D YOUNG & CO

TRADE MARK NEWSLETTER

July 2009

COPYCATS BEWARE!

NO SYMPATHY FOR "LOOK-A-LIKES" FROM EUROPEAN COURTS

The decision of the European Court of Justice in L'Oreal S.A. & Others v Bellure NV & Others (case C-487/07, dated 18 June 2009) provides a welcome boost for trade mark owners especially those concerned by the activities of "look-a-like" competition.

In future, such businesses will have to re-think their business activities to avoid a successful challenge from brand owners. Use of comparative price lists featuring competitors' marks may cease to be possible and deliberate attempts to copy the brand leader's "get up" or package design will also be viewed with suspicion.

The case involved sales by the defendants of "smell-a-like" perfume products which were packaged and branded in a manner designed to evoke the brand leaders (in this case, TRESOR and MIRACLE). The defendant's witness admitted in cross examination that the intention was to "give a wink" to the brand leaders. Accordingly, the ECJ did not have to consider the issue of "without due cause" when looking at whether infringement had occurred. It seems to have been taken for granted that the defendant's stated intentions in this case would not allow them to rely on this provision.

The case had been referred to the ECJ by the English Court of Appeal. They were concerned, in particular, about the question whether trade mark owners could still complain of infringement even if they could not demonstrate any actual confusion, or any detriment to the distinctive character or repute of their mark (such as a drop in sales, change in economic behaviour of consumers or damage to reputation).

L'Oreal's principal argument was that the replica perfumes were nevertheless taking unfair advantage of their trade marks since the sales achieved by the defendants were made on the back of their reputation, built up through expenditure on advertising and promotion over the years. Moreover, the defendant's own evidence showed that they were able to charge more for the "look-a-like" goods than those which they sold in completely plain packs with a simple alpha numeric number used as the identifier.

The legal arguments involved consideration of two acts of infringement. The first related to use

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of the complainant's registered trade marks in the defendant's comparative price lists (which were distributed not only to wholesalers but also to retailers). The English Court of Appeal had asked the ECJ whether this constituted infringement when the use did not cause confusion or otherwise jeopardise the essential function of the trade mark as an indication of origin.

The ECJ reaffirmed its position (established in the ARSENAL, ANHEUSER-BUSCH & ADAM OPEL cases) that the trade mark owner has a right to protection which will ensure that his trade mark can fulfil its functions and that where a third party's use of the sign in issue affects or is liable to affect these functions it may be enjoined.

The ECJ stated then, surprisingly, that the functions of a trade mark not only include those of guarantee of origin but also extend to guaranteeing the quality of the goods or services for which the mark was protected, and those of communication, investment or advertising. Where the defendant is using an identical mark, even if there is no actual confusion, it will still be infringement if that use is liable to cause detriment to any of the functions of that mark (as defined).

The court went on to state that they considered that the use of the complainant's word marks (TRESOR and MIRACLE) in the defendant's price comparison lists was not merely for descriptive purposes but for the purposes of advertising; strictly the ECJ should not make such findings of fact in cases referred to them but clearly it will be hard for the UK Courts to ignore this statement when they apply the ECJ's ruling once the case is referred back to them for a final decision on whether infringement has occured..

The fact that the defendants were using the complainant's trade marks in comparative price lists also meant that the "fair use" defence under the Comparative Advertising Directive 84/450 had to be considered. The CAD sets out a number of cumulative provisions which any defendant has to satisfy before they can rely on this defence, and the ECJ held that since Bellure's use of the offending marks in their price comparison lists had been designed to implicitly present their products as imitations of the brand owner's fragrances, this was not lawful and fair use within the meaning of the CAD rules, which prohibit such copycat activities.

It is hard to see, in light of this ECJ ruling, how any price comparison list involving use of the brand leader's mark side by side with the competitor's brand can survive a legal challenge claiming that the use was designed to suggest that the defendant's goods were imitations or replicas thereof. This is usually self-evident.

Because there was no actual confusion between the goods, L'Oreal (and their co-complainants) also argued that the defendant's use of their trade marks in the price comparison lists took unfair advantage of their reputation. The ECJ inferred that the defendant's use did take unfair advantage of this reputation, in that the defendants were riding on the coattails of the marks in order to benefit from their established power of attraction, reputation and prestige of the mark, allowing them to exploit the brand owner's marketing efforts.

The Court stressed that these were factors which the tribunal needed to take into account in each case when considering unfair advantage but interestingly did not indicate that it was necessary for the brand owner to adduce evidence that there had been a change in the economic behaviour of consumers to establish unfair advantage (by contrast to the ECJ's position on detriment following *Intel*).

The second part of the ECJ's Decision related to the alleged infringement by imitation of the "get up" or appearance of L'Oreal's goods. Again, there had been no actual confusion as a result of this, or any loss of sales to L'Oreal, but they had argued that Bellure had obtained a commercial advantage by adopting the particular packaging and using a copycat sign by reason of its similarity to their registered marks. L'Oreal had registered both the words TRESOR and MIRACLE and the shape of the perfume bottles/packaging as trade marks, and the English Courts had found that certain aspects of the defendant's goods and "get up" were similar thereto (and were indeed designed to suggest that they were imitations of the established brands).

Again the ECJ had no difficulty in holding that this type of activity amounted to taking unfair advantage of the earlier right, irrespective of whether there was a likelihood of detriment to the earlier mark or its proprietor. While a global assessment must be made to see if there was a "link" between the third party's mark and the registered mark, it was clear, in cases where the evidence indicates that the "look-a-like" producer had designed their product intentionally in order to create an association on the part of the consumers between the market leader and their imitation, that they were highly likely to infringe the brand owner's trade mark rights.

Again the ECJ's comments and findings on this point seem very close to actual findings of fact; it will be difficult for the English Court of Appeal to go against their findings when considering the ECJ's judgement and applying the principles it establishes to reach a final conclusion in the present case.

While the tone of this decision is clearly welcome and should discourage "me too" competition, thus protecting brand owners whose marks enjoy a reputation through years of promotion and sales, it remains to be seen whether, in practice, this ruling will be invoked against UK supermarkets, many of whom make a practice of producing "look-a-likes". The difficulty for the brand leaders is that their own goods are often sold in the supermarket side by side with the "look-a-like". This is not often the case in the perfume industry, where the goods offered by Bellure would not be sold in the same retail outlets as those of L'Oreal.

YOU WIN SOME...
PROPOSED FEE REDUCTIONS

The UKIPO are reviewing the current trade mark fee structure with a view to reducing some fees. The review has been prompted by the current economic climate and the subsequent fall in trade mark applications.

One proposal is to introduce an "early assist" application service which includes a 2-stage fee payment. Upon initial filing the applicant will only be required to pay 50% of the application fee. The UKIPO will then examine the application and issue an examination report. If the applicant wishes to proceed with the application, they will then be able to do so on payment of the outstanding 50%. Alternatively, they have the option to withdraw the application and not incur the full application fee.

We are in favour of this suggested fee reduction; this gives our clients more flexibility and options when budgeting for their trade marks.

YOU LOSE SOME...
CHANGE IN PRACTICE FOR *EX PARTE* HEARINGS AT UKIPO (TRADE MARKS REGISTRY)

Following the abolition of examination on relative grounds, the number of requests for *ex parte* hearings on trade mark cases has dropped significantly. This, together with the Government's "green initiatives", has lead to the UKIPO's recent change in practice on *ex parte* hearings.

The default position for parties requesting an *ex parte* hearing is that it will now be conducted by telephone. However, video conferencing facilities are also available. If a video conference is preferred, this must be made clear to the Registry at the time the hearing is requested.

The Registrar is sensitive to the fact that some cases may benefit from face-to-face hearings, where, for example, the evidence filed is complex. The option for face-to-face hearings has thus not been removed altogether. If a face-to-face hearing is needed the request should clearly state so and the reason why this should be accommodated. Even when such hearings are allowed, the expectation is that attorneys should travel to Newport to take the case.

We are disappointed with this change and believe that there is no substitute for face-to-face hearings even for more straightforward matters; removing the option of sitting across the desk from the Hearing Officer and having a flexible discussion on all of the issues seems less advantageous for users of the system – and hard to justify in terms of reduced carbon emissions if the overall hearing caseload is decreased anyway.

PRESTIGE BRANDS
HOW TO PREVENT DAMAGE TO EXCLUSIVITY BY RESELLERS (PART 2)

In our January 2009 newsletter, we reported the Advocate General's opinion in the case of Copad SA v Christian Dior Couture SA. Readers will recall that this case concerned a resale of DIOR products supplied to licensees and sold on to discount stores, in contravention of the "prestige" clauses of the licence. This prohibited resale of the licenced goods to discount retailers specifically, on the basis that this would damage the reputation and allure of DIOR as a luxury brand.

The ECJ has now confirmed the Advocate General's opinion as follows:

1. A proprietor of a trade mark can invoke the rights conferred by that trade mark against a licensee who contravenes a provision in the licence agreement prohibiting, on the grounds of the trade mark's prestige, sales to discount stores of goods, provided it has been established that the contravention damages the allure and prestigious image which bestows on those goods an aura of luxury.

2. A licensee who puts goods bearing a trade mark on the market in disregard of a provision in the licence agreement does so without the consent of the proprietor of the trade mark (i.e. there is no exhaustion of rights).

3. Where a licensee puts luxury goods on the market in contravention of a provision in that licence agreement but must nevertheless be considered to have done so with the consent of the proprietor of the trade mark, the proprietor of the trade mark can rely on such a provision to oppose a resale of those goods only if it can be established that (taking into account the particular circumstances of the case) such resale damages the reputation of the trade mark.

This guidance from the ECJ therefore strengthens the ability of luxury brand owners to maintain and enforce a selective distribution network for their goods. However, whilst this is excellent news for brand owners wishing to restrict those who can resell luxury goods bearing their trade mark, there is greater uncertainty for those further down the supply chain.

Quality control provisions in licences are normally directed at the characteristics of the goods but, at least where luxury brands are concerned, it seems the owners will now be able to extend protection to the brand image even if this is not an explicit term of the licence. However, it will be up to the national court to determine whether the quality of the goods has been affected and what actions will be sufficient to damage the "aura of luxury".

MARKS WITH A REPUTATION IN THE EUROPEAN COMMUNITY: THOUGHTS OF THE ADVOCATE GENERAL IN PAGO INTERNATIONAL GMBH V TIROL MILCH REGISTRIERTE GENOSSENSCHAFT MBH (CASE C-301/07)

The opinion of Advocate General Sharpston, delivered on 30 April 2009 on a reference for a preliminary ruling from the Oberster Gerichtshof (Supreme Court Austria), provides useful guidance on the territorial scope of reputation required for trade marks whose owners seek to rely on the broader infringement protection under Article 5(2) of the Harmonisation Directive.
The case was between two Austrian businesses: PAGO International GmbH and Tirol Milch registrierte Genossenschaft mbH.

PAGO is the proprietor of a CTM registration for the device

mark shown below, in respect of "Fruit drinks and fruit juices; syrups and other preparations for making beverages". Important features of this mark are the representation of a green glass bottle, with a distinctive label and cap, next to a full glass of fruit drink, identified with the mark PAGO in large characters.

Tirol Milch marketed a fruit and whey drink in Austria, under the mark LATELLA. This was packaged in glass bottles which resembled in many aspects the bottle depicted in PAGO's CTM. In the advertising for its drink Tirol Milch used a representation which, like PAGO's mark, showed a bottle next to a full glass of fruit drink.

The Advocate General's opinion suggests that, for some reason, the goods sold by Tirol Milch - the fruit and whey drink - were not considered similar to the fruit drinks and fruit juices covered by the CTM registration and PAGO. However, it seems likely that, in any event, PAGO were precluded from relying on infringement under Article 9(1)(b) - use of a similar mark on similar goods resulting in a likelihood of confusion - because it was accepted that no likelihood of confusion existed as a result of the use made. The marks PAGO and LATELLA featured prominently on the respective goods, and these were sufficient to distinguish the products in the marketplace.

PAGO therefore relied on the provisions of Article 9 (1)(c) of the Community Trade Mark Regulation. This provision entitles the proprietor of a CTM registration to prevent unauthorised third party use, in the course of trade, of any sign which is identical with or similar to the CTM in relation to goods which are not similar to those for which the CTM is registered, where the CTM has a reputation in the Community and where use without due cause would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the CTM.

PAGO initially sought an injunction against Tirol Milch before the Handelsgericht Wien (Commercial Court, Vienna) which was granted. However, this decision was reversed by the Landesgericht Wien (Higher Regional Court, Vienna). PAGO therefore applied to the Oberster Gerichtsthof (Supreme Court Austria).

Since PAGO's CTM enjoyed a reputation in Austria but not necessarily in other EU Member States, the Supreme Court referred the following two questions to the ECJ for a preliminary ruling:

1. *Is a CTM protected in the whole of the Community as a "trade mark with a reputation" for the purposes of Article 9(1)(c) of the Regulation if it has a "reputation" only in one Member State?*

2. *If the answer to the first question is in the negative: is a mark which has a "reputation" only in one Member State protected in that Member State under Article 9(1)(c) of the Regulation, so that a prohibition limited to that Member State may be issued?*

Although the first question was put in such a way that suggested a "yes" or "no" answer would be appropriate, the opinion of the Advocate General veered to a "maybe" – depending on the circumstances of the case.

In her view, the objective of Article 9(1)(c) is to enable the proprietor of a CTM to protect the exclusive rights conferred against third parties, provided that he can show that his CTM has a reputation in the Community and that the other conditions in Article 9(1)(c) are fulfilled.

Since the CTM has a unitary character, and was created to provide undertakings with rights which would enable them to distinguish their goods and services with the identical mark throughout the entire Community regardless of frontiers, an approach which focuses on the boundaries of the Member States when trying to establish the extent of a CTM's reputation was, in her view, misconceived.

Instead, her recommendation was that the first question referred should be answered as follows:

"A CTM is protected in the whole of the Community on the ground that it has a 'reputation in the Community' within the meaning of Article 9(1)(c) of Regulation No 40/94 if it has a reputation in a substantial part of the Community. What constitutes a substantial part of the Community for that purpose is not dependent on national boundaries but must be determined by an assessment of all the relevant circumstances of the case, taking into account, in particular of (i) the public concerned by the products or services covered by the trade mark and the proportion of that public which knows of the mark and (ii) the importance of the area in which the reputation exists, as defined by factors such as its geographic extent, population and economic significance."

Insofar as the second question is concerned, the Advocate General was of the view that because the protection afforded to a CTM under Article 9(1)(c) is so extensive, the conditions laid down in the CTM Regulation must be satisfied in full before it is triggered, and there is an obvious link between the requirement to demonstrate that the trade mark's reputation exists in a substantial part of the Community and the justification for granting protection that extends throughout the Community.

In view of this, where a CTM has a reputation in an area that is NOT a substantial part of the Community, the protection afforded by Article 9(1)(c) would not be triggered and consequently a prohibition against infringement limited to that area may not be issued.

COMMENT

This Opinion raises certain questions regarding the ability of trade mark proprietors to rely on a CTM registration alone to protect their interests. If the Opinion is followed, owners of marks with a reputation in only some Member States will need to maintain, or obtain, protection for those rights at a National level if they want to benefit from the enhanced protection in Article 5(2).

It is difficult to reconcile the approach taken in the Opinion with the current view of OHIM that genuine use in a single Member State is sufficient to maintain a registration, if proceedings for revocation on the grounds of non-use are instituted. Whilst, as the AG rightly points out, the correctness of this practice has not yet been considered by the ECJ, it seems odd that the proprietor of a CTM who uses his mark in only one country would be able to prevent infringing use in an entirely different country where the earlier mark has never been used, whilst the proprietor of a mark with a reputation in one country may not be in a position to rely on his reputation in that same country to prevent dilution.

The decision of the ECJ in Case C301/07 is likely to be issued in six to nine months but perhaps the original proceedings should have explored further whether the goods in question were really not similar, and whether, despite no likelihood of confusion, "a likelihood of association between the sign and the mark" existed, which would have been sufficient to meet the requirements of Article 9(1)(b) instead.

UKIPO TAKES A SHINE TO STANLEY'S SPARKLYCARD

Many of us would like to leave work by watersliding directly to our homes, as depicted in the recent Barclays television advert. Unfortunately, Barclays were unable to slide so sublimely to success when they opposed an application for the mark SPARKLYCARD at the UKIPO.

An individual called Stanley Snelgrove applied to register the mark SPARKLYCARD in the UK in respect of, among other things, "magnetically encoded cards" in class 9 and "credit and debit card services" in class 36. Barclays Bank Plc opposed the application arguing that SPARKLYCARD is (1) confusingly similar to its BARCLAYCARD trade mark and covers identical/similar goods/services, (2) would take unfair advantage of the BARCLAYCARD trade mark by free-riding on its established reputation and (3) constitutes passing off and would damage their goodwill. Barclays later obtained permission to amend its Notice of Opposition, adding a claim that Mr Snelgrove had filed the application in bad faith because he had no genuine intention to use the mark SPARKLYCARD. Mr Snelgrove denied all of the claims and the case came before a Hearing Officer at the UKIPO.

It was not disputed that Barclays is one of the UK's main high street banks and that it has a substantial number of branches and customers in the UK. It was also not disputed that the mark BARCLAYCARD has been used since 1966 and was the first credit card to be operated by a British bank. Profits of several hundred million pounds per year have been enjoyed by BARCLAYCARD financial products over the last few years. It was even agreed that the mark had become a household name for credit card services. It was, therefore, not disputed that the mark BARCLAYCARD enjoys a significant goodwill and reputation in the UK.

On the question of whether the mark SPARKLYCARD is confusingly similar to BARCLAYCARD, the Hearing Officer found that a visual comparison of the marks is likely to be of greater importance than a phonetic comparison given the way in which financial services are purchased. The element CARD was found to be non-distinctive, leading to greater emphasis being placed on the first part of each mark, SPARKLY and BARCLAY. Barclays relied on the expert evidence of a professor of linguistics, who submitted that the marks are 'rhythmically identical' and differ only in respect of the initial 'S' sound. The Hearing Officer agreed and found that the marks have a high degree of phonetic similarity. She found, however, that visually the marks are rather different. She also found that the marks are conceptually different, SPARKLY conveying the idea of a card which sparkles and BARCLAY being perceived as a surname or company name.

In assessing the overall likelihood of confusion, the Hearing Officer considered the level of distinctiveness enjoyed by the mark BARCLAYCARD (the general rule being that the more distinctive the earlier mark, the greater the likelihood of confusion). It was not disputed that the mark BARCLAYCARD had become highly distinctive over time. The Hearing Officer found, however, that although there may be some consumers who upon seeing the mark SPARKLYCARD might think of BARCLAYCARD, on the whole consumers will simply think of a card which sparkles. She found that the association was not strong enough and would not lead the average consumer to be confused as to the economic origin of the goods/services. On balance, the Hearing Officer found that there was no likelihood of confusion and the opposition on this ground failed.

It was conceded by Barclays that if the case failed under the likelihood of confusion test, it would also fail under the passing off test. Accordingly, the Hearing Officer found that this ground of opposition also failed.

On the question of whether the mark SPARKLYCARD would take unfair advantage of the BARCLAYCARD mark and "free-ride" on Barclays' coattails, having found earlier in her decision that some consumers might make a link with BARCLAYCARD when they encounter SPARKLYCARD, the Hearing Officer was obliged to consider whether this link would be sufficient for "free-riding" to occur. The Hearing Officer reiterated the principle that, for "free-riding"' to take place, the link established in the consumer's mind must be sufficient to affect the consumer's "economic behaviour" - mere calling to mind is not enough. In other words, the purchasing behaviour of the average consumer must be affected to such an extent that the marketing and selling of Mr Snelgrove's goods and services becomes easier.

The Hearing Officer found that, although a link may be made by some consumers, the link is rather tenuous and that SPARKLYCARD would generally be seen simply as a form of word play. The Hearing Officer found that the process of applying for and obtaining the type of services at issue is relatively complex and involves a degree of financial commitment, meaning that the average consumer will not consume these services lightly. On balance, she found that the mark SPARKLYCARD would not have any material effect on the consumer's economic behaviour and that, therefore, it would not be taking unfair advantage of BARCLAYCARD. Accordingly, the opposition under this ground failed too.

On the question of whether the application for SPARKLYCARD was filed in bad faith, Barclays argued that Mr Snelgrove would not be able to obtain regulatory approval for all of the financial services covered by his application. Mr Snelgrove denied this and argued that he had suitably qualified business partners to enable him to bring the product to market. Barclays also argued that Mr Snelgrove had been "stockpiling" trade marks with no intention to use them (Barclays relied on the Appointed Person's decision in the KINDER case, in which more than 60 applications which included the mark KINDER were filed over a three year period, the majority of which had still not been used several years later and, as a consequence, were found to be have been filed in bad faith). Mr Snelgrove pointed out that he had registered only three marks, so the KINDER case did not apply.

The Hearing Officer agreed with Mr Snelgrove. As far as the intention to use SPARKLYCARD for financial services was concerned, it was acknowledged that it would be impossible for Mr Snelgrove, as an individual, to provide all of the goods and services for which he was seeking registration. The Hearing Officer was, however, not convinced by Barclays' arguments. She found that whilst Mr Snelgrove, as an individual, faced significant regulatory and financial hurdles on his way to providing these goods/services, there was no evidence that his application was made in bad faith. Mr Snelgrove's business model provided for gradual expansion and was in its early stages. The Hearing Officer, in finding for Mr Snelgrove on the bad faith point, confirmed that the question to be answered is not whether his proposed business was viable but whether the application was made in good faith in the sense that he had a general intention to use the mark. The Hearing Officer was unable to find that the application was filed in bad faith and this ground of opposition failed too. Barclays' opposition therefore failed in its entirety and an award of costs was made in favour of Mr Snelgrove.

This decision is not particularly surprising given the clear visual differences between the marks. Nevertheless, the Hearing Officer gave very careful consideration to the possibility of "indirect" confusion (where consumers are not confused into thinking that SPARKLYCARD is BARCLAYCARD, but that SPARKLYCARD is somehow economically linked with BARCLAYCARD). This potential route to victory is open to owners of particularly distinctive and/or well-known trade marks but, ultimately, this case serves as a reminder that no matter how distinctive and well-known your mark might be, the later mark must still be sufficiently similar to it for an opposition to succeed.

REPUTATION IN NASDAQ ON THE UP?

The ECJ's judgement in the case of Antartica Srl v OHIM (case C-320/07P, dated 12 March 2009) explores the extent to which an unfair advantage can be found where the earlier mark claiming a reputation is held to have a high level of inherent distinctiveness, but the evidence of reputation is less than persuasive.

Antartica had sought to register the trade mark NASDAQ (incorporating a design element, see below) for a range of goods including clothing and sports equipment.

Their Community Trade Mark application was opposed by The Nasdaq Stock Market Inc. on the basis of their earlier rights for NASDAQ in respect of financial services and related goods and services. The opposition was based on Article 8(5) of the CTM Regulation where a later identical or similar mark can be refused registration if the application was without due cause and would take unfair advantage of the reputation of the earlier mark. In the initial case before OHIM, the opposition was rejected; however, the Board of Appeal held that the Opposition Division had erred in finding that Nasdaq's reputation had not been adequately evidenced.

Antartica then appealed to the CFI (Court of First Instance) which looked in detail at the definition of the relevant public where reputation should be shown. The Opponent had claimed a reputation not only in financial circles but also amongst ordinary consumers with an interest in following the Stock Market.

The CFI concluded that this reputation arose through Nasdaq's omnipresence in the press, not only specialist financial publications, but also the general press. It also held that a large part of the general public would be interested in accessing NASDAQ branded financial indices, on account of their present or future investments.

The Court also indicated that the mark NASDAQ was highly distinctive, which helped to establish consumer awareness. It appears to have reached these conclusions without the benefit of market survey evidence or other independent corroboration of the Opponent's claims.

It was also interesting to note that the CFI concluded that Antartica had not adopted their NASDAQ mark "with due cause". Although Antartica had argued that NASDAQ was an acronym which they had adopted in good faith, the CFI disagreed and dismissed their appeal, upholding the opposition.

Antartica appealed to the ECJ arguing that Article 8(5) had been wrongly applied and that Nasdaq's evidence of use and reputation was insufficient to support their case.

The ECJ rejected Antartica's appeal and agreed with the CFI that the reputation in NASDAQ extended to the general public and that Article 8(5) had been correctly applied to the case.

The ECJ's judgement is welcome news for brand owners whose trade marks have a significant reputation, especially following the recent ECJ decision in the case of Intel v Intelmark. Because consumers of sports equipment would overlap with the general public at large, the ECJ rightly upheld the CFI's finding of a link between the marks resulting in dilution or free-riding by Antartica. The ECJ also held that the assessment of the unfair advantage must be considered from the customer's point of view. Nasdaq's case was no doubt enhanced by the fact that Antartica had taken the identical word to form the dominant element of their composite logo.

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OUT AND ABOUT

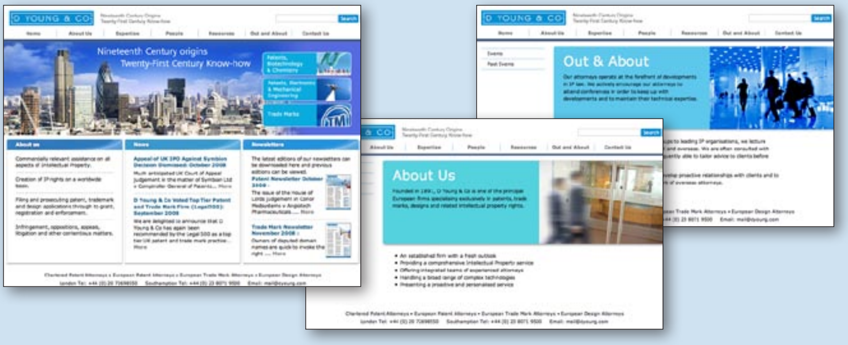
PTMG AUTUMN CONFERENCE
30 SEPTEMBER - 3 OCTOBER 2009

Gillian Deas will be attending the Pharmaceutical Trade Marks Group Autumn Conference in Lisbon, Portugal.

INTA LEADERSHIP MEETING
11-14 NOVEMBER 2009

Jeremy Pennant will be attending the INTA Leadership Meeting in Miami Beach, Florida, USA.

For more details of these and other events attended by D Young & Co attorneys, please visit our website: www.dyoung.com/out_and_about/events.htm



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