PINTAS IP GROUP

" Today's Asset, Tomorrow's Value "

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SEASONS GREETINGS AND HAPPY DEEPAVALI 2016!!

The year 2016 has been a turbulent year for the intellectual market and we here PINTAS IP GROUP were on the ride nonetheless. As we are in the year 2016.

THE MANAGEMENT OF PINTAS IP GROUP WOULD LIKE TO WISH EVERYONE HAPPY DEEPAVALI AND HAPPY HOLIDAYS.

HAPPY DEEPAVALI

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MALAYSIA IP CASE UPDATE:

3 Dimensional Trademark Registrable in Malaysia.

kraft foods **VS.** ®

This case concerns the registrability of three-dimensional (3D) marks. The Plaintiff, Kraft Foods had sought to apply to register a 3D prism-shaped mark in reddish brown colour, described as "Toblerone Chocolate Teeth 3D In Colour" (the "Proposed Mark") for goods in Class 30 (chocolates etc.). The Registrar refused to register the Proposed Mark for the following reasons:
a) it was deemed as a word with no direct reference to the character or quality of the Plaintiff's goods;
b) it was not distinctive and was not capable of distinguishing the Plaintiff's goods in the course of trade; and
c) it did not fall within the definitions of "mark" and "trade mark" under the Malaysian Trade Marks Act ("TMA").
Kraft Foods appealed to the High Court against the Registrar's refusal. Among the issues to be dealt with by the High Court were:
a) whether a 3D prism mark or a "shape" mark is a "mark" and "trade mark" according to s. 3(1) of the TMA; and
b) whether a 3D prism mark of the Plaintiff is distinctive of the Plaintiff's goods within the meaning of s. 10(1)(e), (2A) and (2B) so as to be registrable under the TMA.

In relying on the UK judgment of Smith Kline and French Laboratories Ltd. and the dictionary meaning of the word "device" as stated in the definition of a "mark" in s. 3(1) of the TMA, the High Court held that a 3D mark is a "mark" under the TMA and is thus registrable. The High Court further relied on the Malaysian case of Yong Teng Hing B/S Hong Kong Trading Co & Anor v Walton International Ltd [2012] 6 CLJ 337 as to the conditions of registrability of a 3D "shape mark" where as long as the applicant is the bona fide owner of the mark, the mark is distinctive of the applicant's goods and the registration of the mark is not prohibited by the TMA, then a 3D "shape mark" may be registered.

However in the present case, the High Court held that the Proposed Mark is not a "trade mark" under the TMA as there is nothing in that mark which would indicate a connection in the course of trade between the Plaintiff's goods and the Plaintiff. With regards to distinctiveness, it was held that the Proposed Mark was not inherently distinctive as the Proposed Mark did not possess any feature which was capable of distinguishing the Plaintiff's goods in the course of trade from the goods of other traders. The Proposed Mark was also held to be not factually distinctive as the Plaintiff had only used the Proposed Mark with the "TOBLERONE" name on or in relation to the Plaintiff's goods and there was no evidence that the Plaintiff had used the Proposed Mark without the "TOBLERONE" name.
The Proposed Mark was therefore not registrable as a 3D mark.

SINGAPORE IP CASE UPDATE:

OFFICIAL SECRETS ACT OVERIDES COPYRIGHT

Lee Wei Ling and another v Attorney-General [2016] SGHC 207

In this Singaporean case, the daughter and the younger son of Lee Kuan Yew ("the LKY estate"), who are the executors of his estate applied to court for the interpretation of an interview agreement ("IA") signed in 1983 and the right to use the recordings and transcripts of interviews ("the Transcripts") made between 8 July 1981 and 5 July 1982. The Transcripts were kept by the current Secretary to the Cabinet ("Cabinet Secretary"). The plaintiff of this case, the LKY estate contended that all rights accorded to Lee Kuan Yew ("LKY") under IA are vested in the LKY estate. LKY further contended that there shall be no access to, supply of copies of, or use of the Transcripts by anyone until 23 March 2020 without the express written permission of the LKY estate and the Cabinet Secretary is under a duty to inform the LKY estate of any request made for access to, supply of copies of, or use of the Transcripts and of the grant of any such request without the express written permission of the LKY estate. In rebuttal, the Attorney General opposed on the basis that the Transcripts were protected by the Official Secrets Act 2012 ("OSA") and the LKY estate did not have the right under the IA to the use and copies of the Transcripts.

Two issues arose in this case. The court had to decide whether the OSA applied to and was relevant to the interpretation of the IA and whether the LKY estate inherited the copyright of the Transcripts. In the event the LKY estate had inherited the copyright, the next question which was based on the construction of the IA, was to what extent the copyright to the Transcripts does the LKY estate inherit?

The High Court held that the applicability of OSA to the Transcripts is a relevant issue in interpreting the IA. The OSA as a statute operates by law and needs no explicit reference in the IA. It applies to the Transcripts regardless of whether it was confidential as the Transcripts were created by LKY during his office as the Prime Minister, not in his personal enterprise. It would restrict anyone in possession or control of the Transcripts from dealing with the Transcripts without Government authorization, even LKY himself did not have an unqualified legal right to compel the Government to give him a copy of the Transcripts. The Court further held that the wording of cl 2(a) of the IA was explicit that LKY reserved the copyright of the Transcripts to himself "until 2000 or 5 years after his death, whichever is later", and thus altered the default position under s 197 (1) of the Copyright Act 1987 (Cap 63, 2006 Rev Ed). LKY's copyright would survive for the benefit of his estate based on s 10 (1) of the Civil Law Act (Cap 43, 1999 Rev Ed), which allows all cause of action vested in a deceased to survive for the benefit of his estate. Hence, the LKY estate inherited the copyright to the Transcripts for the 5-year period after LKY's death. However, the copyright inherited by LKY estate is curtailed by the OSA, as such a right is limited to the purpose of ensuring the Government's compliance with the terms of the IA only.

MALAYSIA IP CASE UPDATE:

Malaysia High Court Oishi Trademark Expunged Due To Non-Use

The recent Court of Appeal ("COA") decision in Oishi Group Public Company Limited v Liwayway Marketing Corporation upheld the previous High Court's decision which ordered that the Defendant, Liwayway's registered "Oishi" trademark be expunged and removed from the Trade Marks Register. The Plaintiff, Oishi Group had been exporting products into Malaysia using the "Oishi" trademark with the "Oishi" word being similar to the Defendant's registered mark and had applied to court for the Defendant's trademark to be expunged and removed.

According to the COA's judgment, 3 important issues arose based on the Defendant's appeal of the High Court decision:
(1) Whether the Plaintiff was an 'aggrieved person' as provided under sections 45 and 46 of the Trade Marks Act 1976 ("TMA");
(2) Whether there was continuous non-use of the Defendant's trademarks which would warrant the exercise of the Court's jurisdiction under section 46 of the TMA; and
(3) Whether the registration of the Defendant's trademarks were conclusive under section 37 of the TMA and therefore cannot be removed under section 46.
On the first issue, the COA held that as long as the Plaintiff has shown a genuine, bona fide intention to use its trademark in the territory, the Plaintiff was considered to be an "aggrieved person" and was therefore qualified to make an application to remove the Defendant's trademark under sections 45 and 46 of the TMA.

Secondly, the COA held that the Plaintiff had sufficiently proven the Defendant's non-use of the trademark through an extensive market survey and the Defendant had failed to prove use through its insufficient and unclear commercial invoices. To establish non-use of a trademark, the mark must not have been used for a continuous period of 3 years plus 1 month prior to the date of the Plaintiff's application to remove the trademark from the Register. Furthermore, the Defendant had temporarily suspended sale of its products sometime within 2009 and was therefore held to have not used the mark continuously during the relevant period between.

Lastly under section 37 of the TMA, the COA accepted the Defendant's contention that a trademark which had been in the Register for seven years or more was presumed to be valid. However they viewed that the wording of section 37 showed that the presumption of validity was not a defence against an attack for non-use under section 46. Furthermore, the Plaintiff's application to remove the Defendant's trademark was not on the basis of the validity of its trademark, but rather of its non-use.

SINGAPORE IP CASE UPDATE:

Singapore High Court Rules Conterfeit CK Goods Banned From SGbuy4u E-Commerce Portal

The operator of a local e-commerce website SGbuy4u was ordered by the Singapore High Court to stop selling counterfeit Calvin Klein goods. Previously, Calvin Klein, a leading fashion designer had sued Singapore-registered Global PSM for trademark infringement after investigators discovered that fake Calvin Klein goods including wallets and underwear can be bought online on the SGbuy4u website.

The operator behind the website, Global PSM claimed that it provided customer-to-customer service. The website acts as a platform on which users can search for and buy goods ranging from apparel to health products and electronics.

The website works when a customer pays for an item on the website. The business operator then places order on the Chinese popular shopping website, Taobao, pays for an item, receives delivery in China and freights the item to Singapore to the customer.

After two sample purchases, Calvin Klein sued and sought summary judgment against Global PSM, freight forwarding company HS International and Mr Jeffrey Tan, owner of the two firms.

A summary judgment means the case need not go to a full trial to hear witnesses and consider all the evidence because a prima facie case had been made out.

"The crux of the dispute lies in the proper characterisation of the business and the involvement of each of the defendants in those business activities," said Justice Chan Seng Onn in judgment grounds released yesterday.

Source: Adapted from the Straits Times Singapore

Apple IPhone Users Can Now Experience VR

While the new iphone 7 is a minimal upgrade, there were many speculations that bigger and sexier upgrades will be included in the next-gen iphone, and VR is one of them. VR, or popularly known as virtual reality is the next giant leap from Cupertino giant and Apple is currently working on that technology. The device is imaginatively named, "Head Mounted Display Apparatus For Retaining a Portable Electronic Redeveloping vice with Display".

Apple users will be using a pair of glasses which the phone can be slot into, providing the users a similar VR experience, much like how a Samsung phone can be attached to a Gear VR. The head mounted display apparatus will feature Integrated headphones and a Lightening connector that will connect the two devices together.

Besides that, the device also comes with dual lenses and an Apple remote for controlling the device. While it is a no secret that Apple is looking into the VR division, this proves that Apple has something in the pipeline and this makes Apple fans excited for the upcoming upgrade.

Source: Adapted from ValueWalk

New Onscreen Fingerprint Sensor On Upcoming Iphone 8

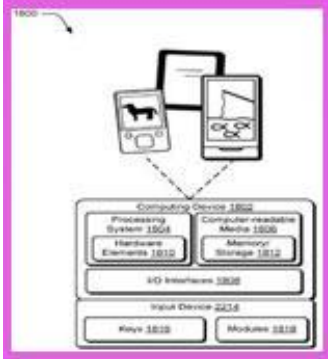
Rumors has it that the next-gen Iphone would include an onscreen Home Button. According to the patent called "Capacitive fingerprint sensor including an electrostatic lens," the device will have a fingerprint sensor built into the screen and will work the same as the current Home Button. Apple explains that Apple's biggest concern and focus is on security. So, it is only fitting that Apple strive to improve the security features on the phone.

By having a fingerprint identification onscreen, detection solution will be improved and it will lead to improved security for the secured device.
So, whether or not Apple will remove the Home Button completely, the question remains unanswered. But, there is a possibility that Apple will go through with this idea for its next-gen Iphone.

Source: Adapted from AppleInsider

Connecting Two Surfaces Will Be Easier Now With The New Keyboard Connector

Microsoft Surface users will have a new reason to celebrate as Microsoft has found a way where users who has many Surfaces, will be able to connect them together to create a larger canvas using a double-headed keyboard connector. Previously, Microsoft Surface Users will have to connect with a wide range of computing devices separately. Through this new keyboard connector,



various computing devices can be used in combination, such as to expand an available display area, share processing and memory resources.

Not only that, communication between the two tablets may be wireless or via the physical connector, and the tablet may be configured to automatically adjust to make the best of the shared resources. Microsoft is also looking into the aspect of connecting the surface with other devices as well. However, the new keyboard connector will not be in the market so soon, as Microsoft had just applied for a new patent and Microsoft is still actively exploring the idea. Having said that, we could certainly foresee that this project would not be too difficult to make reality.

Source: Adapted from MSPoweruser

New Way to Charge Apple Watch 3

Apple's supporters will be ecstatic to know that Apple has found a way to charge the new Apple Watch 3. Recent patents granted to Apple provides a glimpse that the device will be charge via Digital Crown. Digital Crown is one of the main controllers of the Apple Watch series and it performs functions scrolling, zooming, activating Siri, taking screenshots, opening apps, and soon, quite possibly, battery charging.

Currently, Apple watches are charged through a USB port. However, ports are a nuisance because of the easy access for dust and debris to collect and an easy spot for water to enter and damage the device. Thus, Apple is looking into adding a self-charging option for the Apple Watch 3 and adding a self-charging option could get rid of such problem.

While the Apple Watch is currently dominating the smartwatch global market, whether Apple will maintain its popularity is anyone's guess. Will the new and improved charging mechanism increase popularity even more? Only time will tell.

Source: Adapted from iDropnews