

Inspire



phillips ormonde fitzpatrick
intellectual property

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Welcome

Creativity lies at the heart of the IP world but what it is, where it comes from and who is responsible for it can be hard to pin down.

In this edition of Inspire we explore some of the legal difficulties arising from advances in artificial intelligence technology which provide new avenues for generating inventions. As Helen McFadzean discusses, the process of invention has typically been understood as the creative mental activity of a human and patent law in Australia and elsewhere reflects this understanding. As recent patent office decisions indicate, in circumstances where an alleged invention has been generated by an AI machine, the absence of a legal person having entitlement to the grant of a patent or being capable of assigning such a right, meant that no patent could validly be filed.

Correctly identifying the creator of a design is also crucial to ensuring the validity of a design registration as Duncan Joiner explains. In *Manuel Canestrini v Ilan El* one of the two designs in issue was found to be invalid and was revoked in light of evidence showing that the visual appearance of the design was conceived by someone other than the registered owner.

Anita Brown examines the fine line between taking creative license in seeking inspiration from an established brand and appropriation leading to trade mark infringement and misleading and deceptive conduct. The decision in *In-N-Out Burgers, Inc v Hashtag Burgers* also highlights that directors who have close personal involvement in the wrongdoing of a company may also be found liable.

Also in this edition, Annabella Newton looks at infringement of method of treatment claims by the supply of a product, Melissa Wingard explores the enforceability of online contracts and website terms of service and we say welcome to our new and returning members of staff and congratulations to a number of recent award winners.



Adrian Crooks, Principal
BEng(Civil)(Hons) LLB LLM FIPTA
✉ adrian.crooks@pof.com.au



POF named best Australian IP firm across three categories of the 2021 Client Choice Awards

We are delighted that POF has emerged the winner across three categories of this year's Client Choice Awards, the most awards of any Australian IP firm. We were successful in the following categories:

- > Best Specialist IP & Related Services Firm;
- > Best CX (Client Experience) Firm: Specialist IP & Related Services; and
- > Most Innovative Specialist IP & Related Services Firm.

Beaton Research + Consulting manages the independent research behind the Awards. Clients and referrers of work complete Beaton's surveys; rating and commenting on firms' performance in delivering services on a range of criteria. This includes quality, value for money, price, and innovation.

We would like to extend our gratitude to all our clients who nominated us for these awards. We are particularly proud of winning the award for 'Best CX (Client Experience) Firm' as we put our client's interests at the heart of everything that we do.

These awards reflect the strength of our relationships with our clients, our genuine commitment to client service, and the calibre of our people.



Ross McFarlane | Managing Principal
BEng(Elec)(Hons) FIPTA
✉ ross.mcfarlane@pof.com.au



Hello and welcome back

POF welcomes new Patent Attorney, Paul Goodall, to our Sydney office and welcomes back Senior Associate, Helen McFadzean, to our Melbourne office.

POF welcomes new Patent Attorney, Paul Goodall

Phillips Ormonde Fitzpatrick extends a warm welcome to our newest Patent Attorney, Paul Goodall, who joined the Electronics, Physics and IT Team in our Sydney office late last year. He brings with him seven years of experience working in the engineering field.

During his career, Paul predominantly focused on electronics and telecommunications engineering, working on a variety of different engineering projects ranging from satellite systems to developing the electrical systems on the Deepsea Challenger submarine which was successfully sent to the Mariana Trench in 2012.

Paul started his career in intellectual property in 2016 with a large patent attorney firm in Sydney. His hands-on experience, developed from his career in engineering, has allowed him to grasp complex ideas related to electrical and mechanical engineering inventions. We are excited to have Paul onboard.

Welcome back, Helen McFadzean

Returning to POF this year, after her period of parental leave, is Senior Associate Helen McFadzean. We are excited to have Helen back onboard working with our Electronics, Physics and IT Team in Melbourne.

Helen joined POF in 2017 and has been part of the IP profession since 2009. Helen has assisted clients in obtaining patents, designs and trade marks both in Australia and overseas, across a large number of technology areas including automation, smart devices, medical apparatus, automotive technology, audio signal processing, image processing, and subsea mining technology just to name a few. Helen has a history of maintaining excellent client relationships through proactive learning of her clients' business to better understand their needs and commercial objectives.

Additionally, Helen is one of our resident experts in the field of artificial intelligence and co-presented a popular two-part seminar alongside Dr Jeroen Vendrig titled 'IP and the AI Boom' in late 2019. We are delighted to have Helen back onboard at POF.

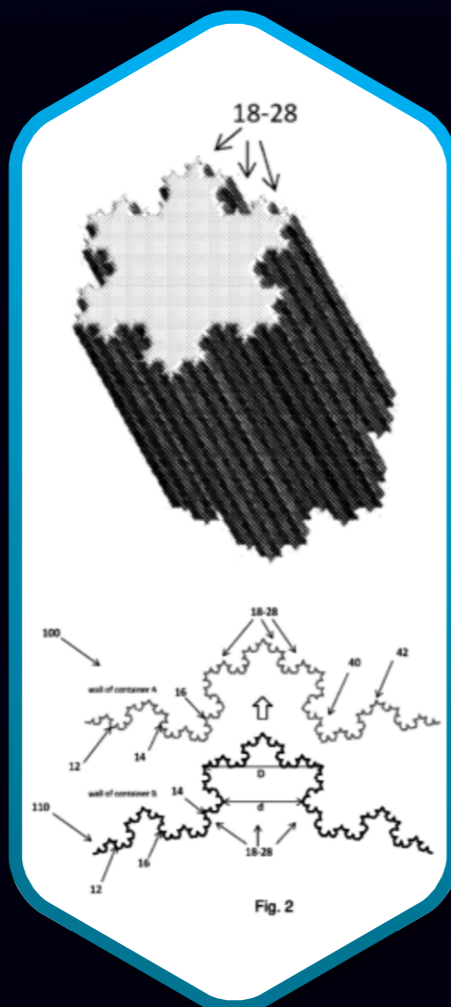
What do an AI machine and a monkey have in common?

DABUS challenges current legal principles on inventorship.



It is believed that as early as the Paleolithic period, distinguished by the original development of stone tools over three million years ago, mankind has been inventing and improving. The concept of inventing has always been regarded as a creative mental activity carried out by a human being. Fast forward to the 21st century, the rapid development in artificial intelligence allows generative AI tools to be used to create entirely new designs by themselves. This raises the question, could an AI system be named as an inventor for a patent application?

In 2008, Dr Stephen Thaler began experimentation on a new type of artificial neural network called DABUS – Device for the Autonomous Bootstrapping of Unified Sentience. By 2018, DABUS reportedly conceived two inventions. Dr Thaler filed patent applications for the inventions naming DABUS as the sole inventor, and the Artificial Inventor Project was born. Patent applications were filed in the major jurisdictions around the world including the UK, Europe, US and Australia causing the respective patent offices to form a view about who can be an inventor. One of the inventions described in the patent applications,



(including Australian application no. 2019363177), is directed to a food or beverage container with a wall profile having pits and bulges as shown in some of the specification drawings reproduced left. The unique profile enables multiple containers to be releasably coupled together without separate fasteners. The increased surface area is also believed to facilitate heat transfer and grip.

In February 2021, IP Australia issued its decision in Stephen L. Thaler [2021] APO 5 addressing the inventorship question. It determined that a patent can only be granted to a person. An AI machine is not a person, and it is not possible for a person to derive title to an invention devised by a machine from the machine as the law does not presently recognise the capacity of an artificial intelligence machine to assign property.

The Delegate also considered that since Dr Thaler asserted that he did not devise the invention, but merely acquired knowledge of the invention from the AI machine, Dr Thaler would not be the inventor.

Finally, the Delegate concluded that the law as it currently stands in Australia is inconsistent with an AI

machine being treated as an inventor. In this case, since it was not possible to identify a person who can be granted a patent, the application failed to meet filing formalities. As this deficiency was not capable of being corrected, the application lapsed.

Accordingly, it appears that a patent application naming an AI machine as an inventor cannot be validly filed in Australia, principally because there is currently no mechanism for a nominated person to derive title to the invention.

While specific legislation regarding inventorship varies in different jurisdictions, related overseas applications naming DABUS as the inventor have received similar outcomes.

In January 2020, the European Patent Office refused two patent applications on the grounds that the applications listed the AI machine DABUS as the inventor and not a 'natural person', and that designating a machine inventor with a name 'does not satisfy the requirements of the European Patent Convention.' Similarly, in July 2020, the UK High Court upheld a 2019 UK Intellectual Property Office decision stating that an inventor can only be a 'natural

person', and not a machine. The UK High Court and EPO each found that an AI machine could hold no rights, and could not transfer any rights to an applicant as successor in title.

In February 2020, the US Patent and Trademarks Office issued a decision denying a petition to vacate a Notice to File Missing Parts. The Notice indicated that the application did not 'identify each inventor by his or her legal name'. The USPTO rejected the notion that an inventor could be construed to cover machines, referring to dictionary definitions and case law indicating that an inventor must be a natural person, and that the inventor who executes an oath or declaration must be a 'person.'

Dr Thaler has appealed the decisions in the UK, EPO, and the Federal Court of Australia.

So, what do an AI machine like DABUS and a monkey have in common? In the [monkey selfie copyright dispute](#), it was found that the monkey was unable to hold copyright in a selfie picture because it was a non-human creator. Just like that monkey, DABUS is unable to be named as an inventor because it is not a natural person.

It seems that without legislative reform, it will be difficult to obtain patent protection for an invention devised solely by an AI machine. It has been argued that this is not necessarily a bad outcome, as allowing patent applications to be filed for inventions generated by AI machines may stifle rather than promote innovation. In any event, the question of inventorship may not be the only hurdle to protection for AI devised inventions. Of course, there is also the question of whether an invention devised by an AI machine during normal operation – e.g. executing an iterative process to determine optimum design features of a product would be obvious. Perhaps this will be the next question.



Helen McFadzean | Senior Associate
BE(Hons) Mechatronics MIP FIPTA
✉ helen.mcfadzean@pof.com.au

Supply of Essential Oils Infringes Method of Treatment Claims

A recent Federal Court decision¹ has shed light on the patentability of naturally-derived essential oils, as well as the applicability of s 117 of the Patents Act to method of treatment claims.

By Annabella Newton PhD

Background

Mr Hood, the applicant, filed the patent in suit, Australian Patent No 721156 entitled 'Essential oil and methods of use', after finding several native shrubs growing on his Tasmanian farm. One of these shrubs, *Kunzea ambigua* of the Myrtaceae family, yielded an oil that Mr Hood tested among friends and family and anecdotally appeared to have antimicrobial and anti-inflammatory properties. Mr Hood had *Kunzea ambigua* essential oil listed on the Australian Register of Therapeutic Goods (ARTG) for the treatment of various conditions including influenza, arthritis, and muscular aches and pains.

Mr Hood sued several parties for infringement of the patent, alleging that the respondents supplied *Kunzea ambigua* essential oil to commercial customers. In response, the validity of the patent claims was challenged. The proceedings were combined and heard together in 2018.

The Patent

In its broadest form, the claimed invention was an 'essential oil derived from shrubs of the genus *Kunzea*'. The claims include several other product claims together with various method of treatment claims that use such an oil. Claim 5, the broadest method claim, was directed to a method of treatment in which the essential oil is applied topically to relieve pain, minimize bruising, or to assist in healing.

Product Claims

Early in the proceedings, the applicant accepted that product claims 1 to 4 were invalid on the basis that they lack novelty. Because of this, the Court acknowledged it was unnecessary to rule on whether those claims are also invalid because they were not for a manner of manufacture. The Court did note, however, that it was highly arguable whether the raw oil extracted from *Kunzea ambigua* was sufficiently different from a product of nature to qualify as patentable subject matter.

Method Of Treatment Claims

The respondents contended that the method of treatment claims were invalid on the grounds that they claimed a 'known use of a known material' and also that they lacked an inventive step. There is a very long history of Australian Aboriginal people using native plants for medicinal purposes, including to treat infections, skin problems, colds and nasal conditions. Evidence showed that approximately 70% of essential oils come from around 12 plant families. One of the most well-known Australian essential oils in October 1996 (the priority date) was tea tree oil, which is derived from several plants of the Myrtaceae family and was known to be useful in the treatment of various ailments. However, no evidence presented showed that *Kunzea ambigua* had been previously used for therapeutic purposes. The Court found that as the evidence did not establish that an essential oil derived from *Kunzea ambigua* had been used for therapeutic purposes before the priority date, the method

of treatment claims were not a known use of a known material. By the priority date, it had been established which chemical compounds in tea tree oil were the active ingredients. In their inventive step arguments, the respondents tried to show that *Kunzea ambigua* essential oil contained many of the same active ingredients as tea tree oil, and it would therefore be obvious that *Kunzea ambigua* essential oil would be suitable for use in the treatment of a similar range of ailments as tea tree oil. However, the Court considered this line of reasoning to be based on ex post facto analysis that did not explain why the skilled person would have been drawn to consider *Kunzea ambigua* as a potential therapeutic agent in the first place, much less analyse an essential oil derived from *Kunzea ambigua* in the expectation that it would also provide a useful treatment. The Court therefore concluded that the method of treatment claims were inventive.

Infringement By Supply

Mr Hood contended that the respondents *Kunzea ambigua* essential oil was supplied to

commercial customers rather than directly to consumers. The infringement case was therefore based on s 117 of the Patents Act, which states that if the use of a product by a person would infringe a patent, then the supply of that product by one person to another is an infringement of the patent by the supplier, as long as it can be shown that the recipient would use the product in a way that would infringe the patent. This may be because the product only has one reasonable use, or because the product was supplied with instructions or inducement to use the product in a way that would infringe, such as an advertisement.

The Court found that some of the alleged infringers had supplied *Kunzea ambigua* essential oil to customers with advertisements and other marketing material which suggested the oil is useful in the treatment of conditions which fall within the scope of the method of treatment claims. The Court considered that this did provide an inducement to the customer to use the oil in a way that would infringe that patent.

Conclusions

The decision highlights that claims to products sourced directly from plant and animal species, such as essential oils, may not be sufficiently different from nature to qualify as patentable subject matter in Australia. Methods of treatment using these naturally-derived products may be considered patentable subject matter although these claims may still fail for lack of novelty or inventive step. This decision also demonstrates how infringement by supply under s 117 of the Patents Act can apply to method of treatment claims.



Dr Annabella Newton | Senior Associate
MChem(Hons) MCommrclLaw PhD AMRSC MRACI GAICD
annabella.newton@pof.com.au

¹Hood v Bush Pharmacy Pty Ltd [2020] FCA 1686 (23 November 2020)

Sydney Business Down N' Out in Burger Battle

The Sydney burger bar formerly known as Down N' Out looks set to remain nameless after it lost its recent Federal Court appeal with US burger chain In-N-Out (INO).



“

Hashtag's appeal contended that the primary judge's assessment of deceptive similarity when comparing the registered trade mark In-N-Out with Hashtag's Down N' Out mark was incorrect

In the case of *In-N-Out Burgers v Hashtag Burgers*¹, the Court upheld the primary judge's ruling that Hashtag's use of Down N' Out infringed trade mark registrations for In-N-Out, constituted passing off and misleading or deceptive conduct.

At first instance, Justice Katzmann found the directors of Hashtag, Benjamin Kagan and Andrew Saliba, jointly and severally liable for their conduct before Hashtag was incorporated – but not liable as joint tortfeasors with the company after its incorporation. INO successfully cross-appealed this decision, with the Full Court finding them to be joint tortfeasors for trade mark infringement and passing off.

The trial decision (discussed here) prompted Hashtag to rename its Sydney restaurant the 'Nameless Bar', with the business appearing to capitalise on the publicity the court case generated.

Hashtag's appeal contended that the primary judge's assessment of deceptive similarity when comparing the registered trade mark In-N-Out with Hashtag's Down N' Out mark was incorrect, on the basis that:

- the presence of the word BURGER within the INO trade marks had not been given any weight;
- there was a failure to assess the effect of the arrows within the INO mark;
- undue emphasis was placed on the 'N-Out' aspect of the INO trade marks;

- insufficient weight was given to the difference in the meaning and ideas the marks conveyed;
- significant or dispositive weight was placed on aural similarity and setting aside the material visual differences between the marks;
- framing the central question as one focussed on imperfect recollection; and
- apparent weight was placed on evidence of confusion from social media posts and not weight on the absence of evidence of actual confusion.

On each point, the Full Court rejected Hashtag's contention that the approach was in error.

Hashtag also challenged Katzmann J's finding that there had been a deliberate appropriation of the US restaurant's trade marks, branding and reputation, and that Kagan and Saliba had acted dishonestly in relation to an email denial sent to In-N-Out regarding use of INO's trade marks 'Animal Style' and 'Protein Style'.

Whilst the Full Court found that the evidence did not support a finding

that the pair had acted dishonestly, it found the evidence supported the initial finding that it was 'no coincidence' that Kagan and Saliba had chosen the name Down N' Out, and that it had been selected with full knowledge of the INO trade marks. The Full Court identified a number of matters that supported this finding and which the primary judge referred to including:

- > the concession that INO inspired the name;
- > the acceptance that the 'N-out' component of the mark was a direct lift from IN-N-Out;
- > Kagan and Saliba had knowledge of the 'legendary' INO and Kagan had attended a pop (up?) event run by INO in Australia; and
- > a request to make the Down N' Out logo like the INO logo, with the subsequent choice of font, colour and a yellow arrow reflecting INO's branding.

Finally, in a blow for Kagan and Saliba, the Full Court found in favour of INO on its cross appeal that the pair were joint tortfeasors with Hashtag. It found that each director's conduct went beyond the proper role of director so as to descend into the realm of 'close personal involvement'. This was on the basis that:

- the pair were the sole directors of Hashtag;
- only they made decisions as to Hashtag's management;
- they alone received the profits derived from it;
- there was no difference between the individual who operated the business prior to incorporation and the way in which they operated it through the corporate vehicle after it was formed; and
- the pair were knowingly involved in the company's wrong doing.

Business owners and brand creators must walk the fine line between inspiration and appropriation when developing trade marks and branding that are based on those of another business. Failure to understand and appreciate the risks, may lead to a potentially embarrassing and costly rebrand.

This case also serves as a reminder to company directors that courts will look beyond the corporate veil in cases of trade mark infringement, passing off and misleading and deceptive conduct.



Anita Brown | Principal

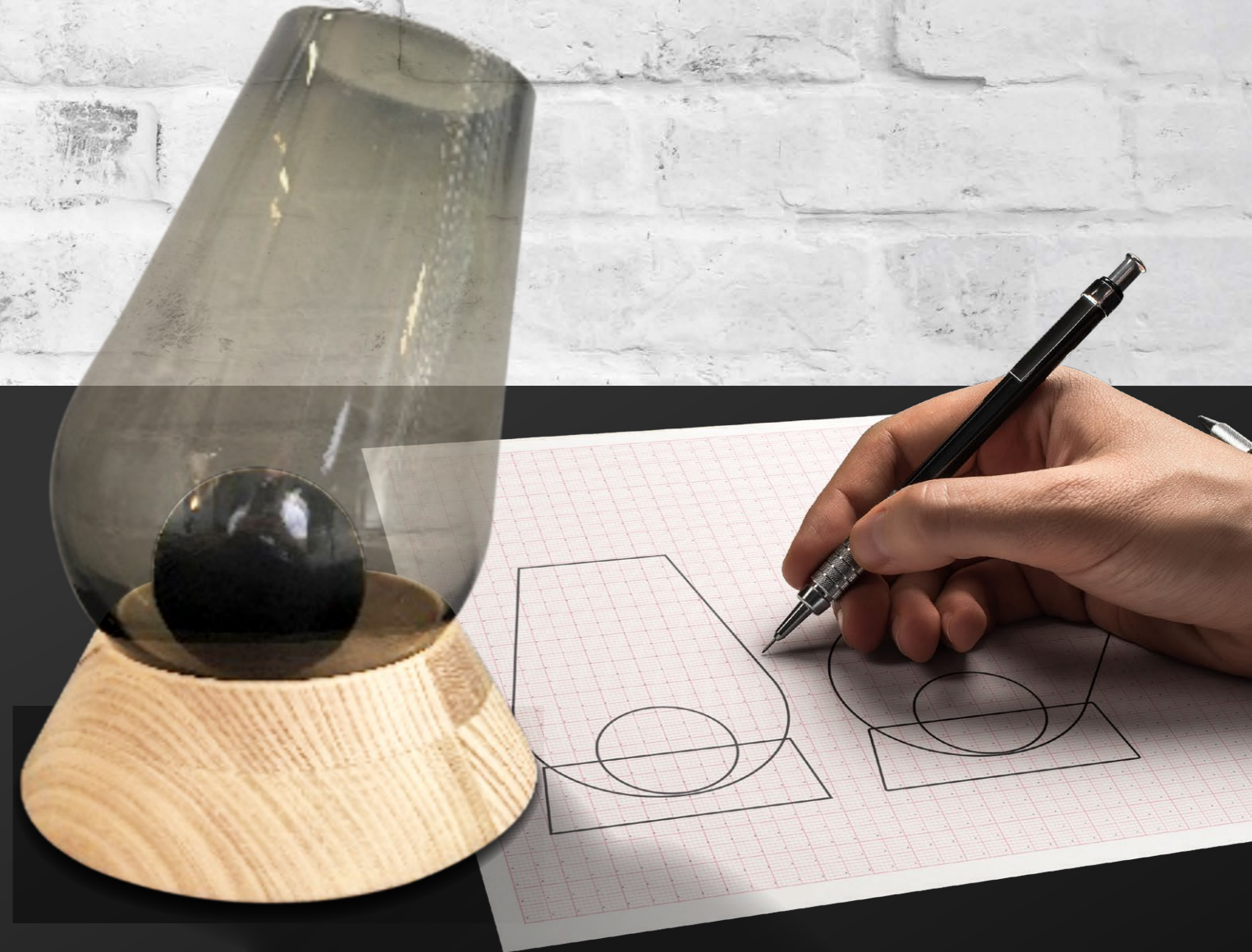
BA LLB MIPLaw GAICD

anita.brown@pof.com.au

¹*In-N-Out Burgers, Inc v Hashtag Burgers Pty Ltd* [2020] FCA 193

Lack of Entitlement breaks glass vase design

The validity of an Australian design registration requires that the registered owner is properly entitled to the design rights.

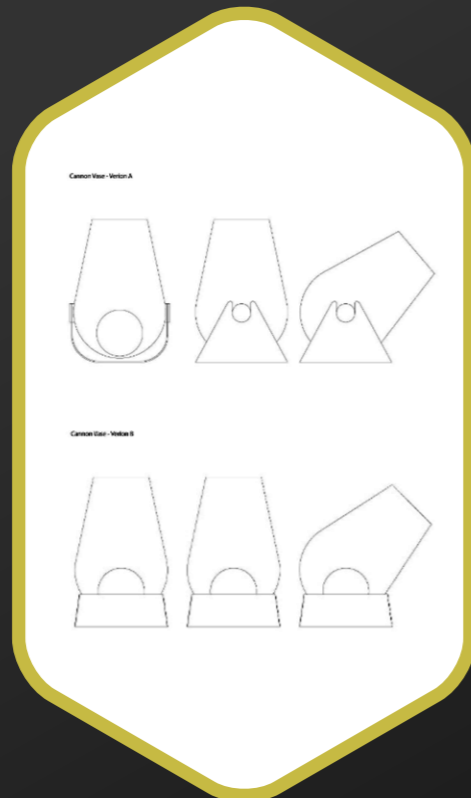


The Australian Designs Office decision in *Manuel Canestrini v Ilan El*¹ demonstrates that a failure to satisfy this requirement can result in revocation of a design registration. The decision also highlights that a request for revocation will be successful only if the lack of entitlement challenge is supported by sufficient evidence.

Background

The decision concerned Australian Design Registrations 201911962 and 201911963 (the '962 and '963 Registrations). The Registrations were applied for by Ilan El (the 'Owner') in April 2019 and were subsequently registered in early July 2019 with the Owner recorded as the sole designer. A request for revocation of the Registrations was made by Manuel Canestrini (the 'Requestor') in late July 2019.

The Owner and the Requestor had been business partners in a



business known as 'Formacy' from March 2017 until February 2018 when the Owner resigned from the partnership. Part of the Requestor's evidence was the Owner's resignation email which noted "As for the designs that we've developed and the products produced to date - These are all yours."

The Owner did not contest or participate in the proceedings although the Delegate noted that the onus remained with the Requestor to establish, on the balance of probabilities, that the Owner was either not entitled or not solely entitled to the design.

The Decision

The '963 Registration related to a 'Cannon Vase' design consisting of a cannonball object within a cannon-shaped vase seated in a base. The Requestor's evidence demonstrated that he had conceived and finalised this design in late

2017 in his capacity as product designer in the Formacy business. The evidence included dated email exchanges demonstrating that the Requestor had conceived of the visual appearance and included alternative and final design versions circulated by the Requestor to other partners of the business.

There was no evidence the Requestor had any contractual relationship with the other partners of the business. It was also noted that conception of the '963 design occurred during the period of the partnership and so the Owner's resignation email disclaiming designs made during the partnership was relevant.

The Delegate was satisfied based on the evidence that the Requestor was the only person entitled to be the registered owner of the '963 design and the '963 Registration was therefore revoked. The '962 Registration related to an alternative version of the 'Cannon

Vase' having a visually different base and a visually different connection between the vase and base.

In contrast with the evidence submitted in respect of the '963 design, the Requestor's evidence with respect to the '962 design was undated and no supporting material was provided to indicate when the design had been conceived. The Owner's resignation email was therefore found not to disentitle the Owner from the '962 design in the absence of evidence that the design was conceived during the partnership period.

Crucially, the Requestor's evidence of design conception included images of several different vase designs but none having the same visual features as the '962 design. The Delegate conceded that the vases in the Requestor's evidence resembled the '962 design but noted mere visual similarity is, in isolation, insufficient to establish entitlement. It was also noted that

a new design may combine visual features from existing designs and so even if the Owner had taken and combined visual features from the Requestor's earlier designs, the Owner may nonetheless be entitled to the '962 design.

On the basis of the evidence provided, the Delegate was not satisfied that the Requestor was a designer of the '962 design and the request to revoke the '962 Registration was declined.



Duncan Joiner | Senior Associate
BAeroEng (Hons) LLB (Hons), LLM (IP)
✉ duncan.joiner@pof.com.au

¹ Manuel Canestrini v Ilan El [2020] ADO 2 (25 June 2020)

All wrapped up

The enforceability of clickwrap, sign-in wrap and browse wrap agreements

There is a running joke being shared online among IT professionals that the leading force in digital transformation was the COVID-19 pandemic, not the CEO or CTO as one might expect. While humorous, there is an element of truth to this. As the world went into various forms of lockdown, many businesses were forced to go online with their offering of goods and services, in some instances erecting websites and payment platforms overnight.

So, as the world engages in this digital transformation and e-commerce becomes the predominant way of buying goods and services, how do you ensure that your online contracts or website terms of service are valid and enforceable? Thankfully, Justice Beach of the Federal Court in *Dialogue Consulting v Instagram*¹ has recently considered the question of the formation of contract when using 'browsewrap', 'clickwrap' and 'sign-in wrap' agreements.

In *Dialogue*, Instagram was looking to obtain a stay of the proceedings on the basis of that there was an arbitration agreement between the parties which arose from *Dialogue*'s acceptance of the online Instagram terms and conditions. *Dialogue* opposed the application and denied there was a valid arbitration agreement. Taking guidance from US Courts, Beach J observed that they classified agreements into one of three types.

Clickwrap

Those in which users of the site are required to scroll through

“
...how do you ensure that your online contracts or website terms of service are valid and enforceable?”

all the terms and conditions of use before they are able to click the 'I agree' button.

Browsewrap

The website doesn't require any agreement or affirmative action to be taken in respect of the terms and conditions. The use of the website, continuing to engage with or use the services provided is taken as the user agreeing to be bound by the terms and conditions, usually published somewhere else on the website. A common example of browsewrap agreements is in the 'terms and conditions' found in the footer of many websites.

Sign-in Wrap

The user of the site is notified that there are terms and conditions associated with their use of the site, and that by clicking the 'sign-in' button they are agreeing to be bound by

those terms and conditions. Taking Facebook as an example, when you provide your details to set up an account there is a notice above the 'Sign Up' button that says 'By clicking Sign Up, you agree to our Terms, Data Policy and Cookie Policy.' Terms, Data Policy and Cookie Policy are hyperlinks which take you to those relevant terms and conditions.

It is worth noting that the Courts' position on what constitutes which type of 'wrap' agreement can differ to the generally accepted understanding of what is meant by clickwrap from an IT perspective, and emphasises the importance of having lawyers also review any proposed website layout and agreements.

Justice Beach in *Dialogue* confirmed that whether online agreements or terms and conditions are enforceable is a question of reasonable notice and manifestation of assent. He noted that the US Courts have a large body of case law on the subject, and that the Australian common law contains and applies similar principles.

Reasonable Notice

Reasonable notice is an objective test to determine whether there was sufficient notice given so that a reasonably prudent person would understand that an offer to enter into a contract was being made. Did the person entering into the contract have actual or constructive notice of the provisions of the contract?

In considering whether reasonable notice has been provided, the courts will look at the layout and user interface of the website. Is

the screen cluttered? Is the entire screen including the terms and conditions visible at once? Are the links to the terms and conditions in different colours or contrasting with the background? Are the terms and conditions spatially coupled with the 'I agree' or 'Sign Up' button? The layout of your website is critical not just from a user experience perspective.

The use of a hyperlink for the terms and conditions won't preclude a court from determining that there is reasonable notice, provided that the links through to the terms and conditions are clear and conspicuous such that a reasonably prudent website user would have been put on constructive notice of them.

The fact that one does not read the terms and conditions does not mean that the user has not accepted them provided that the user is given reasonable notice.

Manifestation of Assent

Like the question of reasonable notice, the courts will apply an objective standard to whether there was a manifestation of assent by the user to the terms and conditions. If there has been reasonable notice to the user that a particular act, such as clicking a button, signifies that there has been acceptance of the terms and conditions, then if the user clicks the button, they are taken to have accepted all the terms and conditions even if they do not know what they are.

It was noted in *Dialogue* that whilst internet commerce has created new and different situations for the courts to consider, it has not changed the requirement that a touchstone of a contract is the manifestation of assent either through writing or conduct.

In assessing internet contracts the Federal Court noted that the US courts place online contracting on 'a spectrum of validity, with clickwrap and sign-in wrap agreements on

one end of the validity spectrum and browse wrap agreements on the other.' In *Dialogue*, Justice Beach found that whilst there was a valid arbitration agreement formed using Instagram's 'sign-in wrap' agreement, Instagram had waived its rights to rely on such arbitration clause. Instagram's stay application was therefore dismissed. Should you require assistance in determining at which end of the spectrum your internet contracting is at, please contact us.



Melissa Wingard | Special Counsel
BA(Eng&Hist) LLB(Hons) GradDipLegPrac
GradDipAppFin&Inv M CyberSecOps
✉ melissa.wingard@pof.com.au

¹ *Dialogue Consulting Pty Ltd v Instagram, Inc* [2020] FCA 1846

Awards and recognition in 2020 & 2021

Our firm and attorneys have recently been recognised by a number of leading publications and directories.

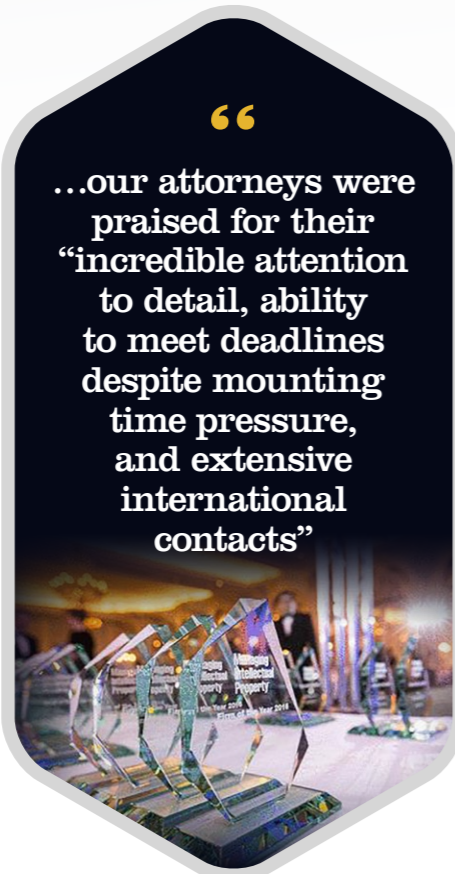
We are proud of our top-tier rankings, and of the individual achievements of our attorneys, outlined below.

We'd also like to extend our thanks to our clients who have helped make these achievements possible through the feedback they have contributed as part of the judging and research process.

MIP IP Stars Awards 2020 – Rising Stars

POF attorneys Michelle Blythe, Helen McFadzean, and Dr Annabella Newton have been named among 2020's Rising Stars in the MIP IP Stars awards. This is a fantastic achievement for Michelle, Helen and Bella, and we'd like to congratulate them on these awards.

Each year MIP research analysts receive and analyse a lot of information on law firms and practitioners that provide IP services. Traditionally, the individual listings in the IP Stars awards feature senior IP practitioners that provide IP services. However, this special listing focuses on some of the best up-and-coming IP practitioners below partner level who contribute to the success of their firms and clients. We are very proud to have three IP practitioners recognised as rising stars.



WTR 1000 2021 – Tier 1 ranking

POF has also been recognised as a leading firm for Prosecution and Strategy, and Enforcement and Litigation in the World Trademark Review (WTR) 1000 for 2020 – and was described as “very client-oriented and the services provided are always adapted to

each business' unique needs.”

Additionally, a number of our attorneys received individual praise for their work in prosecution, enforcement and litigation. POF Principals Michael O'Donnell, Anita Brown and Russell Waters, as well as Senior Associate Marine Guillou, were all highlighted for going beyond what is expected to satisfy client needs, as well as for their attention to detail and timeliness in their work. Greg Chambers,

Chris Schlicht and David Longmuir of Phillips Ormonde Fitzpatrick Lawyers were also individually noted for their experience and diligence in their enforcement and litigation in the trade marks space.

The WTR is a globally renowned guide – Firms qualify for a listing based on their depth of expertise, market presence and the level of work on which they are typically instructed.

IAM Patent 1000 2021 – Tier 1 ranking

We are delighted that POF has once again been recognised as a tier 1 patent prosecution firm in this year's IAM Patent 1000, touted as “one of, if not the best patent attorney firm in Australia when it comes to maintaining decades-long, happy client relationships”.

Alexis Keating of Phillips Ormonde Fitzpatrick Lawyers won the IPTA Trade Mark Prize for 2020

Following the extensive research process carried out by IAM Patent, our attorneys were praised for their incredible attention to detail, ability to meet deadlines despite mounting time pressure, and extensive international contacts.

In addition to our tier 1 firm ranking, we are also pleased that a number of POF attorneys have been individually endorsed by IAM Patent for their work. POF Managing Principal Ross McFarlane, Principals Ray Evans, Matthew Ford and Edwin Patterson, and Special Counsels Saskia Jahn and Mark Williams, were all highlighted for their prosecution work. Additionally, Deputy Managing Principal Chris Schlicht, and Principal David Longmuir from Phillips Ormonde Fitzpatrick Lawyers were highlighted for their great work in Patent litigation.

POFL Associate Alexis Keating takes home the IPTA Trade Mark Prize 2020

Alexis Keating of Phillips Ormonde Fitzpatrick Lawyers won the IPTA Trade Mark Prize for 2020. Now in its second year, the prize is awarded to a candidate who has demonstrated excellence in the academic subjects leading to qualification as a trade marks attorney, and who has shown the potential to make substantial contributions to the profession.

Alexis practises across the full scope of IP rights, with a particular focus on trade marks and brand protection. Alexis has acted in contentious matters before the Trade Marks Office, Designs Office and Administrative Appeals Tribunal. She has also acted in matters before the Federal Court of Australia and the Supreme Court of Victoria, both at trial and appellate levels.

Deputy Managing Principal Chris Schlicht had this to say:

“Alexis has been with the firm now for three years and makes a terrific contribution to the services that we provide to our clients. She is a valued member of the team and we are very pleased with this recognition of her skill and efforts.”

We're very proud to see Alexis' efforts and contributions recognised through this award.





phillips ormonde fitzpatrick
intellectual property

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Contact us info@pof.com.au

Melbourne

Level 16
333 Collins St
Melbourne VIC 3000
+61 3 9614 1944

Sydney

Suite 15.02, Level 15
4-6 Blight St
Sydney NSW 2000
+61 2 9285 2900

Adelaide

Level 3
74 Pirie Street
Adelaide SA 5000
+61 8 8232 5199

Hobart

PO Box 79
Woodbridge
TAS 7162
+61 3 9614 1944