

# HIGH COURT REJECTS FINDING OF SIMILARITY BETWEEN IWATCH AND ISWATCH TRADE MARKS

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- ▶ Guidance from the High Court on the assessment of similar goods
- ▶ Assessment based on the nature of the essential/incidental features of the product in question
- ▶ A feature that is purely incidental to the main purpose of the product will not be sufficient for a finding of similarity between products

## What's it about?

Swatch AG opposed the registration of a UK trade mark application to register the IWATCH trade mark for various goods including cameras, wireless communication devices and radios. The opposition was filed on the basis of Swatch's earlier mark ISWATCH, which was registered for horological and chronometric instruments, including watches.

The Hearing Officer upheld the opposition, on the basis that the IWATCH trade mark was clearly a confusingly similar mark to ISWATCH, and that there was a sufficient degree of similarity between wireless communication devices, cameras and radios, and watches. This was because the functionality of the IWATCH was basically a watch that could perform these functions.

Apple appealed the opposition decision to the High Court, which allowed the appeal.

## Why does it matter?

The High Court held that the Hearing Officer had been wrong to hold that a purely incidental feature of these devices (the fact that they could tell the time) meant that they could be similar goods to watches. If this was the case then any product that had an incidental feature that showed the time would have to be considered to be similar to a watch. The High Court gave an example of a smart watch that had an app that allowed you to communicate with your home security system. The fact that the smart watch allowed you to also tell the time did not mean that security systems should be considered similar products to watches.

The High Court found that there was a low degree of similarity between the specific products and watches. Therefore the finding that there was likely to be customer confusion between the two marks was also mistaken. For this reason the opposition was upheld.

## Now what?

The case gives useful guidance on the pragmatic approach that needs to be taken when assessing whether goods can be considered similar to each other. As technology provides devices that are capable of multiple functions this is likely to become more important.

[Apple Inc v Swatch AG \[2017\] EWHC 713 \(Ch\)](#)

For further information on this or any other IP related matter please contact [Tim Carter](#) on 0161 934 6197