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Developments in brand protection for the Food & Drink sector in 2026

The first half of 2026 has seen a flurry of activity in trade mark and brand protection disputes in the food and drink sector. From how the name of a beer brand sounds in a pub to luxury fashion motifs appearing on tea cups, these cases highlight some key considerations when developing a brand, as well as enforcing rights.

Budvar v Aldi: When phonetics matter

Aldi applied to register "BUVAL" as an EU trade mark for goods, including beer and a range of non-alcoholic beverages. The Czech brewer behind Budvar, which has operated since 1895, opposed the application on the basis of its earlier BUDVAR trade mark.

In assessing the likelihood of confusion, the EUIPO placed weight on both the visual and phonetic similarities between BUDVAR and BUVAL – finding the marks to be visually similar to an average degree and phonetically similar to an above-average degree.

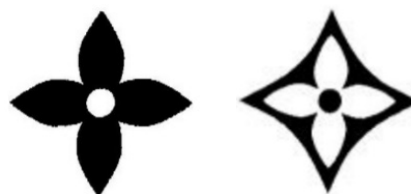
The sound of the names was considered particularly relevant because beer is often requested verbally in busy or noisy environments, such as pubs, bars and clubs. In those circumstances, consumers may not have an opportunity to inspect the marks side by side, increasing the significance of how the marks sound when spoken aloud.

This decision illustrates the importance of not only assessing a proposed mark against existing marks, in a visual sense, but also in the context in which the relevant product will be selected, purchased or ordered.

Louis Vuitton v Molly Tea:

The price you pay for a cup of tea

Louis Vuitton brought trade mark infringement proceedings, in China, against Shenzhen Molly Tea Catering Management Co., Ltd and Dongxia Beverage Shop. Molly Tea is China's leading floral tea brand. The proceedings concerned Molly Tea's use of a four-petal, floral motif across its shops, products and online channels, which Louis Vuitton claimed infringed seven of its registered trade marks.



Examples of Louis Vuitton's marks



Molly Tea's logo



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The Court in China found there to be infringement of Louis Vuitton's rights and that Molly Tea's use of the logo diluted the distinctiveness of the Louis Vuitton branding. Molly Tea was ordered to pay significant damages, of around the equivalent of £1.1 million, as well as to publish corrective statements on six different channels, including its website, Weibo and WeChat account.

This case is notable because the parties operate in entirely different sectors: luxury goods and hot drinks. However, in a time when brand collaborations are becoming increasingly prominent (particularly across sectors), the Court considered that consumers could assume that there was a commercial relationship between the two parties. Molly Tea has stated that it intends to appeal this decision.

This decision is a reminder to businesses that the ability to use a mark is not restricted to clearance in the immediate product category only. In the UK, established brands will often rely on s.10(3) of the Trade Marks Act 1994, to protect marks which have a reputation. To establish infringement, this does not require any likelihood of confusion by the public but instead focuses on how well-known the mark is. The publication notice ordered by the Court here is also of interest, and is a remedy which the Scottish Courts also regularly grant in IP actions.

Dairy UK v Oatly: The limits of dairy designations

The UK Supreme Court issued its judgment in a dispute concerning Oatly's trade mark for the phrase "POST MILK GENERATION".

Oatly, who makes oat-based dairy alternatives, obtained a trade mark for the phrase, as part of their marketing for its oat drink products. Dairy UK, the trade association for the UK dairy supply chain, sought to invalidate the mark, claiming that the use of word "milk" for a non-dairy product was misleading and counter to EU regulations which restricted use of the term.

The Supreme Court held that "designation" under the regulations had a broader meaning and covered the use of "milk" in relation to a food or drink product, even where "milk" formed part of a longer phrase and was not being used as the product's name.

The Court also rejected the reliance on an exception for designations that are used to describe a characteristic of the product. They considered that the phrase did not clearly state that the products were milk-free. Instead, the Court considered that it was primarily directed towards a category or generation of consumers.

This decision confirms that even playful marketing strategies require due consideration to make sure they are not falling foul of any relevant regulations. This is particularly relevant when considering plant-based alternatives – with stricter definitions around use of the word "meat" also due to be implemented.

Conclusion

Taken together, these decisions demonstrate the range of legal considerations that can affect branding and brand protection in the food and drink sector. Some key takeaways are:

- Consider where and how customers will encounter and use your brand name;
- Check whether any established companies, in any sector, use similar branding; and
- Make sure consideration is given to any regulatory restrictions when it comes to product descriptions.

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