

# European Intellectual Property Review

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The European Court of Justice may soon invalidate art. 17 of the Directive on Copyright in the Digital Single Market because it constitutes a general monitoring obligation. The provision is not limited to requiring platforms to block acts of infringement identified by a court. It therefore fails to qualify as permitted monitoring in a specific case.

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Trade mark law is premised on the idea that trade marks and certification marks occupy different roles. This distinction, however, is not as binary as we may expect. This article explains how pseudo-certification marks, a previously unidentified type of mark, are being used as attestation marks indicating a departure from our understanding of the role of different types of marks. In light of this departure, this article considers the role of attestation marks in private governance regimes and the nature of certification marks as a form of intellectual property. This article argues the integrity of the trademark law system relies on different types of marks being regulated in light of their distinct roles, and pseudo-certification marks evade effective regulation. This article further argues that the trend of using pseudo-certification marks as attestation marks can be partially explained by the growing trend of developing brands around certifying marks and certifying bodies.

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AYOYEMI LAWAL-AROWOLO,  
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Advertising agencies, business organisations and photographers perceive images of Afrobeats celebrities as a marketing goldmine. Local traders and small businesses are equally engaged in the game of using these images without authorisation to boost their clientele. Nigeria is not one of the jurisdictions with specific laws on image rights, neither is the UK. The landmark case of *Fenty v Arcadia Group Brands Ltd (t/a Topshop)* and another on passing off and image rights is regarded as persuasive in Nigeria. This article explores applicable laws on the use of celebrity images in Nigeria and non-legal factors fostering or hindering protection of these images.

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LOUIS O'CARROLL

**As Complex as a Rubik's Cube: The Three-dimensional Trade Mark and Its Implications for Competition in the EU 268**

This article seeks to analyse the law of the EU governing the registration of three-dimensional trade marks. It argues that trade marks play a crucial role in ensuring effective competition and as a result a court must keep in mind the requirements of effective competition in defining the boundaries of what can constitute a mark. On examining the two main schools of thought which have influenced the development of competition policy in the EU—the Freiburg school of ordoliberalism and the consumer welfare model—this article then assesses the case law of the European Court of Justice in light of its effectiveness in protecting competition. It concludes that the court's interpretation of Directive 2015/2436 and Regulation 2017/1001 governing the registration of trade marks, most recently seen in the case of *Rubik's Brand Ltd v EUIPO*, reflects a thoughtful and careful consideration of the requirements of effective competition.

ANNA MARIA STEIN

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**Book Review**

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