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Non-traditional Marks in the EU: Old Wine in New Bottles? 287

The 2015 EU Trade Mark Directive is due to be implemented in January 2019. The effect is that trade marks no longer have to be graphically represented and can be represented in electronic format. This enables the registration of new types of non-traditional marks, in particular motion marks, multimedia marks and hologram marks. However, the impact is primarily technological, and these new marks will still need to clear a high hurdle of distinctiveness. Although the UK proposes to implement the Directive, it is not clear how and to what extent UK trade mark law will change.

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EU copyright law on communication to the public continues to be in a state of flux as digital technologies and methods of distributing and consuming content continue to develop. The CJEU takes a flexible solution-focused approach when deciding this issue, but has failed to provide a consistent approach. The "new public" condition continues to be a challenge, and criteria such as knowledge and profit have also been incorporated into the test. Is this an attempt by the CJEU to harmonise accessory liability across the EU in the field of communication to the public?

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Regulatory rights, introduced in order to address public health concerns, have recently evolved into valuable components of the pharmaceutical industry's exclusive rights portfolio. This article looks into two regulatory systems, namely the Orphan Drugs Regulation Regulation 141/2000 and the Paediatric Extension, introduced by means of Regulation 1901/2006. Taking into consideration the fact that both these systems share terminology and a number of central provisions with the Data and Marketing Exclusivity Directive, Directive 2001/83 on the Community code relating to medicinal products for human use (Consolidated version: 16 November 2012), the article will also briefly refer to the rights granted as a result of the submission of clinical data for the grant of a marketing authorisation. The article attempts to shed light on the intertwining relationship of regulatory rights that constitutes both the source of their value as well as the source of complications as to their interpretation and application.

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Invented languages, such as Klingon (*Star Trek*), Elvish (*Lord of the Rings*) and Dothraki (*Game of Thrones*) contribute to popular culture. However, users of these languages are sometimes accused of copyright infringement. A recent example concerns Klingon. This article considers whether copyright can subsist in an invented language, particularly with reference to the individual invented words making up the language, and whether it should do so.

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Victoria Plum Ltd v Victorian Plumbing Ltd highlights the ongoing difficulty in determining infringement where third-party marks are used as keywords in online advertising. This article examines recent case law to outline the current legal position, taking into account the balance required between proprietors' rights and fair competition, and considers the future of keyword advertising.

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It is 20 years since database right was first introduced into the UK's intellectual property laws. It is therefore fortuitous that a recent High Court decision—*Technomed v Bluecrest*—provided a useful demonstration of how database right can be successfully deployed against infringers, and also broke new ground by holding that the right is capable of subsisting in a PDF. In this article we review the lessons about database right that can be learned from the decision.

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Ooo Abbott v Design & Display Ltd: Account of Profits for Patent Infringement 329

In proceedings for patent infringement, once liability has been established a successful claimant will often be permitted to elect between compensatory damages or an account of the profits made by the defendant. The defendant need only account for net profits, not gross turnover, meaning that overheads should be deducted. This raises the question of what overheads can be deducted and in what proportion. The court has grappled with these issues throughout these proceedings. After four years of litigation over the correct quantum of the remedy, the value of the defendant's profit has been determined to be nil.

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In its decision in *VCAST Ltd v RTI SpA (C-265/16)* the CJEU looked, for the first time, at cloud computing and its compatibility with EU copyright rules. The court held that a commercial undertaking providing private individuals with a cloud service for the remote recording of private copies of works protected by copyright, infringes the right holder's exclusive right to communicate to the public. The CJEU's decision is a severe setback for business models based on cloud technology.

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This comment considers *Global Yellow Pages Ltd v Promedia Directories Pte Ltd*, an important decision on copyright in compilation works by the highest appellate court in Singapore in 2017 which rejects the "sweat of the brow" approach, following developments in the US, Europe and Australia. It also considers the applicability of the American fair use defence, in particular the transformative use doctrine, to Singapore.

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