Directors’ Duties Workshop
Thursday 9 May

- In-depth training session on the legal and practical aspects of the statutory duties of directors
- Facilitated by lawyers from our Corporate Governance & Compliance Team
- €250 per attendee, which includes workshop materials and refreshments
- For more information email events@mhc.ie
In-House Counsel Masterclass:
Recent Developments in IP and AI
Wednesday 1 May 2019
Welcome

Gerard Kelly, Partner & Head of Intellectual Property, Mason Hayes & Curran
Recent IP Case Law

Gerard Kelly
Partner
Mason Hayes & Curran
Does anyone recognise this?
World IP Day

- 26 April 2019
- IP Rights and Sport
- Guide: ‘IP and Sports: Tracing the Connections’
Key Developments and Trends

- Trade Marks
- Copyright
- Designs
- Patents
Trade Marks

Dublin
London
New York
San Francisco
Trade Marks

Trade Marks in Sport

- Trademarks are powerful and indispensable marketing tools.
- Sport sponsorship deals
- Licensing third parties to produce merchandise
- Personal brands
Trade Marks

Nestlé SA v Mondelez UK & Ors; C-84/17 P, C-85/17 P and C-95/17; 25 July 2018

- Where a mark is devoid of inherent distinctive character throughout the EU, it is not sufficient to prove that the mark has acquired distinctive character through use in a significant part of the EU

- Unitary evidence acceptable where Member States are grouped in the same distribution network
Trade Marks
C-163/16 Louboutin v Van Haren Schoenen BV, June 2018

• Can a colour be a shape?

• “a sign consisting of a colour applied to the sole of a high-heeled shoe…does not consist exclusively of a ‘shape’”
Trade Marks

T-2015/17 Pear Technologies Ltd v EUIPO, 31 January 2019

- Board of Appeal: “although apples and pears are two distinguishable fruits, they are fruits which are closely related in a biological sense”

- EU General Court: “conceptually different”
Trade Marks

Galway Free Range Eggs Limited -v- O'Brien, CoA, 22 January 2019

• “O’Briens of Galway Free Range Eggs”

• Possible to establish goodwill in the name ‘Galway’

• Confusion demonstrated by survey evidence

• Appropriation of goodwill constituted damage

• Interplay with packaging labels
Copyright

Copyright in Sport

- Exclusive broadcasting rights – largest source of revenue for most sports organisations

- Rio 2016 Olympics: USD 2,868 million broadcast revenue

- Rapid evolution of digital media
Copyright

C-161/17 Renckhoff; 7 August 2018

• Photograph of the city of Cordoba; Spanish class assignment uploaded to school’s website

• The reposting of protected content freely available with the rightholder’s consent on a third-party website is a new act of communication to the public
Copyright

C-149/17 Bastei Lübbe GmbH & Co. KG v. Michael Strotzer;

- The owner of an internet connection used for copyright infringements” cannot invoke his fundamental right to private life to circumvent the possible enforcement of remedies against such infringements.

- Mr. Strotzer’s parents were the only other users of this connection

- Article 7 Charter - protection of family
Copyright

C-310/17 Levola Hengelo

- Taste of spreadable cheese must be capable of being classified as a ‘work’

- “Original intellectual creation”

- ‘Expression’ of that intellectual creation in a manner which makes its identifiable with sufficient precision and objectivity
Designs
Designs

Designs in Sport

- Design makes a product, and a sports event, more attractive and appealing to consumers.

- Design plays a key role in ensuring that products stand out in the market and are immediately recognisable.
Designs

PulseOn Oy v Garmin (Europe) Limited [2019] EWCA Civ 138

• Wrist heart rate monitors (WHRMs) – photosensor

• Layout of a central conical raised platform on the underside of the device

• Designs did not produce an “identical impression”
Patents
Patents

Patents in Sport

- High grade Wi-Fi networks and mobile apps
- Sports equipment embedded with sensors
- Strong, durable, light-weight innovative composite materials
Patents

Eli Lilly and Eisai; High Court; 31 July 2018

• Application to stay pending EPO opposition proceedings

• Trial steps to be carried out

• Strong public interest existed in ensuring that the risk of any delay in supplying a potential treatment for Alzheimer’s disease is minimised
Patents

Merck Sharp & Dohme v Clonmel Healthcare

- Generic alternative to Inegy; discount of approx. 92%.
- Interim Injunction granted April 2018
- Interlocutory injunction refused – adequacy of damages
- Court of Appeal upheld refusal of injunction
Patents

Warner-Lambert v Generics (UK) [2018] UKSC 56

• Validity of and infringement of Warner-Lambert's Lyrica®

• Insufficiency finding upheld by Court of Appeal

• Appeal dismissed

• Infringement would not have occurred, in any event
Thank you
Developments in Artificial Intelligence
Brian McElligott
• Where we are?

• Where we are going?

• What to look out for
The Next Rembrandt
Definition of author of copyright

S 21 Copyright and Related Rights Act 2000

- always a person, individual or group

- Under the Interpretation Act 2005, the word person is to be read as importing a body corporate as well as an unincorporated body of persons, as well as an individual: s.18(c).
3 Legal AI Misconceptions

- iRobot
- Agency
- Entity
EU Parliament Civil Law Rules on Robotics

- creating a specific legal status for robots in the long run, so that at least the most sophisticated autonomous robots could be established as having the status of electronic persons responsible for making good any damage they may cause, and possibly applying electronic personality to cases where robots make autonomous decisions or otherwise interact with third parties independently.
CIVIL LAW RULES ON ROBOTICS


This resolution marks in its paragraph 58: "Creating a specific legal status for robots in the long run, so that at least the most sophisticated autonomous robots could be established as having the status of certain persons responsible for making good any damage they may cause, and possibly applying electronic personality to cases where robots make automatic decisions or other actions with third parties independently.

In fact, a delegating amendment for 58th Frauen-Kartel and 298th Members of Parliament voted in favour of its deletion.

Prior to this vote, Mr. Ghislain, the Luxembourg Member of the European Parliament who drafted the Resolution, wrote a communication to all members of Parliament clarifying his intentions in the Resolution:

"In the long run, determining responsibility in cases an accident will probably become increasingly complex as the most sophisticated autonomy and self-learning robots will be able to take decisions which cannot be traced back to a human agent. In these cases, it is possible to think that the Commission is called upon to ensure a compensatory mechanism which will include the possibility of giving the legal status of an electronic personality to robots in order to facilitate compensation for victims when human responsibility cannot be attributed. Liability is a part of trust, and it is indispensable for citizens' trust."

WHO ARE WE?

We are Political Leaders, Artificial intelligence researchers, and industry leaders. Physical and Mental Health specialists. Law and Ethics experts gathered here to consider an issue around the negative consequences of a legal status approach for robots in the European Union.

Forcing an actionable framework for civil law rules on robotics and AI consequently addressing the issue of liability, "artificial" robots alone a goal. However, we believe that creating a legal status of states, persons would be undesirable and non-sustainable.

The European Commission and Global Committee concerned in its necessity. The consequences of Artificial Intelligence on the Digital single market, production, consumption, employment, and society. First, how the 2016 MRD report on the European Parliament, the 2018 report on Recommendations to the Commissioner on Civil Law Rules on Robotics, already considered the possibility of "creating a specific legal status for robots, so that at least the most sophisticated autonomous robots could be established as having the status of citizens persons with specific rights and obligations, including that of making good any damage they may cause and paying any compensation to persons where robots make automatic decisions or other actions with third parties independently."

- 2018 report on Recommendations to the Commissioner on Civil Law Rules on Robotics.
Who are they?

- Artificial Intelligence and Robotics Experts, industry leaders, law, medical and ethics experts
- *From an ethical and legal perspective, creating a legal personality for a robot is inappropriate whatever the legal status model*
- 285 signatories and counting
“computer-generated”, in relation to a work, means that the work is generated by computer in circumstances where the author of the work is not an individual.

“author” means the person who creates a work and includes: (f) in the case of a work which is computer-generated, the person by whom the arrangements necessary for the creation of the work are undertaken.
Where are we going?

**Legal Tech**
- HighQ
- A&O Fuse Incubator – Deal Platform
- Kira – Contract Reviews
- Thomson Reuters Contract Express Contract drafting

**Daily Life**
- Autonomous vehicles – Valeo Galway
- Passport Control Advanced Meta Data
- IBM Watson – Medical Diagnostics
- Process Automatic Credit Decisions & Risk Management in Fintech
EU Approach

- High level expert group – Ethics Report
- Parliament review
- Pilot stage
- €20 billion investment

- Trust
- AI by Design
- Explainability
- Accountability
- Fundamental Rights
- Trust is key and not a luxury
What is Trustworthy AI?

- Human agency and oversight
- Technical robustness and safety
- Privacy and data governance
- Transparency
- Diversity, non-discrimination and fairness
- Societal and environmental well-being
- Accountability
Recommended Reading

Hello World
by Hannah Fry

Robot Rules
by Jacob Turner
Questions?

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