



COMMERCIAL

CPC Group Ltd v Qatari Diar Real Estate Inv Co.: “Reasonable” and “Best” Endeavours

Under the contract for the development of the Chelsea Barracks site, Qatari was obliged to use "all reasonable but commercially prudent endeavours" to enable the achievement of certain thresholds leading to payment of the deferred consideration and to procure planning permission free of legal challenges. Further, both parties owed each other an express duty to act in the "utmost good faith".

In March and May 2009, His Royal Highness, the Prince of Wales made it known to His Highness the Emir of Qatar, the Prime Minister of Qatar, and Qatari's Chairman, his dislike of the proposal and his support for a more traditional approach. On 12 June 2009, Qatari withdrew the planning application.

The main issues for Vos J in *CPC Group Ltd v Qatari Diar Real Estate Inv Co* [2010] EWHC 1535 (Ch) were

- Whether Qatari was entitled under the contract with CPC to withdraw the planning application and whether such action constituted a breach of contract.
- Whether either party had acted in breach of their duties of utmost good faith in the events following the Prince of Wales' intervention.
- Whether Qatari was in breach of its obligation to use "all reasonable but commercially prudent endeavours" to meet the various threshold events and payment dates set out in the contract in respect of the deferred consideration and to procure planning permission.

Vos J did not find that either party had breached the obligation to act in good faith, saying that "Both these "bad faith" cases are built, in my judgment, on unsteady foundations".

As to the meaning of the obligation to act "in the utmost good faith", the Judge noted that there is not actually much authority on the point. Vos J said that the obligation must be looked at in the commercial context of the contract.

On the obligation to use *reasonable* endeavours, CPC argued that the obligation is less onerous than one to use *best* endeavours, but an obligation to use *all* reasonable endeavours (author's emphasis) is to be equated with an obligation to use best endeavours. Therefore, a party subject to such an obligation must, if necessary, subordinate its own financial interests to obtaining the desired result. Vos J rejected CPC's arguments and concluded that the obligation to use "all reasonable endeavours" did not always mean that the obligor must sacrifice his commercial interests.

Mr Justice Vos said that Qatari had found itself in a very difficult political situation following the Prince's comments and that, in its actions, it "was making the best of a bad job". This had, however, led it to breach the contract with CPC. Vos J did not, however, find that Qatari had been in breach of its duty of utmost good faith, nor that it had breached its obligations to "use all reasonable but commercially prudent endeavours" in performing aspects of the agreement. Equally, he did not find that CPC had breached its own obligations to act in the utmost good faith.

COMMENT

The case confirms that commercial interests do not necessarily need to be sacrificed in the pursuit of acting in the "utmost good faith" or of using "all reasonable endeavours", although it will depend on the particular circumstances. Here, the parties had made this clearer in their drafting by including the phrase "but commercially prudent" in their "all reasonable endeavours" clause.

The Judge did not offer any clarification as to the difference between "all reasonable endeavours" and "reasonable endeavours", but did say that, in this context, "all reasonable but commercially prudent endeavours" did not equate to a "best endeavours" obligation. This is contrary to CPC's argument and contrary to what Lewison J had said in *Rhodia International Holdings Ltd & anor v Huntsman International LLC* [2007] EWHC 292 (Comm), but no clear explanation as to why this was so was provided. Therefore, we are no further forward as to what is expected of a party subject to an "all reasonable endeavours" clause as opposed to just a "reasonable endeavours" clause.

In any event, the case seems to say that it is not strictly necessary to include a phrase such as "but commercially

prudent" in order to protect commercial interests (although for certainty, it is not a bad idea), but it might, depending on the particular circumstances, prevent an "all reasonable endeavours" clause equating to a "best endeavours" clause.

CONFIDENTIALITY

Robert Andrew Jones v Ricoh UK Ltd: Scope of Confidentiality Agreements

BACKGROUND

CMP assisted companies in acquiring and managing photocopiers and multi-functional office automation devices (MFDs). CMP would negotiate with the manufacturers of MFDs on behalf of its clients to obtain the best terms and provide for the smooth delivery, installation and servicing of the devices at the clients' premises. CMP developed a strong relationship with Ricoh, a leading manufacturer of MFDs and, in around 1998, CMP and Ricoh entered into a trading agreement. On 5 February 1999, the parties signed a confidentiality agreement in order to protect confidential information disclosed by CMP to Ricoh.

The 2003 Invitation to Tender

In 2003, one of CMP's major clients, ADtranz (which had since been acquired by the Canadian aerospace group, Bombardier Transportation), issued an invitation to tender (ITT) for the supply of MFDs to Bombardier's sites in the United Kingdom, Sweden and Germany, with the intention of expanding to its other European and global sites. The decision to issue the ITT had come as a result of a joint presentation made to the procurement team by CMP and Ricoh, which had already worked together successfully with the UK Bombardier team. The ITT was sent to CMP and Ricoh. CMP expected to make a joint tender, whereas Ricoh decided to go it alone.

CMP entered subsequently into a negotiation with another manufacturer and submitted a joint tender. This was successful, but implementation of the equipment failed as a result of incompatibility issues with Bombardier's existing IT systems. In the end, Bombardier did not order any devices and terminated the relationship.

The 2007 Invitation to Tender

In July 2007, Bombardier issued a further invitation to tender for the supply of MFDs (the 2007 ITT). CMP was not involved in this process, but in June 2008, it learned that Ricoh had been selected to be Bombardier's global supplier of MFDs.

THE ACTION

CMP went into voluntary liquidation in 2009. A claim was brought by Mr Jones, the founder of CMP Group Ltd and assignee of the causes of action previously vested in CMP, for

- Breach of clause 7 of the confidentiality agreement.

That no approach or contact direct or indirect in connection with or during our discussions or whilst any confidential information remains in the possession or under the control of any relevant person shall be initiated, accepted or made by or on behalf of any relevant person to or with any employee, client or supplier of yours or any government body or regulatory or other authority or to or with any other person who to our knowledge has any actual prospective connection with you without your prior written consent.

- Breach of clauses 2 and 3 of the confidentiality agreement in making the tenders for both the 2003 and 2007 ITT.

(2). That [Ricoh] will use and procure that the confidential information is used only for the purpose of evaluating the purchasing terms available to [CMP] and with a view to entering into an agency agreement with you.

(3). That [Ricoh] will not (except as expressly stated in paragraph 2 above) use the confidential information for our own benefit and will procure that it is not used for the benefit of any other person (including without limitation any Relevant Person);

Ricoh applied for summary judgment in that

- Clause 7 was contrary to Article 101 and/or in unreasonable restraint of trade and therefore unenforceable.
- As regards the 2003 ITT, any damages claimed are irrecoverable
- As regards the 2007 ITT, any alleged breach is fanciful

DECISION

Clause 7

Mr Justice Roth looked first at the scope of the restriction imposed by clause 7 and found that the definitions of both "confidential information" and of "relevant person" were very wide. Although the object of the agreement might, at first sight, appear to have been to protect CMP's confidential information, it was clear that the restrictions in clause 7, on any objective interpretation, went, as Roth J said, "very far beyond any possible view of what could be needed for that purpose. Therefore, although confidentiality agreements are not usually regarded as giving rise to an anti-competitive agreement by object, Roth J decided that, in this case, the agreement exceptionally came within that category.

The Judge went on to say that if he were wrong on that analysis, the agreement was, alternatively, clearly an agreement that was anti-competitive in effect. As Roth J said, "if clause 7 were enforceable, an international group like Bombardier ... would be precluded from receiving a competitive bid from one

of the world's leading suppliers of MFDs whereas other major suppliers such as Canon could take part". Therefore, he found that the provision had the potential effect of restricting competition appreciably. Moreover, Roth J found that this conclusion was so clear that there was no basis on which further evidence at trial could lead to a different conclusion.

Mr Jones argued that the agreement was exempt as it fell within the Vertical Restraints Block Exemption (Commission Regulation 2790/1999/EC). Roth J disagreed, finding that the purchases of the MFDs were actually made from Ricoh by CMP's clients. Accordingly, CMP and Ricoh were not operating at a different level of the distribution chain: CMP was not acting as Ricoh's distributor, or as a re-seller.

It followed therefore that clause 7 was void and unenforceable.

Clauses 2 and 3

It was alleged by Mr Jones that Ricoh had breached both Clauses 2 and 3 of the confidentiality agreement by responding to both the 2003 and 2007 ITTs. Mr Jones alleged that Ricoh would have had a substantial amount of what would have been confidential information that would have assisted in the preparation of the tenders. With regard to the 2003 ITT, Ricoh did not deny (for the purpose of the summary judgment application) that the breach of clauses 2 and 3 could not be rejected, but claimed that in any event the loss claimed was irrecoverable. The Judge reviewed a substantial amount of law on the point advanced by Ricoh and concluded eventually that the damages sought would have been for the loss caused allegedly by the decision to use confidential information in the tender and so could be recoverable. As for the 2007 ITT, the Judge found that this was not a case where an account of profits would be appropriate, but did find that Mr Jones may be able to recover on a "Wrotham Park" basis.

COMMENT

Ricoh's application for summary judgment therefore succeeded on one ground, clause 7, but it was dismissed in respect of two further alleged breaches of the agreement on the grounds that there was sufficient evidence before the court to suggest that the Claimant had a realistic prospect of success at trial. The judgment in regard to these two latter breaches provides a good review of the law of recoverable damages.

The case is a good reminder that a confidentiality clause that is drafted too broadly and restricts a company's activities dramatically may have the effect of being in breach of competition law, not only in the sense that it might be seen as having an appreciable effect on trade between Member States, but, depending on the scope of the drafting, it may even be seen as having an anti-competitive object.

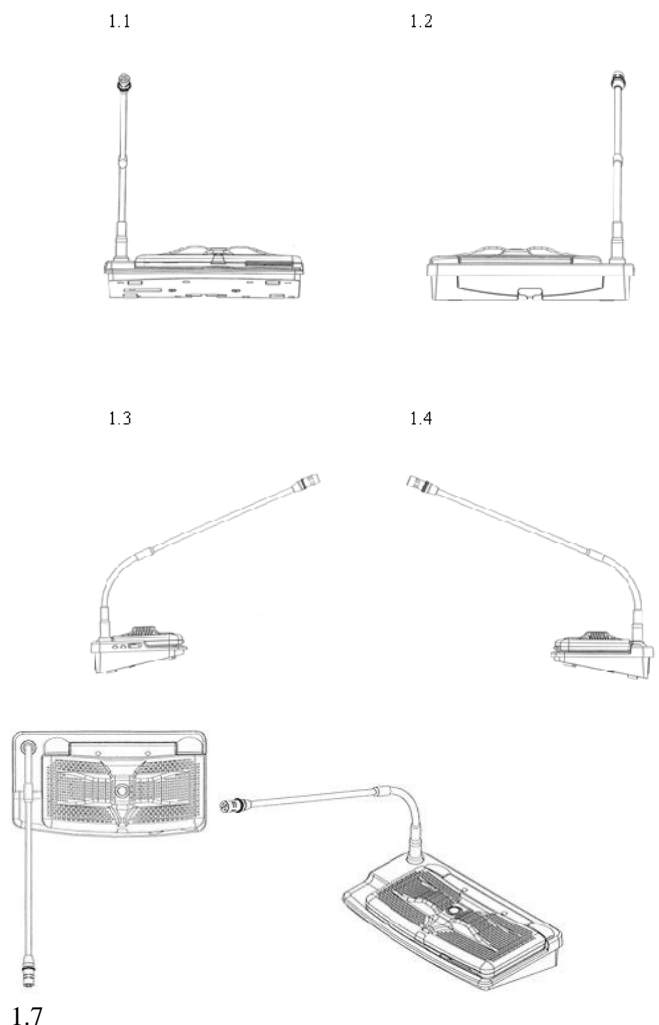
DESIGNS

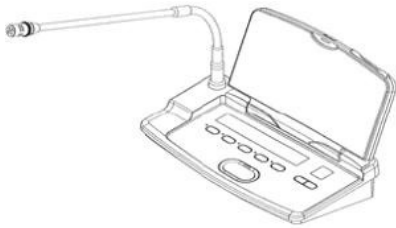
Shenzhen Taiden Industrial Co Ltd v Office of Harmonization for the Internal Market: Individual Character and Degree of Freedom of The Designer

In *Shenzhen Taiden Industrial Co Ltd v Office of Harmonization for the Internal Market* 22 June 2010 (unreported), the General Court dismissed an appeal by Shenzhen Taiden Industrial Co Ltd in relation to the validity of its Community design for a "conference unit", on the grounds that Shenzhen's design did not produce a different overall impression on the informed user when compared with an earlier design owned by Bosch Security Systems BV. As a result, it lacked individual character within the meaning of Article 6 of the Community Design Regulation (6/2002/EC).

BACKGROUND

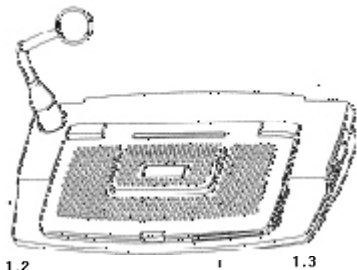
Shenzhen applied to register the following design for "communications equipment" as a Community Registered Design (CRD):





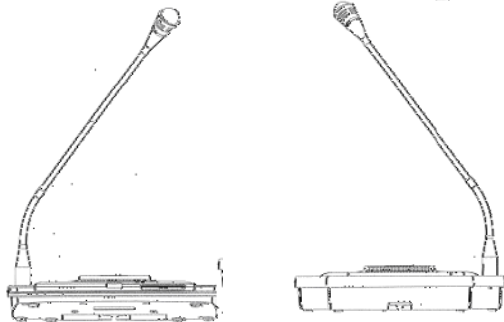
Bosch applied for a declaration of invalidity of Shenzhen's design on the basis that it was not new and lacked individual character, relying on Bosch's earlier international registered design for "units for conference systems":

1.1

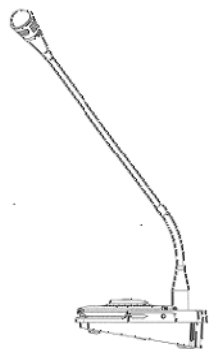


1.2

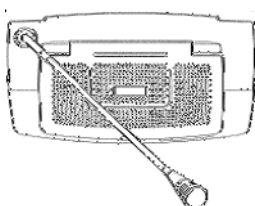
1.3



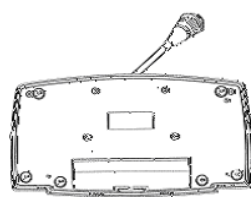
1.4



1.6



1.7



Bosch also submitted a brochure, press cuttings and advertisements that reproduced the design of a conference unit and which Bosch argued was identical to its international design:



The Invalidity Division of the Office of Harmonization for the Internal Market (OHIM) rejected Bosch's application but the OHIM Board of Appeal (BoA) allowed the appeal to the extent that it found that the CRD was new but lacked individual character because the degree of freedom of the designer was relatively wide and the differences between the designs were not sufficiently noticeable to produce a different overall impression on the user. The General Court (GC) upheld the BoA's decision.

DECISION

The GC had to consider whether, from the point of view of the informed user and, taking into account the degree of freedom of the designer of a conference unit, the overall impression produced by Shenzhen's design differed from that produced by Bosch's earlier design.

As far as the informed user was concerned, the BoA and the GC had defined such a person as "anyone who regularly attends conferences or formal meetings at which the various participants have a conference unit with a microphone on the table in front of them".

As to degree of freedom of the designer, which the BoA had found to be wide and which Shenzhen disputed, the GC admitted that in order to fulfil its function, a conference unit had to have a speaker, a microphone and buttons accessible to the user. However, the GC said that those restrictions did not

impact on the configuration of the device's features and appearance of the unit itself, as Shenzhen claimed. This conclusion was backed up by examples of designs of other conference units submitted by Bosch showing devices of varying shapes and sizes that differed perceptibly from Shenzhen's design. The GC found that the BoA had not erred in finding that the degree of freedom of the designer of conference units was relatively wide.

As to overall impression, the GC found that the only difference between the two designs at issue was the decoration on the lid of Shenzhen's design. However, given the fact that when the unit was in use, the decoration could not be seen and anyway the decoration was not particularly pronounced, it was not sufficient to offset the similarities found between the designs and therefore confer individual character on Shenzhen's design.

In conclusion, the GC found that Shenzhen's design produced the same overall impression on the informed user as Bosch's earlier design. Therefore, the BoA had been correct to find that Shenzhen's design lacked individual character.

TRADE MARKS

FreemantleMedia Ltd and 19 TV Ltd (MODEL IDOL and POP IDOL): Moderately Similar Marks and Likelihood of Confusion

In June 2010, the UK Intellectual Property Office (UK IPO) issued its decision in *FreemantleMedia Ltd and 19 TV Ltd v James Fleming* BL O 205 10. Freemantle and 19 TV (collectively the Opponent) filed an opposition against the sign MODEL IDOL in Class 35 for "Advertising, organising, operating and supervising loyalty and incentive schemes, advertising services provided on the Internet, producing television and radio adverts, trade fairs, opinion polling, data processing." The Opposition was based on three trade mark registrations for POP IDOL, word marks and figurative mark, in various Classes (including Class 35). The grounds of opposition were as follows:

- That MODEL IDOL was similar to POP IDOL and had been filed in respect of identical or similar services which leads to a likelihood of confusion (Section 5(2)(b)).
- That MODEL IDOL was similar to the earlier marks for POP IDOL and that those earlier marks had a reputation which MODEL IDOL will take unfair advantage of, or cause detriment or damage to (Section 5(3))
- That MODEL IDOL is passing off as POP IDOL (Section 5(4)(a)).

DECISION

When considering the Section 5(2) grounds, the Hearing Officer took into account the evidence of reputation filed by the Opponent. He acknowledged the enhanced reputation of the Opponent's marks but also balanced this with the cease of use three years prior to the date of the MODEL IDOL application. The sign MODEL IDOL was found to be similar to the POP IDOL marks and the term "advertising" was identical to the "advertising services" of the POP IDOL registration. Hence a likelihood of confusion was found on the part of the relevant public in respect of these services.

In terms of passing off, the Hearing Officer found that any reputation or goodwill of the Opponent's mark—POP IDOL—related only to television programmes and found no similarity with the services in the MODEL IDOL application. There was no misrepresentation on the part of the Applicant in connection with the Opponent's goodwill. As such, this claim failed.

The Section 5(3) part of the decision was more revealing showing the application of recent principles from case law.

REPUTATION

Reputation, for the purposes of Section 5(3), means that the mark is known by a significant part of the public concerned with the products or services covered by that mark (General *Motors v Yplon SA* [2000] RPC 572). In particular, the market share held by the mark, the intensity, geographical extent, duration of use and the level of promotion undertaken must be considered.

The Opponent had produced ample evidence of the success of their POP IDOL programme in 2001, 2002 and 2003. However, there was no evidence in respect of the three year period before the relevant date of 17 May 2006. The Hearing Officer considered that the reputation must have waned to a certain degree, but accepted that the repute of the programme would have remained in the minds of the relevant consumer at the time of filing of the MODEL IDOL application.

Again, such reputation was in respect of the Class 41 specification for "television entertainment services in the nature of competitions in the field of popular music".

THE LINK

It is then necessary to have a link between the POP IDOL mark (with reputation) and the sign MODEL IDOL. It is enough for the sign to simply call to mind the earlier mark for there to be the necessary link (*Intel Corporation Inc v CPM United Kingdom Ltd* [2009] RPC 15).

Despite the only moderate level of similarity between the marks, and that the Opponent's services—"television services"—and the Applicant's Class 35 services were dissimilar, the Hearing Officer found that the Opponent has

significant reputation such as to overcome the lack of similarity and the relevant consumer would make a link between the sign MODEL IDOL and the Opponent's marks, POP IDOL.

DAMAGE

Having established a link, damage is required for a Section 5(3) claim to succeed. There are three heads of damage: detriment to distinctive character, detriment to repute, and unfair advantage of the distinctive character or repute. The Opponent claimed detriment to repute and unfair advantage.

The reputation of POP IDOL was said to be in respect of a specific television programme and that such reputation has waned. The Applicant's services were considered dissimilar to the Opponent's "television services" and the marks were said to have only a moderate level of similarity. Therefore it was held that MODEL IDOL would not cause any detriment to the reputation of POP IDOL.

As for whether the sign MODEL IDOL was free riding upon the reputation of the POP IDOL mark, the Hearing Officer noted that in *Intel* it had been established that, if an earlier mark has a reputation for certain specific services but those services are dissimilar to those of the later mark, and the later mark calls to mind the earlier mark, that is not sufficient to establish that the use of the later mark takes, or would take, unfair advantage of the repute of the earlier mark. Further, it had also been established in *L'Oréal SA v Bellure NV* C-487/07 that taking unfair advantage of the repute of a mark relates not to detriment caused to the earlier mark but to the advantage taken by the third party. Such an advantage may, the Hearing Officer observed, be unfair even where the use is not detrimental to the repute of the mark.

The Hearing Officer found that the reputation of the POP IDOL mark is significant but not as extensive as the Opponent claimed, due to the three year gap between the last broadcast of the programme and the relevant date. As there was dissimilarity of the services and only moderate level of similarity between the marks, there was no evidence of any advantage, let alone any unfair advantage.

In conclusion, the opposition succeeded in respect of the Section 5(2) claim, but only in respect of "advertising services". The opposition failed on the other claims.

O2 Holdings Ltd's Application for WE'RE BETTER, CONNECTED: Registrability of Slogans

The trade mark application by O2 Holdings Ltd for WE'RE BETTER, CONNECTED was partially refused registration due to the lack of distinctive character (O2 Holdings Ltd's Application BL O-246-10 15 July 2010). The recent judgment of the European Court of Justice (ECJ) in *Audi v Office of Harmonization for the Internal Market* (OHIM) C-398/08 was

carefully considered and followed in assessing whether the phrase was capable of denoting origin.

The decision reiterated the inter-relationship between objections under Sections 3(1)(b) and 3(1)(c) of the Trade Marks Act 1994.

BACKGROUND

The sign WE'RE BETTER, CONNECTED was filed for goods in Class 9 and a wide range of services over 10 further Classes. The sign was refused registration on the grounds that it was devoid of distinctive character, being a "straightforward slogan/statement about customer services standards [which could be] applied to any undertaking".

O2 responded that the examiner had speculated about the sign's use in respect of customer service standards and that no explanation was provided as to its actual meaning. O2 submitted that the phrase was meaningless, grammatically incorrect and, at best, vaguely allusive of its intention to promote mobile communities via use of the sign. The case went before a hearing and O2 reiterated its arguments and emphasised the impact of the comma in the sign which, it argued, contributed to the sign's *prima facie* distinctiveness by significantly affecting the relevant consumer's perception and understanding of the sign.

DECISION

The Hearing Officer maintained that the sign is considered devoid of distinctive character in respect of the objected goods and services. The relevant consumer would understand the sign to denote the provider's superior connections to other related businesses or where the sign would promote the benefits of being connected in a telecommunications/technical context. Accordingly, the sign was refused in respect of Classes 38 (telecommunication services) and 39 (transport services), refused in respect of some of the goods and services in Classes 9 (scientific instruments), 35 (services related to computers, mobile telecoms and sound equipment), 41 (entertainment services), 42 (rental services relating to telecoms and computer equipment) and 45 (dating services) and allowed in respect of the services in Classes 36 (insurance services), 37 (construction services), 43 (hospitality services) and 44 (medical services).

The Hearing Officer found that the relevant consumer would understand the sign with the comma as denoting the benefits of being connected to others, whether *via* telecommunications products, travel, entertainment or any other activity characterised by the bringing together of people in a physical or virtual space. Without the comma, he considered that people would understand the sign as a laudatory reference to one's connections within a particular sector. Either way, he concluded that the sign was inherently non-distinctive for those refused goods and services.

Following the ECJ ruling in *SAT.1 SatellitenFernsehen GmbH* C-329/02 P, it was noted that the public interest behind Section 3(1)(b) is that of the essential function of a trade mark, *i.e.*, that of guaranteeing origin. This was distinct from the public interest behind Section 3(1)(c), which was to ensure that descriptive signs or indications may be used freely by all (*Wm Wrigley Jr v OHIM* C-191/0P). Following *Koninklijke KPN Nederland NV v Benelux-Merkenbureau* C-363/99, a trade mark's distinctiveness must be assessed, first, by reference to the relevant goods or services and, second, by reference to the perception of the average consumers of those goods and services.

Guidance was taken from *Audi v OHIM* C-398/08: "...the mere fact that a mark is perceived by the relevant public as a promotional formula, and that, because of its laudatory nature, it could in principle be used by other undertakings, is not sufficient, in itself, to support the conclusion that the mark is devoid of distinctive character." The Hearing Officer approached the matter from a purely semantic perspective in order to assess whether the phrase was capable of performing the essential function of a trade mark.

The Hearing Officer held that the message "We're better, connected" was particularly transparent when used in respect of telecommunications products and services. These products and services are marketed commonly in terms of their ability to facilitate connections and communications between people. In addition, the potential for the sign to be so easily understood was not limited to its use in respect of these goods and services. With communications technology now permeating numerous spheres of commerce and social activity *via* online retailing, web-based marketing, social networking sites and other interactive platforms, he held that one's quality of life and one's effectiveness in society could now be framed in the context of how we use technology to interact and connect with others. If the marketing aim of a company was to promote the benefits of being connected to others, then the phrase "We're better, connected" clearly met that brief.

Accordingly, the Hearing Officer held that any product or service that could be characterised by its capacity to bring people into contact with one another for a productive end was unlikely to enjoy having its commercial origin denoted by the phrase "We're better, connected" other than as a result of extensive use of the sign over a period of time.

The Hearing Officer found the sign to be a motivational statement intended to reinforce the personal benefits of being connected to others. He added that it was the sort of statement that consumers might expect to be used by any provider of communications technology, but in drawing this conclusion, he was at pains to explain that he was not supporting the objection by reference to a need to keep the statement free for others to

use, which was the policy underpinning Section 3(1)(c) rather than 3(1)(b).

Following the ECJ's guidance in *Audi*, the Hearing Officer concluded that the phrase "We're better, connected" could not lay claim to any linguistic imperfection, peculiarity, inventiveness or other creative element that might endow it with the necessary capability to function as an indicator of trade origin.

European Court of Justice Reference on Class Headings in Trade Mark Specification

Geoffrey Hobbs QC, sitting as the Appointed Person in an appeal against the refusal by the UK Intellectual Property Office to register the mark IP TRANSLATOR (Chartered Institute of Patent Attorneys' Application (Appointed Person) BL O-215-10, 27 May 2010), has referred questions to the European Court of Justice (ECJ) as to whether the Class headings from the Nice Classification constitute a sufficiently precise specification of goods or services in a trade mark application and, if so, whether such a specification should be interpreted to cover all of the goods or services under that heading.

BACKGROUND

Communication No 4/03 from the Office of Harmonization for the Internal Market stated that it was acceptable for the goods or services covered by an application or registration to be identified by means of wording that used the general indications or the whole Class headings provided for in the Nice Classification. The communication confirmed that the use of the Class heading or a general undertaking constituted a claim to all the goods or services within the relevant class or falling under the general indication.

CIPA applied to register IP TRANSLATOR for "Education; providing of training; entertainment; sporting and cultural activities". Since these words adopted the general words of the Class heading for Class 41, the Registrar concluded that the specification should be interpreted in accordance with Communication 4/03 and therefore covered translation Classes.

Since CIPA did not adduce evidence of acquired distinctiveness, or request that translation services be excluded from its specification of services, the mark was refused.

DECISION

Geoffrey Hobbs QC noted that the particular degree of clarity and precision with which the various goods or services covered by an application must be identified so as to satisfy the requirements of Community law, remained unresolved.

If the general words of the Class headings were to be used and interpreted in accordance with Communication 4/03, then the

coverage of an application would extend to goods and services not mentioned in the application or in any resulting registration.

Accordingly, Geoffrey Hobbs referred three questions to the ECJ: first, as to the degree of clarity and precision required in a specification of goods and services; second, whether or not it is permissible to use the general words of the Class headings for the purposes of identifying goods or services in a trade mark application; and, if so, third, whether the Class headings should be interpreted in accordance with Communication 4/03.

COMMENT

A reference to the ECJ on this point is overdue. A survey conducted in 2008 by MARQUES, the Association of European Trade Mark Owners, indicated an inconsistency between the practices of Member States. This creates significant uncertainty in circumstances where the protection of trade marks by registration at the national level under the Trade Marks Directive (2009/95/EC) is intended to be synchronised with protection at the Community level under the Community Trade Mark Regulation (207/2009/EC).

Best Buy Co Inc v Worldwide Sales Corporation España SL: Threats, Community Trade Marks and Without Prejudice Correspondence

Best Buy Co Inc proposed to enter the European market under the name of Best Buy.

Best Buy Enterprises Services (BBES) (related to Best Buy) applied for a Community trade mark incorporating the words BEST BUY. This was opposed by the defendant (España) on the basis of its two earlier marks: *Best Buy Co Inc v Worldwide Sales Corporation España SL* [2010] EWHC 1666 (Ch).

España's lawyers sent a letter to Best Buy, stating

In order to ensure that [España] is able to protect its rights in a proper fashion, we hereby request that, within a term of fifteen (15) calendar days as of the date of receipt of this letter, you reply to us in writing confirming (i) [Best Buy's] willingness to start a negotiation process with [España] in order to attempt to find a negotiated solution to the conflict; or (ii) your client's undertaking to not use the BEST BUY trademark in Europe, or issue any news in the press or make any announcements of any imminent activity in Europe, or indeed use such trade mark in any other way.

The issues before the court were whether the letter from España's lawyers threatened proceedings for infringement of España's marks; if so, whether the threat was made in relation to an infringement excluded from the threats provision; and, if a non-excluded threat was made, whether evidence of it was inadmissible by virtue of the "without prejudice" rule.

The court considered that the recipient would understand from España's lawyers' letter that proceedings for trade mark infringement were being threatened. The conditionality did not negate that threat.

The court held that the threats provisions of the Trade Marks Act 1994 referred to proceedings for infringement in the UK courts and its extension to Community trade marks had no widening effect. The court held that the reasonable recipient would consider that España had a range of options as to the forum in which it could bring proceedings and that it was not limiting itself to bringing proceedings in Spain.

The court rejected España's defence based on excluded acts. The letter sought undertakings in respect of any use of the mark, which went much wider than the supply of services and included offering to do so, an act not excluded from the threats provisions.

However, the court accepted that, although the correspondence was not marked "without prejudice", the two businesses were seeking an alternative to litigation and their efforts to do so should not constitute an admissible threat. Overall, the letter was setting out a negotiating position. Given that España's negotiating position involved enforcing its marks, it was natural to draw Best Buy's attention to the consequences of the failure of the negotiations.

PATENTS

Marathon Oil Company's Patent Application: Computer-Related Inventions and the Contribution Approach

BACKGROUND

In relation to Marathon Oil Company's Application (Patent Office) BL O/174/10, Marathon Oil Company and Compagnie Generale de Geophysique (the Applicants) filed an application to patent an invention relating to "a method for predicting quantitative values of a designated rock or fluid property." The invention was to be used to find subterranean resources such as oil, gas, water or minerals. The Applicants contended that the claimed invention fundamentally related to using a model in a patentable method of measuring fluid and rock properties. The Applicants accepted that the measurement was indirect, but still asserted that it was a measurement of a physical property nonetheless. The Examiner did not agree and found that it was simply a method of improving on an existing model and that it fell foul of the exclusions from patentability. The Hearing Officer, applying the "Aerotel/Macrossan" test, set about determining whether the Applicants' or the Examiners position was correct.

Construing the Claim

The Hearing Officer considered that “the skilled person would interpret the claimed invention as a model or representation of an underground volume which provides a prediction of its seismic response based on values of the rock or fluid properties which are initially put into a model.”

Identifying the Actual Contribution

The Hearing Officer noted that the Court of Appeal had summed up this question usefully in *Aerotel* [2006] EWCA 1371 by asking the question: what has been added to the stock of human knowledge? The Hearing Officer also noted, with a view to not assessing the contribution too narrowly, that the law required her to consider the contribution by not only considering the novel and inventive parts of the claim, but the invention as a whole.

It was found that the contribution lied in “using real seismic data to improve a mathematical model (which was run on a computer).” The Hearing Officer also found that the method only provided a prediction of what the rock and fluid properties might be, as opposed to a real measurement of those properties.

Does the Contribution Fall Solely Within Excluded Matter?

The Hearing Officer considered two previous decisions of the UK Intellectual Property Office (UK IPO)—*Institute du Petrole & ELF EP’s Application BL O/201/03* and *Western Geco Limited’s Application BL O/135/07*—and on the basis of the former decision, the Hearing Officer found that the invention was not patentable.

Is the Contribution Technical in Nature?

This question was not assessed as the invention was found to fail the third hurdle.

COMMENT

Under Section 1.2(c) of the Patents Act 1977 (the Act) and Article 52(2)(c) of the European Patent Convention (the EPC) a program for a computer is excluded from patentability. The difference between the approaches of the UK IPO and the European Patent Office (EPO) towards the assessment of whether an invention disclosed in a software patent application relates to a computer program (as such) or something more, has been a hot topic over the last few years.

The Court of Appeal in *Symbian* [2008] EWCA Civ 1066 sought to reconcile the differences in approach in assessing inherent patentability as between the UK IPO (using the *Aerotel/Macrossan* test) and the approach adopted by the EPO. However, the EPO’s Enlarged Board of Appeal confirmed in a recent Opinion that the approach of the EPO was that the general condition for a claimed invention not to be excluded from patentability was: whether the claimed subject matter had “technical character”, that a computer program had “technical character” only if the program causes a “further technical

effect” when run, and that the further technical effect (when considering exclusion from patentability) need not be new.

The Opinion is difficult if not impossible to reconcile with the case law that underlies the *Aerotel/Macrossan* test. While the decision of the Hearing Officer in this present matter shows that the UK IPO is continuing to use the *Aerotel/Macrossan* test and ask what contribution has been added to the stock of human knowledge, no doubt the inconsistencies between the approaches of the UK IPO and the EPO will again reach the Patents Court.

Occlutech GmbH v AGA Medical Corp: Claim Construction

Dismissing an appeal from a decision of Mr Justice Mann, the Court of Appeal, in *Occlutech GmbH v AGA Medical Corp* [2010] EWCA (Civ) 702, has decided that, although in a suitable context the word “clamp” could be understood to carry an extended meaning, in the context of the patent in suit, a “clamp” meant a “clamp” in the everyday sense of the word, and not an all-inclusive term for means of securing things together.

BACKGROUND

AGA Medical owns a patent relating to a device designed to be placed inside blood vessels to block them in order to treat certain medical conditions, such as holes in the heart. The device is made from a sheet of fabric consisting of interwoven metal wires. To prevent the ends of the wires from unravelling, the metal strands were “clamped” at both ends of the device by means of an external clamp and this was claimed in Claim 1. Claim 16 was to a method of manufacture of a device as set out in the earlier claims, including Claim 1.

Occlutech GmbH, a manufacturer of a similar device, used another method to prevent unravelling. In its devices, there were cut strands only at one end and these were secured by welding. AGA Medical claimed that Occlutech’s devices infringed its patent. In turn, Occlutech sought a declaration of non-infringement, asserting that the loose ends of their products were welded instead of clamped and, furthermore, their devices were formed like a sock, so there were loose strands to be secured at only one end of the device. As such, Occlutech argued that the differences in the products took them outside the scope of AGA Medical’s patent.

FIRST INSTANCE

The High Court of England and Wales ruled in favour of Occlutech, with Mr Justice Mann preferring the evidence of Occlutech’s expert, who defined a clamp as an object that exerts force upon two or more other objects in order to keep them together. AGA Medical appealed.

COURT OF APPEAL DECISION

As the appeal turned on the definition of the term "clamp", Lord Justice Patten, giving the leading judgment of the Court of Appeal, considered the issue of claim construction.

The focus was on determining what the skilled addressee would have understood the language of the claim to mean. In *Kirin-Amgen v Hoechst Marion Roussel* [2005] RPC 9, Lord Hoffmann stated that "there is no presumption about the width of the claims. A patent may, for one reason or another, claim less than it teaches or enables". He went on to note that courts in Germany, the Netherlands and the United Kingdom prohibit the use of file wrappers as an aid to construction.

Patten LJ upheld Mann J's view that "clamp" was used commonly to describe something that bound together other objects by applying a degree of external pressure or force, but he held that it could also, in a suitable context, be understood to carry an extended meaning that might include the use of a device that physically bound the strands together, even if that was not the only means used to secure them.

Patten LJ held that the skilled addressee would understand the language of the patent description to mean that a clamp meant the application of an external device to hold the strands together as opposed to fusing them together with solder or a weld and that it excluded an external device that was placed over and physically attached to the welded ends after completion of the moulding process.

Patten LJ also found for Occlutech on the basis that its device, which attached the strands at one end only, fell outside the patent claims, which called for two clamps at opposing ends. This conclusion was reinforced by the knowledge that AGA had sought a divisional patent that had since been granted as a patent for an occluding device with only one clamp. This offered an explanation of why the claims in the patent in suit were limited to the teaching contained in the earlier paragraphs of the description.

Accordingly, Patten LJ upheld the decision of the High Court that Occlutech's devices did not infringe AGA Medical's patent.

COMMENT

It is noted that this is yet another case where various European courts have interpreted the same patent claim differently. The Dutch and English Courts held that there was no infringement, whereas the German courts have held that infringement occurred.

The Community/European Union Patent: Where Does it Now Stand?

THE CURRENT PROPOSALS

Discussions about the Community Patent were again re-launched in 2007 by the European Union. The Treaty on the Functioning of the European Union makes specific provision at Article 118 for separate legislation for the creation of uniform European-wide intellectual property rights and separately for language arrangements for the European intellectual property rights. Also, pursuant to the Treaty on the Functioning of the European Union (TFEU), the European Community no longer exists, so any successor to the Community Patent is likely to be called the European Union Patent (EUP).

According to the most recent draft Agreement on the European and Community Patents Court and Draft Statute, prepared as a Council working document and dated 23 March 2009, the European and EU Patents Court would consist of local, regional and central divisions of a Court of First Instance, a unified Court of Appeal and a Registry (the Court). Regional divisions can be set up on the agreement of two or more Member States. At the local and regional levels, the panel can sit with three legally qualified judges, unless the parties ask for a technically qualified judge. At least one judge to sit on the panel of three judges (which will typically sit to hear cases) would be appointed from a central pool of experienced practitioners; however, parties can have their cases heard by a single judge. At the central division, two legally qualified judges will sit with a technically qualified judge.

The Court of Appeal, which will hear appeals on law and fact, will consist of multinational panels of five judges, two technically qualified and three legally qualified. Appeal on points of law only from the Court of Appeal shall be to the Court of Justice of the European Union (CJEU). The draft Agreement also foresees the setting up of a patents mediation and arbitration centre.

The CJEU's jurisdiction will be split, with the central division hearing revocation cases (where no infringement case is currently ongoing before the other divisions) and the regional and local courts hearing infringement actions (including declarations for non-infringement) and counterclaims for revocation. The language of proceedings before the local and regional divisions can be the languages of the state where those local and regional divisions reside. The language of the central division will be the language that the patent is granted in (currently one of the European Patent Office (EPO) languages).

Where a counterclaim for revocation of the EUP is lodged, the CJEU will be able to decide between: (i) hearing the case, with a technically qualified pool judge assigned to the case; (ii) hearing or staying the infringement action and referring the

revocation to the central division; or (iii) referring the entire case to the central division. Where an action for revocation is ongoing in the central division, an action for infringement can be brought before a local or regional division and the CJEU will have the discretion to hear the case or refer it to the central division along the lines set out above. Currently, the draft Agreement foresees written, interim and oral stages to the proceedings. The interim hearing will be to explore the possibility of settlement. The CJEU has the discretion to dispense with oral proceedings. The means of evidence before the Court include the opinions of experts, witness evidence (oral and written), comparative tests and experiments, as well as disclosure and inspection. The CJEU will also be able to appoint independent technical experts. Legal costs will be decided on the usual "loser pays" basis, however the CJEU will be able to make other more equitable costs awards where the situation dictates that this would be fairer.

LEGAL OPINIONS OF THE CJEU

The European Union envisages that the CJEU would be established by the conclusion of an international agreement involving the European Union, its member states and other states of the EPC. The Council has referred the question on whether such an agreement is compatible with the EU Treaties to the CJEU. The opinion of the full CJEU is likely to appear before the end of 2010.

On 2 July 2010, the Advocates-General of the CJEU released their preliminary opinion on the legality of the proposed EUP. They stated that the draft Agreement did not guarantee the full application and observance of the pre-eminence of European Union law, did not provide for sufficient protection of litigants if the CJEU itself had failed to observe European Union law, the language regime did not protect sufficiently against discrimination of litigators from certain member states, and did not allow for effective control of the EPO's administrative functions in respect of the granting of the EUP. However, the general legislative framework for creating the EUP was approved.

THE THREE LANGUAGE PROPOSAL

As of July 2010, the Council proposed that an applicant would be able to file its patent application in any language. An EUP would then be granted in one of the EPO languages and the applicant would then have to file translations of the claims in the other two EPO languages. Translation of the full specification would only be required when the patent is litigated in an EU language of the choice of the alleged infringer. The patentee would also have to file a patent translated into the language of the proceedings at the CJEU. In order to stimulate research, the commission foresees that high quality machine translations of the specification of EUPs would be made available to the general public, free and on demand. A number of Member States consider these proposals to be unworkable.

LIKELY FUTURE STEPS

It is not clear if the full CJEU will follow the opinion of the Advocates-General. Much of European business is behind the current proposals as they understand that the EUP will reduce the cost and complexity of patent litigation in the European Union and therefore there is considerable commercial momentum behind the current plans. However, the translation issues ensure that political barriers remain.

The next EU meeting to discuss the EUP proposals is on 30 September 2010. It seems that significant work will have to take place at this meeting to ensure that the EUP becomes a reality.

COMMUNICATIONS AND NEW MEDIA

Ryanair Ltd v Billigfluege.de GmbH: Enforceability of Exclusive Jurisdiction Clauses in Website Terms and Conditions

In a dispute concerning so-called "screen scraping" between Ryanair and a German price comparison site—*Ryanair Ltd v Billigfluege.de GmbH* [2010] IEHC 47—the Irish High Court was satisfied that the terms of use of a website formed an agreement between the operator and user of a website for the purposes of Article 23 of the Brussels Regulation. Accordingly, a jurisdiction clause in those terms governed any dispute arising between the parties. Screen scraping is the gathering of flight information offered by a carrier through their website for re-posting on another website.

BACKGROUND

Billigfluege had engaged in screen scraping flights offered by Ryanair through Ryanair's website. Ryanair alleged this breached the terms of use of the website. Pursuant to an exclusive jurisdiction clause in the terms of use, Ryanair brought a claim in the Irish courts.

Billigfluege, a company domiciled in Germany, sought to challenge the jurisdiction of the Irish courts. Billigfluege relied on the domicile rule in Article 2 of the Brussels Regulation (44/2007), arguing the claims should have been brought in Germany.

Ryanair relied on Article 23 of the Brussels Regulation, which allows for parties to agree that disputes shall be subject to the courts of a nominated Member State.

JUDGMENT

Hanna J placed particular emphasis on the European Court of Justice (ECJ) decision in *Benincasa v Dentalkit* [1997] ECR I-3767. The ECJ found that a validly concluded jurisdiction clause remains valid despite either party seeking a declaration that the contract that contains the clause is void. The judge

therefore must be satisfied that the terms of use created a contract between the parties.

Hanna J found that the terms of use were accessible by way of a hyperlink that was visible on the Ryanair website at all times. This, in the Judge's view, was "fairly brought to the attention of the other party" and with sufficient notice. Further, the provision of information constituted a sufficient act of consideration to make the contract legally binding. Hanna J therefore found that a legally binding contract existed between the parties.

Since the terms of use had contractual effect, it followed that the exclusive jurisdiction clause contained therein was also binding. Hanna J did not go so far as to declare the remainder of the terms of use valid.

COMMENT

This judgment is encouraging for website owners, as it suggests that well-signposted terms and conditions can be used to circumvent the potentially prohibitive (and expensive) implications of the domicile rule in the Brussels Regulation. Given that there are only limited High Court authorities to date on this point, any decision of an appellate court will necessarily offer a more authoritative statement of the law in this area.

SPORT

Proactive Sports Management Ltd v Wayne Rooney: Image Rights Representation Agreement and Restraint of Trade

In *Proactive Sports Management Ltd v Wayne Rooney* [2010] EWHC 1807 (QB), the High Court of England and Wales has held that an Image Rights Representation Agreement made between Proactive Sports Management Ltd and Stoneygate 48 Ltd, the company to which Wayne Rooney had assigned his image rights, was unenforceable as it was in restraint of trade.

BACKGROUND

Proactive and Stoneygate entered into the Image Rights Representation Agreement in early 2003 when Wayne Rooney was 17 years of age. It was designed to replace certain terms of various previous agreements entered into by the parties and was in relation to the representation of Wayne Rooney "off-field" only. The Agreement was for a term of eight years and remuneration was by way of commission on Stoneygate's earnings at the rate of 20 per cent.

Mr Stretford, Wayne Rooney's agent at that time, was also Chief Executive of Proactive and a director of Stoneygate. It was Mr Stretford who successfully negotiated a series of highly lucrative sponsorship agreements for the "Wayne Rooney" brand between Stoneygate and various other major businesses.

Mr Stretford was dismissed from Proactive in November 2008. Before he left the company, Mr Stretford, as director of Stoneygate, had declined to authorise payment of certain invoices raised by Proactive for commission under the Agreement.

On 18 December 2009, Stoneygate purported to terminate the Agreement. This was taken by Proactive as a repudiatory breach, which it subsequently accepted on 24 December 2009. Proactive then issued proceedings against Stoneygate for unpaid commission it claimed was due under the Agreement before it was terminated and for commission due after termination, as well as damages. Stoneygate contended that the Agreement was unenforceable as it was in restraint of trade.

In response to Stoneygate's defences, Proactive claimed that, in the alternative, if the Agreement was held to be unenforceable, Proactive was entitled to restitution to recover remuneration for services it had provided to Stoneygate on a *quantum meruit* basis.

RESTRAINT OF TRADE

The Judge referred to the leading case on restraint of trade, *Esso Petroleum Co Ltd v Harper's Garage (Stourport) Ltd* [1968] AC 269, in which their Lordships had said that, even where a contract was of a kind that had become a common and accepted form of commercial arrangement, the court still had to consider whether there was some "exorbitance or special feature" in the contract that might still bring it within the boundaries of the doctrine of a restraint of trade. In that same case it was suggested that the "special feature" might be an inequality of bargaining power.

Applying these principles, HHJ Hegarty said that, "In my judgment, there was a very substantial imbalance in bargaining power between the parties". Essentially, HHJ Hegarty found that the Agreement imposed "significant restrictions on WR's freedom to exploit his talents". He had assigned his image rights to Stoneygate on a "perpetual exclusive worldwide basis" and Proactive was, by virtue of the terms of the Agreement, Stoneygate's sole and exclusive representative. Further, given the fact that there was no way Wayne Rooney could get out of the Agreement during its term unless Proactive breached the terms or became insolvent, the Agreement was, the Judge said, too restrictive.

Therefore, HHJ Hegarty found that the Agreement did come within the doctrine of restraint of trade and required justification as to its reasonableness by Proactive.

Proactive submitted that Stoneygate was contractually estopped from contending that any restraints imposed by the Agreement were unreasonable by virtue of a clause in the Agreement, which said effectively that both parties had sought independent legal advice and confirmed that all the terms were reasonable.

The Judge, however, was not persuaded by this argument because "restraint of trade is a matter of public policy out of which the parties cannot contract".

As the Agreement had been found to be subject to the doctrine of restraint of trade, the burden was on Proactive to show that it was reasonable, having regard to the legitimate interests of the parties. HHJ Hegarty found that none of the six arguments raised by Proactive justified the duration of the exclusive rights and obligations in the Agreement. Proactive was not entitled to any remedies as the Agreement was unenforceable for restraint of trade.

RESTITUTION

Proactive referred the Judge to the statement of principle in *Chitty on Contracts* (30th edition 2008), which states

A person who renders services under a contract that is unenforceable will be entitled to a quantum meruit if the other party has failed to carry out his part, provided the restitutionary claim does not undermine the policy of the statute (or common law rule) rendering the contract unenforceable.

On this basis and on the basis of various authorities, HHJ Hegarty held that Proactive was entitled to a restitutionary remedy and that such remedy did not amount to an indirect enforcement of the contract. The remedy would not, therefore, contravene the public policy considerations which made the Agreement unenforceable.

As to quantification, however, HHJ Hegarty decided that it could not be assessed by his court as further submissions and argument were needed.

ADVERTISING AND MARKETING

Advertising Standards Authority Adjudication on Orange Personal Communications Services Ltd: Comparative Advertising and Statistical Substantiation

In its Adjudication on Orange Personal Communications Services Ltd (30 June 2010), the Advertising Standards Authority (ASA) said that Orange's claim that its 3G network reached more people than competitors' networks could not be substantiated because it did not make clear whether it was referring to population or geographical coverage and because Orange could not show that the coverage data it had supplied for its competitors' networks was collected and reported on the same basis as its own.

THE COMPLAINT

An advertisement for Orange mobile broadband included the claim "The Orange 3G network covers more people in the United Kingdom than any other operator." Hutchison 3G UK

Ltd challenged whether this claim could be substantiated, because it believed that it had the largest 3G network in the United Kingdom, based on population coverage.

RESPONSE

Orange said the claim was based on population coverage as opposed to geographical coverage. It explained that most 3G mobile networks published their own population coverage statistics and that those showed the Orange 3G network covered 93.39 per cent of the UK population, with Hutchinson 3G UK covering 91 per cent. It did acknowledge, however, that Hutchison 3G UK had the largest geographical coverage.

Orange said that its own population coverage percentages were calculated based on a combination of in-house tools and recognised public domain population-to-location information and that the claim was capable of objective substantiation.

THE DECISION

The ASA noted that Orange had intended the claim to be a population coverage claim. However, the ASA considered that the claim was ambiguous because Orange did not make clear whether it was referring to Orange covering more people in the places where they lived (population coverage), or more people in the United Kingdom, wherever they might be using their 3G mobile device (geographical coverage). The ASA referred to Ofcom-issued UK geographical coverage maps for the five major mobile networks, which showed that Orange did not have the greatest geographical coverage.

The ASA said that each 3G network had its own approach to substantiation and verification of coverage claims, meaning that methodologies were not comparable directly. Because Orange had not shown that the data it had supplied for its competitors was collected and reported on the same basis as its own, it considered that the claim had not been substantiated.

As such, the ASA concluded that the ad was likely to mislead and found that it breached CAP Code Clauses 3.1 (Substantiation), 7.1 (Truthfulness) and 19.1 (Other comparisons).

COMMENT

When using comparative advertising, one crucial thing to remember is that using claims that are not based on directly comparable measurement and reporting methods will more often than not scupper any chance of those claims being accepted as adequately substantiated. Equally, ambiguous claims that do not make clear the basis of the comparison, especially where there are significant variables attached to the claim, will be considered misleading and not allowed.

ACKNOWLEDGEMENTS

The European IP Bulletin is produced in association with

CALLEJA CONSULTING

*LEGAL KNOW-HOW AND INFORMATION
MARKETING CONSULTANTS*

rico@callejaconsulting.com

MCDERMOTT CONTACT DETAILS

LONDON

Gary Moss, Partner

Direct Line: +44 20 7570 6940

Email: gross@mwe.com

Hiroshi Sheraton, Partner

Direct Line: +44 20 7575 0324

Email: sheraton@mwe.com

Rohan Massey, Partner

Direct Line: +44 20 7575 0329

Email: rmassey@mwe.com

MUNICH

Boris Uphoff, Partner

Direct Line: +49 89 12712 170

Email: buphoff@mwe.com

DÜSSELDORF

Thomas Hauss, Partner

Direct Line: +49 211 3003 210

Email: thauss@mwe.com

ROME

Francesco Mattina, Partner

Direct Line: +39 06 462024 60

Email: fmattina@mwe.com

For more information about McDermott Will & Emery visit www.mwe.com.

The material in this publication may not be reproduced, in whole or part without acknowledgement of its source and copyright. *The European IP Bulletin* is intended to provide information of general interest in a summary manner and should not be construed as individual legal advice.

© 2010 McDermott Will & Emery. The following legal entities are collectively referred to as "McDermott Will & Emery," "McDermott" or "the Firm": McDermott Will & Emery LLP, McDermott Will & Emery Stanbrook LLP, McDermott Will & Emery Rechtsanwälte Steuerberater LLP, MWE Steuerberatungsgesellschaft mbH, McDermott Will & Emery Studio Legale Associato and McDermott Will & Emery UK LLP. McDermott has a strategic alliance with MWE China Law Offices, a separate law firm. These entities coordinate their activities through service agreements. This communication may be considered attorney advertising. Prior results do not guarantee a similar outcome.

Office Locations

Boston

28 State Street
Boston, MA 02109
USA
Tel: +1 617 535 4000
Fax: +1 617 535 3800

Düsseldorf

Stadttor 1
40219 Düsseldorf
Germany
Tel: +49 211 30211 0
Fax: +49 211 30211 555

Los Angeles

2049 Century Park East
38th Floor
Los Angeles, CA 90067
U.S.A.
Tel: +1 310 277 4110
Fax: +1 310 277 4730

Munich

Nymphenburger Str. 3
80335 Munich
Germany
Tel: +49 89 12 7 12 0
Fax: +49 89 12 7 12 111

Rome

Via A. Ristori, 38
00197 Rome
Italy
Tel: +39 06 4620241
Fax: +39 0648906285

Silicon Valley

275 Middlefield Road, Suite 100
Menlo Park, CA
94025
Tel: +1 650 813 5000
Fax: +1 650 813 5100

Brussels

Rue Père Eudore Devroye 245
1150 Brussels
Belgium
Tel: +32 2 230 50 59
Fax: +32 2 230 57 13

Houston

1000 Louisiana Street, Suite 1300
Houston, TX 77002
USA
Tel: +1 713 653 1700
Fax: +1 713 739 7592

Miami

201 South Biscayne Blvd.
12th Floor
Miami, FL 33131
USA
Tel: +1 305 358 3500
Fax: +1 305 347 6500

New York

340 Madison Avenue
New York, NY 10173
USA
Tel: +1 212 547 5400
Fax: +1 212 547 5444

San Diego

11682 El Camino Real, Ste. 400
San Diego, CA 92130
USA
Tel: +1 858 720 3300
Fax: +1 858 720 7800

Washington, D.C.

600 Thirteenth Street, N.W.
Washington, D.C. 20005
USA
Tel: +1 202 756 8000
Fax: +1 202 756 8087

Chicago

227 West Monroe Street
Chicago, IL 60606
USA
Tel: +1 312 372 2000
Fax: +1 312 984 7700

London

7 Bishopsgate
London EC2N 3AR
United Kingdom
Tel: +44 20 7577 6900
Fax: +44 20 7577 6950

Milan

Via A. Albricci, 9
20122 Milan
Italy
Tel: +39 02 89096073
Fax: +39 02 72095111

Orange County

18191 Von Karman Avenue
Suite 500
Irvine, CA 92612
USA
Tel: +1 949 851 0633
Fax: +1 949 851 9348

Shanghai

MWE China Law Offices
Strategic alliance with MWE China Law
Offices
Suite 2806 Jin Mao Building
88 Century Boulevard
Shanghai Pudong New Area
P.R.China 200121
Tel: +86 21 6105 0500
Fax: +86 21 6105 0501