometimes taking public action to cut ties with an influencer could result in the “Streisand effect,” where the brand winds up giving greater public attention to the issue or problem.

The Influencer Apocalypse

At digital agency People Ideas & Culture (PIC, USA), the team takes a calculated approach to the use of influencers when developing social media strategies for clients.

Doug Raboy, Chief Idea Architect at PIC, says this approach involves making sure the company finds influencers who are already connected to the product or brand they are working with.

“We make sure we find influencers who are authentic and care about the brand,” Mr. Raboy says. “We say the agency takes this careful approach because “audiences can spot a fake [influencer] a mile away.”

One way PIC solves this problem is by using “micro-influencers”—someone who typically has fewer than 100,000 followers in the UK and 300,000 followers in the U.S.—because in most cases a brand will have a very specific audience, and the influencer should reflect this.

“I would much rather use a micro-influencer who is completely in touch with the brand and has the right followers who will be interested in the brand, rather than pay a more popular influencer $150,000 for one post to advertise to millions,” Mr. Raboy says.

While an increasing number of brands are jumping on the influencer bandwagon, Mr. Raboy suggests, “We are getting close to the ‘influencer apocalypse.’”

“A lot of the time brands are blindly going into this and saying ‘oh we need influencers,’ but why do you need influencers? What do you want them to accomplish and what are you trying to achieve?” he asks.

He predicts that working with popular influencers simply because they have the highest number of followers will become less effective, and this will push brands to go “back to being more thoughtful about the way they use influencers and how they connect with their audience.”

Brand Case Study: S’Well

One brand that has developed a strategy to avoid such an “influencer apocalypse” is S’Well (USA), a reusable water bottle company.

Collette Parris, Senior Corporate Counsel at S’Well, says the brand’s target audience cares deeply about sustainability and supporting charitable foundations, so the brand chooses social media influencers who will “strike a chord with those values.”

Ms. Parris says the brand cherry-picks potential influencers and thoroughly vets them.

“You have to work really hard to find influencers who have values which align with the values of your brand. Rather than just looking for a popular influencer, we look for an influencer who mirrors what our brand is about,” she says.

While the company recognizes the power of micro-influencers, S’Well has also benefited greatly from collaborating with influencers who have large followings.

For example, earlier this year, the brand collaborated with Instagram influencer Lee from America, a self-described fitness lover who practices a holistic lifestyle, to design a S’Well bottle.

“It was a way for us to tap into Lee’s audience and introduce them to the S’Well brand where they might not have engaged with it before. And Lee also gained followers, because at S’Well we have a cult following who may not have come across her page before,” she explains.

Ms. Parris emphasizes that S’Well’s careful selection of influencers also protects the brand against having its reputation tarnished by an influencer who might say or do something that conflicts with the brand’s values.

“We haven’t been in a position where we have had to do damage control because we have these safeguards in place,” says Ms. Parris. “The best protection we give ourselves is by being thorough and authentic in who we choose.”

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