

# Registered Trade Marks – A System in Crisis and What’s to be Done?\*

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## Introduction

We assert, without fear of contradiction, save perhaps from some major international brand owners and trade mark bullies, that there is indeed a crisis. Why do we say that? For a number of reasons:

- (a) Because, as any trade mark lawyer will tell you, the difficulty, cost, expense and consequent burden on trade of finding a new mark which does not conflict with an earlier registration is already substantial and becoming more and more so.<sup>1</sup> If the mark is wanted internationally the problem is exacerbated. The system is not fit for purpose now and is becoming more burdensome year by year.
- (b) Trade mark examiners in offices which check for conflict of a mark applied for and earlier registered marks<sup>2</sup> will tell you the same.
- (c) Conflicts have been rising over the years since the 1994 Act and continue to do so. The UKIPO trade mark resolution system via hearing officers and appeal to appointed persons grows and grows.<sup>3</sup> Before the 1994 Act there were only a few oppositions a

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\* Based upon a keynote speech delivered by Sir Robin Jacob at the Retromark Conference, 24 May 2022.

<sup>1</sup> See, for example, Darren Meale, ‘Are you XKING kidding me? Making sense of trade mark conflict in the EUTM system’ IPKat Blogpost 02/08/2017, <https://ipkitten.blogspot.com/2017/08/are-you-xking-kidding-me-making-sense.html>.

<sup>2</sup> The UKIPO is one of them. Following implementation of The Trade Marks (Relative Grounds) Order 2007 SI 2007 No.1976 on 01/10/2007, although the Office examines an application for earlier conflicting marks, it has no power to refuse if it finds a conflict. Rather, it merely informs the owner(s) of the earlier mark(s) who can oppose once the application is published, or seek invalidation post-grant. The task of examination can be almost monstrous – sometimes requiring a comparison of one vast specification of goods and services with another. The EUIPO system is similar. In contrast, the US Patent and Trademark Office and IP Australia are examples where applications are examined and potentially refused based upon ‘relative grounds’ – conflict with earlier trade mark rights.

<sup>3</sup> The number of trade mark applications have increased pretty much year on year, from around 36,000 per year in 1990s to a record high of 197,000 in 2021. [Source: WIPO statistics database (Last updated: November 2021) and *UKIPO Facts and figures: patents, trade marks, designs and hearings, 2021* <https://www.gov.uk/government/statistics/facts-and-figures-patents-trade-marks-designs-and-hearings-2021>.] According to the IPO website (<https://www.ipo.gov.uk/t-challenge-decision-results.htm>) in 1998, there were 230 decisions from 20 hearing officers and 11 decisions from 3 appointed persons. By 2021, the Office published 400 trade mark decisions from 38 hearing offices and 42 decisions from 11 appointed persons. From about 1988 to 1993 the first-named author was the forerunner of an appointed person – sitting on behalf of the Board of Trade on appeal from the Office. The jurisdiction was limited to appeal from refusals to register (not oppositions). There was only one appointee at a time – with about 5 appeals a year. They were heard in Chambers at 4.30pm and generally, by around 6.30pm, a 3- or 4-page decision was on the clerk’s desk for sending out the next day.

year.<sup>4</sup> And hardly any litigation in the courts at all. Trade mark conflict have become a flourishing industry.

Shortly after the 1994 Act came in, the first-named author of this paper wrote a Forward to an annotated version of it by David Kitchin and James Mellor.<sup>5</sup> He said this:

When the Trade Marks Bill was introduced to Parliament the Minister said it would save industry £30m a year. Where he got that figure from is a mystery!

It was obvious bilge at the time – but looking back none of us anticipated just how wrong he was going to be. Our best estimate is that the number of trade mark professionals has doubled or perhaps even tripled since those times.<sup>6</sup> Much as we love them they are cost to industry!

It is not as though the problems were not apparent a long time ago. This is what the first-named author wrote in the Preface to 13<sup>th</sup> edition of *Kerly* in 2000:

Finally I should mention a point to watch for in the future. Trade marks are about signs used in trade. It is apparent from the specifications of goods being allowed by OHIM that owners are being allowed to register for ranges of goods far wider than their use, actual or intended. This causes the Office massive unnecessary work-hours are spent ploughing through long specifications to find out whether, buried in there, are goods or services of which the mark is descriptive. Even more seriously, these overbroad registrations are likely to hamper trade. And of course they may put up costs for anyone seeking registration of mark or contemplating using it. The problem needs resolution. Sooner rather than later, rules will have to be developed to stop this nonsense. It is not good enough to say that there can be later part-cancellation of wide specifications for non-use. Who would

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<sup>4</sup> The number of oppositions filed has increased from 1775 in 2013 to 8080 [Source: *UKIPO Facts and figures: patents, trade marks, designs and hearings 2013* (available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/456097/Facts\\_and\\_Figures\\_2015.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/456097/Facts_and_Figures_2015.pdf)) and *UKIPO Facts and figures: patents, trade marks, designs and hearings 2021*.

<sup>5</sup> D. Kitchin and J. Mellor, *The Trade Marks Act 1994: Text and Commentary* (Sweet & Maxwell, 1995). They speculated (at [26-24]-[26-25]) that bad faith might cover a lack of intention to use for an overwide specification of goods.

<sup>6</sup> The website of the Chartered Institute of Trade Mark Attorneys indicates that there were around 100 trade mark professionals when ITMA was formed in 1934 (see: <https://www.citma.org.uk/about-us/who-we-are/our-history.html>). Since 2010, the Register of Trade Mark Attorneys has been kept by IPReg. The IPReg website, indicates that between 2010 and 2021, the number of trade mark attorneys has risen from 772 to 1009 in 2021 (see: <https://ipreg.org.uk/what-is-an-attorney/intellectual-property-legal-profession-contributing-to-uk-plc> and <https://ipreg.org.uk/sites/default/files/The%20Size%20of%20Regulated%20Profession%20-%20Table%20of%20data%20since%202010%20v2.pdf>). These data suggest a doubling of trade mark attorneys since the 1994 Act, but these figures do not include the number of C/ITMA qualified trade mark administrators nor the IP and non-specialist firms of solicitors who have become more actively involved in filing and prosecution of trade mark applications in the last 10 years, or so.

bother with the expense and time involved when they want to get on with their business? An OHIM Board of appeal missed a chance to deal with the problem in *Trillium TM* (28.3.00) by holding that the doctrine of bad faith cannot be used to deal with it. That may or may not be right. If it is not then another way ought to be found.

He came back to this in the Preface to the 15<sup>th</sup> Edition of *Kerly* in 2011:

Of course some of the difficulty lies with the fact that the Directive and Regulation were written before the days of the internet... . However other difficulties have no such excuse for they were entirely foreseeable. Thus for instance I said in the Preface to the 13<sup>th</sup> Edition that the practice of allowing registration for goods or services as a whole class would lead to trouble. Compounding it as OHIM did by an offer of three for the price one made it worse, as was so well described by Justice Fidelma Macken of the Supreme Court of Ireland in giving the 2011 Hugh Laddie Lecture of the Institute of Brand and Innovation Law at my college.<sup>7</sup> The enormity of selling monopolies as though were like goods in a supermarket is actually breathtaking. The reality now is that the cost of finding a mark which one can be reasonably sure will be free of problems has risen considerably – as any experience trade mark attorney will tell you.

What are the reasons for the crisis? The major ones<sup>8</sup> appear to be these:

- (a) Overwide specifications;
- (b) Depletion of available words in the English language;
- (c) Failure of courts to construe specifications on the basis they are for trade marks;
- (d) Overwide and uncertain scope of protection;
- (e) Encroachment of trade marks into the fields of design and copyright in works of applied art;
- (f) Overprotection in other ways.

A number of these feed on each other – for example overwide specifications in different classes exacerbates the depletion of available marks. That should be borne in mind as a touch briefly on each.

**(a) Overwide specifications and what's to be done about them.**

The problem here is self-evident. People are getting trade mark registration for goods and services in which they have no genuine commercial interest. The Court of Appeal decision

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<sup>7</sup> The transcript is published in R. Jacob (ed), *The Sir Hugh Laddie Lectures: The First Ten Years* (Intersentia, 2019).

<sup>8</sup> There may be others.

in *Sky v SkyKick* is a good example.<sup>9</sup> The Supreme Court has recently granted permission to appeal.<sup>10</sup> It is in a good position to at least ameliorate the problem if not solve it. Ideally it would say not only that lack of intention to use for a particular specification of goods amounts to lack of good faith, but also that where an applicant files a particularly wide specification with an intention to use the mark for only a small portion, then there is lack of good faith for the rest of it.

This is not the place to go into a detailed discussion the arguments in favour of that outcome. But a couple of points are worth mentioning. Firstly, we would draw attention to Professor Phillip Johnson's valuable paper, '*So Precisely What Will You Use Your Trade Mark for? Bad Faith and Clarity in Trade Mark Specifications*',<sup>11</sup> written in 2018 before the CJEU's *SkyKick* decision.<sup>12</sup> Particularly illuminating is his discussion of the *travaux* to the Trade Mark Directive and his compelling argument that 'bad faith' was intended to encompass lack of intention to use as well as other abuses of the system.<sup>13</sup> Given that the General Court has held that evergreening, involving no dishonesty, is 'bad faith' the way may be open to control abuse of the system via the bad faith requirement.<sup>14</sup>

The second point is the argument that 'everyone has been doing it, so it's not bad faith.' It is indeed true that many have been doing it – which is hardly surprising since Trade Mark Offices have acted as though they were powerless to stop it. But if, as we suggest, overbroad claiming is an abuse of the system amounting to bad faith, then that is no answer. The argument amounts to saying a vice becomes a virtue if enough people practice it. Or that because the system has failed in the past it should go on failing in the future - we should do nothing about global warming because we caused it ourselves. It's time to stop clogging the Registers of trade marks with stuff that are not and never will be trade marks.

If the Supreme Court sides with SkyKick that would go a long way to preventing those with overwide specifications from enforcing their marks against those with very different businesses from their own. But it would not fully solve the problem of the clogged register.

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<sup>9</sup> *Sky v Skykick* [2021] EWCA Civ 1121. For a strong critique of that decision and links to discussion of earlier proceedings, see Darren Meale's post on the IPKat blog on 20/08/2021: 'SkyKick's back with a bad faith shocker from the Court of Appeal of England and Wales' available at <https://ipkitten.blogspot.com/2021/08/guest-post-skykicks-back-with-bad-faith.html>.

<sup>10</sup> Leave granted on 25 July 2022 UKSC 2021/0181.

<sup>11</sup> P. Johnson, "'So Precisely What Will You Use Your Trade Mark for?'" Bad Faith and Clarity in Trade Mark Specifications' (2018) 49 IIC 940.

<sup>12</sup> Case C-371/18 *Sky v Skykick* ECLI:EU:C:2020:45.

<sup>13</sup> P. Johnson, 'Bad Faith and Clarity' (see note 11), 959-962.

<sup>14</sup> Case T-663/19 *Hasbro v EUIPO* ECLI:EU:T:2021:211, [2021] ETMR 39.

The practice of overclaiming would probably diminish for the future but it would not go away. It would take the CJEU to take the same line (which it might very well do) before it could ameliorate the problem for those who trade in the EU.

And what about those overclaiming registrations already clogging the UK and EU registers?<sup>15</sup> One idea would be for trade mark registries to institute schemes making it very easy for trade mark owners to cut down their overclaiming registrations.<sup>16</sup> Perhaps even a reduction in renewal fees for those that do it. And of course it would make a lot of sense to raise renewal fees very, very significantly.

**(b) Depletion of available words in the English language**

Professors Barton Beebe and Jeanne Fromer have been studying this for both sides of the Atlantic.<sup>17</sup> The subject is so important that IBIL (UCL's Institute of Brand and Innovation Law) invited Professor Beebe to give the Sir Hugh Laddie lecture in 2021. It was entitled *Is Europe Running Out of Trademarks?* The short answer was an emphatic 'Yes!' This is what we said about the talk:

In this lecture, Professor Beebe will relay the results of his latest empirical study, again undertaken jointly with Professor Fromer, which investigates trade mark depletion within the European Union. Their findings are based on a systematic study of all 1.9 million trade mark applications filed at the EU Intellectual Property Office (EUIPO) between 1996 and 2018. During the lecture, Professor Beebe will report on findings that indicate that levels of trade mark depletion and crowding at the EUIPO exceed those in the United States and explain why the 'reverse Babel problem' is an additional concern. He will also demonstrate how attempts by EUIPO to deal with depletion has led to worsening levels of crowding, before proposing legal reforms that might help trade mark systems around the world to manage what may prove to be among the most intractable problems they may face this century.<sup>18</sup>

**(c) Failure of courts to construe specifications on the basis they are for marks to be used in trade**

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<sup>15</sup> The US and other systems do not have the problem to anywhere the same extent because of the requirement to prove use on renewal.

<sup>16</sup> Indeed, there is currently no official fee associated with filing a request for partial surrender of a trade mark registration (via a Form TM23), but it is not believed that registrants make much use of this procedure voluntarily – rather, waiting for a third party to challenge the validity of the registration across its full scope.

<sup>17</sup> 'Are We Running Out of Trademarks? An Empirical Study of Trademark Depletion and Congestion' 131(4) Harvard Law Review 945 (2018), available at: <https://harvardlawreview.org/2018/02/are-we-running-out-of-trademarks/>.

<sup>18</sup> See: <https://www.ucl.ac.uk/laws/events/2021/nov/annual-sir-hugh-laddie-lecture-prof-barton-beebe>. This webpage also includes a link to a recording of the lecture itself. Professors Beebe and Fromer are currently producing a paper on this research. See also G. von Graevenitz, C. Greenhaigh et al, 'Trade Mark Cluttering: An Exploratory Report' (UKIPO, 2012).

This is an understudied subject. The first-named author said something about it in *Avnet v Isact*:<sup>19</sup>

specifications for services should be scrutinised carefully and they should not be given a wide construction covering a vast range of activities. They should be confined to the substance, as it were, the core of the possible meanings attributable to the rather general phrase.

This was said about specifications for services, but we now see it as more fundamental. Take a couple of examples. Suppose X has a registered mark for ‘mirrors’ and Y uses the mark for cars. Can X assert this is a case of same mark/same goods? The answer is surely not – cars have mirrors but are not mirrors as objects of trade under the mark.<sup>20</sup> Take a case closer to *SkyKick*. These days cars include computers and use computer software not only for internal working but to communicate, and of course they will communicate a lot more in the future self-driving cars. Does that mean a car manufacturer deals in ‘computer software’ for trade mark purposes? Are Sky or its customers really using the word Sky as a trade mark for ‘computer software’ just because computer software is used as a technical means to provide customers with a TV or mobile phone service sold under the name Sky?

This is not entirely a new problem. It arose in a case the first-named author did as counsel years ago, *Unilever v Johnson Wax*.<sup>21</sup> Johnson Wax had come out with a new thick liquid lavatory cleaner called ‘Lifeguard Toilet Duck’. Unilever, owner of a registration of Lifeguard for ‘common soap and detergents’, argued that because Toilet Duck, technically-speaking, included a detergent, the product fell within that specification. Whitford J rejected that, saying:

Trade marks, however, are concerned with the practical, everyday realities of life and the question is: would TOILET DUCK be considered to be a detergent by those who buy it and sell it. My view is quite clearly it would not. It is inconceivable that a retailer asking a wholesaler whether he had got anything new in the detergent line would be offered TOILET DUCK. If he were offered this preparation as a detergent, the comment he would be likely to make is perhaps best left to the imagination. A husband asked to go out to the mini-market or the supermarket to get some detergent is not, if he is in his right mind, going to come back and present his wife with the TOILET DUCK.

**(d) Uncertain scope of protection**

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<sup>19</sup> [1998] FSR 16, at 19, and accepted in the CA in *Reed Executive v Reed Business* [2004] EWCA (Civ) 159.

<sup>20</sup> Similarly, Briggs J.’s example of tyres and cars in *Schutz v Delta Containers* [2011] EWHC 1712 (Ch), [80].

<sup>21</sup> [1989] FSR 145.

Woolly legal rules are inherently undesirable.<sup>22</sup> They naturally are apt to favour the powerful against the weak, for the powerful can afford to take chances which the weak cannot. That is particularly so in the case of IP rights of all kinds. Where a powerful party asserts a right against a weak one the prudent thing for the weak one to do is to give in and do something else. Of course some rules are inherently fuzzy – e.g. when is one mark so close to another that, if used for the same goods or services, there is a sufficient likelihood of confusion to be regarded as an infringement? But the Trade Mark Directive introduced unnecessary fuzziness – what is the line between goods or services which are similar to those for which a mark is registered and those which are not?<sup>23</sup> And how big must a reputation be before the extended form of protection for infringement-without-confusion comes into play?<sup>24</sup>

It is too late to change the legislation – but the courts could probably have done better, especially in confining the ‘reputation’ requirement to a really substantial one.<sup>25</sup> Also, most of the harms aimed at by what is enacted as s.10(3) of the Act are likely covered by the rules of passing off in the UK and unfair competition in continental Europe.

### **(e) Encroachment of trade marks into the fields of industrial design and copyright in works of applied art**

As everyone will know this is a big subject indeed. We say no more here<sup>26</sup> than that sometimes it seems to us that sometimes a court which thinks some activity ought to be

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<sup>22</sup> R Jacob, ‘Woolly Lines in Intellectual Property Law’ was first published as a chapter in *Patents and Technological Progress in a Globalized World: Liber Amicorum Joseph Straus* (Springer, 2009), and then as Ch. 9 in R. Jacob, *IP and Other Things* (Hart, 2015) - the latter withdraws a blunder made in the former.

<sup>23</sup> The CJEU established the relevant factors in Case C-39/97, *Canon*, ECLI:EU:C:1998:442, as including a balancing of several factors including: the nature of the respective goods, their intended purpose and method of use, and the extent to which the goods are complementary or in competition. Although a minimum level of similarity is required for there to be conflict, as the test for likelihood of confusion is also based on a ‘global appreciation’ test (see Case C-251/95, *Sabel v Puma*, ECLI:EU:C:1997:528), a close similarity between the marks, or a highly distinctive registered mark may offset lesser similarity between the goods.

<sup>24</sup> Where a registered mark has a reputation, EU-derived trade mark law provides protection against use and/or registration of any later identical or similar mark which, without due cause, would either cause detriment to the distinctive character or repute of the mark, or would take unfair advantage of that mark, irrespective of whether there is any likelihood of confusion. Based on the literal wording of the original Directive, this protection seemed to be reserved for the situation where there was no ‘traditional’ infringement because the respective goods/services of the parties were dissimilar. However, the CJEU, in Case C-292/00, *Davidoff v Gofkid*, ECLI:EU:C:2003:9, removed the requirement that the goods must be dissimilar, and the change has been reflected in more recent versions of EU trade mark law.

<sup>25</sup> Acknowledged to have been set at a relatively low threshold by the CJEU in Case C-375/97, *General Motors v Yplon*, ECLI:EU:C:1999:408, when compared to the public awareness threshold required to secure protection as a ‘well-known’ mark under the Paris Convention or protection of ‘famous’ marks under US trade mark law, see, for example, I. Simon Fhima, *Trade Mark Dilution in Europe and the United States* (OUP, 2011), pp. 28-30.

<sup>26</sup> Instead, we invite readers to refer to R. Jacob, ‘Product Shape and Trade Dress, A Critical Analysis’ in *IP and Other Things* (Hart, 2015) and L. Chave, *In Good Shape? A Comparative Evaluation of the Registration of 3D Product Forms as Trade Marks and Designs under EU Law*, Ph.D. thesis, University of Nottingham, 2017. Also,

protected will, when considering a claim based on a particular IP right (e.g. a registered trade mark) distort its interpretation of the right to get that result, overlooking the fact that another kind of right might achieve the desired result. Where product shapes and 3-D ‘marks’ are concerned, trade mark protection is apt to overlap with that of designs. The different legislative provisions and different policies for them suggest otherwise.<sup>27</sup> Courts are not wary enough of danger of turning that which is properly an industrial design with a limited term of protection into a trade mark with potentially of unlimited term and wider infringement rights.<sup>28</sup> A holistic approach<sup>29</sup> would be more likely to avoid a distorted expansion of particular IP rights, since an open acknowledgement that there is the potential for overlap issues, such as over-protection and regime clash,<sup>30</sup> to arise would make it possible to harmonise different IP regimes more satisfactorily.

**(f) Overprotection in three other ways**

The EU rules as to exhaustion of rights are frankly a nonsense as far as trade marks are concerned. If a mark on goods truly indicates source, it does not matter where the goods were first sold – the mark is telling the truth as mark of origin. To say it is an infringement when imported is nonsense.<sup>31</sup> It is nonsense-upon-stilts (as Bentham would say<sup>32</sup>) to say that removing the mark outside the EU before importing the goods into it the EU makes no difference.<sup>33</sup>

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in the US context, see, for example, C. Buccafusco and M. Lemley, ‘Functionality Screens’ (2017) 103(7) *Virginia Law Review* 1293, 1373; R. Bone, ‘Functionality Reexamined’ (2015) 7(1) *Journal of Legal Analysis* 183; C. Canahai and M. McKenna, ‘The Case Against Product Configuration Trade Dress’ in G. Dinwoodie and M. Janis (eds), *Research Handbook on Trademark Reform* (2019, Edward Elgar).

<sup>27</sup> To similar effect in the US context, see e.g., D. Welkowitz, ‘Trade Dress and Patent: The Dilemma of Confusion’ (1999) 30 *Rutgers Law Journal* 289, 351, D. Crouch, ‘A Trademark Justification for Design Patent Rights’ (2010) University of Missouri Legal Studies Research Paper No. 2010-17.

<sup>28</sup> For designs the test is the informed user who can put the registered design next to the alleged infringement whereas for trade marks the test is the average consumer whose imperfect recollection may come into play.

<sup>29</sup> In ‘Cumulation of IP Rights Pertaining to Product Shapes - An “Illegitimate Offspring” of IP Law?’ in G. Ghidini, and L. Genovesi (eds.), *Intellectual Property and Market Power - ATRIP Papers 2006-2007* (Eudeba, Buenos Aires 2008), 616, Professor Annette Kur proposes that analysis of the cause of problematic overlapping protection should be undertaken in order to arrive at a ‘sensible interpretation’ of EU trade mark law.

<sup>30</sup> Described in E. Derclaye and M. Leistner, *Intellectual Property Overlaps: A European Perspective* (Hart, 2011), 3-4.

<sup>31</sup> Case C-355/96, *Silhouette v Hartlauer*, ECLI:EU:C:1998:374

<sup>32</sup> In his attack on the French Declaration of the Rights of Man and the Citizen in *Anarchical Fallacies* (1796), Jeremy Bentham famously regarded natural rights as ‘simple nonsense’ and ‘imprescriptible natural rights’ as ‘rhetorical nonsense – nonsense on stilts’.

<sup>33</sup> Case C-129/17, *Mitsubishi v Duma*, ECLI:EU:C:2018:594. The CJEU disagreed with Advocate General Campos Sánchez-Bordona, whose opinion in that case (EU:C:2018:292, [62]) endorsed the approach of the Court of Appeal of England and Wales in *Boehringer v Swingward* [2008] EWCA Civ 83, [51]-[53], viz: ‘Total de-branding in general is far from uncommon. ... To say that removing (or not applying) the original supplier’s mark to the goods amounts to an infringement would be absurd: traders have ... applied their own trade marks to goods for centuries. There is no harm in it. ... Going back to the legislation, such total de-branding is clearly not an



Finally there is perhaps another way in which trade mark conflict has become more widespread – by creeping willingness to find marks confusingly similar when a little bit of common sense would say otherwise. This sort of thing cannot be readily measured but we have a general impression that is so. The recent decision holding that ‘American Eagle’ was confusing similar to ‘Eagle Rare’ for whisky<sup>34</sup> is the sort of thing we have in mind.

## **Conclusion**

The Reach of Trade Mark rights has increased, is increasing and ought to be diminished.<sup>35</sup>

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infringement. There is simply no use of the trade mark in any shape or form. Total de-branding does not fall within Art. 5 at all. No defence is needed. ... So a trade mark owner has no right to insist that his trade mark stays on the goods for the aftermarket.’

<sup>34</sup> *Sazerac Brands v Liverpool Gin Distillery* [2020] EWHC 2424 upheld on appeal, [2021] EWCA Civ 1207.

<sup>35</sup> John Dinning, later Lord Ashburton, put down a Resolution in the House Commons on 6<sup>th</sup> April 1780. The title was: ‘the influence of the Crown has increased, is increasing, and ought to be diminished’. It was carried by 233 to 215. It didn’t do any good – the influence of the modern State far exceeds that of the Crown in those days. I don’t suppose this piece will do any good either!