

Articles

IOANNA LAPATOURA

Fashion Beyond Physical Space: NFTs and Intellectual Property Challenges in the Metaverse 197

This article reviews the legal challenges that fashion brands may face in the metaverse, and considers how they can maximise their intellectual property protection, given that this novel and unregulated virtual market space, where business takes place, also lays ground for copyists.

JONATHAN COOTE

Music Rights Acquisitions and Music Royalties as an Asset Class 203

This article considers the current and continuing appeal of music rights for investors and some of the key risks and future developments to look out for.

Comments

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Fairfax & Favor v House of Bruar: These Boots are Made for Infringing 207

This comment considers *Fairfax & Favor v The House Of Bruar*, in which the IPEC found that two of three versions of leather fashion boots sold by Scottish department store The House of Bruar infringed the registered and unregistered design rights in the Regina boot (otherwise known as the “Heeled Regina”) sold by the English country fashion brand Fairfax & Favor.

MAX PALMER

Force India Found in breach of Implied Term in Dispute with Trade Mark Licensee Stichd 211

The issue in *Stichd v Force India Formula One Team* was whether the Force India Formula One Team breached an implied term of its trade mark and merchandising licence agreement with Stichd by selling the FI racing team to a third party during the term of the agreement. In this comment we review the High Court’s finding that there was such an implied term and consider what lessons can be drawn from the decision.

CLAIRE LIVINGSTONE

CJEU Rules “Order with Obligation to Pay” is on the Button in Booking.com Dispute 213

In *Fuhrmann-2-GmbH v B*, the Court of Justice of the European Union held that where an online ordering button must be clicked to conclude a distance contract, the trader must ensure that, from only the words appearing on the button itself, the consumer understands with absolute certainty that clicking the button will oblige them to pay. This comment reviews the decision and the court’s guidance, and considers their significance for UK traders.

ALEXANDER ROSS

Austro-Mechana v Strato: Cloud Services on Cloud Nine 215

The CJEU has ruled that EU cloud storage services that provide private copying services don’t necessarily have to pay the private copy levy. It will depend on how national legislation allocates liability for the levy, and whether that allocation is fair.

EILEEN WEINERT

BBC Gagged Over Spy Allegations 217

This article reviews the decision of the High Court in *Attorney General v BBC* to grant the Attorney General an interim injunction against the BBC, preventing the broadcast of a programme which would have named and shamed a man the BBC claimed was a Covert Human Intelligence Source working for MI5 who had terrorised two women who were his previous partners.

NICK EZIEFULA AND RACHAEL HEELEY

Ed Sheeran + No Evidence of Access = No Copyright Infringement 220

Ed Sheeran has been awarded a declaration that his hit Shape Of You did not infringe copyright in a Sami Switch song called Oh Why. The “Oh I” hook in Shape Of You has a remarkable similarity to Oh Why. Yet on the facts, Sheeran was not shown to have had access, and the Oh Why co-writers’ counterclaim for infringement was dismissed. In upholding a later writer’s originality, the case goes against the tide of decisions in the wake of the Blurred Lines case, which was widely criticised as having a chilling effect on new songwriting.

HUGO MASON

Determining Meaning on Social Media: Context is Key, but How Much? 224

Two recent decisions highlight the tricky nature of determining the meaning of words when published on social media. *Wilson v Mendelsohn* concerned a Facebook post in which Mr Wilson was called a “weirdo” and “freak” and accused of harassing a mother on the school run and taking pictures of her daughter. *Sivananthan v Vasikaran* concerned WhatsApp group posts that accused Mr Sivananthan of misleading or misinforming Boris Johnson in the course of his 2019 leadership campaign in a manner that undermined the hard work of Tamil activists. In each case, the post was found to be defamatory at common law.

NEALE CHRISTY

No Love Lost Between Match Group and Muzmatch in MATCH Marks Mismatch 227

This comment reviews *Match Group LLC v Muzmatch Ltd* in which the High Court found that the trade marks owned by Match Group were infringed by Muzmatch’s MUZMATCH marks and various MATCH-incorporating SEO keywords.

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