

AUSTRALIAN INTELLECTUAL PROPERTY JOURNAL

Volume 25, Number 3

April 2015

EDITORIAL 109

ARTICLES

Critical examination of the principles for determining whether trade marks are deceptively similar: A quest for more predictable decision making – *Janice Luck*

Deceptive similarity is arguably the most important issue in Australia’s registered trade marks law. While the principles for determining whether one trade mark is deceptively similar to another trade mark are well established, the application of the principles to determine whether two particular trade marks are deceptively similar is often fraught with uncertainty. This article critically analyses the principles for determining deceptive similarity in the context of providing a framework to assist in reducing the level of uncertainty involved in this decision making process. The article finishes with a suggested new legislative definition of “deceptively similar”. 111

Intellectual property rights and the PPSA: Challenges for interest holders, creditors and practitioners – *Francina Cantatore*

The Australian Personal Property Securities Act 2009 (Cth) (PPSA) has made significant inroads into traditional norms of dealing with intellectual property (IP) ownership and rights since its introduction in January 2012, the transitional period of two years having ended on 31 January 2014. Registration requirements under the PPSA have significantly affected a range of commercial transactions dealing with personal property, including the interests of lessors and lessees, consignors and consignees, sellers and buyers, licensors and licensees, and lenders and borrowers. This article considers how IP is treated under the PPSA, and how owners and disseminators of IP (and the practitioners who advise them) may deal with some of the challenges presented by the inclusion of IP rights under the Act. It sets out how a “security interest” may arise in commercial dealings in respect of copyright, patents, trademarks and designs, and the PPSA requirement of “perfecting” such interests for maximum property security. The article expands on potential problem areas in implementing these provisions in commercial dealings in the existing IP framework and recommends protective measures in dealing with problematic issues. 141

Copyright duration in Australia: 1869 to 2014 – *Catherine Bond* and *Graham Greenleaf*

One of the most significant features of any copyright statute is the duration of the rights granted to works and subject matter other than works pursuant to that law. The most “appropriate” length of copyright also continues to be a recurring theme in legislative, policy and academic debates. However, despite both the significance of and interest in the term of copyright, there has been little empirical evidence presented on how long, in light of both statutory term and life expectancies, copyright will likely protect a work. This article provides a historical account of both the duration of copyright and its various extensions, from the introduction of the first colonial copyright statute through to today. It reveals that, while multiple legislative extensions have lengthened the term of protection, continual increases in life expectancies have also added to the duration of copyright, to the point where, today, copyright will likely protect a work for well over 100 years. 155