



Squadra Avocats

PRESS REVIEW

FIRST QUARTER 2023

INTELLECTUAL PROPERTY, CONTRACTS, DISTRIBUTION

January - March 2023

I. INTELLECTUAL PROPERTY

Copyright. The assignment clause "*of all intellectual property rights, excluding those of adaptation, relating to the creations made under this agreement, as and when they are made*" is valid as, in accordance with article L.131-1 of the French Intellectual Property Code, it limits the clause's scope to distinctive, original works, i.e., those made under the agreement, as and when these works are created. Fixed remuneration including the remuneration of the work and compensation for the transfer of the copyrights is also lawful (CA Paris, Pôle 5, Ch. 1, 25 January 2023, [n°19/15256](#)).

Trademark. The distinctiveness criteria of the mark are assessed with regards to all the products referred to in the application for registration and in consideration of the relevant public. Thus, as "*alcoholic beverages, with the exception of beer; cognac; brandy*" are everyday products, the relevant public is the average consumer (not only cognac connoisseurs) who does not have any particular knowledge of the criteria for labelling cognac according to the age of its constituent brandies (CA Bordeaux, Civ. 1, 28 March 2023, [n°22/02287](#)).

Copyright. Any mention that photographs are "*free of rights*" on a photographer's quote and/or the invoice means that the photographer foregoes remuneration for the use of the photographs. However, the use of these photographs accompanied by any unauthorized modification of the work, without second mention of the photographer's name constitutes an infringement on their moral rights (CA Rennes, Ch. 1, 17 January 2023 [n°20/05121](#)).

Trademark. An application for registration of a European Union trademark for the word sign "*THE FUTURE IS PLANT-BASED*" designating goods and food supplements as well as beverages in classes 5, 30 and 32 has been rejected for lack of distinctive character, as the sign is seen to indicate that the designated goods have been made from plants and are therefore the products of the future (General Court of the EU, 15 March 2023, [T-133/22](#)).

II. CONTRACTS – DISTRIBUTION – CONSUMER AFFAIRS

Comparative advertising. A comparative advertisement is only misleading and therefore unlawful if it is likely to impact the economic behaviour of the persons for whom it is intended (*Cass. Com.*, 22 March 2023, [n°21-22.925](#)).

Website. Contracts for the provision of services relating to the creation, installation and operation of an internet site are nullified if the client is not made aware of the site's collection and processing of their personal data (e.g., the use of cookies before/without informing and obtaining the consent of users) (*CA Grenoble, Ch. Com.*, 12 January 2023, [n°21/03701](#)).

Commercial agent. In contracts entitled "exclusive agency agreements" by the parties and designated as commercial agency contracts, the parties' choice of French law as the applicable law applies, even if the commercial agent is established and operates outside the European Union (*Cass. com.*, 11 January 2023, [n°21-18.683, FS-B](#)).

Marketplace. The marketplace sale of products subject to selective distribution networks run by private individuals does not itself constitute a manifestly unlawful act that is likely to justify the intervention of an urgent applications judge (*Cass. com.*, 11 January 2023, [n°21-21.847, F-B](#)).

Influencer marketing. As part of its investigation into the commercial practices of influencers, the DGCCRF has initiated several call-to-order and sanction procedures after finding that 60% of the influencers and agencies investigated since 2021 displayed inconsistencies in the application of advertising regulations and consumer rights (*Press release, DGCCRF*, 23 January 2023, [n°525](#)).

Marketplace. Marketplaces are permitted to deactivate sellers' accounts without notice if they do not respect the obligations (regarding delivery defects and the non-conformity of the products sold) set out in the general terms of use (*CA Paris, Pôle 5, Ch. 11*, 10 February 2023 [n°21/07673](#)).

Off-premises contract. The trader has the burden of proof to show that they have fulfilled their legal obligations to provide information when concluding an off-premises contract. While in the ordinary law based on the former article 1315 of the French Civil Code (now article 1353, after ordinance n°2016-131 of 10 February 2016) the burden of proof falls on the person who invokes their co-contractor's non-performance of their obligations, the French Consumer Code expressly provides for the trader's burden of proof under article L.221-7. It is therefore up to the trader to prove the legality of the contract with regards to the disclaimers that must be included on pain of nullity (*Cass., Civ. 1*, 1 February 2023, [n°20-22.176, F-B](#)).

III. LIABILITY – MISCELLANEOUS

Content publisher. Airbnb is a content publisher by virtue of the active role it takes, particularly with regards to the various rules and constraints it imposes on hosts, which are subject to penalties. As such, it is responsible for ensuring the lawfulness of the advertisements published on its site, as it has the means to carry out such checks (*CA Paris, Pôle 4, Ch. 4*, 3 January 2023, [n°20/08067](#)).

Parasitism. Copying a couture line that is recognised to be the fruit of particular hard work and skill, advertised through by a campaign reliant on large investments, can be sanctioned as parasitism (*CA Paris, Pôle 5, Ch. 1*, 1 February 2022, [n°20/03318](#)).

Digital. Following [law n° 2020-1266 of 19 October 2020 aimed at regulating the commercial exploitation of pictures of children under sixteen years old on online platforms](#), two bills aiming to establish an age of digital adulthood and to guarantee that children's image rights are respected were adopted by the National Assembly on 2 and 6 March. These bills introduce **(i)** a minimum age of 15 for the use of social media, unless expressly authorised by a holder of parental authority, **(ii)** a fixed deadline of 48 hours within which online platform operators are required, under pain of sanction, to respond to judicial requests made in the context of preliminary investigations or investigations in flagrante delicto, **(iii)** the notion of the child's "private life" in the civil code's definition of parental authority in order to prohibit the overexposure of children on social for commercial purposes, **(iv)** provisions for judges to prohibit one of the two parents "from publishing or disseminating any content without the authorisation of the other" (Texts adopted provisionally with amendments: Adopted Text [#82](#), 2 March 2023 / Adopted Text, [#84](#), 6 March 2023).



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