



Friday, 14 March 2025

Weekly Intellectual Property Law

A Weekly Bulletin listing Decisions of Superior Courts of Australia covering Intellectual Property Law

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Executive Summary (One Minute Read)

Aristocrat Technologies Australia Pty Ltd v Light & Wonder, Inc. (No 2) (FCA) - Aristocrat said L&W misused confidential information in creating a game - Court refused mandatory interlocutory injunction requiring L&W to withdraw licence to use game from its customers

HABEAS CANEM

Dive with pike



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Summaries With Link (Five Minute Read)

Aristocrat Technologies Australia Pty Ltd v Light & Wonder, Inc. (No 2) [2025] FCA 64

Federal Court of Australia

Burley J

Confidential information - Aristocrat and L&W both supply electronic gaming machines - Aristocrat claimed two former employees had taken confidential materials and artwork to L&W and L&W had used these in 'Dragon Train', constituting misuse of confidential information, breach of copyright, contravention of s183, *Corporations Act 2001* (Cth), and misleading or deceptive conduct contrary to s18, *Australian Consumer Law* - Aristocrat sought urgent interlocutory relief in respect of the misuse of confidential information claim - alleged confidential information in the form of tables, worksheets, spreadsheets, and compilations that created games' underlying mathematical design - L&W offered undertaking, but Aristocrat said it should also have orders L&W withdraw any licence or authorisation to use Dragon Train under contracts with customers - held: test for mandatory interlocutory orders the same as for interlocutory orders generally, but risk of injustice to respondent will generally be elevated and an important consideration - Aristocrat had shown serious question to be tried that whole of Dragon Train developed by misuse of confidential information - principle that non-party should be joined before court makes orders directly affecting its rights or liabilities applies as a hard and fast rule only in respect of final relief - L&W's interests closely aligned with customers and L&W had sufficiently protected those interests so that there was no need to join customers - balance of convenience did not support additional orders - they would disrupt customers' status quo - Customers innocent of any misuse of confidential information - orders would create confusion as to status of L&W's contracts with customers, and may lead to litigation between L&W and customers, or customers wanting to litigate but not having financial resources to do so - damages adequate remedy for Aristocrat - interlocutory injunction refused.

[Aristocrat Technologies Australia Pty Ltd](#)

[From Benchmark Tuesday, 11 March 2025]

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INTERNATIONAL LAW

Executive Summary and (One Minute Read)

Dewberry Group v Dewberry Engineers (SCOTUS) - Disgorgement of profits in a trade mark infringement dispute brought under the United States Lanham Act may only be awarded against parties that are named defendants. Profits of defendant's affiliates are not statutorily subject to disgorgement

Summaries With Link (Five Minute Read)

Dewberry Group v Dewberry Engineers 604 US __ (2025)

Supreme Court of the United States

Plaintiff, Dewberry Engineers successfully sued Dewberry Group for trade mark infringement. Pursuant to the Lanham Act, the plaintiff sought damages measured by the amount of defendant's profits, known as disgorgement of profits. The plaintiff was awarded US\$43million. The judgment was affirmed by the Court of Appeals. However, the named defendant did not show any profits on its books. The profits attributable to the infringement appeared on the books of defendant's affiliated companies, and the trial court attributed the profits to the named defendant for purposes of ordering disgorgement. The Supreme Court (per Curiam by Kagan J; Sotomayor J concurring) reversed and remanded based on the plain meaning of the statutory language which permits as a measure of loss, disgorgement of the 'defendant's' profits. The Court found that the word 'defendant' in the statute can only refer to a party so named in the proceedings. The plaintiff had also argued that the Lanham Act allows for a 'just-sum' award of damages where a court is persuaded that the traditional measures of losses are inadequate. The Court declined to decide if the award of damages could be justified on the just-sum theory because this had not been employed by the trial court.

[Dewberry Group](#)



Poem for Friday

The Love Song of J. Alfred Prufrock

By T. S. Eliot

*S'io credesse che mia risposta fosse
A persona che mai tornasse al mondo,
Questa fiamma staria senza piu scosse.
Ma perciocche giammai di questo fondo
Non torno vivo alcun, s'i'odo il vero,
Senza tema d'infamia ti rispondo.*

Let us go then, you and I,
When the evening is spread out against the sky
Like a patient etherized upon a table;
Let us go, through certain half-deserted streets,
The muttering retreats
Of restless nights in one-night cheap hotels
And sawdust restaurants with oyster-shells:
Streets that follow like a tedious argument
Of insidious intent
To lead you to an overwhelming question ...

Oh, do not ask, "What is it?"
Let us go and make our visit.

In the room the women come and go
Talking of Michelangelo.

The yellow fog that rubs its back upon the window-panes,
The yellow smoke that rubs its muzzle on the window-panes,
Licked its tongue into the corners of the evening,
Lingered upon the pools that stand in drains,
Let fall upon its back the soot that falls from chimneys,
Slipped by the terrace, made a sudden leap,
And seeing that it was a soft October night,
Curled once about the house, and fell asleep.

And indeed there will be time
For the yellow smoke that slides along the street,
Rubbing its back upon the window-panes;



There will be time, there will be time
To prepare a face to meet the faces that you meet;
There will be time to murder and create,
And time for all the works and days of hands
That lift and drop a question on your plate;
Time for you and time for me,
And time yet for a hundred indecisions,
And for a hundred visions and revisions,
Before the taking of a toast and tea.

In the room the women come and go
Talking of Michelangelo.

And indeed there will be time
To wonder, "Do I dare?" and, "Do I dare?"
Time to turn back and descend the stair,
With a bald spot in the middle of my hair —
(They will say: "How his hair is growing thin!")
My morning coat, my collar mounting firmly to the chin,
My necktie rich and modest, but asserted by a simple pin —
(They will say: "But how his arms and legs are thin!")
Do I dare
Disturb the universe?
In a minute there is time
For decisions and revisions which a minute will reverse.

For I have known them all already, known them all:
Have known the evenings, mornings, afternoons,
I have measured out my life with coffee spoons;
I know the voices dying with a dying fall
Beneath the music from a farther room.
So how should I presume?

And I have known the eyes already, known them all—
The eyes that fix you in a formulated phrase,
And when I am formulated, sprawling on a pin,
When I am pinned and wriggling on the wall,
Then how should I begin
To spit out all the butt-ends of my days and ways?
And how should I presume?

And I have known the arms already, known them all—



Arms that are braceleted and white and bare
(But in the lamplight, downed with light brown hair!)
Is it perfume from a dress
That makes me so digress?
Arms that lie along a table, or wrap about a shawl.
 And should I then presume?
 And how should I begin?

Shall I say, I have gone at dusk through narrow streets
And watched the smoke that rises from the pipes
Of lonely men in shirt-sleeves, leaning out of windows? ...

I should have been a pair of ragged claws
Scuttling across the floors of silent seas.

And the afternoon, the evening, sleeps so peacefully!
Smoothed by long fingers,
Asleep ... tired ... or it malingers,
Stretched on the floor, here beside you and me.
Should I, after tea and cakes and ices,
Have the strength to force the moment to its crisis?
But though I have wept and fasted, wept and prayed,
Though I have seen my head (grown slightly bald) brought in upon a platter,
I am no prophet — and here's no great matter;
I have seen the moment of my greatness flicker,
And I have seen the eternal Footman hold my coat, and snicker,
And in short, I was afraid.

And would it have been worth it, after all,
After the cups, the marmalade, the tea,
Among the porcelain, among some talk of you and me,
Would it have been worth while,
To have bitten off the matter with a smile,
To have squeezed the universe into a ball
To roll it towards some overwhelming question,
To say: "I am Lazarus, come from the dead,
Come back to tell you all, I shall tell you all"—
If one, settling a pillow by her head
 Should say: "That is not what I meant at all;
 That is not it, at all."

And would it have been worth it, after all,



Would it have been worth while,
After the sunsets and the dooryards and the sprinkled streets,
After the novels, after the teacups, after the skirts that trail along the floor—
And this, and so much more?—
It is impossible to say just what I mean!
But as if a magic lantern threw the nerves in patterns on a screen:
Would it have been worth while
If one, settling a pillow or throwing off a shawl,
And turning toward the window, should say:
 “That is not it at all,
 That is not what I meant, at all.”

No! I am not Prince Hamlet, nor was meant to be;
Am an attendant lord, one that will do
To swell a progress, start a scene or two,
Advise the prince; no doubt, an easy tool,
Deferential, glad to be of use,
Politic, cautious, and meticulous;
Full of high sentence, but a bit obtuse;
At times, indeed, almost ridiculous—
Almost, at times, the Fool.

I grow old ... I grow old ...
I shall wear the bottoms of my trousers rolled.

Shall I part my hair behind? Do I dare to eat a peach?
I shall wear white flannel trousers, and walk upon the beach.
I have heard the mermaids singing, each to each.

I do not think that they will sing to me.

I have seen them riding seaward on the waves
Combing the white hair of the waves blown back
When the wind blows the water white and black.
We have lingered in the chambers of the sea
By sea-girls wreathed with seaweed red and brown
Till human voices wake us, and we drown.

Jeremy Irons reads The Love Song of J. Alfred Prufrock "The Love Song of J. Alfred Prufrock" by T. S. Eliot

<https://www.youtube.com/watch?v=adNOs1izBlS>



Thomas Stearns Eliot OM was born on 26 September 1888 in St Louis, Missouri. By the time he was 15, he spoke Greek, Latin, French and English, with some German. He was a leading poet, editor and publisher. He is also well known as an essayist. He started his working life as a clerk in the Colonial and Foreign department of Lloyd's as a linguist. By that time he had also studied Sanskrit, and knew French, Italian and German.

Well known works include *The Waste Land* and *The Hollow Men*. He regarded *Four Quartets* as his greatest masterpiece. He wrote that "*only those who will risk going too far can possibly find out how far one can go*". He received the Nobel Prize in Literature. He relinquished his American citizenship to become a British citizen. Having smoked heavily for most of his life, he suffered worsening problems with his lungs, until his death.

[https://en.wikipedia.org/wiki/T. S. Eliot](https://en.wikipedia.org/wiki/T._S._Eliot)

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