NEWSLETTER

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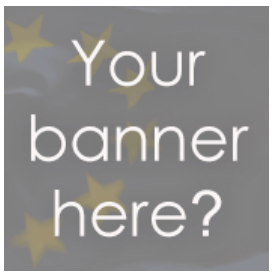

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MONTHLY CASE LAW OVERVIEW

Copyright

CJEU on the protection conferred by the exclusive distribution right of copyright protected goods
IPPT20181219, CJEU, Syed
Copyright. The storage by a retailer of copyright protected goods identical to those which he is selling may constitute an infringement of the exclusive distribution right meant in article 4(1) InfoSoc Directive: an act prior to the actual sale of a work or a copy thereof may infringe the distribution right, in that case it should established that those goods are actually intended to be sold to the public without the rightholder's authorisation, it cannot be inferred from the mere fact that the stored goods and the goods sold in the person's shop are identical that the storage constitutes an act carried out with the aim of making a sale on the territory of the Member State in which those goods are protected by copyright, as regards the determination of the purpose of the goods considered, account must be taken of all factors, including the distance between the storage facility and the place of sale, the regular restocking of the shop with goods from the storage facilities at issue, accounting elements, the volume of sales and orders as compared with the volume of stored goods, or current contracts of sale.

Trade mark law

Appeal against finding that the intervener was entitled to file a notice of opposition inadmissible
IPPT20180725, CJEU, QuaMa v EUIPO
Trade mark law. Appeal regarding the General Court's finding that EUIPO had not erred in interpreting the request for a change of name and address as an application for registration of a transfer of a trade mark so the intervener was entitled to file a notice of opposition inadmissible: re-examination of arguments already given before the General Court does not fall within the jurisdiction of the court, the same goes for arguments that were not put forward before the General Court. Appeal regarding the assessment of the relevant public also inadmissible: determining the relevant public and the level of attention is part of a factual assessment that does not fall within the jurisdiction of the court, findings of the General Court sufficiently motivated.

Portuguese national word mark adegaborba.pt is descriptive
IPPT20181206, CJEU, Portugal Ramos Vinhos v Adega
Trade mark law adegaborba.pt shall not be registered as a national Portugese word mark based on article 3(1)(c) of Directive 2008/95 regarding signs which consist exclusively of indications which may serve to designate the characteristics of the goods or services: the article pursues an aim that is in the public interest, which requires that signs or indications describing categories of goods or services may be freely used by all, the list of characteristics named in the article is not exhaustive, the Portuguese public will perceive the term "adega" as to be a reference to a facility in which wine is produced and stored and, therefore, as a reference to properties of those goods, the combination of this term and the geographical name ''Borba' - relating to the geographical origin of those goods- is descriptive, the fact that a term is part of the corporate name of a legal person is irrelevant for the purposes of examining the descriptive character of that term.

Case law video

Editor in chief Dick van Engelen on copyright protection of food products
IP 10172. In Levola/Smilde, the CJEU ruled that the taste of a food product cannot (yet) be protected by copyright. Hear more from our editor in chief Dick van Engelen, who is also an extraordinary Professor of Intellectual Property Litigation and Transaction Practice with Maastricht University.

ITEMS

News

IP 10167. Famous - unlikely - phrases that were claimed as trademark
BBC.com: "In recent days angry opinion pieces have sprung up in Kenyan media over the well-known Swahili phrase "Hakuna Matata". The phrase translated means "no problems" or "no worries" and is a common expression throughout east Africa. But to the rest of the world, it's best known as a song from the Lion King - and Walt Disney registered a trademark for the phrase for their merchandise.
Some Kenyan newspapers have accused the company of stealing from Kenyan culture by claiming ownership of the phrase. However the trademark they're talking about is itself not new - US records show it was first filed back in 1994 coinciding with the movie's original release. The row has likely come up now as hype around the film's live action remake brews.
We take a look at other famous phrases that were claimed as trademarks.
[...]"

IP 10168. Willemijn Docter joins HGF Amsterdam Office
Press release HGF: "HGF are pleased to announce further growth of the HGF Amsterdam office with the arrival of Willemijn Docter who joined the firm as a Senior Trade Mark Attorney on 1st December 2018.
[...]
Willemijn's practice encompasses all aspects of trade mark and design law from developing strategies for clearance and protection of brands and designs, to filing and prosecution of national and international trade mark and design applications. She assists clients in oppositions and cancellation proceedings before the Benelux and EU Offices for Intellectual Property, as well as in settlement negotiations and assignment agreements. [...]"

IP 10169. Cadbury purple trademark remains subject of litigation
The Drum: "Cadbury has faced yet another setback over its decades-long battle to own the right to trademark the colour purple, which it has used for its chocolate bars since 1905. [...]
"The Court of Appeal has previously held that the wording 'The mark consists of the colour purple, Pantone 2685C, being the predominant colour applied to the whole visible surface, of the packaging of the goods' potentially opens the door to a multitude of different visual forms. Therefore, if the Court had accepted Cadbury's argument that their UK registration is for a series of marks, Cadbury would arguably have a registration for a series containing an unknown number of different marks, consisting of the varying different forms. Unsurprisingly, this is something that the Court of Appeal was keen to prevent.""

IP 10170. Cyprus loses trademark 'halloumi' because correspondence went unanswered
Cyprus Mail: "Cyprus Mail: "Cyprus has lost the halloumi trademark in the UK essentially because of a change of address and because crucial correspondence from the UK dealing with the case either went astray or was not dealt with by the correct officials at the commerce ministry."

IP 10171. The end of the Blurred Lines copyright suit Print this page
ew.com: "The lengthy legal battle over Robin Thicke and Pharrell Williams' "Blurred Lines" finally came to an end this week with a payday for the Marvin Gaye family. The copyright lawsuit was settled on Monday when California Judge John A. Kronstadt entered a judgement of approximately $5 million against Thicke and Williams.
[...]
The suit began in 2013 when Gaye's family claimed "Blurred Lines" copied "Got to Give It Up," Gaye's 1977 hit song. Thicke sued for pre-emptive copyright protection, but the family won their case in 2015. Thicke and Williams made an appeal, but this past March a judge upheld the initial verdict and Judge Kronstadt confirmed the settlement this week."

IP 10172. 'Carlton' (Ribeiro) files lawsuit against Fortnite for copying dance moves
BBC News: "The Fresh Prince of Bel-Air star Alfonso Ribeiro is suing Fortnite's creators Epic Games, accusing them of copying his character's dance moves.
Ribeiro is also suing NBA 2K series creators Take-Two Interactive for using the "Carlton Dance".

The actor claims the companies unfairly profited from his "creative expression, likeness and celebrity".
The dance was made famous by his character Carlton Banks in the hit 1990s sitcom starring Will Smith.
Ribeiro famously performed the moves to Tom Jones' It's Not Unusual, and continues to performs it for fans."
[…]

***IP 10173*. Photographer sues Jennifer Lopez for posting image**
Fstoppers: "Pop singer Jennifer Lopez is the latest public figure to find herself embroiled in a legal battle, after a photographer announced he is suing her for $150,000 damages after she posted his image without permission.
Lopez added the photo to her Instagram story back in June, accompanying it with a now-ironic caption of "Today was a good day!!"
As per court documents obtained by The Blast, the photographer named in the lawsuit is Michael Stewart. He took the photo of Lopez walking through New York City, before then licensing the picture to the Daily Mail. The photo appeared on their website on June 29 of this year."

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