

Intellectual Property Caribbean Association (IPCA)

Annual General Meeting 2016 Report

The second AGM of the Intellectual Property Caribbean Association (IPCA) took place on Saturday, 12 November, 2016 from 9.15 a.m. to 4 p.m. at the Miami Marriott Biscayne Bay, 1633 North Bayshore Drive, Miami, Florida 33131, United States of America. In attendance were 30 representatives from 26 firms from 18 countries from the Caribbean region.

Morning session

The meeting was led by Mr Huw St. John Moses OBE of HSM IP in the Cayman Islands. Registration began at 9 a.m. and the meeting started at 9.15 a.m.

Huw delivered his welcoming remarks and said that IPCA currently consisted of 44 Members from 21 countries.

Proxies

Proxies from the following Member firms had been provided to Huw: Mourant Ozannes, Cox Hallet Wilkinson and Miller Simons. Vanessa Defoe held the Stowe & Co. proxy. Kenneth Williams held a proxy for Sjiem Fat. Nicole Booi held a proxy for John Cunningham of Firstmark.

Quorum

With 26 Members in attendance a quorum was achieved.

Formal AGM

The official minutes of the formal part of the AGM are available in the Members Only section of IPCA's website. Voting points included: (a) the approval of company accounts; (b) membership fees for 2017; (c) consideration of an amendment to the Articles of Association to create an additional class (or classes) of membership to permit Government Officials to be non-voting members of the Company; (d) the election of directors to serve until the next AGM.

The Directors' Report

The Directors had met several times since the last AGM. Their discussions had focused on the practicalities of the AGM. The Directors had also worked hard to satisfy KYC and Money Laundering Procedures of Cayman National Bank.

Management Accounts

Huw reminded everyone of the resources available to IPCA Members on the IPCA website. IPCA's financial information, including the current accounts for the period 1 February 2016 to 31 October 2016, were available on the Members Only section. The accounts set out the details of the income received derived from AGM meeting and membership fees. IPCA started on 28 February 2016 with opening funds of \$26,500 and received \$7,600 in fees since 1 March 2016. Since that date IPCA spent \$200 (hosting fees) and was reimbursed \$415 paid for IPCA's registration as a Cayman Islands company. The IPCA meeting that was held at INTA also cost around \$2,000, roughly. A cash balance just shy of \$32,000 dollars was held at 31 October 2016. The money is currently split as follows: \$5,000 (with CNB) and \$27,000 with HSM IP's trust account.

Huw explained that membership fees (\$150) from BVIFS had been received and was held on trust because IPCA does not yet provide for membership to Government bodies.

Huw mentioned that IPCA's cash reserve should be kept in mind during the Committee Meetings.

Website

Abraham Thoppil asked whether IPCA should reconsider service providers for the IPCA website at www.ipca.website. The current cost for hosting was \$26 per month. Alvaro Ramirez considered this to be a very good price, but Abraham considered that we may be able to get free hosting services. However, free hosting is unlikely to have all of the features currently enjoyed by IPCA. If IPCA pays for one year of hosting services in advance it may be able to take advantage of a further discount on the \$26 currently paid. Huw is to investigate further.

Memorandum and Articles of Association – amendments to provide for Government Meetings

An EMG is to take place in the Cayman Islands in January 2017 where a special resolution will be made to amend the M&A. Members will be invited to submit proxies in order to pass these amendments at the EGM.

Abraham Thoppil talked through the proposed amendments to the M&A to create an additional class (or classes) of membership to permit Government Officials to be non-voting members of the Company, copies of which were provided in both clean and track changes.

The Cayman and Bermuda Registries are keen to become IPCA Members too. It was suggested that the Directors fix the membership fees for Government members. Abraham Thoppil considers that Government fees should be the same as the fees paid by regular Members. There was some debate on this point. It was agreed that Government Members should not be charged a membership fee but they should pay an attendance fee to attend IPCA events. There is a lot of value to be gained by discussing certain issues (e.g. IP enforcement) with Government. It was further agreed that both Members and Government Members who have not paid their membership fees should not be allowed to attend meetings.

Going forward Membership fees will be set by the Directors in consultation with the Members.

Alvaro suggested each Director should Chair each of the committees but it was decided that the Directors should instead oversee each of the committees.

Election of Directors

Four of the five existing Directors: Huw Moses, Zaida Lugo, Steffen Hagen and Kenneth Porter had indicated their willingness to continue to serve on the Board for the coming year. Duncan Stowe had expressed his regret at standing down.

Jessica Ward from Ideas Trademarks and Patents was elected to the Board of Directors on a show of hands.

IPCA and INTA

Possibilities for collaborations between the two bodies were discussed. It was felt, however, that IPCA's identity should remain separate and distinct from INTA.

There was a 30 minute break for coffee and cookies at 10.30 a.m.

Panel Discussion

Zaida Lugo, Abraham Thoppil and Nigel Hughes led a panel discussion entitled "IP Enforcement in the Caribbean – Reality and Challenges." The details of this discussion are set out below:

Dominican Republic (Zaida Lugo)

There are no criminal penalties available for patent infringement. Criminal penalties are available for trade mark and copyright proprietors.

Civil remedies are available for registered trade marks, unregistered trade marks and acts of copyright infringement. However, the proprietor cannot sue in the civil and criminal court at the same time; a choice must be made. Substantial damages are generally awarded in civil cases but it could take up to 3 years. Damages are awarded for lesser amounts by the criminal court but the turnaround is faster.

Customs –trade marks can be registered at Customs and Customs will notify the proprietor when they detect potentially counterfeit goods. Proprietors will have 3 days to decide how to proceed.

Remedies – Courts provide remedies such as destruction of merchandise / delivery up and damages for trade mark infringement, patent infringement and copyright infringement. Security bonds can substitute preventative measures, e.g. temporary injunction.

301 List (Abraham Thoppil)

Five IPCA Members are on the 301 List: They are firms in Barbados, Colombia, Jamaica, Costa Rica, and the Dominican Republic. It was suggested that IPCA Members should work towards ensuring that their countries do not appear on the 301 List as it hard to get off the list. The Cayman Islands risked being on the List but avoided this by updating its Copyright laws in June 2016.

Trinidad & Tobago (Nigel Hughes)

The following IP laws are available (amongst others):

- Copyright Amendments in 2008
- Industrial Designs Act in 2007
- Patents 2007
- WIPO's Copyright Treaty and Performances Treaty in 2008.
- WIPO's Trade Mark Treaty in 2008

There is a strong legislative framework but lack of enforcement (courts and customs) and will. Enforcement through the courts is typically slow.

There was a domain name dispute in 2007. This is the only reported case in this area.

Grenada (Nigel Hughes)

The following IP laws are available (amongst others):

- Copyright Act 2011 (updated from 1953 Copyright Act)
- Trade Marks Act
- Electronic Treaties Act
- Signatory to Berne and Paris Convention

Increased training for law enforcement officers is required.

Cayman Islands (Nigel Hughes)

UK and EU trade mark registrations and patent registrations can still be extended to the Cayman at this time. New legislation has been passed, however, which will enables national trade mark registration in the Cayman Islands once implemented.

New copyright legislation has been recently implemented and new design right legislation has been passed making it possible to re-register UK/EU design registrations to Cayman (once the latter is enforced).

Recently, a new Copyright Law has come into force in Cayman which has introduced the following enforcement measures:

- Section 107A of the new law provides the Director of Commerce and Investment with powers: (a) to make test purchases; and (b) to enter premises and inspect and seize goods and documents. The Director of Commerce and Investment (and any officer generally or specifically authorised by him in writing) has all the powers of a constable under the Police Law (2014 Revision).
- Section 100 of the new law provides the copyright owner the right to apply to the court for an order to allow seizure of infringing work. Before anything is seized, however, notice of the time and place of the proposed seizure must be given to the Commissioner of Police referred to in section 2 of the Police Law (Law 36 of 2010).
- Section 111 of the new law provides the copyright owner may give notice to Customs to treat infringing copies as prohibited goods for a specified period of time; This applies to goods arriving from outside of Cayman; Importation of goods to which a notice relates are subject to forfeiture.

When the new Trade Marks Law comes into force the following provisions will apply in the enforcement context:

- Under section 67 of the new law the police can enter and search any premises or place in which the police officer or the trade officer reasonably suspects -
 - there are goods which, or the packaging for which, bear a sign which is identical to or is likely to be mistaken for a registered trade mark; (ii) there is material bearing such a sign and intended to be used for labelling or packaging goods, as a business paper in relation to goods; (iii) or for articles specifically designed or adapted for making copies of such sign;
- Under section 62 of the new law criminal offences are provided for where a person uses a trade mark without the consent of the proprietor on goods, makes any article specifically designed or adapted for making copies of a sign identical to, or likely to be mistaken for, a registered trade mark, or even has possession, custody or control of such an article in the course of a business, knowing or having reason to believe that it has been, or is to be used to produce goods, material for labelling or packaging goods, as a business paper in relation to goods, or for advertising goods. A person who contravenes this section commits an offence and is liable-
 - on summary conviction to a fine of ten thousand dollars or to imprisonment for a term of three years or to both; or
 - on conviction on indictment to a fine of fifty thousand dollars or to imprisonment for a term of ten years, or to both.
- Under section 61 of the new law the trade mark owner may give notice to Customs to treat infringing copies as prohibited goods for a specified period of time. This applies to goods arriving from outside of Cayman. Importation of goods to which a notice relates are subject to forfeiture.

Guyana (Nigel Hughes)

The following IP laws are available (amongst others):

- Trade Marks Act 1953.
- Berne Convention and Paris Convention.
- No copyright protection.
- No will to strengthen enforcement.
- Counterfeit and pirated goods are widespread.

Objectives and Notes coming out of the Panel Discussion:

Work on: (a) joining the PCT; and (b) implementing design laws; (c) parallel imports laws.

Fanta Punch sits on INTA's Parallel Imports Committee.

Health and food safety regulations is another area that could be considered.

Madrid Protocol – Alvaro reported that Colombia has lost a great deal of work due to membership to Madrid. Colombian applications can be made online without agent representatives.

A three course lunch was served at 12.30 p.m.

Afternoon session

The meeting resumed shortly after 2 p.m. when the Committee Meetings commenced. The following people were absent from the afternoon session:

Committee Meetings

Huw explained that the **AGM Committee (the “Palm” team)** was no longer active

The Members of each Committee are currently as follows:

1. **Marketing Committee (“Conch Team”)**: Humphrey Schurman (**Chair**), Michel Kock (**Deputy Chair**), Zaida Lugo (**Board Liaison**), Duncan Stowe (absent), Alvaro Ramirez Bonilla, Monique Cartwright, Luz Maine Gonzales, Louise Malcolm (absent), Gyan Robinson, Nigel Hughes, Ana Paula Campusano, Melissa Ivette Mercedes Santana, Terina Nichols (absent), Savannah Barnwell (absent) and Anmarieta Staines (absent).
2. **Legislation & Registry Liaison Committee (“Coconut Team”)**: Kimberley Roheman (**Chair**), Christian Steve Brown (**Deputy Chair**), Abraham Thoppil, John Carrington, Christian de Lespinasse, Jeroen de Baar, Rosalind Smith Millar, Fiona Hinds, Kenneth Porter, Jean-Frédéric Salès, Marie Francesca Jeannot (absent), Roxanne Knights (absent). Sophie Davies is no longer a member. The Board Liaison is to be determined.
3. **Education & Training Committee (“Dolphin Team”)**: Sophie Davies (**Chairman**), Kenneth Porter (**Board Liaison**), Roxanne Knights (absent), Duncan Stowe (absent), and Louise Malcom (absent), Jean-Frédéric Salès (absent).
4. **Enforcement & Counterfeiting Committee (“Turtle team”)**: Fanta Punch (**Chairman**) (absent), Howard Harris (**Deputy Chairman**), Steffen Hagen (**Co-Board Liaison**), Jessica Ward (**Co-Board Liaison**), Nicole Booi, Rishi Alain Mungal and Ana Maria Sanchez.

Committee Reports

Team session reports were presented, with the following points discussed:

1. Marketing Committee Report

- a) A general email address: info@ipca.website
- b) Aim to generate more members
- c) Update profiles of each member on the website
- d) Form Facebook, Twitter and LinkedIn accounts
- e) Budget for the committee will be submitted to the Directors for approval

2. Legislation & Registry Liaison Committee Report

- a) Investigations into classifications for trade marks
- b) Customs and their operations
- c) Review 301 list with a view to understanding how to avoid being on the list

- d) Identified the need to collaborate with the marketing committee regarding any proposals put forward to the government; directors should be consulted before any approach is made
- e) Will meet once a month by phone / Skype
- f) Legal questionnaire will be circulated to members for completion

3. Education & Training Committee Report

- a) Essay competition – article clerks and newly qualified lawyers
- b) Project competition – schools
- c) Responsible for panel discussion topics at next meeting and arranging speakers

4. Enforcement & Counterfeiting Report

- a) A questionnaire has been drafted and has been refined
- b) Members urged to complete the questionnaire by 30 November 2016 – answers will be compiled and circulated

Any Other Business

- a) **Meeting at INTA in Barcelona** – The Directors will ascertain the viability of holding an IPCA meeting at INTA on Sunday, 21 May. 9 a.m. – 11 a.m. Meeting is likely to be held at the Conference Centre. The Meeting will consist of an Introduction, Committee Reports (30 mins) and a Panel Discussion to include non-members (30 mins), followed by a meet and Greet (30 mins).
- b) **Cocktail reception at INTA** – a proposal (including budget) will be forwarded to the Directors. It will be a By Invitation Only event.
- c) **Venue of next AGM** – Miami. As IPCA grows it was anticipated that the the relatives costs will be reduce. In the future it was hoped to hold the AGM in the Caribbean.

Next Meeting

Proposed date and venue: 9 – 11 a.m. on Sunday, 21 May 2017 during INTA in Barcelona, Spain.

Closing remarks were made by Huw.

The meeting ended at around 4 p.m.

Report prepared by:

Sophie Davies

Member

IPCA

68 Fort Street, George Town, PO Box 31726, Grand Cayman KY1-1207, Cayman Islands

Direct Tel: +1 345 815 7436