

AUSTRALIAN INTELLECTUAL PROPERTY JOURNAL

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ARTICLES

Why a legal treatise? An interview of Tom McCarthy by Mark Twain – *J Thomas McCarthy*

Trademark treatise author Professor J Thomas McCarthy is interviewed by the ghost of famed author Samuel L Clemens, best known as “Mark Twain”. Twain reminisces about his time in San Francisco and Melbourne and McCarthy expounds on his views about how he wrote his book and what an intellectual property treatise should be. 6

Change of the watch – *Michael D Pendleton*

Some reflections on the role and status of AIPJ, problems with Australian academic law teaching and carrier service provider liability after the Australia–United States Free Trade Agreement and the US Supreme Court decision in *MGM v Grokster* 545 US, 125 SCt 2764 (2005). 10

Struggling for coherence: A review of recent developments in European trade mark law – *David Llewelyn*

This article gives an account of recent developments in trade mark law at European Community level and discusses their impact both on the Community Trade Mark (CTM) system and on the national systems of trade mark registration. Mention will also be made of a couple of recent decisions of the English courts (and of the United Kingdom Trade Mark Registry). Attention will be focused on live issues such as distinctiveness, the concepts of trade mark use in relation to a finding of infringement and of “non-use” with respect to revocation proceedings. The facts and findings of the cases discussed show some of the difficulties that can be encountered in registering, protecting and maintaining trade mark rights, especially in a system which is trying to meld in a coherent fashion widely differing legal cultures and economies. Of course, once the ECJ has opined the national courts and authorities must apply consistently and faithfully the general principles established to all cases before them; as will be seen, this is often a very difficult task. 17

The many-handed Mr Moul as observed by Corno di Bassetto (and introduced by Bill Cornish) – *WR Cornish*

The Editor has built the AIPJ into an organ voiced to carry afar. This is an Occasional Piece to celebrate her achievements. 40

**A bone fide offering to the world at large: (Not) using signs on the internet –
*Warwick A Rothnie***

When does use of a trade mark by a foreign business on its website infringe trade mark rights in Australia? The finding of non-infringement in the *Ward & Brodie* case is the first judicial consideration of this issue in Australia. It bears some important similarities to the United States First Circuit's *Cecil McBee* decision but, perhaps, with some important differences. 45

Kazaa goes the way of Grokster? Authorisation of copyright infringement via peer-to-peer networks in Australia – *Rebecca Giblin-Chen and Mark Davison*

In *Universal Music Australia v Sharman License Holdings* (2005) 65 IPR 289 an Australian Federal Court suggested for the first time that it is acceptable to prohibit the continued distribution of a product on the grounds that after its sale it is capable of being used by its purchaser to infringe copyright, even though it may also have non-infringing uses. The decision, currently on appeal to the Full Court, raises important questions about the scope and meaning of the concept of "authorisation" under Australian law. The most important question is whether or not some degree of control is necessary to support a finding of authorisation. This article comprehensively explains the decision and argues that the Full Court could usefully draw upon some aspects of the United States approach to answer the questions raised. 53

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Editorial inquiries:

Tel: (02) 8587 7000

HEAD OFFICE

100 Harris Street PYRMONT NSW 2009

Tel: (02) 8587 7000 Fax: (02) 8587 7100



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