Media & Entertainment review

Gateley Plc

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Changes made to encourage child performers

Summary

Changes have recently been introduced to the rules surrounding children who are involved in performances or specific activities. These changes have removed time consuming, unnecessary restrictions and have brought the law into the 21st century. This article will look at what has been changed and how it will affect the industry.

Business impact

Successfully applying for a child performance license will now be quicker and more streamlined, which will reduce the amount of time and expense spent on each application. There will also be more flexibility around when a child can perform, which will help them fit into a production company's schedule. This will have the effect of encouraging the creative industry to work more with child performers in their productions and will nurture the creative talent of the future.

Legal detail

The Government put into force The Children (Performances and Activities) (England) Regulations 2014 on 6 February 2015. These changes came after consultations with representatives from across the creative industry and they aim to overhaul rules which were last reformed way back in 1968!

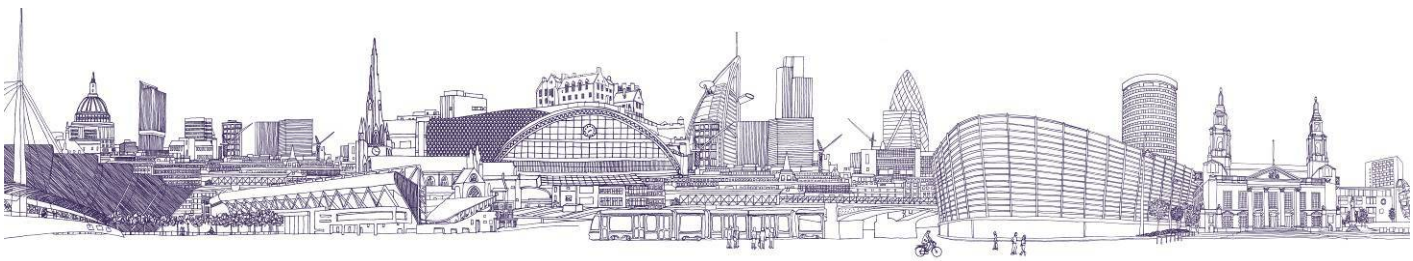
The child performance licensing system is designed to ensure that all necessary arrangements have been made for a child who will be performing to safeguard their health, welfare and educational needs. This has not changed, and if anything, the regulations have placed greater emphasis on parents to take responsibility for their child, and producers to demonstrate measures taken in their license application.

The new rules will apply to all children who are performing in England or who go overseas to perform.

Some of the major changes the regulations have brought into force are:

- A medical certificate doesn't have to be submitted with the child performance license application.
- The earliest and latest time in which a child can be at the place of performance or rehearsal has changed. Under 5s can be on set between 7am and 10pm and over 5s up to school leaving age can be on set between 7am and 11pm.
- There has also been a change as to the number of hours a child can be at the place of performance or rehearsal each day. Under 5s can be on set for 5 hours. Those between 5 and 9 for 8 hours and those between 9 and school leaving age for 9.5 hours. The hours on set must also factor in any hours of education.
- Additionally, a child's chaperone has the discretion to allow the child to perform for up to 1 hour after the latest time permitted in the regulations. This would allow the producer to finish filming a scene that night so the child doesn't have to attend again the next day as long as it does not go over the total number of hours permitted at the place of performance or rehearsal.

Clearly there have been important changes made to the regulation of child performers. It will be interesting to see whether this will affect the number of children taking part in amateur and professional productions.



Marketing communications: make it clear!

Summary

A YouTube video has been banned by the Advertising Standards Agency (ASA) for not making it clear that it was a marketing communication used by Procter & Gamble. The ASA banned the tutorial in its current form on the grounds that it was not sufficiently clear that the tutorial was a marketing communication from Procter & Gamble.

Business impact

It may seem clear to you (and possibly the consumer) that any advertising video which a business releases is a marketing communication. However, it is important to consider the point at which the consumer is made aware and the language used to describe the fact that it is a marketing communication. This is important to avoid getting your piece banned by the ASA or ordered to be edited, as this can have huge cost implications on any company.

Legal detail

The 'Beauty Recommends' tutorial 'Easy Lip Makeup for Winter Time' (tutorial) featured a model vlogger (video blogger), who used both Max Factor branded products (owned by Procter & Gamble) as well as products from other brands. There was text at the beginning of the tutorial stating 'brought to you by Procter & Gamble'. At the bottom of the tutorial, in the 'show more' section, there was a link to purchase Max Factor products. At the bottom of the tutorial description were the words 'Sponsored by Beauty Recommended, brought to you by Procter & Gamble'.

The ASA rules clearly set out that any marketing communication must be **clearly identifiable as a marketing communication.** The tutorial was challenged on the basis that it was not a clear marketing communication. The ASA upheld this challenge and banned the tutorial from publication in its current form giving the following reasons:

- As a website owned by Procter & Gamble, 'Beauty Recommends' was a marketing communication. As the consumer was not explicitly aware that they were viewing marketing content **before** they watched the tutorial, the ASA ruled that Procter & Gamble did not make it clear enough that it was a marketing communication;
- The 'Beauty Recommends' website did not make sufficient reference to the fact that it was owned by Procter & Gamble. Consequently, the consumer would not necessarily be aware that 'Beauty Recommended' was not an independent website. No text was displayed to this effect until the end of the tutorial, by which time it was too late for the consumer to be made aware of its association with Procter & Gamble;
- The use of 'sponsored by' and 'brought to you by' were not adequate enough phrases to explain to the consumer that Procter & Gamble had control over the tutorial. The ASA noted that these phrases could also be used where a company provides financial backing to a project but does not have any editorial control. The ASA ruled Procter & Gamble's position was not clear in this case.

This sends out a clear message to advertisers that any marketing communication needs to be **explicitly clear** that it is just that. Procter & Gamble have now started using #ad at the beginning of all of their tutorials online to ensure that consumers are in no doubt as to the nature of the tutorial.

Things to think about to ensure that your advertising communications are clear:

- Is the consumer aware that the video contains commercial content **before** watching?
- Is the video clearly marked as an advertisement?
- Have you been as transparent as possible?
- Will the use of 'brought to you by' or 'sponsored by' create a clear enough message as to your businesses level of control over the video?

Court blocks attack on Lego-man

Summary

In the case of *Best-Lock (Europe) Ltd -v- OHIM, the European Court of Justice found that Lego's miniature figurines should continue to be protected by a trade mark, cementing Lego's dominance in the toy market and preventing rival companies from creating confusingly similar figures.**

Business impact

This is good news for any company with registered trademarks as it reinforces the protection provided by trademarks, and ensures that even if the product has some technical function, it will still be protected as long as it's not the sole reason for the shape of the product. For anyone launching a new product, you should be wary of infringing upon trademarks and intellectual property in general, as you could face court action and a large bill!

Legal detail

Finally Lego has protected something!

In 2010, the Danish toymaker was prevented from putting a trademark on its well-known building blocks because the European Court of Justice decided that if they did, it would prevent other manufacturers from producing a basic technical building shape and as a consequence, give Lego a monopoly in the market. However, this time the court was on Lego's side ruling that their little figures were entitled to protection.

In order to protect a shape as a trademark, the design must be distinctive and it must not serve a technical function. A good example of this is the Coca-Cola bottle which is highly recognisable to customers and serves a purely aesthetic function, i.e. it looks good. Lego registered their figurines as a three dimensional trademark in 2000 after their patent on them had expired.

The challenge to Lego's trademark was brought by Best-Lock, a Lancashire based toymaker, who has been selling figures similar to Lego's toys since 1998 and has been trying to overturn Lego's trademark since 2012 to allow them to compete with Lego in this area.

Best-Lock argued that the design of the Lego figures served a technical function and, as a result, Lego should not have been granted a trademark on the shape. They said that the shape was solely down to 'the possibility of joining them to other interlocking building blocks for play purposes', meaning the little men and women were simply a different version of a building block with their height equalling three building blocks and their hat the size of one.

The court rejected this argument and instead said that it was clear that a desire to create a human shape that would confer human traits on the figures was the main reason for the shape. Put simply, the moveable arms, protruding head shape and overall human appearance were designed for aesthetic reasons, not technical, and the special holes in their feet and legs did not obviously have a technical function.

It is an interesting ruling that pretty much gives Lego dominance in this area and they will now have considerable rights to enforce their trademark across a wide range of products from Lego kits to video games. However, Best-Lock has confirmed they will pursue a further legal appeal against Lego's trademark so it could possibly change in the future.

**Best-Lock (Europe) Ltd -v- Office for Harmonisation in the Internal Market (Trade Marks and Designs) T-395/14*

Who owns your LinkedIn?

Summary

LinkedIn is one of the largest and fastest growing professional networks with reportedly 2 new users joining every second. The majority of LinkedIn users use the site to make new business connections or to re-connect with old contacts. The issue with LinkedIn as a concept is that it blurs the lines between work

and social connections, with many employees using the site to connect with both groups.

Business impact

LinkedIn contact details can be incredibly valuable to a client as it can include the details of their clients and customer base, business contacts and affiliates. However, LinkedIn profiles do not automatically belong to an employer. It is therefore important that a company adopts policies to manage ownership.

Legal detail

The distinction between personal and work related contacts is not clear, it becomes harder to define which connections an employer should have ownership of. Case law* indicates that where day to day use of LinkedIn is connected to the employee's duties, there is scope for the employer to retain ownership of the account and connections made during the course of employment when such employee's employment terminates. However, cases tend to turn on their own individual facts. To ensure that as an employer you have the right to your employee's LinkedIn profile, employers should bear the following in mind:

- Employers should be certain that their social media policy adequately protects the nature of their business. The policy should emphasise that employees must maintain a clear distinction between their personal social media account and their work-related accounts.
- Employers should consider altering their post-termination covenants to complement their social media policy and to prevent employees making use of LinkedIn contacts post termination of employment.
- Employers should use express terms and policies to address the problem of ownership of LinkedIn contacts and 'groups'.
- Employers should take an active role in setting up employees LinkedIn accounts, to ensure uniform branding and clear guidelines over usage and ownership of the contacts are set from the creation of the account.
- Employers should protect their connections by closing down their employees accounts upon termination of their employment and any passwords should be transferred to the employer.
- Particular care should be taken by employers who give employees the role of managing LinkedIn account and connections with current and prospective clients. Recruitment agencies in particular should think about the value they place on their candidate pool and whether this network should be visible or transferrable to competitors when employees leave.

On the other hand, if you are an employee, you should now think twice about who owns your LinkedIn contacts and try your best to keep your social and professional profiles separate.

** Hays Specialist Recruitment (Holdings) Ltd -v- Ions High Court* [2008] IRLR 904 and *Whitmar Publications Ltd -v- Gamage* [2013]

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