

Copyright, database rights, breach of confidence and conspiracy in relation to horseracing data (The Racing Partnership Limited and others v Done Brothers (Cash Betting) Limited)

14/05/2019

TMT analysis: This judgment concerned claims relating to horseracing data. The case involves a broad range of claims including conspiracy, copyright, database rights and breach of confidence which will be of interest beyond those working in the horseracing arena, due to its potential relevance and application to industries which produce and disseminate data to third parties. The court held that there was no infringement of copyright or database rights, but that there was a breach of confidence. The court also dismissed the claim in conspiracy. Written by Nicole Bollard, barrister at 3PB Barristers.

The Racing Partnership Limited and others v Done Brothers (Cash Betting) Limited and others [2019] EWHC 1156

What are the practical implications of this case?

This case provides a rare application of the law of copyright and database rights in relation to horseracing and, more generally, in relation to the collection and distribution of data. In relation to copyright, this judgment confirms that, while copyright can subsist in an algorithm or formula, the output of these is unlikely to be protected by copyright, as it is generated without the requisite skill, labour and judgment. Further, if a party merely consults another's data in order to check its own workings, this is unlikely to amount to copyright infringement.

The judgment considers where information will have the necessary quality of confidence, not through having an inherently confidential nature but as a result of it having a substantial commercial value and because a party is able to, and does in fact, control the dissemination of that information through exclusive channels to exploit its value.

In relation to the claim in conspiracy, the judgment provides a helpful exploration of the potential inconsistency in such a claim where the unlawful act relied upon is a breach of confidence. A claim for breach of confidence applies an objective test to the knowledge of the defendant, whereas a claim in conspiracy requires the court to be satisfied the defendant had actual knowledge or turned a blind eye to the unlawful act.

What was the background?

The claimants were The Racing Partnership (TRP) and Arena Leisure Limited and Arena Racing Corporation Limited (referred to collectively as 'Arena'). TRP and Arena brought claims in two actions against six companies for the alleged infringement of their rights in respect of data relating to horseracing. By the date of the trial, the only remaining defendant was Sports Information Services Limited (SIS), as the other claims had been settled outside of proceedings.

Arena owns various racecourses. TRP entered into a contract with Arena to enable it to produce live betting and horseracing data collated at Arena's racecourses. SIS had previously been entitled to collect and distribute data from various racecourses—however, these rights ended before TRP entered into contracts with these racecourses.

TRP and Arena alleged that SIS had continued to collect and distribute this data, despite no longer having a right to do so and that this amounted to copyright infringement, an infringement of TRP's database rights, breach of confidence and that the aforesaid (along with a breach of terms and conditions) were the unlawful means by which SIS conspired with others to injure TRP.

The judgment provides a detailed background as to the nature of the data being collected by TRP and its importance to off-course bookmakers. A few of the key points include:

- Betting Shows is the single representative price for each horse in a race which is calculated by using an algorithm that takes into account a selection of the fixed odds being offered by a sample of on-course bookmakers
- Betting Shows are used by off-course bookmakers to enable them to offer odds to their customers which reflect the prices being offered on-course and offer the best indication of the Starting Price, which is a price calculated by an industry standard process

- Raceday Data is the information about specific racecourses on the day of the race and incorporates a number of different elements. The Betting Shows and Starting Price are referred to as the Betting Data. The relevant database in the claim related to the collation, arrangement and so forth of the Betting Data

What did the court decide?

The court found as follows in relation to the different causes of action.

Copyright: Zacaroli J found that there was no copyright in the Betting Shows. Applying *Bookmakers' Afternoon Greyhound Services Ltd v Wilf Gilbert (Staffordshire) Ltd* [1995] FSR 723, a case relating to the copyright in forecasts for greyhound meets, the court held that the process of arriving at each price was 'pure routine work' involving no sufficient skill, labour and judgment. The judge held that while the list of names selected to be included in the sample used for the Betting Shows may be protected by copyright, the output of the Betting Shows using this sample was not protected. Further, even if copyright did subsist in the Betting Shows, the court was not satisfied that it had been infringed. In essence, TRP alleged that SIS had used the Betting Shows (and the relevant price produced) to check its own prices and SIS would either amend its price to be near to but different to TRP's price or leave it where it was. Zacaroli J held that this alleged use could not amount to copyright infringement.

Database right: SIS accepted that TRP had a database right in the relevant database but denied that it had infringed this. The judge accepted SIS's arguments that the consultation of the Betting Shows was not an extraction or re-utilisation of the Betting Shows or the database pursuant to regulation 16 of the Copyright and Rights in Databases Regulations 1997 (CDR 1997). Zacaroli J considered the Court of Justice case of *British Horseracing Board Ltd v William Hill Organization Ltd* (Case [C-203/02](#)) [2005] 1 CMLR 15 as to the interpretation of regulation 16 and in particular, when repeated and systematic extraction or re-utilisation of insubstantial parts will amount to an infringement.

Breach of confidence: Applying *Douglas v Hello! Ltd (No.3)* [2008] 1 AC 1 the judge held that the Raceday Data had the necessary quality of confidence because although the information was potentially publically available, the ability to collect it and distribute it could be and was limited by Arena. The court took into account the commercial value of the information and, notwithstanding the stark differences between unapproved wedding photographs and horseracing data, found that there were strong parallels between the present matter and the *Hello!* case. The court was satisfied that the information had been imparted with an obligation of confidence, that SIS did or should have known that confidentiality attached to it and that there was an unauthorised use of this information to TRP's detriment.

Conspiracy: TRP's claim for conspiracy failed on the basis that the only unlawful means made out was the breach of confidence and the court was not satisfied that SIS had the requisite knowledge of the unlawful means, as SIS neither knew of nor turned a blind eye.

Case details

- Court: High Court, Intellectual Property List (Ch D)
- Judge: Zacaroli J
- Date of judgment: 8 May 2019

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