

NEWSLETTER

IP / MEDIA



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INTELLECTUAL PROPERTY LATEST NEWS

Rejection of exception for parody for artworks illustrating Tintin

Press release of June 5, 2024

On June 4, 2024, the Rennes Court of Appeal handed down a new ruling on the assessment of the exception for parody in copyright law. It follows a dispute between Hergé's rightful claimants and the painter Xavier Marabout. Marabout was accused of having painted canvases depicting Tintin with female characters and containing "powerful elements of sensuality", or "disruptive" elements.

The Court overturned the first-instance ruling, pointing out that parody, as an exception to copyright, must be interpreted restrictively. Thus, any work that merely borrows the distinctive elements of a pre-existing work in order to profit

from its notoriety, without any real parodic intent, cannot benefit from this exception.



According to the judges, the humoristic intention of the parodic work must be "obvious, preferably involving a certain intensity: if smiling is enough, on the other hand, the simple search for an amused complicity with the reader or viewer is not enough, nor is a simple wink in the direction of the public or a visual shock".

With this ruling, the Court intends to prevent the abusive use of this exception to the detriment of authors' rights.

Copyright protection for the Champs-Élysées illuminations

Judicial Court of Paris, 3rd chamber, 1st section, May 16, 2024, no. 20/06340

The Comité association, which organizes and produces the annual illumination of the Champs-Élysées avenue in Paris during the festive season, sued Lindt & Sprüngli before the Paris Judicial Court for infringement after discovering the existence of a promotional campaign for boxes of Lindt chocolates using a representation of the Illuminations as they were presented from 2014 to 2017, namely the "Version Scintillance des Illuminations".

Firstly, the Court noted that the installations gave a "fairy-tale glittering" appearance, and that the ascending, bevelled LED garlands wrapped vertically around the trees on either side of the avenue, giving the homogeneous impression that it was "criss-crossed, on either side, with Champagne flutes topped with moss". According to the judges, these elements make it an original work.

However, they also considered that the visual elements on the packaging appearing on the Lindt & Sprüngli chocolate boxes did not reproduce the alignment of the trees as a set of Champagne flutes topped with mousse, and that the atmosphere of enchantment and enthusiasm of the celebration was not based on this element. The infringement claim was therefore dismissed.

INTELLECTUAL PROPERTY LATEST NEWS

Conditions for applying the reduced VAT rate to photographs

Bofip update

ECJ, September 5, 2019, C-145/18, Regards Photographiques SARL v. Ministre de l'Action et des Comptes publics

The french tax authorities have updated their doctrinal clarifications on the notion of art photography for VAT purposes in order to draw the consequences of a ruling handed down by the ECJ on September 5, 2019.

In its ruling of September 5, 2019, the ECJ ruled that the interpretation hitherto given by tax doctrine was too restrictive, requiring a subjective judgment to be made on the artistic value of photographs in order to apply the reduced VAT rate.

Henceforth, for a photograph to be considered an objet d'art and benefit from the reduced VAT rate of 5.5%, it must meet the following objective conditions, regardless of its artistic value:

- It must have been taken by its author, printed by him or under his supervision,
- It must be signed and numbered, up to a limit of thirty copies.



Netflix: Reputation insufficiently established in France

EUIPO, May 15, 2024, Weedflix v. Netflix, Opposition B 3 193 551

The streaming giant Netflix recently filed a lawsuit against Weedflix, a streaming platform specializing in cannabis-related content, accusing the latter's figurative trademark "WEEDFLIX" of infringing its intellectual property rights, including its registered trademarks, the word "NETFLIX" word and the logo "NETFLIX".

Although the two companies operate in different fields, Netflix considered that the use of the suffix "-flix" by Weedflix had the effect of creating confusion in the consumers' mind, and that Weedflix was taking undue advantage of the reputation of its trademark.

However, despite the documents provided by Netflix to the EUIPO, the latter considered that the reputation of the "Netflix" trademark within the European Union was not sufficiently established in France. The documents produced by Netflix mainly referred to its reputation in the United States, the United Kingdom or the European continent, without specifying the EU countries concerned. As a result, the EUIPO rejected Netflix's opposition, but it is likely that Netflix will file an appeal.



INTELLECTUAL PROPERTY LATEST NEWS

McDonald's: "Big Mac" trademark partially revoked

General Court of the EU, June 5, 2024, T-58/23, Supermac's/EUIPO - McDonald's International Property (BIG MAC)

In 2017, Supermac's, an Irish fast-food chain, applied for revocation of the "Big Mac" trademark, registered by McDonald's since 1996, arguing that McDonald's had not made genuine use of the trademark for five years in the EU.

In its judgment of June 5, 2024, the General Court of the European Union did indeed find that McDonald's had not demonstrated genuine use of the mark for five years for "chicken sandwiches", "poultry-based foods" and certain catering services. The documents produced by McDonald's did not establish the extent of use of the trademark for these products. However, McDonald's retains trademark protection for its meat products and sandwiches.

This case shows how important it is for companies to carefully monitor the actual use of their trademarks, and to properly document the sales volumes, duration and frequency of acts of use, in all the countries concerned.



Adoption of a new regulation on geographical indications for agricultural products, wines and spirits

Regulation (EU) 2024/1143 of the European Parliament and of the Council, April 23, 2024

On April 23, 2024, a new regulation on geographical indications (GIs) for agricultural products, wines and spirits was published after being adopted by the Council of the European Union to strengthen GI protection in the EU. It sets out:

- A clearer and more precise definition of the GI concept, covering processed agricultural products.
- Simplified and accelerated registration procedures at national and EU level.
- Better protection against the evocation and usurpation of geographical indications, including on the Internet and in translations.
- The possibility of requesting enhanced protection for certain geographical indications.
- Stricter supervision and penalties for misuse of a geographical indication.

Member States will have one year from the entry into force of the regulation to adapt their national legislation. It came into force on May 13, 2024, except for Article 45 and certain provisions of Articles 10 and 39, whose applicability is deferred until January 1, 2025.

MEDIAS, ENTERTAINMENT AND ADVERTISING LATEST NEWS

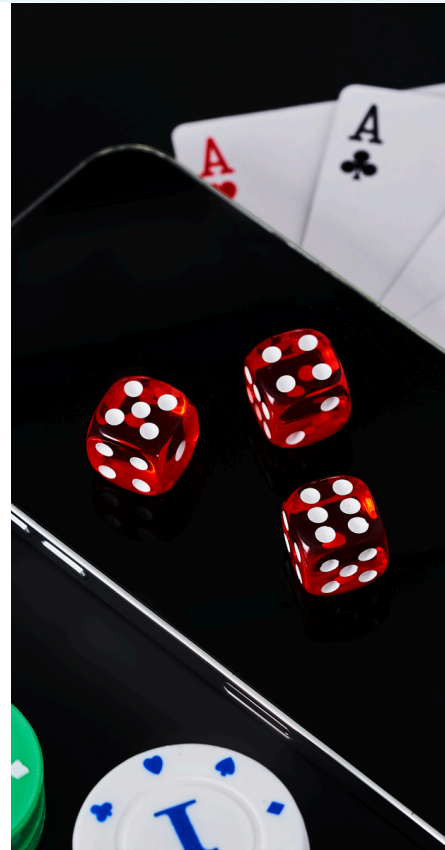
Content regulation of illegal ads by very large online platforms

Judicial Court of Paris, 3rd chamber, 3rd section, April 24, 2024, no. 24/02349

The Judicial Court of Paris has handed down an important decision concerning online advertising between the Barrière casino group and Meta. The Barrière group accused Meta, via its Facebook, Messenger and Instagram platforms, of enabling the dissemination of false advertising usurping its name and brand image in order to "encourage players to register and play on platforms offering illegal online gaming activities".

In a ruling handed down on April 24, 2024, the judges ordered Meta to set up a regulation system for ads mentioning "Barrière" or containing its logos, in order to block unauthorized ads, and ordered it to pay 20,000 euros in damages for the loss suffered.

This ruling underscores the importance of digital giants exercising greater control over the advertising content disseminated on their platforms and could pave the way for similar actions by other aggrieved brands.



Twitter ordered to share its data with press publishers

Judicial Court of Paris, summary order, May 23, 2024, no. 23/55581

On May 23, 2024, the Judicial Court of Paris issued a summary judgment in a case involving several press companies (Le Figaro, Les Echos, Le Parisien Libéré, etc.) against Twitter International Unlimited Company and SAS Twitter France.

The former invoked the related rights of publishers and press agencies, stemming from European Directive 2019/790, with the aim of obtaining from Twitter data relating to the use of their publications on the platform, in order to negotiate equitable remuneration for the reproduction and online communication of their content.

Twitter contested this request, arguing that the action should be deemed inadmissible for lack of standing on the part of the plaintiff companies; and asked that Twitter France be excluded from the case, as it did not have standing to defend, given its purely promotional activity in France. Twitter also argued that the requested communication measures were not legally admissible, since they were general and abstract measures whose effect was to impose an obligation additional to those applicable to an information society service established in another EU country.

However, the interim relief judge rejected Twitter's arguments, and ordered Twitter International Unlimited Company to provide the press companies with detailed information on the use of their online content (number of impressions, click-through rate on impressions in France, average number of engagements, Twitter International's advertising revenues, description of how the algorithms work), subject to a fine of 3,000 euros per day of delay. A confidentiality agreement must also be signed for the communication of data.

MEDIAS, ENTERTAINMENT AND ADVERTISING LATEST NEWS



European Commission initiates formal proceedings against Meta

On May 16, 2024, the European Commission announced the opening of formal proceedings against Meta to assess whether Facebook and Instagram have violated the Digital Services Regulation (DSA) regarding the protection of minors. This new procedure follows a previous one opened in April 2024 concerning deceptive advertising, political content and Meta's notification & action mechanisms. It is based on a preliminary analysis of the risk assessment report provided by Meta in September 2023 and replies to the Commission's formal Requests for Information.

The procedure involves:

- Assessing and mitigating the risks associated with minors' use of platforms
- Protective measures against inappropriate content, including age verification tools that may be ineffective
- Complying with obligations to guarantee the privacy, safety and security of minors, including default privacy settings

Clarification about the offence of online moral harassment

French Supreme Court, Criminal chamber, May 29, 2024, no. 23-80.806

In a ruling handed down on May 29, 2024, the Criminal Division of the French Supreme Court (Cour de cassation) provided important clarifications on the characterization of the offence of moral harassment in the context of cyber harassment.

According to the Court, the author of a single message posted on a social network can be found guilty of moral harassment if he or she has knowingly taken part in a "mass movement" with the object or effect of worsening the victim's living conditions. In this case, the accused had posted a malicious message against the plaintiff at a time when the latter had received thousands of messages of invective, insults or threats from various authors. The Court of Cassation also ruled that it was not necessary to identify, date and qualify all the messages sent by other people and directed against the victim, nor to verify that the defendant's message had actually been read by the targeted person.



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