IP & IT LAW NEWS

Dear Reader,

We are pleased to send you an update on recent developments related to intellectual property and technology law.

You may follow us on Twitter @RLN_Latvia to read these and other office news.

With kind regards,

Ingrīda Kariņa-Bērziņa
Partner
Attorney at Law
Head of IP & Technologies
Practice Group

Guntars Zīle
Partner
Attorney at Law

In this issue:

Practice Developments

Practice Developments

New requirements for sponsoring HCPs attendance at events enter into force in Latvia

Amendments to Cabinet of Ministers Regulation 378/2011 dated 25.11.2014 [Regulation On Medicinal Products Advertising] **[LAT only]**

As of 1 January 2015 pharmaceutical and other companies may no longer provide direct support to healthcare professionals (HCPs) to attend scientific and professional events held abroad. Instead, any financial or other kind of support for such events may be provided only to healthcare organisations or associations which have expressly requested such support for its members, rather than to HCPs directly. This requirement derives from the latest amendments to the Regulation On Procedures for Medicinal Products Advertising and Procedures According to Which Manufacturer is Entitled to Give Free Samples of Medicinal Products to Healthcare Professionals ("Regulation"). The new regulation is believed to minimise corruption risks.

The new wording of the Regulation introduces the obligation of marketing authorisation holders to disclose any transfers of value to healthcare organisations or associations, including the names of HCPs who subsequently attend events abroad. This approach reflects the global trend toward tracking pharmaceutical spend. The first reporting period is 2015.

Top

Latvian Supreme Court allows a non-party to intervene in litigation to prevent disclosure of trade secrets

Decision of 11.03.2015 in case SKA-622 [Ryanair] **[LAT only]**

The Latvian Supreme Court has for the first time ruled that a company is entitled to intervene as a third party in proceedings between a public authority and another party in order to object against disclosure of the intervener's trade secrets.

All information at the disposal of a state authority is publicly accessible, unless, by way of exception, it is confidential. One such exception is the trade secret of a company.

In the present case a party to the proceedings had requested the Latvian Competition Council (LCC) to disclose the entire case file of an earlier investigation. The LCC granted partial access, and refused to disclose documents that allegedly contained non-party Ryanair's trade secrets. The applicant seeking disclosure appealed.

Ryanair asked to be admitted as a third party in the appeal proceedings. The first instance court dismissed the request, but the Supreme Court has now sided with Ryanair. The Court explained that a company is entitled to participate in a dispute between a public authority and a party requesting information, even if that company's own opinion about the characterization of the requested information as a trade secret would not be decisive and regardless of the fact that the public authority had obtained the documents from another source.

The Supreme Court decision implies that public authorities, when they contemplate disclosure of information, should consult not only the direct source, but also other parties whose trade secrets may thereby be disclosed.

Top

Court of Justice of the European Union: hyperlinking does not infringe copyrights

Judgment in case C-466/12 dated 13.02.2014 [Svensson et al.]

Order in case C-348/13 dated 21.10.2014 [BestWater International] **[GER only]**

In a season of European copyright cases, two cases on hyperlinking decided by the Court of Justice of the European Union (CJEU) stand out. In *Svensson et al. v. Retriever Sverige*, journalists whose articles were posted on the Göteborgs-Posten website brought a claim against news-aggregating service Retriever Sverige, which had published links to these articles on its own website. In *BestWater International v. Mebes and Potsch*, the respondents embedded into their web site a YouTube link to BestWater's video about water pollution. BestWater claimed that this video had been posted on YouTube without its consent, and that subsequent linking was not permissible.

In both cases, the CJEU concluded that hyperlinking constitutes "communication to the public", but it is not necessary to receive permission from the right holder if the works are freely available on the Internet. The court clarified that a "new public" is not reached by linking, because all Internet users could access these works on their original websites and therefore the potential visitors (i.e. the "public") of both websites are the same.

CJEU further concluded that “new public” would be reached and therefore consent should be sought for hyperlinking which could circumvent restrictions put in place by the site on which the protected work appears. Such protection measure is for example when the work is available only to the subscribers of the site for a fee. Posting links that can gain access to works which are later deleted would also constitute a copyright infringement. If the work is initially freely available, but restrictive measures are placed afterward, circumvention of such restrictions would be regarded as infringement.

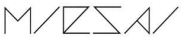
Top

European trademark reforms agreed

Earlier this week, a long-discussed package of reforms concerning both the Community trademark and national trademarks was politically agreed by the European Commission, the EU Council and the European Parliament. The reform package is intended to improve trademark registration processes, speed up the harmonization of trademark law and strengthen measures to prevent counterfeits across Europe. The reforms were agreed on 21 April and are expected to be formally approved by the EU Council and the European Parliament shortly. The reaction from the trademark community has been cautiously positive (the International Trademark Association’s views are here).

Top

Our team successfully defends the MIESAI trademark registration

Our client Asketic SIA registered the figural trademark  for goods in International Class 25 (clothing, shoes, hats) in Latvia. The well-known Latvian graphic design house Asketic uses this mark to market its popular line of design products including  t-shirts and wristwatches, “Cirulis” dishware and lithography, and the Riga Neighbourhoods Map. Danish clothing manufacturer Masai Clothing Corp. filed to oppose the MIESAI registration based on its earlier Community Trademark Registration for the word mark MASAI for clothing.

Following an oral hearing on 6 February, the Latvian Patent Office Board of Appeals held in favor of our client and rejected the opposition. This case reaffirms the established rule that trademarks may coexist, even if they share verbal elements, as long as each mark has a distinct semantic meaning. Our partner Ingrīda Kariņa-Bērziņa , assisted by junior attorney Alise Artamonova, acted for Asketic SIA.

Top
