Trademark Law Institute

2023 Conference, themed exhaustion in Trademark Law’

**Friday afternoon September 15 and Saturday morning 16, 2023**

**Erasmus University Rotterdam**

**Introduction and (draft) Program**

1. Introduction

The principle of trademark rights exhaustion in trademark law is a multifaceted topic. It entails that a trademark holder cannot control further distribution of a physical trademarked product after the first legitimate sale.[[1]](#footnote-1) Recent discussion in trademark law increasingly lays focus on the integration of objectives outside those outlined in the theory of functions. Particularly objectives concerning sustainability and fundamental rights. Sometimes these objectives come into conflict with the traditional functions of trademark law. [[2]](#footnote-2)

A trademark holder can only object to further sales of a branded products if these have not been put on the market within the EEA of if there are legitimate reasons to oppose resale, as outlined in article 15 of [Directive 2015/2436](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015L2436&from=EN). In recent case-law several questions have been raised concerning the relation between exhaustion in trademark law and those legitimate reasons, such as: the burden of proof, repair repackaging and refilling of products, the position of fundamental rights and the usage or re-usage of products. In this introduction several questions surrounding pivotal cases on exhaustion in trademark law are highlighted, for later discussion.

**Overview**

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issues

* 1. Burden of proof for exhaustion of branded products

*In Sporttrading v Converse* the question is addressed whether a reverse burden of proof is justified in certain cases of exhaustion in trademark law.[[3]](#footnote-3) The ratio behind such a reverse burden of proof can generally be found in the protection of the free movement of goods within the internal market.

Exhaustion is a limitation of the exclusive right of a trademark holder. Therefore, the burden of proof lies with the party that relies on this limitation.[[4]](#footnote-4) Conversely, this means the trademark holder has no obligation to prove the goods were imported into the EEA *without* its consent. In practice it will often prove difficult for a selling party, not part of the official distribution chain, to demonstrate that goods were imported into the EEA with the consent of the trademark holder. Records of the entire chain of sales tend to be insufficiently kept. In *Sporttrading v Converse*, no reversal of the burden of proof was deemed justified. This raises the following questions.

When is the adoption of an exclusive distribution network by the trademark holder enough for a reversal of the burden of proof? Does the nature of the product, luxury or not, matter when the selling party claims a reversal of the burden of proof is warranted?

What if it is made ostentatiously clear he is not part of the exclusive distribution network of the trademark holder? Are there other market distribution systems that could warrant a reversal of the burden of proof? [[5]](#footnote-5)

* 1. Issues concerning repair

In the *EPAL* case, which basically deals with the repair of branded wooden pallets, the Dutch Supreme Court reversed several questions to the ECJ in a, now withdrawn, case regarding the repair of trademarked goods (in unofficial translation): [[6]](#footnote-6)

*1(a) Does a successful appeal on Article 15(2) EUTMR[[7]](#footnote-7) require that further commercialization of the trademark products in question is or is likely to be detrimental to one or more of the functions of the trademark referred to above?*

*(b) If the answer to question 1(a) is yes; is there any additional requirement than the presence of 'legitimate reasons'?*

*(c) For a successful appeal based on Article 15(2) EUTMR, is it always sufficient that one or more functions of the trademark referred to in Question 1(a) is adversely affected?*

*2(a) Can it be said in general terms that a trademark holder may, under Article 15(2) EUTMR, oppose the further marketing of goods under his trademark if those goods have been repaired by persons other than the trademark proprietor or persons whom he has authorized to do so?*

*(b) If the answer to question 2(a) is in the negative, does the existence of 'legitimate reasons' (within the meaning of Article 15(2) EUTMR) after repair by a third party of goods put into circulation by or with the consent of the trademark proprietor, depend on the nature of the goods or the nature of the repair carried out, or on other circumstances, such as special circumstances like those of the present case?*

*3(a) Is opposition by the trademark proprietor (in the sense of art 15(2) EUTMR) to further commercialization of goods repaired by third parties, excluded if the trademark is used in a manner that cannot create the impression that there is an economic link between the trademark proprietor (or its licensees) and the party further commercializing the goods, for example if, after the repair, it is clear by removal of the trademark and/or additional labelling of the goods, that the repair was not carried out by or with the consent of the trademark proprietor or a licensee thereof?*

*(b) Does the answer to the previous question depend on whether the mark can be easily removed without detriment to the technical soundness or practical serviceability of the goods have any significance in this connection?*

*4) Does the answer to the foregoing questions depend on whether the mark is a collective mark under the EUTMR, if so, in what respect?*

Question 1 is relevant to the sustainability discussion. The function theory considers the function of the brand from the perspective of the brand. And somewhat from that of the consumer. In the broader context of sustainability, especially corporate due diligence, there is the concept of "double materiality" in risk analysis. By analogy, one might question this one-sided approach of the function theory which solely mitigates external risks to a brand. A contemporary approach to the function theory could internalize the risks that the brand holds for the environment. [[8]](#footnote-8)

Several practical questions can also be raised in response to the questions raised in the EPAL case. Is it harmful to a trademark holder when a third-party repairs and resells a product because it conflicts with the function of the trademark to indicate the origin of a product?

If a repair is not performed with sufficient precision and the consumer is not informed properly of the involvement of a third party, could this possibly damage the reputation or quality guarantee function of the trademark? Would a physical adjustment to the visible mark be necessary/sufficient to avoid consumer confusion? Or would a verbal communication suffice? [[9]](#footnote-9)

* 1. Refurbishment

Refurbishment of a product can include repairs, but not necessarily so. When a seller refurbishes a product, he performs all possible maintenance to bring it as close to a new-state as possible. Therefore, some overlap with the questions in the previous paragraph will apply, especially when the seller does an insufficient job. A refurbishment may also include replacing parts, while spare parts can originate from either authorised or unauthorised sellers.

Some companies, like Apple, fiercely litigate to control the production and distribution of spare parts.[[10]](#footnote-10) A case before the Norwegian Supreme Court ("**NSC**"), demonstrates how the use of replacement parts may conflict with trademark law. The seller of refurbished Apple goods used counterfeit screens for refurbishment. The seller used removable stickers to obscure a falsified Apple logo on the screens. [[11]](#footnote-11) The argument of the seller that environmental impact of certain trademark law aspects should be considered was rejected by the court. The NSC holds that its interpretation follows from the Trademark Directive and caselaw. It explains that ECJ caselaw on the interpretation the Directive asserts the only relevant considerations are those of the function of the trademark.[[12]](#footnote-12) This led to the NSC ordering the destruction of the counterfeit screens. Could the NSC have ordered the defendant to effectively and permanently remove the falsified logos to prevent the destruction of these new, unused parts?

Another point that the NSC makes is the following:

1. 38) There is also a risk of affecting the trademark’s functions even if the concealment is not removed. On the outside, the screens are identical to Apple’s original screens, and the marker is applied at the same place as Apple’s trademark is placed on original screens. Thus, the concealment, which is visible, may cause confusion with regard to the product’s origin. For the relevant public, it may appear unclear whether it is an original screen or a copy. Such ambiguity is in itself adequate to establish a risk of affecting the trademark’s functions.[[13]](#footnote-13)

This raises the question in what case a replacement part that is made outside of the trademark holder's chain of production would not cause this 'ambiguity'. Notably, the relevant public is not the consumer but consists of providers of repair services and professional traders. The marks will not be visible after installation for the end-user. Naturally, the screens cannot carry the falsified logo. But what if the logos are permanently removed by the seller or if there is no logo whatsoever? Would any professional party be confused about the fact that these screens are not authentic, because they look like Apple-screens '*on the outside'*? How would one go about the production of compatible screens without making them look like an Apple-screen? Does this interpretation of trademark law enable trademark holders to monopolize the market for spare parts? How would other national judges interpret this issue?

* 1. Upcycling en recycling

Recycling and upcycling both refer to the reuse of materials.

In recycling, products are broken down into raw materials such as wood, glass or metal. The original product and trademark will typically no longer be recognizable after the process. In this case, there will not likely be any infringement of a trademark owner's right. With upcycling, parts of the product are reused, or the product becomes part of a new product. This practice extends the life cycle of the product. The situation may then arise where i) the trademark is removed ii) it is retained or iii) it is modified.

In the US case *Chanel v Shiver and Duke*, the question was raised what the status of a trademark is when upcycling. In this case, Chanel argued that the use of buttons carrying the trademark, which were offered as part of jewellery, made Shiver and Duke benefit unfairly from the goodwillof the brand. Moreover, Chanel argued Shiver and Duke failed to take appropriate measures to avoid consumer confusion about the origin of the product. Ultimately, this case was settled.

Where should the line be drawn between freeriding on the goodwill built up by a trademark with minimal modifications to a product? What if the 'upcycling' effectively (but inadvertently) decreases the quality of the goods? What norm would be applicable to measure this deterioration aspect, would it be the objective value of the product or relative marketability? And would any devaluation of the good result in a legitimate reason for a trademark holder to object to the sales? How should it be made known to the consumer a good was altered when the visible trademark is one of the main valuable features? And how can this NOT be taking unfair advantage of the reputation or distinctive character of the trademark. How can the upcycling party avoid confusion about affiliation with the brand? Does a disclaimer on the packaging suffice? And does that disclaimer even matter if the result of the upcycling process is awful, due to risks of dilution of the trademark and possible harm to its reputation? [[14]](#footnote-14)

* 1. Use of a branded product in art

The use of a physical product in art can be seen as a special form of upcycling. The relevance of trademark law for the use of a physical product in art will depend on the recognizability of a trademark on the piece.

The first question that arises is whether this is use in the course of trade, and if so, whether the state in question has provided trademark protection for such situations (this is not part of mandatory EU harmonization). If such protection is granted, the use by an artist to which the trademark holder objects, should at least also be weighed against freedom of expression and artistic freedom of the artist. Something can be considered art if it serves to convey a political or social message to some extent. However, this threshold is not very high. Nor does it mean no commercial purpose is allowed. Relevant considerations are whether the use of a trademark in the art work damages the trademark's reputation or whether unfair advantage is taken. But does an artist need to have any intent to harm the trademark holder rights? Or can the intention to freeride on the goodwill of a trademark also suffice? Does the 'no-harm norm form too great a restriction on artistic freedom/freedom of expression? Is providing negative commentary on powerful institutions and actors within society not one of the main prerogatives of an artist?[[15]](#footnote-15) [[16]](#footnote-16)

Senftleben explored the role of fundamental rights and freedom of expression in relation to trademark law. In his paper he looks at the ruling in Hennesy v Cedric Art. This case did not involve the use of a physical product (it just depicted a branded product), but it holds some interesting insights on the issue of fundamental rights in trademark law. Senftleben firmly concludes:   
*EU trademark law fails to provide for robust gatekeeper requirements that render infringement claims against use in artistic contexts futile from the outset. [[17]](#footnote-17)*

He is of the opinion that current tests to determine whether there has been a trademark infringement form a risk to the fundamental right of freedom of expression. In fact, he states the fairness-test of the ECJ does not provide substantial protection for the freedom of expression. Considering the increasing constitutionalization of private law, one may wonder whether the view of the ECJ still reflects that of broader society. [[18]](#footnote-18) This discussion on weighing of rights of the trademark holder and other societal interests, reflects the questions brought up earlier regarding environmental impact in the EPAL case.

Comparatively, the US case *Nike v MSCHF* illustrates how a claim to freedom of expression can be unjustified.[[19]](#footnote-19) The streetwear brand MSCHF released "Satan Shoes" in a collaboration with popular rapper Lil Nas X. These were customized, original Nike shoes. The 666 pairs of shoes, which contained both the Nike logo and a drop of blood, were sold out instantly. Nike stated there was a trademark infringement because the brand received backlash from confused customers who thought the brands were affiliated. Nike also claimed that MSCHF freerides on the trademark's goodwill. MSCHF used several defences:

- first sale doctrine (which is equivalent to exhaustion);

- material alteration of the mark, and

- parody / fair use and social commentary.

The case was settled, but it raises interesting questions. Where is the line between artistic expression and free rider behaviour? How much does the quantity of the 'art-products' produced matter? Does the customization of trademarked products fall under 'art' in a legal sense? Does it matter whether and on what scale these customized trademark products are commercialized? How to distinguish between 'art' and creating outrage merely with the intent to pump sales? And does this distinction even matter? [[20]](#footnote-20)

* 1. Refilling

The trademark issues concerning refilling relate to the sale of refilled, branded packaging. Some industries have their own systems when it comes to refill packaging. This will mostly have to do with safety and quality requirements.[[21]](#footnote-21) Package refilling (on a commercial scale) is an important method of extending the life cycle of goods.[[22]](#footnote-22) At the same time, the origin function and quality guarantee function can be harmed here.

In the *Sodastream-*stream case, empty CO2-cylinders were refilled and repackaged by MySoda.[[23]](#footnote-23) Trademark holder Sodastream argued that the refilling and repackaging (more on that in paragraph 2.7) by MySoda constituted a trademark infringement. Notably, the embossed Sodastream logo was still visible on the bottles. This could create confusion among consumers as to the origin of the bottles and possible affiliation of the companies.

In Sodastream the removal of the original label on the cylinder after refilling qualified as '*active conduct'* in the sense of ‘*use in the course of trade*’. The court asserted that the refilling and relabelling, leaving the embossed trademark on the packaging is only allowed when the average consumer does not (from that) infer a commercial link between the refiller/refilled product and the trademark holder. Depending on the circumstances, like the fact that the cylinders are intended to te reused and refilled many times and the text on the new labels, it is possible that the average consumer does not infer a commercial link (which is, however, the starting point), and that thus no functions of the trademark are harmed.

Referring back to the EPAL-case (paragraph 2.2.), this case may answer some questions surrounding the repair and resale of goods. Apparently, being sufficiently clear about the origin of refilled product, that is typically recycled, is deemed sufficient to take away any consumer confusion. On the one hand this suggests that a verbal communication would not suffice, as this is not visible on the product itself after sales, but that in some cases (sufficiently clear) relabelling would so the trick. And what if the label can be easily removed (such as the stickers on the iPhone screens in the Norwegian case)?

* 1. Repackaging of products (especially pharmaceuticals)

Five conditions for the legitimate repackaging of products follow from case law (informal translation):

1. It follows that the trademark proprietor may prohibit the alteration resulting from any repackaging of a medicinal product bearing his trademark which, by its nature, is liable to affect the original condition of the medicinal product, unless five conditions are met, namely:
2. - that it is proved that the use of the trademark right by its holder to oppose the marketing of the repackaged products under his trademark would contribute to an artificial partitioning of the markets between Member States;
3. - that it has been shown that the repackaging cannot affect the original condition of the product in the packaging;
4. - That the new packaging clearly indicates who repackaged the product and who manufactured it;
5. - That the presentation of the repackaged product cannot damage the reputation of the trademark and of the trademark holder; for example, the packaging must not be defective, of poor quality or untidy;
6. - that the importer gives prior notice to the proprietor of the trade mark that the repackaged product is to be put on the market, and, at his request, provides him with a sample of the repackaged product**. [[24]](#footnote-24)**

In *Junek v Lohmann & Rauscher* the court determined that no repackaging occurs when only a small sticker is affixed that does not conceal the brand or any product codes. For the packaging of pharmaceuticals additional requirements apply when it comes to traceability and origin in order to guarantee the safety and effectiveness. [[25]](#footnote-25) When it is sufficient to use a sticker? And if that a sticker is sufficient, would that mean that repackaging is not in fact necessary? Could a trademark holder in theory object to all repackaging (in product of a similar nature)? Would this be applicable to all products or only to certain types of packaging?

Sometimes repackaging is necessary in case of parallel imports. This may require certain modifications that damage the initial safety seals or anti tampering devices placed on the product by the trademark holder; there may then be a right to object to the resale of those products. However, could that mean certain parts of the internal market are effectively cut off when repackaging is mandatory? What other types of modification to the packaging is allowed? [[26]](#footnote-26)

Where to draw the line between allowing parallel trade in the EEA and guaranteeing the safety and the integrity of pharmaceutical products (where this is more sensitive than most other products)? What does the consumer find acceptable and when is repackaging too suspect? [[27]](#footnote-27)

* 1. Question of limits of debranding/rebranding

In Kort Begrip, Verschuur raises several questions surrounding the *Mitsubishi v Duma* ruling and the debranding of products before import into the EEA. [[28]](#footnote-28) She notes that before this ruling the removal of a trademark was not considered ‘use in the course of trade’. Expansion of the functions of the trademark in case-law had the CJEU reconsider this doctrine. In Mitsubishi the court states that debranding before import into the EEA violates the right of the trademark holder. It infringes upon the 'right of the trademark holder to control the first marketing of goods bearing that trademark in the EEA' ("**the right to control**"­). Geerts raises the question what this expansion of the term 'active conduct in the sense of ‘*use in the course of trade*’ means. Particularly since no clarification was given on the subject of 'use in commercial communications. [[29]](#footnote-29) Bronneman sees an entirely new exclusive trademark right being created by the ECJ here.[[30]](#footnote-30)

In another perspective, Koenraad & Stols discuss Mitsubishi more extensively in the light of Primakabin:

1. Mitsubishi can therefore be distinguished from the CJEU’s Portakabin case, in which the defendant continued to use the PORTAKABIN trademark to advertise its PRIMAKABIN goods, which included rebranded second-hand PORTAKABIN units. It seems unlikely that the rather strange consequence of Portakabin – namely, that the debranding of non-exhausted goods for the purpose of import within the EEA would constitute trademark infringement, but the debranding of goods that are exhausted would not – has been well considered or intended by the CJEU in Mitsubishi. Since the trademark was removed and thus no longer used in the course of trade in both these situations, the difference should be irrelevant.[[31]](#footnote-31)

The intention of the trademark holder in the transaction increasingly seems to play a role with this implied right to control. Does that mean that all debranding, whether inside or outside the EEA constitutes an infringement? How does that work out for parallel import?

* 1. What about the customs status of products in case of exhaustion

Following Mitsubishi, in the *Hennessy v LB11* judgment by the court in The Hague the question was discussed how far the right to control of the trademark holder extends.[[32]](#footnote-32) And what is the role of the trademark holder's interest in realising the 'EEA value' of its branded products? How does this right to control affect the customs status of products?

In Peak Holding the CJEU established contractual restrictions on the resale of goods do not affect exhaustion once the goods are imported in the EEA with the permission of the trademark holder. This essentially sees to the interest of the trademark holder to commercialize the goods being fulfilled after the first sale.

1. 22. Article 7(1) must be interpreted as meaning that goods bearing a trade mark cannot be regarded as having been put on the market in the European Economic Area where the proprietor of the trade mark has imported them into the European Economic Area with a view to selling them there or where he has offered them for sale to consumers in the European Economic Area, in his own shops or those of an associated company, without actually selling them…

… 56. The answer to the third question must therefore be that, in circumstances such as those of the main proceedings, the stipulation, in a contract of sale concluded between the proprietor of the trade mark and an operator established in the EEA, of a prohibition on reselling in the EEA does not mean that there is no putting on the market in the EEA within the meaning of Article 7(1) of the Directive and thus does not preclude the exhaustion of the proprietor’s exclusive rights in the event of resale in the EEA in breach of the prohibition.[[33]](#footnote-33)

But what if these contractual restrictions see to the actual permission of the import? What if the buyer sells the goods inside of the EU when the conditions of sale by the trademark holder outline the goods must be sold outside of the EU? This was one of the important questions in *Hennessy v LB11*.

Can the apparent intention of the trademark holder at the time of sale affect the validity of the transaction? The advantage of the latter position for the trademark holder is that it has better means to act substantially/effectively against (illegal) parallel imports. Why does the court in Hennessy not make an exception to the exhaustion rule unlike Mitsubishi?

Advocate General G.R.B. van Peursem in Hennessy suggests the following question for the CJEU (informal translation):

1. Is there 'putting on the market' in the EEA in a case involving supply in the EEA under T2 customs status to third parties established outside the EEA, even in a case where it must be assumed that the trade mark proprietors negotiated a lower price for the purpose of sale for export outside the EEA than if they had known that the goods would be resold in the EEA market, because they had the opportunity to realise the economic value of their trademarks within the meaning of the Peak Holding judgment? The follow-up question in case of a negative answer could then be what is then the standard for exhaustion in such a case. Is - and if so how - the intent or expectation as to the destination of the selling trademark owner relevant in this regard?[[34]](#footnote-34)

Martens and Leppink discuss the following in line with van Peursem's points (informal translation):

1. The question may be asked why no exception had to be made in Hennessy, mindful of the right to control to which the CJEU gave so much weight in Mitsubishi v Duma. It was the Hennessy's clear and also knowable intention to the buyers to sell the products only outside the EEA. [[35]](#footnote-35)

As demonstrated by many of the cases discussed in this memo, these nuances are not necessarily clear. These difficulties are aggravated by the fact that the right to control does not follow from the text of the law, but only indirectly from article 10(2) [Directive 2015/2436](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015L2436&from=EN) and article 9(2) [Regulation 2017/1001](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R1001&from=NL).

Should the right to control of the trademark holder be considered a new ground for infringement? And if so, should this right be codified in EU-law? How could one interpret 'control' in this sense? Would that include the intention of the trademark holder at the time of the transaction?

The above shows that there are many aspects of and angles to the concept of exhaustion. We would very much enjoy discussing those with the academic participants of the TLI conference 2023. A few have volunteered to speak, those have been included in the draft program below. Some we have added as suggestions, and will receive this introduction and draft program.

\* \* \*

## Programme [DRAFT]

Venue: Erasmus University Rotterdam Campus

Saturday: Sanders 0-07 Moot Court Room

Sunday: Polak 2-04

### *Friday, September 15, 2023*

13.30 Registration and coffee

14:00 Welcome and Information on Trademark Law Institute

*Prof. Tobias Cohen Jehoram, Trademark Law Institute (Rotterdam) - confirmed*

Aim of the Conference

General Approach

14:15 **Part 1**: **Exhaustion and parallel trade**

Chair: *Prof. Dirk Visser, Trademark Law Institute (Leiden)*

14:15 Introduction I: Exhaustion and luxury goods; when the way third party resell can provide legitimate reasons to oppose the resale

*Prof. Luigi Mansani, University of Parma - confirmed*

14:25 Introduction II: Exhaustion in case of different but related entities holding the trademark right, and in case of lack of protection in one jurisdiction (also from a US and TRIPs perspective)

*Prof. Daniel Gervais, University of Amsterdam*

14:35 Introduction III: Contractual structures and obligations to sell outside the EEA and relevance of customs status for exhaustion

*Mr. Gertjan van den Hout, Trademark Law Institute (Groningen) - confirmed*

14:45 Introduction IV: Digital exhaustion of trademark rights in the metaverse (Nike v StockX)

*Dr. César Rámirez-Montes, University of Leeds*

14:55 Discussion

16:00 Coffee Break

16:30 **Part 2: Sustainable Reuses of Branded Goods: Infringement or Exhaustion?**

Chair: *Prof. Charlotte Vrendenbarg, Trademark Law Institute (Nijmegen) - confirmed*

16:30 Introduction I: Upcycling and exhaustion issues

Prof. Dirk Visser, *Trademark Law Institute (Leiden)*

16:40 Introduction II: Upcycling & legitimate reasons; a new approach to traditional trademark doctrines?

Prof. Irene Calboli (online), *Texas A&M University, Singapore*

16:50 Introduction III: A freedom of the arts approach to fashion upcycling & use of branded goods in art

*Prof. Martin Senftleben, Trademark Law Institute (Amsterdam) - confirmed*

17:00 Discussion

18:00 Closing

18:45 Travel by water taxi to the restaurant

19:00 Conference Dinner at Zalmhuis Restaurant on the Maas river

### *Saturday, September 16, 2023*

10:00 **Part 3: Reuse of Branded Goods**

Chair: *Prof. Anselm Kamperman Sanders, Trademark Law Institute (Maastricht University)*

10:00 Introduction I: Refilling and exhaustion

[to be announced]

10:10 Introduction II: Repair & refurbishment and exhaustion, use of third party replacement parts

[To be announced]

10.20 Discussion

11:20 Coffee Break

11:35 **Part 4: Debranding and the right to control first sale in the EEA**

Chair: *Prof. Tobias Cohen Jehoram, Trademark Law Institute (Rotterdam) - confirmed*

11:35 Introduction I: A new exclusive right for the trademark proprietor?

*Mr. Allard Rignalda (CIER, Utrecht)*

11:45 Introduction II: Legal qualification of debranding

*Prof. Łukasz Żelechowski, Warsaw University - confirmed*

11:55 Introduction III: The relationship between debranding and trademark functions

*Prof. Alexander von Mühlendahl, Queen Mary University/U. of Alicante -confirmed*

12:05 Discussion

13:00 Closing and suggestions concerning future projects

13:10 Conference Lunch

1. [I. Calboli, 'Trademark Exhaustion in the European Union: Community-Wide or International? The Saga Continues' (2002). *Marquette Intellectual Property Law Review*. 6, (1), p. 47.](https://scholarship.law.marquette.edu/cgi/viewcontent.cgi?article=1034&context=iplr) [↑](#footnote-ref-1)
2. See for example: [A. Kur, ‘As Good as New’ – Sale of Repaired or Refurbished Goods: Commendable Practice or Trade Mark Infringement?, GRUR International 2021, issue 70, 228–236.](https://academic.oup.com/grurint/article/70/3/228/6114702) [↑](#footnote-ref-2)
3. HR March 22 2022[, ECLI:NL:GHSHE:2020:2699](https://uitspraken.rechtspraak.nl/#!/details?id=ECLI:NL:GHSHE:2020:2699) (*Sporttrading v Converse*). [↑](#footnote-ref-3)
4. HR 22 December 2022[, ECLI:NL:GHSHE:2020:2699](https://uitspraken.rechtspraak.nl/#!/details?id=ECLI:NL:GHSHE:2020:2699) (*Sporttrading v Converse c.s.*), para. 3.79. [↑](#footnote-ref-4)
5. See for other distribution systems for example: HR 19 March 2021, [ECLI:NL:HR:2021:417](https://uitspraken.rechtspraak.nl/#!/details?id=ECLI:NL:HR:2021:417) (*Guy Laroche v 4 EW*). [↑](#footnote-ref-5)
6. HR 6 March 2020, <ECLI:NL:HR:2020:391> and [C-133/20](https://ecer.minbuza.nl/-/c-133/20-european-pallet-association). [↑](#footnote-ref-6)
7. The case dealt with the identical art 13 CTMReg, but for purposes of discussion here reference is made to the EUTMR. [↑](#footnote-ref-7)
8. [R. Gourdel e.a. 'The double materiality of climate physical and transition risks in the euro area', working paper No 2665/ May 2022.](https://www.ecb.europa.eu/pub/pdf/scpwps/ecb.wp2665~622858d454.en.pdf?d29408906ea04274666628f9faefce0d) [↑](#footnote-ref-8)
9. The discussion of sufficient communications towards the consumer surrounding the re-use, repackaging and repair of products will be further expanded upon under 2.6 in relation to the Soda-stream case. [↑](#footnote-ref-9)
10. [Right to Repair Europe, 'Apple crushes one-man repair shop in Norway’s Supreme Court, after three-year battle', righttorepair.com 2020](https://repair.eu/news/apple-crushes-one-man-repair-shop/). [↑](#footnote-ref-10)
11. [K. Stenvik, 'Importation of Goods Affixed with a Trademark Concealed by a Removable Marker', *GRUR International* 2021, issue 3, p. 285-290, para 28.](https://academic.oup.com/grurint/article/70/3/285/6207628) [↑](#footnote-ref-11)
12. Questions 1. a-c of the retracted request to the CJEU by the Dutch Supreme Court relate to this issue as well. [↑](#footnote-ref-12)
13. [K. Stenvik, 'Importation of Goods Affixed with a Trademark Concealed by a Removable Marker', *GRUR International 2021,* issue 3, p. 285-290, para 38.](https://academic.oup.com/grurint/article/70/3/285/6207628) [↑](#footnote-ref-13)
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