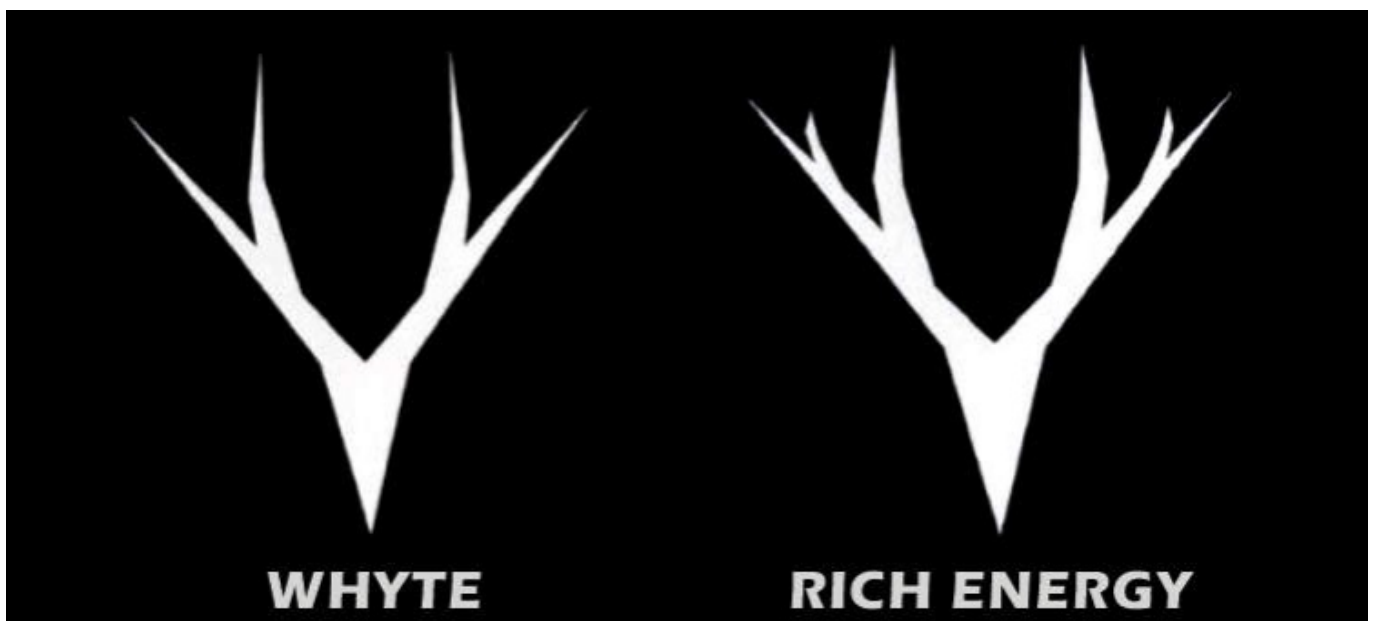


Copyright infringement: a useful weapon and a warning



But Judge, we had no i-deer!



Whyte's logo on the left, Rich Energy's infringing logo on the right.

A recent case provides a useful reminder that copyright can sometimes be used to prevent infringement of a logo in situations where it has not been registered as a trade mark or where confusion with an existing brand (i.e.



a passing off claim) would be too difficult or expensive to prove.

In *ATB Sales Limited v Rich Energy Limited*, Rich Energy branded its energy drinks with a stylised stag's head which was found to be “*virtually identical with only minor differences*” to the existing logo used by Whyte Bicycles. Whyte's and Rich Energy's trademarks were not registered for identical or similar goods or services, thereby removing the option of a more common trademark infringement claim.

The Court found that there was little evidence to support the story that Rich had independently created their logo and therefore determined that Rich had infringed the copyright inherent in Whyte's logo. The Court promptly barred Rich from using the device in the future and ordered the cancellation of its registered trademark. A damages hearing is to take place at a later date.

Rich's lack of credibility that it had designed its own logo highlights the importance of conducting thorough clearance searches before using (or attempting to trade mark) new brand imagery, ensuring all rights in your logo are assigned to you by the designer and carefully documenting your design process to avoid claims of copying.

How we can help

If your business is considering either a change to its branding or registering a new trademark, our commercial team can provide you with practical guidance as to the best way to protect your mark without locking horns with other businesses. Contact our [corporate team](#).



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