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World Intellectual Property Day 2008

To those who did not know, Saturday 26th April 2008 is World Intellectual Property Day. The focus this year will be on celebrating innovation and promoting respect for intellectual property rights.

World Intellectual Property Day is an important international event as it encourages everyone (especially businesses) to think about the role played by intellectual property rights in everyday (commercial) life and about its importance in stimulating and safeguarding innovation and creativity. Every business possesses intellectual property rights whether they are aware of it, or not. The rights vary from a company's name to the logo that appears on company products and documents. These (intangible) assets are important as they can not only be financially exploited but also gives a company a competitive edge over its rivals.

It is often through lack of awareness that these valuable assets are not identified and protected. It is therefore extremely important that businesses ensure that the assets are not only protected but also that they are the owner of the rights. Failure to ensure this may result in serious (and financial) repercussions. It is never too late for businesses to review and protect their intellectual property rights – the time to talk to your legal or intellectual property advisors is now!

Another successful seizure!

Counterfeiters beware as the success of the Irish police in seizing counterfeit products continues.

Earlier this month, in an operation involving FACT (The Federation Against Copyright Theft), the police seized 20,000 counterfeit movies (valued at €500,000) along with DVD burning equipment (valued at €500,000) at a house in Dublin. It is believed that the counterfeit goods were destined for sale at local markets.

In an operation believed to have commenced last year, the police have been targeting certain Sunday markets in Dublin as they have been frequently selling counterfeit products such as cigarettes and DVDs. While the fight against counterfeit products is a never-ending battle, there are many preventative measures that brand owners can take to protect their brands. It is never too late to act – talk to your legal advisors today.

Google Trade Mark Policy change

Brand owners should take note of the change in Google's AdWords trade mark complaints procedure. From 5th May 2008, Google will no longer monitor or restrict keywords in the United Kingdom and Ireland. This brings their trade mark complaints procedure in line with the approach taken in the United States and Canada.

Until now, brand owners enjoy a monopoly in the UK and Ireland as they can ask Google not to allow another party to purchase their trade marks as keywords. This policy will continue in countries other than the United States, Canada, the United Kingdom and Ireland. After 5th May 2008, third parties can buy the right to use a brand owner's trade mark from Google to trigger its own advertisement. It should be noted however that they will not be allowed to use the brand owner's trade mark in the advertisement itself. All keywords that were disabled as a result of a trade mark complaint or investigation will no longer be restricted in the United Kingdom and Ireland from 5th May 2008. Google will however continue to perform a limited investigation of complaints regarding the use of trade marks in advertisements. The change in policy means that brand owners will have to outbid others if they want their advertisements to appear alongside the search results when their trade marks are typed in to Google's search engine by consumers.

It should be noted that there is legal uncertainty in Ireland as to whether use of a registered trade mark as a keyword amounts to trade mark infringement. While the recent English judgment which held that it was not infringement would be of persuasive value, it is not binding in Ireland.

Therefore, in the absence of any legal guidance on this issue, brand owners should consider with their legal advisors how the change in policy will impact their businesses as well as their brands.



Search Engines – “There is no basis for retaining personal data beyond six months”

That is the view of the Article 29 Data Protection Working Party (“Working Party”) as expressed in its Opinion on data protection issues relating to search engines (“the Report”) issued earlier this month. The Report focused on search engine providers who follow the business model based on advertising. It included all the major search engines, in addition to specialised search engines such as search engines which focus on personal profiling as well as meta search engines that present the results of other existing search engines.

The Working Party is an advisory body made up of representatives from the national data protection authorities, the European Data Protection Supervisor and the European Commission. Its role is to provide an expert opinion and to make recommendations to the European Commission in the area of personal data.

In the Report, the Working Party acknowledges the crucial role played by search engines in the development of the information society. However, it stresses that personal data must be processed for legitimate purposes. It recommends that search engine providers delete or anonymise in an irreversible and efficient way personal data once it is no longer needed and also calls for the development of appropriate anonymisation schemes.

On the issue of retention, the Working Party can not understand the basis for search engines retaining personal data beyond six months. If search engine providers retain personal data for longer than six months, the Working Party are of the view that they must comprehensively demonstrate that it is strictly necessary for the service.

Other recommendations of the Working Party include:-

- Where cookies are used, their lifetime should be no longer than necessary.
- Search engines should give users clear and intelligible information about their identity, location and the data they collect as well as the purpose for its collection.
- If search engine providers provide means to retain individual search history, they should ensure that they obtain the user’s consent.
- Cross-correlation of data originating from different services belonging to search engine providers can only be performed with the user’s consent for the specific service.

As the recommendations of the Working Party are usually adopted by the European Commission, search engines should review their operations in light of the Report to ensure that they are data protection compliant. There is no time to lose – search engine providers should immediately seek advice from their legal advisors.

In the Press

Maureen Daly, Partner and Head of the Technology & Intellectual Property Unit was a legal contributor to an article in the reputable business newspaper, The Sunday Business Post on 13th April 2008. In the article entitled “*Online law is still a grey area*”, Maureen commented on the legal position in Ireland in respect of the publication of defamatory/libellous statements online and the defences available to website owners. If you have any queries on issues raised in the article, please contact Maureen Daly (m.daly@beauchamps.ie) or any member of the Technology & Intellectual Property Unit.

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Contact:

Maureen Daly – Partner and Head of Technology & Intellectual Property (m.daly@beauchamps.ie)
Beauchamps Solicitors

Riverside Two, Sir John Rogerson’s Quay, Dublin 2

Tel +353 (1) 418 0600 Fax +353 (1) 418 0699

email securemail@beauchamps.ie web www.beauchamps.ie