2019 Vol.30 Issue 7 ISSN: 0959-3799

# **Entertainment Law Review**

### **Table of Contents**

#### **Articles**

TOM WILKIN AND LISA KELLY

#### Anti-Protest Injunctions and Persons Unknown 207

This article considers injunctions against "persons unknown" in the wake of the recent high profile injunction applications on behalf of Anderton Park Primary School.

#### **Comments**

AMIRA SAIED

### Skating on Thin Ice: Court of Appeal Construes "Reasonable Endeavours" Obligations 210

This article reviews the decision of the Court of Appeal in *Gaia Ventures Ltd v Abbeygate Helical (Leisure Plaza) Ltd*, specifically that a property developer had failed to use reasonable endeavours to secure certain variations in and mergers of leases relating to an ice rink at a leisure plaza.

### DR JANET STRATH AND KATIE CAMERON

### Foul Play: EU General Court Finds NEYMAR Trade Mark Filed in Bad Faith 212

This article reviews Moreira v EUIPO (T-795/17) in which the EU General Court upheld a EUIPO Board of Appeal decision that in registering NEYMAR as an EU trade mark Carlos Moreira had acted in bad faith. The court rejected Mr Moreira's case that he had been unaware of the famous footballer, not least because he had applied to register the name of former Spain and Real Madrid goalkeeper Iker Casillas on the same day.

### ANDY MOSEBY AND HANNAH CORDWELL

# Court of Appeal Affirms Art Dealer's \$10 Million Commission on Sale of Gauguin Masterpiece 215

Staechelin v ACLBDD Holdings Ltd, a recent Court of Appeal decision concerning the 2014 sale of the Gauguin painting, "Nafea faa ipoipo (When will you marry?)", upheld the entitlement of the art dealer to his \$10 million commission payment, despite the agreement having been made with only two of the three trustees of the family trust which owned the painting. The case also clarifies the principle that an agent would still be entitled to commission despite a failure to pass on information, unless he has acted dishonestly.

#### **JENNIFER AGATE**

#### Lachaux: Serious Harm Test has Raised the Bar 217

This case comment discusses the Supreme Court decision in *Lachaux v Independent Print Ltd*, in which the court considered the test of serious harm under the Defamation Act 2013 s.1.

#### **ROHAN MASSEY**

# Dr Robin Rudd v John Bridle—High Court Considers the (in)adequacy of a Response to a Subject Access Request 219

This article reviews the decision of the UK High Court in *Rudd v Bridle*, in which Warby J provides useful insights into the adequacy of a response to a subject access request made under the Data Protection Act 1998 s.7, in particular the extent to which third party data can be withheld, and the application of the litigation privilege and other exemptions to the subject access provisions.

#### KIRSTEN TOFT

#### Cybersquatting Perhaps, but Where's the Goodwill? 222

This article reviews the recent ruling of the Court of Appeal in Media Agency Group Ltd v Space Media Agency Ltd reaffirming the principle in that the mere registration of domain name containing a third party's trade mark is capable of constituting passing off, whilst reminding us that this "does not dispense with the need to show, in the case of a passing off action, relevant reputation and goodwill in the name or mark relied on".

#### LYDIA ZAKRZEWSKI

### R. (oao Cityfibre Ltd) v Advertising Standards Authority—the "Average Consumer" Test is Analysed by the High Court 224

This article reviews R. (oao Cityfibre Ltd) v Advertising Standards Authority in which the High Court upheld the ASA's decision that the use of the term "fibre" in broadband advertisements for part-fibre services was unlikely to mislead the average consumer.

RICHARD REEVE YOUNG

#### Racing Partnership v Done Brothers—Breach of Confidence Proves Safer Bet in Raceday Data Dispute 225

This article reviews *Racing Partnership v Done Brothers* in which Zacaroli J considered allegations of copyright and database right infringement and breaches of contract and confidence in relation to raceday data acquired from the Tote. The article focuses on the claim for breach of confidence as the judge's finding in respect of that claim should be of interest to practitioners advising clients who control access to private entertainment venues.

**EILEEN WEINERT** 

#### Serafin v Malkiewicz—Guidance on Responsible Journalism 228

This article reviews the Court of Appeal decision in Serafin v Malkiewicz reversing the dismissal at first instance of a libel claim relating to an article which made serious allegations about the claimant. The ruling makes clear the continued importance of the Reynolds checklist in determining whether the defendant reasonably believed that publishing the statement complained of was in the public interest.

ANNA DOBLE

# Online Defamation—Potential Help for Claimants Seeking to Remove Unlawful Content Internationally, but at What Price to Freedom of Expression? 231

This article reviews the Opinion of Advocate General Szpunar in *Glawischnig-Piesczek v Facebook Ireland Ltd* (C-18/18) advising the Court of Justice of the European Union on the extent to which a social media platform like Facebook can be ordered by a national court to identify and delete or block access to defamatory content.

PETER HOPTON

#### Wolves Logo—Wandering Origin Story Doubted by High Court 233

This article reviews *Davies v Wolverhampton Wanderers FC*, in which an amateur designer claimed copyright infringement against Wolverhampton Wanderers, alleging that a design he entered into a 1960s competition was copied for a new club logo in 1979, and then in a redesign in 2002. The High Court found that he could not provide credible evidence of the alleged competition or earlier design, and that any alleged transmission to the later designer was wholly implausible. The case underlines the central importance of credibility where a claim rests on witness evidence, alongside the need for brand-owners to be able to demonstrate chain of title to underlying designs.

PETER SMITH

### High Court Re-states Essential Requirement in Libel Proceedings to Read Article Following Headlines 234

This article reviews Spicer v The Commissioner of Police of the Metropolis in which the High Court restated the conventional principle of reading and interpreting an allegedly defamatory headline together with the article following it.

**Book Review** 

PETER COE

Social Networks as the New Frontier of Terrorism #Terror by Laura Scaife 237