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FIDELMA MACKEN

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Status: Retired Judge – Supreme Court of Ireland
Former Judge - Court of Justice of the EU

EDUCATION: BA (Legal Science) : Trinity College, Dublin,
LL.M : London School of Economics, London,
B.L(Barrister-at-Law) : Kings Inn, Dublin,
LL.D (Honoris Causa) :Trinity College, Dublin,
for contribution to the Law.

CAREER:

2005 – 2012 Judge, Supreme Court, Dublin, Ireland

2004 – 2005 Judge, High Court, Dublin, Ireland

1999 – 2004 Judge, Court of Justice of EU, Luxembourg

1998 – 1999 Judge, High Court, Dublin, Ireland

1979 – 1998 Barrister and Senior Counsel, Bar of Ireland

1973-1979 Legal Counsel, F. R. Kelly & Co.,Patent Attys.

EXPERIENCE AS A JUDGE AT NATIONAL LEVEL:

As judge of the Supreme Court, Mrs. Justice Macken heard and determined many cases concerning, *inter alia*, a wide variety of EU issues arising under the Treaties/Directives/Regulations, as well as relevant national legislation, including in environment, finance, banking and commercial matters, insurance, waste and intellectual property (and including drafting references to the CJEU seeking its opinion on the correct interpretation of EU law).

She was also engaged in the determination of cases in many areas of constitutional and administrative law (including judicial review), transparency and the disclosure of documents, European Arrest Warrant cases, consumer rights, equality claims, the Hague Convention, and the EU Charter of Fundamental Rights.

EXPERIENCE AS A JUDGE OF THE CJEU:

As a Judge of the CJEU in Luxembourg Mrs. Macken was involved in many cases involving complex and complicated issues of EU law, and was the reporting judge in a large number of cases during the course of her tenure there. These ranged across commercial and administrative law, free movement of goods/services/capital and of persons and undertakings, intellectual property, state aid, transport, the internal market, equality, banking, securities, state liability for failure to implement EU legislation, the EU Stability Fund, data protection and privacy, and was President of the Third and Sixth chambers of the Court, from 2002 - 2003.

The vast bulk of the above cases, in line with the normal statistics of the CJEU, involved drafting or agreeing judgments on the correct interpretation of EU law on issues where national courts required clarification of the law. In particular she was the reporting judge in almost all of the major cases determined on the interpretation of the EU legislation (regulations and directives) in the area of intellectual property between 1999 and 2004, including the protection of intellectual property rights in trademarks.

EXPERIENCE AT THE BAR

As a barrister, and later as a senior counsel, Mrs. Macken was engaged primarily in the fields of commercial and company law, chancery, administrative law and constitutional law, which included:

- (i) applying to the High Court on behalf of the applicant Minister for the appointment of an Examiner to National Irish Bank and later to its affiliated undertaking; and subsequently in the case concerning the obligations on bank staff to respond to questions posed by the Examiner, involving fundamental rights under the Irish Constitution and the European Convention on Human Rights;**
- (ii) acting on the nomination of The Chief Justice of The Supreme Court as counsel on three separate occasions, to argue on the unconstitutionality of Bills referred to the Supreme Court by the President under Article 26 of the Irish Constitution, in all of which the Court was persuaded that the Bills were unconstitutional;**
- (iii) acting for a number of insurance companies in the demutualisation of their insurance business (on the coming into effect of EU legislation on life and life and non life insurance);**
- (iv) acting as defence counsel in seminal whooping cough vaccine cases (for Welcome);**
- (v) acting for a wide range of Irish, UK, European and American pharmaceutical companies in patent infringements and patent extension cases; and in the field of regulatory control of pharmaceutical products;**
- (vi) acting in many other complex intellectual property cases including in the field of copyright and trademarks, including where a state agency had used a client's trademark in a mock-up package of cigarettes in the promotion of an anti-smoking campaign, involving the interpretation of the law relating to the diminution or extermination of the value of the trademark arising from the ability to use the trademark; and in many cases of passing off. Mrs. Macken was involved in one capacity or another in all or almost all intellectual property cases during the entire of her time as counsel at the Bar;**

- (vii) acting for liquidators, receivers, petitioners and others (including the Revenue Commissioners) in cases by and against companies, concerning a wide variety of company law issues;**
 - (viii) acting in many administrative law proceedings, (including judicial review) in a myriad of areas, including those involving state liability, genetically modified products; environmental and planning issues; university admission and examination issues; for the Law Society on the control of solicitors; in the statutory control of persons operating in the dental and nursing professions, in appearances before the Medical Council, and the Institute of Chartered Accountants in relation to professional Enquiries); and, in general, in a wide variety of other areas of the law;**
 - (ix) In a very wide range of EU related cases, too numerous to list, and across a broad spectrum, including banking, product liability, public procurement, regulatory control, internal market, free movement, etc..**
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OTHER:

Counsel for the Public Interest in the Statutory Enquiry into the use of Blood products; counsel to the chairman of the Enquiry into sexual abuse in swimming (including assisting in establishing the rules of engagement of witnesses and on the applicable procedural rules); counsel appointed to enquire into the handling of the McCole case (arising in connection with the issue of contaminated blood products); counsel for the trustees of Dunnes Stores in the McCracken Tribunal, and several other involvements with public tribunals of enquiry.

LECTURING:

Mrs. Macken held the first Averil Deverill Chair in Commercial Law at Trinity College Dublin, and has been a guest lecturer at many universities

including King's College London, University College London, as well as at the University of Pittsburgh and at Georgetown University Law School in the United States and at several universities throughout Europe. In 2003 she was invited to become the sixth Global Hauser Fellow at New York University. She has been part of the EU-China IPR programmes in China, instructing judges of the Supreme Court of China on the law relating to intellectual property at EU level, in particular in the field of trademark law.

She has been elected one of the 50 most influential people in the world, in the field of intellectual property.

SUPPLEMENTAL INFORMATION:

- 2013 – Present:** Door Tenant, Brick Court Chambers, London, England
- 2008 – present** Chair, Irish Centre for European Law (voluntary) a charity engaged, since the 1970s in the promotion of EU law
- 2010 – present** Patron, Irish Commercial Mediation Association, established to promote the use of mediation as an alternative dispute resolution facility
- 2009 – 2012** Member of the Committee of the Council of the EU for the appointment of judges to the Tribunal for Public Functions of the Institutions of the EU (TFP)
- 2012 – present** Trustee, Trinity Trust, Trinity College Dublin.
- 2002 – 2004** Member Administrative Committee, CJEU, Luxembourg
- 1990/2000s** Member Company Law Review Commission
- Editorial Board, Irish Intellectual Property Review;
- Member of Board, Academy of EU law, Trier, Germany
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