

Intellectual Property Update



Copyright ruling by House of Lords on "Whiter Shade of Pale"

The House of Lords has ruled that Matthew Fisher, who wrote the organ solo introduction to the 1960s song "Whiter Shade of Pale", is entitled to 40% of the royalties from the song. Mr Fisher's entitlement only relates to future royalties from the song, and does not affect royalties which were paid to Mr Fisher's co-writers prior to the ruling.

This decision overturns the Court of Appeal's ruling that Mr Fisher had relinquished his rights in the song's copyright due to the number of years which had passed between the song's 1967 release and Mr Fisher's claim, which was brought in 2005.

The decision serves as an important reminder that the passage of time cannot itself prevent an intellectual property claim. However, depending on the circumstances of each case, it may be appropriate to prevent a much delayed claim where the claimant seeks purely equitable relief (such as an injunction), and where it can be shown that the court would be justified in refusing the relief sought. In this case, the House of Lords ruled that the benefits Mr Fisher's co-writers obtained from the delay (i.e. a greater share of royalties) outweighed any prejudice they may have suffered as a result of Mr Fisher's delay in bringing the claim.

See: Fisher v Brooker [2009] UKHL 41

Show of Olympic force

A Hertfordshire based removals firm, Olympic Removals, has been threatened with trade mark infringement proceedings by the London Organising Committee of the Olympic and Paralympic Games (LOCOG) over the use of the Olympic Rings symbol as its company logo. Olympic Removals claims to have used the same company logo for 22 years, and has indicated that it will not change its logo despite the threat of infringement proceedings. However, the firm has suggested that it would consider changing its logo in return for compensation.

The "Olympic Rings" symbol is one of the most recognised trade marks in the world, along with corporate brands such as Coca Cola, Google, Nike and Virgin. In the UK, the use of the Olympic Rings symbol, along with other Olympic-related logos and words, is controlled by the Olympic Symbol etc (Protection) Act 1995 ("the Act"), which allows infringement claims to be brought against those using protected items without permission.

There are, however, certain exceptions to what is considered to be infringement under the Act, including use of protected items in a context which is not likely to suggest an association with the Olympic Games or the Olympic movement. It has also been suggested that Olympic Removals may have a defence to an infringement claim if, as the firm claims, its company logo has been used since before the Act came into force.

It remains to be seen whether LOCOG will pursue this matter further.

See: Hertfordshire Mercury, 24 July 2009
IP World, 3 August 2009

If you would like to discuss the implications of either of the above cases or would like information on how to protect your intellectual property rights please do not hesitate to contact one of the intellectual property team.



Matthew Talbot

Matthew Talbot specialises in Intellectual Property litigation including disputes involving infringement of trade marks, copyright, design rights, patents and domain names. He has made numerous UK and European trade mark applications on behalf of organisations wishing to protect their company names, trading names and branded products. He has successfully acted on behalf of claimants against Northern Foods, Kraft Foods plc, Nestle and Adams Childrenswear and in defending clients in cases brought by Adidas, Puma, Lacoste and Microsoft.

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