

## Opinion

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This article considers the implications of the recent High Court decision in *Weavabel Group Ltd v Christie* for the drafting and negotiation of anti-disparagement provisions, specifically the distinction between the terms “derogatory” and “defamatory” and the impact that the use of each of those terms can have on the parties involved.

### **An (un)Convention(al) Approach? The Council of Europe’s AI Convention and the Evolving Global AI Regulatory Landscape 51**

The Council of Europe Framework Convention on Artificial Intelligence, the first legally-binding international treaty on AI, was signed on 5 September 2024 by many key global AI development jurisdictions including the EU, US, UK, Canada and Australia. This article considers the scope and key objectives of the AI Convention, and its broader significance in the global regulatory landscape.

### **European Commission Assesses In-Game Purchases, Loot Boxes and Engagement Techniques as Part of “Digital Fairness Fitness Check” on EU Consumer Law 55**

In October 2024, the European Commission published the results of a “Fitness Check” of EU consumer law on digital fairness. This article summarises the key findings of the Digital Fairness Fitness Check, and considers in more detail its relevance for the video games sector and future regulation.

### **Schrems v Meta Platforms Ireland—Will CJEU Ruling Curtail Social Networks’ Use of Personal Data for Targeted Advertising? 58**

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### **Splitting ATOMS—Upper Tribunal Clarifies Need to Determine Whether Data That is Subject to a Cyber-Attack Would Be Personal Data in the Hands of the Attacker 59**

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### **Sattvica v Global Royal Empire—Establishing a Reputation in the EU, a Defeat for Diego Maradona on the Trade Mark Pitch 62**

This article reviews and comments on two recent decisions of EUIPO’s Opposition Division concerning applications to register figurative trade marks relating to the iconic footballer Maradona. With EUIPO rejecting oppositions brought by the owner of an earlier eponymous word mark, the decisions provide a salutary reminder of the conditions required to establish reputation in a EU trade mark, and in particular that “a sign does not enjoy any reputation inherently, simply because it refers to a renowned person or event, but only for the goods and services it designates and the use that has been made of it”.

### **Football Tycoon Ken Bates Scores in Libel Claim Against Tom Rubython and BusinessFI 64**

The High Court has awarded Ken Bates £150,000 in damages and an injunction in his libel claim against Tom Rubython and BusinessFI. The case concerned a magazine article published in May 2023 headed “The biggest ‘wrong-un’ in sport”. The defendants did not run any form of substantive defence, but argued that the article had not caused serious harm to the claimant’s reputation. The size of the award reflected the seriousness of the allegations, which included allegations of financial misconduct and involvement in the alleged murder of a former business colleague, as well as the defendants’ aggravating conduct.



HUGO MASON

**Hibbert v Hall—A Rare Example of Harassment by Publication of Journalistic Material 67**

It is notoriously difficult to bring a harassment claim in relation to publication of journalistic material. Nevertheless, the claimants—seriously injured survivors of the Manchester Arena bomb attack—succeeded in this case. The defendant, a journalist maintaining that the attack was a hoax, was found to have undertaken an unreasonable course of conduct that was a “negligent, indeed reckless, abuse of media freedom”. He should have known that it amounted to harassment, and the claimants suffered severe anxiety and distress as a result.

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**CJEU Upsets Game Publishers and Platform Owners with Ruling on Whether “Cheat” Software Infringes Copyright in Program Underlying Video Game 76**

This article reviews the ruling of the Court of Justice of the European Union in *Sony Computer Entertainment Europe Ltd v Datel Design and Development Ltd* (C-159/23) that “cheat” software that runs at the same time as a video game’s software and alters gameplay does not infringe copyright in the game’s software as long as it does not reproduce or alter the game’s program code.

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**Berne Baby Berne: CJEU Conducts Kwantum Analysis of Copyright Protection Over Non-EU Works 78**

This article examines the Court of Justice of the European Union’s analysis in *Kwantum v Vitra* of the extent, if at all, to which EU Member States can derogate from EU legislation in relation to copyright protection for works of applied art that have been authored by a non-EU national in a non-EU country. The decision reinforces the harmonised legal landscape for intellectual property within the EU and is likely to benefit rights holders based outside the EU who wish to enforce their designs within EU markets.

DR JANET STRATH

**WaterRower Copyright Sunk by Artistry Requirement 79**

This article reviews and comments on *WaterRower (UK) Ltd v Liking Ltd (t/a Topiom)*, in which the Intellectual Property Enterprise Court decided that the EU and UK approaches to copyright were irreconcilable. Although the WaterRower water resistance rowing machine (widely recognised as a beautiful design with aesthetic appeal) qualified as an “original work” under EU law, it was not a “work of artistic craftsmanship” under UK case law. Consequently, Liking Ltd was found to have not infringed copyright, despite the fact that it admitted copying the WaterRower.

NEALE CHRISTY

**YouTube Shorts and Sweet—Decision Rendered in Google’s Favour in UK Trade Mark Infringement Proceedings 83**

This article reviews *Shorts International v Google* in which the High Court rejected trade mark and passing-off claims against Google brought by a company that produces and broadcasts short films, based on various trade marks incorporating the word “Shorts”, on the basis that Google’s use of the term on its YouTube Shorts platform was descriptive.

JOHN PATTEN, ALEX ZAPALOWSKI AND CHARLIE BURRELL

**Supreme Court Delivers a Definitive (Sky)Kick up the Rear for Bad Faith Trade Mark Applicants 85**

This article reviews the Supreme Court’s decision in the long-running case of *SkyKick UK Ltd v Sky Ltd*, in which SkyKick has ultimately succeeded in showing that certain of Sky’s UK and EU trade marks were applied for in bad faith and are, to that extent, invalid. The judgment definitively settles the test for determining whether a UK trade mark is applied for in bad faith and, in lowering the hurdles to be overcome in order to reverse a presumption of good faith, has signalled the need for brand owners to think very carefully about how they apply for and enforce UK trade mark applications. The judgment also methodically assesses the extent to which UK courts have any residual jurisdiction in respect of EU trade mark matters.