

Law Lore & Practice

PTMG



Pharmaceutical
Trade Marks Group

March 2008



Editorial

"If music be the food of love, then trade marks shall be the essence of friendship."

As readers may remember, I stepped out of the

world of trade marks in the Autumn of 2004 to have my second child after 13 years in Procter & Gamble's Europe, Middle East & Africa IP department in Paris. Several years ago, whilst working on the health care portfolio, I had the pleasure of attending both the Eastbourne and Berlin PTMG conferences. Now, after a busy and fulfilled three and half years 'at home', the Board of PTMG has appointed me editor of *Law, Lore & Practice*: truly an honour, but also a responsibility which I hope to acquit successfully.

At the recent PTMG Committee meeting, I experienced a true feeling of homecoming. In part this was due to the location: whilst my professional experience in London was

limited to serving in McDonalds at Marble Arch and the chocolate counter at Selfridges to repay my student loan, returning to the capital city of one's country of origin always awakens certain feelings.

Even more heartwarming was the welcome I received from fellow practitioners of the trade mark community and the inner circle of the PTMG family. What pleasure to be thrown back into the ever challenging world of IP with such eminent minds debating the changing world of pharmaceutical trade marks and those responsible for them.

Some things remain constant, however. Counterfeits are the number one priority for all right holders, as so they should. Figures from the European Commission website show medicines to be the product sector with the greatest increase in seized goods by customs officers. Indeed, since 2005, this increase is estimated at 380%!

Government and institutional awareness is on the increase. Thanks to constant lobbying, brand owners and their counsels can rely on good legislative frameworks and

active customs authorities in order to take action. But how does one build the safeguards into the distribution systems and constantly educate the public as to the full extent of the issue? It is important to remember that a professional network such as PTMG is there to provide support and guidance when faced with such serious global issues.

Of course, it is also there for making new friends and re-discovering old ones, as I trust we shall all do in Dublin in the near future.

This March edition of *LL&P* embodies the true spirit of PTMG: strong, clear leadership decisions accompanied by full support and assistance from key players.

My sincere thanks to Lisa Ritchie who has provided the much needed continuity from one editor to the next and to Georgy Evans for her guidance as I step up to the plate. For sure, your editorials will be a hard act to follow!

Vanessa Parker

US Update

James A. Thomas, Parker Poe, Raleigh, North Carolina

The US Court of Appeals upheld a decision by the Trademark Trial and Appeal Board finding that the term ASPIRINA is merely descriptive for analgesic goods. The court found that online definitions and translations were competent evidence of consumer perception. However, it regarded evidence of foreign registrations of ASPIRINA as "of little value" because foreign trade mark laws could differ. One judge dissented from the decision, arguing that evidence of foreign registrations should be given more weight (*In re Bayer Aktiengesellschaft*).

A federal district court in California found that filing an opposition that pleads a case for trade mark infringement or dilution is a sufficient basis for the applicant to file a declaratory judgment action in federal court. The applicant had filed an application for NEILMED'S SINUS RINSE A COMPLETE SALINE NASAL RINSE KIT (stylised) in Class 5 for pharmaceutical preparations for the treatment of nasal and sinus ailments.

The owner of the mark SINUCLEANSE opposed the application. Many earlier cases had found that merely filing an opposition against a pending application is not sufficient to create an apprehension of being sued in federal court sufficient to allow the applicant to bring a declaratory judgment action in federal court. These prior decisions reasoned that an opposition was aimed only at the registration of the mark and not at its use and therefore did not necessarily give rise to a risk of being sued in court. However, the district court in California found that where the opposer pleads a case for trade mark infringement in the notice of opposition, then the applicant's apprehension of being sued was 'real and reasonable' (*NeilMed Products Inc v Med-Systems Inc*).

Finally, in a case that is unrelated to pharmaceuticals but which has importance to all applicants and registrants in the US, the Trademark Trial and Appeal Board continues to find as fraudulent claims of use

in an application, statement of use or affidavit of use that are not accurate as to each and every enumerated item in the list of goods/services. In the most recent case, an Australian-based applicant had filed a use based application that was ultimately published for opposition with a list of specific entertainment services. In the course of an opposition against this application, the applicant admitted in discovery that it had not used the mark on certain of the services enumerated in the application. As a result, the TTAB found that the applicant had committed fraud in filing the application and upheld the opposition. Interestingly, the TTAB noted that such a misstatement could have been remedied by amendment prior to publication. This is the latest in a series of cases following the decision in *Medinol Ltd v Neuro Vasx Inc* which should be particularly noted by pharmaceutical applicants who may elect to file for a broad list of goods/services in the US (*Hurley International LLC v. Volta*).

Journal of a PTMG 'first-timer'

Wednesday 3rd October

"This is a flight announcement: we will be landing in approximately thirty minutes. The weather is sunny and warm. We hope that you have enjoyed your flight with us and that you have a good visit to Budapest."

This is so exciting! My first PTMG. This flight is full. Many of the passengers know each other. I wonder if they are also going to PTMG?

We have a safe landing. I collect my luggage, and make my way through customs. There is a long queue for taxis, but I have plenty of time. Others are sharing. If I knew someone, I could do the same. Never mind, that is what I am here for: networking and education. I have been told that PTMG is one of the best conferences to do exactly that.

Arriving at the hotel, check-in is smooth and efficient. I go up to my room, unpack my things, shower, change and head to conference registration. The PTMG welcome desk is straight ahead of me, with several smiling faces to greet me. They find my name badge and promptly stick a green blob on it: first timer!

Then, turning from the welcome desk, conference pack in hand, I bump into someone I know. She introduces me to two more people, then some more delegates join our little group. I am already beginning to lose track; I must find a quiet space to tick off names on my delegate list otherwise I will be lost! One important thing I have learned: delegates know each other well and, if they do not know me yet, they certainly know the company I am working for. I feel famous already!

We have a little time to look around the city. Great location! The hotel is right on the river front, and the city centre is an easy walk. We see all the usual high street shops, we could be anywhere. Then we look up and we see the majestic solid buildings, the decorative carved masonry and we begin to get a feel for the unique nature of this beautiful city. We stop to look in shop windows and that is when we see the little alley-ways leading off, tempting us to explore. Here we see the real Budapest: local specialties on display, elegant cut and coloured crystal glasses, embroidery, beautifully tailored jackets and suits with embossed stitching. We walk and walk until we realise that time is passing fast and we must hurry back to the hotel to be ready for the welcome reception.

And what a welcome it is! When 400 people from 64 countries are gathered together and they have not seen each other for several months, there is a lot of catching up to be done and the 'buzz' of conversation and happy laughter is amazing! It really is a wall of noise. A kind gentleman approaches me, points to the green blob on my name badge and says "Oh, I see you are

a first-timer", takes me by the arm, and leads me in.

Now, I do not know much about PTMG, but I do know that this is Derek Rossiter. He is the founder of PTMG and Honorary President, and here he is, in person, leading me into the welcome reception. He knows everyone, and everyone knows him. What a grand welcome, indeed.

Later, much later, after a fabulous dinner with colleagues, I arrive back in my room. Tired but happy, I fall into what must



Above, Sue Evans makes her opening remarks

Left, At the Gala Dinner.

Below, Cruising on the Danube

be the most comfortable bed in hotel history and am asleep in an instant.

Thursday 4th October

Awake bright and early: very bright, beautiful day. Excellent breakfast, with everything from full English to full health, from Chinese to continental. Definitely something for everyone.

I have heard that at PTMG everyone attends the educational conference sessions and that all networking is done in the coffee breaks, lunch breaks, and evening social events. Sounds good to me, so I make my way to the conference room for the opening sessions. Clearly, what I have heard about PTMG is correct. The conference room is full: delegates sitting together, standing in groups to chat before taking their seats and, of course, there is the PTMG 'buzz' again.

PTMG Chairman, Sue Evans, is on stage already, watching the assembled throng as they make their way in, slowly but surely. I find myself wondering, how will she silence that PTMG buzz and bring this mass of delegates to order so that she can start the conference?

No need to worry. Everything is under



control. I hear the majestic strains of *Fanfare for the Common Man* coming over the loudspeakers and, as if by magic, delegates take their seats, mobile phones are switched off, buzz subsides, and all eyes are on Sue as she opens our 75th Conference, leading us through the next two days with her charming relaxed approach and an ever-watchful eye on the timekeeping.

Now we can relax, enjoy: all presentations will be available for reference after the conference, on the website www.ptmg.org. The programme of distinguished speakers unrolls before our very eyes:

EU and Hungarian trade mark law updates from Tibor Gold, MBE, of Kilburn & Strode and Eva Szigeti of Danubia.



Richard Gilbey of Gilbey de Haas

Mediation and negotiation in the US and EU presented by David Mullins of Nelson Mullins Riley & Scarborough and Mladen Vukmir of Vukmir & Associates.

Lost in translation? Not when you are guided expertly through the language issues in China, Hong Kong, Taiwan, Japan and Russia by Philip Cross of Interbrand, Keiichi Ota of Ota & Associates and Eugene Arievidh of Baker & McKenzie CIS.

As PTMG Chairman, Sue Evans closes the conference sessions for the day. The message is clear: in matters of 'Law, Lore and Languages', always keep your expert on hand: absolutely essential to avoid getting lost in – well – anything.

We meet in the hotel lobby for coach transfer to our evening destination. As we set off, our tour guide starts to point out various landmarks on the way. It is difficult for him to be heard above the buzz which seems to follow us everywhere. Difficult, that is, until he points out on our right hand side the Hotel Intercontinental.

Hotel Intercontinental? Isn't that where we are staying? Isn't that the conference venue? Isn't that where we boarded the bus fifteen minutes ago? Yes, it is. And yes, we have just taken fifteen minutes to drive round in a complete circle. Budapest clearly has an excellent one-way system, but would we ever escape it?

PTMG conference organiser, Lesley Edwards, has it all in hand and before we know it we are out of the one-way system. With light refreshments in our hands we are cruising gently down the river, admiring the view of the city and watching the lights reflected in the calm waters.

We arrive at our destination a little cool from the river air, but what a place! Long rustic tables, rustic seating, rustic food and rustic wine. Also rustic music and rustic dancing: they swirl, sway, twirl, smile, in their colourful costumes and give us an impressive display. They are so good, they even manage to interrupt – for a brief moment – that famous PTMG buzz. Finally



Tibor Gold of Kilnurn & Strode

they leave the stage to the tune of our hearty applause.

Back on the bus, no circles to home, my mind full of the day's events, I think I am asleep before my head hits the pillow.

Friday 5th October

Awake. Not quite so bright and early this morning. Yesterday was a long day, packed with information and introductions. Can PTMG really keep up these high standards?

I am expecting the conference room to be sparsely populated, but I am wrong. Such is the reputation and tradition of PTMG that all delegates know they will be treated to an equally challenging and interesting second day programme. Once again the fanfare comes, heralding the start of the new day and Chairman Sue Evans introduces the first speakers.

We begin with a virtual flight on the internet. Are domain names intellectual property? asks Rachel Furlenmeier of Novartis and, having decided that they are, Lorna Gradden of Com Laude explains the intricacies of domain name valuation.

We visit Brazil with Peter Eduardo Siemsen of Danneman Siemsen Law Firm and Chile with Alfredo Montaner of Sargent & Krahn for further country law updates before lunch.

The weather outside is enticing. The sky is blue and the sun is warm. But our afternoon programme promises to address challenges in various sectors of the healthcare industry, and we do not want to miss it. Once again the conference room is packed, a fitting tribute to the wonderful team of speakers who make it all look and sound so easy.

We are given a taste of veterinary medicine by David Lossignol of the Virbac Group.

We are intrigued by the overlaps and differences between cosmetics and pharmaceuticals presented by Sylvain Moins of L'Oreal.

Finally, our whirlwind world tour comes to

an end. Back home in the pharmaceutical industry, Juergen Roemhild (Boehringer Ingelheim), Christian Karhula Luridsen (Plesner Svane Grongborg) and Joanne Green (GlaxoSmithKline) present their respective summaries of the Dowelhurst case.

On that note Chairman Sue Evans closes the conference sessions for the 75th PTMG Conference in Budapest and invites us all to join her at the gala dinner in the Budapest Museum of Fine Arts that evening.

Richard Gilbey, of Gilbey De Haas, gives a moving vote of thanks, on behalf of all delegates, to Derek Rossitter for founding PTMG more than 30 years ago, to Lesley Edwards for her masterly conference organisation skills, to Sue Evans for bringing her own style of chairmanship to PTMG and to all PTMG committee members for creating the excellent programme which has resulted in yet another unique PTMG conference which none will forget.

All that remains is the final event: the gala dinner at the Budapest Museum of Fine Arts. Red carpet up the museum steps, lined with guards in traditional costume; champagne reception; PTMG buzz; fanfare from the high balcony; and silence while our Chairman, Sue Evans, gives her final thank you speech which includes not only the relevant dignitaries but also her thanks to us – it seems we are a great group of delegates.

The silence remains. You can hear a pin drop. Sue has one more announcement to make and here it is, the moment we have all been waiting for (and on which heavy bets have been placed throughout the entire conference). The venue for the 76th PTMG Conference from 31 March to April 2008 is Dublin, as announced previously.

Silence. No reaction. We all know about Dublin. We are waiting, patiently, for more.

The venue for the 77th PTMG Conference from 1 to 4 October 2008 is ... Istanbul!

The roar of approval is incredible! The PTMG buzz returns, magnified beyond belief! There is nothing else for it but to open the grand doors and let us pass through to the elegant dining room to complete this perfect conference with a perfect dinner.

Saturday 6th October

Packing my bags, checking out, taxi to the airport ... reflecting on these past few days in Budapest. I am tired. I have worked hard. I have met a lot of new people, many well respected in the trade mark profession. I have learned many new things. For me, this conference has been a huge success and I believe I am not the only one.

There is no other organisation like PTMG. I have heard it described as the 'PTMG family' and at last I begin to understand. PTMG is special. PTMG is unique. I have the dates for the 2008 conferences firmly in my diary already.

Adele Legate

Members' News

As you can see we have had a large number of applications for membership in recent months and the new Membership Directory triggered several notifications of moves and mergers.

New Members

We are delighted to welcome the following new members to the Group:

Ian Kirby of Arnold & Porter LLP, 25 Old Broad Street, London, EC2N 1HQ, UK

Andrew Vlad Ratza of Ratza & Ratza, 52-54 A.I. Cuza Blvd, Bucharest 011056, Romania

Stephen Bradley and **Colin Miller** of AstraZeneca, PO Box 141, Mereside, Alderley Park, Macclesfield, Cheshire SK10 4TL, UK

Nancy Pei of Smart & Biggar, 438 University Avenue, Suite 1500, Box 111, Toronto, Ontario M5G 2K8, Canada

Claudia Schulz of Carminatti Schulz, Rua Lauro Muller, 116-1505, 22290-160 Rio de Janeiro, Brazil

Stacey Friends of Ruberto, Israel & Weiner PC, 100 North Washington Street, Boston, MA 02114, USA

Liselott Enstrom of RydinCarlsten Advokatbyrå AB, PO Box 1766, SE-111 87 Stockholm, Sweden

William C Wright of Epstein Drangel Bazerman & James LLP, 60 East 42nd Street, Suite 820, New York, NY 10165, USA

Jo Grist and **Carly Mansell** of GlaxoSmithKline, 980 Great West Road, Brentford, Middlesex, TW8 9GS, UK

Yvonne Hammerling of Nauta Dutilh NV, PO Box 7113, 1007 JC Amsterdam, The Netherlands

Davide Follador of Perani Mezzanotte & Partners, Piazza San Babila 5, 20122 Milan, Italy

Yoshiharu Yamagishi of Daiichi Sankyo Co Ltd, 1-16-13, Kitakasai, Edogawa-ku, Tokyo 134-8630, Japan

Maria Cecilia Romoleroux of Corral & Rosales, Robles 653 y Av, Amazonas, Edificio Proinco Calisto, Piso 12, Casilla 17 03-176, Quito, Ecuador

Alma Alvarez of Alvarez Delucio Y Asociados SC, Insurgentes Sur 826 - 2nd Floor, Del Valle, DF 03100, Mexico

Andre Bourgooin of Ipsen, 24 rue Erlanger, 75016 Paris, France

Joanna Lowther of Hindle Lowther, 28 Rutland Square, Edinburgh, EH1 2BW, Scotland, UK

Peter Eriksson of Albihs AB, PO Box

5581, SE-114 85, Stockholm, Sweden

Keri Johnston and **Michelle Wassenaar** of Johnston Wassenaar LLP, 56 The Esplanade, Suite 401, Toronto, Ontario M5E 1A7, Canada

Shigehito Shimizu of Eisai Co Ltd, 6-10 Koishikawa 4-Chome, Bunkyo-ku, Tokyo 112-8088, Japan

Dominique Mallo of Cabinet Hirsch, 58 Avenue Marceau, 75008 Paris, France

Emma Pitcher of Boulton Wade Tennant, 70 Grays Inn Road, London, WC1X 8BT, UK

Dr. Nicolai von Fuener of EUROMARKPAT v. Fuener Ebbinghaus Finck Hano, Mariahilfplatz 2 & 3, 81541 Munich, Germany

Ozlem Futman of Ofo Ventura Ltd STI, Halaskargazi CDo No 266, K2, Sisli-Istanbul, Turkey

Dr. Francesco Fabio of Kemia SA, Via Senago 23, CH 6915 Pambio-Noranco, Switzerland

Barbara Vogt of Grunenthal GmbH, Zieglerstr.6, 52078 Aachen, Germany

Susanne Karow of Lovells LLP, Warburgstr. 50, 20354 Hamburg, Germany

Darren Saunders of Kirkpatrick & Lockhart Preston Gates Ellis LLP, 599 Lexington Ave., New York, NY 10022, USA

Christopher Scholz of Markenverband, Unter den Linden 42, 10117, Berlin, Germany

Natalie Brindle of Gilholm Harrison Ltd, 18 Ash Grove, Bowdon, Altrincham, Cheshire, UK

Dr. Frank Schiwiek of Taylor Wessing, Koenigsallee 92a, 40211 Dusseldorf, Germany

Bernadette Tocjayao of VERALAW (Del Rosario Bagamasbad & Raboca), Rosadel Bldg, 1011 Metropolitan Avenue, Makati City (1200), Philippines

Rachel Furlenmeier of Novartis, Lichtstrasse 35, 4002 Basel, Switzerland,

Eleni Papacharalambous of Papacharalambous & Angelides Law Firm, 10 Themistocles Dervis Street, PO Box 24901, 1305, Nicosia, Cyprus

Maria Pilar Troncoso of Troncoso Y Caceres, Socorro Sanchez No 253, PO Box 1182, Santo Domingo, Dominican Republic

Gretchen Testerman of Qwest Communications, 1801 California Street, Suite 900, Denver, Colorado 80202, USA

John Wilson of John Wilson Partners,

365 Dam Street, Colombo 12, Sri Lanka

Christopher Schulte of Merchant & Gould P.C., 3200 IDS Center, 80 South Eighth Street, Minneapolis, MN 55402, USA

Lisa Ritchie of Howrey LLP, 22 Tudor Street, London, EC4Y 0AY

Joshua Braunstein of CT Corsearch, 345 Hudson Street, 16th Floor, New York, NY 10013, USA

Taro Seo of Bufete Soni, Paseo Los Tamarindos 400-B, Piso 21, Bosques de las Lomas, Mexico City, D.F, CP 05120, Mexico

Ibrahim Al Gawish of Dubai Global Intellectual Property, PO Box 42414, Al Mulla Building, Flat 411, 4th Floor, Muteena Street, Deira, Dubai, United Arab Emirates

Dr Torsten Dilly of Ashurst, Prinzregentenstrasse 18, 80538 Munich, Germany

Yves Asaert of Questel-Edital, Berkenlaan 1, B-1831 Diegem, Belgium

Damir Tkalcic, Industrial Property Attorney of Kosevo 36, 71000 Sarajevo, Bosnia and Herzegovina

Dr Diana Protic-Tkalcic, Industrial Property Attorney of Kosevo 36, 7100 Sarajevo, Bosnia and Herzegovina

Moves and Mergers

James Thomas has moved from Parker Poe to Troutman Sanders at 434 Fayetteville Street, Two Hannover Square, Suite 1900, Raleigh, NC 27601, USA.

Anna Carboni has been appointed by the Lord Chancellor as an Appointed Person under the Trade Marks Act 1994.

Helen Newman has moved from Kirkpatrick Stockton to Olswang at 90 High Holborn, London WC1V

Schering Oy (member is **Soila Joklila**) is now merged into Bayer Schering Pharma Oy at PO Box 415, FI-20101 Turku, Finland

Lammi & Partners Oy (members are **George Souter** and **Pirjo Lammi**) have moved their office to Albertinkatu 36A, Helsinki. The mailing address remains unchanged.

Moeller & Co (c/o IP Services GmbH) (member is **Gerardo Messerer**) have moved to Geiselgasteigstr. 68, 81545 Munchen, Germany

Deris Patents & Trademarks Agency AS (member is **Aydin Deris**) has changed address to Inebolu Sok, Derya Han No.3, Setustu/Kabatas 34427 Istanbul, Turkey

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Susan Keri has left Gowlings to join Bereskin & Parr at 40 King Street West, 40th Floor, Toronto, Ontario, M5H 3Y2, Canada

Morgan Lewis (member is **Anthony Warnock-Smith**) have moved to Condor House, 5-10 St Paul's Churchyard, London, EC4M 8AL

Roger Moore has established his own firm, Roger Moore & Associates Limited and can be found at County Court Chambers, Queen Street, Bridgwater, Somerset, TA6 3DA

Goudreau Gage Dubuc (member is **Chantal Desjardins**) have moved to 2000 McGill College, Suite 2200, Montreal, Quebec, H3A 3H3, Canada

John Reddington has moved from Jones Day to join Williams Powell at Morley House, 26-30 Holborn Viaduct, London, EC1A 2BP

Mario Soerensen Garcia, formerly with Di Blasi, Parente, Soerensen Garcia & Associados, has established a new firm, Soerensen Garcia Advogados Associados. He can be contacted at Av. Rio Branco 110, 11th andar Centro, Rio de Janeiro 20040-001, Brazil

Marius Jason is now with AAA Baltic Service Company - Law Firm of J. Jasinski 16B, Victoria building, PO Box 33, LT-01002 Vilnius, Lithuania

Dr Matthias Nobbe, formerly with Viering Jentschura & Partners, has established his own practice and can be contacted at Tilsiter Str. 86, 45470 Mulheim an der Ruhr, Germany

Korejzova & Co (member is Zdenka Korejzova) have moved offices to Korunni 104/E, 101 00 Prague, Czech Republic

Producta Ltd (member is **Davor Boskovic**) has moved offices to Zinke Kunc 3a, 10000 Zagreb, Croatia

Wayne Condon has moved from Clayton Utz to Griffith Hack at Level 3, 509 St Kilda Road, Melbourne 3004, Australia

Paul Steinhauer, formerly with Steinhauer Hoogenraad, has moved to SteinhauerHeeziusRijsdijk Advocaten at World Trade Center, Strawinskyaan 1347, PO Box 78042, 1070 LP Amsterdam, The Netherlands

Where are they now?

Copies of the last edition of *LL&P* addressed to the following members have been returned. Do you know where they are now? If so, please let me know.

Emma Cowley of SSL International, UK

Keith Widdowson of De La Rue, UK

K P Tomlin of Squibb, UK

Yves Plasseraud of Ernest Gutman - Yves Plasseraud SA, France

Margaret E Zdanowicz of Steifel Laboratories, UK

Sad news

Members will be sorry to learn of the recent death of **Jean Charrière**, a Past President of ECTA, at the age of 72. Jean Charrière was a founding member of ECTA and its original First Vice President. He served as President of the Association from 1984 to 1986. A most friendly man of considerable ability, charm and elegance, he will be greatly missed.

Members will also be sorry to hear of the death of **Robert Freitag**, Past President ECTA President 2000-2002. Robert was a founding partner of the German firm Freitag & Best. Jean and Robert were esteemed colleagues and PTMG extends condolences to Jean's and Robert's family and friends. Please see a fuller obituary for Robert below.

Changes to contact details

Please remember to let us know of any changes to your contact details. You can notify me either via the PTMG website www.ptmg.org or directly to Lesley@ptmg.org or by writing to me at Tillingbourne House, 115 Gregories Road, Beaconsfield, Bucks, HP9 1HZ

Lesley Edwards

PTMG Secretary

Dr. Robert Freitag (1938-2007)

Robert Freitag passed away on 21 November 2007.

Born in Vigo, Spain, he grew up in Barcelona before studying in Freiburg, Germany, from where he graduated in 1968. His roots were both Spanish/Catalan and German. In his mind he was a true European.

He commenced his career as an in-house lawyer for Hoechst AG in 1968, worked for the company for 30 years and was the head of its trade mark department from 1992 until 1998.

Renowned for his expertise, Robert Freitag was heavily involved in many organisations and served, among others, as industry representative at various national and international organisations such as GRUR (the German Association for the Protection of Intellectual Property), VFA (the German Association of Research-Based Pharmaceutical Companies), Markenverband (the German Association of Trademark Owners) and EFPIA (European Federation of Pharmaceutical Industries and Associations).

His particular "hobby" (as he used to put it) was his work with and for ECTA (European Communities Trade Mark Association) and the promotion of the European trade mark system. He became a member of the ECTA Council in 1990



and served as ECTA's Secretary General for eight years before he became ECTA President from 2000 until 2002.

In 1998 Robert Freitag co-founded the law firm of Freitag & Best and was a partner in this firm until his demise.

Robert Freitag's professional life was devoted to intellectual property and in particular to trade mark protection. His great knowledge, his practical sense and his personality as a very honest, straightforward man who was true to his principles but at the same time generous, of good humour and very sociable earned him respect and admiration.

Besides his many professional achievements Robert Freitag was always mainly a family man. His family was the focal point in his life. He is survived by his wife Sylvia and his three sons Robert, Richard and Rafael and their families.

Robert Freitag will be greatly missed by his many friends and colleagues.

Dr Michael Best

Trends, tricks and travails: negotiating RCDs in the pharmaceutical industry (Part I)

David Stone (Partner) and Lisa Ritchie (Associate), Howrey LLP, London

Since the introduction of the Registered Community Design (RCD) on 1 January 2003, almost 250,000 applications have been filed at OHIM. RCDs have been well utilised by the designers, manufacturers and marketers of many types of innovative products, including textiles, clothing, footwear, jewellery, toys, sports equipment, industrial equipment, vehicles, packaging for food and drink, domestic goods, electrical goods and furniture.

The flexible and inclusive nature of the types of designs that can be protected makes RCDs particularly attractive to rights owners. RCDs protect the

appearance of the whole or a part of a product resulting from its features (e.g. the lines, contours, colours, shape, texture or materials) or its ornamentation (e.g. packaging, trade dress, get-up, symbols, logos, icons and fonts).

As product innovators, pharmaceutical companies are increasingly realising the benefits of the RCD system and are taking advantage of it in creative ways. The first part of this article discusses some of the filing trends in the pharmaceutical industry and areas where pharmaceutical players could benefit from shifting their focus towards design rights. In the second part of this article (to be published in the next

edition of *Law Lore & Practice*) we turn to a discussion of design invalidity decisions and tips for obtaining a strong and enforceable registration.

Trends

As of December 2007, 287 RCD applications had been filed in Locarno Class 28.01 (capsules, tablets, pharmaceutical products etc.) and 4595 in Locarno Class 24 (medical, dental and surgical devices etc.).

The biggest RCD filers in the pharmaceutical industry by a wide margin are Procter & Gamble (2858) and GlaxoSmithKline (187). This could well be because they each have large consumer divisions: these types of products are highly 'design driven' as they strive to maintain edginess and freshness in a competitive and sometimes fickle market.

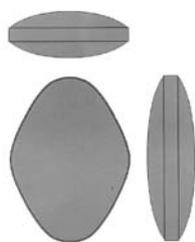
Product shapes

One of the primary benefits of RCDs is the ability to obtain protection for non-traditional signs that may be refused trade mark registration on absolute grounds for lack of distinctiveness. This can be particularly important for the shape of products (without additional identifying features such as logos, words etc), which are also refused registration on the grounds that the shape results from the nature of the goods, is necessary to obtain a technical result or adds substantial value to the goods. Indeed, Class 5 of OHIM's CTM online database is littered with shapes that have been refused on one or more of these grounds. Examples are shown above left.

If each of these shapes had been registered as an RCD, the owners would be afforded a measure of protection for up to 25 years, providing time to gather evidence of distinctiveness acquired through use so as to obtain trade mark registration (with unlimited duration!) at a later date. This can have very practical benefits: for example, an owner can notify customs of its registered rights and have them enforced at the border. RCDs are therefore an important weapon in the fight against counterfeiters, as it will usually be easier for busy customs officers to compare the RCD image to the product, than to be considering patent or other rights that may apply.

One area where this trend is particularly obvious is the registration of pill shapes and inhalers as RCDs. Bottom left are shown some examples of pharmaceutical companies taking advantage of the lower

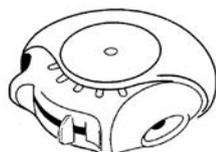
EXAMPLES OF PRODUCT SHAPES REJECTED AS TRADE MARKS



CTM no. 1352418 in the name of Pfizer Inc



CTM no. 3404878 in the name of Merck KGaA



CTM no. 2611002 in the name of Glaxo Group Limited

EXAMPLES OF PRODUCT SHAPES REGISTERED AS RCDs

Pfizer Inc.
RCD no. 17454
'Pharmaceutical product'



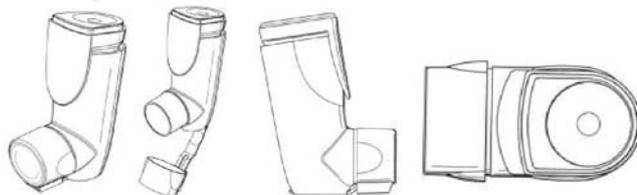
Novartis AG
RCD no. 76682
'Capsules, pharmaceutical'



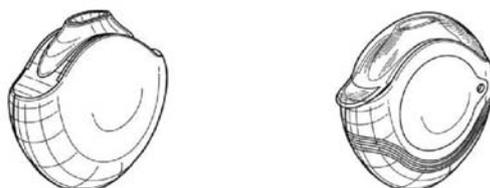
Merck & Co, Inc
RCD no. 566310
'Pharmaceutical tablets'



AstraZeneca AB
RCD no. 166137
'Inhalers'



Glaxo Group Limited
RCD no. 105044
'Inhalers, dispensing devices'



continued on the next page

registrability hurdles for RCDs in relation to product shapes.

Product packaging and logos

There are surprisingly few RCDs for the packaging of pharmaceutical products or pharmaceutical related logos. Examples are shown below.

This may be a consequence of the considerable amount of time that it takes for a new pharmaceutical product to pass through the clinical and regulatory phases before its packaging, name and branding are finalised and ready for launch on the market. Such product launches, while not

rare, are not an everyday occurrence: the 5 years that RCDs have been in existence may not be a sufficient period of time to gauge how the RCD system can best be utilised for packaging and logos. By way of example, GlaxoSmithKline is currently seeking European approval for its breast cancer treatment called TYKERB. A CTM registration has already been obtained for the name. Once the packaging and its associated branding are finalised for a European launch, there could well be benefits in filing for RCD protection in addition to the existing patent and trade mark protection.

The comparative lack of RCDs for packaging may also be explained by the fact that prescription only pharmaceutical products are generally targeted at medical professionals rather than directly to consumers. In such cases, the packaging may not be particularly design intensive or contain new or innovative aspects. Nevertheless, pharmaceutical companies should keep RCD protection in mind when the packaging of an existing product is redesigned, for example, because it is being 'switched' from prescription-only to over-the-counter and therefore needs to have consumer appeal. Similarly, when a corporate logo or product name logo is redesigned, those new rights can be registered as RCDs, usually as a complement to trade mark registration.

It is important to remember that the 'grace period clock' starts ticking when the design is first made available to the public, pretty much anywhere in the world. Rights holders have only 12 months in which to file an RCD application: not a long time in the sometimes slow moving world of pharmaceutical product approval. As we will examine in greater depth in the next issue, even a display at a convention in China has been held to be a relevant disclosure for the purposes of invalidity. In the closely monitored and highly competitive pharmaceutical industry, almost any disclosure is likely to start the grace period running.

It is not only new and innovative external packaging that can be protected by RCDs: equally important interior packaging designs can also be protected. AstraZeneca's 'Blisterpack' and Pfizer's 'Ornament for syringes intended for personal use' shown below left are examples.

Medical devices

It goes without saying that RCD protection sits alongside other forms of IP protection: it should form one arrow in a multifaceted quiver of IP protection of a product. Whereas a patent will protect a product's function, an RCD will protect what it looks like. For example, some of the RCDs for medical devices on page 8 are likely to be the subject of patent applications or registrations. Given the time that it takes for a patent to be registered, RCDs give the owner some almost immediate interim protection: RCDs will usually publish within one month of application. Given this rapid turnaround (which OHIM plans to reduce to two days!), rights owners are in a position to print RCD numbers on a product to discourage copying.

Containers and container parts

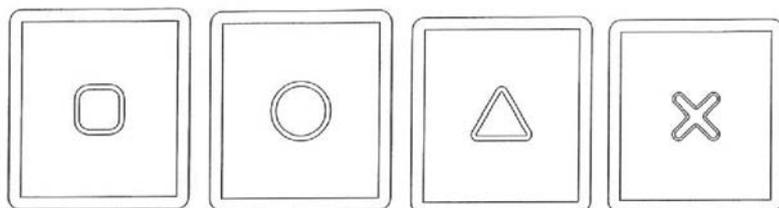
An RCD for a container that is not (yet) registrable as a trade mark can be a useful

EXAMPLES OF EXTERNAL PACKAGING



Hameln Pharmaceuticals gmbh
RCD no. 98280

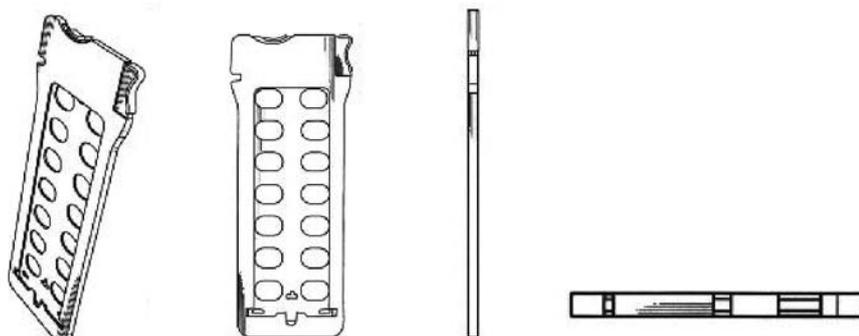
'Packaging for medicines'



Hisamitsu Pharmaceutical Co.
RCD no. 182159

'Boxes [packaging]'

EXAMPLES OF INTERNAL PACKAGING



AstraZeneca AB
RCD no. 400171

'Blister package, holders'



Pfizer Inc RCD no. 35233

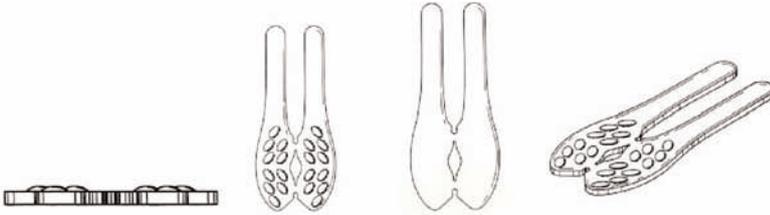
'Ornament for syringes intended for personal use'

EXAMPLES OF MEDICAL DEVICES



AstraZeneca AB
RCD no. 469762

'Devices for communication with voice-disabled persons'



The Procter & Gamble Company
RCD no. 29335

'Knee wraps'



Bayer Schering Pharma Oy
RCD no. 110333

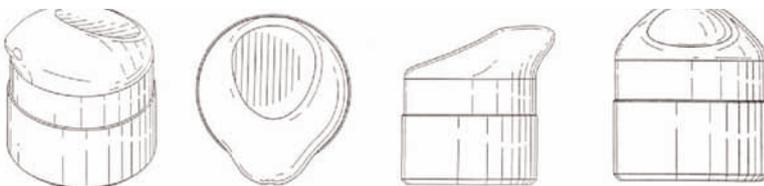
'Medical instruments [Hand operated]'

EXAMPLES OF CONTAINERS



Wyeth Corporation
RCD no. 195524

'Container'



The Procter & Gamble Company
RCD no. 55215

'Actuators'

tool. In a recent case, we used an RCD for the shape and colour of a bottle as one basis for alleging infringement (in addition to trade mark and copyright infringement) against a 'lookalike' product. The combination of the grounds sent a strong message to the infringer: undertakings to cease use and withdraw existing stock from the market were obtained.

Some examples of RCDs for containers and parts of containers are set out above.

One further benefit of the RCD system should be mentioned. It is possible to defer publication of a design for 30 months. Backdated protection is obtained while allowing a product to be developed in confidence and without giving competitors access to the information

from public records. AstraZeneca is one company that is taking particular advantage of this possibility.

Filing tips

Depending on your aims, different RCD filing strategies may be important:

- for faster moving goods, generic or supermarket look-alike products are likely to be a complex issue that trade mark law has struggled to deal with. RCDs may well assist if the look-alike creates the same overall impression on the informed user. To make life more difficult for the look-alike producer, consider filing a range of RCDs for the product packaging and the various draft packaging styles that were rejected. The look-alike producer will have a harder time coming up with something that doesn't create the same overall impression on the informed user as ANY of the filed designs;
- to make matters even harder, consider deferring publication of some of the RCD applications for the draft designs: the look-alike producer will not know of all the rights it is trying to get around;
- the Locarno Classification given to each application does not impact on the scope of protection: the RCD protects against use of the design in relation to any product. There is little to stop a rights owner from 'mis-filing' an RCD with an 'incorrect' Locarno Class if the rights owner doesn't wish the RCD to be found by copycats;
- RCDs are comparatively inexpensive – the filing fee falls to as little as 80 euro for the 11th or more design filed as part of one application. Many fashion industry companies are filing for the whole seasonal range and only renewing (after five years) those designs that have captured the public's imagination. There is no reason for pharmaceutical companies not to take this approach as well; and
- given the low cost, there are also benefits from doubling up protection where it is available, for example, filing for both an RCD and a CTM for logos. For product and packaging shapes, it would be best to file for the RCD at the same time as the CTM: by the time the CTM is finally rejected for lack of distinctiveness, it may be too late to file for a valid RCD.

We will turn to a discussion of design invalidity decisions and tips for obtaining a strong and enforceable registration in the next issue of *Law Lore & Practice*.

International Update

Asia : Launch of .asia sunrise period

Tom Priem, Rouse & Co. International, Oxford

October saw the launch of the second sunrise period for the .asia top level domain, during which registered trade mark owners can register their marks as domain names before others compete to do so. The trade mark relied on need not be registered within Asia, but at least one of the contacts associated with the domain name must be a legal entity in the 'Dot Asia' community.

The second sunrise period has been split into three categories:

- Sunrise 2(a) (9 October – 30 October 2007) for applications based on trade mark registrations applied for before 16 March 2004
- Sunrise 2(b) (13 November 2007– 31 January 2008) for applications based on trade mark registrations applied for before 6 December 2006
- Sunrise 2(c) (13 November 2007– 31 January 2008) for applications for domain names made up of the registered mark plus an additional term from the Nice Classification.

Within these sunrise periods, domain names will not be allocated on a first come first served basis. Where identical applications are made by different applicants, the domain name will be auctioned and allocated to the highest bidder. It remains to be seen whether allocation on this basis is a successful means of remedy for competing proprietors.

Canada: Health Canada to take a more interventionist approach to trade marks

Annie Cormier, Goudreau Gage Dubuc, Montreal

More than a year ago, the federal department Health Canada released guidelines entitled *Drug Name Review: Look-Alike Sound-Alike (LA/SA) Health Product Names* which describes how it will more effectively control the risk of medical errors related to health products. According to Health Canada, a significant percentage of medical errors stems from confusion between trade marks having orthographic or phonetic similarities with other marks or with generic names. Medical errors have also been noted when different products containing different medicinal ingredients are marketed under the same mark.

The guidelines currently apply to biologicals and to prescription drugs for human use in the pre-marketing stage. Its application will eventually be extended to over-the-counter drugs, natural health

products, veterinary drugs and medical devices. Health Canada also intends to release guidelines enabling it to intervene if a risk of confusion arises following market entry of a health product.

Health Canada now evaluates the similarity between proposed marks and marks currently on the market (or pending approval), as well as their resemblance to generic names. In order to assess whether the similarity could pose a health risk, Health Canada considers in particular the sales conditions (whether by prescription or over-the-counter), the clinical use and distribution conditions (through hospitals, clinics or pharmacies), the concentration, dosage, administration forms and the targeted patient.

When developing a branding strategy for health products, the following should be avoided:

- abbreviations, prefixes and/or suffixes present in marks for products which are unrelated and do not comprise the same active ingredients;
- letter or number qualifiers without clear justifications. If qualifiers must be used, it is recommended that an effective justification be provided, for example, IV for 'intravenous';
- marks that are similar to generic names;
- when a drug product line is extended, adopting a suffix or prefix which associates the new product with the original where the new product comprises different medicinal ingredients; and
- similar names for health products with differing dosage and administration forms.

Health product manufacturers are encouraged to contact a trade mark agent to establish a trade mark search strategy tailored to their needs, before filing their notice of compliance with Health Canada.

China: Developments in awards of damages

August Zhang, Rouse & Co. International, Beijing

The often minimal damages awarded by Chinese courts have long been considered as one of the major weaknesses of Chinese IP civil litigation. This problem results in part from the fact that a large number of infringing companies do not maintain proper accounts, making it difficult to discover the true profit from the infringement and thus appropriate damages. In most IP civil cases, plaintiffs must rely on statutory damages, for which the maximum award is RMB 500,000 (approximately USD \$66,666).

Recent judgments have demonstrated that, if reliable accounts establishing the illegal profit can be procured from defendants, the courts will be willing to award appropriate damages. Interestingly, defendants who are making this possible are foreign companies in China which tend to have better accounting practices. This diligence turns out to be most helpful to Chinese plaintiffs who claim large damages.

The most recent civil judgment involving large damages in a case of IP infringement was made by the Wenzhou Intermediate People's Court of Zhejiang Province on 29 September 2007. The defendant, Tianjin Schneider Electric Co Ltd, was ordered to pay landmark damages of RMB 330 million (approximately USD \$44 million) to the Chinese plaintiff, Chint Group Co Ltd, for infringing Chint's utility model for circuit breakers. The calculation of damages was based on audit reports that Schneider had submitted to the Tax Bureau which indicated sales of RMB 883.6 million (approximately USD \$117 million).

The Zhejiang Higher People's Court issued a similar judgment on 24 May 2007 in *Zhejiang LAN YE Wine Co Ltd v Shanghai Pepsi Drinks Co Ltd*. The court ruled against Pepsi for its infringement of Chinese company LAN YE's registered trade mark BLUE STORM. The court awarded damages of RMB 3 million (approximately USD \$400,000). Despite a lack of specific evidence establishing an accurate figure for the profit that Pepsi made by using the mark, the court considered that the defendant would have earned a large profit from the promotion based on an auditor's report of the accounts filed by Pepsi with the Shanghai AIC.

The reported judgments show interesting developments in the Chinese courts' willingness to grant significant damages in IP infringement cases. However, it will remain a real challenge for plaintiffs to prove the profits accrued from the infringement in the majority of cases if defendants are able to continue their lax accounting practices.

Croatia: IP rights become easier to enforce at customs

Anamarija Stancic, SD Petosevic, Croatia

The Government of the Republic of Croatia has adopted a new regulation amending the current regulation on customs measures for goods suspected to infringe certain intellectual property rights.

Most importantly, the amendments implement:

- a new rule that customs measures providing protection for IP rights now also apply to goods circulated by post;

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- a simplified procedure for destruction of infringing goods.

Customs measures for the protection of IP rights now apply to all shipments (irrespective of the value and quantity of goods). This is particularly important considering a recent widespread practice in Croatia of purchasing goods via the internet.

There is now a simplified procedure for the destruction of infringing goods. The IP rights holder can submit the request for the destruction of detained goods which are under customs surveillance without an obligation to establish beforehand whether the detained goods infringe the IP right under the valid provisions of the applicable law. This can also be done without the provisional consent of a declarant, holder or owner of the alleged counterfeit goods.

This is a very important change. Prior to this amendment, goods in transit found and detained by customs could not be destroyed until the final court decision. This was often a difficult decision to obtain because of the laborious process of identifying foreign consignees and consignors and contacting all parties in the procedure.

Therefore, the amended provisions of the new regulation make it easier for IP rights holders to enforce their rights in Croatia.

EU: The visual overall impression comparison of marks

S  verine Redon, Inlex, Paris

On 20 September 2007, the European Court of Justice reversed a decision of the Court of First Instance which upheld an opposition of Quick Restaurants based on the prior mark QUICKIES against Nestle's later application for QUICKY & Device.

The CFI did not base its comparison on a visual overall impression of the marks. Rather, it considered that verbal elements are more distinctive than devices: therefore, even where a device element and word element are of equivalent size, the device element will not render the verbal element insignificant.

The ECJ criticised this analysis: just because the verbal element is not insignificant and the device element is not dominant this does not mean that the verbal element is dominant and that the device element is insignificant.

By two decisions of 20 February 2007 (*LEONIDAS & Device / BELIDAS; CHATEAU RAUZAN DESPAGNE / CHATEAU RAUZAN GASSIES*), the French Supreme Court reversed decisions on the same basis: the courts of appeal did not examine why the less important elements were not significant.

When comparing complex trade marks, a single element cannot be isolated. To be

considered dominant, an element must dominate in the overall impression and overpower all other insignificant elements.

Kosovo: Revalidation process to begin

Ignacio Lazaro, SD PETOSEVIC, Brussels

The Kosovo PTO is expected to open by the end of 2007. Heavy backlog is expected at the Serbian PTO due to revalidation requests that will pour in as soon as the Kosovo PTO begins to operate. Preparatory steps should be taken by rights owners and all necessary paperwork gathered immediately.

Revalidation requests should include the list of Serbian applications and registrations to be revalidated. Based on the list, certified copies of registration certificates will be issued by the Serbian PTO. These certificates are necessary to obtain revalidations in Kosovo.

The revalidation period will last 12 months from the date that the Kosovo PTO starts to operate.

Malaysia: Specialised IP courts established

Siew Ling, Tay & Partners, Kuala Lumpur

There was a lot of excitement recently in Malaysia over the much anticipated and publicised establishment of the IP court system, which was officially launched on 17 July 2007. There will be 21 IP courts in total, comprising 15 Sessions Courts with criminal jurisdiction (1 in each state, including Putrajaya) and 6 High Courts with civil and appellate jurisdictions. The High Courts will be established in the six states which have the highest number of IP infringement cases (Kuala Lumpur, Selangor, Johor, Perak, Sabah and Sarawak). The courts will handle cases under the Trade Description Act 1972 (administrative remedy for trade mark infringement and passing off), Patents Act 1983, Copyright Act 1987 and Optical Disc Act 2000, amongst others.

The new Kuala Lumpur IP High Court has already been designated: all pending and new cases involving IP disputes are being heard by the court. The Kuala Lumpur Sessions Court (a subordinate court), which was specifically designated as a test IP court in 1 January 2006, continues to hear criminal IP cases.

The establishment of IP courts was spurred by delays and a massive backlog of IP cases caused by the court's lack of priority of, and specialisation in, IP matters. The government's commitment towards better protection of IP rights is reflected in the announcement made by the Prime Minister in April this year on the allocation of RM 5 billion for the protection of IP, part of which has been utilised to set up IP courts.

Montenegro: Decree published on intellectual property rights

Mihajlo Zatezalo, SD PETOSEVIC, Belgrade

The Montenegro Decree on IP rights was published on 12 October 2007 in the Official Gazette No. 61 and came into force on 20 October 2007.

The Decree regulates IP rights in Montenegro after its separation from the Union of Serbia and Montenegro on 3 June 2006.

The most important provision in the Decree is the call for an automatic validity of Serbian IP rights in Montenegro. IP owners will have the option of filing requests for new certificates of registration confirming their rights in Montenegro. A proof of their Serbian rights and payment of an applicable fee is required.

The Decree also provides as follows:

- 'IP rights' are defined as the rights that were granted and registered under the relevant laws and international conventions which were applicable in the territory that is today the Republic of Montenegro (predecessor state rights);
- IP rights will continue to be automatically valid in Montenegro as they existed on 3 June 2006, when Montenegro became independent. They will be valid until their expiration, renewal or next annuity date. Consequently, existing IP rights will have to be maintained separately in Montenegro, once renewal and annuity fees become due;
- IP rights granted and registered before the Serbian PTO between 3 June 2006 and the date when the PTO in Montenegro officially starts to operate (date to be confirmed), will also automatically be valid in Montenegro until their expiration, renewal or next annuity date;
- pending applications for IP rights will keep their priority and may be continued in Montenegro upon completing a 're-filing' procedure. The time frame for completing the 're-filing' procedure is 6 months from the date that the Montenegrin PTO officially starts to operate;
- International Registrations (IRs) under the Madrid system will be subject to Rule 39 of the Common Regulations. WIPO has started to inform IR owners of the possibility of continuation of effect to Montenegro within the prescribed time limits;
- IRs extended to Serbia after 3 June 2006 and before 4 December 2006 (when Montenegro signed the Agreement and the Protocol) must be

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re-registered in Montenegro in order to preserve Serbian priority. A WIPO certificate must be submitted to the Montenegrin PTO. The fees for this service have not yet been announced;

- analogue rules will be applicable to industrial design rights under the Hague Agreement;
- European patents and PCT based patents granted in Serbia and Montenegro before 3 June 2006 will automatically continue to be valid in Montenegro until the first upcoming annuity due in Montenegro for a separate annuity fee;
- EU patents valid in Serbia & Montenegro or the Republic of Serbia registered on the basis of an EP application filed on or after 3 June 2006 will continue to be valid in Montenegro until the next annuity is due in Montenegro. When the Cooperation Agreement between Montenegro and the European Patent Office comes into force, different rules will apply. It is still unknown when the Cooperation Agreement will be signed; and
- IP owners have the right to request a Montenegrin certificate (trade mark certificate, patent certificate etc.) from the Montenegrin PTO upon submitting proof of exact contents and validity.

Taiwan: Reverse confusion of trade marks

Ruey-Sen Tsai, Lee and Li, Taipei

If a junior trade mark (a later used or registered mark) that is identical or similar to a senior mark (an earlier used or registered mark) is used on the same or similar goods or services as the senior mark, and if such use is likely to dilute the distinctiveness of the senior mark or to lead to confusion, then registration of the junior mark is likely not to be granted and its use may constitute trade mark infringement. However, if the junior mark is better known than the senior mark, its use may give rise to 'reverse confusion' between the trade marks: a mistaken belief among consumers that the goods or services of the senior user originate from the junior user. The issues of whether, in such cases, registration of the junior mark should be granted and whether its use avoids infringement of the senior mark is highly disputed in theory and in practice.

The Taipei High Administrative Court recently held that reverse confusion is not a reason for granting registration to a later trade mark application and that use of a junior mark in these circumstances is likely to constitute trade mark infringement. The court's reasoning was

that in these circumstances, the senior mark owner is generally in a weaker position in the marketplace, whereas the junior mark owner is in a dominant position or is extremely well known. This being so, the junior owner's use of the junior mark may create a false impression among consumers that the junior owner is the source of the goods or services supplied by the senior owner. Although the junior owner is not attempting to take unfair advantage of the senior owner's commercial reputation, such an impression will cause the senior mark to lose its value and will impact its ability to penetrate the market.

It remains to be seen whether the Taipei High Administrative Court's approach on reverse confusion will affect the outcome of future trade mark infringement litigation.

Taiwan: Use of market research as evidence in trade mark disputes

Ruey-Sen Tsai, Lee and Li, Taipei

The Trademark Act provides that an opponent or trade mark owner may present a market research report as evidence in a trade mark opposition. The Main Points for Determining a Well-Known Mark incorporated into the Act also provide that a market research report may be used to determine whether a trade mark is well known. Neither the Act nor the Main Points specifically define the required methods and content of such market research: there has therefore been much disagreement about the issue in practice.

In a 2004 trade mark opposition case, the Supreme Administrative Court held that a market research report must meet the usual conditions for admissibility of evidence and be free of defects. If the geographical area sampled or the population targeted was inappropriate, then the research report would be defective and could not be adopted as evidence.

The Taipei High Administrative Court recently held that the reliability of a market research report would be affected by whether it was impartial and objective in terms of the credibility of the organisation conducting the research (the length of time it had been engaged in market research, the quantity of such research and the research reports it had previously produced etc), the research methods used (survey duration, survey methods, geographical area of survey, target population, sampling method, size of sampled population, sample size etc), the design of the questionnaire (whether it is appropriate for the intended purpose) and the relevance of the content to the conclusions (ie. there should objectively be an adequate causal relationship between the conclusions, the intended

purpose of the research and the facts at issue).

In that case, the Taipei High Administrative Court held that the content of the survey questionnaire used by the plaintiff was one sided and unilaterally designed by the plaintiff, which cast doubt on its impartiality. Furthermore, the research methods, choice of population and sampling method were unclear. Apart from a very small number of relevant consumers, there was no evidence to demonstrate that the population targeted by the survey included relevant enterprises. The choice of locations at which the survey was conducted was not objective: it was largely concentrated on hospitals, elementary schools and railway stations and the reliability of the research was therefore open to doubt.

United Arab Emirates (Dubai): Customs records and pharmaceutical seizures

Sinead Boden, Rouse & Co. International, Dubai

In October 2006, Dubai customs issued a notice stating that it would begin accepting records of registered trade marks. One year later, records have been proceeding relatively smoothly and customs has been notifying brand owners of suspect shipments. However, short time frames to file complaints and lack of access to information about the shipment have proved problematic in some instances.

There are challenges for customs and brand owners alike: as the volume of trade through Dubai's ports increases, the more difficult it will become for customs to police such trade.

Notwithstanding such challenges, customs are taking positive steps in supporting brand owners and have made a number of recent high profile pharmaceutical seizures this year. For example, in July, customs seized AED 5 million worth of pharmaceuticals from two containers imported from Mauritius. In August, 1500kg of fake VIAGRA was seized at Dubai airport by drug control officials in coordination with customs. In September, there was a large seizure of 5 million counterfeit pharmaceutical products valued at AED 20million.

ERRATUM!

The words ALREX / ARTEX in paragraphs 3 and 9 of the article 'EU:

The average consumer for pharmaceutical products' in the July 2007 issue of *Law Lore & Practice* should have read TRIVASTAN / TRAVATAN.

PROFILE: Seija Saaristo

Seija became acquainted with intellectual property in 1966. She worked in the field of IP for almost 30 years before starting her own firm. This was a 'bunji jump' into the future for Seija, hence the firm's name Benjon. Based in Finland, Benjon now employs a staff of twenty, including seven lawyers; two trade mark attorneys and two trade mark administrators. Seija is the acting Managing Director. Benjon provides its clients with advice regarding all aspects of IP, including trade mark law, copyright law, domain names and IPR enforcement.

Where were you brought up and educated?

I am a country girl, born and raised in southern Finland. I graduated from high school in Kokemäki. I studied business management and marketing at a commercial college. It was there that I realised the importance of putting study in practice. The numbers started to live.

How did you become involved in trade marks?

Small things in life can sometimes make a big difference. I was staying in Oxford in 1960s when my mother sent me a copy of an advertisement for a position in the trade mark department of a patent agency in Helsinki. I must admit that I had absolutely no clue about patents or trade marks at that time – now I have a bit more – but decided to give that intriguing world of IP a shot. I am glad I did!

What would you have done if you hadn't become involved in IP?

I have always had the greatest admiration for people, who can create immortal and unforgettable works: artists. My – oh so modest – photographic hobby is perhaps a reflection of my admiration of the arts.

Which three words would you use to describe yourself?

Energetic, positive and imaginative.

What's the best thing about your job?

At the present, about 80 percent of my time is spent on administrative matters. What I find to be the most delightful aspect of my work is the interaction with clients and our staff and their lively imagination in creating new methods, ideas and services for our clients.

What is your favourite work of art?

Statues, both small and big. That is probably one of the main reasons that I love Paris, Rome and Florence.

What do you dream of?

I must admit that I do not spend a lot of

time daydreaming. Rather, I try to live each day as though it is the best day of my life.

What do you wish more people would take notice of?

I wish people would take more notice of each other and of nature.

What is the most surprising thing that ever happened to you?

I won the darts contest at the PTMG conference in Budapest!! I, who has never before thrown a dart! Perhaps it was the pressure of the moment that brought out the best in me, who knows.

What is your philosophy in a nutshell?

Live and let others live.

What car do you drive?

I recently bought perhaps one of the smallest cars on the market, namely a Citroën C1. It is only 3.5 metres long. The reason is simple: Southern Helsinki is one of the hardest places in Finland to find parking space!

Whom do you most admire and why?

I admire regular people, who have a big heart and know their responsibilities towards other people, their country and nature. Of famous people, I would name Mother Teresa and Al Gore.

Which music recording would you take with you to a desert island?

A complete collection of Elvis Presley's music.

How do you relax?

I go out to nature with my dog Mini. Hiking in Lapland is so close to my heart. The deep stillness is just amazing. No schedules, no rules, no rush, nothing.

What is your favourite item of jewellery?

A necklace made of lava pearls and a rose made of corals and gemstones. It is not



the price that is important, but the soul of the bijou.

Where do you see yourself in 10 years time?

Playing with my grandchildren (hurry up, sons!). I could also see myself starting a kennel of beautiful Portuguese Podengos, like Mini.

If you could save only three things from your burning home, what would they be?

Negatives of my photos (including those taken at PTMG meetings!), my elephant ring (it brings me luck) and my computer (so many important things stored in there). However, if a dog can be counted as a 'thing', I would drop everything else and grab Mini to safety!

What is your favourite mode of transport and why?

Trains. I enjoy the peaceful and smooth travel and the fact that someone else is doing all the driving. In my youth in 1970s, I was a rally co-driver, so believe me, I have good reason to pick the most peaceful and smooth mode of transport available!

What is the best invention ever?

The mobile phone.

What do you like, even though it is not fashionable?

Funny, inexpensive and kitsch decorations, as long as they bring joy and good memories, ideas from the past and an outlook for the future – regardless of current fashion. I feel that we should not be prisoners of the demands of the era, but we should instead be able to freely express our joy with small and big things when decorating. When all other explanations fail, you can always say that the horribly lovely thing is an heirloom from your eccentric but lovable late aunt Henrietta.

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