

## Articles

JEREMY ROBERTS AND OLIVER  
WISEMAN

### **The Impact of Brexit on the UK Television Sector 75**

Now the UK has left the EU, the transition period has ended, and the EU-UK Trade and Cooperation Agreement has been agreed, this article reviews the effects of Brexit on the UK television sector.

DR BALRAJ K. SIDHU

### **Legal Regulation of the “New” Digital “News” Media: Is India at a Crossroads? 79**

The increasing “digitization” of society has triggered a paradigm shift in the production as well as the consumption of news. The recent Supreme Court stay order over the telecast of controversial programme “Bindas Bol” on a news channel, Sudarshan TV (series called as *UPSC Jihad*), has opened up a Pandora’s box over the regulation of digital media. The media landscape globally as well as in India has undergone dramatic change that underscores the need to reassess the applicability and application of the existing law to the new problems thrown up by digital media.

## Comments

DR JANET STRATH

### **Pliteq Inc v iKoustic Ltd: “Bait and Switch” Claim Fails Against Former Distributor 83**

In *Pliteq Inc v iKoustic Ltd*, the Intellectual Property Enterprise Court ruled that a former distributor of a trade mark owner’s products was not liable for infringement by “bait and switch” selling. The distributor had been selling its own competing products alongside its remaining stock of the trade mark owner’s products. Amongst other issues, the judge considered whether the use of the marks was in relation to the trade mark owner’s goods and whether the trade mark owner had legitimate reasons to oppose the use of the marks. This comment considers the judgment and its implications.

HUGH TOMLINSON QC

### **Dupate v Latvia—Publication of Covert Photographs of Politician’s Partner and Baby Violated art.8 86**

This case comment reviews *Dupate v Latvia* in which the Fifth Section of the European Court of Human Rights has held that the publication of covertly taken photographs of the partner of a politician leaving hospital with her new-born baby was a violation of her art.8 rights

LEIGH SMITH

### **IPEC finds Registered Community Design for Ballerina Shoe Infringed 88**

This article reviews the decision of the Intellectual Property Enterprise Court in *Rothy’s Inc v Giesswein Walkwaren AG* that a US company’s registered Community design for a ballerina shoe was valid and infringed by an Austrian shoe company. The case is one of the last, if not the last, decisions of the IPEC sitting as a Community Design Court.

ELEANOR STEYN

### **Gerrard v ENRC—A Chilling Effect on Litigation Surveillance? 90**

In *Gerrard v Eurasian Natural Resources Corporation*, the High Court dismissed an application to strike out a claim for harassment relating to surveillance activities. The court held that the claim was not suitable for summary determination, and there was at least a real prospect that arguments advanced by the defendants were wrong. The court also rejected the defendants’ argument that, because the surveillance was covert, it could not have been calculated to cause distress to the claimants: the word “calculated” does not appear in the relevant legislation, and there is no further mental element contained in the concept of “harassment”.

JESSICA WELCH

### **Evidence of Pre-Publication Steps Crucial to Libel Defence of Public Interest 93**

In the libel case brought by Jamal Hijazi, permission has been refused for Tommy Robinson to plead a public-interest defence under s.4 of the Defamation Act 2013. The High Court explained that the steps taken by a defendant before publication are crucial to the public-interest defence, and there had been a complete absence of chronology in the particulars of the amended defence. To be admissible, the steps must have taken place before publication. The court distinguished between the defence of truth, which relies on objective facts, and public interest, which is founded on the defendant’s subjective belief.

HENRY ELKINGTON

## **Enforcement Remedies and ISP Disclosures of User Identities in the Context of File-sharing 96**

Advocate General Szpunar has delivered an opinion on interpreting the Copyright Directive, IP Enforcement Directive and GDPR in the context of peer-to-peer file-sharing. In his opinion: (a) file-sharing falls within the making-available right; (b) remedies are not intended to be enforceable by a body acquiring rights in works merely to benefit from the remedies, although national law could allow it; (c) a national court must refuse disclosure of information on an alleged infringer if the request is unjustified; and (d) if the request is unjustified, disclosure may well not be in the legitimate interest of the ISP or a third party for GDPR purposes.

SOPHIE LAWRANCE AND ISOBEL THOMAS

## **Groupe Canal+ v Commission—CJEU Overturns Commission Commitments Decision with Implications for the European Film and Television Industry 99**

In the first judgment of its kind, the Court of Justice of the European Union (CJEU) has overturned a Commission decision to accept binding commitments from Paramount Pictures to stop using clauses with contracting parties that granted territorial exclusivity and prevented EU consumers from accessing certain pay-tv services. The CJEU concluded that the Commission failed to take into account the impact of the Paramount commitments on third parties. A controversial EU policy has now been thrown into doubt.

EILEEN WEINERT

## **Manchester Arena Suspect Had a Right to Privacy in his Arrest but Damages for Harm to Reputation Would be an Abuse of Process 101**

This article reviews *Sicri v Associated Newspapers* in which Mr Justice Warby awarded a suspect in the Manchester Arena bombing, who was named in a *MailOnline* article, £88,000 in compensation for infringement of his right to privacy. The case is notable for the judge's consideration of whether the damages award should include compensation for harm to reputation.

RUTH HOY

## **Freddy SPA v HUGZ Clothing Ltd—Jean Maker's Passing Off Claim Enhanced by Post-Sale Confusion 105**

This article reviews *Freddy SPA v HUGZ Clothing Ltd*, a case involving "knock off" body-shaping jeans, in which David Stone, sitting as an IPEC judge, confirmed that post-sale confusion can be relied upon in proving misrepresentation and damage for the purpose of a passing off claim.

KIRSTEN TOFT

## **Gamble on Flaming Trade Mark Doesn't Pay Out 109**

This case comment reviews *Impera GmbH v EUIPO* (T-875/19) in which the EU General Court upheld an opposition to the EU trade mark registration, in relation to gambling products and services, of a figurative sign which featured the phrase "Flaming Forties", brought by the owner of a Bulgarian trade mark which featured the words "Flaming Fruits".

## **Book Reviews**

URSULA SMARTT

## **McNae's Essential Law for Journalists (25th ed) by Mark Hanna and Mike Dodd (eds) 111**

PAUL SUGDEN

## **International Entertainment law and New Media Law by Chanakya Jayadeva 112**