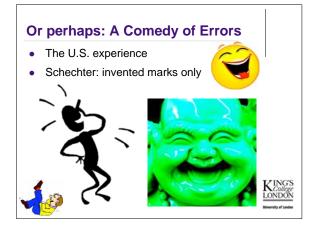


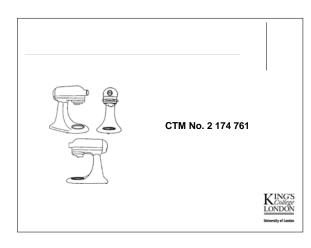
The Tempest

- Any registered mark with a reputation
- Unfair advantage to later mark owner
- Detriment to distinctive character of earlier mark owner
- Detriment to repute of earlier mark owner
 Article 5(2) Trade Mark Approximation Directive











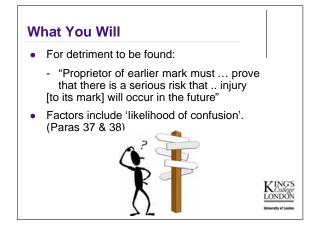
All's Well that Ends Well

 "I think it would be excessive, in the realm of product shapes, to apply the concepts of 'free riding', 'blurring', 'tarnishment' or 'dilution' more generally so as to hold that the bodywork of the kMix was too close to the bodywork of the Artisan for the purposes of art. 9(1)(c) [CTMR]. I am not persuaded otherwise by the evidence indicating that consumers may or will be drawn into choosing the kMix by reason of its resemblance to the Artisan", per Geoffrey Hobbs QC in Whirlpool

LONDON

Much Ado about Nothing Intel Intelmark







- Where 'likelihood of confusion', a link between mark and sign 'is necessarily established' (para 57)
- Not so where mark is unique and has huge reputation (para 64)





Midsummer Night's Dream
But: existence of link is not enough

- Proprietor must prove actual or present injury (or a serious likelihood of it in future)
- That means: "evidence of a change in the economic behaviour of the average consumer" of goods/services for which earlier mark registered (paras 71 and 77)



Back to the Future

- Back to pre Directive?
- Likelihood of confusion for Article 5(1)(a) identical/identical *and* Article 5(2)?









