

Sleeping Treaty: The Pan-American Trademark Convention

Christine Haight Farley

Abstract

This article argues that the 1929 General Inter-American Convention for Trade Mark and Commercial Protection, or the “Pan-American Convention,” should not be forgotten, and will explain why it has. The convention, intended to be self-executing, was never implemented with domestic trademark legislation. As the practice in the U.S. of requiring implementing legislation only became more prevalent in the period that followed ratification, there may now be some ambiguity as to its force. Foreign caselaw suggests that the convention has not been forgotten in member states (Colombia, Cuba, Guatemala, Haiti, Honduras, Nicaragua, Panama, Paraguay and Peru) and has therefore played a very different role abroad. For trademark practitioners today, the Convention makes at least two important contributions to international trademark law. First, it provides a novel approach to the protection of well-known marks by limiting their availability in cases where the mark was known to have been previously used in the region. Second, the convention goes well beyond the Paris Convention to provide a detailed set of protections against unfair competition. Given these substantive provisions, the fact that the convention is still in force in the U.S., and that it is self-executing, it is a wonder that there are so few U.S. cases that invoke this Convention.