

All three interests—~~contractual~~^{the parties'} expectation, responsibility for the quality of the goods and services, and consumer perception—should play a role in deciding who owns a mark. Indeed, an examination of the *Wrist-Rocket* factors shows that the framework is sensitive to these various interests.

Regarding the parties' ~~contractual~~^{the parties'} expectations, *Wrist-Rocket* and its progeny consider first whether there is a contract and what the contract says about ownership.¹³³ In addition, outside of the four corners of the contract, the courts look at which party invented and first affixed the mark to the product,¹³⁴ and who paid for advertising,¹³⁵ both factors that might be relevant to what the parties may have understood about their contractual relationship.

With respect to control of the quality of goods and services, *Wrist-Rocket* specifically considers which party maintained the quality and uniformity of the product, including technical changes.¹³⁶ Regarding consumer understanding, the *Wrist-Rocket* line of cases instructs the courts to consider as a general matter which party possesses the goodwill associated with the product or which party the public believes stands behind the product.¹³⁷ The cases also instruct the courts to look at specific ways that consumers may have gained or expressed their understanding. These include, for example, looking at which party's name appeared with the trademark on packaging and promotional materials,¹³⁸ ascertaining to whom purchasers made complaints¹³⁹ and learning what a party may have represented to others about the ownership of the product.¹⁴⁰ After considering all of these factors, the courts may then come to an informed decision, balancing the interests of the parties and the consumers, to

manufactured by another and stating, with respect to the "Leitz" brand goods at issue in the case, "Further, if the public ever understood or now understands all products bearing the 'Leitz' mark as having originated with German Leitz, its understanding was and is erroneous."), *aff'd*, 254 F.2d 777 (D.C. Cir. 1958).

133. *Sengoku Works Ltd. v. RMC Int'l, Ltd.*, 96 F.3d 1217, 1220 (9th Cir. 1996), citing *Premier Dental*, 794 F.2d at 854; 1 Jerome Gilson, *Trademark Protection and Practice* § 3.02[13] (1997).

134. *Id.*

135. *Wrist-Rocket I*, 379 F. Supp. at 911-12.

136. *Sengoku*, 96 F.3d at 1220 (9th Cir. 1996); *Wrist-Rocket II*, 516 F.2d at 850. Although similar to an inquiry about who "controls" a mark, this standard is more specific, referring to more easily quantified attributes of quality and uniformity and documented events, like changes to product.

137. *Sengoku*, 96 F.3d at 1219.

138. *Id.* at 1220.

139. *Id.*

140. *Automated Prods., Inc. v. FMB Maschinenbaugesellschaft mbH & Co.*, 34 U.S.P.Q.2d 1505, 1511 (N.D. Ill. 1994).