When you live with passion, you see how things should be rather than how they are.
Over the last four years, we accomplished a lot at Brown Shoe.

In 2011, we committed to a portfolio realignment effort.

We recognized that our company’s portfolio of brands and businesses needed a vision, focus and purpose.
We focused our market position on three consumer growth areas.

Then we refocused our portfolio.

Allowing us to target our efforts around growing our more profitable brands.
Today’s portfolio is strengthened, aligned with consumer trends.

At the same time, we set an aspirational mission:

Inspire people to feel good and live better ...
... feet first!
New company values defined how we'd achieve the mission:

- Trust and Transparency
- Personal Accountability
- A Passion for Winning
- Integrity

We articulated a narrative that could motivate us.

Mission
Inspire people to feel good and live better...feet first!

Values
- Trust & Transparency
- Personal Accountability
- A Passion for Winning
- Integrity

Business Strategy
A diverse portfolio of global brands with broad appeal
And the market rewarded us for it.

And we were only just beginning.
Five ambitions will drive this new phase of growth:

- More! Organic growth
- Acquire AND incubate brands
- Be a Magnet for talent
- Build global relevance while Staying “fit” for the consumer.

Ultimately, we will create a portfolio of relevant brands that endure.
The opportunity ahead of us is bigger than it has ever been.

But with it came a new requirement: we needed a company rebranding to support our ambitions.
First, we want a name that reflects our ambitions and gives us the elasticity to diversify and be globally relevant.

“Brown Shoe” does not conjure up the images of what we are.
Instead it conjures up images of this.

To be a global brand, our name must be suggestive, not literal.

The names of global brands tend to be open-ended. This allows the companies to fill their name with meaning.
Secondly, our name must be more than a name. It must be managed as a brand with which people emotionally connect.

Emotional connections can drive significant value growth.
Our history of change has yielded no visual or emotional equity.

We compete for talent with global companies that are progressive.
This is why companies faced with the same needs invest in rebranding.

Here are two examples.
PPR rebranded as Kering.

The new identity leverages fashion cues to signal the company's new direction. This name signals the company's focus on brand building.

Hong Kong and Shanghai Banking Corporation rebranded as HSBC.

Their long history and strong presence in China had been overlooked. Within two decades, HSBC became the world's 2nd largest bank.
For us to reach our ambitions, we believe we need a rebrand that uses our history as fuel for our future.

What has fueled our history is a 137-year obsession with “fit.”

We made almost a religion of fit...

so that we could guarantee “footprint fit” in each and every pair of Buster Brown Shoes, which are made on what we call “Live-Foot Lasts.”

We created a principle of construction called “Tread-Straight,” which tends to encourage the child to step straight ahead, like an Indian, without toeing in or toeing out, which is the concern of every mother.

Every place I go I run into people who tell me that they were “brought up” in Buster Brown Shoes. Maybe some of them are just trying to please me, but I presume a large percentage are telling the truth.

I always get a kick out of this, and guess I have a right to be proud of seeing “my baby” giving satisfaction and going stronger than ever after nearly half a century.
In the 1860s, shoes were underdesigned commodities.

For the average person, cobblers made the exact same shoe for left/right feet and male/females.

Our founder changed that by making shoes fit to feet and gender.
He was among the first to produce shoes unique to the left and right foot and unique to the male and female.

His mission was to teach people how shoes should fit.
In the ’40s, we expanded our obsession with fit to personality.
Most recently, we’ve designed brands to fit an entire lifestyle.

Sam Edelman and Via Spiga are examples of our expansion from footwear into apparel and accessories.
Each time we broadened our definition of “fit,” we grew stronger.

Throughout our 137-year-old story, one passion has defined our culture:
We are ferocious about fit.

And one mark has come to represent this passion.
And one mark has come to represent this passion.

It’s known as the “Star-Five-Star” mark.

It represents our 137-year-old promise and dedication to creating the perfect fit.
Between 1885 and 2000, this mark popped up in a lot of places.

It was also stamped on the bottom of every sole.
Created by our founder, it was an abstraction of a $5 dollar bill.

It promised a fit so ideal that you’d wear the mark off your sole. If not, Brown Shoe would repay you $5.

Star-5-star symbolizes the passion that drove our founder and drives us today.
We saw a need to capture this passion as we focus on the future.

Wanting our new name to carry this story, we drew upon a Latin word.
Calēre: passionate, to glow

Calēre inspired us because it suggests an internal fire that propels a person. We believe this meaning perfectly aligns with our company’s spirit and ‘Ferocious about fit’ story.

We then blended this root word with chiseled typography, intimately linking to ideas of endurance, timeless and heritage.
Marrying Calēre and the Star-5-star gives us a new identity that honors our past and fuels our future.
CALERES
★ 5 ★
Caleres supports the five ambitions that will drive us in our new phase of growth.
It holds our current portfolio of brands well.

Its suggestiveness provides us the brand elasticity to carry a variety of brands and expand into areas beyond shoes.

It carries our heritage story.

It signals what we are and what we strive toward.

What we are (Ferocious) —— CALERES ★ 5 ★ —— What we strive towards (the perfect fit)
It creates a link behind the company brand and our portfolio.

The idea of “the perfect fit” symbolized by the identity’s star-five-star mark aligns with the core idea behind each of our brands.

- **Sam Edelman**: Fit for the fashion forward.
- **VINCE.**: A luxurious fit for the everyday.
- **FAMOUS Footwear**: Fit for the family.
- **VIA SPIGA**: Fit for every mood.
- **DF**: An iconic fit.
- **Dr. Scholl’s**: The most comfortable fit.
- **naturalizer**: A fit that keeps you feeling fit.
- **BZees**: A feel-good fit all day.
- **FRANCO SARTO**: A lightweight, flexible fit.
- **Circus**: A look that never fits in.
- **Fergie**: A glamorous fit.
- **CARLOS**: The perfect fit for any outfit.
- **RYKA**: Fit for women's fitness.

It works because it is globally suggestive.

**CALERES**

⭐ 5 ⭐
It positions us as a company with both legacy + vision

**LEGACY**
137 years of craftsmanship, passion for fit, and business savvy.

**CALERES**

**VISION**
Inspire people to feel good...feet first.
Big Brand Hits of 2015: Trademark Year in Review
By: Alan S. Nemes

INCLUSION OF PRECLUSION IN THE LIKELIHOOD OF CONFUSION

INCLUSION OF PRECLUSION IN THE LIKELIHOOD OF CONFUSION

_E.I. DuPont DeNemours_ (CCPA 1973)

(1) fame of mark;
(2) the similarity of the marks;
(3) the similarity of the goods;
(4) the similarity or dissimilarity of established & likely-to-continue trade channels;
(5) the degree of consumer care in purchasing; and
(6) instances of actual confusion

SquirtCo. v. Seven-Up Co. (8th Cir.)

(1) strength mark;
(2) the similarity of the marks;
(3) degree to which products compete;
(4) the alleged infringer's intent to "pass off" its goods as those of tm owner;
(5) incidents of actual confusion; and
(6) the type of product, its costs and conditions of purchase.

AS A MATTER OF FACT, TACKING IS A MATTER OF FACT!

BONA FIDE or BONA FILE (The elusive proof of ITU)

To Make Your Mark, Walk the Walk, Don’t Just Talk the Talk …


DISPARAGING REMARKS ABOUT DISPARAGING MARKS

Pro-Football Inc. v. Blackhorse, 2015 WL 40926277 (E.D. Va. 2015), appeal docketed, No. 15-
DISPARAGING REMARKS ABOUT DISPARAGING MARKS

In re Tam, 785 F.3d 567 (Fed. Cir. 2015), reh’g granted en banc Fed.Appx. 775 (Apr. 27, 2015).
DISPARAGING REMARKS ABOUT DISPARAGING MARKS

High Octane: Fueling Attorney Fees in TM Cases

Slep-Tone Ent’t Corp. v. Karaoke Kandy Store, Inc., 72 F.3d 313 (6th Cir. 2015)
The Generic Whole is Greater Than its Compound Parts


Questions?

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What You Say May Be Used Against You
The Rise of False Advertising and Deceptive Trade Practice Claims in Consumer Products and Consumables Industries
By: Mike Annis

Focus on Labeling and Advertising

- There is a trend in litigation surrounding accusations of false or misleading advertising in the labeling and promotion of consumer and consumable products.

- There are three basic types of claims
  - competitor claims,
  - consumer claims, and
  - claims brought by the Government (FTC).
Vague Assertions and Terms of Art

- Health-related claims
  - “all natural”
  - purported health benefits
- Quality: How it is made
  - Artisanal/craft
  - Handmade/homemade
- Source or Origin: Where it is made
  - Who Makes it – does “Blue Moon Bottling Company” = MillerCoors?
  - “Made in the USA”

Competitor v. Competitor: Principal Avenues of Attack

- Competitor challenges to labeling and advertising in the civil court system generally focus on allegations of "false advertising" under the Lanham Act – 15 USC §1125(a)
- National Advertising Division of the Council of Better Business Bureau also hears claims.
**POM Wonderful v. The Coca-Cola Co.**

- POM brought suit against Coca-Cola based on a Minute Maid product labeled as “Pomegranate Blueberry” juice.
- POM alleged that the labeling misled consumers into believing the juice consisted predominately of pomegranate and blueberry juices.

**POM v. Coca-Cola – Opens Door**

- The Supreme Court holds that the FDCA does not preclude false advertising claims even if the label complies with FDA regulations:
  - Agency approval of label is not enough if the label is “nonetheless misleading.”
Lessons from POM?

- Highly regulated goods, like food and alcohol beverages, are **not necessarily** safe-guarded by their label and advertising approvals from governmental agencies.
  - TTB COLAs – alcohol beverages
  - FDA Labeling Compliance

Green Light for Deceptive Labeling Class Actions Under State Law

- The *Pom* case also served as a green light for a number of class action lawsuits.

- State consumer laws allow similarly structured claims on behalf of consumers.
Consumer Claims: Class Actions

- The Lanham Act does not provide standing for consumer-based claims of False Advertising.
- Consumers may, however, pursue "misleading" labeling and advertising claims under state deceptive trade practice acts as well as state false advertising and unfair competition laws.

Consumer Fraud and Deceptive Trade Practice Acts

- Adopted in some form by all 50 States.
- Regulatory and remedial statutes intended to protect consumers, borrowers and businesses against fraud, unfair methods of competition, and other unfair and deceptive business practices.
- The “deceptive act” must proximately cause damages.
“All Natural” = [you fill in blank]

What does “All Natural” mean?

❖ “non-GMO”?
❖ “contains no synthetic ingredient”?
❖ “nothing artificial”?

In fact, “natural” is not a regulated term.

– The FDA “has not developed a definition for use of the term natural or its derivatives.”

Food and Beverages – “Natural”

▪ Question becomes:
  – What would a reasonable consumer consider to be unnatural?

A 2014 Consumer Reports survey showed approximately 65% of respondents believed it to mean free of artificial ingredients, pesticides and GMOs.
Food and Beverages - Examples

“All-Natural,” “100% Natural” or “GMO-Free”-Type Claims

Chipotle Grill –
– “G-M Over it” advertising campaign “marketing targets consumers committed to a healthy lifestyle”

However, Chipotle Grill admits that:
> Soft Drinks are made w HFCS
> Meat used is from cattle fed GM corn

Food and Beverages – One More Example

“All-Natural,” “100% Natural” or “GMO-Free”-Type Claims

Kashi® cereals
- "All natural" and ads focused on company’s commitment to health and transparency in regards to ingredients of their cereal.
- Liable for $4 million on claims they misled consumers because their cereals contain genetically modified ingredients.
What do these Brands have in common?

Natural and All Natural lawsuit count
Food and Beverages - Examples
Purported Health Benefits from Products

- Activia® yogurt – (2010)
  - Contains probiotic bacteria for improved immune system (combats cold and flu) and relief from intestinal irregularity.
  - “Deceptive” because did not have scientific substantiation for its “one daily serving” claims.
- Settled with FTC - $21 MM
- Settled separate class action - $45 MM

Health Claim? FTC Thought So…

FTC contended that food products must be supported by randomized, double-blind placebo controlled human clinical trials, particularly if they are being marketed as a substitute for medical treatment.
Warning: Plaintiff’s Bar Watches the FTC

- FTC initiated charges against claims that Frosted Mini-Wheats clinically shown to improved children’s attentiveness by 20%.
- Kellogg settled subsequent class action for $4 million.

Alcohol: The War Over “Handmade”

- Beam Suntory was accused of false and misleading advertising based on the assertion that Maker’s Mark® bourbon is “handmade.”
  - “close attention by a human being, not a high-volume, unattended process.”
- Fifth Generation, Inc. (Tito’s) was similarly accused of deceptive trade practices in using “handmade” on the label of its vodka.
What is "Handmade"?

- Florida federal judge Robert Hinkle tossed the case for failure to state a claim:

  “The term [“handmade”] obviously cannot be used literally to describe bourbon. One can knit a sweater by hand, but one cannot make bourbon by hand…no reasonable consumer could believe otherwise.”

The Flip Side of the Coin:

- Judge Miller in the Southern District of California denied a similar motion to dismiss.

  No "safe-harbor" in the TTB COLA for the product:

  “TTB review is peripheral and informal at most, especially given that TTB does not have standards or rules for the term 'handmade.’”
When is a beer a “craft beer”?  

- MillerCoors attacked for claiming Blue Moon beer is “Artfully Crafted®,” representing product as a craft beer from "Blue Moon Brewing Co."

- Deceptive because label should specifically state that beer is a MillerCoors product and cannot qualify as "craft" under Industry Group definition.

Shoes and Clothing – Not Immune

Sketchers Shape-Ups®

- Claims:
  - “Get in shape without getting into the gym”
  - Shoes will instantly tone your legs by doing nothing more than walking like usual.

- A Kardashian wouldn't fib, right?
Health Claims – help you lose weight

- FTC was looking to make a statement about overhyped and unfounded claims related to health issues.
- Sketcher’s settled the suit by paying $40 million.

Geographic Origin Claims

WhistlePig Rye Whiskey

- Plaintiffs are attacking web-based advertising suggesting that product is "artisanal, craft whiskey produced on a farm in Vermont from certified organic rye grown on site."
- Product is actually distilled and aged in a "massive" factory in Alberta, Canada.
How to Avoid Deceptive Trade Claims:
Careful With Health-Related Claims

- Avoid health claims altogether if you can
  - they may trigger FDA involvement (nobody wants that)
  - Remember, the FTC wants to see science backing claims

- Be able to substantiate health-related claims with scientific testing

How to Avoid Deceptive Trade Claims:
Be Crystal Clear

- Avoid "trigger" terms in labels and in advertising.
  - "All Natural" or "nothing artificial"
  - "Healthy" or "Wholesome"
  - "Handmade" or "Handcrafted"
  - "Small Batch" or "Artisanal"
  - "Craft"
How to Avoid Deceptive Trade Claims: Be Crystal Clear

- Be transparent and "scrupulously forthright" about your product’s origins.

- It’s the half-truths that will get you sued.

An Ounce of Prevention …

- Clear advertising and label content before products go to market
  - Be creative in your review

- Conduct periodic advertising reviews

- Watch the wires
  - What is the trendy topic with the Plaintiff’s Bar?
But, if you do get sued.....

Try an Early Exit -- Motion to Dismiss

- Failure to state a claim
  - "safe-harbor" exception for DTPA claims
- Rule 8 -- Not a plausible claim (Twombley/Iqbal standards)
  - "no consumer could find “handcrafted” for whiskey means made only with human hands"
- Rule 9 pleadings standard for fraud usually apply

But, if you do get sued.....

- What about Preemption?
  - Agency has preempted the field
- What about Primary Jurisdiction?
  - Courts should defer decision-making to agency with the primary regulatory authority
- Block Certification – class not ascertainable
Is the Claim insured?

- The Claim may qualify as an “Advertising Injury” under your CGL Policy

- Watch the damages claim –
  - The policy may not cover “disgorgement of profits”

Questions?

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The Shape of Things to Come – Strategies for Success in the Age of 3D Printing

By: Sam Digirolamo and Dan Cohn

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What is 3D Printing and How Does it Work?

State of 3D Printing

1. As of 2014:
   - 80,000 industrial printers worldwide since 1988
   - 140,000 desktop printers sold in 2014 alone
   - 38% of industrial printers are in U.S.
     - Japan is 2nd
     - China is 3rd

2. Total market as of 2014:
   - $4.1B (includes prototyping + other non-commercial uses)
   - $2B in products
State of 3D Printing

3. Standards being formulated by ASTM, ISO for industrial uses

4. Improvements: Speed, accuracy, materials

5. 3D Printing Technologies
   - Blown Powder: Metal powder blown coaxially to the laser beam which melts the particles on a base metal to form a metallurgical bond when cooled
   - Thermal Extrusion: Thermoplastic filaments heated through a nozzle
   - Stereolithography: UV-light
State of 3D Printing

5. 3D Printing Technologies (cont’d)
   - Selective Laser Melting (SLM);
   - Selective Laser Sintering (SLS);
   - Electron Beam Melting (EBM)
   - Ink-jetting Photopolymer process: Tiny droplets of liquid photopolymer onto a tray & cured with UV-light

State of 3D Printing

6. Printer Capabilities
   - 2014: Stratasys unveiled the first color multi-material 3D printer
   - 2015: Voxel8 unveiled a printer capable of creating objects with both electrically conductive and insulating material:
     - Thermoplastics
     - Inks
     - Pastes
     - Photopolymers
   - 2016: Hewlett Packard will release its Multijet Fusion range of 3D printers
State of 3D Printing
Snapshot of the 3D Printer Players

7. 3D Printing Applications

- **Fashion:**
  - Jewelry
  - Dresses
  - Shoes
- **Food**
- **Aerospace**
- **Homes**
- **Prototyping**
  - Pharmaceutical
  - Medical
  - Orthopedics/prosthetics
  - Dental implants
  - Prototyping surgical operations/surgical planning
  - Skeletal reconstruction
  - Tissue and organ replication (ear, nose, body parts)
- **Hobby**
  - Much more
State of 3D Printing

Aerospace America, July-August 2015 edition
Thermoplastic Powder - Case Study

- Using 3D printing for approx. 12 years
- Using laser sintered thermoplastic parts in production for 10 years
- Over 20,000 3D printed parts used in non-critical applications

Metal Powder – Case Study

- GE Aviation are printing over 114,000 fuel nozzles for use in 6000 jet engines that will start flying in 2016.
- They are using Direct Metal Laser Melting (DMLM) to melt 20-100 micron layers of a powdered alloy.
- Previously nozzles were manufactured by welding together 18 smaller pieces which was labour-intensive and wasteful.
- Design flexibility has allowed the nozzle to be 25% lighter.
State of 3D Printing

8. 3D Printer Materials

- Metal
- Thermoplastic
- Food
- Concrete
- Biomaterials
- Binder (onto Powder)
- Photopolymer

State of 3D Printing

- Graphene
- Ceramic
- Regolith
- Silicone
- Biomaterials
- Carbon Fibre

Emerging Materials

Electrically Conductive Materials
State of 3D Printing

9. Service Providers

- Connect 3D manufacturers with customers
- Industrial based/commercial grade products
- Distinctive network of printers/all technologies
  - Manufacturers execute agreement with service providers
- One service provider: 32 manufacturers using 266 different types of printers

State of 3D Printing

9. Service Providers (cont’d)

- Service provider develops 3D blueprint
- Manufacturers bid on projects
- Customer selects
- Service provider issues license to selected manufacturer
- Send customer instructions
Impact on Manufacturing

- No entry barriers
- Mass customization possible

Impact on Manufacturing

- Digital scans/digital blueprints replace molds
  - File sharing ramifications
- Customers replace manufacturers
  - Reduced shipping and production costs
  - Reduced logistic footprint
- Potential applications (limitless)
- Product demand drops
Legal Issues

- Regulatory
- Federal Drug Administration (FDA)
- Tax Treatment & Accounting of Print-to-Order Revenue
- Product & Environmental Regulations
- Higher Education
- Intellectual Property
- Imports/Exports
- Commercial Contracts
- Licensing Agreements
- Packaging & Transportation
- Healthcare
- Product Safety & Warranty

Manufacturers and Designers

**Intellectual Property**

- Infringement
  - Patents
  - Trademarks
  - Copyrights
- Need a Well-Rounded IP Strategy
Patent Landscape

- USA 60% of 3D patents/patent applications:
  - 2002-2014: 12,000
  - Pending: ~4,000
  - Issued: ~8,000
  - Expiring:
    - 2003-2014: ~225
    - 2013-2014: ~6

Who Are the Players?
Intellectual Property

- Manufacturers of 3D printers
- Scanners/digital blueprint designers
- Product manufacturers and designers
- Customers
- Distributors
Manufacturers and Designers
Intellectual Property

- Infringement of Patented Product
  - Who is the infringer?
    - Third party fabricator?
    - 3D printer manufacturer?
    - Scanner/creator of digital blueprints?
    - Someone who distributes the digital blueprint?
    - Distributor of product?

- Infringement of Trademark (™)
  - Molding vs. Sticker/Ink-printing
    - Molding (advantages/disadvantages)
    - Sticker/Ink-printing (advantages/disadvantages)
    - Infringer can remove trademark

- Need well-rounded IP strategy
Manufacturers and Designers

Intellectual Property

- Infringement of Copyright (©)
  - Sculptured works - easier to copy
  - CAD program (engineering drawings)
  - Electronic instructions to 3D printer/Digital blueprint
  - Digital blueprint - easy to transmit to anyone
    - 3D printing repositories/databases

Intellectual Property

Alternate Ways to Protect Products

- Copyright for 3D product configuration and software for design?
  Who owns software, if contract with someone to write code?
- Trade Dress
- How we structure patent claims:
  - Scanners
  - Method Claims – manufacturing by 3D printing
  - Product by process claims
  - Claims for computer readable storage medium (i.e. digital blueprint)
  - Scanning Method Claims
  - Design patents
Manufacturers & Designers

Intellectual Property

- Risk Analysis: Patent, trademark, trade dress, copyright clearance
- Use of third party vendors
- Commissioned works
- Protection
  - Patent claims
  - Copyright
  - Trade dress
- Customization
- New business models
  - Licensing/Partnering agreements
  - Fan of your product

Scanners/Digital Blueprint Designers

Intellectual Property

- Risk analysis:
  - Patent
  - Trademark/trade dress
  - Copyright
- Protection
  - Indemnification
- Ownership rights
Distributors
Intellectual Property

- Risk Analysis:
  - Indemnification

Customers/Users of Product
Intellectual Property

- Risk analysis:
  - Patent
  - Trademark/trade dress
  - Copyright
- Customization:
  - Ownership rights
- Protection
Who Are We Talking About?

- Non-practicing entities (NPE) or patent-holding companies (PHC) less pejorative names than “patent troll”
- Companies that do not manufacture products or provide services
- Often shell companies—business model seeks to enforce patent rights against accused infringers by threats of litigation and licensing demands
- Potential implications for universities and research institutions

What About Reverse Trolling?

- Recent phenomenon post AIA
- Hedge funds→ short stock, challenge company’s patent, watch market react to uncertainty and stock price drop = $$$
- Significant Concerns Raised from Life Sciences Industry
Abuse of the Patent System

- President Obama—these are entities that simply “leverage and hijack somebody else’s idea and see if they can extort some money out of them”

- Sen. Leahy—“We have been working for almost a year . . . on legislation to address the problem of patent trolls who are misusing the patent system. This is a real problem facing businesses in Vermont and across the country.” (Sen. Judiciary Comm. Hearing, May 2014)

Cases Filed by NPEs Are On The Rise

- First Half of 2015 NPE lawsuits were roughly 68% of total filings—almost 90% in tech cases
- Up 35% from second half of 2014
- Suits brought by NPEs tripled between 2011 and 2013
- Patent litigation driven by trolls could reach all-time high in 2015
Federal Government Is Taking Action

- In 2013 President Obama directed the USPTO to take action to protect innovators from frivolous patent lawsuits
- In response both Houses of Congress are seeking to enact legislative changes aimed at combating abusive NPE litigation

PATENT Act (Senate Bill S.1137)

- Requires additional details when claiming infringement
- Allows court to stay case and limit discovery
- Fees awarded where loser’s position not “objectively reasonable” unless doing so would be “unjust”
- Limits on Use of Demand Letters to prove Willful Infringement and Penalties for FTC violations where done abusively
STRONG Patents Act (S.632)

- Introduced by Sen. Coons last March
- Requires that USPTO prescribe new standards for Patent Trial and Appeal Board (PTAB) proceedings
- Requires that PTAB Petitioners either be sued or charged with infringement in order to have standing
- Directs FTC and state attorneys general to act against NPE practice of sending bad faith demand letters

Innovation Act (H.R.9)

- Heightened Pleading Requirements
- Presumption of Attorneys’ Fees
- More Discovery Limits
- Treble Damages for Willful Infringement—But Limits on Evidence that can be Used to Prove
- Ownership Transparency and Possible Joinder
- Stay of Customer Suits
- Venue must have connection to parties’ dispute
State Legislatures Are Enacting Anti-Troll Laws

- Vermont (2013)—first state effort to pass legislation aimed at halting patent trolls
- Prohibits “bad faith assertion of patent infringement”
- Allows courts to consider various factors relating to whether demand letters provided certain information
- Requires bond filing where demand target establishes reasonable likelihood of violation
- Private right of action to targeted businesses—and fees

Other States Are Following Suit

- In 2014 seventeen other states enacted similar laws
- Nine more in 2015—now up to 27 with anti-troll laws on the books (8 more in the works)
- Many of the laws (like Missouri’s) are similar to Vermont and give a private right of action to targets to initiate suits against bad faith demand letter senders
- Open question whether federal preemption applies
State Attorneys General on the Prowl

- Many state anti-troll laws also provide AGs with powers to investigate violations and bring suits
- In 2013 Vermont’s AG brought first suit against MPHJ
- During last two years both Minnesota and New York secured favorable settlements with MPHJ
- Nebraska AG Jon Bruning not so successful
- 42 State AGs wrote the Senate Judiciary Comm. in 2014

FTC Also Actively Enforcing

- In early 2014 the FTC issued its first complaint against a patent troll—MPHJ and its law firm Farney Daniels
- Last November they announced a settlement with MPHJ
- Consent order requires that MPHJ cease making misleading statements
- Any subsequent demand letters are misleading under FTC Act unless supported by evidence at time sent
- Civil penalties: $16,000/letter for violations
Legislative Ramifications and Open Issues

- Additional tools available to accused infringers if threatened by a NPE
- Potential unintended consequences of Congressional reforms for universities and other research institutions
- Congress potentially taking away too much of judges’ discretion in infringement suits?
- Stay Tuned

Questions?

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QUESTIONS?
Thank you

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