

The October issue of Sterne Kessler's **MarkIt to Market™** newsletter discusses use in commerce as applied to mobile applications and services, outlines best practices for ensuring your business owns artwork and textual works created on your behalf, and provides an updated list of the Sunrise Periods currently available for new gTLDs.

Sterne Kessler's Trademark, Advertising, and Anti-Counterfeiting **practice** is designed to help meet the intellectual property needs of companies interested in developing and maintaining strong brands around the world. For more information, please contact **Monica Riva Talley** or **Tracy-Gene G. Durkin**.



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### BUY NOW: Use in Commerce for Mobile Applications

By **Shana L. Olson** & **Monica Riva Talley**

For a mobile application developer, clearing the Apple® App Store's® often lengthy approval process and seeing the mobile application available for purchase may seem like the last necessary step to establish use of the name of the application as a trademark "in commerce." However, a recent opinion from the Eastern District of Michigan, *Kelly Servs., Inc. v Creative Harbor, LLC*, clarified that use in commerce of a mark that identifies an electronically downloaded product available from an online marketplace occurs when a customer actually purchases and/or downloads the application for the first time.

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### How May We Help You? When is a Service Not a Service

By **Lauriel F. Dalier** & **Monica Riva Talley**

Brand owners seeking federal protection for their service marks from the U.S. Patent and Trademark Office often struggle with how to define their services in the application.

While the Trademark Act defines "goods" straightforwardly as "products," it does not define what constitutes a "service." Products are easily understood because they are visible and generally tangible. On the other hand, the Trademark Act resorts to providing a list of criteria for establishing whether an activity is a service.

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### If It's Worth It, You Should Work It (As a Work Made For Hire)

By **Ivy Clarice Estoesta** & **Monica Riva Talley**

With the growth of mobile apps, non-tech companies face the challenge of creating apps to promote and sell their services or goods. Because the creation of an app can be a one-time project, hiring an independent software company or a freelance software engineer might make more economic sense than hiring salaried employees to complete this singular task.

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### gTLD Sunrise Periods Now Open

As first reported in our **December 2013 newsletter**, the first new generic top-level domains (gTLDs, the group of letters after the "dot" in a domain name) have launched their sunrise registration periods.

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