

AGENTIC AI PULLS THE STRINGS

Are trademarks losing the
consumer influence battle?

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Name game

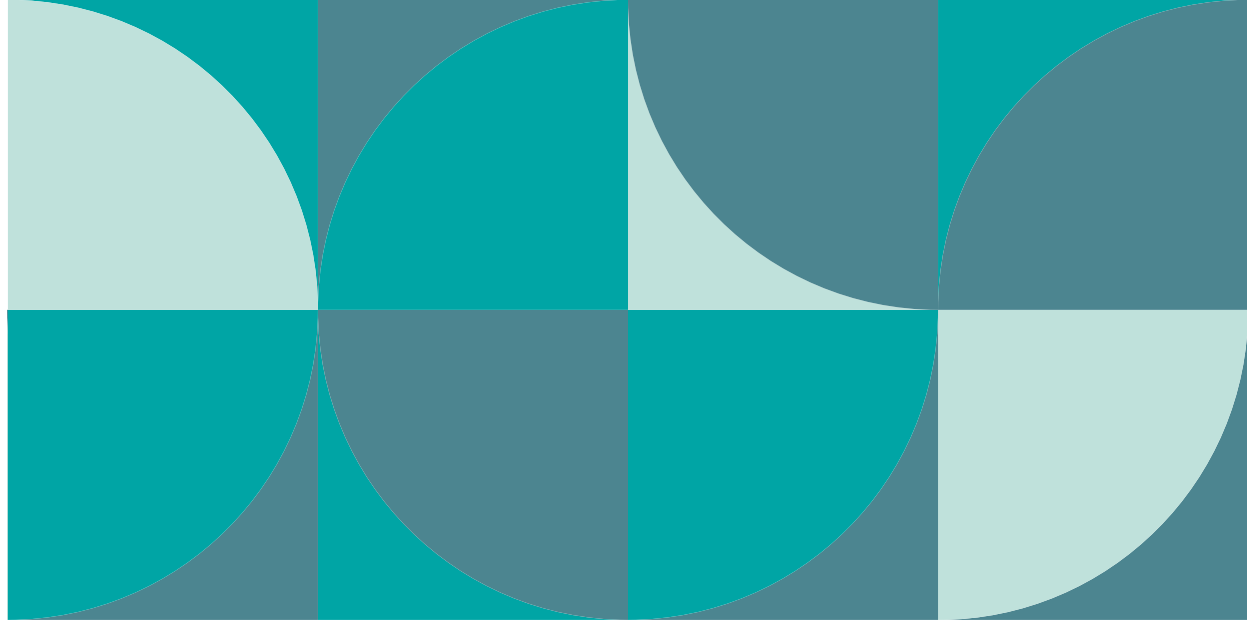
Identity vs TMs in Katy Perry
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Omnilegal



"THERE ARE NO LONGER 'PURE' TRADEMARK JOBS. Today, many in-house professionals are managing trademarks alongside copyrights, patents, privacy, and broader business priorities, which fundamentally changes how teams are structured and how they collaborate with external partners."

This, from Christy Susman, director of business and legal affairs at Crunchyroll, precedes a report that slipped under the radar for many but whose findings catalogue how the role of in-house lawyers is changing scarily fast.

Susman was part of the INTA team that published the snappily titled 'Change & Transformation: Exploring the Evolution of In-House Teams, the Impact on External Partners, and the Future Opportunities for INTA'.

It could just as easily have been called 'Omnilegal: How counsel must do more with less'.

The survey of nearly 300 senior in-house lawyers points to a profession that, in five years, has dramatically changed how it works, bills, and influences the world's corporations.

There is the resource paradox: While 82% of in-house practitioners reported their work has shifted significantly toward strategic business responsibilities, nearly a third simultaneously reported budget cuts and team size reductions.

There is how hourly billing has collapsed way faster than expected: In 2020, 86% of in-house practitioners used hourly billing with outside law firms. By 2025, 42% had moved to fixed, capped, or blended fee models—a huge shift in just five years.

And how AI adoption is already mainstream, not emerging: 74% of in-house practitioners are actively using AI tools, with 40% doing so daily. The report even notes that the conversation shifted within a single year from "whether to adopt AI" to "how to integrate it responsibly".

The pace of change is seemingly coming from all directions and mounting pressure on in-house legal teams to adapt quickly.

This year, *WIPR* launched the Global In-house Elite, a listing of the world's best counsel within companies. The criteria for making it onto the list are aimed at finding who within this community is doing the job the right way.

If things continue, it will be interesting to see if 'the job' is still recognisable by the turn of the decade. [ip](#)

Tom Phillips, Group editor

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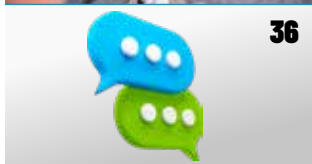
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WIPR Leaders is a trusted global community of leading IP professionals, inspired by personal connections made at events like the INTA Annual Meeting, says Baron Armah-Kwantreng of WIPR Rankings.



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Counterfeiters and infringers face lower thresholds for criminal convictions and severer penalties following guidance issued last year, says Ling Zhao of CCPIT Patent and Trademark Law Office.



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Careers

People moves across some of the biggest IP law firms internationally.

TRADEMARKS

Dior and L'Oréal fend off Chinese trademark challengers in Europe

DIOR AND L'ORÉAL HAVE BOTH SUCCESSFULLY asserted their brand rights in Europe against China-based entities, persuading officials to cancel trademarks that threatened to confuse consumers about the origins of cosmetics, perfumes and related products.

Parfums Christian Dior—known for iconic perfumes such as J'adore, Sauvage, and Dior Homme—convinced the opposition division of the EU Intellectual Property Office (EUIPO) to cancel the word mark 'Hydior', applied for by Shenzhen-based Chengnv Chen.

L'Oréal also headed to the EUIPO headquarters in Alicante, Spain, to oppose the word mark 'Tressora', which Guangzhou Fansi Trading had been hoping to register for goods in Class 3 including cosmetics; nail makeup; beauty creams; and glue for strengthening nails.

Commenting on the Dior decision, Liviu Irimia of Irimia & Partners wrote on LinkedIn: "While disputes involving lookalike marks are commonplace, this case has resonated widely for the clarity with which the office reaffirmed the protective halo surrounding luxury brands with a well-established market presence."

L'Oréal's victory was also decisive, with the opposition division finding high similarity between its international 'Trésor' word mark and Fansi's 'Tressora', rejecting the application in its entirety and awarding costs to the French beauty and cosmetics giant.

Reputational strength

Dior objected to Chen's 'Hydior' mark in an opposition filed in March 2025, arguing that the registration would unfairly benefit from the reputation of its 'Dior' brand, built over 70 years.

The luxury fashion house invoked Article 8(5) EUTMR which protects reputed marks against dilution or unfair advantage even on dissimilar goods, without needing a likelihood of confusion.



Granting Dior its request to cancel the mark, the opposition division said there was a probability that 'Hydior' would "acquire some unearned benefit and lead to free-riding".

Chen had sought to register 'Hydior' for goods in Class 21 including perfume bottles sold empty; perfume sprays; empty spray bottles; and glass bottles.

Dior claimed that its own 'Dior' mark had a reputation with regards to Class 3 goods such as soaps; perfumery; cosmetics; and hair lotions.

The company's evidence in support of this claim included a *Vogue France* article about the history of Dior; sales figures and advertising expenditure for Dior products in the EU including France; and press articles showing Dior products in French and Spanish magazines.

This satisfied the panel that the 'Dior' mark enjoyed a "significant reputation" in France, the relevant territory, at least

in relation to cosmetics and perfumes in Class 3.

In its decision dated March 26, the opposition division noted that although the goods had a different nature to the applicant's goods, there was a link between them.

With regards to the similarity of the signs, the office pointed to the marks coinciding in 'Dior' and its pronunciation, concluding that they were visually and aurally similar to an average degree.

Granting Dior its request to cancel the mark, the opposition division said there was a probability that 'Hydior' would "acquire some unearned benefit and lead to free-riding".

"This ruling reinforces a doctrinal trend that has shaped EU trademark law for the better part of a decade: reputation is not merely an evidentiary advantage, it is a structural one," wrote Irimia.

"And when invoked successfully, it can transform cases that might otherwise hinge on marginal visual similarities into clear-cut findings of unfair advantage and risk of dilution."

'Highly similar' marks

In its separate dispute, L'Oréal did not have to convince the opposition division of the reputation of its mark, as it was found to be inherently distinctive.

The opposition division rejected Fansi's 'Tressora' word mark on March 27, finding it highly similar to L'Oréal's 'Trésor' sign in both a visual and aural sense.

L'Oréal uses the mark primarily for its luxury perfume and fragrance products under the Lancôme brand, but has protected it for a wider range of goods.

The panel found that there was a likelihood of confusion on the part of the public in Slovenia, the relevant territory.

L'Oréal had challenged the mark on the grounds of Article 8(5) EUTMR, but as it was fully successful on the likelihood of confusion claim, this was not examined.

Fansi was refused the registration, and ordered to pay costs. **ip**

PATENTS

Solar patent battle heats up

THE US INTERNATIONAL TRADE COMMISSION (ITC) has opened a sweeping investigation into imports of solar panel components from 47 companies across 11 countries on behalf of First Solar, the largest US-based solar manufacturer.

The company has requested a general exclusion order—or alternatively, a limited exclusion order, and cease and desist orders—which would prohibit the importation of infringing products into the US from all foreign sources, not just those named in the investigation.

Announced on March 26, the move marks an escalation in First Solar's campaign to enforce a patent covering a leading solar cell technology known as tunnel oxide passivated contact (TOPCon), which is widely used by manufacturers—although not by First Solar itself.

The Arizona-headquartered company alleged that rivals from the US, Germany, Canada, China, Thailand, Vietnam, Malaysia, India, Jordan, South Korea and Japan had infringed US patent number 9,130,074, and violated Section 337 based on their imports of TOPCon solar cells, modules, panels, and components.

The '074 patent claims methods that improve the manufacturing efficiency and performance of solar cells, particularly TOPCon. Companies named in the ITC investigation include some of the world's biggest solar manufacturers, including China-based Jinko Solar, Trina Solar, and JA Solar, along with other major players such as Canadian Solar and Hanwha Q Cells.

Licensing and litigation

First Solar—which describes itself as an “American success story”—is the world's largest producer of cadmium telluride (CdTe) thin-film photovoltaic modules. It is the only US-headquartered company among the world's 10 largest producers of solar products, and reported net sales of \$5.2 billion for 2025 compared to \$4.2 billion the previous year.



The USPTO's decision reinforces our belief in the strength of our TOPCon technology patent portfolio.

Jason Dymbort, First Solar

TOPCon is the dominant high-efficiency architecture within crystalline silicon, the primary competitor technology to CdTe, which is used by First Solar's major rivals, including those named in the section 337 proceedings.

First Solar obtained US TOPCon patents and related international counterparts through its 2013 acquisition of Silicon Valley startup TetraSun.

In 2024, the company said it held patents on a leading solar technology it did not produce and intended to enforce them against companies that practise them without a licence.

“While First Solar is a world leader in the development and commercialisation of advanced thin film photovoltaics, our

R&D and intellectual property portfolio spans several semiconductor platforms, including crystalline silicon, as we pursue multiple pathways towards our goal of developing the next transformative, disruptive solar technology,” said Jason Dymbort, executive VP, general counsel and secretary of First Solar, at the time.

This was followed up by the company filing lawsuits against Canadian Solar and JinkoSolar in 2025, and a suit against Trina Solar in February 2026.

In the complaint against JinkoSolar, First Solar told the Delaware district court that it was “committed to investing in the American people and preserving domestic industry”, and had invested approximately \$4 billion in manufacturing and R&D infrastructure in the country over the decade to 2026.

First Solar “owns a large portfolio of patents covering methods of manufacturing solar cells, including patents on TOPCon technology”, the company said, alleging that JinkoSolar had refused to take a licence to the '074 patent, which amounted to willful infringement.

Alongside last year's litigation, First Solar entered into a licence agreement with Talon PV for the Texas-based manufacturer to use its TOPCon patents. Talon said the licence kept it on track to “produce American-made TOPCon cells next year” and offered its customers “the peace of mind that comes with procuring cells that don't infringe on other companies' intellectual property”.

In January 2026, First Solar announced a win in its litigation campaign as the US Patent and Trademark Office rejected *inter partes* review applications from JinkoSolar, Mundra Solar, and Canadian Solar, seeking to invalidate the '074 patent and another US TOPCon patent, 9,666,732.

“The USPTO's decision reinforces our belief in the strength of our TOPCon technology patent portfolio,” said Dymbort in a statement. [ip](#)

COPYRIGHT

Cox v Sony: SCOTUS trims ISP liability in 'seismic decision'

IMAGE: SHUTTERSTOCK.COM / CHRISTIANTHIELNET



INTERNET SERVICE PROVIDERS (ISPs)

can't be held contributorily liable for copyright infringement committed by their subscribers solely for failing to terminate their internet access, the US Supreme Court has ruled in *Cox Communications v Sony Music Entertainment*.

With billions on the line, the case was widely seen as a test of ISP liability on the global stage.

As a US decision, the case doesn't set global law—but it does raise the threshold for ISP liability in one of the world's most influential legal systems.

A \$1bn+ verdict quashed

In 2019, the stakes became high when a federal court in Virginia issued an infringement verdict exceeding \$1 billion against Cox—a record damages award that was later vacated by the Court of Appeals for the Fourth Circuit, which found that the ISP was not “vicariously liable” for its users' music piracy.

However, the Fourth Circuit upheld the finding of contributory infringement, concluding that Cox's failure to terminate known repeat infringers constituted a “material contribution” to the piracy.

But in a unanimous 9–0 decision,

delivered on March 25, the court reversed the Fourth Circuit ruling that had found Cox liable for “contributory infringement” because it continued providing service to users that it knew were involved in piracy.

The historic decision puts an end to the labels' bid to revive the billion-dollar damages award issued by the Virginia jury, as the case is now remanded to the lower courts to be dismissed or reconsidered under new standards.

'About as significant as it gets'

Justice Clarence Thomas, writing for the majority, opined that a company is not a copyright infringer “merely for providing a service to the general public with knowledge that it will be used by some to infringe copyrights”.

He wrote categorically that: “This court has repeatedly made clear that mere knowledge that a service will be used to infringe is insufficient to establish the required intent to infringe.”

David Gold, member at Cole Schotz, views the decision “as seismic for the industry, and for anyone who creates protectable content that finds its way onto ISPs—musicians, authors, publishers—you name it. In the digital

era, this is about as significant as it gets”.

The court held that contributory liability requires intent, which can only be proven if the provider: induced the infringement; or provided a service specifically tailored for infringement—with no “commercially significant” non-infringing use.

Since internet access is a neutral service with vast lawful uses, the court found Cox did not meet these criteria.

For copyright-dependent companies, there is one high-level takeaway, according to Will Milliken, director at Sterne Kessler.

“The model of going after upstream providers of the means of infringement (like ISPs) is going to be very difficult, if not impossible, to execute given this decision.”

In short, mere knowledge that one's product will be used to infringe is insufficient for liability.

“While there could be edge cases,” adds Milliken, “it's hard to envision a copyright plaintiff being able to satisfy that standard against an upstream provider when you're talking about a product (the internet) that so plainly has many non-infringing uses.”

A win for Big Tech

The ruling is widely viewed as a notable boon for the tech industry, including Google, Amazon and X, which argued that holding ISPs liable for user actions would force them to cut off internet access for entire households or institutions over the actions of a few individuals.

The judgment, while unanimous, was tempered by criticism from two justices.

Justice Sonia Sotomayor, joined by Justice Ketanji Brown Jackson, wrote an opinion concurring only in the judgment.

While they agreed that Cox should not be held liable in this specific case, they took issue with the majority for “needlessly” and “artificially” narrowing the law.

The ruling is seismic for the industry, and anyone else who creates protectable content that finds its way onto ISPs—musicians, authors, publishers—you name it.

David Gold, member, Cole Schotz

They argued that the majority limited contributory liability to just two strict categories: inducement or specially tailored services.

"In so doing, the majority, without any meaningful explanation, unnecessarily limits secondary liability even though this court's precedents have left open the possibility that other common-law theories of such liability, like aiding and abetting, could apply in the copyright context," argued Sotomayor.

"By ignoring those past decisions, the majority also upends the statutory incentive structure that Congress created."

Sotomayor contended that the court should instead have left the door open

for other legal avenues, such as aiding and abetting.

What next for in-house teams?

Does this mean that ISPs are now exempt from liability in the US? Not necessarily, says Gold.

"Cox did at least take some steps to try to stop infringing activity—the question remains, how much is enough? That, we assume, will end up being a factual question for the lower courts or something for Congress to address."

Another burning question for in-house counsel at copyright-dependent brands is: where should they direct their enforcement efforts now?

Milliken believes that one option would

be a coordinated effort to target direct infringers.

"This is obviously a less efficient and cost-effective model (which is why copyright holders started going upstream in the first place), but it does have precedent," he explains.

"If executed effectively, the *in terrorem* effect of such suits could substantially reduce the incidence of infringement."

According to Gold, "in-house counsel should be aware that this is likely to be a malleable standard, much like the fair use doctrine, that is not going to have a definitive answer."

He concludes that when moving forwards: "Caution will be the name of the game." **ip**

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IN-HOUSE COUNSEL

World IP Review launches Global In-House Elite 2026

COUNSEL FROM SOME OF THE WORLD'S BIGGEST companies—including Google, Microsoft, Saudi Aramco and Meta—have been recognised in *WIPR*'s inaugural Global In-House Elite 2026.

The listing identifies the leading corporate intellectual property professionals from around the world who demonstrate exceptional ability in managing their company's IP portfolio, legal team, and culture of IP.

Also included are those who champion the in-house IP profession, and positively influence—or demonstrate a commitment to—the client/law firm relationship.

Private practice lawyers from across the globe nominated the clients that they felt were deserving of a place on the list.

The explanations and evidence for these suggestions were carefully reviewed by the *WIPR* editorial and rankings teams, along with a number of self-nominations from in-house counsel.

The Global In-House Elite also includes professionals chosen by the *WIPR* team for their stand-out careers and contributions to the IP industry.

The results reveal the professionals who are among the most highly respected in the market by the law firms they work with.

Profiles of the lawyers in this year's Global In-House Elite, along with comments from their peers detailing their reasons for inclusion, can be found on the *WIPR* website via the Rankings tab.

Specialist expertise

The listing identifies the in-house lawyers handling IP matters for some of the world's most recognisable brands, such as LEGO, Coca-Cola, Walt Disney and Warner Bros.

They include Sandra Georges, group IP director at luxury goods conglomerate LVMH, who is described by a peer as having "a rare ability to translate complex, cross-border trademark issues into clear, business-ready guidance".



Adidas brand protection manager Amanda Luz is nominated by an industry counterpart for her "outstanding achievement in brand protection and global market impact" which includes leading IP matters for the sportswear giant in connection with the FIFA World Cup 2026.

Private practice lawyers also showed appreciation for the high level of technical expertise required to work in-house at leading tech and life sciences companies.

Helen Li, managing patent counsel at Intel, is credited with shaping artificial

The listing identifies the in-house lawyers handling IP matters for some of the world's most recognisable brands, such as LEGO, Coca-Cola, Walt Disney and Warner Bros.

intelligence (AI) portfolios at the company, and described as having "strong technical and legal understanding" that enables her to give "high-value feedback on patent strategy".

Mia Brickhouse, head of IP & DNS at Meta, leads a team that brings "unparalleled specialist knowledge in the field of domain name enforcement", according to the private practice lawyer that put her forward.

This year's top in-house IP professionals are also singled out for their strategic balancing of risk vs reward in high-stakes disputes; a partner at a leading law firm says Clemens Heusch, Nokia's head of global litigation and disputes, runs "the best in-house litigation team in the industry".

Leading law firms across Asia and Europe highlight Shohta Ueno, assistant GC and head of IP litigation EMEA & APAC at Regeneron, for his "amazing sense of team selection and decision-making", noting that they "achieved favourable decisions on litigation thanks to his excellent instruction".

Soft skills essential

Many lawyers who nominated their peers for the Global In-House Elite focused on their stand-out communication skills and other personable attributes which help foster strong, collaborative relationships.

Despite her "enormous workload" and responsibility for a "huge range of global brands", Nic Robinson, lead counsel IP and marketing at Carlsberg Britvic, is said to be "efficient, clear and a pleasure to work with".

Susanne Teixeira, VP legal affairs and IP at Spin Master, is praised for her "exemplary responsiveness" and openness in encouraging outside counsel to ask questions and fully understand the business needs behind each matter.

A private practice client of Eli Gilsohn, vice president IP at Resolution Therapeutics, is particularly impressed by his "timely and clear" instructions, and notes that he involved scientists in discussions with outside counsel—which led to the grant of a key patent.

Russ Jacobs, director and managing corporate counsel—IP at Starbucks, is said to have "top notch" communication skills and responsiveness, with comments from peers including that he "defines the expected deliverable, and is quick to update our team if priorities shift or the task changes".

In its first iteration, the Global In-House Elite is an inexhaustive list and is anticipated to expand. [ip](#)

Queries and requests for inclusion can be directed to Rankings editor Baron Armah-Kwantreng at: barmah-kwantreng@worldipreview.com



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WHEN AI CHOOSES: TRADEMARKS AND BRAND CONTROL IN THE AGENTIC AGE

As AI shopping agents become more common, *WIPR* takes a closer look at the rise of agentic AI and what it means for brand owners' rights.

Rapid advances in artificial intelligence (AI) are transforming not only how we work but also what we choose to buy.

Increasingly, consumers no longer search or compare options—they instruct AI agents to act on their behalf.

But if purchasing decisions are increasingly delegated to AI agents, what does agentic AI mean for brands and traditional IP rights? Could trademarks move from being decision drivers to background noise?

Are brands less relevant?

Dev Gangjee, professor of IP law at the University of Oxford, believes this trend could pose an unprecedented challenge for rights owners.

"One concern is whether AI might start making brands and trademarks less relevant," he explains.

"You just tell the AI what you want, it goes out and gets it for you, and the trademark becomes less central. It effectively becomes a proxy for a category of goods or services, while the AI focuses on price and quality instead."

He uses the example of buying poultry: say you want organic chicken within a certain price range

to make fajitas or tacos, and you tell your online supermarket shopping AI.

It then selects all the ingredients based on your past preferences, price, and availability.

Gangjee believes this deceptively simple task marks a significant shift in consumer decision-making, creating a space "where trademarks don't feature much" at all.

Trends in consumer habits

Research suggests that the trend of consumers using AI is growing.

According to Kantar, 69% of consumers now submit full conversational queries to AI, while more than half spend longer interacting with generative AI than with traditional search.

Similarly, PwC reports the growing adoption of AI in shopping and decision-making processes.

Speaking to *WIPR*, Anna Bancroft—partner for digital transformation at PricewaterhouseCoopers—highlights a consumer market survey over the Christmas period, in which approximately 27% reported using AI.

Among those users, 90% acted on AI recommendations.

"That is very high intent, which means that when people were using AI in their shopping, they were on a specific discovery mission," says Bancroft.

TAKEAWAYS

- Purchasing choices delegated to AI
- Concerns TMs 'less central'
- Rethinking 'average consumer' tests



Established brands need to ensure their products are available and showing up—treating this forum as "essentially another shelf".

"They are very good at ensuring they are on the retailer's physical shelf; they now need the same focus on making sure their product data is fresh so large language models will value it.

"There is more work for established brands to do to defend their territory; this is another front on which they need to compete."

'Deeply frustrated' brand owners

Part of the challenge for brand and IP owners is that agentic AI is different from what has come before—namely algorithmic recommendations and keyword advertising.

Agentic AI goes further—selecting substitutes, executing transactions, and collapsing the visibility of alternatives.

Carlton Daniel, head of the advertising, media and brands group at Squire Patton Boggs, says this development is making brand and IP owners "deeply frustrated".

He adds: "They have invested enormous time and money in building their brands—in marketing, prestige, reputation, and reach.

"AI can recognise when a user is looking for a specific trademark. But



instead of simply responding to that search, the AI draws on extensive tracking across multiple platforms.

"It uses cross-device matching, cookies, and multiple data points to analyse who the user is—how much they are likely to spend, where they travel, what they do for work, and their socioeconomic profile.

"The sheer volume of information held about the average user is, for many, quite terrifying."

Like Gangjee, Anke Moerland—professor of IP at Maastricht University—says the focus is now more on platforms than brands.

"People are potentially less attached to a brand and more to the value that a particular platform offers—the largest choice, the best prices, or whatever the criteria are for choosing one portal over another."

Instead, brand storytelling may take precedence over the previously central 'origin function' of trademarks.

"What I do believe is that a brand, when used in connection with advertising, narrative and the values it represents through storytelling, can still be relevant—and still is.

"Trademarks have a role to play, but I think the origin function—simply indicating where a product comes from—is becoming much less important to consumers."

Liability in an agentic marketplace

But then there is the question of liability when things go wrong.

Gangjee explains. "A consumer might buy a similar-looking product with a different brand and price; they aren't confused, but the original brand's trademark could be diluted or lead to post-sale confusion for others."

For Daniel, one core question remains largely unanswered: what happens when an AI makes a misleading recommendation?

"You might blame the search platforms, but they have various exemptions to trademark infringement, and strong arguments that they are not using the trademark in the course of trade. So those questions remain genuinely unresolved."

Time for a new trademark test?

Louise Popple, senior counsel—knowledge at Taylor Wessing, predicts that a rethink of some fundamental trademark principles could be on the cards.

"At the moment, trademark law assumes a human average consumer—that is the test.

"The legal framework is built around humans and their frailties: imperfect recollection, the fact that consumers rarely have the chance to view products and services side by side, visual and conceptual similarities between marks, and confusion."

But put AI into the mix and a different set of issues emerges.

"One would not expect AI to suffer from 'imperfect recollection'—it ought to know what it has purchased for you in the past, and should be better at making quick side-by-side comparisons."

Consequently, some elements of the existing confusion test may become less important, while others become more relevant.

"The whole basis on which we test confusion may have to flex if we are no longer talking about a human making the purchasing choice," she adds.

One example relates to the use of voice in transactions.



You just tell the AI what you want, it goes out and gets it for you, and the trademark becomes less central.

Dev Gangjee,
Oxford University



The whole basis on which we test confusion may have to flex if we are no longer talking about a human making the purchasing choice.

Louise Popple,
Taylor Wessing

Popple explains: "If a consumer is ordering products by voice, and receiving responses by voice, then the phonetic comparison between marks becomes more important, while conceptual and visual comparisons arguably become less so."

As a result, brand owners might need to start thinking more carefully about how they differentiate themselves phonetically, and how they position themselves as distinctive brands that an AI agent could not mishear or misunderstand.

Popple believes the issues will span many areas of law—not just trademarks—including consumer protection, comparative advertising, unfair competition, and data protection.

Can brands opt out?

Given the risks, is there an option for brands to opt out of these platforms entirely and pursue a more direct relationship with consumers?

Moerland points to the case of cosmetics brand Lush, which did not want its products on Amazon. "But you have to be able to afford it, because people do shop on Amazon and the larger portals—and in the end you may simply be found there anyway," she cautions.

Direct Line "did something similar" in the 1990s by refusing to sell through third-party websites, notes Popple

"It worked for them. So it could work in principle, though it is probably not a viable strategy for many brands."

Despite the challenges, Daniel emphasises that the concept of a brand—bolstered by trademarks—will remain incredibly important.

"I strongly disagree with the suggestion that the internet could return results where brand is irrelevant. There are brands consumers trust, and people want the assurance of provenance and quality.

"Certain brands command a higher price precisely because of the trust that has been built up around them." **ip**



HOW WE WON \$3M FOR AN INFLUENCER AGAINST IMPOSSIBLE FOODS

A solo entrepreneur has beaten a billion-dollar brand in a trademark trial. *WIPR* speaks to the winning counsel to discover the strategies behind a decisive victory.

Plant-based food tech company Impossible Foods (IFI) has lost its trademark battle with an influencer over the use of the word 'impossible' in relation to recipes, apparel, and cookbooks.

On March 24, BraunHagey & Borden's trial team—led by Adam Cashman and Marissa Benavides—

TAKEAWAYS

- Win 'a triumph for all small brand owners'
- Jury found wilful infringement of influencer's marks
- Trial team presented 'consistent case'

secured a complete victory for its client Joel Runyon against the billion-dollar company.

Runyon is an entrepreneur and endurance athlete, and the founder of the lifestyle brand Impossible. In 2017, he gained widespread attention as the youngest person ever to complete seven ultra-marathons on seven

continents, raising around \$192,000 for charity.

He has since built a large online following through motivational content and fitness programmes.

The origins of the dispute can be traced back to 2014 when IFI renamed itself from Maraxi to Impossible Foods and launched 'Impossible'-branded products.

When Runyon reached out to IFI to clarify the parties' respective positions, IFI responded with a federal lawsuit filed in California in 2021, in which it sought to cancel his marks.

However, the jury found that the influencer was the original user and registrant of the 'impossible' mark in relation to endurance athletics and apparel, health and nutrition, as well as sporting events, and that IFI "had wilfully infringed and acted with malice, fraud, and oppression".

In addition to \$1.5 million in compensatory damages, the jury awarded Runyon \$1.75 million in punitive damages.

Commenting on the win, Runyon said the ruling was a triumph for all small brand owners. "The jury's verdict sends a clear message that trademarks are not just pieces of paper and a brand is more than just the name of a company—they stand for something, they matter, and they can't be wilfully trampled."

WIPR spoke to Runyon's winning counsel Adam Cashman following his courtroom triumph to delve into the details.

WIPR: When you first got the case, what was your gut sense of the story you needed to tell the jury—and did that evolve over time?

Cashman: We were engaged a little more than one year before the trial. It was obvious to me then that the strongest facts for our client were that he was clearly first to use the name in the relevant spaces, and that IFI had sued him preemptively despite its actual knowledge of our client's priority rights. Other facts rose and fell in prominence, but those remained central to our case.

The jury found wilful infringement and awarded significant punitive damages—what were the key pieces of evidence or moments at trial that helped establish intent and bad faith?

There was a constellation of conduct that the jury likely relied on in making those findings. For example, there was no dispute



We wanted to focus on showing the jury everything that Joel had built and done under his Impossible brand, without getting stuck repeatedly complaining about a larger company.

Adam Cashman,
BraunHagey & Borden

that IFI knew about Joel and his rights when they rebranded to Impossible.

There was evidence that IFI had looked at Joel's website for inspiration as part of the rebrand, and that it had sought trademark rights for apparel shortly afterwards. IFI also told the jury that Joel's trademark rights were narrow, but the evidence showed IFI insisted on extremely broad protection for its own trademarks when it was dealing with third parties.

IFI also told the jury that it respects the IP rights of others, but admitted it had done no further trademark searches when it decided to expand its products into apparel and cookbooks. The jury found or inferred from all of this and the other evidence at trial that IFI had acted wilfully and with malice, fraud, or oppression toward Joel and his trademark rights.

This case had elements of a smaller creator versus a well-funded company—how did you leverage that dynamic effectively without overplaying it?

That was certainly a part of the case, but we wanted to focus on showing the jury everything that Joel had built and done under his Impossible brand, without getting stuck repeatedly complaining about a larger company.

In some areas, it was inescapable—eg, when talking about the relative sizes of the companies under *AMF v Sleekcraft Boats* (1979). Outside of that, however, we tried to keep the focus on Joel, his company and achievements.

The dispute focused on rights to the word 'impossible' across recipes, apparel, and cookbooks. It's a widely used word—how did you help the jury understand where your client's rights began and ended?

Here too, we kept the focus on the specifics of what Joel had done and sold in commerce under the 'Impossible' mark in

the various categories, as well as the trademark registrations he obtained as to those fields. And while IFI tried to make the argument that Joel's rights were minor and narrow, its own conduct told a different story.

How did you approach defining and defending the scope of the mark across these categories?

Fortunately for us, Joel had amassed a pretty robust record showing his specific use of the mark in commerce over 16 years, so we were able to leverage that by showing websites, order data, physical products, images, etc—all of which confirmed and defined the scope of Joel's rights in those fields.

Looking back, what specific trial tactics—whether in witness examination, expert testimony, or closing argument—do you think most influenced the jury's decision?

I think we presented a consistent case from start to finish that reemphasised our core themes—Joel was first [to file and use], IFI's use is infringing, and its efforts to avoid that are really just excuses. By the time we got to closing, the jury had a pretty clear sense that IFI's excuses and attempts to minimise its infringement were not the product of good faith disagreements, but were rather just a post hoc rationalisation.

Was there a moment during trial—testimony, a document, even something in closing—where you felt the momentum really shift in your favour?

We were fortunate to have a very attentive and diligent jury, but I felt that their attention was perhaps at its highest when we were reviewing in closing IFI's own application for trademark rights as to apparel.

This included its cease and desist letters to others regarding their use of the mark, and IFI's claims made throughout the case that were not supported (and sometimes contradicted) by the evidence. **ip**

WHO OWNS A NAME? KATY PERRY, ESTÉE LAUDER AND JO MALONE TEST RIGHTS

The Katy Perry and Jo Malone cases highlight the friction between personal identity and the power of international trademarks—but differ in crucial ways.

In the world of celebrity IP, naming rights have dominated the agenda. More specifically, two names: Katy Perry and Jo Malone.

In March, the High Court of Australia ruled in favour of fashion designer Katie Taylor (born Katie Perry), who had been locked in a 17-year trademark dispute with US pop star Katy Perry.

The court confirmed Taylor's right to sell clothing under her birth name, finding that her reputation in fashion had been established independently.

On the same day, Estée Lauder filed a claim in the High Court of England and Wales against perfumer Jo Malone over the use of her own name in a recent collaboration with high-street fashion brand Zara.

Estée Lauder, which has owned the Jo Malone brand and associated naming rights since 1999, alleges that the collaboration breaches contractual agreements governing Malone's use of her name.

Both cases centre on a familiar question in celebrity branding: who really owns a name?

Adrian Dykes, partner at White & Case, notes: "These cases demonstrate that a name can be a valuable and contested asset. A name conveys authenticity and identity. When it is registered and commercialised it can separate from the person with profound consequences."



It isn't often possible to sell the naming rights and then use or license the name. One way of putting it is you can't have your cake and eat it!

Rebecca Field, HGF

TAKEAWAYS

- Celebrity names are not 'monopolies'
- Contracts can trump own-name defence
- Strategic foresight is crucial

Katy Perry v Katie Perry

The origins of the Perry case lie in Taylor registering 'Katie Perry' as a business name in Australia and applying for a clothing trademark in 2008.

Around the same time, the singer (born Katheryn Hudson) rose to global fame with *I Kissed a Girl*.

In 2009, the singer's legal team sent Taylor a cease-and-desist letter demanding she withdraw her trademark application. Taylor then sued for trademark infringement regarding merchandise sold during the singer's 2014 Australian tour.

A judge initially ruled in Taylor's favour in 2023, with Justice Brigitte Markovic of the Federal Court of Australia describing it as "a tale of two women, two teenage dreams and one name".

In November 2024, the Federal Court overturned this decision, finding that the singer had an established international reputation that predated the designer's trademark registration.

The High Court ultimately reversed the appeal, finding no "real likelihood of confusion" between the two brands. The court noted that because the singer's reputation was already so well established, consumers would not mistake Taylor's local brand for the global star's merchandise.

According to Roger Lush, partner at Carpmiels & Ransford, "the decision shows that the mere fact of being a celebrity does not

necessarily entitle you to a complete monopoly over your name or similar names" for all products or services.

"Here, the designer had a plausible explanation for adopting the 'Katie Perry' name because it was her maiden name.

"She also proved that she started using the name commercially in 2007, before the singer became well known in Australia."

Jo Malone: Sale of name 'a big mistake'

In the Estée Lauder case, Jo Malone sold her eponymous brand to the cosmetics giant in 1999 and stepped down as creative director in 2006.

Under the original agreement, she was subject to a five-year non-compete clause restricting use of the name 'Jo Malone' in certain commercial contexts, particularly for marketing fragrances.

In subsequent interviews, she has ruefully described the decision as "the biggest mistake of her life".

Malone has since collaborated with Zara to produce fragrance lines under her new brand, 'Jo Loves'. These collections include the 'Emotions Collection', the 'Vibrant Cities' range and the 'Silent Flowers' series.

The lawsuit centres on the fact that the products' packaging and marketing still use the name 'Jo Malone' to identify her as the creator. The Zara UK website describes the items as: "In collaboration with perfumer Ms Jo Malone CBE,



The High Court of Australia this year ruled in favour of fashion designer Katie Taylor (born Katie Perry), who had been in dispute with pop star Katy Perry (pictured).

founder of Jo Loves,” which Estée Lauder argues violates their 1999 agreement.

‘Blurred’ IP lines

But a key difference between the two disputes is that while Katie Taylor never sold her name or rights, Jo Malone voluntarily transferred her trademark and naming rights to Estée Lauder in 1999, which complicates her legal position.

Rebecca Field, partner at HGF, notes that: “Clearly Estée Lauder paid handsomely for the IP rights and, given the price point in this case, it is no surprise they have taken issue with the sale of products in high-street retailer Zara.”

Daniel Kelly, IP legal director at law firm Shakespeare Martineau, says that such cases mean that what is considered IP property and what belongs to the person can become “blurred”, raising difficult questions about ownership, control and future commercial use.

‘Own-name defence’

“While selling the rights to your own name may be tempting, and very lucrative depending on the success and reputation of the business linked to the name at the time, it may come with obstacles that limit future job and business opportunities,” he warns.

Such disputes highlight the scope and limitations of the ‘own-name defence’—the principle that an individual should have



[The own-name defence] can be trumped by contractual obligations.

Claire Breheny,
Mathys & Squire

the right to use their birth name commercially.

Claire Breheny, partner at Mathys & Squire, points out that UK trademark law recognises the own-name defence under Section 11(2)(a) of the Trade Marks Act 1994, which allows individuals to use their personal names provided the use is in accordance with honest commercial practices. “However—and this is important—this can be trumped by contractual obligations.”

Consequently, celebrities and other high-profile figures must be careful about what they agree to when selling brands that use their own name.

“This means being very specific in agreements surrounding the sale about what counts as acceptable and unacceptable usage of their name once the transaction has completed,” says Breheny.

Losing name rights

By signing away the rights to her name, Malone joined an ignominious ‘hall of fame’ of entrepreneurs who lost the right to use their own names commercially after selling their companies.

Comparable examples include fashion designer Karen Millen, who lost a legal battle in 2016 to use her name for new ventures after selling the brand in 2004, and Bobbi Brown, who left her eponymous Estée Lauder-owned brand and had to wait years before she could launch another venture.

As HGF’s Field points out: “It isn’t often possible to sell the naming rights and then use or license the name. One way of putting it is you can’t have your cake and eat it!”

“But it also shows the critical importance of being advised correctly on IP and what founders may wish to do commercially in the future.”

Ultimately, Taylor’s victory was largely possible because she never sold her rights and fought to protect what she owned.

Strategic foresight is crucial, Breheny advises, for a brand owner determined to use their own name at launch, particularly if they are contemplating a future sale.

“If it is important to use their name to build a profile for their brand, this could be done in a way that the created brand is then followed by their name, so consumers know that the brand is connected with the individual.”

This means that when the brand gains traction in its own right, its owner could then stop using their own name alongside it.

“This ensures that eventually, when it comes to selling, the personal name hopefully will not be so much of an issue for the purchaser (and may not require contractual obligations not to use it), as the value at this point would hopefully be sitting independently with the created brand itself,” Breheny concludes. **ip**

RINGS OF POWER: OURA COUNSEL ON PROTECTING AN \$11BN BRAND

With experience spanning fashion, technology, medical devices and global brand protection, **Stéphanie Espada** is one of the driving forces behind the Finnish company's IP strategy.

Stylish, innovative and at the forefront of wellness and fashion trends, Oura Health—the Finnish-US company behind Oura Ring 4 and other smart-ring models—has captured considerable attention in recent years.

The same could be said of the company's own Stéphanie Espada, senior counsel of IP and marketing.

From fashion houses to healthcare innovators, her international journey has taken her from her native France to Ireland and then to the US, where she is now instrumental in developing a global IP strategy for one of the world's fastest-growing wearable brands.

Over the past decade, Oura has made its mark at the intersection of health technology and fashion, combining scientific innovation with chic design.

It is a model that is clearly working. Oura Ring launched in 2015 and generated \$130 million in revenue in 2022, with one million smart rings sold. Nearly ten years on, the company reported more than \$500 million in revenue in 2024, more than doubling the previous year's income.

Oura is now valued at \$11 billion, following a \$900 million funding round this year.

TAKEAWAYS

- IP strategy has been critical for brand's success
- Espada works closely with regulatory counsel
- TM portfolio management key part of role

So what is behind this meteoric success? In terms of its offering, the flagship Oura Ring continuously monitors biometrics such as heart rate variability, sleep stages, temperature trends and stress, providing users with insights via its Oura app. Premium finishes—including ceramic variants and a Gucci collaboration—anchor the brand firmly within the style-conscious luxury space.

'A great win'

In recent years, Oura has vigorously defended its IP, successfully winning a landmark case at the US International Trade Commission (ITC) against India-based rival Ultrahuman and Chinese company Ringconn.

Oura's successes, notes Espada, have been largely on the patent side to date. The ITC win, she says, is a crucial precedent.

"It really sets the groundwork, showing that we are investing heavily in our research, development, and patents. It was a great win, and I hope it will pave the way for other cases."

While trademark enforcement has historically been lighter compared with patents, Espada suggests this could soon change.

"On the trademark side, we have

not been particularly aggressive over the years, mainly because we lacked the resources to pursue different brands," she explains.

"Instead, we have focused on trademark opposition and cancellation actions to block potentially conflicting brands, particularly in the US market. That strategy has worked well, and the Oura brand gained significant recognition in the US market."

That said, she is "definitely keeping an eye on potential infringement" of the brand's trademarks.

"In the US market, things look good, but as we expand internationally, we may need to adjust our strategy.

"This could involve targeting markets where our trademarks are being infringed, or where other trademarks are too similar in pronunciation or overall impression, and potentially taking action there."

Fashion, fate and IP

For Espada, it was a twist of fate and a passion for fashion that eventually led her to a career in IP and to Oura.

Initially guided towards political science, the competitiveness of French admissions diverted her into



My role is very much about supporting international expansion, making sure that when we enter new markets, our brands are protected and protectable.

law—a redirection that ultimately opened the door to IP.

It was during a period of study in Ireland that everything “clicked” and she “fell in love with IP law”.

Her journey then took her to the US and her first role at a boutique IP firm. But a career in-house had always been her ambition.

Getting creative

Her ambition to move in-house was first realised at Lincare, a US medical device company, where she broadened her experience while keeping IP as a focus.

However, a love for fashion never waned. She studied a course at the Fashion Law Institute at the Fordham School of Law before joining US women’s clothing and accessories retailer Chico’s FAS and then Knitwell Group, one of the largest specialty apparel companies in the US.

After gaining experience in medical devices and fashion retail, her next role offered a natural home for her hybrid expertise.

“I made the move to Oura, which aligns with both my medical device and fashion experience. Oura is a healthcare tech company; it is not a medical device company, but who knows what the future holds?”

She is also visibly excited about the brand’s October 2025 launch

of Oura Ring 4 Ceramic, a smart ring available in four different colours—further appealing to style-conscious consumers.

“With our latest collection, released in October, we are moving further into the fashion space,” she says. “We have had collaborations before, like the limited-edition ring with Gucci, but now, with our colourful ring, we are combining technology with fashion and targeting a younger generation that cares about that. It is an exciting direction.”

First the US, then the world

The legal team at Oura includes a patent agent in Finland, who works closely with developers, technology, and science teams, and a US-based patent and litigation counsel.

With the company’s rapid growth and international expansion, a new role was created. Cue the arrival of Espada, who joined Oura in April 2025 with a focus on trademarks, copyrights, trade secrets—and marketing.

At Oura, Espada’s remit is global and fast-paced, emphasising the growth of its increasingly valuable portfolio.

After launching in Finland, Oura set its sights on the US as its first target market, and is now looking eastwards and beyond.

“We are now growing across Europe, entering the Asian market, and launching in Australia,” explains Espada. “My role is very much about supporting international expansion, making sure that when we enter new markets, our brands are protected and protectable.”

Trademark portfolio management and international disputes occupy a large chunk of her workload.

“I would say at least 50% of my time is spent juggling new clearance searches, managing our current applications and registrations, and handling opposition or cancellation actions in different countries.”

Espada is also increasingly mindful of regulatory requirements.

“Since we are at the juncture between healthcare and technology, we need to be very careful about how we communicate and the claims we make. We recently welcomed a regulatory counsel, so I work closely with them to ensure that what I review from a marketing standpoint also aligns with regulatory requirements. This takes about 20–30% of my time.”

Another part of her role is proactively reviewing brand materials, ensuring that websites are in line with the current IP strategy, and providing brand usage guidelines and advice to different teams across the company. This probably takes up about 10% of her time.

Using AI

Artificial intelligence is also a major focus.

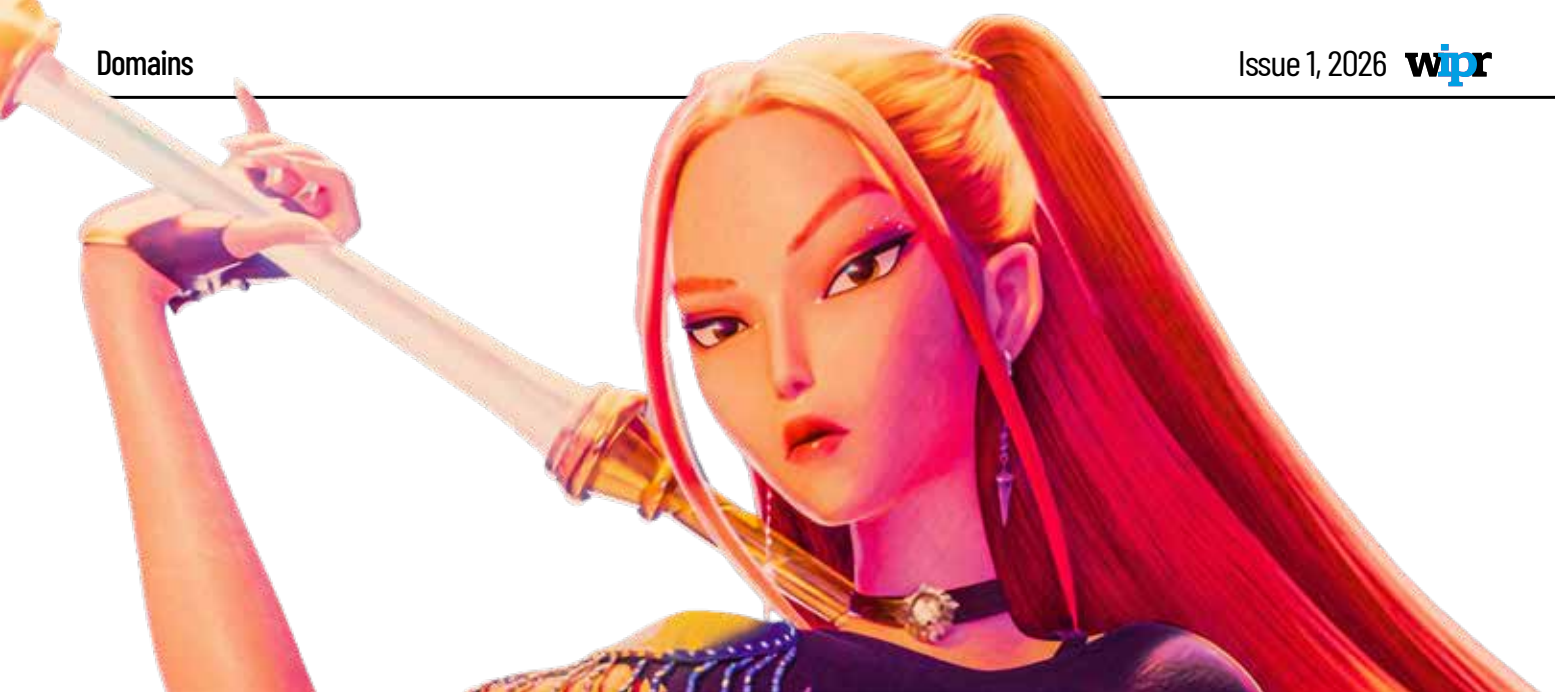
Explains Espada: “We are at the forefront of exploring different AI tools, even creating our own tools, which has been both challenging and exciting. Using these tools also helps us monitor the market and identify potential infringers, which has been keeping us busy.”

She concedes that keeping up with the pace remains a challenge, and the infringement risks currently outweigh the advantages offered by the brand’s AI tools. Nonetheless, she strikes an optimistic note.

“The tools are improving, and we are working closely with our vendors to help them better understand our expectations regarding detection, action, and automated processes.”

In the future, she sees both opportunity and pressure. With Oura doubling sales and valuation, Espada stresses the need for discipline as the brand matures.

“We are not a new startup anymore,” she notes. “Growth is both exciting and challenging. The IP strategy has proven key for Oura’s success and will continue to be critical going forward.” **ip**



GWONNA BE GOLDEN: KPOP DEMON HUNTERS SLAYS THE IP RULEBOOK

Netflix's mega-hit has proved how global streaming can establish trademark reputation and goodwill in days rather than years, finds **Muireann Bolger**.

With record streaming figures, a chart-topping soundtrack and a pair of Academy Award wins under its belt, animated film *KPop Demon Hunters* is a phenomenon.

The same appears to be true of the South Korean blockbuster's IP.

Netflix released the film in June 2025, in partnership with Sony Pictures. It quickly became the platform's most-watched film ever, racking up more than 236 million views worldwide.

But there was a problem: Netflix did not pre-register the exact domain name *KPopDemonHunters.com* before release.

Just three days after the movie premiered, a private individual in Germany registered an identical

domain—grabbing the most obvious URL users would type when searching for the movie online.

Netflix filed a complaint under the Uniform Domain Name Dispute Resolution Policy (UDRP) with the World Intellectual Property Organization (WIPO), citing “confusing similarity”.

A WIPO panel kicked off the new year by ruling in the streaming giant's favour, delivering the game-changing decision that the film had secured a very high level of fame in a matter of days.

What makes the decision especially notable is that it reflects an acceleration in how trademark reputation and fame can be assessed today.

Nathan Smith, partner at Katten Muchin Rosenman, tells *WIPR* that

TAKEAWAYS

- Rapid success can establish protectability
- Highly distinctive title helped Netflix win
- WIPO panel applied the ‘passive holding doctrine’

the decision is “significant” for entertainment IP owners.

“In ordering its transfer to Netflix, the panel accepted that the title had already acquired sufficient source-identifying character within those three days.

“It reflects an understanding that, in today's content landscape, distinctiveness and goodwill can emerge almost instantaneously on a global scale,” he says.

A new script for entertainment IP?

This potentially rewrites the IP playbook for entertainment brands—at least in practice. Until now, it had been relatively rare to see a decision like this, as similar rulings usually stemmed from litigation involving established brands.

That was because ‘fame’ was traditionally seen as something that accumulated slowly, through sustained commercial use, long-running advertising campaigns and repeated consumer exposure over time.

As a result, film titles and franchise names often remained in limbo until sequels or extended commercial exploitation established their long-term recognition. Not anymore, it seems.

Alvin Lin, partner at Morrison Cohen, points out that the important aspect of this decision is that the panel “credited the rapid fame and success of the film” to allow Netflix to prevail.

“This is not so much a shift or change in the law as it is a validation that more immediate

cultural success can meet the legal requirements to establish protectability.”

Monica Riva Talley, director at Sterne Kessler, agrees this decision marks an evolution of how trademark rights are acquired in the entertainment space, rather than a wholesale change.

She explains: “While this opinion does not alter the traditional understanding of how common law trademark rights arise for film and franchise titles and related merchandise, it is an example of just how quickly that can occur for very popular entertainment titles.”

Importantly, the WIPO-appointed panellist ordered that the disputed domain KPopDemonHunters.com be transferred to Netflix, after finding the domain was used in bad faith and that Netflix had established common law rights in the mark—despite not having registered it at the time the domain was acquired.

According to Smith, this underscores a key, and welcome, takeaway for brand owners. “While trademark registration remains an important asset, this case confirms that it is not a prerequisite for bringing a successful UDRP complaint.”

He explains: “Where market evidence shows that consumers already associate a title with a particular studio or streaming platform, unregistered rights may be established within days or weeks of release, notwithstanding the absence of a registered trademark.”

A recipe for success

For context, *KPop Demon Hunters* is a film about a trio of female pop idols, Rumi, Mira and Zoey, who secretly inhabit a supernatural world where they combat demons.

It’s a striking example of how a modern entertainment brand can move from concept to global cultural phenomenon with extraordinary speed.

The film fuses two notable cultural influences. On one hand, there’s K-pop, a South Korean music and visual culture that has achieved global appeal. On the other is an



While trademark registration remains an important asset, this case confirms that it is not a prerequisite for bringing a successful UDRP complaint.

Nathan Smith,
Katten Muchin
Rosenman

The film’s soundtrack broke records by being the first to place four songs simultaneously in the Billboard Hot 100 Top 10.



ancient narrative tradition drawn from Korean myths and folklore.

Symbolic colours and stylised masks evoke traditional imagery within a modern, animated universe. Meanwhile, the use of choreography and song as tools against the antagonists/ demons mirrors the ancient idea that rhythm, sound, and spectacle can influence the spiritual realm.

Music is pivotal to the film’s success. The soundtrack broke records by placing four songs simultaneously in the Billboard Hot 100 Top 10—a first for any soundtrack. Among the biggest hits were *Golden*, *Your Idol*, *Soda Pop* and *How It’s Done*.

Meanwhile, merchandising and a spate of social media memes struck an immediate chord with an unusually broad audience ranging from young children and teenagers to adults.

One viral moment underscored its cross-cultural global appeal. After winning his quarterfinal match at the 2025 US Open in August, Serbian tennis champion Novak Djokovic surprised fans by doing a celebratory dance on court inspired by the choreography to *Soda Pop*—one of the songs performed by the film’s demonic boy band Saja Boys.

He later explained that his dance was a playful tribute to his daughter, who had taught him the moves at home, and that he hoped it would make her birthday “extra special”.

Time and use no longer key

The WIPO panel took note of this level of consumer recognition in its decision, delivering a key message: time is no longer the primary measure of significance.

The case, suggests Smith, shows that such panels seem “increasingly prepared to accept viral exposure and global streaming metrics” as evidence of use and recognition, which “aligns with today’s commercial realities where audience awareness can be created almost instantly”.

The finding of common law trademark rights prior to registration is particularly significant.

Under common law, a film title is protected only if the public comes to associate that title with a specific film or producer, not just the movie itself. This kind of recognition—called secondary meaning—usually develops through widespread release, marketing, and public familiarity.

Lin notes: “Here, the success of the film was so rapid that the panel was able to credit that and establish secondary meaning in a relatively short time frame.”

What’s more, the panel concluded bad faith based on several factors: the domain was registered shortly after the film’s release, the mark’s extreme distinctiveness, and the respondent’s failure to respond to proceedings.

Notably, the panel applied the ‘passive holding doctrine’, holding that even completely inactive use of a domain can still constitute bad faith use under certain circumstances.

The timing was particularly damning—registering the domain just three days after the film’s release suggested the respondent was specifically targeting Netflix’s new property, likely with intentions to sell it to Netflix at an inflated price (cybersquatting); use it for phishing or fraud in the future; or prevent Netflix from obtaining the natural domain for its own property.

This decision reinforces that trademark owners can successfully challenge domain registrations even when the domain squatter hasn’t yet activated a website or undertaken obvious infringement.

As Smith explains, it highlights the UDRP’s flexible approach in addressing domain name registrations that appear “calculated” to take advantage of pre-launch buzz.

“By focusing on whether the name functioned as a source identifier at the time of its launch, the panel was able to address conduct that might otherwise evade scrutiny—it would not be surprising to see this approach applied more frequently.” 

A NEW RELATIONSHIP WITH IN-HOUSE

Members of the inaugural *WIPR* Global In-House Elite find that strong business partnerships, curiosity, and trust are driving the value they offer, reports **Baron Armah-Kwantreng**, *WIPR* Rankings editor.



This year's launch of the *WIPR* Global In-House Elite marks a deliberate outreach to the in-house counsel community, turning the spotlight around from private practice onto IP leaders within corporations.

For years, in-house counsel have been referees for ranking their private practice colleagues. But by researching the world's best in-house IP counsel, *WIPR* is showcasing the wealth of talent among the in-house community itself.

Subscribers to *WIPR* will have noticed an increase in in-house content over the last year.

Says Tom Phillips, group editor of *WIPR* and *LSIPR*: In-house lawyers are "experts in the art of wielding 'it depends' in reply to demands from department heads—or even the CEO—while admirably trying to keep the brand on the right side of the law. This is a role that asks many things of those who choose to go 'in-house'.

"We have a long history of reporting on the skills, successes and concerns of this community.

We are now looking for the most respected global players in the game."

Attendees at *WIPR* events will be used to marquee in-house names chairing topical panels and being fellow guests at LSPN Spring in Boston and at *WIPR* Summit in Chicago, among other events.

Members of the inaugural Global In-House Elite shared their perspectives on the project, their roles, and their changing relationship with internal and external colleagues.

***WIPR*: What do you believe are the main challenges to managing IP at a large and diverse company?**

Alexandre Gauthier, director of intellectual property, patent agent, Soucy

One of the main challenges comes from the decentralised structure of the Soucy Group, where each of the 13 business units is independent and autonomous. In addition to collaborating to design, manufacture, and assemble the various components of our track systems, which are recognised as among the highest performing in the industry, each unit has its own

business model, expertise, and proprietary products.

In this context, I feel like I'm serving several companies and clients from the same position, which is motivating and diverse, but also presents its share of challenges when it comes to orchestrating everyone to develop a culture of innovation aligned with best practices in IP asset management to support our business goals and maximise our commercial value. This is my mission, and it requires daily motivation, dedication, and perseverance.

John Zevitas, vice president of group & managing legal counsel, T. Price Rowe

At a large and diverse organisation like T. Rowe Price, one of the central challenges in managing intellectual property is ensuring that innovation is identified and captured as it occurs.

We leverage technology and data to generate meaningful insights and value for clients, which naturally gives rise to valuable intellectual property across the enterprise. The challenge lies

TAKEAWAYS

- *WIPR* showcasing in-house talent
- 'Transparent communication' is crucial
- List will 'foster connections between members'



not only in having the right tools and protections in place, but in integrating IP “by design” into day-to-day business processes.

While formal policies and governance provide an important foundation, effective IP management is ultimately driven by strong business partnerships, education, and alignment. My team is fortunate to work with engaged business leaders who understand the role intellectual property plays in protecting innovation and enabling long-term value creation.

WIPR: What has been the focus of your work as an in-house counsel?
Nicola Borthwick, director global IP enforcement, Sony Interactive Entertainment

I set up a China enforcement programme focused on strategic litigation design and validation at another global company before my current role. I then joined Sony, where the new general counsel Stephanie Burns had a strategy to globalise IP enforcement.

Drawing on my previous experience, for three years I worked with two previous heads of IP enforcement and I am now



An effective in-house IP team must operate in dual roles: as trusted legal advisors and as strategic business partners.

John Zevitas,
T. Price Rowe

the head of IP enforcement. As part of that journey I brought on board anti-counterfeiting activities at source in China. Not just raids, but rolling out strategic litigation design and validations, the whole package, including finding sources.

This meant finding and building a working relationship with reliable external counsel. Counsel who are comfortable with me going through every bit of the process with them; who are happy to engage in debate and be challenged and be pushed; and who will come back in a way that makes us all better lawyers.

WIPR: What is key to maintaining positive liaison for the in-house IP team with your business colleagues and with external legal counsel?

Gauthier: Being in-house comes with the role of liaison between the company’s technical and management teams and the external specialists we work with.

In the first case, it’s important to listen to needs, be available, and understand the issues at stake. Since IP is generally a little-known field, it’s necessary to take the time to explain, simplify, and illustrate the various concepts involved to ensure that stakeholders have all the information they need to make informed decisions.

In the second case, transparent communication is crucial. As a representative of Soucy’s interests, I want clear and objective opinions from the specialists we consult.

In both cases, a key common element is trust. This is truly what ensures a lasting and effective collaboration.

Zevitas: An effective in-house IP team must operate in dual roles: as trusted legal advisors and as strategic business partners. Maintaining strong, positive relationships—with both business colleagues and external counsel—depends on sustained intellectual curiosity and a genuine commitment to understanding the industry, the business, and its evolving priorities.

By engaging proactively rather than reactively, we are better positioned to anticipate questions, align expectations, and integrate IP considerations seamlessly into decision-making. This approach not only builds credibility and trust, but also drives greater efficiency and better outcomes for the organisation as a whole.

WIPR: How can WIPR best maintain and develop the business relevance of the Global In-House Elite list in future years?

Gauthier: I believe that publishing the list is already a fantastic initiative to promote in-house practice and highlight the work practitioners do. It seems to me that the list will also foster connections among us, in-house professionals, and highlight the added value of having an in-house team for companies hesitant to make the leap as well.

In this sense, I think any initiative aimed at encouraging the sharing of advice or opinions from the nominees, like this article, would be welcome.

Zevitas: To maintain and strengthen the business relevance of the list, it is important to continue shifting the narrative around intellectual property from a purely defensive or administrative function to a strategic business enabler.

Organisations increasingly benefit when they invest in proactive, commercially-minded IP teams that help advance core business priorities rather than simply manage portfolios.

By highlighting concrete examples where in-house IP leaders drive value—through innovation, risk anticipation, and business partnership—WIPR can underscore the evolving role of intellectual property within the enterprise and further enhance the relevance and impact of the Global In-House Elite recognition in future years. **ip**

Visit the list at: worldipreview.com/global-in-house-elite-2026

'ALRIGHT, ALRIGHT, ALRIGHT': WILL HOLLYWOOD'S A-LIST FOLLOW MCCONAUGHEY'S TRADEMARK LEAD?

As AI makes celebrity imitation effortless, Hollywood star Matthew McConaughey's decision to trademark a catchphrase is a creative, if untested, move, finds **Muireann Bolger**.



Actor Matthew McConaughey is no stranger to new directions. After stepping away from lucrative, yet limiting, leading roles in romantic comedies, he embraced darker, riskier performances—a shift culminating in an Oscar for *Dallas Buyers Club* in 2014 and his so-called 'McConaissance'.

Now he's defying expectations yet again, by using trademarks to safeguard his career and legacy. And artificial intelligence (AI) is the driver.

From catchphrase to sound mark

McConaughey has trademarked his signature catchphrase, "Alright, alright, alright," first seen in the cult 1993 film *Dazed and Confused*, as a sound mark.

This includes the specific pitch details that describe how he says it, meaning that the trademark covers the actual audio of the phrase as spoken by McConaughey, not just the words on their own.

It's not completely novel, however. As Mark Bartholomew, professor of law, State University of New York at Buffalo, tells *WIPR*:

"Celebrities already have significant legal protections against unauthorised impersonations, even without trademark registration.

State right of publicity laws protect against commercial use of identifiable aspects of someone's persona."

He points to *Carson v Here's Johnny Portable Toilets* (1983), a classic precedent in celebrity rights, often cited in discussions about catchphrases, trademarks, and the right of publicity.

Explains Bartholomew: "Consider the 'Here's Johnny' case I teach in my trademarks course: when a portable toilet company used Johnny Carson's catchphrase without permission.

"Carson won—and his estate continues to block unauthorised commercial uses decades after his death. In the US, celebrities also possess common law trademark rights in their identifiers, regardless of federal registration."

However, McConaughey's move is widely held to be the first time an actor has used trademark law specifically to protect their voice, likeness and catchphrase against unauthorised AI deepfakes and simulations.

The actor and his legal team say the registration means that if someone digitally replicates this trio in AI-generated media without approval, he can potentially sue them in federal court.

NO FAKES Act

But given existing US rights of publicity laws, why exactly is McConaughey doing it? And could it become widespread in the entertainment industry?

Frank D'Angelo, partner at Loeb & Loeb, believes the action "reflects a growing concern in the industry about the inadequacy of existing legal tools" to protect against unauthorised AI-generated uses of one's image and likeness.

For months, the entertainment industry looked to the promise of the NO FAKES Act (the Nurture Originals, Foster Art, and Keep Entertainment Safe Act), a proposed federal law designed to address the growing problem of AI-generated deepfakes and digital replicas.

In theory, it would create a uniform federal 'digital replica right', allowing individuals to sue creators or distributors of unauthorised AI-generated representations.

However, the Act has not yet been enacted, leaving creators to rely on an unsatisfactory patchwork of inconsistent state laws.

Dyan Finguerra-DuCharme, partner at Pryor Cashman, explains why this leaves many in limbo.

"While there are various bills pending, there is no single, comprehensive federal statute

TAKEAWAYS

- Actor using TM law as AI shield
- 'Trademark overreach' concerns
- Push for NO FAKES Act as solution

specifically for name, image and likeness (NIL) rights. Instead, protections come from a mix of federal and state laws, and common law principles.”

In her view, securing federal registration of McConaughey’s mark offers “a smart way” to address the existing limitations and directly safeguard these types of rights at the national level.

“McConaughey is protecting his personal brand and gaining legal grounds to address unauthorised AI-generated content that imitates him (without compensation) and/or harms his reputation.”

A ‘creative’ solution?

Preetha Chakrabarti, partner at Crowell & Moring, agrees, predicting that other celebrities will likely emulate this “interesting move” due to the lack of streamlined rights across the US:

“AI is now the new frontier, and we’ll need to be creative with the law to protect IP rights. That’s what McConaughey’s attorneys are doing. Trademark rights are a creative way to address worries about others misusing your likeness,” she says.

After all, the actor is far from the first to express concern about AI’s potential.

In 2024, Scarlett Johansson complained that a ChatGPT voice called ‘Sky’ sounded uncannily like her own.

In response to the broader challenge posed by AI replication of performers’ voices, actors’ union SAG-AFTRA started negotiating contracts and licensing frameworks allowing members to grant explicit permission for the use of digital replicas of their voices.

Chakrabarti suggests that McConaughey’s pre-emptive action has, potentially, set a new trend.

“It’s an interesting move he’s taken on this trademark front, and one I’m certain other celebrities—especially those who have well-known catchphrases or character personas from certain works—will look to avail themselves of.”

Bartholomew argues that there are practical advantages to this playbook as well.

“First, federal registration provides public notice that may deter would-be appropriators from risking litigation. Second, pointing to an official trademark in a cease-and-desist letter is often intimidating enough to shut down unauthorised uses without ever going to court.”

Enforcement is the challenge

On the other hand, McConaughey and others could find that actually enforcing such trademarks is far from easy.

D’Angelo, for one, cautions that trademark law has clear limits.

“Because the Lanham Act primarily targets commercial uses that create consumer confusion, it likely does not prohibit non-commercial uses of image and likeness and therefore likely would not offer protection against the majority of deepfakes, memes, and other non-commercial AI content circulating online,” he explains.

This approach also imposes ongoing obligations on the trademark owner, such as policing unauthorised uses and maintaining continuous commercial use of the marks.

“For these reasons, we may not see widespread adoption of this strategy by others,” reflects D’Angelo.

Rebecca Tushnet, professor of law at Harvard University, is underwhelmed at the move, arguing that “it changes very little”.

“Trademark infringement generally requires commercial exploitation (broadly defined). Enforcement is, as always, the challenge.”

For Bartholomew, the big concern is “trademark overreach”.

He explains: “Trademark law exists to prevent consumer confusion in the marketplace—protecting buyers from mistakenly thinking a product comes from a source it doesn’t. It is not designed to give celebrities absolute control



McConaughey is protecting his personal brand and gaining legal grounds to address unauthorised AI-generated content that imitates him (without compensation) and/or harms his reputation.

Dyan Finguerra-DuCharme,
Pryor Cashman

over every invocation of their identity.”

Acknowledging that the impulse to “assert strong IP protection over one’s persona is understandable”, he emphasises that trademark rights should remain “narrowly focused” on actual marketplace confusion.

“If someone uses ‘Alright, alright, alright’ or creates an AI McConaughey voice for a commercial product in a way that deceives consumers about his endorsement, that falls squarely within a trademark’s legitimate scope.

“However, stretching it further to block parody, commentary or non-commercial uses risks transforming the trademark into something it was never meant to be: a general right to control one’s public image in all contexts.”

‘We need the NO FAKES Act’

Ultimately, many see trademarks as a useful addition to an arsenal of rights against AI, but far from a silver bullet.

Chakrabarti points out: “I can imagine the validity of these types of trademarks being ripe for challenge. That said, the challenge would have to be in court, and that’s what a federal trademark registration gets you—a ticket into federal court. So, big picture, it’s certainly a deterrent, to have a robust IP portfolio to go assert in court.”

Similarly, an SAG-AFTRA spokesperson welcomed the development, but emphasised that all eyes should still be on legislation to provide a more comprehensive weapon.

The spokesperson told *WIPR*: “Enactment of the NO FAKES Act would give McConaughey the remedies needed to combat unauthorised replication of his voice and likeness. He may be able to use a trademark due to his incredibly high profile, and his use of his brand in commerce, but trademark law is not a solution available to most.

“We need the NO FAKES Act.” **ip**

WHY MARS IS USING BEHAVIOURAL PSYCHOLOGY TO HELP TACKLE LOOKALIKES

From consumer behaviour to trade dress enforcement, brand owners are refining their approach to lookalike products, according to Mars' IP counsel. **Muireann Bolger** reports.



Brands are “fighting to stay relevant” in the era of lookalikes, according to Mars senior IP counsel Bence Bozóki.

Speaking to a packed room at the UK’s Chartered Institute of Trademarks (CITMA) annual spring conference, he explored the growing impact of lookalikes on brand owners—a specific type of private label or own-brand product designed to closely mimic the packaging and branding of leading brands.

Tackling this threat demands a greater understanding of how lookalikes can harm consumers and how behavioural psychology works, he urged.

One of the world’s largest privately owned companies, Mars is known worldwide for its confectionery, pet care, and food brands.

But beyond selling chocolate, Mars has played an influential role in shaping modern branding and marketing over the course of its 114-year history.

It is particularly renowned for its ‘house of brands’ approach,

where individual products operate with distinct identities rather than being overshadowed by the parent company.

Brands such as Snickers, Pedigree and Whiskas each have their own tone, audience, and positioning, even though they belong to the same company.

However, this approach means that the rise of lookalikes poses a critical challenge to Mars, because so much of its success depends on strong brand recognition.

Harm to brands and consumers

Aside from being a major headache for the company, lookalikes are also detrimental to consumers, emphasised Bozóki.

“Much of the legal discussion focuses on harm to the brand rather than harm to the consumer, but we should not lose sight of that,” he told the London audience.

“Lookalikes create false expectations and a form of ‘attribute deception’ that is not necessarily related to confusion about origin. In the long term, there is a well-evidenced risk

that lookalikes discourage innovation, and that ultimately harms consumers as much as brand owners.”

Mars, he added, deals with between 500 and 1,000 trademark disputes at any given time, a large proportion of which are driven by lookalikes.

Providing a snapshot of the status quo, he described the scale of the private label challenge as “significant”, noting that these brands held a 39% market share in Europe in 2024.

According to a study carried out across the EU and US, 54% of respondents said they primarily or exclusively buy private label products across all categories.

A further 33% said they buy equal proportions of branded and private label goods, while only 13% said they hardly ever or never buy private labels.

“In a nutshell, what we are seeing is high penetration of private label products, particularly in Europe, and in categories with low emotional engagement—commodities like sugar and salt

TAKEAWAYS

- Lookalikes pose critical challenge to Mars
- Consumers focus on visual cues over words
- Registering full trade dress led to ‘huge success’

A HAIR-CURLING PATENT DISPUTE

A case brought by Dyson will decide how far the UPC's 'long-arm' jurisdiction can reach—with a far-reaching impact on businesses, finds **Sarah Speight**.

What began as a dispute over a hair curling patent now raises a procedural question at Europe's highest court that will determine the jurisdictional reach of the Unified Patent Court (UPC).

On March 6, 2025, the UPC's Court of Appeal (CoA) made its first-ever referral of a case to the Court of Justice of the European Union (CJEU)—*Dyson Technology v Dreame International (Hong Kong)*.

In this pivotal move, the CoA has asked Europe's highest court to decide whether the UPC has jurisdiction in the EU when considering claims involving defendants outside the EU, and alleged infringement occurring in EU member states that have not joined the UPC.

And the final decision could reshape European patent litigation.

A cross-border set of parties

To understand the case, it's essential to note a few key facts. There are four defendants in

the case: Dreame International based in Hong Kong, and its three European distributors: Teqphone and Eurep, both in Germany; and affiliate Dreame Technology, in Sweden.

British tech firm Dyson (whose corporate headquarters are now in Singapore) moved to defend its European Patent (3119235 B1), which was granted in April 2025 and covers the 18 UPC member states and Spain—notably, an EU country but not a member of the UPC.

Targeting the 'airwrap' attachment component of Dreame's products, Dyson sued Dreame at the UPC's Hamburg Local Division (LD) in May 2025, alleging infringement of its patent and seeking to block sales of Dreame's hair stylers online and in stores.

The Hamburg LD subsequently issued its decision in August 2025, extending the UPC's 'long-arm jurisdiction' even further after *BSH Hausgeräte v Electrolux* (February 2025) and *Fujifilm v Kodak* (January 2025).

The court granted the requested preliminary injunction (PI) against Dreame in all 18 UPC member states as well as Spain—the court's first PI in that country.

The 'anchor defendant'

It was also the UPC's first PI based on an 'anchor defendant'—namely, Eurep, the distributor based in Germany. This enabled the court to apply the injunction against a non-EU entity in member states as well as Spain.

In its March 6 decision, in addition to the referral, the CoA extended the scope of the PI to cover additional, more up-to-date Dreame products within the UPC territory.

The situation now presents key considerations for non-EU domiciled businesses with operations in the EU, regardless of whether they are UPC members or not and the focus has, at least for now, moved beyond the patent dispute itself.

Crucially, the CoA has asked the CJEU to consider four questions

TAKEAWAYS

- Case is UPC's first CJEU referral
- Cross-border judicial reach is key
- 'Rapidly evolving' area of law

regarding: long-arm jurisdiction; the role of authorised representatives as anchor defendants (according to Article 8(1) Brussels I bis regulation); and whether authorised representatives are 'intermediaries' subject to injunctions.

The referral primarily seeks to determine whether the UPC can exercise jurisdiction over non-EU entities (Dreame HK) for infringements in non-UPC states (Spain) by using a German authorised representative (Eurep) as a 'hook'.

Opening jurisdictional doors

But, asks Thomas Prock, a partner at Marks & Clerk: "Why would the UPC have jurisdiction over a country that's not signed up to the UPC? That's a fairly serious issue, isn't it?"

The reason, he continues, is that Eurep is domiciled in Germany, a UPC member state, so long-arm jurisdiction would apply to it outright. "That opens the door for jurisdiction in Spain."

The question is: "Does the UPC have jurisdiction over whatever Dreame does in Spain?" As Dreame is not domiciled in a UPC member state, *BSH Hausgeräte* "doesn't apply, as the condition for long-arm jurisdiction to apply—to be domiciled in a UPC member state—is not fulfilled," Prock tells *WIPR*.

"The hurdle now is the fact that Dreame is collaborating with Eurep. Is it then possible, because long-arm jurisdiction applies to Eurep, to also apply it to Dreame, given that they've been sued together in the same action?"

Clarification 'welcome'

Michael Nielsen, a partner, UK and European patent attorney and UPC representative at EIP, points out that "there is still quite a bit of uncertainty about the extent of the UPC's long-arm jurisdiction, as the existing case law is not entirely consistent and has been developed primarily by the Court of First Instance.

"Any clarification on the topic from the Court of Appeal or the



Why would the UPC have jurisdiction over a country that's not signed up to the UPC?

Thomas Prock,
Marks & Clerk



Determining whether an authorised representative can act as an anchor defendant is a crucial issue for manufacturers operating within the EU.

Mark Marfé,
Pinsent Masons

CJEU is welcome." Prock, however, makes the point that the EU "is keen to make sure that the judgments that come out of the various courts in the EU are non-contradictory. That's one of the reasons why the UPC exists in the first place."

Mark Marfé, partner and UPC representative at Pinsent Masons, notes the *Adobe v Keex* appeal decision concerning Article 7 of the Recast Brussels Regulation, which establishes that there is a clear limit to the long arm of the UPC—particularly when there is no defendant located within UPC territory.

The CoA's referral of *Dyson v Dreame*, together with *Adobe v Keex*, "highlights a rapidly evolving area of law that should be factored into strategic business planning—including what proactive steps can be taken to mitigate litigation risk," he says.

"Determining whether an authorised representative can act as an anchor defendant is a crucial issue for manufacturers operating within the EU."

Redefining the 'intermediary'

Meanwhile, the concept of the 'intermediary' is already interpreted quite broadly, adds Marfé.

"The CJEU has already clarified that, for an economic operator to fall within the IP Enforcement Directive concept of an 'intermediary', that operator must provide a service capable of being used by one or more other persons to infringe," he tells *WIPR*.

"It is irrelevant if there is a specific contractual relationship in place between the operator and the third parties or if the services are provided online or in the physical world."

He adds: "Businesses need certainty on how best to organise and manage their activities. Until now, the notion of an 'intermediary' has largely been applied to service providers—such as logistics companies—that facilitate a third party's infringing acts.

"The CJEU must now consider whether this concept should

also apply to providers of legal compliance services who, in practice, have no real ability to control the alleged infringement."

He adds: "My sense is that the CJEU will say that an authorised representative can be considered an anchor defendant but only where the alleged infringer and an alleged intermediary are in a sufficiently similar legal/factual situation to create a risk of irreconcilable judgments (which Article 8 seeks to avoid for expediency reasons)."

Business considerations

In the name of consistency and clarity, then, how much could the CJEU's eventual decision impact how and where companies do business?

Nielsen suggests that if the CJEU answers the first question—regarding long-arm jurisdiction—"in the affirmative, this will open the door for many other kinds of intermediaries, such as online service providers and platforms, to be used as intermediary anchor defendants.

"This may lead to more potential intermediaries being named as defendants, while giving claimants more options to expand the territorial scope of actions before the UPC. However, it seems unlikely that this will have a major impact on where companies do business."

In a decision from the Mannheim Lower Division (*Fujifilm v Kodak*, UPC_CFI_365/2023, 30 January 2026), the court highlighted that the question of the UPC's jurisdiction to hear a dispute is different to the question of whether the UPC's decision is enforceable, adds Nielsen.

"This will vary from country to country based on the existence or non-existence of agreements or treaties on the recognition of decisions, so even if this results in new options to expand the scope of the UPC's jurisdiction, claimants will still need to think carefully about how useful that is in their specific circumstances." **ip**

A NEW PATH FOR BRAND PROTECTION IN CHINA

With the country's latest trademark law revision coming into force this year, **Hu Gang** of China Patent Agent (HK) explains the direction of the amendment and what it will mean in practice.

In December 2025, the Draft Amendment to the Trademark Law of the People's Republic of China was officially published and open for public consultation. It is anticipated that the revised draft will be passed and implemented in 2026.

After streamlining and consolidation, the revised draft comprises 84 articles, of which 11 are new. The core objectives of this amendment are to strengthen trademark protection, optimise the trademark management system, and curb malicious trademark registration.

Additionally, the draft expands the types of objects eligible for trademark registration and contains amendments that address practical needs in the field, such as regulating trademark usage; strengthening the protection of well-known trademarks; prohibiting the abuse of trademark rights; and improving the supervision of the trademark agency industry.

TAKEAWAYS

- Draft contains 11 new articles
- Focuses include trademark squatting
- Examination process efficiencies

This article interprets the core changes that have a significant impact on trademark practice, clarifying the direction of the amendment and the key points for practical response.

Tackling malicious applications

Article 18 of the revised draft stipulates: "Trademark applications that are not intended for use and clearly exceed normal production and operation needs shall not be registered."

This provision has been incorporated into the newly added Chapter 2, 'Conditions for Trademark Registration'. This adjustment constitutes a key change—it shifts the burden of proof from rights holders in subsequent invalidation procedures to the Trademark Office, which will proactively review the matter during the registration examination stage. This institutional design will further curb the behaviour of trademark squatters who hoard

trademarks and occupy public trademark resources.

Meanwhile, Article 53 of the revised draft imposes administrative penalties for malicious applications, with a maximum fine of RMB 100,000 (\$14,500). This amount exceeds the resale profits that most malicious registrants earn from selling trademarks to genuine rights holders in practice, rendering most malicious registration activities high risk and low return.

It should be noted that the revised draft clearly defines "malicious" filings as those that "significantly exceed normal production and operation needs". Based on this wording, the compliance threshold for enterprises engaging in defensive trademark applications has been raised. Enterprises must therefore align trademark application strategies with their business expansion plans, strictly following compliance requirements when



IMAGE: SHUTTERSTOCK.COM / BCDSTOCK

applying for batches of trademarks, and ensuring that such filings correspond to their actual production and operation needs.

Regulating 'scheming trademarks'

Article 56, Paragraph 1 of the revised draft introduces administrative regulatory measures against "using registered trademarks in a way that misleads the public". For the first time, it designates "misleading trademark usage" as a direct regulatory target at the trademark law level and establishes a three-tier punishment system, including correction within a time limit, fines, and revocation of registered trademarks in severe cases. This amendment is an institutional response to the issue of "scheming trademarks", addressing misconduct in trademark usage.

In practice, such trademarks are not inherently deceptive by law. Instead, rights holders exploit the interaction between trademarks and their usage scenarios, utilising



The revised draft clearly defines 'malicious' filings as those that 'significantly exceed normal production and operation needs'.

the structural characteristics of Chinese to disassemble trademark words, or through exaggerated descriptions, vague labelling, and other means, to transform trademarks into textual traps that mislead consumers.

The amendment to the law establishes rules for the compliant use of trademarks, not only highlighting the compliance requirements for trademark use but urging trademark owners to exercise their rights in a standardised manner, effectively safeguarding consumers' right to know, maintaining fair market trading order, and preserving a healthy market competition ecosystem.

Usage obligations clarified

Article 56, Paragraph 3 of the revised draft stipulates: "If a registered trademark becomes the generic name of the goods approved for its use or is not used for three consecutive years without legitimate reasons, the trademark administration department of the State Council may revoke the registered trademark."

This amendment further clarifies the obligation to use a trademark after registration, addressing the persistent issue of 'zombie trademarks'. So-called zombie trademarks refer to marks that are in a valid registration status but have not been used for a long time, and the original registrant has died or cannot be reached, resulting in the rights being suspended. By the end of 2025, the total number of valid registered trademarks in Mainland China (excluding Hong Kong, Macao, and Taiwan) reached 49.877 million. Some industry analysts point out that the proportion of zombie marks may be as high as 30%, with a large amount of trademark resources being left idle and wasted.

This amendment strengthens the obligation to use registered trademarks, effectively preventing the idling of trademark public resources, revitalising existing trademark resources, and releasing

more space for market entities in brand naming and trademark applications. At the same time, it grants administrative authorities the right to proactively revoke zombie trademarks, promoting a shift from static registration to dynamic supervision in trademark management and enhancing its efficiency and effectiveness.

Specific operational details—such as the applicable circumstances, trademark scope, and timing for the Trademark Office to initiate revocation—still need to be clarified in subsequent regulations and gradually improved in practice.

Adapting to the digital economy

In the context of the rapid development of the digital economy and artificial intelligence (AI), profound changes have taken place in the use and dissemination of commercial logos. In application scenarios such as online platforms and smart devices, trademarks are often presented in the form of dynamic logos such as continuous images, representing a new form of trademark use.

Article 14 of the revised draft explicitly adds dynamic trademarks as a constituent element of registrable trademarks, which is an institutionalised response to this market trend that better adapts to the diversified needs of brand presentation in the digital economy era and improves protection for non-traditional marks.

Looking back at the protection process of non-traditional trademarks in China, the 2001 version of the trademark law included three-dimensional trademarks and colour combinations in the scope of registrable trademarks, and the 2013 version of the trademark law added the registration protection of sound trademarks, both of which led to a surge in applications for related trademarks after the implementation of the new laws. The inclusion of dynamic trademarks also provides a new path for brand protection;

applicants with a need for such marks can start contacting trademark agencies to prepare.

It should be noted that, apart from dynamic trademarks, non-traditional trademark types such as scent trademarks, location trademarks, holograms, and trade dress, which have been widely discussed previously, have not been included in the protection scope of this revised draft. This also sets the stage for further revisions and improvements of China's trademark law in the future.

Protecting well-known marks

Article 20 introduces a new provision prohibiting the dilution of unregistered well-known trademarks on non-similar goods. This adjustment elevates the protection of unregistered well-known trademarks to a level comparable to that of registered well-known trademarks.

This means that in the future, China's protection scope for well-known trademarks will no longer be determined based on the registration status of the trademark, but solely on the scope covered by its reputation, truly returning to the essential attributes of well-known trademark protection and achieving comprehensive protection for such marks.

The introduction of this regulation effectively curbs the speculative behaviour of "cross-field free-riding" in the trademark sector. In the past, cybersquatters have used the unregistered well-known trademarks of others as business names or domain names. Such behaviour did not directly use well-known marks as trademarks, and was neither identical nor similar to the main business of the well-known trademark owner, thus not constituting trademark infringement in the traditional sense. However, this activity could leverage the popularity of the well-known trademark to attract traffic and gain improper benefits. This revision fills this protection gap.

Meanwhile, this amendment can better adapt to the development needs of the new economic environment of the internet. In response to the reality of explosive growth in trademark recognition in fields such as AI, it provides more timely and adequate legal protection for well-known trademarks, which has strong practical value.

Furthermore, the revised content aligns with the requirements for well-known trademark protection stipulated in Article 18.22, paragraph 2 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), completing institutional preparations for China's subsequent accession to the CPTPP in the field of well-known trademark protection and promoting the alignment of China's trademark protection rules with international treaties.

Enhance trademark examination efficiency

Article 35 of the revised draft shortens the trademark opposition period from the current three months to two months, and clarifies that no extension can be applied for during the opposition period.

This adjustment is based on the widespread automation of trademark monitoring technology, which enables stakeholders to timely and accurately detect similar trademarks through technical means, thus exercising their right to oppose without requiring an excessively long trademark announcement period. The direct effect of this amendment is to shorten the trademark application cycle, accelerate the authorisation process, and enhance the overall efficiency of trademark examination.

From an international comparison perspective, the current trademark opposition period in the EU is three months, while in the US, it is 30 days but can be extended up to 180 days upon

Article 14 of the revised draft explicitly adds dynamic trademarks as a constituent element of registrable trademarks.

Non-traditional trademark types such as scent, location, holograms and trade dress are not protected in the revised draft of China's trademark law.



payment. In India, the period is four months and multiple extensions are allowed. The revised trademark opposition period in China is significantly shorter than that of most countries and regions.

This change also poses higher requirements for the practical operation of opposition cases. Opposition applicants need to complete the collection, organisation, and submission of evidence within a shorter timeframe, ensuring the timeliness, completeness, and professionalism of the evidence. It is recommended that opposition applicants, with the assistance of trademark attorneys, prepare for trademark monitoring and opposition applications in advance.

Summary

Since its implementation in 1983, China's Trademark Law has undergone four amendments to date. The upcoming fifth amendment to the law marks a further breakthrough based on previous revisions, highlighting two distinct features. On the one hand, it reflects a shift from prioritising registration to emphasising both use and registration; on the other hand, the amendment process is more pragmatic, with an emphasis on the coordination of the trademark legal system, the enforceability of rules, and the expected stability in practice.

This amendment will also drive new development directions for agency services in China's trademark field. In the future, trademark agency services will focus more on precise trademark layout and long-term brand planning, assisting market entities in scientifically planning trademark investments, regulating the exercise of trademark rights, and truly embodying and highlighting the market and legal value of trademarks in the new era. **ip**

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UK Patents	11 March 2026	1 May 2026	July
UK Trade Secrets	11 March 2026	1 May 2026	July
Global Trade Secrets	20 May 2026	10 July 2026	September
China Trademarks	3 June 2026	24 July 2026	September
China Patents	3 June 2026	24 July 2026	October
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LESSONS FROM NUTRAMAX ON DEFINING TRADEMARK 'USE'

Given the different statutory interpretations of the commercial application of marks under US law, clear contractual safeguards are essential, say **Lauren Leipold** and **John Heinbockel** of Seyfarth Shaw.

In the US, trademark rights flow primarily from use in interstate commerce rather than registration. Yet the US Lanham Act's definition of "use" of a trademark remains somewhat elusive. A recent court case highlights the importance of negotiating specific, unambiguous parameters in contracts to avoid unintended consequences.

An unsettled legal landscape

Under the Lanham Act, "use in commerce" does not mean the same thing in all contexts. Courts and the US Patent and Trademark Office (USPTO) apply different standards depending on whether the issue is registration, priority, or infringement.

For registration, a mark is used in commerce under Section 45 of the Act when placed on goods, containers, displays, or tags, and the goods are actually sold or transported in commerce. For services, use in commerce hinges

on whether the mark is used or displayed in the sale or advertising of services and whether the services are actually provided. The USPTO will reject so-called "token use" for the purpose of reserving rights in a mark.

Courts apply a similar, though sometimes more flexible, standard when evaluating preparation to use the mark to establish priority. Consummation of a sale may not be required.

Meanwhile, the standard for "use in commerce" by an infringer is much more lenient. It does not matter whether the defendant actually consummated a sale, or whether the use was *bona fide*. For infringement under Section 32 or 43(a), "sale, offering for sale, distribution, or advertising" is sufficient.

Courts have counselled against conflating the various "use in commerce" standards, see, eg, *Marshall Tucker Band v M T Indus.*, 238 F. Supp. 3d 759, 764-65 (DSC

2017), but uncertainty remains.

In March 2026, the US Supreme Court declined review of a multi-million dollar judgment based on statements made in a trademark application, leaving open questions about whether the lower court improperly collapsed registration and infringement standards for trademark use. See *TNSG Health v Clarke*, Case No. 25-964.

The court last addressed "use in commerce" in *Abitron Austria v Hetronic International*, 600 US 412 (2023), holding that the Lanham Act's reach is limited to domestic use in commerce. The court did not articulate a clear standard by which that use should be evaluated, an issue further clouded by the concurring opinions.

A real-world example: keyword advertising

Brand owners often buy competitors' trademarks as search engine "keywords" to divert consumers looking for the rival

TAKEAWAYS

- Contracts need unambiguous parameters
- "Keyword bidding" is a grey area in trademark law
- Broad language can be detrimental in disputes

product. Typically, the competitor's trademark itself doesn't appear in the ad; it acts as an invisible backend trigger.

Courts have generally held that buying a competitor's trademark as a keyword constitutes "use in commerce", but rarely find it inherently infringing absent additional consumer-facing use in the advertisement or on a website. See, eg, *1-800 Contacts v JAND*, 119 F.4th 234, 239 (2d Cir. 2024); *Lerner & Rowe v Brown Engstrand & Shely*, 119 F.4th 711, 722 (9th Cir. 2024).

Even so, the US District Court for the Northern District of Georgia's recent decision in *Nutramax Laboratories v Rowlo*, Case No. 1:2025-cv-02481 (ND Ga. Feb. 20, 2026), illustrates the need for parties, when entering into a private agreement, to clarify the governing standard for "use in commerce".

Nutramax centres around various claims related to the marketing of competing joint supplement products for animals. The parties settled their original lawsuit, agreeing that the defendants would not:

[R]eference or use, or cause to be referenced or used, in any manner... [plaintiffs'] registered or common law trademarks ... in any commercial advertising or promotion, including social media posts and comments.

Subsequently, plaintiffs alleged that defendants began using plaintiffs' trademarks as advertising keywords on an online retail platform. This purportedly caused defendants' products to appear at the top of search results as sponsored listings or banner advertisements when consumers searched for plaintiffs' products. Plaintiffs filed a new action, this time alleging breach of contract rather than infringement, arguing that keyword bidding constituted activity expressly prohibited under the settlement.

Defendants argued the court should interpret the disputed language through the lens of the Lanham Act. Under that reading, "commercial advertising

or promotion" would carry its established statutory meaning—ie, involving consumer-facing use—and thus keyword bidding would fall outside the agreement's reach.

The court consulted the definition of "use" found in the infringement section of the Lanham Act, 15 USC § 1125(a)(1). However, it observed that the parties' settlement agreement did not define "use", and only generally referenced the Lanham Act in non-binding prefatory recitals.

Therefore, it was inappropriate to import any portion of the statute's language into the contract. Rather, the court looked to common dictionary definitions of the terms "commercial", "advertising", and "promotion" as used in the settlement.

In contrast to the Lanham Act's cause of action for false or misleading commercial "use", the parties' agreement operated as a forward-looking prohibition on any commercial "use or reference to" plaintiffs' marks by defendants (emphasis added). In that respect, the court held, the agreement seemed designed to reach more broadly than the statute.

The court ultimately arrived at a practical interpretation: the agreement prohibits the defendants from using or referencing the trademarks to create public exposure for, or drive sales of, its own products. Therefore, defendants' "keyword bidding" was prohibited under the contract and the suit could not be dismissed as a matter of law.

Practical takeaways

The court in *Nutramax* ultimately refused to "reward the defendants' conduct by joining them in creating an imaginary technicality within the settlement agreement". Whether or not the trademark was visibly displayed to the consumer, it was being used, or at minimum referenced, to generate commercial exposure for a competing product.

Other litigants may not be as lucky. Given the multitude of



Lauren Leipold



John Heinbockel

It is best, when given the chance through negotiations and written agreements, to take control of the applicable definition governing improper conduct not contemplated by the parties.

Lauren Leipold and John Heinbockel, Seyfarth Shaw

context-dependent definitions of trademark use, parties hoping to agree upon standards governing their adversaries' conduct should spell those standards out in detail.

Courts may not necessarily hold that "use" equates to consumer-facing "use in commerce" unless the agreement explicitly says so, especially given differing statutory language and differing judicial interpretations of trademark "use" in various contexts. A trademark can be "used" in a commercially meaningful way without ever appearing on a label, package, or visible advertisement. Thus, a restriction on a party's ability to "use" a trademark could include a wide range of conduct that might not be infringing under the Lanham Act, including invisible uses in keyword advertising or even descriptive, fair uses.

It is best, when given the chance through negotiations and written agreements, to take control of the applicable definition governing improper conduct not contemplated by the parties. This applies equally to settlement agreements as well as licences. Sophisticated drafters should not assume that Lanham Act "use in commerce" thresholds will define the scope of their agreements.

If the parties intend to permit certain types of uses, they should consider enumerating specific prohibited conduct (keyword bidding, SEO manipulation, programmatic ad targeting) rather than relying on broad phrases. Furthermore, they should define terms explicitly rather than relying on incorporating contextual assumptions. Otherwise, having agreed to broad language, a party could later be bound by it, to its own detriment. **ip**

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CREATING A GLOBAL ONLINE IP COMMUNITY



WIPR Leaders is a trusted global community of leading IP professionals, inspired by personal connections made at events like the INTA Annual Meeting, says **Baron Armah-Kwantreng** of WIPR Rankings.

For the WIPR Rankings team, the approach of the International Trademark Association's (INTA) Annual Meeting in London in 2026 signalled a looming deadline on the next edition of Leaders—WIPR's annual global list of leading IP lawyers.

INTA's conference represents the largest annual gathering of IP lawyers on the planet, with over 10,000 participants touching down and arriving from continents and countries near and far.

The Leaders platform, now in its ninth year, continues to evolve. Its purpose is inspired by my previous trips to INTA in Atlanta in 2024, and to San Diego in 2025, where I revelled in making new IP contacts across the world. Each time, I returned to London inspired to recreate the INTA experience of meeting a trusted global IP community in person in an online community via WIPR Leaders.

A community whose members leading in-house and referral counsel would be comfortable trusting with their most significant work.

Recommendation leads to result

At INTA in San Diego, I met a US lawyer who asked for a recommendation for a lawyer for a significant client in another jurisdiction. The US lawyer was not getting the expected service from the big name firm in the country and needed a reliable alternative that could be sensible on fees.

At a rooftop law firm reception with drinks flowing and a background DJ, I met a lawyer



I discovered that the meeting had turned into a working relationship—they are now on their third piece of work together and the client is delighted.

Baron Armah-Kwantreng,
WIPR Rankings

TAKEAWAYS

- External recommendations are key
- Leaders are identified from several sources
- Firms should nominate their best lawyers

from that country and mentioned my enquiry. Something about the exchange made me trust him. So I took a punt, introduced him to the US lawyer, and they met for a coffee during the event.

I caught up with the US lawyer recently and discovered that the meeting had turned into a working relationship—they are now on their third piece of work together and the client is delighted.

This is why Leaders exists. With the continued support of the global IP community, the WIPR Rankings team will make these recommendations digital and accessible online.

Research methodology

The deadline for this article arrived as the Rankings team were knee-deep in collating this year's research findings.

The established methodology is to receive an external recommendation from another lawyer who has witnessed that person in action and is willing to recommend the individual to a client or referral lawyer.

Research respondents are given a link to a referee sheet they can use to name referees who can be contacted for feedback. Law firm rankings veterans will be familiar with the phenomenon of "referee fatigue".

With the proliferation of rankings groups, some in-house counsel can be over-contacted for this feedback. As a result, we give respondents the option of three categories of headings: Direct Clients, Referral Lawyers, and Lawyers on the Other Side.

The hope is that across these

categories, respondents will be able to identify sufficient individuals who can attest to the quality of their work product.

It's all in the buckets

Here is a peek behind the curtain in how we collate the mass of information from respondents. We drop the responses into different categories, or 'buckets', that we use to knit together the final constituents of Leaders. These buckets are:

Survey Results: Members of WIPR's database are invited to respond to a questionnaire to recommend themselves, a firm colleague or a peer at another firm.

Firm Responses: Firms that have identified their leading individuals for review.

Research Individuals: Independent research on potential members of Leaders conducted by the Rankings team.

WIPR Rankings 2025 Individuals: Ranked individuals from the 2025 round of private practice research are included in Leaders.

We want to continually improve Leaders and we are particularly keen to showcase the best lawyers from each firm. Each country list should represent the brightest and best IP talent on offer.

Look out for the Leaders 2026 results on the WIPR website and do get in touch with suggestions on how we can improve Leaders in 2027 and beyond. [ip](#)

Access WIPR Leaders via the Rankings tab at www.worldipreview.com

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HOW TO PLAN SUCCESSFUL IP MEDIATION

Mediation is an increasingly attractive option to resolve IP disputes, especially for SMEs, individuals and universities. But it is important that organisations are well prepared and proactive, says **Cyrille Rousseau** of Dennemeyer & Associates.

Mediation offers several significant benefits to parties with IP quarrels. It is often quicker and cheaper than litigation, is confidential, can resolve related conflicts across multiple jurisdictions and can lead to commercially focused solutions (which may not be available from the courts).

When all parties engage in good faith, moderated talks can lead to a win-win situation, where old disagreements are settled and future business opportunities created.

In the past few years, new conciliation opportunities have arisen, particularly within the European Union. For example, the EU Intellectual Property Office (EUIPO) launched its Mediation Centre in November 2023, with services expanded in June 2025 to cover all *inter partes* proceedings relating to EU trademarks and registered EU designs. In June 2026, the Patent Mediation and Arbitration Centre of the Unified Patent Court will be inaugurated, providing a new forum for alternative dispute resolution (ADR) in Europe.

Working out differences

Simply put, mediation is a process whereby a neutral, expert mediator assists parties to reach an

agreement. This kind of ADR can be mandated in an agreement between business partners or can be proposed by one or both parties when contention arises. Unlike court proceedings, this peacemaking takes place behind closed doors, and it is generally less adversarial.

In an IP context, formalised discussion can be used for everything ranging from friction with employees, suppliers or contractors to complex cases involving the validity and infringement of rights. As they are not constrained by court procedures, intercessors may be able to address multiple issues in different jurisdictions and propose creative commercial solutions that are designed to benefit both sides.

While the discussions themselves may last as little as a few hours or as long as several weeks, the whole process may take many months. It is essential, therefore, to be well prepared to ensure you can reap the benefits of sitting around the table.

Know your goals

The first priority for any organisation is to identify and articulate the desired outcome of conciliation. These goals could be legal, industrial or both, but it is critical that they are agreed and understood internally.

However, it is also necessary to remember that mediation can deliver novel solutions. Thus, when establishing the objectives, it may be helpful to divide them into non-negotiables on one hand and issues on which some compromise can be made on the other. It may also be beneficial to reflect on what the other side's aims are and what impact these might have on your own strategy.

Example: An established business, "BigCo", discovers that a new company, "Startup2.0", has recently launched a product that infringes its IP rights. While Startup2.0 does not have much market penetration yet, it could roll out products quickly, and its fortunes could embolden other competitors. BigCo does not want to be seen as a bully and would prefer to avoid the publicity of litigation. If Startup2.0 recognises the validity of the prior rights and agrees not to infringe them, BigCo may agree to grant an IP licence in return for royalty payments. Seeking damages for past infringement is desirable but not a priority.

Define responsibilities

As soon as mediation is put forward, it becomes appropriate to determine who would be involved—both internally and externally. This

TAKEAWAYS

- Novel solutions may arise
- Identifying goals is crucial
- Team composition needs care



IMAGE: SHUTTERSTOCK.COM / KHAIRIL AZHAR JUNOS

may require some discussion, especially for larger companies: internal representatives should have authority to make decisions, but they must also have knowledge of the dispute's history and be able to devote sufficient time to proceedings. External representatives may include lawyers with various specialisms and/or patent attorneys, as well as independent experts.

Factors of team size and composition are more deterministic than their obviousness would suggest, as the knowledge base must encompass all the topics at hand without introducing a headcount that is too big for efficiency and cost reasons.

Talks can move fast, and negotiators can only respond quickly to proposals if they have a proper grasp of the nature of the relevant products and technology, the commercial objectives and the range of acceptable conclusions. It is crucial, then, that the participants are fully briefed at the outset.

Example: A fast-growing high-tech company, "TechBoom", has an agreement to license certain IP rights in software from an individual developer, "Iris Inventor". However, Iris has complained that TechBoom's latest developments are not covered by the licence and



When all parties engage in good faith, moderated talks can lead to a win-win situation, where old disagreements are settled and future business opportunities created.

infringe her rights. The agreement includes a mediation clause. When preparing, TechBoom chooses a team comprising a director who understands the business aims, an executive who was involved in the early stages of the collaboration and the in-house IP attorney. It appoints an external counsel known for taking a conciliatory, innovative approach rather than its usual litigation specialist.

Select evidence and other materials

Careful thought should be given to compiling and presenting evidence for use. Unlike in litigation, parties have wide scope regarding what documents they introduce, and these should be chosen conscientiously since you want to put forward your strongest arguments without jeopardising the efficiency of the process.

A "less-is-more" methodology may be most effective in negotiation, but it is critical not to overlook anything that might be relevant to a favourable result. Key papers may include contracts, licences and agreements between the parties, as well as comparables with other parties, financial data and historical records demonstrating the acquisition, assignment or licensing of IP rights.

When deciding which records to share, attention should be paid

to confidentiality. While anything disclosed in the process is kept between the parties and the mediator, there may be items that are particularly sensitive, where extra precautions are necessary.

Example: A research institute, "Geek Labs", has an extensive patent portfolio and has agreed licences with many manufacturers. It is in mediation with a manufacturer, "Top Products", to finalise licensing terms. As well as evidence of its patent rights and research publications, Geek Labs has extensive confidential information and market-sensitive agreements with other manufacturers. Geek Labs asks its lawyers for advice on whether it can disclose this information only to the mediator, Top Products' external advisers and/or certain named individuals at Top Products.

Keep control

While mediation will likely be cheaper than litigation, it is nevertheless important to plan a budget and allocate resources fittingly. Costs include the fees to pay for the mediator, venue and external advisers, as well as business outlays, such as management time, travel expenses, potential delays in booking revenues and other disruptions pending the closure of procedures.

By setting priorities, assembling strong teams, preparing documents and planning budgets, parties give themselves the best chance of a welcome conclusion to mediation. As ADR looks set to become more common in a range of conflicts involving intellectual assets, these are steps that all IP-intensive businesses should bear in mind as a course of action or a flexible pragmatism where quarrels or unexpected opportunities arise. **ip**

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INDIA REIMAGINES GUI DESIGN PROTECTION

A significant ruling from the Calcutta High Court has steered the country towards aligning with international jurisprudence regarding graphical user interfaces, say **Samta Mehra** and **Bisman Kaur** of Remfry & Sagar.

In a landmark judgment delivered on March 9, 2026, the Calcutta High Court has ruled that graphical user interfaces (GUIs) are eligible for design registration under India's Designs Act, 2000. The ruling aligns India with global benchmarks—92% of jurisdictions already extend design protection to GUIs.

The Intellectual Property Rights Division consolidated five appeals filed by NEC, Erbe Elektromedizin, Abiomed, and TVS Motor—all of which had seen their GUI design applications rejected by the Office of the Controller of Patents and Designs. The common thread running through all five cases was a single question: can a GUI satisfy the criteria of a 'design' eligible for registration under the Act?

Background

A GUI is a form of user interface which allows users to interact with electronic devices through graphical elements such as icons, windows, menus, buttons, etc rather than typing text commands.

TAKEAWAYS

- GUIs are now eligible for design registration
- Clarity on 'permanence requirement'
- Court stresses case-specific approach

For years, India's Designs Office had taken a rigid stance against GUI registration, relying on a narrow reading of the definitions of "article" (Section 2(a)) and "design" (Section 2(d)) under the Act. The definitions read thus:

- (a) "article" means any article of manufacture and any substance, artificial, or partly artificial and partly natural and includes any part of an article capable of being made and sold separately;
- d) "design" means only the features of shape, configuration, pattern, ornament or composition of lines or colours applied to any article whether in two dimensional or three dimensional or in both forms, by any industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye; but does not include any mode or principle of construction or anything which is in substance a mere mechanical device, and

does not include any trademark ... or any artistic work as defined in the Copyright Act, 1957.

The position of the office rested on several grounds: that GUIs lack physical permanence since they are only visible when a device is switched on; that they are not applied to an article through a recognised industrial process; that they cannot be manufactured or sold independently; and that since GUIs may be protected as artistic works under the Copyright Act, 1957, granting them design protection would amount to impermissible dual protection.

The court rejected these arguments and preferred an expansive interpretation of statutory terms based on the principle of 'updating construction' which takes into account relevant changes and technological advancements that have occurred since an enactment was made.

Reinterpreting 'article' and 'design'

The 'design' and the 'article', it was remarked, are distinct,

independent and separate. The court emphasised that the definition of a ‘design’ under Section 2(d) is broad and tying the concept of a design exclusively to a physical or tangible article is a fundamental fallacy. GUIs, icons, animations, and screen-based designs exist in digital form and would be permanently excluded from protection under such a narrow approach—an outcome that the legislature could not have intended.

On the ‘industrial process’ requirement, the court was equally clear. The word ‘any’ that precedes ‘industrial process’ in Section 2(d) signals a non-exhaustive interpretation and the enumeration of manual, mechanical, or chemical processes is illustrative, not limiting. The process of rendering a GUI on a display surface—involving the manipulation of electronic signals through advanced hardware—squarely falls within the evolving concept of an ‘industrial process’.

One of the most consequential findings in the judgment concerns the so-called permanence requirement. The court held that Section 2(d) contains no such requirement and a design does not need to be permanently visible to qualify for protection. It referred to the ‘test of noticeability’ in the Designs Manual, which acknowledges that internal features visible only during use may be registered, and to Ferrero’s application (1978 RPC 473) cited there as authority for construing “judged solely by the eye” to include features revealed only during use.

The court further held that the provision does not mandate physical touch, but only a sufficient association between the design and the article. The statutory intent is to prevent a design being registered in the abstract without association to the article. Drawing on both domestic and foreign jurisprudence, the court affirmed that many designs depend on external conditions to become visible, a lampshade being a simple everyday example. The correct legal test, therefore, is



Samta Mehra



Bisman Kaur

The correct legal test is whether the design is visible when the article is put to its intended and normal use.

Samta Mehra and Bisman Kaur, Remfry & Sagar

whether the design is visible when the article is put to its intended and normal use.

Addressing the issue whether inclusion of GUIs in the Locarno Classification (incorporated in Rule 10(1) of the Indian Design Rules) guaranteed registration, the court clarified that the Locarno Classification may guide filing and classification, but cannot by itself confer registrability, since protection remains subject to Sections 2(a) and 2(d) of the Act. Even so, India’s adoption of the current Locarno framework supports legislative and administrative intent to accommodate GUI protection.

Dual protection and copyright

This issue had two aspects: first, whether a GUI is a computer program and therefore cannot be registered as a design; and second, whether a GUI is an artistic work and therefore unregistrable as a design.

On the first point, the court clarified that although a GUI is produced by a computer program, a GUI is not itself a computer program in the sense of a literary work under the Copyright Act. Re the second, it was observed that the statutory framework itself dispenses with overlap. Section 2(d) excludes artistic works from design registration, while Section 15 of the Copyright Act withdraws copyright protection once a design is registered or the 50-article production threshold is exceeded in the case of unregistered designs. Per the court, once the visual features of a GUI are industrially applied to an article, it transitions from the realm of artistic work into that of a registrable design, and no double protection arises.

However, a case-specific approach was emphasised—each application must be assessed individually against statutory requirements.

What comes next

All five impugned orders were set aside and the matters remanded to the Controller for fresh hearing.

The decision is timely, since

a Concept Note released by the government in late January on proposed amendments to India’s design law framework specifically addresses the issue of GUI protection. The note recognises that while the 2021 amendments to the Designs Rules, 2001 aligned India with the current Locarno Classification, including Classes 14–04 and 32 covering GUIs, icons and other virtual designs, the substantive framework of the Designs Act, 2000 still remains anchored in physical products. This results in uncertainty regarding the protection of GUIs and other virtual designs.

It therefore proposes to modernise the definitions of “design” and “article” to expressly include virtual designs, animations, movement and transition, and to decouple design protection from the requirement of a physical carrier. The definition of “article” may be revised to expressly cover items in physical or non-physical form, including GUIs, icons, graphic symbols, typefaces, augmented reality GUIs, and other virtual products provided under the Locarno classification. A design would thus subsist regardless of whether it is embodied in a tangible object or materialises in a purely digital or virtual environment.

In this context, the Calcutta High Court’s ruling does more than resolve the immediate appeals before it. It provides a judicial framework that closely tracks the direction of legislative reform already under consideration. The well-reasoned judgment should steer the amendment discourse towards international jurisprudence and explicit recognition of design protection for GUIs in the country. **ip**

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CRACKING DOWN: CHINA'S TOUGHER APPROACH TO IP CRIMES

Counterfeiters and infringers face lower thresholds for criminal convictions and severer penalties following guidance issued last year, says **Ling Zhao** of CCPIT Patent and Trademark Law Office.

IMAGE: SHUTTERSTOCK.COM / NEW AFRICA

Criminal protection of intellectual property rights (IPR) constitutes the most deterrent measure in IPR protection and serves as a pivotal safeguard.

In April 2025, the Supreme People's Court and the Supreme People's Procuratorate of China jointly issued the Interpretation on Several Issues Concerning the Application of Law in Handling Criminal Cases of Intellectual Property Infringement (hereinafter referred to as the Interpretation). The Interpretation offers detailed guidance for judicial adjudication and prosecutorial practice in handling IPR-related criminal cases in China.

The Interpretation lowers the criminal conviction thresholds for relevant IPR crimes, adds new circumstances triggering criminal conviction, stipulates provisions on aggravated punishment, and raises the upper limit for the application of fine penalties.

TAKEAWAYS

- Stricter stance on IPR offences
- Criminals face higher fines
- TM similarity test is clarified

Lowering criminal conviction thresholds

The Interpretation largely adheres to the criminal conviction standards stipulated in the previous judicial interpretations. In light of judicial practice, however, it lowers the conviction thresholds for the crimes of illegally manufacturing and/or selling illegally manufactured registered trademark signs; counterfeiting patents; and selling infringing reproductions.

Take the crime of illegally manufacturing and/or selling illegally manufactured registered trademark signs as an example. Pursuant to Article 6 of the Interpretation, the thresholds for triggering criminal prosecution and conviction have been adjusted as follows: the quantity of illegal trademark signs is reduced from 20,000 pieces to 10,000 pieces; the amount of illegal gains is cut from RMB 30,000 (\$4,400) to RMB 20,000; and the illegal business turnover

is lowered from RMB 50,000 to RMB 30,000.

New circumstances for conviction

The 11th Amendment to the Criminal Law of the People's Republic of China revised the conviction rules for the crimes of selling goods bearing counterfeit registered trademarks; selling infringing reproductions; and infringing on trade secrets.

In response to judicial practice needs, the Interpretation adds new circumstances that trigger criminal conviction for relevant IPR crimes. For instance, it stipulates that the sales amount, the value of in-stock goods, and the quantity of infringing reproductions sold shall all serve as conviction criteria for the crime of selling infringing reproductions.

To impose severe legal penalties on repeated and long-term IPR infringement in accordance with the law, the Interpretation also lowers the quantitative conviction thresholds for recidivist infringement

acts—namely, acts of committing IPR infringement again within two years of being subject to criminal punishment or administrative penalties. For such recidivist IPR criminal offences, the threshold amount (eg, illegal gains or illegal business turnover) for criminal prosecution shall be reduced by approximately 30% to 50%.

Stipulating provisions on aggravated punishment

The Interpretation sets out specific provisions on aggravated punishment, with a focus on cracking down on IPR infringement acts that are highly harmful to society and committed with malicious intent. Such acts include engaging in IPR infringement as a professional activity; counterfeiting registered trademarks for special commodities and services during special periods (eg, public health emergencies or natural disasters); and refusing to hand over illegal gains without showing any remorse.

These provisions give full play to the deterrent effect of criminal punishment and its preventive function against IPR crimes.

Raising the upper limit of fines

IPR crimes undermine the legal environment and market order that are foundational to investment and industrial development. The Chinese government attaches great importance to imposing fine penalties on IPR infringers.

The Interpretation amends the original provision that “the amount of the fine shall generally be set at one to five times the amount of illegal gains” to “one to ten times the amount of illegal gains”, thereby raising the upper limit for the application of fine penalties for IPR crimes.

Defining identical goods/services and identical trademarks

The Interpretation clarifies the criteria for determining identical goods and services in the context of the crime of counterfeiting a registered trademark. In cases where the designated names



In response to judicial practice needs, the Interpretation adds new circumstances that trigger criminal conviction for relevant IPR crimes.

of the goods are different, a comprehensive assessment shall be made from the perspective of the general perception of the relevant public, based on such factors as the functions, purposes, main raw materials, target consumers and sales channels of the goods.

The Nice Classification for Goods and Services and the Classification of Similar Goods and Services issued by the China National Intellectual Property Administration (CNIPA) serve as reference for determining whether goods fall into the category of identical goods. The perspective of the relevant public and the assessment factors adopted here are substantially consistent with the civil judicial standards for determining identical goods in trademark infringement cases.

For example, if the approved goods for the rights holder's registered trademark are ‘fertilisers’ and the infringing goods are ‘organic fertilisers’, then ‘fertilisers’ and ‘organic fertilisers’ may be found to be identical goods based on the general perception of the relevant public and in combination with the aforementioned assessment factors.

As for the determination of identical services, the Interpretation mainly draws on the Judicial Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Civil Trademark Dispute Cases, the Trademark Infringement Judgment Criteria issued by the CNIPA, and established judicial practices. It stipulates that a comprehensive judgment shall be made based on the purpose, content, mode, target audience and venue of the services in question.

Identical trademarks under criminal protection refer to trademarks that are either exactly identical or substantially identical to the registered trademark. The determination of substantially identical trademarks has long been a difficult issue in judicial practice. The Interpretation clarifies the criteria for identifying such trademarks, which is limited to

situations where there are only minor differences between the counterfeit trademark sign and the registered trademark.

Examples of such minor differences include changes to the case or spacing of the text in a word mark, or only slight variations in a graphic mark. In judicial practice, it is common for infringers to add elements such as prefixes or suffixes to a registered trademark. In such cases, the principle of stringent determination must be applied. A finding of “substantial identity” may only be made if the added elements are limited to words lacking distinctiveness (eg, the generic names or models of the goods) and do not impair the distinctive character of the registered trademark.

In civil trademark cases, the isolated observation method is generally used to determine whether trademarks are identical or similar, which means the trademarks are observed separately at different times and locations. By contrast, the standard for identifying identical trademarks in criminal cases is more stringent: the side-by-side comparison method must be adopted, which requires the trademarks to be examined and compared together in the same context.

Conclusion

The issuance of this landmark Interpretation has established a systematic and updated legal framework for combating IPR crimes in China. It unifies the relevant legal standards for adjudicating and prosecuting IPR-related criminal cases, facilitates the efficient and standardised handling of such cases by judicial and prosecutorial organs, and ultimately forges a more robust and sounder legal environment for innovation and creative activities in the country. 

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CAREERS



UNITED KINGDOM

'Dazzling' London duo jump from DLA Piper to Eversheds Sutherland

Eversheds Sutherland has hired two partners from DLA Piper, in a strategic move that will ramp up the firm's IP disputes offering and "underlines its ambition to be the 'go-to' adviser for complex, high-stakes contentious IP matters".

Ruth Hoy (pictured) and **Huw Cookson** will join the firm's London-based IP team, part of its wider commercial advisory practice. The pair will work closely with existing partners David Wilkinson, UK head of intellectual property, and Tobias Maier, global co-head, intellectual property.

Bringing more than 25 years' experience at the forefront of UK and European IP litigation, Hoy has deep expertise across all contentious IP matters (excluding patents).

Currently managing partner of DLA Piper's London office, Hoy has spent more than 21 years at the firm. She previously led its London intellectual property & technology (IPT) practice group and the UK intellectual property sub-group, giving her extensive experience in building, managing and developing high-performing IP teams.

Cookson, who joins Eversheds Sutherland as a partner, brings deep experience and expertise in brand protection, enforcement and complex IP disputes.

He advises clients across the full lifecycle of IP rights, including ownership, maintenance, protection, clearance, commercialisation and dispute resolution, both pre-action and through formal litigation.

UNITED STATES

Nine-partner litigation team leaves Winston & Strawn

Global law firm King & Spalding has bagged a nine-partner litigation group from Winston & Strawn, set to become Winston Taylor in May 2026.

The group comprises nationally recognised trial lawyer **Tom Melsheimer** in Dallas and eight additional litigators: **Steven Stodghill**, **Natalie Arbaugh**, **Rex Mann**, **Michael Bittner**, **Ahtoosa Dale** and **Chad Walker** in Dallas; **Danielle Williams** in Charlotte; and **Brian Ferguson** in Washington, DC.

The news comes after Winston & Strawn and Taylor Wessing announced that they will combine to create the newly branded Winston Taylor.

Comments reported by *Law.com* indicate that the Winston Taylor merger was not a factor in Melsheimer's decision to leave.

Tom is one of the most accomplished trial lawyers in the country. Joining with him is a team of exceptional litigation talent.

Robert Hays, King & Spalding

King & Spalding chairman Robert Hays said in a statement that King & Spalding's litigation practice is "one of the strongest in the world, and this outstanding team strengthens it even further in Dallas and beyond. Tom is one of the most accomplished trial lawyers in the country. Joining with him is a team of exceptional litigation talent."

Melsheimer, who becomes global head of trial and managing partner of King & Spalding's Dallas office, added that the team is "thrilled to be joining this elite global litigation powerhouse. The opportunities we will have to impact its continued growth in Texas and beyond will be significant and exciting."



ITALY

Hogan Lovells makes senior public and administrative hire in Italy

Hogan Lovells has added public and administrative lawyer **Luca Perfetti** as a partner within its Global Regulatory & IP practice.

Perfetti makes the move from BonelliErede, where he joined as of counsel and later became a partner, bringing three decades of experience.

He advises clients across the full lifecycle of their engagement with public authorities, from tender procedures and contract awards to execution and litigation.

Patrizio Messina, managing partner for Italy, said the hire "further strengthens our regulatory and public law offering", and described Perfetti as a "highly respected practitioner with a strong market profile".

Perfetti advises clients across a wide range of sectors, including transportation and logistics, energy, technology, life sciences, sports, media and entertainment, and financial services.

His experience also includes representing clients before independent regulatory authorities and handling foreign direct investment matters.

The firm expects his arrival to enhance collaboration across its antitrust, regulatory, arbitration, and transactional teams, both in Italy and internationally.

Charles Brasted, deputy practice group leader for global regulatory & IP, said: "Luca brings deep administrative and public law expertise that complements our global regulatory platform. His practice sits at the intersection of regulation, public policy and major projects, and his arrival enhances our ability to support clients on complex, cross-border matters."



UNITED STATES

Cadwalader global head among trio moving to Orrick

Orrick, Herrington & Sutcliffe has added three partners across its New York and Los Angeles offices.

In New York, the firm has welcomed **Danielle Tully** (pictured) and **Mike Powell** as partners from Cadwalader, Wickersham & Taft. In Los Angeles, **Josh Glucoft** has joined as a partner from Kirkland & Ellis.

Alyssa Caridis, co-head of Orrick's IP litigation practice, said Tully's "first-chair trial chops" and leadership experience will be a "tremendous asset" to the firm's East Coast team.

She added the firm was "equally excited to add Mike's tremendous talent" to its bench.

At Cadwalader, Tully served as co-chair of the firm's global litigation and IP practices. She is a first-chair trial lawyer with experience across patent, trade secret, copyright, trademark, and commercial disputes, in the technology and life sciences sectors.

Powell, who has worked with Tully for more than a decade, also focuses on high-stakes IP and commercial cases in technology and life sciences, including medical devices.

Glucoft brings experience in patent litigation involving electrical engineering, computer science, and medical device technologies. He has litigated cases in both district courts and before the International Trade Commission.

David Gindler, global co-leader of Orrick's life sciences and health tech sector and a former colleague of Glucoft's at Irell & Manella, described him as a "superbly talented litigator, with a strong network here in LA, who brings a combination of technical acumen and litigation savvy to obtain outstanding results for clients."

UNITED STATES

Senior USPTO solicitor steps into private practice

Former US Patent & Trademark Office (USPTO) solicitor **Farheena Rasheed** has joined Orrick as a partner in its Supreme Court & Appellate practice, with a focus on life sciences.

Rasheed, who will be based in Washington, DC, recently served as solicitor and assistant general counsel for intellectual property law at the USPTO from 2010 until September 2025.

In that role, she was the agency's chief IP litigation attorney and a key adviser on national IP policy.

She led the US government's IP litigation strategy and served as lead counsel in more than 500 appeals before the US Court of Appeals for the Federal Circuit, with a significant number progressing to the Supreme Court.

Rasheed also served as the USPTO's liaison to the Department of Justice and as the primary adviser to the US solicitor general on Supreme Court IP matters.

During her time at the USPTO, Rasheed led changes to the agency's intervention and *amicus* participation

I'm incredibly excited to join one of the nation's foremost life sciences patent litigation and appellate practices, and to help Orrick's clients navigate this moment of extraordinary innovation.

Farheena Rasheed, Orrick

practice, and helped develop its approach for evaluating more than 500 America Invents Act post-grant appeals for potential intervention or selective *amicus* participation. She also served on the USPTO's AI and Emerging Technologies Working Group.

Commenting on the move, Rasheed said working at the USPTO had been the "highlight" of her career.

"I'm now incredibly excited to join one of the nation's foremost life sciences patent litigation and appellate practices, and to help Orrick's clients navigate this moment of extraordinary innovation," she added.



SWEDEN

EIP hires 'exceptional' patent attorney

EIP has appointed **Anders Hansson** as a partner for its office in Stockholm, Sweden, enhancing the firm's expertise in digital and technology patent matters.

Hansson brings nearly two decades of experience spanning private practice, industry, and high-technology sectors, with particular expertise in robotics, audio and video coding, applied mathematics, and advanced artificial intelligence.

He is also a part-time Unified Patent Court (UPC) judge, with a technical focus in the areas of applied physics and mathematics.

Throughout his career, he has advised a diverse client base, from startups to major multinational organisations.

Prior to joining EIP, Hansson was a partner at Swedish firm Kransell & Wennborg for six years, advising on patent strategy, drafting, prosecution, and contentious matters.

He also spent four years at Ericsson as IPR commercialisation manager, working within the company's patent assertion team on licensing and litigation-related activities across global markets.

Magnus Hallin, CEO of EIP, commented: "We are very pleased to welcome Anders to EIP. He is known in the market as an exceptional patent attorney.

"His extensive experience advising technology-driven businesses, combined with strong language skills in both contentious and non-contentious matters, makes him an excellent addition to our firm.

"Anders' arrival strengthens our European capabilities and supports our focus on delivering high-value, technically rigorous patent advice."



UNITED KINGDOM

Taylor Wessing lands first major hire after merger vote

Taylor Wessing has appointed **Jeremy Drew** as a partner in its London IP practice, marking the firm’s first major hire since confirming a partner vote that approved its merger with Winston & Strawn had passed.

Drew, who joins from RPC, is a regulatory and commercial specialist whose practice spans contentious and non-contentious IP, technology disputes, sports law and complex regulatory matters.

He is particularly well known for his work in the retail and brands, sports and technology sectors, where he advises major domestic and international clients on strategic, business-critical issues.

According to the firm, the hire strengthens its strategy to build what it describes as an “unrivaled IP powerhouse”, reinforcing its regulatory, commercial and contentious IP offering at a pivotal moment in the firm’s growth.

His practice has a strong international dimension, including global deals, cross-border litigation and European arbitrations.

Drew led RPC’s IP and Technology team, played a central role in developing its TMT practice into a leading market group, and spearheaded the growth of its sports sector. Until earlier this year, he led the firm’s commercial division and served on its board for approximately 15 years.

Shane Gleghorn, UK managing partner at Taylor Wessing, said Drew had an “outstanding track record” across retail and brands, sports and technology.

“As our first major hire since confirming the Winston Taylor merger vote, his arrival sends a clear signal of our ambition,” said Gleghorn.

GERMANY

HSF Kramer hires Düsseldorf patent litigator

Herbert Smith Freehills (HSF) Kramer has hired **Philipp Cepl** as an IP partner in its disputes practice in Düsseldorf, where he joins after nearly nine years at DLA Piper.

Cepl has a broad patent litigation practice that covers the tech, life sciences and automotive sectors.

He represents domestic and international clients in patent infringement and validity cases before the Unified Patent Court (UPC) and national German courts.

During a career spanning over two decades, he has been involved in more than 150 patent infringement cases.

The hire follows the arrival of IP litigator Florian Schmidt-Bogatzky in Düsseldorf in March last year.

Cepl will work alongside Schmidt-Bogatzky as well as partner Ina vom Feld, enabling the firm to offer a three-partner team in Germany to support clients on patent litigation.

Sebastian Moore, head of IP at HSF Kramer, said: “Germany continues to be

[HSF Kramer] comprises a highly reputable pan-European team aligned with a strong network in other jurisdictions that offers global reach for clients.

Philipp Cepl, HSF Kramer

an important market for our IP team as well as our clients as the strategic forum of choice for patent disputes in the region and a significant jurisdiction for litigation in the UPC.

“Philipp is an experienced litigator who will complement the strengths of our existing partners and deepen the expertise we can offer to clients across Europe.”

Cepl described HSF Kramer as an “outstanding platform” for patent litigation.

“It comprises a highly reputable pan-European team aligned with a strong network in other jurisdictions that offers global reach for clients—the perfect platform for me to continue and expand my patent practice,” he said.



UNITED KINGDOM

Charles Russell Speechlys promotes recently hired litigator to lead IP

International law firm Charles Russell Speechlys (CRS) has appointed **Robert Lundie Smith** as head of intellectual property, based in London. Lundie Smith joined the firm as a partner in November 2025, moving from EIP where he spent 13 years and was most recently head of UK patent disputes.

A highly regarded IP litigator, he brings a proven track record in practice building and leadership and attracting good quality clients.

CRS said that by adding patent and technology disputes expertise to its “highly respected soft IP practice”, Lundie Smith’s appointment “marks the next chapter in the significant development of the team”.

Lundie Smith succeeds Mary Bagnall, who after more than a decade leading the group, will continue to support the firm as a consultant.

Bagnall said that she is “delighted to see Rob take on the leadership of the IP team.

“He is extremely highly regarded throughout the IP profession and since joining us, he has quickly demonstrated his strengths in hard IP and patent and technology disputes alongside his know-how in softer IP matters and associated disputes.”

Lundie Smith commented that he is “honoured to take on the leadership of the IP practice at a time of real momentum for the firm.

“Mary’s exceptional work has been central to the group’s success, and I look forward to building on that as we continue to expand our capabilities.” **ip**

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