

NEWSLETTER

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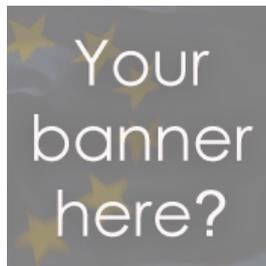
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JOB OFFERS AND ADVERTISEMENTS

The Advanced Masters Intellectual Property Law and Knowledge Management (IPKM) feature specialisation tracks on international IP litigation practice, entrepreneurship and valorization, and claim

drafting. In its common programme lawyers, economists, scientists and engineers mingle to deal with real-life problems in multidisciplinary teams.



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newsletter, a news item on our website and a tweet to our followers.

MONTHLY CASE LAW OVERVIEW**Trade Mark Law*****IP 10117. Preliminary questions about jurisdiction of EU trade mark court***

Trade Mark Law. Case C-172/18 AMS Neve and others. Preliminary questions Court of Appeal United Kingdom: “1. Does an EU trade mark court in Member State B have jurisdiction to hear a claim for infringement of the EU trade mark in respect of the advertisement and offer for sale of the goods in that territory?”

2. If not, which other criteria are to be taken into account by that EU trade mark court in determining whether it has jurisdiction to hear that claim?”

3. In so far as the answer to (2) requires that EU trade mark court to identify whether the undertaking has taken active steps in Member State B, which criteria are to be taken into account in determining whether the undertaking has taken such active steps?”

IPPT20180419. CJEU about seniority revoked national trade mark

Trade Mark Law. Court of Justice EU, 19 April 2018, Peek & Cloppenburg

No basis in EU law for the claim that the use of a national trade mark can have a legal effect after it has been renounced. Article 14 Trade Marks Directive 2008 in conjunction with Article 34 (2) EU Trade Mark Regulation precludes national legislation whereby the invalidity or revocation of an earlier national trade mark, the seniority of which is claimed for an EU trade mark, may only be established a posteriori if the trade mark can be declared invalid or null, not only at the time on which this earlier national mark was surrendered or lapsed, but also on the date on which the court's decision in which this determination takes place.

IP 10120. Request for a preliminary ruling on jurisdiction in case of trademark infringement by a company in a Member State through an ad, aimed at consumers in another Member State

Trade Mark Law. Case C-172/18 AMS Neve et al. Preliminary questions. Court of Appeal (United Kingdom): “1. Does an EU trade mark court in Member State B have jurisdiction to hear a claim for infringement of the EU trade mark in respect of the advertisement and offer for sale of the goods in that territory?”

2. If not, which other criteria are to be taken into account by that EU trade mark court in determining whether it has jurisdiction to hear that claim?”

3. In so far as the answer to (2) requires that EU trade mark court to identify whether the undertaking has taken active steps in Member State B, which criteria are to be taken into account in determining whether the undertaking has taken such active steps?”

Unfair Competition***IPPT20180419. CJEU on the concept of “competitive disadvantage” point c, second paragraph of Article 102 of the TFEU***

Unfair Competition. Court of Justice EU, 19 April 2018, Meo v Autoridade da Concorrência

The concept of ‘competitive disadvantage’, for the purposes of subparagraph (c) of the second paragraph of Article 102 TFEU, must be interpreted to the effect that, where a dominant undertaking applies discriminatory prices to trade partners on the downstream market, it covers a situation in which that

behaviour is capable of distorting competition between those trade partners. A finding of such a 'competitive disadvantage' does not require proof of actual quantifiable deterioration in the competitive situation, but must be based on an analysis of all the relevant circumstances of the case leading to the conclusion that that behaviour has an effect on the costs, profits or any other relevant interest of one or more of those partners, so that that conduct is such as to affect that situation.

Other

[IP 10119](#). Opinion AG CJEU: EUIPO must re-examine trade mark three-dimensional "Kit Kat 4 fingers"

Trade Mark Law. Case C-84/17 P *Société des produits Nestlé v Mondelez UK Holdings & Services*. Opinion AG Wathelet

From the press release: "According to Advocate General Wathelet, EUIPO must re-examine whether the three-dimensional shape of the 'Kit Kat 4 fingers' product may be maintained as an EU trade mark. He proposes that the appeals brought by Nestlé, EUIPO and Mondelez be dismissed and states that Nestlé did not adduce sufficient evidence to show that its trade mark had acquired distinctive character. [...]"

[IP 10121](#). Opinion AG CJEU: No SPC for active ingredients that are not mentioned in the words of the claims of the basis patent

Patent Law. SPC. Case C-121/17: *Teva v Gilead*. Opinion A-G Wathelet. Preliminary questions High Court of Justice of England and Wales, Chancery Division.

Gilead markets an antiretroviral medicinal product called TRUVADA for the treatment of people with HIV. This medicinal product contains two active ingredients, tenofovir disoproxil (hereinafter "TD") and emtricitabine. Gilead obtained a marketing authorisation for this medicinal product ('the MA') issued by the European Medicines Agency (EMA) in 2005. Gilead is the holder of European patent EP 0915894 ("basic patent"). The patent expired on July 24, 2017 and covers a set of molecules that are useful for the therapeutic treatment of multiple viral infections in humans or animals, including HIV. In 2008, Gilead obtained SPC SPC/GB05/041 on the basis of claim 27 of the basic patent and the marketing authorisation for TRUVADA, which relates to a 'composition containing [TD], optionally in the form of a pharmaceutically acceptable salt, hydrate, tautomer or solvate, together with Emtricitabine'. The applicants seek to market generic alternatives to TRUVADA on the market as soon as the basic patent expires and have brought an action before the referring court to challenge the validity of the SPC. [...]

ITEMS

News

[IP 10114](#). IViR Summer Courses on Privacy Law & Policy en International Copyright Law Print this page

IViR: "This summer, the Institute for Information Law (IViR), affiliated with the University of Amsterdam, will hold its annual Summer Courses on International Copyright Law and on Privacy Law and Policy. Both courses will take place in the city center of Amsterdam from 2 to 6 July, 2018."



[IP 10116](#). \$ 19,2 million in statutory damages for infringement Harley-Davidson trademark

World Intellectual Property Review: "Motorcycle manufacturer Harley-Davidson has secured \$19.2 million in statutory damages in a trademark clash with t-shirt designer SunFrog, in what is Harley-Davidson's largest-ever trademark infringement win. In May last year, Harley-Davidson accused SunFrog of selling counterfeit merchandise, including t-shirts, leggings and mugs, online through its platform. Michigan-based SunFrog operates a platform which designs and sells print-on-demand clothing products to consumers, who are invited to upload designs onto the website. According to the claim, the online platform had infringed Harley-Davidson's 'Bar & Shield Logo', 'Willie G. Skull Logo' and 'Number 1 Logo' trademarks, and Harley-Davidson's copyright in the 'Willie G. Skull Logo'.

[...]

SunFrog was also accused of facilitating the advertisement and promotion of the products on social media sites by providing its sellers with sales-tracking tools and offering tutorials for social media marketing."

[IP 10122](#). UK ratifies the Unified Patent Court Agreement

From the press release: "The Minister for Intellectual Property, Sam Gyimah MP, has today (26 April 2018) confirmed that the UK has ratified the Unified Patent Court Agreement (UPCA). Our ratification brings the international court one step closer to reality. [...]"

Innovative businesses will benefit significantly from the Unified Patent Court. It removes the requirement to assert rights before the court system of each state. The unique nature of the proposed court means that the UK's future relationship with the Unified Patent Court will be subject to negotiation with European partners as we leave the EU. Ratification of the UPCA will keep the UK at the forefront of influencing the international system."

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