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Summer news 2023

Best Firm of the Year 2023, Spain Trademark Prosecution - MIP Awards



We are thrilled to announce CURELL SUÑOL has won the award Best Firm of the Year, Spain, in the category Firm of the Year - Trademark Prosecution (Patent & Trademark Attorney Firms) at the prestigious Managing Intellectual Property Awards 2023. On behalf of our entire team, María Ceballos, Isabela Robledo McClymont, Emil Edissonov and Mercè Hernández had the honour to receive the award at a splendid ceremony in London yesterday, 21 June 2023.

This prize recognises our team's wonderful effort and work, particularly our trademark department. Congratulations to all and everyone at CURELL SUÑOL! We also wish to express our gratitude to our clients and colleagues for their trust.

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Influencers, who are they, and why do they matter? A new form of marketing your trademark

Different figures have appeared in the last few years, known as streamers, content creators, Youtubers, Tiktokers, etc. broadly referred to as influencers but, who are these influencers, and why do they matter so much?



Influencers engage audiences that follow them through all over the social media channels. They can become powerful brand advocates by raising awareness for brands and make a product or service relevant to their followers. In a world where *likes* and *follows* quickly spread on social media, *influencers* are those whose opinions are highly valued.

Influencers are inevitably linked to social media channels. This makes us raise the following questions: Which social media channels are most important when trying to sell a product? Does it depend on what you are trying to sell? Or does it depend on the different consumers or target? It cannot be denied that even if all social media channels share certain similarities, they also work in a different way. As a mere comparison, *Instagram* works with very short videos and providing brief information of the brands whereas *Youtube* works in a totally different manner, as it offers longer videos and gives far more elaborate information concerning the marks and the goods and services. However, their aim is certainly the same: to sell as many products or offer as many services as possible of a certain brand.

The figure of the influencer has had a great impact on several fields, making nowadays *Influencer marketing* a mainstream form of online marketing.

Influencer marketing is a hybrid of old and new marketing tools. It takes the idea of celebrity support and integrates it into a modern content marketing campaign. A lot of campaigns are now collaborations between brands and influencers, putting aside celebrities.

And why are influencers chosen over celebrities? The reasons are simple: influencers act as tastemakers and create desire for products and, needless to say, their cachet is much lower.

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Goldsmith vs Andy Warhol Foundation: drawing the line between copyright and fair use

The US Supreme Court ruled on 18 May that the Andy Warhol Foundation (AWF) infringed the copyright of the celebrity photographer Lynn Goldsmith by licensing a silkscreen print created by Andy Warhol with Prince's face based on a photo of which she was the author



A bit of background:

In 1981, Lynn Goldsmith took a picture of the singer and performer Prince for the New York magazine *Newsweek*. Three years later, *Vanity Fair* magazine commissioned Andy Warhol to create silkscreen prints of the singer's face based on Goldsmith's photo; she accepted and was compensated with \$400 for the use of her picture as *reference material* for the purple silkscreen.

In 2016, on the occasion of the singer's death, *Condé Nast* magazine published a new image of Warhol's silkscreen print, in orange.

This time, only the AWF was asked for permission and received a compensation of more than \$10,000.

As a result of this second publication, the photographer discovered that Warhol had created other works from her photo, apart from the one initially published by *Vanity Fair*, and sued AWF for having licensed the publication of this work without having sought her permission, mentioned her authorship of the photo that constituted the *reference material*, or compensated her financially.

After a seven-year court battle and two previous contradictory decisions, the Supreme Court of the United States of America has ruled in Goldsmith's favour, declaring that her copyright in the photo was infringed.

Fair Use?

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Avanti! on the protection of GIs in the EU



In early May, the EU Parliament and Council concluded a political agreement to protect geographical indications (GIs) for craft and industrial products, such as ceramics from La Bisbal or from Talavera, embroidery from Lagartera, inlaid pottery from Granada, damascene from Toledo, cuckoo clocks, etc.

Currently, although some EU countries do protect these types of GIs, there is no EU-wide protection, as there is for agricultural products and foodstuffs, wines and spirits. GIs for the latter products are called "agri GIs" because of their agricultural component, while those for craft and industrial products are known as "non-agri GIs".

The agreement refers to the proposed [Regulation](#) which was presented in April 2022, which in turn was the result of consultations with both states and EU public opinion on this issue (we already commented this in our former article [Geographical Indications \(GIs\): the turn of the screw?](#)) and experts in this sector.

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Inventions with (in)credible effects



Plausibility, sufficiency, and inventive step in patents

In the field of intellectual property, the term “plausibility” is commonly used to refer to the “trustworthiness” or “credibility” of an invention claimed in a patent application.

While its origin is still in discussion among experts, the concept of “plausibility” appears in the Case Law of the European Patent Office (EPO) since years, often related to patents in the pharma and biotechnology fields.

Additionally, this concept is used in connection with two patentability requirements clearly defined in the European Patent Convention (EPC), i.e. sufficiency of disclosure and inventive step.

The “sufficiency” requirement, according to Article 83 EPC, implies that an invention has to be sufficiently described to allow the skilled person (legal figure often referred to in patent law) to carry it out based on what the patent application describes and the general common knowledge at the time of filing the application (again another concept in patent law referring to all knowledge available in textbooks and manuals in a particular technical field). As a minimum requirement, the application should contain at least one sufficiently detailed example of how the invention can be implemented to consider it sufficiently disclosed. However, the number of examples required depends on the case, particularly on the scope of protection requested by the claims.

The “inventive step” requirement, according to Article 56 EPC, implies that to be considered patentable, an invention should not be obvious for the skilled person in view of the state of the art.

It is worth highlighting that, despite the weight that the concept has acquired in the case law, “plausibility” is not mentioned in the legal text body of the European patent system, but only in the Guidelines of examination and with regards to the burden of proof in certain specific situations.

To believe or not to believe?

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Brand activism, *greenwashing* and *pinkwashing*



Consumers' actions and decisions today are certainly determined by many psychological, sociological, and cultural elements. This is the reason why companies are more and more concerned about these issues and are trying to take actions by actively being involved in social movements.

Well-developed brand activism, because it agrees with the main values or vision of the brand, can increase your recognition and market share among your audience and supporting the causes that matter to your customers can inspire brand loyalty and engagement.

But consumers are nowadays very demanding and look deep into the policies of companies which arises the question: is it always a true concern or is it just a marketing strategy? As a result, concepts such as *greenwashing* or *pinkwashing* have arisen.

Greenwashing is the process of providing a false impression that your products are environmentally sound. *Pinkwashing* may refer to either the promotion of consumer goods and services which support for breast cancer-related charities or the promotion of the gay-friendliness of a company.

How can we identify, as consumers, true concern from mere marketing?

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CURELL SUÑOL SLP

Barcelona - Madrid - Alicante

mail@curell.com

Tel. +34 934875166

www.curell.com



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