

Articles

DAVID PELOQUIN, ELANA BENGUALID  
AND ROHAN MASSEY

Regulation of Online Behavioural Advertising (Part 2): Existing  
Challenges and Recent Changes in the United States 137

Following the first part of this two-part article (published in the last issue of this journal) which considered the position and developments under the EU and the UK legal regimes applicable to online behavioural advertising, this second part will examine the position under the US legal regime.

ELINOR CAVIL, THOMAS FOLEY AND  
CLAIRE SNG

Will Advertising Goods or Services with a Rude Name Get You into  
Trouble with the UK Advertising Regulator? 145

This article analyses the Advertising Standards Authority’s recent ruling relating to an advertisement in *The Sunday Times Culture* magazine for Dawn French’s latest show. Complaints were made because the name of the show contained a swear word. The article considers the applicable CAP Code rule on harm and offence, as well as considering trade mark law as regards the registrability of brands where there are possible public policy concerns.

Comments

DIONNE CLARK

No *Betrayal* in Copyright and Confidence Claim Against the BBC 148

The High Court has summarily dismissed a claim of copyright infringement and breach of confidence against the BBC in relation to a two-part storyline (*Betrayal*) in the long-running forensic pathology series *Silent Witness*. The claimant had not pleaded a positive case on access and instead relied on an inference of copying arising from the alleged similarities between the works. Yet the judge found that the alleged similarities ignored various material differences and certain inevitable thematic similarities. Overall, there was no arguable basis for an inference that the defendants had copied the claimant’s works.

HUGO MASON

School Run-in—“Weirdo”/“Freak” Libel Claim Going to Trial After  
Strike-Out Refused 151

This case relates to a post on social media calling the claimant a “weirdo” and a “freak” and alleging that he harassed a mother during a school run. The High Court refused an application to strike out the claimant’s claims in harassment, defamation, data protection and misuse of private information—except a claim in harassment against the third defendant, which was struck out as the alleged actions failed to amount to a course of conduct.

ANDREW WILSON-BUSHELL AND  
CHARLIE EDWARDS

Claims of Copyright Subsistence in the Bitcoin File Format Founder at  
Fixation 153

The High Court has ruled that a claim of copyright subsistence in the Bitcoin file format had no real prospect of success. The claimants failed to demonstrate the requisite extent of fixation, for which the format must describe content and not just structure. Yet the claimants had a real prospect of success for copyright claims arising from the Bitcoin white paper, as well as database rights in three iterations of the Bitcoin blockchain, and were granted permission to file out of the jurisdiction on those. Whether Dr Wright was, in fact, the creator of Bitcoin has yet to be determined.

JON OAKLEY AND HUGO MASON

No SLAPP—Banks Wins in Part on Appeal Over Cadwalladr TED  
Talk 155

Brexiter Arron Banks has succeeded in part of his appeal in his defamation claim against journalist Carole Cadwalladr. At first instance, the High Court had ruled that, while Ms Cadwalladr had a valid public-interest defence, the case was not a SLAPP, but a legitimate attempt by Mr Banks to seek vindication—even if unsuccessful at first instance. The Court of Appeal concurred on that point, but found that, after the defence had ceased to apply, the continued publication of Ms Cadwalladr’s TED talk caused serious harm to Mr Banks’s reputation, and to that extent, he was entitled to damages.

JANET STRATH

Here Be Dragons: Copyright Claim Slayed in the IPEC 157

This comment considers *Evans v John Lewis Plc*, in which the IPEC found that the fictional dragon that appeared in a John Lewis Christmas advert and in a spin-off illustrated children’s book entitled *Excitable Edgar* did not infringe the copyright in a self-published children’s picture book called *Fred the Fire-sneezing Dragon* written by Fay Evans.



HETTIE HOMEWOOD

## **Influencer Marketing Disclosures—CAP and the CMA Adamantly Advocate that #Ad is the Advisable Way to Adhere** 160

March 2023 saw the Committee of Advertising Practice and the Competition Markets Authority publish a new edition of their joint guidance *Influencers' guide to making clear that ads are ads*. This article looks at what's new in this latest iteration of the guidance and considers whether it signals a stricter approach to enforcement.

EMMA FLETT, JACQUELINE CLOVER  
AND SAMANTHA BRADLEY

## **The Metaverse IRL—EUIPO Refuses to Register “METAVERSE FOOD” and “METAVERSE DRINK” as EU Trade Marks for Real-World Goods** 162

The application of intellectual property rights to the metaverse continues to draw the attention of businesses, the government and regulators. In relation to trade marks, most attention to date has focused on the protection of brands applied to virtual goods that are used in the metaverse. But what about the “METAVERSE” as a trade mark for protecting real goods in the real world? The Second Board of Appeal of the European Union Intellectual Property Office considered this question in two related decisions issued on 28 February 2023.