



## COMPETING AGAINST YOUR FOREIGN DISTRIBUTORS IN THE U.S. FOR YOUR OWN BOOKS? THE SUPREME COURT SAYS YES!

By Anthony F. Bonner, Intellectual Property (IP) Attorney, Dinsmore & Shohl LLP

If you are a copyright owner of books, music, photographs, and/or other copyrightable works, you may sell copies of those works in the U.S. for a “U.S. price.” If you sell copies overseas, you may also establish a “foreign price.” While the foreign price is often lower than the U.S. retail price, the consensus among scholars has been that foreign entrepreneurs cannot purchase your foreign copies and resell those in the U.S. for profit because the “first sale doctrine” does not apply to those copies. In a recent decision, the U.S. Supreme Court disagrees.

The “first sale doctrine” in copyright law entitles the purchaser of a copy of a work to resell that exact copy without infringing the copyrights of the owner. This means that a



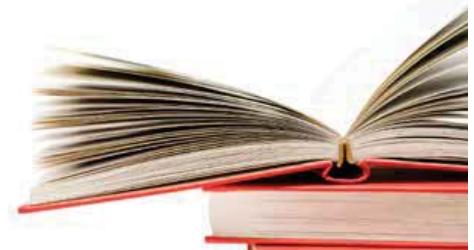
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student may purchase a textbook and, after the semester is complete, may sell that textbook to someone else. Because the copyright owner was compensated at the “first sale,” he/she is not entitled to compensation for subsequent sales. This is also called the “exhaustion doctrine” because the copyright owner’s rights are exhausted after the original or “first sale.”

While the first sale doctrine has been well established in this country, the general consensus among scholars has been that the first sale must have been made in the U.S. for the doctrine to apply. Thus under this traditional view, if the first sale occurs in a foreign country, the first sale doctrine does not apply. As a consequence, if someone from a foreign country comes to the U.S. and sells his or her books in a yard sale, they would be liable for infringement under U.S. copyright laws because there was never a “first sale” in the U.S.

This has all changed now with the U.S. Supreme Court decision in *Kirtsaeng v. John Wiley & Sons, Inc.* (568 U.S. \_\_\_\_\_, 2013 WL 1104736 (U.S. March 19, 2013)). In this case, Kirtsaeng, a foreign exchange student, was purchasing textbooks for his U.S. college courses from his homeland of Thailand and reselling those textbooks in the U.S. Because John Wiley & Sons (“JWS”) was selling copies of the textbooks for a substantially lower price in Thailand than in the U.S., Kirtsaeng was able to realize a substantial profit in this endeavor. JWS sued Kirtsaeng for copyright infringement. JWS argued that because Kirtsaeng had not purchased the textbooks in the U.S., Kirtsaeng committed copyright infringement for his U.S. sales. The U.S. District court agreed with JWS, following the recognized view that

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the first sale doctrine only applies to sales made within the U.S. and awarded JWS \$600,000 in damages. Kirtsaeng appealed, and the U.S. Supreme Court reversed the decision, ruling that the statute defining the first sale doctrine only requires the sale to be “lawfully made under this title” and thus does not place any geographical restrictions on the first sale.

Many see this decision as a victory to U.S. consumers, because foreign entities may now sell copies to U.S. residents for a lower price. However, many businesses are seeing this decision as a significant blow to their operations because of the threat of a U.S. price war against a foreign purchaser of the works. Thus, many businesses are currently rethinking foreign sales. This has resulted in new strategies to protect against such competition.

First, because the U.S. is likely the largest market

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## CHP – an Opportunity for Manufacturers

By Ty Vierling, Harshaw Trane



Ty Vierling

According to the Kentucky Geological Survey, approximately eighty percent of Kentucky’s coal is used to generate electricity. As coal is on the decline as a form of power generation for the state, stability is not expected on the electricity side of the utilities market. As coal resources become more expensive to mine and federally regulated to burn for power, the cost of coal-based generation will increase.

In the last ten years, natural gas has been the utility that has fluctuated unpredictably over time. With the increase in production within the United States, this fluctuation has stopped as supply sources have improved. Looking at natural gas futures, the natural gas price is holding at a constant. In fact, long range futures for natural gas are trading below \$5.00 per million BTUs.

As new electrical generation transitions to natural gas for the state of Kentucky, Combined Heat Power Systems (CHP) offer new options for industrial facilities. CHP systems can be a great option for industrial facilities and can behave as a curtailment strategy, reduce usage on hard assets such as boilers and help avoid the capital cost of buying new assets. Some other drivers in using CHP systems include aiding in environmental stewardship and improving utility efficiencies and power quality as well as lowering demand cost.



Harshaw Trane

So what exactly does a CHP system do that makes it useful for a manufacturing facility? These systems capture waste heat from the production of electrical power and use that heat to offset a building’s heating requirement, while only consuming a single fuel.

Manufacturing facilities have both electrical load and thermal loads. Thermal loads can be comfort conditioning or process driven. In a traditional system, electric is provided by a power company that produces power at a plant. For every 100 units of fuel consumed by the power plant, the customer can receive up to 33 units of electricity. The thermal load is typically supplied by a boiler. In comparison, if that same amount of power is produced locally and the end user has access to the waste heat produced in the power production process, the entire system can increase by as much as 30 efficiency points.

The heat from the generation is supplied from two sources; first is the exhaust gas and second is the water used to cool the engine. This heat can be manipulated to match consumer need, whether that requires producing high pressure steam or chilled water or both. Chilled water can be created in coordination with an absorption chiller. These chillers take a heat source and create chilled water through the vapor absorption refrigeration cycle and can take a variety of heat sources, exhaust gas, hot water or steam, to produce this chilled water. Depending on the heat source, these

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## Kentucky Labor-Management Conference Announces 36th Annual Event

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Thursday September 12, the final day of the Conference is reserved for networking activities designed to team labor and management together in a recreational setting. Over the years participants have indicated that numerous issues that could have resulted in conflict have been resolved in the relaxed atmosphere of the Conference.

Each year since 1987, the Conference has presented the Labor and Management Awards to one representative from labor and one representative from management, who have demonstrated a sincere commitment to the concept of labor-management cooperation. These winners have sought to find the common ground necessary to make their respective enterprises more competitive in the global marketplace through true cooperation.

Since 2007, the Conference has presented the Julian M. Carroll Young Labor and Business Leader Awards to recognize excellence in young leaders who have demonstrated their commitment to the promotion of labor-management cooperation in Kentucky.

The Kentucky Labor-Management Scholarship Award was established in 2005 and awards scholarships up to \$4,000 for students who have plans to pursue a career in a labor-management relations related field or an apprenticeship occupation.

If you are interested in attending or obtaining information concerning the 2013 Kentucky Labor-Management Conference, please visit the Labor Cabinet’s web site at [www.labor.ky.gov](http://www.labor.ky.gov) or contact Jodie Craig, Conference Coordinator, at 502.564.3203 (office) or 502.352.3591 (cell) or via email at [jodie.craig@ky.gov](mailto:jodie.craig@ky.gov).