



Low2No Bev Workshop: Brand Protection

The IP toolkit - look-alikes

RPC speakers



Ciara Cullen

**Partner
IP & Technology**



Sarah Mountain

**Partner
IP & Technology**



Samuel Coppard

**Associate
IP & Technology**

Roadmap

- **What is a look-alike?**
 - recent examples
 - case study: Colin and other caterpillars
- **IP right infringement**
 - trade marks
 - passing off
 - copyright
 - design rights
- **Practical takeaways**
 - when developing a brand
 - when faced with look-alikes



Look-alike products

Not a
counterfeit

Deliberately
similar

Takes
advantage

Established
brand

Parasitic

Copies or
Mimics

“Rides the coat-
tails”

Recent examples

Look-alikes – examples



Aperol Aperitivo
Source: <https://www.which.co.uk/news/article/aperol-vs-aldi-vs-ms-which-makes-the-best-spritz-aA1123s5FN16>



Lidl's Bitterol
Source: <https://www.lidl.ie/p/summer-bbq-food/bitterol-aperitivo-italiano-11/p13816>



M&S Aperitivo Orange Flavour Liqueur
Source: <https://www.which.co.uk/news/article/aperol-vs-aldi-vs-ms-which-makes-the-best-spritz-aA1123s5FN16>

Look-alikes – examples

As launched in March 2018



Aldi's Aperini Aperitif
Source: <https://www.prima.co.uk/leisure/news/a43030/aldi-aperol-drink-aperini/>



Current design
Source: <https://www.which.co.uk/news/article/aperol-vs-aldi-vs-ms-which-makes-the-best-spritz-a1123s5FN16>

Case study: Colin (and other caterpillars...)

Colin the Caterpillar

Colin v Cuthbert and: Wiggles, Cecil, Clyde, Curly and the gluten free Eric and Carl



Intellectual property

Intellectual property

- It's important! And is everywhere...
- Negative rights – prevent others, not rights to use
- Territorial – jurisdiction by jurisdiction
- Registered or unregistered
- Infringement



IP rights in your product

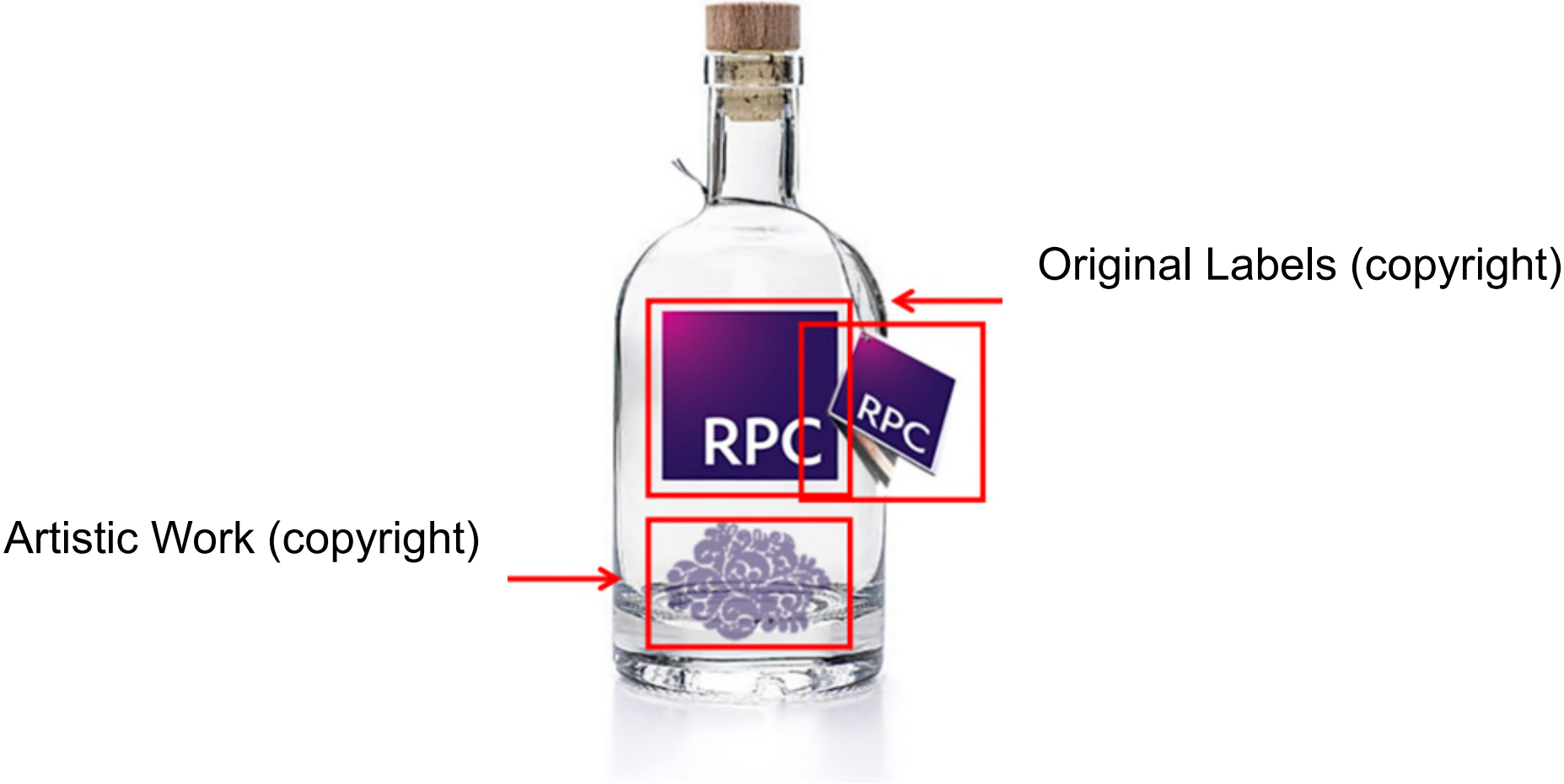


IP rights in your product – trade marks

Brand Name/Logo
(trade mark)



IP rights in your product – copyright



IP rights in your product – design rights

Design of Bottle/Box
(unregistered design
right, registered design,
trade mark)



Other IP rights

- **Recipes** (confidential information/ trade secret)
- **Distillation process/techniques** (confidential information/trade secrets/patents)
- **Website** (Copyright/database right/passing off/trade marks)
- **Advertising and Marketing campaigns** (Copyright/trade marks)



Taking these IP rights (briefly) one by one...



Trade marks

IP rights in your product – trade marks

Brand Name/Logo
(trade mark)



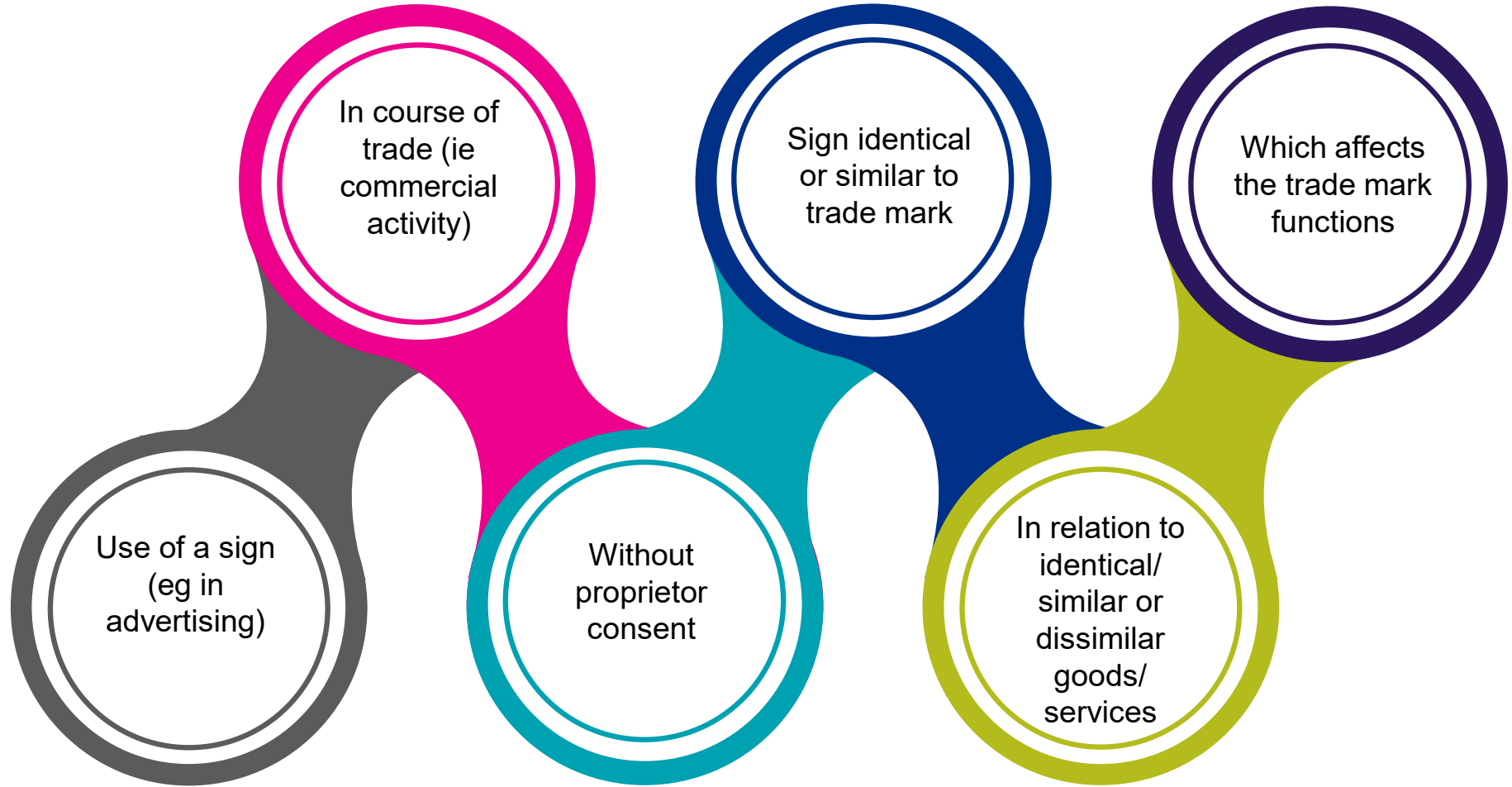
Trade marks

Registered trade marks

- **Type:** Registrable
- **Protects:** Words, logos, symbols, shapes, moving digital images, colours
- **Requirements:** Distinctive and not descriptive
- **Function:** Designates the origin of goods and services. Protects the brand
- **Duration:** 10 years (renewable)



Trade mark infringement



Infringement?



Hendrick's trade mark



Hendrick's Gin



Lidl's redesigned Hampstead Gin

Passing off

Passing Off

“Unregistered Trade Marks”

- **Type:** Unregistered
- **Protects:** Business goodwill and get-up
- **Requirements:** the Trinity - *Jif Lemon* case:
 - goodwill
 - misrepresentation to the relevant public, and
 - loss
- **Function:** Protects the brand
- **Duration:** Perpetual



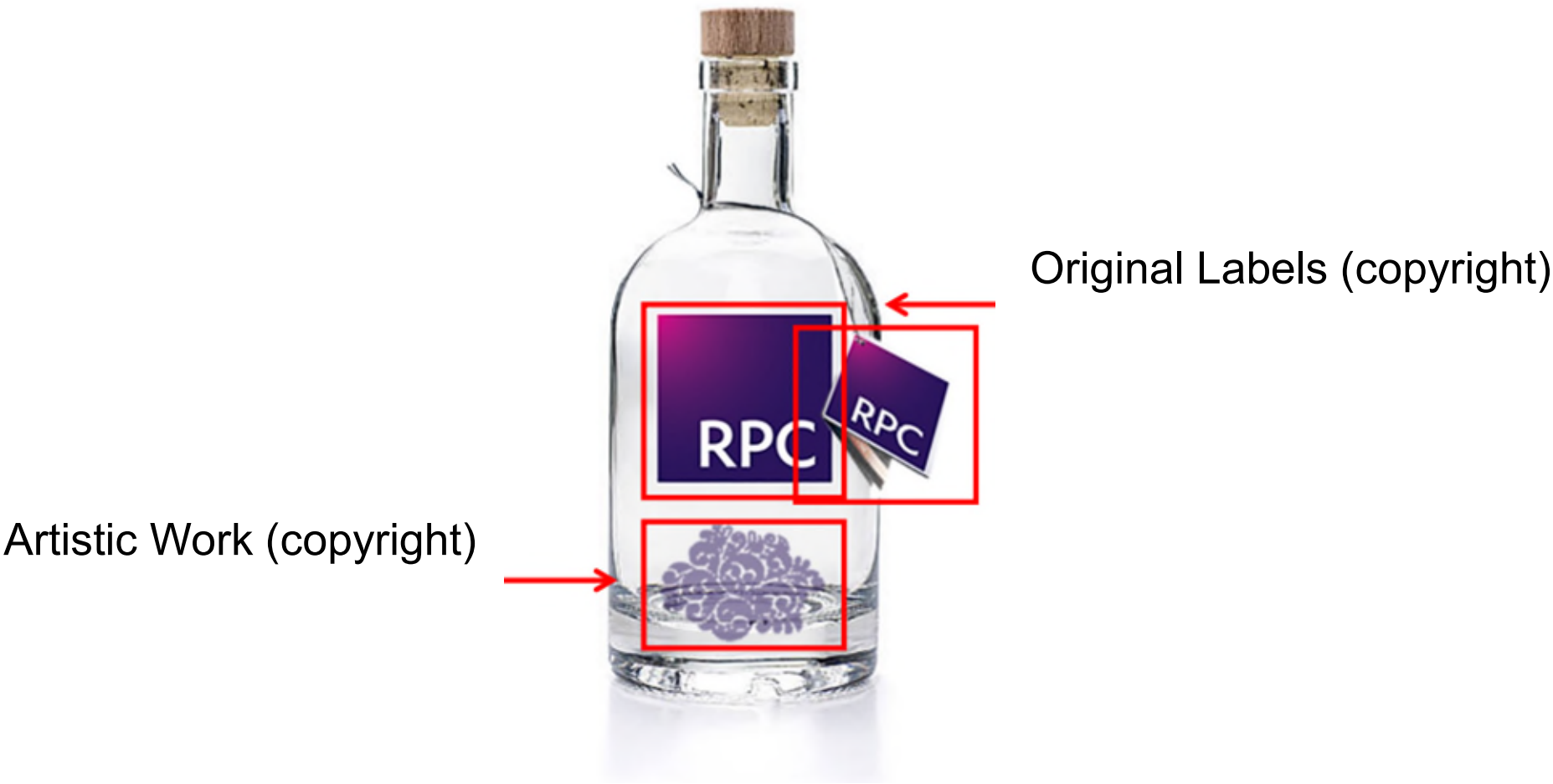
Infringement?



Source: *Moroccanoil Israel v Aldi Stores* [2014] EWHC 1686 (IPEC) IPEC judgment

Copyright

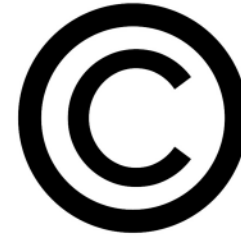
IP rights in your product – copyright



Original Labels (copyright)

Artistic Work (copyright)

Copyright



- **Type:** Arises automatically
- **Protects:** Literary works (ie text), artistic works (including photographs and illustrations), films (including animations) and sound recordings
- **Requirements:** Originality
- **Caveat:** Protects the **form of expression** of ideas, not the ideas themselves
- **Duration:** 50 years (sound recordings), 70 years (literary and artistic works, films)

Copyright protection

COPYRIGHT



Designs

IP rights in your product – design rights

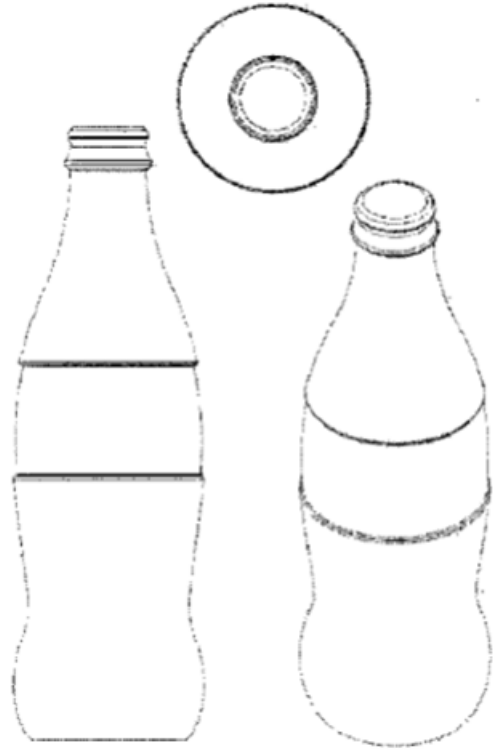
Design of Bottle/Box
(unregistered design
right, registered design,
trade mark)



Designs

- **Type:** Registered or unregistered
- **Protects:**
 - Appearance (registered)
 - Shape or configuration (unregistered)
- **Requirements:** Originality, recorded, created by a qualifying person
- **Duration:**
 - 25 years (registered rights)
 - 10-15 years (UK unregistered)

Design protection



Practical takeaways

Practical points – developing a brand

1. Clearance searches
2. Log design objectives and brief
3. Register IP early
4. Distinctiveness
5. IP portfolio – aim for an armoury of strong rights
6. Use IP and maintain evidence of use
7. Monitor IP and the marketplace

Practical points – when faced with look-alikes

1. Monitor for look-alikes, act quickly
2. Be proactive then agile on social media
3. Lead with the strongest IP right
4. When choosing which IP right to rely on – be mindful of risk of unjustified threats and revocation vulnerability
5. Sow the disclosure seed
6. In a trade marks case collect evidence of confusion, where appropriate
7. Consider the market the infringer operates in
8. Passing off – consider differences as well as similarities
9. Be realistic – no brand is bulletproof

Q&A





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