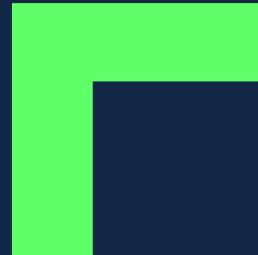




A COMPARATIVE VIEW OF POST-SALE CONFUSION: IT'S A MATTER OF PERSPECTIVE

Tuesday 24 March 2026

LAURA ELLIOTT
PTMG – Munich



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A comparative view of post sale confusion

**STEPHENSON
HARWOOD**

**HOYNG
ROKH
MONEGIER**
We do IP.

W Westerberg



**WAR PAR
DYN TNE
SKI+ RS.**

WILLIAM FRY

NautaDutilh

+

A comparative view of post-sale confusion

“Confusion...as to the trade origin of goods or services in relation to which the impugned sign has been used which only arises *after* the goods or services have been purchased.”

- Arnold J, *Datacard v Eagle Technologies Limited* [2011] EWHC 244 (Pat)

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A comparative view of post-sale confusion

WHAT ABOUT FOR PHARMACEUTICALS?



RX MEDICINE

+ The doctor prescribes the medicine, and the pharmacist fills the prescription. The patient doesn't see the product until they open the pharmacy bag at home.



MEDICAL DEVICE

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HARWOOD

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ARSENAL FOOTBALL CLUB PLC V MATTHEW REED C-206/01

“...there is a clear possibility in the present case that some consumers, in particular **if they come across the goods after they have been sold** by Mr Reed and taken away from the stall where the notice appears, may interpret the sign as designating Arsenal FC as the undertaking of origin of the goods.”



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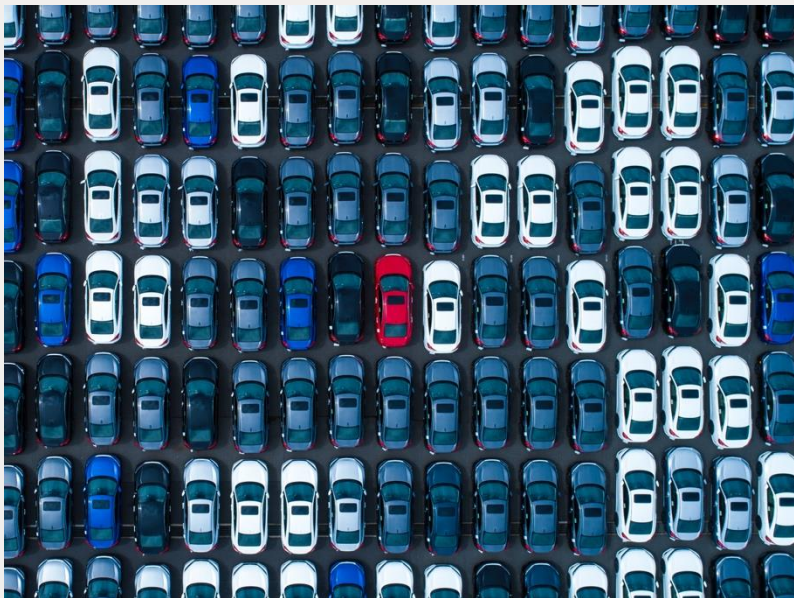
ANHEUSER-BUSCH INC. V BUDĚJOVICKÝ BUDVAR C-245-02

*“It must be established whether the consumers targeted, including **those who are confronted with the goods after they have left the third party's point of sale**, are likely to interpret the sign, as it is used by the third party, as designating or tending to designate the undertaking from which the third party's goods originate.”*



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PICASSO V OHIM & DAIMLER CHRYSLER AG C-361/04 P



“...the relevant public is also likely to perceive such goods and the marks relating to them in circumstances unconnected with any act of purchase and to display, where appropriate, a lower level of attention on such occasions...the existence of such a possibility does not prevent the taking into account of the particularly high level of attention exhibited by the average consumer when he prepares and makes his choice between different goods in the category concerned”.

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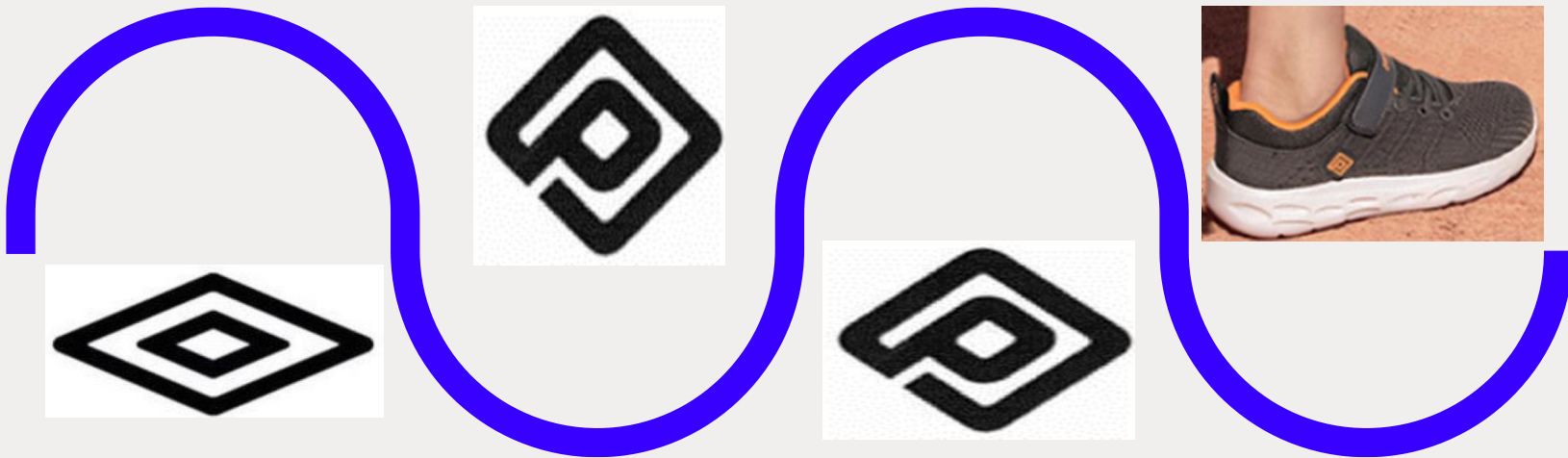
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DATACARD V EAGLE TECHNOLOGIES LIMITED [2011] EWHC 244 (Pat)

*“Confusion...as to the trade origin of goods or services in relation to which the impugned sign has been used which only arises **after** the goods or services have been purchased.”*

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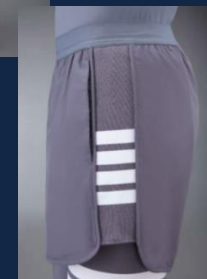
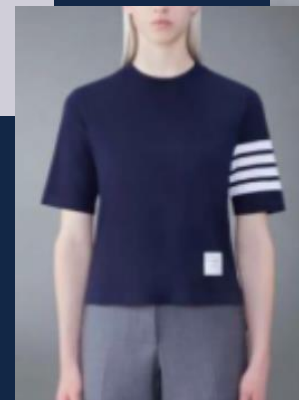
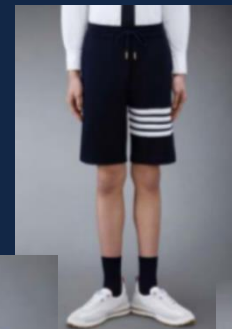
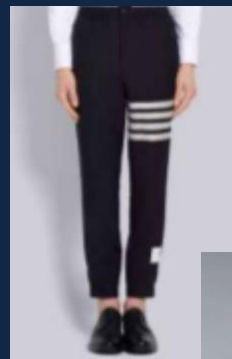
ICONIX LUXEMBOURG HOLDINGS SARL V DREAM PAIRS EUROPE INC AND ANOR. UKSC/2024/0032



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THOM BROWNE INC V ADIDAS AG [2024] EWHC 2990 (CH)

“For a post-sale context to be relevant, the sign must act as a guarantee of origin to an individual who would be likely to rely upon it for the purpose of making a decision to acquire the goods. The realistic or representative scenario in which the average consumer will view the product must be representative of the normal or ordinary (“frequent”) circumstances in which the average consumer will come across the product”.

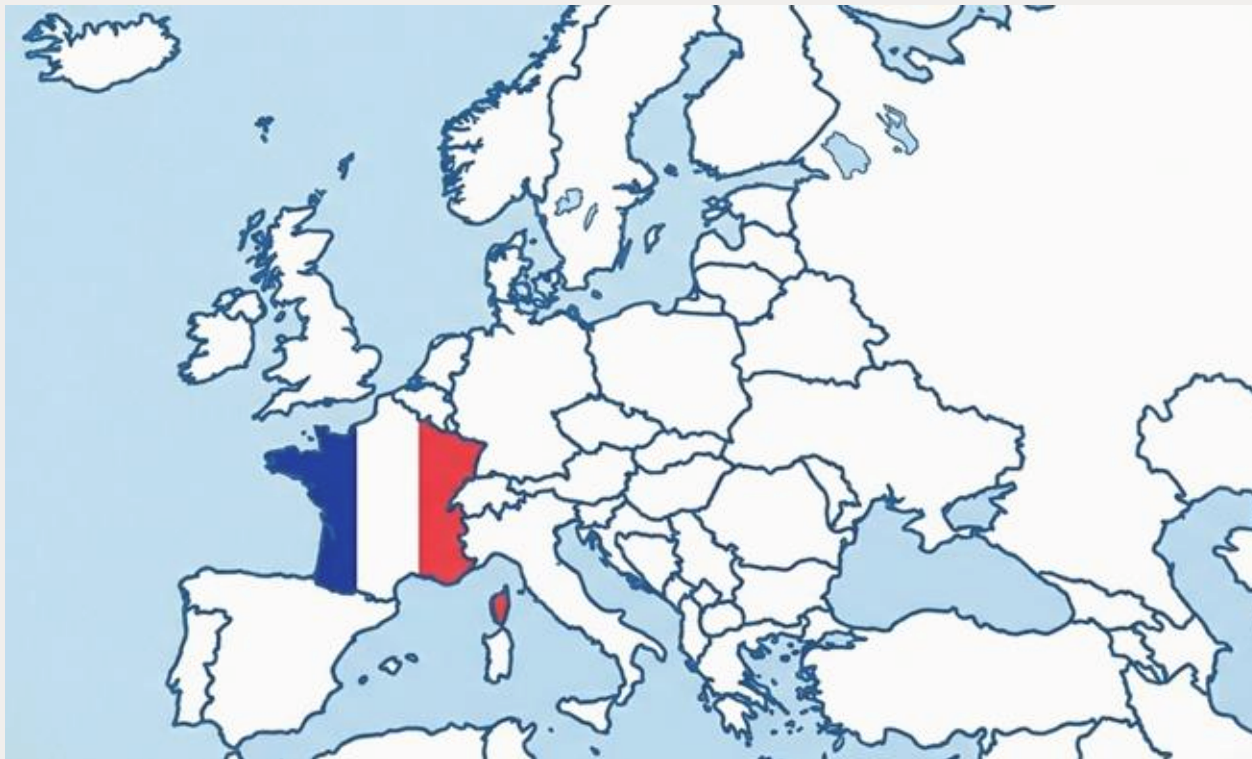


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FRANCE

**STEPHENSON
HARWOOD**

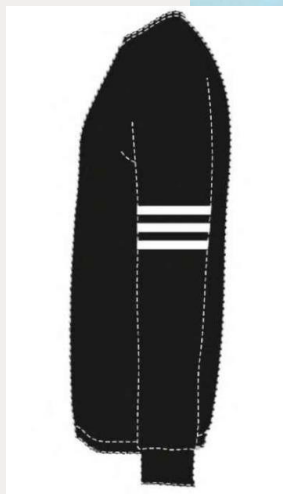


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A comparative view of post-sale confusion

GERMANY

HOYNG
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**STEPHENSON
HARWOOD**

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SWEDEN



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POLAND

WAR **PAR**
DYN **TNE**
SKI **RS**



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IRELAND

WILLIAM FRY



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THE NETHERLANDS

● **NautaDutilh**



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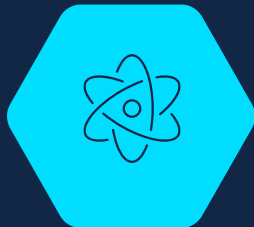
PRODUCT



DAMAGE?



JURISDICTION



PUBLIC/CONSUMER



REGULATORS



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THANK YOU!



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With particular thanks to:

