

NEWSBRIEF

AUTUMN 2007

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CHEERS!

Wright Hassall raise a glass to floating hotel, page 6



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- Everything to gain from EMIs
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- HIPs, HIPs hooray – why they should speed up conveyancing

WRIGHT HASSALL
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HR forum launched

A surgery for human resources managers has been launched by Wright Hassall.

The firm will host the free HR forum every other month and bring together managers from the Midlands to discuss problems and ideas.

Wright Hassall's human resources expert, Ian Besant, led the opening meeting and helped answer legal questions from more than 30 HR professionals.

Ian said: "The motivation behind setting-up the surgery was to create a venue where people can come together and talk to one another informally about any ideas or issues

they want to discuss like the recent smoking ban or, the other hot topic, absence management."

A guest speaker will also be invited to each gathering. Wayne Campbell, managing director of Healthy Performance Ltd, was the first speaker and considered how HR departments can promote well-being projects to make their workforce healthier – and more productive.

The next meeting, at Wright Hassall's Olympus Avenue HQ, will be on Thursday 15 November at 3.45pm and the topic is an update on cases and legislation. Call Caroline Venuto on 01926 886688 to book a place.



Wayne Campbell and Monica McCusker of Healthy Performance (both centre) with Wright Hassall staff Ella Bond, Ian Besant, Marianne Russell and Suki Harrar.

EMIs – the win-win staff incentive scheme

Enterprise Management Incentive (EMI) schemes are growing in popularity. Recognised as an effective staff motivator, EMI schemes can mean considerable financial gain for employees and this is just one reason why many of our clients are keen to set them up.

In this article, we set out some of the frequently asked questions raised by clients when discussing the benefits of an EMI Scheme.

What is an EMI Option?

An EMI option is an agreement by the company to let an employee buy shares at an agreed price.

Why is it beneficial?

It is beneficial because:

- The employee does not pay income tax or national insurance on entering into the option;
- when the employee "buys" the shares, he does not pay any tax or income tax; and
- when the employee sells his EMI Shares he will only pay capital gains tax at 10% provided the sale is two years after the grant of the option, and the option exercise price was at market value.
- The employee would need to remain an employee of the company working more than 25 hours per week.

Does the employee have to pay anything on grant of the option?

No, only when the option is exercised. Options are often exercised on a sale of the company in which case the employee buys the shares, sells them straight away and benefits from the profit.

If an employee leaves the company, what happens?

If an employee resigns or is dismissed he will lose the option. However, if an employee leaves because of ill health, or death, he or his estate will be allowed to exercise the option for a short period, though some of the tax advantages may be lost.

Will it cost the employee anything if he doesn't exercise the option?

No, he can simply walk away.

Why is the company granting the option?

The company grants the option to give the



Rob Parry explains Enterprise Management Incentive schemes and why they are becoming increasingly popular.

employee the same motivation as the shareholders to increase the value of the company.

There is potential for significant gains at a very beneficial tax rate. Example:

Option Shares Value/Price (per share) (market value)	£100.00
After 3 years the Company is sold at a price of £300 per share	
The tax treatment is as follows:-	
Exercise Price	£100.00
Sale Price	£300.00
Gain	£200.00
CGT* - 40% x 25% = 10%	
Profit After Tax	£180.00

*With the changes in taper relief from April 2008, the

effective rate of CGT at 18% is still a big improvement on 40% income tax plus NI.

Are there qualifying criteria for companies ?

Yes. The company must :

- carry on a qualifying trade. The trade must be mainly in the UK and on a commercial basis. If more than 20% of the business is an 'excluded activity', the company will not qualify for EMI schemes. (Property development, farming and the operation and management of hotels and nursing homes are some of the excluded activities.)
- be independent, i.e. not a 51% subsidiary of or controlled by another company
- not have subsidiaries, or if it does, the subsidiaries must be at least 75% shareholders
- must have a balance sheet that indicates a gross asset value of no more than £30 million on the date of grant of the EMI options. Where the company is part of a group (subject to the limitations above) the £30 million is calculated by reference to the consolidated gross assets for the whole group.

How long does an EMI scheme take to set up?

Three to four weeks. Timing for the legal documentation depends principally upon the time taken to agree the share value at the date of grant of the option with HM Revenue & Customs.

To find out more, please contact Rob Parry on 01926 884617 or Christine Mott on 01926 880774 or via email.

rob.parry@wrighthassall.co.uk
christine.mott@wrighthassall.co.uk

Bankruptcy may upset divorce settlement

Bankruptcy can have far reaching and often adverse implications for divorcing couples as shown by several recent cases heard by the Court of Appeal.

In one, *Avis v Turner & Another* 2007, the appeal questioned the powers of the Court when a trustee in bankruptcy (Charles Turner) had applied for an order to sell the former matrimonial home in which the bankrupt (Mr Avis) had an interest.

As part of the financial aspect of the divorce proceedings in 1985, the ownership of Mr and Mrs Avis's property was varied so that Mrs Avis would own two thirds of the property and Mr Avis, one third – which he would only receive in the event of Mrs Avis remarrying, cohabitating, selling or dying.

Mr. Avis subsequently became bankrupt and his one third share vested in the Trustee under Section 306 of the Insolvency Act 1986. In 2005 the Trustee made an application to sell the property so that the one third share could be realised. Mrs Avis was still living in the property and, with Mr Avis, opposed the application.

The presumption that the interests of the bankrupt's creditors outweigh all other considerations is subject to

the important wording "unless the circumstances of the case are exceptional". Prior to a further hearing where Mrs Avis could file evidence pertaining to the exceptional circumstances that would displace the presumption, she appealed the Order of the District Judge to the High Court stating that none of the events specified in the 1985 order had occurred and, therefore, the application brought by the Trustee should have been dismissed.

This appeal was dismissed and sent back to the District Judge to determine whether there were circumstances to displace the statutory assumption that the Bankrupt's creditors should take priority.

An appeal to the Court of Appeal was also dismissed resulting in the matter proceeding to a hearing on the merits as intended by the District Judge and the High Court Judge. If Mrs. Avis does not succeed in proving exceptional circumstances, the property will have to be sold which means she will lose her home of 20 years unless she can buy out the one third share owned by her former husband.

gillian.jackson@wrighthassall.co.uk



Wright Hassall joined in the World's Biggest Coffee Morning recently and helped raise more than £1,000 for its chosen charity, MacMillan Cancer Research. Pictured are: Wright Hassall trio Rebecca Mushing, Mark Lewis and Julia Whitby with guest Susie Treasure. The event was sponsored by Starbucks Coffee and Fresh By Miles food.

IHT changes

The recent announcement that IHT nil rate band is transferable between spouses and civil partners means that:

- technically no increase in an individual's nil rate band;
- surviving spouse/civil partner can utilise proportion of deceased's nil rate band where this has not been fully used;
- is not applicable to co-habiting couples;
- will trusts remain a useful planning tool for married couples with joint wealth in excess of two nil rate bands, individuals owning Business/Agricultural property and those with complex family circumstances.

Brights deal

Wright Hassall has helped Birmingham-based Brights Chemist sell its five branches to Boots.

The pharmacies in Warley, Solihull, Northfield, Smithwick and Nuneaton have been purchased by E Moss Ltd trading as Alliance Pharmacy, the owners of Boots.

Partner Robert Lee headed up the Wright Hassall team, assisted by Rita Rajput and Gill Worthington.

Minimum wage update

On October 1 the national minimum wage increased from:

- £5.35 to £5.52 per hour for over 21 year olds
- £4.45 to £4.60 per hour for 18 to 21 year olds
- £3.30 to £3.40 per hour for 16 to 17 year olds .

Asbestos – the final word

A decision in relation to claims arising from asbestos exposure, which has been anxiously awaited by employers and their insurers, has been delivered by the House of Lords.

Asbestos was widely used up to the 1970s in industries as diverse as construction, engineering and shipbuilding. Characteristics such as low heat conduction and non-flammability lead to asbestos being used in products such as building insulation and brake linings.



Some 100,000 claimants will be denied compensation following a recent House of Lords ruling on an asbestos-related illness. Adam Brain reports.

Unfortunately, asbestos also proved to be extremely dangerous and when its fibres escaped into the atmosphere they were often inhaled by employees. In some cases those employees went on to develop serious conditions such as mesothelioma and lung cancer.

Over a number of years claims have been brought by many people who have been exposed to asbestos and who have gone on to develop health problems but the issue recently considered by the House of Lords related to one very specific asbestos related condition – pleural plaques.

Pleural plaques are a scarring on the outer lining of the lung caused by exposure to asbestos. The asbestos fibres penetrate the lung and after a number of years there is a thickening of the tissues. In the vast majority of cases the pleural plaques do not cause any symptoms and are only discovered when someone has an x-ray for some other complaint. Despite the lack of symptoms the people affected are naturally anxious when told that they have an asbestos-related condition and there is then always the fear of developing some other, more serious, asbestos related condition.

In 2005 the High Court confirmed that, despite the lack of symptoms, pleural plaques were an injury warranting compensation and awards of up to £15,000 were typical.

However in 2006 the Court of Appeal reversed the position and people with pleural plaques were no longer entitled to claim compensation.

Between the 25th June and 2nd July this year the House of Lords heard an appeal against the Court of Appeal decision and the Lords' judgment was handed down on the 17th October. In essence the Lords upheld the Court of Appeal decision and decided that the development of pleural plaques did not amount to an injury for which compensation could be claimed.

Bearing in mind the widespread use of asbestos in the past it seems likely that a large number of employees would have had exposure to the material and could potentially have developed pleural plaques. The Lords' decision will have major implications for those people and, according to one estimate, up to 100,000 potential claims will now be prevented.

adam.brain@wrighthassall.co.uk

HIPs may be more useful than you think

House prices, interest fluctuations, bank lending criteria, buy-to-let – you name it, anything that affects the buying and selling of homes usually makes headline news which is unsurprising given the percentage of personal wealth invested in bricks and mortar.

This year's major change, the introduction of Home Information Packs (HIPs) has, after a rocky start, had a mixed reception. In fact, when properly executed, HIPs could actually simplify the conveyancing process and speed things up at the same time.

Since 10 September residential properties with three or more bedrooms have needed a HIP (at least to be commissioned if not completely compiled) before they can go onto the market.



Kim Fracchia argues that Home Information Packs should simplify and speed up the conveyancing process for all concerned.

However, the HIP which was finally launched is a considerably watered down version of the original HIP which was intended to make the conveyancing process more transparent and less prone to hazards such as delays.

In advance of the introduction of home information packs, Wright Hassall joined forces with a group of local independent agents to review how best to deal with the production of HIPs.

When we looked at the requirements, we decided that not only could we produce them online but, in doing so, we could also achieve the government's original objective of simplifying and streamlining the conveyancing process.

To do this, we have invested in a web-based system, VisualHIP, which assembles the constituent parts of the HIP electronically. This means that the



Kim Fracchia, of Wright Hassall LLP, with local estate agents and domestic energy assessors, at the launch of its online HIPs service.

compulsory elements of the HIP, including the Evidence of Title, Searches and the Energy Performance Certificate, are automatically requested at the press of a button. The whole process can be started by the local estate agent, responsible for marketing the property, via a link to Wright Hassall's VisualHIP website, as part of the normal sales procedure. The whole process is undertaken by us from initial instruction from the client or from the estate agent acting on the sale via a direct weblink already installed. Once the information requested is available, the results are automatically collated and made available to the client and agent who are able to download the contents of the HIP.

The HIP, with all the necessary elements, can then be viewed on-line via a unique code which is given to the seller, the agent and prospective buyers. Obviously a paper copy can be printed if necessary but, due to the sheer size of the document, we are encouraging people to view on-line.

The additional advantage of this system is the ability to go beyond the compulsory requirements of the HIP and compile the entire history of the

property (such as the planning permissions, fixtures and fittings and guarantees) online. We can collate all the information that is normally requested by a prospective purchaser's solicitor ahead of time so that, when an offer is made, the seller will be ready to exchange. In the future it will be possible for all parties to view this collated information online where progress can be tracked using the unique code given when the HIP was originally commissioned.

The ability to see exactly what is going on in the conveyancing process will help to dispel many of the problems that accompany the sale of a property – nothing will be hidden as the facts will be there for all involved to see. This will save considerable time raising, and replying to, the many enquiries between solicitors which will in turn reduce the time between finding a buyer and exchange of contracts which is so important in fixing a commitment. The future is electronic!

For more information about HIPs or Wright Hassall's conveyancing procedures, please contact Kim Fracchia by calling 01926 880791 or via email.

kim.fracchia@wrightthassall.co.uk

Bravissimo opens Regent Street outlet

Wright Hassall has helped a national retailer open a new store after agreeing a particularly appropriate lease covenant.

Bravissimo, which specialises in lingerie, swimwear and clothing for women who wear a D cup or above, has its headquarters and warehouse operation in Leamington and has opened its first store in the town.

The shop, located in a listed property in Regent Street, has opened after the covenant was signed which specified that an "attractive frontage be displayed by the tenant at all times."

Sarah Tremellen founded Bravissimo in 1995 when she experienced difficulties finding a choice of lingerie in sizes D cup and above.

She started the company as a mail order business from home and has since launched a website and 15 outlets throughout the UK employing 465 staff. Some 200 of those are based in Leamington Spa across Bravissimo's Holly Walk headquarters, warehouse and new store.

Sales are expected to hit £37 million this year and the firm's mail order business accounts for



Gill Worthington, head of the retail unit at Wright Hassall (right), with Leamington Bravissimo store manager Vicky Smith.

around 55 per cent of turnover.

Bravissimo was named this year as the 19th best company to work for in the Sunday Times annual list.

Gill Worthington, head of the retail unit at Wright Hassall, helped Bravissimo secure the lease in Regent Street.

She said: "It is great to play a part in bringing another quality major retailer to Leamington.

"As well as the lease work, the construction team at Wright Hassall advised Bravissimo on a number of related issues with this historic building.

"In fact it is only the listed frontage which remains from the former Woodward store, with the mixed usage development behind being built largely from scratch.

"This is the fifth store opening we have worked on with Bravissimo and it is great to be involved with a locally-based company which is achieving national success."

Sarah Tremellen, founder and Chief Executive of Bravissimo, said: "We moved the head offices and warehouse facility to Leamington Spa from London in 2001 and since then Bravissimo has undergone a dramatic period of expansion.

"We're delighted to have finally opened a shop in Leamington - it's a vibrant town and we're pleased to be at the heart of it.

"We've worked closely with Wright Hassall for several years and they have ensured each acquisition has run smoothly on our behalf."

All change for UK Trade Mark applications

Clients familiar with the process of applying for trade marks in the UK will be aware that all new applications are examined by the UK Intellectual Property Office (UK IPO) and may be refused on "absolute" and "relative" grounds.

A refusal on absolute grounds means that the trade mark is not thought to meet the legal criteria for registration for inherent legal reasons. A "relative" refusal indicates that the UK IPO believes that the trade mark may conflict with one or more existing third party-owned trade mark registrations or applications (prior rights) on the basis of too much perceived similarity.

From October 1, the UK IPO will no longer refuse new trade mark applications on the basis of prior rights. This will put the burden on to prior rights owners to satisfy themselves that new applications are not in conflict with any of their own trade mark registrations or applications.

The UK IPO will however send new applicants a copy of a search of the trade mark register showing relevant prior rights. This will give new applicants the option of withdrawing or restricting the scope of goods and services covered by the new trade mark

to avoid conflict with such prior rights. If the applicant continues with the application nevertheless, the UK IPO will inform the owners of the UK prior rights in question of the application at the time it is published for opposition purposes. Owners of prior rights which are Community Trade Marks will need to opt-in to this service upon payment of a fee.

Prior rights owners will continue to have the right to object to new applications which they may oppose when the applications are advertised if they consider them to be unduly similar. If no opposition is filed, the new application will be registered automatically. This will leave prior rights owners who did not take action at the opposition stage with the burden of commencing expensive and difficult invalidity proceedings.

Depending on which side of the fence you are on, there are advantages and disadvantages to the new system:

Because there is no longer an "official" rejection system, UK trade marks may be perceived to be less valid or resistant to challenge than trade marks in certain other jurisdictions.

Applicants for trade marks will be better off as their applications are less likely to fall at the first hurdle: if prior rights owners fail to take action following notification, new applications will automatically proceed to registration.

Prior rights owners will have the trouble and expense of having to respond rapidly to a notification in order to oppose the new application. Alternatively, they will need to set up an adequate "watching service" to enable them to identify new and conflicting applications as soon as they appear on the UK IPO's register so that action may be taken as early as possible.

It will be interesting to see how much more trade mark litigation the changes will generate and whether there will be any other effects on the popularity of the application procedure.

If you require advice on trade marks or other intellectual property matters, contact Laurie Heizler or Dan Middleton on 01926 880782 or via email.

daniel.middleton@wrighthassall.co.uk
on laurie.heizler@wrighthassall.co.uk

Consumer protection from unfair trading

Aggressive and unfair trading practices will be targeted by new EU-inspired rules that are due to come into effect next year.

The Consumer Protection from Unfair Trading Regulations are due to be implemented in April as a result of the EU Unfair Commercial Practice Directive. The regulations look likely to have a significant impact on business to consumer (B2C) transactions and will apply to omissions, acts and the general conduct of businesses when dealing with the typical consumer.

The wide scope and flexible provisions of the Directive mean that the regulations will supersede some of the established (and now outdated legislation) on unfair trading. The aim is to protect consumers by prohibiting deceptive and intimidating sales practices that are unfair but not currently illegal. Importantly the regulations will apply before, during and after a contract is made with the consumer and will apply across all business sectors.

Although the regulations are geared towards protecting consumers they will also benefit honest businesses and will also target unscrupulous and dishonest traders as well as simplifying the existing consumer protection legislation.

Broadly speaking the regulations will introduce three prohibitions (which will be enforced by the Office of Fair Trading and local Trading Standards Departments) to ascertain whether sales techniques are unfair. These prohibitions include:

- 1) specific categories of misleading actions and omissions and aggressive commercial practices;
- 2) a list of practices that are always deemed to be unfair and will be prohibited in all circumstances with no exceptions;
- 3) a prohibition on unfair commercial practices.

Aggressive practices and misleading practices

The prohibition on aggressive practices targets those advertisements and other sales methods that encourage consumers to make decisions or purchases that, in the absence of the aggressive practice, they are unlikely to have made.

A misleading commercial practice includes an action or omission which contains untruthful information or in some way deceives a typical consumer into taking a transactional decision that he would not have otherwise made. An action will be misleading if it:

- causes or is likely to cause a typical consumer to confuse a particular product with that of a competitor; or
- is misleading generally.

Omissions will include:

- material or information which is hidden or omitted and which the typical consumer needs in order to decide on whether to undertake a transactional decision;

- failure to identify the commercial intent or reason of the practice; or

- information that is provided in an unclear, ambiguous or unintelligible manner.

Practices that are always deemed to be unfair

The list of practices that are always unfair is substantial but the following are the more salient examples:

- making personal visits to the home of a consumer and ignoring the consumer's request to leave and/or stay away;
- displaying a quality mark without authorisation;
- falsely claiming that a product can cure illness;
- falsely claiming to be a signatory of a code of conduct;
- falsely stating that a product will be available for a very limited time in order to obtain or encourage an immediate decision; and
- failing to respond to pertinent correspondence in order to dissuade a consumer from exercising his contractual rights.

General prohibitions

The general prohibition serves as a "catch all" provision for those practices not specifically covered by the prohibitions detailed above.

Infringement and Enforcement

Infringement or contravention of the regulations will lead to civil and criminal penalties and the burden of proof will depend on which prohibition has been breached. The general prohibition will require the prosecution to prove that the trader has knowingly or recklessly breached the requirements of professional diligence. A breach of the remaining prohibitions will be strict liability crimes as the fact that the regulations have been breached is enough.

The regulations, when breached by a corporate body, provide for the prosecution of the management where they have been breached with the consent of the management or where the offence is attributable to any neglect on the part of the management. The duty of enforcement will fall to the OFT and Trading Standards.

Conclusion

It is clear that the regulations are well overdue in addressing the issue of unscrupulous advertisers and businesses. However, there is likely to be a fine line between advertising being effective and whether it breaches the regulations. In the absence of any clear judicial guidance on the matter, early legal advice will be essential to ensure that even honest businesses are guided through the regulations. If you require further advice then please contact Daniel Middleton or Laurie Heizler on 01926 880782 or via email.

daniel.middleton@wrighthassall.co.uk
or laurie.heizler@wrighthassall.co.uk

Cruising hotel brings WH on board

Guests on a new canal cruising hotel will be able to splice the main brace thanks to Wright Hassall.

Visitors on Katie, a luxury three-bedroom narrow boat hotel, can now enjoy a glass of wine, champagne or beer with their evening four-course meals.

The licence, which Wright Hassall helped obtain, was required because serving alcohol on a narrow boat without one is illegal.

But now the hotel boat, which is operated by Away4awhile, can supply its full, luxury service.

Boat master, Mike Chambers, said: "We've been lucky because Wright Hassall has been very quick in getting the licence which is the whole reason we chose them."

Andrew Potts, of Wright Hassall, said: "I've licensed bars at the top of skyscrapers and bars which serve underground – but canal boats are something quite different. We were able to get 'Katie' a licence fairly quickly, so we hope their guests can enjoy their trip that little bit extra."

Pictured on front page: Boatmaster Mike Chambers (left) toasts the new narrow boat hotel licence with Andrew Potts of Wright Hassall.

Ellis signs on

Lindsay Ellis has joined Wright Hassall's commercial team.

Lindsay, who has considerable experience in advising suppliers and customers on all aspects of IT procurement and outsourcing transactions, has particular expertise in advising businesses in the financial services, logistics/retail and public sectors. He also has extensive knowledge on advising on regulatory issues in the financial services sector, data protection and on general commercial contracts.

Third time lucky for lease code?

The Code for Leasing Business Premises in England and Wales 2007 was published in March and is intended as a voluntary good practice guide for use by both landlords and tenants. It is designed to avoid common pitfalls in entering into letting arrangements and to promote an informed and standard approach to key lease terms.

Sounds familiar?

The code has been with us for some time now, having been published previously in 1995 and again in 2002. It originally came about as an attempt by the property industry to regulate itself in the face of central government pressure to regulate commercial lettings and address a perceived inflexibility in commercial lease terms.

Uptake has been slow. Since its original publication the code has not had a huge impact on market practice. Reading University research suggests that the 2002 Code did gain a greater profile than the original code, largely due to its wider dissemination, but even then, it has had little impact in practice on individual lease negotiations. The 2007 Code represents a further attempt to deflect the government attentions from the industry.

So what makes the 2007 Code different?

The Code is the product of collaboration between commercial property professionals and industry bodies, including the British Property Federation, British Retail Consortium, and the Royal

Institute of Chartered Surveyors. It comprises three separate documents (which are more user-friendly than earlier versions):

- a landlord code – two pages of recommendations for landlords;
- a tenant guide – simple guide explaining how commercial leases work; and
- a heads of terms checklist – designed for use by all parties and their agents and solicitors during lease negotiations.

Each element can be downloaded from www.leasingbusinesspremises.co.uk:



The latest Code for Leasing Business Premises does not appear to be making a big impact. Richard Herdman reports.

Will it be third time lucky?

Clearly the failings of the first two codes remain a concern. On the launch of the code, Philip Freedman CBE, chairman of the Code Steering Group, said: "Hundreds of hours have gone into the production of these three documents, but it will be all for nothing if we do not get them into the right hands at the right time. I strongly therefore urge prospective tenants, their agents, solicitors, bankers

and accountants to ask for code compliancy when negotiating a lease, and landlords and their representatives to volunteer it."

The British Property Federation are also doing all they can to promote the code.

Our view

We believe that the code can be a particularly useful tool when negotiating a lease, especially from the tenant's perspective. However, we can only start to assume that the code will be a real success when we start to see heads of terms coming through from agents which have clearly been negotiated by reference to the code. So far there is scant evidence of that and it seems that many landlords and agents are unaware of the code, or more likely they are simply choosing to ignore it.

What is more, some of the recommendations made in the Landlord's Code are probably unrealistic. In particular the recommendation that landlords might offer both upwards and downwards rent reviews.

So far the code remains voluntary – so whilst nobody can be forced to adhere to it, the code's supporters clearly hope that its use will quickly become common practice. Only time will tell – if history repeats itself, legislation might well have a part to play in the future.

For more information please contact Richard Herdman on 01926 880730 or via email.

richard.herdman@wrightthassall.co.uk

Don't get snared in your own website

It is very easy to be caught up with the stunning design or exciting technology of your new website. But it is just as easy to commission a new website only to discover that you don't own the intellectual property in the design, content and coding of the site.

This often only comes to light when, perhaps some time later, you fall out with the developers and wish to take the site to a new developer and re-use some elements of the design, content or coding.

Copyright is the intellectual property right that will protect the design and the look of the website, the navigation menus, graphics, images, the text or content of each page, and/or any animations. Similar protection will also apply to the hidden coding in HTML, javascript or other programming language, which the browser reads and interprets to display the webpage on the screen.

The underlying issue is that the copyright in the various elements of the site will belong to the person who is commissioned to create those

elements, unless you agree specifically that this not to be the case. If the person who creates the elements in question is an employee and he/she is doing so in the course of their employment, then the copyright will belong to that person's employer in the first instance.

This means that if you engage a third party web developer to create your new website then any elements that are designed or written by the developers (or their employees) will belong to the developers rather than you. The developers will therefore have the right to prevent you from copying or re-using these protected elements of your design. Whilst this may not cause any practical difficulties at the outset, it may limit the extent to which you can continue to use those elements if you change to a new developer.

Of course, if you or your employees write the text, create the images or take the photographs which the developers then incorporate into the website, the copyright in these items will belong to

you and you will be entitled to use these elements without restriction.

In addition, care needs to be taken if you provide the developers with photographs taken by a third party because, again, that third party may own the copyright in those photographs.

This common pitfall can be avoided by making sure that you agree with the developers at the outset that the intellectual property in everything they create will be transferred to you. An appropriate contractual term will need to be negotiated and agreed with the developers. It is of course always easier to negotiate such a provision at the outset rather than months later when you have fallen out with the developers.

However, there is often a deal to be struck which includes the assignment of the intellectual property as part of a wider settlement, even when all seems to be lost.

For more information, please contact Iain Colville on 01926 880753 or via email.

iain.colville@wrightthassall.co.uk

Tax efficient profit extraction

Pension contributions have always been an effective method of extracting profits for the benefit of business owners. On 6th April 2006 the rules governing pension contributions were radically changed introducing both a simpler structure than we had previously under company pension rules as well as uncertainty as to how these contributions, when made for controlling directors and family members might be treated for tax relief purposes.

Though as far as HM Revenue & Customs (HMRC) are concerned there is no monetary limit on contributions that can be made to a pension, income tax relief is restricted to the greater of either 100% of earnings or the Annual Allowance (£225,000 for 2007/08). However, there is a disparity between the income year running to 5 April annually and the Annual Allowance, which is based upon Input Periods. Input Periods are set by the pension scheme

but can be altered by the individual, so long as they do not run for more than 365 days and you do not have more than one Input Period ending in any income tax year.

This means that in a relatively short period, (as little as a few weeks, so long as they straddle two tax years) it is possible to make tax relievable pension contributions of up to £705,000 gross. This is based upon using the Annual Allowance of £225,000 for 2007/08, £235,000 for 2008/09, and £245,000 for 2009/10. Of course this does require the individual to have earnings in the first two tax years of at least £705,000. Given that a pension scheme can borrow capital of up to 50% of scheme assets, this would allow a property of up to £1m to be readily purchased by a pension scheme utilising a very short funding period.

One word of caution though is that whilst

presenting new opportunities in the contribution arena, HMRC changed the Corporation Tax relief position of pension contributions, moving it to the same basis as any other business expense, "wholly and exclusively for the purposes of the employer's trade". In doing so they highlighted in particular the possible refusal of relief for controlling directors or their close family or upon the cessation of a business. As ever, the issue is, one of whether remuneration overall, including pension contributions, is excessive compared to the work undertaken. This is a very clear example of the need to ensure that all of the professional advisers work together to provide holistic support, rather than advice in isolation.

**Ed Gibson, Chartered Financial Planner,
Cavanagh Group plc
www.cavanagh.co.uk**

2012 Olympics create marketing minefield

There may still be five years until the start of the 2012 Olympics but businesses need to move swiftly to take advantage of the commercial climate created by them. However, businesses also need to tread very carefully, as new legislation makes using Games-related words a legal minefield. This article highlights the tactic of Ambush Marketing together with the general effects of the new legislation.

Legislative measures in relation to advertising and marketing are designed to tighten the protection of Olympic intellectual property and to prevent unauthorised marketing in connection with the Games. It is crucial that the London Organising Committee of the Olympic Games ("LOCOG") can offer exclusivity to sponsors who have paid such large amounts for the privilege to be associated with the event. To this end, the IOC requires that candidate cities undertake to protect Olympic

marks and imagery, prevent ambush marketing and maintain advertising-free venues. Furthermore, it restricts market clutter, prevents the over-commercialisation of the Games, prevents inappropriate marketing and protects the high standards associated with the Olympic ideal.

Ambush marketing

Ambush marketing is the attempt by some businesses, who are not official sponsors, to employ marketing tactics in order to gain commercial advantage from the event, without having to pay for the privilege. This is essentially where a company attempts to ambush or undermine the sponsorship activities of a rival that owns the legal rights, often by creating the sense that they, and not the actual sponsor, are associated with the owners of the event or activity.

In many cases ambush marketing is perfectly legal; any actual infringements of intellectual property laws are very hard to establish. The use of another company's trademark or registered design; the copying of another's work; or the making of any misrepresentations is easily avoidable by the ambush marketer. Therefore the introduction of new legislation has been seen as the solution to completely prohibit such practices.

Effect of the legislation

As with most new legislation some think that it

is surplus to requirements, believing that current provisions are sufficient to prevent any would-be ambush marketers. Others feel that certain gaping loopholes have been closed as a result of the new Act. Whatever the thinking, it is clear that the new provisions are more stringent in nature.

This will inevitably have an impact on the so called "halo effect" that a large sporting event, such as the Olympics, brings to the host nation's economy. The provisions within the legislation will effectively give the IOC a monopoly on both certain words and also on combinations of those words. There is a fear that localised businesses will be unnecessarily penalised as they will be unwittingly caught out by the Act. Therefore, both local businesses and advertisers alike, need to be aware of and fully understand the legislation. The provision of clear and careful guidance by legal advisers is essential if this potential legal quagmire is to be navigated successfully.

For more information please contact Claire Cram on 01926 884631 or Daniel Middleton on 01926 880782 or via email.

**claire.cram@wrighthassall.co.uk
daniel.middleton@wrighthassall.co.uk**

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