

THE BRITISH BRANDS GROUP

International Exhaustion of Trade Mark Rights

Case Study

(supplied by Levi Strauss (UK) Ltd)

Background

Levi Strauss (UK) Ltd (LSUK) has been protecting its trade mark rights by taking action against retailers who sell Levi's® branded goods sourced from outside the European Economic Area (EEA) without the company's consent, a practice found to be unlawful by the European Court of Justice (the EU's highest court) in the Silhouette judgement.

Those engaged in this unlawful practice claim that LSUK's action against them has been taken to stop price cutting and is anti-competitive, a claim unsupported by the facts. Price is not the issue as LSUK does not set or even recommend retail price, which on the high street ranges from £35 to £52. The issue for LSUK is to manage lawfully the distribution of the Levi's® brand for the benefit of the consumer, their retail customers and indeed the brand.

The EU and Competition

EU exhaustion of trade mark rights enables the free circulation of goods throughout the EU as one single market and is integral to the EU single market. This helps fair and relevant free trade within the EU and level competition. Global exhaustion of trade mark rights does not provide level competition and only makes sense if there is global free trade / free circulation of goods. Global exhaustion would put EU industry at a disadvantage to competitors with lower costs; lower margins; and lower levels of consumer, social and environmental protection.

Levi's® Distribution Policy

LSUK wholesales Levi's® products in the UK. LSUK do not set or recommend prices for their retailers and there is a wide range of prices on the high street (£35-52, source: The Independent).

LSUK has a network of 1,900 Levi's® Authorised Dealers (LAD's) established throughout the UK using objective and consistent criteria that comply with UK/EU law, and price is not one of the criteria. This distribution policy:

- Enables people to choose from a good range of current styles, sizes, fits, fabrics and colours;
- Ensures consumers are served by trained staff with effective after-sales service;
- Guards against counterfeits;
- Provides continuity of supply.

Any retailer is welcome to apply to become an LAD. LSUK applies its criteria for potential new retail accounts consistently and objectively and if these are met will supply any retail applicant. If they fail to meet these objective criteria for retailing Levi's® products they can reapply should they make changes to meet the criteria. Every week new retailers are signed up who have taken the necessary steps to meet the consistent and objective criteria.

Within the EU there are 20,000 LAD's who are specifically authorised to trade between each other providing a huge and competitive market place of 373 million consumers (source EIU).

Levi's® Investment in the UK

LSUK has some 1,700 employees. There are 200 located at the Swan Valley HQ and Distribution Centre. There are 1,500 in three Scottish Plants and Depot (unlike many other clothing brands, all are company-owned) in Dundee, Whitburn, Bellshill and Bothwell.

Swan Valley is the largest capital expenditure project for Levi Strauss & Co worldwide, costing \$50million securing a future for a Levi's® presence in Northampton, out of all the European venues that could have been chosen for this regional distribution centre.

Fully 75% of Levi's® denim jeans sold in the UK are made in the UK. Most of the remainder comes from other company-owned plants within the EU. There are 1,500 Scottish jobs dependent on the effective planning, management and future success of the Levi's® brand in the UK.

US Goods

The Parallel Traders Association (PTA) argues that LSUK has taken legal action because the PTA's imports of US goods undercut the price of EU produced goods and that this action is anti-competitive. This is not the case. The fact that LSUK does not set or suggest retail price is borne out by the wide range of prices on the high street (£35-52). In comparison the price of the vast majority of unlawfully imported Levi's® jeans is £45 which, disregarding the odd supermarket stunt, offers little price advantage to the consumer and many drawbacks in terms of choice, service and after-sales support.

Levi Strauss & Co. owns the Levi's® brand - not illegal importers of their US goods. LSUK has the right to determine which retailer may stock it's branded goods - as long as the criteria it uses are objective and consistent (and price is not one of them).

The 1,900 Authorised Dealers who are serious about long-term investment in the jeans business do stock a wide range, train their staff and (importantly) plan and forecast their jeans business to meet customer demand and provide continuity of supply.

Brands, such as Levi's®, are committed to investment through innovation, product development and excellent customer service. Trade marks are one way to help protect that investment and that protection encourages further development of brands. They are a seal of quality, enabling consumer selection. Those who don't create brands often don't value trade marks - they frequently free ride on the investment of others. Brands are a major part of the economy, driving economic growth, innovation, competition, investment and employment. Trade marks are a legal protection for brands, providing an incentive for innovation, deterring others from exploiting their integrity and safeguarding the brand owner's investment.

A more detailed analysis of the economic implications on owners of brands and trade marks of the Silhouette judgement is made by Professor Paul Seabright of Churchill

College, Cambridge in the paper “The Economic Implications of the *Silhouette* Judgment”.

US imports are not produced for the European market in terms of colours, finishes and fits. Often even within shipments of mainly genuine but illegally imported US products counterfeit goods have been combined.

US v UK Pricing

The retail price of many branded and non-branded goods is significantly lower in the US than in Europe. The retail price-difference between Levi's® 501® jeans in the US and the UK has been the subject of a disproportionate and misleading slug of media attention. Price differences are to do with macro- and micro-economics and it is unreasonable to expect that a particular branded item can be sold for the same price around the world. Price differences are driven by the following factors:-

- Variable exchange rates;

- US Sales Tax - on average 5% compared with the UK's VAT rate of 17.5% (source: The Economist/OECD);

- US Sales Tax is added at the point of purchase and is not shown on the price tag, unlike UK VAT;

- US fuel and energy prices are about two-thirds cheaper than in the UK;

- Rents, interest rates and employee costs (e.g. national insurance) are substantially lower in the US than in the UK;

- Import duty of 13.5% is also paid by legitimate companies bringing products from the US into Europe;

- There is six times more retail space per capita in the US, putting pressure on prices and margins.

It simply costs more to produce goods, distribute them and sell them in Europe than in the US. With 75% of Levi's® sales produced in the UK by LSUK's 1,500 employees, the cost of doing business is driven by UK overheads, not US overheads.

Summary Conclusion

LSUK operates in a highly competitive environment within the EU as well as the UK. As brand owners they have the right and duty to manage the distribution of the Levi's® brand. The *Silhouette* judgement of the European Court of Justice protects these rights. As a significant contributor to the UK economy, LSUK expects the UK government to support the *Silhouette* principle of EU exhaustion as an integral part of the single market. To change this principal will not help fair competition but disadvantage European industry.