

Table of Contents

Articles

CLAIRE SNG AND ELINOR CAVIL

Advertising Law and a Spotlight on the “S” (“Social”) in ESG (“Environmental, Social and Governance”) 33

Studies show that almost a third of consumers will stop buying a particular product because of ethical or environmental concerns, and furthermore that such efforts of businesses in relation to ESG (Environmental, Social and Governance) issues clearly contribute to business success. In this article, Claire Sng and Elinor Cavil shine a light on some recent advertising trends covering the “social” side of ESG and how the ASA has responded to them.

ANDY PHIPPEN AND LOUISA STREET

Addressing Online Harms in Policy—Failing to Learn from the War on Drugs 36

As the Online Safety Bill may or may not reach royal ascent, this article questions whether any piece of prohibitive legislation will successfully tackle the social harms caused by online abuse. Drawing upon the history of another prohibitive approach—the War on Drugs—the article proposes the more progressive harm reduction approaches that have been applied to drugs policy have far greater potential than a digital Just Say No.

HETTIE HOMEWOOD AND NICOLE CLERK

Lights, Camera, Finally Some Action? The Future of Influencer Marketing Regulation in the UK 44

This article reports on steps being taken to better regulate influencer marketing practices in the UK. It summarises the Government’s response to the recommendations in the report published by the Digital, Culture, Media and Sport Select Committee entitled *Influencer culture: Lights, camera, inaction?* and discusses the latest CMA guidance on social media endorsements.

Comments

ALEXANDER ROSS

Safarov v Azerbaijan: A Reminder that Copyright is a Human Right 46

This article reviews *Safarov v Azerbaijan*, a rare ruling on copyright matters by the European Court of Human Rights, in which the Court held that the Azerbaijani courts had failed to apply Azerbaijani copyright law correctly in a case involving the online publication of a book without the author’s consent.

DESIREE FIELDS AND CELIA TAO

A Delicate Balance of Interests: UK High Court Refuses Interim Injunction Against New Vodka Bottle in Passing Off Dispute 48

In *Au Vodka Ltd v NE10 Vodka Ltd* the High Court refused to grant Au Vodka Ltd an interim injunction in a passing off claim against a new range of NE10 vodkas alleged to be deceptively similar to the get-up of the claimant’s vodka bottles. Mr Justice Mellor found a serious issue to be tried and noted that the case, due to be heard in January 2023, could swing either way depending on the evidence.

NOA NAAMAN

Dutch Court Considers Principle of Reciprocity in Land Rover Copyright Case 52

This article reviews the preliminary injunction decision of the Court of Appeal of Arnhem-Leeuwarden in *Jaguar v Ineos* in which the key, but ultimately unresolved, issue was whether the three-dimensional exterior of an all-terrain vehicle designed in the United Kingdom was eligible for protection under copyright law in the Netherlands pursuant to the principle of reciprocity as set out in the Berne Convention. The Court of Appeal dismissed Jaguar’s infringement claims as the eligibility of a vehicle as a work of applied art under English law could not be established with sufficient certainty.

ANDREW WILSON-BUSHELL

From Russia Without Love—Biography Not Infringed by Fictional Account of Dr Zhivago Muse 54

The High Court has ruled, for the most part, against a relative of *Doctor Zhivago* author Boris Pasternak, finding that her biography of his lover (the inspiration for leading character Lara) was not infringed by Lara Prescott, who wrote a novel about the dissemination of his epic in Cold-War Russia. The case illustrates the difficulty in proving copyright infringement in a selection based on historic events. It also informs best practice for providing sufficient acknowledgment when relying on the quotation exception in relation to extracts from other works.

NEALE CHRISTY

It's on the Bag but not in the Bag—EU Designation of Louis Vuitton's Damier Azur Pattern Trade Mark Revoked (Again) 56

This article reviews *Louis Vuitton Malletier v EUIPO* in which the 10th Chamber of the EU General Court dismissed Louis Vuitton's action seeking annulment of an EUIPO Board of Appeal decision, finding its familiar Damier Azur pattern unregistrable as a trade mark. The court held that the mark had not acquired distinctive character through use.

NICHOLAS TALL

Paddington (Marma)Laid Bare: IPEC Unsticks Audit Provision in Royalty Sharing Agreement 58

This article considers the judgment of the Intellectual Property Enterprise Court in *Pixdene Ltd v Paddington and Company Ltd*, in which HHJ Melissa Clarke applied principles of contractual interpretation and implication of terms to come to a decision on the meaning of a short-form audit provision in a royalty sharing agreement in respect of "Paddington Bear" merchandise. The very existence of the dispute, and the fact that each party won on certain points, highlights the need to clearly draft such clauses. The well-reasoned decision should be a must-read for all lawyers drafting agreements including audit provisions.