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# Daily News

ANNUAL MEETING 2005, SAN DIEGO

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## Annual Meeting starts in style

**T**he INTA Annual Meeting kicked off last night with a stellar Gala Dinner which had more than 500 attendees.

The sell-out dinner was the first INTA Gala, and was held in the Manchester Grand Hyatt ballroom.

The dinner was a recognition of Brand Names Education Foundation (BNEF) award winners and INTA volunteers. Guests enjoyed a cocktail reception, followed by a four-course menu featuring a harvest salad and roasted salmon and filet mignon combination plate. Post-dinner entertainment was provided by Art Deco & the New Era.

During the dinner, BNEF Chair David Gooder, of Jack Daniel's Properties, announced prizes for students and practitioners.

The student Ladas Memorial Award was presented to Anna Popov. The award recognizes excellence in research and writing and in the trademark field. Popov's paper was titled "Watering Down Steele v Bulova Watch Co to Reach E-Commerce Overseas: Analyzing the Lanham Act's Extraterritorial Reach Under International Law."

The professional winner of the Ladas Memorial Award was Jane Ginsburg, who wrote a paper on "The Right to Claim Authorship in US Copyright and Trademark Law."

Announcing the Saul Lefkowitz Moot Court Competition, Gooder said: "A record 62 teams from 50 schools participated this year in the Lefkowitz Competition. Regional competitions were met with high praise from the participants." The regional winners were Boston College Law School, Marquette University School of Law, University of Alabama School of Law and Santa Clara University School of Law.

The four regional winners competed in a national competition in Washington DC, where



The Gala Dinner at the Manchester Grand Hyatt

they argued in front of judges and practitioners. Marquette University Law School was the winning team and also received the second place brief award. Second-placed team was University of Alabama School of Law, which also received the second place oralist award. Boston College Law School won Best National Oralist Team and the Dolores K Hanna Best Brief Award was won by William Mitchell College of Law.

Anne Gundelfinger, INTA President,

thanked the BNEF Board of Governors and Dolores Hanna, saying: "The work that the Board and Dolores have done on BNEF programs has been invaluable, and I assure you that now that these programs have moved to INTA, they will continue at that same high level." She added that INTA hopes to expand the programs outside the US.

Gundelfinger also led thanks for the volunteers who worked on the BNEF competitions as well as INTA's other programs and publications.

## Showbiz glamour for San Diego

**S**lip on your party clothes, put on your dancing shoes and let your hair down: the theme of this year's INTA Annual Meeting is That's Entertainment.

David Bernstein, a partner of Debevoise & Plimpton in New York and one of two co-chairs of the Meeting, explained why the theme was chosen: "We are seeing more and more conflicts between brand owners and the entertainment industry, whether in TV commercials, artwork, movies, the stage or songs." Issues such as the right to use celebrity images, merchandising, endorsement and the use of brands in the entertainment industry will all be addressed during the Meeting.

The theme has particular relevance because this year's Annual Meeting is being held in southern California, home to the US entertainment industry - "[San Diego is] a great city which always has perfect weather," said Bernstein.

But there is much more to this year's Meeting than just the entertainment streams.

The number of interactive workshops has been increased, with emphasis on smaller sessions of up to 150 people focusing on subjects such as depositions, due diligence and UDRP proceedings. These should provide for a "more intimate experience," said Bernstein.

An innovation this year will feature a real-time deliberation involving a jury made up of local people, seen live by the audience and commented on by a panel of litigation specialists. In another session, panelists will enact an international arbitration.

A project team of 50 people has put together the program, led by Bernstein and fellow co-chair Lisa Gigliotti of L'Oréal. The co-chairs have reviewed all the papers and presentations prepared for the Annual Meeting to minimize overlaps and ensure that speakers deliver on what is promised in the brochure. "We want to ensure the quality of materials and presentations are the highest they can be," said Bernstein.

He added: "We want as great a show and as great a party as we can possibly have."



Lisa Gigliotti and David Bernstein

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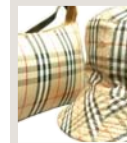
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# Meet James Dean's agent

This year's keynote speaker, **Mark Roesler**, set up his own company specializing in the IP rights of deceased celebrities. He explains what brand owners need to know before deciding whether to use such icons

## **How is CMG Worldwide different from other talent agencies?**

We're a boutique agency that specializes in both the marketing and the promotion of the various clients that we represent, and also the legal protection of their IP rights. We look at it as: our clients have a portfolio of intangible property rights, and we try to maximize the value of that portfolio.

## **What set you down this particular path?**

This is our 25th year, and our first client was the Elvis Presley estate. When we got started, it really wasn't established that deceased personalities could protect their name and likeness. Being a young, aggressive lawyer just out of law school, it just made sense to me that a famous deceased person should be able to protect their name and likeness. So I sought out ways to do that.

## **Were likenesses of famous people being used without their permission?**

It was the only thing that was out there at that time. Every use of a famous deceased person was being made without their authorization.

## **What type of deceased celebrities do you represent?**

Typically, the deceased personalities that we represent are personalities that were very famous when they were alive. Just because you are a celebrity and you die, doesn't mean that there is a market for you out there. Most celebrities that die are not used after their deaths. But certain celebrities, from Humphrey Bogart to James Dean to Marilyn Monroe – people like that – these are personalities that are still remembered by subsequent generations.

## **Is there a limit to how long celebrities can legally protect their image?**

With respect to the right of publicity, there are different statutes that address this point. For example, Indiana protects the name and likeness of a deceased person for up to 100 years after they're dead. Tennessee protects them for 10 years after they're dead, but then the protection continues indefinitely until there's two years of non-use. In a place like Tennessee, in theory, 200 years from now the Elvis Presley estate can still protect his name and likeness. That really becomes more analogous to trademark use, where Coca-Cola, for example, can protect their trademark indefinitely as long as they have use.

## **Do you agree with that type of protection?**

It's the fair way to do it, because when we talk about trademarks and right of publicity, we're talking about an analogous concept, and an analogous body of IP law. There's goodwill built up in that mark, so to speak, and it's more or less a means of branding a product when you put a Marilyn Monroe or a James Dean on a product – it's very analogous to having a Ralph Lauren.

## **And there's no federal statute that covers this area of IP?**

That's correct.



Mark Roesler pictured with James Dean, Marilyn Monroe and Humphrey Bogart

## **So what is the legal situation in California and New York?**

They're quite different. California protects the name and likeness of a deceased person for 70 years, and New York doesn't have a right of publicity statute for someone that is deceased.

## **How then does a brand owner seeking to use a deceased celebrity deal with this patchwork of laws across the US?**

Well, we think that the right of publicity is universally protected, in the sense that it is just one legal concept. You also have the Lanham Act, an unfair competition doctrine which is analogous to a federal right of publicity law, which we think clearly protects a personality like Marilyn Monroe. With any famous personality – and in this case we're talking about deceased personalities – I think those rights can be fairly well protected throughout the US. And in states like Indiana, the right of publicity law applies regardless of domicile.

## **What are the advantages to using a deceased celebrity?**

From a branding standpoint, it's a consistent brand. There's not a chance that the brand is going to be diluted or changed by virtue of something happening to that personality. We're all aware of the Kobe Bryant and Michael Jackson situations, where famous personalities can get into very embarrassing situations. That obviously doesn't happen with a deceased personality. The other advantage is that it's a brand that's been ingrained over a significant period of time.

Take for example James Dean: this year is the 50th anniversary of his death and the brand James Dean is still very marketable throughout the world, not only on various products but also in terms of advertising. A deceased celebrity can be a very powerful brand that's reinforced over time. That's one of the hallmarks of a brand – to really become an effective brand, time is an important element,

whether you're talking about McDonald's, Coke or Disney. These are brands that have been recirculated through different generations, and that's what you see with a James Dean or a Marilyn Monroe. That's a little different from a famous personality who may come on the scene right now, and is very popular right now, but in five years might be forgotten by a large segment of the public.

## **Is it right for brand owners to think that a deceased celebrity's rights will be cheaper than those of a living celebrity's?**

It's hard to separate between deceased persons and living persons. In the deceased arena you have personalities like Marilyn Monroe and James Dean who can command a large sum of money because of their iconic status, and when you talk about living personalities you have those that are megastars and those that are just stars.

## **What is the best way for companies to find out if a deceased celebrity has a business representative?**

I think the easiest way to find out as much information as you can about a personality is from their personal website. I know that with each of the deceased personalities that we represent, we have their .com addresses, and I think that's become a very consistent means of identifying who these personalities are.

## **As technology advances, do you think that there will be more instances of using deceased celebrities in advertisements?**

It's true that as technology improves, it opens up more opportunities. But even 10 years ago we won awards for a promotion we did with Diet Coke where they used a number of personalities, including Humphrey Bogart, in a Diet Coke commercial. There was a feature film made recently, Sky Captain and the World of Tomorrow, where they used Sir Laurence Olivier's digitized image so that he could be one of the co-stars of that movie. So the

technology is there, it's becoming more available and used, and as an agent for these personalities, it's a line that you have to be very careful about crossing, because future generations might then remember the personalities differently.

For example, with James Dean, we don't necessarily want him to star in a fourth movie. He's known for the three movies that he was in. Do we want to, 51 years later, have him star in a fourth movie? Because 10 years from now, our children might remember him from that fourth movie which wasn't that good.

## **Who makes the decisions about what partnerships the deceased celebrities should be involved in?**

That's our role, as the representative of these particular clients, to advise whoever our client is and tell them what we think they should do.

## **And so the person you would advise would be...**

Whoever is rightful owner of those IP rights. What we're talking about is a portfolio of intangible IP rights, not that much different from a tangible set of rights. And just as with a tangible set of rights – whether you have money or a car or a house – you can give it or sell it to whoever you want, or transfer it through your estate, it's the same way with these intangible IP rights. If you're Marlon Brando and you die, you can give those rights to whoever you want: you can give them to charity, to your family, or to your lover.

## **What determines which projects you deem suitable for your deceased clients?**

Speaking as their business agent and legal representative, it is important for us to keep their memories alive in a tasteful fashion. We're proud of the fact that 50 years after James Dean's death, people still want to buy T-shirts of him and put his posters in their dormitories. We work hard to keep that brand and that memory of James Dean alive.