

# The Trademark

Issue 1 2025

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## Lawyer

# *Thatchers* *v. Aldi:* what does a look-a-like look like now?



**Launch**  
interactive document

Peter Vaughan, Associate Professor at Nottingham Law School, reviews the recent case that underscores the complexities of trademark law regarding look-a-like products, highlighting potential strategies for brand owners to protect their product packaging effectively.



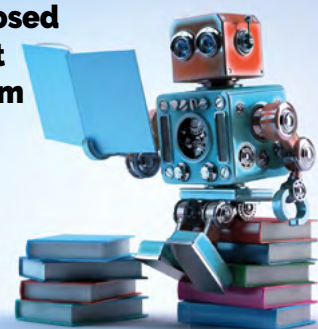
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**FERRANTE**  
INTELLECTUAL PROPERTY



# Editor's welcome



EDITOR'S WELCOME

Limitation may well be the sincerest form of flattery... until it comes to attempting to leverage a competitor's reputation through the form of a look-a-like product! In yet another case, our cover story assesses the recent feud between Thatchers and Aldi, asking *what does a look-a-like look like now?*

From here, we explore the profound impact of influencer marketing on consumer behavior and the legal responsibilities that influencers and

**The profound  
impact of  
influencer  
marketing.**

brands must navigate to protect their IP; address non-use cancellation in trademarks, sharing insights into the latest trends and strategies emerging from China; review the UK Government's proposed reforms, contemplating the delicate balance between innovation and creator rights; examine the strategic implications of trademark evergreening; and provide insights into parallel imports in Russia.

Plus, join us for an enlightening conversation with Elisabeth Stewart Bradley, the newly appointed 2025 INTA President. Discover her vision for IP practice and how she aims to lead us through the ever-evolving challenges of this field.

Our *Women in IP Leadership* segment features Charlotte Wilding, Partner at Keltie LLP.

Our next issue will be our INTA Special Edition, distributed at the Annual Meeting in San Diego in May; contact us now to reserve your feature!

*Faye Waterford*  
Faye Waterford, Editor

## Mission statement

*The Trademark Lawyer* educates and informs professionals working in the industry by disseminating and expanding knowledge globally. It features articles written by people at the top of their fields of expertise, which contain not just the facts but analysis and opinion. Important judgments are examined in case studies and topical issues are reviewed in longer feature articles. All of this and the top news stories are brought to your desk via the printed magazine or the website [www.trademarklawyermagazine.com](http://www.trademarklawyermagazine.com)

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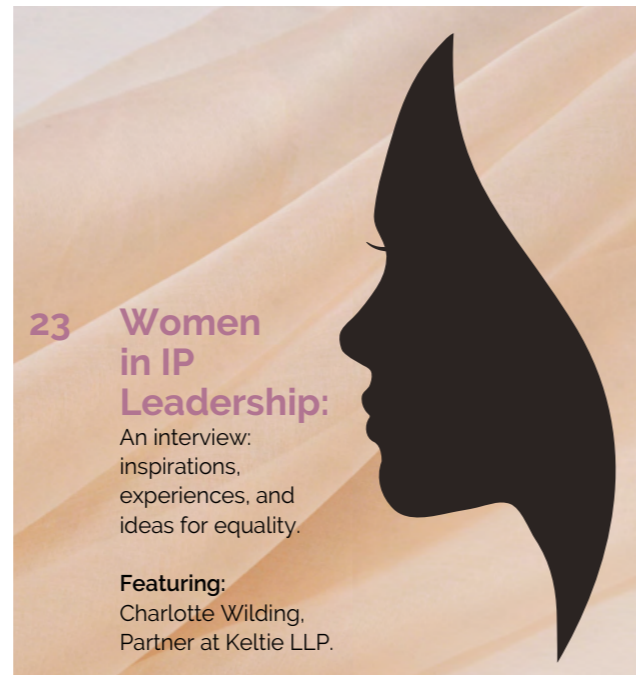
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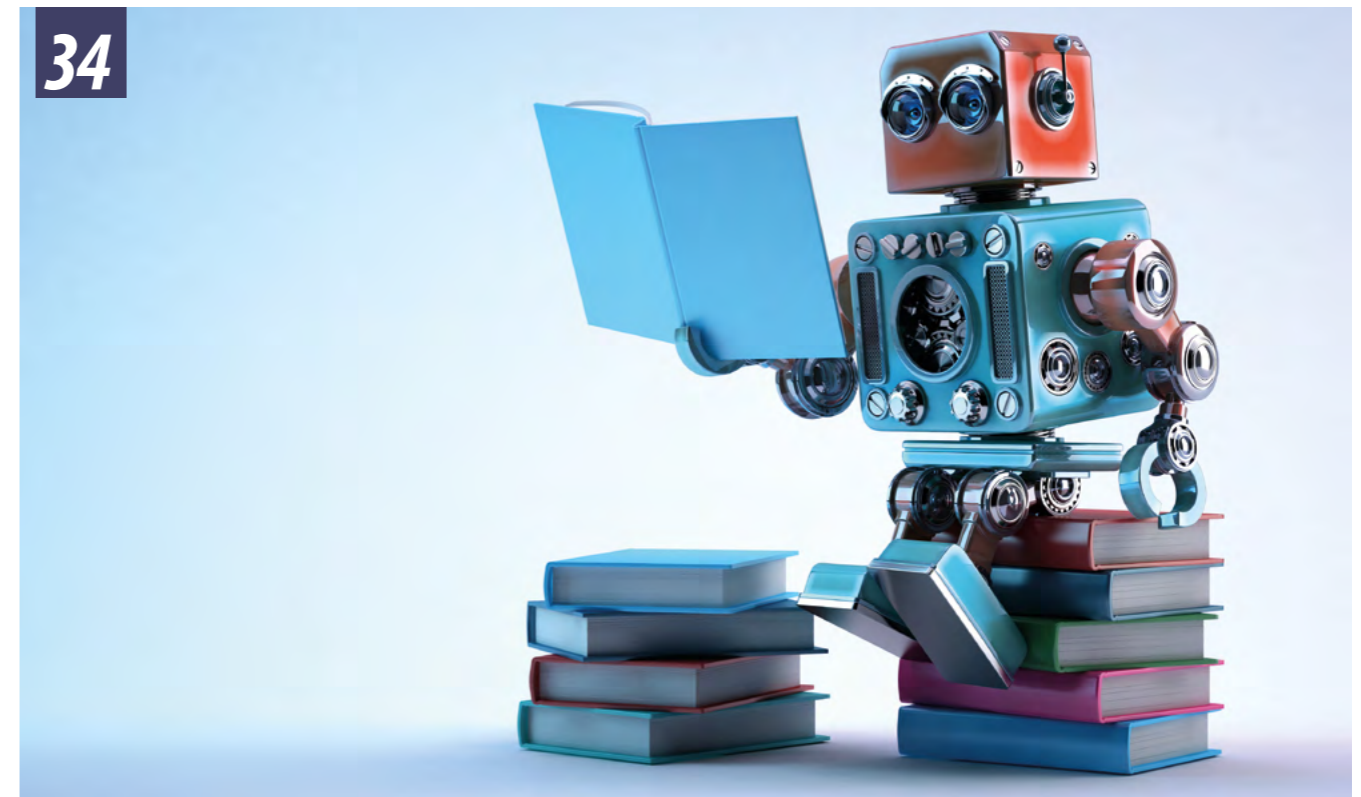
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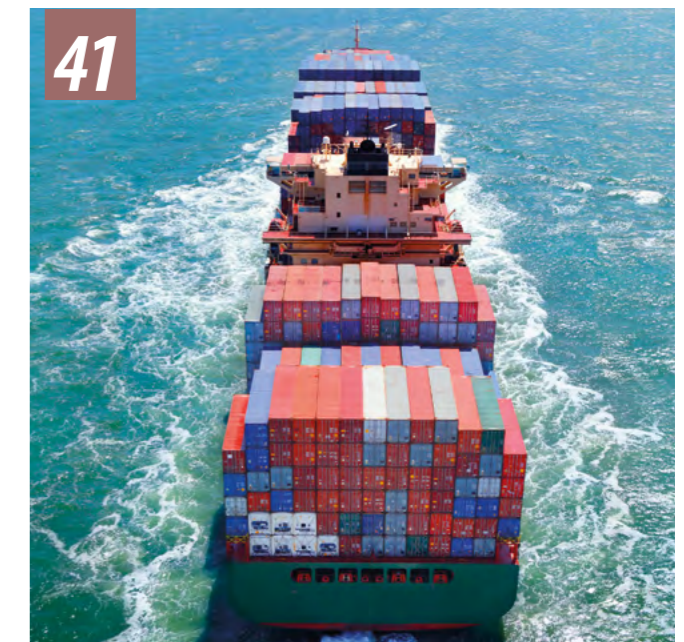
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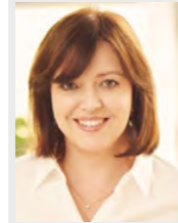
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# Thatchers v. Aldi: what does a look-a-like look like now?

**Peter Vaughan, Associate Professor at Nottingham Law School, reviews the recent case that underscores the complexities of trademark law regarding look-a-like products, highlighting potential strategies for brand owners to protect their product packaging effectively.**

The *Thatchers v. Aldi* Lemon Cider cases need little introduction. From the judicial taste testing at first instance, to the existential debate which has subsequently sprung up around "look-a-like" products, the saga has generated plenty of headlines and strong opinions. But are these justified? After all, at its heart, the decision of the Court of Appeal shows that this was simply a classic L'Oreal free-riding type case turning on its own particular facts.

In my view, Lord Justice Arnold's decision does not advocate a general point that look-a-



Peter Vaughan

likes are doomed. Instead, it is a fact-specific decision that illustrates some of the evidential challenges with bringing and defending 10(3) reputation cases. Even though the first instance decision was overturned on unfair advantage, the door is still open to the right type of look-a-like.

Whilst the decision is best seen as a cautionary tale for look-a-likes, closer inspection reveals some solace for both sides of the debate. Lord Justice Arnold's decision demonstrates the risks of walking the fine line between look-a-like and infringement. But, for those interested, elements

## Résumé

Peter Vaughan is an Associate Professor at Nottingham Law School and practicing Chartered Trademark Attorney, where he supervises the IP work at NLS Legal (Nottingham Law School's on-campus teaching law firm), providing advice to small businesses and individuals in the field of IP.

Peter is also the Deputy Course Leader on the IP Practitioner Portfolio of Courses at Nottingham Law School. He teaches and is module leader on the Professional Certificate in Trade Mark Practice, a course accredited by IPREG for trainee trademark attorneys wishing to qualify. He is also module leader on the new Postgraduate Diploma in the Commercial Intellectual Property course.





of the case provide hints at how to create a look-a-like less easily challenged. Look-a-likes, on this reading, are not over. The fine line is finer but still there for those who wish to tread it. Let's take a look.

### What was not at issue

As is often the case, what was not said (or appealed) can be as instructive as what made it before the court. It is notable that Thatchers did not seek to appeal the first instance decision, which dismissed both the passing off claim and the 10(2) likelihood of confusion claim. Only the 10(3) unfair advantage and detriment claims were pursued through to appeal. This narrowing of the issues for the appeal illustrates, in part, the difficulties that parties face in preventing look-a-like packaging. Claims under 10(2) and passing off, in the case of a true look-a-like as opposed to a more obvious copy-like, are very difficult to establish; consumers are not confused. Previous case law has demonstrated the challenge of using 10(2) and passing off (Moroccanoil, for example), and Thatchers accepted this approach. United Biscuits and Jif Lemon are now almost the exceptions that prove the rule.

### Sophisticated trademark strategies

The focus, therefore, fell on the 10(3) claim. Reputation was claimed in the label trademark registration itself. The main claim was as to unfair advantage (Lord Justice Arnold rejected the claim under detriment further demonstrating just how difficult it is to succeed on this ground).

Reliance on 10(3) creates two challenges for brand owners. Neither insurmountable, but both potentially limiting in who will succeed against a look-a-like product.

#### Challenge 1: an exotic filing strategy

It is not normal practice to secure trademark protection for the product label as Thatchers had in this case. Focus is rightly on securing protection for individual elements such as the brand name or the logo. It is a sophisticated party that also decides to secure protection for its label. It is, therefore, likely to be the bigger brands who benefit. Smaller entities may not have the knowledge, or the budget, to pursue these more exotic filing strategies.

The Court of Appeal decision shows that this tactic can work. Importantly, it confirms that when the label is registered, consideration of the label as a whole is needed – the label is more than the brand name and logo. This aspect was crucial for Thatchers before the Court of Appeal.

Following this, it will be interesting to see whether parties more readily seek to secure label-based registrations. Such a registration



could prove an invaluable addition to a trademark portfolio (and one wonders what this means for the utility of instead securing design registrations) albeit not at the expense of the word/logo marks.

#### Challenge 2: The right reputation

A party needs to show reputation in its label registration (and not the brand name or logo in isolation). This is, of course, a question of evidence. In this instance, Thatchers was able to demonstrate that sales were driven not just by the THATCHERS branding but also by the other visual cues. It will come down to evidence, and parties will need to be prepared.

Reputation is a high hurdle. Brands that stick with consistent packaging over many years are going to be in a stronger position than those who refresh their packaging on a more regular basis – which could place emphasis back on the brand name and away from the visual elements. Consistency is rewarded when it comes to trademark reputation.

So, we have our first set of challenges for brand owners who want to stop a look-a-like. Not insurmountable challenges and navigable with foresight and careful planning.

#### Benchmarking

The challenges with pleading a case are not just for the brand owner. One of the clear difficulties faced by Aldi was the approach taken to benchmarking; the process of looking at competitor products in developing your own. If there is one key point for the look-a-like maker to take away from the decision, it is that benchmarking against just one competitor is likely to cause difficulties.

Benchmarking is a common practice and occurs with respect to packaging as well as the underlying product. This practice does not appear to be objectionable in itself. However, the difficulty for Aldi arose as the evidence pointed to their benchmarking only against Thatchers. Further, deliberate design decisions were seemingly

made with an eye on closing in on the Thatchers packaging (the selection of the style of lemons, for example).

In contrast, Thatchers demonstrated that when they designed their packaging, they had benchmarked (or at least market researched) against a wider array of competitor products.

It is much easier to say that there has not been deliberate targeting of one competitor if a party can point to a consideration of a number of products. This approach may then act as a shield, albeit an imperfect one, in the situation where, subsequently, an element is adopted that mirrors that adopted by one competitor over another. Expressing a preference for one style over another after careful consideration is arguably different to simply targeting one competitor's products.

#### House styles

Aldi also ran into difficulty as they already had an established house style for their cider products. Why, then, did this product deviate from that style? This question was a key point of difference between the Court of Appeal and First Instance decision. At First Instance, the judge felt there was little deviation from the house style. In the Court of Appeal, Lord Justice Arnold took the view that the deviation from the house style was clear. Importantly, this aspect was not explained and seen as further evidence of intentional targeting.

Whilst fact-specific, this decision does raise an intriguing possibility. A one-off look-a-like, released where there is no established in-house range, may be in a better position than a look-a-like product that sits within a range of established house products. Such a product would not engage the considerations around deviating from established house style. Although this does not provide a blanket pass for the other benchmarking considerations, it could point to the beginnings of a way forward for those interested.

#### Data, data, data

Even given all the above points, Aldi may have been able to escape the grasp of 10(3), had they been able to show that no unfair advantage had been taken, despite the targeting.

Whilst there was sales data for the Aldi products, it was not enough or of the right sort. Thatchers had argued that the sales of the Aldi lemon cider were exceptional without marketing efforts. Aldi attempted to rebut this contention with sales data that compared sales of the lemon product to its flavored ciders, such as cherry. However, the data was not entirely comparable and sought to compare apples and oranges (or should that be lemons and cherries). The first instance judge appears to have accepted the general thrust of the data that the sales of the lemon cider were

at least broadly comparable with Aldi's other flavored ciders – and thus no unfair advantage. The Court of Appeal was skeptical and took a different view of the evidence. Time periods did not match, context was lacking, and this had an impact on its utility.

Data is crucial. The comparative sales data could have been more compelling. Such evidence might have allowed Aldi to show that sales of the lemon cider were on par with their other flavored ciders. In turn, this would have made it possible to argue that no advantage had been gained. The data did not extend far enough and was not sufficiently comparable. More precise data (assuming this was available) could have supported a very different decision. We will leave to one side the entertaining argument raised by Thatchers as to whether Aldi had targeted Strongbow in creating its usual house style (and the suggestion that if only Strongbow had a packaging registration...).

#### The end of look-a-likes?

Rather than spelling the end of look-a-likes, the decision, at one level, simply confirms that in the right case, for the right party, with the right trademark registration, a claim under Section 10(3) can succeed. This is not a universal rule, and for those parties still wishing to draw inspiration from the packaging of competitors, this case provides a useful benchmark for what might be done to fall on the right side of the line.

This must be right. Whilst there are strong opinions on look-a-likes, I have some sympathy for the need to use similar visual cues to those of established competitors. The parties in this case acknowledged that consumers give mere seconds of attention to the shelves. Without the right visual cues there is a risk that a competitor product could be overlooked. Those visual cues are, to some degree, inevitably dictated by the market leader. This is the accepted benchmarking process.

So are look-a-likes over? No. If executed correctly, they have a role to play in supporting consumer choice. But, perhaps we are entering a more cautious age for those creating look-a-likes. For the brand owner, previously niche, exotic filing strategies, at least for consumer goods, may well become the norm.

“ It will be interesting to see whether parties more readily seek to secure label-based registrations. ”

“ Consistency is rewarded when it comes to trademark reputation. ”

# The rise of influencer marketing and IP implications

**Emma Pallister, Associate at Mathys & Squire, explores the burgeoning landscape of influencer marketing, examining its impact on consumer behavior, the legal implications for influencers regarding IP, and the necessity for brands to navigate advertising regulations to mitigate potential liabilities.**

It is clear just from a quick swipe of Instagram that the growth of social media and influencer marketing go hand in hand, with affiliate links and product and service recommendations often being seamlessly interwoven into content. Influencers have come to offer brands an ability

## Résumé

### Emma Pallister

Emma is a UK Chartered Trademark Attorney based in the Manchester office, qualified since 2022. Her primary practice areas include trademark clearance, prosecution, contentious matters, and portfolio management. Before joining the profession, Emma obtained a Law degree and a first-class Masters in Intellectual Property Law from the University of Manchester. She also gained valuable experience working in Amsterdam for a well-known fashion brand. Emma assists clients of different sizes and across various industries, from SMEs to multinational corporations, with their intellectual property needs. While her specialty lies in trademark rights—helping clients identify, protect, enforce, and manage these assets—she also advises on designs, copyright, and online monitoring, including takedowns on e-commerce platforms such as Alibaba and Taobao.



Emma Pallister

to connect with consumers on a personal, more "authentic" level, and indeed, several recent reports highlight a shift in consumer behavior and trust patterns away from traditional forms of advertising and towards a reliance on influencer recommendations.

IZEA Worldwide's fourth annual 'Trust in Influencer Marketing'<sup>1</sup> report from 2024 shows that 77% of respondents prefer influencer-created content over traditional advertising, and 85% of respondents said they trust influencer-sponsored posts more than celebrity endorsements.

As influencers overtake even celebrity endorsements to be the go-to trusted source for product or service recommendations, brands need to carefully consider the legal aspects of the working relationship, particularly surrounding intellectual property liability and the impact of advertising regulations. Recent US case law also highlights how influencers themselves can be at risk of liability for IP infringement from sponsored posts, increasing the onus on them and their representatives to carry out due diligence before carrying out work.

### Use of IP in #sponsored posts and considerations for brands

Influencer marketing is inherently linked to the creation and sharing of content, and when promoting a product or service, this will often involve the use of trademarks relating to brand or product names or subject matter that is subject to copyright protection.

One of the most effective ways for brands to



mitigate IP risks is to establish clear and specific contract terms with influencers. These agreements should outline the terms and responsibilities relating to the collaboration, including:

- The scope of the influencer's work, e.g., types of content to be created, platforms to be used.
- Ownership of the content created, e.g., whether the brand or influencer retains copyright.
- Guidelines for using brand assets, logos, and trademarks. This is particularly useful for ensuring the trademark is used in the correct format, including use of the TM or ® if applicable, and avoiding the trademark being used in a descriptive sense that could lead to genericide.
- Obtaining approval and permissions for the use of third-party content.
- Payment and compensation terms.
- Confidentiality and non-disclosure provisions.

Brands also need to consider the applicable advertising regulations and laws, specifically in the context of influencer marketing. Although influencers and content creators themselves

“**Direct liability and contributory liability on the part of Sims was alleged for her sharing of the link.**”

<sup>1</sup> <https://izea.com/resources/insights/2024-trust-in-influencer-marketing/>

are typically responsible for ensuring compliance with regulations (and this could be confirmed in contractual arrangements), it could become a PR issue if a brand was featured in a post that was called out for being misleading. Therefore, brands should still review commissioned influencer content.

In the UK, the Advertising Standards Authority (ASA) and Competition and Marketing Authority (CMA) publish guidance and online rulings, including the following rules:

- Influencers must disclose any partnerships with tags like "#ad," "gifted," or "paid partnership." These tags should be clearly visible and not hidden behind a "read more." This includes formal agreements or more informal incentives to post, including gifted and PR products.
- Influencers and brands must maintain transparency and not make any exaggerated or untruthful claims.
- There are also additional laws for industries like gambling that prohibit content that could have a 'strong appeal' to under-18s, and therefore, the use of celebrities and influencers is restricted.
- Social media platforms are expected to provide tools for labeling commercial content and reporting hidden advertising.



The UK government plans to give the CMA more power to independently determine breaches and issue fines. However, currently, the only punishment for failure to comply with regulations is "naming and shaming." For example, the Advertising Standards Authority (ASA) has previously run its own targeted Instagram ads to highlight to users where influencers are not properly disclosing ads on the platform.

The ASA has also stated that content that only includes an "@ mention", a tagging of the brand, or the use of "#BrandAmbassador" is insufficient identification as an ad. Also relevant is how consumers would perceive certain terms, with "affiliate" not being considered by the ASA to be sufficient identification of a sponsored post by an influencer, as it was thought that consumers did not widely understand the "affiliate" itself.

Social media platforms have been responding to this increased scrutiny and adding their own in-built tools; for example, the 'paid partnership' label on Instagram can now be used to indicate sponsored content.

#### Influencer liability

With content creation becoming more and more commercial in nature, influencers may start to find it more difficult to avoid liability for claims made on their own account, even if paid to post. This issue was highlighted by *Petunia Products, Inc. v. Rodan and Fields LLC*, a case brought in the US in 2022.

“ It highlights that influencers need to take an active role in considering legal implications rather than leaving it to the brands themselves. ”

Petunia Products alleged that competitor Rodan and Field had infringed its BROW BOOST trademark, which had been registered and used in the US for a number of years, when the company brought out a "Brow Defining Boost" product and used the term as a hashtag on social media. Petunia also alleged that the model and influencer Molly Sims was also liable for trademark infringement due to her promotion of the product in a blog post, which also included a link for readers to shop the similarly-named Rodan and Field product.

Interestingly, direct liability and contributory liability on the part of Sims was alleged for her sharing of the link, for both providing a link to purchase the product from Rodan and Field and for encouraging readers to share said link.

In a motion to dismiss the claim, Sims argued that her use of the "Brow Defining Boost" mark was not use in commerce and that there should not be trademark infringement liability in instances where third parties publish blog posts about a product without confirming that the product does not violate trademark rights. She raised the point that if the court found otherwise, genuine online "commentary" would likely be stifled, which is akin to a "fair use" defense. Sims had also followed the Federal Trade Commission's rules for influencers by identifying the name of the product reviewed, identifying Rodan and Field as the seller, and by marking the post as sponsored.

Despite this, this use of the mark was found to be use in commerce, which could confuse consumers as to the source, given that the blog post was a paid advertisement. The court, therefore, made a distinction between a review of the product compared to a sponsored post, which was found to be commercial use because of the advertising element.

The District Judge also considered there to be a risk of confusion as to the source, as the point of the post was to promote the Rodan and Fields product with a similar name, and consumers could still wrongly infer an affiliation with Petunia Products' BROW BOOST trademark despite Sims being a third-party.

Ultimately, the direct infringement claim was allowed to proceed, while the contributory infringement claim was dismissed as Petunia failed to show that Sims had knowledge of the alleged infringement.

Although the case was unsurprisingly settled between all parties, it is notable that the infringement claim against Sims was allowed to proceed, leaving content creators in some uncertainty. Unlike what may have been thought previously, the fact that influencer posts are commissioned by third parties does not protect the influencer from the risk of liability.

Suppose claimants can now look to influencers as another potential source for monetary damages. In that case, it highlights the need for influencers to push for indemnity clauses within sponsorship contracts, whereby the commissioning brand will assume the risk and liability if the promoted product in question turns out to be infringing. This, in turn, potentially increases the cost of influencer marketing campaigns for brands if they are willing to assume this risk.

Similarly, it puts a greater onus on influencers and their agencies to perform due diligence on the products and brands they agree to promote. In general, it highlights that influencers need to take an active role in considering legal implications rather than leaving it to the brands themselves.

In addition, brands should continue to ensure they are clearing and considering any third-party trademark rights when promoting their products, even if the promotion is carried out by an influencer, and check the trademarks and supplied content are being used correctly.

#### Promotion of counterfeits

Another issue raised by influencer marketing is the possibility of involvement in promoting counterfeits. A study commissioned by the IPO in 2021<sup>2</sup> surveyed 1,000 female consumers aged 16 to 60, active on social media and resident in the UK, to provide insight into the impact of

“ The linked Amazon listing contained a description and image relating to a generic bag that wouldn't be picked up by Amazon anti-counterfeit monitoring, but purchasers of the product would be sent the counterfeit item. ”

social media influencers on consumer decisions to purchase counterfeit goods. This reports that 10% of consumers are prompted by social media influencers to buy counterfeits, and 3% use the recommendations of the influencers in their searches for counterfeits.

Promotion of counterfeit goods on social media can often be used to bypass monitoring tools of ecommerce sites themselves, as shown by a case in the US in 2021 that saw the Amazon's Counterfeit Crimes Unit claim against several influencers involved in a social media scheme to sell counterfeit goods.

The individuals had posted "order this, get this" images on Instagram stories that compared a designer product to a counterfeit item and directed users to a "hidden link." The linked Amazon listing contained a description and image relating to a generic bag that wouldn't be picked up by Amazon anti-counterfeit monitoring, but purchasers of the product would be sent the counterfeit item. The influencers had also posted videos describing the alleged high quality of the counterfeits they promoted. The matter was settled out of court a year later, resulting in the ban of the two influencers in question from Amazon's platforms.

Brands clearly need to be as active in monitoring social media sites as they are in monitoring websites themselves, utilizing tools such as reverse image searches and the monitoring of keywords, and consider looking to separately prosecute influencers involved as well as direct sellers.

#### Conclusion

The growth of influencer marketing has created new opportunities for brands to connect with consumers, but it has also introduced a number of legal challenges. Influencers must be mindful of the risks associated with promoting products, and brands should ensure their agreements with influencers are comprehensive, covering aspects such as content ownership, trademark usage, and advertising compliance. Ultimately, it is crucial for those on both sides to ensure the required due diligence has been carried out to guard against potential liabilities and ensure successful campaigns.

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<sup>2</sup> <https://www.gov.uk/government/publications/social-media-influencers-and-counterfeit-goods>



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# Meeting the 2025 INTA President: an interview with Elisabeth Stewart Bradley

Elisabeth sits down with *The Trademark Lawyer* to discuss her plans for the year ahead, earmarking her determination to serve the development of IP practice in an ever-evolving and complex landscape.

**Can you introduce yourself and your role in the IP industry?**

I'm Elisabeth Stewart Bradley, and I am INTA's president for 2025, and I am also Vice President of Innovation Law at Bristol Myers Squibb Company, which is a global Biopharma company based in Princeton.

I started as an INTA volunteer in 2004, so going on 21 years! I've been involved with trademarks and the IP community for about 25 years.

**Did any particular cases or developments stand out for you in 2024?**

INTA filed six amicus briefs in 2024, and one that particularly stood out to me was the case of *Yuga Labs, Inc. v. Ripps*. It garnered a lot of attention in the media, including mainstream. The case surrounded a collection of artwork that featured pictures of cartoon apes that had been generated by an algorithm. INTA filed an amicus brief before the US Court of Appeals for the 9th Circuit, arguing that the court should affirm the lower court's holdings that NFTs, non-fungible



Elisabeth Stewart Bradley

tokens, and other intangible goods could constitute goods under the United States' Lanham Act. This was a really significant case because the 9th Circuit did find that NFTs and intangible goods in general are protectable under the Lanham Act, so that, in my opinion, was one of the more significant IP decisions last year.

**What do you believe are the key evolving challenges in the IP community, and how is INTA working to support these challenges?**

From my perspective as a brand owner, and also from what we heard while conducting research in connection with the next [2026-2029] strategic plan, there are lots of challenges surrounding budgetary pressures and headcount reduction, especially from in-house members.

Members and other key stakeholders involved in the strategic plan discussions also talked about the rapidly evolving legal and business landscape and the need to stay current and to adapt in this environment. That was, and remains, a big challenge for our IP community.







Anti-IP sentiment is sometimes voiced as a threat to IP and innovation. This can be a narrative presented by the mainstream press for example, as well as from younger generations.

Of course, evolving technologies are also a huge challenge that is impacting consumer behavior, which, in turn, affects IP practice.

So, what is INTA doing to help with these challenges? One specific thing I want to share is that INTA has established a Think Tank exploring what novel IP rights might look like if we were to start from scratch. Imagine we didn't have any other IP frameworks out there in this current world and landscape – what would a new IP right look like? And how might that work differently, compared to some of the other vehicles we have now? There's a group of experts working on this and we are very excited to hear what comes from that Think Tank.

No doubt, we're looking at the impact of AI on IP in general and how to support brand owners as the landscape continues to evolve. There are a lot of dialogues happening with IP offices and government officials around the world about the wide-reaching impact of AI. Additionally, we've been offering numerous programming and educational sessions around AI, such as the March 2024 New York conference on AI, and which continues this year, including at next month's New York conference, titled The Business of Trade Secrets Conference: Navigating the Challenges and Opportunities in the Ever-Changing World of AI, as well as at the Annual Meeting in San Diego. We're looking at legislation in the name, image, and likeness space. That's a very hot topic right now. There are certainly a lot of resources INTA is offering which we hope our members will find helpful.

Finally, we are also looking at trying to help our members adapt to these major changes as part of my Presidential Task Force, which is focusing on the theme of "Change and Transformation," and it is set to explore the evolution of in-house teams, the impact on their external partners, and what opportunities this presents for INTA.

#### What aspect of being INTA President excites you the most?

There's quite a lot! I'm really happy to be speaking to you with about one month under my belt. We've had a chance to do our first delegation; INTA travelled to Ottawa, Canada, to meet with the Canadian IP Office as well as Global Affairs Canada. The opportunity to represent INTA before IP offices and authorities around the world and share the perspective of brand owners as to how critical IP is to our members, and to innovation, is really exciting to me.

I look forward to more of those delegations in

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**INTA has established a Think Tank exploring what novel IP rights might look like if we were to start from scratch.**  
”

the coming year, and also interacting with our members, and working with our dedicated volunteers. It's easy to forget that all of these incredible committee members, speakers on panels, and board members, for example, are volunteering their time. I am excited about having the chance to interact with all of our members, hear from them about their priorities, and then, hopefully, do a good job of representing them within INTA and around the world this year.

#### What are your main goals as President?

I have many goals. With this role being only one year, I think it's really important to continue advancing the legacies of the Presidents who came before me, and then hopefully pass the torch on to the Presidents coming after me. My goals strive to be very consistent with INTA's current mission and priorities, to ensure they are complementary, but also to be relevant for the future after I leave.

So, given that context, one of my main goals is to continue to evolve IP practice to keep up with the rapidly changing times that we've mentioned.

We've seen a sea change in the last year or two, including rapidly transforming geopolitics and emerging technologies. We definitely see the IP landscape needing to evolve in turn. That's going to be something that I'll be working on through various initiatives, including my Presidential Task Force, in addition to making sure that legislation and policies are being shaped in a way that supports our IP community.

I want to help members be comfortable with their expanding responsibilities. As we're seeing, it's very rare to have a trademark-only practice these days; it really has become a much broader scope. So, it is a big goal of mine to make sure that our members are in a really good place to thrive in this new environment.

With this vision in mind, through my Presidential Task Force, we want to make sure that our members don't just survive through this evolution, but that they actually can thrive. There's a lot of pressure on in-house members to demonstrate value and show what they're adding to their companies and practices. Honestly, every dollar is being scrutinized these days, especially within in-house budgets, but I expect as well for our external partners.

INTA, I believe, is in a unique position to help our members, and to tackle this. We have pulled together a Task Force to come up with some new ideas and approaches, and to create new resources. I'm very excited to see what they come up with to help our members and also to take a look at the overall member experience and make sure we continue to offer cutting-edge benefits and value, which I think we're in a great position to do.

#### What aspect of the INTA Annual Meeting in San Diego are you most looking forward to, and why do you think professionals should attend this year?

One highlight of this year's Annual Meeting is going to be the Opening Ceremonies. I always find them to be incredibly motivating. It is your opportunity, as a registrant, to hear about the accomplishments that INTA achieved for its members in the past year, as well as the Association's priorities for serving you in the year ahead. The Opening Ceremonies are also a chance to hear about all of the amazing educational programming and exciting events that are going to happen in the week ahead. I think there's such energy and excitement in kicking off the Annual Meeting.

IP and brand professionals should attend the Annual Meeting to take advantage of the very new and relevant programming in store. We have an educational program set around the theme of The Business of IP, and there are three different tracks: Business and Technology, Legal and Policy, and Professional Development and Career Advancement. Every single session is labeled for the track it falls under to allow attendees to navigate the program to best suit their needs.

In addition to the tracks, we have dedicated sessions for our corporate members designed to help them navigate the complexities of in-house trademark practice. Topics include effective communication of IP value, cybersecurity collaboration, team management, brand expansion and management in China, and much more. There's around 550 table topics, as well as workshops and idea exchanges; there will be many networking receptions; and this year, there is programming around patents for brand professionals. It's a great chance to learn even more about patents, which you might have some familiarity with, via structured programming, because, as I mentioned, we're no longer really sitting in silos anymore.

Then there are, of course, some amazing business development opportunities, so that registrants can get out and enjoy everything that San Diego has to offer while networking with other registrants. It's really going to be a productive and dynamic week.

We recommend to everyone joining us in San Diego to review the program and add sessions and Business Development activities to your schedules early and then book all your meetings around the education and networking events. Doing it the other way around is far more challenging.

Also, bring a lot of energy, along with comfortable shoes! INTA's Annual Meeting is one of the most exciting and programming-packed

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**One of my main goals is to continue to evolve IP practice to keep up with the rapidly changing times.**  
”

events for the global IP community in the entire year.

#### We are now in the final year of the 2022-2025 Strategic Plan; on reflection, how well do you think the plan has been delivered, and what do you hope to achieve in the remaining months?

We believe that the plan has been very successfully implemented. We executed against all three strategic directions, and keep in mind that we in fact still have one more year to deliver against these priorities. It's hard to go into all of the details of what we have achieved in the past few years, but I would love to highlight a few things.

One of the pillars of the current plan is to "Promote and Reinforce the Value of Brands." You may recall that Jomarie Fredericks, our 2023 President, focused her Presidential Task Force on "Unlocking IP" – this intersected very well with IP and the media community. It was designed to create accessible tools and information relating to IP that could help the busy media professional easily and quickly familiarize themselves with IP and to use it in their own writings and career. The idea was to help disseminate factually correct and usable information about IP and help share that with the mainstream media. The IP trade press is of course quite familiar with these concepts, but sometimes there's a bit more need to help communicate this outside of IP media into the more mainstream.

In addition, we submitted voluminous comments and testimony to government and non-government organizations around the world, as well as about 140 letters, and we submitted several amicus briefs on issues of great importance to the IP community.

The second pillar of the current strategic plan is to "Build a Better Society through Brands," and here, the INTA Foundation has been really active. We gave out many scholarships – which was flagged at the Leadership Meeting, and it was super exciting to have some of those students with us in the audience – and completed a lot of *pro bono* work. Those aspects are very important to us as a community, and served that second pillar well.

The third pillar is "Support the Development of IP Professionals." A few highlights were the certificate programs that were developed and finalized, including one for trademark administrators. A second certificate program covering online takedown procedures was very popular, another around the life cycle of a trademark, and finally, a really interesting one called Finance for Non-Finance Legal Professionals.

We are very proud of all of that work, which is still ongoing. We are now beginning to look

ahead to the next strategic plan, and we believe we'll transition there smoothly.

**How do you think the global nature of your role at Bristol Myers Squibb Company (USA) will benefit you as INTA President?**

I've always had a love of languages, and in middle school and high school, I studied French, German, Latin, Russian, and Spanish. I continued with German in college, and I lived abroad at various times.

I would say, like many Americans, I'm a mix of many heritages. My father is of Scottish descent and was a German professor. My mother is Austrian-German, and one of my grandmothers was born in Canada (which was kind of neat to reminisce about when I was in Ottawa!). That international background led me to a lot of travel and curiosity about the world.

Then, before my current role, I was with Cadbury, the confectionery company, and I was responsible for North and South America IP matters. It's a UK based company, so I had a lot of opportunity to travel there, as well as to South Africa and Asia.

Bristol Myers Squibb, where I have worked for about 14 years, is a global biopharma company, and my team has global responsibilities as well. We handle all trademarks, copyrights, and brand protection matters for the company around the world. We have law departments and business colleagues based around the world, and our external counsel is truly global.

All of this just really serves to make me curious and comfortable and just delighted with the international aspect of INTA. I'm really excited to keep having the chance to travel the world and get to know people and cultures beyond my current understanding, all while helping to champion the importance of IP and represent the interests of INTA members.

**What strategies do you think IP professionals should adopt to navigate the increasing complexities of international IP laws and regulations?**

Awareness is one really important strategy: being aware of the ever-evolving landscape and accelerating geopolitics, globalism, and yet also nationalism, for example. We need to remain agile and flexible in response to these myriad changes. I've heard the *phrase growth* mindset. I think it's perfect in this context; basically being open-minded and curious about everything that's changing and trying to see how you might need to change your practice or to appreciate areas that you could learn a little bit more about, to help stay current.

Further, continuing education is vital for success, and here INTA can help because there are many

**“ Awareness is one really important strategy: being aware of the ever-evolving landscape and accelerating geopolitics, globalism, and yet also nationalism, for example. ”**

resources and guidelines on our website that can help IP professionals navigate this changing world. We're offering workshops and roundtables, plus targeted conferences, and annual meeting programming. Then, if IP professionals adopt an open-mindedness, curiosity, and willingness to devote a little bit of time to education, all of that combined will really serve them well in dealing with this increasing complexity.

**What advice would you give to young professionals looking to build a career in intellectual property?**

I would say to young professionals again, be open-minded; say yes to everything. You have no idea where something might lead, and just being willing to take on new things can really serve you well, even if you're a little bit nervous.

I would also recommend looking for mentors, as well as trusted peer circles, to help you navigate your career. It's going to be complex and interesting, and having really good mentors and a good support system can make a big difference.

Expect that your career is going to change. Believe it or not, domain names and social media weren't even a thing when I first started practicing! I can only imagine what it will be like for IP professionals in the next five-to-10 years.

If you embrace that change and see it as an opportunity to grow and develop, that will really serve your career. Be positive, read everything, be curious. And then, finally, get involved with INTA: start by becoming a member or attending an Annual Meeting. Consider joining a committee – later this year, we'll put a call out to all INTA members to submit their committee applications for the 2026-2027 committee term – speaking on panels, or serving on project teams if asked. You will truly be amazed at how much the INTA community will enrich your career. I can say without reservation that my professional life has been tremendously enhanced by being really involved with INTA and all that it has to offer.

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# Navigating trademark challenges: the power of non-use cancellation

**Nick Ji, Partner, Head of Trademarks, at Corner Stone & Partners, highlights recent trends and challenges in Chinese non-use cancellation while emphasizing its effectiveness as a strategy for removing obstacles and protecting trademarks.**

As is known, according to the Trademark Law, if a trademark has not been used for more than three consecutive years after registration, any party has the right to apply for its cancellation. In the non-use cancellation process, the applicant does not need to submit substantial evidence to prove non-use; the burden of proving genuine use falls primarily on the trademark owner. When a registered trademark faces a non-use cancellation action, the Trademark Office will contact the trademark owner to provide evidence of use over the past three years. If the trademark owner fails to respond within the deadline or if the submitted evidence is deemed insufficient, the trademark will be canceled.

Based on recent case studies, several new changes and trends have emerged that are worth noting:

#### 1. Cumulative non-use cancellation requests by the same applicant:

If the same applicant submits an excessive number of non-use cancellation requests within a short period, exceeding a "reasonable quantity," sub-



Nick Ji

sequent requests may be rejected. To prevent malicious non-use cancellation applications, the China Trademark Office has started monitoring the volume of non-use cancellation applications from the same requester over a period of time. Although no official standard for this "reasonable quantity" has been published, submitting too many applications (e.g., dozens) within a short timeframe (e.g., one month or a few months) is not advised. Different applicants should submit in such cases.

#### 2. Repetition of non-use cancellation requests within three years:

If a trademark has previously faced a non-use cancellation attempt but was maintained through the submission of use evidence, a new non-use cancellation request within three years might still be upheld based on the evidence provided in the previous case, even if the trademark owner does not respond to the new request.

#### 3. Use evidence for similar registered trademarks:

If a trademark owner has registered multiple similar trademarks and the use evidence submitted during a non-use cancellation response shows a logo different from the one being challenged (but identical to another registered trademark), such evidence may not be considered valid for maintaining the challenged trademark's registration.

#### 4. Class 35 "retail services" registration:

Some trademark owners register their marks under Class 35 for "retail services" to protect sales of their own products. However, recent cases suggest that evidence related solely to

promoting and selling one's own products may not be considered valid use evidence, as it does not constitute providing services "for others."

Despite these challenges, non-use cancellation remains an effective and cost-efficient method to remove obstacles in trademark applications or eliminate maliciously registered trademarks in many situations.

#### The success rate of non-use cancellation

Based on our experience, approximately 70% of non-use cancellation applications succeed (including cases where the trademark was genuinely in use). Many trademark owners fail to update their address or agent information with the Trademark Office, leading to missed deadlines for responding to notifications. Additionally, some owners do not adequately preserve use evidence, resulting in trademark cancellation despite actual use due to insufficient/invalid proof.

#### When to Initiate non-use cancellation

Non-use cancellation is typically recommended in the following scenarios:

1. **Prior identical or similar trademarks:** If a prior identical or similar trademark obstructs your application and has been registered for over three years, consider initiating a Non-use Cancellation to clear the obstacle.

2. **Malicious registration:** If your trademark is preemptively registered by another party, you can file both invalidation and non-use cancellation applications. Invalidation focuses on whether there was malice during the application process and the renowned of your trademark, while non-use cancellation only examines actual use over the past three years.

3. **Post-five-year registrations:** After five years, invalidation can only occur if the trademark was filed maliciously and your trademark is well known. In the absence of sufficient evidence for invalidation, non-use cancellation might be the only viable solution.

#### Responding to non-use cancellation

1. **Preserve use evidence:** maintain thorough records of trademark usage.

2. **Provide extensive use evidence:** when facing a non-use cancellation, submit evidence of use across various goods/services.

3. **Submit international use evidence:** consider including evidence from other regions, especially Chinese-speaking areas like Hong Kong, Macau, and Taiwan.

4. **Respond actively even without commercial use:** even if the trademark is not yet commercially active, submit supportive materials such as product manuals, design images, and promotional materials or use evidence from other classes. Since the examination process for non-use cancellation may not be very thorough, and the evidence submitted during this procedure is not forwarded to the opposing party for cross-examination, some insufficient use evidence may still be accepted by the examiner.

#### Conclusion

1. **Initiating non-use cancellation:** since no evidence is required from the cancellation applicant and there is no liability for failed attempts, it is advisable to actively pursue non-use cancellation regardless of the opponent's actual use.

2. **Responding to non-use cancellation:** even with insufficient use evidence, it is still recommended to respond actively, as there remains a possibility that the trademark may be successfully maintained

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## Résumé

### Nick Ji, Partner, Head of Trademarks

Nick's broad experience spanning more than 20 years includes representation in consumer products, luxury goods, children's products, and media and entertainment industries. Nick's Electronics Engineering degree, along with his employment history with domestic and multinational IP firms, enables him to analyze intellectual property issues from multiple practice disciplines. His practice includes structured strategic intellectual property prosecution and enforcement.

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# Women in IP Leadership

Celebrating achievements and continuing the empowerment of women





# Charlotte Wilding: Partner, Keltie LLP

**An interview: inspirations, experiences, and ideas for equality.**

This segment is dedicated to women working in the IP industry, providing a platform to share real accounts from rising women around the globe. In these interviews we will be discussing experiences, celebrating milestones and achievements, and putting forward ideas for advancing equality and diversity.

By providing a platform to share personal experiences we aim to continue the empowerment of women in the world of IP.



If you would like the opportunity to share your experiences with *Women in IP Leadership*, would like to nominate an individual to be involved, or would like to learn more about sponsorship, please contact our Editor.

Charlotte is a trademark partner and Chartered UK trademark attorney at Keltie LLP. Charlotte acts on behalf of clients in a broad range of industries including automotives, cosmetic, beauty, entertainment, finance, insurance, accounting and telecommunications, in respect of trademark, design, copyright and domain name protection. In particular, Charlotte conducts detailed clearance searches, advises on worldwide filing strategies, and the prosecution of trademark and design applications through to registration, including contentious proceedings, negotiating agreements, and representing clients at hearings before the UK Intellectual Property Office. In addition to advising clients, Charlotte regularly lectures on trademark and design matters.

#### What inspired your career?

My grandfather inspired my career – he was a patent attorney. He showed me the exciting world of IP and the various jobs that I could consider. I am not scientific, so patents were out from the get go. However, trademarks really spoke to me and I knew that was where I wanted to focus. I was in my second year at university when I decided to up the ante and gain some experience. I got in touch with Unilever and was delighted to be able to take three weeks over the Christmas period to shadow various people in the IP team. It really was a great start to my career and boosted my interest – they have so many brands so I was able to see different aspects of IP law daily. I was also lucky to spend the summer in a patent and trademark firm to see how attorneys operated in private practice. Finally, I did work experience with solicitors and barristers, locally and in London, in a variety of different areas, which helped me to understand that IP was where I wanted to focus. Maybe somewhat naively, I took the view that I'd get a job as a trademark attorney and if I didn't like it I'd just become a solicitor (as if it's that easy!). Luckily, I loved it from day one and have never looked back. Without my grandfather's knowledge, I'm not sure I would have found trademarks as a career, at least not early on, as it really wasn't well advertised 15 years ago!



#### How have you found the pathway to your current position? And can you offer advice from your experience?

I would say my pathway has been relatively smooth – with maybe a slight bump in more recent years. I started at Keltie as a trainee, qualifying and moving my way up to Director. I left in 2019 to take the opportunity to develop a trademark practice at a boutique law firm, Kemp Little. KL was then bought by Deloitte Legal not long after joining, so it was a transition to go from a small to a large firm. I left to start a trademark practice at another London law firm, Wedlake Bell. I had to take the opportunities that were presented to me at the time, otherwise I would have always been wondering what if. However, ultimately, I came back to Keltie in 2023 and it felt like coming home. I would say my take aways are that you need to have faith in your abilities and sometimes risks need to be taken but only if you feel that you may regret it otherwise.

#### What challenges have you faced? And how have you overcome them?

My biggest challenge was probably becoming a mother and working out the complexities of children and work. I am lucky that my firm is very supportive of working mothers (and fathers), but it is still tricky and I sometimes worry I am doing too much at once. I am sure this is the experience of every working parent. When I had my first child I was able to return on a part-time basis, which gave me great flexibility in being able to spend quality time with my child but



**I would say my take aways are that you need to have faith in your abilities and sometimes risks need to be taken but only if you feel that you may regret it otherwise.**





also spend time exercising my brain and doing what I love. With my second child, I feel much more comfortable in my abilities so have returned on a full time basis. This has been helped with the flexibility in being able to work from home each week (we require two days in the office) as it makes school/nursery drop off and pick up really easy.

**What would you consider to be your greatest achievement in your career so far?**

I would say that my biggest achievement was passing all my exams to qualify. There have also been achievements in client takeovers, contentious matters and the like, which are all exciting, but really they all stem from qualifying and having confidence in my abilities. Also, being able to be a part of a colleague's journey and seeing them grow into amazing attorneys or paralegals is a wonderful feeling, even if the part I've played is very, very small. I am a big believer in wanting others to achieve greatness. That is something my grandfather taught me, as well as David Keltie (the founder of Keltie). Being able to work with and learn from David was a real joy and I am sad that my new colleagues have not been able to have the same experience. He really was one of a kind!

**What are your future career aspirations? And how will you work to achieve them?**

I hope to be working in IP for a long time to come so I am sure there will be many future aspirations. At present, I want to continue to build my practice and become an equity partner. I am really lucky that my trademark partners are so supportive of that goal and have imparted great advice on how to achieve it. It really does make a difference to have support, both from colleagues and personally.

**What changes would you like to see in the IP industry regarding equality and diversity in the next five years?**

Personally, I think the IP industry is one of the

more diverse areas of law but there are always things that can be improved. In particular, we need a more diverse workforce across all levels, particularly in leadership roles, reflecting a wider range of genders, ethnicities, socioeconomic backgrounds, and other underrepresented groups. It's not good enough to have the same type of people as then only one thought process can take place, which isn't always right. It's great that we have a number of mentor programs now, through CITMA and INTA. Keltie also has its own internal program, and I am sure there are a number of other firms doing the same. I would also like there to be an increase in awareness about careers in IP among underrepresented communities through outreach, scholarships, and partnerships with schools and universities. By addressing these areas, the IP industry can become a beacon for equality and diversity, benefiting not only the individuals within it but also the clients and communities it serves.

**How do you think the empowerment of women can be continued and expanded in the IP sector?**

We need to continue in the manner we've been going on – particularly encouraging mothers to return to work (if that's what they want to do) and ensuring they are given the tools to be able to stay. Supporting flexible working arrangements to accommodate different needs and remove barriers to entry or progression is key. It is typically still the case that women take on the load of childcare and/or housework and this does need to be recognised. If not, burnout will become all the more common as we try to do it all. There should be a focus on actively promoting women to leadership positions and ensuring there is gender balance at decision-making levels. Implementing sponsorship or mentoring programs where senior leaders advocate for high-performing women to help them advance in their careers would be a great idea. It's key that firms genuinely foster a culture where diverse voices are valued and heard, ensuring women feel empowered to contribute.

Likewise, the sector should look at the start and how women can be encouraged to join the IP sector from the beginning. Promoting STEM and IP-related careers to young women through outreach programs in schools and universities is one area that we can focus on. As well as partnering with educational institutions to provide scholarships, internships, and exposure to IP careers. By creating, developing and continuing an environment where women can thrive, the IP sector can continue to attract, retain, and empower talented women, creating a stronger, more inclusive industry.

**Implementing sponsorship or mentoring programs where senior leaders advocate for high-performing women to help them advance in their careers would be a great idea.**

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## LAW FIRM RANKINGS 2025

### South America

A comprehensive list of the 10 most well-respected law firms from South America





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Throughout the next few pages, you will view a comprehensive list of the 10 most well-respected law firms from South America, in alphabetical country and company order. Our focused list is derived from a multifaceted methodology, which uses months of industry research and feedback from our readers, clients, and esteemed connections around the world. All firms are ranked top 10 in their jurisdiction but are displayed alphabetically to avoid bias.

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URUGUAY



# Navigating the intersection of AI and copyright: UK Government's proposed reform to copyright law

**Giles Parsons, Partner, and Phoebe Price, Trainee Solicitor, of Browne Jacobson enter the heated debate surrounding the proposed reforms to copyright law in relation to AI as stakeholders grapple with the balance between fostering innovation and protecting the rights of creators.**

AI is changing the world, and any change this big comes with new legal issues. The UK government launched a consultation on copyright and AI<sup>1</sup>, to seek the public's views on its proposals to reform UK copyright law, and it has polarised opinion. (The consultation closed on 25 February 2025).

AI needs to read to learn. Generative AI is trained on gigantic volumes of data, and these are often copyrighted works. When people read, that's not copyright infringement, but when AI does it, the text or image is copied into memory. This has resulted in a lot of lawsuits; there are at least 15 significant cases in the US, and also others in the UK and Europe.

## Résumés

### Giles Parsons, Partner

Giles' contentious experience includes acting for some of the world's most famous brands in the IPEC, the Chancery Division, the Court of Appeal and the EU General Court. He helps clients with technology development agreements, trademark licenses, sponsorship and influencer agreements, and collaboration agreements. He also helps manage IP portfolios for leading technology companies and brands.

**Phoebe Price** is a Trainee Solicitor at UK & Ireland law firm Browne Jacobson.



Giles Parsons



Phoebe Price

The UK is already the third-largest AI market in the world<sup>2</sup>. But does UK copyright law need to explicitly allow AI to be trained on copyright works? There is a debate about whether AIs infringe copyright; in the US, tech companies are arguing it is "fair use". Stability AI has said that their use in the UK is covered by the "pastiche" defense, though training an AI is not necessarily the natural meaning of the word "pastiche". When we left the EU, we did not implement the EU's Digital Single Market Directive and so did not introduce a statutory "text and data mining" exception that would allow AI to be trained on copyright works for commercial purposes. The statutory defense for text and data mining ("TDM") only allows non-commercial use. Rightsholders say that training on copyright works is just copyright infringement, and that the law does not need to change to permit this just because tech companies don't like the law. But as the consultation says, "...the current regime means that leading AI developers do not train their models in the UK, and instead train in jurisdictions with clearer or more permissive rules. *Since copyright law applies in the jurisdiction where copying takes place, this means that AI developers are not obliged to respect rights under UK law. This harms our UK AI sector too, as investment from the major AI developers is limited and UK-based SMEs who cannot train overseas are disadvantaged*".

This consultation also has to be viewed in the context of an AI-friendly government, which released its AI Opportunities Action Plan<sup>3</sup> on

13 January 2025, which plans for the UK "to shape the AI revolution rather than wait to see how it shapes us".

This is not the UK's first attempt at resolving the tension between copyright and AI – the Government previously launched consultations on AI and IP in 2020 and 2021. Following the 2021 consultation, the Government proposed a broad exception to copyright infringement for TDM, which would have been more permissive than the EU's position. However, the proposals faced significant backlash from the creative industries and were abandoned. The UKIPO instead convened a working group made up of AI stakeholders in an attempt to develop an AI and copyright voluntary code of practice. However, talks broke down – unsurprising perhaps, given how entrenched positions were on each side.

The UK's efforts to establish a coherent stance on AI regulation have now led us to the present consultation on copyright and AI,<sup>4</sup> which closed on 25 February 2025. It sets out 47 questions for stakeholders. As well as considering TDM exemptions, the consultation covers the protection of AI outputs, the licensing of content for TDM, and the labelling of AI outputs. The new exception to infringement for TDM for any purpose is very similar to the EU's position. It is more favorable to the creative industries than the Government's 2021 position because, like the EU's approach, it allows rightsholders to "opt-out," in which case AI firms would be required to obtain a license to use their content.

These proposals are controversial. Sir Paul McCartney recently declared in a Times<sup>5</sup> article that the measures could "wipe out" the creative industry. US media groups, including Disney, Fox, Paramount, Universal Music, and Getty, insisted that any exception to infringement for AI use would discourage investment in the UK's creative sectors on the basis that it effectively asks creators to subsidize AI. Ed Newton-Rex, who is ex-Stability and the founder of Fairly Trained, has an interesting perspective on this. Another view is that if the EU (and other countries) already permit AI training on copyright works, any restrictions in the UK will limit our access to technology and won't make much of an impact overall, as training would just occur elsewhere.

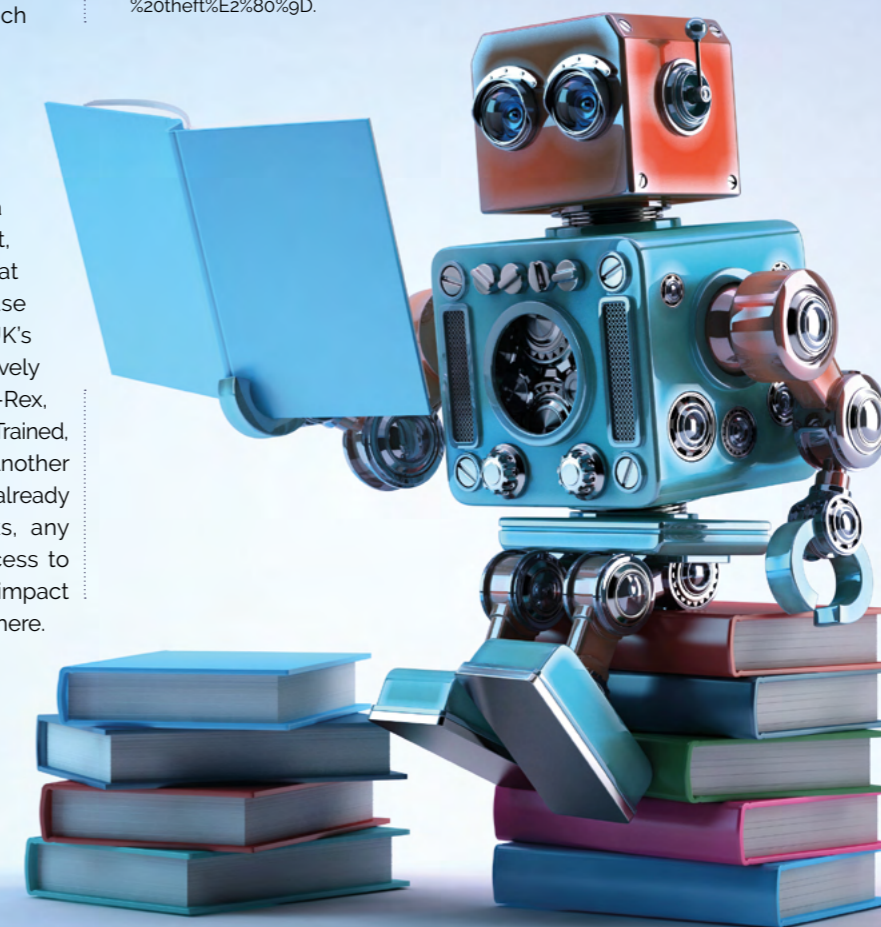
The other issues covered by the consultation are less controversial but are still interesting.

It's clear that the IPO has carefully looked at the EU's approach, which is set out in the Digital Single Market Copyright Directive 2019/790 (DSM Directive). As mentioned above, this allows TDM for commercial purposes, provided access

- <https://www.gov.uk/government/consultations/copyright-and-artificial-intelligence/copyright-and-artificial-intelligence>
- 'AI Opportunities Action Plan' (2025) gov.uk. Department for Science, Innovation & Technology. <https://www.gov.uk/government/publications/ai-opportunities-action-plan/ai-opportunities-action-plan>
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to the work is lawful and the rights holder has not expressly reserved their rights "in an appropriate manner, such as machine-readable means" (Article 4). The new EU regime is not without problems though – it's not clear what amounts to a valid reservation of rights, and the lack of standardization in this area is noted as a concern in the UK's consultation. Existing methods to "opt-out" include the use of a robots.txt file, which indicates to web crawlers (bots that search the internet for content) which parts of a website they are permitted to use and which must be avoided. As the onus is on rightsholders to opt out, if an opt-out is adopted, it would be valuable to have an approved form of opt-out. The consultation, therefore, welcomes views on how adoption of a standardized tool should be approached.

There are also proposals for transparency requirements. These would oblige AI developers to disclose the source of their training data. The proposed transparency provisions include a requirement on AI firms to disclose use of specific works and data sets, as well as details regarding their web crawlers, including ownership and the purpose for which they "crawl" particular content. It also proposes obliging AI firms to keep records to enable them to provide information about





what works were accessed by AI models on request, and to evidence compliance with rights reservations. The proposals are a development of the EU and US's approach to transparency. Under Article 53(1)(d) of the EU AI Act, AI firms are required to disclose their AI model's training datasets by making "a sufficiently detailed summary" of the works used publicly available. Under California's Assembly Bill 2013, AI firms are required to post specific information about the datasets used by their models, including sources and whether the datasets contain material subject to IP rights, on their public websites by 1 January 2026. There are concerns that such transparency requirements may be cumbersome for small businesses or new entrants, considering the vast amount of data used by AI models, but such provisions are thought to be necessary in order to build trust between the sectors. In navigating questions around transparency, the UK government has committed to engaging with the EU and other international partners, with the goal of international interoperability.

There are questions about licensing, and the IPO has asked for views on whether measures should be introduced to support good licensing practices. This is something that would be great, but it can be difficult for government to set this up.

“  
These proposals are controversial.”  
”

Should AI outputs be labeled? This seems difficult to us (how is it policed and enforced?), and what rights should individuals have over "digital replicas"? This is a more interesting question and deserves careful thought.

Should AI-generated works be protected by copyright? The UK law on this was drafted in the 1980s, and it would be sensible to clarify and improve it in a section entitled "wider clarification of copyright law". The CJEU's interpretation of the InfoSoc Directive has significantly changed UK copyright law and has resulted in important uncertainties (including some which are currently being litigated in the Court of Appeal, such as the scope of protection for 3D works). It is not helpful to have a statute that does not reflect the law that is being applied, and it would be wonderful if time and thought could be found to modernize and clarify copyright statute.

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# Evergreening in trademark law: strategic implications and judicial interventions

**Ivana Canucci, IP Counsel at Sporty Group, explores the practice of trademark evergreening, examining its strategic implications, notable judicial interventions, and the ongoing debate about its impact on market competition and innovation.**

Evergreening in trademark law involves the deliberate practice of making minor modifications to existing trademarks or continuously filing for new trademarks to prolong exclusive rights and market control. This strategy often arises in industries where brand recognition is critical, such as pharmaceuticals, consumer goods, and technology. In fact, by making minor modifications to a trademark or filing successive applications for similar marks, companies aim to prevent competitors from entering the market or benefiting from a brand's established goodwill. This strategy also aims to circumvent the legal obligation that, after a certain period (typically five years in jurisdictions like the EU and UK), a trademark must be actively used in commerce to maintain its protection.

The concept of evergreening has sparked debate about its impact on competition and innovation, with critics arguing that it can lead to monopolistic practices. One notable early case where courts addressed the issue of ever-



Ivana Canucci

greening is *Ferrero SpA v. OHIM* (T-356/11), where the European General Court examined whether Ferrero's successive applications for slightly altered versions of its "Tic Tac" packaging constituted an abuse of trademark renewal mechanisms. This case set a precedent for scrutinizing the legitimacy of evergreening in trademark law and paving the way for further significant rulings that demand industry attention.

## The MONOPOLY case: judicial stance on evergreening

Another notable instance highlighting the judicial stance against evergreening is the European Union General Court's ruling regarding Hasbro's "MONOPOLY" trademark. Hasbro, Inc. is the owner of a number of trademark registrations for the word "MONOPOLY", including EU trademark registration no. 9071961<sup>1</sup> filed on 30 April 2010 and registered on 25 March 2011. Hasbro's earlier registrations, registered in 1998, 2009 and 2010, for the same mark "MONOPOLY" covered some of the same goods and services in their most recent registration. In 2015, a Croatian company, Kreativni Dogadaji d.o.o., sought to invalidate Hasbro's 2011 EU trademark registration, alleging bad faith due to evergreening. In April 2021, the court found that Hasbro acted in bad faith by re-filing its MONOPOLY trademark for the same goods and services, intending to avoid the obligation to prove genuine use. Hasbro admitted that this re-filing strategy was a deliberate attempt to bypass use requirements. The court rejected Hasbro's defence that such practices were common in the industry, emphasizing that re-filing identical trademarks without genuine use contradicts the objectives of EU trademark regulations.

<sup>1</sup> <https://euipo.europa.eu/eSearch/#details/trademarks/009071961>

## Résumé

**Ivana Canucci** is the IP Counsel at Sporty Group and a qualifying solicitor in England & Wales. As an IP specialist with over five years of experience, she has extensive expertise in both contentious and non-contentious IP law. Ivana's practice spans multiple industries, including media, fashion, consumer products, and entertainment, where she provides strategic legal advice on trademarks, copyrights, IP enforcement, brand protection, and anti-counterfeiting. Fluent in English, Italian, and Spanish, Ivana has a proven track record of managing global trademark portfolios, negotiating complex, high-value settlements, and leading IP enforcement strategies across diverse international markets.  
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This ruling served as a significant precedent, indicating that courts may invalidate trademarks obtained through evergreening practices, thereby discouraging companies from engaging in such strategies to unjustly extend their trademark monopolies. The court emphasized that re-filing for EUTM protection is not inherently considered evidence of bad faith. Instead, each case must be evaluated based on its unique circumstances. Competitors challenging a trademark on the grounds of bad faith due to re-filing must still present compelling evidence to convince the EUIPO that it is appropriate to set aside the presumption of good faith and declare the mark invalid on this basis.

Nevertheless, this ruling came post-Brexit transition period, hence it is not binding on UK courts or the UK Intellectual Property Office (UKIPO), introducing uncertainties on whether UK registrations will be assessed under similar principles.

## UK insights: *Lidl v. Tesco*

Shortly thereafter, a subsequent case involving Lidl and Tesco in the UK provided further insights into judicial interpretations of trademark usage and limits of protection strategies.



Figure 1:  
Lidl's Logo



Figure 2:  
Lidl's Wordless  
Mark



Figure 3:  
Tesco's Clubcard  
Prices Logo

Lidl's primary logo features the word "Lidl" within a yellow circle, set against a blue square background. This mark has been in use in the UK since 1994 and was registered in 2011. See Figure 1. In addition, Lidl holds several tm registrations for a wordless mark consisting solely of the yellow circle on a blue square, without any text. See Figure 2. This was registered in 1995 and subsequently re-filed in 2002, 2005, 2007, and 2021. Notably, Lidl has never used the wordless

**The court rejected Hasbro's defense that such practices were common in the industry, emphasizing that re-filing identical trademarks without genuine use contradicts the objectives of EU trademark regulations.**



mark independently in the UK; it has always appeared alongside the "Lidl" text.

In September 2020, Tesco introduced a promotion using a logo comprising a yellow circle on a blue square background, accompanied by the words "Clubcard Prices". See Figure 3. Lidl initiated an action against Tesco, contending that Tesco's design was strikingly similar to its own trademarks, potentially causing consumer confusion and diluting Lidl's brand identity.

On the other hand, Tesco argued that Lidl's wordless mark registrations were invalid due to non-use and bad faith. Tesco asserted that Lidl engaged in "evergreening" by repeatedly re-filing the wordless mark to avoid the statutory requirement of proving genuine use, thereby maintaining trademark protection without actual commercial use.

In April 2023, the High Court found Tesco's use of the Clubcard Prices logo infringed upon Lidl's trademark with text, as the similarity between the logos was likely to cause consumer confusion and take unfair advantage of Lidl's reputation as a discount retailer.

In addition, the court held that Lidl's repeated re-filings of the wordless mark constituted bad faith. The practice of evergreening was deemed an attempt to circumvent the requirement to prove genuine use, rendering the wordless mark registrations from 1995, 2002, 2005, and 2007 invalid. By 2021, it was found that the wordless mark had derived its own reputation through its use as part of the mark with text and so Lidl had a legitimate reason to register it at this time.

## *Sky v. SkyKick*

The UK Supreme Court's 2020 ruling in *Sky v. SkyKick* clarifies the interpretation of bad faith under UK - and possibly EU - trademark law, marking a significant decision with broad implications. In this case, Sky had registered the SKY trademarks broadly across many categories, including computer software. SkyKick, using a similar mark for its software, challenged Sky's registrations as being in bad faith, arguing that



istock.com/duckycards



Sky had no genuine intention to use the trademark for some of the broadly registered categories.

Initially, the lower court agreed that Sky's intent to use the trademarks for certain unrelated goods was questionable, leading to a reduction in the scope of goods covered by Sky's trademarks. However, even with this narrowed scope, some uses by SkyKick were still found to infringe. This decision was overturned on appeal but later restored by the Supreme Court, which affirmed the initial findings and significantly narrowed Sky's trademark protections, emphasizing that the broad registration aimed to unjustly extend trademark protection far beyond reasonable commercial expectations.

The Supreme Court's decision is pivotal, confirming that while broad trademark filings are not inherently in bad faith, they must reflect a legitimate commercial rationale and not extend beyond the foreseeable scope of business. This judgment compels applicants and practitioners to consider carefully the range of goods and services they claim under a trademark, recognizing that overly broad claims can now more readily be contested as bad faith, potentially invalidating the trademark. This case serves as a cautionary tale against the strategic use of trademarks as legal weapons beyond their intended commercial scope, ensuring a more honest and focused application of trademark protections.

#### Conclusion: navigating trademark strategies in light of judicial rulings

- **The mere act of maintaining protection without substantive use may constitute bad faith.** The evolving judicial landscape surrounding trademark law has brought renewed scrutiny to the concept of evergreening and the practices associated with it. The cases reviewed highlight the critical importance for trademark owners to demonstrate genuine use of their trademarks, emphasizing that the mere act of maintaining protection without substantive use may constitute bad faith. This is particularly evident in rulings where courts invalidated trademarks due to practices that circumvent legal obligations, such as the Hasbro Monopoly case and the *Lidl v. Tesco* dispute.
- **Trademark filing strategies must, therefore, align with authentic commercial purposes.** The re-filing of identical or similar marks without a clear intention of use risks being classified as an abusive practice. This is not to suggest that all re-filings are inherently

“ This case serves as a cautionary tale against the strategic use of trademarks as legal weapons beyond their intended commercial scope, ensuring a more honest and focused application of trademark protections. ”

problematic. As demonstrated by case law, including *SkyKick* and *Lidl v. Tesco*, each scenario requires a thorough examination of the motives behind the filings. For example, while re-filing for identical goods or services does not automatically constitute bad faith, evidence such as deliberate admissions of intent to bypass use requirements, as seen in Hasbro's case, could lead to adverse judicial outcomes. Context, therefore, remains paramount in assessing the legitimacy of trademark applications.

- **The presumption of good faith, while generally upheld, places a burden on trademark holders to substantiate their actions with credible and plausible commercial logic.** The *Lidl v. Tesco* case provides a compelling example of the high standards courts now impose, demonstrating that repeated filings without sufficient purpose can falter under judicial examination. Broader terms or variations of a mark also do not inherently safeguard against bad faith allegations. Rather, these strategies demand clear justification grounded in a genuine intention to use the marks, as evidenced by recent rulings.
- **Moreover, companies seeking to protect their trademarks must adopt proactive and transparent approaches to their filings.** Recording the commercial rationale behind filings at the time of application can serve as a vital defense in potential disputes. The lack of convincing logic, as was the case in *Lidl's* wordless mark registrations, only exacerbates allegations of bad faith.

The practice of evergreening in trademark law represents a contentious balance between protecting intellectual property and ensuring fair competition. Landmark cases, including *Lidl v. Tesco* and Hasbro's Monopoly dispute, illustrate the evolving judicial stance against practices that exploit legal technicalities to prolong monopoly rights. These rulings underscore the importance of genuine use and the burden on trademark owners to justify re-filings with credible commercial logic. For businesses, the implications are clear: strategic trademark management must prioritize substantive use and transparent intentions over procedural loopholes. By aligning practices with these principles, trademark holders can safeguard their rights while fostering a fair and competitive market.

# Parallel imports in Russia: current regulation and trends

**Anna Degtyareva of Gorodissky & Partners examines the evolving landscape of parallel imports in Russia, detailing the government's temporary allowances for select goods amid ongoing sanctions while reinforcing that parallel imports remain largely illegal.**

In the last two years, the political and economic situation in Russia has experienced constant change, and parallel imports have become a highly debated issue. Sanctions have resulted in some Western companies leaving the Russian market; to combat this, the Russian Government is seeking new remedies to meet the high demands of the local consumers.

These circumstances have culminated in misinformation that parallel import is allowed in Russia. However, this is not correct.

The current situation has not changed the general approach of Russian law here: parallel imports remain prohibited and constitute an infringement of exclusive rights.

#### Exhaustion of rights principle

Most commonly, parallel imports relate to the *principle of exhaustion of exclusive rights to trademarks*, which means that if the original goods were introduced to the market by the trademark owner or under their consent on a particular territory, there is no trademark infringement.

The Russian Civil Code (CC RF) establishes the *national principle* of exhaustion of trademark rights, meaning that once goods legally enter the Russian market, their subsequent sale does not infringe on those rights (Article 1487 of CC RF). At the same time, Russia is a member of the Eurasian Economic Union (EAEU), and the Treaty on the EAEU of May 29, 2014, signed by the member states, including Russia, Belarus, Kazakhstan, Armenia, and Kyrgyzstan, which stipulates the *regional principle* of rights exhaustion: if the product was introduced to the market in one of the member states, its further sale in any of the EAEU countries does not constitute infringement.



Anna Degtyareva

#### Résumé

**Anna Degtyareva** graduated from the Faculty of Law of Lomonosov Moscow State University.

She received professional training at the law offices of Schlütius Eulitz Schrader Rechtsanwälte. Anna started her career as a lawyer in the non-profit partnership "Lawyers for Civil Society". From 2010 to 2013, she worked in the Moscow office of the law firm Gowlings International (Canada).

Since 2013 she has been working at Gorodissky & Partners, where she represents and advises clients on trademark, copyright, and patent protection, anti-counterfeiting and parallel import, licensing and franchising, of IP, Internet and domain names, advertising and unfair competition, and selection achievements.

“ Overall, the List can be seen as a balanced solution to meet consumers' needs, keeping parallel imports prohibited for the brands that continue their business in Russia in good faith. ”

National and regional principles are applied in Russia in conjunction.

**New regulations**

To overcome recent economic challenges, the Russian Government decided to temporarily allow parallel import for some goods: in April 2022, the Russian Ministry of Industry and Trade (Minpromtorg) approved a list of goods that can be imported into Russia without consent of the rights holders (the List). Since 2022, the List has been modified multiple times, with the current version introduced by the Order of Minpromtorg No. 2701 of July 21, 2023 (as amended on July 5, 2024).

The legislation does not indicate any criteria that shall be applied while forming the List, but it can be assumed that the main criterion is the insufficiency of particular goods on the Russian market. The List covers general categories of goods but also specific brands, mainly of the companies that have left the Russian market. Below is an example of how the goods can be represented in the List:

Customs Commodity (CC) Group	Product Type	CC Code of the Product and (or) Means of Individualization (one should be guided by the EAEU CC code and (or) trademarks that belong to right holders registered in unfriendly countries)
35	Protein substances; modified starches; adhesives; enzymes	42) 3503 00 100 1 GELITA 43) 3506 44) 3507 90 900 0 SMARTENZ, MEDLEY
36	Explosives; pyrotechnic articles matches; pyrophoric alloys; certain flammable substances	45) 3602 00 000 0 3M
37	Photo- and cineme products	46) 3701 20 000 0 FUJIFILM, KODAK 47) 3703 20 000 0 3703 90 000 0 brother, CANON, EPSON, HEWLETT PACKARD (HP), xerox 48) 3707 90 900 0 brother, CANON, EPSON, HEWLETT PACKARD (HP), TOSHIBA, xerox

The import of goods included in the List shall not constitute a violation of exclusive rights. Overall, the List can be seen as a balanced

solution to meet consumers' needs, keeping parallel imports prohibited for the brands that continue their business in Russia.

**Protection of exclusive rights**

Companies that remain in the Russian market see the current situation as an opportunity to expand their presence in Russia. As the business of such companies in Russia can be affected by counterfeit and grey products, they show interest in protecting their exclusive rights.

As a first step aimed at monitoring the imports into Russia, it is recommended that companies register trademarks in Russia and to include their trademarks in the Customs IP Register, maintained by the Russian Federal Customs Service. Once the trademarks are included in the Register, the customs checkpoints shall inform the trademark owner of suspicious importations.

Trademark violations can also be established during regular market monitoring, both online and offline. Whether the goods are crossing the Russian border or being sold on the market, the trademark owners may pursue the infringers of their exclusive rights by filing a petition to initiate administrative/criminal/civil actions against importations of counterfeits or filing a civil lawsuit against parallel importations or sales.

**Parallel import: taking actions**

The actions against parallel import can include out-of-court and in-court remedies. In some cases, forwarding a cease and desist letter to the violator can be considered as an initial step, and it can be effective, for instance, when the importer/seller is not aware of the company's exclusive rights and is ready to cooperate.

Obviously, most importers and sellers of grey goods know exactly what they are doing and receive significant profits from their actions. In this instance the IP owner may go to court. A civil action is the only in-court remedy against parallel goods, and it can be applied either against the importation or sales thereof on the market.

A civil lawsuit can be filed with a commercial court by the trademark owner or its exclusive licensee. In a lawsuit, it is possible to claim the **ban of the importation in question from entering the Russian market, as well as grounded compensation for infringement of exclusive rights.**

Previously, pursuing the destruction of parallel imported goods was also possible, but in 2018, the Constitutional Court limited the available remedies in its landmark Resolution No. 8-P of February 13, 2018. The Court ruled that legal consequences shall not be the same with respect to the importers of counterfeits and original "grey" goods.

In particular, the Constitutional Court ruled that the **destruction of grey goods shall only be permitted if the goods are of low quality or for reasons of security, safeguarding people's health and life, protecting the environment and cultural values.** Further, the Court explained that the compensation amount for parallel imported original goods should not be the same as for the importation of counterfeits.

Companies that remain in the Russian market see the current situation as an opportunity to expand their presence in Russia.

**Court practice**

Recent court practice supports the general approach that parallel import is not allowed in Russia. In court case No. A53-26676/2023, the company Davide Campari-Milano N.V., owner of a famous apéritif brand "Aperol", filed a civil action against a local company for importation of branded goods into Russia without consent of the trademark holder. The first instance court considered the case and satisfied the right holder's claim to ban sales or other marketing of the batch of goods in question.

Most importantly, the court confirmed that parallel import is prohibited in Russia for the goods not included in the List of Minpromtorg mentioned above. Courts of appeal and the cassation instance, IP Court of Russia, upheld this approach.

**Conclusions**

Despite the common misconception, parallel import can be pursued in Russia, provided that the rights holder's business is present in the Russian market. We are constantly monitoring the legislative initiatives and court practices and will be pleased to provide high-end services for the protection of exclusive IP rights.

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“  
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”

# Pavia Justice Court (Italy): Bankruptcy of MORESCHI S.P.A.

The Italian company Moreschi S.p.A, active in the production and sale of high-quality shoes since 1946, based in Vigevano (PV), was declared bankrupt by a ruling dated July 19, 2024. The receiver was allowed by the Court to begin the sale of the business branch through an auction.

This branch, which involves the activity of producing and selling footwear and accessories, consists of:

- The "Moreschi" and "Stemar" brands, currently registered and therefore exclusively usable by their owner;
- Intellectual property rights, including designs, patents, model archives, internet domains, social media accounts, databases, etc.;
- The store and showroom located in Milan, via Manzoni No. 12, owned by third parties and leased by Moreschi S.p.A., along with the furnishings present within;
- Raw materials (leather, etc.);
- Finished products amounting to approximately 7,000 pairs of shoes;
- Furnishings and machinery for production present in the industrial facility.

The auction will take place based on a minimum price set at Euro 1,737,650.00.

Online bids must be submitted, accompanied by a deposit equal to 30% of the offered price, by 21:00 (Rome time) on March 30, 2025, and will be examined at 15:00 (Rome time) on March 31, 2025, with an immediate subsequent start of the online bidding – only in the event of multiple valid bids – which will end at 16:00 (Rome time)

on April 3, 2025. The award will be given to the best bidder without any possibility of additional increases (in derogation of Article 217 of the Italian Bankruptcy Code). The deadline for the transfer of the business branch is set for April 17, 2025, at the presence of an Italian notary.

Every appraisal, document, and piece of information can be requested from the receiver at the procedure email address [lg51.2024pavia@pecliquidazionigiudiziali.it](mailto:lg51.2024pavia@pecliquidazionigiudiziali.it) or at the email addresses [gorgoni@studiogpl.it](mailto:gorgoni@studiogpl.it), [paolo.bisio@studiogpl.it](mailto:paolo.bisio@studiogpl.it), [elisa.rizzi@studiogpl.it](mailto:elisa.rizzi@studiogpl.it).



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