

## FRIDAY FORTNIGHTLY WEEK: THE IP AND COMPETITION NEWSLETTER (ED. 2022 WEEK 42 NO. 34)

Dear Readers,

Welcome to the first edition of the academic year 2022-23. In light of the long break between this edition and the previous one (No. 33 in July 2022), in this edition and the next, we shall cover the key developments in the world of Competition, Copyright, Patents, and Trademarks for the period, July-October 2022. This is to ensure that our readers stay abreast of the latest developments in the world of IP and competition. It also means that these two editions may be a bit more detailed and longer than usual!

The Innovation Legal Aid Clinic's (TILC) information initiatives - Friday Fortnightly and IP Talks - are open to contributions by students and alumni from the intellectual property law programmes offered at the Faculty of Law, Maastricht University. To know more about, and participate in our upcoming Monday Morning – IP Talks, please follow the events section.

In addition to the newsletter, you can now, also connect with us on [LinkedIn](#) and [Instagram](#).

We very much look forward to your feedback, inputs and suggestions.

With kind regards,

A. Haesaert, A. Lazić, P. Bentham, S. Abel and K. Tyagi

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*Serving innovative start-ups pro-bono with the wisdom of intellectual property laws*

## 1. Competition law

### 1.1 EU/US discuss best practises to reign in the big tech at the 2<sup>nd</sup> joint policy dialogue

Following the emergence of the digital markets and the nouvelle challenges to competition law enforcement therein, whereas the EU introduced the Digital Markets Act; the US too plans to introduce new laws, such as the American Innovation and Choice Online Bill and the Open App Markets Act. To co-operate on the issue of platform regulation, on 7<sup>th</sup> December 2021, the EU and the US competition agencies officially launched the joint Technology Competition Policy Dialogue (TCPD). On 13<sup>th</sup> October, the European Commission and the US Department of Justice (DOJ) and the Federal Trade Commission (FTC) met in Brussels for the second joint TCPD to exchange thoughts and enhance co-operation to promote “fair and inclusive digital transformation”. The TCPD offers a non-binding platform to conduct “high-level meetings as well as regular staff discussions” to co-ordinate and co-operate at an institutional level. The TCPD is expected to serve as a complement to other ongoing cooperation and collaboration initiatives between the EU and the US on the issue of policy enforcement in the digital sector.



*Sources: European Commission, 13 October 2022, available [here](#). Federal Trade Commission, 13 October 2022, available [here](#). Politico, 14 May 2022, available [here](#).  
Image Source: European Commission, available [here](#).*

### 1.2 Commission sends SO to Teva for delaying entry of multiple sclerosis drugs



In 2015, Israel headquartered pharmaceuticals company Teva’s blockbuster drug, Copaxone went off-patent. In 2014, Copaxone’s peak worldwide market sales hovered around US \$ 4 billion per annum. To prevent the entry of generics, and thereby retain its profits, Teva allegedly engaged in the following two anti-competitive practices. First, it abused the patent procedure, by following a so-called “divisional game”. In a divisional game, the patent holder strategically files patents “derived from

an earlier secondary patent”. Second, Teva also engaged in an unscrupulous “systematic disparagement campaign”, whereby it methodically approached medical professionals, and cast aspersions on the efficacy of the competing drugs containing the active pharmaceutical ingredient (API), glatiramer acetate medicine. Investigations in Teva’s aforementioned anti-competitive conduct was first initiated in October 2019, when the Commission conducted unannounced dawn raids at various regional offices of Teva across the EU. Following this initial investigation, the Commission initiated formal investigations on 4<sup>th</sup> March 2021.

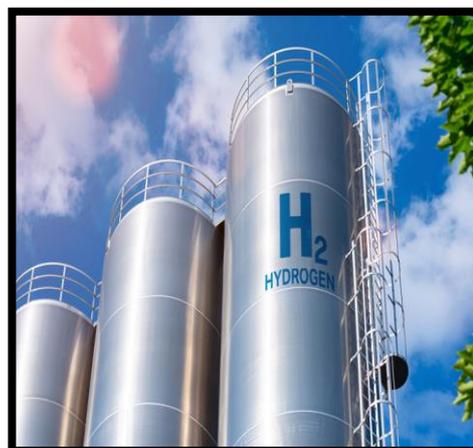
On 10<sup>th</sup> October, the Commission formally sent a formal statement of objections (SO) to Teva. As per the SO, Teva’s allegedly anti-competitive conduct has delayed the entry of competitors in the market for glatiramer acetate in Belgium, Czechia, Germany, Italy, the Netherlands, Poland and Spain, which has cost the EU taxpayer an average additional burden of over € 500 million per year.

*Sources: European Commission, 10 October 2022, available [here](#). Reuters, 10 October 2022, available [here](#). Healthworld.com, 10 October 2022, available [here](#). The Pharma Letter, 10 October 2022, available [here](#).*

*Image Source: Getty Images, 21 October 2022, available [here](#).*

### 1.3 Commission approves State Aid to COBRA for renewable energy

On 13<sup>th</sup> October, the Commission approved an aid of €220 million to Cobra Instalaciones y Servicios, S.A. (COBRA). With this aid, COBRA will set up two electrolyzers, with a combined capacity of 205 megawatts (MW), in Cartagena and Castellón in Spain. These plants are expected to annually produce 8,550 tonnes of renewable hydrogen and 6,480 tonnes of oxygen via a chemical process known as water electrolysis. One molecule of water (H<sub>2</sub>O) is composed of two atoms of hydrogen and one atom of oxygen. Electrolysis degenerates these molecules into pure atoms of hydrogen and oxygen. With this environment friendly process of energy production, project COBRA is not only expected to reduce EU’s dependence on Russian energy, it is also expected to positively contribute to EU’s green transition towards more sustainable and renewable sources of energy. This is the third Important Project of Common European Interest (IPCEI) under the “REPowerEUPlan” approved by the EU. Whereas the other projects were approved under the general framework, the Spanish Project, COBRA was approved under EU State Aid rules on account of the special nature of this grant. If this project turns out to be successful, COBRA shall return a part of the profits to the Spanish government as per the “claw-back” provisions. Following an assessment of the proposed project under Article 107(3)(c) Treaty on the Functioning of the European Union (TFEU) and the 2022 Guidelines on State Aid for Climate, Environmental Protection and Energy (CEEAG), the Commission was of the opinion that the Aid shall offer “an incentive” to the company to make an investment in renewable hydrogens.



*News and Image Source: European Commission, 13 October 2022, available [here](#).*

### 1.4 EU Digital Markets Act published in the OJ, to enter force on 1<sup>st</sup> November

On 12<sup>th</sup> October, the Commission published the Digital Markets Act (DMA) in the Official Journal of the EU (OJEU). The DMA will enter force on 1<sup>st</sup> November, that is 20 days following its publication in the OJEU. DMA is part of the EU’s Agenda to offer a befitting regulatory response to address the digital capture by large online platforms. It, accordingly, offers a new set of conditions to be met by companies designated as “gatekeepers”. As per Article 3 of the DMA, if an undertaking enjoys a “significant impact”, “offers a core platform service” and enjoys “entrenched and durable” position of market power, it shall be deemed as a gatekeeper. These “gatekeepers” are then required to comply with a set of obligations and prohibitions as prescribed in the Act. They are, for example, required to ensure effective interoperability and portability with competing service providers under some prescribed conditions.

In light of the highly innovative and complex nature of the DMA, the Commission shall soon follow with a public consultation on its implementing regulation. It will also organize workshops to enhance familiarity with this new legislative framework.

Sources: *Skadden*, 12 October 2022, available [here](#). *European Commission*, 14 September 2022, available [here](#). *Deloitte*, 19 October 2022, available [here](#).

## 2 Copyright

### 2.1 Article 2(7) Berne Convention not an *acte claire*: says Dutch Supreme Court

In an interim judgment dated 23<sup>rd</sup> September, the Dutch Supreme Court, Hoge Raad der Nederlanden (HR), expressed doubts on the scope of application of Article 2(7) of the Berne Convention (BC) to works of applied art.

In the case, *Kwantum/ Vitra*, currently pending appeal before the HG, Vitra claimed that Kwantum's "Paris Chair" (see image below) infringed its "Design Sidechair Wood" (DSW) (see image right). The famous DSW was



designed by

US citizens Charles and Ray Eames for the Museum of Modern Art in New York in 1948. DSW is not protected by copyright in the US. In 2014, Vitra first requested a "cease-and-desist" order against Kwantum. The lower court, however, found that Kwantum did not infringe Vitra's rights in DSW. On appeal, the higher court reversed the findings, and found in favour of Vitra. In the currently pending appeal before the HR, Kwantum challenged the findings of the Dutch Court of Appeal. It raised doubts about the scope of Article 2(7) of the BC, that is applicable to industrial designs and works of applied art.

The HR has particularly expressed doubts over the scope and applicability of the "materiële-reciprociteitstoets" (the Materiel Reciprocity Test, MRT) to "werk van toegepaste kunst" (works of applied art). As per the MRT, in case of special protection by the country of origin (for example, through design patents), the BC members must afford the same protection. Further, as regards copyright, the Dutch position has been that copyright protection can also be afforded to such works, provided that such a protection is also offered in the country of origin. In addition to the BC, the Charter of Fundamental Rights (CFR), most notably Article 17(2) suggests that intellectual property (including works of applied art) be protected, which can, in compliance with the prescriptions in Article 52, be limited in some cases. However, as per the CJEU in RAAP (Case C-265/19), only the EU legislature has the power to limit the application and availability of the rights prescribed in the CFR.

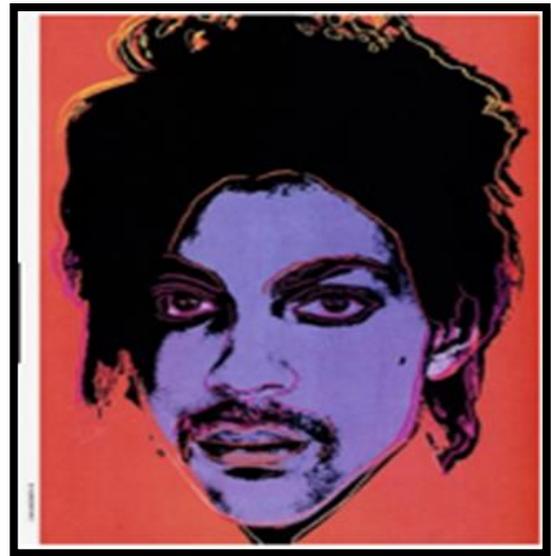
In light of the foregoing, the HR has now invited both – Vitra as well as Kwantum – to make their submissions before it. Once the HR has heard both the parties, it will formally make a request for a preliminary ruling on the scope of Article 2(7) BC and the CFR to the Court of Justice of the European Union (CJEU). The HR is expected to formally make its request to the CJEU by the end of this year.

News & Image Source: *The National Law Review*, 3 October 2022, available [here](#). *IPKat*, 3 October 2022, available [here](#). *Hoge Raad*, 23 September 2022, available [here](#).

## 2.2 SCOTUS hears oral arguments on fair use in Goldsmith/ Warhol case

On 12<sup>th</sup> October, the Supreme Court of the United States (SCOTUS) heard oral arguments in Goldsmith/Andy Warhol Foundation (AWF).

Warhol's work, namely 15 silkscreen prints and pencil illustrations, were based on a 1981 photograph of Prince, one of the greatest all-time musicians, by Lynn Goldsmith. As Warhol had not taken any permission from Goldsmith, following a publication of Warhol's work in 2016, Goldsmith sent a notice to the AWF. The AWF however, obtained a favourable decision from the US District Court on grounds of fair use. On appeal, the US Court of Appeal (CoA) found that Warhol's work was not sufficiently transformative, and accordingly, failed the four-factor fair use test. Central to the case at hand are



two of the four factors of the US open-ended fair use test – namely, the transformative nature of the follow-on work (1) and the effect of the derivative work on the market for the original work (2). The decision of the SCOTUS is eagerly awaited as it is expected to clarify the nature and scope of the fair use test in the US. [For a discussion on the decisions of the lower courts in Goldsmith/Warhol case, see Friday Fortnightly Ed. 2021, Week 14 No. 9, News Item 2.1 'Objectivity' key to evaluation of fair use claims: US Second Circuit, available [here](#).]

*News and Image Source: Copyright Alliance, 13 October 2022, available [here](#). PAPER, 13 October 2022, available [here](#). IPWatchdog, 12 October 2022, available [here](#). AP News, 12 October 2022, available [here](#). Supreme Court Docket No. 21-869, available [here](#).*

## 2.3 Uffizi goes after Jean Paul Gaultier for unauthorised use of Botticelli's works



Earlier this year, Europe's leading luxury brand, Jean Paul Gaultier (JPG) launched its Spring/Summer 2022 collection 'La Musée Capsule'. The collection is a tribute to leading artists and their classical works. Many dresses, scarves and trousers in this collection depicted Sandro Botticelli's classic work 'The Birth of Venus' (see image on left). JPG used these works without taking any permission from Italy's leading Florence-based art museum, Uffizi. Uffizi accordingly sent a notice to JPG in April for making commercial

use of the images without taking due authorisation. The warning letter required that either the Spanish parent company, Puig, the majority shareholder of the brand JPG, withdraw the collection from the market, or alternatively take a license from Uffizi.

Central to Uffizi's claim is the issue of patrimony as the Italian Cultural Heritage Code (CHC) endows patrimonial rights to museums and cultural heritage institutions. These institutions can accordingly, require that users must first take a due license and authorization to merchandise

such classic works. As JPG made commercial use of the work without taking license, Uffizi intends to seek legal action, and demand payment of upto € 100,000, as provided by the Italian CHC. Following this announcement, JPG promptly took down images of clothes depicting ‘The Birth of Venus’ from its website.

*Sources: IPKat, 11 October 2022, available [here](#). ARTnews, 11 October 2022, available [here](#). OBSERVER, 11 October 2022, available [here](#). The Guardian, 10 October 2022, available [here](#).*

*Image Source: Pixabay, available [here](#).*

## 2.4 CJEU defines scope of ‘cable retransmission’ in the SatCab Directive

On 8<sup>th</sup> September, the CJEU offered its opinion in RTL/Grupo Pestana on the scope of Article 1(3) of the Satellite and Cable Directive (93/83/EEC), the SatCab Directive.

RTL is a free-to-air (FTA) German channel. It can be accessed without any restrictions via a satellite dish antenna across Europe. Grupo Pestana is a majority shareholder with a group having a chain of hotels in Portugal. In August 2012, the RTL requested Grupo Pestana to take a license before making its TV channel available in the hotel rooms. Following Grupo’s refusal to take a license, RTL approached the Portuguese



Intellectual Property Court, Tribunal da Propriedade Intelectual (TPI). The TPI, however, refused RTL’s request as it was of the opinion that hotels were not a broadcasting organisation, and that “the distribution of [RTL] could not be regarded as a ‘retransmission of broadcasts’” (CJEU, at para 39). On appeal, the Lisbon Court of Appeal, the Tribunal da Relção de Lisboa, upheld the findings of the TPI. RTL then approached the Supreme Court of Portugal, Supremo Tribunal de Justiça, which referred the question for a preliminary ruling to the CJEU. It requested in particular an interpretation of the expression “cable retransmission” under Article 1(3) read along with Article 8(1) of the Directive 93/83.

The CJEU, in its opinion stated thus: first, Directive 93/83 “was adopted principally in order to facilitate, in particular, cable retransmissions by promoting the granting of authorisations” (CJEU, at para 82) and second, that hotels could not be deemed as cable operator or cable distributor within the meaning of the Directive (CJEU, at para 84). In light of the foregoing, the CJEU was of the opinion that retransmission of programmes by an individual other than the operator, such as for example a hotel, could not be deemed as cable retransmission.

*Sources: CJEU Case C-716/20, 8 September 2022, available [here](#). Wiggin, 20 September 2022, available [here](#). IP-PorTal, 12 September 2022, available [here](#).*

*Image: Unsplash, available [here](#).*

## 3. Patent

### 3.1 Moderna files multiple patent infringement suits against Pfizer and BioNTech

On 26<sup>th</sup> August, US-based biotech, Moderna filed a complaint against the US-based pharmaceuticals company Pfizer, and German-headquartered BioNTech in the US District



Court for the District of Massachusetts. As per the Complaint, Pfizer and BioNTech infringed three key patents owned by Moderna. Moderna's complaint is based on the three key patents that it filed between 2010 and 2016. This comprises of their foundational mRNA technology, that continue to be infringed by the Defendants. These technologies include first, an mRNA chemical modification and second, "the approach to encode for the full-length spike protein in a lipid nanoparticle formulation for a coronavirus". The Defendants allegedly "copied two critical features of Moderna's patented mRNA technology platform" (Complaint, at para 21). These include: first, the use of exactly same chemical medication to mRNA, and second, encoding "the exact same type of

coronavirus protein" as developed by Moderna's scientists. Pfizer and BioNTech had entered into a joint collaboration to produce the Covid-19 vaccination, Comirnaty®.

In addition to the US, Moderna has also filed a patent infringement lawsuit in the Düsseldorf Regional Court (case ID: 4b O 62/22).

In both the lawsuits, Moderna has only requested for damages, and requires that the parties enter a "commercially viable license". It does not request injunctive relief. Further, it has requested damages for infringement starting 8<sup>th</sup> March this year, that is once the fight against Covid-19 no longer faced similar barriers to access, as it did between March 2020 and March 2022. Moderna also does not intend to enforce these patents in any 92 low- and middle-income countries in the Gavi COVAX Advance Market Commitment (AMC) or in the World Health Organization's (WHO) South African project for the supply of vaccines to these countries.

*Sources: Complaint, 26 August 2022, available [here](#). Moderna, 26 August 2022, available [here](#). Juve Patent, 29 August 2022, available [here](#).*

*Image Source: Unsplash, available [here](#).*

### **3.2 Peloton and Lululemon settle 'Athleisure' Patent Dispute**

On 30<sup>th</sup> September, Canada-based athletic apparel retailer, Lululemon Athletica and US-based exercise equipment and media company, Peloton Interactive Inc. entered into an undisclosed settlement agreement. As per the Agreement, the two will not pursue any further legal action against each other in regard to the Peloton athletic wear line, that allegedly infringe Lululemon's design patents.

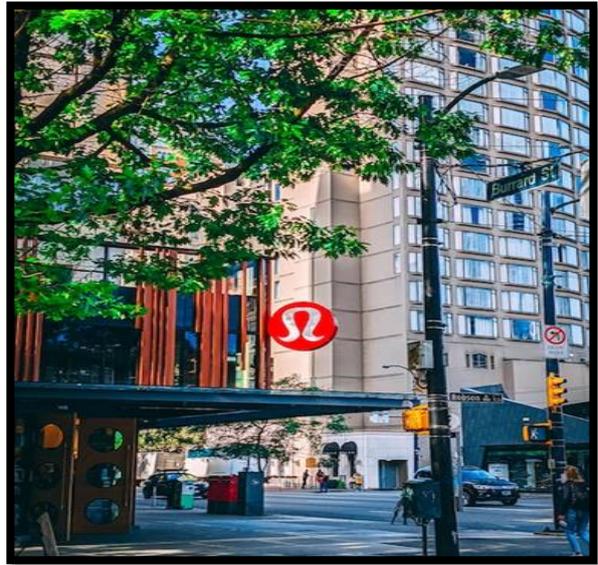
In 2016, Lululemon and Peloton entered into a co-branding partnership agreement. As per the Agreement, Lululemon would supply wholesale athletic apparel that Peloton would then co-brand with its logo and sell in its retail outlets. The two, however, subsequently amicably ended this partnership agreement, and Peloton launched its own product line in September 2021.

Shortly thereafter, Lululemon sent a cease-and-desist letter to Peloton on 11<sup>th</sup> November 2021. In response, Peloton filed a suit for declaratory judgment in New York District Court (SDNY DC) on 24<sup>th</sup> November 2021.

Finding no timely response to its cease-and-desist letter, Lululemon filed a lawsuit in the US District Court of California on 29<sup>th</sup> November 2021. As per the lawsuit, Peloton infringed its design patents. These designs were used in “Peloton’s Strappy Bra, Cadent Laser Dot Legging, Cadent Laser Dot Bra, High Neck Bra, and Cadent Peak Bra”.

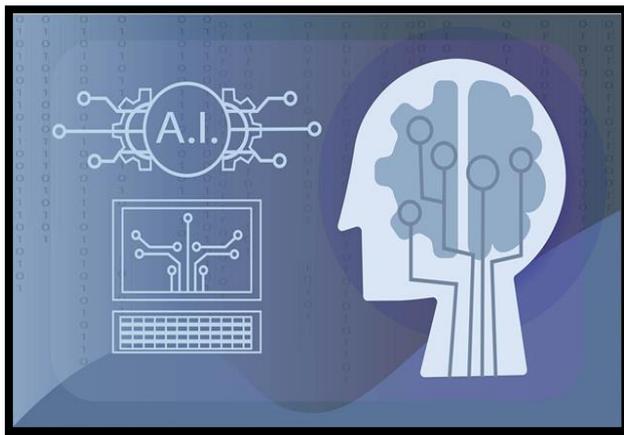
On 29<sup>th</sup> September 2022, the SDNY DC dismissed Peloton’s lawsuit, requesting pre-emptive declaration of non-infringement, calling it an “anticipatory action”.

The Settlement Agreement, formally filed in the California District Court on 30<sup>th</sup> September, came just a day after the dismissal of Peloton’s lawsuit by the SDNY DC.



*Sources: United States District Court Southern District Court of New York, 24<sup>th</sup> November 2021, available [here](#). United States District Court for the Central District of California, 29<sup>th</sup> November 2021, available [here](#). Insurance Journal, 3<sup>rd</sup> October 2022, available [here](#).  
Image Source: Unsplash, available [here](#).*

### 3.3 AI as an inventor? – No, not yet: says UK Intellectual Property Office



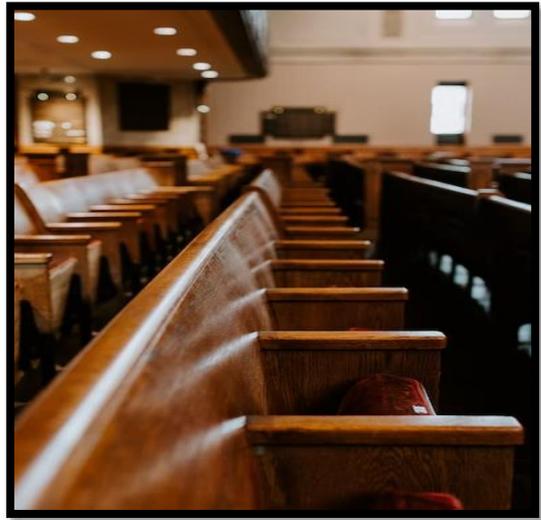
On 28<sup>th</sup> June, the United Kingdom Intellectual Property Office (UKIPO) published the results of its consultation outcome on AI and intellectual property. The consultation focused on copyright and patents. The outcome of this consultation is expected to offer inputs to UK’s National AI Strategy. On the issue of patentability of AI-generated inventions, the consultation explored the following policy options: first, whether the concept of “inventor [should] include humans responsible for an AI system which

devises inventions”; second, whether patent laws be broadly interpreted to identify “AI as inventor”; or third, whether the AI-generated inventions be protected through a new sui generis right. The Study identified that whereas the first two policy options did not impact the current requirements for patentability, the third policy option could be designed in several ways. For example, the new right may have similar requirements as patentability, albeit with a stricter standard for the “inventive step”, and a shorter duration of protection. The results of the Consultation suggest that the current policy, that is the identification of a human inventor on the UK patent applications remains the best policy option. The Study also identified that this is not only in alignment with the recent decision of the UK Court of Appeal in the Stephan Thaler/DABUS case, it is also in alignment with the practices of the top five patent jurisdictions that receive over 80 per cent of global patent applications each year.

*Sources: UK IPO, 22 June 2022, available [here](#). BBC, 28 June 2022, available [here](#).  
Image Source: Pixabay, available [here](#).*

### 3.4 EPO Boards of Appeal refuse request for in-person hearing

On 22<sup>nd</sup> August, the European Patent Office's (EPO) Boards of Appeal (BoA) refused applicant, Caterpillar's request for an in-person hearing in Munich, Germany. As per the BoA, the current Covid-19 situation in Munich warranted that hearings be held online. The meeting was accordingly preferred online via Zoom. In G-1/21, the Enlarged BoA opined that in a period of general emergency, oral proceedings could take place via a videoconference. [For a discussion on the EPO's Enlarged BoA in G-1/21, cf Friday Fortnightly Ed. 2021 Week 44 No. 18, News Item 4.2 EPO's Enlarged Board on the legality of videoconferencing in oral proceedings, available [here](#).]



The representatives of the applicant, Kramer Barske Schmidtchen, expressed discontent with the decision, as they believed that the current situation in Munich was no longer an emergency with the meaning of G-1/21.

*Sources: Juve Patent, 22 August 2022, available [here](#). EPO, 16 July 2021, available [here](#).*

*Image Source: Unsplash, available [here](#)*

## 4. Trademark

### 4.1 Not Ethica(l) Diamonds, as trademarks filed in bad faith



In 2020, Kinetique Limited, managed by Avial Foreman and Jason Foreman, registered two trademarks, namely Ethica Diamonds and Ethica Diamond, with the UK Intellectual Property Office (UKIPO). Jason Foreman and Elain Reffell had divorced in 2019. Following this separation, Elain along with their daughter Emily Grace Foreman planned to re-brand their family business, Kinetique Jewellery to Ethica

Diamonds. Based on their pre-divorce conversations, and his position as a director at Kinetique Jewellery, Jason Foreman was aware of these forthcoming changes and re-branding strategy. The company had started this process of transition in November 2018, at a time when Jason was on the board of directors of the company, Kinetique Jewellery.

Following the divorce, Jason immediately registered the above-referred two trademarks at the UKIPO. In addition, Jason also directed the stone supplier for Kinetique Jewellery (since Ethica Diamonds) to supply the raw materials to him, as he claimed to be the sole owner of the said trademarks.

Following a hearing on the issue, the Hearing Officer (HO) at the UKIPO found that Jason Foreman had “acted in bad faith... with the sole purpose to cause difficulty ... and to provide

a tool that could be used to extract monies...”. The HO, accordingly, concluded that the trademarks were filed in bad faith and should therefore, be held as invalid.

*Sources: UKIPO, 30 September 2022, available [here](#). The Packet, 11 October 2022, available [here](#).*

*Image Source: Unspalsh, available [here](#).*

#### 4.2 ‘House of Zana’ and ‘Zara’ are not confusingly similar: says UKIPO

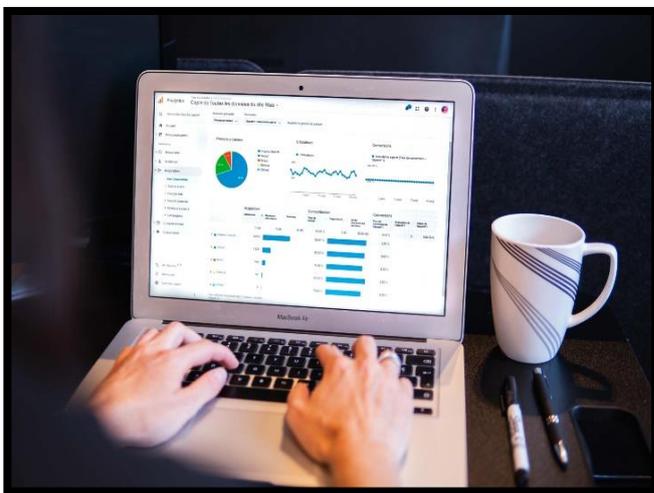
In 2018, Amber Kottri, the Applicant opened an online boutique store, ‘House of Zana’. The following year, she opened a concept store in Darlington, UK. In December 2020, Kottri requested registration of figurative marks ‘House of Zana’ (see image right) at the UKIPO.

Following the publication for opposition of the said mark in February 2021, the fashion retail house Zara opposed the said application on grounds of its registered mark ‘ZARA’. Zara claimed that the proposed mark was “visually, conceptually and aurally” similar to the registered mark. Moreover, as ‘ZARA’ enjoyed “extensive reputation” in Class 25 and Class 35, dealing with clothing and other related accessories, the contested mark was likely to “bring to mind the ZARA mark” and thereby, cause detriment to its well-established reputation. Zara, accordingly, based its opposition on Section 5(2)(b) and 5(3) of the UK Trade Marks Act, 1994. On the issue of visual and aural similarity, the HO opined that the marks enjoyed only “low to medium degree of similarity”. Overall, the HO was of the opinion that notwithstanding a number of factors that weighed in favour of Zara, an average consumer was not likely to be confused between the two marks. On the issue of reputation, the HO was of the opinion that even though Zara’s reputation was well-established, and the brand was well-known amongst “a significant part of the relevant public”, it remained unlikely that an average consumer would draw a mental link between the two marks.

*News and Image Source: UKIPO, 4 August 2022, available [here](#). Fieldfisher, 22 August 2022, available [here](#). The Northern Echo, available [here](#).*



#### 4.3 EUIPO on the role of Automated Content Recognition in IP enforcement



In 2019, the European Union Intellectual Property Office (EUIPO) started a project that seeks to identify the use and application of automatic content recognition (ACR) technology. Following a year-long study, the EUIPO published the initial findings of the project in November 2020. The publication titled “Automatic Content Recognition: Existing technologies and their impact on IP” aimed at raising awareness on the emerging ACRs and how they interplay with the world of intellectual property. On 22<sup>nd</sup>

September 2022, the EUIPO published the results of the second phase of the Study. The publication titled, “Automatic Content Recognition: IP Enforcement and management use cases” is a discussion paper that analyses how emerging ACR technologies such as “hashing, watermarking, fingerprinting, AI-based and enhanced solutions” can be practically used by various stakeholders and law enforcement agencies to offer robust protection and prevent infringement of IPRs. Notably, the study highlights successful case studies in e-commerce marketplace (1); identification of counterfeits (2); 3-D printing (3); copyright-protected content sharing (4) and live streaming (such as e-Sports) (5) to illustrate how ACR can complement effective IP enforcement in the digital space. The study also identifies the limits of the technology. As an example, the study illustrates how automated enforcement, at least in the near future, may continue to require human intervention and oversight. This can, for example, be the case with parodied content, which evokes the parody exception, that requires a case-by-case assessment to confirm whether the exception may be available for a given work.

*Sources: EUIPO Discussion Paper, 22 September 2022, available [here](#). The IPKAT, 4 October 2022, available [here](#). EUIPO observatory, 22 September 2022, available [here](#).*

*Image Source: Unsplash, available [here](#).*

## 5. Events: Save the date – Next Monday Morning, with TILC’s IP Talks(!)

On 7<sup>th</sup> November, Manuela Lobraico, a second European Law School bachelor’s student at Maastricht University, will give a lunch talk on “IP and the Metaverse”.

The rise of the metaverse has given way to novel problems for IP enforcement. On 14<sup>th</sup> January, Hermès approached the US federal courts requesting injunctions against Mason Rothschild for creating non fungible tokens (NFTs) of Hermès well-known Birkin bags (*see* image on right). Also known as the MetaBirkins lawsuit, the ongoing litigation offers an insight on the unique challenges posed by the emerging



NFTs. [For a discussion on the MetaBirkins lawsuit, cf Friday Fortnightly Ed. 2021 Week 51 No. 21, News Item 5.1, available [here](#) and Friday Fortnightly Ed. 2022 Week 20 No. 31, News Item 4.1, available [here](#)].

In her talk, Ms. Lobraico will discuss these novel issues that emerge at the intersection of law and technology, especially in light of the ongoing MetaBirkins lawsuit. The talk shall be chaired by Dr. K. Tyagi.

Please bring along your lunch, and enjoy an interesting talk on “IP and the Metaverse” over lunch. Coffee and tea will be served.

**When:** 7<sup>th</sup> November 2022, 12-13 hrs

**Where:** KAP 2 0.043 (in Kapoenstraat)

**Topic for presentation: “IP and the Metaverse”**

Will you like to join the talk? To reserve your seat, please email @ [Christos Keramidas](mailto:Christos.Keramidas)

*Image source: Fashion United, available [here](#).*