interpretation NOW!

Episode 131 – 8 May 2026

The High Court refused an application by US singer Katy Perry to cancel the clothing trade mark *Katie Perry* held by an Australian fashion designer[1]. It was argued that its use by the designer 'would be likely to deceive or cause confusion'[2]. This was due to the reputation the singer's later trade mark *Katy Perry* had acquired. Steward J invoked a maxim against allowing a person to take advantage of their own wrong[3]. Should the 'assiduous efforts of an infringer' in creating likely confusion be permitted to cause cancellation?[4] A literal reading suggested 'maybe', but Steward J held 'no'. The statute should not reward an infringer as parliament 'cannot have intended such a glaringly wrong outcome'. Where the legislative target is clear, the duty of the court is to ensure it is hit rather than missed[5]. This case shows how old maxims are accommodated into modern practice.

Gordon Brysland Tax Counsel Network gordon.brysland@ato.gov.au 0417 605 338

Negative words

Glascott v The King [2026] VSCA 42

The court gave 9 reasons why it could not have been intended that a special hearing on mental competence was invalid for being conducted outside the statutory time limit. The provision said the 'court must hold a special hearing … within 3 months …'[6] The last reason given (at [122-123]) was that the obligation here was expressed as an 'affirmative prescription' rather than as a 'negative stipulation'[7].

Negative words, it was said, 'carry a stronger mandatory import than affirmative words'. This case is a good example of there being less propensity for affirmative words to produce invalidity where 'inconvenience will flow from such a result'[8].

Dictionaries

McCallum v Projector Films [2026] FCA 173

After setting out the basics of our 'modern approach' from Palmanova, the court (at [150-151]) provided guidance on the proper use of dictionaries.

The court said that ordinary meaning 'is not necessarily divined from a dictionary'. A 'familiar difficulty' is that dictionaries specify a range of meanings (or senses) rather than any particular meaning in context. Dictionaries are useful in the identification of possible meanings, but they tell us nothing about context and they are no substitute for interpretation. Finally, beware of treating words used in dictionary definitions 'as if they are synonyms for the word in its statutory context'[9].

Consequences

Chief Commissioner v Gentner [2026] VSCA 22

The court in this case (at [72]) noted that, when selecting between competing interpretations, regard may be had to the consequences of each[10]. Detective G was charged with a breach of discipline. Another officer later amended the charge, found it proved, and determined that G should be dismissed. The regulation said that the 'Chief Commissioner or authorised person may amend a charge …'[11]

G argued the amendment was invalid, as only the original charging officer could amend the charge. This was rejected. The court reasoned (at [85]) that this was impractical, likely to cause delay and 'unlikely to have been intended by the legislature'[12].

Social media posts

Supaphien v Chaiyabarn [2026] ACTCA 5

A 'shopping service' operator was accused of selling a fake Chanel handbag. A social media video later detailed the allegation without naming the person[13]. She sued for defamation alleging 'serious harm'[14].

One issue was how social media posts are to be understood. The trial judge said that posts are to be read in a 'somewhat informal manner' because social media is a 'casual medium'. That is, they are 'in the nature of conversation rather than carefully chosen expression'[15]. McWilliam J (at [121-123]) said this underestimated the impact posts may have, 'especially within a particular community'. Posts may cause serious harm to reputation, though not here.

▪ **Thanks – Oliver Hood, Jeremy Francis, Charlie Yu & Patrick Boyd**

[1] Taylor v Killer Queen LLC [2026] HCA 5.
[2] s 88(2)(c) Trade Marks Act 1995 (Cth).
[3] [135-157], Broom's Legal Maxims (191), Ruthol [2005] NSWCA 443 [20-21].
[4] Bali (1968) 118 CLR 128 (133), Murray Goulburn (1990) 171 CLR 363 (384, 389).
[5] [157], Newcastle (1997) 191 CLR 85 (113), Taylor [2014] HCA 9 [60] cited.
[6] s 14F(5) Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 (Vic).
[7] Davis [2016] VSCA 272 [61] cited, cf Forrester [2012] NTSC 61 [31].
[8] Pearce 10th ed [11.24], Tilbury [1940] VLR 245 (255), cf MBW [1965] VR 143.
[9] Martinez [2013] FCA 439 [68] quoted, cf Supaphien [2026] ACTCA 5 [62].
[10] Young [1999] NSWCCA 166 [15], CTM [2008] HCA 25 [237]) cited.
[11] reg 52(1) Victoria Police Regulations 2014 (Vic).
[12] cf Cooper (1981) 147 CLR 297 (319-321), Episodes 24, 54, 100 & 108.
[13] The post was 'liked' 185 times, received 144 comments & shared 34 times.
[14] s 122A of the Civil Law (Wrongs) Act 2002 (ACT).
[15] Randell [2022] NSWDC 506 [18], Bazzi [2022] FCAFC 84 [29] cited.

Episode 132 – development consents; correct procedure; judgment words; legal meaning

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ISSN 2651-9518