



Friday, 15 November 2024

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)

Koninklijke Douwe Egberts BV v Cantarella Bros Pty Ltd (FCA) - the makers of Vittoria coffee had not infringed a shape trade mark owned by the makers of Moccona coffee by selling Vittoria coffee in similarly shaped glass jars

HABEAS CANEM

Cattle collie & collie



Summaries With Link (Five Minute Read)

Koninklijke Douwe Egberts BV v Cantarella Bros Pty Ltd [2024] FCA 1277

Federal Court of Australia

Wheelahan J

Trade marks - the applicants were the owner and Australian distributor of Moccona coffee - they owned a shape trade mark protecting the characteristic shape of the glass jars in which Moccona coffee is sold - they contended Cantarella had marketed and sold Vittoria brand coffee in glass jars of a shape that infringed their trade mark, and had engaged in misleading and deceptive conduct, and committed the tort of passing off - Cantarella denied these claims, and cross claimed for the applicant's trade mark to be cancelled, and for unjustified threats of trade mark litigation - the applicants' shape mark was not inherently adapted to distinguish their goods, and was reminiscent of other generic containers - however, the shape mark had acquired, in relation to coffee, a distinctiveness in fact before the priority date - the trade mark should therefore not be cancelled for lack of distinctiveness - it also should not be cancelled on any other ground alleged - the applicants' infringement case failed because Cantarella had not used the shape of their jars as a trade mark - the Cantarella jar shape was relatively plain, and, unlike the applicants' shape mark, had no two-tiered lid to embellish the appearance of the jar - Cantarella had selected packaging for its coffee to create a particular impression in the minds of consumers, but, primarily, this was to ensure that the materials used were seen as premium, rather than the shape - further, the Cantarella jar shape was not deceptively similar to the applicants' shape mark, and the infringement claim must fail for this reason also - as for passing off, the applicants' promotion and sale in Australia of coffee in a clear glass jar had resulted in substantial distinctive goodwill and reputation in the shape of the jar - however, there was no real chance that Cantarella's jar would be likely to lead the public to believe that Cantarella's goods were the goods of the applicants - as the applicants' trade mark infringement case had failed, Cantarella's unjustified threats claim had to succeed - the Court declined to make a declaration or injunction, and damages would be dealt with later - applicants' claim dismissed, Cantarella's cross-claim for trade mark cancellation also dismissed.

[Koninklijke Douwe Egberts BV](#)

[From Benchmark Tuesday, 12 November 2024]

Benchmark

INTERNATIONAL LAW

Executive Summary and (One Minute Read)

Robert F Kennedy, Jr v Joseph R Biden, Jr (USCA5CT) - In an action for equitable relief, plaintiffs' claims failed as a result of lack of standing to sue because it was speculative that the wrong complained of was ongoing and therefore redressable

Summaries With Link (Five Minute Read)

Robert F Kennedy, Jr v Joseph R Biden, Jr, No 24-30252

United States Court of Appeals

Higginbotham, Stewart, & Haynes JJ

Robert F Kennedy Jr and others complained that, due to unlawful pressure exercised by federal officials, Meta and YouTube censored or de-platformed Kennedy regarding COVID-related content in 2021. The plaintiffs sought and were granted a preliminary injunction by the District Court. The government appealed. In an earlier decision, *Murthy v Missouri* 144 S Ct 1972 (2024), the Supreme Court held that, to establish standing to sue, plaintiffs must demonstrate a substantial risk that they will suffer injury that is (1) traceable to a government defendant, and (2) redressable by an injunction. The Court of Appeals found that, while Kennedy had evidence that the initial censorship was traceable to government officials, he was unable to show that the continued censorship could be attributed to government actions. The Court found that there was not any evidence that could attribute continued suppression to government activity as opposed to internal platform moderation procedures. Consequently, standing failed on the redressability issue; namely, that Kennedy was unable to show that an injunction directed against the government would, in fact, redress the injury of which he complained. In accordance with the recent Supreme Court precedent, standing to sue was not established and the orders of the District Court granting a preliminary injunction were reversed.

[Robert F Kennedy, Jr](#)



Poem for Friday

How Do I Love Thee? (Sonnet 43, from Sonnets from the Portuguese)

By Elizabeth Barrett Browning (1806-1861)

How do I love thee? Let me count the ways.
I love thee to the depth and breadth and height
My soul can reach, when feeling out of sight
For the ends of being and ideal grace.
I love thee to the level of every day's
Most quiet need, by sun and candle-light.
I love thee freely, as men strive for right.
I love thee purely, as they turn from praise.
I love thee with the passion put to use
In my old griefs, and with my childhood's faith.
I love thee with a love I seemed to lose
With my lost saints. I love thee with the breath,
Smiles, tears, of all my life; and, if God choose,
I shall but love thee better after death.

Elizabeth Barrett Browning, English poet was born on 6 March 1806, in County Durham, the eldest of 12 children, 11 of whom survived into adulthood. She was ill from her mid teens. She was influential in campaigning for the abolition of slavery and the introduction of child labour protection legislation. Her grandfather had been a slave owner in sugar plantations in Jamaica. She was a contemporary of, and met Coleridge, Tennyson, Carlyle, Wordsworth and Mitford. She met Robert Browning in 1845, and after a secret marriage, they moved to Italy in 1846. Whiting, describes her as “the most philosophical poet” living a life as “a Gospel of applied Christianity”. Barrett Browning died on 29 June 1861 at the age of 55, in Florence Italy.

How Do I Love Thee? sung by Femmes de Chanson, (2012)

[How Do I Love Thee? \(Nathan Christensen\) - Femmes de Chanson - 2012 \(youtube.com\)](https://www.youtube.com/watch?v=...)

How Do I Love Thee read by Dame Judi Dench

[How Do I Love Thee? \(Sonnet 43\) by Elizabeth Barrett Browning \(read by Dame Judi Dench\) \(youtube.com\)](https://www.youtube.com/watch?v=...)

Reading by **Patricia Conolly**. With seven decades experience as a professional actress in three continents, Patricia Conolly has credits from most of the western world's leading

theatrical centres. She has worked extensively in her native Australia, in London's West End, at The Royal Shakespeare Company, on Broadway, off Broadway, and widely in the USA and Canada. Her professional life includes noted productions with some of the greatest names in English speaking theatre, a partial list would include: Sir Peter Hall, Peter Brook, Sir Laurence Olivier, Dame Maggie Smith, Rex Harrison, Dame Judi Dench, Tennessee Williams, Lauren Bacall, Rosemary Harris, Tony Randall, Marthe Keller, Wal Cherry, Alan Seymour, and Michael Blakemore.

She has played some 16 Shakespearean leading roles, including both Merry Wives, both Viola and Olivia, Regan (with Sir Peter Ustinov as Lear), and The Fool (with Hal Holbrook as Lear), a partial list of other classical work includes: various works of Moliere, Sheridan, Congreve, Farquar, Ibsen, and Shaw, as well as roles such as, Jocasta in Oedipus, The Princess of France in Love's Labour's Lost, and Yelena in Uncle Vanya (directed by Sir Tyrone Guthrie), not to mention three Blanche du Bois and one Stella in A Streetcar Named Desire.

Patricia has also made a significant contribution as a guest speaker, teacher and director, she has taught at The Julliard School of the Arts, Boston University, Florida Atlantic University, The North Carolina School of the Arts, University of Southern California, University of San Diego, and been a guest speaker at NIDA, and the Delaware MFA program.

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