

# D YOUNG & CO TRADE MARK NEWSLETTER *no.145*

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## Dryrobe v D-Robe Why policing your trade mark matters



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Welcome to our March trade mark newsletter. In this edition, we explore notable decisions from the IPEC, CJEU, UK Supreme Court, BGH and the UK Court of Appeal, a truly pan-European snapshot of how courts are shaping IP protection strategy.

We are delighted to report that our Munich trade mark team has been ranked by Legal 500 Germany and also Chambers Germany. In addition, we have been shortlisted in the Managing IP EMEA Awards for trade mark disputes (PATMA) and prosecution (PATMA), with Gemma Kirkland and Peter Byrd nominated individually for the trade mark attorney of the year and rising star of the year awards respectively.

Finally, a reminder that UKIPO fees are set to increase in April 2026 (see page 08 of this newsletter for a link to our updated advisory article on this subject).

Oscar Webb, Editor

Events



**Marques Spring Team Meeting**  
12-13 March 2026, Frankfurt, Germany

Jana Bogatz, Charlotte Duly and Gabriele Engels will be attending this meeting. Gabriele will be presenting the Kay Uwe Jonas Memorial Lecture, and is also organising the “Investigating with AI” workshop with Charlotte.

**PTMG Spring Conference**  
23-24 March 2026, Munich, Germany

Yvonne Stone will be attending the Pharmaceutical Trade Marks Group conference.

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# Dryrobe v D-Robe

## Why policing your trade mark matters

The decision of the Intellectual Property Enterprise Court (IPEC) in *Dryrobe v D-Robe* considers issues of genericism in trade mark infringement claims and offers a reminder to brand owners about the importance of protecting the distinctiveness of their brands.

Dryrobe Limited (Dryrobe) is a manufacturer and retailer of outdoor clothing products, most famous for its changing robes, an oversized waterproof coat with a towelled lining. Dryrobe sells these products under the brand name DRYROBE and owns various UK trade mark registrations for DRYROBE.

Caesr Group (D-Robe) was also trading in the UK in waterproof changing robes. D-Robe used a number of signs in the course of trade, including D-ROBE and the figurative mark shown below:



Image source [2025] EWHC 3167 (IPEC): [dycip.com/2025-ewhc-3167-ipecc](https://dycip.com/2025-ewhc-3167-ipecc)

Dryrobe issued proceedings alleging trade mark infringement under section 10(2) and section 10(3) of the Trade Marks Act 1994 (TMA), as well as passing off. D-Robe denied infringement and counterclaimed that Dryrobe’s trade marks were invalid under sections 3(1)(b), 3(1)(c) and 3(1)(d) TMA. D-Robe also sought revocation of the DRYROBE marks pursuant section 46(1)(c) TMA.

**The counterclaim**

The IPEC addressed D-Robe’s invalidity counterclaim first. The key issue was whether the DRYROBE mark was:

1. devoid of distinctive character (section 3(1)(b));
2. descriptive of the goods or their characteristics (section 3(1)(c)); and/or

3. customary in the current language or established practices of the trade (section 3(1)(d)).

The court accepted that DRYROBE could not be considered descriptive for all goods covered by Dryrobe’s trade mark registrations. For example, in relation to goods such as bags and hats. However, the position was different for the core products at issue, namely, changing robes. In respect of those goods, the court found that DRYROBE was descriptive of at least one characteristic.

D-Robe argued that “dryrobe” had become a generic term used by the public and the trade to refer to changing robes generally, rather than as a badge of origin for Dryrobe’s products.

The IPEC considered a significant amount of evidence submitted by both parties, including press articles and social media usage. The court noted following key features of this evidence:

- Many press articles did not clearly use the term generically or were ambiguous as to whether they were referring to the category of goods or Dryrobe’s brand. For example: “I used to take the mickey out of ‘dryrobes’, but they are brilliant... they start from around £45 and go up to around £140, from dryrobe.”
- Some press articles used the term in a generic way but explicitly acknowledged it as a brand, for example: “What is a ‘dryrobe’ you might ask... A dryrobe is an extremely useful towel/coat combination... its generic term derives from its earliest iteration, the Dryrobe™.”
- Dryrobe had actively approached social media users to discourage generic use. Although there were examples where posters were unaware that DRYROBE was a brand, there were also examples where users used “dryrobe” generically while still knowing that Dryrobe was a company and DRYROBE was its brand.

While there were examples of “dryrobe” and “dry robe” being used in a generic sense,

Case details at a glance  
 Jurisdiction: England & Wales  
 Decision level: IPEC  
 Parties: Dryrobe Limited v Caesr Group Limited (trading as D-Robe Outdoors)  
 Date: 04 December 2025  
 Citation: [2025] EWHC 3167 (IPEC)  
 Decision: [dycip.com/2025-ewhc-3167-ipec](https://www.dycip.com/2025-ewhc-3167-ipec)

### Brands should put in place strategies to prevent their trade marks becoming generic



the court did not consider that this evidence went far enough to establish that the term was incapable of functioning as a trade mark. Crucially, the court gave weight to Dryrobe's proactive strategy for tackling generic use.

The court then considered whether DRYROBE had acquired distinctive character through use. The judge found there was compelling evidence that a significant proportion of the relevant public would identify goods sold under the DRYROBE mark as originating from Dryrobe. As such, the court held that DRYROBE had acquired a medium level of distinctive character.

Some of the key evidence that led the court to conclude this was:

- D-Robe's admissions in cross-examination that Dryrobe was the biggest player in the UK changing robe market.
- Extensive sales volumes and revenues, including net sales revenues of approximately £20.3m in 2021, £14.7m in 2022, and £18m in 2023. The court noted that each sale effectively operated as advertising as the robes were worn outdoors and prominently featured the DRYROBE branding.
- High-profile commercial relationships with major organisations including Team GB, Red Bull, Top Gear and Comic Relief.
- Substantial marketing expenditure, including over £1.38m in 2022, almost £2m in 2023, and almost £3m in 2024.

Taken together, this evidence persuaded the IPEC that DRYROBE had acquired distinctiveness, despite the somewhat descriptive nature of the word.

D-Robe's revocation claim under section 46(1)(c) TMA was somewhat closely linked to the genericness points discussed above. The court concluded that DRYROBE continued to function as a mark of origin, and that Dryrobe was clearly taking active steps to prevent generic use.

Overall, D-Robe's counterclaims for invalidity and revocation failed.

#### Infringement claim

Having found Dryrobe's registrations valid, the IPEC turned to the infringement claim.

In assessing similarity between DRYROBE and D-ROBE, the court found:

- A high degree of visual similarity;
- A medium degree of aural similarity; and
- A medium degree of conceptual similarity.

In relation to D-Robe's figurative mark, the court found a low degree of visual similarity and low to medium conceptual similarity, due to the presence of a shield device which was considered a dominant element. However, the court maintained its conclusions on aural similarity.

Importantly, Dryrobe's infringement claim included strong evidence of actual confusion, which the court found confirmed the risk

beyond doubt. Examples included direct confusion, such as consumers contacting Dryrobe to return or exchange D-Robe products as well as indirect confusion, where consumers contacted Dryrobe to ask whether D-Robe was connected with Dryrobe.

The court found that there was infringement under section 10(2) TMA.

While reputation and acquired distinctiveness are legally distinct concepts, the court was satisfied that the DRYROBE marks had a reputation, based on the same evidence relied upon for acquired distinctiveness.

Given the similarity of the marks and the court's findings on confusion, it was also satisfied that consumers would make a link between the marks. The section 10(3) TMA claim therefore also succeeded.

Finally, the court was also satisfied that all the elements of passing off had been made out based on its earlier conclusions in relation to the trade mark infringement claims.

#### In short

This decision highlights the importance of investing in brand education and having an effective enforcement strategy in place to prevent a trade mark becoming generic. Dryrobe successfully overcame invalidity and revocation attacks by producing strong evidence that consumers recognised DRYROBE as a badge of origin, supported by sustained marketing investment and a consistent approach to challenging misuse in the press and on social media. The case is a useful reminder that brand owners must actively manage how their marks are used in the market, particularly where a name is descriptive-adjacent and at risk of becoming shorthand for the product itself. Dryrobe had in fact consulted with its IP lawyers when constructing its enforcement and marketing strategies, highlighting the importance of obtaining input at an early stage on how best to grow a brand name, without jeopardising its distinctiveness.

Author:  
**Kamila Geremek**



# Limits on using “milk” in product names, brand names and slogans

## Supreme Court rules Oatly’s trade mark invalid

Case details at a glance

Jurisdiction: UK

Decision level: Supreme Court

Parties: Oatly AB (appellant) and Dairy UK Ltd (respondent)

Date: 11 February 2026

Citation: [2026] UKSC 4

Decision (PDF): [dycip.com/2026-uksc-4](https://dycip.com/2026-uksc-4)

In short, the use of dairy terms such as “milk” is prohibited within trade marks for plant-based food and drink goods unless the term is clearly used to describe a “characteristic quality” of the goods, such as “milk free”. The UK courts have considered whether this restriction, resulting from an EU Regulation, applies only to product names and descriptions, or whether it extends to any use of such terms. The Supreme Court has now confirmed that the prohibition applies whenever a protected dairy designation is used in relation to a relevant product, and that it is not necessary for the term to be used as a product name.

### Background

In April 2021, the trade mark “POST MILK GENERATION” was registered by Oatly AB (Oatly) in relation to oat-based food and drinks.

In November 2021, Dairy UK Ltd (Dairy) applied to invalidate the mark, *inter alia*, on the ground that a trade mark shall not be registered if or to the extent that its use is prohibited in the UK by an enactment or rule of law other than law relating to trade marks (Section 3(4) of the Trade Marks Act 1994).

The relevant enactment in question was an EU Regulation (assimilated law) that established a common organisation of the markets in agricultural products ((EU) No. 1308/2013 of 17 December 2013 (the 2013 Regulation)). The 2013 Regulation sets out certain requirements regarding the use of the term “milk”, as well as milk products such as “cheese” and “yoghurt”. In essence, there are “designations” reserved for dairy products, including the term “milk”, with the exception that the designations can be used for any product when “clearly used to describe a characteristic quality of the product”. For instance, “this oat-drink is milk-free”.

At first instance, the United Kingdom Intellectual Property Office (UKIPO) declared the trade mark POST MILK GENERATION invalid on the basis that the 2013 Regulation prohibited the use of the term “milk” for non-milk products.

The High Court overturned this decision, finding that the 2013 Regulation did not

### Certain rules and regulations may prohibit use of specific words for goods and services



prohibit use of the term “milk” in the general marketing of products. Since the trade mark POST MILK GENERATION did not purport to market the relevant goods as a milk product, it did not constitute a designation.

This in turn was overturned by the Court of Appeal and Oatly subsequently appealed to the Supreme Court.

### Supreme Court decision

At the Supreme Court, Oatly argued that the 2013 Regulation prohibition only kicked in when “milk” was used as a name of a non-dairy food or drink, for example, “oat-based milk”. As POST MILK GENERATION did not name or describe an oat-based food or drink, the prohibition did not apply: no one would say the product they were drinking was POST MILK GENERATION.

However, the Supreme Court noted that the 2013 Regulation did not utilise the term “name” but the broader term “designation”. It was held that the term “designation” referred to “use in respect of food or drink rather than the naming of it”. On this basis, it found that designations, including the term “milk”, may not be used for any product other than the milk products referred to within the 2013 Regulation. It concluded that “the prohibition bites where the designation has been used for a relevant product, and it is not necessary that it has been used as the name of the product.”

As an alternative, Oatly argued that even if the

trade mark POST MILK GENERATION did constitute a prohibited designation, use was nevertheless permitted on the basis of the 2013 Regulation’s proviso, as the trade mark clearly described a characteristic quality of the oat-based food and drink goods; namely that the products were milk-free. However, the Supreme Court rejected this argument, finding that the meaning of POST MILK GENERATION was far from clear. It was considered that the mark did not seek to clearly refer to milk-free characteristics, but rather described the target consumers and in particular, younger consumers who have concerns about the consumption of milk. It was held that “in so far as it is describing a characteristic quality of the product, it is doing so in an oblique and obscure way and is certainly not doing so ‘clearly.’”

For these reasons, the Supreme Court unanimously dismissed Oatly’s appeal.

### In short

Brand owners need to remain alert to the fact that certain rules and regulations may prohibit the use of specific words in connection with particular goods and services. Checks should be carried out to ensure that trade marks do not contain any prohibited terms, reducing the risk of making redundant investments. This decision may also prompt increased scrutiny in the UK marketplace regarding the use of regulated terms.

Author:  
Sophie Rann



# Design meets copyright Mio & Konektra reshapes EU protection for works of applied art

**O**n 04 December 2025, the Court of Justice of the European Union (CJEU) in the joined cases of Mio and Konektra revisited the core principles of EU copyright law in the context of furniture design. Addressing subsistence and infringement, the ruling provides timely clarity on originality and the protection of works of applied art amid growing divergence across member states.

The central questions were straightforward: first, did copyright subsist in the claimant's furniture; and, if so, did the defendant's reproductions infringe that copyright?

In answering these questions the CJEU took the opportunity to examine three core issues: the interplay between copyright and design protection, the assessment of originality in copyright works, and the requirements for establishing copyright infringement.

## 1. Copyright v design rights

The CJEU confirmed that copyright and design rights may occasionally cover the same subject matter, but they remain distinct legal rights. Each pursues different objectives and is governed by separate requirements: copyright protects original works in specified subject matter, while design protection depends on novelty and individual character. This distinction reinforces that overlapping subject matter

does not merge the legal standards, but rather each right has its own criteria.

## 2. Copyright subsistence

The referring courts sought clarification on how originality should be assessed in the context of utilitarian objects, such as furniture. The CJEU reaffirmed that the sole requirement for copyright subsistence is originality, defined as "free and creative choices reflecting the author's personality". There is no higher threshold for works of applied art, even where functional constraints can limit creative freedom.

Such free choices and the author's personality must be visible in the subject matter for which protection is claimed, and identifiable with sufficient precision and objectivity. The CJEU recalled previous case law, including the Brompton Bicycle judgment, confirming that technical constraints do not preclude copyright protection if the author's personality is expressed. However, these choices cannot be presumed; they must be identifiable by the court. Additionally, aesthetic or artistic merit is not required, as confirmed in Cofemel.

Another key point relates to derivative works: copyright covers only an author's own creative elements, but a later work that draws on, without reproducing, those elements can also qualify for protection. This is especially relevant for applied art, where designs are often reworked and antique

and contemporary elements combined.

In short, the court confirmed that originality remains the sole requirement for copyright subsistence across all works, including applied art.

## 3. Copyright infringement

The referring courts also asked the CJEU to clarify the standard for infringement. Specifically, they questioned whether infringement requires that the copied work reproduce the creative elements in a recognisable form, or whether replicating the overall impression is sufficient. They also queried whether factors such as the work's originality or the existence of similar works should influence this assessment.

The CJEU confirmed that infringement hinges on whether the creative elements have been reproduced in a recognisable way. Interestingly, it did not clarify to whom the work must be recognisable, whether an average observer, a professional designer, or someone else within the relevant industry. The court further clarified that the overall visual impression and the degree of originality are not relevant when assessing infringement.

## In short

Originality remains the cornerstone of copyright protection for all works in the EU. For designers, this means ensuring that their free and creative choices are clearly expressed and identifiable in their designs. However, the lack of clarity around the recognisability test could create challenges going forward, as the perception of similarity may differ significantly between the average observer and someone well-versed in the history and archives of design in a specific sector. In the UK, it will remain challenging for courts to reconcile the EU position with the UK law on copyright protection for "works of artistic craftsmanship" which, in addition to being original, must also have "artistic" quality and "craftmanship" (according to the House of Lords decision in *Hensher v Restawile* which also considered furniture designs).

## Case details at a glance

Jurisdiction: EU

Decision level: CJEU

Parties: *Joined cases C 580/23 (Mio AB and others v Galleri Mikael & Thomas Asplund Aktiebolag) and C 795/23 (USM U. Schärer Söhne AG v konektra GmbH and LN)*

Citation: *Joined cases C 580/23 and C 795/23*

Date: 04 December 2025

Decision: [dycip.com/cjeu-c-58023-c79523](https://dycip.com/cjeu-c-58023-c79523)

### Did copyright subsist in the claimant's furniture and did reproductions infringe it?



# When being the perfect secretary is not enough

## No title protection for Miss Money Penny

In a dispute over whether “Miss Money Penny” or simply “Money Penny” can be protected as a work title, the Bundesgerichtshof (German Federal Court of Justice, BGH) has clarified the requirements for protecting fictional characters as such.

### Background of the dispute

The claimant owns the rights to the James Bond film franchise, originally based on the novels by Ian Fleming. Miss Money Penny appears in that universe as the secretary to “M”, the head of MI6. While widely recognised, she is a supporting character rather than the central figure of the series.

The defendants owned German trade marks for “MONEYPENNY” in various classes, including administrative, telecommunications and IT services. The company used the sign primarily for secretarial and business support services and operated domain names incorporating the term.

### Legal framework

While copyright aims to protect the actual, original work and/or the content of a work (for example, film, music, image), title protection serves to prevent confusion in the course of trade.

**Section 5(3) of the German Trade Mark Act protects titles of works, defined as the names or special designations of printed publications, films, or comparable creative outputs. Protection arises through use of the title in commerce in Germany.**

The concept of a “work” includes intangible creative results that, in the perception of the relevant public, can be individually named and serve as objects of legal and commercial transactions. Against this background, the claimant maintained that, as a copyright-protected fictional character,

Miss Money Penny should also qualify as a protected work title under Section 5(3).

The central issue in the case was therefore whether “Miss Money Penny” could herself be regarded as such an independent work that qualifies her character as a title of work, separate from the films in which the character appears.

### Fictional characters as works

The court accepted in principle that fictional characters may qualify as works capable of title protection. However, this requires more than fame or recognisability.

First, the character must be sufficiently concretised in terms of personality and appearance. Second and more crucial, the character must display a degree of independence from the underlying work. Only if a character has achieved autonomy and separate marketability can it function as an independent object in commercial life.

Indicators of independence may include distinctive visual features, pronounced character traits, specific abilities or consistent behavioural patterns. In a series, repeated and characteristic appearances may also support autonomy. However, such independence must stem from the “basic work” itself and not from external exploitation such as merchandising or licensing.

### Copyright protection not determinative

The court rejected the reasoning that copyright protection of Miss Money Penny as a fictional character would automatically entail recognition as a protected work title.

According to established case law, copyright protection for fictional characters requires an unmistakable personality created through a combination of distinctive character traits and recognisable physical features. A purely functional or stereotypical role is insufficient.

Based on the court’s assessment, Miss Money Penny does not exhibit a sufficiently specific visual characterisation combined with pronounced personality traits to meet that threshold. In any event, the court

### Case details at a glance

Jurisdiction: Germany

Decision level: German Federal Court of Justice (BGH)

Parties: Amazon v Money Penny Verwaltungs GmbH

Date: 04 December 2025

Citation: I ZR 219/24

Decision: [dycip.com/bgh-title-work](https://dycip.com/bgh-title-work)

emphasised that copyright and title of work protection are distinct concepts. Even if copyright protection were assumed, this would not automatically justify title protection.

### No sufficient independence

Although survey evidence showed that many people associate “Miss Money Penny” with the Bond films, this did not support independence. Instead, it confirmed that the character is perceived as part of the broader Bond universe, not as a standalone work. Licensing, publications, and merchandising were also irrelevant. Independence must be evident within the original work itself; external commercial use cannot create autonomy where the character remains narratively dependent.

### In short

This ruling confirms the German Federal Court of Justice’s restrictive approach to title of work protection.

**Fame and long-standing public recognition are insufficient. Only fictional characters that have developed true autonomy and independent marketability within the primary work can qualify as protected titles of works.**

For rights holders, the judgment highlights three points. First, supporting characters face a high threshold in demonstrating autonomy. Second, copyright and title-of-work protection must be assessed separately, as copyright standards cannot simply be transferred into title-of-work protection. Third, even if protection had been granted, enforcement would likely have been limited to confusion between works, not to the use of the name for unrelated business services.

**Author:**  
Lisa Bieber



# Creative origin

## Can use of a fashion designer's own name cause deception to consumers?

Case details at a glance

Jurisdiction: EUIPO

Decision level: CJEU

Parties: PMJC SAS v [W] [X], [M]

[X] and [X] Créative SAS

Date: 18 December 2025

Citation: C-168/24

Decision: [dycip.com/cjeu-c-168-24](https://dycip.com/cjeu-c-168-24)

A French company, named after its founder, the fashion designer Jean-Charles de Castelbajac, owned various trade marks for “JC de CASTELBAJAC” (the JC marks). The company became insolvent and its trade marks were assigned to PMJC SAS (PMJC/the company) in 2011-12. Jean-Charles agreed to work for PMJC until the end of 2015. In June 2018, PMJC brought an action against Jean-Charles for infringement of the JC marks.

Jean-Charles filed a counterclaim and sought to have PMJC's rights in the JC marks revoked on the grounds that PMJC had been using the marks in a deceptive manner from the end of 2017 to the beginning of 2019. Jean-Charles alleged that the company had used the JC marks in a way to make the public believe that Jean-Charles was the creator of the goods to which the marks were attached.

In October 2022, the Court of Appeal in France, issued a judgment where PMJC's rights were partially revoked. The court considered that EU law did not prevent the revocation of a trade mark referring to a designer's surname in a situation where “the assignee of that trade mark leads the public actually to believe that the designer is still involved in the design of the goods, or creates a sufficiently serious risk of such a deception”.

According to the Court of Appeal, PMJC had on two occasions had been found guilty of infringing Jean-Charles' copyright in his recent works, which were not assigned to PMJC. The company had implied that Jean-Charles was still involved in the design of its goods through its use of the JC marks for clothing, which also incorporated a design, the copyright of which was owned by Jean-Charles.

The Court of Appeal held that the JC marks had become deceptive.

PMJC appealed to the Court of Cassation, which referred the following question to the Court of Justice of the European Union (CJEU): “Must Article 12(2)(b) of Directive [2008/95] and Article 20(b) of Directive [2015/2436] be interpreted as precluding

### Businesses should consider use made of trade marks bearing a former designer's name



the revocation of a trade mark consisting of the surname of a designer on the grounds that it is used after the assignment in such a way as to make the public actually believe that that designer is still involved in the design of the goods bearing the mark, when that is no longer the case?”

#### The CJEU decision

With reference to the Advocate General's Opinion and Emanuel, C 259/04, the CJEU considered that a trade mark consisting of the name of a fashion designer used by an undertaking with which that designer is no longer connected is not sufficient alone, to justify revocation of that mark. The average consumer, who is reasonably well informed and reasonably observant and circumspect, is aware that not all goods bearing a trade mark which refers to the name of a designer, have been created by that designer.

Revocation on the grounds at issue, presumes either actual deception or that it is proven that there is a sufficiently serious risk of deception.

The question regarding whether use of the trade mark is misleading to the public must be considered regarding all the relevant circumstances of that case. In this case, the court held that “the presence of decorations pertaining to the specific creative universe of a designer and infringing his or her copyright, on the goods covered by the trade marks

consisting of the name of that fashion designer”, might constitute an applicable circumstance given that it increases the risk that the public may mistakenly discern the creative origin of the goods covered by the trade marks.

The CJEU therefore answered the referred question as follows: “Article 12(2)(b) of Directive 2008/95 and Article 20(b) of Directive 2015/2436 must be interpreted as not precluding the revocation of a trade mark consisting of the name of a fashion designer on the ground that, having regard to all the relevant circumstances, it is used by the proprietor of the trade mark, or with his or her consent, in such a way as to lead the average consumer who is reasonably well informed and reasonably observant and circumspect to believe, mistakenly, that that designer was involved in the design of the goods bearing that mark.”

#### In short

It is important for fashion companies and other businesses to carefully consider the use they make of any trade marks which bear a former designer's name which they are authorised to use, to ensure that they are not used in conjunction with any of the designer's other IP rights which they do not own, in order not to deceive consumers as to the creative origin of goods.

Author:

Sarah Brooks



# D YOUNG & CO INTELLECTUAL PROPERTY

And finally...

## Exhaustion / copyright

# Honey, I modified the cooker! Court of Appeal explores trade mark exhaustion and copyright in design drawings

**U**KIG sold refurbished and electrified second-hand AGA cookers that had been converted using their “eControl” technology. At first instance in the Intellectual Property Enterprise Court (IPEC), AGA alleged trade mark and copyright infringement.

At first instance, it was found that UKIG’s use of the identical sign “AGA” in its marketing and on its products amounted to trade mark infringement. However, UKIG argued the trade mark rights were exhausted by the authorised sale of the original cookers by AGA. This defence was rejected, as UKIG’s marketing created the impression of a commercial connection between itself and AGA (the trade mark proprietor), which fell within one of the recognised exceptions to exhaustion (the others being alteration of the goods’ condition and damage to reputation).

On appeal UKIG argued that the first instance judge’s factual findings were irrational. This was rejected, with The Court of Appeal holding it was reasonable to conclude (as the first instance judge did) that the composite of “AGA” and “eControl” could lead consumers to believe the conversions were authorised by AGA or formed part of AGA’s product range.

A common theme in UKIG’s appeal was that it had no alternative way to describe its products, other than through a composite of “AGA” and “eControl”, yet it was noted that UKIG did not have an unfettered right to use “eControl” alongside “AGA”.

AGA also alleged indirect copying of copyright protected design drawings through the reproduction of the cooker control panel. This claim initially failed due to s51 CDPA which prevents findings of infringement in relation to non-artistic design drawings. AGA cross appealed, arguing that the panel qualified as a graphic (artistic) work due to being a “thing to be looked at”, however this was rejected as the panel was considered to be primarily functional.

While businesses may be free to resell goods by reference to the original trade mark, they must carefully consider if their additions, modifications or other activity gives rise to the impression that they are commercially connected with the original brand owner.

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*Decision:* [dycip.com/2025-ewca-civ-1622](https://dycip.com/2025-ewca-civ-1622)

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**Important reminder!**  
**UKIPO fee increases effective 01 April 2026**

Changes to UK trade mark, design and patent fees will come into effect on 01 April 2026.

Read our updated advisory article for information about the fee increases and next steps we encourage rights holders to consider taking:  
[dycip.com/ukipo-fees-apr2026](https://dycip.com/ukipo-fees-apr2026)

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