

# ***Everything You Need To Know About Electronic Discovery***

***Trademark Administrator's Conference  
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INTERNATIONAL TRADEMARK ASSOCIATION

# Meet the Panel

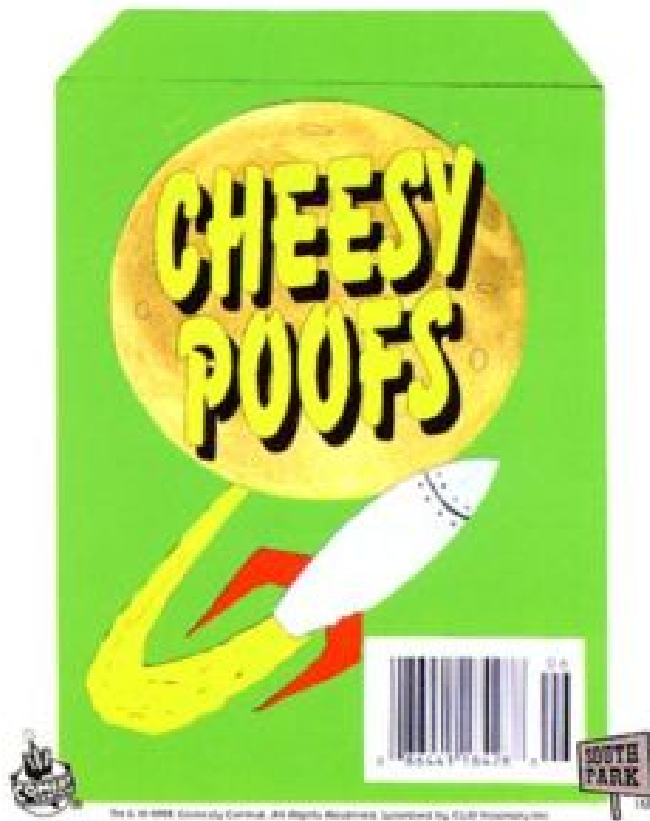
- **Elizabeth E. Gouthro**
  - *Trade-mark Agent, Fasken Martineau DuMoulin LLP (Canada)*
- **Rachel K. Zimmerman**
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- **Heidi L. Belongia**
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# The Setup

- Fast Follower makes a wide variety of consumer snack food products.
- The hot new area is snack foods targeted at teenagers and young adults (ages 15-25).
- Next New Thing, just introduced a new snack (CHEESY POOFS) being promoted in connection with “SouthPark” on Comedy Central.
- In order to compete, Fast Follower developed a new product (CHEESE PUFFS) that looks a lot like the competition.



# The Setup: CHEESY POOFS v. CHEESE PUFFS



# The Setup: Timeline of Events

- **June 15, 2010:** Fast Follower begins advertising and preparing for the launch of CHEESE PUFFS
- **July 15, 2010:** Planned launch of CHEESE PUFFS
- **July 16, 2010:** Next New Thing files a complaint and motion for a preliminary injunction to stop the launch and sale of CHEESE PUFFS
  - Complaint alleges federal trademark infringement, trade dress infringement, and unfair competition along with related state law claims
- **August/September 2010:** Briefing and expedited discovery in preparation for the preliminary injunction hearing
- **October 5, 2010:** Preliminary Injunction Hearing

# What Now?

- The attorney you are working with asks for your assistance on handling Fast Follower's expedited discovery.
- We must preserve, identify, collect, review, and produce relevant and responsive electronically stored information ("ESI").
- Where do we start?

# Document Retention Policies

- Should Fast Follower have a written document retention and/or destruction policy?
- If Fast Follower implements a document retention policy, what should it keep in mind?

# Litigation Hold

- Fast Follower has been sued by Next New Thing – what happens now?
- What are the key aspects of a litigation hold?
- What triggers the need for a litigation hold?



# What is ESI?

- What is included within the definition of ESI?
- Where should we look for Fast Follower's ESI?
- Are all of these categories fair game for Next New Thing's expedited discovery requests?

# Legal Obligations

- What are Fast Follower's legal obligations with respect to ESI?

# Identifying ESI

- What is the best way for Fast Follower to identify its ESI?
- Why are document custodians important?

# Collecting ESI

- How should Fast Follower collect its ESI?
- What can an e-discovery vendor do to assist Fast Follower?
- What key issues are important to keep in mind when collecting ESI?

# Searching ESI

- We have identified and collected Fast Follower's ESI. What now?
- How are search terms developed and used?
- What are some of the pitfalls to avoid with search terms?

# Reviewing ESI

- What format is best for reviewing ESI?
- What is the difference between a “native” file and a .TIFF file?
- What are “tags” and why are they helpful?

# Producing ESI

- What is the best format for producing ESI?
- Should Fast Follower discuss production format with Next New Thing?
- What are the pitfalls to avoid in production of ESI?
  - For example: Metadata

# Third-Party ESI

- What if Fast Follower needs ESI from third-parties to defend against Next New Things' trademark claims?
- Can Fast Follower obtain and use third-party ESI?
  - For example: Google, Yahoo, eBay, domain name registrars



# Practical Tips & Takeaways

# Questions?