

# **INTA Judges Workshop**

Welcome to INTA's International Court!

# The Judges:

- Presenting the Case: Dr. David Aschmann,
  Federal Administrative Court, Switzerland
- For the EU position: Marianne Grabrucker, former Presiding Judge at the German Federal Patent Court and current President of the CET-J

Richard Arnold, High Court of London

 Hugo Gómez Apac, Andean Community Court of Justice

Rajiv Sahai Endlaw, High Court of Delhi

· Sanjay Kishan Kaul, Supreme Court of India

Michael Manson, Federal Court of Canada

Motoyuki Nakashima, IP High Court of Japa

- Elisabeth Ohm, Deputy Director, Norwegian Board of Appeal for Industrial Property Rights
- Luis Rodriguez Vega, Court of Appeal Barcelona
- Junli Xia, Presiding Judge of 3<sup>rd</sup> Civil Division of the Supreme People's Court

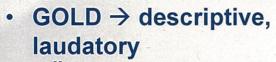




### Swiss Federal Administrative Tribunal

Decision of 1 February 2016

Trademark GOLDBÄREN



- BÄREN → commonly used shape
- simple combination

no distinctive character



- constant actual practice
- · no overriding interests

registration based on equal treatment



# Goldbären

- 1. Similar registrations
  - «gold» + animal/thing name
  - official languages or English
- 2. Constant unlawful practice
  - 19 comparable cases
  - recent cases
  - no change of practice
- 3. No overriding public interest
  - not essential
  - · bear form remains free



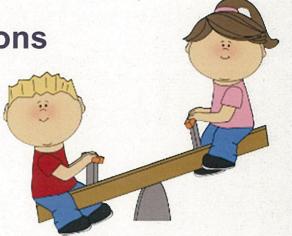






### Consistency

- Enforcement of administrative actions
- · Equal treatment in a bipolar world
- Reasons of consistency
- Alternatives



# Equality in injustice

- 1. Comparable registrations
  - o similar sign
  - o similar sign concept



- o no «isolated» single cases
- o applicant's own cases do not co Red Bull
- o no actual changement of practice
- 3. No predominating interests
  - o public interests
  - private interests







# Constitutionality

- Legitimacy and lawfulness of administrative conduct
- Private interest overrides public interest, as in e.g.:
  - acquired distinctiveness
  - o notorious trademarks
  - o geografical trademarks of communities
- Registration as «semi-protection»
  - o legal effect of a registration due to equal treatment?

### Discussion

HARIBO GOLDBÄREN

- Consistency
- Equal treatment in injustice
- Constitutionality

# Questions?

# Thank you!

