



Honors & Awards

Super Lawyers Magazine and *San Francisco Magazine* announce top attorneys in Northern California—Teraoka recognized and honored—again.



Manga Fans Flock to New People J Pop Center by Viz Pictures

Crowds line up in stores at *New People*, the vision of Mr. Seiji Horibuchi, President and CEO of Viz Pictures, Inc. Client Viz Pictures celebrated an unprecedented grand opening in San Francisco Japan Town in August, 2009.



Piazza Trading Celebrates 20th Anniversary

Mr. Masao Yamamoto, President & CEO of Piazza Trading, a wholly owned subsidiary of Sumida Trading Co., Ltd., addresses Consul General of Japan Yasumasa Nagamine and Mrs. Nagamine (left of Yamamoto), and other honored and distinguished community leaders and guests at Piazza's 20th Anniversary Dinner held at Bushi Tei Restaurant in San Francisco. Mrs. Koshikawa, (far left), presented an evening seminar on business ethics and customs of the Edo period. To the right, Steve and Catherine look on. Steve has advised Piazza for the last 20 years.

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PACIFIC COUNSELOR™

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Law Bulletin from TERAOKA & PARTNERS LLP

A Brief Message from Steven Teraoka...

The first decade of the New Millennium is about to close. The 2009 Holiday Season is already here. This last year has had its share of difficult economic issues and woes for many. Others are celebrating because they made it through one of the most challenging years of their business careers. The stock market, a leading economic indicator of things to come, seems to be telling all of us that we are on the road to economic recovery—better business and employment days are on the horizon. In our day-to-day practice, we are certainly seeing signs of economic recovery by the very nature of work that we are doing. Existing businesses are restructuring for efficiency and growth; some new businesses are starting with new incorporations; others are renewing prior business relationships with a certain degree of confidence that the coming fiscal quarters will be better, i.e., lease renewals, distributorship and agency renewals and licensing extensions. Despite the tough times, we hope that you have been able to stay focused on the very essence of your business where you originally found it most enjoyable and rewarding for you—that is a key ingredient to your success.

We wish you Happy Holidays and continued good health and peace throughout the rest of the year.

Best regards,

Steve Teraoka

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PACIFIC COUNSELOR NEWSLETTER

Please deliver to:

SELLERS BEWARE: NEW CONSUMER PRODUCT SAFETY RULES

The Consumer Safety Improvement Act of 2008 (the "Act") was adopted in August 2008 in response to the global epidemic of recalls of imported toys and consumer products. It grants new and greater powers to the Consumer Product Safety Commission to enforce new stricter standards on virtually all consumer products. Some of its provisions went into effect immediately, others were slated to go effective in early 2009, and still others have subsequently been postponed to go effective in 2010. This Act will effect the sale and labeling of virtually all products that are subject to the jurisdiction of the Consumer Product Safety Commission ("CPSC") from the manufacturer's level down to retail.

In the United States, more than 15,000 types of consumer products—not including foods, drugs or vehicles—come under the authority of the CPSC to regulate.

Some of the key provisions that will affect manufacturers, packers and distributors follow:

- The acceptable limits for the presence of lead in children's products will be lowered over the next 2 years with a goal of reducing the permitted level of lead to 100 ppm by August 2011.
- Paint containing lead on all products that are the subject of CPSC was reduced to 90 ppm effective February 10, 2009. This ban will likely include product in inventory at that time as well as new product.
- Effective November 12, 2008, every manufacturer, importer or private labeler of a consumer product was required to issue a certification identifying all of the CPSC regulations that apply to that product and certify that the product complies with all of those regulations, based on appropriate

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- required tests. That certificate must be transmitted with the product down the chain of distribution all the way to the retailer. (It does not need to be provided to the ultimate consumer.)
- Commencing February 10, 2009, new requirements for lead, phthalates and other elements were required to meet new mandatory safety standards. To show compliance with those safety standards requires third party verification and certification. The specific rules relating to the testing and certification will not take effect until February 10, 2010. However, the products themselves must still comply with these new standards. The only way for a manufacturer to show that its products meet these new safety standards is to conduct the approved required testing and provide the certification.
 - The laboratories conducting the testing must follow certain established accreditation procedures, and only those accredited laboratories may be used for testing.
 - Effective February 10, 2009, this Act imposed a ban on certain phthalates in children's products.
 - Violations of this new Act will include failing to execute a certification or executing a false certification, failing to test or falsifying the test results, or manufacturing, importing, distributing or retailing any noncompliant product.
 - The Act gives the CPSC enhanced powers to recall products and enforce corrective action to resellers.
 - Maximum fines for violations will increase from \$1.25 million to \$15 million, and there is also the potential for criminal conviction.
 - The new Act also grants whistleblower status to those who refuse to participate in a violation or who otherwise oppose violations.
 - Manufacturers and sellers of consumer products have the obligation to notify the CPSC immediately when they learn that a product may be noncompliant. Failure to notify can subject the distributor to fines of up to \$15 million and can subject the product to a recall.
 - Under the new Act, the recall notice requirements have been expanded to require the notice be posted prominently on the Company's website, possibly in multiple languages, and may even require radio or television advertising of the recall.

The CPSC has been given expanded powers and funding to monitor and enforce compliance with this new law. All businesses that are involved in the manufacture, import, private label manufacturing, packaging and selling of consumer products would be well advised to consult the Consumer Product Safety Commission or their business counsel for advice as to how best to take steps to comply with these new product safety requirements.

EMPLOYER POLICIES FOR THE INTERNET

In the modern American office, almost every desktop in every office now has computers with access to the Internet. This new reality gives all office employees access to very powerful communication tools that may create issues and the need for new policies that have not been in place before. Many employers have learned that unrestricted use of the Internet and email not only diminishes productivity, but may also create liability for improper use of those media. To protect themselves from liability, employers should adopt a policy outlining the permissible parameters of employee Internet use, or an Internet-acceptable use policy.

A recent case from the U.S. District Court for the Southern District of New York demonstrates the value of such a policy. In Pacenza v. IBM Corp., 2009 WL 890060 (S.D.N.Y. April 2, 2009), an employee was terminated for accessing sexually oriented chat room sites on the Internet. The employee alleged that IBM had terminated his employment because of his disability—PTSD—and his age.

IBM successfully avoided liability in this case because it was able to show that, at the time of the employee's conduct, IBM had in place an Internet use policy that prohibited accessing sexually oriented material on company computers.

In Johnson v. Midcoast Aviation, 2008 WL 3200801 (E.D.Mo. August 6, 2008), the employer terminated the plaintiff's employment when it discovered the plaintiff's violation of the employer's widely-established Internet usage policy. Similarly, even though the Ninth Circuit has found a reasonable expectation of privacy in an employee's computer files, it has determined that the employer could consent to a search of those files. The Court held that an employee had a reasonable expectation of privacy in his private, locked office, and thus, a reasonable expectation of privacy in the computer hard drive located in the office. However, because the computer was owned by the employer and was monitored by the employer, and because employees were on notice of these risks through the employer's widely disseminated Internet access policy, the employee could

not assert that his access to pornography on the Internet in his office was private.

The Tenth Circuit in a 2007 case found that a public employee did not have a reasonable expectation of privacy in a personal computer that he brought to work for work-related use. An employee had networked the computer into the City network and had not taken any precautions (such as password protection) to ensure that there could be no third-party access to the computer. Because the computer was in an unprotected, public space, the employee had no reasonable expectation of privacy, and his motion to suppress the evidence of a crime stored on his laptop was denied.

An Internet use policy can also help an employer in enforcing its right to protect confidential information. In Bloomington-Normal Seeding Co. v. Albritton, 2009 WL 1329123 at *1 (C.D.Ill. May 13, 2009), for example, the employer adopted an Internet and email policy "to maintain the integrity of its electronic data and its information system." After Albritton accessed confidential information without authorization, the employer sued. The Court denied Albritton's motion to dismiss the complaint.

Employers should consider adopting an appropriate and effective Internet use policy. Such a policy should include provisions to clarify expectations of privacy for employees, should prohibit the improper use of the Internet, such as accessing materials which may contribute to a sexually harassing hostile work environment, or the commission of a crime (such as downloading or accessing child pornography), and should clarify the employer's intentions regarding the protection of confidential information stored on the computer. In addition, it should be clarified that the abuse of company equipment for personal use or entertainment will also figure into one's performance evaluation. Employers should review their handbooks to confirm that such a policy is in place and then take steps to implement that policy.

HARASSMENT PREVENTION TRAINING

Each business in California that has 50 or more employees must provide 2 hours of harassment prevention training to its supervisors and managers every two years. Many businesses started this program in 2005 in order to comply with AB1825. Have your supervisors and managers received their 2-hour prevention training for 2009?

PIAZZA TRADING CELEBRATES 20TH ANNIVERSARY

Piazza Trading & Co., Ltd. celebrated its 20th year of doing business in the United States by sponsoring a seminar in Japantown on Japanese business ethics in the Edo period. Piazza Trading & Co. was founded with the remarkable vision of a unique businessman and humanitarian, Masao Yamamoto. Mr. Yamamoto, CEO of Sumida Trading & Co., Ltd. in Japan (which just celebrated its 60th anniversary) chose the name "Piazza" for his American subsidiary because the Italian word for "piazza" represents an open space where many cultures can meet and engage in meaningful exchange. Certainly, Mr. Yamamoto has promoted that unique vision in the operation and growth of Piazza Trading & Co. Having established its home base at the Piazza Building in Sausalito, California, Piazza Trading has operated art galleries, jewelry retail shops and now owns and operates several office buildings in California, and exports Native American buffalo meat, maple syrup, maple sugar, wild rice, and teas and uniquely designed Native American jewelry to Japan. In 2001, he founded the Yamamoto Cup, an annual canoe race in Minnesota for young members of the Leech Lake Tribe of the Anishinabe Nation, and the winners—2 boys and 2 girls—win an all-expense paid trip to Tokyo to share cultural traditions with the Japanese people. Mr. Yamamoto participated in the recent program in Japan to promote "Cool Biz," a program sponsored by the Japanese government to change professional dress codes to eliminate suit coats and ties to reduce the need for air-conditioning in government office buildings. In addition to overseeing affairs at Piazza and managing the business of Sumida Trading, Mr. Yamamoto spends a great deal of time on his eco-farm outside Tokyo, where he raises organic vegetables for use in his many restaurant businesses in Japan.

We congratulate Mr. Yamamoto and his fantastic management team at Piazza—Takeo Koshikawa, Diana Byrd, Akiko Gotoh, Nobuko Nin, Doug Kang and Bryn Bowman—on 20 years of success, and wish them continued prosperity and inspiring vision.

See photo under "Honors & Awards" section.

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