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JOB OFFERS AND ADVERTISEMENTS

MONTHLY CASE LAW OVERVIEW

Trade Mark Law

IP10255. Preliminary questions: can a trade mark proprietor oppose the further commercialization of trade mark products repaired by a non-licensed person on the basis of a collective trade mark and arcitle 13(2) CTMR?
Case C-133/20: European Pallet Association v PHZ. Preliminary questions Hoge Raad – Netherlands.
Via gov.co.uk. Preliminary questions: "1.
(a) Does successful recourse to Article 13(2) of the CTM Regulation require that the further commercialisation of the branded products concerned adversely affect or are liable to adversely affect one or more of the functions of the trade mark referred to in paragraph 3.2.4 above?
(b) If the answer to question 1(a) is in the affirmative, does that constitute a requirement that is additional to that of the existence of 'legitimate reasons'?
(c) Does it suffice for successful recourse to Article 13(2) of the CTM Regulation that one or more of the functions of the trade mark referred to in question 1(a) above are adversely affected?

2.
(a) In general, can it be said that, under Article 13(2) of the CTM Regulation, a trade mark proprietor may oppose the further commercialisation of goods under his trade mark if those goods have been repaired by persons other than the trade mark proprietor or persons to whom he has given consent to do so?
(b) If the answer to question 2(a) is in the negative, is the existence of 'legitimate reasons' within the meaning of Article 13(2) of the CTM Regulation, after repairs by a third party of goods put on the market by or with the consent of the trade mark proprietor, dependent on the nature of [Or. 9] the goods or the nature of the repair performed (as further explained in 3.2.5 above), or on other circumstances, such as special circumstances like those in the present case, set out above in 2.1 (ii) and (iii)?
3.
(a) Is opposition by the trade mark proprietor as referred to in Article 13(2) of the CTM Regulation to the further commercialisation of goods repaired by third parties excluded if the trade mark is used in such a way that it does not give the impression that there is a commercial connection between the trade mark proprietor (or his licensees) and the party who further commercialises the goods, for example if, by the removal of the brand and/or by the additional labelling of the goods, it is clear after the repair that the repair has not been carried out by or with the consent of the trade mark proprietor or a licensee of the latter?
(b) Does that mean that significance should be attached to the answer to the question of whether the trade mark can be easily removed without compromising the technical soundness or practical usability of the goods?
4. When answering the foregoing questions, is it important whether it is a collective trade mark under the CTM Regulation that is at issue, and if so, in what respect?"

Design Law

IP10254. Preliminary questions: Can unregistered Community designs in individual parts of a product arise as a result of disclosure of an overall image of a product?
Case: C-123/20: Ferrari. Preliminary questions Bundesgerichtshof – Germany.
Design Law. Gov.co.uk: "The following questions are referred to the Court of Justice of the European Union for a preliminary ruling on the interpretation of Article 11(1) and the first sentence of Article 11(2), as well as of Article 4(2)(b) and Article 6(1)(a) of Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs (OJ 2002 L 3):
1. Can unregistered Community designs in individual parts of a product arise as a result of disclosure of an overall image of a product in accordance with Article 11(1) and the first sentence of Article 11(2) of Regulation (EC) No 6/2002?
2. If Question 1 is answered in the affirmative:
What legal criterion is to be applied for the purpose of assessing individual character in accordance with Article 4(2)(b) and Article 6(1)of Regulation (EC) No 6/2002 when determining the overall impression of a component part which - as in the case of a part of a vehicle's bodywork, for example - is to be incorporated into a complex product? In particular, can the criterion be whether the appearance of the component part, as

viewed by an informed user, is not completely lost in the appearance of the complex product, but rather displays a certain autonomy and consistency of form such that it is possible to identify an aesthetic overall impression which is independent of the overall form?"

Others

***IP10253*. A-G CJEU: e-mail addresses, telephone numbers and IP addresses are not covered by the concept of "names and addresses" as set out in article 8(2)(a) of the Enforcement Directive**

Litigation. The dispute concerns the refusal by YouTube and Google to provide certain information required by Constantin Film Verleih with regard to users who have placed several films online in breach of Constantin Film Verleih's exclusive exploitation rights. Constantin Film Verleih is asking YouTube and Google to provide it with the email addresses, telephone numbers and IP addresses of those users. The Landgericht Frankfurt am Main rejected Constantin Film Verleih's request that such information be provided. On appeal, the Oberlandesgericht Frankfurt am Main ordered YouTube and Google to provide the email addresses of the users concerned, rejecting Constantin Film Verleih's request as to the remainder. The Bundesgerichtshof asks whether email addresses, telephone numbers and IP addresses are covered by the concept of "names and addresses" as set out in article 8(2)(a) of the Enforcement Directive. A-G Saugmandsgaard Øe is convinced that this is not the case. In quotes:

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