Kluwer Trademark Blog

Top 3 Posts of the Spring from our IP Law Blogs

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To ensure you don't miss out on interesting IP law developments reported on our other IP blogs, we will, on a regular basis, provide you with an overview of the top 3 most-read posts from each of our IP law blogs. Here are the top posts from April, May and June.

Top 3 Kluwer Copyright Blog posts of April/May/June

1) Before the CJEU soon: the question of digital exhaustion by Saba Sluiter

"One of the main limitations to the right of distribution in European copyright law is the principle or rule of exhaustion. This rule, known as the first sale doctrine in US law, means that the right of distribution is exhausted by the first sale or other transfer of ownership of a copy of the work made by the rightholder or with his consent (Article 4(2) InfoSoc Directive). This rule has mostly been of straightforward application to physical copies of works, but can it be applied to digital copies of works too? That is the question in the case of Tom Kabinet in a nutshell."

2) Member States can no longer require a higher level of originality for works of applied art/designs, says AG Szpunar in Cofemel by Estelle Derclaye

"On 2 May 2019, Advocate General Szpunar delivered his opinion in Case C-683/17, Cofemel – Sociedade de Vestuário SA v. G-Star Raw CV. The case concerned designs for t-shirts and jeans made by G-Star Raw. In essence, the question posed by the Portuguese Supreme Court is whether Member States have the freedom to choose the level of originality pertaining to works of applied art, industrial designs and works of design or whether they must apply the CJEU standard of "the author's own intellectual creation" (AOIC) to such works. AG Szpunar chose the latter option."

3) Can Machines be Authors? by Daniel Gervais

"Using newer forms of Artificial Intelligence (AI), including General Adversarial Networks (GANs), AI machines are increasingly good at emulating humans and laying siege to what has been a strictly human outpost: intellectual creativity…At this juncture, we cannot know with certainty how high on the creativity ladder machines will reach when compared to or measured against their human counterparts, but we do know this: They are far enough already to force us to ask a genuinely hard and complex question, one that intellectual property (IP) scholars and courts

will need to answer soon, namely whether copyrights should be granted to productions made not by humans, but by machines. This question is the subject of my forthcoming article, the key points of which are discussed in this post."

Top 3 Kluwer Trademark Blog posts of April/May/June

1) Jurassic battle in Spanish courts by Carolina Pina

"Can Dinosaurs be monopolized as a trademark? The Commercial Court of Barcelona (Judgment No. 123/2019 of April 3, 2019) has held that the representation of a dinosaur on a cookie cannot be monopolized by a company and should remain in the public domain."

2) India: Deceptive Similarity of Trademarks by Amrit Singh

"In India, so-called translation cases, where a later mark is (or is alleged to be) a mere translation of an earlier mark leading to confusion resulting from conceptual similarity, are dealt with under the concept of "deceptive similarity". While earlier decisions seemed to favour a broad interpretation of this concept, the judgment of the Delhi High Court dated 31 January 2019 in the case of M/S Allied Blenders and Distillers Pvt. Ltd. v. Govind Yadav & Anr seems to support closer scrutiny. In this case, the Court ruled that the trademarks "Officer's Choice" and "Fauji's" were not deceptively similar."

3) Celebrity Names in Class 16 by Kai Schmidt-Hern

"With decision of 25th February 2019, the German Federal Patent Court (Bundespatentgericht) has ruled on the registrability of a celebrity name for inter alia publications in class 16. The Bundespatentgericht is the appeals court for decisions of the German Patent and Trademark Office (DPMA)…Franziska van Almsick, one of the most successful swimmers of recent times, applied for the registration of her name "Franziska van Almsick" as a word mark for several goods and services with publications in class 16 among them."

Top 3 Kluwer Patent Blog posts of April/May/June

1) EPO staff survey: concerns about quality, low confidence in management, lack of respect by Kluwer Patent blogger

"Only two thirds of EPO staff are proud to work at the European Patent Office. Four in ten say they face substantial obstacles to doing their job well. They have a very negative view of management effectiveness, with low confidence in senior management decisions, lack of clarity about direction, and insufficient contact between senior management and staff. Concerns are high about the Office's commitment to quality, and about its reputation and service focus. The majority of staff have autonomy to do their work, but far fewer think it is safe to speak up, or feel

encouraged to contribute new ideas. There is little evidence of a 'continuous improvement culture' in the Office.These are the most important conclusions of 'Your voice, our future: The EPO Staff Engagement Survey'."

2) Es gibt nichts Gutes. Außer man tut es. Both within and outside the EPO. by Thorsten Bausch

"One of the deepest insights in moral philosophy is provided by Erich Kästner's short rhyme „Es gibt nichts Gutes. Außer man tut es." (There's nothing good. Unless you do it.), which became one of the most cited proverbs in German. Mind Kästner's original punctuation. In the first sentence, he expressed fundamental skepticism that there is an absolute good. But then he allowed for the one, single exception: if you do it.

With that, let me turn straight to the European Patent Office. It has called for comments on its strategic plan. It seeks a dialogue with the public on quality and wants to receive direct feedback from every stakeholder so that it can improve its quality processes by reacting to clearly identified and real needs. Its President seeks to listen to its staff and pledged to renew social dialogue and ease tensions in his letter of motivation to the Administrative Council before he was elected. There are news on the financial side. And, finally, the EPO has recently published the Annual Report on the Boards of Appeal 2018, which also gives cause for a few comments."

3) Union calls for strike at the EPO, first time since president António Campinos took office by Kluwer Patent Blogger

"The SUEPO trade union has called for a strike in all EPO sites around the next Administrative Council's meeting in June…'Almost one year after the arrival as Mr. Campinos as President of the EPO, we note with regret that the social situation hasn't improved and that none of the root causes of the many issues that trouble our organisation have been addressed. The Battistelli administration and its anti-staff policies are still in place. The situation in the office is more toxic than ever, as also shown by the recent disastrous staff survey results and the worsening of staff health. There are many reasons for discontent', the SUEPO wrote to president Campinos last week."

Read further posts on the Kluwer Copyright Blog here, the Kluwer Trademark Blog here and the Kluwer Patent blog here.

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