



# WESTCHESTER COUNTY BAR ASSOCIATION NEWSLETTER

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November 2009



## Golf Outing Turns Fifty!

On Tuesday, September 29, the WCBA held its 50<sup>th</sup> Annual Golf Outing at Wykagyl Country Club. More than 150 members of the Bar and Judiciary enjoyed a day of golf and comraderie.

This year's play offered two options: stroke play and scramble format. Individual winners for the men's low gross were **W. Whitfield Wells** and **Richard Thomas**. **Jeffrey Antin** and **Michael Levinson** took the prizes for men's low net. Women's low gross winners were **Debra Levinson** and **Michele Silva**. **Gail Boggio** won the closest to the pin contest and **Bryant Goulding** won the putting contest. Longest drive winners were **Ken Meccia** and **Adrienne Orbach**.

Thanks to all our golfers, dinner attendees and sponsors for making this year's event a success!

*Golf Committee Chair  
Hon. George Sirignano  
with event sponsor and  
WCBA Past President  
Anthony Enea.*



*First place foursome Michael Hurley, Sander Koudijs, Ken Meccia and Guthrie Garvin.*

— See pages 10-11 for more photos.

## Meet The Judges



The WCBA held its annual Meet the Judges Reception on October 6<sup>th</sup> at the Judicial Institute at Pace Law School. More than 125 attorneys, law students and Pace Law professors had the opportunity to meet with members of the judiciary in an informal setting. This annual event is hosted by the WCBA's New Lawyers Section.

WCBA President Peter Zeltner welcomed the group and acknowledged the judges who were able to attend the reception. Administrative Judge for the Ninth Judicial District Hon. Alan D. Scheinkman spoke to the group, stressing the importance of fostering positive relationships between students, attorneys and the judiciary. He also discussed current initiatives underway in his administration.

Thanks to all the judges and attendees for a wonderful evening!

— See page 15 for more photos.

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# In re Bose Corporation — The Federal Circuit Overturns the Standard for Fraud in Trademark Cancellation and Opposition Proceedings

BY YUVAL H. MARCUS, ESQ.



In *In re Bose Corporation*, 91 USPQ2d 1938 (Fed. Cir. 2009), a long-awaited decision issued on August 31, 2009, the United States Court of Appeals for Federal Circuit rejected the standard for fraud that had been applied by the Trademark Trial and Appeal Board (Board) of the United States Patent and Trade-

mark Office (PTO) since 2003. Prior to the Federal Circuit's ruling, the Board had followed a line of decisions that began with *Medinol v. Neuro Vasx, Inc.*, 67 USPQ2d 1205 (TTAB 2003), and routinely invalidated trademark registrations based on fraud where the applicant knew or should have known that certain statements made in trademark applications or in renewal declarations were not accurate. In *Bose*, the Federal Circuit held that a trademark registration may not be cancelled based on fraud absent proof of an intent to deceive. "By equating 'should have known' of the falsity with a subjective intent, the Board erroneously lowered the fraud standard to a simple negligence standard."

The Federal Circuit reversed the Board's decision in *Bose Corp. v. Hexawave, Inc.*, 88 USPQ2d 1332 (TTAB 2007), in which the Board had cancelled the WAVE registration of Bose Corporation (Bose) based on a finding of fraud. Bose's General Counsel, Mark Sullivan, had signed and submitted a Section 8 declaration of continued use for the WAVE registration that stated that the WAVE mark was in use for various goods including audio tape recorders and players. In fact, Bose had discontinued the sale of audio tape recorders and players but continued to repair previously sold audio tape recorders and players. Mr. Sullivan testified that he believed that the repair of WAVE branded audio tape recorders and players constituted use sufficient to support the WAVE registration. The Board determined that Mr. Sullivan's belief was both mistaken and unreasonable. As a result, the Board cancelled the WAVE registration in its entirety based on fraud.

Bose appealed and the Federal Circuit reversed the Board's decision. Rejecting the Board's knew or should have known standard, the Federal Circuit stated "we hold that a trademark is obtained fraudulently under the Lan-

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ham Act only if the applicant or registrant knowingly makes a false, material misrepresentation with intent to deceive the PTO.” Since Bose’s counsel stated that he believed that the statements he made were true at the time he signed the Section 8 declaration and there was no evidence of any intent to deceive, Bose did not commit fraud and it was improper for the Board to cancel Bose’s WAVE registration.

The *Bose* decision is a welcome relief to trademark owners as it reduces the likelihood of the inadvertent forfeiture of valuable trademark rights. Counsel can take comfort in knowing that a mistaken belief as to what constitutes use in commerce in the context of filing a trademark application or renewing a registration is not likely to give rise to cancellation of the trademark registration based on fraud. ■

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