

# Kluwer Copyright Blog

## Top 3 Posts of the Summer from our IP Law blogs

Kluwer Copyright Blogger · Monday, September 4th, 2017

To ensure you don't miss out on interesting IP law developments reported on our other IP blogs, we will, on a regular basis, provide you with an overview of the top 3 most-read posts from each of our IP law blogs. Here are the top posts from June, July and August.

*Top 3 Kluwer Copyright Blog posts of June/July/August*



### 1) **The “Data Producer’s Right”: Unwelcome Guest in the House of IP** by Bernt Hugenholtz

*“With the growth of the ‘data-driven economy’ and the rise of ‘Big Data’ have come calls for the introduction of a novel property right in data. Apparently in response to demands from the German automotive industry, the European Commission has in its 2017 Communication on ‘Building a European data economy’ advanced the idea of creating a ‘data producer’s right’ that would protect industrial data against the world... – a most unwelcome guest in the house of European intellectual property.”*

### 2) **France: Mankowitz’s photo of Jimi Hendrix is finally protected by copyright in appeal** by Brad Spitz

*“On 21 May 2015, the IP specialist chamber of the High Court of First Instance of Paris handed down one of its worst rulings in copyright law: in breach of the most basic EU and French copyright law rules, it refused copyright protection to a famous photograph of Jimi Hendrix (reproduced above), taken by Gered Mankowitz. On 13 June 2017, the Court of Appeal of Paris reversed the first instance judgment and awarded copyright protection to this photograph.”*

### 3) **Communication to the public in the Zurs.net case: more explanations, less clarity:** by Tatiana Synodinou

*“In the case Staatlich genehmigte Gesellschaft der Autoren, Komponisten und Musikverleger registrierte Genossenschaft mbH (AKM) V Zurs.net Betriebs GmbH (C-138/16, Judgment of 16 March 2017) the CJEU was called upon to decide once again on the seminal concept of communication to the public.”*

**1) How “unitary” is an EUTM? CJEU decides in the KERRYGOLD matter** by Florica Rus

*“In a case heard before the Audiencia Provincial in Alicante, Spain, the Spanish EUTM Court had to decide on the infringement action brought by Ornua Co-operative (formerly the Irish Dairy Board), owner of the dairy mark **KERRYGOLD**, against the Spanish distributor of Kerry Group’s – **KERRYMAID** margarine, for use of that mark in Spain.”*

**2) Can a TM symbol mislead the public if no trademark has been registered?** by Manon Rieger-Jansen

*“That is the question that was recently answered by the Board of Appeal of the Dutch Advertising Code Authority ... In a nutshell, the <sup>TM</sup> symbol may be useful to let a descriptive word acquire distinctive character and register it as a trademark at a later stage. However, while the Board of Appeal may have given the go-ahead, there is still a risk that civil courts will find such use of the <sup>TM</sup> symbol misleading.”*

**3) Testarossa – Still a trade mark or just a memory of the fancy 80s?** by Oliver Löffel

*“On August 2, 2017 media reported that Miami Vice is getting a reboot and on the same day the Regional Court of Düsseldorf ruled that Ferrari is ordered to consent to the cancellation of its German trade mark registration “Testarossa”, No 1158448 (decision of August 2, 2017, 2a O 166/16). However, Ferrari has neither lost the brand “Testarossa” nor to a German toy company yet, unlike German and international media reported incompletely (demonstrating that Litigation-PR can be important in order to avoid such misleading reports).”*

**1) UPC – Finally some News from the German Federal Constitutional Court** by Thorsten Bausch

*“The surprising request by the German Federal Constitutional Court (FCC) to the German President to wait with his executing of the UPC ratification law, pending the outcome of a – heretofore unknown – constitutional complaint, has made many people wonder what is behind this constitutional complaint and on which alleged violations of the German Basic Law (i.e. our constitution) this complaint was based. I therefore asked the FCC directly what is going on here...”*

**2) Lithuania ratifies Unified Patent Court Agreement** by Kluwer UPC News blogger

*“Lithuania completed the ratification formalities of the Unified Patent Court Agreement on 24*

*August 2017 by depositing its instrument of ratification with the secretariat of the EU Council in Brussels. It is the 14<sup>th</sup> member state to do so.”*

### 3) Federal Supreme Court Confirms Compulsory License by Way of a Preliminary Injunction: by Thomas Musmann

*“In March our partner Hetti Hilge reported on a preliminary injunction by which the Federal Patent Court granted Merck an interlocutory compulsory license for Merck’s HIV drug Isentress in the light of Shionogi’s Raltegravir patent EP 1 422 218.*

*The compulsory license has now been confirmed in the second instance PI proceedings by the Federal Supreme Court (BGH), which just issued its written decision (verdict of 11 July 2017, docket No. X ZB 2/17)”*

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**LAWYER**

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