



e-News

No.21

November 2011

International Association for the Protection of Intellectual Property
AIPPI General Secretariat | Toedistrasse 16 | P. O. Box | CH-8027 Zurich
Tel. +41 44 280 58 80 | Fax +41 44 280 58 85
enews@aippi.org | www.aippi.org

(Article by Peter-Ulrik Plesner, Plesner law firm, Copenhagen, Denmark)

BUDDHA-BAR mark in breach of Switzerland's morality

After the *IPhone* (Case B-6430/2008) and the *Madonna* (Case 4A_302/2010) cases, another decision sheds light on the restrictive approach adopted by the Swiss courts regarding absolute grounds of exclusion of trademarks.

On December 9, 2010, the Swiss Federal Administrative Court (the "Court") upheld a decision to refuse the registration of the BUDDHA-BAR Swiss trademark in classes 9 and 41, on the ground that it could hurt the religious feelings of the Swiss Buddhist community (Case B-438/2010).

(Article by Thomas Widmer, LALIVE, Geneva, Switzerland)

The New U.S. Patent Law

After two decades of debate, the U.S. is moving to a first inventor to file system, and will abandon its long standing first to invent standard. A new law called the "America Invents Act" or AIA, was signed into law on September 16, 2011. Some provisions were immediately effective, but most will not become effective for one year to 18 months after signing. Among the notable changes is the introduction of a post grant opposition system, a revised inter partes review system and a supplemental examination system that is intended to reduce the number of claims of inequitable conduct during litigation.

(Article by Joshua Goldberg, United States Group Reporter)

The Pirate Bay case and implications of AIPPI membership for judges

The impartiality of judges comes increasingly into question: is it merely a tactic by parties to prolong hopeless litigation or is there a more serious issue to be considered. Should some global standards be set? In Sweden recently, in the Pirate Bay case, judges' engagements in copyright related associations did not disqualify them but the case raises interesting issues.

(Article by Jonas Westerberg and Hanna Tilus, Advokatfirman Lindahl KB, Stockholm, Sweden)

Feedback

Any comments you have as members are invited and welcomed. Please let us have your input on this e-News or on anything relating to AIPPI by e-mail to enews@aippi.org.

Your contribution please!

Readers of this e-News are encouraged to provide us with their contributions for our future editions. Articles should comply with our current [editorial policy and guidelines](#).



International Association for the Protection of Intellectual Property

AIPPI General Secretariat | Toedistrasse 16 | P.O.Box | CH-8027 Zurich
Tel. +41 44 280 58 80 | Fax +41 44 280 58 85
enews@aippi.org | www.aippi.org

BUDDHA-BAR mark in breach of Switzerland's morality

Thomas Widmer, LALIVE, Geneva, Switzerland

The Court's reasoning can be summarized as follows: First, as a rule, the mere choice of a religious sign for commercial purposes is considered as immoral. There is, therefore, no need that the sign be offensive per se, like Anti-Christ or Mohammed for alcoholic beverages for instance. This ruling is similar to the UK *Jesus* case ([2005] R.P.C. 25).

Second, all religions deserve protection, regardless of their quantitative representation in Switzerland. The fact that Buddhists represent less than 1% of the Swiss population is therefore not relevant.

In contrast, OHIM has held that only signs which offend the religious sensitivities of a *substantial group* of the population are best kept off the register (*Screw You*, R495/2005-G).

Third, the assessment must be made by reference to the standards and values of moderate followers of the religion in question. The *Madonna* case provided some guidance in this respect: religious figures can be registered if their religious connotations have been "diluted" by frequent use, as names; the comparison between the *Madonna* (refused) and the *Christ* (accepted) trademarks was indeed found inconclusive because *Christ* was a family name which was "*much more frequently encountered than Madonna*".

Fourth, the Court held that compliance with *bonos mores* did not depend on the products/services. It was, therefore, likely that a trademark which was considered to be sexually offensive, would be refused registration in Switzerland for all products and services, including, for example, the ones sold in sex-shops.. OHIM espoused a different position in the *Screw You* case, where it allowed the registration of the *Screw You* trademark as regards sex toys.

Finally, the Court held that religious signs which are, *prima facie*, considered as immoral, can, nevertheless, be registered: (i) for products/services which are clearly linked to religion; or, (ii) if they are generally perceived as neutral by consumers, the Court mentioning the "*historical use of names of saints in relation with alcoholic beverages*" as an example.

To conclude, immoral trademarks may be denied registration under the Paris Convention. However, national sensibilities are sometimes unpredictable; for instance, the extension of the *Jesus* IR trademark has been refused as being "contrary to religion" in...Cuba, home of Fidel Castro who, for having suppressed Catholic institutions in Cuba, was excommunicated. An attempt at redemption?