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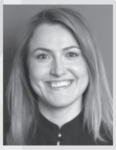
## Expert Analysis Chapters



## Q&A Chapters

# Q&A Chapters Continued

# What Next for Exhaustion in Trade Mark Law?

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## Introduction

The principle of exhaustion, or the "first sale doctrine" as it is known in the US, is well known to brand owners and their trade mark lawyers. At its core, it prevents trade mark proprietors from asserting their trade marks to restrict the resale of genuine (i.e. not counterfeit) goods once they have been put on the market in a specific territory by the trade mark proprietor or with its consent, subject to certain exceptions. Those exceptions include situations where the condition of the goods has been changed and/or where there is a risk of damage being caused to the trade mark.

Although a longstanding and well-established concept, exhaustion has always been a thorny issue, sparking intense debate largely between brand owners seeking to deploy differential pricing strategies and parallel importers looking to take advantage through price arbitrage. Supporters of exhaustion point to the perceived benefits of increased competition and wider consumer choice that results from parallel trade.

Exhaustion is once again under the spotlight and its scope up for debate for a number of reasons. In particular, what is the relevant "market" following the UK's departure from the EU single market as of 1 January 2021 and what should the UK's exhaustion regime look like in a post-Brexit world? Often overlooked but increasingly topical is the application of exhaustion principles in a purely national, as opposed to cross-border, trade context. How far can brand owners take the exceptions to exhaustion where there is increasing consumer demand for customised goods and the resale market is booming?

This chapter discusses what the principle of exhaustion is, how it applies to trade marks, and why exhaustion is likely to be a trade mark talking point in 2022.

## What is Exhaustion?

The principle of exhaustion effectively limits the ability of an intellectual property ("IP") owner to enforce its IP rights in order to control the distribution and resale of genuine goods that it has already put on the market in a specific territory. Once the goods have been put on the market by the IP owner or with its consent, the IP rights in those goods are, subject to certain exceptions, considered to be "exhausted". The principle of exhaustion is one of several mechanisms used within an effective IP system to strike a balance between protecting and therefore incentivising IP owners' investment in the creation of IP while also ensuring free and fair competition.

Exhaustion can apply to all types of IP right depending on the specific regime in place in a particular country or region. Key sectors that have been identified as IP rights-intensive and affected by parallel trade are fast-moving consumer goods ("FMCG"), luxury goods, print and publishing, pharmaceuticals and automotive. The European Union Intellectual Property Office ("EUIPO") and European Patent Office ("EPO") published a report[1] in September 2019 that analysed the economic performance of IP rights-intensive industries in the EU. Between 2014 and 2016, trade mark-intensive industries were found to account for more jobs and to contribute more value to GDP in the EU than design-, patent-, copyright-, geographical indication-, or plant variety right-intensive industries. This suggests that exhaustion, and any changes to the exhaustion regime as we know it, are likely to affect trade mark owners and those who deal in trade-marked goods in the EU and the UK more than any other type of rightsholder and parallel importers of their goods.

## Approaches to Exhaustion

### Internationally

Internationally, different nations take different approaches to the principle of exhaustion of IP rights. Some operate an international exhaustion regime whereby IP rights in goods are considered exhausted worldwide as soon as those goods are placed on the market anywhere in the world. Others prefer a national exhaustion regime whereby IP rights are only considered exhausted in the country in which the goods are first placed on the market.

### EU and UK

The EU operates a regional system of exhaustion, treating first sale within the European Economic Area ("EEA") as the point at which IP rights are exhausted. Once goods are placed on the market anywhere in the EEA, IP owners are restricted from enforcing their IP rights to control the further distribution of those goods within the EEA. However, their ability to prevent the importation of goods into the EEA from outside the EEA is retained. This approach seeks to balance the key EU principles of free movement of goods and competition with IP owners' interests, and recognises the single market created by the EU.

As discussed below, the exhaustion principle is expressed relatively straightforwardly and succinctly in Directive (EU) 2015/2436 to approximate the laws of the Member States relating to trade marks ("EUTM Directive"), in Regulation (EU) 2017/1001 of the European Union Trade Mark ("EUTM Regulation") and in the UK Trade Marks Act 1994 ("TMA"). However, underpinning those provisions is an extensive body of EU case law. Although the UK withdrew from the EU on

31 December 2020, trade mark law principles derived from the case law of the Court of Justice of the European Union ("CJEU") as at that date continue to apply in UK law unless or until altered by the Court of Appeal or Supreme Court. Accordingly, at the time of writing, the discussion below applies equally to both the UK and the EU.

Article 15(1) of the EUTM Directive provides that a trade mark shall not entitle the proprietor to prohibit its use in relation to goods that have been put on the market in the EEA under that trade mark by the proprietor or with the proprietor's consent. However, under sub-paragraph (2), that provision is to be disapplied where there exist legitimate reasons for the proprietor to oppose further commercialisation of the goods, especially where the condition of the goods in changed or impaired after they have been put on the market.

Derived from Article 15 of the EUTM Directive, Section 12(1) TMA provides that a registered trade mark is not infringed by the use of the trade mark in relation to goods that have been put on the market in the UK or the EEA under that trade mark by the proprietor or with his consent. For reasons discussed below, the wording "United Kingdom or" was inserted by the Intellectual Property (Exhaustion of Rights) (EU Exit) Regulations 2019 as of 31 December 2020. As in Article 15(2) of the EUTM Directive, Section 12(1) TMA is disapplied under Section 12(2) TMA where there exist legitimate reasons for the proprietor to oppose further dealings in the goods (in particular, where the condition of the goods has been changed or impaired after they have been put on the market).

## Legitimate Reasons

Unsurprisingly, much of the EU case law to date concerning the exhaustion of trade mark rights has centred around the meaning of "legitimate reasons" in Article 15(2) of the EUTM Directive and the EUTM Regulation. The examples provided in the legislation itself, i.e. where the goods have been changed or impaired after they have been put on the market, are expressly stated to be non-exhaustive and other situations have arisen and been considered by the Courts.

### Altering the condition of the goods

As envisaged by the legislators, the clearest example of where legitimate reasons will arise is where the condition of the goods is altered or impaired after they are put on the market by the trade mark proprietor. One specific example of this was *Sony Computer Entertainment v Tesco*[2] where Tesco was injuncted from importing Sony PlayStation video games consoles from France and selling them to consumers in the UK with an adapter attached to the original French plug to make them compatible with UK plug sockets.

### Repackaging, relabelling and rebranding

A large number of cases have been brought by pharmaceutical companies in circumstances where, although the condition of the pharmaceuticals themselves had not been changed, the condition of their packaging had been altered by parallel importers in order to comply with regulatory requirements in the country of intended resale.

This culminated in the adoption by the CJEU, in *Bristol-Myers Squibb v Paranova A/S*,[3] of a number of conditions that must be met in order for repackaged products to be lawfully resold. These can be summarised as follows: (i) repackaging must be necessary in order to market the product; (ii) there must be no effect on the original condition of the goods and proper instructions must be provided; (iii) the manufacturer and importer of the product must be clearly identified; (iv) the repacking must not damage the reputation of the trade mark; and (v) the parallel importer must give notice to the trade mark owner before the repackaged product is put on sale.

These principles have subsequently been held to apply to instances of relabelling and rebranding in the same way they apply to repackaging (*Pharmacia & Upjohn SA v Paranova A/S*)[4] and, in principle, to all goods and not just pharmaceutical products (*Loendersloot (t/a F Loendersloot Internationale Expeditie) v George Ballantine & Son Ltd*).[5]

### Damage to the reputation of the trade mark

In *Parfums Christian Dior SA v Evora BV*,[6] Dior owned several Benelux trade marks for Eau Sauvage, Poison, Fahrenheit and Dune perfumes. Evora operated a chain of chemist shops and had imported Dior's products into the Netherlands where it advertised them for sale by picturing them in leaflets for a Christmas promotion. Dior objected to the manner in which the goods were advertised. The CJEU held that a reseller of goods put on the market by the trade mark owner was free not only to sell those goods but also to advertise them in ways customary in the reseller's sector of trade. The only exception was where the trade mark owner could establish that the use of the trade mark for that purpose "seriously damages" the reputation of the mark.

Although Dior's claim was ultimately rejected, *Dior v Evora* established the principle that a trade mark proprietor can object to the resale of genuine goods in circumstances where the reseller's activities seriously damage the reputation of the trade mark; in particular, where the marketing of the goods detracts from the luxurious image cultivated by the trade mark owner. *Dior v Evora* was subsequently applied by the CJEU in *Copad SA v Christian Dior Couture SA*,[7] where an authorised distributor sold Dior products outside the exclusive distribution network. The CJEU held that sales outside of a selective distribution network could undermine the aura of luxury and prestige surrounding the goods but that the proprietor can only object if, in the particular circumstances, such resale "damages the reputation of the trade mark". The absence of a reference to "serious" damage in the CJEU's judgment has resulted in uncertainty as to whether mere damage to the trade mark will suffice or whether damage must be serious and, if so, how serious. The Court of Appeal of England and Wales has expressed the view that there is no real distinction to be made.[8]

*Copad* was referred to by the CJEU in its more recent judgment in *Coty Germany GmbH v Parfumerie Akzente GmbH*.[9] The case concerned whether restrictions preventing authorised distributors from selling goods on third-party platforms such as eBay and Amazon (over which Coty had no control as to how the goods were displayed) contravened EU competition law. Recognising that the Court had already, in *Copad*, held that the quality of luxury goods was not just the result of their material characteristics but also of "the allure and prestigious image which bestow on them an aura of luxury", the CJEU found that it followed that a selective distribution system designed primarily to preserve the luxury image of those goods was, in principle, compatible with EU competition law.

Although not a trade mark case, *Coty* appears to strongly support the proposition that the CJEU is prepared to recognise and give effect to the reputation enjoyed by luxury brands. Indeed, in his Opinion in *Coty*, the Advocate-General expressly referred to the Court's previous decisions in the context of trade mark law and its conclusion that a selective distribution system "*seeks to ensure that goods are displayed in sales outlets in a manner that enhances their value, 'especially as regards the positioning, advertising, packaging as well as business policy,' thereby "contributing to the reputation of the goods at issue and therefore to sustaining the aura of luxury surrounding them"*".

Some court decisions in individual EU Member States since *Coty* even suggest that the principle might not be limited to luxury goods. In a competition law decision[10] handed down in 2020, the Amsterdam Appeal Court, referring to the CJEU's ruling in *Coty*, upheld the finding of the lower District Court that Nike was entitled to prevent members of its exclusive distribution network in Europe from selling Nike products on Amazon. The Court found that it was irrelevant whether the Nike products in question qualified as "luxury" products. On the other hand, earlier that year the Court of Appeal of England and Wales ruled[11] that restrictions on online sales imposed by golf equipment manufacturer Ping on its authorised dealers amounted to an unacceptable restriction of competition. This was despite Ping's position that its practice of steering potential customers firmly towards a custom fitting before they bought ensured that the customer acquired the most suitable golf club to enhance their game. However, the Court of Appeal's decision in *Ping* was handed down before the UK left the EU and there is now potential scope for UK competition law to diverge from EU competition law. Whether it will, when, to what extent, and the effect any such divergence might have in the context of trade mark, rather than purely competition law, remains to be seen.

## Exhaustion is Having a Moment

While much of the case law on exhaustion dates back many years, it has recently been thrust into the spotlight for very different reasons.

### Flourishing resale market

Although exhaustion is usually associated with parallel trade between different countries, Article 15 of the EUTM Directive and Section 12 TMA are in fact not so limited. They apply equally in a purely national context and therefore enable trade mark owners to object to the further commercialisation of goods they have already put on the market in the same country, if they have legitimate reasons for doing so.

Luxury brand owners are increasingly seeking to apply the principles laid down in *Evora*, *Copad* and *Coty* to object to the resale of their goods in circumstances where there is no cross-border trade and no damage or other alteration to the goods or their packaging, but where they believe the sales environment in which the goods are sold might be damaging.

The secondary market in luxury goods, particularly fashion, is booming. The luxury resale segment was valued at an estimated €33 billion at the end of 2021.[12] At one end of the "secondary spectrum" is the more traditional resale of genuine second-hand or "pre-loved" (used/worn) items to which brand owners on the whole have little interest in, or basis for, objecting. Whereas items such as clothing and handbags might previously have been donated to charity or sold off at a second-hand sale, they are increasingly being resold on a growing number of dedicated e-commerce platforms by consumers either eager to "waste not want not" or those simply looking to make some money from their unwanted items in a few clicks.

Regardless of the environment in which an individual chooses to resell a used second-hand item, their use of the relevant trade mark will not generally constitute use in the course of trade and will therefore fall outside the scope of trade mark infringement in any event. As such, not only are brands unlikely to be able to stop it but few would want to be seen to try in the new era of sustainability and given the almost inevitable backlash of their own, often loyal and repeat, customers. On the contrary, several high-profile luxury brands have seen potential benefits in choosing to partner with select resale sites.

At the other end of the secondary spectrum has been the rapid growth of a whole new market in unworn, unused, often still-packaged, hard-to-come-by luxury fashion items and accessories. Dedicated resale sites have emerged on which such goods are regularly sold at prices significantly higher than their regular retail price. Whilst some such sites operate merely as passive platforms, others source goods directly from brands and/or operate a consignment-type model.

The extent to which brand owners can or are inclined to take action against the operators of these sites will vary significantly depending on the particular circumstances. It is likely to depend on a number of factors, including: (i) the role of the platform operator according to the usual principles of intermediary liability; (ii) the extent and nature of use of the relevant trade mark(s); (iii) the sales environment in which the goods are advertised including the appearance of the website itself and the nature of communications on it, as well as the nature and reputation of any other goods offered for sale alongside the goods of the brand owner; and (iv) the quality, nature and duration of any pre- or post-sale service offered to customers, including delivery methods and returns policies as well as personalised advice. In line with *Evora*, *Copad*, and *Coty*, points (ii)–(iv) are highly likely to be assessed by reference to the brand owner's own practices and standards, including whether they sell or authorise the sale of their goods online and any requirements placed on authorised distributors concerning the nature and quality of their sales environment, customer service, marketing activities and brand adjacencies. It is therefore likely to be only the most "luxurious" brands operating the most selective distribution arrangements and which impose stringent conditions on the presentation of their brand to consumers that will be able to establish legitimate reasons to oppose the further commercialisation of their goods in this way.

Even if a brand owner establishes "legitimate reasons" for the purpose of Article 15(2) of the EUTM Directive/Section 12(2) TMA on the basis described above, it must still meet the requirements for trade mark infringement under Article 9(2)(a) of the EUTM Regulation/Section 10(1) TMA, including showing that the defendant's acts are liable to adversely affect its trade mark's functions. However, it is difficult to envisage a situation in which a brand owner would succeed in establishing that it has legitimate reasons to oppose the further commercialisation of the goods on the basis of the *Evora*/*Copad*/*Coty* line of case law but fail to establish a likely adverse effect on at least the investment or advertising functions of its trade marks.

As an alternative to, or in addition to, legal strategies, some brand owners are deploying commercial strategies in an attempt to cut the legs out from underneath the unworn, unused, resale market. Limiting the number of products that can be purchased in-store by a single customer, incorporating appropriate provisions into terms of use and conditions of sale, and increasing production of in-demand items to reduce the perception of scarcity, each have their limitations and potential downsides but can have some useful effect.

Of course, while most major resale platforms take care to ensure that sales are only possible within a single market, sales of goods from one market to another in which the brand owner's trade mark rights are not exhausted would likely give rise to cause for complaint without the need to engage Article 15 of the EUTM Directive/Section 12 TMA.

## Customisation

A further trend engaging exhaustion principles is the growing consumer demand for new, genuine, customised products.

Nike recently initiated proceedings in the US against Customs By Ilene,[13] trading as Drip Creationz, which advertises and sells customised Nike footwear. Nike claims that Drip Creationz has infringed its rights by deconstructing its genuine Air Force 1 shoes and replacing and/or adding material to them, thereby materially altering the goods in ways Nike has never approved or authorised. This, says Nike, includes adding fake Nike Swoosh designs, as well as third-party trade marks and designs to produce customised footwear that has been sold for significantly more than the retail price of Air Force 1 shoes. Nike claims that consumers have been deceived into believing, wrongly, that Nike has approved Drip Creationz's designs and diluted its trade marks. In its defence, Drip Creationz claims that its sale of genuine, modified Nike footwear falls under the first sale doctrine and therefore does not infringe Nike's rights because those rights were exhausted when the shoes were first put on the market by Nike.

Nike also took action[14] in the US last year against a company that injected a drop of its employees' blood into the soles of 666 pairs of Nike Air Max shoes, added a charm to the laces, and the words "*Luke 10:18 'I saw Satan fall like lightening from heaven'*" along the side. The shoes were produced in collaboration with the US rapper Lil Nas X and went on sale for more than $1,000 (£740) each, with 665 pairs reportedly sold in under a minute.

Similarly, Rolex is well known for objecting to the resale by third parties of original but modified Rolex watches. In a 2020 decision[15] of the US District Court for the Southern District of New York, La Californienne was found to have infringed Rolex's rights, including its trade mark rights in "Rolex", by advertising and selling (through several well-known retailers) pre-owned Rolex watches it had modified. Although they were permitted to continue customising Rolex watches, the final ruling prevented La Californienne from carrying out marketing or any other activity that would profit from the use of Rolex's IP.

In principle, brand owners could expect to have similarly good prospects of success against such customisers in the EU or the UK under Article 15(2) of the EUTM Directive/Section 12(2) TMA, respectively. Those provisions refer expressly to the condition of the goods (as opposed to their packaging) being changed or impaired, which would suggest that any modification to the goods would suffice to negate the effect of Article 15(1)/Section 12(1) regardless of the nature, extent, visibility or otherwise of the modification.

A brand owner would still then need to show that the conditions for trade mark infringement were met, including that there was an adverse effect on one or more of the functions of the mark (assuming it were to allege "double identity" infringement under Article 9(2)(a) of the EUTM Regulation/Section 10(1) TMA). However, it seems unlikely that a brand owner would struggle in this respect. At least for quintessentially luxury brands, an effect on the investment function would be almost inevitable where an alteration would detract from the aura of prestige and luxury that normally surrounds the goods. Even for non-luxury brands, an alteration that could be said to tarnish the brand in some way, such as a "Satan shoes" situation, is likely to be said to affect at least the investment function of the mark. One can see that, in many cases, the brand owner is also likely to have an argument that the origin function of the mark is impaired, although the precise formulation of that argument will almost certainly depend on the circumstances of the particular case. For example, Rolex argued against La Californienne that the latter's alterations to include non-authentic Rolex parts transformed an authentic watch into a counterfeit; Nike has argued against Drip Creationz and MSCHF that consumers will wrongly believe that it had a commercial relationship with Drip Creationz and MSCHF/Lil Nas X; and post-sale confusion would also presumably be relevant in many cases, i.e. even where a consumer is not confused at the time of purchase, when worn/used, the altered product may lead others to believe that it originates from or is associated with the brand owner.

At least in theory, a possible workaround for customisers (aside from avoiding any use of the trade mark in question) might be to provide customisation *services* to existing owners of branded goods, rather than customising the *goods* before advertising and offering the finished product for sale. In those circumstances, provided any use of the brand owner's trade marks by the customiser was informative (rather than misleading so as to indicate a false commercial connection with the brand owner, as per the UK Court of Appeal's ruling in *BMW v Technosport*),[16] there is likely little a brand owner could do. However, the commercial reality is that this model simply would not be as attractive to consumers and as lucrative for customisers. It therefore seems likely that the game of cat and mouse between owners of coveted brands and those wanting to tap into the customisation trend is set to continue.

## Impact of Brexit

The UK participated in the reciprocal EEA exhaustion regime for many years while it was an EU Member State. From 1 January 2021, the EU's exhaustion rules ceased to apply in the UK. As mentioned above, the Intellectual Property (Exhaustion of Rights) (EU Exit) Regulations 2019 were made to preserve the *status quo* as an interim measure. The Regulations provide that the system of EEA-wide exhaustion is unilaterally retained by the UK to the extent possible, at least for now. The result is that, at the time of writing, IP rights in goods put on the market in the EEA will be considered exhausted in the UK; however, putting goods on the market in the UK will not exhaust IP rights in the EEA. Therefore, while owners of UK IP rights cannot prevent imports from the EEA, owners of IP rights in the EEA are able to prevent parallel imports from the UK, resulting in an "asymmetric" exhaustion regime.

In June 2021, the UK government launched a public consultation on the UK's future regime for exhaustion of IP rights post-Brexit. The consultation paper contemplated four possible future exhaustion regimes, as follows: (i) retain the UK's current unilateral application of a regional EEA regime, known as "UK+"; (ii) adopt a national exhaustion regime; (iii) adopt an international exhaustion regime; or (iv) adopt a mixed regime.

Although the UK government has stated that it does not have a preferred option, it recognised that a continuing UK+ regime would have the benefit of continuity. It would, it said, also be the cheapest option for businesses reliant on goods coming from the EEA for the supply of goods, while continuing to provide the same level of choice for UK consumers. However, as there would be no guarantee of reciprocity from EEA Member States, it could still leave no option for parallel exports from the UK to the EEA.

A national regime, where IP rights in goods would be considered exhausted only in the UK once they were put on the market in the UK, was all but rejected on account of its apparent irreconcilability with the Northern Ireland Protocol. The Protocol preserves the position that parallel goods may move from the Republic of Ireland and other EU Member States into Northern Ireland (part of the UK) without restriction. A mixed regime would also need to be compatible with the Northern Ireland Protocol and could be complex and burdensome for businesses and consumers to navigate as different regimes would apply depending on the specific sector and/or IP right.

Under an international regime, the IP rights in goods would be considered exhausted in the UK once they had been put on the market in any other country. The practical effect would be that genuine goods could be parallel imported into the UK from any other country in the world without the IP owner's consent. The consultation paper acknowledged that this could result in owners of IP rights losing control of the parallel trade of their goods after they were first put on the market anywhere in the world. From the consumer's perspective, an international exhaustion regime could increase consumer choice and supply and may even reduce the price of products, albeit with potential confusion and safety issues due to different products being intended for specific markets but ultimately distributed elsewhere. As for parallel exports from the UK to other countries, this would continue to depend on the applicable exhaustion regime in the relevant country of import.

The consultation closed at the end of August 2021 and, in January 2022, the UK government published a summary of responses to the consultation. Out of the 150 responses received, the majority were from those representing the pharmaceutical and creative industries. The majority of respondents who expressed a preference for one of the four options favoured the current UK+ model, over a third favoured a national exhaustion regime, a small number favoured an international regime, and the least popular option was a mixed regime. The UK government has stated that there is not currently enough data available to understand the economic impact of any of the alternatives to the UK+ regime but that it "remains committed to exploring the opportunities which might come from a change to the regime". It plans to further develop the policy framework before reconsidering the evidence and making a final decision on the future exhaustion of IP rights regime. However, at the time of writing, no timeframe has been set out for this.

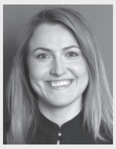
## Waiting Game…

The UK government has acknowledged that a changeover period and transitional provisions would be required if a decision is made to adopt any regime other than the current unilateral UK+ regime. While the UK+ regime provides some continuity in the interim, longer-term uncertainty remains.

It also remains to be seen whether, and to what extent, the senior UK courts may diverge from the existing body of EU case law on exhaustion. Cases concerning exhaustion in relation to trade marks are generally quite rare and even rarer at the appeal stage. The most likely reason for this is that it will usually be an easier and cheaper solution for a parallel importer or reseller to simply agree not to import or sell the goods of a particular brand (often one of many they trade in) than to defend itself in court proceedings. It is therefore likely to be some time before the law on exhaustion comes to be substantially reconsidered by the UK courts.

## Endnotes

1. "*IPR-intensive industries and economic performance in the European Union*", Industry-Level Analysis Report, September 2019, third edition.
2. [2000] E.T.M.R. 102.
3. Case C-427/93.
4. Case C-379/97.
5. Case C-349/95.
6. Case C-337/95.
7. Case C-59/08.
8. *Brealey v Nomination* [2020] EWCA Civ 103 at paragraph 23.
9. Case C-230/16.
10. *Nike European Operations Netherlands B.V. v Action Sport Soc. Coop, A.R.L.*
11. *Ping Europe Ltd v Competition and Markets Authority* [2020] EWCA Civ 13.
12. "*From Surging Recovery to Elegant Advance: The Evolving Future of Luxury*", Bain & Company.
13. *Nike, Inc. v Customs By Ilene, Inc.* (Case No. 5:2021cv01201).
14. *Nike, Inc. v MSCHF Product Studio, Inc.* (Case No. 1:21-cv-01679).
15. *Rolex Watch U.S.A., Inc. v Courtney Ormond, Reference Watch LLC d/b/a/ La Californienne, Leszek Garwacki, Reference Watch LLC and Reference Watch LLC d/b/a/ La Californienne* (Case No. 2:2019cv09796).
16. *Bayerische Motoren Werke AG v Technosport London Ltd* [2017] EWCA Civ 779.



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Nick has been recognised by *World Trademark Review* as one of the World's Leading Trademark Professionals.
Nick's UK litigation experience covers trade mark infringement and passing off, breach of licence/coexistence agreement, trade secrets, and designs. Example UK cases include *Merck KGaA v MSD*, *Maier v Asos*, *Kenexa v Alberg*, *Codemasters Software v ACO* and *Daimler v Sany*.

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