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LAW ALERT

LITIGATION

SPOTLIGHT ON INTERNATIONAL PRACTICE

July 2015

RMF *Pro Bono* Case “Under Reconsideration” as a Result of New Trade Legislation

By Thomas A. Telesca, Esq. and Gracie C. Wright, Esq.

On June 29, 2015, President Barack Obama signed the Trade Adjustment Assistance Reauthorization Act of 2015 (“TAARA 2015”) into law as part of the Trade Preferences Extension Act of 2015, which gave President Obama "fast track" power on the Pacific Rim trade deal. TAARA 2015 amended the Trade Adjustment Assistant Act of 1974. That Act implemented the Trade Adjustment Assistance (“TAA”) program, which is a federal program administered by the Department of Labor that provides a path for employment growth and opportunity through monetary aid to American workers who have lost their jobs as a direct result of foreign trade. The TAA program provides such workers with opportunities to hone the skills and techniques they need to become re-employed.

TAARA 2015, sometimes referred to as the 2015 amendments, reauthorizes the TAA program for six more years while also re-expanding the group eligibility requirements and individual benefits and services available under the program. The 2015 amendments make service sector and public sector workers eligible for TAA benefits. Under the prior 2011 amendments, only manufacturing sector workers, fisherman, and farmers were eligible for TAA benefits. The 2015 amendments also include job search and relocation allowances.

Moreover, the 2015 amendments authorize automatic reconsideration of petitions denied during the period in which the eligibility requirements were more stringent - those petitions filed between January 1, 2014 and June 29, 2015 under the 2011 amendments. Not only will the Office of Trade Adjustment Assistance (“OTAA”) reconsider these denials, but OTAA will also conduct a full investigation into each case under the new eligibility requirements.

Over 400 denials will be reconsidered, one of which is a case we are handling *pro bono* on behalf of Former Employees of GE Industrial Solutions as members of

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For additional information on this or any litigation related issue, please contact ***Thomas A. Telesca, Gracie C. Wright***, or any other member of the Litigation Department.

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the bar of the Court of International Trade – which has jurisdiction over claims arising from the customs and international trade laws of the United States.

This is Mr. Telesca’s second *pro bono* case involving the TAA program. Mr. Telesca’s first case resulted in the reversal of the Department of Labor’s denial of TAA benefits and set a new standard of review for these cases. *See Former Employees of Invista, S.A.R.L. v. U.S. Secretary of Labor*, 714 F.Supp.2d 1320 (Ct. Int’l Trade 2010). Notably, the Court of International Trade awarded attorney’s fees to RMF under the Equal Access to Justice Act in Mr. Telesca’s first case.

RMF is proud of its commitment to provide *pro bono* legal services in diverse areas of the law.

General Mills Wins Six-Year Battle Against Chinese Trademark Squatter

By Thomas A. Telesca, Esq. and Gracie C. Wright, Esq.

On July 6, 2015, General Mills, the United States multinational company that manufactures and markets consumer goods such as Betty Crocker, Totino’s, Pillsbury, Cheerios, and Lucky Charms, to name a few, obtained a significant victory in the Beijing High Court against a trademark squatter. In an article published in the Hauppauge Reporter in March 2015, we warned that failing to register your trademark in China opens businesses up to protracted and expensive litigation against trademark squatters – those who register your trademark in China before you do. General Mills’ win in the Beijing High Court marks a success against these squatters, but the cost of success still warrants the recommended best practice to register your mark in China as soon as possible to circumvent a similar six-year battle against a trademark squatter.

In the General Mills case, a caterer in Zhongshan, Guangdong Province filed an application in 2000 for the registration of a trademark depicting “Wanchai Ferry” – a line of frozen Chinese-food dinners owned by General Mills. On June 21, 2001, the trademark was approved for registration by the China Trademark Office (“CTMO”), and on August 13, 2009, the trademark was assigned to an individual named Cheng Chao.

On August 21, 2009, General Mills applied to cancel Mr. Chao’s trademark registration, arguing that the trademark had not been used for three consecutive years pursuant to Article 44.4 of the Trademark Law of 2001. On October 17, 2011, the CTMO cancelled Mr. Chao’s trademark registration, and on December 5, 2011, Mr. Chao appealed to the Trademark Review and Adjudication Board (“TRAB”). The TRAB upheld the CTMO’s cancellation, finding that Mr. Chao failed to establish that the mark had been used in commerce. The TRAB agreed with the CTMO that the trademark had not been used for three consecutive years for purposes of Chinese Trademark Law. Mr. Chao then appealed to the Beijing Number 1 Intermediate Court, and on April 18, 2014, the Intermediate Court reversed the TRAB’s decision. General Mills was then forced to appeal to the Beijing High Court to avoid the possibility of having to pay Mr. Chao a licensing fee to use its own trademark.

The Beijing High Court agreed with the CTMO and the TRAB and Mr. Chao’s registration was cancelled. Specifically, the High Court held that Mr. Chao failed to set forth sufficient evidence to prove the trademark had been used in commerce during a three-year period. Notably, the High Court also found that Mr. Chao had registered more than 50 trademarks that were either identical or similar to well-known trademarks of others. This demonstrated that Mr. Chao filed these trademark applications without the intention to use the marks in commerce as required by Article 44.4. Mr. Chao was clearly a trademark squatter.

Although the High Court upheld the original decision of the CTMO and cancelled Mr. Chao’s trademark registration, not all U.S. businesses will have the economic might to wage a war like General Mills. The smart business decision is to register your trademark in China to avoid the need to litigate there.

Thomas Telesca is of counsel to Ruskin Moscou Faltischek, P.C.'s Litigation Department and a member of the International Practice Group. Gracie Wright is an associate in the Litigation Department and also a member of the International Practice Group.

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