

INTELLECTUAL PROPERTY

# Intellectual Property Masterclass 2026

*Key takeaways*

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# Intellectual Property Masterclass 2026

## *Key takeaways*

Our annual **In-House Counsel Masterclass** for IP coincided with World IP Day, themed around the intersection of IP and Sports. The session brought together experts Gerard Kelly SC, Hazel McDwyer, and Eimear O'Brien to dissect the most significant developments in case law and some "cautionary tales" that define modern brand protection. Our panellists also addressed regulatory shifts concerning influencer marketing.

As the IP landscape grows increasingly complex, shaped by Generative AI, high value endorsements and cross-border jurisdictional disputes, the core message was clear:

IP management is no longer a "set-and-forget" administrative task, but a vital component of proactive risk management.

## CONTENTS

## KEY THEMES FROM THE WEBINAR

# 01

## Trade marks: Protecting the “human brand” and AI defence

The definition of what constitutes a trade mark is expanding rapidly as athletes and celebrities seek to protect their digital and physical likenesses against the rise of deepfakes and AI-generated content.

### The rise of non-traditional marks

- **Faces and voices:** Darts phenomenon Luke Littler and Chelsea footballer Cole Palmer have both moved to register their faces as trade marks, primarily to combat deepfakes in the AI world. Similarly, Taylor Swift has reportedly sought to trade mark her voice for the same reasons.
- **Signature celebrations:** Cole Palmer’s “cold shiver” goal celebration has been sought for registration, illustrating how athletic performance is now being codified as intellectual property.

- **Sound marks:** The EU General Court recently allowed a four-note, two-second jingle to be registered as a sound mark, confirming that sound marks are not held to a higher bar of distinctiveness than traditional logos.

### The limits of technical function

The masterclass highlighted that while aesthetic qualities can be protected, shape marks solely dictated by technical function remain ineligible for registration. A recent case involving a corkscrew handle was refused because, despite its “aesthetic quality,” the hollows for fingers were considered functional. Essentially, the law seeks to prevent companies from monopolising functional items through trade marks.



### Bad faith and localised use

- **Breitling for women:** A perfume brand registered as “Breitling for Women” was successfully invalidated based on bad faith. The applicant’s pattern of registering famous names, like “New Balance for her” or “Aston Martin pour homme”, for perfumes without a persuasive reason for the choice was deemed an abuse of the trade mark system.
- **Maintaining EU marks:** Proving “EU-wide use” remains a challenge for localised businesses. While a steakhouse with international bookings and TripAdvisor reviews succeeded in maintaining its EU trade mark, a Madrid-based restaurant failed because its use was considered purely localised.

## KEY THEMES FROM THE WEBINAR

# 02

## Irish litigation: Long wars and technical pitfalls

Irish case law over the past 12 months provides several warnings regarding long-term disputes and the importance of procedural accuracy.

### **The 30-year stalemate: Diesel v Montex**

One of the most remarkable Irish cases involves a three-decade dispute between Diesel, the Italian brand, and Montex, a Monaghan-based factory. After years of litigation, the Court of Appeal reached a “complete stalemate” where neither party can register their mark in Ireland due to the risk of confusion, yet neither is prevented from using it. This highlights the risk of “concurrent use” leading to a permanent loss of exclusivity.

### **Injunctions and the “insolvent” parent**

In the *Classic Hits Radio v Greatest Hits Radio* case, an injunction was granted to prevent the latter from using its full name, though they were permitted to use the acronym “GHR”. Notably, the court scrutinised the cross-undertaking as to damages, requiring additional security from a parent company because the applicant’s balance sheet suggested potential insolvency.

### **Jurisdictional hazards**

The Merck litigation serves as a lesson in joining international parties to Irish lawsuits. An application to serve a US-based entity out of jurisdiction failed because the supporting affidavit did not sufficiently address whether New Jersey was a more appropriate forum, a flaw the court considered fatal.



*Risk management is not only about responding when something goes wrong; it is about having the correct structures in place so incidents are handled properly.*

## KEY THEMES FROM THE WEBINAR

# 03

## The new reality of influencer marketing

Influencer marketing has evolved from an informal digital trend into a high-stakes, regulated commercial practice.

### Regulatory enforcement: CCPC's guidelines

The Competition and Consumer Protection Commission (CCPC) and Advertising Standards Authority of Ireland (ASAI) have intensified their oversight of transparency in digital advertising.

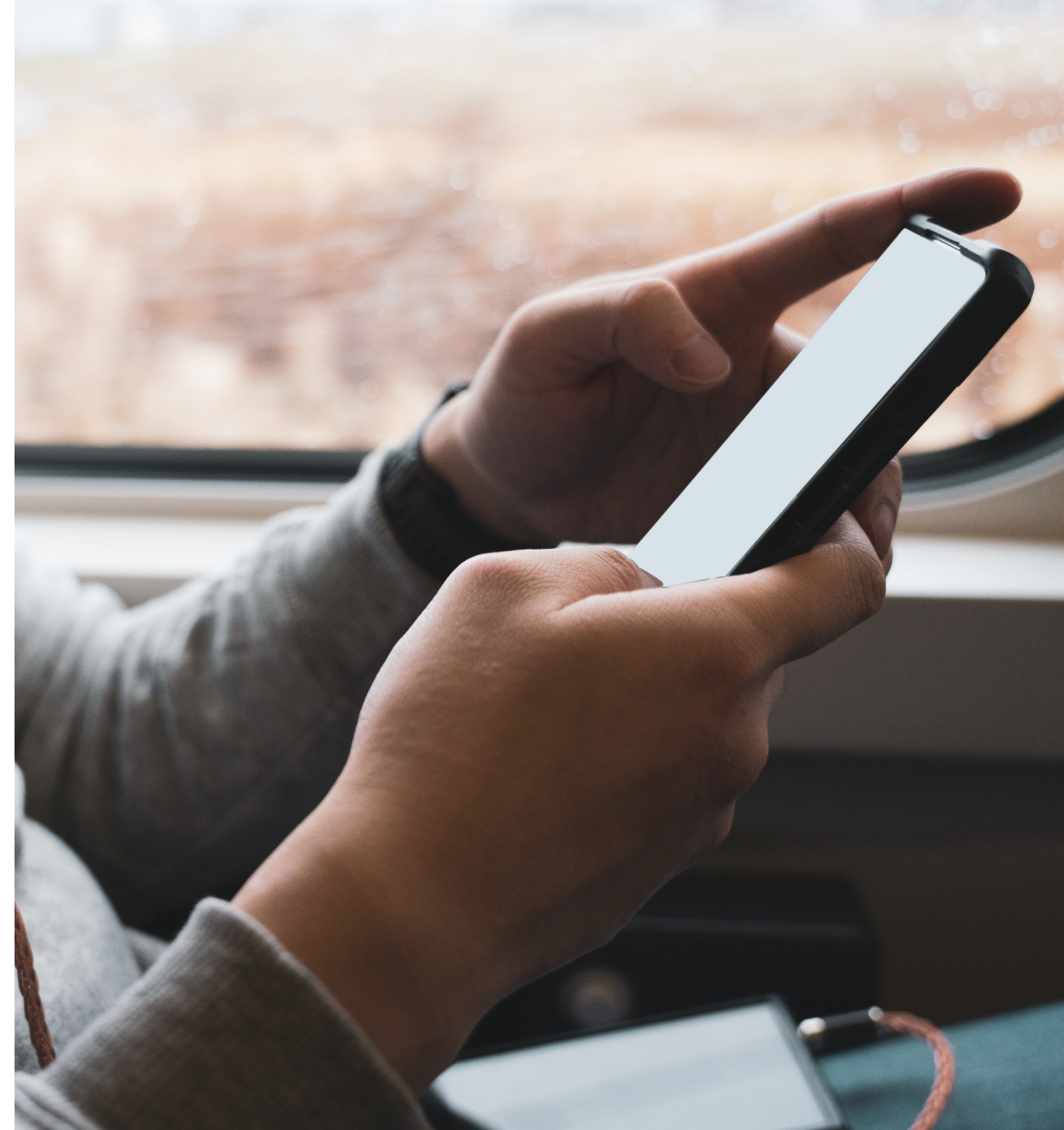
- **Traders under the law:** High-profile figures like Conor McGregor and Suzanne Jackson have faced compliance orders for failing to clearly label editorial content that promoted their own brands.
- **Labelling standards:** The use of #ad or #gifted on social media is mandatory and must be prominent; secondary labels cannot be used as substitutes for these primary disclosures.

### The copyright ownership myth

A frequent mistake for brand owners is assuming they own the content created by an influencer because they paid for it. Under the Copyright and Related Rights Act 2000, the influencer remains the first owner of original photos, videos and captions unless a written assignment is executed. Without this, brands may face legal hurdles when attempting to reuse or archive content after a campaign concludes.



*Don't treat the influencer agreement as an informal marketing arrangement. It's as much a rights-based contract as any other.*



## KEY THEMES FROM THE WEBINAR

# 04

## Cautionary tales: The “end-of-life” risks for IP

The session concluded with an exploration of how IP rights can be lost during restructuring, dissolution or through poor contract drafting.

### The “Bona Vacantia” trap

When a company is dissolved, its assets, including trade marks, often pass to the State under the principle of bona vacantia. In the Notting Hill Shopping Bag UK case, a company failed to assign its trade mark during a restructure and was subsequently struck off. By the time the company was restored, the trade mark had expired, and since the “Crown” (the owner during dissolution) had not used the mark, it would have also been vulnerable to revocation for non-use.

### The \$160 million licensing trap

The dispute between Virgin Aviation and Alaska Airlines highlights the dangers of “set-and-forget” licensing agreements. Alaska Airlines debranded from the Virgin name but was held liable for an annual minimum royalty of approximately \$8 million for the remainder of a 25-year term. The court ruled that the royalty was a “fixed fee for the right to use” the brand, regardless of whether Alaska actually used it, costing the airline roughly \$160 million because there was no “emergency exit” clause in the contract to cover a scenario where it was simply no longer required.

### Preventing “genericide”

Brands like Dryrobe have successfully defended their trade marks against claims that they have become generic household terms. The key is active education and enforcement; by showing they actively taught consumers and retailers that the name was a “badge of origin” and not a generic category, they preserved their exclusivity.

## KEY THEMES FROM THE WEBINAR

# 05

## What this means for you, depending on your role

### General counsel and board members

- **Treat governance as IP control:** Ensure IP rights are correctly identified and audited during every merger, acquisition, or restructuring.
- **The “Brexit clone” check:** Verify that UK-equivalent marks, created post-Brexit, are explicitly captured in transaction schedules to avoid missing key assets.
- **Monitor solvency:** Be aware that your company’s balance sheet can impact your ability to secure injunctions if you cannot provide a credible cross-undertaking.

### Marketing and brand managers

- **Influencer due diligence:** Is the influencer the right fit for the brand? Check for conflicts, reach and engagement levels.
- **Label early and often:** Educate influencers on labelling requirements (#ad) before content goes live to avoid liability for misleading advertising and continuously monitor.
- **Register rights broadly:** Ensure marks are registered in all relevant territories and address co-branded marks and new trade marks created due to the partnership.

### IP & Legal Teams

- **The genericide defence:** Build a track record of educating consumers on your brand and enforcing your IP rights. This can assist in ensuring that no confusion arises in the market and prevents a brand from becoming generic.
- **AI triage:** Prepare for secondary infringement risks. Even if generative AI models are trained abroad, importing software that facilitates the use of infringing works can trigger liability.
- **Draft “emergency exits”:** In licensing deals, ensure there are provisions for partial debranding or the cessation of use to avoid being locked into “minimum royalty” payments for unused assets.
- **Audit influencer contracts:** Move beyond simple “deliverables” and ensure contracts include morality clauses, approval rights, termination and suspension rights, clear IP ownership assignments and post-termination rights.



We are a leading, multi-award winning intellectual property advisor to a wide variety of multinationals, indigenous companies, third level institutions and state bodies. Our dedicated Intellectual Property team specialises in protecting, capitalising and maximising our clients' investments in their IP.

Our global coverage and sector focus on technology, energy, built environment, financial services, healthcare and life sciences sets our practice apart. We understand the unique challenges faced by our clients and our leading lawyers consistently deliver innovative and strategic solutions to meet them.

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## MARKET RECOGNITION

*"Market leaders by virtue of their extensive and diverse expertise across numerous sectors/industries, coupled with a genuine passion and interest in their work across all aspects of IP law."*

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*"Mason Hayes & Curran's depth of industry and business knowledge is clear from how it articulates and translates complicated issues into workable solutions."*

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