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Litigation, Business, International Trade, and Transportation Law Newsletter

The Real Law of Iron Man 2

by *Oscar Gonzalez, Attorney*

The blockbuster movie season has started. The movies are expensive, breezy, predictable, and highly enjoyable, especially the younger you are. The critics hate them, but as summer approaches, the public retreats to accessible escapism. The studios work mightily at finding just the right balance between familiarity (often in the form of sequels) and thrills.



While Avatar created a whole new world of people, lexicon, and topography, its themes and story line are viewer-friendly and familiar. They have to be. You lose audience when you stray away too much from concrete, comfortable reality.

But who judges if a movie is real enough? As we are all human, we are all equally expert at judging motives of all parties to a movie plot. Scientists are often asked about a technology or gadget that is featured in a movie ("can people really do that?"), but lawyers are rarely asked whether events in a movie are even possible under the law. Lawyers would have a field day if asked. For example, CSI movies and TV shows greatly exaggerate the reliability of forensic "science", the prominence of CSI personnel in resolving a crime, and the admissibility at trial of the evidence generated.

You might, respond, "who cares? I don't want to know if the law shown in a movie is real."

We can't really blame anyone for thinking this way. Injecting legal realism into a plot often sucks all the fun out of a movie.

But lawyering is all about reducing the world to its cold essentials. Here is my take.

Let's talk about **Iron Man 2**. Tony Stark (Robert Downey, Jr.), an inventor billionaire, is Iron Man. Mr. Stark created a high tech suit that turns him into a super hero and that also allows him to live. Without the arc reactor, an important component of his armor, his heart would stop. The US Government wants Tony to fork over the technology behind the armor for national defense purposes. That's villain number 1. Villain number 2 is of the super variety. His name is Ivan Vanko (Mickey

Rourke), a Russian genius inventor fresh from a gulag and itching to thump Mr. Stark for what he considers a patent infringement on the arc reactor. So Vanko does what you or I might do if we wanted to enforce intellectual property rights: he builds his own super armor to ambush Iron Man/Stark at a car race in Monaco.

Problem One: Export violations. Tony Stark invented some of his armor's technology while being held prisoner in the Middle East, but Stark Industries is US-based and the technology behind his armor is clearly tied to US soil. At one time, he was a major supplier of munitions to the US Government, he was thus probably registered with the US State Department and was accustomed to filing export licenses before shipping his technology overseas. Monaco is overseas. Thus, he would probably need to have first applied for an export license.

(continued on page 3)

Update: Best Customs Exam Study Course



The Best Customs Broker Exam Study Course just got even better. Here are highlights:

Advanced Boot Camp in Houston

We are having EARLY-BIRD Boot Camps for serious students - that's you! Please try to avoid the mad rush of people who think they can cram for the October exam by starting their studies in August or September. The earlier in the semester that you attend a Boot Camp, the better prepared you will be. Dates: June 14-17.

New York City Boot Camp

We are finally having a boot camp in the Big Apple. The boot camp will be held in the trendy location in lower Manhattan and is close to the theater district and business class hotels with reasonable rates. The boot camp's address is 71 West 23rd Street, Suite 515. Dates are August 2-5.

Save \$500 through our Early Bird reward

Buy our course before June 11, 2010 and get \$500 off. Other discounts are available, including our "switch from another course" discount, client discount, and group discount.

Free pass to other events

Students currently enrolled in our customs broker exam course may attend any and all of our seminars, webinars, and workshops for free. We sponsor dozens of programs every year on a wide variety of import and export compliance subjects.

More boot camps than ever

We now offer coast-to-coast coverage. With five cities

- Houston, June 14-17, 2010
- San Antonio, July 6-9, 2010
- New York, Aug 2-5, 2010
- Dallas, Sept 20-23, 2010
- Los Angeles March 14-17, 2011

And we didn't leave anything behind

In addition to the above, we continue to offer all the great benefits that we have always offered, including:

- 94% Pass Rate
- Guaranteed
- Testimonials
- 24/7 Online Material
- Weekly Conference Calls
- We teach you how to study, what to study, and what to avoid studying.
- Customized homework
- Free Demo

To find out more, go to www.bestcustomsbrokercourse.com or contact us at info@bestcustomsbrokercourse.com or (800) 256-2013, ext. 1.

Problem Two: Patent Infringement. Prisoners tend to know the law better than most lawyers and Vanko had oodles of time to investigate the finer points of enforcing his intellectual property rights. While nothing can beat the adrenalin rush from thrashing a goody-two-shoes superhero, hiring a lawyer would have been more effective. A lawyer would have filed to protect the patent and gone after the rights to the intellectual property, as well as against the infringer. A lawyer would have invoked treaties and applied to agencies and enforcement authorities, probably sought injunctive relief and damages. The downside is that there aren't too many pyrotechnics when you watch lawyers do this kind of stuff, and our pinstripes can't hope to compare to a high-tech armor suit. But we do the job, the real job, that is needed.

Oscar Gonzalez is a founding member of GRVR Attorneys

Hey Stella! A Website Named Inquire



While we're on the subject of movies, In a *Streetcar Named Desire*, Stanley screams "Hey, Stella!" to the top floors of his seedy New Orleans tenement, hoping to win Stella Kowalski back. It worked, but the acting skills of even Marlon Brando (who played Stanley) would have been tested if he tried to find out what the government had done with his export license request. Or, at least, that used to be the state of affairs. But thanks to STELA (only one l) things have changed dramatically (sorry for all the bad puns).

STELA stands for System for Tracking Export License Applications and it is the web system created and maintained by the Bureau of Industry and Security (BIS) to allow exporters to track any agency action and status of export license applications. There are many differences between Stella Kowalski and STELA the automated system. Stella Kowalski responds favorably to verbal cues. But not STELA, at least not anymore. The BIS just announced that it will no longer allow exporters to check on license status through the voice response system. It has always been smart to control your voice when talking to federal enforcement officials. Now more than ever.

For more information, go to <https://snapr.bis.doc.gov/stela/>

Customs Assists: importers get hurt by what they don't know

CBP has for decades targeted importers looking for problems with assists. And that trend has only escalated recently. Most importers do not even realize that they have assists that must be reported to CBP. This happens because importers do not firmly grasp what an assist is. All this comes to a head typically when CBP audits an importer or sends a request for information. Then there is a mad rush to file prior disclosures and to fix the problem, while shelling out large settlement payments to CBP.



An "assist," is defined by statute as "materials, components, parts, and similar items incorporated in the imported merchandise" that is provided "free of charge or at a reduced cost, by the buyer of imported merchandise for use in connection with the production or sale for export to the United States of the imported merchandise." 19 USC Section 1401a(h)(1). An "assist" might consist of, for example, design or

engineering work done overseas. The value of the assists is subject to import duties pursuant to 19 USC Section 1401a(b)(1) (C). Pursuant to 19 CFR 152.102 an assist means any of the following if supplied directly or indirectly, and free of charge or at reduced cost, by the buyer of imported merchandise for use in connection with the production or the sale for export to the United States of the merchandise: (i) Materials, components, parts, and similar items incorporated in the imported merchandise. (ii) Tools, dies, molds, and similar items used in the production of the imported merchandise. (iii) Merchandise consumed in the production of the imported merchandise. (iv) Engineering, development, artwork, design work, and plans and sketches that are undertaken elsewhere than in the United States and are necessary for the production of the imported merchandise.

There are ways to avoid violations, including understanding the regulations governing assists, meticulous record keeping, careful coordination with suppliers, and sound communications within the company.

By the way, did you know that 19 CFR § 152.103 (d) (2) allows companies to depreciate the value of an assist? The regulation states: "If the assist has been used previously by the buyer, regardless of whether it had been acquired or produced by him, the original cost of acquisition or production would be adjusted downward to reflect its use before its value could be determined."

FDA proposes new reporting requirements for foreign manufacturers and importers of medical devices



The Food and Drug Administration is proposing new reporting requirements for foreign manufacturers and importers of medical devices. 75 Fed. Reg. 14510 (March 26, 2010).

Before its devices will be allowed into the United States, foreign manufacturers ("foreign establishments"), including foreign contract manufacturers, would have to register with the FDA and list and identify, using an Internet service, all of its "importers", a broadly defined term that includes customs brokers and other agents, but not carriers. The proposed reporting and listing requirement would apply as well to medical devices imported into FTZs and re-exported out of the USA, a complete change of FDA policy.

The deadline for the public to submit written or electronic comments on the proposed rule is June 24, 2010.

Exporters beware: you could go to prison for merely entering an improper contract, even if you did not carry out the contract

The Ninth Circuit Court of Appeals affirmed the conviction of Seyed Mousavi for willfully violating our nation's embargo of Iran. Mr. Mousavi, a U.S. permanent resident, is originally from Iran and traveled back and forth from there as part of his business. The IRS audited him, possibly because he was the president of a non-profit that provided services to the Islamic community and ran a business that organized travel packages to Mecca for the Hajj pilgrimage. Mr. Hajj entered into a contract with a Middle Eastern business to provide consulting services for people wanting to do business in Iran. Prosecutors presented to the jury the contract and evidence of payments made to Mousavi apparently under the contract. Prosecutors did not provide any direct evidence that Mousavi actually provided goods or services to Iran, but the Ninth Circuit found sufficient proof to allow the jurors to connect the dots.

Consumer protection agency publishes factors to penalize manufacturers, importers, retailers, and distributors

Federal authorities are often granted discretion under statute to determine what activities constitute violations of the laws they are responsible for enforcing and to determine the severity of the punishment. The Bureau of Industry and Security and US Customs and Border Protection, for example,

provide extensive guidelines on what constitutes aggravating and mitigating factors. U.S. District Court Judges follow the Federal Sentencing Guidelines for the same purpose. The Consumer Product Safety Commission (CPSC) recently published a new rule to inform any manufacturer, importer, distributor, or retailer of factors the agency will consider in determining the size of any civil fine for knowing violations of the Consumer Product Safety Improvement Act (CPSIA). The CPSC also multiplied the maximum penalty for violators by nearly ten times, from \$1.8 million to \$15 million. The final rule, which is effective immediately, is codified in 16 CFR Part 1119. 75 Fed. Reg. 2010 (March 31, 2010).

The provision lists several factors (or arrows for the quiver of enforcement officials, some cynics might suggest), including whether the company is a serial violator. One factor is a surprise: economic gain from noncompliance. The CPSC can increase the penalty if the violator benefitted economically from violating the CPSIA.



Exporting to Brazil? Learn to navigate the customs and antidumping restrictions

Brazil transformed itself from a developing country to a global economic powerhouse. US companies are busy trying to crack into the Brazilian market, but are having difficulties with the complexity of the country's customs regulations, as well as with the substantial increase in the antidumping investigations.

Fortunately, there are experts to assist you. Oswaldo Moraes, of-counsel to our law firm, has decades of experience helping companies navigate Brazil's antidumping and customs restriction. Fully fluent in English, he can provide the exact guidance your company needs to make headway into Brazil.

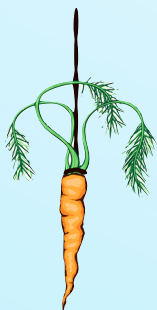


Attention Whistleblowers: get cash for turning in violators of the Foreign Corrupt Practices Act

There is no greater evidence of superior intelligence than to be surprised at nothing.

Josh Billings

Sometimes an event is so global in its effect that people wonder why there were not more precautions taken and why the people that should have known did not sound the alarm. This can be said of the great oil leak currently devastating the Gulf of Mexico and beyond. It can also be said of laws.



The Foreign Corrupt Practices Act (FCPA) lay dormant for decades until Sarbanes-Oxley became law. Enforcement actions boomed several years ago, and now the Securities and Exchange Commission (SEC) and the US Department of Justice (DOJ) have hundreds of investigations and enforcement actions open at any time. Fines in the millions, and sometimes tens of millions, of dollars are common, and company executives are starting to be sent to federal prison. But there apparently will be a major increase in even these bloated numbers thanks to the new financial regulation bill before Congress.

According to the Wall Street Journal, "A new fund, known as the Securities and Exchange Commission Investor Protection Fund, would pay out between a minimum 10% and a maximum 30% of the recovered money from a violation of more than \$1 million. A similar version of the program's expansion passed the House in December when it passed its financial regulation bill, but one main difference is that bill contains no minimum payout. The two bills will be merged in a conference committee, and House and Senate leaders have said a bill will reach President Barack Obama's desk by the July Fourth recess."

Do-Gooder Corner: Louisiana Gulf Response

www.lagulfresponse.org

In the wake of the BP Oil Spill that is threatening our coast, local, regional and national conservation organizations are coordinating volunteers to assist in local, state and federal recovery efforts in Louisiana. This website is a clearing house for this effort. It is also a way for volunteers and donors to help.



