



THE CANADIAN
BAR ASSOCIATION
L'ASSOCIATION DU
BARREAU CANADIEN

November 4, 2010

Via facsimile transmission: 819-953-2476

Stéphanie Golden
Canadian Intellectual Property Office
Trade-marks Branch
50 Victoria Street
Place du Portage II
Gatineau, QC K1A 0C9

Dear Ms. Golden:

Re: Three Proposed Practice Notices

The Trade-marks Committee of the Canadian Bar Association's National Intellectual Property Section (CBA Committee) writes to respond to the consultations on three proposed practice notices:

- List of Trade-mark Agents and Register of Patent Agents (the List)
- Non-traditional Trade-marks
- Document Retention and Disposal

The Canadian Bar Association (CBA) is a national association representing over 37,000 jurists, including lawyers, notaries, law teachers and students across Canada. The CBA's primary objectives include improvement to the law and the administration of justice. The CBA Committee is pleased to have the opportunity to offer input to you at this stage in the process.

The CBA Committee applauds CIPO's move to recognise non-traditional marks and supports the proposed practice notice. We look forward to future expansion of the definition of "non-traditional marks". The CBA Committee also supports the practice notice relating to the List.

With document retention and disposal, however, the CBA Committee is of the view that CIPO does not have legislative authority to destroy files without an amendment to the *Trade-marks Act*. Subsection 29(1) of the Act reads as follows:

29. Inspection – (1) Subject to subsection (2), the registers, **the documents on which the entries therein are based, all applications, including those abandoned**, the indexes, the list of trade-mark agents and the list of geographical indications kept pursuant to subsection 11.12(1) shall be open to public inspection during business hours, and the Registrar shall, on request and on payment of the prescribed fee, furnish a copy certified by the registrar **of any entry in the registers, indexes or lists, or of any of those documents or applications.** (*emphasis added*)

The intent of Parliament expressed in this section is to impose on the Registrar of Trade-marks the duty of being official custodian of these records. The records are to be available publicly.

The CBA Committee appreciates the practical difficulties and costs involved in retaining paper files. The CBA Committee recommends alternatives, such as electronic file storage. We understand that CIPO is currently reviewing its electronic system. Now may therefore be an ideal time to incorporate electronic scanning of these paper files with other electronic initiatives.

The CBA Committee also understands that CIPO is considering amendments to the *Trade-marks Act*. The issue of records retention can be reviewed in that context.

Again, the CBA Committee is pleased to have the opportunity to work constructively with CIPO by offering input through this consultation process. If you have any questions about what these recommendations, please contact me.

Yours truly,

(original signed by Rebecca Bromwich for Marijo Coates)

Marijo Coates
Trade Marks Committee
National Intellectual Property Section