

Articles

DR HAYLEIGH BOSHER

The Impact of *Skidmore v Led Zeppelin* on US Music Copyright: Closing the Floodgates After Blurred Lines? 187

On 9 March 2020, the Ninth Circuit upheld the verdict that Led Zeppelin's "Stairway to Heaven" did not infringe the copyright of Randy Wolfe's song Taurus. This article considers the key issues covered in the course of the judgement including, the scope of copyright in music, the test for copyright infringement, and access to the work. In particular, considering of the impact of the decision as seen in the subsequent judgements in the *Townsend Griffin v Ed Sheeran* and *Marcus Gray v Katy Perry* cases.

ANDY PHIPPEN AND EMMA BOND

Covid-19 and Tech Solutions—Another Politician's Fallacy? 191

The challenges facing the nation as a result of the Covid-19 pandemic have made government leaders turn to technology to provide solutions to understanding adherence to social distancing measures and understanding with whom people have been in contact, particularly those who might have been in contact with someone exhibiting symptoms of infection. While there is much debate on the legality of monitoring and location tracking, there is a more fundamental concern – that software can only ever be as effective as the data that is available to it, and perhaps this view of technology as a solution to lifting lockdown is perhaps yet another example of a Politician's Fallacy.

TANIA WILLIAMS

Look Before You Leap: Terminating an Agreement 196

During the pandemic, businesses are facing difficult commercial decisions. Amongst the most difficult might be whether to terminate agreements, for example where renegotiating an agreement can't yield a desired outcome. For those thinking about terminating an agreement, it is useful to undertake a complete review of the agreement in relation to termination options and consequences. This article identifies a number of key pointers to help with that review.

STEVEN FARMER

New Guide Published for Companies Offering Bundled Products and Services in Europe and Principles for Enforcers 199

This article examines recent European guidance on bundled products published in November 2019 which outlines principles for companies offering bundled products and for regulators overseeing and regulating sectors with bundled products. The article is a must read for companies seeking to comply effectively with prescriptive requirements under existing regulation and legislation relating to the marketing of bundled products and services.

Comments

AMIRA SAIED

2 Entertain Video Ltd v Sony DADC Europe Ltd: Assessment of Whether Force Majeure Could Constitute a Sufficient Defence Against Claims for Various Loss and Damage 203

This article reviews the High Court's assessment in *2 Entertain Video Ltd v Sony DADC Europe Ltd* of whether a force majeure clause in a logistics services agreement provided a defence against claims for loss of profits, business interruption costs and increased cost of working following a fire at a warehouse. The article also considers the significance of the case in the context of COVID-19 and the current focus this has placed on force majeure provisions.

ALEXANDER ROSS

Stim v Fleetmanager: Driving Licence Not Required 206

The European Court has assured car hire companies that they don't communicate music to the public when they hire cars with radios and CD players; they are instead providing physical facilities that enable that communication.

CALUM BRYANT AND RACHAEL
HEELEY

Bedtime for Bonzo—Members of Bonzo Dog Doo-Dah Band Have Promoter Claims Struck Out 208

In *Slater v Anglo Atlantic Media Ltd*, the High Court struck out proceedings brought by a music promoter against the members of the 1960s experimental pop band the Bonzo Dog Doo-Dah Band. Members of the band successfully applied to strike out all four claims that were brought against them: conspiracy to injure, malicious falsehood, statutory misrepresentation and trade-mark infringement. The scathing judgment found the causes of action pleaded to be incomplete, despite being tediously lengthy, and supported by evidence that often contained "inadmissible opinion ... bare assertion and irrelevancies".

ELLA CASTLE

Addressing Online Infringement: Advocate General Saugmandsgaard Øe Advises the CJEU to Rule that “Address” Cannot Extend to Email or IP Addresses under Article 8 of the EU Enforcement Directive 211

This article considers Advocate General Saugmandsgaard Øe’s opinion in *Constantin Film Verleih GmbH v YouTube LLC* that art.8(2) of the EU Enforcement Directive 2004/48 does not require the disclosure of telephone numbers, email addresses or IP addresses used, in this case, by YouTube users uploading infringing copies of intellectual property works.

ELIZABETH WIGGIN

Family Feud—Interim Non-Disclosure Order on Short Notice Not Justified 213

Warby J has refused an application on short notice for an interim non-disclosure order in a dispute between opposing factions of the Barclay family ruling there was nothing to justify the urgency of the application.

FREYA HADRILL

Free Photo Apps Show Context is Key When Assessing Trade Mark Claims 215

This article reviews the High Court’s ruling in *Planetart v Photobox* that an icon used for an app providing a free photo-printing service infringed registered trade mark rights for the icon of an app providing a very similar service. The judgment provides a very useful and comprehensive overview of the principles of trade mark infringement and passing off in the context of marks with descriptive elements.

ALESSANDRO CERRI

Dance-off Over Copyright and Goodwill Relating to Entertainment Event 219

This article reviews the ruling of the High Court in *Shua Ltd v Camp & Furnace Ltd* that the claimant company owned all of the goodwill in Bongo’s Bingo, a business providing bingo games fused with raves and dance-offs, as well as the copyright in two logos, and accordingly was entitled to an injunction against the operator of the venue at which Bongo’s Bingo events were originally held.

JENNY WILSON AND JACQUELINE CLOVER

Scott v LGBT Foundation Ltd: Do Phone Conversations Amount to “Processing” of Personal Data? 221

In *David Scott v LGBT Foundation Ltd* the High Court held that a disclosure of personal data made through speech alone is not processing of personal data under the UK Data Protection Act 1998. Although the case was examined under the previous UK data protection regime, it may nonetheless provide useful judicial authority for the position that the act of “processing” under the current rules does not include purely verbal communications.

ALEX WOOLGAR

Amazon Out of Hot Water After CJEU Ruling on Storage of Unlawfully Imported Davidoff Perfumes 223

This article considers the significance of the ruling of the Court of Justice of the European Union in *Coty Germany v Amazon* (C-567/18) on a reference from the German Federal Court of Justice in relation to Amazon’s liability, if any, for trade mark infringement where Amazon stored, on behalf of a third party seller, infringing DAVIDOFF-branded perfumes at an Amazon-owned warehouse, without having knowledge of that infringement.

Book Review

URSULA SMARTT

Enemies of the People: How Judges Shape Society by Joshua Rozenberg 226