

# To the point

## Legislation, cases and news

### South Africa

- The Consumer Protection Act 68 of 2008 Act was gazetted on 29 April 2009. The transitional provisions of the Act provide an interim period before the Act becomes fully operational on 29 October 2010. Several statutory bodies will have to be in place; in particular a National Consumer Commission must be established within the next 12 months, which would then be responsible for implementing and enforcing the Act. Further, the Minister of Trade and Industry must publish all the required regulations within the next 12 months. The Act is designed to promote a fair and sustainable marketplace for consumer products and services, to prohibit certain unfair marketing and business practices and to promote responsible consumer behaviour.
- In the case of *D Feldman NO v EMI Music SA (Pty) Ltd / EMI Music Publishing SA (Pty) Ltd ZASCA 75* (1 June 2009), the Supreme Court of Appeal confirmed that a co-owner of a work of joint authorship may not claim full damages for copyright infringement of such a work to the exclusion of the other co-owners, without setting out a basis upon which he claims to be so entitled. The court ruled against David Feldman, in his capacity as executor of the deceased estate of the well-known singer Brenda Fassie, in two actions for copyright infringement. Mr Feldman was claiming damages for the copyright infringement of a number of musical works on which the late Ms Fassie collaborated with others to compose, claiming that the deceased had joint ownership of the copyright in the said works.

### South African IP Calendar

- Bio2Biz 2009 and the South African Society Association of Microbiology:  
21 – 23 September 2009  
(Call +27 (0)31 261 6427)
- IP Africa:  
30 September - 1 October 2009  
(Call +27 (0)11 835 1565)

### Madrid

- The number of international registrations of trade marks through the Madrid system recently reached the 1 million mark when Austrian company Grüne Erde registered its trade mark in May 2009. The first international trade mark was registered in 1893 by Swiss chocolate-maker Russ-Suchard & Company; 93 years later, the 500 000th trade mark was registered in 1986 by Sandoz AG of Switzerland (now owned by BASF SE of Germany). The 750 000th mark was registered 15 years later in 2001 by microTec Gesellschaft für Mikrotechnologie mbH of Germany. The 900 000th international trade mark was registered five years later in 2006 by a Chinese company, Chaozhou Fengxi Jinbaichuan Porcelain Crafts Factory, with the millionth mark registered just three years later.

### United Kingdom

- The Intellectual Property Office is sponsoring an exhibition titled "Wallace and Gromit Present a World of Cracking Ideas"; the exhibition started on 28 March and ends on 1 November.




## European Union

- A much publicised and long-running European trade mark dispute between Waterford Wedgwood PLC (the Irish maker of luxury glassware and china) and Assembled Investments (Pty) (Ltd) (South African wine maker in the district of Stellenbosch since 1998) finally reached its maturity on 7 May 2009 in a significant judgement by the European Court of Justice (ECJ). The ECJ ruled in favour of Assembled Investments in a trade mark opposition matter, granting them the right to use the name WATERFORD for wines in the European Union. This case should provide guidance for South African courts adjudicating on a trade mark opposition or infringement case from the position of complementary goods.
- As from 1 May, the Trade Marks and Design Registration Office of the European Union instituted a reduced fee structure for the registration of a community trade mark (CTM) covering the European Union. The cost has been reduced by 40%.

## USA

- The US Supreme Court agreed, on 1 June, to hear arguments in *Bilski v Doll* to review the Federal Circuit decision. The Supreme Court will deal with two questions: firstly, does the Federal Circuit's decision conflict with the Supreme Court's decision in *Diamond v Diehr*, where the court held that the only non-patentable subject matter is "laws of nature, physical phenomena and abstract ideas;" and secondly, does the "machine-or-transformation" test conflict with the US Congress's intent that business methods are patentable?
- With regard to *Spirits International, N.V.* the US Court of Appeals for the Federal Circuit has clarified the application of the doctrine of foreign equivalents in determining whether a mark is geographically deceptively misdescriptive. The court also held that the appropriate inquiry for materiality is whether a substantial portion of the relevant

consumers are likely to be deceived and not whether any absolute number or particular segment of the relevant consumers (for example foreign-language speakers) is likely to be deceived.

- The US Trademark Trial and Appeal Board in *Bayer Consumer Care AG v Belmora LLC*, Cancellation No 92047741, held that there is no famous marks doctrine in the US.

## People's Republic of China

- The Supreme People's Court circulated the "Interpretation on the Application of the Law Concerning Several Issues Regarding the Trials of Civil Disputes Relating to the Protection of Famous Trade Marks" in April. This provides clarity on the position of "famous trade marks" in China.

## Japan

- The Japan Patent Office started the Patent Prosecution Highway (PPH) pilot programme with the Federal Service for Intellectual Property, Patents & Trade Marks of Russia in May. The PPH enables an application whose claims have been determined to be patentable in the Office of First Filing (OFF) to undergo an accelerated examination in the Office of Second Filing (OSF) with a simple procedure on request from an applicant.

## Taiwan and Korea

- Both Taiwan and Korea recently passed laws aimed at cracking down on online copyright violations.



*Willy*



## India

- The Bombay High Court has ruled on copyright in drawings in the recent case of Indiana Gratings Private Limited & Anr v Anand Udyog Fabricators Private Limited & Ors. The judgment, simply stated, was that the use of Indiana Gratings' drawings would infringe the copyright in their drawings. Also, the making of any 3-D articles of machine parts amounting to the reproduction of Indiana Gratings' drawings would also infringe on the copyright in Indiana Gratings' drawings.
- The Controller General of Patents, Designs and Trade Marks has called for strict compliance of legal formalities in prosecution of all IP applications. IP officials are now required to ensure the bona fides of the persons who prosecute the applications before processing. This is at least to curtail various IP applications being prosecuted by people who are not duly authorised to do so.

