

# Articles

CLAIRE SNG AND AKSHAY RUPARELIA

## Avoiding Racial and Ethnic Stereotyping in Ads 249

On 25 May 2023, the Committee of Advertising Practice published new Guidance on avoiding racial and ethnic stereotyping in ads. The guidance offers a detailed framework of principles and this article considers these, including: describing specific types and treatments of stereotypes identified as having the potential to cause harm; the factors the ASA is likely to consider when assessing complaints; the difference between harm and offence; the use of humour in advertising; scenarios that seek to challenge harmful racial or ethnic stereotypes; and portrayals that objectify or sexualise people using or fetishising characteristics that can be stereotypically associated with their racial or ethnic group.

DAVID COPPING AND GENNA  
MORGAN-MCDERMOTT

## AI-Generated Art: A New Dawn for Creativity, or a Black Hole for Intellectual Property Rights? 253

This article examines when copyright may subsist in AI-generated artworks, how that copyright can be infringed and protected, and how the legislative landscape in the UK may change in the coming months and years.

# Comments

DR JANET STRATH

## The Sport of Kings: Royal County of Berkshire Polo Club Successfully Defends Trade Mark Infringement Claim Brought by Beverly Hills Polo Club 257

This comment considers the decision in a recent dispute concerning the ROYAL COUNTY OF BERKSHIRE POLO CLUB and BEVERLY HILLS POLO CLUB brands for polo club-themed clothing and accessories, in which the High Court dismissed a claim for trade mark infringement, passing off and conspiracy to injure by unlawful means. Mellor J found there was no likelihood of confusion between the figurative marks which both featured a picture of a polo player on horseback. As the parties operated in a “crowded market”, the trade mark was deemed less distinctive and evidence of actual confusion was required. Unfortunately for the claimants, the judge found “a number of problems with the evidence put before the court”.

DIONNE CLARK

## Easy, Tiger—BBC presenter Chris Packham Awarded £90,000 in Libel Damages 260

The High Court has awarded Chris Packham £90,000 in damages over articles published online by *Country Squire Magazine* and on social media. The articles included allegations of dishonesty concerning a tiger sanctuary. Although the publications concerned a matter of public interest, the public-interest defence failed, as the publishing defendants had no reasonable belief that publishing the statements was in the public interest. Rather, they had targeted Mr Packham because of an agenda against him. The claim against the third defendant was dismissed, as there was no evidence that his retweets caused any serious harm.

HUGO MASON

## BBC Restrained From Naming Celebrity Accused of Sexual Misconduct 263

The High Court has granted an interim injunction restraining the BBC from naming a claimant in connection with allegations of serious sexual misconduct. He had been arrested over some of the allegations, and police investigations were continuing, but no charging decisions had been made. Noting the “exceptional” degree of publicity, the judge found that publishing his name would create a “substantial risk” of seriously impeding or prejudicing the course of justice and would be a contempt of court. Further, publication was likely to be a misuse of his private information, given the reasonable expectation of privacy in criminal allegations between arrest and charge.

CATHERINE ARNOLD

## European Court of Human Rights Rules French Politician’s Conviction in Relation to Hate Speech Posted by Third Parties on his Facebook Wall did not Violate Article 10 265

This article reviews and comments on the decision of the Grand Chamber of the European Court of Human Rights in *Sanchez v France*. The Grand Chamber held, by a majority, that the criminal prosecution and conviction of the applicant, Mr Julien Sanchez, a local politician, for comments posted on the public “wall” of his Facebook account by third parties in the run-up to the French parliamentary elections in 2011 did not violate his right to freedom of expression.



MOLLY PANAGI-WILLIAMS

## **IPSO Clarkson Ruling a Win Against Discrimination or a Loss for Freedom of the Press? 270**

At the end of June, some six months after the event, the Independent Press Standards Organisation issued a ruling against *The Sun* over Jeremy Clarkson's article about Meghan Markle. The ruling, while on the face of it a victory against discrimination in the press, raises questions over IPSO's remit and whether a decision so far post article publication is "far too late" to have any meaningful impact. This article summarises the ruling and reactions to it.

MATTHEW GILL AND BEA ILDEM

## **Police Ordered to Pay Damages for Unnecessarily Disclosing Identity of Complainant 272**

This article reviews the High Court's ruling in *Ali v The Chief Constable of Bedfordshire Police* in which the police force was ordered to pay damages of £3,000 for misuse of private information and for breaches of art.5 of the GDPR and s.6 of the Human Rights Act 1998. The breaches arose from Bedfordshire Police's unnecessary disclosure of Ms Ali's identity as the source of a complaint about her ex-husband.

ALEXANDER ROSS

## **Ocilion IPTV Technologies v Seven.One Entertainment: Another "Indispensable" Ruling from the CJEU on Communication to the Public? 274**

This article reviews *Ocilion IPTV Technologies v Seven.One Entertainment* in which the Court of Justice of the European Union ruled that the supply by an IPTV service of equipment and services which enabled commercial customers to allow users to replay online television broadcasts does not constitute a communication to the public within the meaning of art.3 of the Copyright Directive. However, the reproduction that enabled such replay did not fall under the private copying exception and was therefore licensable.