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Do the Trade Secrets (Enforcement, etc.) Regulations Contain New Principles for the Breach of Confidence? 759

This opinion examines the principles of common law and equity relating to the breach of confidence in the UK. It argues that the Trade Secrets (Enforcement, etc.) Regulations nuance the breach of confidence in three ways: first, by expanding the scope of application of the definition of a “trade secret”; secondly, by emphasising the requirement of “reasonable steps” in the traditional test; and, thirdly, by shifting the focus from the relational aspect of confidence to the value of the subject-matter in question.

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Painting by Numbers: Copyright Protection and AI-generated Art 786

Who owns the copyright when AI systems make art? Grounded in a detailed discussion of the technology, this article argues against the creation of legal exceptions for computer-generated artwork and instead views AI like any other tool. It argues for a utilitarian understanding of intellectual property rights in which the user (as opposed to the programmer) would hold the copyright for such works.

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NFTs: Copyright Foe or Friend? 793

Copyright infringement can occur when an NFT is created without authorisation of the copyright holder. On the other hand, NFTs might aid copyright owners in proving copyright infringement. NFTs are a “frenemy” to copyright owners, but with the potential to become a friend if the minting process is cost-effective, requires verification, and NFTs track access rather than just provenance.

Comments

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Kerry: Where Freihaltebedürfnis Goes to Die 800

The success of the producer of Kerrygold in preventing registration of Kerrymaid as a trade mark has serious implications for EU trade mark law. The Kerrymaid trade mark was found to be confusingly similar to the senior Kerrygold marks because the court did not accept that when the shared element indicates the origin of the goods it should be excluded from the assessment. The decision undermines the principle that descriptive signs should be kept free for use by all producers. As a consequence of the decision, producers may find it difficult to register trade marks containing descriptive elements that are shared with other trade marks. Furthermore, the first producer to succeed in registering a trade mark that includes a descriptive term may secure a monopoly on the use of that descriptive term in a trade mark.

Non-traditional Signs: The EUIPO's First Board of Appeal Confirms that a Sound Mark, like Any Other Mark, Is Distinctive When It Is Perceived by Consumers as an Indication of Commercial Origin 808

Contrary to the examiner's decision, the EUIPO's First Board of Appeal ruled in favour of B. Braun Melsungen AG by stating that the sound mark for which it applied is not devoid of distinctiveness pursuant to art.7(1)(b) of Regulation 2017/1001. In particular, the Board of Appeal, after reiterating that the law does not provide specific criteria for assessing the distinctiveness of sound marks, has confirmed that, to satisfy the requirement of distinctiveness, both traditional and non-traditional marks (such as a sound mark) must enable the relevant public to identify goods and services as originating from a specific undertaking and, thus, distinguish them from those of other undertakings.

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