

If you thought it was all over



He's back!

In a month which has seen football hitting the headlines with the failure of the Scotland and England national teams to qualify for next summer's European Championships as well as the draw for the World Cup 2010 - we look at some aspects of sports rights and intellectual property.

Trade Marks - World Cup Willie

Readers old enough to remember the heady summer of 1966 and the World Cup finals (hosted in England by the FA) may also vaguely recall the official mascot for the tournament - a cartoon type lion dressed in the Union flag with white shorts under the name "World Cup Willie" (WCW).

Long thought (at least North of the Border) to have died of natural causes, WCW is, surprisingly, alive and well and back in the news through an application by Jules Rimet Cup Limited (JRCL) to trade mark a lookalike character (top right) and the name - which has ended up in the (English) High Court following opposition by the FA.

A number of different IP issues were argued including copyright ownership, was there "copying" and questions of bad faith over the trade mark application itself. But of most interest, and perhaps surprise, was the Court's willingness to accept, on the evidence, that, despite a lapse of 40 years and minimal use of WCW during that time, there was still sufficient residual goodwill in the WCW mark and character for the FA to succeed in a passing-off action i.e. to prevent the later registration and use of the "lookalike" mark by JRCL. So, although the FA have had WCW on the bench for the past 40 years - we apparently have not seen the last of him.

Any message here for the ordinary business name user? Well, we can surmise that if you have significant profile, use and business reputation/goodwill in a particular trading name or style (but which is not actually protected as a **registered** trade mark) then you may

benefit from two broad categories of rights. Firstly, the right to oppose (no guarantee of success of course) any later third party application to register and use "your" mark as a trade mark. This of course depends on you noticing that a competing mark has been applied for. Secondly, if you fail to notice the application or lose your opposition to it and the mark proceeds to a registration, then you cannot necessarily be prevented from continued use of your mark in the way that you have always used it - **but** any greater use, for example outwith your local area (where your "goodwill" exists) **may** be prevented.

Football Websites

Sheffield Wednesday FC management sought to force the operator of a fan discussion site (Owlstalk.co.uk) to disclose the identity of several individuals responsible for postings on the site which were allegedly defamatory of the Club's manager and chief executive. The gist of the posted string concerned an overseas scouting trip by management, speculation that they'd spent the Club's money on loose women (i.e. "hookers instead of strikers") and (predictably) that "they wouldn't know the difference anyway". Fairly harmless, if somewhat ribald, abuse rather than wilful defamation - and so thought the Court in refusing to order the disclosure of the identity of the authors. Some points:

- Website operators - have the worst of both worlds. Fail to remove abusive material promptly may find you liable to a complainer if the material is defamatory. Disclose too readily the real identity of the authors of the material (i.e. your users) and you may have a liability to them for invasion of privacy and data protection issues. Best to let a court decide.
- Message board contributors - remember that the line between harmless abuse or jokes and defamation is an uncertain one. Vulgar and abusive content will put you in breach of the site's user guidelines in any event. You may increase your chances of staying anonymous (and hanging on to your season ticket) if you post to sites which have a robust user confidentiality and privacy policy.

He's from Barcelona

The move to a new points based immigration system, including a compulsory English Language Test, which the Home Office are to phase in next year will be of concern to employers generally. More so to those who regularly need to recruit overseas researchers or arrange inter-company transfers. Happily for Club managers, international standard footballers are likely to be one of the few categories exempt from the ELT requirement.

For further information on any aspect of intellectual property please contact Lester Cameron (LFCameron@paul-williamsons.co.uk)