Applicability of Non-Traditional IP Collateral to Secured Lending Transactions

Kyriakoula Hatzikiriakos, McMillan Binch Mendelsohn
Justin Basara, Ocean Tomo, LLC
Paul Seiler, Munch Hardt Kopf & Harr, P.C.
Categories of Other IP

- Trade Secrets
- Industrial Designs
- Website and Domain Names
- Consumer Databases
- Geographical Indications
- Plant Variety Rights
- Publicity/Personality Rights
- Moral Rights
- Know-How
- Non-IP Intangibles (e.g. Contract Rights)
  - Wireless Spectrum Rights
  - Energy Credits
In the last thirty years, the labor economy ended and the knowledge economy began.

Intangible assets are emerging as the most powerful asset class.
Hypothetical Case – Trade Secrets

Coca-Cola Co.

- Coca-Cola offers nearly 400 products in 200 countries worldwide
- Coca-Cola consistently ranked as top global brand
- Merchandise 7X: Secret element of Coca-Cola’s formula since 1886
- Country-specific variations: Mexican Coke

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<th>THE GLOBAL BRANDS SCORECARD 2006 (BusinessWeek/Interbrand)</th>
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<td>2006 Rank</td>
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KFC

- Substantial re-branding effort in recent years
- Colonel's "secret recipe" of eleven herbs and spices is marketed as one of the best-kept trade secrets in business
Hypothetical Case – Publicity Rights

- Former heavyweight boxer George Foreman is a partner in Knockout Group, LLC
- Knockout Group is a celebrity consumer product branding company based in US best known for “The George Foreman Lean, Mean, Fat Reducing Grilling Machine”
- Knockout Group is seeking a $50MM senior secured credit facility to retire existing debt and provide expansion capital for new product lines
- Potential Collateral Assets
  - Registered Trademark: George Foreman’s Knock-Out®
  - Copyrights: George Foreman’s line of associated grilling cookbooks
  - Contract Rights: Royalty Bearing Endorsement Agreement with Salton Inc.
  - Publicity Rights: Right to use George Foreman’s name in association with any line of consumer products not currently under contract
Hypothetical Case – Other Intangible Assets

U.S. Advanced Wireless Services (AWS) spectrum Auction

- September 18, 2006: FCC sold 1,087 licensees in the 1710-1755 MHz frequencies
- 104 bidders including Cingular, Sprint, T-Mobile, and Verizon Wireless collectively bid $13.9 billion for spectrum licenses previously used by the federal government
- T-Mobile USA represented the largest single bidder winning 120 licenses covering most major markets in North America for approximately $4.2 billion
- The FCC is holding another auction for spectrum licenses in the 700 MHz band in 2008

European Union Emission Trading Scheme

- largest multi-national, greenhouse gas emissions trading scheme in the world
- In its first year, 362MM tonnes of CO₂ were traded on the market for a sum of €7.2 B
- Price of allowances increased to peak level in April 2006 of ca. €30 per tonne CO₂, but came crashing down in May 2006 to under €10/ton when it became clear that many countries had given their industries such generous emission caps that there was no need for them to reduce emissions
Topics for Discussion

**Practical Impediments**

- Ability to value as standalone assets
- Significant value fluctuations
- Required Loan-to-Value (LTV) Ratios
- Ability to realize value in event of default
- Necessary scale of transaction
- Credit enhancement procedures
  - Use of Insurance
  - Selection of backup manager/liquidator
- Alternative financing structures (e.g. IP Sale/License Back)
Topics for Discussion

Legal Impediments

- Ability to quarantine assets
- Procedural Due Diligence
  - Chain of title
  - Existing liens and encumbrances
  - Priority of claims
- Rights and obligations in event of infringement
- Rights and obligations in event of impairment
- Ability to foreclose on assets
Contact Information

KIRIAKOULA HATZIKIRIAKOS  
Partner  
McMillan Binch Mendelsohn  
1000 Sherbrooke Street West, Suite 2700  
Montreal, QC  
Canada H3A 3G4  
Tel: 514.987.5025  
Fax: 514.987.1213  
kiriakoula.hatzkiriakos@mcmbm.com

JUSTIN J. BASARA  
Director of European Operations  
Ocean Tomo, LLC  
Medius House LG  
2 Sheraton Street  
London W1F 8BH (U.K.)  
Office: +44 (0)870-899-8041 x4820  
Mobile: +44 (0)779-412-9383  
U.S.: +1-312-753-9565  
jbasara@oceantomo.com

PAUL F. SEILER  
Shareholder  
Munsch Hardt Kopf & Harr, P.C.  
3800 Lincoln Plaza  
500 N. Akard Street  
Dallas, TX 75201-6659  
Tel: 214.855.7576  
Fax: 214.978.4395  
pseiler@munsch.com