



Friday, 20 December 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)

Hampden Holdings I.P. Pty Ltd v Aldi Foods Pty Ltd (FCA) - Aldi had infringed copyright in relation to artistic works used on packaging for children's food products



HABEAS CANEM

Merry Christmas from McGregor

Summaries With Link (Five Minute Read)

Hampden Holdings I.P. Pty Ltd v Aldi Foods Pty Ltd [2024] FCA 1452

Federal Court of Australia

Moshinsky J

Copyright - applicants sued Aldi for breach of copyright in relation to artistic works used on packaging for children's food products - held: where an artistic work is created under the terms of employment, the employer is the owner of any copyright (s35(6), *Copyright Act 1968* (Cth)) - a 'work of joint authorship' is a work produced by the collaboration of two or more authors and in which the contribution of each author is not separate from the contributions of the other authors (s10(1)) - alterations made by A to an earlier work created by B can sometimes result in a work of joint authorship of A and B together - even though an assignment of copyright cannot be given retrospective operation as against a third party, the assignment of the right to sue for copyright infringement, even if that assignment also operates only prospectively, can be a right to sue for past infringement - the applicants had taken a valid assignment of copyright and also a valid assignment of the prospective right to sue for past copyright infringements, and therefore had the right to bring the present proceedings - considered cumulatively, some of the layout and design elements used by Aldi (but not others) constituted a substantial part of various works owned by the applicants - some infringements therefore made out - additional damages should be awarded under s115(4) as the infringement was flagrant, and in order to deter similar infringements.

[Hampden Holdings I.P. Pty Ltd](#)

[From Benchmark Friday, 20 December 2024]

Benchmark

INTERNATIONAL LAW

Executive Summary and (One Minute Read)

Khachatryan v Armenia (EUHR5S) - In a matter of first impression, the European Court of Human Rights found that a member state has an obligation to provide a mechanism whereby victims of domestic violence may seek compensation for non-pecuniary damage from the perpetrator of the violence

Summaries With Link (Five Minute Read)

Khachatryan v Armenia, Case 11829/16

European Court of Human Rights

Guyomar P, Elósegui, Harutyunyan, Felici, Zünd, Sârcu, & Šimáková JJ

In Armenia, the victim had been subjected to numerous events of serious physical and emotional abuse by her former spouse. He repeatedly threatened and insulted her. He also repeatedly beat her, breaking bones and causing concussions and other grievous injuries. The perpetrator was charged with aggravated torture of a person who was dependent on the perpetrator. However, he was convicted of non-aggravated torture and sentenced to 18 months imprisonment. He did not serve any time as he was exempted under an Amnesty Act. The victim of the abuse unsuccessfully launched civil legal proceedings seeking compensation for both pecuniary and non-pecuniary damage for emotional and psychological suffering due to ill-treatment. Armenian domestic law did not provide for compensation for non-pecuniary damages in this situation. The judgment was affirmed by the local court of appeal. Armenia is one of the 46 member states comprising the Council of Europe and is subject to the European Convention on Human Rights and the jurisdiction of the European Court of Human Rights. The victim sought review of the decision by the Armenian courts by alleging that Armenia had acted in violation of Article 3 of the *European Convention on Human Rights*, which states that 'No one shall be subjected to torture or to inhuman or degrading treatment or punishment'. The Court found that the Armenian criminal-law mechanisms were so defective in terms of protecting the victim that they amounted to a breach of Armenia's obligations under Article 3. The European Court said that Armenia had repeatedly failed to discharge its procedural obligation to respond adequately to the serious acts of domestic abuse. In a decision of first impression, the Court also found that Article 3 imposed an obligation on the state to allow claims by the victim against the perpetrator for compensation for non-pecuniary damages in matters of serious domestic abuse. The Court stated that Article 3 created a positive obligation on the part of a member state in respect of allowing claims for non-pecuniary damage from the perpetrators of such violence directly, or indirectly through the member state. The European Court awarded the victim €24,000 plus €2000 in costs as against Armenia.

[Khachatryan](#)



Poem for Friday

Somewhere

By Rev David Conolly

Somewhere,
unexpectedly,
hope is born.

A voice.
At first, only the cry
of a new-born
gulping for breath.

In time, a voice.

The voice speaks to
a world grown used to
darkness, despair.

The voice says,
*You are light for the world;
Let it shine.
Love, and forgive*

And suddenly, hope is born.

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