

LOS ANGELES

# Daily Journal

WEDNESDAY,  
MARCH 28, 2007

— SINCE 1888 —

OFFICIAL NEWSPAPER OF THE LOS ANGELES SUPERIOR COURT AND UNITED STATES SOUTHERN DISTRICT COURT

## Focus

# Coordinated Enforcement

By Nathaniel Bruno

There is a groundswell of federal legislative activity aimed at protecting and enforcing the intellectual property rights of United States businesses, authors and artists against international counterfeiting and piracy. This movement is signified most recently by the introduction of Senate Bill 522 on Feb. 7, entitled the "Intellectual Property Rights Enforcement Act." What remains to be seen is whether this groundswell will come out of the halls of Congress and into the international marketplace, or whether it will recede into relative oblivion, as when a prior version of IPREA was introduced in 2005.

IPREA begins with a series of Congressional findings, among them, that counterfeiting and piracy: 1) cost U.S. businesses, authors and artists hundreds of billions of dollars annually; 2) have resulted in the loss of hundreds of thousands of jobs in the U.S.; 3) are particularly harmful to small- and medium-size businesses that lack resources to pursue recourse overseas; 4) can create serious health risks in the cases of counterfeit medicines and automobile and aviation parts; and 5) help fund terrorist groups and acts of terrorism. It also explicitly identifies the United State's "greatest economic assets" as its innovators, entrepreneurs and workers.

Given the significant value of U.S.-based intellectual property and the tremendous depletion of that value which IPREA blames on counterfeiting and piracy throughout the world, the act seeks to create new methods of dealing with troublesome IP protection issues. The act recognizes that responsibility for protecting and enforcing U.S.-based IP rights is currently spread throughout no less than nine agencies of the federal government. Under the current arrangement, it appears IPREA's supporters believe that IP

enforcement is not sufficiently important to any one agency nor is there meaningful coordination between agencies to effectively combat the problems.

To solve those issues and foster cooperation, efficiency and information sharing, IPREA would establish a new federal agency called the Intellectual Property Enforcement Network. The IPEN would be an inter-departmental group chaired by the deputy director for management of the Office of Management and Budget, vice-chaired by a new coordinator for intellectual property enforcement to be appointed by the president, and including deputy secretaries from several other federal departments (including Homeland Security, Treasury, Commerce, and State), a deputy attorney general, and a deputy U.S. trade representative.

The Intellectual Property Enforcement Network would be responsible for establishing "policies, objectives and priorities concerning international intellectual property protection and intellectual property enforcement." More specifically, it would develop policies and procedures to: 1) eliminate counterfeit and pirated goods from the international supply chain; 2) identify financiers, producers and traffickers acting in violation of IP rights; 3) share information for the purpose of prosecuting IP rights violators (as well as provide assistance to the U.S. trade representative in taking appropriate action against countries that violate World Trade Organization rules regarding protection of IP rights); 4) disrupt and dismantle networks of illegal activity; 5) strengthen the capacity of other countries to protect and enforce IP rights; and 6) work with willing countries to establish international standards and policies for the effective protection and enforcement of IP rights, while creating a specific international task force of IP-respecting countries for that very purpose.

To carry out these goals, the act mandates that the IPEN submit regular "strategic plans" to the president and several Congressional committees that include detailed descriptions of the IPEN's objectives and goals, threat analyses, proposed methods for achieving protection and enforcement success, and perhaps most significantly, "performance measures that will be used to monitor results."

Thus, the teeth in the new legislation seems to be that it seeks to track the effectiveness of IP protection and enforcement with concrete data and measurable standards that will indicate in clear terms whether and how much progress is being made.

IPEN would be responsible for coordinating interagency cooperation between U.S. government departments and international cooperation between IP-respecting countries throughout the world. The ultimate purpose of this coordinating agency will be to better protect and enforce U.S.-based IP rights on an international scale, with the requirement that the IPEN's progress be assessed regularly to ensure it is yielding quantifiable and measurable positive results.

Of course, a bill still needs actual votes to become a law. The act was introduced by Sen. Evan Bayh, D-Ind., and is co-sponsored by Sen. George Voinovich, R-Ohio, so it appears to enjoy some bipartisan support. It is possible that the specific findings in the bill linking IP theft to terrorist activity may give the legislation special favor as it makes its way through Congress, although that appeal to national security did not carry the day when the prior IPREA was introduced in 2005.

Sen. Bayh seems to believe that tying the bill to the war on terror is a winning strategy. The online edition of "The Journal Gazette," of Fort Wayne, Ind., reported that Bayh highlighted the security threat posed

by terrorist organizations such as al-Qaida financing their activities with sales of counterfeit goods when he touted IPREA during a stop in Fort Wayne on Feb. 22. The online edition of the Tribune-Star of Terra-Haute, Ind., also quoted Bayh as recently commenting that there is now a different attitude in the White House regarding IPREA compared to that of 2005, as the bill has now gained support from business and industry. The bill's sponsor is therefore optimistic about its chances of being enacted.

In terms of potential support from other quarters, Nancy Pelosi (now House Speaker) issued an open letter to President Bush on Oct. 12, also signed by several other ranking House Democrats, that called for "immediate and effective action to promote and safeguard American intellectual property around the world" and

cited China as a major violator for which a "broad-based challenge in the World Trade Organization" was appropriate. Pelosi's letter suggests that initiatives such as IPREA appear to have support among the new leadership of the House and can be expected to meet with success if passed out of the Senate.

Further, relatively recent actions of Bush suggest he too may be amenable to a bill like IPREA. A March 16 press release from the White House heralded President Bush's signing of the "Stop Counterfeiting in Manufactured Goods Act" on that date, which the press release describes as strengthening laws against counterfeit labels and packaging, and as strengthening penalties for counterfeiters. IPREA supporters would likely hope that Bush's signing of that act is an indication of his willingness to enact further legislation such as IPREA for the

express purpose of protecting American IP rights around the world.

Counterfeiting and piracy drain the U.S. economy. But it will be interesting to observe whether lawmakers can agree upon dynamic legislation (perhaps beginning by passing IPREA) for ensuring that U.S.-based IP rights are protected and defended more effectively across the globe. If Congress is serious about its findings regarding the United State's "greatest economic assets" being its innovators and the "hundreds of billions of dollars" of damage being inflicted by international IP counterfeiters and pirates, the current legislative groundswell may soon prove to be a tidal wave of change.

---

**Nathaniel Bruno** is an associate in the San Francisco office of Sheppard Mullin, where he focuses on intellectual property litigation.