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Table of Contents

Opinion

DR JESÚS IVÁN MORA GONZÁLEZ

Neutral Position of Online Service Providers in a Trade Mark Infringement 71

In *L'Oreal SA v eBay International AG* (C-324/09) the Court of Justice of the EU held that an online service provider must be considered not to have taken a neutral position in a trade mark infringement if it provided assistance that entails, in particular, optimising the presentation of the offers for sale or promoting those offers between the customer-seller and potential buyers. The principle of proportionality could provide an interesting approach to service neutrality in trade mark law and bring more certainty to the interpretation of the safe harbour provision in accordance with art.14(1) of Directive 2000/31.

Articles

JAMES FOX, LAURA THOMPSON,
BEVERLEY POTTS AND MARC
DÖRING

UK Threats: Worldwide Consequences? 74

Threats legislation in the UK may be viewed by those outside the country as a peculiar British animal confined to these shores. Our article explores how new UK threats legislation may have international reach beyond future-proofing itself for the potential introduction of the Unified Patent Court. It also selects some earlier high-profile cases involving threats, and considers whether they might be decided differently under the new law.

NICHOLAS FOX

Brevets sans Frontières: How Much Litigation Will Actually Take Place in the Unified Patent Court? 85

How much patent litigation takes place in Europe? And how much of that litigation is likely to transfer to a Unified Patent Court? In the early years, the Unified Patent Court will largely be an optional court which shares its jurisdiction with the national courts. Much patent litigation in Europe concerns national rights or concerns multinational pharmaceutical disputes. With the Unified Patent Court ineligible to hear the former and many high value pharmaceutical patents likely to be opted out, the volume of litigation in the new court is likely to be very limited for many years.

PAUL HUGHES

Painting on a Broader Canvas: The Need for a Wider Consideration of Moral Rights under EU Law 95

EU law has failed to establish a coherent approach to the moral rights flowing from art.6bis of the Berne Convention. There is a strong linkage between the concept of authorial autonomy that underpins moral rights and the EU fundamental rights of dignity and, to some degree, privacy. The concept of dignity embraces self-respect, the right to respect from others, autonomy, privacy, integrity and self-determination, which together could be employed in achieving greater harmonisation with respect to moral rights within the EU.

MARI MINN

Patent Settlement Agreements and the Refusal to License in the Light of Competition Law 109

Practices that are legal in patent law may come into conflict with competition law. This article considers EU case law dealing with problematic patent settlement agreements and the refusal to license in the pharmaceutical sector: *Lundbeck*, *Servier* and *IMS Health*.

GABRIELE SPINA ALI

Collective Monopolies: SIAE v Soundreef and the Implementation of Directive 2014/26 in Italy 113

In 1941 Italian law conferred on the Società Italiana Autori and Editori (SIAE) the exclusive right to manage and collect copyright licences on behalf of authors and right holders in Italy. In recent times, the lawfulness of this monopoly has been questioned by Soundreef, a UK-based company which has challenged SIAE's position in the Italian legal system by invoking relevant EU statutes and case law. The present article analyses SIAE's monopoly in the light of Directive 2014/26 on collective management and its implementation in Italy in 2017. While suggesting that recent laws have had only a limited effect on SIAE's privileged position in the Italian panorama, the article refers to the impact of Soundreef on the market to advocate that competition might be beneficial to the future of collective management in Italy.

Comments

NICK ZWECK

You Can DEFENDER Wide Specification: High Court Confirms Excessively Wide Specification not a Ground of "Bad Faith" in EU Trade Mark Law—*Jaguar Land Rover Ltd v Bombardier Recreational Products Inc* 129

Mr Justice Nugee confirmed that as a matter of settled EU law, an EU trade mark may not be invalidated for bad faith solely on the grounds that there was no intention to use the mark across the whole range of goods and services specified at the time of filing. Questions remain as to whether: (1) the law is right in principle; and (2) this is the position where there was no intention to use in relation to any of the goods covered. The court also gave guidance on pleading bad faith for excessive claim width.

ALEX WOOLGAR

Duran some Interesting Arguments with a View to Reclaim, but Le Bon et al. Come Undone in an Ordinary World: No Rio-version of US Copyright 134

In *Gloucester Place Music Ltd v Simon Le Bon & Ors*, the defendants sought to terminate the assignment to the claimant of US copyright in some of the band's most famous musical works, by taking advantage of the termination right under s.203 of the US Copyright Act 1976. The English High Court held that such purported termination was in breach of the various relevant music publishing agreements. The court did not have the benefit of expert evidence on US law, so the dispute focused primarily on contractual interpretation. The relevant agreements contained broad assignment provisions and warranties which the court construed as excluding the defendants from exercising the s.203 right.

AGATA SOBOL

Calculation of Damages for Copyright Infringement in Italy: *Flou SpA v Chateau d'Ax SpA* 138

This judgment is one of the most recent examples (at the date of submission of this comment) of how the Italian judges calculate damages in IPR infringement disputes. The general tendency developed in recent years is to apply the criterion of the restitution of profits made by the infringer. This criterion is considered not as an element to be held in consideration while assessing the IP right owner's lost profits, but as an autonomous way of sanctioning the infringer, even if there is no evidence of lost profits. This case shows that even with reference to copyright infringement, to which this specific provision of the Italian Intellectual Property Code (art.125.3) does not apply, the Italian judges tend to somehow apply this criterion.

Book Reviews

142