

Battling Branding Issues in Global Markets

Strong brands breed big intellectual property responsibility at two international powerhouses.

By Ari Kaplan



KATHERINE LAMBERT

MARRIOTT INTERNATIONAL INC.: Trademark Trials

As the manager of more than 2,600 lodging properties in the United States and 63 other countries and territories, Marriott International Inc., which operates Renaissance Hotels & Resorts, The Ritz-Carlton Hotel Company, and Ramada International Hotels & Resorts, among others, has a valuable stable of brands. Jim Akers, the company's senior vice president and associate general counsel for litigation and intellectual property, is responsible for protecting them. As the organization expands globally, how-

ever, Marriott is continually frustrated by trying to obtain trademark registrations within a reasonable time period—it can take as long as 10 years to issue trademarks in some countries. “This operates as a serious impediment to our ability to invest in those countries,” says Akers, who looks forward to U.S. implementation of the Madrid Protocol in November, which will allow domestic corporations to simultaneously seek protection for a single trademark in different countries.

The company's service mark is also used on a variety of products, and some countries do not accept service mark registrations. In those countries, the company must register “Marriott,” for example, as a trademark for printed matter, robes, and other items. A principal disadvantage of

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—JAMES E. AKERS, SENIOR VICE PRESIDENT AND ASSOCIATE GENERAL COUNSEL, LITIGATION AND INTELLECTUAL PROPERTY

BIO BRIEF

JAMES E. AKERS

Joined Marriott International Inc.: October 1996

Title: Senior vice president and associate general counsel, litigation and intellectual property

Primary Responsibilities: Intellectual property and commercial litigation functions

Graduated From: Columbia Law School, 1967

Enjoys: Being surrounded by very smart people and working with a company that views legal strategy as a critical part of conducting business

this type of registration is that “if someone opens a pseudo-Marriott hotel, we cannot assert a claim for trademark violation, only for unfair competition,” comments the former Sullivan & Cromwell LLP and Holland & Knight LLP partner.

Akers supervises a staff of five attorneys and five outside partner firms. When he's not focused on branding issues, he oversees lawsuits from the owners of the hotels that the company manages, challenging systemwide

practices in the organization. He and his team recently resolved three such suits favorably and are handling others in which the owners own multiple Marriott-branded properties. Akers also concentrates his time on the bankruptcies facing the hospital industry, one of the hardest hit since the attacks of September 11, 2001. A large number of companies, for example, have declared bankruptcy after hosting conventions at Marriott hotels and have not been able to pay their bills.

When not saving bankrupt hotels or securing worldwide trademark rights, the former dancer sits on the boards of the Washington Ballet—with which he performed in *The Nutcracker* for 17 years—The Studio Theatre, and the Cultural Alliance of Greater Washington. He also spends time with his two sons and daughter-in-law. “Being a parent is better than anything else you will do in life,” notes the proud father.

THE COCA-COLA COMPANY: Patent Suits Pending

As the registrant of the world’s most recognized trademark and owner of arguably the most protected trade secret in business, The Coca-Cola Company has, shall we say, some valuable intellectual property. It is now the job of chief litigation counsel Ben Garren and intellectual property litigator Michael Kline to work closely with the company’s patent, trademark, and marketing attorneys in Atlanta and division counsel around the world to protect them.

The world’s leading supplier,

BIO BRIEF

C. BEN GARREN JR.

Joined The Coca-Cola Company:

August 1996

Title: Chief counsel, worldwide litigation

Primary Responsibilities: Commercial, antitrust, employment, international, products liability, insurance, and intellectual property litigation, as well as international arbitration

Graduated From: University of South Carolina Law School, 1987

Enjoys: Being part of the company team, learning about the global business, and contributing to the strategic direction

manufacturer, distributor, and marketer of concentrates and syrups for nonalcoholic beverages operates in more countries than are members of the United Nations. The company faces IP challenges from new products; packaging and manufacturing innovations; and its extensive promotional, advertising, and licensing activities. Of his role counseling senior management and supervising six attorneys handling Coke’s diverse litigation matters, Garren, a former federal law clerk and Cravath, Swaine & Moore LLP associate, says, “It is a fabulous way to practice law.”

One of the elements that make it so interesting is the group’s new responsibility for patent litigation, led by Kline. The company has, for example, filed a claim against Rapak LLC and PepsiCo Inc. for allegedly infringing Coke’s patent on a device that allows syrup contained in a bag to flow from an exterior box. The dispute stems from sales of this system by Rapak to Pepsi. Not to be outdueled, Pepsi is aligned with Procter & Gamble’s allega-

tions against Coca-Cola that the company is violating P&G’s method of supplementing calcium in its Minute Maid brand orange juice. P&G licenses its patent for this process to Tropicana, which is owned by Pepsi. Garren’s assessment of the industry’s litigation climate? “It is fun to have such a strong rivalry,” he says.

Also exciting to Garren are the issues resulting from the company’s ubiquitous advertising and marketing campaigns. “We often find ourselves in disputes with people who claim to have submitted promotional ideas,” he says. For instance, a former partner in a creative agency that once worked with Coke has asserted copyright ownership of the musical score from the company’s recent “Enjoy” commercials.

In addition to its varied caseload, the company pursues litigation in unusual locales such as Iran and the Sudan, where it has filed suits to stop non-Coca-Cola bottlers from misappropriating the famous contoured bottle design for their own colas.

Back home, Garren, the father of a 3-year-old daughter, serves the children of his community as a pro bono guardian *ad litem* through the Atlanta Volunteer Lawyers Foundation.

Protecting the hottest intellectual property in the world is not easy, but Garren enjoys the brand of legal work at Coke. “Litigating in these countries requires persistence and, unfortunately, a great deal of patience,” he says, “but it is often fascinating.”

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DONNA TEREK

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—C. BEN GARREN JR., CHIEF COUNSEL, WORLDWIDE LITIGATION