



AA THORNTON

INTELLECTUAL PROPERTY LAW

Food & Drink

It's our people that make the difference

About us

We are a leading Intellectual Property firm based in London and Munich. Our team of committed and passionate individuals includes patent, trade mark and design attorneys, as well as litigation solicitors, working with clients across a huge range of technologies and commercial fields. We provide the full range of IP services to clients around the world, from prosecution to litigation, in patent law, trade mark, design and copyright law.

Having an excellent understanding of our clients' industries and the challenges they face is key to us delivering commercial, insightful legal advice. Our highly qualified industry teams are made of attorneys and solicitors who work together to share knowledge and experience. We firmly believe *it's our people that make the difference* and that this sets us apart from others. Simply stated, we speak our clients' technical language!

We offer a completely bespoke service at a competitive price. We pride ourselves on our genuine desire to understand the way clients want to work with us, and provide every client with a personalised, superior service that reflects their commercial needs. Our advice is always in-depth, commercial and accessible. We ensure that your inventions, brands and designs are expertly protected and your risks are minimised.

We have a wealth of experience in all aspects of patent law and can advise across a wide and diverse range of **innovations** and technical areas. Whether you are a sole inventor or large corporation, protecting your ideas is vital and we have the leading knowledge to help you. We work seamlessly with legal counsel, R&D, Business Development, Regulatory and Commercial Affairs departments to become an integral part of your team.

We love brands. We are passionate about protecting, enforcing and commercialising your trade marks, as well as safeguarding them through dispute avoidance and dispute resolution. We represent clients before the UK IPO, the EU IPO and the WIPO as well as working with an extensive network of established attorneys around the world to provide complete global coverage.

Our attorneys and lawyers regularly speak at conferences, and publish articles in leading magazines. We are passionate about innovation and enjoy nothing more than working on new or complex technologies.

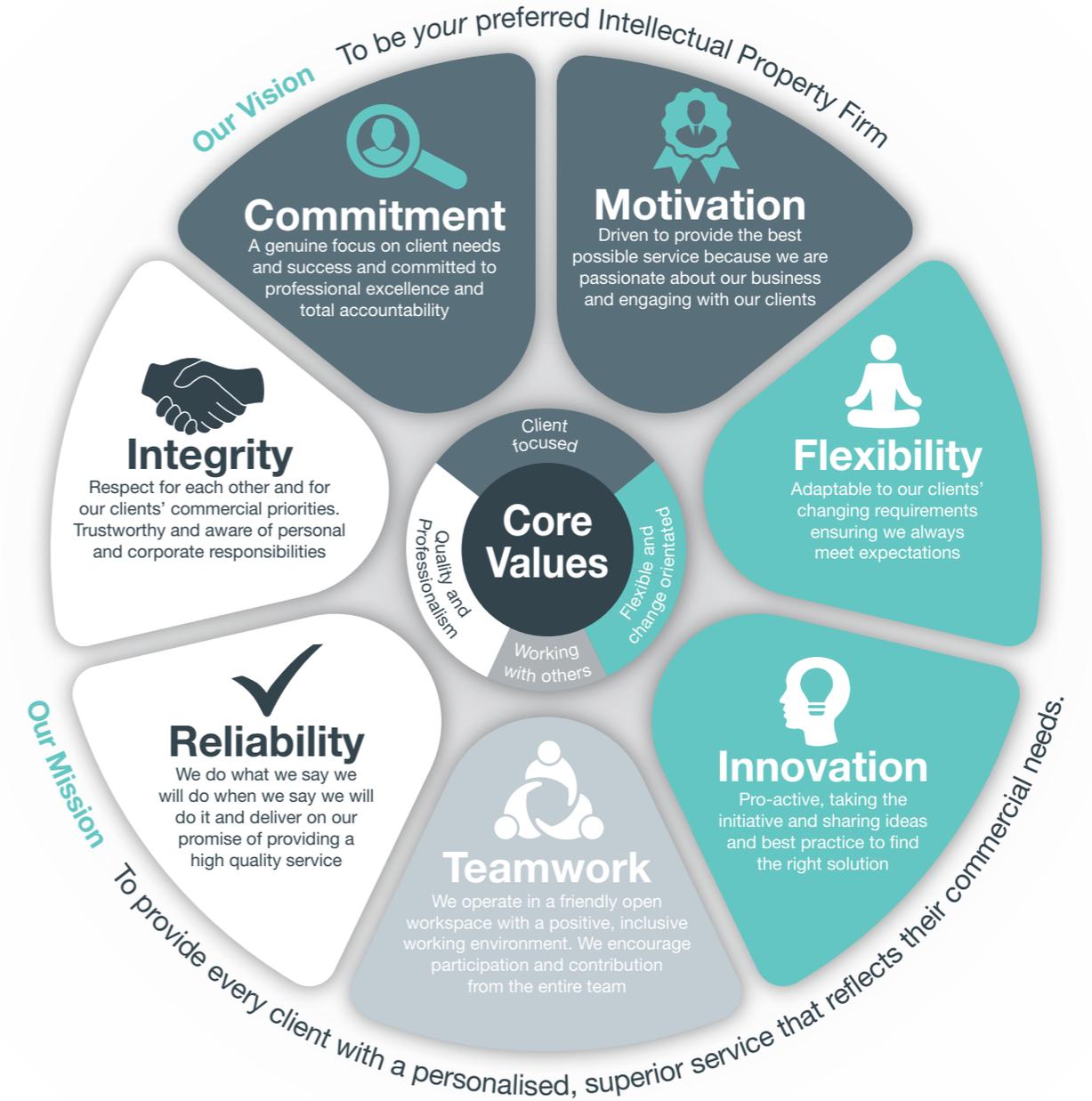
Our vision is *"to be your preferred intellectual property firm"*, and we are committed to providing every client with a personalised, superior service that reflects their commercial needs.



IP INCLUSIVE
Working for diversity and inclusion in IP

We are delighted to be involved with IP Inclusive, which is an organisation that promotes diversity and inclusion within the various IP professions. AA Thornton were among the first signatories to the IP Inclusive charter, which is part of our ongoing commitment to improving diversity and inclusion. We take an active lead in IP Inclusive, such as the project to promote careers in IP to schools and universities through the "Careers in Ideas" initiative.

Our values



Our expertise

The firm's Food & Drink team includes attorneys and solicitors from a wide range of professional and academic backgrounds. We are a friendly and approachable team that has an open and collaborative working style, both internally and in how we work with our clients.

Our experience encompasses the whole Food & Drink sector. Our clients range from small family-owned businesses to international household names and include, by way of example:

- Packaging manufacturers
- Restaurant chains
- Speciality food and drink producers
- An independent brewery
- Catering companies
- Ice cube producers

We have the skills and expertise to advise on all aspects of IP relevant to the Food & Drink sector, including:

- Trade marks, including clearance searches and registration (for example in relation to brands and sub-brands)
- Patents, including prior art searches and patent protection (for example protecting innovative products, packaging and methods of manufacture)
- Registered Designs, including searches and registration (for example protecting new packaging or bottle shapes)
- Unregistered IP rights, including copyright, unregistered trade marks and unregistered designs (for example in relation to 'copycat' products)
- Enforcement, invalidity, opposition and infringement proceedings in relation to the above rights

Case study 1

Freedom to Operate (FTO) opinion for a major food and drink brand relating to Nespresso™-compatible pods, involving patent infringement and validity analysis.

Teams involved - IP Litigation; Chemistry, Biotechnology & Pharmaceuticals Patent Department

The case

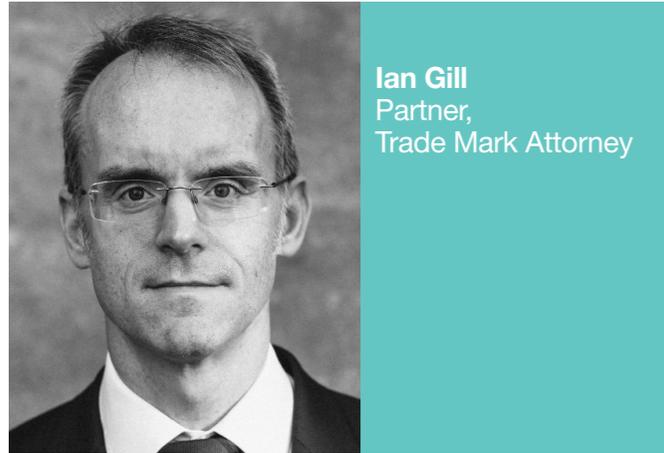
We have been working closely with our client since 2016 to assess and mitigate the legal risks associated with their proposed launch of Nespresso™-compatible pods. This has involved careful infringement analysis of a number of third party patents in what is a heavily protected area of technology, and combining that with in-depth patent validity opinions, where appropriate, to provide our client with a commercially acceptable route to market. The patent landscape in this area of technology is further complicated by a number of ongoing oppositions at the European Patent Office and by an interesting history of pan-European litigation.

Our input

Due to the proposed product launch taking place in a number of different European countries, we have had to provide advice relating to a number of different jurisdictions, consulting with foreign associates where appropriate. We have provided our client with commercially-focused advice as to the strengths and weaknesses of their position and potential changes that could be made to their product to mitigate commercial risks at launch.



Meet the team



Ian Gill
Partner,
Trade Mark Attorney

Ian joined the profession in 1994 having gained a degree in Aeronautical Engineering from Bristol University and an MSc in the Management of IP Law from London University.

Ian is sought-after due to his extensive range of experience dealing with both contentious and non-contentious intellectual property matters and his common sense and timely advice which demonstrate a strong desire to put the interests of the client first. A significant proportion of Ian's work relates to advising on IP for major food and beverage brands.

A selection of the brands Ian represents include:

- Twinings
- Ovaltine
- Patak's
- Kingsmill
- Ryvita
- Southern Fried Chicken



Geoff Hussey
Partner,
Solicitor

Geoff Hussey is an IP solicitor whose main practice areas are IP litigation, and Commercial IP. His experience includes acting for a broad range of clients in many sectors including pharmaceuticals & medical devices, chemicals, electronics, telecoms, aviation, food & beverages and financial services.

Geoff has extensive experience in litigation before the UK courts in disputes involving patents, trade marks, copyright, design right, passing off, reverse passing off and IP licences. He has advised clients in the food and drink sector particularly in relation to issues of freedom to operate, whether that be in relation to patents, or trade marks.

By way of example, he has provided advice in relation to the patent landscape for Nespresso related coffee pods; and also in relation to the Olympic Association Right.



Rachel Havard
Partner,
Trade Mark Attorney

Rachel Havard is a Partner and a UK Chartered Trade Mark Attorney and European Trade Mark and Designs Attorney. Rachel handles a wide range of UK and international trade mark cases, and has significant experience of clearing trade marks for use and registration, and in negotiating and drafting trade mark co-existence agreements.

Her portfolio of clients covers a variety of sectors, including clothing, pharmaceuticals, medical devices, oil & gas and automotive; but she also works with a number of clients in the food and beverages sector, including distilleries and breweries, as well as manufacturers of innovative food packaging solutions.

A selection of the brands Rachel represents include:

- Indo European Foods Limited
- Euro Food Brands Limited
- Niche Drinks Co Ltd
- Sierra Nevada Brewing Company
- FFP Packaging Solutions Limited



Sarah Darby
Partner
Trade Mark Attorney

Sarah is a UK Chartered Trade Mark Attorney and European Trade Mark and Designs Attorney. Sarah handles trade marks, designs and copyright in the UK, EU and worldwide. She advises on all types of trade mark matters from the inception of a brand and checking its availability to obtaining registrations, commercialisation of rights and enforcement of rights in opposition actions, cancellation actions and litigation.

Sarah also deals with domain name registrations, purchases and complaints, as well as customs and counterfeit issues. Sarah has experience in advising both domestic and international clients and has a broad range of experience in the food and drink sector ranging from local cheese producers to global franchises.

A selection of the brands Sarah represents include:

- Jordans Cereals
- Ryvita
- British Sugar
- Dorset Cereals
- SFC (Southern Fried Chicken)
- Ovaltine
- Ohly
- Westmill (Elephant Atta)



Alex Bone
Partner,
Patent Attorney

Alex is a UK Chartered and European Patent Attorney in the Engineering, Physics & Mechanical Devices department. Alex joined the firm following seven years working in-house at Novartis Pharmaceuticals Ltd where he was responsible for IP support relating to delivery devices, formulation technology and packaging projects.

Alex's professional experience covers a broad range of technologies including food packaging, household goods, waste treatment, beverage cooling, oil and gas drilling, and automotive technologies. Since joining the firm, Alex has been involved with assisting companies with the identification of potentially patentable subject matter in their developments, conducting freedom to operate searches, and the preparation and prosecution of patent applications directed to some of those developments.

A selection of the brands Alex represents include:

- Colpac
- Cedo
- 24Kice



Suzanne Power
Senior Associate,
Trade Mark Attorney

Suzanne is a UK Chartered Trade Mark Attorney and European Trade Mark and Designs Attorney and acts for clients with interests across the food and beverage sector – including in product packaging, distribution, retail and restaurant services. Her primary responsibilities include the prosecution of applications for trade marks in the UK, EU and overseas, and advising on strategies for the long-term management of intellectual property portfolios.

Suzanne also has experience in infringement and enforcement of intellectual property rights, including representing clients' interests before customs authorities in the EU and overseas to prevent the distribution of counterfeit products. Suzanne has worked particularly closely with the Twinings and Ovaltine brands of the FTSE 100 company Associated British Foods plc.

A selection of the brands Suzanne represents include:

- Twinings
- Ovaltine
- Patak's
- Blue Dragon



Sarah Neil
Senior Associate,
Trade Mark Attorney

Sarah is a UK Chartered Trade Mark Attorney and European Trade Mark and Designs Attorney. Sarah joined the profession in 2012. Sarah has a range of experience in the protection and enforcement of trade mark and design rights for clients in the food and beverage sector.

Examples of projects Sarah has assisted with include an IP Audit for a multi-national specialist food producer, advising on obtaining IP protection for new packaging for a beverage, defending threats of registered design infringement made against a well-known producer of bakery products and the enforcement of trade mark rights on behalf of clients in the food and beverage sector both in the UK and overseas.

A selection of the brands Sarah represents include:

- Kingsmill
- High5
- Lady Grey
- Allinson's
- Watson's Water

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The 'excellent' A.A. Thornton & Co. 'goes the extra mile to provide outstanding customer service'

Legal 500

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Case study 2

Lycopene food colourant patent opposition.

Teams involved - Chemistry, Biotechnology & Pharmaceuticals Patent Department

The case

Israeli company LycoRed specialise in the research and development of new products and systems based on natural pigments and nutrients, particularly to improve flavour and overall composition and feel in a variety of food applications. LycoRed take protection of their IP seriously and are the owners of a European patent protecting a unique formulation based on the colourant lycopene, used for providing stable red colouring for foods, cosmetics and pharmaceuticals. The stability of the red colouration, particularly under high temperatures such as during cooking of food, is of particular significance. Products containing the invention are widely sold, particularly under the Tomat-O-Red® brand.

The European patent was opposed by multinational BASF, a competitor of LycoRed. A successful opposition could have resulted in a significant reduction in LycoRed's market share. The team at AA Thornton were asked to defend the patent during opposition proceedings at the EPO, owing to our expertise in opposition / appeals.

Our input

We successfully defended the patent at the EPO opposition hearing, including maintaining it in completely unamended form. This result was important because it has enabled LycoRed to maintain their position in this market, and has also opened up possibilities for strong licences on favourable terms. Maintaining the patent with unamended claims was essential, because it maintains protection for a number of different, but related, compositions.



The Food & Drink Sector in brief

In 2017, UK consumer expenditure on food, drink and catering was estimated to be £219 billion, an increase of 6.1% on the previous year. Further, UK food and drink exports were valued at £22 billion, up 9.7% on 2016*. At AA Thornton, we strive to use our in-depth understanding of the sector to support Food & Drink companies across the globe at every stage of their journey.



We represent the largest manufacturer of own label and branded household disposable products in Europe



We have over 4,000 trade marks on our records in the core food and drink classes



We represent winners of the Great Taste Awards 2017



We represent the oldest brewery in Yorkshire



We represent the market leader in sugar in the UK



We represent a finalist for the UK Packaging Awards 2016 and 2017



We represent a UK-based multi-national food processing and retailing company listed on the FTSE 100



We represent regional, family-owned restaurant businesses and multi-national fast food franchises alike

We represent Food & Drink clients in 174 different territories.



Case study 3

Brewery trade mark opposition

Teams involved - Trade Marks Department

The case

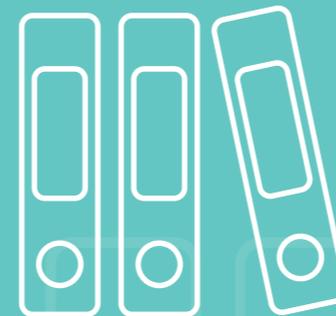
In 2015 we were instructed by our client, a UK brewery, to file an opposition to a Chinese trade mark application for a mark in class 43 'goods and services'. In January 2017, the China Trademark Office ("CTMO") issued a decision in our favour, and rejected the application. Thanks to our strong argumentation, the CTMO found that the services subject of the contested application, namely "rental of transportable buildings; rental of meeting rooms; mobile supply of beverage and food; bar services; snack-bars; restaurants; canteens; cafeterias; cafés; catering (food and drink)" - were similar to the goods subject of our client's earlier Chinese registration for "Beer, ale, porter, stout and lager"; that the mark subject of the contested application was highly similar to our earlier mark; and that the contested application had been filed in bad faith and that coexistence of the contested mark with our own trade marks would give rise to consumer confusion as to the origin of products.

The outcome

The CTMO generally takes a very formulaic approach in deciding oppositions, and therefore the client was very pleased that, in this case, they have found in its favour; it is often the situation that unless trademark applications are filed for near identical products in the same class, confusion will not be found. This is a very important decision for our client as it prevents an unauthorised Chinese company from gaining rights in the relevant mark in China in relation to class 43 'goods and services', and keeping the space free for the client to trade in these services under its own mark in China.



More about our services and expertise



Trade Mark, Design & Copyright Portfolio Management

Our patent and trade mark attorneys regularly advise on IP portfolio management, with a focus on alignment with each client's overall corporate objectives and strategy.

We understand the need to review expenditure, IP asset value and portfolio management decisions on a regular basis, and to check alignment with the current business objectives and market conditions. We approach this with a desire to understand your business needs and to provide a solution that achieves your objectives efficiently and cost-effectively.



Patents

Our patent attorneys have a wealth of experience in all aspects of patent law, and can advise across a wide and diverse range of technical areas.

- Chemistry, Biotechnology & Pharmaceuticals
- Electrical Engineering, Electronics, Telecoms & IT
- Engineering, Physics & Mechanical Devices

Whether you are a sole inventor or large corporation, protecting your ideas is vital. Our European and UK Patent Attorneys can act on your behalf, presenting your case to the UK Intellectual Property Office (UK IPO), the European Patent Office (EPO) and the World Intellectual Property Office (WIPO). Thanks to our network of associates overseas, we can advise on different patent laws and protect or defend you anywhere in the world.



IP Transactions, Ownership & Licensing

We regularly advise clients in relation to commercialising their IP. When entering into negotiations for contracts involving IP it is important that clients' interests are protected and that the appropriate rights are secured in the transaction.

We have the experience and focus to help guide you through what is a technical legal area to achieve a result that meets your commercial aims for all of your non-contentious IP requirements.

Our services include:

- Drafting assignments and licences
- IP contract reviews
- IP due diligence
- IP audits
- Developing IP ownership and licensing structures
- Dispute settlement agreements
- Recording transactions at Intellectual Property Offices



IP Strategy & Audits

We will work with you to put in place effective strategies for the protection and commercialisation of your IP.

Our services include:

- IP audits
- IP due diligence
- IP portfolio management and maintenance advice
- Project reviews to identify potential IP
- Strategy reviews
- IP litigation strategic advice
- Marketplace and competitor surveillance
- Advice on upcoming Unified Patent Court opt-outs
- Parallel imports – advice, reviews, procedures



IP Litigation

Our IP litigation and legal department advises on all aspects of IP law. Our experience and expertise ranges from dealing with small IP disputes (often resolved in negotiation), to hard-fought high-value IP litigation and coordinating parallel actions in other jurisdictions.

Our litigation approach is, where appropriate, for IP solicitors to work closely with our patent or trade mark attorneys to provide a coordinated approach to both enforcement and protection – ensuring the best possible resolution of IP disputes. The strength of our collective technical expertise also ensures that we can understand the necessary complexities involved in each case.

Our services include:

- IP portfolio and litigation strategies
- Patent litigation
- Trade mark, copyright and design right litigation
- Arbitration and mediation
- Licensing disputes
- Coordinating with local counsel in parallel actions around the world
- Settlement advice



IP Due Diligence & Freedom to Operate or Freedom to Use

We have considerable experience advising clients in relation to commercial due diligence activities across the full spectrum of IP rights. Clients value our commercial focus and attention to detail in helping them to evaluate and realise new business opportunities.

Our services include:

- IP due diligence for clients seeking to commercialise their own IP
- IP due diligence for clients seeking to acquire third party IP
- Freedom-to-operate or freedom-to-use assessments

Because of our people we are consistently ranked as ‘top tier’ and ‘leading’ by our peers and clients:

The Legal 500 | Chambers & Partners | WTR 1000 |
Managing IP Stars | The Financial Times

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The information in this booklet is general information only and is not intended to constitute legal advice. If you wish to explore protection and associated costs for any of the types of intellectual property discussed, please contact one of our patent, trade mark or design attorneys. August 2020.



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