

Conference of the International Bar Association  
the global voice of the legal profession

# **Durban 2002**

## **South Africa 20 - 25 October**

The world's premier international legal organisation welcomes  
you to the largest annual Conference of international lawyers

## **Programme**



# Practice Areas – Business Law

## Subcommittee L3

### Trademark Law

#### Chair

Walter Eberl Schwarz Kelwing Wicke,  
Munich, Germany

#### WEDNESDAY 23 OCTOBER

0930 – 1230 Room 12 abe, ICC

#### Infringement of foreign trademark rights on the internet

##### Session Chair

Lynda Zadra-Symes *Knobbe Martens Olsen & Bear, Newport Beach, California, USA; Vice-Chair, Committee L*

How to advise your clients on conflict of laws and jurisdiction issues. Clients are being sued in foreign courts with increasing frequency as a result of their trademark use on the internet. This panel will bring lawyers up to date on the law they need to know to advise their clients effectively on the risks of being sued for trademark infringement and related claims in various foreign jurisdictions. The panel will also discuss steps that can be taken to alleviate such risks.

##### Speakers

Bob H Sotiriadis *Léger Robic Richard-Robic, Montreal, Quebec, Canada*  
Darren Olivier *Field Fisher Waterhouse, London, UK*  
Marilyn Krige *Adams & Adams, Pretoria, South Africa*  
Tamás Gödölle *Bogsch & Partners, Budapest, Hungary*

## Subcommittee L4

### Licensing Intellectual Property and International Treaties

#### Chair

Eric van Ginkel *Hughes Hubbard Reed, Los Angeles, California, USA*

#### THURSDAY 24 OCTOBER

0930 – 1230 Hall 2c, ICC

#### Space imaging – photographs taken from satellites

*Joint session with Committees R and Z. See Committee Z, page 65, for details.*

## M

### International Sales and Related Commercial Transactions

#### Co-Chairs

Bernhard Meyer-Hauser *Meyer Muller Eckert, Zurich, Switzerland*  
Hans van Houtte *Institute for International Trade Law, Leuven, Belgium*

#### MONDAY 21 OCTOBER

0930 – 1230 Hall 3b, ICC

#### Sale of a business using an auction process

*Joint session with Committee G.*

##### Session Co-Chairs

Ruth L Lansner *Holland & Knight LLP, New York, USA; Chair, Subcommittee M10 (The Sale Contract)*  
Nilufer von Bismarck *Slaughter and May, London, UK; Vice-Chair, Committee G (Business Organisations)*

This session will be a case study/panel discussion in which the participants will focus on the increasing use of the auction process in the sale of private companies.

The discussion will include an overview of the auction process, including solicitation of interested buyers, the qualification process, the preliminary non-binding bidding round, the final bidding round and selection of the winning bidder. The discussion will also include considerations relevant to use of a financial adviser, the documentation required in an auction including the non-disclosure agreement, information memorandum and acquisition agreement, and the establishment of a data room for the due diligence process, fiduciary duties of the seller to stockholders and interested employees, the use of pre-emptive bids, bid evaluation process, parallel negotiation, seller techniques for maximising price; buyer techniques for determining the extent of the competition; and statutory or common law relevant in different countries in conducting auctions.

##### Speakers

Martin Brink *Van Benthem & Keulen Advocaten, Utrecht, Netherlands*  
Philippe David *Fasken Martineau, New York, USA*  
Jérôme Gertler *HSD Ernst & Young, Paris, France*  
James Philips *Minter Ellison, Sydney, New South Wales, Australia*  
Magnus Pousette *Hannes Snellman, Helsinki, Finland*  
José Ramón Villar *Garrigues, New York, USA*  
Matthias Schueppen *Haarmann Hemmelrath, Stuttgart, Germany*  
Andrew D Parsons *Denneys Reitz Inc, Durban, South Africa*

1400 – 1700 Hall 3b, ICC

#### Antitrust issues in distribution and agency networks

*Joint session with Committee C.*

##### Session Co-Chairs

Eytan Epstein *Epstein Chomsky & Co, Tel Aviv, Israel; Vice-Chair, Subcommittee M3 (Agency Distribution Agreements)*  
Stephen Kinsella *Herbert Smith, Brussels, Belgium; Senior Vice-Chair, Committee C (Antitrust and Trade Law)*

An overview and analysis of recent developments in antitrust laws in the EU, the USA and other jurisdictions.



The panel will address:

- the effect of new legislation and jurisprudence on existing practices and agreements;
- the international dimension – structuring an international distribution network in several jurisdictions;
- combining internet and physical distribution channels.

#### Speakers

Robert Legh *Bowman Gilfillan Inc, Johannesburg, South Africa*  
Heiko Tietz *Haarmann Hemmelrath & Partners, Düsseldorf, Germany*  
Stephen Weissman *Howrey Simon Arnold & White, Washington DC, USA*  
Mauro Grinberg *Araujo e Policastro, São Paulo, Brazil*  
Ruth L Lansner *Holland & Knight LLP, New York, USA; Chair, Subcommittee M10 (The Sale Contract)*

#### 1700 COMMITTEE BUSINESS

**MEETING.** An open meeting to discuss future activity of the Committee.

### TUESDAY 22 OCTOBER

0930 – 1230 Hall 2b, ICC

#### International sales transaction checklist – an online tutorial

*Joint session with Committee X.  
See page 63 for details.*

### WEDNESDAY 23 OCTOBER

0930 – 1230 Hall 2b, ICC

#### Won't it stick? Unenforceable contracts!

*Joint session with Committee S.*

#### Session Co-Chairs

Jürgen Brandstätter *Foglar-Deinhardstein & Brandstätter, Vienna, Austria; Deputy Secretary, Committee S (Products Liability, Advertising, Unfair Competition and Consumer Affairs)*  
Bennet Hugh Silverman *Katz Wittenberg Levine & Silverman, New York, USA; Secretary, Committee M*

A panel from diverse jurisdictions will consider express and implied limitations under the laws of various jurisdictions on the ability of contracting parties to agree

on some terms which are used in other jurisdictions. The impact of concepts such as adhesion, required good faith, fair dealings-fair trade, choice-of-law, arbitration, consumer safety and public order, as well as others, will be examined and applied to the case study presented for discussion.

#### Speakers

Eytan Epstein *Epstein Chomsky & Co, Tel Aviv, Israel; Vice-Chair, Subcommittee M3 (Agency Distribution Agreements)*  
Nick Theunissen *Shepstone & Wylie, Durban, South Africa*  
Jorge Acedo *Hoet Peláez Castillo & Duque, Caracas, Venezuela*  
Jingzhou Tao *Coudert Brothers, Beijing, China; Vice-Chair, Asia Pacific Forum*  
Amir Singh Pasrich *International Law Affiliates, New Delhi, India; Chair, Subcommittee M5 (Financing of International Sales)*  
Nicole VanCrombrughe *Lafite VanCrombrughe & Partners, Brussels, Belgium; Co-Chair, Subcommittee M1 (Sales of Goods)*

2000 A DINNER will be held for Committee members and guests.  
*See page 101 for details.*

### THURSDAY 24 OCTOBER

0930 – 1230 Room 11 abe, ICC

#### Letters of credit – one strike and you're out!

#### Session Co-Chairs

Peter Callens *NautaDutilh, Brussels, Belgium; Senior Vice-Chair, Committee M*  
James Klotz *Klotz & Co, Toronto, Ontario, Canada; Senior Vice-Chair, Committee M*

The letter of credit is the most common payment mechanism in international sales, yet it can be quite complex. This session, in the context of a case study and panel discussion, will examine traditional letters of credit and stand-by letters of credit, and the practical issues that arise from their use.

#### Speakers

Antoine Maffei *De Pardieu Brocas Maffei & Leygonie, Paris, France; Co-Chair, Capital Markets Forum*  
Essam Al Tamimi *Al Tamimi & Co, Dubai, United Arab Emirates; Section on Business Law Council member*  
Andrew Robinson *Deneys Reitz Inc, Johannesburg, South Africa*  
Mauro Rubino-Sammartano *Rubino-Borghesi de Tilla & Valensise, Milan, Italy*  
Harold Shupak *Shupak & Co, London, UK*  
Michele Simpson *Trevo Simpson, Edmonton, Alberta, Canada*

### Subcommittee M6

#### Government Procurement

#### Chair

James J Myers *Gadsby Hannah LLP, Boston, Massachusetts, USA*

### FRIDAY 25 OCTOBER

0930 – 1230 Hall 3b, ICC

#### International procurement: objectivity and subjectivity

#### Session Chair

John Grayston *Eversheds, Brussels, Belgium; Vice-Chair, Subcommittee M6*

The preference for using solely objective methods of procurement must in some instances give way to a more subjective approach. How do the EU procurement rules and the UNCITRAL code reconcile the theoretical goal of total objectivity with the practical requirement for some degree of subjectivity?

#### Speakers

Velia Leone *Treasury Ministry, Italian Government, Rome, Italy*  
Martin Dischendorfer *Assistant Legal Officer, United Nations Commission on International Trade Law, Vienna, Austria*



#### Electronic privacy in the workplace.

- monitoring and surveillance.
- acceptable use policies.
- enforcement issues/labour law constraints.

#### Speaker

Ulrich Wuermeling *Wessing, Frankfurt am Main, Germany*

## S

### Products Liability, Advertising, Unfair Competition and Consumer Affairs

#### Chair

Christopher J S Hodges *CMS Cameron McKenna, London, UK*

#### MONDAY 21 OCTOBER

0930 – 1230 Hall 2b, ICC

#### Roundtable on global developments in consumer law and product liability law

*Joint session with Committee Cc.*

#### Session Co-Chairs

Christopher J S Hodges *CMS Cameron McKenna, London, UK; Chair, Committee S*

Jürgen Brandstätter *Foglar-Deinhardstein & Brandstätter, Vienna, Austria; Deputy Secretary, Committee S*

This session will take the form of an interactive discussion on developments around the world on all areas of business consumer affairs, including:

- product liability: law, procedure, class actions and practice;
- advertising and unfair competition;
- product regulation, safety and recall;
- new consumer and protection laws.

The session will be attended by the global network of national correspondents who provide regular reports for Committee S's Newsletter. It will be of particular interest both to young lawyers and corporate counsel who wish to gain knowledge and an overview of business consumer law

and affairs, and see what's on the horizon.

There will be a particular focus on laws on trading fairly. Which jurisdictions have duties to trade fairly or requirements of good faith? What are their limits? Are they being extended?

The European Commission's 2001 White Paper on consumer protection has raised the possibility of a framework directive on consumer trading, incorporating a general duty to trade fairly. The Commission asserts that such a duty already exists in the national law of some Member States. Is this true? If so, what are the circumstances or limits in which it operates? Can a general duty of good faith or fairness ever be applied? Is it far too uncertain? Is there a difference between consumer transactions and business transactions? There will be reports from EU jurisdictions, the USA, Australia and elsewhere.

#### Speakers

Christopher J S Hodges  
Jürgen Brandstätter

#### TUESDAY 22 OCTOBER

0930 – 1230 Room 12 abe, ICC

#### Traditional knowledge

*Joint session with Subcommittee L2 and Committee 20.*

#### Session Co-Chairs

Louis van Wyk *Spoor & Fisher, Pretoria, South Africa; Vice-Chair, Committee S*  
Clive Elliott *Shortland Chambers,*

*Auckland, New Zealand; Publications Officer, Committee L (Intellectual Property and Entertainment Law)*

Barbara Hoffman *Law Offices of Barbara Hoffman, New York, USA; Chair, Committee 20 (Art, Cultural Institutions and Heritage Law)*

#### Key issues

*Moderator*  
Clive Elliott

#### Introduction

Catherine Odora-Hoppers *Department of Teaching and Training Studies, University of Pretoria, Pretoria, South Africa*

#### The traditional perspective: just what is traditional knowledge and why does it matter?

#### Speaker

Naida Glavish *Auckland District Health Board, Auckland, New Zealand*

#### The international perspective: what is traditional knowledge terminology and subject matter

#### Speaker

Wend Wendland *World Intellectual Property Organization, Geneva, Switzerland*

#### The industry perspective

How should we balance consumer protection with the continuing use of traditional remedies? Should traditional remedies be subjected to the same requirements as modern, synthesised medicines? How could compliance with such requirements be funded?

#### Speaker

Christopher J S Hodges *CMS Cameron McKenna, London, UK; Chair, Committee S*

#### Convergence between traditional knowledge, science and intellectual property

#### Moderator

Clive Elliott

#### For whom should traditional knowledge be protected?

#### Speaker

Roger Chennells *Chennells Albertyn, Stellenbosch, South Africa*

#### Economic value of traditional knowledge

#### Speaker

Professor Coenraad J Visser *Department of Mercantile Law, University of South Africa, Pretoria, South Africa*

#### Emerging ethno-botanical issues

#### Speaker

Dr Neil Crouch *Assistant Director, National Botanical Institute, Durban, South Africa*

A panel discussion will follow.