

INTELLECTUAL PROPERTY LATEST NEWS

Pan European jurisdiction in counterfeiting of European trademarks

ECJ, September 7, 2023, Case C-832/21, VOGUE v. DIAMANT VOGUE

The American company owning the European trademark VOGUE sued a German company and a Polish company for infringement before the German courts for marketing drinks sold under the name DIAMANT VOGUE. The Polish company contested the German court's international jurisdiction on the grounds that it did not deliver the litigious drinks in Germany.

According to Article 8 of the Brussels I bis Regulation, the European Court of Justice pointed out that, as the claims were closely linked, it was in the interests of the case to hear them at the same time: the co-defendants, which did not belong to the same group, were nevertheless linked by an exclusive distribution contract. Moreover, only one of the two co-defendants owned the domain names associated with their websites, thus confirming a certain level of collaboration between the two companies. The German court therefore had international jurisdiction to issue prohibitory injunctions against the German defendants but also against the Polish defendants.



Refusal of the registration of figurative trademark consisting of Puck Schrover mannequin portrait

A company based in Brazil has filed a trademark with the EUIPO for a metallic gold sole as an integral part of footwear.

The EUIPO recalls that the distinctive character of a trademark is assessed with reference to the goods or services for which protection is sought and the perception of the relevant public. The Office points out that, in that regard, the average consumer cannot recognize the sign as originating from a specific company since the golden colored element of the sign is not linked to any commercial origin in particular. The registration is therefore rejected on the grounds that the relevant public perceives the sign as a non-distinctive design serving as a mere decoration.



Non-distinctiveness of a metallic gold sole on footwear

EUIPO, Refusal of application trademark No. 018731419, August 31, 2023

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Adoption of the proposal for a regulation on geographical indication protection for craft and industrial products

European Parliament legislative resolution of September 12, 2023, on the proposal for a regulation on geographical indication protection for craft and industrial products

On September 12, 2023, the European Parliament adopted the proposal for a regulation allowing the registration of the names of craft and industrial products as geographical indications. The relevant products are those whose quality, reputation or any other characteristic may be essentially attributed to their geographical origin. Parliament pointed out that the registration procedure will comprise two phases, at a national level and then with the European Office within one year of the application being filed with the national authority.

With this proposal, members of the Parliament are aiming to establish a truly efficient internal market for this type of product across the European Union, drastically reducing the risk of counterfeiting on European territory. It will benefit small and medium-sized rural businesses actively developing their craft industries. If the Council approves the text, the regulation should be applicable in 2025.

Parasitism against Guerlain's perfume "La Petite Robe Noire »

Paris Court of appeal, September 20, 2023, No. 21/19365

Guerlain, which markets the perfume "LA PETITE ROBE NOIRE" in a bottle in the shape of a bow tie called "COQUE D'OR", accused a competitor exploiting the perfume "LA PETITE FLEUR NOIRE" of parasitism.

In a decision issued on September 20, 2023, the Paris Court of Appeal held that the disputed perfume was strongly inspired by the name, visual identity, and shape of the bottle, so that the elements of similarity taken as a whole reflected the competitor's desire to follow Guerlain's direction. Moreover, the illustration on the bottle of the disputed perfume depicts the colors and feminine silhouette characteristic of Guerlain's perfume. As a result, the Court stated that the company's actions were unlawful parasitic practices and sentenced the competitor €694.000 to compensate for the commercial and moral damage caused to Guerlain by the dilution of the reputation of its perfumes and the damage to its commercial reputation and brand image, and to pay €25.000 of legal costs in accordance with article 700 of the civil procedure code.



MEDIA, ENTERTAINMENT AND ADVERTISING LATEST NEWS

Adoption of the European Parliament's position on the European Media Freedom Act

Amendments adopted by the European Parliament on October 3, 2023 on the European Media Freedom Act

Members of the European Parliament adopted their position on the European Media Freedom Act on October 3, 2023. Parliament is calling for greater protection for journalists and the media by guaranteeing media pluralism and their independence from political or technological interference. In particular, the use of spyware will be prohibited, save in exceptional cases.

The major platforms will also have to inform the media at least 24 hours before their content is removed from the platforms to enable them to react accordingly under the Digital Services Act. Parliament is also suggesting to limit state advertising to prevent the media from financially depending on public authorities. Negotiations on the final form of the text can now begin, with the aim to reach a final agreement by February 2024. **To be continued...**

Signature of an agreement between the Writers Guild of America and studios for better wages and a greater protection against AI

After intense negotiations and almost five months of strike action that paralyzed the entertainment industry, the Writers Guild of America and the production studios signed a historic tentative agreement on September 24, 2023. From now on, screenwriters will benefit from a minimum 5% pay rise and an increase in the residuals earned from successful films and series on streaming platforms. In addition, the use of artificial intelligence in scriptwriting will now be strictly regulated: AI cannot be used to rewrite scripts, nor can it be imposed by an employer on his scriptwriter. A certain level of transparency regarding the production of documents generated by AI or incorporating artificial content will also have to be respected between an employer and its scriptwriter.

However, negotiations are still underway between the studios and the Screen Actors Guild, which has also been campaigning for the past three months for better working conditions.

For more news on artificial intelligence, we invite you to read the TECH DATA Newsletter of September-October 2023



MEDIA, ENTERTAINMENT AND ADVERTISING LATEST NEWS

New minimum compensation framework for directors of audiovisual fiction

On September 15, 2023, a double agreement was reached between the audiovisual producers' unions (SPI, USPA, SPECT, SATEV) and fiction directors' unions (SFR-CGT, SPIACCGT, F3C-CFDT), putting an end to almost thirty years of legal limbo regarding the remuneration of directors, who were up until now the only workers on film sets without any minimum wage set under the collective bargaining agreement for audiovisual production.

These agreements will be accompanied by annual monitoring committees, which may make adjustments to reflect ongoing developments in the audiovisual market.

DGCCRF's jurisdiction to impose penalties against influencers

Decree No. 2023-887 of September 20, 2023, on the liquidation of penalties imposed against influencers

In our [June to August 2023 issue](#), we reported on the adoption of the law of June 9, 2023, for a secure use of social media and a framework for the commercial influence of influencers.

A decree issued on September 20, 2023, clarified the terms and conditions for the payment of penalties imposed on influencers.

From now on, the DGCCRF (Directorate General for Consumer Affairs, Competition and Fraud Prevention) will be able to request the payment of penalties for violations of the provisions of the law on influence and will publicly disclose the amount of the penalties. Thus, anyone operating in the sphere of influence may be subject to injunctions accompanied by daily penalty payments up to €300,000 in total or 5% of their turnover.



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