

FRIDAY FORTNIGHTLY: THE IP & COMPETITION NEWSLETTER (ED. 2023 WEEK 4 NO. 37)

Dear Readers,

In this edition, you will find an overview of the key developments in Competition, Copyright, Patents and Trademarks for Dec'22-Jan'23. Please also feel warmly welcome, and find the invite to the upcoming TILC's IP Talks on Artificial Intelligence and transparency.

The Innovator's Legal Aid Clinic's (TILC) information initiatives – Friday Fortnightly, TILC's Insights, 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.

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

This edition, as it takes account of developments during the Christmas break, may also be a bit more detailed and longer than usual! Enjoy your newsletter with a bigger cup of tea/coffee!

With kind regards,

N. Basler, S. Umamaheswaran, S. Michaelidou, T. Pierrel 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 UEFA/FIFA not in breach of EU competition law: says Advocate General



In 2021, Europe's twelve leading football clubs came together to establish the European Super League (or the Super League, SL). The Club faced immediate and severe reprimand from the Union of European Football Associations (UEFA) and Fédération Internationale de Football Association (FIFA), and it soon fell apart. Three of the twelve founding clubs, namely, Real Madrid Club de Fútbol, Juventus FC, and Football Club Barcelona, however, remained committed to the project, and registered a formal complaint before the *Juzgado de lo Mercantil n°17 de Madrid*, the Spanish Commercial Court in Madrid. For a discussion on the original lawsuit, kindly see Friday Fortnightly Ed. 2022 Week 44 No. 18, News Item 1.1,

“*Super League* challenges UEFA and FIFA’s anti-competitive conduct in court”, available [here](#). In light of a potential EU-wide impact of the decision in the SL case, the Spanish Court referred a number of questions to the Court of Justice of the European Union (CJEU).

For a critical discussion on the SL project, and the court’s reasoning, please see TILC’s **insights**, penned by our academic team, “Madrid Commercial Court refers UEFA & FIFA’s anti-competitive kick to the ECJ”, at Law Blogs Maastricht, available [here](#).

On 15th December 2022, Advocate General Rantos offered his opinion in the matter. As per the AG, even though, UEFA and FIFA did enjoy a dominant position on the relevant market, their conduct was not in breach of Article 101 and 102 of the Treaty on the Functioning of the European Union (TFEU). Notably, UEFA’s and FIFA’s “prior approval scheme [is] inherent in, and proportionate for achieving, the legitimate objectives pursued by [them] which are related to the specific nature of [the sport]” (the AG at para 187(1)). As a next step, the CJEU, while considering the AG’s opinion, shall offer its preliminary opinion in the case at hand.

Sources: Eur-Lex: Opinion AG, 15 December 2022, available [here](#). Dalloz Actualités (in French), 11 January 2023, available [here](#). Skysports, 15 December 2022, available [here](#).

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

1.2 FTC blocks the proposed merger between Meta and Within Unlimited

On 17th January, the US Federal Trade Commission (FTC) authorized the administrative complaint against Meta, filed in light of the proposed Meta/Within Unlimited merger.

In 2021, Meta (formerly, Facebook) proposed to acquire Within Unlimited Inc., the developer of Virtual Reality (VR) Fitness App, “Supernatural”. Amongst its dominance in the other sectors of the platform economy, Meta is also one of the largest sellers of VR headsets, and VR apps. In light of the expected substantial lessening of competition (SLC) in the fast emerging VR market following the proposed acquisition by Meta, the FTC proposed to block the transaction.



In July 2022, the FTC first filed its formal complaint before the Californian Federal Court in San Jose. On 8th November 2022, twenty-three US States, including New York and California, filed their amicus brief before the Federal Court. Extending their support to the FTC's complaint, the Brief alerted the Court against the presence of strong network effects, and scale economies in the app market, and how the transaction may have irreversible anti-competitive effects on the VR market. The FTC apprehends that the merger will lead to SLC in the US market for “fitness and dedicated-fitness VR apps”.

Sources: Federal Trade Commission, 11 January 2023, available [here](#). Fortune, 15 December 2022, available [here](#). Reuters, 8 November 2022, available [here](#). Siècle digital (in French), 12 December 2022, available [here](#).

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

1.3 Bronner not relevant to determine Lithuanian Railways' conduct: says CJEU



On 12th January, the Third Chamber of the Court of Justice of the European Union (CJEU) dismissed Lithuanian Railways (Lietuvos Geležinkeliai AB, LG) appeal in its entirety, and held that the conditions prescribed in the Bronner case were not applicable to the case at hand.

LG is the dominant Lithuanian railways company that manages the rail infrastructure, and rail transport services across Lithuania. LG had entered into a long-term agreement with Orla Lietuva, a Polish company, to transport Orla's oil products from its

Lithuanian refinery until the Latvian border, also referred to in the agreement as the “Short Route to Latvia” (CJEU, at paras 8-15). During the term of the agreement, commercial dispute emerged on the issue of applicable transportation rates between the two parties. While the dispute was ongoing, LG identified defects across the “Short Route” railway track, and following a technical and scientific committee report, quickly dismantled the entire Track. Distressed by LG's unilateral decision, Orla approached the Commission under Article 7 of Regulation 1/2003. Following its investigation, the Commission was of the opinion that “LG had abused its dominant position by removing the Track... [which could] foreclose competition on the market for the provision of rail transport services for oil products between the Refinery and neighbouring seaports...” (CJEU, at para 37). Aggrieved by the decision, LG first appealed to the General Court (GC), and then at the CJEU. The GC rejected LG's plea in entirety, except for a reduction of fine (based on GC's discretion, and not on the merits of the appeal). The CJEU also upheld the GC's refusal to apply the *Bronner* test to ascertain the existence of the alleged abuse. The CJEU was of the opinion that “the removal of the Track cannot be understood as a refusal of access, as provided for [in *Bronner*], but must be viewed, depending on the circumstances, as an independent form of abuse....” [CJEU, at para 91].

Sources: CJEU, 12 January 2023, available [here](#). Lexxion, 18 January 2023, available [here](#). White&Case, 18 January 2023, available [here](#). Ropes&Gray, 13 January 2023, available [here](#). Image source: Wikimedia, available [here](#).

1.4 Apple self-corrects high commission fees in Korea, as competition authority steps in

Following a preliminary investigation in Apple's app store practices in September 2022, the Korean Fair Trade Commission Competition Authority (KFTC) identified that Apple charged

South Korea-based app developers an additional ten per cent sales tax on top of its 30 per cent Commission. This resulted in an effective 33 per cent rate, an additional 3 per cent surcharge on the Korean app developers.

To avert a full-fledged investigation by the KFTC, Apple formally announced that starting January 2023, it would exclude value-added tax (VAT) from app-generated sales (which initially led to this 3 per cent surcharge). In addition, it will also present a detailed statement to app developers to help them understand the effective surcharge paid by them.

The KFTC has announced that it will continue to monitor Apple’s conduct. Further, it will also soon establish a new team dedicated to addressing potential anti-competitive conduct by online platforms.



Sources: Competition Policy International, 23 November 2022, available [here](#). The Register, 23 November 2022, available [here](#). The Korea Herald, 23 November 2022, available [here](#). Image source: Wikimedia, available [here](#).

2. Copyright

2.1 GPT Zero, a new app to detect “plagiarism” by ChatGTP

ChatGTP, a free-to-use online Chatbot, is an AI (Artificial Intelligence)-driven bot that crawls through data available over the internet, and identifies patterns to create automated works. These works can range from a poem to a story, from an email to a college entrance essay. It can easily and quickly do this in a matter of seconds. The result is impressively deceptive, as even highly educated individuals and experts in the relevant field find it difficult to



discern whether a human being or the ChatGTP created the work.

Officially introduced in November 2022, ChatGTP has been developed from the OpenAI’s GPT-3 natural language processing (NLP) model.

Seeing potential mass infringement, and implications for education, Edward Tian, a student of Computer Science at the Princeton University, used the GitHub Co-Pilot, another GPT-3 based software, to develop his app, GPTZero. Launched on 2nd January, GPTZero uses inputs from ChatGPT “to ascertain whether there’s zero involvement or a lot of involvement of the AI system in creating a given text”. The app uses three variables – first, the complexity of the text; second, the density of the text, that is the length of the sentences, and third, the writing style - to detect whether an AI, or a human author wrote the text.

Sources: BBC, 13 January 2023, available [here](#). National Public Radio, 17 January 2023, available [here](#). Business Insider Nederland, 19 January 2023, available [here](#). Euronews, 19 January 2023, available [here](#). CBS News, 10 January 2023, available [here](#). Image source: Wikipedia, available [here](#).

2.2 Aix-En-Provence's Court of Appeal on the parody exception

Belgian cartoonist Hergé's "The Adventures of Tintin" (Les aventures de Tintin) are one of the most popular classical comics of the 20th century. Tintinimagination (formerly, Moulinsart) now manages all the IP-related rights in Hergé's works. In 2019, Tintinimagination brought formal legal proceedings against Canada-based French sculptor Mr. X at the Tribunal Judiciaire of Marseille, as the latter had produced and sold sculptures inspired from and named after Hergé's works, such as, "Objectif Lune" and "On a marché sur la Lune". The Marseille Court offered two injunction orders against Mr. X - first on 17 June 2021, and the second on 14 March 2022. However, Mr. X continued making the infringing sculptures. In addition, he also appealed the Court's orders before the Cour d'Appel d'Aix-en-Provence (Court of Appeals, Aix-en-Provence, CoA). In the appeal, Mr. X relied on the parody exception, as provided for in Article L. 122-5, 4^o du Code de la propriété intellectuelle (Code of Intellectual Property).



In its decision dated 24th November 2022, the CoA found that Tintin met the requirements for copyright protection. Without divulging on the nature and type of copyright infringed, the CoA directly addressed the parody exception as raised by Mr. X in his defence. Even though CoA did not explicitly mention the *Deckmyn* decision of the CJEU, its opinion did reflect a strong resemblance to the *Deckmyn* test. Notably, the CoA opined that to benefit from the exception, the follow-on work must "evoke" a reminder of the original work, while being "noticeably different" from it. The work must not necessarily bring a laughter, it suffices if the follow-on work makes one smile in their thoughts (literal translation) – "... l'humour ne se limite pas à ce qui fait rire mais peut seulement prêter à sourire même intérieurement...". However, as the conditions were not met in the case at hand, the CoA held that Mr. X had infringed the original work, and could not benefit from the parody exception.

Sources: Cour de Cassation (in French), 24 November 2022, available [here](#). IPKat, 26 December 2022, available [here](#). BLIP (in French), 14 December 2022, available [here](#). Dalloz (in French), 2 December 2022, available [here](#).

Image: Wikipedia, available [here](#)

2.3 No ancillary copyright protection for publishers required: says US Copyright Office

On 30th June 2022, the United States Copyright Office released its first draft report on the need for, and potential limitations of an additional ancillary copyright protection for news publishers.



Following the introduction of a new neighbouring right for press publishers in the EU, a discussion emerged amongst the US-based copyright scholars, whether in light of the changing dynamics of news aggregation and consumption, the US too should introduced a new right for the press publishers. The US Copyright Office, accordingly, set up a public study to evaluate the merits of a new right for

publishers, especially, the Press Publishers.

Following a detailed public consultation, and internal evaluation, the US Copyright Office identified that even though the press publishers had a relatively weak bargaining position vis-à-vis major platforms such as Google and Facebook, an additional protection was not required on account of the following reasons. First, the US law already conferred many of the same EU's press publisher-like rights, including via the work-made-for-hire doctrine. Second, another additional ancillary right could "most likely need to avoid existing copyright limitations, which would raise First Amendment and policy concerns" [The Report at page 58]. The Report was, however, quick to clarify that this did not translate into a lack of concern about the issue [The Report at page 59].

Sources: U.S. Copyright Office, 30 June 2022, available [here](#). News Media Alliance, July 2022, available [here](#). Mind your Business, 15 July 2022, available [here](#). IPKat, 4 July 2022, available [here](#). MediaPost, 17 July 2022, available [here](#).

Image source: European Journalists, available [here](#).

2.4 Canadian copyright term of protection extended to align with the US and the EU

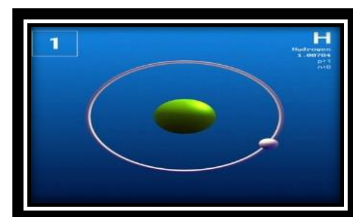
On 30th December 2022, Canada introduced a notable Berne plus measure to bring its copyright term of protection in alignment with the duration of protection in the US and the EU. Prior to the said amendment, Canadian copyright, in compliance with the Berne Convention, afforded copyright protection for only the life of the author plus fifty years. The Canada-United States – Mexico Agreement (CUSMA) was enacted on 1st July 2020, the Canada Day. As per Chapter 20 of the CUSMA dealing with the intellectual property rights (IPRs), members to the said trade agreement are required to offer Trade Related Aspects of Intellectual Property Rights (TRIPS)-plus protection as referred to in the said Article. One such requirement was a harmonized duration of protection to copyright-protected works. In addition to the requirements from the CUSMA, the Canadian Government also conducted its own internal study on how to promote Canadian works on the international market. In its May 2019 "The Shifting Paradigms" Report, the Standing Committee on Canadian Heritage recommended that in order to ensure authors a fair and reasonable remuneration, and in light of the increased life expectancy, authors be afforded a longer duration of protection. Following the findings of this internal study, and the requirements, as prescribed by the CUSMA, the Canadian Council Order 2022-1219, extended the duration of protection to life of the author plus 70 years. This new duration shall not be offered to works that were already in public domain as of 31st December 2021. In other words, works entering the public domain in 2022, shall benefit from this extended duration of protection.

Sources: All Things Canada, 19 January 2023, available [here](#). Global News, 2 January 2023, available [here](#). McMillan, 30 November 2022, available [here](#). Copyrightlaws, 3 December 2022, available [here](#). Lavery law firm, 24 November 2022, available [here](#).

3. Patents

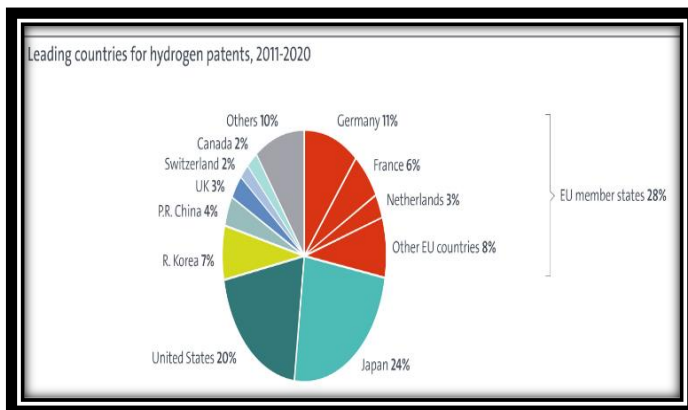
3.1 Hydrogen patents for a cleaner future

On 10th January, the European Patent Office (EPO) and the International Energy Agency (IEA) released a joint study titled, "Hydrogen patents for a clean energy future". In light of Hydrogen's potential and promise as a clear energy, developments in Hydrogen-related patenting are expected to be a key enabler for transition to renewable energies. The Study,



accordingly, assessed the global trends in hydrogen-related patenting. It assessed emerging technological developments for the “full range of hydrogen supply, storage, distribution, transformation and end-user applications” in the period, 2011-2020. The technologies were mapped along the International Patent Families (IPFs), whereby an application had been filed in at least two distinct jurisdictions.

EU member states, with a total 28 per cent, lead the race in terms of Hydrogen-related patenting. Japan is a close second at 24 per cent. Interestingly, US, a key centre for innovation and patenting, is a distant third and accounts for only 20 per cent of the patents between 2011 and 2020. Key emerging players in the market include China and Korea.



There is one notable area in the Hydrogen industry, a low-emission manufacturing technology, namely, the “new electrolyser manufacturing capacity” that accounts for over 80 per cent of all hydrogen-related patents in 2020. The emerging focus on low-emission innovations can be seen as an indicator of the increased consciousness and concern for climate change and global warming. Here, the universities and public institutions,

notably the French and Korean institutions, have a prominent research contribution in hydrogen-related innovation. In the end-user applications, Japan leads the growth, with a particular focus on the automobiles sector. Korea, with an average annual growth rate of 15.2 per cent, seems a strong competitor to Japan as regards the end-use applications of hydrogen. For future innovation in clean energy, the Study recommends a need to look at more drastic innovations, and “align [more closely] with climate motivations if these technologies aim to have a role in a net zero energy system” [The Report, at p. 11].

Sources: EPO News and Events, 10 January 2023, available [here](#). IEA Report, 10 January 2023, available [here](#). The National News, 10 January 2023, available [here](#). Science Business, 17 January 2023, available [here](#).

Graph & Image source: IEA, 10 January 2023, available [here](#). Wikimedia, available [here](#).

3.2 Comma Costs in Patent Claims

On 30th September 2022, the EPO’s Boards of Appeal (BoA) offered its decision in T 1473/9. The contested patent, EP 2621341 concerned contactless rotary joint for use in a CT scanner. Claim 1 read thus, “said body having a free inner bore holding a capacitive data link”. Discrepancy emerged as the parties to the case provided two differing interpretations to this Claim. As per the Opponent, this meant that it was the body having a free inner bore and the capacitive data link was held by the *bore*; whereas as per the patentee (the Respondent in the current appeal) it meant that the body had a free inner bore and, that the *body* held a capacitive data link. The disclosure in the description referred to a joint wherein the rotary joint *body*, and not the *bore*, held the capacitive data link. The patentee also attempted to amend the claim to introduce a comma in order to correct the claim as per Rule 139 of the

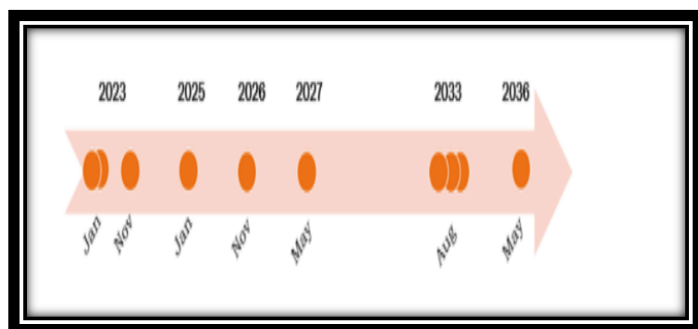


European Patent Convention (EPC). The Patentee added that the description was sufficient to interpret the claims. He also submitted a request to correct the claim and align it with the description. Following two important questions of law emerged: First, whether the granted claim contained added matter under Article 123(2) EPC? Second, whether the correction of the claim would extend the scope of patent protection? The BoA suggested that in light of Article 69 EPC, accompanying description and drawings were relevant, as they offered “context-specific information about the claimed subject matter”. However, “the primacy of the claims” limited the extent to which the description be relied upon to decipher the meaning of the terms used in the claims [BoA, at paras 3.16.1 and 3.16.2]. In light of this, the BoA was of the opinion that the reading of the claims gave the interpretation that, without the commas, the correct interpretation was that it was in fact the free inner *bore* that possessed the capacitive data link, contrary to the patentee’s suggested interpretation. Any subsequent correction thereto, as proposed by the patentee could extend the scope of protection, resulting in a patent trap. Moreover, as the proposed correction was not obvious to a person skilled in the art, the BoA rejected the patentee’s claim requests, and revoked the patent.

Sources: EPO, 30 September 2022, available [here](#). IPKitten, 16 January 2023, available [here](#). Image source: Wikimedia, available [here](#).

3.3 As Entresto goes off-patent, Novartis eyes secondary patents

The Swiss pharmaceuticals company Novartis’ blockbuster drug Entresto® (sold under the brand name Vymada in India) went off patent on 14th January 2023. The original US base patent (US 7468390B2) was filed in January 2003. Vymada is a prescription-based medication approved for “the treatment of symptomatic chronic heart failure and preserved ejection fraction”. The drug inhibits the ectoenzyme, Neprilysin that breaks down proteins that help relax blood vessels. Vymada is combination of two ingredients, namely “sacubitril” and “valsartan”. Whereas “valsartan” had for long been used to treat heart failure, it was the combination of the two ingredients that contributed to the blockbuster success of Entresto®.



To retain its customer base once the base goes off patent and the profitability therein, Novartis has deployed a slew of interesting life-cycle management patent strategies. Recent patenting activity indicates new patents on Entresto® with combinations within the composition as well as claiming a “method-of-use” patent covering a method for the treatment of hypertension and heart

failure as well as patents for the dosage regimen of the base molecule. These additional secondary patents include changes in the method of treatment and dosage regimen. Notable amongst them is the US patent, US11135192B2 filed in June 2018 by Novartis. This patent, now available until August 2033, indicates a dosage regimen that may be given as “50 mg, 100 mg, or 200 mg dose daily twice for at least 36 weeks”. These secondary patents are also the ones that face more pre-grant oppositions, and are likely to be challenged by the generic manufacturers to facilitate the market entry of low cost medicines.

News and Image Sources: BananaIP, 13 January 2023, available [here](#). Financial Express, 15 January 2023, available [here](#).

3.4 Ready-to-eat: A Sustainable 3D-printed Fish

Singapore-based Umami Meats, and the Israel-based, Steakholder Foods entered into a joint venture (JV) to produce sustainable meat. The JV recently received a \$1 million grant from the Singapore Israel Industrial R&D Foundation. The Grant offers them to work in collaboration, and develop sustainable alternatives to seafood. The project will start with a focus on eel, and grouper, and once successful, the joint venture will diversify to sustainably produce other types of seafood. This sustainable method of meat production, based on animal cells and cultured in laboratories is known as “cultured meat”. This is distinct from farm-based meat, based on rearing and slaughtering the animals for consumption. Cultured meat is “made up of muscle and fat tissue grown from animal cells, and being developed to be indistinguishable from farm-raised meat in taste, texture and smell”.



The JV has filed numerous patent applications worldwide. These patents are principally focussed around the 3D bio-printing technology and bio inks. The JV is also expected to launch the hybrid grouper prototype. On the regulatory front, Singapore is currently the only country in the world that offers approval for cultured meat. A formal regulatory framework is yet to follow in the EU and the US for more widespread and mainstream acceptance of the cultured meat. In the US, in September 2022, President Biden signed an executive order on advancing biotechnology, and biomanufacturing to further innovation and sustainability in the US Economy.

Sources: Forbes, 18 January 2023, available [here](#). Executive Order on Advancing Biotechnology and Biomanufacturing Innovation, 12 September 2022, available [here](#). Patent application WO2021055996A1 for Physical manipulation of Cultured Muscle Tissue, available [here](#).

Image source: Wikimedia commons, available [here](#).

4. Trademark

4.1 Shoes on the Platform? – Online Platforms may be held liable: says CJEU

On 22nd December 2022, the Grand Chamber of the CJEU offered its preliminary opinion in the joined cases C-148/21 and C-184/21, more commonly known as the “Louboutin” case. The CJEU received two closely-related reference requests from the Tribunal d’arrondissement de Luxembourg and the Tribunal de l’entreprise francophone de Bruxelles in March 2021. As similar questions were asked in both the requests, the CJEU joined the two cases. Mr. Louboutin, a French-based designer of women’s accessories, designs and sells shoes with the trademark (see image left, registered with both, the Benelux as well as EU Intellectual Property Offices) “high-heeled shoes [with] an outer sole in a red colour (Pentone 18-1663TP)” (CJEU, at paras 6-7). Mr. Louboutin alleged infringement of Article



9(2) (a) of the EU Trade Mark Regulation 2017/1001 (2017 EUTMR), as Amazon, as online market operator, regularly displayed “advertisements for red-soled shoes” on its website without his consent. It may be useful to add that the concept of “use” under Article 9(2) is not defined under the 2017 EUTMR. Following a perusal of the nature of platforms such as Amazon, that adopt a hybrid business model, and its evolving case law, the CJEU was of the opinion that “Article 9(2) [...means use of a sign....] where third-party sellers offer for sale [...on the platform...] without the consent of the proprietor of that trade mark, such goods bearing that sign, if a well-informed and reasonably observant user of that site establishes a link between the services of that operator and the sign.....” (CJEU, at para 54).

Sources: CJEU, 22 December 2022, available [here](#).

Image source: Getty images, available [here](#).

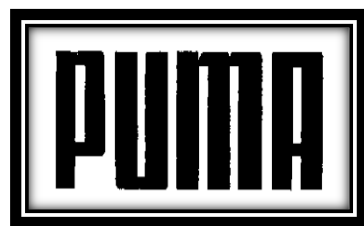
4.2 General Court rejects Puma’s appeal

On 21st December 2022, the Sixth Chamber of the General Court (GC) dismissed Puma SE’s appeal to annul the decision of the First Board of Appeal of the European Union Intellectual Property Office (EUIPO) in its entirety.

In 2012, DN Solutions requested registration of the figurative sign Puma (see image right) for goods in Class 7, that corresponds to “lather, CNC (computer numerical control)



lathes, machine centers, turning center, electric discharge machine”. The following year, in 2013, Puma opposed the registration of DN Solutions’ proposed mark on the basis of its earlier registered international figurative mark (see image left) for Classes 18, 25 and 28, dealing



respectively with leather and imitation of leather-based accessories, clothing, games, tops and sportswear. The Opposition was based on Article 8(5) of the 2009 EUTMR, which is “essentially identical in content” to the currently applicable Article 8(5) of the 2017 EUTMR (GC, at para 15). Article 8(5) prohibits registration upon opposition of a trade mark, that though identical or similar to the earlier mark, is applied for “goods or services which are dissimilar to those for which the earlier trade mark is registered”, where the earlier mark enjoys a reputation, and where use of the trade mark applied for “would take unfair advantage of, or be detrimental to the distinctive character or repute” of the earlier mark.

The GC was of the opinion that in light of the special circumstances of the case at hand, and the specific nature of the goods and the class applied for, despite “... [Puma’s] reputation, its highly distinctive character and the degree of similarity between the signs at issue, a connection could not be made between [DN Solution’s and PUMA SE’s] mark” (GC, at para 67).

News & Image Source: General Court, 21 December 2022, available [here](#).

4.3 For interim injunction, the test is one of probability: says Hungarian Supreme Court

In its November 2022 decision, the Hungarian Supreme Court offered its opinion on the scope of, and interplay between trademark infringement and unfair competition. The Claimant applicant and the defendant sold medical instruments and offered bio resonance-based services. The Defendant, a former employee of the Claimant, sold competing goods, and asserted in his advertisements, and sales promotion, that his goods were of a higher quality. Aggrieved, the Claimant requested an interim injunction from the Tribunal at the Metropolitan Court. The

Tribunal offered immediate relief on grounds of trademark infringement, and unfair competition. The Metropolitan Court of Appeal, however, reversed the decision of the Tribunal, as it was of the opinion that “the defendant’s use of the mark did not qualify as trademark use” under the EUTMR, and further, that an unfair competition claim “could not be judged on the basis of the Trademark Act”. The Claimant appealed to the Supreme Court of Hungary (SCH) that once more reversed the decision, and found the use of the mark in the course of the trade by the Defendant. Agreeing with the decision of the Tribunal, the SCH was of the opinion that the fact that an act could be condemned under “the Law of Competition, does not exclude the condemnation under the Trademark Law”. Moreover, the standard in cases of interim injunction was one of “probability of infringement”. As the Claimant established that probability to the satisfaction of the SCH, an interim relief was awarded in his favour.

Source: Danubia, 29 November 2022, available [here](#).

4.4 Surnames may be distinctive, and trademark-protected: says Taiwanese IP Court

As per point 4.6.1 of the Taiwanese IP Office (IPO) Examination Guidelines on Distinctiveness of Trademarks, family names used as trademarks are generally not distinctive, although they may acquire distinctiveness. The IPO as well as the Taiwan Intellectual and Commercial Court (the IP Court) have regularly followed this approach. A recent decision by the Taiwanese IP Court seems to diverge from this practice. In *Morita Biotech Co. Ltd. v. IPO* (the *Morita* case),



the IP Court held that the Japanese family name, “Morita” has “inherent distinctiveness... as the term itself has no connection to the designated goods/services...”. On the issue of similarity, the IP Court was of the opinion that even though there were notable differences between the subject trademark and the earlier trademark (see image left), the relevant consumers compared “similar trademarks by vague impression instead of

a side-by-side comparison while shopping”. The two marks were found to be “visually, aurally and conceptually similar to a high degree”, and were accordingly, highly similar, while observed separately or while making an actual purchase decision. However, as the Taiwanese Trademark Act followed the “first-to-file” principle, the IP Court called for a higher level of protection for the earlier trademark both in case of direct as well as reverse confusion.

News and Image Source: Lexology, 19 January 2023, available [here](#).

5. Events

5.1 TILC’s IP Talks on Artificial Intelligence, Consumers and Competition

In the forthcoming **TILC’s IP Talks**, **Shu Wang** shall speak on **AI-assisted consumers**, their position under the proposed **EU Artificial Intelligence Act**, and the transparency requirements for the black box algorithms therein. This is turn shall be linked with the competition law aspects of the platform economy.

Dr. K. Tyagi shall chair the session.

Please bring your own lunch. Coffee and tea will be provided.

When: 7th February 2023 (12-13 hrs)

Where: KAP2-0039