

## INTA ANNUAL MEETING PRESIDENTIAL ADDRESS

### The Age of the Lightning Brand

Thank you very much, Alan, for your report and your kind words.

Welcome to our 128<sup>th</sup> Annual Meeting. **My** name is Paul Reidl and it is a great honor to serve as INTA's President for 2006.

Traditionally, Presidents have used this opportunity to review the state of the **association**. I'm not going to do that today. Instead, I would like to reflect on the state of our **profession**, and offer some comments on **where** we have been and **where** we may be going. Hopefully, my comments will provide some context for the wonderful program we will experience over the next few days

In the last fifteen years or so we have witnessed **extraordinary** changes in our practice. Our client's businesses, their brands, the way we serve them, the tools we use, the issues we face, the breadth of our mission, the speed at which we move, have all been transformed. No other period in history has seen such **dramatic** change in such a short period of time.

My thesis is simple. The twin phenomena of globalization and the internet age have created what I have termed the **Lightning Brand**: global, fast, powerful, important, valuable, and critical to the success of our clients. The demands of servicing the **Lightning Brand** have, in turn, transformed our profession. How **we** adapt to the Age of the Lightning Brand will shape our profession for years to come.

But before we can understand **where** we are and **where** we may be going, we must first understand where we've been.

I started in trademark law in 1991. At the time, INTA had just over 2,000 members from 80 countries, and our Annual Meeting was half the size it is today. We were then known as the **United States** Trademark Association. Ours was a small, specialized bar where collegiality ruled the day.

Those of you who were practicing with me at that time know that we ran our practices very differently than the way we do today. For example:

- Written communications were by government postal services or by fax;
- We dictated those letters to secretaries or stenographers, who then typed them with electric typewriters or “word processing machines.”
- Our only telephone was on our desk;
- Computers were slow, large and used primarily for word processing. Most lawyers shunned them.

Clearly, our practices were **very**, very different. The search, clearance and application process usually took several weeks; the international process took much longer.

But at **that** time the needs and expectations of our **clients** were very different. The world moved at a **leisurely** pace. A handful of brands were truly **global** brands; most were not. For the most part, global activity was the province of large brands owned by large companies. Almost everything else was national.

And then it changed. Our sleepy practice was blown away by a perfect storm having two components: globalization and the internet age. These two phenomena turned our practice and our clients' businesses upside down. And when the storm passed, the world had changed forever.

**The first of these phenomena was globalization.** When I started practicing law, doing business in international markets was very difficult due to protectionist tariffs and non-tariff trade barriers. Our client's brands were, almost by necessity, locked into their countries of origin or narrow markets because the barriers to entry into international markets were too high. In the mid-1990's, however, the GATT/TRIPS agreement removed the barriers to entry. Suddenly our clients found themselves competing in the **global** marketplace. Regional free-trade agreements such as the European Economic Community, NAFTA, MERCOSUR, APEC, the Andean Pact, and ASEAN added yet another layer to the globalization phenomenon.

As trade barriers fell away, business moved **aggressively** into these new markets. As practitioners, our workloads **surged** as we tried to keep pace with the expansion of our clients' businesses. As an example, in the 6 years following the effective date of TRIPS, **my** client's international

business grew from less than 5% of its total business to more than 20%.

Collectively, our practices **exploded** into **global** practices with **global** problems and new issues of **global** clearance, **global** competition for business, and **global** disputes.

**The second phenomenon** which formed the perfect storm that changed our world was the advent of the internet and micro computing technology. Think about what **that** did to our practice and our ability to communicate:

- Government postal service is now derided as “Snail Mail,” and was replaced by e-mail
- The desk top phone was replaced by the ubiquitous cell phone; most of you have one in your pocket right now.
- We could do trademark searches from our desktops, and in some jurisdictions, file applications;
- Computers became portable and lightweight, and every lawyer had one;
- In fact, from this one little unit I can send and receive e-mail, access the internet, and telephone someone anywhere in the world.

The ability to have the world at our fingertips was **unthinkable** even 10 years ago. The new technology **shrunk** the world; it **collapsed** territorial boundaries; and it **compressed** time frames for everything that we did.

**These two components** of the perfect storm, globalization and the internet age, also caused dramatic changes to INTA:

- We changed our name
- We **dramatically** increased global membership, swelling to over 4900 members in 180 countries
- We held meetings and programs in Europe, Asia and Latin America
- We changed the committee structure to address the new issues and globalization
- We established a regional office in China, and plan to open a European office later this year
- We published materials on-line on our website and developed registration for meetings on line,
- We sent publications and notices by e-mail around the globe

- And we hired staff with specialized language skills so that we could better communicate with our members.

INTA **saw** the challenge and **met** it head-on.

The perfect storm of globalization and the internet age also challenged traditional assumptions about branding and marketing. This new marketplace reality dramatically **affected** our practice and will continue to do so over the coming years. This new marketplace reality is “The Age of the Lightning Brand.”

What is the Lightning Brand? It is what every marketing person in every country in the world is under intense pressure to achieve; from the roiling thunderclouds of the marketplace, create a brand **so** impactful that it **thunders** through the clutter and **electrifies** the consumer – a brand that is **urgent, powerful, and not-to be ignored**. And when it has run its course, it will quickly be supplanted by another, equally powerful brand.

The Lightning Brand is the brand of the internet age. Today's consumers expect **instant** gratification; they are impatient; they want more, more, more; and they want it now. They are conditioned to expect this by the instantaneous nature of the internet. They are conditioned to this by the non-stop news cycle they have come to expect from CNN, Fox or the BBC. **This consumer impatience has shortened the life cycle of brands.** I think that **most** marketers would **scoff** at the notion of building a brand with 30 years of brand equity in the 21<sup>st</sup> Century world. To be sure, there will always be a place for the traditional **power** brands, but if the Lightning Brand does not achieve **instant** success, it will quickly be replaced by another one.

The Lightning Brand is also the brand of the globalization age. Globalization has led to a massive consolidation among retailers, producers and wholesalers. It is Economics 101: When you have **fewer** producers competing for the attention of **fewer** retailers and wholesalers, you necessarily create **intensified** competition for the shelf and floor space needed to display your brands. And, for **some** goods, bricks and mortar retailers may **themselves** be obsolete. This places a **huge** premium on delivering brands to the retailers that consumers **demand**, because if the consumers are **indifferent** the retailers will not stock it, and if the retailers



will not stock it, you are out of luck. And once the Lightning Brand gets **on** the shelf, there is now a **much** greater imperative to **fight** to keep it there. With retail margins being razor thin, the Lightning Brand **must** produce sales with a great sense of urgency. The Lightning Brand must amaze consumers in an instant and have an **immediate** impact – or face extinction.

How does the Lightning Brand get the attention of consumers? There are many ways, and you have seen them in stores and in your practice:

- Eccentric packaging.
- Innovative packaging shapes
- Innovative product designs
- Bright colors, bold packaging
- Quirky advertising
- And, regrettably, by following the time-tested route of mimicking the market leaders.

The phenomenon of the Lightning Brand has kept us as practitioners very busy. The terms “hectic” and “chaotic” come to mind. It is difficult to keep pace with the marketing demands of the Lightning Brand, as our clients struggle continuously to find the next one, and the one after that. And the

ways that the Lightning Brand grabs your attention implicate **difficult** and **emerging** issues in trademark law.

The demands of the Lightning Brand have unleashed a number of **substantive** issues into the trademark world that will continue to challenge us in the years ahead. Some examples are:

- **Counterfeiting.** As brands become more valuable, both on their own and on a global basis, the incentive to knock them off grows exponentially.
- **Territoriality.** As a medium without borders, the internet is truly international. At what point does on-line competition among Lightning Brands shatter the traditional concept of territorial rights?
- **Global Clearance Issues.** With an increasing number of brands being launched and cleared globally, how do we as practitioners keep up with the Lightning Brand's imperatives for speed? How do trademark offices keep up?
- **Special Interest Issues.** As marketers push the envelope of branding on a global scale special interest groups of all types

have begun to raise their voices in response, challenging the reach and assumptions of brand protection.

- **Conflicts with other forms of IP.** As the value of successful brands **increases**, the lines between the other forms of IP are being blurred. For example, can music once protected by copyright laws nonetheless continue to be protected under the trademark laws because it functions as an identifier of source?
- **And, of course, Internet Issues.** With the internet medium becoming such an important advertising and retail environment, we will **continue** to see all manner of issues affecting trademarks, from initial interest confusion to cybersquatting to internet governance.

These **substantive** issues will continue to challenge us in the Age of the Lightning Brand. But the demands of the Lightning Brand have also unleashed **profound** issues **for our practice**. For example:

- **Increased Litigation.** How many of you have seen your litigation practice boom over the last few years? That is no accident. Resolving trademark disputes has become

increasingly acrimonious and increasingly difficult because the stakes are much higher.

- **Ethical Challenges.** As Lightning Brands become more valuable, it becomes irresistible to some to cheat. Five times in the last two years I have encountered “miracle evidence” – 11<sup>th</sup> hour evidence that **miraculously** appeared at the hearing that **magically** plugged a hole in the other side’s case.
- **Cost Issues.** Although the global value of Lightning Brands **has soared**, clients are **demanding** that we provide **more** services at a **lower** cost – - and this at a time when outside counsel billing rates are going through the roof.
- **And, finally, Quality of Life Issues.** The dizzying speed of Age of the Lightning Brand has changed the pace, the stakes, the stress level, the character, and the overall nature of our practice. We are in danger of losing the unique virtues of being a small, collegial bar.

These issues, and others, will **continue** to challenge us in the Age of the Lightning Brand.

INTA will do **its** part to provide the networking opportunities, programming, publications, and public policy advocacy you, our members, expect and deserve. // But **each** of us must make our **own** peace with the Age of the Lightning Brand, whether within our businesses, our firms, or INTA because it is going to be with us for a long, long time.

Will we rise to these challenges? We must, for if we do not, we will lose all that we hold dear about our profession, about INTA, and about this Annual Meeting. I am **confident** that we will. My confidence stems from my heartfelt belief that trademark professionals are **very special people**.

**You** give this **great** association its unique and lasting character.

Collectively, you work thousands and thousands of volunteer hours every year because **you** have a **passion** for trademark law, **for** brands, and **for** your colleagues in the global bar, and for that, I thank you.

And that is why I am so very fortunate to be here today, at the pinnacle of my career, humbly speaking to you as the **President** of the International Trademark Association. I wish you all the best for this Annual Meeting and beyond.

Thank you very much.

