CONTINUING LEGAL EDUCATION

SEMINAR SERIES 2012/2013:

The Resurrecting Doctrine of Aesthetic Functionality in US Trade Mark Law

By Dr. Irene Calboli,
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DATE & TIME: 5 MARCH 2013, TUESDAY, 2.30PM TO 3.30PM
VENUE: LEE SHERIDAN CONFERENCE ROOM, EU TONG SEN BUILDING

ABSTRACT

This presentation addresses the origins, demise, and resurrection of the doctrine of aesthetic functionality in United States trade mark law. Focusing on recent judicial cases, Dr. Calboli illustrates how courts have resurrected the doctrine of aesthetic functionality in the attempt to limit overreaching trade mark rights in the United States, in particular in the context of merchandising products and trade dress. Dr. Calboli argues, however, that very premise of this doctrine is problematic—it expands the traditional concept of functionality to include marks that are, or have become, aesthetically appealing and that are displayed on products as “embellishments and ornamentations” of the products themselves. Still, the courts have not clearly defined what constitutes “aesthetic use” of a trade mark, and have resorted to confusing tests to assess whether the use of a mark is aesthetically functional under the doctrine. This, in turn, has created much uncertainty among trade mark owners and competitors in the market. Even though overreaching trade mark rights are troublesome under several perspectives, Dr. Calboli argues that the doctrine of aesthetic functionality is not the appropriate mechanism to address and resolve the issue. In particular, courts should be wary of the unintended consequences that could derive from this expansion of the traditional concept of functionality and recur, instead, to other means to bring trade mark law within its proper boundaries.

ABOUT THE SPEAKER

Dr. Irene Calboli is a Visiting Professor at the Faculty of Law, and a Professor of Law and the Director of the Intellectual Property and Technology Program at Marquette University Law School. She started her academic career at the Faculty of Law of the University of Bologna and held visiting research positions at the King’s College London, the University of California Berkeley, the University Complutense, and the Max-Planck-Institute for Intellectual Property Law. Dr. Calboli’s research interests focus on trademark law and policy, overlapping intellectual property rights, and the protection of geographical indications of origin. She is an active member of the International Trademark Association (INTA), the International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP), the Association Littéraire et Artistique Internationale (ALAI), the Association of American Law Schools, and the American Bar Association. Before joining academia full time, Dr. Calboli practiced as an associate with the Società Italiana Brevetti in Italy, and was an intern at the Court of Justice of the European Union.

REGISTRATION

There is no registration fee for this seminar but seats are limited. To register, please click here and you will receive an automated message upon submission. For enquiries, please contact Ms Shu Hui at Tel: 6601 2693 or email her at cemail@nus.edu.sg

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