



INSIDER

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WORLD CONFERENCE IN DUBAI, NOVEMBER 10-13, 2005

At the forthcoming GGI/LSI world conference, **Dr. Thomas Müller**, Europe's leading criminal psychologist, is sure to keep us spellbound with his fascinating lecture on "*Criminal Psychology and the method of interpreting human behavior*".



Dr. Thomas Müller

By way of a case study, Dr. Müller will draw parallels between the use of applied criminal psychology in criminal justice and its practical uses for the world of business (traders, lawyers, auditors), so that the lecture will be of practical use to all participants. The next day, you will have the opportunity to talk to Dr. Müller when he gives a workshop entitled: "Be your own behavioral analyst".

For those who have not registered yet for the upcoming World Conference in Dubai, we recommend that you do this at your earliest convenience in order to benefit from good rates.

If you need any further information, please contact Annina Huber on +41 44 256 18 18 or by email at huber@genevagroup.net.

DIARY

10-13 November 2005
World Conference
Dubai

11-14 May 2006
European Conference
Ireland

02-03 June 2006
Latin American
Conference Venezuela

RESTRUCTURING OF MEMBER FIRM IN POLAND

For legal reasons, the law firm Wendler Tremml Sp. Z o.o in Poland has had to change its structure and company name. They now operate under the name WT Skowrońska & Pietrzyk Sp. K. in association with Wendler Tremml.

The services offered include: advising entities on corporate law and business transaction law, civil law, investment and construction law, copyright, employment law and litigation management.

WT Skowrońska & Pietrzyk Sp. K. in association with Wendler Tremml also cooperate with an accountant and licensed tax consultant.

For contact details, see

<http://www.genevagroup.net/index.php?w=4&id=4&memberId=138>

and for any supplementary information, check out www.law-wt.de.



ESTABLISHING A TRANSFER PRICING WORKING GROUP

On 1 January 2005, the new corporate tax law came into effect in Slovenia, which established the requirement for arm's length pricing on transactions between connected companies.

The impact of this would subsequently be felt by those multinational groups with business units in Slovenia. In their 2005 annual reports, these business units are obliged to substantiate that their pricing policies comply with the law and consequently, a transfer pricing study needs to be included in the annual report.

Currently, transfer pricing has become a major tax planning issue throughout Europe, triggering discussions on legislative measures by those countries which still have no legislation in place. Besides Slovenia, two of the countries to adopt the new transfer pricing regulations in 2005 are Denmark and the Russian Federation.

Simic & Partnerji d.o.o. are looking for a GGI member who has experience in transfer pricing. Please contact one of the following:

Mr. Rok Meglic +386 1 3000-605, rok.meglic@simic-partnerji.si

Mr. Ivan Simic +386 1 3000-600, info@simic-partnerji.si

MEMBER FIRM GIBBONS OPENS OFFICE IN PHILADELPHIA

Patrick C. Dunican, Jr., Managing Director of the Newark-based law firm of Gibbons, Del Deo, Dolan, Griffinger & Vecchione, announced the opening of a Philadelphia office and the naming of veteran Philadelphia lawyer David W. Marston and Director Timothy S. Susantin to lead the effort. The firm's new office is located at One Logan Square.

"When several of our major clients urged us to open an office in Philadelphia, we became convinced of the great opportunities offered by this city", Dunican said. "With our Concentration on Intellectual Property and other complex litigation, together with our strong general corporate and commercial litigation practice, we expect to compete successfully in the Philadelphia market. The Gibbons name is already known in the Philadelphia legal market, due to, among other things, John Gibbons' service on the United States Court of Appeals for the Third Circuit for 20 years. Our initiative is bolstered by the strong local ties that Dave Marston and Tim Susantin have in this community, and we are delighted to have them spearhead this endeavor."

For more information visit the website at <http://www.gibbonslaw.com>.

COUNTERFEITING,

written by Charlotte Weekes, Roiter Zucker Solicitors



Charlotte Weekes,
Roiter Zucker Solicitors

Counterfeiting is, unfortunately, one of the Fastest growing economic crimes in the modern world. Those involved in counterfeiting have developed a sophisticated network of organised crime which not only threatens the business of those making genuine products, but has the Potential to threaten

national economies, endanger safety and even kill.

The counterfeiting industry “devalues corporate reputations, hinders investment, funds terrorism, and costs hundreds of thousands of people their livelihood every year”. (*Counterfeiting Intelligence Bureau, CIB*)

A **counterfeit** is an illegal copy of something which is made to look like the original, usually bearing the trade mark or a mark which can be mistaken for the trade mark of the original item. The purpose of counterfeiting is often to create a product which an innocent purchaser would assume was genuine, e.g. “Coca Cola” – cola was sold in identical bottles, with identical labelling by a counterfeiter. This also enables the counterfeiter to enhance the value of their product because the goods are believed to be genuine.

To **forge** is to make an illegal copy of something in order to deceive.

Pirated goods are also counterfeits, but are goods/works which are copied without the consent of the copyright or design right holder.

The most common counterfeits are:

- Designer label clothes, watches, perfume and cosmetics,
- Alcohol
- CDs/DVDs, video and tapes
- Computer software
- Vehicle parts
- DIY tools

Patented drugs are also illegally copied. Fake drugs are unlikely to work and have been known to kill.

Counterfeiting accounts for 5-7% of world trade, worth an estimated \$350 billion per year (*CIB*). It has also been estimated from BBC investigation, that up to 10% of perfumes and toiletries in the market place are fakes, along with 12% of toys and sports goods. The Internet is enabling an increase in counterfeit goods, particularly through online auction sites.

Buying a counterfeit item can seem like a good way to have a designer item for a cheaper price. However, the reason such items are cheaper is because they are badly made and can sometimes even be dangerous.

Some horrifying finds in counterfeit goods have included urine as a stabiliser in perfumes and anti-freeze in alcopops. Fake Tetley tea bags have been seized containing metal filings, floor sweepings and mouse droppings!

Counterfeit items often have poor quality labels and/or packaging and this can indicate that the item is a fake.

Car parts are also frequently counterfeited, as much as 10% of the market. Such fakes could cause fatal accidents if they failed.

Unfortunately, we must be suspicious of bargains – if something appears too good to be true, it probably is!

The law - in the UK

Section 92 of the Trade Marks Act 1994 contains the principal criminal offences relating to trade mark infringement. The House of Lords, in *R v Johnstone [2003] UKHL 28* held that s92 only applies where the offending sign is being used as an indication of trade origin and this must be proved by the prosecution. This is determined by how the average consumer of the type of goods would perceive the use of the sign in question (Lord Nicholls).

The offences under s92 are:

s92 (1) – applying a sign identical to (or likely to be mistaken for) a registered trade mark to goods or their packaging; selling, hiring, offering or exposing for sale or hire or distributing such goods; having such goods in possession, custody or control in the course of business with a view to selling, hiring etc. whether by himself or another.

s92(2) – applying a sign identical to (or likely to be mistaken for) a registered trade mark to material intended to be used for labelling or packaging goods, as a business paper in relation to goods, for advertising goods...

s92(3) – making article specifically designed or adapted to make copies of a sign identical to (or likely to be mistaken for) the registered trade mark, or having such an article in possession, custody or control in the course of a business.

These are offences with a view to gain or with the intent to cause loss to another, without the proprietors consent. The trade mark owner usually has to establish that the infringing goods are within a category for which the mark is registered.

s92(5) sets out a defence for a trader who can show that he reasonably believed that his use (or intended use) of the sign was not an infringement of the mark. This must be shown on a balance of probabilities. In the case of *R v Rachel McCrudden (2005)* it was held that s92(5) did not provide a defence of good faith, e.g. not knowing what a registered trade mark was and having no reason to believe that the goods were not genuine.

The Police have powers to search and seize counterfeit goods under the Trade Marks Act and the Copyright Designs and Patents Act 1988. The Court can make an order that 1989.counterfeit goods be forfeited or 1990.destroyed.

Punishment

On indictment the maximum penalty for committing an offence under s92 is 10 years imprisonment, an unlimited fine or both. Summarily, the maximum penalty is 6 months imprisonment and/or a fine not exceeding the statutory minimum.

The Law - in the EU

Council Regulation (EC) No. 1383/2003 concerns customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights.



This regulation sets out the action which customs authorities are allowed to take. A right holder can apply to customs to take action to prevent entry into the Community and the export or re-export from the Community of counterfeit and pirated goods and goods infringing patents, trade marks and other intellectual Property rights, such as design rights. Alternatively, if during the course of checks under customs procedures goods are found which are believe to be counterfeit, customs can suspend the release of the goods or detain them for a period of three working days to notify the right holder and enable them to lodge an application for action.

How to end counterfeiting?

It is the responsibility of consumers and brand owners to prevent counterfeiting from happening. Brand owners are being advised to use anti-counterfeiting technology such as holograms and specific methods packaging to make it easier for a consumer to identify a fake.

Although this can be more costly for brand owners, it protects consumers by making it more difficult for the counterfeiters to fake genuine goods.

Consumers should notify the relevant authorities such as Trading Standards in the UK if they come across a trader selling counterfeit goods.

Roiter Zucker regularly advise brand owners on anti-counterfeiting strategies and enforce their trade mark rights against those dealing in counterfeit products

Roiter Zucker Solicitors
Regent House
5-7 Broadhurst Gardens
Swiss Cottage
London NW6 3RZ
UK
Tel: +44: (0)20 7328 9111
Fax: +44 (0)20 7644 8953

SUCCESS STORY: ADVISED HOWARD HOLDING PLC ON €200M PLUS LANDMARK PROPERTY DEVELOPMENT IN CORK

Frank J.O'Flynn represented Howard Holdings Plc in a series of major transactions relating to the innovative Hotel, Office, Retail, Car Parking development at City Quarter, Lapps Quay, Cork with transaction values exceeding €200 million in total – advice included site purchases, derelict sites acquisitions, development agreements, appointments of design team consultants, building contractors and sub-contractors, dealing with issues of insurance and finance, and ultimately dealing with the sales and/or FRI leases of units in the development. Over the previous twelve months, Frank has also represented Howard Holdings Plc in the acquisition of development sites in Lavitts Quay and Half Moon Street Cork , Dock Road Limerick and Kinsale, County Cork.



DIRECTORS DUTIES & RESPONSIBILITIES IN AUSTRALIA

Written by Francis Ruggiero, Behan Legal

Corporate Governance

Office holders such as directors and employees in management are subject to legal duties and responsibilities under Corporations Law to the company and public.

The stricter Corporate Governance requirements in Australia and overseas, such as Sarbanes Oxley in the USA, highlight both the governments' desire and investors' needs to safeguard the public when dealing with companies and their management. Because of growing concerns by shareholders, creditors, and employees, directors and employees in management are more accountable for their governance style and behaviour.

The Corporations Act 2001 sets the legal framework for the duties and responsibilities of directors and employees in management. The legislation gives greater powers of investigation, prosecution for breaches and wider powers to the courts to penalize more severely for breaches.

Personal Liability

Courts do not entertain excuses of ignorance about management's duties and responsibilities. Directors have a positive obligation to inform themselves about the company's affairs and where necessary obtain proper advice; otherwise, apart from penalties, they face personal liability for the company's debts and liabilities.

When examining whether a director has breached his duties and responsibilities, the court sets certain standards expected of directors. Failure to consider the following issues will give rise to personal liability:

- When appointed to management, did the director examine past financial statements of the company?
- Did the director frequently attend board meetings?
- Did the company maintain accounting records as required by law?
- Did the director or management verify the information provided by officers and employees?
- Did the director or management obtain professional advice to make an informed decision?

Issues for Concern

Directors and employees in management must maintain diligent approaches to management and to their own continuing education on legal issues that affect their dealings with the public otherwise they face personal liability. Directors and employees in management must ensure:

- The company does not illegally finance share transactions
- Proper dividend policies are in place and there are no unlawful dividend payments



- There are safeguards that prevent insider trading
- They obtain specialised advice on related party transactions
- They fully understand the legal relationship of any contract
- They comply with, and have in place compliance programs that prevent breaches of Trade Practices and Corporations laws
- They fully understand the nature of, and have environmental audits in place
- They comply with, and have in place compliance programs for specialised legislation such as Occupational Health & Safety, Equal Opportunity, etc.

Duties & Responsibilities

Directors and employees in management must comply with many common law and statutory duties and responsibilities that form the basis of their obligation to the company and its overall corporate governance. It is critical for management to know and fully understand each duty and responsibility, as ignorance will not minimise the penalty for breach.

Directors and employees in management must underpin their ongoing education, and obtain detailed advice about each duty:

- Duty to act in good faith in the best interests of the company (replaces duty to act honestly)
- Duty to act with care and diligence

- Prohibition against the misuse of information obtained by directors
- Duty to avoid a conflict in the position of a director or any interest that a director may have
- Duty to avoid prevent insolvent trading

Consequences for Breaches

Directors and employees in management face personal fines and penalties, such as:

- Personal fines up to \$200,000.00
- Disqualification to act as directors
- Imprisonment of 5 years, a fine of up to \$200,000.00, or both, for insolvent trading
- Derivative actions by shareholders
- Actions by employees and creditors claiming personal liability
- Legal claims for damages

Criminal & Civil Proceedings

This legal framework increases the likelihood that affected parties will start legal action against management who breaches its duties and responsibilities or allows the company to trade whilst insolvent. Therefore, management must closely examine the company's financial situation always looking for signs of financial trouble, which can include:

- Low operating profits or cash flow
- Inability to pay creditors on time
- Inability to meet loan payments on time
- Inability to meet taxation requirements, or employee entitlements

Compliance with legal obligations

Directors and employees in management must:

- Understand their common law and statutory duties under the Corporations Act; the legal duties & responsibilities and understand the consequences for breaching those duties and responsibilities
- Implement compliance measures and programs for the company safeguarding themselves from personal liability and avoiding financial ruin for the company, and

- Keep up to date with every aspect of the Corporations Law and obtain appropriate legal advice to know and understand their duties and obligations.

Behan Legal
Collins Street West
P.O. Box 562
8007 Victoria
Australia
Tel.: +61 3 9646 0344
Fax: +61 3 9646 3759

NEW GGI MEMBERS

We wish to extend our warmest welcome to our new distinguished members in



Hungary

Signator Audit Auditor Ltd.

Contact Person: Eva Gaberné Szellem
Radnóti tér 2, 8200 Veszprém, Phone: +36 88 57 96 00, Fax: +36 88 579 601,
signator@signator.hu, <http://www.signator.hu>

Languages spoken: English, German, Hungarian



Switzerland

FM Group AG

Contact Person: Niels Fischer
Schulhausstrasse 9, 6052 Hergiswil NW, Phone: +41 41 632 42 72, Fax: +41 41 632 42 73
info@fischerpartner.com, <http://www.fischerpartner.com>

Languages spoken: English, German, French, Swedish, Italian, Greek



Estonia

Law Office Ruus, Koch & Partners

Contact Person: Erki Vabamets
City Plaza, Tartu mnt 2, 10145 Tallinn, Phone: +372 682 85 50, Fax: +372 682 85 51
Erki.vabamets@ruus.ee, <http://www.ruus.ee>

Languages spoken: English, Russian, Finnish, German





FURTHER INDEPENDENT CONFERENCES AND EVENTS

Please find below some independent conferences and events which could be of interest for our members.

[Commonwealth Law 2005 Developing Law and Justice](#)

11th – 15th September 2005
London, United Kingdom

[Performance Management](#)

14th September 2005
Sidney, Australia

[CECL conference on European Company Law in Accelerated Progress](#)

23rd September 2005
Leiden, Netherlands

[Sarbanes-Oxley for Corporate Counsel](#)

26th – 28th September 2005
New York, United States

[Indo – European Investments](#)

28th – 30th September 2005
Geneva, Switzerland

[World Offshore Convention 2005](#)

26th – 27th October 2005
San Juan, Puerto Rico

Please doubleclick on the topic of the conference in order to obtain further information from the website

If you wish to be taken off the mailing list, send an e-mail to <mailto:info@genevagroup.net>.
Let us know what you think of Insider and we deal for future issues.

HEAD OFFICE

Forsterstrasse 70
8044 Zurich
Switzerland

T +41 44 256 18 18
F +41 44 256 18 11
info@genevagroup.net

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