

Samsung ordered to pay the Swatch Group US\$11.6 million in damages for trade mark infringement

In brief

- The High Court has handed down its quantum judgment in the trade mark dispute between the Swatch Group and Samsung, concerning watch face apps that infringed Swatch Group trade marks on the Samsung Galaxy App store between 2015 and 2019.
- The Swatch Group's expert valued the claim at approximately US\$170 million; Samsung's expert valued it at just US\$301. However, the court rejected both extremes and awarded "negotiation" damages of US\$11.6 million.
- The court held that damages must be assessed by reference to what the infringer actually needed to render its conduct lawful, assessed prospectively (i.e., ex ante) and without the benefit of hindsight, not by reference to an inflated hypothetical licence or a deflated after-the-fact economic benefit calculation.

Background

The Swatch Group, whose brands include Omega, Longines, Tissot, and Swatch, brought trade mark infringement proceedings against Samsung concerning "watch face apps" made available through the Samsung Galaxy App store (the SGA store). These apps allowed users of Samsung smartwatches to replicate the appearance of a physical watch face on their device's screen.

Liability was determined in 2022, when the High Court found that a number of the Swatch Group's trade marks had been infringed by watch face apps available on the SGA store between October 2015 and February 2019; a decision [upheld by the Court of Appeal in 2023](#).

The infringements fell into three categories:

- infringement through display of the mark on the watch face itself once downloaded (Dial Branding Infringements);
- infringement through use of the mark in the app's name as displayed in the store, irrespective of download (Store Display Infringements); and
- infringements combining both (Double-Barrelled Infringements).

The infringing apps were downloaded around 160,000 times in the UK and EU and generated total revenue of only around US\$1,000.

The High Court decision on quantum

The question of how much Samsung should pay the Swatch Group in damages for those infringements came before Mr Justice Marcus Smith at a quantum trial in June 2026 with [judgment handed down in August 2026](#).

The Swatch Group claimed for "negotiation" damages (also called licence fee, *Wrotham Park* or user damages). Negotiation damages compensate a rights holder for the loss of its ability to control and exploit its property, not for any demonstrable financial loss or the infringer's actual profit. The court had to consider what a reasonable licence fee would have been, had Samsung, as the infringer, approached the Swatch Group, as the rights holder, and sought permission.

The judgment identified three broad categories of case for assessing such damages:

1. cases where the rights holder exploits its rights by selling products, so that infringement diverts sales, and lost profit is the natural measure;
2. cases where the rights holder licenses its rights and an established market royalty exists as a comparator; and
3. cases, like this one, where there is no diversion of sales and no comparable licences (the Swatch Group did not license its brand), so the court must construct an assessment from more general evidence.

Several important principles of general application emerged from the judgment:

- The relevant hypothetical negotiation is between the actual claimant and the actual infringer, not with third parties (here, the app developers) who might also have needed a licence.
- The subject matter of the hypothetical licence must match what the infringer actually did and actually needed, not a broader or narrower right. Samsung's expert erred by confining the notional licence to the Dial Branding Infringements alone, ignoring the Store Display Infringements. The Swatch Group's expert erred in the opposite direction, positing a full co-branding licence Samsung never contemplated or needed.
- The negotiation must be assessed prospectively, based on what the parties would reasonably have expected at the time, not retrospectively engineered around the infringement that actually occurred and its resulting revenue.
- The unwillingness of a brand owner to license its marks at all does not defeat a claim for negotiation damages; every rights holder has a price, and the exercise remains one of objective valuation rather than actual willingness.
- An "economic benefits" approach measuring only the infringer's realised revenue and the claimant's demonstrable loss is inherently unreliable in brand cases, because brand value accrues and erodes gradually and is very difficult to measure in the short term.

The court's assessment

The expert evidence in the case produced two wildly diverging positions:

- The Swatch Group's expert calculated negotiation damages (as if the parties had reached a hypothetical licence) at around US\$170 million, based on a full co-branding scenario in which Samsung's smartwatch hardware, packaging and marketing would have carried Swatch Group branding.
- Samsung's expert, by contrast, calculated damages of just US\$301, based narrowly on the actual revenue Samsung earned from paid downloads of the infringing apps, arguing there was no demonstrable economic benefit to Samsung or economic harm to the Swatch Group.

The court rejected both experts' methodologies and declined to simply split the difference. Instead, it constructed its own assessment from first principles, informed by, but not bound to, the experts' underlying data. The final award combined a royalty-based figure for the infringing downloads with a separate flat fee reflecting the reputational harm of displaying Swatch Group brands on Samsung's app store:

- For the Dial Branding Infringements, the court applied a flat fee of US\$10 per download and multiplied this by the number of downloads (160,000), producing US\$1.6 million.
- For the Store Display Infringements, which the court regarded as potentially the more damaging category because they associated Swatch Group brands with free or low-cost products displayed indiscriminately in the SGA store, the court awarded a flat fee of US\$10 million, informed in part by a prior, non-comparable but broadly informative, settlement paid by Apple to the Swiss Federal Railway over a design dispute concerning a clock face.

The court considered the final award was *"sufficiently high to incentivise companies who sell Apps via stores like the SGA store (both Apple and Google operate stores along these lines) to respect the intellectual property rights of others, without rendering their businesses uneconomic"*.

Key takeaways

- Negotiation damages remain available and valuable even without demonstrable loss. Brand owners do not need to prove that an infringement caused quantifiable financial or reputational harm in order to recover substantial damages. It is the value of the right infringed, not the damage the infringement caused.
- An unwillingness to license is not a bar to recovery. Brand owners who, as a matter of policy, never license their marks to third parties (as is common for luxury and prestige brands) can still recover a meaningful licence fee for unauthorised use; the law treats every owner as having some price, however high.
- Evidence of brand value and licensing practice is central, but must be realistic. Expert evidence overreaching into speculative, hypothetical co-branding scenarios far beyond what the infringer actually did will be discounted heavily. Brand owners should ground valuation evidence in what the infringer actually used the mark for, not the most valuable use imaginable.
- Distinguish and separately value different forms of infringement. The court treated the reputational harm of a brand being displayed cheaply or for free in a digital storefront (Store Display Infringement) as distinct from, and potentially more damaging than, the harm of the mark simply appearing on the end product once downloaded (Dial Branding Infringement). Brand owners pursuing platform or marketplace infringers should consider pleading and evidencing these categories of harm separately.

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