IP & Media News

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Our newsletter on recent developments

Trade Marks

The CJEU has given judgment in Cases T-423/12, T-183/13 and T-184/13, *Skype v OHIM.* The General Court confirmed that there exists a likelihood of confusion between the figurative and word mark SKYPE and the word mark SKY. This is a significant loss for SKYPE. Readers will recall SKY enjoyed a similar recent success against Microsoft's SKYDRIVE (now ONEDRIVE). A salient reminder of the importance of proper clearance.

Blocking injunctions

Another blocking order pursuant to §97A of the Copyright, Designs and Patents Act 1988 (CDPA) was made on the application of the Motion Picture Association of America (MPAA) in *20th Century Fox and Others v Sky UK and Others*. The case concerned an open source application 'Popcorn Time', a free download from the Popcorn Time website (PTAS site). The application could be used to browse, search and locate film and TV content using the BitTorrent protocol (with the addition of media player software, an index/catalogue of titles and images and descriptions of titles). Once downloaded the user did not revisit the PTAS website. Popcorn Time applications locate torrents by searching catalogues of existing websites which host torrents and they do so by

circumventing technical means and blocks Birss J noted "*[n]o-one really uses Popcorn Time in order to watch lawfully available content."* The applicants had put their case in three ways: (1) communication to the public; (2) authorisation, and (3) jointtortfeasance. Birss J. found infringement only in respect of (3). He found the PTAS site did not communicate copyright works to anybody but "*the suppliers of Popcorn Time plainly know and intend*" the application to be "*the key means which procures and induces the user to access the host website and therefore causes the infringing communications to occur.*" The case is not surprising in light of the existing §97A case law although the new linking and embedding authorities (below) were not argued.

Copyright linking & embedding

Last year we reported on Case C-348/13 *BestWater*, where the Court of Justice for the European Union (CJEU) confirmed the embedding online of a work online elsewhere online (a video uploaded to YouTube), does not infringe copyright provided there is no new public and no new technical means. This followed the ruling in *Svensson*, Case 466/12 (same --see our update in March 2014). A judgment has now been given in a third case, *C More Entertainment AB v Linus Sandberg*, Case C-279/13, dealing with linking and paywall circumvention for live hockey games. The live games were not protected by copyright under the Copyright Directive as there was insufficient originality in the work of the camera operator etc. Further, as the games were live they were not on demand within the definition of 'making available' in art. 3(2) of the Copyright Directive 2001/29/EC. There is hope for sports cubs however as the court confirmed member states can add protection for such content as related rights --provided copyright was not undermined –using the Lending and Rental Directive.

Domain Names

A WIPO panellist awarded the domain name 'trumpcard.com', registered by the Respondent in 1998 and used as part of an affiliate arrangement with gambling sites such as partypoker.com, to the Complainant, Donald Trump. The Panel found the Respondent should have known of the reputation and fame of the Complainant at the time of registration and so registered the domain name in bad faith. The decision is controversial due to the descriptive nature of the term trump card and the fact that panels had previously decided against Mr Trump—who came up lucky on his third attempt.

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