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Brexit Implications for Geographical Indications of Food and Beverages 1

The fate of protection of geographical indications (GIs) within the UK after it leaves the EU has been a subject of controversial discussion within the Brexit discussions. The EU has implemented a high level of protection of its GIs and is pursuing their protection in its free trade agreements. The type of Brexit finally adopted, if actually implemented, will heavily prescribe the future protection of GIs in the UK. This paper will trace the available options open to the UK with respect to its future arrangements for protecting GIs.

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The extent to which non-traditional signs such as sounds can be registered as trade marks has generated a fair amount of debate and controversy. The graphical representation criterion, which has traditionally served as an important prerequisite for trade mark registration, has recently been abolished in the EU. Interestingly, Hong Kong and Singapore have yet to follow suit, and continue to require graphical representation for all signs in their domestic trade mark legislation. This raises the question of whether cases such as *Shield Mark BV v Joost Kist (Shield Mark)*, decided at a time when graphical representation was still a requirement in the EU, still carry any persuasive weight in Hong Kong and Singapore. This article seeks to demonstrate that the criteria for determining the registrability of "acoustic trade marks", as set out in *Shield Mark*, do not provide a sufficiently nuanced framework with which to evaluate the growing variety of sound-based stimuli used in multi-sensory branding and marketing. In view of these emerging challenges, the article argues that Hong Kong and Singapore should consider adopting a more inclusive regime for the representation of sound marks that accommodates a broader spectrum of media-based elements, such as spectrograms and digital audio files, in line with developments in other jurisdictions and major markets.

SALLY DAVISON

Follow-on Innovation and Australia's Intellectual Property Rights: Who's Doing the Heavy Lifting? Analysis of the Impact of the High Court of Australia's Decision in *D'Arcy v Myriad Genetics* against Proposed Reforms to the Patents Act 1990 (Cth) 14

This article considers the potential impact of the High Court of Australia's decision on the patenting of human genetic materials for follow-on innovation against proposed amendments to intellectual property legislation in Australia. The purpose of the article is to address the following question: Has the High Court of Australia done more for follow-on innovation in the area of patents and human health than the Federal Parliament is proposing through its IP reform agenda? The first section will discuss the purpose of the patent system, follow-on innovation and the role of intellectual property legislation in stimulating new developments. The second section will consider the decision of the High Court of Australia in *D'Arcy v Myriad Genetics Inc.* The third section outlines the potential amendments to the Patents Act 1990 (Cth), and the Federal Government's responses to the Productivity Commission's review of that Act. Finally, the fourth section will discuss whether the proposed legislative changes are likely to stimulate follow-on innovation, or whether the High Court of Australia has done more for follow-on innovation than the Parliament through its decision in the *D'Arcy* case.

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The present article attempts to align the principles generally governing insolvency law and specific provisions laid down in European trade mark law. In particular, in those cases in which an applicant has been declared insolvent, they would no longer be entitled to further continue with trade mark proceedings or to renew a registered trade mark before the European Union Intellectual Property Office (EUIPO). Such a situation, if not properly managed, could lead to a loss of trade mark rights. Thus, an analysis of the interaction between the above-mentioned branches of law could certainly assist in avoiding the aforementioned loss of rights.

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In *Victoria Plum v Victorian Plumbing*, the High Court decided that keyword bidding by competing traders on each other's long-established confusingly similar trading names was an infringement of trade mark and passing off. This article identifies the deficiencies in the court's reasoning, in particular the failure to take account of the impact of honest concurrent use on the origin function of a trade mark when considering whether the confusion caused by such advertising leads to the conclusion that there is an infringement of the competing trader's rights.

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Protecting the Image: Applying a Right of Publicity to Images Uploaded on Social Networks 38

The uploading and sharing of personal images on social networks is one of the most popular ways to communicate online. When personal images are created, different interests arise between the creator of the image and the subject whose image is captured in the photograph. It is important to distinguish between the creator and the subject's interests because different rights arise when a photograph is misused. While copyright law protects photographs, there is a significant gap of protection afforded to the creator's rights and the subject's rights. This gap may potentially result in personal images being misused by third parties when those images are uploaded online. When a third party photographs a person, the person whose image is captured is often left with limited legal protection over the use of their image. This is because the subject is not protected by copyright and must seek protection in other areas of law. The United States' development of publicity rights has provided a rich scholarship that may be a potential model for other jurisdictions in considering whether a right of publicity may protect the misuse of personal images. This article explores whether a right of publicity is adequate to protect personal images that are uploaded online from misuse.

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On 22 June 2018, a new Italian law (D.lgs. 63/2018) entered into force implementing the UE Directive no.2016/943 on the protection of trade secrets. D.Lgs. 63/2018 introduced important amendments of Italian Intellectual Property Code, such as the subjective element required to obtain protection, the uses of trade secrets considered unlawful, the measures of protection and the safeguards in pending proceeding. Before analysing the reform, the current rules relating to trade secrets in Germany, France, the UK, Spain and the Netherlands will be described in order to understand the significant innovations of Italian new regime.

JOSEPH JONES

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On 25 July 2018, the CJEU handed down its judgment on a long-running dispute between Nestlé and Cadbury relating to Nestlé's attempt to obtain trade mark protection across the EU for the shape of a four-finger chocolate-coated wafer.¹ The CJEU ruled that KitKat had not acquired distinctiveness under the relevant tests, and so the EU Intellectual Property Office (EUIPO) must reconsider its assessment as to whether the three-dimensional shape of the bar can be retained as an EU trade mark. The judgment is an important one as it addresses the issue of "distinctive character" and, more specifically, what level of proof is required to establish that a shape which is devoid of distinctive character has become distinctive through use.

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