

## Contents

Preface .....	v
Abbreviations .....	ix
1. On tour through uncharted territory .....	1
1.1 Trade mark links and product loops .....	1
1.2 Remanufacturing: a hidden giant .....	5
1.2.1 Industry as a whole .....	5
1.2.2 The automotive sector .....	8
1.3 Methodology .....	9
2. In focus: The law in Member States .....	11
2.1 Germany .....	11
2.1.1 The “Linotype” doctrine .....	11
2.1.2 The rise of a new law .....	13
2.1.2.1 The “implied consent” rule .....	13
2.1.2.2 The “individual character” rule .....	14
2.1.2.3 The “deactivation” rule .....	17
2.1.2.4 The interrelation between the rules .....	20
2.2 Austria .....	21
2.3 France .....	22
2.4 Italy .....	25
2.5 United Kingdom .....	27
2.6 Benelux Countries .....	28
2.7 The state of “pre-European” law .....	30
3. Remanufacturing and “European” Trade Mark Law .....	31
3.1 A working hypothesis: The typical marketing of remanufactured goods .....	31
3.2 The applicable law .....	32
3.2.1 European law v. national law .....	32
3.2.2 The pertinent provisions of European law .....	36
3.2.2.1 The principle of exhaustion .....	36
3.2.2.2 “Legitimate use” provisions .....	39
3.3 Preliminary questions .....	41
3.3.1 No <i>tabula rasa</i> solution .....	41
3.3.1.1 The “creating markets” and “cradle to grave” dogmas .....	42
3.3.1.2 The “spent” product defence .....	46
3.3.2 A two-tiered approach to the concept of “honest practices” .....	47
3.3.2.1 The doctrine of functions .....	47

3.3.2.2	The dual approach: <i>horizontal</i> and <i>vertical</i> trade mark infringements . . . . .	51
3.3.2.3	Submerged structures revealed . . . . .	60
3.4	Interim findings . . . . .	62
4.	The “honest” remanufacturer . . . . .	63
4.1	Typical trade mark interests . . . . .	63
4.1.1	The origin function . . . . .	63
4.1.1.1	What the remanufacturer must do in substance . . . . .	63
4.1.1.2	How the remanufacturer must present his message . . . . .	69
4.1.1.2.1	The relevant addressee and “judge” . . . . .	69
4.1.1.2.2	The way of articulating the remanufacturer’s message . . . . .	73
4.1.1.2.2.1	The use of descriptive words . . . . .	73
4.1.1.2.2.2	Equivalent methods of commu- nication . . . . .	79
4.1.1.2.3	The media for transporting the remanufacturer’s message . . . . .	80
4.1.1.3	The result: reasonable safeguards . . . . .	84
4.1.2	The quality function . . . . .	84
4.1.2.1	Direct damaging . . . . .	84
4.1.2.2	The “rub off” effect . . . . .	85
4.1.3	The advertising function . . . . .	87
4.1.4	Scope of trade mark rights not dispositional . . . . .	88
4.2	Collateral factors to be weighed . . . . .	89
4.2.1	Collateral factors which are <i>not</i> relevant . . . . .	90
4.2.1.1	Unloved (price) competition . . . . .	90
4.2.1.2	<i>Leaving v. re-affixing</i> the trade mark . . . . .	91
4.2.1.3	The “individual character” rule . . . . .	91
4.2.1.4	Honest practices and “ <i>necessary</i> ” use . . . . .	93
4.2.1.4.1	The true road . . . . .	93
4.2.1.4.2	The <i>alternative</i> road . . . . .	94
4.2.1.4.2.1	Technical, economic and legal restraints . . . . .	94
4.2.1.4.2.2	The essential meaning of “ <i>necessary</i> ” . . . . .	98
4.2.1.4.3	All roads lead to Rome . . . . .	101
4.2.2	Collateral factors which <i>are</i> relevant . . . . .	102
4.2.2.1	Free movement of goods . . . . .	102
4.2.2.2	Environmental objectives of the Community . . . . .	104
4.2.2.3	Res ipsa loquitur . . . . .	106
5.	Summary: The end of the tour . . . . .	109