

OCA CIRCULAR NO. 4-2004, January 15, 2004

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TO:

ALL JUDGES OF SPECIAL COMMERCIAL COURTS

In line with the Resolution of the Honorable Court in A.M. No. 03-03-03-SC (Consolidation of Intellectual Property Courts with Commercial Courts) dated June 17, 2003 and to promote expediency and efficiency in handling special cases, those involving cases formerly cognizable by the Securities and Exchange Commission and violations of the intellectual property rights under Intellectual Property Code (R.A. No. 8293), we reiterate our commitment to minimize if not totally eliminate fraudulent or manipulative devices and practices which create distortions in the free market.

Momentarily, we would like to impart to you an information given by Mr. Bradford J. Bell, Second Secretary for Economic Affairs, U.S.A. illustrating the U.S. Government's concern to carve out infringements on intellectual property rights.

"CRIMINAL CONVICTIONS OF INTELLECTUAL PROPERTY CRIMES IN THE UNITED STATES

At both the federal and state levels, U.S. authorities are cracking down on and prosecuting IPR violators. Below are some current trends and statistics that demonstrate the U.S. government's commitment to enforcement of intellectual property rights in the United States.

The conviction and prosecution statistics include both federal and State cases, and are derived from attorney general reports. These reports under-represent the actual number of cases, especially at the state level. Additionally, because complex prosecutions can take a significant amount of time from investigation to sentencing, the attendant time lag may skew figures. For instance, a criminal case that was filed by prosecutors in late 2001 might result in a conviction in 2002 and sentencing in early 2003. Finally, the majority of enforcement in the U.S. occurs in the civil courts, as we have a fully functioning and highly trained judiciary, and rights owners are able to avail themselves of preliminary measures (such as seizure of goods) and remedies (such as enforceable financial judgments). These caveats should be kept in mind when using the figures below.

In fiscal year (FY) 2000, the Justice Department obtained federal court convictions of 76 defendants for IPR violations. In FY 2001, the number increased to 86 and in FY 2002, the number increased again to 106. Using FY 2000 as a base, the number of convictions increased 13 percent in FY 2001 and nearly 40 percent in FY 2002.

Moreover, the number of defendants sentenced to imprisonment is also on the rise. In FY 2000 52 defendants received jail time. In FY 2001, the number increased to 40 defendants and in FY 2002, the number increased again to 48 defendants. Again using FY 2000 as a base, defendants incarcerated for violating IPR laws increased 60 percent in FY 2001 and 92 percent in FY 2002.

State law enforcement officials also vigorously enforce intellectual property rights by engaging in criminal

anti-piracy and anti counterfeiting actions to halt the distribution of illegal materials. In 2001, as a result of state actions,, anti-piracy actions and/or raids were conducted in over 2,100 cases and 6,100 defendants were indicted, resulting in 3,741 convictions. Of those convicted, 125 defendants were sent to jail for criminal violations and criminal fines were issued in 1,845 cases.

Recent Enforcement Efforts

Video Piracy: On June 25, 2003 , a New Jersey man pled guilty to stealing the movie "The Hulk" and posting it on the Internet. The defendant was sentenced to three years probation and ordered to pay \$7,000 in restitution. On April 16, 2003 , a New York federal judge sentenced the two leaders of a counterfeit videotape ring to 46 months in prison each. The judge also ordered the two defendants to jointly pay \$11.2 million in restitution. In January 2002, the Justice Department indicted two men after seizing over 60,000 pirated DVDs and CDs with an approximate retail value of \$1 million in Brooklyn , New York .

Music Piracy: In May 2003, a Virginia man pled guilty to creating and selling over 17,000 musical compact discs in violation of criminal copyright laws. The man faces a maximum sentence of five years in prison and a fine of \$250,000. In the District of Columbia, a man pled guilty in February 2003 after producing and selling musical CDs over the Internet and was sentenced to six months in prison in September 2003.

Trademark Piracy: In July 2003, a Massachusetts man pled guilty to conspiring to sell counterfeit Rolex, Cartier, Omega, Movado, and Tag Heuer watches over the Internet. The defendant faces up to five years in prison, a \$250,000 fine and restitution to the identifiable victims of the crime. A South Carolina man pled guilty to trafficking in clothing with counterfeit Nike and Tommy Hilfiger trademarks in January 2003. He faces a maximum penalty of 30 years in prison and a fine of \$3 million.

Software Piracy: A federal judge sentenced a North Carolina man to 15 months in prison for distributing pirated game software-on the Internet, In April 2003, a federal judge in Virginia sentenced a man to four months in prison, four months of home confinement and a \$3,000 fine for offering pirated copies of software on his web site. Authorities estimated the value of pirated software between \$40,000 - \$50,000.

Pharmaceutical piracy: In August 2002, a federal district court convicted a California man of two counts of trafficking in counterfeit goods, conspiracy and misbranding food shipped in interstate commerce. The conviction came after the man fraudulently labeled baby formula with a popular name brand. The man was sentenced in December 2002 to 44 months in prison. This case is under appeal.

Operation Buccaneer: On December 11, 2001, the U.S. Customs Service, in coordination with its law enforcement counterparts in the United Kingdom, Australia, Finland, Sweden, and Norway, executed approximately 70 search warrants worldwide in the initial phase of Operation Buccaneer, the most significant law enforcement penetration to date of international organizations engaged in the criminal distribution of copyrighted software, games and movies over the Internet. This coordinated law enforcement action was the result of a 14-month undercover operation that began in "October 2000. As of October 2003, there have been 24 felony convictions resulting from Operation Buccaneer, 20 of whom have been sentenced. Core conspirators received sentences ranging from 33 to 46 months imprisonment.

Seizure of counterfeit goods by Legacy U.S. Customs: Legacy U.S. Customs issues fines for counterfeit goods that are seized. In addition to the fine issued, seized counterfeit goods are destroyed. The penalty for violations of copyrights is the destruction of piratical goods. The following fines were issued for seized goods bearing a counterfeit trademark: FY 2001 - \$51,639,525.29; FY 2002 - \$55,977,628.74; and FY 2003 -\$45,612,124.83."

For information

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PRESBITERO J. VELASCO, JR.

Court Administrator

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