



## Technology vs Intellectual Property

### Who's winning?

November 2011

Can businesses use intellectual property rights (IPRs) to gain competitive advantage – even in fast-moving, technology-driven markets? Or does the speed of technological development and the ease of digital copying mean that IPRs are increasingly irrelevant? In this briefing we look at several recent cases which show that IPRs remain a key tool for businesses to protect their revenue streams.

#### Apple v Samsung

In September this year, Apple secured an injunction from a German court preventing Samsung from selling the latest model of its Galaxy Tab device, which competes with Apple's iPad. The German injunction was based on Apple's EU design rights, which protect the outward appearance of the product.

Based on its patent rights, Apple has obtained further injunctions against Samsung in other jurisdictions, such as the Netherlands.



For most businesses, the design rights injunction is probably of greater significance, because such rights are generally easier to obtain than patents; they can even be used alongside trade marks to protect aspects of branding.

#### Movie file-sharing

Meanwhile in the UK, major Hollywood film studios have obtained a court order forcing BT, the country's largest internet service provider (ISP), to block access to the Newzbin website, which was providing access to illegal copies of films.

The court accepted that, as an ISP, BT was not directly responsible for the illegal copying. However, UK legislation enables owners of IPRs to apply for injunctions against intermediaries whose services are used by others to infringe those IPRs.

#### Enforcement of IPRs: new measures

Based on powers due to be introduced under the Digital Economy Act 2010, owners of IPRs will be able to:

- force ISPs to write warning letters to customers who appear to be associated with infringement of IPRs; and
- obtain more information from ISPs about such customers (which may help with enforcement action).

Earlier this year, ISPs failed in their attempt to challenge these provisions, although an appeal is underway. As a result, introduction of these measures may be further delayed.

#### News aggregators

In a major victory for newspapers, the Court of Appeal has ruled that so-called "news aggregators" must pay for a licence from the Newspaper Licensing Agency.

News aggregators provide a form of digital cuttings service, consisting of headlines and snippets taken from newspaper websites, with links to the full article. The Court of Appeal has confirmed that copying headlines and key excerpts can amount to copyright infringement.

#### Murphy v Premier League

As widely reported, the FA Premier League has been in dispute with a publican, Karen Murphy, over her use of a Greek decoder card to screen Premier League football matches (received from a Greek satellite broadcaster) in the UK.

The Premier League argued that she could only screen the matches legally if she purchased the service from its UK licensee, BSkyB (which would cost her significantly more) – and that she acted illegally in purchasing the Greek decoder card. However, the European Court of Justice has ruled that restrictions on the import of decoder cards into the UK from elsewhere in the EU are themselves illegal.

*“IPRs still have a key role to play in protecting successful business models in technology-driven markets.”*

#### IPRs to win in extra time?

But this may not be the end of the story. The ECJ ruling also suggests that the Premier League may be able to rely on its IPRs, such as copyright and trade mark rights in its logo, to prevent customers in the UK obtaining coverage of Premier League matches from licensees elsewhere in the EU. It may be that, in future, the Premier League will insist that its logo is displayed throughout transmission in order to enable it to assert its IPRs more effectively.

All the above examples demonstrate that, although technological developments often run ahead of the law, IPRs have a key role to play in protecting successful business models in technology-driven markets.

## *How we can help*

**We have extensive experience of advising clients on the acquisition, exploitation and enforcement of intellectual property rights. We have recently advised:**

### **Samuel Smith's Brewery**

On a successful claim relating to the trade mark rights in its key logo.

### **Chorion**

Owners of the Agatha Christie novels and the Mr Men books, on a major reorganisation of its IP portfolio.

### **Oracle**

In relation to software development and source code ownership issues.

### **BBC Magazines**

Exponent Private Equity on its acquisition of the BBC Magazine business, including licensing arrangements for certain titles.

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Chambers Guide to the UK Legal Profession (2012)

*“Satisfied client sources comment that ‘not only does [Dan Reavill] know his subject, he is great at minimising costs for the business and proactive in giving suggestions’ ”*

Chambers Guide to the UK Legal Profession (2012)

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