

Artist Takes No Bull

Arturo Di Modica, creator of New York City's famous *Charging Bull* sculpture, is suing at least 10 companies in Manhattan US District Court, including Wal-Mart Stores, North Fork Bancorp, Art.com, and S.G. Martin Securities, for copyright infringement, alleging that the defendants are selling unauthorized photographs and lithographs of the sculpture or using images of it in advertising without his permission. The copyright was registered in 1998.

The snorting, pavement-pawing, 11-foot-tall, 7,000-pound bronze bull took two years and over \$350,000 of the artist's own funds to complete. The sculpture was introduced in 1989, and has since become one of the world's best-known symbols of American capitalism and one of the biggest tourist draws in the financial district. Di Modica has received a fee in the past from film and television companies when he has authorized them to use the bull in motion pictures and television shows.

The sculptor is seeking an unspecified award of damages and part of the profits that resulted from the sales, as well as a court order to block continued use of the sculpture and its image.

Trademark Dilution Revision Act of 2006 ready for Bush to sign

What has previously been a muddled area of trademark law may get some clarity when, as expected, President Bush signs H.R. 683, known as the *Trademark Dilution Revision Act of 2006*. This act sets the standard of proof in dilution claims as "likelihood of dilution," and not actual dilution. The Act provides for injunctive relief for famous marks when a likelihood of dilution by blurring or by tarnishment exists, regardless of the actual or likely confusion, competition, or economic injury. 'Dilution by blurring' is association arising from the similarity between a mark or trade name and a famous mark that impairs the distinctiveness of the famous mark. 'Dilution by tarnishment' is association arising from the similarity between a mark or trade name and a famous mark that harms the reputation of the famous mark. Additional remedies, along with fair use and other exclusions may also be available.

DARJEELING No Ordinary Cup of Tea

In *Tea Board of India v The Republic of Tea, Inc.*, (opposition No. 91118587), a citable TTAB precedent, the Board set out certain standards concerning the degree of control that the owner of a certification mark (and mark owners in general) must exercise in order to maintain their rights.

Applicant sought to register DARJEELING NOUVEAU for tea ("DARJEELING" disclaimed) and was opposed by owner of the certifications marks DARJEELING and DARJEELING & Device. Applicant had argued that registrant had lost control of its mark so that it had become generic, and pointed to numerous instances of third party misuse. The board noted that "*the statute does not define control or indicate the degree of control required, but it is clear that absolute control would be impractical, if not impossible...The owner of a mark is not required to constantly monitor every nook and cranny of the entire nation and to fire both barrels of his shotgun instantly upon spotting a possible infringer...The question is whether the control is adequate...the owner must take reasonable steps... to prevent the public from being misled...Even if control is not maintained and misuse occurs, it must be shown that the misuse was of such significance to permit an inference that the mark is generic.*" Finding that the registrant had indeed taken action upon learning of misuse and had upgraded its monitoring program to prevent misuse, the Board found that applicant's evidence did not support a finding that registrant had lost control of its mark.

Patent Reform Legislation Likely Delayed

Patent Law Reform and proposed changes to the USPTO rules and regulations have been a hot topic in the IP field for at least the last year. Both the House (H.R. 2795) and Senate have taken up different bills to enact legislation for patent reform. On September 19, 2006, the Senate's Hatch-Leahy patent reform bill (S. 3818) was placed on the Senate Judiciary Committee's agenda. Legislative news services report that the Senate bill might be taken up by the committee in the week of October 2, but most observers believe the committee likely will not reach the subject of patent reform before the Congress recesses on October 6 for the November election. Even if Congress takes up patent reform legislation during the "lame duck" session following the election, the general expectation is that no patent reform legislation will be signed this year. The implementation of changes to USPTO rules and regulations is also not assured, as the proposed rules have come under fire from the patent bar and industry.