

Innovation and Trade Law Update

Cowles & Thompson | October 2008

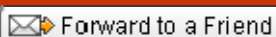


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By the Numbers

Behind every successful law firm you will find attorneys who love their profession, and Cowles & Thompson is no exception.

Our numbers speak for themselves. In business since 1978, we have worked with over 48 of the Fortune 100 companies (2006) as well as local middle-market companies. Our experience includes having handled more than 500 appellate matters and 20,000 litigation matters, over 2,000 business matters and more than 500 legal malpractice matters. Experience matters.

International

China Reports Increased Enforcement of Intellectual Property Protection

China has dramatically improved efforts to support the rights of intellectual property owners. Historically, China has been criticized by the international community for their lax approach to intellectual property infringement.

In 2007, 708,000 trademarks were registered in China, ranking it first in the world for 6 consecutive years. In the first half of 2008, 21,045 trademark infringement cases have been investigated, up 10.92 percent from a year earlier. These cases include 16,630 domestic ones and 4,415 foreign-related ones, up 7.58 percent and 25.6 percent, respectively, according to the State Administration For Industry and Commerce (SAIC).

Fines from these cases reached \$25.74 million, up 8.58 percent. Another 50 trademark-related criminal suits and 53 suspects were presented to judicial bodies. SAIC handled 1,232 cases of infringement of Olympic symbols in the first half year, which resulted in confiscating and destroying 174,560 pieces of related goods and 81,012 pieces of trademarks.

SAIC has also reinforced copyright protection efforts through 12,838 related cases involving the confiscation of more than 46.11 million pieces.

Source: *People's Daily Online (China)*

Exports

Illinois-Based Chemical Manufacturer Settles Charges of Export Violations

The Commerce Department's Bureau of Industry and Security (BIS) recently announced that Nalco Company of Naperville, Illinois has agreed to pay a \$115,000 civil penalty to settle allegations that it made thirteen unlicensed exports in violation of the Export Administration Regulations.

"Chemicals that are controlled for anti-terrorism and chemical weapon reasons can be very dangerous if they fell into the wrong hands," said Darryl W. Jackson, the Assistant Secretary of Commerce for Export Enforcement. "Therefore, exporters need to be vigilant of where their products are being sent and who they are being sent to."

The allegations involved exports of items containing the chemical solution triethanolamine (TEA) to Angola, the Bahamas, and the Dominican Republic between April 2003 and September 2006. TEA is a commodity that, depending on its composition in various solutions, can be used as a precursor for toxic agents and is controlled for Chemical/Biological, Anti-Terrorism, and Chemical Weapons reasons. Nalco had voluntarily self-disclosed these exports to BIS.

Source: *BIS*

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Imports/Customs

Customs Proposes Changes to "Country of Origin" Rules

The Bureau of Customs and Border Patrol recently proposed new regulations to establish uniform rules governing CBP determinations of the country of origin of imported merchandise. The proposal extends application of the country of origin rules codified in 19 CFR part 102 and has the potential to substantially impact US importers. The changes may affect import duty rates, admissibility of goods into the US, and marking requirements. Proponents argue that the revision will provide more objectivity and predictability in the US Customs import process allowing businesses to make more informed production process decisions.

Country of origin determinations are currently decided using a "substantial transformation" test on a case-by-case basis. This test has developed from a series of federal court cases and CBP guidance, and finds that a good substantially transformed when it becomes an integral part of a new article. CBP has proposed all imported goods be determined by the "tariff shift" method, which is presently used in determinations for Canadian and Mexican imports. Under this method, the substantial transformation that an imported good must undergo in order to be deemed a good of the country where the change occurred is usually expressed in terms of a specified tariff shift as a result of further processing.

The proposed change would aid an importer's exercise of reasonable care. In addition, the changes propose to amend the country of origin rules applicable to pipe fittings and flanges, printed greeting cards, glass optical fiber, and rice preparations.

Source: *73 Fed Red 43385*

Upcoming Trade & Innovation Seminars

Legal Aspects of International Trade

Sponsor: TCC/ International Small Business Development Center
Date: October 23, 2008
Time: 9:00 am - 12:00 pm (Continental Breakfast Provided)
Place: Ft. Worth International Center
Speaker: Jim Chester
Contact: [Nodgar Piranian](#)

Key Differences Between Domestic and International Contracts

Sponsor: Inst. Of Supply Chain Management- San Antonio
Date: April 23, 2009
Time: 6:00 pm - 8:00 pm
Place: Petroleum Club of San Antonio
Speaker: Jim Chester
Contact: [Bob Wolfe](#)

Trademark

Cupcake Infringement

Sprinkles Cupcakes, Inc. recently filed suit against baking rival Famous Cupcakes, Inc. in California Central District Court alleging trademark infringement. As a signature to its tasty treats, Sprinkles places two concentric circles (dots) in the center of its cupcakes. Sprinkles has federal trademark protection for this design dating back to May of 2004. In the suit, Sprinkles alleges that Famous has infringed upon the Sprinkles' trademark design by using a similar design on Famous' baked goods and promotional items.

Trademarks are not limited to words or phrases, but can be images that are used to uniquely identify the source of a product or service to a consumer. If you have questions about trademark protection in your business, contact [Jim Chester](#).

Source: *California Central District Court*

Business

Losing a Domain Name to the State

A County Circuit judge in Kentucky recently ordered the transfer of the domain names of 141 illegal Internet gambling sites to the Commonwealth of Kentucky in an effort to stop illegal and unregulated online gaming. Kentucky is the first state to bring an action against Internet gambling operators that has resulted in the seizure of domain names.

The order came in response to a suit filed by the Justice and Public Safety Cabinet on behalf of the Commonwealth seeking to force the sites to block access to Kentucky users, or relinquish control of their domains. The Justice Cabinet had asked the court to order Internet registrars to transfer control of the domain names to the Commonwealth, pending a hearing on whether forfeiture is required.

"Unlicensed, unregulated, illegal Internet gambling poses a tremendous threat to the citizens of the Commonwealth because of its ease, availability and anonymity," Governor Steve Beshear said. "The owners and operators of these illegal sites prey on Kentucky citizens, including our youth, and deprive the Commonwealth of millions of dollars in revenue."

Operating your business through a website may subject you to the laws of other states. If you have a question about your business's compliance with state laws, contact [Jim Chester](#).

Source: Kentucky.gov

International

United States Requests WTO Panel in Challenge to EU High-Technology Tariffs

United States Trade Representative Susan C. Schwab recently announced that the United States, together with Japan and Chinese Taipei, requested the World Trade Organization (WTO) to establish a dispute settlement panel to review whether the European Union (EU) has failed to accord duty-free treatment to certain products covered by the WTO Information Technology Agreement (ITA) and thus entitled to such treatment.

"We regret that formal consultations have not been successful in resolving our concerns over the duties that the EU is imposing on several high-tech products," said Ambassador Schwab. "The EU committed to bind and eliminate duties on ITA products in its WTO tariff schedules. We believe that these duties are inconsistent with the EU's commitments on these products, and that they discourage technological innovation in the IT sector."

Requesting a panel is the next step in the formal WTO dispute settlement process. The United States requested WTO consultations with the EU on May 28, and consultations were held in late June and mid July. As consultations have failed to resolve the dispute, the United States is requesting that a dispute settlement panel be established to determine whether the EU is acting consistently with its WTO obligations

The EU in the past several years has adopted a series of measures that resulted in new duties on imports of specific high-tech products - cable boxes that can access the internet, flat panel computer monitors, and certain computer printers that can also scan, fax and/or copy. Global exports of these products were estimated at over \$70 billion in 2007.

In effect, the EU is taxing innovation - a move that could impair continued technological development in the information technology industry and raise prices for millions of businesses and consumers.

Source: USTR

Intellectual Property

Jury Awards Mattel \$100 Million

Recently in federal court, a jury unanimously awarded Mattel \$100 million damages from MGA Entertainment and its CEO, Isaac Larian, for copyright infringement and other claims related to Mattel's ownership of Bratz-related works.

The jury awarded \$90 million for MGA's and Larian's actions against Mattel and \$10 million for copyright infringement against MGA and Larian. Mattel proved to the jury that an MGA employee came up with the Bratz concept while still working for Mattel. Based on agreements the employee signed the intellectual property was owned by Mattel.

"Mattel has pursued this case first and foremost as a matter of principle," said Robert A. Eckert, chairman and chief executive officer of Mattel, Inc. "We have an obligation to defend ourselves against competitors who choose to engage in fraudulent activities against us. We're pleased that the jury agreed with Mattel that what MGA did was wrong and that damages were awarded."

If you have questions about protecting your company's intellectual property, contact [Jim Chester](#).

Source: Mattel, Inc.

Intellectual Property

Senate Passes New IP Protections Bill

Congress recently voted in support of the Prioritizing Resources and Organization for Intellectual Property Act of 2008 (PRO-IP). The Act increases enforcement of intellectual property laws and penalties for infringers.

A previous draft gave the Justice Department the power to bring civil suits against patent and copyright infringers, where damages would be awarded to the IP holders and not the government. The bill was stripped of this provision after public outcry from online groups and the Justice Department itself. However, one controversial component remains in place. The bill creates an IP "czar" within the White House responsible for overseeing IP enforcement.

Specifically, PRO-IP will:

- 1) Prioritize the federal government response to domestic intellectual property crimes by streamlining the coordination and improvement of interagency efforts
- 2) Provide grants to the Department of Justice to assist state and local law enforcement agencies in enforcing intellectual property-related crimes
- 3) Devote additional agents and resources to the FBI for the study, implementation and active enforcement of efforts against intellectual property and counterfeiting crimes
- 4) Provide tools to better gather evidence for the prosecution of IP crimes

The bill also creates treble damages in counterfeiting cases and targets the importing and exporting of infringing goods.

Source: S.3325; RIAA

Business

National Federation of the Blind and Target Agree to Class Action Settlement

The National Federation of the Blind and Target announced that they settled a class action lawsuit under the Americans with Disabilities Act regarding access to the Target.com Web site by blind people.

As part of the settlement, Target will establish a \$6 million fund from which members of the California settlement class can make claims. In addition, the National Federation of the Blind will certify the Target Web site through its Nonvisual Accessibility Web Certification program once agreed upon improvements are completed in early 2009. Target and NFB have agreed to a three-year relationship during which NFB will perform accessibility testing of the Target Web site.

Dr. Marc Maurer, President of the National Federation of the Blind, said: "Access to Web sites is critical to the full and equal participation of blind people in all aspects of modern life. The National Federation of the Blind is pleased to have reached a settlement with Target that is good for all blind consumers, and we recognize that Target has already taken action to make certain that its Web site is accessible to everyone. We look forward to working with Target in the coming months to help make additional improvements that will enhance the experience of blind visitors to Target.com. It is our sincere hope that other businesses providing goods and services over the Internet will follow Target's example and take affirmative steps to provide full access to their Web sites by blind consumers."

Source: NFB

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