



Competition Law Association

British Group of the
Ligue Internationale du Droit de la Concurrence
(International League for Competition Law)

www.competitionlawassociation.org.uk

www.ligue.org

17 April 2024

LIDC Questions Workshop: Tuesday 14 May 2024 – 6:00 to 8:00pm

Each year, the LIDC examines two topical questions concerning competition law and IP/unfair competition law. The two questions are then the focus of discussions at the annual LIDC Congress with a view to adopting resolutions in the areas concerned.

This year, the competition law question asks what progress has been made, and is still to be made, in ensuring effective redress for harm resulting from infringements of competition law. The IP question asks how we should approach 'copycat' packaging.

The full wording of, and the context for, the two questions that are to be discussed at the forthcoming LIDC Congress, which is taking place in London on 7 to 9 November 2024, are set out in full below.

We are delighted to announce that **Anna Morfey** of Ashurst LLP and **Helen Bignall** of Herbert Smith Freehills LLP are leading preparation of the UK's national report on the competition question. **Dr Luminita Olteanu**, Assistant Professor at the University of Warwick, is preparing the UK's national report on the IP question. Before joining academia, Dr Olteanu practised as a dispute resolution lawyer specialising in IP&IT disputes.

We shall be holding an evening workshop on **Tuesday 14 May 2024** at **Ashurst LLP, London Fruit & Wool Exchange, 1 Duval Square, London, E1 6PW** to seek Members' contributions and comments on the draft UK reports prepared by our National Rapporteurs. The working session will begin at **6.00pm** and conclude by **8.00pm**. The workshop will be informal and refreshments will be on offer.

There is no additional charge for attendance at the workshop for members. However, there is a charge for non-members: £50, or £35 (full time academic/public sector employees), or £10 (students, trainees, pupil barristers). Registrations can be completed and paid for on-line.

We would be delighted if you could come along to this meeting, which should be an excellent opportunity to discuss the issues raised by the questions with other practitioners in an informal setting. If you cannot come yourself, you might consider sending a colleague along in your place.

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Members and Non-Members should please visit the [**NEW EVENTS**](#) section of our website to register their attendance.

Please note that online registration will close on Monday 13 May 2024.

With kind regards

Sharon Horwitz
Secretary

LIDC CONGRESS 2024 – LONDON QUESTIONS FOR CONSIDERATION

COMPETITION QUESTION

What progress has been made, and is still to be made, in ensuring effective redress for harm resulting from infringements of competition law?

Background & Context:

It is generally accepted that private enforcement has an important role in increasing the effective functioning of competition regimes globally and that individuals and/or firms who suffer harm as a result of anti-competitive conduct should be entitled to compensation for their loss(es). Consequently, interest in, and the significance of, this aspect of the competition law ‘toolkit’ continues to grow.

There have been a number of initiatives in various jurisdictions to promote more private enforcement and provide the necessary legal and economic framework for this purpose. For example, in November 2014, the EU Damages Directive, which harmonised certain procedural rules for competition damages actions across all EU Member States (including the United Kingdom at the time) and sought to establish a level playing field across the EU, entered into force. Together with the 2013 Recommendation on Collective Redress, the Damages Directive was intended to make it easier for victims of anti-competitive conduct to obtain compensation.

During the past decade, the use of private enforcement of competition law has increased throughout Europe and beyond. However, the intensity and experience of private enforcement is very mixed. Some jurisdictions have considerable experience in dealing with damages actions, however, in others private actions are rare.

Major differences still exist among jurisdictions, even between the EU Member States. For example, in a number of Member States, there have not yet been any court rulings applying the provisions of the Damages Directive and, for temporal application reasons, many rulings are still based on pre-existing national law.

The 10th Anniversary of the EU Damages Directive provides the LIDC with an opportunity to take a critical look at how private enforcement has evolved around the world, taking stock of the progress that has been made and what obstacles remain, considering how these might be overcome to ensure: effective redress; and a balance between public and private enforcement.

National groups are invited to provide an account of the emerging practices and trends in private enforcement of competition law in their respective jurisdictions from a legal and economic perspective, reflecting on various factors such as: the relevant legal instruments; institutional developments; applicable jurisprudence; the relevant procedural, legal and economic framework; and key practical and litigation issues.

INTELLECTUAL PROPERTY QUESTION

How should we approach ‘copycat’ packaging?

Background & Context:

It is often said that “imitation is the sincerest form of flattery”, however the proliferation of high-profile disputes in recent years concerning ‘copycat’ packaging, product names, and/or ‘look-alike’ product design suggests that brand owners view such practices less as a compliment and more as harmful to their businesses and misleading for consumers.

In some jurisdictions brand owners rely on unfair competition law to prevent competitors selling products in copycat packaging. In other jurisdictions, however, claims are based on one or more form of IP infringement (e.g. trade mark, registered design, and/or copyright infringement, and/or “passing off”).

Claims can be challenging from a legal, evidential and practical perspective. It also raises concerns as to whether there is a gap in the law or sufficient protection, as well questions about the potential impact of divergencies in approach and legal basis.

A key consideration is the risk of business being diverted from brand owners who have made significant investments and the potential market distortion. There are also questions of goodwill and brand reputation management. For retailers (and others using copycat packaging) there are concerns about (unwarranted) restriction of market access, as a result of enforcement action. As regards consumer protection, there is also the question of whether consumers are truly being misled, or whether they are aware that they are purchasing a cheaper alternative product to the branded product/market leader, especially when faced with the current 'cost of living crisis'.

With this in mind, and in order to identify any areas of divergence/convergence internationally, National groups are invited to provide an account of the existing legal framework, case-law, and emerging practices and trends concerning similar packaging in their respective jurisdictions and whether/how this seeks to strike the balance between recognising brand owners' investment and interests, protecting consumers from confusion and ensuring fair market access for look-alike products.