

NEWSLETTER

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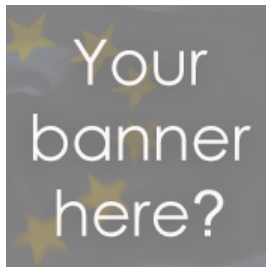
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JOB OFFERS AND ADVERTISEMENTS



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

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MONTHLY CASE LAW OVERVIEW

Copyright

The owner of an internet connection cannot be exonerated from liability for copyright infringements by naming a family member who might have had access to that connection

IPPT20181018, CJEU, Bastei Lubbe

Copyright. Article 8(1) and (2) of the Copyright Directive read in conjunction with Article 3(1) thereof, and Article 3(2) of the Enforcement Directive must be interpreted as precluding national legislation under which the owner of an internet connection used for copyright infringements through file-sharing cannot be held liable to pay damages if he can name at least one

family member who might have had access to that connection without providing further details as to when and how the internet was used by that family member: such a legislation would make proving the alleged infringement of copyright and who was responsible for that infringement impossible and thereby not respect the requirement to ensure a fair balance between the various fundamental rights in question.

IP 10141. Advocate General: Distribution right in Copyright Directive includes t-shirts in storage away from store

Copyright. Preliminary questions in a procedure regarding the unauthorised sale of t-shirts with logo's of rock bands and artists. The shirts were placed in the store itself as well as in a storage elsewhere. The Swedish Supreme courts questions whether the right to authorise or prohibit any form of distribution to the public by sale or otherwise - as mentioned in the Copyright Directive - includes the t-shirts in the storage. Advocate General Campos Sánchez-Bordona is of the opinion that it does, claiming that storing the shirts is part of the actions that lead to selling them.

Trademark Law

No risk of confusion between mark with four crossed lines and Asics figurative mark

IPPT20181016, GCEU, Asics v EUIPO

Trade Mark Law. Appeal against the decision of the Board of Appeal of EUIPO in the opposition procedure regarding the figurative sign with four thin straight lines for class 18 (leather and imitations of leather), 24 (textiles and textile goods) and 25 (clothing, footwear, headgear). The Board of Appeal ruled that there was no risk of confusion and that the mark applied for did not take unfair advantage of, or was detrimental to, the distinctive character of the repute of the earlier trade mark.

The action is dismissed. The Board of Appeal found correctly that there was no visual similarity between the marks, because the overall impression given by the marks at issue is so different that the consumer will not make a connection between the signs at issue solely on the basis that they are both composed of parallel lines crossing two other lines. The General Court confirms the analysis of the Board in regard of the



phonetic and conceptual comparison. Because the signs are figurative marks without word elements it is not



possible to compare the signs phonetically. Furthermore, none of the graphic forms have a conceptual content.

(Courtesy of Bram

Woltering and Peter Claassen, [AKD](#))

ITEMS**Calendar*****[IP 10149. Marques EU judges meeting on 18 January 2019 in Amsterdam](#)***

Marques: “MARQUES is hosting its first European Judges Meeting in Amsterdam on 18 January 2019.

Following the popularity of national judges meetings, which have been organised by MARQUES all over the world, this new one-day event will bring together IP-specialist judges and practitioners from across Europe to discuss developments in the CJEU and General Court, EUIPO Boards of Appeal and national courts.

Confirmed participants include judges from Belgium, the Netherlands, Portugal and the UK as well as members of the General Court and Boards of Appeal.

Among the topics on the agenda are: jurisdiction issues in EU trade mark law; how case law from Luxembourg has helped build trade mark law in the EU; and complex marks and those with weak/non-distinctive components. There will also be round tables where judges will answer questions raised by practitioners. The event will conclude with a drinks reception.

This European Judges Meeting is sure to be popular, so reserve your place now!”

News***[IP 10140. Torrent usage on the rise due to increase in exclusive content](#)***

Motherboard: “A new study shows that after years of declines, BitTorrent usage and piracy is on the rise again. The culprit: an increase in exclusivity deals that force subscribers to hunt and peck among a myriad of streaming services to actually find the content they’re looking for.”

[IP 10142. Draft Council Conclusions on the EU Customs Action Plan to Combat IPR Infringements for the Years 2018 to 2022.](#)

Press Release: “The EU Customs Action Plan to combat IPR infringements for the years 2018-2022 is attached. A roadmap will be prepared by the Commission in co-operation with Member States experts to define the actions and tools to be deployed within an agreed timeframe, taking into account the financial and human resource implications. The agreed roadmap will be made available to the Council in Spring 2019.”

[IP 10143. Walmart files patent for carts that track your heart rate.](#)

Popular Mechanics: ” [...] The grocery chain filed a patent in August for a shopping cart that monitors various biometric signals, like a customer's body temperature, heart rate and tightness of grip on the handle. According to the patent titled System And Method For Biometric Feedback Cart Handle, the data

would be transmitted to a server and used to alert staff when shoppers might need help or medical assistance. Or when Black Friday stampedes give way to a holiday fracas. [...]”

[IP 10143. Colin Kaepernick wants to trademark an image of his face and hair.](#)

CNBC International: “ [...] Fans could be able to buy t-shirts, shampoo and even candles featuring a black and white image of the athlete and activist with a beard, mustache and afro hairstyle, which he has applied to trademark. Kaepernick's company, Inked Flash, has applied to the U.S. Patent and Trademark Office (USPTO) to use the image in several categories such as clothing, toys, candy and mugs. The filing, dated October 5, was first reported by ESPN on Wednesday. [...]”

[IP 10145. Richard blames his iPhone in copyright case](#)

Page Six: “Controversial artist Richard Prince is back in court for an ongoing copyright case over two photographs used in his 2014 “New Portraits” series that were taken by artists Donald Graham and Eric McNatt. Prince — who took the images from Instagram and printed them largely unaltered with a comment he added — is arguing that his iPhone is a “paintbrush.” [...]”

[IP 10146. According to reports, Hailey Baldwin filed an application to register the trademark for the name “Hailey Bieber”](#)

elite daily: “The world has one question for Justin Bieber and Hailey Baldwin: Are you married or not? My god. The mystery is doing my head in. But what Hailey Baldwin just did could hint at their current relationship status. Hailey Baldwin filed to trademark Justin Bieber's last name, according to a report by TMZ. And if it's true, I am totally and utterly shooketh. Elite Daily reached out to Baldwin's team for confirmation on the report, but did not hear back by the time of publication.”

[IP 10147. China establishes Trademark Office to protect intellectual property of domestic businesses](#)

Sixth tone: “China’s first trademark office for helping domestic businesses protect their intellectual property overseas was established Wednesday in Shanghai, according to business news outlet Jiemian.

The Shanghai Trademark Overseas Protection Office will support Chinese companies in international copyright disputes by providing guidance, training, and legal services. It will also create a think tank of experts to share their professional suggestions with businesses.”

[IP 10148. Little Trees Air Fresheners sues Balenciaga for copyright infringement](#)

Vogue: “Nearly two months after Balenciaga was sued by City Merchandise Inc for copyright infringement over its New York tote, the company has once again found itself in hot water over its new leather tree-shaped key rings.

According to TMZ, Car-Freshner Corporation, the company that owns the rights to Little Trees Air Fresheners, is suing Balenciaga for copyright infringement as they feel the label has once again crossed the rather blurry line of appropriation.”

IP 10150. YouTube CEO: new Copyright Directive threatens hundreds of thousands of jobs

According to YouTube CEO Susan Wojcicki, article 13 of the new Copyright Directive threatens hundreds of thousands of jobs.

Googleblog.com: “Article 13 as written threatens to shut down the ability of millions of people -- from creators like you to everyday users -- to upload content to platforms like YouTube. And it threatens to block users in the EU from viewing content that is already live on the channels of creators everywhere. This includes YouTube’s incredible video library of educational content, such as language classes, physics tutorials and other how-to’s.

This legislation poses a threat to both your livelihood and your ability to share your voice with the world. And, if implemented as proposed, Article 13 threatens hundreds of thousands of jobs, European creators, businesses, artists and everyone they employ. The proposal could force platforms, like YouTube, to allow only content from a small number of large companies. It would be too risky for platforms to host content from smaller original content creators, because the platforms would now be directly liable for that content. We realize the importance of all rights holders being fairly compensated, which is why we built Content ID and a platform to pay out all types of content owners. But the unintended consequences of article 13 will put this ecosystem at risk. We are committed to working with the industry to find a better way. This language could be finalized by the end of the year, so it’s important to speak up now.”

IP10151 Opinion AG CJEU: no copyright protection for a simple military report

From the press release: “According to Advocate General Szpunar, a simple military report cannot enjoy copyright protection. First, such a report does not satisfy the requirements in order to be treated as a work eligible for copyright protection and, second, such protection would constitute an unjustified limitation on freedom of expression.

[...]

The Advocate General doubts that such reports can be classified as works eligible for copyright protection. He notes in particular that these are purely informative documents, drafted in absolutely neutral and standardised terms, providing an accurate report of

events or stating that no events of interest have occurred. Such ‘raw’ information, that is to say, information presented in an unaltered state, is excluded from copyright, which protects only the manner in which ideas have been articulated in a work. Ideas (including raw information) themselves can therefore be freely reproduced and shared.

[...]

Although the State is entitled to benefit from the civil right of ownership, such as the right to intellectual property, it cannot rely on the fundamental right to property as a means of restricting another fundamental right such as freedom of expression. The State is not a beneficiary of fundamental rights, but is rather under an obligation to safeguard fundamental rights.

Furthermore, it does not appear necessary to protect military reports by way of copyright.”

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