

NEWSLETTER

IP / MEDIAS



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INTELLECTUAL PROPERTY LATEST NEWS

Batman Logo – the association of a trademark to a fictional character does not exclude its distinctive character

European General Court, June 7, 2023, No. T-735/21, Luigi Aprile, Commerciale Italiana Srl v. European Union Intellectual Property Office (EUIPO)

The European General Court has ruled on the distinctive character of the Batman logo for goods and services such as clothing, costumes, and masks. In this case, an Italian company request claimed for the invalidity of the DC Comics figurative trademark «  », which, in their topinion, merely referred to Batman and thus deprived the trademark of distinctiveness.

The Court confirmed the validity of the mark, stating that the mere fact that consumers associated the contested trademark with a fictional character could not, on its own, in itself rule out exclude the possibility that it might also indicate the origin of the goods. Moreover, it considered that given the evidence submitted, the Batman character was still associated with DC Comics at the date of the registration, and it has not been was not proved proven that the relevant public associated the trademark with any other commercial origin: the trademark is therefore distinctive. The Court also recalled that the protection of the logo by copyright law as a literary and artistic work does not exclude the trademark law protection.



A free assignment of intellectual property rights is regarded as a donation and must be concluded by a notarial deed

Paris Judicial Court, April 12, 2023, No. 23/50949

A former Russian army soldier who took part in the invasion of Ukraine assigned all of his copyrights on one of his testimonies to the "New Dissents Foundation" private non-profit association by private deed and free of charge. Thereafter, the association signed an assignment of rights agreement with a publishing company for the publication of the testimony. The former soldier raised before the Court the nullity of the initial assignment of rights because of the lack of notarial actdeed.

In accordance with Pursuant to article 931 of the French Civil Code, the interim relief judge ruled that the agreement concluded between the former soldier and the association explicitly led to the gratuitous assignment of copyrights for free. The summary judge, who considered that this assignment was thus null and void, ordered the sequestration of the sums stipulated in the agreement until a final decision to be is rendered on the merits.

This decision is a reminder that intellectual property is not exempt from the rules of the common law system relating to gifts inter vivos: the gratuitous assignment of intellectual property rights is legally regarded as an inter vivos donations, and must be concluded in front of a notary notarized otherwise it shall be regarded as nullto avoid nullity.



INTELLECTUAL PROPERTY LATEST NEWS



AFP sues Twitter to enforce press agencies' and publishers' related rights

On August 2, 2023, the Agence France-Presse (AFP) press agency asked seized the Paris Judicial Court, into emergency interim proceedings, to order Twitter to provide the press agency with all the information required to assess the remuneration that it can expect from in accordance with its related rights.

To date, Twitter, recently renamed "X", has refused to enter into discussions to ensure the implementation of the press agencies and publishers' related right which guarantees that press agencies and publishers will be remunerated by the platforms distributing their content.

This Court action is an illustration of the battle waged initiated by AFP since the creation of this new related right with by the law dated of July 24, 2019, the aim being to adapt the related right in favor of the press and guarantee its effective implementation to find for a fair balance in the sharing of the valuable information.

A selfie with a dog in an elevator is not protected by copyright

Paris Court of Appeal, May 12, 2023, No. 21/16270



The Paris Court of Appeal has ruled that a selfie taken with a dog in an elevator is not protected by copyright after an influencer summoned sued a ready-to-wear fashion company for copyright infringement, unfair competition, and parasitism for having creating created an advertising campaign inspired by her blog, on which she posted daily selfies taken in an elevator with her dog. In first instance, the Court rejected the copyright and unfair competition claims, but admitted the parasitism.

The Court of Appeal ruled that the selfies did not qualify for copyright protection, and rejected the unfair competition and parasitism claims. The judge stated that the photographs were not original: the choices claimed by the influencer were choices already made by other influencers before her. In addition, the Court pointed out that there was no evidence of the influencer's notoriety linked to the photograph that was allegedly used as an inspiration for the ad.

This decision illustrates the complexity of demonstrating the originality of selfies.

INTELLECTUAL PROPERTY LATEST NEWS

The Yuka app does not commit unfair and deceptive practices by informing consumers of the risks associated with nitrites

Paris Court of Appeal, June 7, 2023, No. 21/11775

In our [December 2022- to January 2023 issue](#), we reported on the dispute between ABC Industrie, a charcuterie company, and the start-up Yuka, which was accused of classifying the company's hams as "bad" due to the presence of nitrites in their products.

On June 7, 2023, the Yuka application won its case before the Paris Court of Appeal, which ruled, as had the Aix-en-Provence Court of Appeal before it, that information on the risks associated with nitrites falls within the scope of freedom of speech.

The Yuka app had launched a petition to ban nitrites in charcuterie and had been condemned in the first instance for unfair and deceptive practices and disparagement to the prejudice of ABC Industrie, to pay €20.000 in damages. The Court of Appeal stated that the information on the risks associated with nitrites was part of a subject of general interest relating to public health and therefore do not constitute acts violating the requirements of professional diligence.



Case Combo-Mélenchon: Street-art is fully protected by copyright

Paris Court of appeal, July 5, 2023, No. 21/11317

Street-artist Combo has won a case against the politician Jean-Luc Mélenchon for infringement of his copyright on his street-art work "La Marianne asiatique", which was used in political campaign videos for La France Insoumise without his authorization.

The Court of Appeal recalled that the exceptions of freedom of panorama and short quotation provided for in article L122-5 of the French Intellectual Property Code are strictly applicable.

Regarding the exception of freedom of panorama, the Court ruled that the work was not an architectural work and could not be regarded as permanently placed on the public highway in light of external factors (deliberate degradation, erasure by the owner of the support, alterations due to bad weather, etc.).

Regarding the short quotation exception, the judge stated that Combo's name was not mentioned in the videos, and that the representation of the street-art was not justified by the critical, polemical, educational, or computer-related nature of the political campaign videos. Infringement of moral rights was also upheld because the spiritual integrity of the work had been compromised, as it had been associated with the actions and interests of a political party and personality, without the artist's consent.

The Court thus reminded that a street-art work is a work of the mind protected by copyright, and its unauthorized uses are regarded as an infringement.

MEDIA, ENTERTAINMENT AND ADVERTISING LATEST NEWS

Adoption of the bill on French public audiovisual services and audiovisual sovereignty

Bill No. 1350 adopted by the French Senate relating to French public audiovisual services and audiovisual sovereignty

On June 14, 2023, the French Senate adopted on first reading the bill on the reform of French public audiovisual services and audiovisual sovereignty. The bill rests upon two foundations: a merging of public audiovisual to create a range of free, high-quality programs accessible to all on every media, and a revision of the law of September 30, 1986 relating to the freedom of communication.

The text, after being supplemented by new amendments from the Senate, suggests in particular to:

- Create an holding company, "France Médias", merging France Télévisions, Radio France, France Médias Monde and the Institut National de l'Audiovisuel (INA), of which it would own the entire capital and define the strategic orientations;
- Secure funding for public audiovisual through the creation of a permanent, sufficient and predictable tax-based public resource that takes inflation into consideration;
- Extend to subscription-only platforms the obligation imposed to subscription pay-TV channels to transfer certain rights to major sports events to free-to-air digital TV services;
- Increase support for public audiovisual channels, to enable them to develop high-quality productions that can help promote French creative talent abroad.

The proposal has been referred to the French cultural and educational affairs Committee. The assemblies must now approve it.

To be continued...

The use of Twitter Blue, regarded as a new form of advertising sponsorship, will be prohibited during election period

The French National Commission on campaign accounts and Political Party Financing (CNCCFP) has announced that the paid subscription "Twitter Blue" will be regarded as a form of advertising sponsorship. Its use will be considered as contrary to article L52-1 of the French Electoral Code for electoral purposes during the 6 months preceding an election. This article states that the use for electoral propaganda purposes of any commercial advertising process using the press or any means of audiovisual communication is prohibited.

Violation of this prohibition leads to the cancellation of the election in the event of a narrow margin and is subject to a fine of €75,000 (article L.90-1 of the French Electoral Code).



MEDIA, ENTERTAINMENT AND ADVERTISING LATEST NEWS

Adoption of the law for a secure use of social media and a framework for the commercial influence of influencers

Law no. 2023-451 of June 9, 2023 for a regulation of commercial influence and the fight against abuses by influencers on social media

In our [April- to May 2023 issue](#), we announced the adoption of the bill aimed at preventing influencers scams and abuses on social media. The law was adopted on June 9 and published on June 10, 2023.

Deputies and senators agreed on the need to strengthen the obligations of online platforms, which will have to: offer a button to report illicit content, treat notifications from trusted signalers as a priority and remove such content as quickly as possible in compliance with the Digital Services Act (DSA). In addition, the law prohibits the advertising of certain products and services deemed to be dangerous, such as cosmetic surgery or nicotine, and reinforces the responsibility of influencers regarding dropshipping practices.

In the event of infringement of these new prohibitions or obligations, influencers face imprisonment and heavy fines (up to €300.000 in some cases), along with a ban on practicing their profession.

TikTok announces its decision to end ad targeting on minors in the light of the DSA

TikTok' news release : "An update on fulfilling our commitments under the Digital Services Act"

The Chinese video-hosting service has declared that it is reinforcing its transparency policy, putting an end to ad targeting of users aged 13 to 17 in Europe, and has introduced the option for European users to deactivate the personalized recommendation system. From now on, users will be able to opt for display in chronological order or according to content popularity.

The platform also points out its commitment to make easier the reporting of allegedly violent content. The platform has also made its API (Application Programming Interface) freely available for research purposes, as well as its commercial content registry. Researchers will thus have access to certain anonymized data relating to consumption, misinformation, and mental health. TikTok is also planning to set up a library of all advertisements broadcast in Europe.

TikTok is striving to comply with the new obligations imposed by the DSA, which came into force on August 25, in terms of content moderation and transparency with fines up to 6% of worldwide sales.

Apple TV+'s Tetris film accused of plagiarizing a book on the history of the homonymous video game

U.S. Court for the Southern District of New York District Court, August 7, 2023, Daniel Ackerman c/ Apple Inc.

Daniel Ackerman, author of the book *The Tetris Effect*, claims that he sent in 2016 a copy of his manuscript to The Tetris Company, which manages the rights to the game, in preparation for a possible partnership on the adaptation of his book recounting the genesis of the iconic video game. At the time, The Tetris Company put the author on notice to abandon all adaptation projects.

Following the release of the Apple TV+ movie *Tetris* last March, the author sued the production company and The Tetris Company in front of the Manhattan federal court. Ackerman claims that the screenplay for the *Tetris* film freely borrows many specific sections and events from his book, making the film a work "similar in almost every respect" to his book. He is asking for nearly \$8 million in damages for copyright infringement, unfair competition, and commercial interference.

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