

Table of Contents

Articles

ANDY PHIPPEN AND EMMA BOND

The Online Harms Spearmint Paper—Just More Doing More? 169

In April 2019 the UK Government released its “Online Harms” White Paper to much press coverage and ministerial comment on how it will ensure that the UK is the safest place in the world to go online, while supporting and growing the UK as a world leader in digital business. In this article Professors Andy Phippen and Emma Bond present their first impressions on what is defined, and whether they view it as effective, in particular whether the white paper sets out achievable aims or is simply a case of following the typical government rhetoric of expecting companies to “do more”.

TIMOTHY PINTO

Robo ART! The Copyright Implications of Artificial Intelligence Generated Art 174

From a legal perspective, copyright and moral rights are the main rights which enable artists to be rewarded for their work, incentivise them and protect their intellectual creations from being exploited without consent. This article explores how these rights apply in the context of increasingly powerful and prevalent artificial intelligence.

Comments

HENRY ELKINGTON

Arcade Fire—Tombola Game Ads in Breach of Gambling Rules 180

The ASA has ruled that ads for a Tombola arcade game in an I'm A Celebrity, Get Me Out Of Here app breached CAP Code rules on gambling, as they were likely to be used by under-18s. The ASA considered that, although the app was neither directed nor targeted at under-18s in terms of its design, features and content, the advertiser, by not employing a specific targeting mechanism, had failed to minimise the likelihood that under-18s could be exposed to the gambling ads within the app.

DR JANET STRATH AND KATIE CAMERON

IPEC Fashions Trade Mark Infringement Decision out of Repackaging and Resale of Bracelet Links 181

In *Nomination v Brealey*, the Intellectual Property Enterprise Court (IPEC) held that the low-quality packaging used by the defendants was likely to damage the public's perception of the luxury NOMINATION brand. This decision confirms that a trade mark owner's right to object to its goods being poorly presented is not confined to the repackaging of pharmaceuticals, and that damage done to the reputation of a trade mark might be a legitimate reason for the proprietor of the mark to oppose further commercialisation of luxury goods.

CLARE SELLARS

TV Production Company Fined £120,000 for Personal Data Breaches During Filming of Documentary at Addenbrooke's Hospital 184

This article reviews the decision of the UK's Information Commissioner to fine True Visions Productions for unfairly and unlawfully filming patients at a maternity clinic at Addenbrooke's Hospital in Cambridge for a Channel 4 documentary.

ALEXANDRA COOKE

Pig v Tapir: Peppa Pig Succeeds in Trade Mark Invalidity Proceedings Before EU General Court 187

This article reviews the recent decision of the EU General Court in *Xinhao Pan v EUIPO* (T-777/17) upholding a declaration of invalidity in respect of a combination EU trade mark featuring a cartoon tapir (that looked like a pig) registered for clothing and footwear on the basis that it was likely to be confused with Entertainment One's earlier “PEPPA PIG Mark” registered for identical goods.

ED BADEN-POWELL AND RACHAEL HEELEY

Distributor Not Liable for Secondary Infringement of Copyright in Eminem Album 189

In *FBT Productions LLC v Let Them Eat Vinyl Distribution Ltd* the High Court found a record company liable for primary infringement of another label's copyright in Eminem's first album, Infinite. Yet the related distributor was not found liable for secondary infringement, as in the judge's assessment it did not know (or have reason to believe) that the copies it sold were infringing copies. The reasoning of the judgment is instructive on how courts are likely to approach applying that test.

JENNIFER AGATE

Adjudicating on Offence in Reality TV 192

This comment discusses Ofcom's adjudication on complaints that episodes of Celebrity Big Brother breached r.2.3 on offence.

ELEANOR STEYN

Privacy Damages Upheld for Couple Evicted on Can't Pay? We'll Take It Away 194

The Court of Appeal has upheld an award of £20,000 in damages for misuse of private information to a couple whose eviction was included in an episode of Channel 5's *Can't Pay? We'll Take It Away*. The ruling illustrates the appellate courts' reluctance to interfere unless a first-instance decision goes beyond a reasonable view of the evidence presented. The trial judge's decision was considered "long and meticulous", and he had considered the full range of public-interest issues when deciding liability, as well as the relevant facts when deciding quantum.

DR JANET STRATH AND KATIE CAMERON

High Court Grabs Gleissner by the Bigly Bad Faith Filing: Make Applications Great Again! 196

This article considers the High Court's decision that an application filed by Trump International Limited for the trade mark TRUMP TV was made in bad faith. Although the name might lead you to believe otherwise, the applicant was a UK company with no link to the current US President or to any businesses connected with him; rather, its sole director, one Mr Michael Gleissner, has achieved notoriety for being behind 5% of all contentious trade mark proceedings before the UK IPO in 2016, and whose companies have attempted to register trade marks associated with famous brands of third parties in various territories, including ITUNES, IPHONE, APPLE, THE HOME DEPOT, PAN AM, TESLA, THE LEARNING CHANNEL logo, and even the mark EUIPO.

ANDREW TERRY AND EILEEN WEINERT

Putting the Cat Back in the Bag: a Rare Belated Injunction but no Damages for Harm to Reputation in Privacy 199

This article reviews the unusual facts and decision in *ZXC v Bloomberg LP* in which Nicklin J granted a permanent injunction restraining continued publication on Bloomberg.com of an article containing details of a criminal investigation into the claimant businessman, over two years after publication and notwithstanding the court's earlier refusal to grant an interim injunction in the same case.

JENNIFER AGATE

Context Key in Social Media Defamation: Stocker v Stocker 203

This case comment discusses the Supreme Court decision in *Stocker v Stocker*, in which the Supreme Court considered defamatory meaning in the context of social media posts.