

Articles

DAVID CRAN, CHRIS ROSS, MELANIE
MUSGRAVE AND LEONIA
CHESTERFIELD

MELANIE MUSGRAVE AND LEONIA
CHESTERFIELD

ELIZABETH KILBURN

ROBERT LISTER

Comments

ALEXANDER ROSS

PAUL HARRIS

EILEEN WEINERT

Legislation Empowering the CMA's Digital Markets Unit Introduced into Parliament 203

The Digital Markets, Competition and Consumers Bill was introduced into Parliament on 25 April 2023. The Bill not only introduces major landscape reforms to the UK's consumer protection regime and significant enhancements to the CMA's competition law powers, it also ushers in a new regime for digital markets. This article takes a look at the main aspects of the new regime and the DMU's extensive enforcement powers.

The Digital Markets, Competition and Consumers Bill—What's New on the Competition Side? 207

The Digital Markets, Competition and Consumers Bill, introduced into Parliament on 25 April 2023, makes wide-ranging enhancements to the competition powers of the Competition and Markets Authority (CMA) and changes to the UK merger regime. This article takes a look at some key changes to competition law proposed by the Bill.

Meta's Mega Fine—Does this Signify the End of Data Transfers to the US? 210

This article reviews and considers the implications of the decision of the Irish Data Protection Commission to fine social media giant Meta €1.2 billion for unlawful data transfers; a decision which sends a stark message to tech giants and the broader industry as companies in the digital realm face increasing scrutiny from regulators.

It is Time to Get to Grips with the Digital Services Act—What this Means for Online Intermediary Service Providers 213

The EU's Digital Services Act came into force on 16 November 2022. While only a small number of large organisations will need to comply in full with the DSA in 2023, a significant majority of other online service providers now only have until 17 February 2024 to put in place the required measures to ensure compliance. This article is the first in a series by Ropes & Gray on what the DSA means in practice and covers frequently asked questions about the scope of the DSA. In particular, this article provides an overview of what the DSA is, what it seeks to address, which organisations it applies to (and to what extent) and how it interacts with existing requirements for online service providers under the e-Commerce Directive.

Planes, Trains and the Latest From the CJEU on Communication to the Public 220

This article reviews *Blue Air Aviation SA v UCMR* in which the Court of Justice of the European Union ruled that the playing of a musical work as background music in a means of passenger transport constitutes a communication to the public for the purposes of the Copyright Directive (2001/29) art.3(1), but that the mere installation of sound equipment and software enabling music to be played does not.

Re-edit Ordered for Video-editing Company's STITCH Trade Mark as High Court De-splices Hearing Officer's Opposition Ruling 222

This article reviews *Stitch Editing Ltd v TikTok Information Technologies UK Ltd* in which Sir Anthony Mann, sitting as a High Court judge, upheld an appeal against the decision of Mrs June Ralph, as Hearing Officer at the UKIPO, in which she found that the opposition by TikTok Information Technologies Ltd to Stitch Editing Ltd's application for "STITCH" as a UK trade mark in class 41, succeeded.

A Defamatory Tweet Published for 40 Minutes to a Couple of Thousand People Causes No Serious Harm 224

This article reviews *Hayden v Family Education Trust* in which Nicklin J granted summary judgment dismissing a libel claim for a tweet which accused the claimant of being a "delusional transactivist" who was "funded by the tax payer" to "harass decent, hardworking people and their families" and which stayed online for 40 minutes. There was no evidence that it caused or was likely to cause the claimant serious harm.

DÉSIRÉE FIELDS AND PAULINA
KASPRZAK

**EUIPO First Board of Appeal Refuses Margiela’s Application for a
Figurative Trade Mark Consisting Solely of a Sequence of Numbers 226**

A recent EUIPO Board of Appeal ruling, rejecting a figurative EU trade mark application by French luxury fashion house Margiela consisting of a sequence of numbers from 0 to 23 arranged over three lines, highlights the importance for signs to incorporate memorable and eye-catching elements so that they meet the necessary “distinctiveness” threshold, can be instantly memorised by the relevant public, and act as an indicator of commercial origin.

MARIYAM KAMIL

**Prismall v Google UK Ltd: Representative Action for Misuse of Private
Information Dismissed 229**

This article reviews *Prismall v Google UK* in which Williams J struck out the claim by Andrew Prismall, acting as a representative claimant on behalf of about 1.6 million people, and entered summary judgment for the defendants. The judgment is likely to have material implications for the tort of misuse of private information generally and for representative actions based on that tort in particular.

ADELAIDE LOPEZ

**Public Place, Private Lives? A Look (Again) at Privacy in
Photographs 232**

This article reviews *Stoute v News Group Newspapers* in which the Court of Appeal dismissed an appeal from the decision of Johnson J refusing the claimants, a couple who own and run a company which profited significantly from selling PPE to the Government during the pandemic, an interim injunction restraining the further publication of photographs of them taken by paparazzi on a public beach in Barbados.

NEALE CHRISTY

**Court of Appeal “MATCHES” Up with IPEC in Matchmaking Brand
Dispute 233**

This article reviews *Match Group v Muzmatch* in which the Court of Appeal rejected Muzmatch’s appeal against an IPEC ruling that its MUZMATCH marks and various MATCH-incorporating SEO keywords infringed Match Group’s trade marks and constituted passing off.

JESSICA WELCH

**Hugh Granted Partial Permission to Continue Action Against The Sun
Publisher 235**

The High Court has struck out a phone-hacking claim brought by Hugh Grant against News Group Newspapers over events that occurred 10 years or more before he issued his claim. The court held that it was statute-barred under the Limitation Act 1980, rejecting Mr Grant’s submission that the start of the limitation period had been delayed by NGN’s concealment of facts that he had not (or could not by reasonable diligence have) discovered. However, the court gave him permission to pursue the rest of his claim in relation to other unlawful information-gathering by journalists at *The Sun*.

ANDREW WILSON-BUSHELL AND
EDWARD HETHERINGTON

Court Acts to Prevent Malicious Copyright Strikes on YouTube 239

The High Court has ordered Mohammad Rahi to desist from making further infringement complaints relating to the claimant music publishers’ YouTube channels, via YouTube’s copyright strike system. Mr Rahi, a singer and writer of Pakistani folksongs in Punjabi and Urdu, was found to have taken advantage of the platform’s “three strikes” policy, causing the take-down of the Moviebox and Oriental Star YouTube channels. Finding that the defendant had pursued “a relentless and fraudulent campaign aimed at damaging the economic interests” of the claimants, the court granted a permanent injunction and ordered a trial on quantum of loss.

ASHLEIGH FEHRENBACH

BAM! POW! Holy Logos Batman, Victory for DC Comics 241

This article reviews the recent ruling of the *EU General Court in Luigi Aprile v EUIPO*, a case which involved an unsuccessful attempt to wrest the Batman logo from the grip of DC Comics. The court agreed with EUIPO that there was insufficient evidence to show that the Batman logo trade mark was devoid of distinctive character, or that it was descriptive on the date the application for registration was filed in April 1996.

JOANNA THOMSON AND LUKE VAZ

**CJEU Confirms No Automatic Right to GDPR Compensation but No
Seriousness Threshold 244**

This article considers the judgment of the Court of Justice of the European Union in *UI v Österreichische Post*, which found that, amongst other things, (i) mere infringement of the GDPR does not give an automatic right to compensation under art.82; and (ii) no de minimis seriousness threshold is required for non-material damage. The judgment represents the first time that the CJEU has definitively addressed non-material damage under art.82 and may herald a shift in the GDPR compensation environment by encouraging non-material damage claims, with five further CJEU decisions on art.82 expected in the coming months.

Book Review

DR ALEXANDROS ANTONIOU

Media and Entertainment Law (5th edn) by Ursula Smartt 246