

# THE RISLEY NEWSLETTER

## VICTORY IN UNITED STATES DISTRICT COURT



Figure 1

### A Unanimous Federal Jury Verdict Overcame Enormous Judicial Obstacles for Risley Cleints

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A dispute over ownership of the “VICTOR” machine tool Trademark erupted 10 years ago. It led immediately to litigation in both Federal and State Courts in this Country, as well as litigation in Taiwan. The State Court and

Taiwanese Court lawsuits were decided a few years ago. But not until November 23, 1998, were the Trademark issues finally decided by a unanimous Federal Court Jury after a two week trial. Even before the verdict, “It was a beautiful, beautiful job.” said client Alen Huang of Risley’s handling of the case. This was an incredible victory for the American Huang Family and their Victor Group of Companies.

Our opponents claimed that they were the owners of the "VICTOR" Trademark. Worse, their lawyers claimed that Alen Huang, the founder of the Victor Companies in American, was obligated to register the name "VICTOR" in the name of TMW, a Taiwanese manufacturer, rather than registering it in his own company's name. They claimed he perpetrated a Fraud. Even worse, they charged him with Racketeering under the Federal RICO Statutes. In trial, the lawyers called him a liar and a thief who cheated his family and took advantage of a corporate opportunity. But these damning charges backfired on them. The Jury saw through the lawyers false rhetoric.

The obstacles to success were enormous. The U.S. District Judge "didn't like my clients for several reasons, but mainly because they misunderstood her earlier decrees on a related Trademark issue." The Judge granted 11 of 12 of our opponents Motions in Limine. These motions preclude testimony or even mention of certain critical issues. Then the Judge determined that our client, Alen Huang, was a "fiduciary" to our opponents. The implications were devastating. This determination and in Limine rulings made it very evident that the Judge didn't like our case. To make matters worse, the Judge granted only one of our nine Motions in Limine, further favoring our opponents. The tactical difficulties created by these rulings were followed by extraordinarily adverse Jury Instructions. Several adverse Jury Instructions were read repeatedly to the Jury. To top it off, when the verdict was reached late Friday, the Judge sent the Jury back to reconsider two of their findings. When they returned with a Verdict a second time on Monday, our opponents urged they return for even further deliberations. The Judge agreed and out they went again. But their request backfired when the Jury resoundingly found in our favor.

"I have never handled a case where the

cards were stacked so heavily against me." Risley noted. "Fortunately, the Jury believed my clients and our witnesses. Moreover, our opponents critical evidence was patently false. It involved a photograph taken in 1981, but their witnesses lied to date it in 1975. Their testimony was obviously not truthful, and their purpose in giving false testimony was clear. It was to establish first use, as the Trademark Law gives the person that 'first uses' a name in commerce ownership of it."

Details in the false picture were clear to even the casual observer, but our opponents' lawyers pressed on with this false picture. But we were able to compare the false picture with pictures taken in 1974 and 1976. These clearly demonstrated that many features contained in the false picture could not have existed in 1975. For instance, the false picture showed grown shrubbery and trees, a new flag pole, a fence and gate containing the word "VICTOR," and building developed along a ridge in the horizon. None of these features existed in 1975, as our opponents witnesses claimed. As an aside, perhaps Presidential Prosecutor, Ken Starr, would be interested in this perjured testimony.

Risley said he admired his clients' determination and confidence in their case. When adverse rulings were made by the Judge, "I told them to settle, but they told me it's our name, we registered it with the United States Patent and Trademark Office in Washington, D.C., and we first used it in United States commerce." Risley responded, "Okay, let's go to trial."

Risley also reported that he had good, professional assistance from colleagues, Robert (Rik) E. Prussing, and Kimberly Offenbacher. In addition, he received significant help from Michael Huang, Alen's son, who worked tirelessly with suggestions and with (500 multi-page) documents contained in six large looseleaf notebooks. Risley said, "Working with Rik, Kim and Michael was one of the real

pleasures of my professional career.”

This incredible victory of the American Huang Family and their Victor Group of Companies, in the face of enormous odds, is also a highlight for the Risley firm. Unfortunately, there is still legal maneuvering, motions and Appeals yet to come; but the value and importance of a Jury Verdict can never be overstated. Moreover, the value of the Jury System in American Jurisprudence has proven once again, as it overcame clear judicial bias.

### **SOCIALLY CORRECT MONEY**

The number of mutual funds that invest in “socially responsible” companies is growing. More than 55 ideological funds now exist (about three times as many as five years ago), and they typically invest in companies based on specific social values as well as financial performance.

Some funds completely avoid companies with behavior or products that go against the funds’ philosophy, but other funds use their status as shareholders to press companies to change their policies.

Funds typically are organized around a specific philosophy; for example, Islamic principles, social Roman Catholic values, companies that are responsive to gay and lesbian issues, Mennonite values, and conservative Christian values. They may shun the stocks of companies associated with alcohol, gambling, pornography, weapons, tobacco, or nuclear energy. Beyond products, funds may exclude from their portfolios companies who are known for unfair labor practices or who donate money to pro-choice organizations.

To find more information on mutual funds and financial planners that specialize in social investing look up [www.greenpages.org](http://www.greenpages.org).

### **YOU WANT TO PLAY, YOU GOTTA PAY**

Kaiser Permanents health plan made headlines recently when it announced it would not cover Viagra, Pfizer’s immensely popular erectile dysfunction drug, due to the cost (\$10 per pill). Kaiser estimates that covering the drug would increase its costs for pharmaceuticals by about \$100 million per year--or 10 percent.

Kaiser will offer an option to its corporate health plan purchasers that will cover Viagra at an added cost per person. Kaiser decided not to raise everyone’s premiums in order to pay for treatment for a condition that is neither lethal nor crippling. In addition, Kaiser maintains that almost all of its members can afford Viagra on their own.

Kaiser wins points for being honest about its reason for denying coverage. Other health plans, including Prudential Healthcare and Humana, Inc., have been called hypocritical for denying coverage for Viagra because of “safety concerns.”

This decision brings attention to the tough calls health plans make on a daily basis to keep their coverage affordable. Health plans often exclude coverage of particular types of care by categorizing them as “experimental,” “cosmetic,” or “risky.” But plans must weigh the costs of hugely expensive treatments of secondary importance against treatments of primary importance.

If you believe you have unfairly been denied coverage for treatment of a health problem by your health plan, please contact your lawyer.

### **Census 2000**

If your business, like most consumer goods and services firms, currently relies on data measuring race and ethnicity in its marketing efforts, you probably will be affected by the new federal standards for collecting data on race and ethnicity. While these new

standards are effective immediately, their first major use will be for Census 2000.

The new categories offer greater detail, but there will be more race and ethnic categories to be analyzed and considered. The revision was spurred by the growing population of minorities, particularly Hispanics and Asians, along with increasing numbers of children born to people in mixed-race marriages.

Census 2000 will allow respondents to select one or more races (White, Black or African American, American Indian or Alaska Native, and a variety of Asian or Pacific Island options), unlike Census 1990, which only allowed respondents to select one race. In addition, respondents can identify their ethnicity as one of a number of Spanish/Hispanic/Latino groups.

Critics complain that the new standards don't go far enough. The new classification system does not allow people of mixed Hispanic ethnicity to identify themselves as such, so children of one Hispanic parent and one non-Hispanic parent must still say they are either Hispanic or not Hispanic (unlike children of one white parent and one black parent, who can check off both races). Plus, Hispanics can only elect one country of origin, even if their mother is from Cuba and their father is from Mexico. Also neglected: the 2.5 million people in the United States of Arab or Middle-Eastern descent and the 2.5 million people from the former Soviet Union.

For more information, visit the Office of Management and Budget's website ([www.whitehouse.gov/WH/EOP/OMB/html/fedreg/Ombdir15.html](http://www.whitehouse.gov/WH/EOP/OMB/html/fedreg/Ombdir15.html)).

Robert L. Risley, A Professional Law Corporation  
790 E. Colorado Blvd., Ninth Floor  
Pasadena, California 91101-2113  
Telephone: (626) 397-2745  
E-Mail: [risley@pacbell.net](mailto:risley@pacbell.net)

Web Site: <http://www.icanect.net/califlaw>

