

Articles

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Broadcasting Crown Court Sentencing—A Tentative Step Forward for Open Justice? 1

Pursuant to the Crown Court (Recording and Broadcasting) Order 2020, television cameras have now been permitted to broadcast sentencing remarks made by Judges in Crown Courts. The first such occasion of this was in the case of R v Ben Oliver (2022). This article considers the broadcast and reactions to it and considers whether this is in fact a step forward to improving accessibility for the public and open justice.

Stream on! CMA Halts Plans to Investigate Music Streaming Market 4

This article reviews the recent developments on the UK’s Competition and Markets Authority (CMA)’s music streaming market study. On 26 July 2022 the CMA produced an update paper and conducted consultations up until 19 August 2022 regarding its decision not to proceed with a full market investigation.

Court of Appeal Finds Non-Compete Clause Operating During Marketing Agreement Reasonable But Post-Termination Restraint Unreasonable 6

This article reviews *Credico Marketing Ltd v Lambert* in which the Court of Appeal ruled that a restrictive covenant in an agreement between two marketing companies requiring one to work exclusively for the other during the term of the agreement was reasonable and enforceable, whereas a six-month post-termination non-compete restriction was not reasonable absent some special interest to justify it.

Countdown Final: Appeal Dismissed in Rachel Riley Libel Case 9

The Court of Appeal has dismissed Laura Murray’s appeal against the High Court’s award of £10,000 in damages for libel to Countdown presenter Rachel Riley. Ms Murray brought the claim on the basis that the High Court had misapplied the defences of truth, honest opinion and public interest under the Defamation Act 2013. Lord Justice Warby, giving the lead judgment, found that the High Court had not erred in applying the relevant law and dismissed the appeal.

Successful Appeal in George v Cannell Malicious Falsehood Claim with Door Open for Substantial Damages for Distress 12

This article reviews the Court of Appeal judgment in *George v Cannell* on the proper construction of s.3 Defamation Act 1952 relating to damage caused by a malicious falsehood, a point not previously addressed by the Court of Appeal since its enactment and considers whether damages are available for distress where there has been no financial loss.

You’ve Gotta Have (Bad) Faith: Reviving Legacy Brands isn’t Always Parasitic 14

This article reviews *Ladislav Zdút v EUIPO* in which the EU General Court found that a figurative “nehera” EU trade mark registered by Ladislav Zdút should not be revoked on the basis of bad faith, despite the fact that the NEHERA brand was used and registered by an historic European clothing manufacturer, Jan Nehera.

Wright in the Wrong: Bitcoin “Inventor” Wins Nominal Damages After Making False Case 16

Dr Craig Wright, a scientist and businessman claiming to be the inventor of Bitcoin, has won a libel case against a journalist who repeatedly called him a fraud, even if the victory was pyrrhic. The High Court found for the claimant, but awarded him only nominal damages of £1, because in the judge’s view the claimant had deliberately advanced a false case in his particulars of claim and witness evidence. The judge commented that the claimant might instead have been awarded substantial damages had he not raised false claims in trying to establish serious harm.

MATTHEW GILL AND AIMME GAVIN

## **High Court Refuses Application for Norwich Pharmacal Order to Disclose Names of Anonymous Signatories to Defamatory Letter 20**

This article reviews *Cockburn v Rogers* in which Mr Justice Johnson refused an application for a Norwich Pharmacal order to reveal the names of anonymous signatories to a defamatory letter, on the basis that it would be a disproportionate interference with the signatories' rights of freedom of expression and could discourage anonymous whistleblowing in the public interest.

SOFIA BERNADINI

## **Can a Public Figure Prevent the Use of their Image? An Italian Perspective 23**

This article analyses and comments on the judgment of the Italian Supreme Court in *Gianni Rivera v Rcs SpA* which explored the boundary between the rights to image and privacy of public figures and, on the other hand, the right to the press, the freedom of expression and information, all of them constitutionally protected rights in Italy.

DIONNE CLARKE

## **IPEC Upholds Passing-Off Claim and Invalidates Trade Mark in Rubettes Band-Name Dispute 26**

The IPEC has upheld claims of passing-off and trade-mark invalidation in a band-name dispute. The band's trading activities had been carried out through a series of companies to which the goodwill accrued, and the defending individual band members had not accrued any senior or concurrent goodwill. By trading under the name, the defendants were likely to cause confusion as to their connection with the claimant company's business, and damage by intrusion on goodwill and loss from promoters' unwillingness to book the claimants' band. The first defendant's trade mark was invalid as a result of the finding of passing-off, and the application was held to have been made in bad faith.

ROLAND SCARLETT AND DON MCCOMBIE

## **WaterRower: CJEU Copyright Case Law Giving the CDPA a Work Out 29**

This article reviews a strike-out/summary judgment application in *WaterRower v Liking Ltd* in which the High Court was asked to make a determination as to whether a distinctively designed rowing machine could be protected as a copyright work in the UK. The court found there was a real prospect that it could. Notably, the judgment also expressly acknowledges "apparent inconsistencies" between the closed-list system of UK copyright law and the EU case law as to copyrightable works.