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# Norwegian Perspectives on Product Recycling and Reuse

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# Observations from Norway

- Nordic pragmatism gives way to European property focus
  - Balance of rights approach gives way to exceptions
- Exhaustion
  - Repair, sale of used goods/reuse, lifecycling
  - Less integration of competition law/free movement
- Further questions
  - Licensing and exhaustion
  - Destruction of products

# Exhaustion – reuse/lifecycling

- Rt-1975-951, Fiskå Mølle
  - Reuse of paper bags for grain feeds
  - No secondary sales
  - The trademark was not used as a «sign»
- HR-2018-110-A, ENSILOX
  - Changed supplier of silage additive
  - Trade mark still on cans/containers
  - «risk» of harm to trademark functions
- C-46/10, Viking Gas
  - Competition in downstream market

# Repair and de-branding

- Apple case for the Supreme Court this spring
- LB-2018-62352
- Appeals court: No exhaustion
  - «fake» screens from China
- «use» of the Apple trademark?
  - Trademarks concealed by marker

# De-branding of original goods

- C-129/17 MITSUBISHI
  - (42) deprives the proprietor of the mark of the benefit of the essential right to control the initial marketing in the EEA of the goods bearing the mark
- C-558/08, Portakabin
  - (86) the function of indication of origin
- Norway: LB-2014-5832: PARAJUMPERS
  - TM holder may not control downstream market
  - Selective distribution system

# Exhaustion – sale of used goods

- Norwegian case law in line with CJEU case law
- Rt-2004-1474 volvoimport.no
- (43) balancing of interests (interesseavveining) under TMD 2008 art. 7
  - Reseller may use the mark in advertising as customary in the business
  - Must not appear as there is an affiliation or commercial connection with trade mark holder
- LB-2013-35584: Land Rover + Jaguar
  - Balancing of interests

# Outlook

- Surplus license production
- Sanction catalogue – is destruction of goods sustainable?