Kluwer Trademark Blog

Top 3 posts for summer reading 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 most-read posts from each of our IP law blogs. Here are the most popular posts over the past few months.

Top 3 Kluwer Copyright Blog posts

1) Generative AI, Copyright and the AI Act by João Pedro Quintais

"Generative AI is one of the hot topics in copyright law today. In the EU, a crucial legal issue is whether using in-copyright works to train generative AI models is copyright infringement or falls under existing text and data mining (TDM) exceptions in the Copyright in Digital Single Market (CDSM) Directive. In particular, Article 4 CDSM Directive contains a so-called "commercial" TDM exception, which provides an "opt-out" mechanism for rights holders. This opt-out can be exercised for instance via technological tools but relies significantly on the public availability of training datasets. This has led to increasing calls for transparency requirements. In response to these calls, the European Parliament is considering adding to its compromise version of the AI Act two specific obligations with copyright implications on providers of generative AI models"

2) Ed Sheeran's song "Shape of You" does not infringe Sami Switch's "Oh Why" by Jeremy Blum and Jake Palmer

"The UK High Court has declared that Ed Sheeran's mega-hit "Shape of You" does not infringe copyright in Sami Switch's lesser-known song "Oh Why". The case focuses on whether Ed Sheeran consciously copied Sami Switch's chorus. Accordingly, this case is a useful example of how a court will: (1) assess the derivation requirement (of actual copying) of UK copyright; and, (2) as part of that, consider similarity between musical works for the purpose of copyright infringement."

3) How to Distinguish Transformative Fair Uses From Infringing Derivative Works? by Pamela Samuelson

"In March 2022 the U.S. Supreme Court agreed to review the Second Circuit's ruling that Andy Warhol's series of colorful prints and drawings of Prince were not transformative fair uses of Lynn Goldsmith's photograph. Vanity Fair magazine had commissioned Warhol's artwork in 1984 to accompany an article about the singer's rise to fame based on Goldsmith's photograph under a one-time-use "artist reference" license between Vanity Fair and Goldsmith's agent."

Top 3 Kluwer Trademark Blog posts

1) Good for the Goose: Own goal for Lidl in future lookalike cases by Julius Stobbs, Amelia Sainsbury and Nirmal Trivedy

"This post is the first of four looking at the decision of Smith J in Lidl & another v Tesco & another [2023] EWHC 873 (Ch). It will focus on the s.10(3) trade mark infringement elements of the judgment and the potential impact this may have for rights holders."

2) Can reporting on dupes of famous perfumes amount to trademark infringement? by Bettina Clefsen

"In a decision of this year, the District Court of Hamburg confirmed that an online-magazine article about so-called perfume dupes being "smell alikes" of well-known perfumes amounted to trademark infringement (decision of 26 January in Case 327 O 130/22)."

3) European Union Trademarks and Austria: Famous mark PUMA beats "PUMA Multipower" for dissimilar goods by Katharina Schmid

"We all know that highly famous marks enjoy a kind of "universal" protection for (almost) any goods and services. However, for only "average" well-known marks", the threshold of necessary closeness depends on how well-known the trademark is, on the similarity of the marks, and on the type of injury. In a recent opposition case, the Higher Regional Court Vienna (HRC), had the rare opportunity to shed some light on the scope of protection of the well-known trademark "PUMA" as against a similar mark applied for entirely dissimilar goods."

Top 3 Kluwer Patent Blog posts

1) UPC opt-outs: statistics and trends one month in by Laurence Lai

"As of the end of June 2023, 535,152 patents and applications have been opted-out of the jurisdiction of the Unified Patent Court. The effective number of opt-outs is already being reduced by subsequent withdrawals and removals. To date, 54 withdrawals and 220 removals of opt-outs

have been requested. There have also been 52 automatic withdrawals due to requests for unitary effect of opted-out patents."

2) Deteriorating patent quality: EPO under fire, management is not impressed by Kluwer Patent Blogger

"The EPO management has been under increasing criticism for its perceived lack of attention for the deteriorating quality of EPO patents. The subject was put on the agenda prominently last year in October by the Industry Patent Quality Charter (IPQC), a group representing a series of major and smaller international corporations, and endorsed by the staff union SUEPO. Apparently it was also brought forward during the meeting of the EPO's Administrative Council late June by various member states. But in a letter sent two days ago, the EPO refutes most of the IPQC's quality concerns."

3) A Short Summary of the Recently Leaked EU Regulation Proposal on Standard Essential Patents by Enrico Bonadio and Dyuti Pandya

"EU institutions have recently paid attention to Standard Essential Patents (SEPs) and how the SEPs framework could be improved to encourage innovation while also promoting competition and satisfy consumers' interests. In its 2020 Intellectual Property Action Plan on IP, for example, the Commission stressed the need to set the right conditions for a transparent, predictable and efficient SEPs system; and in February 2022, it invited parties to express their views and experiences in order to improve such system, in particular the transparency and predictability of the licensing framework."

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

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