

# Australian Intellectual Property Journal

Volume 29, Number 2

2019

EDITORIAL – *General Editor: Dianne Nicol* ..... 55

## ARTICLES

### **Intellectual Property and the Business of Innovation** – *Bill Ferris AC*

This article is the edited text of the 10th Francis Gurry Lecture on Intellectual Property delivered by the author on 28 August 2018 in Melbourne and on 30 August 2018 in Sydney. .... 56

### **Australian Laws and Regulations on Regional Branding on Food and Wine Labels: Part 1** – *Paula Caroline Zito*

This is the first of a two-part article series that analyses the current laws and regulations in Australia that regulate the usage of Australian regional names on food products to make origin claims. This article analyses the consumer protection laws under the Australian Consumer Law, the doctrine of passing off and extended passing off. It identifies the deficiencies of current consumer laws and regulations and passing off, and problems resulting from them, for Australian regional food producers and the wider Australian food and agrifood industries. In particular it underscores that these laws and regulations are allowing food producers and traders to use Australian regional names on food labels that just fall short of being misleading or deceptive, or involving passing off, even though the food product, to which the name is attached, only has a weak connection with the named region. Furthermore, this article emphasises that current consumer protection laws and regulations do not give regional food producers enough ex ante guidance as to when they can make an origin claim on food labels and products, especially where some of their ingredients are sourced, or some of the food production takes place, outside the named region. They do not adequately regulate whether there is a clear connection between food and origin before a regional name can be used on a food label to make an origin claim. Consequently, many food producers use Australian regional names on food labels to make origin claims on food products that lack any clear or strong connection with the region claimed. This article explains that, in doing so, many food producers and traders take advantage of, and benefit from, the reputation that Australian regions have for producing quality regional food and the value that accordingly exists in the relevant Australian regional names. .... 67

### **Dealing Fairly with Parody: How Literary Theory Can Inform Legal Definitions** – *Sarah Hook*

This article is a sustained examination of the definition of parody within the fair dealing exception to copyright. Without a definition of parody that looks to literary theory a parody may come down to what makes a judge laugh. Parody within this arrangement is at risk of being diluted to a mere mockery of texts, relying on dictionary definitions, while the

more contemporary understanding of parody “critical ironic distance”, “refunctioned”, “decoding and encoding” of texts is ignored. This article will look at the gap between literary theory and legal definitions of parody and provides a working definition that marries the literary theory to workable criteria for use in the definitional exercise by the judiciary. This engagement with literary theory and practices is needed to avoid the chilling effect copyright litigation has, and to better serve the overall purpose of copyright which is to promote the delivery of new works to the public. .... 91