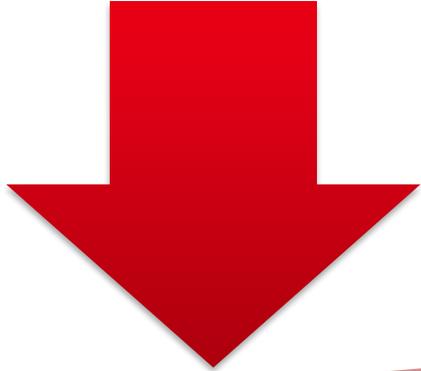


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Getting the most of your brand in litigation: a Swiss perspective
Frédéric Serra
FICPI 27th Open Forum, 27 October 2017



PATEK PHILIPPE
GENEVE

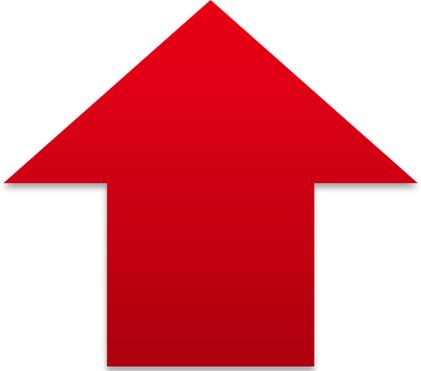


HERMÈS



LOUIS VUITTON


ROLEX



WHAT IS YOUR TRADEMARK WORTH?

Financial compensation? 3 legal grounds

Tort

- unlawful act
- fault
- **damage**
- causal link between damage and unlawful act

Unjust enrichment

- absence of cause
- enrichment of the Infringer
- **decrease of IP owner's assets**

Remittance of profits

- Unauthorised use of the IP owner's business affairs
- bad faith
- **illicit profit obtained in relation to the violation**

**MISSION:
IMPOSSIBLE**

WHAT IS YOUR BRAND WORTH?

Preliminary injunction

Brand is more than just a trademark – unfair competition

- Copied items are **distinctive – specific characteristics**
- Reputation of **quality and prestige** associated with the copied products
- **Image transfer** to the copied products
- Element of **unfairness**
 - Systematic, sneaky and planned approach
 - Copying refers to a multitude of products, happens repeatedly, further copying is planned, etc.
 - Deceitful behavior of the infringer
 - Particularly close imitation that could have been easily prevented

SHOES «PERRA» / CHRISTIAN LOUBOUTIN RED SOLE SHOES



DAFFODILE



prestige



HOT CHICK



very strong similarities



YOU YOU SLING



NEW SIMPLE PUMP



Many models copied, declined in multiple variations (color, heel height, texture, etc.)

WHAT IS YOUR BRAND WORTH?

Preliminary injunction

Trade dress imitation

Swiss Supreme Court 135 III 460 - MALTESERS / KIT KAT POP CHOC

- The products cannot be interpreted differently than an imitation of the trade dress of the competitor
- Objectively this creates a reference to the other product

WHAT IS YOUR BRAND WORTH?

Defining your brand DNA

- bold Roman numerals: 88% of sold Cartier watches
- "railway track": 73% of sold Cartier watches
- "guillochage": 29% of sold Cartier watches
- blue hands: 74% of sold Cartier watches
- blue cabochon: 52% of sold Cartier watches
- "argenté" coloured dial: 80% of sold Cartier watches
- H-shaped wristband: 32% of sold Cartier watches



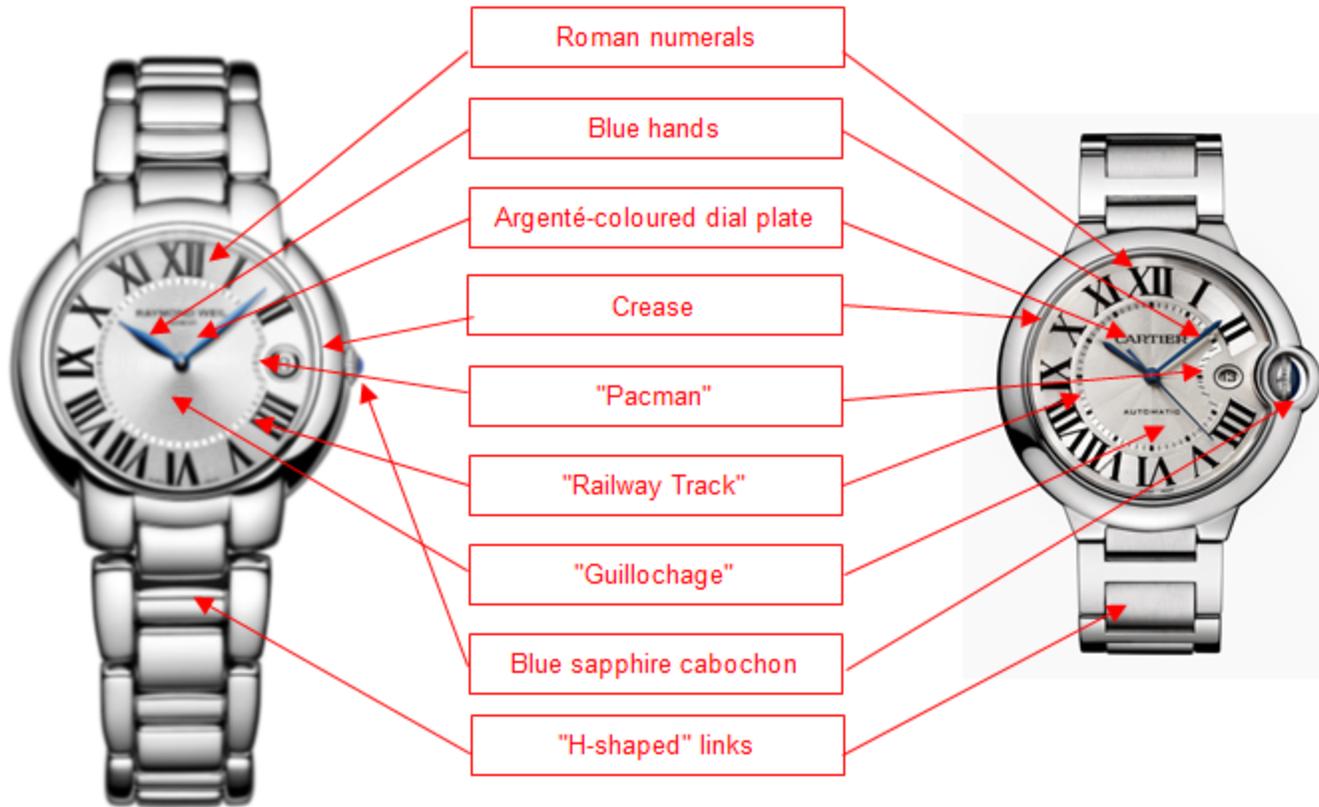
WHAT IS YOUR BRAND WORTH?

Defining your brand DNA

- Railway track is indented at the Roman numeral "III"
- This special form of the railway track quickly came to be dubbed internally at Cartier as the "Pacman railway track" as one is reminded of the popular computer game



RAYMOND WEIL «JASMINE» / CARTIER «BALLON BLEU»



AERO WATCH «PHASE DE LUNE» / JAEGER-LECOULTRE «RENDEZ-VOUS»



Arab numerals with specific police

Numerals orientated towards center

Box around each number

"Railway Track"

Thickener point every 5 minutes



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Frédéric focuses on all aspects of intellectual property and new technologies



- French and Swiss Bachelors of Laws degree
- Master of Laws in intellectual property and new technologies
- Admitted to the Geneva Bar
- Highly experienced litigation lawyer in all fields of intellectual property, including unfair competition with extensive experience practice in complex non-contentious intellectual property matters
- Particularly in-depth knowledge of the legal and business needs of the luxury goods sector
- Co-Chair of IP section the Inter-Pacific Bar Association