

Industry Eyes New SEC Enforcement Units

BY MICHAEL VALERIO

The SEC recently created five “national specialized units” dedicated to enforcement efforts in “particular highly specialized and complex areas of securities law,” as well as a new Office of Market Intelligence to oversee the analysis of tips and other information provided to the agency by external sources. The SEC touted these initiatives as part of the Enforcement Division’s “most significant reorganization since its establishment in 1972.” These actions followed on the heels of a substantial year-over-year uptick in both the number of new investigations opened and the amount of fines imposed in 2009.



SEC enforcement units to keep investments safer

The five new specialized units are: Asset Management (focusing on investment companies, advisers, hedge funds, and private equity); Market Abuse (large-scale market abuses and complex manipulation schemes); Structured and New Products (complex derivatives and financial products, including credit default swaps and CDOs); Foreign Corrupt Practices; and Municipal Securities and Public Pensions. The proclaimed emphasis for the new units will not only be on maximizing the division’s knowledge base in these areas, but also on increasing the speed with which the agency moves “message” cases from investigation to prosecution. In this regard, the SEC’s recent fraud case against Goldman Sachs relating to synthetic CDOs was filed and announced by, among others, the chief of the Structured and New Products unit.

It is not yet clear exactly how broadly the new units will construe their mandates or how prolific they will be. Nevertheless, broker-dealers and investment advisers clearly could come within the crosshairs of one or more of the units in the context of particular investigations. In any event, it is important to keep in mind that the new units are intended to supplement – rather than supplant – the existing enforcement structure and staff.

Intellectual Property & Technology Update

Google’s “AdWords” Service Clears Big Hurdle in European Court

BY JOHN PITBLADO

Google’s AdWords service has come under fire in litigation around the world. Typically, the suits are brought by companies who find their competitors have purchased keywords for use in Google’s search algorithm, which results in competitors’ ads appearing when those trademarks are searched in Google’s search engine. If a recent ruling in the European Court of Justice is an indication, service providers like Google may face less litigation over keyword advertising, while litigation between competitors over unauthorized trademark usage in internet advertising may very well increase.

Luxury fashion brand company Louis Vuitton Malletier brought suit against Google in France, alleging that Google’s AdWords service allowed counterfeiters and other competitors to purchase from Google certain of Vuitton’s trademarks as search terms that trigger the placement of those competitors’ ads alongside search results.

Google’s appeal of a ruling against it to France’s highest court, resulted in that court referring questions to the European Court of Justice. In March, 2010, the ECJ ruled for Google, finding that “Google has not infringed trademark law by allowing advertisers to purchase keywords corresponding to their competitors’ trade marks.” The ECJ warned, however, that a trademark owner may invoke its rights against advertisers who arrange for a service provider like Google to place ads in a manner which create customer confusion as to the origin of the products covered by the ads.

According to the ECJ ruling, service providers that are not considered “neutral” with regard to their role in keyword advertising, may be held to have violated the trademark laws. If a trademark owner believes the keyword advertising is posted by a counterfeiter, the trademark owner may still request that the service provider remove the trademark from the posted ad. The ECJ ruling seems to suggest that even a “neutral” service provider may be deemed to have violated the trademark laws if, after being notified, it does not remove the trademark from a posted ad that makes unlawful use of another’s trademark.