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EDITORIAL 69

ARTICLES

Parallel importing: Who's using what and when and what happens then?
– Mark Davison

While Australian case law has tended to permit parallel importing of trade marked goods, the precise basis upon which it did so has been uncertain; with some case law suggesting that a parallel importer does not use the trade mark as a trade mark. That view was recently rejected by the Full Federal Court which sought to explain some previous cases by reference to a defence of consent to use of the trade mark. This article analyses the nature of the use of a trade mark by a parallel importer, the defence under s 123 of the *Trade Marks Act 1995* (Cth) and consent to use. It also provides an alternative explanation for some previous decisions under the *Trade Marks Act 1955* (Cth) that may have incorrectly conflated the separate issues of use of a trade mark as a trade mark, and use of a trade mark that is likely to result in confusion. 71

Could Sony legally make a Walkman that plays iTunes FairPlay-protected content? – Lucy Davis

This article explores whether the current Australian copyright law relating to technological protection measures has gone beyond the apparent policy intention concerned with infringement of intellectual property rights to prevent competition in complementary markets. The article uses the example of whether the law would allow Apple to restrict competing firms – such as Sony – from developing and selling content-rendering devices to play audio content protected by FairPlay digital rights management (DRM) purchased through Apple's iTunes Music Store. A brief overview of DRM, Apple's FairPlay and the development of legal protection is provided. In order to show the possible use of this legal protection to limit competition, the article explores the legislative intention behind the protection of DRM in relation to competition issues. It looks at whether, based on the current legislative regime, liability would arise if, hypothetically, Sony produced a Walkman that could play FairPlay-protected music and, to the extent that the law does prevent such a development, the competition law provisions which might assist Sony. Finally, the article considers whether the apparent legislative intent has been realised and, to the extent that it has not, it considers ways in which this intent could be achieved. 80

BOOK REVIEWS –

International Law and Indigenous Knowledge: Intellectual Property, Plant Biodiversity, and Traditional Medicine by Chini Oguamanam 115
The True History of Copyright: The Australian Experience 1905-2005 by Benedict Atkinson 118

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Customer service and sales inquiries:
Tel: 1300 304 195 Fax: 1300 304 196
Web: <http://www.thomsonreuters.com.au>
Email: LTA.Service@thomsonreuters.com

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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