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JOB OFFERS AND ADVERTISEMENTS

MONTHLY CASE LAW OVERVIEW

Related rights

IP 10183. A-G CJEU: "Sampling" without permission of the producer of the first phonogram is copyright infringement

Case C-476/17: Pelham. Opinion A-G Szpunar::

The A-G proses that the Court should answer the questions as follows:

"(1) Article 2(c) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society must be interpreted as meaning that taking an extract of a phonogram for the purpose of using it in another phonogram (sampling) infringes the exclusive right of the producer of the first phonogram to authorise or prohibit the reproduction of his phonogram within the meaning of that provision where it is taken without the latter's permission.

(2) Article 9(1)(b) of Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property must be interpreted as meaning that a phonogram which contains extracts transferred from another phonogram (samples) is not a copy of the other phonogram within the meaning of that provision.

(3) Article 2(c) of Directive 2001/29 must be interpreted as precluding the application of a provision of the national law of a Member State, such as Paragraph 24(1) of the Gesetz über Urheberrecht und verwandte Schutzrechte — Urheberrechtsgesetz (German Law on Copyright and Related Rights) of 9 September 1965, according to which an independent work may be created in the free use of another work without the consent of the author of the work used, to phonograms, in so far as it exceeds the scope of the exceptions and limitations to exclusive rights provided for in Article 5(2) and (3) of that directive.

(4) The quotation exception provided for in Article 5(3)(d) of Directive 2001/29 does not apply where an extract of a phonogram has been incorporated into another phonogram without any intention of interacting with the first phonogram and in such a way that it forms an indistinguishable part of the second phonogram.

(5) Member States are required to ensure the protection, in their domestic law, of the exclusive rights set out in Articles 2 to 4 of Directive 2001/29, in so far as those rights can be limited only in the application of the exceptions and limitations listed exhaustively in Article 5 of that directive. Member States are nevertheless free as to the choice of form and methods they consider appropriate to implement in order to comply with that obligation.

(6) The exclusive right of phonogram producers under Article 2(c) of Directive 2001/29 to authorise or prohibit reproduction, in part, of their phonogram in the event of its use for sampling purposes is not contrary to the freedom of the arts as enshrined in Article 13 of the Charter of Fundamental Rights of the European Union."

Trade Mark Law – Geographical Indications

CJEU on genuine use of a three-dimensional trade mark on which a word mark has been affixed

IPPT20190123, CJEU, Klement v EUIPO

Trade Mark Law. General Court implicitly held that trade mark in question has a high degree of distinctiveness solely because of its unusual shape, even though that shape is to some extent functional. Trade mark in question has been put to genuine use even though the word mark "Bullerjan" is affixed to the goods. The fact that the word mark "Bullerjan" can facilitate the commercial origin of the respective furnaces does not conflict with the fact that the word mark does not alter the distinctive character of the

three-dimensional trade mark consisting of the shape of the goods. In the event that the court of first instance finds that the mark in question departs significantly from the norm or customs of the sector, it is not up to the trade mark proprietor to provide further evidence that the shape of the trade mark is not customary in the sector concerned, but to the person who claims that the trade mark has not been put to genuine use.

CJEU on requirement to package a product covered by a protected geographical indication in its geographical area of production
IPPT20181219, CJEU, Schwarzwalder Schinken
Geograpical Indications. Requirement to package a product covered by a protected geographical indication in its geographical area of production is justified, under Article 4(2)(e) Council Regulation on the protection of geographical indications and designations of origin for agricultural products and foodstuffs, if it constitutes a necessary and proportionate means to safeguard the quality of the product, to guarantee its origin or to ensure the verification of the specification of the protected geographical indications. It is for the national court to assess whether that requirement is duly justified by one of these objectives, regarding the protected geographical indications 'Schwarzwälder Schinken'. (...)

CJEU on communication of carve out is request to limit the scope of the marketing authorisation of the generic medicinal product
IPPT20190214, CJEU, De Staat v Warner-Lambert
Patent Law. In a marketing authorisation procedure, a communication of the package leaflet or summary of the product characteristics of a generic medicinal product, which does not include indications or dosage forms which were still covered by patent law at the time that medicinal product was placed on the market (carve out), constitutes a request to limit the scope of the marketing authorisation of the generic medicinal product in question

ITEMS

News

IP 10184*. The Netherlands, Luxembourg, Poland, Italy and Finland do not support the end-result of the new Copyright Directive
The end-result on copyright is a step back for the digital single market. It fails to strike a balance between protecting right holders and the interests of individual citizens. This is what The Netherlands, Luxembourg, Poland, Italy and Finland claim in a joint statement. They believe that the Directive in its current form is a step back for the Digital Single Market rather than a step forward.
According to the mentioned counties, the Directive does not strike the right balance between the protection of right holders and the interests of EU citizens and companies and therefore risks to hinder innovation rather than promote it.
The end-result must now be approved by Council representatives and the EP plenary. The rapporteur, Axel Voss claims that the deal is an important step towards correcting a situation which has allowed a few companies to earn huge sums of money without properly remunerating the thousands of creatives and journalists whose work they depend on. He states that the deal helps make the internet ready for the future, a space which benefits everyone, not only a powerful few.
Read the joint statement here.
Read the press release of the European Parliament including the statements of Voss here.

IP 10185*. Manchester United orders Panini Cheapskates to stop selling drawings of their ex-players
Football Club Manchester United has ordered a couple who make their own football stickers to stop selling their drawings of the team's ex-players. The couple started during the World Cup in 2014 under the name "Panini Cheapskates". The couple says Manested United got in touch and made them stop selling their drawings. A Manchester United spokesman states: "Permission to use Manchester United's intellectual property is only granted to official licensees, partners and sponsors of the club. "Because Panini Cheapskate's items featured the Manchester United word mark, they unfortunately infringed those intellectual property rights." The couple has now changed the drawings, that no longer show the Machested United logo and the real name of the players.

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