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# Copying Without Infringing in 2009

## Where do the boundaries lie? Protecting the parties' interests

24 November 2009, London

Previous  
delegates have  
said:

*"Really good  
day!"*

*"The topics  
covered were  
interesting &  
relevant"*

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Infringement or not? From handbags to trademarks, IP lawyers are charged with the difficult task of advising their clients whether they have crossed the difficult line from legal influence to illegal copy.

This one day conference will provide a road map through the tricky legal territory of what does amount to actionable infringement, what doesn't and what might.

- Downloads of Recordings: What is the Current Legal Position?
- Beyond "Three Strikes" – The UK's Approach to Filesharing
- Transformative use of Another's Work: Creativity or Theft - or Both?
- Orphan Works: What are the Problems, What are the Solutions?
- Google Book and the Future of the Printed Word
- Using Patents for Research and Testing
- Non-exact Infringement and the Protocol to Article 69
- The Marriage between Fashion Designers and Design Right Law
- Nods and Winks: Imitation Perfumes in the European Court of Justice and Beyond
- Adwords, Keywords, and Non-authorized Online Uses of Trade Marks and Names
- Lookalike Consumer Products – Should you Reap Where you Have Not Sown?

CPD: Solicitors Regulation Authority Accredited 6¼ hours

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6¼ Hours CPD

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### 9.00 Registration and Coffee

### 9.30 Chairman's Welcome and Introduction *Jeremy Phillips, Olswang LLP*

## Copyright

### 9.45 Downloads of Recordings: What is the Current Legal Position?

- Bits and bytes
- Black letter law in the ether
- Licences for online music
- New business models

*Amanda Harcourt, IP Consultant*

### 10.10 Beyond "Three Strikes" - The UK's Approach to Filesharing

- Digital Britain - forging new relations between creators, ISPs and consumers

*Florian Koempel, UK Music/British Music Rights*

### 10.35 Transformative use of Another's Work: Creativity or Theft - or Both?

- Transformative use: UK vs USA
- Examples:
  - Social networking sites, search engines and copyright infringement
  - News, fair dealing and infringement (*Copiepresse v Google; Infopaq v DDF* (ECJ 2009))
  - Mashups, music and art
  - Parody/satire

- Law reform post *Gowers*

*Simon Stokes, Blake Laphorn*

### 11.00 Coffee

### 11.15 Orphan Works

- What are the problems?
- What are the solutions?

*Gwilym Harbottle, Hogarth Chambers*

### 11.50 Google Book and the Future of the Printed Word

- The proposed Google Book Settlement and implications outside the US
- Prospects for the ebook and electronic text licensing market
- Digital rights grabs? Volume rights and audio-book rights
- Books' far horizon: user-generated content

*Hugo Cox, IP Consultant*

### 12.30 Questions

### 12.45 Lunch

## Patents and Designs

### 1.45 Using Patents for Research and Testing

- Differences as between jurisdictions
- Prospects for change - eg the outcome of the IPO consultation
- What are the consequences of infringing experimentation?

*Trevor Cook, Bird & Bird LLP*

## 2.15 Non-exact Infringement and the Protocol to Article 69

- Historical approach
- Classical approach
- Mechanical equivalents
- Sufficiency considerations

*Michael Edenborough, Serle Court*

## 2.45 The Marriage between Fashion Designers and Design Right Law

- Something old: designs that cannot be protected
- Something new: designs that can be
- Something borrowed: inspiration vs copying - a fine line
- Something blue: practical tips to avoid problems

*Anoushka Der Kureghian and Melissa Morgia, Olswang LLP*

## 3.15 Tea

### Trade Marks and Passing Off

## 3.30 Nods and Winks: Imitation Perfumes in the European Court of Justice and Beyond

- Where to draw the line between legitimate comparative advertising and unlawful free-riding in the light of the ECJ Judgment in *L'Oreal v. Bellure*
- Where are we left after the Court of Appeal's view in *Whirlpool v Kenwood*
- Guidance on the evidential burden in taking action for free riding, blurring, tarnishment or dilution

*Joel Smith, Herbert Smith*

## 4.00 Adwords, Keywords, and Non-authorized Online Uses of Trade Marks and Names

- Discussion of key legal issues arising from keywords and search engine technology
- Development of European case-law on trade mark "use"
- Impact of the "E-Commerce Defence"
- Consideration of commercial implications of recent High Court and ECJ decisions

*Joel Vertes, Olswang LLP*

## 4.30 Lookalike Consumer Products – Should you Reap Where you Have Not Sown?

- Distinctiveness is important
- Why copy?
- What encourages copying?
- What happens to distinctiveness?
- Where should we draw the line?

*Dawn Franklin, BrandRight*

## 5.00 Chairman's Concluding Remarks and Questions

## 5.15 Conference Close

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# Chairman:

**Jeremy Phillips** intellectual property consultant, Olswang. He is a research director, Intellectual Property Institute, editor of *The European Trade Mark Reports and Journal of Intellectual Property Law and Practice* and co-founded the IPKat weblog. He contributes to Class 46, IP Finance, Fashionista-at-Law, PatLit and various other weblogs.

# Speakers:

**Trevor Cook**, partner, Bird & Bird LLP. His practice covers all aspects of intellectual property, technology and regulatory law. Appointments include: President of the UK Group of the AIPPI, member of the Council of the Intellectual Property Institute, and Secretary to the British Copyright Council Working Group on Copyright and New Technology.

**Hugo Cox** is an IP consultant. His most recent project was the launch of the Penguin ebook list, for which he negotiated ebook and electronic sublicensing terms with agents and authors. Hugo worked for many years as an editor in book publishing. He writes for the 1709 Copyright Blog.

**Anoushka Der Kureghian** is an associate in the Intellectual Property Department at Olswang LLP. She carries out both contentious and non-contentious intellectual property work, but specialises in contentious work in relation to trade marks, copyright, designs and domain name disputes. Anoushka regularly advises clients in the fashion and retail sector in connection with protecting and enforcing their rights and has experience in relation to a wide range of topics including brand clearance, brand management, brand protection and anti-counterfeiting.

**Michael Edenborough** is a member of Serle Court where his practice covers all aspects of IP law and practice, with over 70 reported cases since 2000. He has acted for the UK IPO in patent matters (e.g. *Yeda Research* (HLs, CA and PatCt); *Bending Light* and *Black Light* (both appeals to the PatCt)). He has appeared before both the Legal and Technical Boards of Appeal in the EPO.

**Dawn Franklin** is Managing Director of Brandright. Dawn has worked in-house for multinational companies in sales, service and finance, risk management and marketing properties. In 1996 she established her brand protection consultancy, Brandright, working on the development and management of brand portfolios and best branding practice. Dawn has served on the Board of INTA and as a consultant to WIPO. She is currently Chairman of the trademark committee of AIM (European Brands Association), an official observer to OHIM and an associate member of the British Brands Group.

**Gwilym Harbottle** is a barrister and a member of Hogarth Chambers. He specialises in intellectual property law. He has appeared in a number of significant copyright and design right cases, is a joint editor of the 15th edition of *Copinger on Copyright* and has written several articles on civil and criminal remedies for infringement of IP rights.

**Amanda Harcourt** is a former academic and an IP rights consultant with particular interest in film and television, music, theatre and the rights of creators. She has extensive experience of the trade practices of, and the domestic and EU law governing, the collective administration of IP rights. She is a contributor to the 1709 copyright blog.

**Florian Koempel** has been Legal Counsel at UK Music/British Music Rights since 2001. He is the British Copyright Council representative at WIPO and a member of the Executive Committee of the British Literary and Artistic Copyright Association. He holds a Diploma in European Competition Law, an LLM in Intellectual Property from London University, as well as a Law Degree from the University of Regensburg in Bavaria. In 1998, he passed the bar exam in Munich and has worked for the Regional Court and in private practice.

**Melissa Morgia** is an associate in the Intellectual Property Department at Olswang LLP. She advises on a variety of contentious intellectual property matters including trade marks, copyright and designs. In particular, Melissa regularly advises clients in the fashion and retail sector in connection with protecting and enforcing their rights in their brands and designs. Melissa also manages a number of trade mark portfolios for major brands, including dealing with prosecution and opposition matters.

**Joel Smith** is an IP partner with Herbert Smith LLP. He has experience of a wide range of heavy-weight trade mark and branding matters, including taking infringement proceedings in the High Court and Court of Appeal. He is also involved in disputes involving copyright and new media. He is a member of INTA, ITMA and The Law Society IP Working Party.

**Simon Stokes** is a partner with Blake Laphorn in London. He is the author of several books on copyright law including *Digital Copyright Law and Practice* (3rd edition Hart Publishing 2009) and is a Visiting Research Fellow at Bournemouth Law School.

**Joel Vertes** advises on contentious and non-contentious matters in all areas of intellectual property law. He has particular expertise in trade mark, passing off and copyright litigation, as well as advising on trade mark portfolio and domain name strategy. He also regularly advises on a range of online infringement issues including domain name recovery, anti-spam and anti-phishing litigation.

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