



Legal Network International

IP and trade mark news – September 2023

A monthly update on global IP and trade mark news from the member firms of the Legal Network International (LNI).



Canada

The Canadian Intellectual Property Office has recently announced upcoming changes to the prosecution fees for patents, trademarks, copyrights and industrial designs. On January 1, 2024, most fees will increase by 25%, including application and examination fees, as well as fees for recording assignments, initiating trademark oppositions or requesting certified documents. People seeking protection for their intellectual property in Canada may want to file any patent or trademark applications prior to the end of 2023 to take advantage of the lower fees.

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China

"Cognac" is the first foreign geographic indication mark in China. Ford, the automobile manufacturer, used "Cognac" to name its vehicle models and the term "Cognac Brown" to describe the automotive interior colour. Recently, Jiangsu High People's Court ruled that Ford's action constituted unfair competition because it, although from a different industry, gained competitive advantages through improper means and damaged the legitimate rights of the owner of the GI mark. This is the first case under which a foreign GI mark was protected in a different industry. It is not yet known whether Ford will appeal.

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France

In a decision dated April 27, 2023, the Court of Justice of the European Union (CJEU) ruled on whether a Court can have jurisdiction over a dispute related to a company using paid referencing via Google AdWords for a public based in another Member State.

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India

In the case of UST Global's registration application for their "Touch Screen" design, the Calcutta High Court highlighted the shift from a liberal approach to a strict interpretation of "article," impacting the registration of screen displays as designs. The Court's analysis considered the Locarno Classification for Industrial Designs, ruled that (Graphical User Interface) GUIs are eligible for registration, and questioned the interpretation of Section 2(a) and (d) of the Designs Act, 2000. This ruling has significant implications for GUI design registrations, clarifying design law's scope and protection for commercially viable creations.

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Italy

Last July, the Court of Cassation, in its order no. 21775/2023, concerning a case of alleged infringement of a famous Italian fashion trademark, affirmed that in order to ascertain the invalidity of the registration of a trademark considered similar to another registered well-known trademark under Article 12(1)(e) IPC, it must be taken into consideration the latter's reputation at the time of the filing of the first. Whereas, for the judgement of infringement between signs under Article 20(1)(c), the reputation of the well-known trademark must be considered at the time when the second registered trademark started to be used.

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Evidence in copyright cases before Luxembourg jurisdictions



Luxembourg

In January 2023, the Luxembourg Court of Cassation voided a decision of the Luxembourg Court of Appeals based on the Luxembourg Copyright Law of 2011. The Court emphasised that claims regarding the cession and transfer of rights must be supported by written proof and interpreted favourably toward the author.

Therefore, the Court of Cassation ruled that the circumstantial evidence that a software was installed on the IT systems did not sufficiently demonstrate the acquisition of corresponding rights. For this reason, the lower courts should have required that the defendant demonstrate his argument via a written agreement with the developer.

Case law: https://anon.public.lu/Décisions%20anonymisées/Cour%20de%20Cassation/Cour%20de%20Cassation/2023/20230112_CAS-2022-00031_2_pseudonymisé-accessible.pdf

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Mexico

On August 21, 2023, an "Advertising Guide for Influencers from the Federal Consumer Protection Agency (PROFECO)" was published in the Official Gazette of the Federation in Mexico.

This guide may be consulted at the following website: <https://www.profeco.gob.mx/influencers/> and its purpose is to inform influencers and content creators of the provisions regarding advertising established in the Federal Consumer Protection Law, so that everyone, especially influencers and content creators, are better informed and can correctly comply with the provisions of the Law.

Follow the next link to have access to the full article:
<https://drive.google.com/file/d/1qx2XuC4tsy02YjV07GZYoga7kVB31In/view?usp=sharing>

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Singapore

Coinbase vs bitFlyer – crypto exchanges battle over an identical trademark registration by bitFlyer. Coinbase succeeded on two grounds: bitFlyer was well aware of the original mark Coinbase registered for protection and did not intend to use the mark for certain services unrelated to cryptocurrency, and there was a likelihood of confusion between the marks and services. For more info, please click [here](#)

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Sweden

A person, a private individual, had posted photos on her social media account. The photographer of the photos lodged an application for damages. The defendant argued that the usage was lawful since the photographer already had made the photos available on Instagram and had provided at least one copy of a photo to the defendant. The court held that the posting of the pictures in this case required a consent pursuant to the Swedish Copyright Act. No consent was established and the posting on the social media account could not be exempted as private use although the usage was limited.

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UK

The UK's House of Commons Science, Innovation and Technology Committee has published a report setting out areas to be addressed during the global AI Summit to be held in the UK in November. The report highlights 12 issues which the Committee believes must be met through both international engagement and domestic policy to ensure public safety in relation to AI.

<https://committees.parliament.uk/committee/135/science-and-technology-committee/news/173701/mps-to-examine-regulating-ai-in-new-inquiry/>

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