

**To:** Mandour & Associates, APC ([jmandour@mandourlaw.com](mailto:jmandour@mandourlaw.com))  
**Subject:** U.S. TRADEMARK APPLICATION NO. 85608458 - TRADEMARKNEWS - 0000.01-001  
**Sent:** 6/13/2012 2:50:34 PM  
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**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)  
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

**APPLICATION SERIAL NO.** 85608458

**MARK:** TRADEMARKNEWS

**\*85608458\***

**CORRESPONDENT ADDRESS:**

JOSEPH A. MANDOUR  
MANDOUR & ASSOCIATES, APC  
16870 W BERNARDO DR STE 400  
SAN DIEGO, CA 92127-1678

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**APPLICANT:** Mandour & Associates, APC

**CORRESPONDENT'S REFERENCE/DOCKET NO :**  
0000.01-001

**CORRESPONDENT E-MAIL ADDRESS:**  
jmandour@mandourlaw.com

**OFFICE ACTION**

## STRICT DEADLINE TO RESPOND TO THIS LETTER

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW.

**ISSUE/MAILING DATE: 6/13/2012**

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issue(s) below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62, 2.65(a); TMEP §§711, 718.03.

### Search Results

The Office records have been searched and there are no similar registered or pending marks that would bar registration under Trademark Act Section 2(d), 15 U.S.C. §1052(d). TMEP §704.02.

### Section 23 Refusal – Mark is Generic

The applicant seeks registration on the Supplemental Register for the mark TRADEMARKNEWS for “Educational and entertainment services, namely, providing on-line magazines in the field of intellectual property.”

Registration is refused on the Supplemental Register because the applied-for mark is generic for applicant's publication, and therefore is not capable of identifying applicant's publication and distinguishing it from those of others. Trademark Act Section 23, 15 U.S.C. §1091; *see In re Kalmbach Publ'g Co.*, 14 USPQ2d 1490, 1492 (TTAB 1989) (holding RADIO CONTROL BUYERS GUIDE generic for magazines); *Yankee, Inc. v. Geiger*, 216 USPQ 996, 999 (TTAB 1982) (holding FARMER'S ALMANAC generic for publications).

Generic terms are common names that the relevant purchasing public understands primarily as describing the genus of applicant's goods and/or services. *In re Dial-A-Mattress Operating Corp.*, 240 F.3d 1341, 1344, 57 USPQ2d 1807, 1810 (Fed. Cir. 2001); *H. Marvin Ginn Corp. v. Int'l Ass'n of Fire Chiefs, Inc.*, 782 F.2d 987, 989-90, 228 USPQ 528, 530 (Fed. Cir. 1986); *see* TMEP §1209.01(c). Generic terms are by definition incapable of indicating a particular source of goods and/or services, and cannot be registered as trademarks and/or service marks. *In re Merrill Lynch, Pierce, Fenner, & Smith, Inc.*, 828 F.2d 1567, 1569, 4 USPQ2d 1141, 1142 (Fed. Cir. 1987); *see* TMEP §1209.01(c). Registering generic terms “would grant the owner of [a] mark a monopoly, since a competitor could not describe his goods as what they are.” *In re Merrill Lynch, Pierce, Fenner, & Smith, Inc.*, 828 F.2d at 1569, 4 USPQ2d at 1142.

Determining whether a mark is generic requires a two-step inquiry:

- (1) What is the genus of goods and/or services at issue?
- (2) Does the relevant public understand the designation primarily to refer to that genus of goods and/or services?

*In re 1800Mattress.com IP, LLC*, 586 F.3d 1359, 1363, 92 USPQ2d 1682, 1684 (Fed. Cir. 2009) (quoting *H. Marvin Ginn Corp. v. Int'l Ass'n of Fire Chiefs, Inc.*, 782 F.2d 987, 989-90, 228 USPQ 528, 530 (Fed. Cir. 1986)); TMEP §1209.01(c)(i).

Regarding the first part of the inquiry, the genus of the goods and/or services is often defined by an applicant's identification of goods and/or services. *See, e.g., In re Reed Elsevier Prods. Inc.*, 482 F.3d 1376, 1379, 82 USPQ2d 1378, 1380 (Fed. Cir. 2007); *Magic Wand Inc. v. RDB Inc.*, 940 F.2d 638, 640, 19 USPQ2d 1551, 1552 (Fed. Cir. 1991).

In the present case, the identification, and thus the genus, is “online [news] magazines in the field of intellectual property.”

Regarding the second part of the inquiry, the attached evidence from the Merriam Webster Online Dictionary shows that the wording “TRADEMARKNEWS” in the applied-for mark means “ a report of recent events” and/or “material reported in a newspaper or news periodical” related to “device[s] (as a word) pointing distinctly to the origin or ownership of merchandise to which it is applied and legally reserved to the exclusive use of the owner as maker or seller”; thus, this wording is essentially the apt or common name for the genus of the services. (References retrieved June 12, 2012 from the following: <http://www.onelook.com/>.) Accordingly, the relevant public would understand this designation to refer primarily to that genus of services because the applicant's online magazines are clearly promoted as sources of intellectual property news generally and trademark news specifically, as shown in the specimen of use, directing viewers to “IP Magazines – click here to review the latest on-line issues of IntellectualPropertyNews Magazine, PatentNews Magazine, **TrademarkNews** Magazine, and CopyrightNews Magazine.” (Excerpted from [www.mandourlaw.com](http://www.mandourlaw.com).) Additional attached articles from such sources as *Intellectual Property Today*, *World Patent and Trademark News*, *Class 46* and *Trademarks + Brands* confirms what the applicant's own specimen indicates: that the

mark TRADEMARKNEWS refers primarily and directly to the news magazine category of intellectual property magazines.

Applicant cannot overcome this refusal by submitting a claim of acquired distinctiveness under Trademark Act Section 2(f). *See* 15 U.S.C. §1052(f). Such a claim would be insufficient because no amount of purported proof that a generic mark has acquired secondary meaning can transform it into a registrable trademark or service mark. *See In re Bongrain Int'l Corp.*, 894 F.2d 1316, 1317 n.4, 13 USPQ2d 1727, 1728 n.4 (Fed. Cir. 1990); *H. Marvin Ginn Corp. v. Int'l Ass'n of Fire Chiefs, Inc.*, 782 F.2d 987, 989, 228 USPQ 528, 530 (Fed. Cir. 1986); TMEP §1212.02(i). A generic term cannot become a trademark or service mark under any circumstance.

Although applicant's mark has been refused registration, applicant may respond to the refusal by submitting evidence and arguments in support of registration.

/Heather D. Thompson/  
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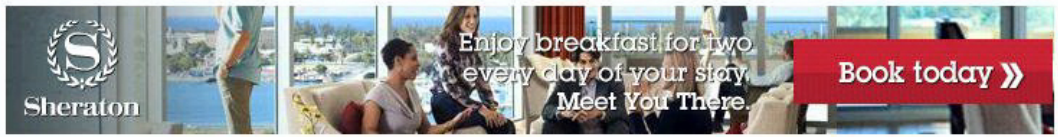
**All informal e-mail communications relevant to this application will be placed in the official application record.**

**WHO MUST SIGN THE RESPONSE:** It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

**PERIODICALLY CHECK THE STATUS OF THE APPLICATION:** To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using Trademark Applications and Registrations Retrieval (TARR) at <http://tarr.uspto.gov/>. Please keep a copy of the complete TARR screen. If TARR shows no change for more than six months, call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

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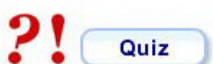


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- 1) trademark (noun)
  - 2) trademark (verb)
  - trademark infringement (noun)

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trade·mark *noun* \-,mārk\

Definition of TRADEMARK

- 1 : a device (as a word) pointing distinctly to the origin or ownership of merchandise to which it is applied and legally reserved to the exclusive use of the owner as maker or seller
- 2 : a distinguishing characteristic or feature firmly associated with a person or thing <wearing his *trademark* bow tie and derby hat>



See [trademark](#) defined for English-language learners »  
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Examples of TRADEMARK

- "Kleenex" is a registered *trademark*.
- Outspokenness has always been his *trademark*.
- Courtesy is the company's *trademark*.

First Known Use of TRADEMARK

1838

Related to TRADEMARK

**Synonyms:** [brand](#)

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Rhymes with TRADEMARK

[aardvark](#), [airpark](#), [anarch](#), [autarch](#), [ballpark](#), [benchmark](#), [birthmark](#), [blue shark](#), [bookmark](#), [check mark](#), [chop mark](#), [debark](#), [demark](#), [Denmark](#), ...

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news



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Popularity



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- news (noun plural but singular in construction)
- news agency (noun)
- news analyst (noun)

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**news** *noun pl but singular in constr, often attributive* \ˈnūz, ˈnyūz\

#### Definition of NEWS

- 1 **a** : a report of recent events
- b** : previously unknown information <I've got *news* for you>
- c** : something having a specified influence or effect <the rain was good *news* for lawns and gardens — Garrison Keillor>



<the virus was bad *news*>

**2 a** : material reported in a [newspaper](#) or news periodical or on a [newscast](#)

**b** : matter that is [newsworthy](#)

**3** : [NEWSCAST](#)

— [news-less](#) *adjective*

First Known Use of NEWS

15th century

Rhymes with NEWS

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## Syria Withdraws from Madrid Agreement, Remains Member of the Protocol

6/11/2012 | 9:08 AM

Special to ag-IP-news Agency DAMASCUS - The Syrian President Bashar Assad issued the Presidential Decree No. 179 stipulating the cancelation of Syria's accession to the Madrid agreement for the international registration of marks (the ...

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6/7/2012 | 9:33 AM

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6/6/2012 | 12:27 PM  
SALT LAKE CITY, Utah - Catheter Connections Inc. announced in a press release that it has filed two lawsuits against Ivera Medical Corporation ...

### Jailbreaking Enables Software Piracy, BSA Tells Copyright Office in Hearing on DMCA Rules

6/6/2012 | 9:39 AM  
WASHINGTON, DC - Jailbreaking smartphones and media tablets undermines the value proposition they offer and pulls the rug out from under a software ...

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6/6/2012 | 9:31 AM  
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MARINA DEL REY, CA - As part of the Internet Corporation for Assigned Names and Numbers (ICANN)'s ongoing focus on improving how the ICANN Board ...

### CERN Adopts New Scheme for Easy Access to Intellectual Property

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NEW YORK, NY - The International Trademark Association (INTA) applauded the Government of Colombia for joining the Madrid System for the ...

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By YOUKYUNG LEE AP Technology Writer SEOUL, South Korea (AP) – Samsung Electronics Co. said Thursday it will fight Apple's move to stop U.S. sales of its new Galaxy phone in the latest flare-up of an intellectual property battle between the world's top smartphone makers.

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
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- [Waller Clients Prevail in \*Soul Men\* Intellectual Property Case](#)

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- McAndrews, Held & Malloy Wins Inequitable Conduct Ruling for Client CSP Technologies
- RyMed Technologies Wins Patent Infringement Case

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- Excentus Files Patent and Trademark Infringement Lawsuit against QuikTrip Corporation, Midax, Inc. and Others
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- **US Patent Office Re-Exam Concludes RPost Proof of Delivery Patent Valid**

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- **General Patent Corporation Settles Patent Infringement Lawsuit with Giesecke & Devrient America**
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- **Potter Voice Technologies Files Colorado Patent Infringement Lawsuit Against Apple, Google, Others**
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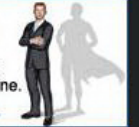
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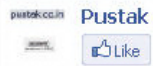
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[Google, Apple, 'The Bachelor': Intellectual Property](#)

Google Inc.'s bid to block imports of Microsoft Corp.'s Xbox gaming system and Apple Inc.'s iPhone based on patents owned by its Motorola Mobility unit may hurt competition, the U.S. Federal Trade Commission said.

[Compromise Cybersecurity Bill Talks Started, Lieberman Says](#)

A bipartisan group of senators is working on a compromise around U.S. cybersecurity legislation that's been stalled over differences on whether government should set protection standards, Senator Joseph Lieberman said.

[Apple, Merck, Syms, Haka, Nortel: Intellectual Property](#)

Apple Inc. filed an enforcement action at the U.S. International Trade Commission in Washington, seeking an emergency order that would block imports of HTC Corp.'s

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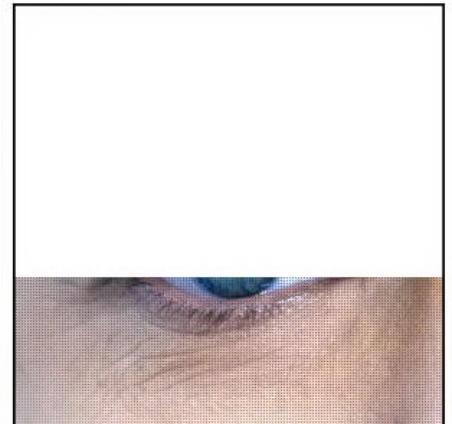


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Cyber attacks pose a greater risk to Canada's economic prosperity than the government previously believed and the country lacks the tools to fight hackers, officials warn in internal documents obtained by Bloomberg News.

#### [Tivo, Apple, Yahoo, Coca-Cola: Intellectual Property](#)

TiVo Inc. filed a lawsuit claiming that television set-top boxes made by Cisco Systems Inc. infringe patents related to digital-video recording services.

#### [Nokia, Apple, Obama, Ubisoft, ETSI: Intellectual Property](#)

Nokia Oyj's claim of patent infringement on electronics, including mobile phones and tablet computers from Taiwan's HTC Corp., will be reviewed by a U.S. agency that has the power to block imports of the goods.

#### [Kluger, Jenner, Reed Smith, Hughes Hubbard: Business of Law](#)

Attorney Matthew Kluger was sentenced to a 12-year prison term that is the longest ever imposed for insider-trading, exceeding the 11-year sentence given Galleon Group LLC co-founder Raj Rajaratnam last year.



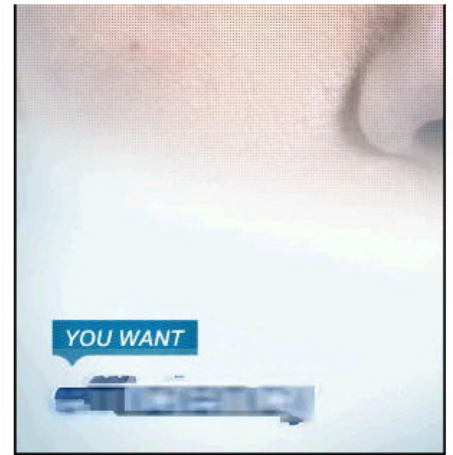
#### [Dish's Ad-Skip Tool May Benefit From Cablevision DVR Case](#)

The dispute over whether Dish Network Corp.'s ad-skipping technology violates network television copyrights may turn on which court the second-biggest U.S. satellite-TV service persuades to hear the matter.

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## Intellectual Property News - September 2011 - Limited Window to Prevent Trademark Uses in Internet Red Light District Domains (.XXX)

by McNeese Wallace & Nurick LLC on 9/1/2011

Contact

As of September 7, 2011 the Internet Corporation for Assigned Names and Numbers (ICANN) will begin offering .xxx domain registrations. The registry will be operated by Florida-based ICM Registry (ICM), the company that first applied for the .xxx domain in 2004. ICM's intent is to create designated domains for adult content which are operated under its policies which are intended to reduce malware, SPAM, and intellectual property infringement. The .xxx domain also represents the creation of new internet real estate and, because any string ending with .xxx can be purchased, the launch of .xxx represents an opportunity for domain squatters and trademark infringers. In other words, your trademark could become associated with a .xxx domain and website. Fortunately, you have options to prevent this from occurring.

Sunrise B Opt-Out Period Owners of registered trademarks who are not involved in the adult entertainment industry, and who do not want their trademarks to appear in a .xxx domain owned by a third party will have the opportunity to prevent such domains from being purchased – but only if they act during a limited period of time. ICM Registry has provided an opt-out period called Sunrise B for owners of registered trademarks to block .xxx domains that contain their registered marks. The key facts you should know about Sunrise B...

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**LIMITED WINDOW TO PREVENT TRADEMARK USES IN INTERNET RED LIGHT DISTRICT DOMAINS (.XXX)**  
By Brian P. Gregg

As of September 7, 2011 the Internet Corporation for Assigned Names and Numbers (ICM) has provided an opt-out period called Sunrise B for owners of registered trademarks to block .xxx domains that contain their registered marks. The key facts you should know about Sunrise B:

Registry has provided an opt-out period called Sunrise B for owners of registered trademarks to block .xxx domains that contain their registered marks. The key facts you should know about Sunrise B:

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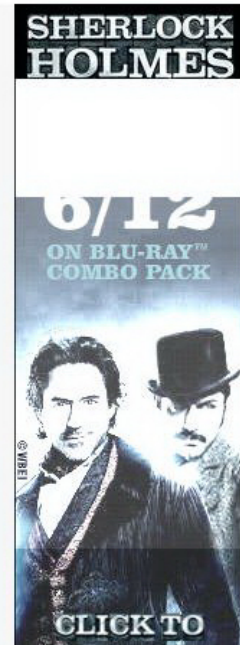
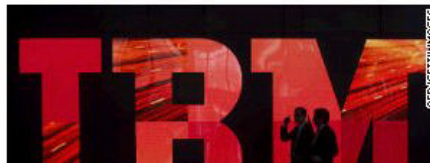
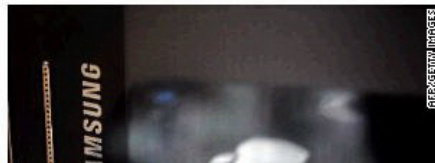
Kristie Lu Stout explains the long-running legal fight between Apple and Samsung

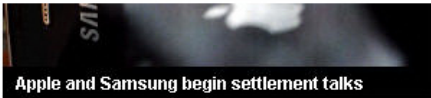
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## Smartphone patent wars

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Apple and Samsung begin settlement talks

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Report: Facebook bought 750 patents from IBM

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### Latest Stories

#### Opinion: How Yahoo weaponized my work updated March 14, 2012

While most of the tech world was partying at South by Southwest in Austin yesterday, Yahoo announced it was filing a lawsuit against Facebook for allegedly infringing on 10 patents from their 1,000+ patent warehouse.

f 48 □ 10

#### Time to update copyright law? updated January 31, 2012

On the first day of every year, works of art whose term of copyright has expired enters the public domain. This year's class is particularly strong, as the novels of James Joyce and Virginia Woolf are now free of copyright protection. If you ever wanted to stage a puppet show of Joyce's masterpiece "Ulysses" or set Woolf's "Mrs. Dalloway" to music, now is your chance.

f 274 □ 447

#### CNNMoney: SOPA explained: What it is and why it matters updated January 20, 2012

The tech industry is abuzz about SOPA and PIPA, a pair of anti-piracy bills. Here's why they're controversial, and how they would change the digital landscape if they became law.

#### CNNMoney: Anonymous strikes back after feds shut down piracy hub Megaupload updated January 20, 2012

In one of the U.S. government's largest anti-piracy crackdowns ever, federal agents on Thursday arrested the leaders of and shut down Megaupload.com, a popular hub for illegal media downloads.

#### Anonymous strikes back after feds shut piracy hub Megaupload updated January 19, 2012

"Hacktivist" collective Anonymous on Thursday took credit for taking down U.S. Department of Justice, FBI and entertainment company websites, following arrests in one of the federal government's largest anti-piracy crackdowns.

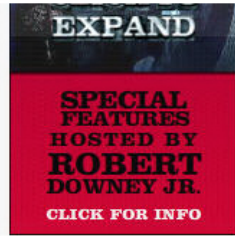
f 4 □ 967

#### CNNMoney: Trademark wars heat up. Be ready. updated December 1, 2011

A trademark can be a company's greatest asset. It can also be one of its biggest challenges -- especially lately.

#### New Apple patent would shield against broken glass updated November 21, 2011

Apple is a powerhouse of ingenuity, patenting ideas as soon as an engineer can scratch them



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down on paper (or iPad). Around three dozen Apple patents made their way through the U.S. Patent and Trademark Office this week alone.

1645 312

**CNNMoney: Occupy Wall Street applies for trademark** updated October 31, 2011

Even anarchic movements like to have some legal protections: Occupy Wall Street's organizers have applied to trademark their movement's name.

**Apple secures patents on China stores** updated September 21, 2011

Apple has been granted patents on some of the distinctive elements of its store designs in China as the US company moves to better protect itself against rampant copying of not only its products but also its sales channels on the Chinese mainland.

0 21

**CNNMoney: Patent trolls cost inventors half a trillion dollars** updated September 21, 2011

Patent trolls -- companies that license patents but do not actually sell anything -- have long been looked on with fiery scorn in Silicon Valley. This week, a Boston University study offered fresh fuel for those flames.

**Obama signs patent reform bill** updated September 16, 2011

President Barack Obama signed legislation Friday that will overhaul the U.S. patent system for the first time since 1952.

375 55

**CNNMoney: Will patent reform really create 200,000 jobs?** updated September 16, 2011

America's first significant patent reform in six decades is close to becoming law: it passed Congress on Thursday and President Obama has declared that he will sign the bill.

**CNNMoney: Sweeping patent changes poised to become law** updated September 9, 2011

Congress on Thursday passed legislation that will reform the U.S. patent system for the first time since the Truman administration.

**CNNMoney: Google to buy Motorola Mobility for \$12.5 billion** updated August 18, 2011

In a surprise deal that would be its largest acquisition ever, Google has agreed to buy Motorola Mobility for \$12.5 billion, the two companies said Monday.

**CNNMoney: When Silicon Valley fights, patents are the deadliest weapon**

updated August 18, 2011

Patents have dominated the tech news headlines lately, with industry leaders such as Google, Apple and Microsoft spending billions to beef up their intellectual property portfolios.

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### Current IP News

[Eastman Kodak files for auction of Digital Imaging patents](#)

*Monday, Jun 11, 2012*

(Reuters) - Eastman Kodak Co filed a motion on Monday seeking approval of bidding procedures for bankruptcy auction of i Digital Capture and Kodak imaging Systems and Services patent portfolios, which together comprise more than 1,100 pate

[Banks eye intangible assets as collateral](#)

*Monday, Jun 11, 2012*

Several US lenders want to tap the value of the intellectual property holdings of their borrowers as a way of trimming their capital requirements

[Kodak's Patent Allure Fades](#)

*Monday, Jun 11, 2012*

Eastman Kodak's effort to whip up interest in the sale of its digital patent portfolio is flagging, complicating the 132-year-old photography pioneers odds of emerging from bankruptcy court.

[Kodak's Patent Allure Fades](#)

*Friday, Jun 8, 2012*

Eastman Kodak's effort to whip up interest in the sale of its digital patent portfolio is flagging, complicating the 132-year-old

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[ArticleOne: Prior Art in Your Closet or Gym Bag? Have you seen any similar sports cleats? http://t.co/72MH3DW3](#)  
*Monday, Jun 11, 2012*

[ArticleOne: Considering a new job? Make sure to attend the #BIO Career Fair next Monday from 2-7pm at the Hynes Convention Center http://t.cn/735r9tFF](#)  
*Monday, Jun 11, 2012*

[ArticleOne: Thanks, and Happy Weekend - #FF @ipgossip @prcpatentlaw @Intelloqist @patentworkbench @IPWatchdog @maxbpv9](#)  
*Friday, Jun 8, 2012*

[ArticleOne: NEW - Article One's Weekly Patent and IP News Update, including stories from @arstechnica and @ipwatchdog http://t.co/X6HbssQl](#)  
*Friday, Jun 8, 2012*

Eastman Kodak's effort to whip up interest in the sale of its digital patent portfolio is nagging, complicating the 152-year-old photography pioneers' odds of emerging from bankruptcy court.

[Judge Calls Off Apple v. Motorola Patent Rumble](#)

*Friday, Jun 8, 2012*

The Apple v. Motorola trial scheduled to begin next week in the U.S. District Court for the Northern District of Illinois has been cancelled, with the judge presiding over the case deciding it should be dismissed because neither side has established a right to relief. However, Judge Richard Posner wrote on Thursday that in the course of preparing his full opinion, he might change mind. ...[Read More](#)

[Apple Suit Against Motorola Tentatively Dismissed](#)

*Thursday, Jun 7, 2012*

A federal judge in Illinois said he had "tentatively decided" to dismiss patent litigation between Apple Inc. and Motorola Mot which was recently acquired by Google Inc.

[Apple Suit Against Motorola Tentatively Dismissed](#)

*Thursday, Jun 7, 2012*

A federal judge in Illinois said he had "tentatively decided" to dismiss patent litigation between Apple Inc. and Motorola Mot which was recently acquired by Google Inc.

[Google Points Finger at Microsoft, Nokia](#)

*Thursday, May 31, 2012*

Google filed an antitrust complaint in Europe arguing that Microsoft and Nokia are using proxy companies to brandish patents and hurt the prospects of its Android mobile-phone software.

[Google Wins Patent Verdict](#)

*Wednesday, May 23, 2012*

A federal jury ruled that Google didn't infringe Oracle patents for Java technology in the second phase of the companies' trial.

[Samsung, Apple to Sit at the Table](#)

*Monday, May 21, 2012*

Chief executives of Apple and Samsung Electronics will meet in Monday in a court-directed session aimed at settling their smartphone patent war. But a deal seems unlikely.

[ITC Rules in Favor of Microsoft Over Motorola Mobility](#)

*Friday, May 18, 2012*

Microsoft scored a win over Motorola Mobility Holdings on Friday as a judge ruled in favor of the software giant in a closely watched patent dispute over how mobile communication devices operate.

[A Crackdown on Patently Absurd Lawsuits](#)

*Thursday, May 10, 2012*

The Supreme Court and White House rein in patent owners who file frivolous cases

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### Rapper Yo Gotti facing copyright suit



US rapper Yo Gotti has been served with a copyright infringement lawsuit over his hit song "28 Bars". Musician Eric Dion Flemming claims the song 28 Bars was originally given to the rapper Starlito, who works under Yo...

### Student fined for infringing subtitle download site

A student who ran a site which allowed users to download film and TV...

### Samsung denies suing Australian patents commissioner

Following weekend reports, South Korea's Samsung has denied it is suing the...

### Copyright industry adds 3bn sterling to UK GDP

According to figures from the UK Intellectual Property Office (UKIPO), the...

### Google sued over GDrive patent

In the unceasing barrage of technology related patent suits, most of them...

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The pharma battle in India recently took a new turn when generics...

Termination Rights: Musicians ready to claw back copyright

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The entire process can take up to four months. It starts with a man named...

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THE CASE: Volkswagen AG v OHIM Case T-63/09 General Court of the European...

What test is the gatekeeper?

Elizabeth Swanson asks which test is the "gatekeeper" in deciding...

Is patent reform in Hong Kong on the horizon?

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Patentability exclusions exist for method of doing business



Avidity IP's Alex Turnbull continues his series of articles discussing when...

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Intellectual property partner and patent attorney, Kam W Law, has joined...

Two new lawyers for Akin Gump

Akin Gump Strauss Hauer & Feld has hired two lawyers Kevin G McBride and...

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European patent and trademark attorneys Avidity IP has announced the...



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DEFINITIONS OF:

## intellectual property

1

**n** intangible property that is the result of creativity (such as patents or trademarks or copyrights)

Type of: [belongings](#), [holding](#), [property](#)  
something owned; any tangible or intangible possession that is owned by someone

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The changes can be found on the website of China's State **Intellectual Property** Office at [www.sipo.gov.cn/](http://www.sipo.gov.cn/).

*Reuters* · Jun 8, 2012

Their practices include **intellectual property**, antitrust and unfair competition litigation.

*Forbes* · Jun 6, 2012

Smarterer's real **intellectual property**, Balter insists, lies in its content management and production system, another priority for the company going forward.

*Forbes* · Jun 5, 2012

The resulting implications for foreign policy, **intellectual property** security and individual privacy are profound.

*Forbes* · Jun 4, 2012

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**Australia**

**Trademark WILD GEESE Expunged on the Ground of Non-Use. Circumstances Allowing a Mark to Remain on the Register Despite a Finding of Non-Use Clarified by the Full Federal Court**

*Case Summary And Commentary: Austin, Nichols & Co Inc v Lodestar Anstalt [2012] FCAFC 8 Griffith Hack*

Reversing the decision at first instance, the Full Federal Court of Australia has ordered that Lodestar Anstalt's ("Lodestar") trade mark WILD GEESE ("WG mark") should be expunged from the Register. The decision was made on grounds that the primary judge had inappropriately exercised the discretion not to remove a mark for non-use granted under s 101(3) of the Trade Marks Act 1995 (Cth). The decision sheds crucial light on how, and the circumstances in which, the Registrar/courts may exercise their discretion under s 101(3) to allow a mark to remain on the Register despite a finding of non-use. Facts In 2005, Austin, Nichols & Co Inc ("Austin"), owner of the bourbon brand WILD TURKEY, applied to the Registrar of Trade Marks to have the WG mark removed from the Register under s 92(4)(b) of the Trade Marks Act 1995 (Cth) for non-use. The Registrar refused the application for removal except in so far as it related to 'wine, fortified wine and wine based spirits, namely brandy, grappa and cognac' in class 33. ....[Click here for full details >>](#)

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## Principles to Deal with Trademark Matters During the Transition Stage of Trademark Act Amendments

Jaw-Hwa International Patent & Trademark & Law Office

The new Trademark Act was passed on May 31, 2011 by the Legislative Yuan, and amended and promulgated on June 29, 2011 by President Order. The date of enforcement of this Act will be prescribed by the Executive Yuan and is proposed to be enforced in June 2012. ....[Click here for full details >>](#)

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### Trademarks

#### Argentina

### Particularities of TM Opposition Procedure in Argentina

Moeller IP Advisors

When we refer to the Argentinean trademark opposition procedure, different questions arise especially in light of the comparison with other local and regional systems. The purpose of this article is to provide the reader with a clear idea of which are the particularities of the mentioned proceeding, whenever exclusive rights granted by a trademark registration are intended to be obtained in the country. ....[Click here for full details >>](#)

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### Trademarks

#### Australia

### Tobacco Plain Packaging Legislation in Australia and its Impact on Trademarks

Knightsbridge Lawyers

The Tobacco Plain Packaging Act 2011 (Cth) (the 'Act') will come into effect with regard to retail sales of tobacco products in Australia on December 1, 2012. The Act and the Regulations made pursuant to it (together, the "legislation"), tightly regulate and dictate the manner in which tobacco products may be packaged and offered for sale at the retail level. In doing so, the legislation severely restricts or prohibits the use of trademarks for tobacco products. Sub-section 20(1) of the Act prohibits any trademarks from appearing on the retail packaging of tobacco products unless they are specifically permitted by the legislation. Sub-section 20(3) however permits the use of the brand name of tobacco products and any variant name for the products. The effect of these provisions is that only word trademarks for tobacco products will be permitted on retail packaging. The use of all other trademarks (such as logos, any artwork or aspects of packaging) is prohibited. ....[Click here for full details >>](#)

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#### [Trademark Protection In Barbados](#)

Clarke Gittens Farmers

Barbados is a tiny island in the Caribbean Sea, covering just 431 square kilometers. The population numbers under 290,000; there are very few natural resources and almost no manufacturing industries. So, why am I telling you all of that? The answer is that most of the consumer goods, TV shows and music found in Barbados are imported. Foreign brands and technology are exposed to locals and to the hundreds of thousands of tourists and working ex-pats who visit the island year round for the sun, sea, sand and business opportunities. It is therefore very important for foreign intellectual property owners to protect their rights in Barbados. Let's look at brand protection. Trade, service, certification and collective marks may be registered. The common law action of passing-off provides additional protection for unregistered marks and trade dress. ....[Click here for full details >>](#)

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### [China](#)

#### [Use of Trade Name Shall Not Infringe Trademark Rights](#)

Beijing Globe- Law Firm

In July 2006, ABC (China) Investment Co., Ltd. and ABC, Inc. (Switzerland) (collectively known as "the Applicants") filed an application for dispute resolution to the Beijing Municipal Administration for Industry and Commerce Bureau, Haidian Branch against ABC (Beijing) Biological Chemical Co., Ltd. for the violation of their trademark rights. The matter of the application is as follows: To revoke or rectify the ABC (Beijing) Biological Chemical Co., Ltd. trade name in accordance with relevant laws. ....[Click here for full details >>](#)

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#### [Anti-Paperwork Decree Reforms Trademark Prosecution Proceedings in Colombia](#)

Cavalier Abogados

Trademark prosecution proceedings in Colombia are now a bit easier thanks to a recent Anti-paperwork Decree of January 10, 2012. The Decree (Nu. 19 of 2012) echoes all the recent changes to Colombian trademark laws that will apply after the Trademark Law Treaty (TLT) enters into force on April 13, 2012. Legalizations of documents are now a thing of the past, multiclass applications are now available, applications and registrations may be divided and the filing dates of initial applications for the purpose of priority rights are now certain. ....[Click here for full details >>](#)



for the purpose of priority rights are not certain. [Click here for full details >>](#)

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#### [Development in Trademark System in the Czech Republic After Joining European Union](#)

Kania Sedlak Smola

Trademark protection in Europe tends especially since the introduction of the Community Trademark System to unification of rules and practice in all EU states. The easy changes in individual countries have been mostly done, but there still remain some problems that resist any convenient solution. A problem that has been in the Czech Republic already solved concerns bringing our Trademark Law in conformity with one aspect of the TRIPS Agreement. According to the former Czech Trademark Law the license agreement came into force only after it was registered at the Czech Industrial Property Office. This was very important in cancellation proceedings in cases where the trademark was not used by its owner but by another firm with a consent of the trademark owner. To bring this law into conformity with TRIPS the Czech Trademark Law was amended so that that the license agreement came into force in respect to third persons only after it was registered at the Czech Industrial Property Office. Nevertheless, the Czech Industrial Property Office understood this amendment so that a use of a trademark by a licensor of a non-registered verbal license could not be considered a use for the purpose of a proof of use in a cancellation proceeding, which has been based on non-use, and the proof was thus still missing. The problem had to be solved by the Highest Administrative Tribunal, which had declared that where a trademark has been really used by a subject with a consent of the trademark owner, such use should be considered as a use by an authorized person even though the consent, i.e. the oral or written license, has not been registered at the Industrial Property Office. [...Click here for full details >>](#)

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#### [The Absence of a Link Between the Patent and Trademark Office and The Commercial Registry](#)

A.C. PALOMO & PORRAS

The Guatemalan trademark system is based on the principle of "registration" and it's "territorial", meaning that the trademarks are protected in Guatemala only if they are registered in the Guatemalan Patent and Trademark Office (GPTO). Different than the trademarks, the trade names are protected on a "first use basis". This means, that they are protected by the owner since its first use in the commerce. However, if a company wants to register it's trade name in GPTO, they may do so using a similar application process, but adding a document that proves the actual an non interrupted use of the said trade name, in its country of origin. This all should work just fine, but there is a current issue in Guatemala with the registration of trade names, which is that, the Commercial Registry grants anyone who requests for the constitution of a

that, the Commercial Registry grants anyone who requests for the constitution of a new company, the use of a trade name if it is not registered in that particular Office, and it does not take into consideration the previous Intellectual Property Rights, that are already protected or in process to be protected in our GPTO. This means, the Commercial Registry doesn't check if the trade name is registered at the GPTO. ....[Click here for full details >>](#)

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#### [Japan Patent Office to Accept "Dietary Supplements" in Class 5](#)

Maruyama & Co.

The JPO (Japan Patent Office) has adopted the 10th edition of Nice Classification and changed its practice to accept the description of "dietary supplements" for processed food for health aid in Class 5. This new practice has been applied to the trademark applications filed after January 1, 2012. However, for the applications which were filed before January 1, 2012 and are pending for examination in the JPO at present, they shall be examined under the old practice. ....[Click here for full details >>](#)

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#### [Frequent Provisional Refusal in Japan](#)

S. Kitamura patent office

1.Introduction I am often requested by foreign associates to respond to provisional refusals issued by the Japan Patent Office ("JPO") against applications based on the Madrid Protocol. Recently, a frequent ground for refusal refers to the main paragraph of Article 3(1) of the Japanese Trademark Act, which requires "actual use"or "intent-to-use."This provisional refusal has been issued more often than before due to the revision of the Guidelines for Examination in effect since April 1, 2007. Hence, I would like to explain the trademark examination practice in Japan, particularly regarding "Subclass"and "Similar Group Code,"both strongly related to said provisional refusal; in case this provisional refusal is issued; and how we should deal with it. ....[Click here for full details >>](#)

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### [Japan](#)

#### [The Basics of Acquiring and Maintaining a Trademark in Japan](#)

Ryuka IP law Firm

1.Before Filing What can be Registered A trademark may include colors and may be two-dimensional or three-dimensional, but mere color without any accompanying figure is not permitted in Japan. Sounds and smells are not eligible for trademark protection. Description of Goods or Services The Japan Patent Office (JPO) publishes a list of acceptable descriptions of goods and services organized in classes and subclasses. (The list can be viewed via our website at [www.ryuka.com/goods](http://www.ryuka.com/goods).) If a desired goods or services classification does not appear on this list, the goods or services should be explained in great detail so that the examiner can clearly understand their nature and scope. The examiner will then suggest a description in the first office action. ....[Click here for full details >>](#)

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#### [Efficiency vs Effectiveness of Authorities in Charge of Administering Industrial Property](#)

Novopatent International Service, S. C.

Since the administration neoclassic theory's perspective and bearing in mind the industrial property field, every authority in charge of administering industrial property (Patent and Trademark Office, PTO) should be considered in terms of its efficiency and its effectiveness when an assessment of its performance is to be done. Effectiveness: is the capability of producing a desired result. When something is deemed effective, it means it has an intended or expected outcome. Then, this is a measurement of achieving a desired effect. Effectiveness does not worry about means, but it focuses on achievements only. Efficiency: is the capability of conducting an effective operation as measured by a comparison of achievements with resources. Efficiency is a measurement of the use of resources, i.e., is the ratio of resources to outcome. Efficiency does not necessarily worry about achievements, but it focuses in the use of means. ....[Click here for full details >>](#)

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### [Netherlands](#)

#### [A Due Cause to Take Unfair Advantage of Reputable Trademarks?](#)

Abcor BV

The Netherlands is not only known as the land of tulips, but also as the land of "coffeeshops". Coffeeshops, unlike the name suggests, are places that sell marijuana. One of the oldest coffeeshops in Amsterdam is THE BULLDOG, which has been visited by millions of tourists over the years. THE BULLDOG, initially started as a small coffeeshop in 1975, grew in to a multi-million dollar business. THE BULLDOG eventually became a large consortium consisting of several hotels, shops and cafes. Its product range went well beyond just marijuana, and many different goods are sold today under the THE BULLDOG name. Through its expansion THE BULLDOG trademark acquired a reputation in he Netherlands. ....[Click here for full details >>](#)

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### [New Zealand](#)

#### [Introduction of Online Case Management System for Trade Marks and Designs](#)

James & Wells Intellectual Property

On 13 February 2012 the Intellectual Property Office of New Zealand ("IPONZ") released its new case management system for trade marks and designs. The case management system has made IPONZ systems the equal of the most modern of any Intellectual Property Office in the world, and the functionality of the system has obviated the need for traditional postal correspondence. Key features of the new system include: All correspondence sent electronically. Applications are managed from a personal IPONZ inbox. Contact information can be more readily updated by the agent. Progress of applications and the file can be reviewed online. Cases before the hearings Office can be managed online. ....[Click here for full details >>](#)

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### [Nigeria](#)

#### [Trademark Legislation in Nigeria: the Enabler or Disabler?](#)

Aelex

Nigeria is listed amongst the 'Next Eleven' countries as having a high potential of becoming one of the world's largest economies in the 21st Century [http://en.wikipedia.org/wiki/Next\\_Eleven](http://en.wikipedia.org/wiki/Next_Eleven). With the global recognition of Nigeria as an emerging commercial hub of Africa, multinationals are increasingly expanding protection of their trademark portfolios to include Nigeria. As a result, the Trademarks Registry has been inundated with an increasing number of trademark applications. With the several forms of corporate structuring, trademark portfolios have become rather complex in their management needs. It would be expected that the growing need for trademark protection in Nigeria would be met with an equally able legal climate to enable adequate protection of trademarks belonging to multinationals and local businesses. Unfortunately, this is not the case. The primary legislation regulating trademarks in Nigeria is the Trademarks Act (1965) Cap T13 Laws of the Federation of Nigeria 2004 ("the Act"). It is unfortunate that the legal regime for trademark protection in Nigeria has remained largely stagnant since the Act was promulgated. ....[Click here for full details >>](#)

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### [Russia](#)

#### [Special Court on Intellectual Rights will be Created in Russia](#)



### **Special Court on Intellectual Rights Will Be Created in Russia**

Sojuz Patent

On December 7, 2011, a new Russian law (Federal Constitutional Law No. 4-FKZ) came into force. According to this law, a new, specialized court, the Court on Intellectual Rights ("IP Court"), was added to the Russian Arbitrazh court system. Russian Arbitrazh courts are state courts which consider disputes between legal entities. If a participant of a dispute is a physical person, such a dispute is subject to consideration by Regular courts. Law 4-FKZ provides that the IP Court will be established no later than February 1, 2013, on the basis of Arbitrazh courts as a special court body to consider cases related to the protection of intellectual property rights. This is the first specialized state court to be established in Russia. [...Click here for full details >>](#)

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## **Trademarks**

### **Sierra Leone**

#### **Sierra Leone to Enact new Trademark Law**

Afrimark

Sierra Leone Intellectual Property Law is about to shed its colonial vestige for a modern state-of-the-art law which includes service marks. A Bill is before Parliament for a new Trade Marks Act. The current Trade Marks Law is the Trade Marks Ordinance of 1913 and 1923 (Cap 244); Ordinance No. 26 of 9th December 1929 and Ordinance No. 10 of 18th July 1940. The pre-1938 Old British Classification of Goods would be replaced by International Classification of Goods which makes provision for services marks. Sierra Leone which has a population of 5,530,000 (about Five and a half million) inhabitants has been propelled into the International Commercial World with this Bill. The Trade Marks Office and Registry is fully operational and vibrant thanks to the innovative gestures of a dynamic Registrar-General who is at the helm of affairs. She has already managed to collect record revenue for Government through increased activities and efficient service. [...Click here for full details >>](#)

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## **Trademarks**

### **Taiwan**

#### **Introduction of Trademark Practice in TAIWAN**

Mission International Patent and Trademark Office,

1.Trademark Act and Rules: TAIWAN adopts First to File System and proceed substantial registrability examination, by international goods classification. An application may include multiple classes; three months of opposition period opens to third parties after publication of issued registration; the term of registration is ten years and each renewal is extended for ten years. 2.Current practice of Registrability Examination: Current Trademark Act protects a trademark composed of a word, device, symbol, color, sound, three-dimension or a combination of these. In Taiwanese practice, the designated names listed in Nice Classification generally would

Taiwanese practice, the designated names listed in Nice Classification generally would be accepted; Examiner usually reviews the goods specification, completes the search for similar prior registrations and applications, and then issued first Office Action indicating almost all questions; applicant may have more than one chance to response to an Office Action; most Examiners accept new description of designated names beyond those allowed and published registrations, especially to new products. Please note in China, standard examination of the above-mentioned practice is not the same. ....[Click here for full details >>](#)

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### [Taiwan](#)

#### [Trademark Use in Taiwan](#)

Tai E International Patent & Law Office

The main functions of a trademark are to identify the source of origin and to distinguish it with the goods manufactured or services provided by others. Comparing the practice in the U.S. that requires a Statement of Use to obtain trademark registration if the application is based on intent-to-use, in Taiwan, a trademark applicant need not provide evidence of use to obtain registration, provided that, such evidence is only required to prove that the applying mark has gained a secondary meaning so that it has become distinctive for registration. The current Trademark Act effective from November 21, 2003 adopted multi-class registrations and abolished associated trademarks. Thereafter, a trademark may be revoked in whole or partially depending on the case; an associated mark automatically became the principal mark after the enactment of the Trademark Act of 2003. Although the new Trademark Act, promulgated by the President on June 29, 2011, is expected to become effective on July 1, 2012, the aforementioned matters remain the same. The Intellectual Property Court (IP Court) was launched on July 1, 2008. Thus, the IP Court has the authority to determine most of the intellectual property issues by itself for all courses of actions, no matter whether administrative, civil or criminal. ....[Click here for full details >>](#)

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## [Trademarks](#)

### [USA](#)

#### [The Importance of Finding Deception:Barring Trademark Registration on Geographic Deceptive Misdescriptiveness Grounds](#)

Gottlieb Rackman & Reisman PC

The Trademark Trial and Appeal Board (TTAB) of the United States Patent and Trademark Office (USPTO) recently sustained, on a second go-around, Corporacion Habanos, S.A.'s (Habanos) opposition to Guantanamera Cigars Co.'s (GCC) application to register the mark GUANTANAMERA for cigars. The mark was deemed not registerable for cigars on the ground that it was determined to be a primarily geographically deceptively misdescriptive term and thus not entitled to registration under the Lanham Act. See Corporacion Habanos, S.A. v. Guantanamera Cigars Co., Opposition No. 91152248 (February 16, 2012). ....[Click here for full details >>](#)

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### [USA](#)

#### [Saving Costs in The U.S. Trademark Registration Process](#)

Edwards Wildman Palmer LLP

Because of the complexities of the U.S. trademark registration system, many trademark owners from other countries, and their counsel, are reluctant to file national or international applications in the United States. One of the reasons often given is the higher cost of obtaining trademark protection in the United States due to the statutory requirements and the formalities that must be observed. It is frequently overlooked, however, that a U.S. trademark registration covers a largely monolingual (English), highly sophisticated market of over 310 million people. ....[Click here for full details >>](#)

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## [Trademarks](#)

### [USA](#)

#### [Do Not Risk Your Brand – Common Misconceptions About Trademarks](#)

Dickstein Shapiro LLP

1. We did a corporate name search and registered our name so we are protected. Companies often mistakenly believe that filing corporate paperwork and registering their company name with the appropriate Secretary of State's Office is the equivalent of having the name approved as a trademark. It is not! Federal trademarks are governed by federal law and regulated by the U.S. Patent and Trademark Office ("PTO") and federal courts. ....[Click here for full details >>](#)

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### [Uruguay](#)

#### [Uruguayan Criminal Court of Appeals Held that Customs is Allowed to Open and control Containers in Transit](#)

Fox & Lapenne

On December 2011, a Uruguayan Criminal Court of Appeals affirmed an important decision issued by a lower Criminal Court stating that Uruguay has jurisdiction over counterfeit goods in transit, since counterfeits constitute a criminal offense according to the Uruguayan Trademark Act. This means that counterfeit goods can be stopped and seized at customs, by customs own initiative or upon the request of the trademark owner before the correspondent Criminal Court. ....[Click here for full details >>](#)

Trademark owner before the corresponding official court. [Click here for full details >>](#)

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## [Trademarks](#)

### [Japan](#)

#### [Requirements for Three-Dimensional Trademark Registrations Becoming Clearer](#)

D.P.Ahuja & Co. Research Department

In Japan, it is difficult to be determined that “three-dimensional shapes of goods themselves or packages (containers) of goods (hereinafter, referred to as “three-dimensional shapes of goods or packages themselves”)” have “distinctiveness” as trademark. Thus, there are few examples of prior registration of “three-dimensional shapes of goods or packages themselves”. In recent few years, however, there are some cases of registration regarding “three-dimensional shapes of goods or packages themselves” as “three-dimensional trademarks” in Japan, such as “Case of registration regarding Coca Cola bottle” below. Through these cases, requirements for registration of “three-dimensional shapes of goods or packages themselves” as “three-dimensional trademarks” in Japan are becoming clearer. ....[Click here for full details >>](#)

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### [India](#)

#### [Delhi High Court Rules, VOLVO Cannot be Used for Icecream](#)

*Aktiebolaget Volvo Vs. Mr. Vinod Kumar - Delhi High Court*

D.P.Ahuja & Co. Research Department

The Plaintiff, Aktiebolaget Volvo adopted the trademark VOLVO in 1915 and is the registered proprietor of the mark in relation to various categories of goods including buses, cars, automobile parts etc. In February 2009, the Plaintiff's representative came across ice cream being sold under the mark VOLVO by the Defendants. The Plaintiff filed a suit for trademark infringement and passing off, and sought a temporary injunction against the Defendants. ....[Click here for full details >>](#)

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#### [Permanent Injunction Granted To Ecolab Inc. for its Trademark ECOLAB Against Eco Labs Ltd.](#)

*Ecolab Inc Vs. Eaco Labs Ltd – Delhi High Court*

D.P.Ahuja & Co. Research Department

Ecolab Inc., is a US corporation formed in 1924 and into the business of manufacture and trade of premium cleaning, pest elimination and repair products having wide application in the hospitality, food service, ....[Click here for full details >>](#)



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#### **Delhi High Court Rules that Component of an Established Trademark Cannot be Used by Anyone Else**

*Procter and Gamble Co. Vs. Joy Creators and Ors. - Delhi High Court*

D.P.Ahuja & Co. Research Department

The plaintiff, Procter and Gamble Co. is a reputed multinational company, engaged in the business of manufacturing and selling skin care and personal cleansing products, including anti-aging moisturizer under the trademark OLAY. The plaintiff holds registration for the trademark OLAY TOTAL EFFECTS and OLAY in Class 3 in India and is also using the trademarks in respect of anti-aging products. ....[Click here for full details >>](#)

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#### **South African Breweries Granted Permanent Injunction for CASTLE due to First Use and Cancellation of Defendants' Trademarks**

*South African Breweries International (Finance) B.V. vs. Mohan Goldwater Breweries Ltd. - Delhi High Court*

D.P.Ahuja & Co. Research Department

The Plaintiff, South African Breweries International (Finance) B.V. is the registered proprietor of the trademark CASTLE and CASTLE label in respect of beer in a large number of countries. In India, plaintiff has been selling beer since 1994. The Plaintiff applied for registration of CASTLE (label) in India on 29th April, 1995 and the word mark CASTLE on 6th February, 1996, which were granted registration during the pendency of the suit. ....[Click here for full details >>](#)

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#### **HAKKASAN and 'HAKKA SUN' Held to be Confusingly Similar by Bombay High Court**

*HAKKASAN Limited v Savannah Leisure Pvt Ltd & Ors. - Bombay High Court*

D.P.Ahuja & Co. Research Department

The Plaintiff Hakkasan Ltd, is a well established and reputed UK company which owns a number of fine dining restaurants in the food and hospitality sector since 2001, under the trade mark/trade name HAKKASAN. The expression HAKKASAN was coined by the Plaintiff in 2000 and it was also the registered proprietor of its trademark in India in Class 42. The Defendant is an Indian entity, also engaged in restaurant services and operated an outlet called Vie Lounge and Deck. In June 2010, the Plaintiff came to know that the Defendant had introduced oriental cuisine services at its outlet Vie Lounge and Deck. ....[Click here for full details >>](#)

its outlet Vie Lounge and Deck, [....Click here for full details >>](#)

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#### **False Documents and Forged Evidence Spells Doom for Indian Entity**

*Hahnemann Laboratory Ltd. & Ors. Vs. The Hahnemann India Laboratories (BN) & Ors. - Calcutta High Court*

D.P.Ahuja & Co. Research Department

The Plaintiff, Hahnemann Laboratory Ltd. & Ors is a family concern and is the owner of the registered trademark "ARNIMAX" for its medicinal and pharmaceutical preparation under Class 5 since 2003. The Plaintiff also used the silhouette of the lady with black hair as its trade dress together with the said registered trademark "ARNIMAX", which came to be identified with the Plaintiff. In October, 2009, the Plaintiff came to know that the Defendants have infringed its trademark by using the word "ARNIMAX" on its products coupled with the trade dress and thereby has infringed the registered trademark and passed off its products as that of the plaintiff. Accordingly, the Plaintiff filed a suit and an interim order was passed on 19th February, 2010 by the Court restraining the Defendants from using the "ARNIMAX" mark. At the trial, the Defendants produced a 'No Objection Certificate' purportedly signed by Das Homoeo Laboratory (P) Ltd., who they claimed to have been permitted by the Plaintiff to use the "ARMINAX" mark. The Defendants alleged that the Plaintiff was aware of such use of the "ARMINAX" mark by Das Homoeo Laboratory (P) Ltd. and the Defendants and yet had taken no steps. Therefore, the Plaintiff is guilty of suppression of material facts and acquiescence and is thus disentitled to a relief of temporary injunction. On consideration of the evidence on record, the Court found that there was neither any assignment or license of the "Arnimax" mark by the Plaintiff to Das Homoeo Laboratory. Moreover, the No Objection Certificate was signed by only one of the partners of Das Homoeo Laboratory and was therefore invalid. Also, on comparison of the signature of the Partner who purportedly signed the No Objection Certificate with another document signed by the same partner of Das Homoeo Laboratory, the signatures did not match. On the basis of the above grounds, the Court held that the Defendants' claims to the "ARMINAX" mark derived from the permission granted by Das Homoeo Laboratory cannot be accepted. Accordingly, the Court issued an order restraining the Defendants from using the "ARMINAX" mark in any manner. [....Click here for full details >>](#)

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#### **Suppression Of Material Facts and Vague Agreements Leads to Loss of Trademark**

*Parth Parenteral Pvt Ltd and Anr. vs. RFCL Limited and Ors - Gujarat High Court*

D.P.Ahuja & Co. Research Department

The Plaintiffs Parth Parenteral Pvt Ltd (PPPL) and Pearl Drugs Private Limited (PDPL), are Indian entities engaged in the business of manufacturing and marketing of pharmaceuticals and veterinary products including animal feed supplement preparation and agricultural, horticultural, food stuff for animal and veterinary and sanitary [....Click here for full details >>](#)

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### [India](#)

#### **Calcutta High Court decides on Infringement of Certification Trademark**

*Tea Board Vs. I.T.C. Limited - Calcutta High Court*

D.P.Ahuja & Co. Research Department

The Plaintiff, Tea Board is an autonomous, non-profit making statutory body created under the Tea Act, 1953 and a part of the Ministry of Commerce and Industry, Government of India for the purpose of controlling the Indian Tea Industry. The Plaintiff is the registered proprietor of the certification marks DARJEELING and DARJEELING ...[Click here for full details >>](#)

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#### **MOET & CHANDON Fails to Stop Operation of MOET'S, the Restaurant**

*Champagne Moet and Chandon v Union of India and Ors. - Delhi High Court*

D.P.Ahuja & Co. Research Department

The Petitioner is a French company and a well known manufacturer of wines which it is selling under the trademarks MOET and MOET & CHANDON worldwide. The petitioner is known as Moet & Chandon since 1832 and its Champagne bearing the mark MOET had been shipped in India as early as 1906. The petitioner is the registered proprietor of the mark MOET in Class 33 since 15 October 1982 and MOET & CHANDON since 5 July ...[Click here for full details >>](#)

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#### **Court Rules in Favour of Double Coin**

*Double Coin Holdings Ltd v Trans Tyres (India) Pvt. Ltd - Delhi High Court*

D.P.Ahuja & Co. Research Department

The present decision involves two suits filed by the parties against each other. The parties are Double Coin Holdings and Trans Tyres (India) Pvt. Ltd. Double Coin Holdings is a Chinese company who is the proprietor of the trademark DOUBLE COIN in respect of tyres. Double Coin distributes its products under the mark DOUBLE COIN ...[Click here for full details >>](#)

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**Trademarks**

**India**

**Delhi High Court Rules Against Unauthorised Importation**

*Samsung Electronics Company Limited Vs. Kapil Wadhwa & Ors. - Delhi High Court*

D.P.Ahuja & Co. Research Department

The Plaintiff, Samsung Electronics Company Limited is a Korean company engaged in manufacturing and trading in a range of electronic goods. The Plaintiff's trademark SAMSUNG is registered in India in a number of classes of the International Classification and the SAMSUNG mark is licensed by the Plaintiff to its Indian subsidiary. The Defendant is an Indian company engaged in distributing, retailing and selling various types of computer hardware ....[Click here for full details >>](#)

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**Trademarks**

**India**

**Delhi High Court Rules Parody or Critical Comment does Not Necessarily Result in Trademark Infringement**

*Tata Sons Limited v Greenpeace International & Anr. - Delhi High Court*

D.P.Ahuja & Co. Research Department

The Plaintiff is a well known Indian industrial conglomerate with operations in the field of iron and steel, textiles, power, chemicals, hotels, automobiles etc. The Plaintiff has been using the trademark and trade name TATA, which is a rare and distinctive patronymic name, since 1868. The Plaintiff is the registered proprietor of ....[Click here for full details >>](#)

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**Trademarks**

**India**

**Plaintiff's Delay and Acquiescence of Defendant's Use of Mark May Result in Refusal to Continue Injunction**

*Construction Research & Technology GmbH v Dirk India Pvt. Ltd. - Delhi High Court*

D.P.Ahuja & Co. Research Department

The Plaintiff, Construction Research & Technology is the owner of the trademarks 'POZZOLITH and POZZUTEC in the field of building materials, i.e., admixture material and building material for concrete. The Plaintiff is the registered proprietor of the trademark POZZOLITH in India for more than 60 years. The Plaintiff's claim is that the prefix 'POZZO/POZZU' have become distinctive of its' products and the consumers associate all POZZO formative mark with Plaintiff exclusively. ....[Click here for full details >>](#)

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**Trademarks**

**India**



**India**

**Court Holds That Examiner Did Not Follow Principles Laid Down by Judicial Precedents in Examining ECOLEAN Mark**

*Eco Lean Research & Development A/S v. Intellectual Property Appellate Board & Anr - Madras High Court*

D.P.Ahuja & Co. Research Department

Eco Lean Research & Development A/S filed a trademark application for registration of the trademark ECOLEAN for different classes of goods under the International Classification list. The Registrar of Trademarks examined the application and refused to allow the application to be registered. ....[Click here for full details >>](#)

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**India**

**Court Refuses Temporary Injunction to Eveready on Grounds of Delay and Acquiescence**

*Eveready Industries India Ltd v Sanjay Chadha and Anr. - Delhi High Court*

D.P.Ahuja & Co. Research Department

Eveready Industries India Ltd is engaged mainly in the business of manufacturing and trading of dry batteries, re-chargeable batteries, flash lights, compact fluorescent lamps, general service lamps, insect repellants and packet tea, under its trademark/house mark EVEREADY. Eveready had been using the trademark EVEREADY since 1905 ....[Click here for full details >>](#)

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**Trademarks**

**India**

**Court Rules on Distinction Between "Rectification" and "Invalidation" of Registered Mark vis-a-vis Stay of Suit Proceedings**

*Godfrey Phillips (India) Ltd. Vs. I.T.C. Ltd. - Calcutta High Court*

D.P.Ahuja & Co. Research Department

Godfrey Phillips (India) Ltd. had filed an application for cancellation against ITC Ltd's registered mark PILOT before the Trade Marks Registry, Kolkata. In the cancellation proceeding, ITC repeatedly prayed for extension of time to file its evidence and subsequently, in 2009 filed a suit for trademark infringement and passing off against Godfrey Phillips. In the suit, the Trial Court passed an ex-parte injunction order restraining Godfrey Phillips from using the PILOT mark in any manner. Godfrey Phillips filed a request for stay of proceedings before the Trial Court on the ground that its cancellation application challenging the rights of ITC to the PILOT mark is pending adjudication before the Trade Marks Registry. ....[Click here for full details >>](#)

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**India**

**GORBATSCHOW Vodka Granted Temporary Injunction Restraining Defendant from Using its Shape Mark**

*Gorbatschow Vodka v. John Distilleries Limited - Bombay High Court*  
D.P.Ahuja & Co. Research Department

The Plaintiff, Gorbatschow Vodka is the proprietor of a trademark in the shape of a Vodka Bottle which according to the Plaintiff, represents the architecture of the Russian Orthodox Church, Russia. The Plaintiff introduced the first version of the bottle in 1958, while the latest was launched in 1996 and a device of bird was added in 1999. ....[Click here for full details >>](#)

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**Trademarks**

**India**

**Levi Strauss Acts Against Counterfeiters**

*Levi Strauss & Company v Nizami Garments - Delhi High Court*  
D.P.Ahuja & Co. Research Department

The Plaintiff Levi Strauss & Company, is engaged in the business of manufacture and marketing of clothing of all kinds, , clothing, leisure shoes, spectacles, glasses, sunglasses, bags and other accessories under the LEVI'S mark. The Plaintiff is also the registered proprietor of the trademark LEVI'S in India in different classes. ....[Click here for full details >>](#)

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**Trademarks**

**India**

**Mark Not Prominently displayed on Products May Lead to a Ruling of Non-infringement**

*Crompton Greaves Limited Vs. Salzer Electronics Limited and Europa Component and Equipment PLC - Madras High Court*  
D.P.Ahuja & Co. Research Department

The Plaintiff, Crompton Greaves Limited (Crompton Greaves) is the market leader in the electrical engineering sector and also exports its products to more than 60 countries worldwide. It is using and is the exclusive proprietor of the corporate name CROMPTON GREAVES and a distinctive CG logo since the year 1966. ....[Click here for full details >>](#)

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**Domain Names**

**India**

**Domain ( argiletz.co.in) ordered to be transferred by Arbitrator**

*Mr. Tejas Mehta (Respondent) Vs. Mr. G. Anand (Plaintiff) - The National Tribunal, Chennai*

*Mr. Jean Heitz, Laboratoire Argiletz S.A. v Jack Sun - The National Internet Exchange of India*  
D.P.Ahuja & Co. Research Department

The Complainant is the founder-owner of Laboratoire Argiletz S.A., specializing in the extraction and production of natural sun-dried coloured clay extensively used in medicines, skin care and health care products. The Complainant is the owner of the trademark 'ARGILETZ' worldwide and in India and owns several domain name comprising the mark 'ARGILETZ'. [....Click here for full details >>](#)

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## Domain Names

### India

#### **Rachael Ray Successfully Claims the domain (rachelay.in)**

*Ray Marks Co. L L C v Rachel Ray Techniques Pvt. Ltd. - National Internet Exchange of India*  
D.P.Ahuja & Co. Research Department

The Complainant, Ray Marks Co. LLC is the company formed by celebrity chef and talk show host Ms. Rachael Ray. The Complainant is the registered proprietor of the trademark 'Rachael Ray' and has been using the trademark since 1999. [....Click here for full details >>](#)

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## Domain Names

### India

#### **Minute Differences in Domain Names Cannot be a Defence in Trademark and Domain Name Disputes**

*Robert Half International Inc v Rajboor Kadyan & Ors. - Gurgaon District Court*  
D.P.Ahuja & Co. Research Department

The Plaintiff, Robert Half International Inc. is an US company, the world's first and largest specialized staffing firm, founded in 1948. The Plaintiff provides specialized staffing and risk consulting services through its specialized divisions which places professionals on a temporary, temporary-to-hire, and full-time basis. The Plaintiff owns the trademark/trade name ROBERT HALF [....Click here for full details >>](#)

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## Domain Names

### India

#### **Radio Maria Succeeds in Obtaining Transfer**

*Associazione Radio Maria v Liu Jiapeng - The National Internet Exchange of India*  
D.P.Ahuja & Co. Research Department

The Complainant is an international non-profit organization, representing the Association of Radio Maria, a Catholic radio broadcasting service founded in 1983 in Erba, Milan. The Complainant is the registered proprietor [....Click here for full details >>](#)

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Domain Names

India

Arbitrator Allows Transfer of (bloomberg.net.in) to Bloomberg

Bloomberg Finance L.P. v Kanhan Vijay V - National Internet Exchange of India

D.P.Ahuja & Co. Research Department

The Complainant, Bloomberg Finance L.P. is the registered proprietor of the trademark BLOOMBERG in India for various services. The complainant came across the domain name ...Click here for full details >>

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Domain Names

India

Arbitrator Rules that (parmaham.co.in) belongs to Consorzio del Prosciutto di Parma

Consorzio del Prosciutto di Parma v Jim Muller - National Internet Exchange of India

D.P.Ahuja & Co. Research Department

The Complainant is a voluntary consortium of Parma Ham producers and was set up in 1960 on the initiative of 20 producers of Parma region in Italy, with the objectives of safe guarding the genuine products of Parma. ...Click here for full details >>

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India

Arbitrator Directs transfer of the Domain (bancaintesa.in) to its Rightful Proprietor

Intesa Sanpaolo SpA v Liu Jiapeng - The National Internet Exchange of India

D.P.Ahuja & Co. Research Department

The Complainant was formed in 1823 and is using the name 'Banca Intesa' in relation to national and international financial services, commercial bank services, industrial credit, insurance services, mutual fund services etc. The Complainant came to know of the domain name ...Click here for full details >>

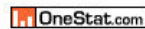
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### [Supreme Court of Justice considers principle of priority of registration](#)

**Portugal** - The Supreme Court of Justice has considered the principle of priority of registration in a dispute involving a trademark and a corporate name. The court clarified that, in such a case, priority must be assessed by reference to the date of the application for the 'business name admissibility certificate' and the date of application for registration of the trademark. [Full text](#)

### [Court considers "element that public will remember" in assessing risk of confusion](#)

**European Union** - In *Olive Line International SL v OHIM*, the General Court has annulled, in part, a decision of the Fourth Board of Appeal of OHIM finding that there was no likelihood of confusion between the figurative marks O•LIVE and OLIVE LINE. Interestingly, the court held that, although a descriptive element will not usually be considered as the dominant element in the overall impression conveyed by a mark, this does not prevent that element from making an impression on, and being remembered by, consumers. [Full text](#)

### [Kazakhstan now third country in the world to offer Cyrillic domain names](#)

**Kazakhstan** - The Kazakh Registry has announced the opening of domain name registrations under '.kas', which means that it is now possible to register domain names entirely in characters from the Kazakh Cyrillic alphabet. During the sunrise period, which ends on July 31 2012, holders of trademarks registered before December 31 2011 and containing Kazakh alphabet characters can register the exact equivalent domain name under '.kas'. [Full text](#)

## Latest blogs

### [Battle for the Financial Times in India rages on](#)

**India** - A dispute between the UK's Financial Times and the Times of India over the trademark 'Financial Times' that has been running for almost 20 years shows no sign of reaching an end, despite a recent order by India's Intellectual Property Appellate Board that has cancelled registrations by both parties. However, it provides some important pointers for brand owners. [Read blog](#)

Helen Sloan | June 13 2012

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**International** - Tomorrow ICANN will finally reveal the full list of gTLD applications – making it the perfect time to review what we know and consider how the

**International** - Tomorrow ICANN will finally reveal the full list of gTLD applications – making it the perfect time to review what we know and consider how the list should be approached. [Read blog](#)

Trevor Little | June 12 2012

### [\*\*Compulsory licensing in China – a concern or an opportunity to demonstrate trademark value?\*\*](#)

**China** - This weekend a range of media reports focused on amendments to China’s patent law, which clarify the conditions under which compulsory licensing can occur. While the story is a bit more complex than being reported, it does throw the spotlight on the role trademarks can play when patents are under attack. [Read blog](#)

Trevor Little | June 11 2012



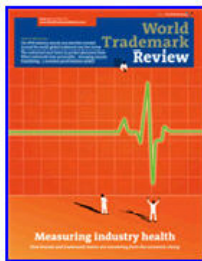
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The banner features a dark background with the text 'Industry Awards 2012' in white and yellow. Below the text, it says 'Each year WTR honours leading in-house departments and groups through its Industry Awards'. On the right side, there is a small image of a 'World Trademark Review' award certificate.

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#### Windows Live Brand Fades Into the Sunset - Digital Domain

By RANDALL STROSS

Microsoft is leaving behind the once-ubiquitous, yet often confusing, Windows Live as a brand name, and renaming every product that currently features that two-word phrase.

May 27, 2012

MORE ON TRADEMARKS AND TRADE NAMES AND: ADVERTISING AND MARKETING, WINDOWS (OPERATING SYSTEM), XBOX (VIDEO GAME SYSTEM), COMPUTERS AND THE INTERNET, MICROSOFT CORPORATION



#### Mondelez Is New Name for Kraft's Snack Foods Company

By STEPHANIE STROM

Mondelez International, whose meaning is a combination of "world" and "delicious" in several romance languages, will adorn packages only in small print.

May 24, 2012



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### Watch Industry Quarrels Over Swiss-Made Labels

By RAPHAEL MINDER

The Swiss watch industry wants to tighten requirements so that 80 percent of the value of the watch has to be made locally, rather than in countries like China.

April 28, 2012

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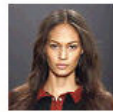
### An Uneasy Exchange Between Fashion and Navajo Culture

By GUY TREBAY

Fashion styles that appear to borrow heavily from traditional Navajo culture raise questions about what belongs to whom and what people are really wearing.

March 15, 2012

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### Reclaiming My Web Address

By DELIA EPHRON

When my Web site domain name was hijacked, it raised the question: How much was my name worth to me?

March 11, 2012

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### Apple Case in Shanghai Is Suspended

By DAVID BARBOZA; GU HUINI CONTRIBUTED RESEARCH.

A local court rejected an effort by a Chinese company to stop sales of the popular iPad in the



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company to stop sales of the popular iPad in the city, saying it would not rule because a related trademark case is pending in Guangdong Province.



February 24, 2012

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### Michael Jordan Sues Chinese Sportswear Company for Using His Name

By DAVID BARBOZA

Qiaodan Sports has been using the Chinese name of the former basketball star as its brand name for years, the lawsuit says.

February 24, 2012

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### Trademarks Take On New Importance in Internet Era

By STEPHANIE STROM

A legal battle over Pretzel Crisps underscores the value of a brand name.



February 21, 2012

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### Inflaming Trademark Dispute, Second City in China Halts Sales of the iPad

By MICHAEL WINES; LI BIBO CONTRIBUTED RESEARCH.

The seizures follow a ruling in December in which a Shenzhen court dismissed a lawsuit by Apple claiming ownership of the iPad name in China.

February 15, 2012

MORE ON TRADEMARKS AND TRADE NAMES AND: SUITS AND LITIGATION, INTELLECTUAL PROPERTY, IPAD, CHINA, APPLE INCORPORATED, PROVIEW TECHNOLOGY

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## Class 46 - for your European trade mark news

Now in its third year, Class 46 is dedicated to European trade mark law and practice. This weblog is written by a team of enthusiasts who want to spread the word and share their thoughts with others.

TUESDAY, 12 JUNE 2012

### Poland: conflict of rights

On January 2000, the Polish Patent Office registered the trade mark DACH-BUD PERDKOWIE R-116968 for goods in Class 19 and services in Class 37. This sign was applied for by Polish entrepreneurs Krzysztof Perdek and Zbigniew Perdek Zakład Ogólnobudowlany DACH-BUD in 1996. Przedsiębiorstwo Budownictwa Ogólnego DACH BUD Spółka z o.o. from Wrocław filed a request for invalidation. DACH BUD argued that at the time of trade mark application, it was the only business that has used the sign DACH BUD as its company name. In 2002, one of the shareholders of the present company DACH BUD Spółka z o.o., has filed a request for invalidation, but it was dismissed by the PPO and the Voivodship Administrative Court in its judgment of 22 December 2005 case file VI SA/Wa 337/05.



Also in this case, the PPO dismissed the request and decided that the proceedings were separate and independent in relation to proceedings that were held before on the request of the predecessor of DACH BUD. According to the PPO, the request based on the provisions of the old Polish Act of 31 January 1985 on Trade Marks was unjustified, and there were no grounds to invalidate the right of protection. Statutory requirements for the grant of a right of protection are assessed by the PPO under the provisions effective at a date of filing of an application concerning a trademark. The new Polish Act on Industrial Property came into force in 2001. These old provisions state that the registration of a sign which infringes personal or property rights of third parties, has to be refused. All the personal interests that are protected under the provisions of the Polish Civil Code, are identified among the rights of a personal nature. The name (firm) of the limited liability company (spółka z ograniczoną odpowiedzialnością) is the name under which the company is established according to the provisions of the Polish Commercial Companies Code. The name of business/entrepreneur



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of the Polish Commercial Companies Code. The name of business/entrepreneur is treated as its personal right and as such is protected as the right to company name. According to legal commentators, it is an absolute personal right of an entrepreneur, and it is effective, *erga omnes*, against all. Its content is defined as the ability to use the company name to identify business/entrepreneurs on the market. The company name of a private person or entrepreneurs acting as a commercial companies, is not transferable. The Polish legal doctrine and case law established the view that the registration of a sign that is corresponding to the designation of another entrepreneur, that was used before the registration of that trade mark, affects the personal interests of such entrepreneur. However, that interference in the sphere of personal property, and more specifically - in the right to the name of the entrepreneur, may also occur in case of use of the part of that name, if it is a part that is fulfilling the function that sufficiently individualize an entity, i.e. that allows to uniquely identify and distinguish the company from other private or legal (corporate) persons. The PPO ruled that a similar position should be adopted in case of registration of a figurative sign, which in the word element contains the company name (firm) of another entity, or a significant part of it. The PPO noted that the company did not exist at the filing date of the disputed trade mark, and it could not effectively rely on the infringement of its right to the company name by the disputed sign. Therefore, if the applicant's right was not the right "with a better priority", there were no grounds to consider the request. In the opinion of the PPO, in the exercise of its personal interests, the applicant could rely only on the right enjoyed by it exclusively, and not by others. In particular, the company could not claim and invoke any right that was enjoyed by its shareholder - a private person. DACH BUD Spółka z o.o. filed a complaint against this decision.

The Voivodeship Administrative Court in Warsaw in its judgment of 18 January 2012 case file [VI SA/Wa 1222/11](#) agreed with the PPO and dismissed it. The Court noted that in case of conflict of rights, in this case, the protection right for a trade mark with a personal interest that includes the right to company name, the priority is to protect the personal interest. However, the registration of a trade mark that is identical or similar to a company name does not prejudice the infringement of the right to a company name. This exclusive right is not a total absolute. Its limits are defined by the coverage (territorial and goals) and the time of actual activities of the entity that is using the name. The collision between identical or similar company name and a trade mark may occur only within these limits. This judgment is not final yet.

Posted by: [Tomasz Rychlicki @ 08.35](#)

Tags: firm, personal rights or interests, Polish Act on Trade marks, Polish Civil Code, Polish Patent Office, similarity of goods, similarity of signs, trade mark invalidation, Voivodeship Administrative Court,

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MONDAY, 11 JUNE 2012

**Rioja: why is it such a big deal?**

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**Rioja: why is it such a big deal:**

Rioja is one of the best-known wine names in Europe today -- but where does the name come from and why is there so much sensitivity as to who uses the word and how they do so?

If you'd like to know more, there's a fascinating little article on this topic, "Where Does Rioja Wine Really Come From?", by Sofia Castillo, which you can read [here](#) on the American University Intellectual Property Brief



Class 46 thanks Chris Torrero for this link.

Posted by: Jeremy Phillips @ 13.05  
Tags: wine appellations, Rioja,

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MONDAY, 11 JUNE 2012

**Santa Lucia appeal allowed in Malta**

Santa Lucia Products Limited ('Santa Lucia'), a well established Maltese company with an excellent reputation in the catering sector, applied in June 2009 to register the words 'Santa Lucia' as they appeared on a label specifically designed for them for goods in Class 16. The Comptroller of Industrial Property refused the application on the basis that a Spanish registered company, Santa Lucia, S.A. Compania de Seguros, which provided business management, financial services and consultancy, had already registered two allegedly similar trade marks -- 'Santa Lucia, S.A. Compania de Seguros' and 'Seguros Santa Lucia'.



Santa Lucia argued that the Comptroller of Industrial Property was wrong to refuse its application: the earlier registered trade marks could not be regraded as similar, especially when considering their respective overall impressions. Even more so, there could never be any possible likelihood that the two trade marks could ever lead to confusion with the applied-for mark, it being well established that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details.

On 30 November, 2011, the Court of Appeal in Malta allowed Santa Lucia's appeal.

Source: Tanti-Dougall & Associates, Advocates, to whom Class 46 gives its thanks (note: this firm were legal advisors to Santa Lucia Products Limited in these proceedings).

Balance in Danish battle with Bestseller

Poland: Columbus and Columbia compared

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these proceedings).

Posted by: Jeremy Phillips @ 09.32  
Tags: Malta, registrability,

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FRIDAY, 8 JUNE 2012

### General Court: TORO XL v. XL

In case T-169/10, Grupo Osborne, SA (Spain) had registered the word Community trademark **TORO XL** for goods in Class 33 which was opposed by Industria Quezalteca SA (Guatemala) on the grounds of the XL figurative CTM registered for 'alcoholic drinks' in Class 33.



The Opposition division had rejected the opposition, however the decision was overturned by the Board of Appeal which held that for the average consumer, the common element XL, counterbalances the differences between the signs in conflict, and there is risk of confusion for identical goods.



The General Court held that the Board was wrong in concluding that XL is distinctive for the goods in question because the relevant consumer will understand the initials as a descriptive reference of the drinks being "extra large". Furthermore, the signs present significant differences, such as in the oval shaped green color and undefined outlines of the earlier mark, which overall impression will remain in the mind of the consumer. The applied for CTM contains the word "toro" which constitutes the most distinctive element and will be understood by the Spanish and Italian speaking consumer as meaning "bull", as well as by the French and Portuguese consumer which have very similar words in their languages. Thus the contested CTM will be perceived by part of the relevant consumer as a "big size" bull and for the rest of the relevant public, there can be no conceptual comparison.

Therefore, the GC held that for the relevant public, the signs bear enough differences (visual, aural and /or conceptual) so as to avoid a risk of confusion.

Posted by: Laetitia Lagarde @ 14.52

Tags: General court, likelihood of confusion, Toro XL, XL,

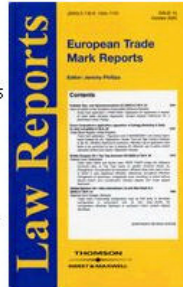
Tags: General Court, Likelihood of Confusion, TUD XL, XL,

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FRIDAY, 8 JUNE 2012

### June ETMR now published

The June 2012 issue of the *European Trade Mark Reports (ETMR)*, published monthly by Sweet & Maxwell, contains English-language reports, together with informative headnotes, of recent decisions from national and EU courts and intellectual property offices. This issue includes reports on a number of cases from national courts. These include:



\* *Rolex SA and Manufacture des Montres Rolex SA v MW*, in which the Maritime and Commercial Court, Denmark, gives its important ruling on whether the importation of a counterfeit watch for use by a single individual may be prevented by the rules governing the detention of goods by customs authorities;

\* *Bestway Inflatable & Material Corp and another v Burak Ithalat ve Ithrahat dis Ticaret Ltd Sti.*, a ruling of the TC Bakirkoy Civil Intellectual Property Court, Turkey, on bad faith applications and the need for applicants to comply with the standards of the prudent businessman;

\* *Weight Watcher (UK) Ltd and others v Love Bites Ltd and others*, a salutary lesson in how difficult it can be to put an end to a competitor's similar mark after initially tolerating it.

MARQUES members are reminded that, if they have been involved in litigation which is of significant interest and can provide an English-language text of the full decision of the court, the ETMR will be delighted to consider it for publication.

Posted by: Jeremy Phillips @ 14.10  
Tags: ETMR,

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WEDNESDAY, 6 JUNE 2012

### General Court: TM - wolf - TM

In Case T-570/10, Entec Industries Ltd filed a CTM application for a figurative CTM representing a wolf's head for goods in Class7: 'Machines for professional and industrial processing of wood and green waste; professional and industrial wood chippers and shredders'





The opponent Société Emar Wolf filed an opposition on the grounds of Article 8 (5) CTMR on the basis of the following earlier French and international marks with effect in Portugal and Spain, registered among others for goods in Class 7 :



The BoA annulled the decision of the Opposition Division on the ground that the earlier marks were highly reputed in three Member States. It then held that there was some similarity between the marks at issue and that the relevant public could establish a link between the signs, having regard to the distinctiveness and reputation of the earlier marks, and to the similarity of the goods covered by the marks at issue. Finally, the Board of Appeal concluded, referring to the arguments put forward by the intervener, that the mark applied for could dilute the unique image of the earlier marks and could take unfair advantage from their distinctive character or their reputation. With regard to Article 42(2) and (3) of the CTMR, the BoA held that the earlier marks had been put to genuine and continuous use for the protected goods.

Regarding the link between the marks at issue, the Court found that the BoA had rightly taken into account that the differences (i.e.: the canines represented by the two marks are different, one drawn in detail which has an aggressive quality whereas the second, apparently more amiable, is less detailed) were not of such importance and the relevant public, which displays an average level of attention and has imperfect recollection, will connect the image of the mark applied with that of the earlier marks.

Further, according to well-established case-law *Intel Corporation* (case C-252/07) the earlier mark is proprietor is required to adduce evidence that use of the later mark would be detrimental to the distinctive character of the earlier mark, however it is not required to show and additional effect on the economic behaviour of the average consumer of the goods or services for which the earlier mark was registered.

The Opponent had indeed substantiated its arguments such as to show a risk, which is not hypothetical, that use of the mark applied for could be detrimental

which is not hypothetical, that use of the mark applied for could be detrimental to the earlier marks that use of the mark applied for would lead to an erosion of the earlier marks' reputation, since the relevant public would no longer associate the intervener's goods with those marks, and that the figurative part of those marks would be rendered commonplace and would lose its highly distinctive character.

In the present case, therefore the use by the applicant of a canine's head as a mark for garden and horticultural tools, identical or similar to those sold by the opponent under marks also representing a canine's head, necessarily means that the consumers of those tools will no longer immediately associate the image of a canine with the opponent's goods and would undermine the commercial efforts made by the latter for the development of its marks.

Posted by: Laetitia Lagarde @ 16.05

Tags: general court, likelihood of confusion, wolf, wolf jardin,

0 comments: [Post a comment](#)

TUESDAY, 5 JUNE 2012

### Balance in favour of New Balance in Danish battle with Bestseller

On 30 May, 2012 the Danish Supreme Court, affirming the ruling of the trial court, awarded damages of DKK 2.5 million plus around DKK 500,000 in costs to New Balance following their successful trade mark infringement and unfair competition suit against Bestseller, after the latter's "JJ Slick" and "JJ Stan" products were found to be close imitations of New Balance's PF FLYERS models "Grounder Hi" and "Number 5" -- each of which came in several styles. In this blogpost the genuine New Balance products are illustrated on the right, while those of Bestseller are shown on the left.



The infringing products, which were indeed best-sellers -- Bestseller had sold 7,000 pairs of "JJ Slick" and 12,800 pairs of "JJ Stan" footwear in most countries throughout Europe -- had different pedigrees: "JJ Slick" had been bought from a Chinese supplier, whereas "JJ Stan" was designed by an in-house designer with Bestseller.

But it wasn't just the shoes themselves that caused offence to New Balance: it was the manner of their promotion. Bestseller had distributed 290,000 copies of a promotional magazine for their infringing footwear, which contained an illustration of a sticker art wall depicting New Balance's trade mark PF Flyers. This was found to constitute an actionable trade mark infringement despite Bestseller's argument that this picture did not constitute trade mark use since it was neither prepared nor manipulated by it and was not used in direct correlation

was neither prepared nor manipulated by it and was not used in direct correlation with the shoe products in question.

MARQUES Council Member Hanne Weywardt (MAQS), who acted for New Balance, had this to say about the Supreme Court decision:



“If you look at case law within this field over recent years, it was difficult to foresee the outcome of the Supreme Court rulings when it comes to the question of infringement. However, this ruling ... clearly states that you have to be very careful not making a business out of other companies’ creations and creativity or riding on other’s marketing efforts”.



This case provides a good example of highly effective enforcement. Bestseller’s products were put on the market late September 2006. New Balance took action by filing a request for a combined procedure with the Bailiff’s Court for preservation of evidence and injunctive relief. The goods were off the market by mid-December of that year. New Balance was however still entitled to a substantial amount in compensation -- which the Supreme Court has since confirmed.

From a Danish perspective the amount of compensation is historically high. This can be seen as a result of the implementation of EU Enforcement Directive 2004/48, by which the law in Denmark was changed with effect from 1 January 2006. When calculating the amount of damages to the right holder the court should now take into consideration, among other things, the profit unfairly obtained by the infringer. Bestseller had made an unfair profit of DKK 1.7 million and, with the recent ruling awarding New Balance a considerably higher amount, the ruling confirms that it is not worthwhile violating the rights of other businesses.

Posted by: Jeremy Phillips @ 08.23

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by T+B BLOG TEAM on JUNE 6, 2012

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