

Law Lore & Practice

PTMG



Pharmaceutical
Trade Marks Group

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Editorial: Olympian achievements

As we go to print, the Rio Paralympic Games are drawing to a close in Brazil after a fully packed summer of sport. How inspiring these athletes are, be they able-bodied or disabled, to those of us who dedicate our lives to the more sedentary activity of the defence of intellectual property. Around 4350 athletes from 160 countries have competed in this year's Paralympic Games, no doubt far beyond anything

that their creator Dr. Ludwig Guttmann ever imagined back in 1948 when he launched the idea of sporting events for WWII veterans with spinal injuries.

His revolutionary work at Stoke Mandeville Hospital is still honoured today as the Olympic flame lit there was united with the five other flames relayed around the five regions of Brazil which all united at the Maracanã during the opening ceremony. The first official Paralympic Games were held in Rome in 1960 and since 1988, they have systematically been held after the Olympic games in the same city. There can be no doubt that the momentum created behind the London 2012 Games has continued to raise the profile of these extraordinary athletes, some of whom began their sporting careers as able-bodied and have continued to demonstrate the drive and determination that is necessary to reach Olympic standards.

The World Health Organisation in partnership with the International Olympic Committee has played its role in raising awareness about disabled athletes, notably by profiling those who suffered from polio as children. Vaccination campaigns are still not systematic in all parts of the world and this week's statistics reveal that the disease remains endemic in Afghanistan and Pakistan, while parts of West Africa remain vulnerable to outbreaks of the disease.

Meanwhile, a new chapter in International sport will begin next month with the inaugural Cyborg Olympics to be held in Zurich on Saturday 8th October. Whilst most PTMG delegates will be recovering from the Gala Dinner, people with disabilities will use sophisticated technologies to compete in six disciplines, using the latest assistive technologies. As an example, in the cycling race, athletes with paralysed legs will use nerve stimulation systems to power up their dormant leg muscles and push their feet against the bike pedals. As with some Paralympic events which are raced in pairs, here the competing team will consist of the athlete and their engineer.

Inspiring stories indeed for us all as we head to Oslo to experience another conference programme which I know will continue to push at the boundaries for our profession, particularly during the Friday afternoon session. I look forward to seeing many of you there.

Vanessa

US Update

Jonathan S. Jennings, Pattishall, McAuliffe

The Trademark Trial and Appeal Board (TTAB) of the United States Patent and Trademark Office issued a multi-faceted precedential decision, *Mini Melts, Inc. v Reckitt Benckiser LLC*, focusing on the potential for confusion between nearly identical marks used for ice cream and an OTC pharmaceutical product used by children, respectively, and what role safety concerns may have on this issue. The TTAB also discussed the sufficiency of evidence to establish acquired distinctiveness in a mark, and the impact on the proceeding of a prior federal court decision involving the parties.

The TTAB proceeding involved Reckitt's applications to register MINIMELTS and MINI-MELTS for "pharmaceutical preparations for use as an expectorant" versus Opposer's MINI MELTS mark for ice cream. The TTAB had earlier denied cross-motions, including one by Reckitt claiming that a prior federal court decision and appeal in which it prevailed

constituted claim or issue preclusion, and one by Opposer concerning judicial estoppel over the format for Reckitt's marks. These motions essentially stated that certain determinations made in the federal litigation controlled the TTAB proceeding. The TTAB denied both motions primarily because the parties' marks at issue in the federal litigation differed somewhat from those at issue in the opposition. In particular, the federal litigation involved Reckitt's use of CHILDREN'S MUCINEX MINI-MELTS not MINIMELTS and MINI-MELTS.

The TTAB then turned to the question of how product safety might pertain to the likelihood of confusion analysis. Opposer, the ice cream distributor, described its safety concerns as follows:

Safety is a concern because a child could get access to Applicant's medicine and think, because of the identity in trade marks, that it is one of Opposer's ice

cream products or that they could take as much of it as they wanted, thereby causing harm to their well-being . . . It is not arguing that Applicant's Mini-Melts medicine should be taken off the market because it is too dangerous; rather, Opposer is arguing that it creates a danger to the public to give a use-only-as-directed medicine with potentially dangerous side effects the same name as a popular children's novelty ice cream treat.

The TTAB acknowledged that it had considered these safety concerns, but found "no evidence that anyone abuses or misuses Reckitt's product as a result of trade mark confusion. More specifically, the TTAB stated: "the issue herein is not whether purchasers would confuse the goods (ice cream and pharmaceutical preparations), but rather whether there is a likelihood of confusion as to the source of these distinctly different goods."

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Challenging times we live in! Nobody would have anticipated that our British friends would really do it and vote for the Brexit. But they did and the rest of Europe is kind of shocked. We will eventually all have to deal with the aftermath of this political earthquake. It is probably too early to foresee the impact this will have on our IP world. The UK has not even submitted the formal motion to leave the EU. It can be guessed that there are a lot of negotiations taking place behind closed doors in Brussels and elsewhere trying to define the conditions under which the Brexit may occur.

It can probably be said with some certainty that EU trademarks will lose their validity in the UK but at the same time a mechanism for the conversion of EU trademarks into national British trademarks is likely to be implemented. Also on the patent side the launch of the European Unitary Patent and the introduction of the Unified Patent Court scheme will be in some way affected or at least delayed. And last but not least the European Medicines Agency (EMA) will probably have to move to another EU Member State if the UK finally leaves the EU. At the PTMG Committee meetings we have agreed that PTMG will only deal with all these open questions at one of our future conferences once we have some kind of clarity. It is by far too early for that now.

In the meantime we are preparing for our PTMG Autumn Conference which will take place in Oslo early in October. We are proud that we will again be able to present an interesting programme to our friends and colleagues. I hope to see many of you there. See you in Oslo!

Frank Meixner

Assessing the dominant character of elements of a composite trade mark

Margret Knitter, LL.M. SKW Schwarz



Facts

A private person in Germany applied for the word and figurative EUTM for dietary supplements in Class 5. Spanish company Laboratorios Ern, SA filed a notice of opposition based on the earlier Spanish word mark DYNAMIN, which was registered for dietetic foods adapted for medical use in Class 5. The Opposition Division as well as the Fourth Board of Appeal of EUIPO rejected the opposition. The Board of Appeal concluded that, taking into account the normal distinctive character of the earlier mark and the heightened level of attention of the relevant public for goods for medical use, there was no likelihood of confusion.

Decision

The European General Court held that the comparison between the signs at issue must be made by considering the mark applied for in its entirety, the overall impression made in the minds of the relevant public by that mark not being dominated by any of its component parts. The term dynamic cannot be considered to be dominant in the mark applied for. That term would neither dominate the term life, which is represented in the same way, nor the figurative element, which occupies a significant place in the sign, in view, in particular, of its size, its position and its bright colours. Due to the second word of the mark applied for, life, and its figurative element, which both have no equivalent in the earlier mark, the Court held that the marks at issue show a low degree of visual and phonetic similarity. The Court followed from all of the foregoing that, specifically in light of the normal distinctive character of the earlier mark, the average or even high level of attention in respect of a portion of the goods at issue, the low degree of

visual and phonetic similarity between the signs, and the lack of conceptual similarity, there would be, notwithstanding the identical character of certain goods, no likelihood of confusion between the signs at issue.

Comment

Even if the figurative part of the contested sign is certainly eye catching due to its size, it tends to reinforce the promotional character of the word elements in the minds of the relevant public because of its descriptiveness (the leaf-shaped elements are merely descriptive for dietary supplements). Further, the second word of the mark applied for, life, also does have a descriptive meaning for dietary supplements. This word will be associated with human or animal life and bearing in mind that the relevant goods are dietary supplements, this element is non-distinctive for such goods, since the Class 5 goods are used to maintain a healthy life. In contrast, the first word of the mark applied for, Dynamic, might be linked to the Spanish word for dynamic, namely *dinámico*, but it still shows a normal level of distinctiveness, as the Court affirmed. That said there are good reasons for giving the first word of the mark applied for, Dynamic, a dominant role in the sign, in which case, the decision might be that the signs are confusingly similar.

PTMG is proud to announce that the Editor has been awarded 2016 Best in Pharmaceutical Trademark Law by Acquisition International, an online publishing company.

Is LUMINOUS similar to LUMINA? The Delhi High Court says yes

Omesh Puri, Associate Partner at LexOrbis.

Battles between big players in the pharmaceutical industry cannot be considered as a new and trending phenomenon. We customarily come across events where pharmaceutical companies incline to claim their rights over a new invention or a trade mark.

One such battle made headlines when the International pharmaceutical company, Novartis AG (hereinafter as the Plaintiff) filed a suit of passing off and unfair competition against Intas Pharmaceuticals (the defendant) for restraining them from manufacturing, selling, offering for sale, etc. the drug for ranibizumab under the trade mark LUMINA or any other trade mark which is deceptively similar to Plaintiff's trade mark LUMINOUS.

The Plaintiff was engaged in rendering medical services in relation to ranibizumab. In the year 2011, in order to analyze, evaluate and benchmark the treatment, efficacy and safety of ranibizumab the Plaintiff had initiated a data and scientific research study under the mark LUMINOUS.

The issue against the Defendant arose when the Plaintiff in 2015 came to know that the Defendant was planning to launch its drugs for ranibizumab. In December 2014, the Plaintiff and the Defendant participated in a pharmaceutical conference conducted by Vitro Retinal Society of India (VRSI) wherein the Plaintiff's trade mark LUMINOUS was exhibited for its use in relation to medical studies pertaining to ranibizumab. Subsequently, in February 2015 during a conference organized by All India Ophthalmological Society, the Plaintiff was in utter shock to see the Defendant exhibiting the proposed launch of Ranibizumab under the trade mark LUMINA which was deceptively similar to the Plaintiff's LUMINOUS mark.

Aggrieved by this act, the Plaintiff issued a legal notice to the Defendant contending that the adoption of a deceptively similar trade mark by the Defendant will cause confusion. The Defendant in their reply to the legal notice of the Plaintiff refused to comply with the requisitions sought by the Plaintiff. In fact, the Defendant went ahead and instituted a suit before the Delhi High Court against the Plaintiff on the ground that the legal notice issued by Plaintiff constituted groundless threats

under Section 142 of the Trade Marks Act 1999 and sought appropriate reliefs.

In view of all this, the Plaintiff filed the instant suit of passing off against the Defendant requesting permanent injunction in its favour and to restrain the Defendant from manufacturing, selling, advertising, etc. the drug for pharmaceutical preparations of ranibizumab using the trade mark LUMINA or any other mark deceptively similar to the Plaintiff's trade mark LUMINOUS.

The Plaintiff contented before the Delhi High Court (hereinafter as the Court) that the mark LUMINOUS was used in other countries from July 2010 and had been in use in India since 1 December, 2012. The Plaintiff argued on its being the prior adopter of the trade mark LUMINOUS and submitted that contrary to this, the Defendant had not even commenced use of its mark LUMINA.

The Defendant challenged the use of the mark LUMINOUS by the Plaintiff and contended that the Plaintiff had been using the mark LUMINOUS for clinical data and scientific research which does not amount to commercial use and therefore cannot be considered a trade mark. Thus, no protection can be sought for or granted to the Plaintiff. The defendant also urged to consider LUMINOUS a generic mark based on various registrations on the record of the Registrar of Trade Mark of the mark LUMINOUS and marks akin to this sign. The Plaintiff submitted that all research and studies under the mark LUMINOUS are related and connected with ranibizumab and the sale of its drug, therefore the same amounts to commercial usage.

The Court after hearing both the parties granted an ad interim injunction in favour of the Plaintiff. Though the Defendant had not filed its reply, the Court was persuaded to grant an interim injunction giving due weight to the prior use by the Plaintiff of the trade mark LUMINOUS. The Court reiterated that it is a settled legal position that in order to succeed in a passing off matter, what has to be established is the use of a mark "prior in point of time" to the impugned use by the respondents. The Court restrained the Defendant to manufacture or sell LUMINA considering its structural and phonetic similarity with Plaintiff's trade

US Update Continued

In other words, the TTAB recognized Opposer's concerns over children abusing Reckitt's medicine and that parents may accidentally give their children too much of the product; however, the TTAB concluded that this has "nothing to do with confusion between trade marks."

The Opposer was not without recourse however, after the defeat of its safety-related likelihood of confusion claim. Earlier in the proceeding, the Opposer had claimed that Reckitt's marks were merely descriptive and Reckitt had responded by claiming that its marks had acquired distinctiveness under Section 2(f) of the Lanham Act. The TTAB noted that Reckitt had applied for its marks on an intent-to-use basis and so a claim of acquired distinctiveness on this point technically was not available because it must be based on use. Nonetheless, the TTAB considered the issue of acquired distinctiveness because the parties had litigated the issue, and found Reckitt's evidence insufficient.

Although Reckitt had used the marks since 2006, the advertising figures supporting the claim of acquired distinctiveness, despite totaling around \$22 million, had declined and were not recent. In addition, the TTAB noted that there was no contextual evidence submitted that would allow it to properly evaluate the impact of Reckitt's sale of 779 million doses of expectorant within the "vast pharmaceutical industry." The TTAB noted that "the raw number, although perhaps showing the relative success of applicant's product, does not necessarily evidence consumers' recognition of the proposed mark as a source indicator." Thus, the TTAB sustained the opposition on the basis of Reckitt's failure to establish that its marks had acquired distinctiveness.

Overall, this TTAB decision has several lessons for companies selling OTC pharmaceuticals in the US, such as the importance of establishing a thorough record when claiming acquired distinctiveness, including explanations as to the relevance of this evidence within the pharma industry. Finally, it demonstrates that health and safety concerns do not trump or unduly influence a likelihood of confusion analysis before the TTAB where the evidence does not otherwise support such a finding.

BELARUS

PETOSEVIC

In January 2016, Belarus adopted a new trade mark law, which entered into force on 15 July 2016. It brings about changes necessitated by economic and legal developments in Belarus and aims to clearly specify the scope of trade mark rights and outline local trade mark procedures.

The new law introduces an amended list of relative and absolute grounds for refusal, making the registrability threshold more stringent. Under the new law, relative grounds examination includes checking new trade mark applications against earlier, third party industrial designs and plant varieties, along with the earlier, third party trade marks and commercial names.

As regards absolute grounds for refusal, the former law prohibited trade marks or designations that consist solely of signs or indications which serve to designate the kind, quality, quantity, intended purpose, value, the place or the time of production of the goods or of rendering the service. The new law prohibits registration of trade marks if the signs or indications hold a dominant position.

In an attempt to harmonize and rationalize formal application requirements, the law no longer allows haphazard indication of the applied-for goods and services. Instead, it obliges the applicant to group the list of goods and services into classes in an orderly fashion.

A new provision has been added concerning the method of representation of a three-dimensional mark, which should be represented in two dimensions as either a drawing or a photograph. The provision leaves flexibility to the applicant as to the number of representations they might want to include, be that a single image or a set of images showing the mark from different angles. Another provision establishes a mandatory colour claim and invites the applicant to use the CMYK colour model by either naming the colours or colour codes.

Importantly, under the new law, information related to trade mark applications that successfully passed formal examination will be made public, to enable third parties to comfortably track and examine new applications. Trade mark details should be published online within two months following the end of formal examination.

Efforts to shorten the registration process resulted in a time limit of two years and two months for the examination period, two months of which will be allocated to

formal examination, while two years will be reserved for substantive examination. Additionally, the time for publication in the Official Bulletin should be factored in, which has been shortened to two months (previously it was three months). One month has been set for the issuing of a registration certificate. Thus, in total, the whole registration process should not exceed a period of two years and five months.

Amendments were also introduced regarding license agreement requirements. The new law introduces an alternative to the usual and obligatory quality control provision - "the quality of goods and services manufactured or rendered under license shall not be inferior to the quality of goods and services of the trade mark holder". So called quality indicators – GOST standards maintained by the Euro-Asian Council for Standardization, Metrology and Certification (EASC), a regional standards organization, may now be used to enable licensors, who have not put any goods on the market, and are thus unable to provide any information on the quality of goods, to actually sign the license agreement.

Mandatory remuneration provisions for businesses entering license agreements are now also explicitly inscribed into the law.

Finally, trade marks that have lapsed into the public domain are no longer subject to cancellation actions before the Board of Appeals, which generally has jurisdiction over other matters such as reviewing cases that involve unlawful trade mark registration. To cancel a trade mark that has become generic, a cancellation action should be now brought before the Supreme Court.

BOSNIA

PETOSEVIC

Prior to June 2012, the Institute for Intellectual Property of Bosnia and Herzegovina applied the class heading covers all approach when interpreting the scope of protection when class headings are used in lists of goods and services in trade mark applications and registrations.

The Court of Justice of the European Union's 19 June 2012 decision in the IP Translator case did not seem to have much effect on the practice of the Bosnian PTO, despite the fact that the PTO closely follows the EUIPO practice and that it has quite often used EUIPO Guidelines in its work.

The trade mark law and related regulations did not include any details on the goods and services, other than formal requirements, such as properly classifying the goods, distinguishing classes and

submitting a specification as a separate document.

However, sometime in 2013, local agents were unofficially notified that the PTO would slowly start shifting from the class heading covers all to the means what it says approach. The broad and incomplete regulations governing the specification of goods and services allowed the PTO to adopt the new approach, but the lack of formal regulations as well as the fact that the Bosnian PTO operates at three locations – Mostar, Sarajevo and Banja Luka – resulted in inconsistency of procedures.

The opportunity to make the practice uniform first came about as a result of an EU-funded project that led to the creation of the first official methodology for trade mark examination, which entered into force in January 2015. The methodology includes guidelines on all aspects of trade mark examination, including a chapter dedicated to the specification of goods and services, which explicitly states that the means what it says approach will apply to applications filed on or after 1 January, 2015.

Recent changes introduced by the EU Regulation 2015/2424, especially those related to implementing the IP Translator decision, will again leave the Bosnian PTO one step behind the EUIPO, as the PTO lacks personnel and funding necessary to carry out this task. It is not sufficient to simply amend the methodology, but also to amend additional legislation, as this time they would not be simply changing the rules of the game to guide future cases, but the changes would have implications for the rights that were granted earlier.

Due to the complex political and administrative structure of the country, such changes in legislation are not likely to happen in the foreseeable future. It would be slightly easier to implement the changes through subordinate legislation mentioned earlier; specification of goods is not regulated by any law and thus, does not necessarily trigger legislation amendments or new legislative efforts. Moreover, changing legislation would not solve the problem of a lack of skilled staff and funding needed to implement the changes.

Through informal communication, we learned that the PTO is aware that the recent changes will resonate on a global level, but that it is unlikely that the sunset period and declarations will be introduced any time soon in Bosnia.

Changes related to removing the requirement of graphical representation will be even more difficult to implement, as the current trade mark law (Article 4) prescribes that in order to be eligible for trade mark protection, a mark must be graphically representable. In order to implement this change, the law would need to be amended and subordinate

International Update

legislation, as an alternative option, is not possible in this case.

In light of the above, it is quite obvious that the EU trade mark reform will have little or no impact on Bosnia and Herzegovina. The reason for this is not the lack of will, but the lack of efficient political mechanisms and of means to keep pace with the changes.

MONTENEGRO

PETOSEVIC

The amended laws on trade marks, industrial designs and topographies of semiconductor products have recently entered into force in Montenegro. The changes aim to bring Montenegro's IP legislation fully in line with the European Union's legislation and relevant international treaties. Below is the summary of the most important changes.

Trade marks

Trade mark law amendments entered into force on 8 July 2016, generally bringing greater clarity to certain requirements and procedures.

In case of a provisional refusal of an international trade mark registration, the four-month deadline for appointing a local representative is now calculated from the date on which WIPO issued the notification, as opposed to the date of receipt of the notification.

The amended law defines monetary fines in case of trade mark infringement. A fine in the amount of EUR €2,000 -10,000 may be imposed against a legal entity, EUR €500 - 3,000 against an entrepreneur and EUR €250 -1,500 against a physical person and the responsible person within a legal entity.

Another change concerns the market watch requirements and market inspectorate activities, which were previously regulated by the Law on Implementation of Intellectual Property Rights (Official Gazette of the Republic of Montenegro 45/05). These provisions have now been incorporated into the trade mark and industrial design laws.

Finally, the law defines the effects of an EU trade mark in Montenegro after this country accedes to the EU.

Industrial Designs

Industrial design law amendments, which entered into force on 19 July 2016, are in line with the Directive 98/71/EC of the European Parliament and of the Council on the legal protection of designs.

Provisions defining legal effects of the Community Design in Montenegro have been included and the exhaustion of rights within the EU has been further clarified, to take effect when Montenegro accedes to the EU.

The amended law also clarifies the question of the cancellation of a design on absolute or relative grounds. The cancellation lawsuit may be filed during the whole time of validity of a design, as well as after the expiration of the same or renunciation of a design right.

PHILIPPINES

Gladys Mirandah & Gaurav Jit Singh, mirandah asia (philippines) inc

Westmont Pharmaceuticals Inc. (Westmont) filed an opposition against the registration of the mark ANGIMAX in the name of Cathay YSS Distributors Co. Inc. (Cathay) for use on pharmaceutical preparations namely tablets for the treatment of ischaemic heart disease, angina pectoris, sequelae of infraction in Class 5.

The opposition was based on Westmont's prior registration for the mark AMPIMAX registered on 24 July 2008 for antibiotic pharmaceutical preparations under Class 5. It should be noted that Section 123.1 (d) of the Republic Act No. 8293, also known as the Intellectual Property Code (IP Code) of the Philippines, states that a mark cannot be registered if it is identical with a registered mark belonging to a different proprietor or a mark with an earlier filing or priority date, in respect of:

- (i) the same goods or services; or
- (ii) closely related goods or services; or
- (iii) if it nearly resembles such mark as to be likely to deceive or cause confusion.

Westmont's application for AMPIMAX was filed as early as 2008 while Cathay's mark ANGIMAX was filed in 2013.

Based on the pleadings submitted, it was observed that both marks consist of three syllables: AM-PI-MAX and AN-GI-MAX. The similarity of the word marks lies in the beginning letter A, the middle letter I and the ending syllable MAX. However, the middle letters M and P of AMPIMAX created a stark difference from the middle letters N and G of the ANGIMAX.

It also appeared that Cathay's mark ANGIMAX was derived from the treatment for which the product is being used, which included the treatment for angina pectoris, which is a medical term for chest pain or discomfort due to coronary heart disease, which occurs when the heart muscle does not get as much blood as it needs due to narrowed or blocking of one or more of the heart's arteries, also called ischemia. On the other hand, Westmont's mark AMPIMAX was derived from the drug Ampicillin which is a penicillin-like antibiotic used to treat certain infections caused by bacteria such as pneumonia, bronchitis, as well as ear, lung, skin, and urinary tract infections. This

showed that the two marks were derived, coined independently of, and based on distinct goods and/or pharmaceutical products.

The Bureau of Legal Affairs of the Intellectual Property Office of the Philippines, in their decision dated 18 February 2016, held that the likelihood of the consumers being deceived, mistaken or confused was remote because of the highly sensitive nature of the respective parties' drugs. The sheer disparity in the nature and purposes of the goods precluded the probability of confusion or mistake.

Accordingly, given the difference in the goods or pharmaceutical products, Cathay could not be said to have had the intent to ride on the goodwill of the mark AMPIMAX, which reinforces earlier cases, especially given the breadth of class 5. The decision of the Bureau of Legal Affairs is currently the subject of an appeal filed at the Office of the Director General on 1 April 2016.

THAILAND

Gladys Mirandah & Puwin Keera, mirandah asia (thailand) co ltd

Amendments to the Thailand Trade Mark Act took effect on 28 July 2016. It should be noted that the primary objective of these amendments is to provide Thailand with a solid foundation to join the Madrid Protocol by the end of 2016. The revised Act has introduced amendments to the trade mark registration process, extended its protective scope and revised the applicable deadlines and fees.

A summary of the important amendments to the Act is as follows:

- the timeframe for oppositions and responses to office actions has been reduced from 90 days to 60 days. On the other hand, the timeframe to pay registration fees has increased from 30 days to 60 days;
- partial assignment of marks is now allowed under the new amendments, whereas association of marks is no longer required. Furthermore, under the new amendments, a license agreement will not be terminated from the transfer or inheritance of the right unless agreed otherwise;
- one of the most progressive steps that the amendments have brought into the trade mark legislation is that sound marks are registrable if they are not directly descriptive of the applied goods or services. Likewise, shape marks are now explicitly recognised in the new Section 7 of the Act;
- multi-class applications have been allowed under the new Act from 28 July 2016 onwards.

International Update

Another important change that should be taken into account is that a trade mark registration may still be renewed post-expiry date provided that the renewal application is filed within a period of 6 months from the expiry date and an additional 20 percent of the official fees is paid.

The new amendments to the Trade Mark Act have also explicitly imposed an offense for unauthorised refilling or reusing of packages or containers. Under the new section 109/1, a person who refills or reuses packages or containers bearing registered trade marks of another person in order to mislead the public that the goods contained therein belong to the real mark holder will be liable for imprisonment of up to four years and/or a fine of up to THB 400,000.

The new amendments have also changed the new official fees as follows:

New Application:

- Up to five items = THB 1,000 per item per class
- More than five items = THB 9,000 per class

Registration Fees:

- Up to five items = THB 600 per item per class
- More than five items = THB 5,400 per class

Renewal Fees:

- Up to five items = THB 2,000 per item per class
- More than five items = THB 18,000 per class

Additionally, the new amendments to the Trade Mark Act have substantiated many relevant concepts. For instance, the Presumption of Inherent Distinctiveness. Marks that contain invented words, numbers, characters and devices which are not directly descriptive of the character or quality of goods/services will be presumed to have inherent distinctiveness. Furthermore, the new Section 7 explicitly states that marks that lack inherent distinctiveness will be registrable if they have acquired distinctiveness from their prolonged use (through substantial sale, distribution and advertisement) in Thailand to the extent that they are well known to the public.

UNITED KINGDOM

Rachel Conroy, Boulton Wade Tennant

Background

Medicom Healthcare Ltd applied to register the mark MEDAX for the following goods in class 5: pharmaceutical preparations for the eye; ophthalmic

preparations; eye drops; eye care products; food products and supplements for medical use all relating to the eye, none of which relating or containing honey, royal jelly, propolis or other bee related products.

The application was opposed by Medac Gesellschaft für klinische Spezialpräparate mbH on the basis of likelihood of confusion with its earlier EUTM for MEDAC which covers the following goods in class 5: pharmaceutical and veterinary preparations; sanitary preparations for medical purposes; dietetic substances adapted for medical use, food for babies; plasters, materials for dressings; material for stopping teeth, dental wax; disinfectants; preparations for destroying vermin; fungicides, herbicides.

Decision

The goods were found to be identical.

The average consumer was held to be both the general public and medical professionals for whom the selection and purchase of products would be both visual and oral such that both visual and aural similarity is important in the comparison of marks.

Despite the cost of the goods being low, since the goods are to be applied to the eye or consumed for medical purposes, it was held that a high degree of attention would be paid by both the general public and professionals.

The marks were held to be visually and aurally similar to a high degree, with the Registrar making reference to the general rule of thumb that the beginnings of words tend to have the greatest impact on the consumer's perception. Since both have the appearance of invented words, neither is likely to portray any meaning and therefore the conceptual position is neutral.

Since the earlier mark MEDAC appears to be invented in nature, and in no way describes or alludes to the relevant goods, it was found to possess a high degree of distinctiveness.

In assessing the likelihood of confusion, the Registrar found that although consumers are likely to pay a high level of attention during the purchase of the goods which militates, to some degree, against the marks being misremembered, it does not mean that the effect of imperfect recollection is diminished to the point of playing no role at all. Therefore, taking into account the high degree of visual and aural similarity, the identity of the goods and the high degree of inherent distinctiveness of the earlier mark, it was found that there is a likelihood of direct confusion. The opposition succeeded.

UKRAINE

PETOSEVIC

On 19 June 2016, amendments to the Ukrainian Law On the Medicinal Products came into effect simplifying the process of medicine registration.

The amendments aim to facilitate the state registration process in general and in particular for medicinal products for which a marketing authorization has already been obtained in the US, Switzerland, Japan, Australia, or Canada, or which have been registered under the centralized procedure in the European Union.

Previously, medicinal products authorized in these countries could get a marketing authorization under the simplified procedure only if they were intended for the treatment of tuberculosis, HIV/AIDS, viral hepatitis, oncological and orphan diseases. Now the simplified procedure applies to all medicinal products.

Under the amendments, there is no need to file results from pre-clinical and clinical trials. No examination of registration dossiers is required during the authorization procedure, and the time period allotted to the Ministry of Health to make its final decision on authorization has been reduced to seven business days.

Moreover, the registrants previously had to file a copy of a certificate confirming that the manufacturing practice meets the requirements of the Ukrainian legislation, but now, instead of this document, they may opt to file a written confirmation that they make products for the Ukrainian market in the same manufacturing facilities where they make products for the markets of the above-mentioned countries.

In terms of medicinal products in general, under the amendments, information on filed applications, such as their status and relevant decisions, should be available to the public online free of charge. Moreover, the State Register of Medicinal Products will include additional fields for data on prior authorizations as well as renewals and cancellations of authorizations.

Purple puzzles in the High Court

Chris McLeod, Elkington and Fife LLP, London

In the 15 June 2016 case *Glaxo Wellcome UK Limited and Glaxo Group Limited v Sandoz Limited*, Sandoz has succeeded in the High Court in a counterclaim for a declaration of invalidity of an EU trade mark registration of an EUTM registration of a combined colour mark registered for inhalers in class 10. The counterclaim was in response to Glaxo's claim that Sandoz had infringed the registration.

The mark as registered was as follows:



The registration also contained the following description:

"The trade mark consists of the colour dark purple (Pantone code 2587C) applied to a significant proportion of an inhaler, and the colour light purple (Pantone code 2567C) applied to the remainder of the inhaler."

Sandoz's case was based on Article 4 of Council Regulation (EC) 207/2009, namely that the mark was not a sign and was not capable of being represented graphically.

His Honour Judge Hacon considered the relevant case law on colour marks, including *Heidelberger Bauchemie*, *Libertel*, *Nestlé v Cadbury* and *Sieckmann*. The essence of these cases is that a mark must be clear, precise, unambiguous and uniform in order to comply with Article 4.

Additionally, despite submissions on behalf of Glaxo that the visual representation should be the primary indication of the scope claimed, and on behalf of Sandoz that the description was the definitive description of the mark by virtue of the words "...consists of...", Judge Hacon concluded that, because the visual representation and the description did not

have "strict congruence", he had to give each element equal consideration without precedence over the other.

He went on to define the mark as setting a puzzle with three possible solutions: a mark with the outline of the visual representation and the precise combination of light purple and dark purple; a mark with the many alternatives for which the description provided; or a pattern abstracted from the representation of the mark. He held that only the first of these solutions equated to a single mark and that the ambiguity caused by the possible solutions meant that the mark was insufficiently precise, uniform, clear or unambiguous. He therefore upheld the counterclaim for a declaration of invalidity and dismissed the infringement claim.

Comment

It appears that Glaxo have suffered this defeat due to the body of case law on colour marks subsequent to the 2004 date of application for registration of their mark. In retrospect, the mark arguably does not comply with the criteria subsequently established by the cases mentioned above, so the case serves to underline the need to review portfolios and to try to determine whether registrations of marks which are more complex than words and/or logos are likely to overcome attacks of this nature on their validity.

94th PTMG Conference

Paris

13th - 14th March 2017

Registration will open mid January

Members News

New Members

We are delighted to welcome the following new member to the Group:

Apostolos Dakanalis of HGF Limited, London, UK adakanalis@hgf.com

Moves and Mergers

Ashley Benjamin has left Dehns to join Reckitt Benckiser Group Plc in Slough, UK. Ashley can now be contacted at Ashley.benjamin@rb.com

Josée Sanchez has left Sanofi to join bioMérieux in Marcy L'Etoile, France. Josée can now be contacted at josee.sanchez@biomerieux.com

Wallis Pons Cardi has left Biaggi & Messina to join AngelesPons in Santo Domingo, Dominican Republic. Wallis can now be contacted at wpons@angelespons.com

Susie Arnesen is with the newly named firm Løje Arnesen & Meedom in Copenhagen, Denmark. Susie can now be contacted at spa@iplaw.dk

Brooks Bruneau has left Porzio Bromberg & Newman to join FisherBroyles LLP in Princeton, New Jersey, USA. Brooks can now be contacted at brooks.bruneau@fisherbroyles.com

Tiffany Valeriano has left Brandstock Services AG to join TrademarkNow Oy in Helsinki, Finland. Tiffany can be contacted at tiffany.valeriano@trsdemarknow.com

David Rose has left King & Wood Mallesons to join Mishcon de Reya in London, UK. David can be contacted at david.rose@mishcon.com

Agustin Velazquez Garcia Lopez is with the newly named firm AvaLerroux in Mexico City, Mexico. He can be contacted at agustin@avalerroux.mx

Peter Harrison has left Hill Dickinson LLP to join York Law School at the University of York in the UK. Peter can now be contacted at peter.harrison@york.ac.uk

Liselott Enström has left Advokatfirman Lindahl KB to join Beatum Advokatbyrå AB in Stockholm, Sweden. Liselott can now be contacted at liselott@beatum.se

Please note that the email address for **Lidia Lanza** of Helsinn Healthcare S.A. in Lugano, Switzerland has changed to lidia.lanza@helsinn.com

Please remember to let us know of any changes to your contact details. You can notify me either via the PTMG website www.ptmg.org or directly to Lesley@ptmg.org or by writing to me at Tillingbourne House, 115 Gregories Road, Beaconsfield, Bucks, HP9 1HZ

Lesley Edwards
PTMG Secretary

Much Ado About Nothing?

Rachel Wilkinson-Duffy & Dr Birgit Clark, Baker & McKenzie LLP, London

Those of our readers who keep a watchful eye on pharmaceutical related trade mark disputes decided by the EU IPO may be interested in a recent decision issued by the EUIPO's Fourth Board of Appeal (Board) in *Pentasa v Xenasa* handed down early this year. In this notable decision the EUIPO held that a likelihood of confusion between two word marks covering Class 5 goods cannot be ruled out despite the high level of attention which the public at large and health professionals will have in the context of goods of a medical nature. The fact that health professionals may understand an element of the marks in question as a reference to an active ingredient was regarded as irrelevant by the Board, where the general public would not perceive this reference.

Facts

The case involves an application by Tillotts Pharma AG (Tillotts) to register as an EUTM the mark XENASA for pharmaceutical and dietetic substances "for the diagnosis, prevention and/or treatment of gastrointestinal disorders and conditions", following a restriction at the appeal stage of the originally broader specification in class 5. *Ferring B.V.* (*Ferring*) opposed the application, claiming a likelihood of confusion with a prior EUTM for the mark PENTASA with protection for pharmaceutical products broadly in class 5. The prior EUTM was not subject to a proof of use request, but during the course of the opposition *Ferring* provided evidence supporting a claim of enhanced distinctiveness of PENTASA for intestinal anti-inflammatory products.

Decision

The EUIPO Opposition Division rejected the opposition, finding that, even assuming enhanced distinctiveness of the earlier mark PENTASA, the attentiveness of the

relevant public in question is high and so there would be no likelihood of confusion due to the overall differences between the marks, despite the goods in question being found identical.

Ferring appealed, arguing that the marks PENTASA and XENASA are visually and aurally highly similar. While the common ending ASA would be understood by the professional public as alluding to the active ingredient mesalazine, it had no meaning for the end consumer.

With reference to the CJEU's decision in *Travatan*, the Board confirmed that, while the Class 5 goods concerned require a doctor's prescription prior to their sale to end-users in pharmacies, the relevant public was composed of both medical professionals and end-users. As it had not been established that end users would understand the letters ASA as referring to an active ingredient, this element could however not be treated as lacking distinctiveness. Therefore the mark PENTASA was held to be of average inherent distinctiveness, and aurally and visually similar to XANTASA to an average degree, with neither mark having any conceptual meaning.

The "impressive" sales and marketing figures provided by *Ferring* in support of their opposition convinced the Board of the enhanced distinctiveness of the PENTASA mark for both the professional public and the public at large in respect of a pharmaceutical product prescribed for the treatment of diseases of the gastro-intestinal tract. In this context the Board stressed that the earlier mark was afforded a broadened scope of protection due to its extensive use and market success. In view of this, the identity and high similarity of the goods and the average level of visual and aural similarity between the marks, the Board concluded that there was a likelihood of confusion.

Comment

Taking into account the - at least in the view of these authors - quite striking differences between the prefixes PENT- and XEN-, the Board's decision may come as somewhat of a surprise, bearing in mind the established principle of a higher level of attention in trade mark cases concerning medical and pharmaceutical goods and services. Further, the Board's reasoning emphasises the importance of the perception of end consumers, who represent a significant part of the relevant consumers, when considering the likelihood of confusion between pharmaceutical trade marks. The Board's decision is therefore a useful reminder of the relevant principles that must be taken into account when assessing a likelihood of confusion in the context of products of a medical and/or pharmaceutical nature.

Finally, readers may be afforded some comfort by perusing the very informative summary of EUTM case law provided by Verena von Bomhard in the last addition of *Law Lore & Practice* which helpfully illustrated that the higher level of attention for pharmaceutical products continues to be an influencing factor in determining consumer confusion. This is echoed in the EUIPO's updated trade mark manual of 23 March 2016 provides the following guidance: "... insofar as pharmaceutical preparations are concerned, the relevant public's degree of attention is relatively high, whether or not issued on prescription ... In particular, medical professionals have a high degree of attentiveness when prescribing medicines. With regard to non-professionals, they also show a higher degree of attention, regardless of whether the pharmaceuticals are sold without prescription, as these goods affect their state of health."

As most readers will no doubt be aware, on 23 June 2016 the United Kingdom voted to leave the European Union - Brexit. The UK is expected to enter into a negotiation period during which the terms of withdrawal from the EU will be settled. The exit date is not yet known, but it will be triggered by the UK invoking Article 50 of the Lisbon Treaty. Current reports suggest that the new British Prime Minister, Theresa May, will not formally notify the EU of the UK's intention to leave until 2017.

Once the UK invokes Article 50, a two-year countdown for leaving the EU will begin. Indications are therefore that the UK will cease to be a part of the EU at some point in 2019.

Many issues have yet to be resolved. The current political situation in the UK can best be described as uncertain, and despite the creation of a new cabinet position - 'Secretary of State for Exiting the European Union' - there have been no definitive policy announcements on Brexit to date. IP is also one of a myriad of issues that the UK government will need to address overseeing the UK's withdrawal from the EU, so the position is unlikely to be clarified in the near future.

In relation to trade mark protection in the UK specifically, the position at present is entirely unchanged. However, once Brexit happens, and assuming that the UK does not join the European Economic Area (EEA), there are likely to be some significant changes, not least in that EUTMs may potentially no longer cover, or be effective in, the UK.

How will Brexit affect trade mark protection in the UK?

Currently, there are two parallel systems for obtaining registered trade marks which cover the UK: a) UK registered marks, which are obtained through and administered by the UKIPO; and b) European Trade Marks which are obtained through and administered by the EUIPO. Brexit will have no impact on UK registered marks.

However, once the UK formally leaves the EU, the strong likelihood is that EUTMs will cease to have effect in the UK. This

means that after Brexit, potentially the only way to obtain new registered trade mark protection in the UK will be to file a new UK trade mark. Protection for the rest of the EU will be possible by filing an EUTM, as before, or by applying to national offices in the country of choice.

What will happen to existing EUTMs? Will rights in the UK be lost?

While again, nothing is certain, the expectation is that there will be provisions to ensure there are no loss of rights in the UK for owners of existing EUTMs. At present it is not clear what that mechanism will be, but the consensus is that it may be one of the following three options:

- i) Automatic continued recognition of EU registered trademarks by both the EUIPO and UKIPO - essentially that the UK is treated as still being part of the European Union Trade Mark system by the EUIPO and that EUTM rights apply equally in the UK. This is considered unlikely.
- ii) Automatic creation of parallel UK rights based on previous EUTM registrations. Again, some consider this less likely due to the potential burden it would place on the UKIPO.
- iii) An opt-in procedure for the creation of a parallel UK application/registration based on the existing EUTM application/registration. This seems the most likely outcome, with the administrative cost being passed on to the rights holders.

Will UK companies still be able to protect and enforce their trade marks in the EU after Brexit?

Yes. Brexit will not prevent UK companies (or natural persons) from applying for and owning EUTMs, since the system does not require the holder of an EUTM to be from the EU. They will also still be able to enforce these rights against third parties.

What does Brexit mean for EUTM seniority claims?

It is too early to say with any certainty. However, owners of EUTMs should no

longer let national UK marks lapse - as they might previously have done in favour of recording a seniority claim against an EUTM. Instead, they should continue to maintain their UK marks.

What is the position if EUTMs have been used only in the UK?

At present, genuine use of an EUTM in a single member state is potentially sufficient to maintain an EUTM registration (although there may be some doubt about this following the UK High Court judgment in *The Sofa Workshop Ltd v Sofaworks Ltd*). Post-Brexit, however, if an EUTM has only been used in the UK, then the EUTM could become vulnerable to revocation for non-use. The only way to safeguard the position in the remaining EU member states would be to start use of the trade mark in some or all of those states, or to file new national applications.

What will happen to international registrations based on an EU trade mark?

The validity of any existing international registration (IR) based on an EUTM will be unaffected by the UK's exit from the EU.

Once the UK does leave the EU, however, UK companies looking to file new IRs based on an EUTM will be required to prove they have a real and effective commercial establishment in an EU member state in order to rely on the EUTM as a basis for the IR.

What will happen to agreements which apply to "the EU"?

Undertakings and coexistence agreements to settle disputes, as well as licences and distribution agreements will usually specify the geographical scope, often referring simply to "the EU". These should be reviewed to clarify their scope and to ensure the terms continue to apply in the UK post-Brexit. They may also require revision or a new agreement. Any agreements concluded between now and Brexit should include a specific reference to the UK and the EU, and not only the EU.

Brexit *Continued*

General advice for current EUTM owners

EUTM registrations currently being used in the UK only may become susceptible to non-use challenges post-Brexit, as use in the UK may no longer constitute use of a EUTM. EUTM proprietors would therefore be well advised to conduct a full portfolio review and identify any marks that are potentially vulnerable. If use of these marks can be extended into the mainland EU, it would be sensible to do so prior to 2019. Alternatively, filing a national application in the UK prior to Brexit would ensure that no rights in the UK are lost.

A review of any IP-related agreements, such as licensing arrangements, would also be advisable where EUTMs are involved, or where the territory is specified as 'the EU'. Unless the agreement expressly deals with the prospect of countries leaving the EU, the issue of whether a particular agreement will still cover the UK post-Brexit will be open to interpretation.

In general, unless there is anything in the contract to contradict it, it is likely that such agreements (where English law is the governing law of the contract) would be construed as still including the UK, on the basis that the parties intended to include the UK at the time of entering the contract. However, this cannot be guaranteed.

In relation to the other changes that Brexit will potentially bring to the trade mark position in the UK and European Union, it is a case of 'watch this space'. The position until 2019 (at the earliest) remains unchanged, and any developments will be monitored very closely.

Finally, one absolute given, at a time of otherwise almost complete uncertainty, is that where there is a particularly newsworthy event, trade mark applications will follow. A number of opportunistic applications have been filed at both UK and EU level in the wake of the Brexit vote, and some of the more noteworthy include: BREXIT – THE MUSICAL; ENGLISH BREXIT TEA; BREXIT BLUE (for cheese) and BREXIT BREAD. The UKIPO has not issued a practice notice on its position in relation to BREXIT marks, and has already accepted some of the applications. Whether these marks will be considered distinctive, in view of the now ubiquitous nature of the term Brexit, remains to be seen.

Tenants of marketplaces are liable for trade mark infringements of subtenants

Magnus Hirsch, SKW Schwarz Rechtsanwälte, Frankfurt

The Court of Justice of the European Union has decided that, similar to online platforms, the operator of marketplaces who sublets various sales areas to market-traders may be forced to put an end to trade mark infringement committed by these market-traders and to take measures to prevent new infringements.

Background:

The defendant, Delta Center, is the tenant of the marketplace Prague market halls and sublets areas to market-traders. The plaintiff, the brand owners (inter alia Tommy Hilfiger and Burberry), discovered that counterfeits of their goods were sold in the market hall. Proceedings against the individual market-traders have proved difficult in the past, because the person of the infringer changed very often. For that reason the brand owners have joined together for an injunction against Delta Center to stop renting sales areas to market-traders who offer counterfeits. The case came to the Czech Supreme Court which decided to stay the proceedings and refer to the Court of Justice of the European Union for a preliminary ruling. The legal basis is that the Intellectual Property Directive allows trade mark owners to bring an action against intermediaries whose services are used by third party to infringe their trade marks. The trade mark owners took the view that the tenant of market halls who sublets sales points to market-traders falls within the concept of an "intermediary whose services are being used by third party to infringe an intellectual property right" within the meaning of that provision.

The Court of Justice of the European Union has already decided that the operator of an online marketplace is liable, if counterfeits were sold via an online marketplace.

Decision:

The Court of Justice of the European Union decided that the tenant of a market hall, who sublets sales areas to market-traders selling counterfeits, is an intermediary pursuant to Art 11 Intellectual Property Directive. It is irrelevant if the provision concerns an online marketplace or a physical marketplace because it is not apparent from the Directive that it is limited to the electronic commerce. This means that the operator of a physical marketplace can be forced to put an end to the trade mark infringements by market-traders and to prevent new

infringements. The Court found that the conditions for an injunction are identical to those which are addressed to intermediaries in an online marketplace as set out by the Court in the L'Oréal decision. As a result, the injunctions have to be effective and dissuasive, but must also be equitable and proportionate. They must not be excessively expensive and must not create barriers to legitimate trade. The intermediary cannot be required to exercise general and permanent oversight over its customers. However, the intermediary may be forced to take measures which contribute to avoiding new infringements of the same nature by the same market-trader from taking place. As a result, the injunction may be pronounced only if it ensures a fair balance between the protection of intellectual property and the absence of obstacles to legitimate trade.

Consequences for the practice:

The question remains what may the trade mark owner demand from the landlord and how far do the obligations of the landlord extend. For sure, it is the function of the national courts to find answers and to specify the duty requiring action. At least the landlords should examine the contracts with the tenants and should ensure that they have clauses which allow them to terminate the contract if an IP right infringement is shown. Referring to overseeing the tenants, a "notice and take down" procedure comparable to the online sales platforms would be effective and necessary. Control measures can naturally not be technically-automated but have to be conducted by the staff of the landlord. The landlords should be ready to take prompt action if they notice the infringement. In addition, the case may be applicable for any operator of a trading point, also for example for shopping centres or other shopping facilities which were rented to different tenants. Therefore, the decision is not only interesting for owners of fashion brands but also for pharma trade mark owners, because pharma products, not just with regard to drugs but also to other IP protected pharma products, are sold in shopping centres or similar establishments.

Conclusion:

The decision reinforces the rights of the IP owners and makes it easier for these owners to protect their rights. They do not therefore have to act against a large number of traders but can proceed solely against the landlord or operator.

PROFILE: Mario Soerensen Garcia

Mario is the founder and managing partner of the Soerensen Garcia Advogados Associados firm. His practice involves virtually all aspects of intellectual property law, with a particular focus on trade mark, patent litigation, licensing and client counseling.

Mario regularly writes and lectures on a variety of intellectual property topics at several international programs and conferences. For the International Trademark Association (INTA), he has co-chaired, among others forums, the Annual meeting in 2015 in San Diego, served on the nomination committee during 2014/15 and was appointed to the Board of Directors as well as the Executive Committee during 2010/11/12. He is a long-standing member of PTMG.



Where were you brought up and educated?

I was born and raised in Rio de Janeiro, Brazil.

How did you become involved in trade marks?

I received a job offer from my good friends at Dannemann Siemsen firm and spent great and memorable 8 years there.

What would you have done if you hadn't become involved in intellectual property?

I would have done whatever else, with the same fun and pleasure. Architecture, Sports, Medicine. I do eat what I have in my plate.

Which three words would you use to describe yourself?

Fantastic, Sensational and Modest!

What was (were) your best subject(s) at school?

Mathematics and Physics. Truly! But also History and Geography. I was a good student.

What do you do at weekends?

I enjoy family, friends and water sports. Mostly sailing.

Complete the sentence: I'm no good at

WAITING...

What did you want to be as a child?

A Super Hero!

What is your biggest regret?

Not being good in any musical instrument. But this is still on my "to do" list.

What is your philosophy in a nutshell?

You can trust or not trust. But to live trusting is a lot more fun!

What is your weakness?

Impatience.

Which sport do you play and/or enjoy?

Sailing. I am back to competition (started when I was 8 years old and interrupted many times) and presently having good results in a very fast boat called J70. We were 2nd overall last May in the Annapolis NOOD Sailing Week and 5th overall in the European Championship in Germany last June among 94 boats.

What is your favourite drink?

Mango Juice or water.

Which word or sentence do you most often say?

"Life isn't the days you past but the days you remember".

What is your most treasured possession?

My 3 kids (Barbara, Pedro and João) and 2 recently born Grandkids (Bernardo and Raffaella) born just 40 days from each other.

Do you have any unfulfilled ambitions?

Not for myself! I accomplished all that I wished and worked for, the way that I wanted, without violating my values and before I expected. But for others and for the world I have unlimited ambitions of peace, love, wealth and happiness, and I work hard for that as much as I can..

Where do you see yourself in 10 years' time?

Right here. Hopefully.

Which piece of advice would you give a visitor to the area in which you live?

Call me for a drink!

Which modern convenience could you not live without?

A SmartPhone.

What do you like, even though it's not fashionable?

My "shabby" self.