

Noli IP Newsletter

NOLI IP SOLUTIONS, PC

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CROWDFUNDING UPDATE: The SEC Regulations

By David Peteler

If you are thinking about raising capital for your business using Crowdfunding, you need to know about the final SEC regulations, released October 29, 2015 ("Regulation

firms, "how to" instructions, Crowdfunding consultants, and Crowdfunding presentation videographers. Entrepreneurs all know the SEC regulates sales of securities by businesses in

"Regulation Crowdfunding treats Crowdfunding sales of securities basically in the same way as current regulations do: requiring the company to make filings with the SEC, prepare disclosure documents, financial statements, and making ongoing formal SEC reports. The result is, selling stock using Crowdfunding is less attractive in many ways than existing ways of selling stock to raise capital for a business."

Crowdfunding," Section 4(a)(6) of the Securities Act of 1933).

Background: Crowdfunding, such as Kickstarter, has become a popular way of raising money for small ventures. A whole industry has been spawned around Crowdfunding, including dedicated websites, marketing

capital raising transactions. Regulation Crowdfunding applies only to the sale of a "security" using Crowdfunding; Crowdfunding that does not involve selling securities is not regulated. Simply put, equity-based Crowdfunding (selling stock or LLC interests) is a sale of a security; reward-based

Appointment to the INTA Law Firm Committee



We are excited to share with our friends and clients the appointment of our founder, Ms. Mariana Noli, to the International Trademark Association (INTA)'s Law Firm Committee. This Committee develops member benefits, services and programs specifically designed for law firms and some of its work includes content development, identification of speakers and moderators, support with course materials development and review, and program implementation.

Dear Mariana,

You have been appointed to the following INTA C
Law Firm Committee

Develops member benefits, services and program development and review, and program implementation
Professional Development Book Reviews.

For more information, please see the following m

-Formal Notification Letter of Appointment (PDF)
-Law Firm Committee Roster with Contact Details

Best regards,

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International Trademark Association (INTA)
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Crowdfunding (giving swag in exchange for donations in a Kickstarter campaign) is probably not.

In April 2012, the Jumpstart Our Business Startups (JOBS) Act was signed into law. The JOBS Act required the SEC to implement a new exemption to the federal securities laws to allow crowdfunding. The SEC finally released these regulations last week.

Summary. Regulation Crowdfunding treats Crowdfunding sales of securities basically in the same way as current regulations do: requiring the company to make filings with the SEC, prepare disclosure documents, financial statements, and making ongoing formal SEC reports. The result is, selling stock using Crowdfunding is less attractive in many ways than existing ways of selling stock to raise capital for a business.

The Basic Rules. The basic rules for Regulation Crowdfunding include:

1. **Limits on Sales.** A company may not sell more than \$1,000,000 of securities in a 12 month period under Regulation Crowdfunding.
2. **Limits on Purchases.** A purchaser's amount is limited. Anyone can invest up to \$2,000. To invest more than \$2,000, you need to meet requirements based on percentages of annual income and net worth. The

maximum an investor can purchase is \$100,000 in a year.

3. **Disclosure Statement.** The company must make an initial filing with the SEC, which includes a disclosure statement, and must provide the disclosure statement to investors. The disclosure statement must contain information and financial statements similar to that required in a Regulation A filing.

4. **Financial Statements.** The disclosure statement must include financial statements. For capital raises of more than \$100,000 but less than \$500,000, the financial statements must be reviewed by an independent accounting firm. If the company is raising capital under Regulation Crowdfunding for the first-time, and the amount is over \$500,000, the financial statements need only be reviewed; but for subsequent offerings over \$500,000, the financial statements must be audited by an independent accounting firm.

5. **Target Amount.** The company must state, in its disclosure document, the target amount it wants to raise. If the target amount is not raised, the money that was raised must be returned to the investors. The disclosure statement must include a description of what happens if the company receives more than the target amount.

6. **Progress Reports.** The company must file with the SEC, and provide to investors, an update on the progress towards meeting the target offering amount, when the company reaches 50% and again at 100% of the target amount.

7. **Ongoing Reporting Requirements.** The company must file with the SEC, and post on the company's website, an annual report containing required disclosure information and financial statements. The annual reporting requirements continue until one of several termination events occurs.

8. **SEC Registered Intermediary.** The Crowdfunding must be done on a platform of an intermediary that meets the SEC intermediary requirements. Intermediaries must be registered with the SEC as a broker or as a funding portal.

9. **Advertising.** Any advertising about the offering must comply with Regulation Crowdfunding requirements.

Conclusion. Regulation Crowdfunding doesn't really deliver on the hope of increased access to a wide range of small investment capital in an economic and efficient way. Through Regulation Crowdfunding, the SEC is maintaining its basic function: to protect investors by requiring filings and disclosures in a sale of

securities, unless the investor is “accredited” (i.e. has the economic means and knowledge to protect his or her own interests). The SEC is not ready to allow anyone who can access a Crowdfunding website to buy stock without disclosure and regulation.

Companies will have to weigh the costs and ongoing administrative burden of Regulation Crowdfunding against the benefits of being able to reach small (think up

to \$2,000 each) investors. Companies will need to pay lawyers and accountants, just as if they were doing a PPM for a private placement under Regulation A or Regulation D, and must use an SEC licensed broker / intermediary with the associated intermediary costs. The ongoing reporting requirements mean expense and administrative burden for some time in the future. While Regulation Crowdfunding may become popular over time, as a

practical matter, most startups will likely continue to use Regulation D for capital raising. If you want to go down the Regulation Crowdfunding road, you have about 180 days to get prepared before the regulations become effective. For more information on this topic or if you need assistance, please do not hesitate to contact David Peteler at david@noli-ipsolutions.com or david@petelerlaw.com.

Everything is Changing: Why Should European trademark rules stay the same?

By Judit Marai and Mariana Noli

As you may know, Applicants can obtain registration of their trademark in the European Union countries in two (2) different ways: (1) by filing a national stage application with the country’s respective Intellectual Property Office; or (2) by filing a Community Trademark with the Office for the Harmonization in the Internal Market (OHIM) covering all the countries member of the European Union.

The Council has been reviewing the rules and regulations for the Community Trademark for a while, and it seems that these discussions are coming to an end. Some of the changes you should expect to see are the following:

1. **Terminology.** The Office for the Harmonization in the Internal Market (OHIM) will become the European Union Intellectual Property Office (EUIPO); Community Trademark (CTM) will now be referred to as European Union Trademark (EUTM) and the main set of rules currently known as Community Trademark Regulation (CTMR) will be called European Union Trademark Regulation (EUTMR).

2. **Fees.** This Reform will also adjust the procedural fees to be small business-friendly by changing the application filing fee from “up-to-three classes” fee structure at EUR \$900.00 to “one-fee-per-class”

system at EUR \$850.00 as it is in the rest of the world. The first additional class of goods and/or services will cost EUR \$50.00 and subsequently, any additional class will cost EUR \$150.00 per class. We will also see changes in the renewal fees, which will also be restructured similarly to the application filing fees. From a system where the renewal fee is EUR \$1,350.00 for up-to-three (3) classes of goods/services and any additional class costs EUR \$400.00, we will be able to renew a registration for EUR \$850.00 for the first class; EUR \$50.00 for the second class; and any subsequent class(es) at an additional EUR \$150.00.

3. No Need for Graphical Representation. There is also a proposal to delete the requirement of graphical representation of a trademark registered in the European Union. Thus, this current requirement will no longer be needed for registration in the future, which means that the European trademarks will include non-traditional trademarks, such as colors and sounds.

4. Improved Fight Against Counterfeits. The new regulations also include many changes in an effort to protect brand owners against third parties bringing counterfeit or infringing goods into the

customs territory of the European Union. Trademark owners will be given a broader right to prevent importation of counterfeit goods into the EU, ensuring that a trademark owner can prevent businesses – whether located in the EU or not – from selling counterfeit goods to private consumers, and discouraging the purchase and sale of counterfeit goods over the internet. In addition, the owners of CTM registrations with the right to prevent third parties from bringing goods with counterfeit marks into the customs territory of the EU, even if the goods with counterfeit marks are not released into free circulation.

A rule allowing proceedings against the distribution of counterfeit labels and packaging that may subsequently be combined with infringing goods is also being added.

The revised regulations will go into effect ninety (90) days after the final text is approved, we estimate approximately by the end of this year or sometime next year.

If you have any questions about the changes in the European Union trademark registration regulation, please don't hesitate to contact us at mail@noli-ipsolutions.com.

PEPPERDINE UNIVERSITY NATIONAL ENTERTAINMENT LAW MOOT COURT COMPETITION 2015

Ms. Mariana Noli and Ms. Monica Hernandez will be representing **Noli IP Solutions, PC** by volunteering as judges for the “National Entertainment Law Moot Court Competition” this upcoming Saturday, November 14, 2015. For more information about the “Pepperdine National Entertainment Law Moot Court Competition,” please visit the university’s site at: <http://law.pepperdine.edu/student-experience/campus-life/organizations/moot-court/entertainment-law/>

