

NEWSLETTER

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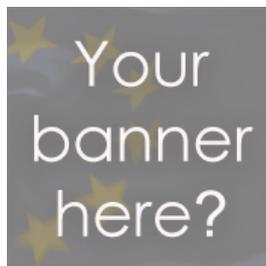
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JOB OFFERS AND ADVERTISEMENTS

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.



Advertising in this newsletter and on IP-PortaI is a great way to get the attention of the European IP-society for job offers, conferences and other IP related subjects. Advertising on IP-PortaI will get you a large banner on our website, a banner in our

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

MONTHLY CASE LAW OVERVIEW**Copyright*****IP 10137. A-G CJEU: EU law does not preclude national legislation concerning publication***

Copyright. Case C-215/17. Nova Kreditna Banka Maribor d.d. v Republika Slovenija. Opinion A-G Bobek. Request for a preliminary ruling. Vrhovno sodišče Republike Slovenije (Supreme Court of the Republic of Slovenia).

A-G Bobek proposes the CJEU to answer the questions as follows:

– Article 1(2)(c), third indent, of Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public

sector information, as amended by Directive 2013/37/EU of the European Parliament and of the Council of 26 June 2013 amending Directive 2003/98, does not preclude national legislation, such as that in question in the main proceedings, which permits unrestricted (absolute) access to certain information concerning copyright and consultancy contracts solely in relation to institutions under the dominant influence of the State.

‘39. Since the issues of initial access are clearly ones for the Member States to decide, then by definition the subsequently potentially applicable ‘add-on’ in the form of Directive 2003/98 cannot be used for reasoning backwards and limiting the scope of that initial access. As a result, that directive cannot prevent national rules granting unrestricted access to certain documents, even if those documents were categorised as business secrets.’

[...]

Trademark law***EU trade mark “NEUSCHWANSTEIN” not descriptive and not registered in bad faith***

[IPPT20180906, CJEU, Souvenir – Geschenke – Ehrenpreise eV v EUIPO](#)

***Trade mark law.***

Designation

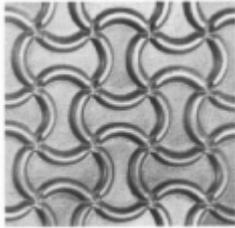
‘Neuschwanstein’ from EU word mark “NEUSCHWANSTEIN” not descriptive for quality or essential characteristic goods and services:

‘souvenir items’ not mentioned in Nice classification, goods covered by contested trade mark are everyday consumer goods and everyday services, souvenir function is not an objective characteristic inherent to the nature of a product, the fact that the concerned items constitute souvenirs through the mere affixing of the name “Neuschwanstein” is not, in itself, an essential descriptive characteristic of those goods. Designation “Neuschwanstein” not descriptive for place of origin goods and services: the castle of Neuschwanstein is not famous because of souvenir items or offered services, not apparent from the case file that the contested trade mark is used to market specific souvenir products and to offer particular services for which it would be traditionally known, not all services covered by the contested trade mark are directly offered at the website of the castle, therefore it is not reasonable to conclude that, in the mind of the relevant public, the place of marketing to which the name ‘Neuschwanstein’ relates is, as such, a description of a quality or an essential characteristic of the goods and services covered by the contested trade mark. General Court gave sufficient reasons to the requisite legal standard in regard to the existence of distinctive character of the contested trade mark by

stating that mere affixing of that mark on the goods and services concerned enables the relevant public to distinguish them from those sold or provided in other commercial or tourist areas. It is not apparent from the Lindt & Sprüngli-judgment (IPPT20090611) that the assessment of bad faith must necessarily take the means used to achieve a legitimate objective into account.

CJEU dismisses the appeal of Birkenstock regarding their figurative mark representing a pattern of wavy, crisscrossing lines

[IPPT20180913, CJEU, Birkenstock v EUIPO](#)



Trade Mark Law. The General Court was entitled to hold that the applicability of the case-law relating to three-dimensional marks that are indissociable from the appearance of the goods - that are devoid of any distinctive character unless they depart significantly from the norm or customs of the sector - is applicable to Birkenstock's figurative mark representing a pattern of wavy, crisscrossing lines: this case-law also applies to a figurative mark consisting of the two-dimensional representation of the product or a sign consisting of a design applied to the surface of a product, in view of the intrinsic characteristics of the sign - which is made up of a series of elements which are repeated regularly - and the nature of the goods covered there is an inherent probability that a sign consisting of a repetitive sequence of elements will be used as a surface pattern and thus will be indissociable from the appearance of the goods concerned.

ITEMS

News

[IP10138, European Parliament votes in favour of new copyright laws](#)



BBC News: “Controversial new copyright laws have been approved by members of the European Parliament. The laws had been changed since July when the first version of the copyright directive was voted down. Critics say they remain problematic. Many musicians and creators claim the reforms are necessary to fairly compensate artists. But opponents fear that the plans could destroy user-generated content, memes and parodies. Leaders of the EU's member states still need to sign off on the rule changes before the individual countries have to draft local laws to put them into effect. The vote in Strasbourg was 438 in favour of the measures, 226 against and 39 abstentions [...]”

[IP10139, “Image rights metadata in Google Images”](#)

Google: “As part of a collaboration between Google, photo industry consortium CEPIC, and IPTC, the global technical standards body for the news media, you can now access rights-related image metadata in Google Images.

[...]

Starting today, we've added Creator and Credit metadata whenever present to images on Google Images. To see this information on Google Images, you can click on the “Image Credits” link to view the metadata fields. Over the coming weeks, we will also add Copyright Notice metadata.

[...]”

[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.

Sandvine's new Global Internet Phenomena report offers some interesting insight into user video habits and the internet, such as the fact that more than 50 percent of internet traffic is now encrypted, video now accounts for 58 percent of all global traffic, and Netflix alone now comprises 15 percent of all internet downstream data consumed.

But there's another interesting tidbit buried in the firm's report: after years of steady decline, BitTorrent usage is once again growing”.

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