

Articles

ALEX LOWE, HANNAH POTTER AND
JOHN WILKS

Sexual Imagery in Advertising: Where Do You Draw the Line? 65

“Sex sells” and “no publicity is bad publicity”, but advertisers often get into trouble with the UK’s advertising regulator (the ASA) when they use overly sexualised images or “shockvertising”. This article explores the concept of “serious or widespread offence” through the lens of ASA Rulings concerned with sexual depiction of under 18s; objectification; harm to specific groups; and untargeted ads.

JONATHAN GREENWAY AND JOSH
CHARALAMBOUS

European Parliament Adopts Online Video Games Report Emphasising Consumer Protection and Sectoral Growth 69

An examination of two recent texts from the European Parliament—a resolution and a report—both of which emphasise the importance of the video games sector and the need for robust, harmonised consumer protection measures.

ROHAN MASSEY

UK Smart Products Must Also Be Safe and Secure Products—The UK’s Connected Products and Cybersecurity Standards in the Product Security and Telecommunications Infrastructure Act 73

This article provides an overview and commentary on the new regulatory framework for the “Internet of Things” under the Product Security and Telecommunications Infrastructure Act 2022 which received Royal Assent on 6 December 2022.

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Fearn v Tate—Avert Your Eyes, I Object to Your Gaze 77

Following the Supreme Court’s ruling in *Fearn v Tate*, this article asks whether privacy nuisance is a new weapon in the celebrity arsenal and what remedies might have been available in the traditional causes of action of misuse of private information, breach of confidence, breach of the data protection act, harassment and stalking.

JON OAKLEY AND HUGO MASON

French Connection—Panorama Reporter Wins Libel Case Against Investigative Journalist 80

In this case, investigative journalist Paddy French accused presenter John Ware of “rogue journalism” and politically biased reporting in a BBC documentary about antisemitism within the Labour party. At a trial in which Mr French declined to appear and was not represented, Mr Ware succeeded in showing serious harm and was awarded £90,000 in damages, plus costs. The High Court also struck out a defence of public interest, ordered a summary of its judgment to be published and granted a permanent injunction restraining further publication of the defamatory material.

HUGO MASON

Journalist Adds 2 and 2 and Makes 5—Countdown Presenter Wins Libel Claim Against Mike Sivier 83

Rachel Riley succeeded in her libel claim against journalist Mike Sivier over an article on his Vox Political website that accused her of online abuse and harassment of a 16-year-old girl. Mr Sivier unsuccessfully attempted to argue that the article was defensible as a publication on a matter of public interest. The High Court rejected his defence as the article was wholly unbalanced and Mr Sivier: (a) had failed to make such enquiries as were reasonably required in the circumstances; (b) had no reasonable grounds for making the factual allegations that he did; and (c) had misrepresented the evidential picture.

RORY O’HARE AND HIATHAM JAVAID

Judge’s Decision Final in MasterChef Challenge 86

This article reviews *Shine TV Ltd v SKA Trading Ltd* in which the High Court dismissed Shine TV’s appeal from a Trade Marks Registry decision rejecting its opposition to the application for the UK word mark MISTER CHEF. The case is another to illustrate the challenges facing an appellant from a decision of a hearing officer of the UK Intellectual Property Office, particularly where the appellant holds an earlier mark in the name of a TV show and the reputation of that mark relates exclusively to that show.

CATHERINE ARNOLD

European Court of Human Rights Rules French Journalist’s Conviction for Inciting Discrimination did not Breach Article 10 88

This article reviews *Zemmour v France*, in which the Fifth Section of the European Court of Human Rights held, unanimously, that the art.10 right of the applicant, a journalist and political commentator, had not been violated by his conviction for inciting discrimination and religious hatred against the Muslim community in France under s.24(7) of the Freedom of the Press Act of 29 July 1881.

ANNA MARIA STEIN

The Parody of Zorro: Copyright, Trade Marks and Freedom of Expression 91

This article examines a significant recent decision of the Italian Supreme Court on the protection under copyright and trade-mark law of a fictional character with specific regard to parody.

PETER VAUGHAN

Copyright is for Losers: Trade Marks are for Winners? Pest Control Office Ltd v Full Colour Black Ltd 93

This case comment considers the Board of Appeal decision in *Full Colour Black Ltd v Pest Control Office Ltd* (R 1246/2021-5) [2023] E.C.D.R. 3 considering whether a trade mark registration had been correctly held invalid under art.59(1)(b) the European Trade Mark Regulation (EUTMR). It highlights the continued reluctance to develop the concept of bad faith and argues the position under art.59(1)(a) as regards distinctiveness remains unclear. The comment proposes that artists consider design protection as a preference to trade mark registration.

DAN WYATT AND CHRISTOPHER WHITEHOUSE

Court of Appeal Finds that Bitcoin’s Developers May Owe Fiduciary Duties to Bitcoin Owners 96

This article reviews the highly anticipated judgment of the Court of Appeal in *Tulip Trading v Bitcoin Assoc for BSW*. Allowing the claimant’s appeal, the court found that the developers looking after Bitcoin arguably owed fiduciary duties in tort to an owner of bitcoin.

NEALE CHRISTY AND LEIGH SMITH

Watch Your Back—Rolex’s EU Opposition Against CROWN Device in Class 25 Rejected 97

In *Rolex SA v EUIPO* the EU General Court dismissed the luxury watch maker's appeal seeking annulment of a EUIPO Board of Appeal decision which rejected its opposition against Danish fashion brand PWT’s application to register a crown device as an EU trade mark. The General Court held that watches in Class 14 and clothing, shoes etc. in Class 25 are dissimilar.

CLAIRE SNG AND ELINOR CAVIL

Cheers to that!—ASA Hands Down Concurrent Adjudications on Ads Promoting Sale of Alcoholic Beverages 99

Early February 2023 saw the ASA’s focus turn to advertisements for alcoholic beverages. Interestingly, of the two adjudications, the ASA upheld the complaints in one case but not the other. Both cases involved complaints that the ads promoted irresponsible or excessive drinking as well as raising some interesting points on targeting and labelling. This article sets out the key facts and takeaways.

DÉSIRÉE FIELDS

The Value of Characters: EUIPO Denies Registration of Charlie Chaplin’s “Charlot” 102

This article reviews a recent decision of the European Union Intellectual Property Office which refused to register a shape mark for the figurative depiction of Charlie Chaplin’s “Charlot” character as a European Union trade mark. EUIPO found the mark non-distinctive and descriptive of the goods and services, deciding that use of the mark would merely serve a promotional function by reinforcing the values of the character to enhance the attractiveness of the goods and services.

Book Review

DR ELENA COOPER

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