

Strictly Japanese

- ▶ Accusation that Defendant was in breach of a settlement agreement
- ▶ Settlement agreement more restrictive than was argued in the original passing off case
- ▶ High Court follows rule that words should be given their ordinary and natural meaning

What's it about?

The group behind the clothing brand Superdry brought proceedings against a number of companies for passing off in relation to the "get up" of certain clothing items. In particular, during the proceedings, Superdry pointed to the Defendants' use of a combination of Japanese characters and vintage American imagery, which are a key feature of Superdry's clothing designs.

The case settled before going to trial, and the parties signed a settlement agreement which restricted the Defendants from using certain "Japanese elements" in the graphical representation of their own clothing products.

Later, Superdry discovered that the Defendants were using Japanese and Chinese characters as features on clothing items and brought an action for breach of the settlement agreement.

Why does it matter?

The Defendants claimed that the settlement agreement restricted them from using Japanese elements combined with vintage American imagery (which would be consistent with the arguments used in the original passing off action), rather than Japanese elements alone.

In reaching a decision, the court looked to the fundamental principles which apply to the interpretation of contractual terms generally. Accordingly, the court gave the words in the agreement their natural, ordinary meaning to determine what the parties had agreed.

The court held that it was entitled to take into account the background to the case (including the arguments made as part of the passing off action). However, the wording of the settlement agreement was clear: the agreement had been breached by the Defendants' use of Japanese elements alone.

Now what?

In recent months, the courts have been interpreting contractual terms strictly. The trend has been to uphold terms of a contract which are clearly drafted, even where this produces a result which may seem unfair or "uncommercial". This case confirms that settlement agreements should not be treated any differently.

DKH Retail Ltd (trading as Laundry Athletics) and others v SRG Apparel Plc and others [2015] EWHC 3560

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