



IP ITeasers 64:

Roam's race relations

Roam's Skin Tone Condoms are currently being advertised on the London Underground with the strap line "*Set the right tone*", which accompanies a picture of four hands of graduating skin colour holding a half-opened sachet showing a protruding prophylactic sheath. So far so good. However, on closer inspection, all the hands appear identical as the palmar flexion creases were the same, which strongly suggested that the differences in skin tone were generated artificially and applied electronically to a photograph of the hand of the same model. Further, as anyone who has actually looked at the hands of people of different races would know, the skin tone is not uniform on the dorsal and palmar surfaces, unlike the case in the advertisement. A lost opportunity surely to showcase a range of people to whom such a product might appeal. Maybe, the wrong tone was set?

Separately, the photograph raises complicated questions of whether copyright can arise in a simple photograph, especially of a naturally occurring item or scene such as a hand or landscape. Even in these circumstances, there is a degree of original intellectual endeavour in selecting the view, in particular the near-field composition for a landscape, and any technical details that would have an effect upon the final depiction, such as aperture size, shutter speed, filters and the like. In the case of this photograph for the advertisement, there has most likely been some rather simplistic post-production manipulation that would more than likely infuse the result with the author's own creative intellectual stamp (akin to the photoshopped photograph in the Red Bus case, [2012] EWPCC 1, [2012] FSR 9). Note, though, the case of *Kenrick v Lawrence* (1890) LR 25, QBD 99 that grappled with the idea / expression dichotomy, and in which an injunction was refused to stop an imitation of a

drawing of a hand holding a pencil marking a cross on a ballot paper, which had been used to help educate illiterates to vote correctly.