REGISTERING TRADEMARKS AND PATENTS IN CUBA:

¿DEMASIADO POCO Y DEMASIADO TARDE (TOO LITTLE, TOO LATE)?

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"Tomorrow is often the busiest day of the week." ~Spanish Proverb

INTRODUCTION & OVERVIEW

Corporate procrastinators beware! The Pearl of the Antilles may, once again, be considered a real gem. When the changing tides appear as if they may swell up, awash in fresh business opportunities, your company can either be riding the edge of the wave, unceremoniously dunked in the briny blue behind the cresting wall of foam, or -- if you are very tardy in wading into the water -- being inundated by the crashing force of the angry surf.

As the crow flies, 90 miles south of the iconic Kodak®-moment painted marker buoy erected at the corner of South and Whitehead Streets in Key West, Florida (otherwise known as the "Southernmost Point in the Continental USA") lies the Republic of Cuba ("Cuba"), the largest island nation in the Caribbean. There are now direct airline flights to Cuba and U.S.-based cruise ships have begun to disembark their well-heeled passengers there.

The waves of tourists (there were almost 2.7 million in 2011) are beginning to ebb and flow and, with them, will inevitably follow the enterprising businessmen and businesses that cater to, provide for, and sell to them. Clearly, after the Cubans

have had a taste of capitalism, and the infusion of money, from the Europeans, the fiery cry of "Yankee, go home!" is seldom heard these days. Largely disappeared is the practice of "enclave tourism," which has been replaced with historic, touristic, familial/roots, medical, and (if we are going to be brutally honest) sex tourism.

Nevertheless, despite the nautical proximity, the governmental interface and interplay of IP laws between the 2 countries has, for well over half a century, drifted oceans apart. Perhaps, someday soon, however, that may be altered. Arguably, the rate of change may very well depend, in great measure, upon which political party gains the most ground in the 2016 U.S. elections. Yet, change, like time and tide, wait for no man; eventually, it will roll in.

Discovered by explorer Christopher Columbus, and claimed for Spain in 1492, Cuba nowadays has a GDP of $77.15 Billion, imports about $13.6 Billion in goods, and boasts a population of only 11.38 Million, all relatively dwarfish by U.S. standards. Still, there are those visionaries (a/k/a confirmed optimists) that believe that future business opportunities will blossom on the Caribbean island nation like so many Bougainvillea flowers.

If time and experience proves the optimists right, and foreign businesses do indeed flourish, then, Cuban IP (mainly, patents and trademarks) will, without question, become of far greater significance. Unfortunately, unless you are a gambler, because of the first-to-file system in Cuba, coupled with the seedy IP-squatter cottage industry, it probably is not the best executive brainstorming

technique, or shrewd business plan, to put off until tomorrow the IP applications which your company could, or should, be filing in Cuba today.

Under the tenets of American law, as we realize, IP rights do not enjoy extra-territoriality; rather, their life-forces stop dead in their tracks at the nation's border. Contrast that with the activities and machinations of the unscrupulous trolls who operate their piratical schemes both at home and abroad, intervening high seas notwithstanding.

IP-squatting is, beyond peradventure of doubt, a real, and weighty, concern. Many applications for what are viewed in the U.S. as "famous marks" (*e.g.,* IHOP and JETBLUE) have already been filed in Cuba and not, as you might have guessed, by the associated folks in the U.S. that serve up hot stacks of delectable buttermilk pancakes and high quality/low-cost airfare. The main victims of such squatting, thus far, appear to be airlines, hotels, banks, and restaurants. Surprisingly, perhaps, not all the squatters are Cuban; there are plenty of home-grown trademark trolls. Moreover, wresting back control of a mark from an IP interloper could well be a long, expensive, and ill-fated business and legal proposition.

Consequently, whether a business has plans to engage in commercial enterprise in Cuba this year, or 3 or 5 years from now, wise strategic planning mandates that serious discussions and, in appropriate situations, prompt actions, are necessary on a much sooner-rather-than-later basis.

There are, to be sure, a raft of advantages associated with filing in Cuba for trademark protection. Among other things, filing prevents a first-to-file (or IP-squatting) battle; actual use is not required by the mark owner; the process is not that expensive (perhaps costing around $1,200-1,500 [U.S.]); and the procedures in Cuba are fairly uncomplicated.

The savvy businessman must, then, look beyond current challenges and legal obstacles in order to attend to tasks that will, or may, benefit the company tomorrow, if not today. Admittedly, it is not always easy to see one's way clear through the soupy fog of rules and regulations cooked up and left simmering by two governments long mired in a protracted war of ideologies.

Has our own U.S. government helped or hindered the IP healing process? Believe it or not, the U.S. actually appears to be taking at least baby steps in the right direction.

Many among us, for example, are blissfully unaware that the United States of America has an "IP Czar." No, I am not referring to the Commissioner of Patents and Trademarks or the Chief Judge of the U.S. Court of Appeals for the Federal Circuit. Rather, Daniel H. ("Danny") Marti, Esq. is the current Intellectual Property Enforcement Coordinator ("IPEC," but euphemistically referred to as the "IP Czar"). (*See* Title 15, US. Code, Section 8111.)

The question next arises as to what exactly is IPEC? Simply stated, IPEC is a bureaucratic office under the purview of the U.S. Office of Management and Budget. The post was created back in 2008 as part and parcel of the "PRO-IP" (Prioritizing

and Organization for Intellectual Property) Act. IPEC's avowed *raison d'etre* is to protect IP and the creative, innovative, and technology driven industries which give birth to and nurture IP, as well as to foster and protect the U.S.A.'s global competitive advantage; a very, very tall order by any standards.

So, how do IPEC, and Danny Marti, fit into our cautionary tale about Cuba, trademark trolls, and the Cuban IP system? As a factual backdrop, you will recall that Washington and Havana recently resuscitated their mutual official relations on July 20, 2015, following a 54 year diplomatic drought. A year later, as was quietly reported (mainly by foreign news sources), just this past September, the Czar and his entourage visited Havana, Cuba to hold the first talks between the two nations relating to intellectual property. The Czar was joined by a coterie of officials from the U.S. State Department, the U.S. Copyright Office, and the U.S. Patent and Trademark Office ("USPTO").

The Cuban IP Office prominently reported the event, which supposedly took place on September 8-9, 2016 in the Cuban capitol; the Chinese press likewise jawboned about it; the American officials and media, not so much. Indeed, if one looked at the official IPEC website, as late as November 5, 2016, you would find no media and spotlight events at all listed for 2016.

According to one Chinese media source "the parties exchanged views on current regulations in the respective countries…and the legal framework of the two states for protection of trademarks, patents and legal copyright." (Retrieved from

ChinaDaily.com on October 27, 2016.) As one would reasonably expect, the Cubans also carped about the seemingly endless U.S. embargo directed against them.

I am not quite sure what we can read into all of this. After all, who can accurately predict what, if anything will come of all this bureaucratic blathering? But, as the Cubans like to say, "[b]rief encounters can result in long relationships."

It seems obvious to state that, as U.S.-Cuban relations continue to thaw, and as business ventures get freed up in Cuba, the need, and desire, for U.S. businesses to expand likely will grow exponentially. In such cases, it is imperative that the pioneering U.S. companies at least start with a prompt and frank discussion, if not the commencement of corporate initiatives, relative to doing business on Cuban soil.

Generally speaking, no person or company subject to U.S. jurisdiction and law is authorized to purchase or lease real property in Cuba. The Cuban Assets Control Regulations ("CACR") prohibits any person subject to U.S. jurisdiction from so doing.

From the U.S. side of the fence, persons subject to U.S. jurisdiction are prohibited from doing business or investing in Cuba, unless authorized by the Office of Foreign Assets Controls ("OFAC"). Stated otherwise, the Cuban embargo prohibits most types of commerce with Cuba, absent a specific license from OFAC. However, the law does provide for an OFAC "general license," which does not have to be specifically applied for or renewed, and which allows nationals of either country to legally spend money to register, prosecute, or oppose a patent, trademark or copyright. It is important to note that the general license does not, however,

provide for court enforcement of trademarks or a waiver of the use requirement, which, quite obviously, serves to frustrate the protection and enforcement of marks.

As to the hordes of IP trolls, in a fight with a squatter who has applied for a mark without use, in Cuba, while such trademark registrations are subject to cancellation, transfer of any trademark applications or registrations owned by a U.S. company requires first requesting and obtaining a specific license from OFAC.

Assuming, *arguendo*, that a U.S. company, or individual, manifests an interest in eventually engaging in business in Cuba, what type of IP landscape can reasonably be anticipated? And, perhaps more importantly, how can that foreign legal terrain best be traversed by the newly arriving "gringo" entrepreneurs?

THE CUBAN "PATENT AND TRADEMARK OFFICE"

The Cuban counterpart to USPTO is the Cuban Industrial Property Office ("Oficina Cubana de la Propiedad Industrial" or "OCPI," its Spanish acronym). OCPI firmly is under the thumb of the Cuban Ministry of Science, Technology, and Environment ("CITMA"). It is worth mentioning that various information and technical advisory services are offered through OCPI's so-called Specialized Service for the Entrepreneurial Sector (or "SESE"). OCPI has a rather informative Internet website which may be viewed at www.ocpi.cu . Sample forms are included (in Spanish)(the latest forms shown are from January, 2015), and there is a list of the government tariffs for various types of filings and procedures as well (the most recent of which being derived from Resolution No. 164/2012).

The main office of OCPI is situated in Havana. There are, however, provincial satellite offices located in more remote places such as Matanzas, Camaguey, Holguin, and Santiago de Cuba.

In order to live long and prosper in any new environment, one is customarily well-advised to do the research first and attempt to familiarize oneself with the various and sundry challenges, costs, obstacles, risks, and threats that may be involved in the venture or adventure. As a threshold matter, understand that there are no private lawyers in Cuba such as we have here in the U.S.A. Rather, all lawyers work for, and under direction, of the government. Indeed, if you review the OCPI website, you will find the names of the "Official Offices" and "Official Agents" for IP, including their names, addresses, and other relevant contact information.

For that reason, in the author's opinion, for the American lawyer or client seeking truly independent local counsel, it may well be advisable to use a trusted (or highly recommended) lawyer from a (third) foreign country in the capacity of liaison counsel; that is to say, a skilled IP lawyer, one who knows the "ins" and "outs" of the Cuban IP system, and who has no economic, financial, legal, political, or other barriers or limitations on such dealings. In my estimation, the modest, additional layer of cost for the client is well worth the time, effort, practical suggestions, and sage advice.

There are many highly competent IP lawyers in a host of countries who can provide such IP professional legal services. If you are at a loss to find such an attorney, may I suggest that you consult Martindale® or, better still, you can

contact the International Trademark Association ("INTA") or The Inter-American Association of Intellectual Property Attorneys ("ASIPI") for further and more specific information.

A frequently asked question that arises in this arena is with respect to the propriety of payment for intellectual property protection in Cuba. Technically speaking, despite the U.S. embargo, since at least 1996, American law has had a baked-in exemption for U.S. companies to allow them to enforce their IP rights in Cuba. This includes the retention of local agents and the paying of filing fees.

However, as a practical matter, many American banks were, and still are loathe, or refuse, to engage in direct financial or monetary transactions with Cuba. In such cases, and if one prefers to avoid the time and aggravation, as well as to bypass the manifold complications and uncertainties of dealing with the labyrinthine rules of the U.S. Treasury Department (OFAC), and/or other agency regulations in that regard, I suggest, once again, that you simply retain an experienced IP lawyer from a third country as your client's liaison counsel.

CUBAN TRADEMARKS

As a threshold matter, trademarks can be applied for, and registered, in Cuba pursuant to the provisions of the Trade Mark and Other Distinctive Signs Decree, Law No. 203 of 2000.

The United States is, of course, a used-based mark registration system. Albeit "intent-to-use" applications may be filed in the U.S.A., no registration can issue except upon a satisfactory showing of use of the mark in commerce. In marked

contradistinction, as is the case with most Latin American nations, Cuba is a charter member of the "first-to-file" jurisdictions. That is to say, in Cuba, a trademark registration will be granted to the applicant, any applicant, and as a matter of course, who is first-in-time, whether that applicant has actually used the mark *vel non*. In short, it is a paper horse-race to the local IP Office.

Turning to the mechanics of the process, the categorization of sought-after marks into appropriate pigeonholes ought not to prove difficult in Cuba. That is primarily because Cuba utilizes the same International Classification system as the USPTO. In that vein, it also may be noted that multi-class applications also are permissible.

As is generally the case with trademark filings, irrespective of the jurisdiction, undertaking a revealing trademark search should be deemed to be a "best practice" and, thus, strongly is recommended. On that particular subject, in order to conduct a proper search, all that is needed is the name of the mark (unless the mark consists of text alone), along with one copy of the design or logo (if applicable). The search results normally take about two (2) weeks to boomerang back to the requestor.

In order for your foreign (liaison) counsel to properly attend to the filing of a mark application in Cuba, certain information and documents doubtless will be indispensable, *to wit*: name of trademark or service mark; 1 copy of the logo or design (unless it is a word mark, without more); indication of the class(es); indication of specification of goods and/or services, the applicant's name and

address, and a duly executed Power of Attorney (notably, no legalization or notarization is required for the P/O/A).

As a somewhat comforting factor, priority can be claimed under the Paris Convention. Needless to say, in addition to the foregoing information and/or documentation, if priority is to be claimed, then, the applicant also must provide OCPI with a certified copy of the predicate priority document.

As in America, putative marks are published in Cuba for opposition purposes. The length of the opposition period is sixty (60) days, starting the count of the calendar following the date of publication.

From starting line to the checkered flag, the trademark registration process in Cuba normally takes about eighteen (18) months to process the application and register a mark. Once the entire process has been traversed successfully, then, OCPI will issue a Registration Certificate in favor of the Applicant.

Notwithstanding the issuance of a registration of a mark in Cuba, if the mark has not been used within a period of three (3) years from the registration issuance date or, alternatively, has not been used for a continuous period of three (3) years, then, the mark may be susceptible to cancellation. This facially minor wrinkle can, in real life, prove to be a very troublesome matter for business applicants who, owing to the current rules and regulations, cannot lawfully engage in business on "Tierra Cubana." Care must be taken in such circumstances to avoid abandonment along with its concomitant, Draconian consequences.

Barring any unforeseen complications, a typical trademark registration issued in Cuba enjoys validity for a period of one (1) decade. Subsequently, such registrations are subject to renewal(s) for additional periods of ten (10) years each.

In order properly to apply for a renewal in Cuba, the only pre-requisite documentation is a Power of Attorney. As a general rule, the renewal application should be filed within a period of six (6) months prior to the expiry date of the particular registration at issue. It ought to be noted, however, that there is a six (6) month grace period allowed (measured from the expiry date for the filing of the renewal application, contingent upon payment of a late fee). After the grace period has lapsed, however, then, of necessity, a brand new application must be lodged.

In terms of processing times, it ordinarily consumes twelve (12) months (possibly, a bit less) for OCPI to issue a renewal. Upon completion of the renewal procedures, OCPI will issue an official Certificate of Renewal in favor of the mark-owner.

The fairly short processing times may well be a reflection of the overall dearth of filings in Cuba. However, that, too, may change over the course of time. At present, the press of business at OCPI hardly compares to USPTO. To illustrate, during the period from 2010-2014, OCPI was presented with anywhere from between a low of around 1,000 to around a high of around 2,000 mark applications per year. Of those, the number of mark applications filed by non-residents virtually was always more than double the number of resident mark applications (in fact, it has been that way since at least the year 2000).

As alluded to, above, a finding of abandonment of a Cuban trademark (for non-use, or less than continuous use) is, by no means, a hypothetical or imaginary threat. In order, therefore, to avoid such a dilemma, as a practical matter, if your client, a prior Cuban mark Registrant, has failed to use the mark in question – which is an easy trap to fall into since many types of business still are not allowed to exist in Cuba – then, serious consideration should be afforded to the filing of a new mark application every three (3) years (prior to the expiry of the preceding application.) That simple expedient will be far less costly, and aggravating, and much less potentially damaging to the business than allowing a gap into which some officious intermeddlers or IP squatters can wriggle themselves into.

Assignments of marks are permitted under Cuban law. Such assignments, to be valid, must be recorded. In order to successfully record an assignment, only a modicum of paperwork is called for. In fact, one needs but a Power of Attorney and a notarized Deed of Assignment. In terms of duration, it takes about a year (possibly, a bit less) for OCPI to process such a recordal of a mark assignment. Following the successful completion of the recordation process, OCPI will grant a Certificate of Recording which evidences the assignment.

In the event that other, more minor types of changes transpire (*e.g.,* change of address), once again, a Power of Attorney, and a Deed reflecting the change are all that is necessary. As in the case of assignments, this process takes about one (1) year (sometimes less) to process an application to record a change of Particulars.

CUBAN PATENTS

It can fairly be stated that OCPI has not been deluged with patent applications over the years. Resident patent applications between the years 2011-2014 numbered far under 100 in total. Non-resident applications, for that same time-frame, were well in excess of 100, as were applications from abroad, but the overall totals were still extremely low. To place these numbers in the proper perspective, back in the good old USA, in 2015, there were 629,647 patent applications filed at USPTO.

If we concluded that OCPI is not that occupied with trademark applications (*see* discussion, above), it certainly cannot be said to be overwhelmed with patent applications either. For example, by its own statistics, OCPI had the following number of patent applications filed in the years indicated: 2011- 246; 2012-178; 2013- 168; and 2014- 150.

Most of the applications in the Cuban patent realm (as is true with trademark applications) were filed by non-residents. In 2011, 194/246; 2012-140/178; 2013- 141/168; and 2014- 126/150. In 2014, for example, OCPI granted 95 patents (78 of which had been filed by foreigners.) Grants of letters patents, by OCPI, in years 2011-2013 were as follows: 2011-154; 2012- 84; 2013- 114. The majority of foreign patent applications in Cuba have been filed by citizens or entities of countries such as Germany, Switzerland, U.S.A., U.K., and France.

A patent can be registered in Cuba pursuant to Legal Decree 290 of April 1, 2012, which law provides for patent applications in that jurisdiction. It usually takes about eighteen (18) months for the General Director of OCPI to process an

application for patent registration. That being said, the average time from filing to grant is roughly four (4) years.

Although there exists no legal mandate or requirement to conduct a patent search in Cuba prior to the filing of an application, once again, a search is a highly vaunted vehicle for purposes of ascertaining that there will be no discrepancies concerning the novelty of the patent application under consideration. The search results usually can be provided to the commissioning party within a period of three (3) weeks or so.

The following information and documentation is required for a Cuban patent application: 1. the name(s) and address(es) of the Applicant(s); 2. the name(s) and address(es) of the Inventor(s); 3. an Affidavit or Declaration (duly notarized); 4. one or more claims and two (2) copies of any drawings referred to in the description of any claim;

5. an executed Power of Attorney (no legalization required), to be provided within sixty (60) days of the Cuban Office Action; 6. a certified copy of the predicate Priority document (assuming priority is claimed), to be provided within ninety (90) days of filing; 7. the PCT application (if required); and 8. a Spanish language translation of all of the above-described documents, to be provided within sixty (60) days after the Cuban Office Action.

Cuba is, as hereinabove mentioned, a member of the Paris Convention. Thus, convention priority can be claimed. It should be noted that Cuba also is a signatory to the Patent Cooperation Treaty ("PCT") and, accordingly, national phase filing of a

PCT patent is possible. Such a practice certainly is encouraged if your client is seeking coverage in another jurisdiction.

It hardly seems necessary to add that a PCT application can serve to simplify the process of seeking a patent in other countries that are parties to the Patent Cooperation Treaty. That treaty provides, to the countries that sign on, a set of rules for filing in the other countries. The U.S. joined the PCT in 1978, while Cuba inked the treaty in 1996. Using the PCT can save a business quite a bit of money.

Succinctly stated, in order to file patent applications in other countries, a U.S. inventor must first file in the U.S.; thereafter, it may file, or "'nationalize" in other countries. Thus, there is a means to hold one's filing date in a number of foreign countries, while one decides which nations are the best in which to pursue nationalization for one's invention; the path of least resistance is to file a so-called "PCT" application once the U.S. patent application is filed. As soon as the PCT application is on file, the applicant, then, has a period of 18 months in which to decide which countries it wants to do business in.

PCT applications can be filed within thirty (30) months from the original filing date and the documents can be presented in the original language. Certified translations can be filed later. For patent applications based upon International Applications (PTC), one does need a PCT publication and international search report, an indication if preliminary exam has been taken, and a certified Spanish translation indicating if there has been any amendment to the PCT original filing.

The Cuban patent filing and registration process is essentially as follows: filing of patent application; preliminary examination by OCPI; patent publication (eighteen (18) months from priority date); formal examination request (prior to thirty six (36) months from the filing date) and must be requested after sixty (60) days from the patent publication date; ninety (90) days to respond to an Office Action from the formal examination; acceptance or rejection by OCPI; payment of the taxes; and title issued.

Once the registration process is complete, OCPI will issue a Registration Certificate. After a patent has been registered in Cuba there is an annuity payable to the Cuban government each year. The fee is due on the anniversary of the application date. Annuities for a PCT-issued patent are due on the same date. Failure to pay an annuity will result in the rights protected by the registration being placed in abeyance. The practical result, then, is that it will effectively prevent any enforcement action being taken on that particular patent.

A utility patent registration in Cuba enjoys validity for a term of twenty (20) years. Utility models enjoy a term of only ten (10) years. Utility models are tailor-made for utensils, tools, apparatus, devices or any parts (but not chemical products, methods, or uses). Design patents are valid for fifteen (15) year terms. As in the U.S., once a patent registration has expired, however, it cannot be renewed.

Patent marking is not mandatory. As for abandonment, it is allowable. If a Registrant so wishes, a patent can be allowed to lapse. Assignment of a patent likewise is permissible. In such cases, one must file an application to record the

assignment in Cuba. In turn, in order to record the assignment of a patent registration the documentation required is the Deed of Assignment and a Power of Attorney with Spanish translations. It usually takes twelve (12) months or less for OCPI to process an application to record an assignment. Once the recording is complete, the Office of Intellectual Property will issue a Certificate of Recording reflecting the assignment.

In the event that there are any other changes to the registration, an appropriate application must be filed in order to record the change in Cuba. To effectuate a change in the name and/or address for a patent registration, the documentation that is required is the Deed evidencing the change and a Power of Attorney, accompanied by Spanish translations. It usually takes 12 months or less for OCPI to process an application to record. Once the recording, as to any change in particulars, is complete, OCPI will issue a Certificate of Recording reflecting the change(s).

SQUATTERS, AND PIRATES, AND TROLLS…OH MY!

Even a cursory examination of the internet will reveal that IP-squatters, trademark trolls, and other species of business pestilence abound in Cuba. Indeed, there are even articles regarding this subject on the OPCI website.

Squatters have no ethics, morals, or business scruples. They are respecters of no man's rights or of the sanctity of another's intellectual brainchildren. They are, candidly, driven by pure greed. And their greed knows no geographic boundaries.

Squatters have two things going for them. First, they cavalierly exploit the fact that trademarks are territorial in nature, so that a famous U.S. mark for a breakfast restaurant, for example, holds neither sway, nor sympathy in Cuba. Second, inasmuch as Cuba is a "first-to-file jurisdiction, squatters can throw down fast form applications, plunk down their pesos, and they are "in business," so to speak.

Parenthetically, I should add that, the squatters are, by no means, all Cuban. Indeed, there are many Americans or American entities in the quay (including some Florida entities) vying with the other trolls to make a fast buck. They are hoping, in a best-case-scenario, to hold the marks hostage and to thereby exact a hefty ransom payment, in the form of a highway robbery price therefor, from the rightful owner(s).

The relative cost of applying for, and registering, a mark in Cuba, versus fighting a squatter or troll down the line just does not make for good business sense or sound economics. Not only may there be a legal skirmish with a squatter, but the U.S. company may not be able to do business in Cuba in the interim because of the squatter, or may even have its (genuine) goods seized. Furthermore, they will have to seek, and secure, a specific license from OFAC, a process which, itself, is a magical, mystery tour which could quite literally take months, or years. One can wait until one is grey and withered before OFAC gets around to hand down, if it

ever hands down, one of its infamous arbitrary and capricious decisions)which, by the way, are virtually un-reviewable by the federal courts).

Apart from that, the U.S. business may well have to resign itself, and its corporate destiny, to OPCI or, worse still, to a Havana courtroom. Even we litigation lawyers who are all too familiar with the nagging concept of "home-field" advantage may be surprised to witness the ostensibly outlandish level of blatant favoritism demonstrated in a Cuban court, and especially to a Cuban defendant in the firing line of an American plaintiff. To illustrate, can you envision the nightmarish scenarios wherein the products/brands at issue before OCPI, or a Cuban court, touch upon or concern such vaunted staple goods -- and threats to local Cuban orgullo (pride) -- such as cigars, rum, or sugar? ¡Que viva la revolución!

THE EARLY BIRD CATCHES THE IP WORMS

As well-stated in the 17th century English proverb, "[t]he early bird catcheth the worm," American companies, and their counsel, must quickly learn to flit over to the bright notion that expeditious and peremptory action in Cuba regarding IP protection and enforcement must be taken early and often. If a company has any conceivable plans to expand into Cuba, then, not to adopt proactivity as one's boardroom mantra borders on boardroom neglect or, depending upon the circumstances, gross corporate incompetence.

As an old Cuban adage goes, "[j]ustice is a good thing, only not in my house, but in my neighbor's." In the event that American businessmen allow the IP

squatters to manage to get a false start, or to gain a leg up in the race to registration, the contest may be over before the starter's gun is even fired.

As Cuba is, and shall remain, a first-to-file jurisdiction, we Americans must learn and adapt in order to take preventative steps. Such prophylactic measures will undoubtedly inure to the benefit of the company (and its stockholders). File the applications; pay the fees; closely monitor political and bureaucratic events; and adapt and change with the eventual metamorphosis. Renew registrations, or re-file applications, as may be necessary and/or desirable.

In this area, continued procrastination by American businesses could render the road to riches in Havana pock-marked with legal potholes and ringed by deep ditches. It is important to bear firmly in mind that there is so much regulation (and, I would dare say, corruption), in Cuba in terms of engaging in business, that stealthy operations or quiet business planning is neither possible, nor realistic. Remember, internet access is strictly controlled and e-mails are monitored by the Castro regime. Needless to say, once your business affairs are hanging out there on the electronic laundry-line, the avaricious squatters quickly will squirm into action.

CONCLUSION

Essentially for the foregoing reasons, by sending their applications flying out the door now, during this relatively brief window of opportunity, U.S. businesses can play, and win, the game of "early bird" as to the IP-squatters, trademark trolls, and patent parasites.

Early planning. Early filing. Early registering. These are the major keys to the ultimate success of American business in Cuba as regards their valuable IP assets and the potential revenues that can be harvested therefrom. A winning business and legal strategy in Cuba involves laying the seeds of a solid IP foundation, cultivating strong IP assets and, later, protecting and policing the marks. Furthermore, though this may seem counter-intuitive, all of this must be done well prior to the time the company actually reaches the level or stage of actually engaging and operating a business in Cuba.

On the other hand, if the American companies' executives choose poorly, then, they may as well tarry in their in their rushed Spanish language lessons. If U.S. enterprises presently commit the grievous error of hanging around their cozy stateside nests, then, before too long, America's corporate chickens surely will be coming home, and staying home, to roost.