

Each chapter progresses from an explanation of the law to critical readings. Kershaw begins by explaining what the main policy concerns and legal issues are, and proceeds to explain how the law has developed. The author's chosen technique continually encourages the reader to think about the law. This does not detract from his ability to convey the basic rules in a clear and succinct fashion. Rather, the explanation of the normative basis, coupled with comparative examples, enables the reader fully to understand the law. In addition, the fact that the reader is drawn into an engaging narrative ensures that both the broad question and the fine detail are enjoyed as revelations. They are therefore remembered. The discussion does justice to the technicalities of the law without losing sight of the fact that company law is indeed a fascinating discipline. The chapters also include extracts from statutes, judgments, scholarly work, and popular media, which make this book an excellent resource.

Company Law in Context is not the only good company law book on the market, but it is certainly the most readable that this reviewer is aware of. In the reviewer's experience, the book is thoroughly enjoyed by both undergraduate and postgraduate students. What is more, students who read this book emerge from their course equipped with an excellent understanding of company law, as well as an ability to critique the law in an intelligent and knowledgeable manner. Kershaw's contribution will be a welcome addition to both undergraduate and postgraduate courses, as well as an excellent point of reference for the seasoned researcher.

*Justin Borg-Barthet**

Jonathan D. C. Turner, Intellectual Property and EU Competition Law, Oxford: Oxford University Press, 2010, 384 pp, hb £155.00.

This book is an authoritative study of how EU competition law relates to intellectual property. It is a substantial achievement and very obviously the last word on the subject for the time being. Jonathan Turner is an experienced barrister with a practice in this area, and the text contains practical insights which add value to the text. The content of the book is drawn from Vaughan and Robertson's encyclopedic looseleaf work on EU law. It is to the credit of the publishers that these sections contributed by Jonathan Turner have now been made available in a more convenient separate work.

The book is split into four chapters. The first is an introduction to the principles of EU competition law applicable to intellectual property, in particular Articles 101 and 102 of the Treaty on the Functioning of the European Union and the merger control regulation. Article 101 prohibits agreements between undertakings with the object or effect of preventing, restricting or distorting competition in the common market. In the context of intellectual property, care must be taken, for example, to ensure that assignments of rights or licenses of trademarks to

*School of Law, University of Dundee

distributors are not anti-competitive. Article 102 prohibits the abuse of a dominant position affecting trade between EU member states. The author is aware of the difficulties of the law in this area and helpfully discusses wrinkles in the case law. He notes, for example, at paragraph 1.111 (83) that the various national regulatory regimes for health service provision means that geographic markets for pharmaceutical products under Article 102 are normally defined as national. The merger control regulation allows the European Commission to assess mergers with an EU dimension for anticompetitive effects. The disposal of intellectual property rights or other requirements (such as licences or sharing arrangements) may be required by the Commission as commitments for a merger to be cleared.

The second chapter concerns technology licensing and similar agreements, referred to in various soft law instruments by the European Commission as 'technology transfer' agreements. The law in this area is complex, based on Regulation 772/2004 providing a block exemption to certain agreements and the Commission's detailed Guidelines on technology transfer. The 2004 Regulation exempts from competition law scrutiny licenses and certain types of assignment of patents, know-how and software copyright, where part of the risk associated with the exploitation of the technology remains with the assignor. The Guidelines are the Commission's commentary on what the 2004 Regulation means, without prejudice to future rulings of EU courts. The block exemption applies where the parties are competing undertakings and their combined market share must not exceed 20 per cent. Where the parties are not actual competitors in the relevant technology market, their combined market share must not exceed 30 per cent. Where technology transfer agreements are not covered by the block exemption, they must be assessed individually for compliance with Article 101. This is, again, a complex matter. The text contains a helpful table which summarises the law as to particular terms under Article 101 (166–170). Exclusivity and restrictions on sales in licenses are considered further under this analysis. Sometimes it has been thought that these do not themselves infringe Article 101 since they protect licensed intellectual property rights. The better view, the author argues, is that such terms can contravene Article 101 if the parties could have concluded a less restrictive agreement (173). There follows an extensive analysis of various varieties of terms. Further discussed in the chapter are technology pools licensed to third parties, subcontracting of technology agreements, and joint research and development agreements.

The third chapter examines inter-related markets in the fields of culture, media and sport, typically, the author argues, concerning the economic exploitation of copyright. The EU case law and decisional practice of the European Commission with respect to films, broadcasting and exclusive television rights are all considered, as are those concerning collecting societies for royalties flowing from rights in members' works. An interesting analytical theme that emerges from the law on collecting societies underlines the importance of making arrangements that do not contravene Article 101, either by exclusivity clauses or collusion over fees charged. Similarly, a collecting society may abuse its dominant position under Article 102 by unjustified, discriminatory or excessive royalties. A final section concerns the joint exploitation of television rights to major sporting events, which have been permitted by the European Commission provided that access to competing television companies is clear and practical.

The fourth chapter examines the protection of branding by intellectual property rights. EU legislation and the case law of the European courts have recognised that the economic functions of trademarks include communicating characteristics or attributes of the product, such as an image of reliability or quality, or possibly other information, ideas or sentiments. Trademarks can also foster public confidence and protect investment in the brand. The protections of trademark rights can be national or throughout the EU. Comparative advertising is permitted by Directive 2006/114 in order to stimulate competition and allow consumers to compare the relative merits of products, provided that such advertising is not misleading, compares products accurately, objectively, and not unfairly, or in a way which creates confusion for consumers. Re-branding, relabeling and repackaging of a proprietor's goods are also permitted under certain circumstances that foster competition. EU protection of designations of origin and geographical indications is also permitted, provided that the names are not generic or deceptive. (Sadly, it is very probably too late for cheddar cheese.) The registration of domain names on the internet within the EU is in accordance with uniform international policies. Consumer protection is strengthened by unfair competition laws at national and EU levels, including Directive 2005/29 on unfair business-to-consumer commercial practices, which prohibits practices such as displaying a trust or quality mark without having obtained the necessary authorisation. There are full discussions of distribution and rights in branding, and franchising and merchandising.

An unexpected pleasure of the text is occasional quotations from ancient and modern English cases and also non-judicial authors, particularly in the first chapter. The author is certainly well read. Ruskin, Talleyrand and Voltaire offer some wisdom on competition. On the other hand, one or two quotations can confuse more than they illustrate – an example which struck me was a quotation from Popham CJ's famous judgment in *Darcy v Allein* (1602) 1 WPC 1 before a section of the text on abuse of dominance (78). An associative implication of the quotation is that a patent is a statutory monopoly and owning one could be similar to abusive behaviour. Yet the statute Popham was construing did not concern a patent for a new invention but a monopoly granted by the Crown for playing cards, which were not a new invention. Philip Grubb has pointed this out in his new fifth edition of *Patents for Chemicals, Pharmaceuticals, and Biotechnology* (OUP, 2010, 8–9), arguing that a patent is in any event more properly conceived of as an exclusionary right to market a new invention in consideration for the general benefit of the new invention to society, rather than a statutory monopoly granted by the state as a reward for innovation.

This is probably a pedantic point. Less forgivable, for a book published in 2010, is the failure to incorporate changes made by the Vertical Block Exemption Regulation No 330/2010, which came into force in April of that year. This is annoying, as certain passages require cross-checking. But at all times, the author's analysis of the law is authoritative, succinct and precise. It will surely be indispensable for practitioners.

*John Townsend**

*Associate, Cleary Gottlieb Steen & Hamilton LLP, Brussels; Barrister, Lincoln's Inn