

Welcome to the Summer edition of Hot Topics in Intellectual Property and Technology. This is a quarterly bulletin highlighting some topical developments in the UK in the areas of intellectual property and technology, contract, data privacy, trade secrets, and advertising and media. Succinct and relevant, this briefing will help you stay ahead of the game and ensure you are well positioned to take advantage of new opportunities.

Our intention is to alert you to upcoming legal developments, so we have kept detail to a minimum. We are happy to discuss any of the developments, and the implications for your business, in more detail. Feel free to call your usual Squire Patton Boggs contact or any of the individuals listed in this publication. You can also visit our [Global Business IP and Technology Blog](#), which is a source of more comprehensive news and insight into legal issues of interest to the global intellectual property and technology community.

Some topical issues for Summer 2014 are:

Many Businesses Still Not Compliant With New Information and Cancellation Consumer Laws

On 13 June 2014, the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 came into force, implementing the EU Consumer Rights Directive in the UK. The Regulations set out what information “traders” must give consumers pre and post contract and the rights consumers have to cancel the contract. When compared to the laws they replace, the Regulations impose more stringent information requirements on traders and give consumers enhanced cancellation rights. The Regulations also include some entirely new requirements, such as the obligation on online traders to make it clear to consumers (via an appropriately labelled click box) that they are entering into a payment obligation. With some exceptions, the Regulations apply to all contracts between traders and consumers whether made on or off business premises or online. Non-compliant traders risk action by regulatory authorities and indirect financial penalties through having to pay certain transaction costs usually borne by the consumer. In addition, there is a risk that the contract with the consumer may be unenforceable. Traders must act now to review and update their sales processes, website and terms and conditions to reflect the Regulations. More information can be found on our [Blog](#).

Consumers Given New Rights to Unwind Contracts and Claim Compensation

From 1 October 2014, consumers will be given new rights of redress against traders who engage in “misleading” (untruthful) or “aggressive” (pressure selling) commercial practices, contrary to the Consumer Protection from Unfair Trading Regulations 2008. A consumer purchasing goods or services from the trader will have the right to unwind the contract (return to the position they would have been in had the contract never been made) and claim a full refund. Alternatively, they will have the right to a discount on the price, of up to 100% depending on the severity and impact of the trader’s conduct. In addition, the consumer will be able to claim compensation for any reasonably foreseeable financial loss or alarm, distress, physical inconvenience or discomfort resulting from the trader’s conduct. The government has just published guidance on how these Regulations will be implemented in practice. Many businesses may be tempted to overlook this development on the basis that they always engage in “above-board”, professional business practices. However, the definition of misleading commercial practice not only covers out and out deceit but also, on the opposite end of the scale, may catch over-optimistic statements by sales staff or in marketing literature about the nature or characteristics of the goods or services being sold. Now is a good time, therefore, for businesses to review their sales procedures, websites and marketing literature to ensure clarity and accuracy and to train staff on how to avoid overselling a product.

Another Consumer Law Shake-up to Come

Businesses should brace themselves for yet more reform of consumer law in the UK. The Consumer Rights Bill is currently being considered by Parliament and is likely to come into force later this year. The Bill is an entirely UK driven initiative without any direct involvement from the EU. The primary objective of the Bill is to tidy-up UK consumer laws on the rights consumers have in respect of faulty goods. At the moment, these rights are set out in a number of different pieces of legislation resulting in uncertainty amongst consumers and traders alike about what rights consumers, and what obligations traders, have where goods are faulty. These rights will be brought together in one place to create clarity and certainty. Consumers will also be given a new hierarchy of rights making it clear for the first time whether they can always insist on a refund or whether traders have to be given an opportunity to try and repair the faulty goods first. The Bill also deals with these issues specifically in the context of a new category of product to be known as “digital content”, covering apps and downloads. The Bill is due to be considered in detail by a House of Lords committee on 13 October 2014, after which its progression through Parliament will be almost complete. Once a final version of the Bill is available, businesses will need to review their processes for handling consumer complaints and dealing with faulty goods to ensure they are compliant, or risk regulatory action.

Copyright Exceptions Back On the Agenda

On 1 June 2014, significant changes were made to UK copyright law. New copyright exceptions were introduced which widened the scope of what third parties were permitted to do with copyright works without infringing copyright. Two of the planned exceptions, those relating to quotation, caricature, parody and pastiche and the making of copies for personal use, were unexpectedly held back, without any real explanation from the government as to why. Those exceptions are now back on the agenda and will be introduced on 1 October 2014. From that date, third parties will be permitted to freely use quotes and extracts, and to copy works for the purposes of caricature, parody and pastiche. In addition, consumers will also be able to make copies of films, books and music they have purchased or downloaded for their own private use and to ask the Secretary of State to order the removal of copy protection measures which prevent such copies being made. These reforms are intended to benefit consumers and content creators. However, rights-holders are likely to be concerned about the potential for abuse and the difficulties in practical enforcement. They should familiarise themselves with the new exceptions and take prompt action to enforce their rights where they believe that anything being done falls outside the scope of an exception. It is also likely that the copies for personal use exception will be subject to challenge at the European level on the basis that it does not provide for right-holders to be paid compensation in respect of copies made, as required by the Copyright Directive (on which all of the exceptions are based). Read more on our [Blog](#).

Risk That UK and EU Trade Marks Could Be Invalidated

In a recent ruling, the UK High Court has warned businesses to ensure that the scope of their trade marks is clear and precise or risk their marks being invalidated. The High Court based its ruling on a judgment of Europe's highest court, the Court of Justice of the European Union (CJEU), which was handed down two years ago – known as the IP Translator case. In that judgment, the CJEU said that trade mark applicants must ensure that the goods and services to be covered by a mark are identified with sufficient clarity and precision to enable competitors and others to understand the scope of protection. Applications which lacked the necessary clarity and precision would be rejected. The UK High Court has now extended the effect of the CJEU's ruling. The result is that where the goods and services to be covered by a mark are not identified with clarity and precision in the initial trade mark application, not only may the application itself be rejected but, if the mark does proceed to registration, the registered trade mark may be invalidated later on this ground. Following this case, businesses looking to obtain trade mark protection in the UK and the EU should ensure that care is taken when specifications in trade mark applications are drafted to ensure the necessary clarity and precision. The drafting of the initial trade mark application is key to minimising both the risk of the application being rejected (with the resultant loss of time and cost and the negative impact on wider brand strategy) and the registered trade mark subsequently being invalidated (which could leave a business without core brand protection in a significant market).

Expert advice should always be sought when trade mark strategy is being developed and trade mark applications being made. Read more on our [Blog](#).

New Food Labelling Law to Bite on Restaurants and Takeaways

On 13 December 2014, a new EU Regulation will come into force that will require food business operators that sell non pre-packed food, including restaurants and takeaways, to provide customers with information concerning the presence of allergens in their food. The Regulation is concerned with 14 named allergens, including fish, peanuts, milk and eggs. Customers must be informed where these allergens are intentionally used as ingredients in a food product. This information can be provided, in the case of restaurants, on menus or on behind the counter boards in takeaways, provided the information is easily accessible, clear, visible and legible. The penalties for non-compliance are not yet clear although criminal sanctions are possible. Food business operators must act now to ensure that their food displays and menus contain the relevant information by 13 December 2014. They should also review their contractual arrangements with suppliers to ensure that suppliers are under an obligation to provide the allergen information necessary to enable compliance with the Regulation.

We have extensive experience advising clients on commercial, IP and technology issues, such as those mentioned in this bulletin. Please feel free to call your usual Squire Patton Boggs contact, or any of the individuals listed in this publication, for an informal chat on how we can help your business.

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