

Sept 2009

## European Court Confirms the Value of Protecting Product Get-up

A recent judgment by the ECJ has confirmed the value of registering Trade Marks covering the get-up\* of products. (\*Get-up is known as “trade dress” in North America.)

In June of this year the European Court of Justice (ECJ) published its judgment in response to various questions referred to it by the UK Court of Appeal. The case related to the get-up of perfume products owned by L’Oreal and so-called ‘smell-alike’ products sold by the defendant.

In a situation where the offending smell-alike products were said to ‘wink’ at the L’Oreal products by imitating aspects of the get-up and brand-name, the ECJ ruled that the defendant’s product took unfair advantage of L’Oreal’s reputation, was detrimental to L’Oreal and its trade marks, and thus infringed L’Oreal’s registered trade mark rights.

More recently, and following on from the above, Diageo – the owner of the famous PIMM’S trade mark – has commenced legal action against the supermarket chain Sainsbury’s in which Diageo objects to Sainsbury’s look-alike product PITCHER’S.

This development is interesting because Sainsbury’s is an important customer for Diageo and it is unusual for brand owners to take action against the supermarkets. These developments have implications for brand owners.

### Practice Points:

1. The registration of labels, bottles, containers, packaging and the overall shape and appearance of a product is recommended. It is of particular interest that the ECJ has effectively confirmed that there is real value in registering the get-up of products in order to be in the best position to prevent imitations. Trade mark owners should review the get-up of their products and register any important features that are not already registered.
2. Infringement issues should be re-assessed. In particular, for those businesses involved in the development, design and manufacture of private label products, the risks of infringing established brands may need to be considered in a new light.

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