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New Developments in Advance of IFA's Legal Symposium

In this alert, we report on developments that will be of particular importance to US franchisors and operators. Most of the Cheng Cohen lawyers will be at IFA's Legal Symposium in Washington DC on May 15-17, 2016, so feel free to find us there for more information on these developments.

Trademarks in China

US franchisors entering China often have angst over what will happen to their intellectual property there. A Beijing court's ruling against Apple in late April seems, at first blush, to add fuel to those fears. However, the case was not an instance of the China courts running amok. It was probably the right decision given China's rule that, unlike in the US, trademark ownership is based on "first to file" rather than "first to use."

In 2002, Apple filed an application to register and eventually was granted a registration for "iPhone" for computer hardware, software and other commodities in Class 9. In 2007, a China company filed an application to register the "iPhone" mark for leather goods in Class 18. Apple opposed the application claiming that its iPhone mark was "well-known"

or “famous” and as such was entitled to protection beyond Class 18 for which it was registered. The court, however, found that Apple’s iPhone mark had not reached “well-known” status in China when the China company’s application was filed, so the opposition on that basis fell. It’s important to note that Apple did not lose the “iPhone” mark in China, but it did lose the right to stop this Chinese company from registering and using the same mark on leather goods.

The lessons of this decision for every trademark owner seeking to protect its marks in China are three-fold: (1) be the first to file, (2) file applications in all relevant classes of goods and services, and (3) do what’s possible to create “well-known” or “famous” mark status as soon as possible through using or licensing others to use the marks in China.

[Update on FDA Mandate on Menu Labeling](#)

Earlier this month, the FDA released its previously postponed final guidance on the calorie labeling that restaurants will have to include on their menus. That release starts the 1-year clock (May 2017) by which all restaurants and away-from-home food retailers must begin complying with the labeling requirements. We will do a separate Client Alert in the coming months devoted to a more detailed description of the labeling requirements.

[New Federal Protection for Trade Secrets](#)

On May 11, 2016, President Obama signed the Defend Trade Secrets Act that provides protection under federal law for trade secrets. Of particular importance for franchisors will be the ability to use the DTSA as a basis for getting into federal court on claims that, absent other jurisdictional grounds, have previously been relegated to the state courts under their particular state trade secrets statutes. We will report further on this new law in next month’s Client Alert.

[IFA’s Legal Symposium Program on Advising New and Emerging Franchisors](#)

Michael Daigle will be moderating a program at the IFA’s Legal Symposium on May 16 and 17 that will discuss hurdles that new and emerging franchisors face as they take their systems to the next level, including: defining motives and short-term and long-term objectives, budgeting for costs of creating and maintaining a franchise program, planning for evolution of the brand and growth strategies, dealing with unintentional franchises, creating appropriate legal structures, taking steps to protect the brand, and managing the supply chain. If you’re attending the Legal Symposium, we hope you’ll stop by and participate in this program.

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