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## Editorial

As the Autumn conferences prepare to open their doors we are very much looking forward to seeing friends and colleagues in person around the world. If you are attending the IPO Annual meeting in LA, MARQUES in Madrid and/or the CITMA Autumn conference in the UK, we'd be delighted to hear from you if you would like to arrange a meeting during the event.

Our team continues to grow in response to client demand and we are extremely pleased to welcome Associate Solicitor Olivia Oxton to our London office, and Associate Rechtsanwältin Christa Dory and Trade Mark and Design Specialist Anna Scheuermann to our Munich office.

Jackie Johnson
Partner, Trade Mark Attorney

## Events

**IPO Annual Meeting**
**Los Angelas, US, 18-20 September 2022**
Jackie Johnson and Garreth Duncan will attending the 2022 IPO Annual Meeting.

**MARQUES 36th Annual Conference**
**Madrid, Spain, 20-23 September 2022**
Matthew Dick, Anna Reid and Jana Bogatz will be attending MARQUES 2022. Matthew Dick will be speaking at the "Judicial Approaches to Parasitic Competition" session on Friday 23 September.

**EUIPO SQAP RCD Audit**
**Alicante, Spain, 28-29 September 2022**
Jana Bogatz will be auditing registered Community design invalidity decisions on the EUIPO Stakeholder Quality Assurance Panel.

**CITMA Autumn Conference**
**Birmingham, UK, 12 October 2022**
Jennifer Heath will be attending the CITMA Autumn Conference.

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# A "Lidl" victory

## Tesco and Lidl battle it out over bad faith and survey evidence

The budget supermarket, Lidl, recently succeeded in having Tesco's bad faith counterclaim struck out, and was permitted to have survey evidence introduced at trial, to assist with the issue of distinctiveness of Lidl's registered trade marks.

### The claim

German discount retailer Lidl, operating in Europe and the US, owns various registered trade marks for two versions of its logo; a graphical device consisting of a yellow circle with a red rim on a blue background (the wordless mark) and the graphical device with the word "Lidl" in blue with a red letter "I" on a yellow circle with a red rim on a blue background, as depicted below (the mark with text).

British multinational supermarket Tesco has recently used a yellow circle on a blue background with the words "CLUBCARD PRICES", to promote its discounted prices for its loyalty "clubcard" members (the sign).


*Image source: High Court judgment; accessed via Joe Giddens/PA Archive/ PA Images*

Lidl alleged that Tesco's use of the sign amounted to trade mark infringement of its wordless mark and its mark with text.

Lidl accepted that the wordless mark had not been used on its own in the UK, however, it argued that its use in conjunction with the mark with text meant that it was recognised as being distinctive of Lidl's business. Therefore, it had a reputation in the UK and Tesco's use of the sign was taking unfair advantage of this reputation contrary to section 10(3) Trade Marks Act 1994.

### The counterclaim

Tesco counterclaimed to invalidate Lidl's wordless mark. It claimed that the trade mark had been registered in bad faith as Lidl had no intention of using the mark, and that its sole purpose was to be used as a "legal weapon" in proceedings. Tesco also accused Lidl of "evergreening" by filing duplicative trade mark applications for the wordless mark.

### The applications

Lidl applied to the High Court to have the bad faith counterclaim struck out or, alternatively, for summary judgment. The court needed to establish that there were no reasonable grounds for bringing the claim and that it was bound to fail.

Lidl also requested permission to rely on survey evidence to prove the mark's distinctiveness.

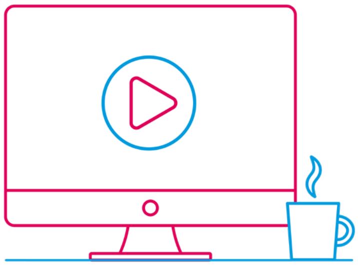
### Decision: bad faith

Tesco argued that Lidl had never used nor intended to use the wordless mark and that its only use of it was in conjunction with the mark with text. The judge referred to the earlier Specsavers International Healthcare Ltd v Asda Stores case, which had already established that there was nothing wrong with owning overlapping trade mark registrations or protecting the background of a logo.

The judge was not convinced that by registering the wordless mark without intent to use, or registering it and not using it, or registering it and not knowing what use will be made of it, were sufficient grounds to defeat the presumption of good faith. An allegation of bad faith is a serious allegation which must be proved distinctly. The behaviour must be one that falls short of what can be regarded as acceptable commercial behaviour.

Similarly, Tesco's allegation of evergreening was found to be insufficient to rebut the presumption of good faith. It was found that Lidl had applied to re-register the wordless mark on its own commercial rationale, with each registration either covering a wider specification, wider territories, or reflecting the evolution of the logo. The mere re-registration was not in itself indicative of bad faith as there must be an intent to circumvent trade mark law in relation to proof of use requirements, which was not evidenced in Tesco's arguments.

Related webinar



*We've published a short "bite-sized' webinar about this decision that you can access on demand at:* *dycip.com/tm-lidl-tesco-2022*

Case details at a glance

*Jurisdiction: England & Wales*
*Decision level: High Court*
*Parties: Lidl Great Britain Limited and Lidl Stiftung & Co KG v Tesco Stores Limited and Tesco PLC*
*Date: 13 June 2022*
*Link to decision: dycip.com/lidl-tesco-2022*

Overall, the judge was not convinced that Tesco had done enough to rebut the presumption of good faith. There was no proof that the sole objective when applying to register the wordless mark was anything but for the essential functions of a trade mark. Therefore, the application to strike out the counterclaim was granted.

### Survey evidence

Lidl had applied for permission to rely on survey evidence at trial, which had already been conducted. The survey was composed of three questions, each of which invited the consumer to look at an image of the wordless mark and answer the following questions:

1. What do you think this image is?

2. Now, please imagine that this image was used as a company's brand…Which company would you expect it to be?

3. Now, please imagine that you saw this image in or around a supermarket…Which supermarket would you expect it to be?

Tesco objected to the admissibility of the survey. First, it claimed that the survey had used the wrong stimulus and had been conducted under artificial circumstances. Lidl should not have shown the wordless mark to participants since they would not have come across it in the real world. Second, Tesco claimed that the survey evidence was insufficient to demonstrate acquired distinctiveness. The judge was not convinced by this line of argument. The context in which participants in the survey would have encountered the image, and the fact that it would only ever have been encountered as background, did not render the survey valueless. The survey went to the core of the issues in the proceedings, which is whether the wordless mark had acquired distinctiveness and was therefore considered to be of value to the court assessing this point.

Tesco went on to argue that the survey was unreliable due to the fact that it had failed to comply with several "Whitford Guidelines".

In Imperial Group plc v Philip Morris Ltd judge Mr Justice Whitford set stringent criteria on surveys which would be admitted. The Whitford Guidelines, as summarised by the Court of Appeal:

- If a survey is to have any validity at all, the way in which the interviewees are selected must be established as being done by a method such that a relevant cross-section of the public is interviewed;

- Any survey must be of a size which is sufficient to produce some relevant result viewed on a statistical basis;

- The party relying on the survey must give the fullest possible disclosure of exactly how many surveys it has carried out, exactly how those surveys were conducted, and the totality of the number of persons involved, because otherwise it is impossible to draw any reliable inference from answers given by a few respondents;

- The questions asked must not be leading; and must not direct the person answering the question into a field of speculation upon which that person would never have embarked had the question not been put;

- Exact answers and not some sort of abbreviation or digest of the exact answer must be recorded;

- The totality of all answers given to all surveys should be disclosed; and

- The instructions given to interviewers must also be disclosed.

Tesco pointed to the phrasing of the second and third questions, which it claimed invited speculation from consumers with the use of the word "imagine". However, upon review, the judge found that these questions added very little to the overall result of the survey, as an overwhelming 73% had already mentioned Lidl in answer to the first question. Tesco also criticised that the first question presupposed that the image was a singular thing, and that it must represent something as warranted a response based on the phrasing of the instructions. Again, this was not sufficient to deprive the survey of its validity and value. Furthermore, the fact that Lidl had conducted the survey prior to obtaining permission from the court was not reason enough to exclude it entirely.

Finally, the judge had to consider whether the costs justified the value of the survey. Tesco had estimated that an additional £136,000 would be spent on survey evidence which the judge found to be unrealistic in comparison with Lidl's estimated £64,000. Given the overall estimated cost of the litigation (well over £2 million) the cost of the survey was deemed justified given the value that the survey added to issues of the proceedings. As such, Lidl was permitted to rely upon the survey evidence.

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## In short

This case provides a useful summary of the law on bad faith, and stresses the fact that an allegation of bad faith is a serious one which must be "distinctly pleaded and distinctly proved" for the court to be satisfied that a party has been commercially dishonest. Failure to do so can lead to the claim of bad faith being struck out at an early stage of the proceedings. The case also highlights that there is no "one rule fits all" when it comes to survey evidence. The court will analyse each case in detail and decide based on the particular facts. Be warned – just because Lidl was able to have a survey approved after conducting it does not mean that this is a blanket rule that applies going forward.

# Tick, Tock, TikTok
# Metronomically descriptive?

This case is a High Court appeal against the decision of a UK Intellectual Property Office (UKIPO) hearing officer to invalidate a registration for TikTok, emphasising the importance of claiming priority when you can, as well as discussing the criteria for considering complementarity between goods and services.

TikTok International Ltd owned a class 42 registration for TIK TOK covering the "compilation of information relating to information technology", dating from November 2018.

TikTok Information Technologies UK Ltd, the operator of the well-known internet platform on which members of the public can post short videos on any topic, owned a prior registration for the identical mark, TIK TOK. This resulted from a cloned EU mark, with priority claimed from an application in India, being filed less than one month before the registration in question. Without this priority claim the case would have been doomed.

The earlier right was relied upon for a cancellation action under the Trade Marks Act 1994. The scope of the specification of the earlier mark was relevant and central to many of the submissions made during the appeal:

**Class 9**
"application software; application software for smart phone; downloadable computer software applications; downloadable smart phone application (software)";

**Class 38**
**"**providing access to search services of smart phone applications; providing access to peer-to-peer (P2P) sharing services"; and

**Class 41**
"electronic publication of information on a wide range of topics".

The appellant contested the hearing officer's decision to cancel their mark based on their belief that the officer's decision was wrong on three fronts:

1. the earlier mark TIK TOK was distinctive to a high degree
2. there was similarity between any of the relevant goods and services
3. there was a likelihood of confusion.

### Distinctiveness of TIK TOK

The appeal didn't start particularly well for the appellant. They argued that TIK TOK represents a widely-used onomatopoeic term, referring to the operation of a metronome or clock, and thus was descriptive of a service providing a platform for posting short videos of musical and/ or dance performances on the Internet.

The respondent pointed out that this argument hadn't been raised in the first instance and therefore doing so on appeal was inadmissible. The judge clearly didn't want to be seen to be favouring her most used social media app and consequently allowed the argument. However, the judge did conclude that the question of distinctiveness is not determined simply by a broad inquiry about the nature of the business of one of the parties. Further, merely because it might be evocative of the sound of a metronome or clock this didn't detract from the distinctiveness of the mark. In addition, the judge noted that the clearly deliberate misspelling is an element of distinctiveness: "Common sense tells you that the earlier mark is inherently distinctive, and highly so".

### Similarity of the goods and services

The appellant perhaps had a stronger case for appealing on the second limb of their claim. However, they rather went off at a tangent in discussing the complementarity of pictures and nails, used to hang them on a wall.

The judge confirmed that the comparison was effectively information gathering v the dissemination of information. She upheld the principles set by Arnold LJ's summary in Sky v Skykick:

- Goods and services can still be held similar even if the classes do not overlap.
- Complementarity is just one assessment to be made when considering similarity.

The judge did have some difficulty with the conclusion in the first instance regarding the comparison with the services in class 38 but held that "this is not a case where I should simply substitute my own decision."

Using the appellant's nail analogy the judge then applied it to their coffin by confirming that information is generally gathered together for the purpose of disseminating it in some form, and therefore would be complementary and thus similar.

Unsurprisingly, the judge concluded that with TikTok being highly distinctive there existed a likelihood of confusion notwithstanding any low degree of similarity between the goods and services.

**Author:**
**Jeremy Pennant**

## In short

The definition of complementarity continues to be broadened from the original decision in Boston Scientific in 2006.

An appeal from a decision at the UKIPO will be an uphill task with the tribunal slow to overturn a decision unless a material error has been shown.

When filing new applications, claim priority where and when you can.

# “ABSOLUT-ly” distinctive
## Vodka bottle found distinctive and to indicate trade origin on appeal

The Absolut Company Aktiebolag (the applicant) sought to register a 3D mark as a European Union trade mark (EUTM) in class 33 alcoholic beverages, namely vodka.

The EUIPO found the application to lack distinctive character pursuant to Article 7(1)(b) EUTMR. The applicant appealed the decision.

The Board of Appeal raised three issues, as detailed below.

### 1. The EUIPO wrongly assumed that product get up cannot serve a trademark function

The Board of Appeal highlighted that a sign may fulfil various functions at one time. The mere fact that a sign has functions other than indicating origin, and may also serve decorative purposes, is not in itself a ground for refusal. In this respect the EUIPO had erred in its assumption that bottles are commonplace containers which merely serve the purpose of carrying a liquid.

The evidence submitted by the applicant highlighted that the vodka sector was characterised by a variety of different shaped and coloured bottles and highlighted some common aesthetics, including:

- common colours such as white, blue and silver, and transparent.
- a cylinder shape.
- a long neck.

The Board of Appeal commented that the use of a memorable specific packaging in such an environment prompts the public to the commercial origin of such products. The averagely attentive and circumspect EU consumer is aware of this and is thus accustomed to attributing a trademark function to distinctive product getups to the extent that it departs from the norms and packaging customs of the sector concerned.

### 2. The assessment of product get-up

In assessing the protection-establishing uniqueness of a packaging shape as an indication of origin it is necessary to relate the degree of uniqueness of the packaging to the specific situation and practice in the respective field of goods. With regard to the shape mark applied for the following elements were found to be unique:

- The design of the back of the bottle being entirely copper-coloured.
- Front label consists of a prominent frame in the unusual copper colour
- The copper-coloured neck foil (neck wrapper).

It was highlighted that although a single colour normally is in itself not distinctive the sign applied for had shades ranging from copper to brown or gold.

The totality of features were found to distinguish the shape mark so clearly from the usual shapes and colours of vodka bottles that it was held that the relevant public could easily recognise the applicant’s imaginative bottle getup, and thus perceive the bottle as an indication of origin.

Accordingly, the Board of Apepal held that the EUIPO had erred in finding that the sign lacked distinctive character within the meaning of Article 7(1)(b) EUTMR and the mark was allowed to proceed to publication.

### 3. The evaluation of evidence

Moreover, the Board of Appeal found it “unlawful” that the EUIPO had based its conclusion on “acquired experience” rather than on the evidence and expert opinion submitted. It stated that, “From the point of view of the rule of law alone, the facts which lead the Office to refuse the mark on the basis of the absolute grounds for refusal must be legally plausible, verifiable and fully justiciable.”

### Comment

The criteria for assessing the distinctive character of three-dimensional marks, consisting of the appearance of the product itself, are no different from those applicable to other categories of trade marks.

However, it must be taken into account that the average consumer’s perception is not necessarily the same as it is in relation to a verbal or figurative mark consisting of a sign which is independent of the appearance of the products it denotes.

The Board of Appeal’s stance was that the average consumer is not in the habit of making assumptions about the origin of products on the basis of their shape in the absence of any verbal or graphic element. It is therefore more difficult to establish distinctive character in relation to 3D marks than in relation to a verbal or figurative mark. In these circumstances, only a mark which departs significantly from the norm or customs of the sector is not devoid of any distinctive character for the purposes of article 7(1)(b).

Indeed, this case can be contrasted to Voss of Norway ASA v Office for Harmonisation in the Internal Market (trade marks and designs): C-445/13 P [2015] All ER (D) 52 (May), whereby the general court found that the bottle shape shown below did not depart significantly from the shape of other drink containers:

**Authors:**
**Sophie Rann & Jeremy Pennant**

*Infringement / online marketplaces / content reviews*

# Swatch v Samsung
# Time for more content review?

The UK High Court recently held that the Samsung Electronics Group infringed Swatch's trade marks by making infringing third party watch face apps available on its app store. Most notably, Mrs Justice Falk found that Samsung was liable as primary infringer, that it had used the infringing signs in the course of trade, and that by conducting a content review of third party apps it had equipped itself with actual knowledge of the infringements.

## Background

The judge noted that since 2015 Samsung's smartwatches, much like conventional watches, had been round in shape and had a bezel (unlike, for example, Apple's square watches). These smartwatches had also specifically been marketed for their "watch-like" qualities.

Between October 2015 and February 2019, 23 of the Swatch group's EU trade marks (including GLASHÜTTE, JACQUET DROZ, BREGUET, BLANCPAIN, OMEGA, LONGINES, TISSOT, HAMILTON and SWATCH) were included in 30 watch face apps made available in the Samsung Galaxy App (SGA) store, including the examples below. The apps had been downloaded around 160,000 times in the UK and EU.


*Examples of the third party watch dials (source: BAILII).*

Each of the apps was created by a third party app developer and added to the SGA store following Samsung's technical and content review process. The content review had been conducted by a team of 14 individuals based in Vietnam, each of whom had each been instructed to review at least 85 apps per day against Samsung's internal content guide (this roughly amounted to 5-10 minutes per app).

The content guide included only three paragraphs of generic guidance on third party rights. It did not mention any watch brands or specifically advise reviewers about apps for smartwatches. The guide also did not clearly instruct the reviewers to conduct an internet search or check any trade mark database.

Swatch demanded that the infringing apps be taken down on 21 December 2018, and Samsung removed all of the apps by 09 January 2019. Swatch subsequently issued proceedings in February 2019 on the basis of trade mark infringement by Samsung as a primary tortfeasor under articles 9(2)(a), 9(2)(b) and 9(2)(c) of Regulation 2017/1001 (the EU Trade Mark Regulation), alleging that Samsung was "intimately involved in, and controlled, the whole process by which the apps were made available".

Samsung denied liability, pointing out, among other things, that it had not "used" the marks, and that it had a complete defence as an information society provider under Article 14 of Directive 2000/31/EC (the e-Commerce Directive).

## Infringement

The court considered that the average consumer is the general public, namely persons who acquire watches and/or smartwatches, who may not necessarily be familiar with app stores and who may not understand that the majority of apps available via the SGA are not connected with Samsung. Moreover, the average consumer would understand the apps available in the SGA store to carry an "implicit assurance" that Samsung has approved them.

## The case on "use"

Mrs Justice Falk broadly summarised the legal position on trade mark use (as set out in the Google France v Louis Vuitton Malletier, L'Oreal v Ebay, and Coty v Amazon decisions) as follows:

- Use involves active behaviour on the part of an information service provider;
- Allowing its client to use a mark does not amount to use of the mark by an online marketplace;
- Simply creating the technical conditions necessary for a third party to use a mark does not mean that the party offering that technical service itself uses the sign; and
- To establish use, it is necessary for an economic operator itself to pursue the aim of offering goods or putting them on the market.

Samsung pointed out that use and display of signs on the website of an electronic marketplace is not use by its operator "any more than their use in classified newspaper ads is use by the newspaper". The tech giant also argued that validating third party apps did not amount to use since the apps were developed and uploaded to the SGA store by third parties. Swatch disagreed, noting the active behaviour and control by Samsung which went beyond merely enabling customers to display signs.

The judge considered Samsung's behaviour as a whole, bearing in mind the fact that it marketed its smartwatches as "truly watch-like", and that it made a commercial choice to only create 17 "official" Samsung watch face varieties, thus encouraging third parties to develop the majority of the watch face apps available on the SGA store. All apps, including the Samsung watch face apps, were grouped together in the SGA store, and the average consumer would therefore consider the third party apps to constitute an "optional alternative". The court held that this was indicative of a symbiotic relationship between Samsung and the app developers, which benefitted both parties and went well beyond revenue derived from app sales.

It was also noted that Samsung provides help to developers via the Galaxy Watch Studio tool, hosting developer conferences and entering into licensing agreements with app developers, all of which made sure that any apps available via the SGA store were of high quality. Overall, the Judge considered that the SGA store is not "just" an online marketplace, and that Samsung's activities could be described as offering or stocking the goods in the SGA store, or affixing signs to the smartwatch under Articles 9(3)(b) and 9(3)(a) of the EUTM Regulation.

*Case details at a glance*
*Jurisdiction: England & Wales*
*Decision level: High Court*
*Parties: Montres Breguet SA and ors v Samsung Electronics Co Ltd and anor*
*Dates: 20 May 2022; 15 July 2022*
*Citations: [2022] EWHC 1127 (Ch); [2022] EWHC 1895 (Ch)*
*Links to decisions:*
*dycip.com/swatch-samsung-1127 & dycip.com/swatch-samsung-1895*

**Samsung made infringing third party watch face apps available on its app store**


## Comparison of goods and services, and use "in relation to" the same

There being little debate regarding the similarity or identity of the infringing marks, the court turned to the comparison of goods and services, finding as follows:

- The watch face apps were not identical to "computers worn on the wrist", "electronic apparatus incorporating a time display", "smartwatches" or "smartphones in the shape of a watch" (which were covered by the claimants' registrations), as software is not a subset of hardware;
- The apps were similar to smartwatches, due to their complementarity, as they are essential for each other's operation and are intended to be used together. The average consumer would believe them to have a common commercial origin, regardless of the fact that app providers' names were displayed in the SGA store;
- Smartwatches are at least highly similar to watches;
- Use of a sign in an app name in the SGA store would be considered use in relation to that app by the average consumer (and in particular, it would constitute use in relation to what it would represent once downloaded). Therefore, signs that appear on the watch faces produced by the apps were being used in relation to smartwatches.

The post-sale context was crucial in these findings. The judge clearly distinguished between a smartwatch owner who knows that he is wearing a smartwatch and using an app, and a bystander seeing the infringing watch face on a Samsung smartwatch who does have that knowledge. The court concluded that the infringing branding would appear as being shown on the face of a watch to a sizeable portion of the relevant public, or that they would assume the presence of a licencing or economic arrangement between Samsung and Swatch. Accordingly, a likelihood of confusion arose on the facts.

## Defence

Samsung relied on Article 14(1) of the e-Commerce Directive, claiming that it should be afforded a complete defence as a provider of an information society service which did not have actual knowledge of the infringement, and that, upon obtaining such knowledge, it acted expeditiously to remove the offending apps from the SGA store.

Unfortunately for Samsung, the defence failed, as its content review process equipped the tech giant with knowledge of the infringing signs via the individual reviewers, who were able to reject apps that did not adhere to Samsung's policies. The fact that the content review team was significantly under-staffed was not relevant factor in the infringement assessment.

The court further noted that the mere existence of a notice and take-down procedure was not sufficient to provide a defence and that the e-Commerce Directive does not require an explicit 'alert' for infringements to fall within the ambit of an information society provider's actual knowledge.

Overall, Samsung had failed to act as a diligent economic operator, which ought to include in its review process a search of a trade mark database as well as provide clear written instructions to the review team (instead of relying on their individual knowledge or awareness).

## Appeal

After the judgment was handed down, Samsung was granted permission to appeal on points of law in relation to the Article 14 defence and, importantly, the issue of "use".

## Comment

For now, and until the appeal is heard, this case is a positive development for brand owners in the UK. It also potentially represents a cautious first step away from EU case law on the liability of online marketplaces and the balance to be struck between the interests of right holders and online retailers, many of whom will likely need to reconsider the size of their content review and moderation teams.

**Authors:**
**Tamsin Holman & Agnieszka Stephenson**

# D YOUNG&CO INTELLECTUAL PROPERTY

## And finally...

*NFTs / virtual goods*

# Nice classification
# Virtual goods and NFTs

The EUIPO has issued guidance on its approach to terms containing virtual goods and non-fungible tokens (NFTs):

- NFTs are treated as "unique digital certificates registered in a blockchain, which authenticate digital items but are distinct from those digital items".
- The term "downloadable digital files authenticated by non-fungible tokens" will be included in the 12th edition of the Nice Classification.
- The term "non-fungible tokens" alone will not be accepted. The type of digital item being authenticated needs to be specified.
- The term "virtual goods" alone will not be accepted as it lacks clarity and precision. The content of the virtual goods must be specified. For example, "virtual goods, namely, virtual clothing" would be accepted. The term would be proper to class 9, as the goods are treated as digital content or images.
- Services relating to these goods will be classified according to the usual principles for classifying services.
- The EUIPO's approach is outlined in the 2023 draft Guidelines, on which stakeholders may comment until 03 October 2022.

We have seen similar objections raised against terms such as "digital collectibles", where the content must be specified to enable clarity and precision.

At the UKIPO, the term "non-fungible tokens used with blockchain technology" was considered too vague in a recent case. Instead, the UKIPO confirmed it would accept "downloadable software, namely non-fungible tokens used with blockchain technology" in class 9.

In the UK in July 2022, the Law Commission published a consultation paper setting out its recommendations for changes to the law surrounding digital assets, including NFTs. At the time of writing, the deadline for comment is 04 November 2022.

It will be interesting to see how physical assets and/or memberships linked to NFTs will be treated by the IP offices in due course. As the law moves to recognise and protect digital assets, the terminology used to specify related terms will no doubt evolve.

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**Useful links**
EUIPO news: dycip.com/nice-virtual-nft
Law Commission consultation:
dycip.com/lawcom-digitalassets

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