

Pet Businesses: Not Just All Mom and Pop

People sometimes think of pet stores and some of their product suppliers as mom and pop industries. It is true that many retail pet stores and animal breeders are small businesses. But the pet industry includes large chains, like Petco and Petsmart, large manufacturers of leading pet food brands like Nestle (Alpo; Purina); Heinz (9 Lives; Gravy Train); Colgate-Palmolive (Science Diet); and Proctor & Gamble (Iams); franchises in pet supply, boarding and grooming; veterinarians; industry publications; trade associations, exhibitions and clubs. According to the American Pet Products Manufacturers Association, total 2005 pet industry expenditures will exceed \$35 billion dollars in the United States, where more than 69 million homes, or more than 63% of all households, own pets. By these measures, the industry is large enough to have a huge impact on local and national economies.

Companies in the pet industry face legal challenges much like other businesses. Like other industries that make and distribute consumer products, the pet industry faces issues of product liability and safety, truth in advertising and labeling, dealing with myriad costly government regulations, protecting trade secrets, brand names and even patented inventions, and complying with legal requirements in using corporate structures to conduct business.

Last year, in a Los Angeles Federal Court, the inventor of a portable pet feeding device claimed that a locally based international trading company, Macke International, infringed patents by selling portable water drinking devices for pets. The devices were called "Handi Drink." One of the issues was whether the trading company's principal officer could be held personally liable for any patent infringement committed by his corporation.

This issue was not unique to the pet industry. A business in any trade can face questions whether use of the corporate form will protect a key officer from personal liability.

In the *Macke* case, the court recognized it had to examine whether excessive unity of interest and ownership eliminated any separateness between the individual and his corporation, and whether respect for the corporate structure would allow the individual to accomplish a fraud or injustice.

The court found that even though there may have been patent infringement, the individual officer respected corporate formalities and had not abused the corporate form. There was also enough capital in the company to satisfy any likely award. The court said the individual officer would not be held liable as an "alter ego" for corporate patent infringement.

Another recent case demonstrating the deep reach of the industry, occurred in federal court in Florida. The pet industry also includes pharmacies just for pets, and one of the industry leaders is PetMed a publicly traded pet pharmacy (NASDAQ: PETS) which advertises nationwide through catalogues, TV and web addresses that feature the PetMed name. A competitor emerged, using the name MedPets. The competitor used web addresses that matched the various PetMed addresses in all respects except for the reversal of the



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syllables into MedPet. Not surprisingly, PetMed sued MedPet for trademark infringement.

The federal court found MedPet liable not only for willful trademark infringement, but also for Cyber Piracy under a relatively new provision of the federal trademark law. The court awarded PetMed \$900,000 of damages, attorneys fees and a permanent injunction against using the infringing names.

These recent court decisions demonstrate several ways that the pet industry is anything but mom and pop. Mom and pop businesses are not publicly traded, and don't often get into contested patent disputes or cases with hundreds of thousands of dollars of damages. These cases concerned products that were valuable enough to protect under the patent laws and brands worthy of trademark protection in federal court.

These cases and the pet industry provide a message that resonates for businesses generally. Given the size of the American economy even businesses that seem in some ways to be narrow, young or small may really be part of much deeper, larger industries. It may even be that today, there is no such thing as a true mom and pop industry. This is because in some sense, every business, whatever its particular size or structure, can be shown to be part of a stream of commerce that includes manufacturers, distributors, service providers and different categories of customers. And each of these businesses, whatever its size or structure, confronts a potentially wide range of today's ever changing business and legal issues.

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