

Conkle law firm has served salon industry for 30 years

In 2012, the **Conkle, Kremer & Engel** law firm in Santa Monica, CA, is celebrating 30 years of representing some of the most prominent names in the professional beauty business.

Beauty Industry Report (BIR) recently checked in with the firm's founder, **Bill Conkle**, and its most recent member from the beauty industry, **Mark C. Riedel**, to learn how they're helping companies succeed.

BIR: How did the Conkle firm get started in the beauty business?

Bill Conkle (BC): I started the firm in 1982, and soon after, we began representing **Joico**. Back then, it was just a tiny company that **Steve Stefano** operated out of his house. We helped Steve deal with the kinds of issues that arise for most businesses starting up in the salon products business. I think we played at least a small part in Joico's success, and the word got around. We represented **Sebastian** when it was still operated by **John Sebastian**. **OPI** followed, and **American International Industries**, **Worldwide Cosmetics**, **MoroccanOil**, **PureOlogy** and others came over the years. Recent clients include **Pravana**, **M&M International**, **Bosley Professional** and **ColorProof**.

BIR: Mark, you're a recent addition to the firm. How did you get your start?

Mark Riedel (MR): In 1998, I was a partner in a business law firm, and I was asked to become Sebastian's general counsel. I stayed on when Sebastian merged its U.S. operations with **Wella**. In 2003, P&G purchased Wella, and I remained general counsel for P&G Professional for five years. I joined the Conkle firm in 2008.

BIR: The Conkle firm is well known for its aggressive anti-diversion and anti-counterfeiting activities. Is that all you do?

BC: No, far from it. While we have considerable expertise in combating diversion and counterfeiting, we also have decades of experience helping large and small businesses in the salon industry with almost every aspect of their legal needs. We continue to work with startup businesses, like **Jim Markham's** new line, **ColorProof**. We help develop the plans and tools startups need to succeed, beginning with business formation and development of

strong, well-protected trademarks and copyrights. We help larger businesses with many of the same types of concerns, and with the additional issues that arise as a business grows. The areas of legal service that we provide to industry participants are too many to list, but they include negotiating effective distribution agreements and salon contracts, supply agreements, licensing agreements, U.S. and foreign trademark registration and enforcement, copyright registrations and enforcement, federal and state government regulation compliance, acquisitions of intellectual property, purchase and sale of businesses, trade secret concerns, marketing and advertising issues, employment issues and even artist and model agreements. We're also



Conkle law firm lawyers and staff celebrate 30 years at their Santa Monica, CA office.

skilled at making sure insurers fulfill their duties to our clients, which can arise in many circumstances. And of course, we help design, implement and enforce effective anti-diversion and anti-counterfeiting programs, from coding systems to policing and well-targeted litigation.

BIR: What differentiates your law firms?

BC: Mostly, tenacity and ingenuity. We don't stop until we've accomplished the client's objectives. We are dedicated to the salon industry—protecting brands and stopping counterfeiters and diverters has been our main mission for decades. What other law firm do you know that has its own on-site photo studio to help clients track codes and to generate evidence of diversion, decoding and counterfeiting? We know many of the players—the good guys and the bad guys—and we know how to stop the bad guys. As a result of all

that, we've had a long history of successes where others have fallen, and the word gets around. And throughout, we work to keep our fees low, because we know that our service has to be cost-effective for the client.

MR: I was general counsel of Sebastian and P&G Professional for 10 years while it was a client of the Conkle firm. What stood out for me when I was in the role of a client was the excellent value provided by the firm. This firm provides the best price to quality of service ratio in the business. Sebastian used some of the large firms as well, but the Conkle firm's charges typically were 20 to 40% lower than those of other firms. This is a firm that puts client service first, and has always been focused on cost-effective delivery of high quality legal service.

BIR: As you look back, what are some of your favorite memories from your practice?

BC: The one that's probably closest to my heart is one of my earliest, when Steve Stefano asked us to help protect Joico from a competitor who was trying to ride on Joico's success by claiming to be "the real Joico." The competitor would not stop, but Joico stuck to its guns all the way to trial. When the jury verdict came in, and awarded \$5.5 million in favor of Joico, the sense of vindication was so palpable that Steve and several others in the courtroom wept. For me, that moment encapsulated what we try to do every day—give everything we've got to help our clients.

Not all of our memorable moments have been so dramatic, of course. I remember during a lawsuit against **Albertsons** for selling counterfeits, its lawyers got so frustrated with our staff members finding diverted and counterfeit products in Albertson's stores that they sent us a letter prohibiting Conkle firm employees from even entering Albertsons stores. That was especially funny because our office is across the street from an Albertsons, and we grab a quick lunch there all the time.

Another great moment was after we got injunctions against **Costco** for selling decoded diverted salon products. Costco just could not believe the injunction by a Los Angeles court would be effective against it worldwide. We

brought Costco to court on contempt charges when we found violations of the injunction. The court ordered Costco's president to fly down from Washington to attend the contempt hearing. Just before the hearing, Costco agreed to settlements that were very favorable to our clients, but Costco still had to answer to the judge. Flanked by a platoon of lawyers, Costco's president appeared in front of the judge, personally apologized and swore it would never happen again.

Then there was the time PureOlogy found out that a product shipment bound for Russia was about to be diverted back to the United States. We located the container shipment in Finland, and used our knowledge of international commerce to convince the shipping agent and carrier that PureOlogy was entitled to prevent the rerouting, so they stopped the shipment on a dock in Helsinki. The diverted products were literally frozen as the container sat through a Helsinki winter, after which we convinced the shipper that the products had become defective, so they were destroyed rather than being shipped anywhere. We accomplished all that by working the phones late at night, without filing a lawsuit.

MR: Since I joined the firm three years ago, we've been working a lot with Moroccan oil, helping to create strong distribution agreements and fending off diverters, infringers and counterfeiters. We've had some great successes against wholesale and retail merchants who sold counterfeit and diverted Moroccan oil products—we've negotiated many settlements with both major and minor gray market participants who have agreed not to handle Moroccan oil products.

We've also been working with Moroccan oil to police sales of diverted, decoded and counterfeit products on the Internet. We've gotten infringing websites taken down and we've been able to bring offenders to justice in California. California has some of the country's strongest laws in favor of manufacturers whose products are diverted and decoded. In fact, one of the great benefits that the Conkle firm has provided to the salon industry dates back to when I was a client of the firm. The firm took on **Quality King, Pro's Choice** and other diverters, and was successful in getting the first reported court ruling that salon products are

protected by California's law that makes possession or sale of decoded products a crime. That's an important anti-diversion tool that the Conkle firm delivered for the industry.

BIR: Speaking of the Internet, from a legal perspective, how do you see it affecting the beauty industry?

BC: While there's no doubt that the Internet is a useful tool for promotion and marketing of products, and particularly helpful to new companies struggling to get their names out, it has also been a huge problem for the industry. In salons, professionals can guide consumers based on their personal attributes and needs, but the Internet is a place where all products tend to look like commodities and little meaningful personalized guidance is available to consumers. That can damage the image and reputation of professional salon products businesses. Rather than talking with a trusted stylist, the Internet offers "product reviews" by authors whose credentials, impartiality and even identity are unknown. Internet sales of professional salon products can diminish and degrade the products and disserve both consumers and the industry. The distribution and salon agreements that we prepare invariably prohibit Internet sales, and we make those agreements enforceable.

MR: On the other end of the spectrum, we routinely monitor and police the Internet on behalf of our clients. We've developed very efficient methods of enforcing our clients' rights to protect their intellectual property, including trademarks and copyrights on advertising photos or text that have been copied and posted by diverters on their websites. For example, we've gotten many quick "take down" actions by Amazon and eBay when we find infringing advertisements of our clients' products. Social media, such as Facebook and YouTube, have been the most recent Internet battlegrounds.

BIR: How do you keep current with concerns of the industry?

MR: Well, of course we read **BIR** regularly! Our attorneys and staff members attend major beauty industry trade shows. Our firm is also a member of the **Personal Care Products Council**, and we participate in their meetings. But most of all, we stay current through frequent communication with our clients,

hearing their issues and helping them find solutions.

BIR: Aside from diversion, counterfeiting and Internet issues, what other current industry concerns have you worked on recently?

BC: "Salon-only" distribution has many benefits, including motivating distributors and retailers to be very committed to the product line. But the distribution plan must be tailored to comply with federal and state antitrust laws, which can be hostile to downstream resale restrictions. For example, manufacturers sometimes hear that resale price maintenance might be possible, but such programs can have serious legal traps for those who launch them without guidance. Similarly, enthusiastic marketing departments and distributors sometimes generate great "new ideas" for price promotions or customer restrictions. While that zeal is laudable, the great ideas of marketers and even distributors can sometimes get the manufacturer into legal hot water in the United States and internationally. We've helped several clients avoid that kind of trouble, often with just some small tweaks to the proposed promotional program.

MR: Another current issue that comes to mind is the subject of whether and how salon products can claim to be "organic." A number of federal and state regulations can affect whether a product can be labeled "organic." Typically, a high percentage of the finished product has to be made from ingredients that are "certified organic," meaning the suppliers have to be independently certified as organic producers. But that may not be enough—like many regulatory issues, this one can get complicated fast, and a misstep can lead to regulatory trouble and consumer or competitor claims of misleading advertising and unfair trade practices. Last summer, an environmental group made a splash by filing such a lawsuit against a number of beauty industry manufacturers, claiming that their products were not truly "organic" as advertised. We've helped clients navigate this "organic" morass recently, and we expect to see more of those issues arise.

Learn more about Conkle, Kremer & Engel at conklelaw.com or call 310 998-9100. Reach Bill Conkle at w.conkle@conklelaw.com and Mark Riedel at m.riedel@conklelaw.com.