

Legal Network International

IP and trade mark news – October 2023

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



Canada

The Federal Court ordered new remedies in an anti-counterfeiting case (*Burberry Limited v. Ward*) where Chanel and Burberry were able to get high damages awards and injunctions against counterfeiters, and injunctions against shipping companies aware of importation of counterfeit goods—potentially exposing them to criminal sanctions for contempt of court if not obeyed. The Defendants sold counterfeit Burberry and Chanel merchandise through a changing and expanding online presence, involving the use of multiple names, aliases, and Facebook pages. Canadian customs detected infringement and informed the brand holders. Reneging on an agreement to cease their infringing activities, the Defendants were sued, and the Court found trademark infringement and awarded over C\$900,000 in damages. Please see our summary [here](#).

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China

KABUSHIKI KAISHA YAKULT HONSHA (“YAKULT”) sued Shanghai Yuejia Food Co., Ltd. (“Yuejia”) for unfair competition, requesting compensation of RMB 2.3 million (approximately USD 315,185). In August 2023, Shanghai IP Court ruled that through YAKULT’s use and promotion, the package and decoration of YAKULT products are influential and can identify the source of products, which makes them protectable under the Anti-Unfair Competition Law. In that context, the package and decoration of Yuejia products can easily confuse the public and therefore, infringement was established. In addition, Yuejia acted in bad faith again after having reached a settlement agreement with YAKULT in 2010 under another infringement case. Eventually, the Court granted compensation of RMB 350,000 (approximately USD 47,963).

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YAKULT products



Yuejia products



Colombia

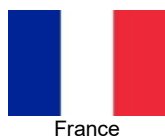
Colombian companies are strongly committed to certifying their services and products through Certification Trademarks. Take, for example, PorkColombia, the association of pork farmers in Colombia that produces pork meat. Following an extensive legal strategy, we secured three Certification Trademarks on their behalf. Each trademark application must be accompanied by two manuals. The first manual outlines the guidelines for using the certification seal, detailing aspects such as placement, usage, color specifications (pantones), size, and so on. The second manual focuses on internal procedures, establishing the rules and internal policies concerning meat production.



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France

In a decision dated June 9, 2023, a French Court of Appeal ruled that due to technical and security imperatives, the simple removal of an artwork from its original support could not constitute an infringement of the artist's copyright.

In this case, a building's front which was covered with artworks created by an artist was destroyed and rebuilt to comply with safety standards and new regulations.

No infringement was found given that (i) the artist was informed of the project, (ii) no alteration or modification of the work was made during the removal and (iii) he refused to reinstall its artworks on a new building.

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India

In the case of Tea Board of India v. ITC Ltd., the plaintiff, alleged that the defendant had infringed their registered geographical indication (GI) rights related to "Darjeeling" by using it in the name and branding of their business premises, 'DARJEELING LOUNGE.' The plaintiff claimed that this use was fraudulent, malicious, and misled customers into thinking the products originated from Darjeeling. They sought a temporary injunction to restrain the defendant from such use. The court clarified that the GI protection only applied to goods, specifically tea, and not services like a lounge. As a result, the plaintiff's claims of infringement were deemed baseless, and the suit was dismissed.



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Italy

The Ministry for Business and Made in Italy published the announcements for the year 2023 relating to the subsidies Patent+, Trademark+ and Design+, setting the deadlines for the filing of applications to access the financial resources made available by the Italian government. The total budget for the year 2023 amounts to 32 million Euros: 20 million for the measure Patents+, 10 million for the measure Designs+ and 2 million for the measure Trademarks+. Applications for access to the facilitation measures can be submitted from: 24 October 2023 for Patents+, 7 November 2023 for Designs+ and 21 November 2023 for Trademarks+. The granting of subsidies aims to the valorisation of industrial property titles and to support Small and medium-sized enterprises.

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Luxembourg

The National Data Protection Commission in Luxembourg (the "CNPDP") is currently developing a "DATA Protection Compliance Support TOOLkit" (ALTO). The purpose of ALTO is to provide an intuitive tool for small and medium businesses ("SMEs") enabling them to integrate the GDPR obligations into their activity.

The CNPD aspires that this tool will prove to be a significant help for SMEs in managing their obligations with regard to data protection legislation in Luxembourg and across Europe. Indeed, the CNPD's plan is that the tool can subsequently be replicated in other EU member states. It is planned that ALTO will move to the beta test stage during the fourth quarter of 2023.

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Mexico

Last week SAW X movie was released in theaters. The filming of the movie took place in Mexico, specifically there were shots of very important monuments. With this in mind, we may ask ourselves, is it necessary to ask for some kind of permission to film certain shots of the monuments in the movie?

The answer is yes, permits must be obtained from INAH for the "Monumento de la Revolución" and "Ángel de la Independencia" and INBAL for the "Palacio de Bellas Artes". When shooting a film in any location, permission must be requested, however, these monuments represent Mexico's heritage, so there are agencies such as INAH and INBAL that must give the corresponding authorization.

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Singapore

In *Ila Technologies Pte Ltd v Element Six Technologies Ltd*, which pertained to lab-grown diamond technology, the Court of Appeal in Singapore ruled that if a person skilled in the art cannot clearly determine if a product or process falls within the claim's scope, it does not meet the sufficiency requirement outlined in the Patents Act. Read more [here](#).

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Sweden

A design company has claimed that tables in a furniture series are works of applied art that enjoy copyright protection. The Patent and Market Court of Appeal has asked the ECJ for a preliminary ruling regarding the interpretation of Directive 2001/29/EC. One question concerns how the directive should be understood as to the assessment on the originality of works in the field of applied art. Another question concerns what criteria are relevant when examining whether an allegedly infringing work falls within the shape of another work that is subject to copyright in the form of applied art.

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UK

The UK's Intellectual Property Office has worked with the EUIPO to develop 'SEARCH', a new patent-search tool. This will assist the UK IPO's patent examiners by allowing more in-depth searches of prior art and ensuring the validity of patent applications.
<https://www.gov.uk/government/news/powerful-new-search-tool-will-help-ipo-maintain-patent-quality>

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