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VEPACHEDU EDUCATIONAL FOUNDATION

The Andhra Journal of Industrial News

IP and Industry News

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Contents

Sunrise Period

The Sunrise Period allows brand owners to safeguard their domain names through a priority-registration. Sunrise is the first phase of a domain name's availability. During Sunrise, trademark holders have exclusive access to registrations in that domain. There is a discrete 60 days Sunrise period for each Donuts domain name. Successful Sunrise registrations will be allocated immediately after Sunrise concludes. Over 180 official Clearinghouse agents are available to assist: http://agents.clearinghouse.org.

There are three steps in using this Sunrise Period:

1. Trademarks validation

To access the exclusive priority-registration period, trademark information needs to be validated by the Trademark Clearinghouse, through registration with the Clearinghouse and then submission the trademark for verification.

- Fill out a form detailing trademark information (such as the registration date and number)
- Upload proof of use of the trademark. This could be a brochure, screenshot of your website or other marketing material
- Sign a declaration of use of the trademark

2. The Authentication Key

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When the trademark information and proof of use documents have been successfully verified, download the SMD-file from the secure Clearinghouse web-portal.

That Signed Mark Data file is a unique key which authenticates the trademark information when completing a priority-registration. It can be used over and over again as it is valid for every Sunrise period of every new Top Level Domain (TLD).

3. Register the Domain Name With the Authentication Key

Whenever a TLD launches its Sunrise period, it can be registered before it opens up to the general public.

The following process applies to Sunrise Applications:

Service Mark Data (SMD) Files submitted with Sunrise Applications are validated by the Registry.

Sunrise Applications missing a valid SMD File or containing an invalid SMD File will be rejected by the Registry.

Domain Names for which a valid Sunrise Application has been received that

(1) meet the Sunrise Registration eligibility criteria described herein and

(2) were submitted in accordance with Registry Policies, ICANN Requirements, and the Registry-Registrar Agreement, will be allocated to the Applicant following the close of Sunrise.

If more than one Sunrise Application for the same Domain Name meet the eligibility criteria described herein, the Sunrise Applications will be submitted to an Auction Provider. The prevailing Applicant for the Domain Name will be determined at an auction hosted by an auction provider. The auction process will be governed by the terms and conditions published by the Auction Provider and available on the Registry Website. Domain Names awarded to successful Sunrise Applicants at auction will be allocated by the Registry typically within seven (7) days of notification from the Auction Provider that the auction has concluded.

TIMELINE

Action	**Time**
Open Sunrise	Day 1
Close Sunrise	Day 60

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Rest Period	Day 61-62
Claims Notice Begins	Day 63
General Availability	Day 65
Claims Notice Ends	Day 155

Some Domains in Sunrise Period[2], [3]

Domain Name Extension	Order Entry Deadline
.group	26 May 2016
.salon	26 May 2016
.store	2 June 2016
.insurance	6 June 2016
.gmbh	9 June 2016
.ltd	9 June 2016
.tube	16 June 2016
.steam	23 June 2016

TRADE SECRETS GO TO FEDERAL COURT

Intellectual property intensive industries contribute 34.8 percent of our US gross domestic product (more than $5 trillion dollars) and support at least 40 million jobs. Failure to protect trade secrets stifles innovation and impedes economic growth. In fact, trade secret theft costs US innovators more than an estimated $300 billion annually[4]. Increasingly the result of cyber espionage, this theft may be the largest wealth transfer in history. Plain and simple, American innovators need strong tools to protect their ‘secret sauce’ from getting into the wrong hands. The Trans-Pacific Partnership would be the first trade agreement to impose criminal penalties on those who steal our companies’ trade secrets. It would extend these protections across the Asia-Pacific, covering nearly 40 percent of the global economy.

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Non-compete agreements[5], or "non-competes," are contracts that ban workers at a certain company from going to work for a competing employer within a certain period of time after leaving a job. The main rationale for these agreements is to encourage innovation by preventing workers with 'trade secrets' from transferring technical and intellectual property of companies to rival firms, even when there are trade secret laws to protect companies. These agreements may also encourage greater employer investments in worker training because they may reduce fear that workers will take skills gained to a competitor. Non-competes can reduce workers' ability to use job switching or the threat of job switching to negotiate for better conditions and higher wages, reflecting their value to employers. Furthermore, non-competes could result in unemployment if workers must leave a job and are unable to find a new job that meets the requirements of their non-compete contract. In addition to reducing job mobility and worker bargaining power, non-competes can negatively impact other companies by constricting the labor pool from which to hire. Non-competes may also prevent workers from launching new companies. Research suggests that 18 percent, or 30 million, American workers are currently covered by non-compete agreements. Even more workers, roughly 37 percent, report having worked under a non-compete agreement at some point during their career. Based on the impacts of unnecessary non-competes for workers, consumers, and the broader economy, several states have passed, and many others are currently weighing reforms to the ways non-compete agreements are regulated. Federal legislation has also been proposed to limit the use of non-compete agreements in low-wage fields where they are less likely to have valid uses. Continued state interest and a growing understanding of the prevalence of non-compete agreements suggest that the time is ripe to consider how government can best ensure these agreements are used appropriately.

Therefore, President Barack Obama on May 11, 2016 signed the Defend Trade Secrets Act 2016 (DTST) into law to create a federal system of trade secrets law, which will allow companies for the first time to file federal civil lawsuits for trade secrets theft. Until now, companies could either sue under various state laws or, in rare circumstances, lobby federal prosecutors to bring criminal charges. Trade secret owners now also have the same access to federal courts long enjoyed by the holders of other types of intellectual property. This will add to the litigation costs involved in IP Litigation[6].

Major provisions of the Defend Trade Secrets Act include:

- Notice requirement
- Ex parte seizure
- Preemption of state law

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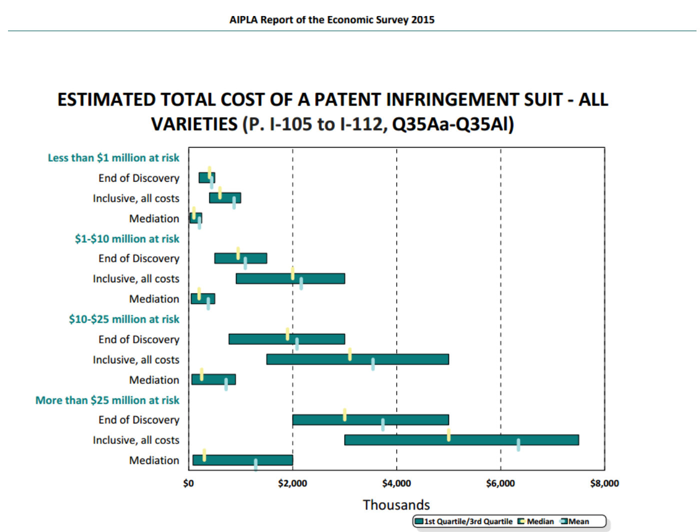
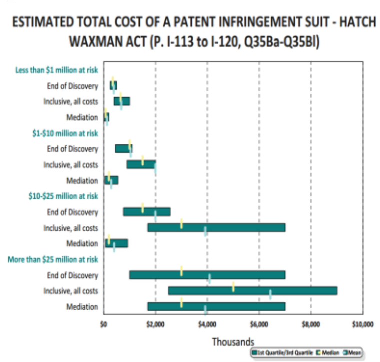
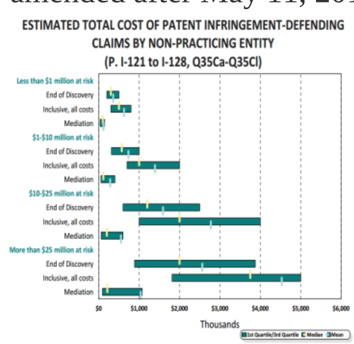
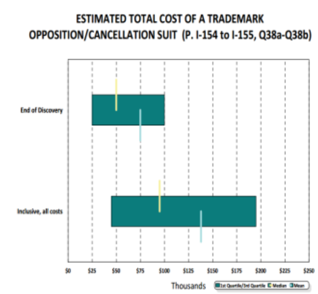
- Whistleblower protections
- Enhanced damages



In practice, employers who have trade secrets need to seek legal review of their contracts and other employee documents, lest unrevised documents prevent recovery of significant awards now available to them under the DTSA's imposition of federal civil liability on trade secret offenders[7]. The DTSA's notice requirement must be in all contracts and communications that may create, disclose or disseminate information protectable as a trade secret. Employers must provide notice of the immunity provision in any contract or agreement with an employee that contains provisions governing the use of a trade secret or other confidential information. This notice provision applies to all contracts entered into or amended after May 11, 2016.







According to a poll conducted at a seminar on The Defend Trade Secrets Act: A Federal Remedy at Last, presented by Thomas F. Lebens at Fitch, Even, Tabin & Flannery LLP[8], a majority of attorneys in the audience indicated that there would be more trade secret litigation as a result of the DTSA.

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Evil But Necessary Patent Dance Enigma

“Unravel the riddle, solve the mystery, and comprehend the enigma” of the Biologics Price Competition and Innovation Act (BPCIA) (part of the Affordable Care Act in 2010)!

It is a well known fact that cases of patent litigation have increased steadily (although Abbreviated New Drug Application (ANDA) cases remained steady[9]), thanks to various litigation opportunities created by patents for practicing & non-practicing entities and trolls[10] & grasshoppers[11], and new opportunities of forced litigation stemming from the Drug Price Competition and Patent Term Restoration Act (Public Law 98-417) (Hatch-Waxman) of 1984 and the Biologics Price Competition and Innovation Act (BPCIA) of 2010[12].

The abbreviated biologics license application (aBLA) litigation protocol is similar to the ANDA litigation involving the branded drug maker suing a generic maker for patent infringement within a limited window of opportunity.

The Hatch-Waxman attempted to strike a balance between promoting innovation of new brand drugs and facilitating generic entry, with ANDA certification process, creating an opportunity for patent litigation.

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Similarly, the BPCIA established an abbreviated pathway for regulatory approval of follow-on biological products that are 'highly similar' to a previously approved reference product. The approval of the biosimilar product will be effective 12 years after the reference product was first licensed. Therefore, a reference product sponsor (RPS) of an approved reference product receives up to twelve years of exclusivity against follow-on products, regardless of patent protection.

The Food and Drug Administration (FDA) approves a biological product by granting a biologics license application (BLA) for a license under 42 USC § 262(a) for commercial marketing. An applicant filing a biologics license application (BLA) typically provides clinical data to demonstrate the safety and efficacy of its product. In contrast, under the abbreviated pathway created by the BPCIA, codified at 42 USC § 262(k), an applicant filing an aBLA (subsection (k) application) instead submits information to demonstrate that its product is biosimilar to and interchangeable with a previously approved reference product, together with publicly-available information regarding the reference product is safe, pure, and potent.

The BPCIA allows infringement suits based on a biosimilar application prior to FDA approval and prior to marketing of the biological product. Within 20 days after FDA acceptance of an aBLA, the biosimilar applicant should grant the RPS confidential access to its aBLA and the manufacturing information regarding the biosimilar product, which would be the subject of an immediate infringement action by the RPS, if the RPS has a list of valid patents covering the reference product.

The BPCIA requires a biosimilar applicant to notify the reference product sponsor of its drug no later than 180 days before the first commercial marketing date. The RPS has to sue the biosimilar applicant within 30 days for any such alleged infringement of RPS patents, allowing the RPS a period of time to seek a preliminary injunction, before the commercialization of the biosimilar; while the biosimilar applicant may counter-claim that the asserted patents are invalid and/or not infringed.

Trademark Fees Increase

On May 27, 2016, the USPTO issued a notice of proposal[13] to set or adjust 44 trademark processing fees. The proposed fee structure would increase the per-class fee for an initial application filed on paper by**$225 to $600**, and would increase the fees for 31 other paper filings by between **$100 and $200** (per

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class, where applicable). The per-class fee for an initial application filed using the regular TEAS option would increase by **$75 to $400**. Comments are due on or before July 11, 2016 to the USPTO's notice, which was published at 81 Fed. Reg.103[14].

The Indian Patents (Amendment) Rules 2016

The Indian Patents (Amendment) Rules 2016[15], effective 16 May 2016, amend the Patents Rules, 2003. Salient features include:

- Shortened timelines for placing an application for allowance: reduced to six months from the date on which the first statement of objections is issued to the applicant to comply with the requirements, extendable for a period of three months
- Expedited examination of applications: examiner's report within two months and the Controller disposes of the examiner's report within one month from the date of the Examiner's report to the Controller.
- A new entity "Startup" is added to existing entities: natural persons (an individual), small entity (companies and legal entities, having an investment less than INR 5 crores (approx USD 835000) and other than small entity (companies and legal entities, having an investment over Rupees 5 crores (approx USD 835000). The new entity "Startup" is a Private Limited company with turnover in any of the financial year should not be more than INR Twenty Five crores.
- Expedited examination has been launched for start-up companies having International Search Report and Preliminary Report on Patentability prepared by the Indian Patent Office; for a fee of INR 8000.
- The option of holding hearing via video conferencing.
- Each claim over 10 claims is charged an addition fee, and the amendment provides for an option to amend the claims by deleting excess claims over 10 claims.

Product Placement in Movies in Bollywood

A devoted fan of a Bollywood megastar travels from Delhi to Bollywood with a box of famous Sohan Halwa candy from a 225-year-old **Ghantewala Halwai** (घंटेवाला हलवाई) in Chandni Chowk in Delhi. Product Placement in movies[16] as an advertising medium has an edge over others. Brand awareness increases with captive audience which in turn increases consumer memory and recall of the brand or product[17].

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The early instances of a product promoted in a movie[18] include the 1967 movie, "An Evening in Paris" where actress Sharmila Tagore was seen sipping delicately from a 200 ml bottle of Coke, struggling to make sure the logo was visible. Raj Kapoor's 1973 "Bobby", starring Rishi Kapoor and Dimple Kapadia. The Rajdoot motorbike from Enfield Motors was launched in the movie. In the movie, "Awwal Number", the Dev Anand flick released in 1990 starring Aamir Khan, every time the hero hit a four, the ball bounced off a poster saying Garware! A lot of people unrelated to the story line were shown carrying Benzer bags in the 1992 movie, "Prem Diwane" where an entire sequence with Madhuri Dixit was shot inside the famous Benzer stores of Bombay. In recent times, Mc Donald's India has been quite active on the product placement front. In "Love Ke Liye Kuch Bhi Karega", the hero strategically holds a ball with the Mac 'M' on it. Another direct reference is when the heroine declares she consumes nothing but Domino's Pizza and Diet Coke. A similar example is when Hritik Roshan flexes biceps etc and asks irritably, "McDonald's ka burger laaon kya?" in the movie, "Kaho Na Pyar Hai"[19]."

However, 225-year-old **Ghantewala Halwai** (घंटेवाला हलवाई) in Chandni Chowk in Delhi was not happy about the free ad in the movie Fan. The owner of the sweet shop, Sushant Jain, has sent a legal notice to Yash Raj Films, Aditya Chopra, director Maneesh Sharma, writers Habib Faisal and Sharat Katariya, and Shah Rukh Khan. He has asked them to remove the dialogues and scenes that "infringe the trademark" of the shop[20].

In fact, Ghantewala sweets shop was closed[21] on July 2015 for failing to survive in modern times as the people of Delhi changed. One has to wonder why a closed shop files a frivolous suit:

1. "Ghantewala sweets" is not a registered trademark in India[22] .
2. No person shall be entitled to institute any proceeding to prevent, or to recover damages for, the infringement of an unregistered trade mark[23].

The Sino-Singapore Guangzhou Knowledge City

The Intellectual Property Office of Singapore (IPOS) has opened its first overseas Representative Office at the Sino-Singapore Guangzhou Knowledge City (SSGKC) in Guangdong, China[24].

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http://www.avvo.com/profile/dashboard.

[2] http://www.trademark-clearinghouse.com/gtld-calendar

[3] http://www.spruson.com/new-gtld-sunrise-availability-may-2016-june-2016/?utm_source=Spruson+%26+Ferguson+Publications&utm_campaign=b261bfd8cd-gTLD_Sunrise_Availability_May_June_2016_3112016&utm_medium=email&utm_term=0_73816f354b-b261bfd8cd-103253997

[4] Protecting America's Secret Sauce: http://www.huffingtonpost.com/michelle-k-lee/protecting-americas-secre_b_9904770.html

[5] Office of Economic Policy, Non-Compete Agreements: Analysis of the Usage, Potential Issues, and State Responses, May 2016: https://www.treasury.gov/resource-center/economic-policy/Documents/UST%20Non-competes%20Report.pdf; A 2013 study commissioned by the Wall Street Journal signals either a rise in the prevalence of non-competes, or significant growth in their enforcement.

[6] http://www.aipla.org/about/newsroom/PR/Pages/150728PressRelease.aspx

[7] Taft: http://taftlaw.com/news/publications/detail/1345-federal-trade-secrets-act-signed-into-law

[8] The Defend Trade Secrets Act: A Federal Remedy at Last: https://attendee.gotowebinar.com/register/1771952422821518084

[9] http://www.insidecounsel.com/2014/11/11/surprising-data-about-anda-litigation

[10] http://www.slideshare.net/linkedin_share/ip-risk-management-for-mn

[11] http://www.slideshare.net/linkedin_share/ip-risk-management-for-mn

[12] http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/ucm216146.pdf

Safe Harbor for Grasshoppers
Intellectual Property Risk Management
Legal Analytics for ANDA Litigation
Economics: Explaining Reverse Payments in ANDA Litigation;
Solving the mystery of the patent dance
To dance or not to dance
Amgen v. Sandoz

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The Biologics Price Competition and Innovation Act: Potential Problems in the Biologic-Drug Regulatory Scheme
Is the "Patent Dance" Mandatory?
FDA approves first biosimilar product Zarxio
[13] https://www.gpo.gov/fdsys/pkg/FR-2016-05-27/pdf/2016-12571.pdf?utm_campaign=subscriptioncenter&utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=
[14]http://links.govdelivery.com/track?type=click&enid=ZWFzPTEmbXNpZD0mYXVpZD0mbWFpbGluZ2lkPTIwMTYwNTI3LjU5NTk4NTUxJm1lc3NhZ2VpZD1NREItUFJELUJVTC0yMDE2MDUyNy41OTU5ODU1MSZkYXRhYmFzZWlkPTEwMDEmc2VyaWFsPTE2ODMwMzA5JmVtYWlsaWQ9cmFvLnZlcGFjaGVkdUBjcm0taXAuY29tJnVzZXJpZD1yYW8udmVwYWNoZWR1QGNybS1pcC5jb20mdGFyZ2V0aWQ9JmZsPSZleHRyYT1NdWx0aXZhcmlhdGVJZD0mJiY=&&&101&&&https://www.gpo.gov/fdsys/pkg/FR-2016-05-27/pdf/2016-12571.pdf?utm_campaign=subscriptioncenter&utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=
[15] http://www.ipindia.nic.in/IPActs_Rules/Patent_(Amendment)Rules_2016_16May2016.pdf
http://www.epo.org/searching-for-patents/helpful-resources/asian/asia-updates/2016/20150518.html
[16] http://www.ripublication.com/gjfm-spl/gjfmv6n1_09.pdf
[17] Product Placement in Movies: The Bollywood Experience
[18] http://www.ripublication.com/gjfm-spl/gjfmv6n1_09.pdf

[19] Product Placement in Movies: The Bollywood Experience (http://www.ripublication.com/gjfm-spl/gjfmv6n1_09.pdf)
[20] Shah Rukh Khan-starrer 'Fan' runs into legal trouble with Delhi-based sweet shop (http://indianexpress.com/article/india/india-news-india/trademark-infringement-in-fan-sweet-shop-sends-legal-notice-to-shah-rukh-khan-2788298/#sthash.2eruKuVw.dpuf).
[21] After 225 years, Delhi's sweet shop shuts down: http://www.thehindu.com/news/cities/Delhi/after-225-years-gone-without-a-warning/article7377569.ece
[22] http://ipindiaonline.gov.in/tmrpublicsearch/tmsearch.aspx?tn=39326365&st=Wordmark: Total No Of Matching Marks : 0
[23] http://www.ipindia.nic.in/tmr_new/tmr_act_rules/TMRAct_New.pdf
The Trademark Act of India (1999), Chapter IV, section 27. (1) 3. Infringement of a Registered Trademark: Chapter IV, section 28 (1) Subject to the other provisions of this Act, the registration of a trademark shall, if valid, give to the registered proprietor of the trademark the exclusive right to the use of the trademark in relation to the goods or services in respect of which the trademark is registered and to obtain relief in respect of infringement of trade mark in the manner provided by this Act.
Chapter IV, section 29 (1) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which is identical with, or deceptively similar to the trademark in relation to goods or services in respect of which the trademark is registered and in such manner as to render the use of the mark likely to be taken as being used as a trademark.
4. Trademark is NOT INFRINGED:
Chapter IV, section 30
(1) Nothing in section 29 shall be construed as preventing the use of a registered trade mark by any person for the purpose of identifying goods or services as those of the proprietor provided the use--- (a) is in accordance with honest practices in industrial or commercial matters, and (b) is not such as to take unfair advantage of or be detrimental to the distinctive character or repute of the trade mark.
(2) A registered trade mark is not infringed where—
(a) the use in relation to goods or services indicates the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of services or other characteristics of goods or services.
(b) a trade mark is registered subject to any conditions or limitations, the use of the trade mark in any manner in relation to goods to be sold or otherwise traded in, in any place, or in relation to goods to be exported to any market or in relation to services for use or available or acceptance in any place or country outside India or in any other circumstances, to which, having regards to those conditions or limitations, the registration does not extend:
(c) the use by a person of a trade mark--- (i) in relation to goods connected in the course of trade with the proprietor or a registered user of the trade mark if, as to those goods or a bulk or which they form part, the registered proprietor or the registered user conforming to the permitted use has applied the trade mark and has not subsequently removed or obliterated it, or has at any time expressly or impliedly consented to the use of the trade mark; or (ii) in relation to services to which the proprietor of such mark or of a registered user conforming to the permitted use has applied the mark, where the purpose and effect of the use of mark is to indicate, in accordance with the fact, that those services have been performed by the proprietor or a registered user of the mark:
(d) the use of a trade mark by a person in relation to goods adapted to form part of, or to be accessory to, other goods or services in relation to which the trade mark has been used without infringement of the right given by registration under this Act or might for the time being be so used, if the use of the trade mark is

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reasonably necessary in order to indicate that the goods or services are so adapted; and neither the purpose nor the effect of the use of the trade mark is to indicate, otherwise than in accordance with the fact, a connection in the course of trade between any person and the goods or services as the case may be.
(e) the use of a registered trade mark, being one of two or more trademarks registered under this Act which are identical or nearly resemble each other, in exercise of the right to the use of that trade mark given by registration under this Act.
(3) Where the goods bearing a registered trade mark are lawfully acquired by a person, the sale of the goods in the market or otherwise dealing in those goods by that person or by a person claiming under or through him is not infringement of a trade by reason only of----
(a) the registered trade mark having been assigned by the registered proprietor to some other person, after the acquisition of those goods: or
(b) the goods having been put on the market under the registered trade mark by the proprietor or with his consent.

[24] https://www.ipos.gov.sg/MediaEvents/Readnews/tabid/873/articleid/339/category/Press%20Releases/parentId/80/year/2016/Default.aspx

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