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The Bulldog vs Red Bull Rightly claims damages



In 2007, Red Bull initiated legal action against the introduction of The Bulldog energy drinks, citing trademark infringement. The contention was that the trademark "The Bulldog" bore resemblance to Red Bull due to the shared element of "BULL". In 2010, the court sided with Red Bull on this. However, The Bulldog contested this decision, escalating the matter to the Supreme Court and eventually the European Court, arguing the legitimacy of their trademark use. They asserted that energy drinks were a natural extension of their offerings in coffee shops and that the trademark had been used in good faith for this purpose over several years. Eventually, The Bulldog's position was vindicated. Having been cleared of trademark

infringement, The Bulldog now seeks to recoup damages, estimated at 49 million euros, from Red Bull. Red Bull's actions were deemed unlawful for prohibiting The Bulldog from continuing to market energy drinks under its brand. The court affirmed this conclusion. It was established that issuing a threat of injunction is illegal if that judgment is subsequently overturned. By issuing such a threat, The Bulldog was deprived of the opportunity to capitalize on its products. In this regard, The Bulldog has already prevailed. Only the amount of damages remains to be determined. A prudent lesson emerges: refrain from threatening enforcement until a judgment becomes final.

Misleading Sustainability Claims by Primark

As consumer interest in sustainability grows, brands incorporating eco-friendly practices gain a competitive edge.

To combat misleading advertising, the ACM (the Dutch Authority for Consumers and Markets) introduced the Guideline on Sustainability Claims. Since 2023, the Sustainability Advertising Code by the Advertising Code Foundation has been in effect. However, the term "sustainable" lacks a clear definition, causing practical challenges.

Primark's posters in stores, boasting "Organic, recycled, sustainable, and affordable cotton" and "We make our



clothes circular. So the world keeps turning," sparked a complaint to the Advertising Code. Despite small print clarifying these as future ambitions for 2027 and 2030, Primark faced backlash. The complainant argued the ads misled consumers by suggesting current compliance. Both initial and subsequent rulings found against Primark. The advertising infringed rules by prominently displaying claims while subtly mentioning their future nature. Additionally, the meanings of "organic, recycled, sustainable," and "circular" remained unclear. Sustainability claims may allure, but clarity and specificity are imperative.

Trademarks

Legal Battle: William Djoko vs DJ Djoko

In a legal dispute, DJ Djoko (the defendant) and William Djoko (the plaintiff) both claim rights to the (deep) house DJ stage name. Since 2006, the plaintiff has been performing regularly in the Netherlands, Berlin, and Ibiza under the name William Djoko. In 2016, he officially registers this name as a trademark in the European Union. Meanwhile, the defendant emerges online in 2020, causing confusion on social media due to their similar names.



The court acknowledges the validity of the trademark "WILLIAM DJOKO," ruling that it was not registered in bad faith, considering the plaintiff's longstanding use of the name. Despite the defendant's claim of older trade names, evidence suggests minimal prior usage, which is insufficient to establish rights.

Given the visual and aural similarity between the names "DJOKO" and "WILLIAM DJOKO," coupled with their identical service use, the court imposes a ban on the defendant's use of the name within two months. This ban extends to record labels and music platforms. The case underscores the importance of registering one's stage name as a trademark promptly.

Limburg Flan: European protected local product

The European Commission grants quality labels to local products, among them the Protected Geographical Indication (PGI), aimed at safeguarding the quality and authenticity of regional gastronomic treasures rooted in local traditions. Typically, this pertains to delicacies like sausages and cheeses, such as Jambon d'Ardenne and Camembert de Normandie.



In the Netherlands, such claims are rare, unlike in other European nations where cultural delicacies

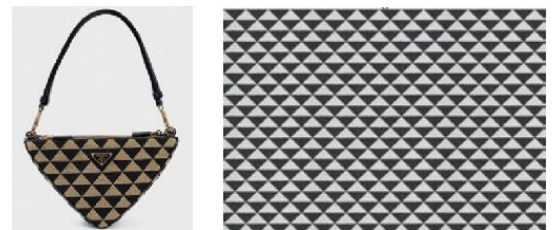
are frequently protected, allowing production exclusively within designated regions. Previously, only a handful of Dutch products had received PGI status, including Gouda Holland, Edam Holland, Dutch goat cheese (three varieties), Westland grapes, and De Meerlander potatoes.

A recent addition to this esteemed list is the Limburg Flan: a sumptuously filled, golden-brown round sweet cake, crafted with a diverse array of fillings and toppings, exclusively baked in Belgian or Dutch Limburg. Notably, post-baking, freezing the flan is strictly prohibited!

This newfound recognition underscores the importance of preserving and promoting our local culinary heritage, while also deterring unauthorized usage of these esteemed names by foreign entities.

Prada Pattern – Basic and Everyday

Since 1913, Prada has used an inverted triangle as its emblem, registered as both "PRADA" and the loose triangle logo. In response to the fashion industry's growing trend of using patterns as distinguishing marks, Prada sought protection for a black-and-white repeating triangle pattern on various products in 2022.



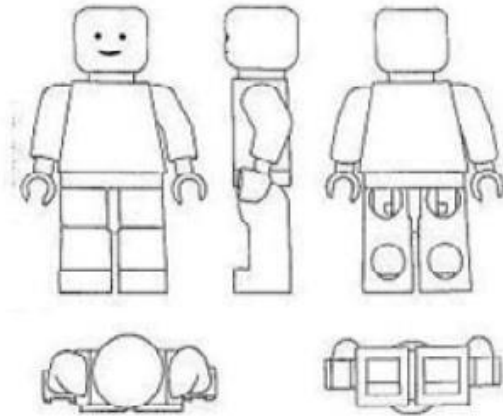
European authorities, including the Board of Appeal, rejected the application, deeming the pattern lacking in distinctiveness.

Instead, consumers perceived it as decorative rather than identifying. Despite the acceptance of the triangle as a logo, precedent from shape marks governed the evaluation of pattern marks.

The public's unfamiliarity with recognizing marks within patterns led to the refusal. Only patterns significantly deviating from industry norms could be trademarked. Given its basic and commonplace nature, Prada's pattern failed to meet this criterion. Incorporation claims might have fared better, yet attaining Union trademark status posed a formidable challenge. Thus, Prada's best recourse lies in timely securing trademark and design rights in national jurisdictions, such as the Benelux region, where the pattern sees extensive use.

Lego doll valid shape mark

In 1974, Lego made waves in the toy industry with its introduction of construction dolls, setting a new standard for innovation. Recognizing the uniqueness of their design, Lego promptly registered the shape of these dolls as a trademark within the European Union. However, such shape marks are subject to stringent requirements, making them susceptible to challenges from competitors eager to exploit any lapses in trademark protection for their own gain. In 2015, Best-Lock attempted to undermine Lego's rights by arguing that the dolls' design was purely functional, intended solely for construction purposes. However, the European Court swiftly dismissed this notion, emphasizing that the dolls' design also incorporated distinct human features, enhancing their playability and appeal beyond mere construction.



Fast forward to 2020, and BB Services made a similar attempt to contest Lego's trademark. BB Services asserted that the shape of the dolls was dictated solely by their functional necessity for construction purposes. Yet again, the European General Court ruled decisively in Lego's favour. They emphasized that the dolls served not only as construction tools but also as playthings, with their design deliberately incorporating human-like attributes. As such, the dolls' distinctive design fulfilled both functional and aesthetic purposes, safeguarding the integrity of Lego's trademarked shape for generations of toy enthusiasts to come.

Perfumes Escobar conflict with good morals

Authorities have the discretion to reject a trademark application if it contradicts public order and morality. Interestingly, the European trademark office tends to apply a stringent standard in such cases. This became evident when a French trademark registration for the packaging of PARFUMS

ESCOBAR encountered hurdles upon extension to the European Union.



The rationale behind the rejection stems from the association of the mark with the notorious Colombian drug trafficker, Pablo Escobar, known for his extreme cruelty and power. Drawing a parallel with the rejection of the La Maffia brand, PARFUMS ESCOBAR was deemed to glorify crime and drug trafficking, contradicting the foundational values of the European Union and offending universal moral sensibilities.

In light of these considerations, the refusal of the trademark was deemed appropriate as it aligns with the imperative to uphold public order and discourage the glorification of criminal activities.

Jan Smit – Portrait Trademark?

In 2015, Jan Smit sought to trademark a photograph of his face in the European Union. The trademark was applied for performances, audiovisual materials and merchandise items like clothing and quilts, in order to gain protection against unauthorized sales.

However, after an extended period of deliberation, the European Union Intellectual Property Office (EUIPO) ultimately rejected the application in 2023. The grounds for refusal were rooted in the perceived lack of distinctive character in Jan's facial depiction.



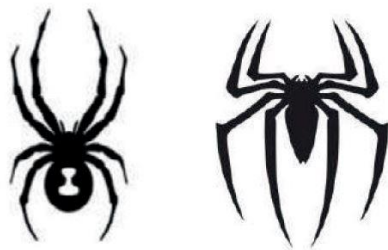
According to the EUIPO, Jan's face lacked any unique or remarkable features that would set it apart (like Donald Trump's crest or Barbara Streisand's nose), resembling a standard representation of a man's face. Disagreeing with this decision, Jan Smit has appealed the ruling.

He contends that a facial representation serves as a distinct identifier, differentiating an individual from others. Recent precedents set by the Board of Appeal in similar portrait trademark cases bolster Jan's case, offering hope for a favourable outcome.

Just like a name or first name, the depiction of a face is an identification of a person, distinguishing them from others. Therefore, a portrait can indeed be registered as a trademark. Hopefully, Jan won't have to wait another 8 years.

Importance of Logo Registration

Spyder Active Sports, an outdoor brand, has secured registration for its logo across a diverse array of outdoor merchandise, spanning sporting goods, watches, bags, and apparel. When a similar logo is filed for clothing, Spyder promptly raises objections.



Authorities concur with Spyder's stance, asserting that not only are the products identical, but the marks themselves bear significant similarity. Conceptually, both logos allude to a spider, while visually, they feature a black silhouette of a spider in an identical pose with eight legs. Although minor differences exist between the spiders depicted, they are deemed insufficient to negate the overall resemblance. Consequently, there is a risk that consumers may erroneously associate the clothing bearing the similar logo with Spyder or its affiliated products. In light of this, the trademark application is denied. While a logo may not thwart every depiction of a spider, it can certainly prevent those that venture too close from causing confusion in the marketplace.

Advertising law

Rituals on sale at The Bodyshop?

In 2015, The Body Shop introduced a new skincare line in the Benelux countries named "SECRETS OF THE WORLD," featuring four distinct lines: RELAXING RITUAL, REVITALISING RITUAL, BLISSFUL RITUAL, and FIRMING RITUAL.



Rituals, a prominent player in personal care products since 2000, swiftly objected to the launch. With its brand registered across various countries, including the European Union, Rituals felt The Body Shop's line encroached on its territory, leading to a legal dispute.

The Body Shop argued that it used the term RITUALS not as a trademark but to indicate product suitability for treatments, a form of descriptive use. While The Body Shop's argument had merit, the judge disagreed. The dominant display of the word RITUAL, in capital letters, a frame, larger font, and sometimes a different colour, led the public to perceive it as a trademark.

Given the similarity between the marks and their use for identical products in the same market segment, consumers might infer a commercial connection with Rituals, potentially leading to confusion or association. Consequently, a justified ban was imposed. The ruling underscores the importance of avoiding dominant and separate use of descriptive words to prevent consumer confusion regarding brand identity.

European Trademark Agency Abcor

Abcor is an IP Law firm, located in Europe (the Netherlands). Our specialty is consultation with regards to intellectual property matter, trademarks, designs, copy right and domain names in particular. Our services include the registration of trademarks and designs, searches, infringements and oppositions.

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Sources:

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Contact Abcor

For more information please contact us:

ABCOR B.V.

Frambozenweg 109/111
P.O. Box 2134
2301 CC LEIDEN
The Netherlands

Tel: +31 71 576 3116
Fax: +31 71 576 8947
E-mail: info@abcor.eu
Website: www.abcor.eu

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