



Brand Interchange



February 2025

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High Court Decisions

Abbott Diabetes Care v. Sinocare

Introduction

Our monthly newsletter is designed to be essential reading for all in-house brand lawyers, providing news, case updates and events in the United Kingdom. This month, we address 3D shapes and the latest instalment in the Slush Puppie Wars.

Events

Brand Interchange: Networking Event

Join us for an evening of networking and collaboration at our upcoming event. Whether you're a seasoned in-house lawyer or just starting out, this is the perfect opportunity to connect with like-minded brand lawyers in the sector. Share ideas, make new contacts, and expand your network in a relaxed and friendly atmosphere.

Date: Thu, 5 June 2025, 18.30-22.00

Location: Shoosmiths, 1 Bow Churchyard, London, EC4M 9DQ

About

Brand Interchange is a community for brand lawyers to exchange ideas, socialise and network; this is the perfect place to connect with like-minded lawyers.

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Brand Interchange

Court: High Court of Justice, Business & Property Courts, Intellectual Property List

Judge: Mr Justice Richard Smith

Reference: [2025] EWHC 206

Trade Mark: UK3779922

Issue: Trade mark infringement and validity

Summary

In Abbott v Sinocare, Mr Justice Smith found Abbott's three-dimensional trade mark to be invalid and not infringed.

The judgment provides a useful summary on the law as it applies to three-dimensional trade marks, as well as the use of evidence such as surveys.



Background

Abbott manufactures and sells a continuous glucose monitor, which works via an on-body unit, which inserts a small electrochemical sensor under the skin to measure glucose levels in the interstitial fluid around the cells. In December 2022, it registered a three-dimensional trade mark for its on-body unit in class 10.

In April 2023, Sinocare introduced its own continuous glucose monitor, including an on-body unit. The following year, in February 2024, Abbott commenced proceedings, alleging trade mark infringement on the basis of s. 10(2)(b) and 10(3) of the Trade Marks Act 1994, as well as passing off.

In response, Sinocare denied infringement, advanced a defence under s.11(2)(b) of the Trade Marks Act 1994 and counterclaimed that the trade mark was invalid on the basis of, among others, s. 3(1)(b) and 3(2)(b).

Initially Abbott sought interim injunctive relief, but this was broadly declined by the Court following certain assurances from Sincocare. The claim went to trial some 8 months from issue, with judgment given some four months thereafter.

Decision

R. Smith J concluded that Abbott's trade mark was invalid, holding that it lacked distinctive character and that some of its characteristics were necessary to obtain a technical result.

As to the former, Abbott relied on survey evidence as well as evidence of marketing, advertising and sales to show acquired distinctiveness. The judge concluded that this was insufficient to show that the average consumer understood the mark to connote origin. In so doing, he was critical of the surveys (as to which, please see

below).

With regard to the latter, the judge concluded that characteristics such as the flat, circular shape, outer adhesive area, the smooth texture and curved edges and central cogwheel all performed a technical function.

In any event, he concluded that there was no likelihood of confusion, unfair advantage or detriment. In doing so, he noted that the level of attention from the average consumer would be high, given the nature of the medical device. He also observed that there was a lack of evidence of a change of the economic behaviour of the consumer.

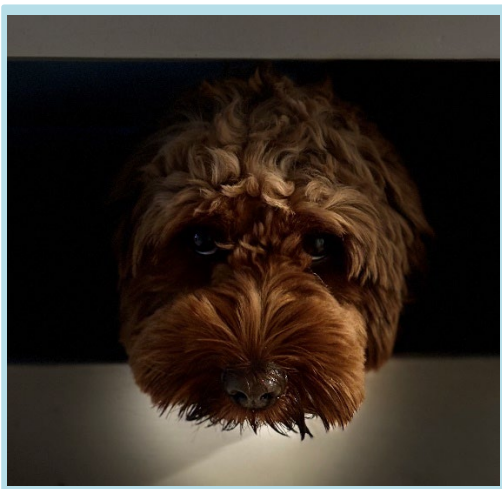
Comment

Trade mark law is generally sceptical of three-dimensional marks, with the trade mark owner

having to meet a high evidential burden to show acquired distinctiveness.

This is exacerbated in the UK, where it is long established that it is difficult to obtain permission for survey evidence before the English courts and, when permission is granted, the court will treat these surveys with scepticism.

In particular, the court judges the surveys against the Whitford guidelines, first set out in *Imperial v Philip Morris*. In the case at hand, the court concluded that the survey evidence did not meet guideline 3, as there was a lack of information as to the source of the samples. It followed that it was not possible to establish whether the people surveyed were a representative sample or not.



J&J Snack Foods v. Ralph Peters & Sons

Court: High Court of Justice, Business & Property Courts, Intellectual Property List

Judge: Mr Justice Fancourt

Reference: [2025] EWHC 436 (Ch)

Trade Mark: [SLUSH PUPPIE]

Issue: Trade Mark Infringement

Summary

Slush Puppie has long been a favourite for many generations of children on a hot summer's day. The use of the brand, however, has descended into a trade mark and passing off dispute between J&J Snack Foods and Ralph Peters & Sons, culminating in a worldwide freezing order being granted in relation to up to £10 million of the latter's assets.

That order has now been discharged, with the court concluding that J&J Snack Foods

had not given fair presentation when obtaining the order. The judgment is a useful reminder of the heavy burden on applicants when applying for such relief. Meanwhile, the litigation continues.

Background

Parallel proceedings have been ongoing in Ohio, USA since 2019. Around October 2024, J&J Snack Foods commenced proceedings before the English Courts. The claim is unusual in that Ralph Peters & Sons is not alleged to be a primary tortfeasor, but a joint tortfeasor with

one of its group companies (unnamed in the litigation), Frozen Brothers.

The commencement of proceedings was followed by a without notice application on 3 December 2024 for, among other things, a worldwide freezing order. This was directed to £10 million of Ralph Peters & Sons' assets and £10 million of its director and majority shareholder's assets, including two of his homes. This was granted shortly before Christmas, with the return date listed after Christmas.

On 17 January 2025, Ralph Peters & Sons sought an order discharging, among other things, the freezing order. It argued that the partner at the law firm responsible for J&J Snack Foods' application had failed to give fair presentation (sometimes referred to as full and frank disclosure).

Full and frank disclosure

The burden on applicants for full and frank disclosure in applications for freezing orders was summarised in *Uconinvest LLC v Jysan Holding LLC* as follows:

"Applications for without notice freezing orders, whether domestic or worldwide, are now a routine part of the business of the Chancery Division and the Commercial Court. It is easy therefore to regard them as "normal", but any hearing where only one side of the case is heard should be regarded as exceptional. Further, freezing orders that are broad in their reach are capable of having very serious consequences for a respondent. The price of obtaining such relief without notice to the respondent is a heavy responsibility to ensure that the matter is fairly presented to the court, not

slanted or partial, and that the points that the respondent would wish to make were they present, so far as able to be anticipated, are fairly put before the court for consideration. That is particularly so when serious allegations are made against the absent parties."

Reasoning

The judge concluded that the freezing order should be discharged. His reasons included, among others, as follows:

- **Failure of full and frank disclosure:** J&J Snack Foods had failed to disclose several key points during the without notice hearing:
 - It did not explain why it was appropriate for the applications to be made without any notice to Ralph Peters & Sons;
 - It failed to distinguish between the 'Phase 1' (the use of SLUSH PUPPIE) and 'Phase 2' (the use of SLUSHY JACK) claims, particularly the weakness of the 'Phase 2' claim and its impact on the quantum of the claim;

- It did not provide solid evidence of a serious risk of Ralph Peters & Sons dissipating assets or making itself judgment-proof;
 - It did not address the relevance of the passing of time from 2020 to December 2024 in relation to the risk of dissipation and the need for a without notice hearing;
 - It did not explain the argument that gross profits made by Frozen Brothers was not the proper basis for the quantum of a claim against Ralph Peters & Sons.
- **Lack of real risk of Ralph Peters & Sons making itself judgment-proof:** The Judge was not convinced that there was a real risk of Ralph Peters & Sons taking steps to make itself judgment-proof. J&J Snack Foods did not provide sufficient evidence to justify this risk, especially considering the long-standing litigation in Ohio and Germany without any evidence of Ralph Peters & Sons taking such steps. The dishonesty alleged against Mr Peters did not lie at the heart of J&J Snack Foods' claim and did not of itself give rise to a strong inference of a risk of dissipation of assets.

Appointed Person Decisions



Elbisco v Kerangus

Court: Appointed Person

Judge: Philip Harris

Reference: BL O/0111/25

Trade Mark: UK00003651180

Issue: Trade mark validity

Summary

In *Elbisco v Kerangus*, the Appointed Person has upheld the Hearing Officer's decision that

Kerangus' application for UK '180 (below) in classes 29 and 30 should not be registered in light of Elbisco's earlier registration UK '468 (also below) in class 30.

The decision provides a useful analysis of the average UK consumer's approach to signs with Latin and non-Latin letters (in this instance Greek).

The Earlier Right (UK '468)



The Application (UK '180)



Background

On 4 June 2021, Kerangus applied for UK '180 in classes 29 and 30, including certain food products. Some six months later, Elbisco opposed the application relying on its earlier right, UK '468, registered for class 30, again including certain food products.

In response, Kerangus defended the opposition and commenced a cancellation action. Here, it challenged the validity of UK '468 (which includes the words απλά and APLA) on the basis of its earlier registration UK '115 (which includes a stylised version of απλά), depicted below. UK '468 was registered in classes 29 and 30 for certain food products.



In both instances, the parties relied on s. 5(2)(b) of the Trade Marks Act 1994.

Hearing Officer

The proceedings having been consolidated, the Hearing Officer concluded that:

- The vast majority of average UK consumers would not understand Greek characters;

- As a result, the average consumer would deem Kerangus' '115 mark to comprise the word element ANNA (not απλά);

- Further, the average consumer would consider the dominant element of '468 to be APLA (as απλά would not be readily articulable by the consumer);

- As a result, '115 and '468 were visually and aurally similar to only a very low level and conceptually different;

- While the goods for which the respective marks were, in part, identical or similar, given the lack of similarity of the marks, there was no likelihood of confusion;

- By comparison, the Hearing Officer held that, where APLA was the dominant element of both '468 and '180, they were visually similar, aurally identical and conceptually neutral;

- Where the goods were, in part, identical or similar, there was a likelihood of confusion;

- It followed that UK '468 remained valid, but UK '180 was not in relation to certain goods.

Kerangus appealed on several grounds, including flaws in the assessment of the overall impression of the marks, visual and aural comparison, and likelihood of confusion.

Where the grounds of appeal were primarily a submission that the Hearing Officer's assessment was wrong in fact, not law, the Appointed Person was unwilling to deviate from the Hearing Officer's conclusions.

In particular, the Appointed Person emphasised that an appeal is by way of review, not re-hearing. This was recently summarised by the Court of Appeal in *Lidl Great Britain Ltd v Tesco Stores Ltd*, where Arnold LJ held as follows:

"It is common ground that, in so far as the appeals challenge findings of fact made by the judge, this Court is only entitled to intervene if those findings are rationally insupportable: *Volpi v Volpi* ... Equally, it is common ground that, in so far as the appeals challenge multi-factorial evaluations by the judge, this Court is only entitled to intervene if the judge erred in law or principle ..."

It followed that '468 was valid, but '180 was invalid for certain goods.

Appointed Person

Month in numbers

- 14 cases issued in the Intellectual Property Court
- 13 cases issued in the Intellectual Property Enterprise Court
- 0 cases issued in the Patents Court
- 2 (trade mark decisions) of the High Court
- 5 decisions of the Appointed Person, UKIPO
- 8 decisions of the General Court, CJEU





De Longhi v Ronix

Court: Appointed Person

Judge: Emma Himsworth KC

Trade Mark: UK00003740463 (CHEFCHY)

Issue: Trade Mark Invalidity

The Earlier Right (UK '050)	The Trade Mark Application (UK '463)
CHEF	CHEFCHY
Classes: 7 and 11	Classes: 7 and 11

Summary

In De Longhi v. Ronix, the Appointed Person has upheld the Hearing Officer's decision that Ronix's application UK '463 for CHEFCHY in classes 7 and 11 was valid over De Longhi's earlier mark, UK3438050, for CHEF in the same classes.

Opposition

De Longhi opposed the registration on the basis of ss. 5(2)(b), 5(3) and 5(4)(a) (passing off) of the Trade Marks Act 1994.

The Hearing Officer found for Ronix, concluding as follows:

- **Reputation and distinctiveness:**

The Hearing Officer found that UK '050 had a moderate reputation in the UK for food mixers and their attachments. However, its distinctiveness was no more than a medium level overall.

- **Similarity between the marks:**

The Hearing Officer concluded that there was a moderate degree of similarity between the competing marks overall.

- **Similarity of goods:** The Hearing Officer found that the goods for

which UK '050 was registered, such as electric kitchen tools and utensils, were similar to a medium to high degree to the goods for UK '463, such as food mixers and their attachments.

- **Overall:** Taken together the differences between the marks, such as the additional letters "CHY" in the contested mark, were sufficient for the average consumer to distinguish between them and avoid confusion.

- **Section 5(3) and 5(4)(a):** The Hearing Officer dismissed De Longhi's claims under these sections, finding no evidence of unfair advantage, detriment, or passing off.

The Appointed Person

The opponent appealed the Hearing Officer's decision on several grounds:

- **Errors in the Assessment of Reputation and Distinctiveness:**

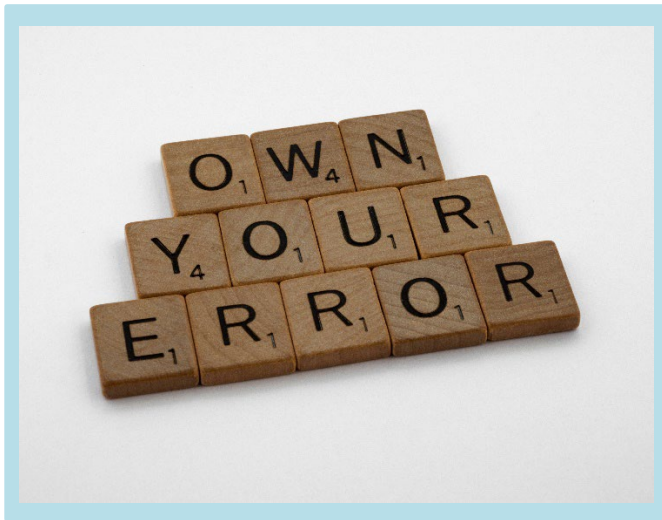
The opponent claimed that the Hearing Officer overlooked certain evidence and should have found a higher degree of acquired distinctiveness for their earlier mark.

- **Errors in the Assessment of Similarity of Goods:** The opponent argued that the Hearing Officer should have found the goods to be identical or highly similar, rather than just similar to a medium to high degree.

- **Errors in the Assessment of Likelihood of Confusion:** The opponent contended that the Hearing Officer made errors in assessing the likelihood of confusion between the marks.

- **Errors in the Assessment of Section 5(3) and 5(4)(a):** The opponent maintained that the Hearing Officer should have considered unfair advantage, detriment, and passing off.

The Appointed Person reviewed the decision and found no material error in the Hearing Officer's assessment, dismissing the appeal and upholding the Hearing Officer's decision.



Tapper v Beak Fried Chicken


Court: Appointed Person

Judge: Dr Brian Whitehead

Reference: O/0096/25

Trade Mark: UK3380292, UK3120818, UK3815842, UK3849951

Issue: Trade Mark Invalidity

Tapper's Earlier Right 1 (UK '292)	Tapper's Earlier Right 2 (UK '818)	Beak Fried Chicken's Trade Mark Application (UK '842)	Tapper's Trade Mark Application (UK '951)
THE BEAK BREWERY	THE BEAK BREWERY	BEAK	
Classes: 25 and 43	Class: 40	Classes: 35 and 43	Class: 32 and 35

Summary

In Tapper v Beak Fried Chicken, the Appointed Person has provided guidance on when a party may resile from an admission, upholding Tapper's appeal and remitting the matter to the Hearing Officer for consideration.

Hearing Officer

The Hearing Officer heard two consolidated oppositions, Tapper's opposition in relation to Beak Fried Chicken's UK '842 and Beak Fried Chicken's corresponding opposition in relation to Tapper's UK '951.

The Hearing Officer concluded that Tapper's opposition was successful under s. 5(2)(b) of the Trade Marks Act 1994 and so the registration proceeded only in relation to "retail services relating to stationery, namely stickers".

As to Beak Fried Chicken's opposition, the Hearing Officer relied on an admission by Tapper in its TM8 counterstatement that the

services in class 35 were identical with those for which UK '951 was to be registered. He concluded that, because the marks were visually similar to a medium degree, aurally identical and conceptually similar to a high degree there was a likelihood of confusion.

As a result, he refused registration for the certain services in class 35 including: "Advertising, marketing, promotion and / or retail ... of key rings, pens, books on brewing beer, beer mats, etc."

Appointed Person

Tapper appealed the Hearing Officer's decision, arguing that the admission in its TM8 counterstatement was in respect only of the challenged services in the '842 mark.

The Appointed Person disagreed, finding that there was no ambiguity in the TM8 counterstatement, which read:

"[Tapper] accepts that the word element is identical, however

[Tapper's] mark has a strong and distinctive visual identity. [Tapper] accepts that the services in Class 35 are identical."

Tapper further argued that it was contrary to Registry practice and procedure for the Hearing Officer to continue on the basis of identity when this was wrong as a point of fact.

Here, the Appointed Person disagreed with the appellants reasons, citing §4.1 of Contentious Trade Mark Registry Proceedings (2nd Edition):

"If an allegation is admitted, then that fact or matter is no longer in issue between the parties, and so (a) no evidence needs to be adduced to establish it; (b) no argument needs to be advanced to promote or defend it; and, (c) the tribunal need not trouble itself about it, as it becomes an agreed point between the parties and may be used by the tribunal as a basis for its

decision".

However, the Appointed Person found that the Hearing Officer had erred by not investigating with Tapper as to whether it wished to resile from the admission. He pointed to CPR 14.5, which explains that a Court can give permission to withdraw or qualify an admission. In doing so, the Court should consider:

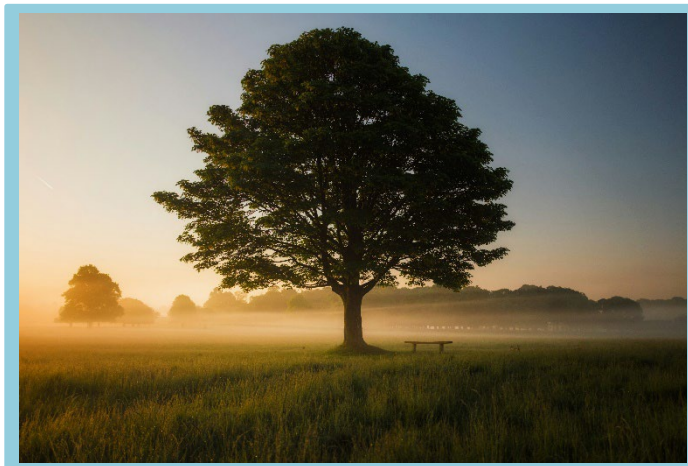
“(a) the grounds for seeking to withdraw the admission;

(b) whether there is new evidence that was not available when the admission was made;
(c) the conduct of the parties;
(d) any prejudice to any person if the admission is withdrawn or not permitted to be withdrawn;
(e) what stage the proceedings have reached; in particular, whether a date or period has been fixed for the trial;
(f) the prospects of success of the claim or of the part of it to which the admission relates;
and

(g) the interests of the administration of justice".

As a result, the Appointed Person remitted the matter to the Registry for consideration of whether Tapper should be permitted to resile from or qualify the admission of identity of services made in its TM8 counterstatement.

General Court Decisions



Essity Hygiene v EUIPO

Court: General Court

Judges: Kowalik-Bańczyk, Hesse and Ricziová

Judgment: T-434/23

Trade mark: EU016709305

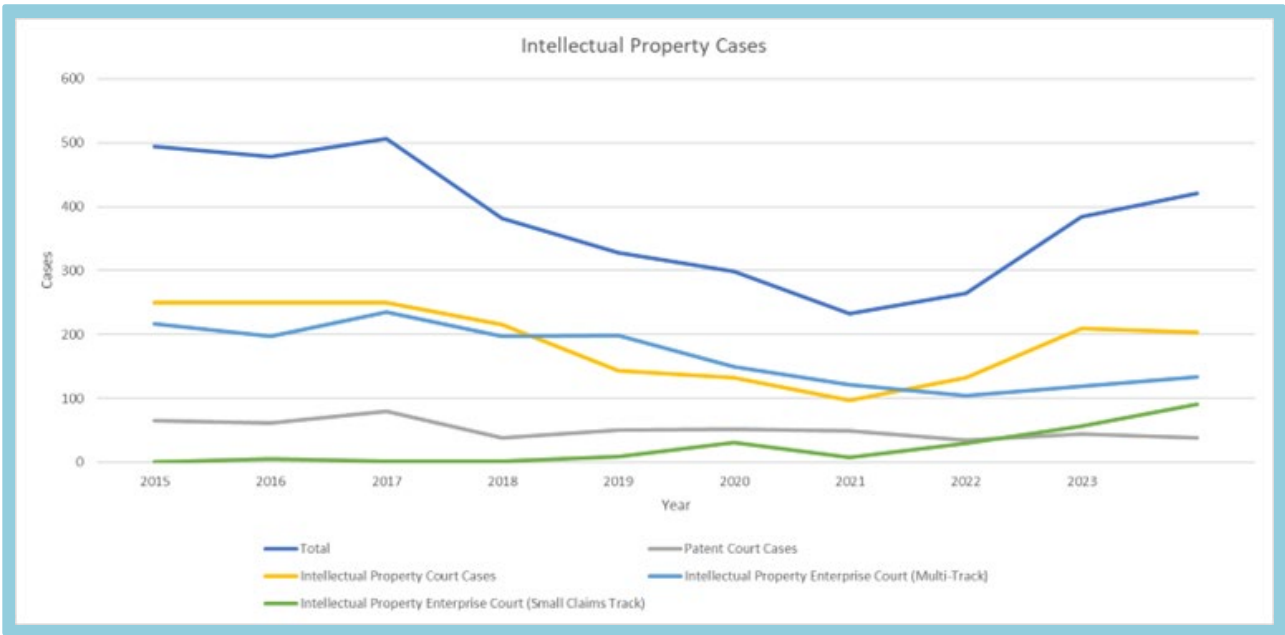
Issue: Trade mark validity



In *Essity Hygiene v EUIPO*, the General Court has upheld the EUIPO Board of Appeal's decision to refuse registration for a leaf, depicted below.

The application was for class 16, including “paper, cardboard; fine paper, writing paper”, etc. The court reasoned that the average consumer would understand a leaf to refer to the ecological characteristics of the goods or to be purely decorative or ornamental.

Intellectual Property Cases Year by Year



Litigation Tracker

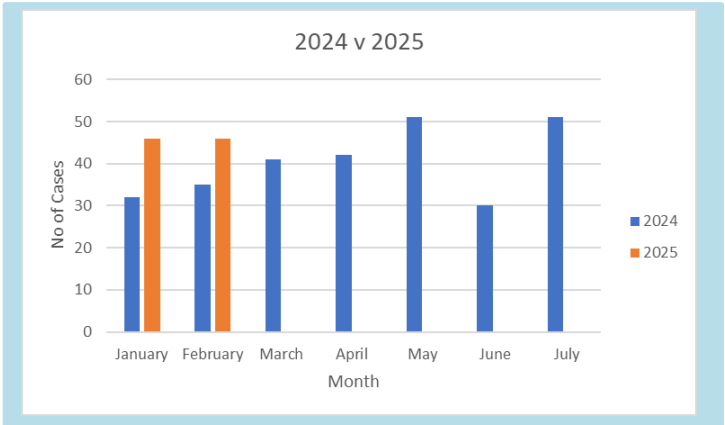
Below is a list of intellectual property cases issued before the English intellectual property courts for February 2025 (excluding the Small Claim Track and PPL / PRS cases):

Claim No	Parties	Court	Date Filed
IL-2025-000031	Golden Wolfe Limited and another v Koi Footwear Limited	Intellectual Property Court	03/02/2025
IP-2025-000008	Billbo (UK) Limited v Laltex & Co Limited	Intellectual Property Enterprise Court	03/02/2025
IL-2025-000033	Aspinal of London Limited and another v Pom Pom London Limited and others	Intellectual Property Court	04/02/2025
IP-2025-000010	Haggart v Iktomi Limited and another	Intellectual Property Enterprise Court	07/02/2025
IP-2025-000011	Albert Bartlett & Sons (Airdrie) Limited and another v Jones Food Company Limited	Intellectual Property Enterprise Court	07/02/2025
IP-2025-000012	LAVA BV and another v OAK FURNITURELAND GROUP LIMITED and others	Intellectual Property Enterprise Court	07/02/2025
IP-2025-000013	DAMEX FR (UK) Limited v Brennan	Intellectual Property Enterprise	11/02/2025

Claim No	Parties	Court	Date Filed
	Enterprise Limited	Court	
IL-2025-000035	Studiocanal Films Ltd v Rusbridger (pka Bella Mackie)	Intellectual Property Court	12/02/2025
IL-2025-000036	Paddington and Company Limited v Z A Product Limited and another	Intellectual Property Court	12/02/2025
IP-2025-000014	Sodaflexx Distribution LLP and another v Sodaflexx Limited and another	Intellectual Property Enterprise Court	13/02/2025
IP-2025-000015	PUMA SE v Shafiq and others	Intellectual Property Enterprise Court	14/02/2025
IP-2025-000016	Rashid and others v BFF Cash And Carry Limited	Intellectual Property Enterprise Court	19/02/2025
IL-2025-000042	National Tube Straightening Service Ltd v Brisko Scaffolding Limited	Intellectual Property Court	24/02/2025
IP-2025-000017	ITC Limited v Krishna Asian Food Market Limited and another	Intellectual Property Enterprise Court	25/02/2025
IP-2025-000018	ITC Limited v SCP Management Limited and others	Intellectual Property Enterprise Court	25/02/2025

Claim No	Parties	Court	Date Filed
IP-2025-000019	ITC Limited v Sabar Foods Ltd and others	Intellectual Property Enterprise Court	25/02/2025
IP-2025-000020	National Tube Straightening Service Ltd v Brisko Scaffolding Limited	Intellectual Property Enterprise Court	25/02/2025
IP-2025-000022	Advance Magazine Publishers Inc. and another v Cornucopia Entertainment Limited and another	Intellectual Property Enterprise Court	26/02/2025

Intellectual Property Cases 2024 v 2025



J&J Snacks Food Corp v Ralph Peters & Sons Ltd	Chancery Division	[2025] EWHC 436 (Ch)	27 Feb 2025
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Decision Tracker

Below is a list of reported trade mark decisions issued by the English intellectual property courts, appointed Person or General Court for February 2025:

Decision	Court	Reference	Date
Elbisco Industrial and Commercial Foods SA v Kerangus Holdings Ltd	Appointed Person	[2025] 2 WLUK 304	1 Feb 2025
VistaJet v EUIPO	General Court	T-195/24	5 Feb 2025
Quality First v EUIPO	General Court	T-219/24	5 Feb 2025
Mason v Tutr Ltd	Appointed Person	[2025] 2 WLUK 180	5 Feb 2025
Abbott Diabetes Care Inc v Sinocare Inc	Chancery Division	[2025] EWHC 206	7 Feb 2025
Ronix Ltd v Longhi Benelux SA	Appointed Person	[2025] 2 WLUK 384	11 Feb 2025
Essity Hygiene and Health v EUIPO	General Court	T-434/23	12 Feb 2025
Biif v EUIPO	General Court	T-187/24	12 Feb 2025
Shard Financial Media Ltd v Blue Moon Group Ltd	Appointed Person	2 WLUK 363	14 Feb 2025
Lumi Glo Ltd v Wood	Appointed Person	[2025] 2 WLUK 411	18 Feb 2025
Schweppes International v EUIPO	General Court	T-1066/23	26 Feb 2025
IVDP v EUIPO	General Court	T-40/24	26 Feb 2025
IVDP v EUIPO	General Court	T-23/24	26 Feb 2025
eBilet Polska v EUIPO	General Court	T-197/24	26 Feb 2025

Events



Brand Interchange: Networking Event

Date: Thursday, 5 June 2025 (18.30 - 22.00)

Location: Shoosmiths, 1 Bow Churchyard, London, EC4M 9DQ

Description: Join us for an evening of networking and collaboration at our upcoming event. Whether you're a seasoned in-house lawyer or just starting out, this is the perfect opportunity to connect with like-minded brand lawyers in the sector. Share ideas, make new contacts, and expand your network in a relaxed and friendly atmosphere. See you there!

Link: [Here](#)