

# D YOUNG & CO TRADE MARK NEWSLETTER *no.95*

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## Mermeren v Fox Does geographical location designate geographical origin?



Full story [Page 02](#)



Welcome to our last trade mark newsletter of 2017. We close the year with new Regulation (EU) 2017/2001 of the European Parliament and of the Council of 14 June 2017 on the European Union Trade Mark in force. EU trade mark law is undergoing some of the most significant reforms since the implementation of the Community trade mark (now the European Union Trade Mark) in 1996. We've summarised some of the more significant changes that the new Regulation brings on page 04 of this newsletter. Do get in touch if you or your clients require further clarification on any of the changes that came into effect on 01 October 2017.

We are also pleased to share the fantastic news that we have once again been ranked top tier for patent and trade mark services by the Legal 500 and would like to thank our clients and colleagues in the IP world for their contribution to the research process.

The D Young & Co trade mark team

Events



07-10 November 2017  
**INTA leadership meeting, Washington, US**

Trade mark team partner Jeremy Pennant will be attending the INTA leadership meeting in Washington DC this November. The meeting brings together INTA volunteers and leaders once a year to advance the association's objectives and goals.

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Geographical origin

# Mermeren v Fox

## Does geographical location designate geographical origin?

A recent decision from the Intellectual Property Enterprise Court (IPEC) concluded that the use of a geographical location did not serve to designate the geographical origin of the goods.

The facts

Both companies are involved in the extraction, processing and sale of marble which they obtain from their quarry located in the Prilep region of the Republic of Macedonia, more precisely, from a mountain pass known as "Sivec" (pronounced SIVETS).

The dispute arose when the defendant, Fox, began selling marble under the mark "SIVEC". Mermeren, who had been selling marble under the identical mark since the 1950's issued infringement proceedings before the IPEC claiming infringement of its EU trade mark registration for "SIVEC" covering "marble of all types" and dated August 2013 (the filing date).

Whilst Fox admitted infringement, it sought cancellation of the registration on the basis of Articles 7(1)(b) to (d) and Article 51(1)(b) of Regulation (EC) No 207/2009 (now amended) (Old Regulation). In brief, Fox sought to argue that SIVEC:

1. was devoid of any distinctive character;
2. served to designate the geographical origin from where the goods originate from;
3. had become custom in trade; and
4. had been applied for in bad faith.

Mermeren argued that the mark had acquired distinctiveness through use and was therefore valid pursuant to Article 7(3) of the old regulation. Alternatively, the mark acquired distinctive character in relation to the goods for which it was registered by virtue of its use **after registration** pursuant to Article 52(2) of the Old Regulation.

Central question

Taking into account Mermeren's defence, Fox accepted that cancellation of the trade mark would not succeed if the case under Article 7(1)(c) failed. Consequently, the entire dispute

essentially boiled down to one question:

Did the mark "SIVEC" serve in trade to designate the geographical origin of a type of marble at the relevant date ie, the filing date?

Inherent character of the trade mark and the average consumer

The courts confirmed that when looking at a mark's inherent character, all use of the mark should be disregarded; what is being looked at is whether the mark is in itself distinctive. The question therefore was whether, **at the filing date**, the mark SIVEC inherently denoted a geographical origin to the average consumer; the average consumer having been identified as "a specialist dealer in marble or a person who advises their customers on the choice of materials to be used in a building, such as an architect or designer of interiors...[and] came from within the EU, so this excluded Macedonia".

Although it was accepted that the mark was the name of a geographical location, the evidence showed that no one will have heard of Sivec except, presumably, those who lived somewhere near the Sivec mountain pass. However, those individuals did not form part of the relevant persons or even people within the EU which, according to the court, was "fatal to Fox's case under this head".

If the average consumer had never heard of a place, the name of that place cannot **inherently** designate a geographical origin in the mind of the average consumer. Consequently, the trade mark was inherently distinctive.

Acquired distinctive character

It was commonplace for marble to be named by reference to the locality from which it is quarried and, up to 2011, Mermeren had made no effort to suggest to the public that the SIVEC name was attached to one supplier of marble. It was not until between 2011 and 2013 that Mermeren began using the SIVEC mark as a brand name, thus suggesting that it designates a single commercial source of marble.

Consequently, Fox argued that the mark had been rendered non-distinctive by virtue of Mermeren's non-trade mark use of SIVEC

➤ **Case details at a glance**

Jurisdiction: England & Wales

Decision level: Intellectual Property Enterprise Court (IPEC)

Parties: Mermeren Kombinat AD v Fox Marble Holdings plc

Citation: [2017] EWHC 1408 (IPEC)

Date: 14 June 2017

Full decision: <http://dycip.com/ewhc1408>

**Did SIVEC inherently denote geographical origin at the filing date?**



up to 2011; it argued that in the short period between 2011 and 2013, the perception of the average consumer, created by Mermeren, could not have been dislodged.

The court rejected this argument, confirming that a trade mark could not lose its inherent distinctiveness through use. Although it accepted that the use of a real place name in association with a type of marble could generate the perception that the name designates a geographical origin, even if the average consumer just assumes that it is somewhere on the map but does not know this to be true.

However, “when it comes to the consequences of the use of a sign, it is the perception of the average consumer generated by that use that counts, not the reality”. It therefore didn’t matter that SIVEC was a geographical location, only how the relevant consumer perceived it. Therefore, although some relevant persons had been led to think that SIVEC meant the place from which the marble was quarried, the court concluded that a significant portion had moved on to think that SIVEC meant marble quarried and/or supplied by Mermeren; a “significant portion” being “markedly above *de minimis* but not necessarily over half”.

**Summary**

Whilst the court accepted that Sivec was in fact a real place, it concluded that it **did not** serve to designate the geographical origin of

the marble and that, in any event, the mark had acquired distinctiveness by the filing date and maintained it following registration.

Brand owners should therefore pay close attention to how their marks are used in practice as although it is unlikely for a mark’s distinctive character to be weakened by virtue of the manner in which it is used, such instances may arise. It is therefore a useful reminder to ensure that marks are being used as trade marks. This means ensuring use of the <sup>TM</sup> or ® symbols, using the mark as an adjective and not a noun, or ensuring that the mark is used and represented in a consistent manner.

The courts also provided a useful summary of the law related to inherent and acquired distinctiveness which is provided below:

- What must be assessed is whether at least a **significant portion** of the **relevant class of persons** perceive, as of the **filing date** of the application for registration, the trade mark identifying relevant goods or services as originating **from a single undertaking**;
- This perception must rise out of the use of the mark **as a trade mark**;
- Circumstance in which the average consumer recognises the mark and associates it with the applicant’s goods **is not of itself sufficient** to confer distinctive character on a trade mark;

- The courts may take the following into consideration when assessing the distinctive character of a trade mark: (i) the market share held by the mark; (ii) how intensive, geographically widespread and long-standing use of the mark has been; (iii) the amount invested by the undertaking in promoting the mark; (iv) the proportion of the relevant class of persons who, because of the mark, identify goods as originating from a particular undertaking; and (v) statements from chambers of commerce and industry or other trade and professional associations;
- Subject to national rules, the courts may have recourse to a public survey;
- The courts may consider whether a significant proportion of the relevant class of persons would have relied on the sign as denoting the origin of the goods or services. Such **reliance is not a precondition** for establishing the distinctive character of a trade mark, but if established **it is sufficient** to show that the mark has distinctive character;
- Where the name of a **geographical location is very well known**, it can **only** acquire distinctive character if there has been **long-standing** and **intensive use** of the mark by the proprietor;
- Distinctive character must be established **in the part of the EU** in which it initially had **descriptive character** for the purposes of Article 7(1)(c);
- A mark cannot lose its inherent distinctive through use;
- When it comes to the consequences of the use of a sign, it is the perception of the average consumer generated by that use that counts, not the reality;
- A significant portion of the relevant persons is a portion being markedly above *de minimis* but not necessarily over half; and
- Use of a mark should be disregarding for the purposes of Articles 7(1)(b) to (d).

**Author:**  
Alban Radivojevic



# EU trade mark law reforms October 2017

**R**egulation (EU) 2017/1001 repealed Regulation 207/2009 and came into force on 01 October 2017.

In March 2016, we advised you of the changes brought in by Regulation (EU) 2015/2424 amending Council Regulation (EC) No. 207/2009 (a link to our summary of those changes can be found at the end of this article). We now bring to your attention ten of the more significant changes that came into effect from October 2017.

## 1. Representation of a trade mark

A sign can be represented in any available technology. Examples of types of trade marks are listed as: word, figurative, shape, position, pattern, colour, sound, motion, multimedia and hologram.

## 2. Subsidiary claim to acquired distinctive character

On filing an application or, at the latest, in response to the first objection, the applicant can claim that the sign has acquired distinctive character. This can be a principal or subsidiary claim. A subsidiary claim means that the applicant will not have to incur the time and effort in preparing evidence to support the claim until it has exhausted its right of appeal on inherent registrability.

## 3. Consistency in contentious proceedings

Both invalidity and revocation proceedings will align with opposition proceedings. This means that an applicant in an invalidation action will not have to prepare all the observations and evidence upfront as this can be filed within the adversarial part of the proceedings.

## 4. Substantiation of earlier rights

Earlier rights relied upon in opposition or invalidation actions can be substantiated by reference to a recognised online source.

## 5. Proof of use

Provision has been made for the EUIPO to exercise its discretion in accepting evidence for proof of use after the expiry of the time limit.

Regulation (EU) 2017/1001 came into effect in October 2017



## 6. Suspension periods

Suspension will now be granted for periods of six months up to a maximum of two years, in comparison with the previous one year periods that were permitted for up to three years.

## 7. Written evidence

New rules are introduced that seek to mirror the rules of the General Court. Completion of evidence in a ready-to-file format is likely to be more time consuming in order to comply with these rules.

## 8. Board of Appeal

New rules will come into force which provide clarification on the content of statement of grounds of appeal and the response, 'cross-appeals', claims and facts which are raised before the Board of Appeal for the first time.

## 9. Legal references

The full name of the new regulation is: Regulation (EU) 2017/2001 of the European Parliament and of the Council of 14 June 2017 on the European Union Trade Mark.

Secondary legislation in which some of the changes are confirmed takes the form of the Commission Implementing Regulation (EU) of 18.5.2017 and the Commission Delegation Regulation (EU) of 18.5.2017.

## 10. Certification marks

EU certification marks have been introduced. A certification mark is a mark that distinguishes goods or services that have been certified by the proprietor as having certain characteristics. This differs from a collective trade mark which is a mark that is capable of distinguishing the goods and services of the members of a particular association. EU collective marks have been in existence since EU trade marks were introduced.

## Authors:

Jackie Johnson & Anna Reid



### Reforms to EU trade mark law 2016

Regulation (EU) No 2015/2424 of the European Parliament and the Council amending the Community Trade Mark Regulation came into force on 23 March 2016. We summarised changes to the Community Trade Mark Regulation and the Trade Mark Directive, including OHIM's name change to the EUIPO and the Community trade mark to the (EUTM) in an article published in 2016:

[www.dyoung.com/knowledgebank/articles/eutmlawreforms16](http://www.dyoung.com/knowledgebank/articles/eutmlawreforms16)

# Design infringement & the IP Act 2014 Neptune (Europe) v DeVOL Kitchens

➤ *Case details at a glance*

*Jurisdiction: England & Wales*

*Decision level: High Court (Patents Court)*

*Parties: Neptune (Europe) Limited*

*v DeVOL Kitchens Limited*

*Citation: [2017] EWHC 2172 (Pat)*

*Date: 25 August 2017*

*Full decision: <http://dycip.com/ewhc2172>*

**A**s a result of the Intellectual Property Act 2014, the scope of UK design right (namely, UK unregistered design) has changed. In *Neptune (Europe) Limited v DeVOL Kitchens Limited*, the England and Wales High Court (Patents Court) has considered the effect and application of this change.

## Background

In 2002, the claimant, Neptune, started designing kitchen furniture, selling it, between 2002 and 2011, through a distribution network and, since 2011, through its own branded stores. In 2006, Neptune designed the “Chichester range”, with the aim of bridging the modular and bespoke markets by producing high quality modular kitchens.

The defendant, DeVOL, was also a designer (as well as retailer) of kitchen furniture. Having been founded in the 1980s and designing a number of bespoke kitchens (including the “Classic range” in 1989), in 2008 DeVOL began to distribute Neptune’s Chichester range, which was successful.

In 2009, DeVOL decided to create its own range of modular kitchens, called the “Shaker range”. By 2010 the range was being offered in its stores, with the relationship between Neptune and DeVOL breaking down shortly afterwards.

In 2015, Neptune commenced a claim against DeVOL, alleging (among other things) that its design rights in its Chichester range had been infringed by DeVOL’s Shaker range. DeVOL asserted that it had independently designed the range (including that it had used its earlier Classic range as its basis).

## Designs

Neptune alleged infringement in relation to twelve designs in articles of its kitchen furniture which, through case management, were reduced to six for the purposes of the trial: a wine rack; a one-drawer cabinet; a one-door wall cabinet; a one-door base cabinet; a curved end cabinet; and a door glazed cabinet.

Neptune relied on the **entirety** of each of the articles but sought to **exclude** certain features

of the articles, including the cock-beading and moulding, which was one of the key differences between the design and alleged infringement.

It sought to do this on the basis that, among other things, the cock-beading and moulding was a “**part of**” each article. DeVOL resisted this on the basis that it was an “aspect of” each article and, as such, it was incapable of being excluded. The merits of this argument necessitated a discussion about the effect of the Intellectual Property Act 2014.

## Effect of the Intellectual Property Act 2014

Until 01 October 2014, s. 213, Copyright, Designs and Patents Act 1988 stated: “(2) In this Part, ‘design’ means the design of **any aspect** of the shape or configuration (whether internal or external) of the whole **or part of** an article.” After 01 October 2014, by virtue of the Intellectual Property Act 2014, “any aspect of” was deleted from the section.

Prior to the amendment, the definition of “design” was considered to be very wide, enabling a claimant to claim design right in small, arbitrary aspects of an article. The amendment to section 213(2) was intended to address this problem by narrowing the definition of “design”. For example, the explanatory notes to the act stated:

“Subsection (1) limits the protection for trivial features of designs, by making sure that protection does not extend to ‘any aspect’ of the shape or configuration of the whole or part of an article. It is expected that this will reduce the tendency to overstate the breadth of unregistered design right and the uncertainty this creates, particularly in relation to actions before courts.”

The trial judge, Mr Justice Carr, explained the difference between a “part” and an “aspect” of as follows: “In my view, aspects of a design include disembodied features which are merely recognisable or discernible, whereas parts of a design are concrete parts, which can be identified as such ... aspects of the design of a teapot could include the combination of the end portion of the spout and the top portion of the lid, which are disembodied from each other and from the spout and

lid. They are not parts of the design.”

## Application of the Intellectual Property Act 2014

As the design for the Chichester range was created in 2006, with the alleged infringement taking place between 2009 and 2017, this meant that the design was created before the amendment to the act and that the infringement occurred for five years before and three years after the amendment. The question arose, therefore, as to what definition of “design” applied and when.

Having considered the authorities, the court concluded that any cause of action which existed in “any aspect of” continues to exist for infringing acts incurred up to 01 October 2014 (presumably until the expiry of the six year limitation period), but does not apply to infringing acts after 01 October 2014.

## Conclusion

In any event, the court held that the cock-beading and moulding was a “part” not an “aspect” of the design and, therefore, could be excluded pre-and post 01 October 2014.

As to the claim itself, while the designs were found to subsist, they were found not to be infringed. Rather, the source of the designs was broadly held to be DeVOL’s earlier kitchen furniture, the Classic range.

## Author:

**Antony Craggs**



## In short

The practical implications of this decision are that, when a rights holder is assessing their infringement claim, they will need to consider when the design was created and when the infringing acts occurred. The rights holder enjoys wider rights if both occurred before 01 October 2014.

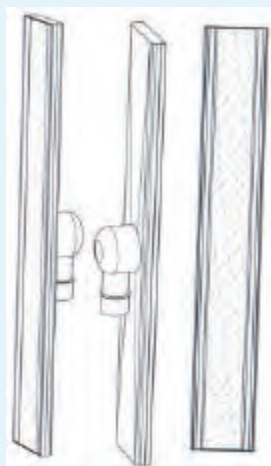
# Scope of protection afforded to designs

## CJEU confirms UK Courts' position

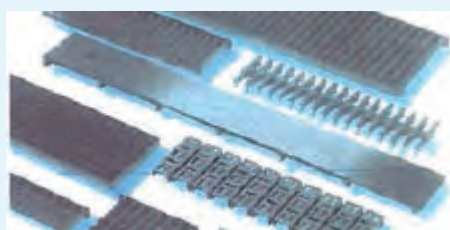
**E**asy Sanitary Solutions BV and European Union Intellectual Property Office v Group Nivelles NV. A recent and important decision from the Court of Justice of the European Union (CJEU) has confirmed the position held by the UK Courts that the scope of protection for a registered design extends to the application of the design to any product irrespective of the trade sector.

### Background

Easy Sanitary Solutions (ESS) obtained a registered Community design in 2004 as shown in the three views below. The application indicated the product as shower drains under class 23.02 of the Locarno classification system.



The design was renewed in 2009 but shortly thereafter an application for declaration of invalidity was filed by I-Drain, the predecessor of Group Nivelles NV (Nivelles). Nivelles argued that the design did not fulfil the novelty requirements under the Regulation and nor did the design have sufficient individual character. In support of the application for a declaration of invalidity Nivelles included extracts from two catalogues including the image shown below.



Initially, the design was held to be invalid by the EUIPO but on appeal that decision was overturned. Nivelles successfully appealed to the General Court and the original decision was reinstated. The case came before the CJEU with appeals both by ESS and the EUIPO along with an intervention from the United Kingdom.

### EUIPO's appeal

The EUIPO was concerned at the inference from the General Court's decision that it should be required to compare the contested design with the prior art and, at its own initiative, consider the combination of several components of the earlier design even when they are disclosed separately. The EUIPO rightly made reference to the decision in *Karen Millen Fashions* (see our article here: [www.dyoung.com/knowledgebank/articles/karenmillen](http://www.dyoung.com/knowledgebank/articles/karenmillen)) which confirmed that a design could be compared with earlier individual designs but not with an amalgam of specific features or parts of an earlier designs.

**The CJEU noted that a design is defined as being "the appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colours, shape, texture and/or materials of the product itself and/or its ornamentation".**

It follows that appearance is the decisive factor when considering a design.

The EUIPO argued that Nivelles had failed to present in its application for a declaration of invalidity, a complete reproduction of the design that was claimed to be an earlier design. The CJEU confirmed, however, that contrary to the General Court's judgment, the fact that the contested design only exists as a combination of designs is not relevant for the purpose of assessing novelty. Notwithstanding this error by the General Court the CJEU confirmed that its judgment

should still hold if its operative part was well founded on other legal grounds. The CJEU confirmed that the design claimed by Nivelles to be earlier was a complete drainage device for liquid waste offered by Blücher and thus this could be used for comparison purposes when considering novelty with the contested design.

### The ESS appeal – scope of protection

ESS argued that the General Court was wrong in stating that the "sector concerned" is not limited to that of the product in which the contested design is intended to be applied. They argued that the concerned sector must have a link between the design and the product or products to which the design would be applied. ESS essentially contended that a design's protection should be limited to designs belonging to a specific sector.

This case is the first time this point had come before the CJEU. Previously, however, in the United Kingdom in the case of *Green Lane Products v PMS International* in 2008 it was confirmed that the prior art available for attacking validity may come from any sector and not just that of the intended products of the design, subject to the limited exception of prior art that is obscure even in the sector from which it comes.

### Finding of the CJEU – confirmation of the UK position

The most important aspect of this judgment was the confirmation from the CJEU that a registered Community design confers on its owner the exclusive right to use the relevant design for all types of products and not only in the product indicated in the application for registration. Accordingly, a Community design cannot be regarded as being new if an identical design has been made available to the public, even if that earlier design was intended to be used in a different sector or for a different product. The sectors in this particular case appear similar to the layperson but the appeal by ESS on the point enabled the CJEU to issue a definitive decision.

### Position of the informed user

The court also looked at the position of the informed user. Previous case law has

➤ **Case details at a glance**

*Jurisdiction: European Union*

*Decision level: Court of Justice*

*Parties: Easy Sanitary Solutions*

*BV and Group Nivelles NV*

*Citation: Joined Cases C-361/15 & C-405/15*

*Date: 21 September 2017*

*Full decision: <http://dycip.com/easysanitary>*

confirmed that the informed user knows the various designs which exist in the sector concerned, possesses a certain degree of knowledge with regard to the features which those designs normally include, and, as a result of his/her interest in the products concerned, shows a relatively high degree of attention when using them.

The CJEU contended, however, that the General Court had erred in requiring that the informed user should have knowledge of the actual product in which the earlier design is incorporated or to which it is applied. This would be incompatible with Article 10 of the Regulation which states that the protection granted by a Community design extends to any design that fails to produce on the informed user, a different overall impression.

**Author:**

**Jeremy Pennant**



**In short**

This major decision is important in confirming the extent to which protection is afforded to a registered design. An outcome where the scope of that protection was limited to the relevant sector concerned would have had huge consequences for design owners and future filing strategies.

Confirmation that the UK Court's position in *Green Lane Products v PMS International* was correct is to be welcomed as it very clearly and unambiguously confirms the novelty requirements throughout the European Union and reinforces the strength of protection afforded to registered designs.

## Exhaustion of rights

# SCHWEPPEES Trade mark exhaustion

Is the licensee of the proprietor of a national mark prevented from invoking the exclusive rights of the proprietor under the law of the member state in which the trade mark is registered, in order to object to the importation and marketing in that state of goods bearing an identical trade mark which originated from a different member state, in a situation where the trade mark at issue was once owned by the group to which both the proprietor of the trade mark and its licensee belong, but which is now owned by a third party by virtue of an assignment?

The sign SCHWEPPEES is registered as a series of national trade marks in various EU member states. The trade mark rights were owned by Cadbury Schweppes for many years, until in 1999 it sold the rights in certain member states to Coca-Cola. Cadbury Schweppes retained ownership of the rights in the remaining member states. The Spanish national trade mark registrations for SCHWEPPEES are owned by Schweppes International Ltd, an English subsidiary of the Schweppes holding company. The Spanish Schweppes subsidiary had an exclusive licence to exploit the marks in Spain.

In 2014 Schweppes commenced infringement proceedings against Red Paralela in Spain in relation to the importation from the UK and subsequent sale in Spain of bottles of tonic water bearing the SCHWEPPEES trade mark. Schweppes alleged infringement on the basis that the bottles of tonic water were placed on the market by Coca-Cola in the UK and not Schweppes. In its defence Red Paralela argued that Schweppes' trade mark rights have been exhausted as a result of implied consent, because there is a legal and economic link between Coca-Cola and Schweppes arising from the common exploitation of the mark SCHWEPPEES as a global brand.

**Questions referred by the Spanish Court**

The Commercial Court (No.8) of Barcelona referred four questions to the Court of Justice of the European Union (CJEU) for a preliminary ruling. These questions essentially ask whether the licensee of the proprietor of a national trade mark (a Spanish national registration) is prevented from invoking the exclusive rights of the proprietor under the law of the member

state in which the trade mark is registered (Spain), in order to object to the importation and marketing in that state (Spain) of goods bearing an identical trade mark which originate from a different member state (the UK), in a situation where the trade mark at issue was once owned by the group to which both the proprietor of the trade mark and its licensee belong (Schweppes), but which is now owned by a third party by virtue of an assignment (Coca-Cola).

The Advocate General considered that:

- As confirmed by the CJEU exhaustion of trade mark rights can occur when goods are put on the market by the trade mark proprietor or an entity economically linked to the proprietor;
- The above analysis also applies in situations in which use of the trade mark is under the unitary control of two distinct persons, for example, proprietors of national trade marks, who act together to exploit the trade mark. Where two or more proprietors of parallel trade marks reach an agreement to exercise joint control over the use of their respective signs (whether or not there is a common origin of the goods), the placing of the goods on the market in one member state should be regarded as having taken place with the consent of the proprietor of the national trade mark in the member state of importation, and the trade mark rights are therefore exhausted;
- In order for exhaustion to occur, the agreement between the trade mark proprietors should provide for the possibility of determining directly or indirectly the goods to which the trade mark may be affixed and of controlling their quality; and
- The burden of proof is on the parallel importer to establish such exhaustion by reference to the facts in each case.

AG Mengozzi's opinion will be welcomed by parallel importers. However, it remains to be seen whether the CJEU follows the AG's opinion and even if it does, it is unclear how the national court in Spain will apply the decision.

**Author:**

**Anna Reid**



And finally...

## Supreme Court ruling Criminal sanctions can be imposed for the sale of grey goods

**A**n appeal asked the Supreme Court to determine the proper construction of section 92(1) of the UK Trade Marks Act 1994; the part which sets out the criminal offences relating to the unauthorised use of trade marks.

The Supreme Court ruled that criminal penalties can not only be imposed on businesses that engage in the sale of 'true' counterfeit goods but also those who sell 'grey goods' - goods that have been legitimately produced but whose sale has not been authorized by the relevant trade mark owners.

The defendants, who were involved in the alleged bulk importation and subsequent sale of goods bearing the trade marks of well known brands such as Ralph Lauren and Adidas, argued that whilst civil liability would arise from any unauthorized trade mark use, a criminal offence could only subsist in the case of the sale of counterfeits as opposed to grey goods

on the basis of the wording of section 92.

The court unanimously dismissed this reading of the provision stating the appellants' proposed reading of the section was 'strained and unnatural'. The court further dismissed the defendants' argument that the Crown's construction of section 92(1) was a disproportionate breach of their rights under Article 1 of the Human Rights Act and considered a criminal penalty a necessary sanction for those who may otherwise calculate the risk of liability in damages is one worth taking.

Accordingly the appeal was dismissed and the criminal trial will proceed accordingly.

**Author:**  
Fay Birch



### Case details at a glance

Jurisdiction: United Kingdom  
Decision level: Supreme Court  
Parties: R v M & Ors  
Citation: [2017] UKSC 58  
Date: 03 August 2017  
Full decision: <http://www.bailii.org/uk/cases/UKSC/2017/58.html>

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