



Birkin Bag Bonanza

Michael Edenborough KC

It is the beginning of the silly season, and it started well with a second-hand (pre-loved!) handbag selling for about €8.6 million (including buyer's and seller's premiums, €7 million without). The bag was, of course, the original 1985 Hermès Birkin Bag owned by Jane Birkin herself.

The whole saga is replete with IP and related issues – copyright / design right in the bag itself, trade mark issues on the branding and perhaps most controversially the purported restrictions on sales of new bags by the fashion house. It is said that before one can even be considered as a prospective buyer for a new bag, one must have spent significant sums on other items. This is called “tying”, which forms the subject matter of the Hermès Game litigation brought by two rich, but disgruntled, frustrated buyers in California, based upon an alleged breach of its federal antitrust law. Even once selected, one does not get a free choice; rather it is a Hobson's choice that you can buy what you are offered.

IP rights are inherently anti-competitive, but leveraging them in this way is even more so. This creates an active secondary market for genuine bags for sale with no waiting list, but obviously at a premium price. Finally, of

course, where there is a demand for a valuable product, there is criminal activity in the form of counterfeiting and piracy.

The whole of IP and the related economic wrongs and illegal activities are present in one rather utilitarian bag – the original design was intended to be spacious and practical with pockets so that the contents did not spill out when dropped.



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