

Innovation and Trade Law Update

Cowles & Thompson | September 2008



As you probably noticed, "Chester's World of Innovation & Trade Law" has become the "Cowles & Thompson Innovation and Trade Law Update." We hope you enjoy the new name and format. - J.F. Chester

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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.

U.S. & E.U. Courts Send Mixed Messages Regarding Infringing Goods Sold on eBay

Tiffany and Co. recently took online retailer eBay, Inc. to court for the sale of counterfeit Tiffany silver jewelry from 2003 to 2006. Tiffany sought to hold eBay liable for direct and contributory trademark infringement, unfair competition, false advertising, and direct and contributory trademark dilution, on the grounds that eBay facilitated and allowed these counterfeit items to be sold on its website. The US District Court SDNY found in favor of eBay.

However, eBay didn't fare as well in recent trademark infringement cases in the European Union (EU). A French court recently ordered eBay Inc to pay 38.6 million euros (\$61 million USD) to luxury goods group LVMH (Moët Hennessey - Louis Vuitton) for allowing the sale of fake merchandise. That decision comes just one month after eBay was ordered by another French court to pay handbag and scarves maker Hermes 20,000 euros for allowing the sale of counterfeits, and is the latest episode in a long fight between luxury goods makers and the world's biggest online auctioneer. As part of the court ruling, eBay must prevent future sales of the LVMH goods via its auction site, or pay additional fees of 50,000 euro per day.

Intellectual property protection is important for any business. If you have questions about how to protect your trademarks, copyrights, trade secrets or patents, click [here](#) to contact Jim Chester.

Source: *United States District Court Southern District Of New York & LVMH.com*

Patent Promotion Scammers Forced To Pay Up

The owners of an invention promotion operation have agreed to pay \$10 million in consumer redress to settle Federal Trade Commission charges that they deceived consumers across the country. The settlement includes a cash payment of \$6.9 million, plus other property valued at \$3.1 million.

According to the FTC, the defendants charged up to \$12,000 to evaluate and promote consumers' inventions. The defendants enticed consumers with false claims about their selectivity in choosing products to promote, their track record in turning inventions into profitable products, and their relationships with manufacturers. They also deceptively claimed that their income came from sharing royalties with inventors, rather than from the fees consumers paid.

Under the proposed settlement, in connection with providing research, patent, marketing, and/or invention promotion services, the defendants cannot misrepresent that they're selective in accepting inventors, and that they have a stake in an invention because they "work for free" and/or receive significant income from royalties. They also cannot misrepresent how many consumers have contracted with them, how many of those consumers realized a net profit, or how many product licenses they obtained for consumers.

The settlement also bans the defendants from misrepresenting that they have helped inventions become products without disclosing whether consumers have profited from the product, and that they have a vast network of corporations with which they regularly negotiate licensing agreements. They also cannot misrepresent that their services are necessary for consumers to license their ideas, and that they prepare objective and expert analyses of the marketability or patentability of ideas.

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Source: *FTC*

Your Business Online

A federal court again upheld a ban on a law that would criminalize the use of some speech on the Internet accessible to minors. Clients in the case include Salon Media Group, which runs the online magazine Salon.com; the Sexual Health Network, which operates sexualhealth.com; and Aaron Peckham, who owns UrbanDictionary.com. COPA would have imposed harsh criminal sanctions, including penalties of up to \$50,000 per day and up to six months in prison, for material acknowledged as protected for adults but deemed "harmful to minors."

Previously, a federal district court and a federal appeals court found the online censorship law violates the First and Fifth Amendments of the Constitution. The Supreme Court upheld that decision, effectively banning enforcement of the law in June 2004 and sending the case back to the district court to determine whether there had been any changes in technology that would affect the constitutionality of the statute, such as whether commercially available blocking software was still as effective as the banned law might be in blocking material deemed "harmful to minors." In March 2007, a district judge once again struck down COPA; the government again appealed, and today the U.S. Court of Appeals for the Third Circuit upheld the ban.

"Our clients provide valuable and necessary health and news information. Preventing adults from accessing this information under the guise of protecting children is not permissible," said Aden Fine, Senior Staff Attorney with the ACLU First Amendment Working group. "There are more effective, less intrusive tools available to limit what minors can access on the Internet."

The content of your business's website may be governed by various state and federal laws designed at protecting the rights of minors or other protected groups. To learn more about laws governing your business, click [here](#) to contact Jim Chester.

Source: *ACLU*

Upcoming Seminars

U.S. Export Controls and Technology

Sponsor: DBA Computer Law Section
Date: September 22, 2008
Time: 12:00 pm - 1:00 pm
Place: Belo Mansion, Dallas
Cost: Free (Separate Charge for Lunch, If Desired)
Contact: [Bhaveeni Parmar](#)

Legal Aspects of International Trade

Sponsor: CC International Small Business Development Center
Date: September 24, 2008
Time: 9:00 am - 12:00 pm (Continental Breakfast Provided)
Place: Ft. Worth International Center
Contact: [Nodgar Piranian](#)

Key Differences Between Domestic and International Contracts

Sponsor: Inst. Of Supply Chain Management- Waco
Date: October 7, 2008
Time: 6:00 pm - 8:00 pm
Place: Uncle Dan's on Lake Air (Waco)
Contact: Susan Smith, 254-710-6130

International Trade Finance

Sponsor: TCC International Small Business Development Center
Date: October 30, 2008
Time: 9:00 am - 12:00 pm (Continental Breakfast Provided)
Place: Ft. Worth International Center
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
Contact: [Bob Wolfe](#)

WTO World Trade Report Released

The WTO recently released this year's World Trade Report, entitled "Trade in a Globalizing World", which is devoted to an examination of the gains from international trade and the challenges arising from higher levels of integration. Over many years, governments in most countries have increasingly opened their economies to international trade, whether through multilateral trade negotiations, increased regional cooperation or as part of domestic reform programs.

"Few would contest the benefits that globalization and trade have brought in terms of greater prosperity for hundreds of millions, as well as greater stability among nations. But many individuals in different societies across the world have shared little or not all in the benefits. The challenges facing governments in managing globalization are formidable, and success in spreading prosperity more widely requires a strong common purpose" says WTO Director-General Pascal Lamy in an introduction to the Report.

The economic geography literature makes three important predictions. First, countries will tend to export products for which there is a large domestic market (the home market effect). The domestic market allows increasing returns to scale to operate, establishing a base for exports. At the same time, agglomeration permits various kinds of productivity "spillovers" to strengthen the competitive position of firms. Second, the home market effect will be amplified by falling trade costs, at least in the first instance (the magnification effect). Third, while falling trade costs will result in an initial period when manufacturing is concentrated in the "core", with the "periphery" specializing in non-manufactures, further reductions in trade costs, along with emerging limits to the advantages of agglomeration, will eventually reverse this process and lead to a dispersion of manufacturing activity.

If you have questions about international trade regulations, click [here](#) to contact Jim Chester.

Source: WTO

Another Effect of Oil Price Hikes

The U.S. Small Business Administration has revised its small business size standards for small businesses in the Heating Oil and Liquefied Petroleum Gas Dealers industries and restored small business eligibility to those firms that may have exceeded their existing size standards due to higher receipts generated by higher oil prices.

The SBA announced the revision of the size standard in a Final Rule published on July 22, 2008. The new rule will convert the existing receipts-based size standards from \$11.5 million in average annual receipts in the Heating Oil Dealer industry and \$6.5 million in the Liquefied Petroleum Gas Dealers industry to a 50-employee size standard to provide a more stable size definition for small businesses and provide an accurate measure of their operations.

Before the rule change, many small businesses in the Heating Oil and Liquefied Petroleum Gas Dealers industries were exceeding their existing size standards due to large and unpredictable increases in oil costs but continued to deliver the same quantity of fuel products. The dealers in these industries supplemented the higher costs by increasing prices for their customers. According to the U.S. Energy Information Administration, heating oil and propane average weekly prices have increased by 95.9 percent and 74.5 percent and have fluctuated by more than 35 percent between 2002 and 2007.

The Final Rule for the Heating Oil Dealers and Liquefied Petroleum Gas Dealers Industries will become effective on August 21, 2008 and the final rule for the inflation adjustment for size standards and the EIDL loan program will become effective on August 18, 2008.

Your business may be eligible for substantial incentives depending on the size and nature of your company. If you have questions, click [here](#) to contact Jim Chester.

Source: SBA

Dolly Not the Only Thing to Land on Texas Coast in July

Rio Grande Valley Sector Border Patrol agents in Texas recently seized almost 10,000 pounds of illegal narcotics as Hurricane Dolly threatened landfall.

Border Patrol agents assigned to the U.S. Highway 77 Checkpoint near Sarita, Texas seized 9,651 pounds of marijuana that had been buried under a load of cotton seed inside a tractor trailer. The driver, a United States citizen, was taken into custody.

While determining the driver's citizenship, a Border Patrol canine alerted to the presence of humans or drugs concealed in the back of the tractor trailer. The driver was directed to the secondary inspection area where a search of the trailer led to the discovery of 479 bundles of marijuana. The total weight of the marijuana was 9,651 pounds with an estimated value of \$7,720,800.

"This incident serves to remind us all that narcotics traffickers and other criminal organizations will exploit events like hurricanes and storms to their advantage," said Ronald D. Vitiello, chief patrol agent of the Rio Grande Valley Sector. "It also reminds us that the Border Patrol can prepare and assist its communities while continuing to protect America."

If you have questions about international trade regulations, click [here](#) to contact Jim Chester.

Source: US CBP

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