Iconix v Dream Pairs

Post-sale confusion

What counts and will sway the court on post-sale confusion after Iconix v Dream Pairs — where there are fleeting, imperfect or real-world viewing conditions?

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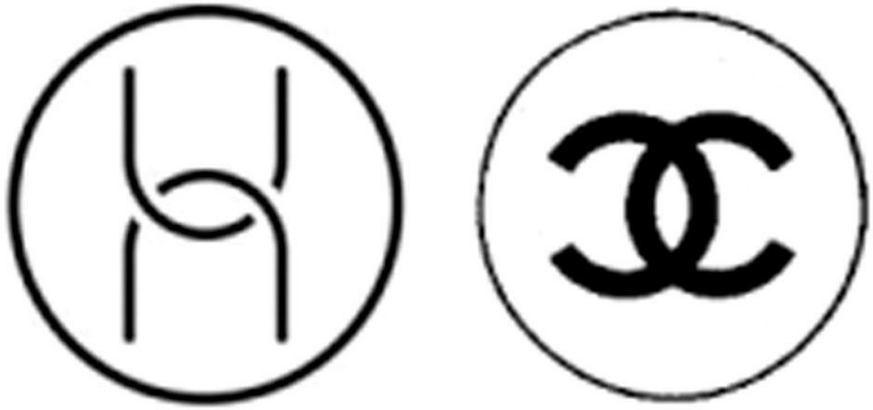
Iconix v Dream Pairs





Chanel v Huawei
General Court
T-44/20 – April 2021

”Thus, it should be noted that, assessed globally, the marks at issue are visually different, despite the presence in each of them of two interlaced curves within a black circle, the latter being, moreover, a common geometric element”



The High Court decision [2023] EWHC 706 (Ch)

"They both involve rhomboid shapes with an outer and inner dominant element and both sit on one angle. But there are also multiple variances between the Marks and the Sign. I have reached the overall assessment (applying the average consumer perspective) that there is at most a very low degree of similarity between the Marks and the Signs - it is very faint indeed"

"even in the more angled photos where perspective plays some part there is only the faintest resemblance between the Sign and the Marks"

"On a global assessment, I am not satisfied that there is a likelihood of confusion among a significant proportion of the public interested in the goods in question and with the characteristics of the average consumer. For the avoidance of doubt I would have reached this conclusion even ignoring the contextual information on the Amazon webpage for the relevant footwear, including the references to Dream Pairs as the brand and the absence of reference to Umbro. I have reached the same conclusion in relation to the allegation of post-sale confusion."

The Court of Appeal decision [2024] EWCA Civ 29

- The finding of only faint similarity is rationally insupportable when considering the Sign "*affixed to footwear when viewed from other angles…*"

- "*The judge had failed to take into account the key aspect of the post-sale context, namely that the viewer would see the Sign as affixed to footwear looking down from head height at the feet of another person wearing the footwear.*"

Grounds of Appeal to the Supreme Court

(1) The proper approach to identifying the sign and testing similarity of sign and mark. How does the court assess the similarity of sign and mark for the purposes of the global assessment of likelihood of confusion under section 10(2) of the Act?

(2) The proper approach to the timing and nature of confusion under section 10(2). When assessing whether there is a likelihood of confusion under section 10(2) of the Act, can that include a risk of confusion arising outside the transactional context13 and/or by someone other than the potential purchaser?

(3) Was the Court of Appeal entitled to interfere with Miles J's evaluative findings? Were they rationally insupportable?

The Supreme Court decision [2025] UKSC 25

"*we consider that realistic and representative post-sale circumstances can be taken into account for the purpose of establishing whether the signs at issue are similar and, if so, the degree of similarity*"

"it is possible in an appropriate case for use of a sign to give rise to a likelihood of confusion as a result of post-sale confusion even if there is no likelihood of confusion at the point of sale."

The Supreme Court decision [2025] UKSC 25

"*We would readily acknowledge that reasonable judicial views might differ on this issue about similarity when viewed from an angle, but our task is not to form our own view, unless both the judge and the Court of Appeal made what may loosely be called appealable errors. It is enough for us to say that, whether we would or would not have agreed with the judge's assessment, his was by no means irrational*"

"*The reason why the Court of Appeal appears to have concluded that the judge fell into that supposed trap was, we think, the same as their reason for finding irrationality, namely their own firm contrary view about similarity. With respect, they appear to have fallen into the trap of thinking that the only reasons why the judge could have reached an equally firm view differing from their own was that he must have made the errors of principle of which he was accused by Iconix.*"