

IPeople[®]News

Vol. 1 (Jan-Mac'09)

CONTENT

What is in This Issue?

- Wal Mart faces Infringement issues
- Does toothbrush design really matters?
- Patent Application Trends in Malaysia
- Malaysian Franchise Growth despite economic turmoil
- Franchising Recession proof?
- 5 Tips on Good Business Signage
- 7 Good Reasons to Protect your Brand
- Tips on developing sound Business Plan

THE INTELLECT GROUP OF IP COMPANIES



Intellect Worldwide Sdn Bhd
(420074-T)
Intellect Franchising Sdn Bhd
(755193-A)
Intellect Worldwide (S) Pte Ltd
(726078-D)
International Brands Standards Sdn Bhd
(200803819D)

Penang
3, 02 Menara Boustead Penang,
39, Jalan Sultan Ahmad Shah, 10050 Penang
T. 04-229 1100 F. 04- 227 1100

Kuala Lumpur
Suite 13A-06, Wisma MCA,
163, Jalan Ampang, 50450 Kuala Lumpur
T.03-2161 7001 F.03-2166 9001

Singapore
Level 42, Suntec Tower Three,
8 Temasek Boulevard, Singapore 039988
T. (65) 6866 3600 F. (65) 6866 3636

www.intellect-worldwide.com

Commemorating success through charity : Our 15th anniversary bash

As 2008 drew to a close, we looked back and reflected on our highlights and milestones for the past 15 years.

Success was humbling when we realized that we couldn't have done it without our clients, staff and the support of our family members and the community in general. It was with this awareness that our 15th Anniversary "Blue Velvet Night" Dinner Organising Committee, chaired by Patent Manager Bryan Wong decided to use this event as a platform to highlight the plight of autistic children, giving back to the community that has supported our growth from a humble start-up to a major IP player with offices in Penang, KL and Singapore.

The Association of Resource and Education for Autistic Children (REACH), a Lions' Club community service project was the beneficiary of The Blue Velvet Night, and they even graciously agreed to let 20 of the autistic children under their wing to perform two songs, winning the audience's hearts with renditions of 'I Have a Dream' and



'You Raise Me Up' as they feasted on the 8-course dinner at Penang's City Bayview Hotel in Georgetown.

Our guest-of-honour, EXCO for Local Government, Traffic Management and Environment

YB Mr Chow Kon Yeow, in his officiating speech, stressed the importance of having international standards of Intellectual Property protection in Malaysia in order to pave the way for more foreign investments prior to the implementation of the Free Trade Agreement. He went on to express his confidence in the Intellect Group as a major contributor to the development of an IP-friendly business environment in Malaysia.



We are ISO 9001:2000 Certified

Another recent highlight at Intellect was our successful ISO 9001:2000 accreditation for our IP consultation system, an achievement that we embrace as an acknowledgement of the international standard that we have

upheld over the years. Attaining this accreditation after various rigorous independent audits by BM Trada is a strong testament to Intellect's credibility—stemming from our adherence to a sound quality management system.





Nike Takes On Wal-mart For Shoe Design Infringement

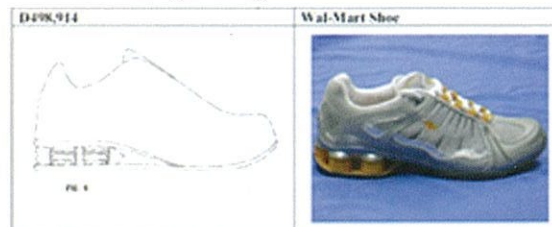
As they began to feature the 'swoosh' less prominently on their recent shoe designs, Nike has turned to the option of Industrial Designs to deter and take on infringers.

In this second design infringement lawsuit against Wal-Mart (the other one being in 1996, in which Nike won more than USD 5 million), they asserted Design Patent Nos. D498,914 (pictured right) and D499,248. For the past ten years, Nike has annually ranked among the top ten owners of newly issued IDs.

In the United States, damages for an ID infringement may be calculated based on the infringer's profits, lost profits and a reasonable royalty. In Malaysia, remedies for ID infringement may include damages, infringer's profits and an injunction against further infringements.



The Nike shoe with the registered design



Designing Matters Does Toothbrush Design Matter?

In India, at least, it apparently does. A battle over toothbrush designs is being fought between Colgate Palmolive and its rival, Anchor Health and Beauty Care. This, however, is not an issue of infringement, but rather, one of challenging registered designs. Anchor is seeking cancellation of the three toothbrush designs that Colgate Palmolive had obtained registration for, claiming that similar products had already been registered as designs in India. Earlier hearings by the Patent and Design Office resulted in a decision that prohibited Anchor from manufacturing and selling toothbrushes with similar features

as they held that the three designs by Colgate Palmolive fulfilled all registration criteria and were different from products registered earlier. Clearly unhappy with the decision, Anchor filed an appeal at the Calcutta High Court but failed to obtain a stay on the Patent and Design Office's decision. The recent increase in the number of IP litigations in India is seen as an effort to improve its IP protection system. According to the US Trade Representative Office's 2008 Special 301 Report, India remains on its Priority Watch List for countries whose IP rights protection and enforcement are deemed inadequate.

The Patent Application Trends In Malaysia

Year	No. of PCT Applications	No. of Malaysian Applications	No. of Foreign Applications
2006	34	531	4269
2007	93	670	1702
2008 (up till Sept)	118	594	3338

Source: The Malaysian Intellectual Property Office (MyIPO)

The chart above features the number and type of patent applications received by MyIPO from 2006 to September 2008. While the number of foreigners seeking to register their patents in Malaysia greatly outnumber our own inventors, it is, nevertheless, still heartening to note the upward trend in the number of Malaysian applications filed—especially the PCT applications.

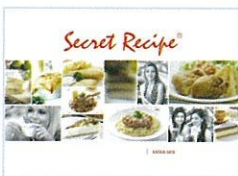
Although we still have a long way to go in terms of being an IP-savvy economy, the political will to create a more IP-friendly business environment has undoubtedly borne fruits. The number of Malaysian patents filed owes its increase to the various initiatives through the likes of the Multimedia Super Corridor, (MSC) Multimedia Development Corporation (MDEC) and Malaysian Venture Capital Bhd. (MAVCAP).



Malaysian Franchise Grown Despite Slowdown

Secret Recipe

This company debuted in 1997, the year the Asian economic crisis hit. Yet they have since grown to 6 Asian countries with almost 200 outlets, and counting.



Smart Reader Kids

They began franchising their program in 1999 and has since grown to 225 outlets locally and 144 abroad.

D-Lima Convenience Store

The owner of this chain of convenience stores has recently announced their target of 15 franchise stores in Malaysia by the end of 2010. They currently own 40 outlets all over Malaysia.

Marrybrown Restaurant

This fast-food chain was established in 1981, and today it boasts over 250 outlets all over the world, having weathered three global economic crises in the early 1990s', 1997-1998 and 2001-2002.



Sinma

Malaysia's largest costume jewellery retail chain was established in 1986, and began franchising in 2000. It is currently expanding overseas.



Recession? It's business and growth as usual for these homegrown acts. Malaysia Boleh!

Franchising Recession Proof?

Franchising has always been hailed as the more resilient business model. Some of the world's biggest brands, like Singer and Coca-Cola, have their roots in franchising, and some others, like McDonalds, have stuck with franchising through the decades, charting phenomenal growths all the way.

The risk reduction of starting a business based on an already proven format contributes to the high success rate of new franchise businesses which is typically 90% - compared to traditional start-ups among which 90% is expected to fail within the first three years!

Now, enter the economic crisis yet again -during which consumers take a tighter rein on their spending, and lenders become more cautious in giving credit to businesses. How immune would franchise establishments be to such discouraging economic forces?

If historical statistics are a good indicator, then the answer is that even during tough times franchises remain more resilient than their non-franchise counterparts.

For example, during the 1992 post-Gulf War recession in Europe, a survey conducted among franchisees showed that 90% of them were able to weather the crisis better due to the support they enjoyed from their franchise systems.

In the United States, where franchising is a USD 1 trillion industry, a Department of Commerce study shows that between 1971 and 1997, less than 5% of franchised businesses close each year.

This is an optimistic finding, given that the US suffered a recession in the early 1981-82, and another one from 1990-1993. In fact, according to a study by University of Louisville, franchising at the time helped the US out of its economic turmoil.

In Malaysia, on the other hand, it is heartening to note that the Franchise Act 1998 came into force in the wake of the 1997 Asian crisis, indicating our government's confidence in this business model. 10 years later, as we face another global

recession, it turns out that our Father of Franchise, Tun Dr Mahathir Mohammad was right. At the recent Franchise International Malaysia 2008 expo, a record total of RM 283.3 million franchise trade deals was closed, exceeding the original target of RM 275 million.

Given the number of Malaysian franchises that are still expanding (see story below), it would seem that the facts and figures are pointing towards a glass that is half-full rather than half-empty.

After all, a business needs to grow regardless of economic condition, so choosing the most recession-proof option makes plenty of sense. Franchising, anyone?



Tips on Developing Sound Business Plan

1. Write Business Plan with a complete financial and marketing plan
2. Marketing strategy must be built around your strengths
3. Think through the reality of your business on how and how it work
4. Review it every now and then
5. Establish an annual operating plan and update accordingly

5 Tips On Good Business Signage

1. Always think of the communication and what you want to get across
2. Make it as short and simple as possible
3. Provide ample lighting so it can be read at night
4. Signage must be large enough to read – Consider speed of traffic
5. Change your signage every now and then

7 Good Reasons to Protect your Brand

1. Be recognized as owner of the work
2. Prevent infringements
3. Benefits from creativity such as royalties and extensive branding
4. Increase value of your creation
5. Differentiate from competitors
6. Inspire trust
7. A secured marketing tool

Yet Another Forbidden Apple

About three years after using their apple logo, Canada's Victoria School of Business and Technology has received a cease and desist letter from Apple Inc., citing trademark infringement.

Despite featuring its acronym, VSBT, and blue and green colours on the logo, the school found itself being accused of "infringing Apple's rights" and "falsely suggesting that Apple has authorized your activities", according to the letter from Apple's lawyer, Stephanie Vaccari. That the school offers software operation courses is, in fact, one of Apple's biggest concerns. The school has denied any infringement in a response letter written by its president and CEO, Dieter Gerhar. He stressed that their logo is unique

and distinguishable from Apple's, adding they decided to use the apple because of its iconic association with education. As of November 2008, the online poll on VSBT's website showed that 76% of its respondents did not think that people would confuse their logo with Apple's.



Confusingly similar?

The Problem With Ponni

A local rice importer and retailer, Syarikat Faiza Sdn Bhd, caused a stir among other importers when it obtained a trademark registration in Malaysia for the Ponni rice variety. An unhappy fellow importer who had received the legal notice from Faiza asking them not to use the word 'Ponni' to describe their products challenged the trademark which the Malaysian IP Office reportedly agreed to cancel. Ponni denotes a variety of paddy released by the Tamil

Nadu University in India that has been produced by millions of South Indian farmers for the past two decades, therefore a trademark for it could not be issued—according to the University's Professor N Raveendran.

On May 15 2008, India empowered its Agriculture Export Promotion Agency to protect indigenous farm and horticulture products from being patented overseas.

The Three Stripes That Brought In USD305 Million

Retailers take note. Infringing someone else's designs could be a costly affair, like what Payless Shoesource Inc. has discovered.

The USD 305 million that a Portland jury had ordered Payless to pay to Adidas America Inc. was considered by experts to be the largest award ever in a trademark infringement case.

The jury had gone through 268 images of Payless shoes and found all but one to be infringements. While Payless maintained that they had not violated the Adidas trademark by featuring either 2 or 4 stripes on their shoes, the court found them to have willfully infringed on Adidas' trademark and trade dress. The Wall Street Journal's Law Blog reported Adidas' counsel, Charlie Henn, as saying that Payless bought multiple versions of Adidas' three-stripped sneakers, sent them to China to be manufactured in 2- and 4- striped variations and went on to sell about USD 400 million worth of those infringing shoes.

The USD 305 million award consisted of USD 30 million in actual damages, USD 137 million in account of profits due to the court's finding of the element of willfulness in their act of infringement,

and punitive damages that mirrored the disgorged profits.

Adidas America General Counsel Paul Ehrlich expressed their pleasure over the results, stating that the verdict "supports the value our society places on protecting innovation and quality brands."

On the other hand, Collective Brands Inc, who owns Payless, called the verdict "unjustified and excessive" and stated their intention to ask the court to set it aside.

Adidas is known to be an aggressive defender of its three-stripped mark, having pursued 325 infringement matters in the United States alone—against the likes of K-Mart, Target and WalMart.

Payless was also sued for trademark infringement by K-Swiss Inc., which uses a five-stripped logo on its athletic footwear.

