

## AIPPI BOSTON CONGRESS

September 7 - 10, 2008

### Workshop XIX

International advertising on environmental issues:  
Green and White?

Publicité internationale sur les problèmes environnementaux:  
Vert et blanc

Internationale Werbung zu Umweltthemen:  
Green & White

Wednesday, September 10, 2008  
16:00 to 17:30  
Room 205ABC

Moderator:  
John Feldman, Reed Smith, LLP (Washington, DC, USA)

Speakers:  
Richard Wageman, DLA Piper (Beijing, China)  
Felix Hofer, Hofer Loesch Torricelli (Florence, Italy)  
Catherine Bate, Heenan Blaikie LLP (Toronto, Ontario, Canada)

Reporter:  
John Feldman, Reed Smith, LLP (Washington, DC, USA)

## Description

XIX. International advertising on environmental issues: Green and White?

Green marketing has proliferated as consumers increasingly desire to make environmentally sound purchasing decisions, and in turn, regulators around the world have begun to crack down on false and misleading green claims. From Europe to Australia, from the US and Canada to China, watchdog groups and regulators are trying to police the rise in bogus environmental claims. Come and learn some of the pitfalls of green marketing and steps you can take to avoid them, as well as hear about trends that will impact environmental claims in years to come.

## Summary Report

In his introduction, the Chairman introduced the general principles underlying regulation of advertising that makes reference to environmental benefits. He also made a link between this area of advertising law and trademarks. In particular, he spoke of the use of logos and certification marks that have become increasingly important signals to the public as to whether a product or service is actually “green.”

In their respective papers, which were made available to the audience and which remain available via the AIPPI website, the three speakers addressed the relevant issues from the perspective of their respective jurisdictions. The Chairman asked questions throughout in order to keep the intellectual property angle front and center.

Catherine Bate spoke about the “life cycle” analysis that appears to be central to every analysis of “green” marketing claims in Canada. She also discussed a variety of environmental marks and terms. She made reference to self-regulatory guidance that appears to be based on ISO standards, similar to the approach of the Europeans.

Felix Hofer, an Italian lawyer, spoke about Europe more generally, and showed several examples of advertisements found to be misleading in Europe. In particular, Hofer described a significant attempt at harmonization in Europe by the Commission on Marketing, Advertising and Distribution of the International Chamber of Commerce, which drafted and then published – in June 2001 - the ICC International Code of Environmental Advertising. This has now been integrated into the Consolidated Code of Advertising and Marketing Communication Practice. He described the principles that are set forth in this code and how individual countries have sought to address these international principles.

Richard Wageman discussed the Chinese approach to environmental marketing claims. Over the past several years, the government has formulated a number of laws, including the *Manufacturing Law* and the *Renewable Energy Law*, that set environmental standards for household products, buildings and services. In addition, Wageman described a series of certification standards that are increasingly being used. Such systems have begun being used in the food, energy efficiency, and building sectors. Wageman described an increase in “green” marketing claims and the need for and likelihood of more regulations and enforcement.

The session was ill-attended and there were very few questions.

The Chairman concluded the session by expressing his and the audience's thanks to all the speakers and his appreciation for the attendance of those who did come to the session.

## **Conclusions**

The Chairman's conclusions from the Workshop are as follows:

There is a push toward the use of international standards. The U.S. regulatory system for advertising is not based on standards but based on principles of deception. Therefore, the U.S. focuses on whether consumers are being confused, an approach that is familiar to most trademark practitioners. Europe and Canada, and to a growing extent China, focus on governmental or quasi-governmental mandates as to what terms mean and when they can be used. As the U.S. moves toward new guides for terms such as "sustainable" and how "energy credits" and carbon offsets can be used without confusing consumers, the rest of the world appears to be moving quickly toward the adoption of ISO standards. There is agreement, however, that 'green' marketing – as broadly understood – will be a major regulatory priority in the near term in all major world markets.

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