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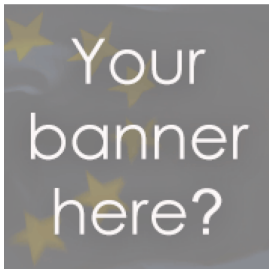
The Advanced Masters Intellectual Property Law and Knowledge Management (IPKM) feature specialisation tracks on international IP litigation practice, entrepreneurship and valorization, and claim drafting. In its common programme lawyers, economists, scientists and engineers mingle to deal with real-life problems in multidisciplinary teams.

Concise European Trade Mark and Design Law aims to offer a rapid understanding of the provisions of trademark and design law in force in the European Union (EU). In an increasingly globalized and diversified marketplace, the importance of brands and their effective legal protection across country borders and regions is ever growing. In the past twenty years, trademarks and designs have become truly European. The expansion of the EU, from fifteen Member States in 1996 to twenty-eight at present, has triggered further discussion of pan-European trademark and design protection, its requirements and limitations, and even twenty years of case law of the Court of Justice of the EU have left – or in fact opened – many questions on the interpretation of the law. This book, one of the series of volumes of commentaries on European intellectual property legislation, provides information on the judgments of the relevant case law of the EU and also incorporates new case law since the publication of its first edition.



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MONTHLY CASE LAW OVERVIEW

Trade Mark Law

Appeal against judgment of the General Court regarding genuine use of the wordmark NN dismissed by reasoned order

IPPT20180117, CJEU, Josel v EUIPO

Trade Mark Law. Appeal against judgment of the General Court regarding genuine use of the wordmark NN dismissed by reasoned order: grounds of appeal are either manifestly inadmissible or manifestly unfounded.

Patent Law

CJEU about incorrect date of first marketing authorisation for an SPC

IPPT20171220, CJEU, Incyte v Szellemi Tuljdon Nemzeti Hivatala

Patent Law. Date of the first MA, as stated in an application for the SPC, on the basis of which the duration of the certificate is calculated, is incorrect when the incorrect date led to a method for calculating the durating of the certificate which does not comply with the requirements of Article 13(1) of SPC Regulation for Medicinal Products, as interpreted by a subsequent judgment of the Court. When the date of the first MA is incorrect, the holder of an SPC may, under Article 18 of SPC Regulation for Medicinal Products, bring an appeal for ectification of the duration stated in the SPC, provided that the SPC has not expired.

Privacy

Collective action against Facebook cannot proceed

IPPT20180125, CJEU, Schrems

Privacy. *Private International Law*. A user of a private Facebook account can be regarded a consumer within the meaning of article 15 of the Brussels I Regulation when he has been assigned the claims of numerous consumers for the purpose of their enforcement in judicial proceedings. A consumer As the assignee of other consumer's claims, he cannot, however, benefit from the consumer forum for the purposes of a collective action under Article 16 of the Brussels I Regulation: the consumer forum does not apply to the

plaintiff who is not a party to the consumer agreement concerned.

Designations of Origin

Aldi allowed to use the name 'Champagner Sorbet' if their sorbet has a taste attributable primarily to champagne as one of its essential characteristics
IPPT20171220, CJEU, Champagner Sorbet
Designations of Origin. The use of a Protected designation of origin (PDO) as part of the name under which is sold a foodstuff that does not correspond to the product specifications for that PDO but contains an ingredient which does correspond to those specifications – like "Champagner Sorbet" containing 12% champagne – cannot be regarded, in itself, as an unfair use against which PDOs are protected in all circumstances: it is for the national courts to determine, in the light of the particular circumstances of each individual case, whether such use is intended to take unfair advantage of the reputation of a PDO, this is the case when that foodstuff does not have, as one of its essential characteristics, a taste attributable primarily to the presence of that ingredient in the composition of the foodstuff.

Competition Law

Arrangement intended to disseminate misleading information relating to adverse reactions to medicinal products constitutes a restriction of competition
IPPT20180123, CJEU, Hoffmann-La Roche
Competition Law. *Pharmaceutical Law*. National competition authorities are allowed to consider medicinal products of which the MA lays outside the treatment of the diseases at issue, but can be used for this and therefore can be regarded as substitutable with other medicinal products as products in the same market. It is for national courts to decide whether such substitutability exists. An agreement restricting the conduct of third parties, which consists in encouraging the use of another medicinal product for the treatment of the same condition, does not escape the application of that provision on the ground the arrangement cannot be considered to be ancillary and objectively necessary for the implementation of the licensing agreement. An arrangement which consists in dissemination of misleading information relating to adverse reactions with a view to reducing the competitive pressure constitutes a restriction of competition 'by object' under Article 101(3) TFEU. An arrangement intended to disseminate such misleading information in respect of a medicinal product cannot be regarded as indispensable under Article 101(1) TFEU and therefore cannot be exempt.

Other

IP 10094. Request for a preliminary ruling on whether the interpretation by the CJEU of Article 2(a) Copyright directive precludes national legislation
Case C-683/17. Request for a preliminary ruling. Supremo Tribunal de Justiça (Portugal).
Copyright. Preliminary questions: "1. Does the interpretation by the Court of Justice of the European Union of Article 2(a) of Directive 2001/29/EC preclude national legislation – in the present case, the provision in Article 2(1)(i) of the Codigo de Direitos de Autor e Direitos Conexos (Code on Copyright and Related Rights) (CADC) – which confers copyright protection on works of applied art, industrial designs and works of design which, in addition of the utilitarian purpose they serve, create their own visual and distinctive effect from an aesthetic point of view, their originality being the fundamental criterion which governs the grant of protection in the area of copyright?
2. Does the interpretation by the Court of Justice of the European Union of Article 2(a) of Directive 2001/29/EC preclude national legislation - in the present case, the provision in Article 2(1)(i) of the CDADC – which confers copyright protection on works of applied art, industrial designs and works of design if, in the light of particularly rigorous assessment of their artistic character, and taking account the dominant views in cultural and institutional circles, they qualify as an 'artistic creation' or 'work of art'?"

IP 10095. Request for a preliminary ruling on when an individual trade mark is used in such a way as to infringe the exclusive right of a trade mark
Case C-690/17. Request for a preliminary ruling. Oberlandesgericht Dusseldorf (Germany).
Trade Mark Law. Preliminary questions:
"Is an individual trade mark used in such a way as to infringe rights for the purposes of point (b) of the second sentence of Article 9(1) of the EC Trade Mark Regulation/EU Trade Mark Regulation or point (a) of the second sentence of Article 5(1) of the Trade Mark Directive in the case where
- the individual trade mark is affixed to a product in respect of which the individual trade mark is not protected; [...]"

ITEMS

News

IP 10090. New Board at Hoyng Rokh Monegier
From the press release: "Benoît Strowel, a member of Hoyng Monegier's and HOYNG ROKH MONEGIER's executive committee since 2011, will succeed Willem Hoyng as managing partner. The other members of the executive committee are Bart van den

Broek, Christine Kanz, Carl De Meyer and Luis Fernández-Novoa.
Willem will step down as managing partner after seven successful years in the position, first as managing partner of Hoyng Monegier and since 2015 as first managing partner of the new European IP Boutique HOYNG ROKH MONEGIER.
He will now dedicate his time to his busy practice and the firm's client relationships."

IP 10091. Radiohead refutes that they have filed a plagiarism lawsuit against Lana Del Rey
The Guardian: "Radiohead have refuted Lana Del Rey's claim that they have filed a lawsuit against her that demands publishing rights to her song Get Free, thanks to its similarity to their song Creep.
[…]
A representative for Radiohead's publishers, Warner/Chappell, admitted they had been "in discussions since August of last year with Lana Del Rey's representatives. It's clear that the verses of Get Free use musical elements found in the verses of Creep and we've requested that this be acknowledged in favour of all writers of Creep." But they added that no lawsuit has been filed, and Radiohead aren't demanding 100% of the publishing, per Del Rey's claims."

IP 10092. Kodak announces blockchain-powered photo rights management platform and cryptocurrency
The Verge: "There's a growing list of companies that have added language about blockchain or cryptocurrency into their names and mission statements, and it makes sense. Companies that do so see their stocks rise in value afterward. The latest company to jump on this trend is, unexpectedly, Kodak, which just launched its own KodakCoin, a cryptocurrency for photographers. As soon as the news was announced, Kodak's stock (KODK) jumped up, and as of this writing, its stock price is $5.02, a 60 percent gain. [...]"

IP 10093. #metoo trademark application withdrawn
World Intellectual Property Review: "Hard Candy Cosmetics has withdrawn its trademark application for '#metoo' following widespread public criticism.The US beauty brand, which sells make-up products through Walmart, abandoned its application to the US Patent and Trademark Office on Thursday, January 18. Filed in October last year, the trademark, serial number 87,653,745, covered cosmetics and fragrances in international class 3, and US classes 1, 4, 6, 50, 51, and 52. [...]"

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