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Currents

ISSUES AND TRENDS IN INTELLECTUAL PROPERTY AND E-COMMERCE LAW

Under the microscope:

Medical device tax enacted *as part of health care reform*

By Nancy Waite

On March 30, 2010, President Obama signed into law the Health Care and Education Reconciliation Act (Public Law No. 111-152) (the Reconciliation Law). This Act amended the sweeping federal health care reform bill and included a 2.3 percent excise tax on the sale of medical devices. However, certain types of devices are exempt from the tax, including eyeglasses, contact lenses, hearing aids and other devices that are generally purchased by the general public at retail for individual use. The medical device tax applies to sales after Dec. 31, 2012, and is expected to generate $20 billion over 10 years.

QUICK LOOK INSIDE

WINTER 2011

Intellectual Property Gray Matter Matters®

On March 23, 2010, President Obama signed the Patient Protection and Affordable Care Act (Public Law 111-148) (the Reform Law) which was subsequently amended by the Reconciliation Law. Media coverage of federal health care reform has primarily focused on the provisions holding insurers and providers more accountable, making health care more affordable and expanding health coverage to millions of uninsured Americans. The Congressional Budget Office estimates that these sweeping reforms come with a staggering price tag of $938 billion. The provisions that will help finance the reform and that significantly impact the life science industry have not received as much attention. One such provision is the medical device tax.

Evolution of the medical device tax

Reform Law. Section 9009 of the Reform Law would have imposed an annual "fee" on manufacturers and importers of certain medical devices. The fee would have been allocated among manufacturers and importers based upon their share of covered sales. For purposes of calculating this fee, covered sales did not include sales of (a) Class I medical devices and (b) Class II medical devices that are sold primarily to consumers at retail for not more than $100. Further, small medical device manufacturers would have been protected, because the first $5 million of receipts from a company's medical device sales were not taken into account and only 50 percent of receipts between $5 million and $25 million were taken into account. The fee was not deductible, would have first been payable in 2011 based on 2010 sales and would have raised $2

billion per year starting in 2011 and $3 billion per year starting in 2017.

Reconciliation Law. The initial version of the Reconciliation Law would have replaced the annual fee with a 2.9 percent excise tax on the sale of medical devices and included an exemption for all Class I medical devices. A House Rules Committee amendment lowered the tax rate to 2.3 percent but, in order to continue to generate $2 billion a year, the amendment also eliminated the broad exemption for Class I medical devices. The deletion of this exemption was a significant change because 47 percent of medical devices fall under Class I.

As enacted, the Reconciliation Law repealed the annual fee imposed by the Reform Law and instead imposed a 2.3 percent excise tax on the sale of any *taxable medical device* by the manufacturer, producer or importer. The medical device industry successfully lobbied to delay the tax until 2013 and for the tax to be deductible.

The term "taxable medical device" means any device (as defined in Section 201(h) of the Federal Food, Drug and Cosmetic Act) intended for humans. However, this term does not include:

- eyeglasses,
- contact lenses,
- hearing aids, and
- any other medical device determined by the Secretary of the Treasury to be of a type which is generally purchased by the general public at retail for individual use.

Under Section 201(h) of the Federal Food, Drug and Cosmetic Act, a medical device is "an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including a component, part, or accessory which is:

- **recognized in the official National Formulary, or the United States Pharmacopoeia, or any supplement to them,**
- **intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment or prevention of disease, in man or other animals, or**
- **intended to affect the structure or any function of the body of man or other animals and which does not achieve its primary intended purposes through chemical action within or on the body of man or other animals and which is not dependent upon being metabolized for the achievement of its primary intended purposes."**

Taxable medical devices – Awaiting clarifying guidance

Medical devices include a diverse mix of products ranging from simple devices such as elastic bandages and bedpans to complex implantable pacemakers and joint implants. However, ambiguity exists regarding whether certain types of products will be considered "taxable medical devices." For example, combination products include products composed of a combination of (a) a drug and a device or (b) a biological and a device. Examples of combination products are devices coated or impregnated with a drug or biological (drug-eluting stent; catheter with antimicrobial coating), prefilled syringes and surgical trays with surgical instruments, drapes and lidocaine and alcohol swabs. The Secretary of the Treasury will need to determine how combination products will be treated for purposes of the medical device tax.

In addition, the Secretary of the Treasury has not yet issued guidance on what devices qualify for the retail exemption. The Secretary will need to define by regulation when a device is purchased by the "general public" at "retail" for "individual use." One uncertainty is how the Secretary will address types of medical devices that are sold at retail for individual use and also sold to hospitals or physician offices. It is anticipated that the Secretary will prepare a list of products that qualify for the retail exemption. Therefore, medical device companies should consider providing the Secretary with a list of their devices that they believe qualify for the retail exemption and work with their trade associations to help educate the Secretary about the appropriate scope of the retail exemption.

Will increased demand help offset tax?

Lawmakers defend the medical device tax by arguing that health care reform will result in an increase in demand for medical devices. It is true that reform initiatives should result in

Editor's Notes

While technology is reputed to move at breakneck speed, ICANN's attempt to introduce new generic top-level domain extensions has been anything but speedy. Brand owners and others most likely to be affected have attempted to have their concerns met repeatedly over the last several years. Although policy recommendations were first approved in October 2007 to begin the process, it now appears that new domain extensions will be introduced in 2011 or 2012 at the latest.

Currents is published three times a year as a service to inform business owners and professionals of current legal developments in intellectual property and e-commerce law. The material in Currents should not be construed as offering legal advice. Readers should consult their own professional advisors to discuss their specific circumstances.

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increased sales for certain segments of the medical device industry. For example, health care reform encourages reductions in adverse events in hospitals. Therefore, medical devices that prevent adverse events, such as catheters that are designed to reduce infections, should have increased sales.

However, the medical device industry does not believe that health care reform, particularly the coverage expansion in 2014, will result in a substantial increase in demand for medical devices overall. In fact, hospitals purchase 60 percent of medical devices and provide care to uninsured patients. By increasing the number of insured individuals, a greater percentage of hospital patients should have insurance coverage. But, the medical device industry does not believe that expanded insurance coverage will necessarily result in more hospital patients using more medical devices.

Further, older individuals utilize a disproportionally large share of medical devices and are already covered by Medicare. Therefore, while certain segments of the medical device industry may benefit from health care reform, the medical device industry as a whole does not anticipate a significant increase in demand.

Impact of the tax

While recognizing that the current health care system is not sustainable, the medical device industry is concerned about utilizing the medical device tax to finance health care reform.

The tax will negatively impact both large and small medical device companies by decreasing funds available for research, development and job growth. Small, start-up companies are an important source of innovative, breakthrough technology and are particularly vulnerable because they often have not yet achieved profitability.

Venture capital firms that provide seed capital for early stage medical device companies view the medical device tax as an additional obstacle in a highly regulated industry that incurs high research and development costs. Therefore, the tax may result in less venture capital investment for early stage companies in the medical device sector. As a result of their special concerns, start-up medical device companies are advocating for a revenue-based exemption or a phase-in of the tax for small companies.

Efforts to repeal

While some groups are challenging the constitutionality of federal health care reform and others are pursuing repeal of the health care reform in its entirety, two bills have been introduced to specifically repeal the medical device tax. In April, Representative Erik Paulsen of Minnesota introduced HR 5095, the Protect Medical Innovation Act, to remove the medical device tax from the Internal Revenue Code. In June, Representative Brian Bilbray of California introduced HR 5615, the Medical Device Repeal Bill, which would repeal the medical device tax and use unspent stimulus funds to offset the loss of revenue. Neither piece of legislation is currently moving toward enactment.

Conclusion

Because implementation of the medical device tax is delayed until 2013, the medical device industry has the opportunity to encourage the Secretary of the Treasury to provide favorable guidance regarding what devices qualify for the retail exemption and clarification of whether certain products (such as combination products) are subject to the tax. Additionally, the industry may consider pursuing legislative changes such as an exemption or phase-in for small companies. In the meantime, medical device companies should evaluate the impact of the 2.3 percent tax on their business and take appropriate steps to prepare for this possibility. ■

ICANN to add new Web extensions to extend life beyond the dot-com

By Jay Krasovec

The Internet has 21 generic top-level domain names (gTLDs), such as .com and .org, and another 250 country code top-level domain names. Despite those numbers, over half of the almost 200 million registered domain names across all top-level domains contain the ".com" gTLD. However, with the decision by the Internet Corporation for Assigned Names and Numbers (ICANN) to expand domain name extensions, the World Wide Web may finally live up to its name while offering many potential opportunities and challenges for trademark and brand owners.

ICANN's expansion decision and rationale

On Nov. 12, 2010, ICANN published the final Applicant Guidebook (the fifth Draft Applicant Guidebook) (AG) that fully defines the requirements of the application process in obtaining a new top-level domain name beyond the .com, .net, .org or other previously identified generic top-level name identifiers. A full copy of the AG can be downloaded for review at http://icann.org/en/topics/new-gtlds/dag-en.htm.

Under the new proposed rules, companies can apply for new generic domain names including specific company/brand

identifiers or product names. For example, IBM is rumored to be applying for the ".ibm" name and Anheuser-Busch is potentially in line for the ".bud" name. The city of Berlin intends to apply for .Berlin. ICANN estimates that 300 to 1000 new domain name extensions could be added once the rules are finalized. Another change will be the ability to create new extensions that are between three and 63 characters in a variety of different foreign language characters.

ICANN indicated that its new system will promote competition, allowing global companies to operate broader registries. Prior to ICANN's announced changes via the AG, most prominent global sites needed an address ending in the .com moniker and one company, VeriSign, was the dominant registry that regulates that domain. Thus, a company (such as Anheuser-Busch or IBM) wanting more control over its brand might want to apply under the new rules to operate a controlling domain with its own name (or product name) as the identifier.

Jumping in line

At the outset, mainly those with trademarks to promote or defend are the ones who should pay most attention to the new system. However, there is no clear path on what anyone should do at this point.

For example, Japanese camera maker Canon has already announced its intention to apply for the ".canon" domain, an asset that would stamp its identity and net presence with its own named brand. Canon said it hopes to globally integrate open communication policies that are intuitive and easier to remember than existing domain names such as "canon.com."

Such globalization of brand/product domain names, however, does not come without a steep price tag. It is anticipated the application fee for the new domain name extensions will be $185,000, payable with a $5,000 deposit and the remaining balance paid with the completed application. There are additional fees to establish complete domain registry functions and administer the assignment of domain names. In addition, there will be attorney fees and other administrative fees incurred if a third party objects to the application, if the evaluation process is extended or if an auction occurs to settle hotly contested bidding for a domain name for which two or more applicants apply. Applicants may need to secure the services of third parties to assist with the legal and technology issues associated with operating a domain name registry.

Further, some Web-based consultants are not totally invested in the concept, especially for lesser known marks/brands. Some see the new top-level domain extensions as merely a holding place for the most relevant content and argue that Internet customers would rather flock to great content and engaging Web experiences, not necessarily to specific domain names.

Thus, trademark and brand owners are left with two competing strategies: (1) aggressively compete in the early stages for the gTLDs they want for Web presence; or (2) defensively protect their marks and/or brands against new top-level domains that may infringe on their marks or permit a competitor to corner the Web market for an industry or product-specific moniker.

Final approval

When the ICANN board held its annual meeting on Dec. 10, 2010, in Cartagena, Colombia, it did not finalize the AG during this meeting. Some anticipate that final approval will occur at ICANN's March 2011 meeting in San Francisco. If so, a four-month global communications campaign will be undertaken. During this process, ICANN will aim to ensure that all potential participants in all regions of the world are aware of the program details and how to apply.

The new application period would not start until the fall of 2011. Brand owners will want to plan their application initiatives and defensive strategies before year's end.

What does it mean for trademark owners?

Trademark and brand owners will occupy one or more possible roles in the introduction of new domain names – applicant, objector and registrant. Each owner must decide soon which role(s) it will have, design a plan for fulfilling that role and be prepared to execute it.

Either way, clients must anticipate that changes are coming and be ready for the necessary budget increases over the next two years. In fact, in a recent poll in the World Trademark Review, 58 percent of in-house counsel indicated that they are already strategizing and budgeting around new gTLDs. Protecting valuable trademarks and trade names may encompass seeking outside counsel's assistance in prosecuting domain name infringement in federal court or under the online Uniform Dispute Resolution Process. SZD's Intellectual Property Practice Group has the expertise to assist clients with all aspects of domain names prosecution and enforcement. ■

WEB EXTRAS

The cases, statutes and regulations referenced in this newsletter can be accessed from the online version of this *Currents* issue accessible from the SZD homepage at szd.com. Click *Resources*, *SZD Publications*, then *Currents*. SZD newsletters are posted with live links (when applicable).

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Sidebar

A domain name primer: *registry* and *registrar*

ICANN recently approved the vertical integration of domain name registries and registrars which was previously not authorized. Here's a primer to differences between a registry and registrar.

A domain name ***registry*** is a database of all domain names registered in a top-level domain. A registry operator, also called a Network Information Center (NIC) is the part of the Domain Name System (DNS) of the Internet that keeps the database of domain names and generates the zone files which convert domain names to IP addresses. Each NIC is an organization that manages the registration of domain names within the top-level domains for which it is responsible, controls the policies of domain name allocation and technically operates its top-level domain.

A domain name ***registrar*** is an organization or commercial entity, accredited by a generic top-level domain registry (gTLD) and/or by a country code top-level domain (ccTLD) registry, to manage the reservation of Internet domain names in accordance with the guidelines of the designated domain name registries and offer such services to the public. ■

Practical tips for licensing trademarks in an online world

By Susan Rector

The Internet has revolutionized the marketing and sale of goods and quickly is transforming all commerce into electronic commerce. These changes have important implications for brand owners who license their trademarks. This article highlights licensing considerations and best practices in an online world.

Consider restricting licensees' sales through online retailers

Any licensor contemplating entering into a new license agreement should consider restricting licensees' rights to contract to sell goods through online retailers such as Amazon, eBay or Etsy. The case of *Video Professor, Inc. v. Amazon.com, Inc.*, 2010 WL 1644630 (D.Colo. April 21, 2010) makes clear that provisions in Amazon's Vendor Manual, which licensed Amazon to use Video Professor, Inc.'s marks, permitted (1) Amazon's use of the mark VIDEO PROFESSOR as a sponsored link on the Google search engine and (2) Amazon's alleged portrayal of Video Professor products with competing products on Amazon's landing page. Both actions were held to be authorized under the terms of the trademark license in the Vendor Manual.

Video Professor's arguments that the license impliedly extended only to promote Video Professor products and not that of competitors and that the rights should not continue after Amazon stopped selling its products fell on deaf ears. The court interpreted the broad licensing provisions (granting Amazon a nonexclusive, worldwide, perpetual and royalty-free license to use the trademark and trade names of the products it sells) quite literally and condoned promoting competing products even after Amazon stopped selling Video Professor products.

While not all brand owners may have sufficient leverage to negotiate changes to these online terms of Internet sellers, a licensor who restricts its licensees' rights to sell online will necessarily have greater negotiating power with the online seller based upon all its licensees' rights. The licensor should seek to limit the license to use of the licensor's trademarks exclusively to promote the licensor's goods and to limit the duration of that license to the period for which the online seller is selling licensed products.

Specific provisions to consider

A licensor should assume that every licensee of its brand name will want to use the marks to market and sell goods online. Therefore, licensors should review each of the following standard licensing provisions and pay particular attention to the issues discussed below which are implicated by online use.

Granting sublicenses. If online sales are contemplated, licensor will want to think long and hard before granting rights to sublicensees who will be competing online with other licensees and potentially the licensor. Traditionally, sublicenses were restricted to narrow geographic or product lines and had little ability to influence the overall brand. Since the Internet is ubiquitous and online access gives sublicensees greatly enhanced ability to influence the brand and expand its geographic reach, the licensor may want to prohibit sublicensing altogether or to retain the right to approve sublicensees and the scope of their online or other activities.

User generated content. If a trademark licensee is given the right to post user generated content on its Web site, the licensor should create or approve the terms of use and the privacy policy required to be used by its licensees. In order to limit liability from infringing content, the licensor should require the licensee to comply with the Digital Millennium Copyright Act, the Communications Decency Act, the Children's Online Privacy Protection Act and the new FTC Testimonial and Endorsement Guidelines. The licensor should seek indemnification for failure to comply with these acts and recognize that user generated content brings additional possible risk to the licensor.

Limited use of the mark in domain names. If a licensor permits its licensees to use a registered mark in its domain name or on a social networking site, it should be restricted by all of the terms of the license agreement. The license agreement should include specific transfer provisions and a future assurances clause requiring, in the event of termination of the agreement, the licensee to sign all documents and take all actions necessary to transfer ownership of the domain name and other online identities on social network sites to the licensor.

Customer data. Online business activity necessarily gives licensees the ability to collect and store information regarding customers, including financial, health information and other protected information governed by various statutes. A license agreement should set out who owns the data and who may use it during the license agreement and after termination. Furthermore, licensors will want to hold licensees responsible for security breaches and for compliance with applicable security notification breach statutes.

Policing and enforcement of infringement. As attractive as it may be to require licensees to police and enforce infringement found online, the very public nature of the Web and public relations disasters, posted cease and desist letters and instant strings of tweets and viral marketing via Facebook and other social media sites should give licensors reason to pause. A better reasoned view may be for licensors to retain the exclusive right to respond to infringements or to have veto power over any enforcement action that a licensee seeks to take.

Enforcement of rights online. Licensors should consider an offensive enforcement strategy to take against online abusive trademarks. Owners should consider obtaining registration of the following specific types of recitations of services from the U.S. Acceptable Identification of Goods and Services Manual:

- "Downloadable virtual goods, namely, computer programs featuring {specify nature, type, e.g., articles of clothing} for use in online virtual worlds in Class 9
- On-line retail stores servicing featuring {indicate field or type of goods} in Class 35
- On-line retail store services featuring physical and virtual merchandise for use by members of an on-line community in connection with a designated website featuring fictional characters in Class 35
- Providing on-line chat rooms for social networking in Class 38
- Computer services, namely, creating an on-line community for registered users to participate in discussions, get feedback from their peers, form virtual communities, and engage in social networking in Class 42
- On-line social networking services in Class 45"

Obtaining registration of these types of recitations will give licensors another arrow in their quiver when enforcing rights against those who infringe.

Social media monitoring. Licensors should also consider use of social media services such as TM.Biz that monitors trademark usage and possible infringement or other inappropriate behavior across hundreds of social network sites. A licensor will be able to not only monitor its brand, but also the activities of its licensees in order to take appropriate action when necessary.

Where online sales occur. Given all the above considerations, licensors should consider limiting where online a licensee may sell goods. To limit risk, a licensor may limit licensees' sales of goods to the licensees' own Web sites or require the licensee to direct its purchasers to the licensor's Web site and give the licensee credit for sales occurring there.

While the Internet has vastly expanded the world of commerce to brand owners, it is not without risk to brand owners when they become licensors. Each license should be analyzed in order to evaluate the unique risks of doing business online. Then brand owners should take action to limit liability based upon the actions of its licensees. ■

Summary of the FTC's proposed Green Guides

By Amy Tulk

On Oct. 6, 2010, the Federal Trade Commission (FTC) released its proposed Guides for the Use of Environmental Marketing Claims (the proposed Guides), also known as the Green Guides, which are aimed at helping marketers avoid making environmental claims that are unfair or deceptive under Section 5 of the FTC Act. These proposed Guides are a result of a review commenced in 2007 of the current Guides, which were issued in 1998. The FTC requested comments on the proposed Guides through Dec. 10, 2010.

The Green Guides focus on general principles that apply to all environmental marketing claims and give guidance on specific green claims such as "biodegradable," "compostable," "recyclable," "recycled content" and "ozone safe." The proposed Guides contain both revisions to the current Guides and additions to expand the coverage of the Guides to include new types of claims, such as "made with renewable materials." Highlights of the revisions and additions are summarized below.

General environmental benefit claims

Although it is generally discouraged, the current Guides allow marketers to make unqualified claims if they can substantiate all express and implied claims. If they cannot substantiate such claims, the current Guides require marketers to qualify the claims. Under the proposed Guides, marketers should not make **any** unqualified environmental benefit claim, because such claims are difficult, if not impossible to substantiate.

The proposed Guides advise marketers to ensure that qualifications for environmental benefit claims are clear, prominent and limit the claim to a specific benefit. The FTC also notes that marketers should be careful that the context of an advertisement does not imply a deceptive environmental claim.

Certifications and seals of approval

The current Guides address certifications and seals of approval only through use of examples. The proposed Guides provide further detail by adding a separate section addressing claims made by way of certifications and seals. In the new section, the FTC emphasizes that certifications and seals are covered by the FTC's Endorsement Guides and provides several examples of acceptable uses. Under the proposed Guides, marketers should disclose material connections to the certifier issuing the certification or seal of approval.

Certifications and seals should be accompanied by clear and prominent language limiting the claim to particular substantiated attributes. Marketers are also required to provide substantiation of all express or implied claims given by a third-party certification. Further, the proposed Guides note that a certification or seal that does not state the basis for certification is viewed as a general environmental benefit claim and should be treated as such.

Degradable

Currently, the Guides state that a marketer should qualify a degradable claim unless the marketer can substantiate that the entire product or package will completely break down and return to nature within a "reasonably short period of time" after customary disposal. The proposed Guides clarify that a "reasonably short period of time" for decomposition means no longer than one year for products not destined for incinerators, recycling facilities or landfills. For those waste products that are destined for incinerators, recycling facilities or landfills, marketers should not make any unqualified degradable claims, because products disposed in these facilities will likely not decompose within one year.

Compostable

The proposed Guides similarly clarify the definition of "compostable." For an unqualified "compostable" claim, the current Guides require that "all materials in product/package will break down into, or otherwise become a part of, usable compost…in a safe and timely manner." In the proposed Guides, the FTC has clarified that a product or package is "compostable" if it will break down in approximately the same period of time as the materials with which it is composted.

Recyclable

The proposed Guides also address disclosure of the availability of recycling programs. In some cases, marketers should qualify recyclable claims according to whether recycling programs are available in certain communities. The following guidelines apply to recyclable claims:

- Marketers can make an unqualified recyclable claim if a "substantial majority" of consumers/communities have access to recycling facilities.

- Marketers should qualify a recyclable claim if a "significant percentage" of consumers/communities have access to recycling facilities. Marketers should qualify this type of recyclable claim by stating "package may not be recyclable in your area."

- Marketers should qualify a recyclable claim if less than a "significant percentage" of consumers/communities have access to recycling facilities by stating a "product is recyclable only in the few communities that have recycling programs."

Free-of/Non-toxic

Free-of and non-toxic type claims are only covered in the current Guides by way of example. The proposed Guides add a new section to expand the guidance relating to these types of claims. This section advises that even if true, claims that an item is free-of a substance may be deceptive if the item has substances that pose the same or similar environmental risk as the substance not present or if the substance has never been associated with the product category. This section also advises that under certain circumstances, free-of claims may be used where an item contains a *de minimis* amount of a substance.

New proposed guidance

Made with renewable materials

The proposed Guides include new provisions regarding "renewable materials" claims, which marketers are advised to qualify with information such as what it is, how it is sourced and why it is renewable. Additionally, the proposed Guides advise marketers to qualify renewable materials claims if the item is not made entirely with renewable materials, although this does not apply to minor, incidental components.

Made with renewable energy

The FTC has also added guidance for "made with renewable energy" claims, advising that if the power used to manufacture any part of the product was derived from fossil fuels, marketers should not make unqualified renewable energy claims. Claims should be qualified by specifying the source of renewable energy, such as wind or solar. The proposed Guides also advise marketers to qualify claims if less than all, or virtually all, of the significant manufacturing processes involved in making the product/package were powered with renewable energy or with conventional energy offset with renewable energy certificates.

Carbon offsets

The proposed Guides advise marketers to have competent and reliable scientific evidence to support carbon offset claims and to use appropriate accounting methods to ensure they are properly quantifying emission reductions and are not selling those reductions more than once. Marketers should also disclose if the offset purchases fund emission reductions that will not occur for at least two years. Finally, the proposed Guides include a provision discouraging marketers from advertising a carbon offset if the activity that forms the basis of the offset is already required by law.

It was only a matter of time before the FTC revisited the Green Guides. Business owners and their marketers should review their current advertising and promotional materials with an eye to complying with the proposed Guides. Once the Green Guides become final, businesses must be prepared to make any adjustments to assure compliance with any new requirements. ■

Speeches and Publications

On Aug. 6, 2010, **Alan Rothenbuecher** presented "Trade Secrets," at the American Bar Association Annual Meeting in San Francisco, CA.

In Fall 2010, **Susan Rector** published an article entitled "Can Avatars Commit Trademark Infringement?" in *The SciTech Lawyer*, ABA Section of Science & Technology Law**.**

On Oct. 14, 2010, **Asim Haque, Amy Tulk, Eve Ellinger** and **Kevin Mueller** presented "If You Start Me Up I'll Never Stop: *Ten Tips for Your Startup*" at the Dublin Entrepreneurial Center in Dublin, OH.

On Oct. 21, 2010, **Alan Rothenbuecher** and **Josef Keglewitsch** presented "New Trends in Protecting Your Business - Terms and Conditions," at the Benchmarking and Best Practices Conference, Manufacturers Association for Plastics Processors in Indianapolis, IN.

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