

# THE IP BRIEF

a quarterly update of key IP cases and news,  
with a primarily UK and EU focus.

MARCH 2025



## / INTRODUCTION

Welcome to our latest edition of The IP Brief - a quarterly update of key IP cases and news, with a primarily UK and EU focus.

In this edition, we take a look at:

- the latest updates on AI and copyright, including the UK's new consultation on copyright and AI and the High Court's most recent decision in the *Getty Images v Stability AI* case;
- the IPEC's deliberations on works of artistic craftsmanship and the compatibility of UK and EU copyright law relating to works of applied art in *WaterRower v Liking*;
- Thatchers' successful appeal in its trade mark infringement dispute against Aldi's lookalike cloudy lemon cider;
- the difficulties of protecting and enforcing position marks, as evidenced by Adidas' recent dispute with fashion designer Thom Browne; and
- what's coming up in 2025 for IP.

## COPYRIGHT

### COPYRIGHT AND AI - KEY UPDATES

There has been a lot happening over the last few months in the sphere of copyright and AI.

#### *UK consultation on copyright and AI*

In the UK, the main headline is that, just before Christmas, the UK government launched its promised consultation on AI and copyright. That consultation, which recently closed on 25 February, is relatively far reaching, covering a number of important topics. But, perhaps most importantly, it contains the Government's latest proposals on:

- (i) how best to balance the rights of AI developers and rights holders when training generative AI (something which has proven very difficult to get right so far, with previous Government proposals failing and developers and rights holders themselves having been unable to find a workable solution); and
- (ii) copyright protection for so-called "computer-generated works" (CGWs) - that is, works generated by a computer where there is no human author.

For the former, the Government's preferred approach would be to introduce a new exception for text and data mining (TDM) which applies to TDM for any purpose, subject to rights holders having the ability to reserve their rights, and which is underpinned by supporting measures on transparency - largely mirroring the approach taken in the EU.

As for the latter, the Government has put forward three policy options - maintain the existing CGW provisions as they are; amend them to make them clearer; or get rid of them altogether. Whilst the Government is seeking views on all three, the consultation document indicates that it is currently minded to reject the option to maintain the existing

CGW provisions and, should the consultation reveal insufficient evidence of the positive effects of protecting CGWs, its current preference would be to remove these provisions altogether - bringing the UK more into line with the position in the US and most EU member states. See our [blog](#) for further details.

### *UK Data (Use and Access) Bill*

In an interesting turn of events, however, this is not the only thing to keep an eye on here, as a number of copyright-related provisions have now also made their way, via the House of Lords, into the Data (Use and Access) Bill. These include provisions requiring the Secretary of State to set out strict requirements for operators of web crawlers (not defined in the Bill, but generally taken to refer to software applications that are used to automatically index, extract or aggregate information from web pages) and General Purpose AI (GPAI) models whose services have links with the UK to:

- comply with UK copyright law, regardless of the jurisdiction in which the copyright-relevant acts relating to the pre-training, development and operation of those web crawlers and GPAI models takes place;
- disclose information about web crawlers used by them or by third parties on their behalf;
- deploy distinct web crawlers for different purposes (e.g. web indexing for search engine results pages and GPAI model pre-training);
- ensure that the exclusion of a web crawler by a copyright owner does not negatively impact the findability of the copyright owner's content in a search engine; and
- disclose information regarding the text and data used in the pre-training, training and fine-tuning of GPAI models.

It will be interesting to see what the House of Commons think about this, but, given the ongoing consultation on copyright and AI, we suspect there will be push back.

### *Getty Images v Stability AI*

Separately, a new High Court decision has been handed down in the *Getty Images v Stability AI* case, which shines a light on some of the procedural and practical challenges that copyright claims against GPAI model providers can give rise to.

As many of our readers will be aware, Getty alleges that Stability AI's generative AI image generator "Stable Diffusion" was trained using images scraped from its websites without permission, thereby infringing its copyright and database rights. It also alleges that the outputs produced by Stable Diffusion reproduce substantial parts of Getty's works and/or

bear its protected water marks, and therefore also infringe.

The latest decision primarily deals with whether the Sixth Claimant (Thomas M Barwick Inc, which has exclusively licensed images to Getty) could act, per CPR 19.8, as a representative for a class of around 50,000 individual copyright owners who had exclusively licensed works to Getty and whose copyright (so Getty allege) has been infringed by Stability AI.

Ultimately, the court concluded that it could not (see our [blog](#)), but the court has since granted Getty permission to proceed, without having to join the relevant copyright holders, under s.102 of the Copyright, Designs and Patents Act 1988 and CPR 19.3. Those provisions give the court discretion to order that persons with concurrent rights of action need not be joined as a party to the proceedings. Whilst the High Court did consider this approach in its recent decision, it initially dismissed it on the basis that sufficient evidence had not been adduced, nor comfort given, that Stability AI would be protected from future claims for the same relief by exclusive licensors that had not been made party to the proceedings. Nevertheless, the court left the door open to this route if supported by appropriate evidence or comfort to Stability AI. And it appears that Getty has now provided that in the form of an undertaking to: (i) indemnify Stability AI against all damages and legal costs that it might incur as a result of a subsequent claim brought by the non-joined exclusive licensors; and (ii) take reasonable steps to assert and enforce the right to control claims clauses in its exclusive licence agreements with those licensors.

### *EU GPAI Code of Practice and template summary of training data*

In the EU, progress is being made on the General Purpose AI Code of Practice (GPAI Code), with the second draft having been published shortly before Christmas. The main purpose behind the GPAI Code is to give providers of general-purpose AI models guidance on compliance with Articles 53 and 56 of the EU AI Act. Article 53 is of particular interest from an IP perspective because it imposes two key copyright-related obligations on GPAI model providers who place their models on the EU market (regardless of where they were trained). Those providers must:

- i. put in place a policy to comply with EU copyright law, including, in particular, to identify and comply with any rights holders' opt-outs from the EU's broad text and data mining exception (so-called "TDM opt-outs"); and
- ii. make publicly available a "sufficiently detailed" summary of the data used to train

their model, according to a template to be provided by the AI Office.

The main copyright focus of the current draft of the GPAI Code is on the first of these - compliance with EU copyright law - which is broken down into 11 “measures”, each with their own key performance indicators, providing further granularity on what is required to achieve compliance (see our [blog](#) for further details). The next version is due out imminently, with the fourth and final version due to be published in May.

Separately, the EU AI Office has unveiled its preliminary proposals on the template for the summary of training data required under point (ii) above (see our [blog](#)). Broadly, the AI Office proposes that the template will comprise of three sections:

- **General information** regarding the GPAI model, including information about the provider and the date of placement of the model on the EU market as well as information on the overall training data size, modalities (e.g., text, image, video or audio) and characteristics of each modality.
- **List of data sources** used to train the GPAI model, including publicly accessible datasets, private datasets of third parties (such as data licensed by rightsholders), data crawled and scraped from online sources and user-sourced data (including data sourced via prompts) - with different requirements applying to different datasets.
- **Other relevant data processing aspects**, such as measures implemented during data collection to respect rightsholder TDM opt-outs, as well as steps taken after data collection to remove data that is subject to such TDM opt-outs.

We understand that the full draft template will be further discussed in dedicated working groups over the coming weeks, with the goal of adopting a finalised template in Q2 2025 in advance of the AI Act’s rules on GPAI models (including the summary requirement) coming into force on 2 August 2025.

## CHOPPY WATERS AS IPEC CONSIDERS INCONSISTENCY OF UK AND EU COPYRIGHT LAW FOR WORKS OF APPLIED ART

In its keenly anticipated decision in *WaterRower (UK) Limited v Liking Ltd (trading as Topiom)*, the UK Intellectual Property Enterprise Court (IPEC) has given further guidance on the meaning of “works of artistic craftsmanship” under the Copyright, Designs and Patents Act 1988 (CDPA) and considered the apparent inconsistency between UK and EU copyright law on the protection of works of applied art.

The Claimant designed and sold an innovative wooden rowing machine known as the “WaterRower” (pictured below). Topiom, a competitor, manufactured and sold rowing machines that closely resembled the design and mechanics of the WaterRower. Unhappy with this, the Claimant asserted that its WaterRower machines were protected by UK copyright as works of artistic craftsmanship under s.4(1)(c) of the CDPA and that Topiom had infringed that copyright by producing its lookalike rowing machines.



*The WaterRower Series 1, Version 1 (1987 - 1992)*

Although Topiom accepted that its rowing machines were copies of the WaterRower, it argued that no copyright subsisted in the WaterRower as it was not a work of artistic craftsmanship.

As readers will be aware, in order for copyright to subsist in the UK, it must fall within the closed list of works set out in s.1(1) of the CDPA. That list includes ‘artistic works’, which, in turn, includes “a work of artistic craftsmanship”. The term “work of artistic craftsmanship” remains undefined in the legislation and the case law on it is notoriously complicated and uncertain, with the leading authority - the House of Lords’ (as it then was) decision in *Hensher v Restawile (Hensher)* - lacking a clear ratio. Having reviewed the case law in some detail, however, the IPEC in *WaterRower* highlighted a number of key threads including, importantly, that works of artistic craftsmanship must have artistic quality (“more than eye appeal”) in order to attract copyright protection.



This must be contrasted with the position under EU copyright law, where the only requirements for copyright to subsist are that the work in question is original (i.e. the author's own intellectual creation) and that the work can be identified with sufficient precision and objectivity. Artistic quality or aesthetic effect is not required.

This left the IPEC in a conundrum as it was bound by s.4(1)(c) CDPA and the House of Lords' decision in *Hensher* on the one hand; but also by retained EU case law, including the CJEU decisions in *Cofemel* and *Brompton Bicycle*, on the other - both of which appeared incompatible.

Ultimately, the IPEC sided with Liking, finding that it was not possible to reconcile the UK and EU positions - in the words of the judge, to do so would "go against the grain of the wording of the CDPA and distort the intention of Parliament".

At the same time, however, the IPEC acknowledged that it remained under a strong duty of interpretation to construe UK law in accordance with EU law that remains binding in the UK (particularly, in this case, the InfoSoc Directive) where possible. With this in mind, the IPEC determined that the correct approach for it to take was to first consider whether the WaterRower machine was 'original' within the meaning of the InfoSoc Directive and, if it was, only then to consider whether it was also a "work of artistic craftsmanship" under the CDPA.

Adopting this approach, the IPEC concluded that the first version of the WaterRower was original and so would have been protected as a copyright work under EU law. Whilst acknowledging that there were some functional constraints relating to the shape of the WaterRower, the IPEC found that its shape wasn't solely dictated by technical function and there was room for the author to reflect his personality (e.g. through choosing the layout of the decks, the width of the rails, the materials used and the shape and finish of those materials). Iterative modifications made in subsequent versions of the rowing machine were not, however, deemed to be sufficiently original to attract their own separate copyright.

Having established that the first version of the WaterRower was original, the IPEC went on to consider whether it was also a work of artistic craftsmanship under the CDPA. It found that it was not. Whilst the IPEC considered the designer to be a craftsman, that he used his skills to create the WaterRower and that the WaterRower had aesthetic appeal, he did not have the character of an "artist craftsman". In part, this was because, in the IPEC's opinion, the evidence before it indicated that the author had designed the WaterRower with the aim of creating a commercially successful rowing machine, rather than to create a work "where the craftsmanship in its creation was artistic". As such,

the IPEC concluded that the WaterRower was not protected by UK copyright and so the Claimant's infringement claim failed.

This is the first time the English courts have truly had to grapple with the apparent incompatibility between UK and EU copyright law relating to works of applied art. It is helpful to see judicial confirmation of this incompatibility and to see the court's approach to determining questions of copyright subsistence in those circumstances. However, as the IPEC was bound by the clear wording of the CDPA and was not in a position to diverge from binding EU case law (such power being reserved to the higher courts), this decision looks ripe for appeal.

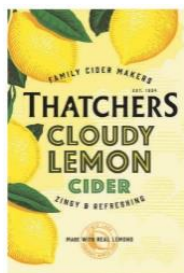


## TRADE MARKS

### ALDI LOOKALIKE CIDER FOUND TO INFRINGE AS COURT OF APPEAL OVERTURNS FIRST INSTANCE DECISION

The Court of Appeal has held that Aldi's Taurus cloudy lemon cider product infringed Thatchers' UK registered trade mark for its own cloudy lemon cider product, overturning an earlier ruling by the Intellectual Property Enterprise Court (IPEC). This marks a significant victory for established brands, confirming that, given the right circumstances and trade mark registrations, UK courts will be willing to protect companies from competitors taking unfair advantage of their brands by selling lookalike products.

The dispute centred on Thatchers' "Cloudy Lemon Cider", launched in February 2022, and Aldi's "Taurus" branded lookalike "Cloudy Cider Lemon". In January 2023, the IPEC ruled in favour of Aldi, finding low overall similarity between Thatchers' trade mark (below left) and Aldi's sign - which, at first instance, was found to be the overall appearance of a single can of Aldi's product (see below right) - and no likelihood of confusion, no unfair advantage taken by Aldi or detriment to Thatchers' mark, and no misrepresentation or passing off (see the [May 2024 edition](#) of The IP Brief for further details).



*Thatchers' trade mark*



*Aldi's product*

Thatchers appealed on no fewer than 10 grounds, all of which were focused on dismissal of its claims for unfair advantage and tarnishment under section 10(3) of the Trade Marks Act 1994 (TMA). It did not, however, challenge the IPEC's decisions on likelihood of confusion or passing off.

In considering these grounds, the Court of Appeal found a number of errors in the IPEC's assessment, including the following:

- It had incorrectly identified Aldi's "sign" as the overall appearance of a single can of the Aldi product. In the Court of Appeal's view, it was clear from Thatchers' pleadings that the sign complained of was,

in fact, the graphics on the cans and the cardboard 4-can pack.

- The IPEC incorrectly assessed the degree of similarity between Aldi's sign and Thatchers' mark as "low". In part this was due to the IPEC's error as to what constituted Aldi's sign. Similarity should have been assessed as being "somewhat greater" than it was.
- When considering Aldi's intention, the IPEC confused "intention to deceive" (which is relevant to likelihood of confusion) with an "intention to take advantage of the trade mark" (which is relevant to section 10(3)). Whilst Aldi sought to argue that this was merely an error of drafting in the judgment, the Court of Appeal disagreed as the IPEC had placed considerable emphasis on Aldi's evidence that its intention was that the Aldi product should be clearly understood as a Taurus branded cider - something which would have been highly relevant to any allegation of intention to deceive, but much less relevant to Thatchers' pleaded case of intention to take advantage of the reputation of its marks.
- The IPEC was wrong to find that Aldi had not significantly departed from its house style for its Taurus branded ciders - the Court of Appeal found it had.
- The IPEC had incorrectly discounted the fact that both Aldi's sign and Thatchers' mark included certain "faint horizontal lines". In the Court of Appeal's view, there was no way to explain these other than as a result of close imitation of Thatchers' mark by Aldi.

Pulling all of this together, the Court of Appeal concluded that this case fell squarely within the realms of taking unfair advantage as described by the CJEU in *L'Oréal v Bellure*, involving "a transfer of the image" of Thatchers' mark and "riding on [its] coat-tails". Aldi intended its sign to remind consumers of the Thatchers mark and convey that its cider product was 'like the Thatchers product, only cheaper'. And it was clear from some of the evidence before the court that at least some consumers understood that message. That, the court said, enabled Aldi to achieve substantial sales of its cloudy lemon cider product in a short space of time, without spending any money promoting it, and to profit from Thatchers' investment in developing and promoting the Thatchers' product, rather than competing on quality, price and its own promotional efforts.

As for tarnishment, the Court of Appeal dismissed Thatchers' appeal, agreeing with the IPEC that this part of the claim must fail.



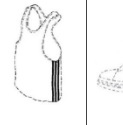
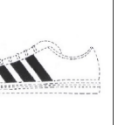
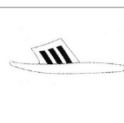

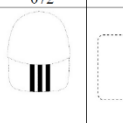
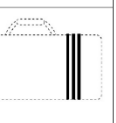
This case has garnered significant attention amongst IP practitioners and triggered a policy debate about whether our current IP laws achieve the right balance between protecting brand owners against lookalike products and upholding competition and cheaper prices for consumers. The Court of Appeal, rightly, refused to engage in this policy debate, but ultimately its decision will be welcomed by brand owners as a step in the right direction. Whether or not other brand owners will be able to achieve a similar result will depend on the nature of their trade mark registrations. Here, Thatchers had been well advised to register a device mark containing all of the key elements of the get up for its cider product, which other brand owners should take note of. It almost certainly would have been unsuccessful had it had to rely on word marks alone.

With Aldi having already indicated its intention to appeal, however, this may not be the end of the story.

**HIGH COURT CONSIDERS VALIDITY AND INFRINGEMENT OF ADIDAS’ “THREE STRIPE” POSITION MARKS**

On 22 November last year, the High Court handed down its landmark judgment in the case of **Thom Browne v Adidas**, which concerned the validity and infringement of a number of Adidas’ trade marks for its “three stripe” branding (all of which were so-called “position” marks). This is the first time that the English courts have considered the validity and infringement of position marks and so the judgment provides valuable guidance on how the English courts will approach trade marks of this kind.

The claim was started by two companies from the luxury fashion group Thom Browne (“**Thom Browne**”) who sought to invalidate sixteen of Adidas’ position marks (the “**Adidas Marks**”) which relate to the location of the brand’s iconic “three stripes” on certain apparel and accessories (as exemplified in the image below).

Tracksuit Top Mark '588	Tracksuit Bottom Mark '661	Vest Mark '612	Shoe Mark '646
			
Slide Mark '951	Slide Mark '327	Cap Mark '072	Bag Mark '889
			

Adidas counterclaimed for infringement and passing off in relation to a multitude of Thom Browne items which all featured Thom Browne’s “four bar” design (as exemplified in the image below). There was no claim that Thom Browne’s actions gave rise to a likelihood of confusion at the point of sale, but Adidas argued that there was a real risk of post-sale confusion, and that Thom Browne’s use of its “four bar” design took unfair advantage of, and was detrimental to the distinctive character or repute of, the Adidas Marks.



In challenging validity, Thom Browne's main line of argument was that the various Adidas Marks covered a wide variety of different permutations of the use of three stripes, including different lengths, positions and arrangements, and, as such, the marks failed to satisfy the identity requirements in section 1(1) of the TMA. In particular, it argued that some of the descriptions accompanying the various illustrations were unclear and imprecise, as well as being inconsistent with the graphic representations of the marks.

Following detailed individual analysis of the marks, the High Court ultimately decided to invalidate eight out of sixteen of the Adidas Marks on the grounds that they failed to meet the identification requirements under the TMA.

In its analysis, the court focused on the potential scope for a number of "permutations" or "variations" of each mark. Whilst acknowledging that the fact that a particular mark encompasses a number of variations is not in itself sufficient to invalidate a mark, some variations will be impermissible.

Factors which the court took into account in considering whether the variations before it were impermissible included:

- i. whether the variation would affect the ability of the mark to convey clear and precise information to the registrar, to economic competitors and to the relevant public; and
- ii. whether the mark is capable of denoting origin to the relevant public so as to enable a consumer to repeat the purchase.

The first of these factors was particularly important in this case, with the court agreeing with Thom Browne that some of the descriptions Adidas had used were too vague and uncertain. For example, phrases like "running along one third or more of", "substantially the whole length of" and "generally used vertically", would be perceived as covering a wide variety of different forms, none of which (except the one illustrated) would be readily ascertainable from the words and illustration.

The court also placed considerable emphasis on the wording used to direct the reader to the graphic representations themselves - such as "as shown in the accompanying illustration", "as illustrated below" and "as shown in the representation" - and whether those phrases would be read, in context, as limiting the scope of the mark to what was shown in the graphic representation only or as simply indicating that the graphic representation was intended as one of a number of examples. Where the court interpreted the wording as limiting the scope of the mark to that shown in the graphic representation, it ultimately found the marks to be

valid. However, where the wording was interpreted as meaning that the graphic representation was simply an example, and the accompanying description was vague or unclear, the court found that the illustration could not serve to clarify the scope of the relevant mark, rendering it invalid.

Notwithstanding its findings on validity, the court proceeded to assess Adidas's counterclaim for infringement on the assumption that all of Adidas' marks were valid. But, ultimately, it still found that there was no infringement or passing off by Thom Browne.

Those parts of the judgment which deal with the question of likelihood of confusion and, in particular, the court's assessment of similarity between Thom Browne's signs and the Adidas Marks are worthy of note. Acknowledging that, for position marks, the position of the mark is an integral part of the mark itself, the court's assessment of similarity between mark and sign included consideration of the sign's orientation and position on the goods in question. Indeed, the court took the view that in certain circumstances that position will be decisive on the issue of similarity of marks and sign, finding in certain cases that the position of Adidas' mark on the product in question rendered it dissimilar to Thom Browne's four bar sign.

Overall, and bearing in mind certain differences between the mark and sign (including the different number of stripes (three vs four); the vertical orientation of the Adidas Marks versus the horizontal orientation of Thom Browne's signs; and the position of the signs), the court found very faint to moderate levels of similarity across the board (with moderate levels being found where the Thom Browne signs showed a vertical orientation).

Bearing in mind that the average consumer would notice the difference between three and four stripes, the different markets in which the two businesses operate, and the lack of evidence of actual confusion despite Thom Browne's signs and the Adidas Marks having been used in parallel for many years (going back to 2009), the court ultimately concluded that there was no likelihood of confusion in the post-sale context (nor, for similar reasons, any passing off, which requires not just confusion, but deception).

As for whether Thom Browne's use of its four bar design took unfair advantage of, or was detrimental to the distinctive character or repute of, the Adidas Marks, the court rejected this claim too on the basis that Adidas failed to establish that Thom Browne's use of its sign gave rise to a link between that sign and the Adidas Marks in the mind of the average consumer.

This is a fascinating case which sheds light onto the English court's approach to position marks and



highlights the importance of clear and precise specifications, particularly for such marks. A mark with a significant number of possible permutations could be susceptible to being invalidated. As a result, those applying for position marks should take particular care to clearly define the scope of those marks and seek to avoid registering individual marks which embrace a number of variations based on a theme. Where protection for such variations is desired, brand owners should consider registering separate marks for each variation, with illustrations of how each such mark appears on particular goods.

## HORIZON SCANNING

### WHAT'S COMING UP IN 2025 FOR IP?

2024 was a very busy and exciting year for IP, with three UK Supreme Court decisions, plenty happening in the world of AI and IP, a wealth of fascinating case law on SEPs and FRAND licensing, and the UPC handing down its first substantive decisions, to name but a few things!

It looks like 2025 is going to be another bumper year. So, what have we got to look forward to? We've selected a few choice items we'll be following closely, below.

#### Copyright

Perhaps unsurprisingly, copyright and AI will feature heavily again.

In the UK, we can expect to see the outcome of the government's latest consultation (see above and our [blog](#)), which will hopefully result in a clearer path forwards around the use of copyright works in training generative AI tools, as well as greater legal certainty around copyright protection for outputs from generative AI tools (amongst other things).

The *Getty Images v Stability AI* case is also due to go to trial in the UK High Court in June, with judgment expected either later in the year or in early 2026. Any such judgment would be the first of its kind in the UK and should shed further light on whether current training practices for generative AI models are compatible with existing UK copyright and database right laws. We've already discussed the most recent interim decision above in this edition but see our [blogs here](#), [here](#) and [here](#) for further background.

In the EU, we can expect to see further drafts of the General Purpose AI Code of Practice, with the final version due to be published in May. Whilst not exclusively copyright-focussed, this Code will give guidance to providers of general-purpose AI (GPAI) models on how to comply with their copyright related obligations under Article 53 of the EU AI Act - see our [blog](#) on the second draft of the Code for further details. Closely linked to that, we can also expect to see the first full draft of the EU AI Office's proposed template for the summary of training data that GPAI model providers will be required to publish under Article 53(1)(d) of the EU AI Act (following publication of the EU AI Office's preliminary proposals earlier this year (see above and our [blog](#))).

#### Patents

AI will also feature heavily on the patents side, with the UK Supreme Court due to hear an appeal in the *Emotional Perception* case this year. That appeal



will focus on the patentability of inventions implemented via an artificial neural network - in particular, whether such inventions engage the computer program exclusion from patentability and, if so, whether Emotional Perception's particular invention fell foul of it. See our [summary](#) of the Court of Appeal decision for further detail.

As noted in our [May 2024 edition](#) of The IP Brief, we might also get a new UK consultation on standard essential patents (SEPs) and FRAND licensing, with a focus on examining options that could help improve the functioning of the SEP market. Things have, however, gone very quiet on that since the UKIPO initially announced it back in February 2024.

Over in the EU, we will be keeping a close eye out for updates on the European Commission's proposed reforms relating to supplementary protection certificates and compulsory licensing. We had also been expecting to keep a watchful eye on the European Commission's proposed SEP reforms, but the Commission has very recently [withdrawn](#) those on the basis that there was "no foreseeable agreement" on them.

#### Trade marks

As for trade marks, we can look forward to another UK Supreme Court decision this year, with the appeal in *Iconix v Dream Pairs* due to be heard in March. As readers may recall (see our [first edition](#)), the Court of Appeal found that Dream Pairs had infringed Iconix's "double diamond" logo associated with its Umbro brand (below left) by using its Dream Pairs logo (below right) on footwear, finding that the High Court's conclusion that there was only a faint degree of similarity between them was "rationally insupportable" and that there was, in fact, a likelihood of confusion.

The main grounds of appeal are: (i) whether the Court of Appeal was right to find that the High Court's conclusion on similarity was "rationally insupportable"; (ii) at what point of time should confusion be assessed; and (iii) what approach should the court take when assessing whether trade marks are similar?



*Umbro's mark*



*Dream Pairs' sign*

Separately, we might also start to see the impact of the Supreme Court's decision in *SkyKick v Sky* (see our [briefing](#) for further detail) and could see further court focus on lookalike products, particularly if Aldi does seek, and is granted, permission to appeal the Thatchers decision to the Supreme Court.

#### Design rights

Finally, the EU's amended regulation on Community Designs will come into effect on 1 May 2025. As noted in our [November edition](#), this seeks to modernise the current Community designs (soon to be renamed "EU designs") system, making it fit for purpose in the digital age, with key changes including: new definitions of "Product" and "Design"; stronger protections to address illegitimate 3D printing; new defences to infringement for referential use in the context of comparative advertising and for the purposes of comment, critique or parody; and the introduction of a new registered design symbol.

Member States will have slightly longer, until 9 December 2027, to transpose the revised Directive on the legal protection of designs (which governs national design rights within Member States).

## CONTACTS

If you would like to discuss any of the above in more detail, please contact your relationship partner or email one of our IP team.

If you would like to receive The IP Brief on a quarterly basis, please email [subscriptions@slaughterandmay.com](mailto:subscriptions@slaughterandmay.com).



**David Ives**

**Partner**

+44 (0)20 7090 4266

[david.ives@slaughterandmay.com](mailto:david.ives@slaughterandmay.com)



**Duncan Blaikie**

**Partner**

+44 (0)20 7090 4275

[duncan.blaikie@slaughterandmay.com](mailto:duncan.blaikie@slaughterandmay.com)

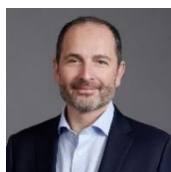


**Laura Houston**

**Partner**

+44 (0)20 7090 4230

[laura.houston@slaughterandmay.com](mailto:laura.houston@slaughterandmay.com)



**Rob Sumroy**

**Partner**

+44 (0)20 7090 4032

[rob.sumroy@slaughterandmay.com](mailto:rob.sumroy@slaughterandmay.com)



**Richard McDonnell**

**Senior Counsel**

+44 (0)20 7090 4240

[richard.mcdonnell@slaughterandmay.com](mailto:richard.mcdonnell@slaughterandmay.com)



**Richard Barker**

**Senior Knowledge Lawyer, IP**

+44 (0)20 7090 4522

[richard.barker@slaughterandmay.com](mailto:richard.barker@slaughterandmay.com)