Brands and the interaction between competition law and trade mark law

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Introductory observations

- The consumer interest lies at the heart of competition law and trade mark law
- Consumers are integral to brands
- Trade marks enable branding by allowing companies to differentiate their offer and invest in reputation
- Competition law deals primarily with market abuse
- Trade mark registrations and competition law operate at different lifecycle stages
- (Competition law not to be confused with unfair competition)
What are brands?

- Discussion depends on meaning of “brands”
- No single, authoritative definition
- A brand involves the individual consumer / customer
Conference introduction

- Branding is crucial to smaller companies
  Innocent, Green & Black, Gü, Fevertree, Tyrells, Ty Nant, Reggae Reggae Sauce
- Some brand truths
  - Brands can have ‘low price’ positioning
    Lidl, Ryanair, Primark, Dell, Ikea, Argos, TRESemmé
  - Brands strengthen competition
  - Brands are a springboard for market entry
    Apple (Walkman), Dyson (Hoover), Digital photography (Kodak; Agfa), Branston beans (Heinz); Walkers (Smiths)
  - Brands (and trade marks) spur innovation
Brands, IP law and competition law

- Limited interaction between brands (a consumer construct) and IP and competition law that regulates business
- Branding is heavily regulated – consumer regulations, marketing regulations; sector regulations
- Greater knowledge on brands is required
  - Contribution to innovation, growth and competitiveness
  - Drawing the right line between fair and unfair practices
  - Dynamic between branded and retailer ‘own brand’ products
- Important to take account of brands’ positive contribution to consumers, society and the economy