NEWSLETTER

IP / MEDIA

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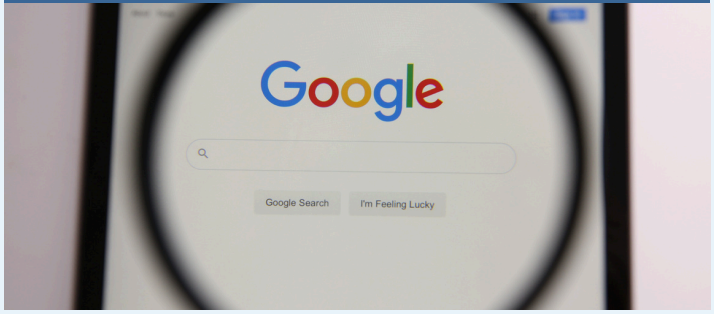
Google fined 250 million euros by the French Competition Authority

Google is accused of not respecting its commitments concerning the neighboring rights of press publishers. This decision was taken after a settlement procedure. Read our article on page 5 of our newsletter.



INTELLECTUAL PROPERTY LATEST NEWS

Veuve Clicquot - Absence of distinctive character acquired through use of a color mark

European General Court, 6 mars 2024, T652/22, Lidl Stiftung v MHCS

MHCS, owner of the famous Veuve Clicquot champagne, has been trying for many years to obtain EU trademark protection for its orange color " ", registered as a figurative mark on the application form on which it was stated that protection was claimed for the color orange, accompanied by its trichromatic coordinates.

While it's not easy to prove the distinctiveness of a colored trademark, following a long legal saga against LIDL STIFTUNG, the European General Court ruled on August 16, 2022, that the trademark had acquired distinctiveness through use. LIDL appealed against this ruling.

In a decision dated March 6, 2024, the European General Court ruled, however, that the evidence presented by MHCS was not sufficient to demonstrate that the color had acquired distinctiveness through use in Greece and Portugal. Proof of distinctiveness acquired through use is required for the entire territory of the European Union, which demonstrates the complexity of establishing distinctiveness acquired through use of an EU trademark, even for world-renowned trademarks such as Veuve Clicquot.

Copyright infringement claims against OpenAI and Microsoft

The Intercept's complaint
Raw Story and Alternet's complaint

Media companies The Intercept, Raw Story and Alternet have filed a lawsuit against OpenAI and Microsoft. They accuse them of violating the Digital Millennium Copyright Act (DMCA), as they are alleged to have used their articles by intentionally removing information relating to authors' names and terms of use to train generative AI models. These complaints follow an earlier one filed by the New York Times, which alleged that the two companies had infringed its copyrights, and that its articles had been used to train their generative AI without the New York Times' prior authorization.

INTELLECTUAL PROPERTY LATEST NEWS

Free assignment of trademark rights qualifies as a donation again

Paris Court of appeal, Pôle 5, Ch. 1, March 13, 2024, no. 22/05440
Lyon Judicial Court, April 9, 2024, no. 20/05900

In a ruling dated March 13, 2024, the Paris Court of Appeal confirmed that the free transfer of industrial property rights is treated as a donation, which must therefore be authenticated by a notary to avoid nullity, as stipulated in article 931 of the French Civil Code.

This ruling, which in this case concerned a trademark and design assignment contract, confirms the judgment of February 8, 2022 and established case law on the subject, stating that nothing in the Article L. 714-1 paragraph 7 of the French Intellectual Property Code, according to which the assignment of trademark rights must be evidenced in writing, failing which it is null and void, and which does not cover the case where the title is assigned free of charge as part of a donation, is a special rule derogating from the public policy rule of article 931 of the French Civil Code.

However, in another ruling handed down by the Lyon Judicial Court, while it was indeed held that a contract by which a company assigns its trademark rights free of charge must be declared null and void, the court considered that when a new deed of assignment for consideration has been drawn up subsequently, the latter replaces the initial contract, thus allowing a retroactive transfer of the trademark.

Absence of infringement by posting a poster on social media

French Supreme Court, crim., February 27, 2024, no. 23-81.563

Following the publication by an individual on his Facebook page of a photo of an advertising poster bearing the slogan "Les syndicats de police et BFM vous souhaite un bon enfumage 2019" (“Police unions and BFM wish you a smokin' good 2019"), BFM TV filed a criminal complaint for unauthorized use and reproduction of its BFM trademark.

BFM TV appealed to the French Supreme Court following the Court of Appeal’s decision to uphold the investigating judge's order not to investigate the case. The judges considered that the reproduction of the trademark did not fall within the scope of business life, and that the publication, which was satirical in nature and contained no product proposals, had only been broadcast in a restricted manner and for a limited period.

INTELLECTUAL PROPERTY LATEST NEWS

Implicit assignment of copyright between assignee and sub-operator

French Supreme Court, civ. 1ère, February 28, 2024, no. 22-18.120

Chris Music company, owner of copyright on the song "Partenaire Particulier", and “Musiques & Solutions” company had agreed by e-mail to use excerpts from the song in the film Alibi.com, and to sign a contract to this effect. However, Chris Music did not want Musiques & Solutions to appear in the film's credits.

As no contract was finally signed when the film was released in cinemas, Chris Music, the co-writers and performers of the song took legal action against Musiques & Solutions and the film's producer, requesting the removal of the soundtrack of the disputed sequences and the credits, as well as damages. Their claims were rejected on appeal and by the Cour de cassation, the French Supreme Court.

It ruled that Chris Music had agreed to the principle and terms of use of the song, even without signing a contract. The Court thus recalls that articles L. 131-2 and L. 131-3 of the French Intellectual Property Code govern only contracts conclude by the author for the exercise of his exploitation rights, and not those that assignees may conclude with sub-exploiters.

For another ruling along these lines, see our January-February 2024 newsletter.

VEJA - Lack of originality in a pair of sneakers

Paris Judicial Court, March 22, 2024, no. 21/08049

Veja claimed that Calzados nuevo milenio, which markets footwear under its Victoria trademark, had infringed copyright by offering for sale sneakers similar to its V-10 sneakers. However, the Paris Judicial Court found that the model lacked the originality required to allow copyright protection. It found that the features claimed by Veja were common to low-top lace-up sneakers, and that their combination was not distinctive in any way, since the elements used did not reflect the personality of a designer. Indeed, no designer had been identified. Consequently, the model in question was not considered an original work protected by copyright, and no infringement could therefore be recognized.

MEDIAS, ENTERTAINMENT AND ADVERTISING LATEST NEWS

Google fined 250 million euros by the French Competition Authority

French Competition Authority's press release, March 20, 2024

After examining the commitments made by Google in June 2022 in the context of the dispute with publishers claiming remuneration for the use of extracts from their articles, the French Competition Authority has found that Google has not complied with them. Google allegedly failed to negotiate transparently and in good faith with press publishers to determine a fair remuneration for the use of these extracts, and also failed to inform press publishers that some of their content would be used by its AI software Bard (now Gemini), for training purposes. It has therefore been fined 250 million euros.

Blocking streaming sites and illegal downloading

Paris Judicial Court, 3rd Ch., April 4, 2024, no. 24/02076
Paris Judicial Cour, 3rd Ch., April 4, 2024, no. 24/02432
Paris Judicial Cour, 3rd Ch., April 4, 2024, no. 24/02433
Paris Judicial Cour, 3rd Ch., April 4, 2024, no. 24/02843

Several rulings rendered on April 4, 2024, by the Paris Judicial Court have ordered the blocking of dozens of streaming sites and torrent links enabling the illegal downloading of films, series and music, following complaints from rights holders such as the Société civile des producteurs phonographiques, the CNC, Disney, Gaumont and Paramount.

The main French Internet service providers (Orange, Bouygues Telecom, Free, SFR) have been ordered to block these sites within 15 days, for a period of 18 months.

MAAF - No song counterfeiting in an advertising spot

Paris Court of Appeal, Pôle 5, Ch. 2, March 8, 2024, no. 22/03274

To produce an advertisement for MAAF, the authors of the song "C'est la Ouate" had consented to the use of their song in a commercial as well as to the modification of the lyrics for the needs of the advertisement. The lyrics "De toutes les matières, c'est la ouate qu'elle préfère, c'est la ouate" ("Of all the materials, she prefers wadding, it's wadding") had been adapted to read: "Efficace et pas chère, c'est la MAAF que je préfère ! c'est la MAAF!" ("Efficient and inexpensive, I prefer MAAF! It's MAAF!").
However, the song's co-authors sued for copyright infringement and parasitism because, after 15 years of use, a new advertising spot was created, incorporating a new melody and the following slogan: "Rien à faire, c'est la MAAF qu'il (elle) (ils) préfère(ent)!" ("Nothing to do, it's MAAF he (she) (they) prefers!") and "C'est la MAAF que je préfère!" ("I prefer MAAF"). The judges dismissed the infringement action at first instance, but the claimants appealed.
On appeal, the Court recognized that the words used could have a double meaning and agreed to protect the phrase under copyright, independently of the melody of the song from which it was taken. However, while admitting a certain inspiration of structure, the Court considers that the length of each part of the phrase is not balanced and sounds different. Consequently, the infringement claims are dismissed, together with the claims for unfair competition and parasitism.

MEDIAS, ENTERTAINMENT AND ADVERTISING LATEST NEWS

INTERNATIONAL FOCUS

Yuzu creators and Nintendo reach an agreement

After threatening Tropic Haze, the developer of the Yuzu emulator which allows to play Nintendo Switch games on PC, with legal action, video game publisher Nintendo has secured a very favorable settlement.

Nintendo accused Tropic Haze of bypassing the technical protection measures of its consoles and video games by allowing users to play games available on Nintendo Switch on their computers.

Under the terms of the agreement, approved on March 6 by a Rhode Island judge, Tropic Haze will pay Nintendo $2.4 million in damages. In addition, Tropic Haze has undertaken to immediately suspend the commercialization and development of Yuzu's functionalities, and to transfer the domain name hosting the emulator to Nintendo.

Qualification of the contract between an influencer and a representative marketing agency

Court of Appeal Paris, February 23, 2024, no. 23/10389

In a decision dated February 23, 2024, the Paris Court of Appeal ruled on the qualification of the exclusive representation contract concluded between an "influencer" and a marketing agency, concluded for a one-year duration of, renewed for a further two years. On June 10, 2022, the influencer notified the company of the immediate termination of the contract, to the exclusive detriment of the latter, which sued the influencer for the early and brutal termination of the contract. Claiming that the agreement binding the parties should be requalified as an employment contract, the influencer argued that the Conseil des prud'hommes ("Labour Court") of Meaux was the one competent. The Court of Appeal was therefore called upon to rule on the qualification of the disputed contract.

The Court ruled that the influencer's activity fell within the scope of commercial influence exercised through the publication of content on social networks, as provided for by Law no. 2023-451 of June 9, 2023, aimed at regulating commercial influence and combating the abuses of influencers on social network. The Court also ruled that, although the influencer received instructions from the agency, he remained free to produce the videos in his own style and to determine the way in which the products were presented. His "stagings" were not limited to a simple reproduction of his image or to mannequin poses. What's more, the influencer had complete freedom of choice as to the campaigns proposed by the agency, and could refuse them, thus ruling out any relationship of subordination. Consequently, the influencer could not claim to be bound to the agency by a contract of employment and could not be qualified as either a model or a performer. His claims are therefore dismissed.

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