

ABCOR's ABChronicle



Trademarks

RED BULL defeats RED DRAGON

Red Bull protects, since the launch of its new energy drinks, its brand with tooth and nail. Legal Proceedings are started everywhere (with varying success) against energy drinks brands that contain the element RED or BULL. In this way Red Bull tries to avoid diluting of its brand and retain a strong position in the market for energy drinks. Recently there was an interesting case in the Benelux. RED BULL opposed the application for RED DRAGON . Rightly so, ruled the Benelux trademark authorities. The logos vary, but there are also some similarities. Foremost, the word RED in both brands.



In addition, both contain animal logos. The RED BULL logo has two red bulls charging each other, while the disputed logo has two dragons who are about to attack each other. These animals are associated with strength, virility and unequalled power. On the other hand, there are some remarkable differences. Therefore, the marks are deemed visually, aurally and conceptually similar but only to a small extent. Confusion implies some interdependence between the similarity of the marks and the similarity of the products. This case is about identical products. Because the products are identical, which compensates for the low degree of similarity between the signs, the trademark authorities decided to refuse the logo RED DRAGON.

Wide protection HORSE logo

To anticipate a refusal, descriptive marks are often filed in conjunction with a logo. But how broad is that protection exactly? Especially if the picture elements is strongly allusive or descriptive. When the logo for HORSE COUTURE was requested for leather goods, the registered proprietor of the Portuguese HORSE logo objected.



The court held that the marks are similar. Both brands contain the element HORSE and an image of a horse. As a result, the marks were deemed conceptually and aurally similar. Because the products are identical, the visual differences are not sufficient to offset the aural and conceptual similarities. Likelihood of confusion is present and the brand HORSE COUTURE was therefore refused.

RAW is not descriptive for clothing

In 2010 RB Europe started a cancellation action against RAW at OHIM. The reasoning for this being that RAW in its opinion is not distinctive for clothing. RAW refers to the raw and natural state of the material, material which has not been altered. In relation to the goods (clothing) it is immediately obvious what it is about, namely the structure of the tissues. Because this is an indication of one of the characteristics of the product, it is descriptive.

This case was very important to G-Star since several pending court cases are based on the RAW brand.

The Cancellation Division is clear in her statement:

RAW is a great brand. The Raw brand will be understood by the public as "uncooked, raw and unfinished. That cannot be seen as a description of the characteristics of clothing. The claim was rejected, so G-Star can continue to use its RAW brand.



Louis Vuitton condoms

Georgian Irakli Kiziriaartist introduced Louis Vuitton condoms on World Aids Day. The artist came up with this idea, because LVMH (Louis Vuitton's parent company) supports various organizations in the field of research into public health.



The condom was about € 60, - . A portion of the money can be beneficial to research into AIDS.

The condom is packaged in the golden brown colors showing the distinctive

Abcor BV, specialized in goodwill protection

info@abcor.nl
www.abcor.nl
KvK: 33296694
ING: 67.39.12.914
IBAN NL56 INGB 0673 9129 14
Tel.: + 31 (0)71 576 31 16
Fax: + 31 (0)71 576 89 47
BIC: INGB NL2A

ABCOR BV
Hoge Morsweg 54
Postbus 2134
2301 CC LEIDEN



characters of Louis Vuitton. The condoms themselves bear the monogram. A noble idea, but its implementation still seems damages the carefully constructed image of Louis Vuitton. Something which Louis Vuitton strongly and systematically acts against. Think of the Hyundai commercial during the Super Bowl or the recent painting of Nadia Plesner Darfurnica. The product has since disappeared from the website of the artist.

FUCKING FREEZING

Not every brand will be automatically registered. The most common refusal of the authorities, that a mark is descriptive / not distinctive. Very occasionally a brand is refused because it is seen as contrary to public order or morality.



The brand FUCKING FREEZING was applied for leather and clothing, but was refused on moral grounds. The applicant disagreed. FUCKING is a common word in daily language and has become a way to emphasize the intensity or significance of severe. The Board of Appeal was not convinced and refused the trademark, because it was vulgar and offensive.

Tradename rights

After effect Boerenleenbank (Farmer's Loan Bank)

Tradename Law provides protection for a local company for the services offered. Yet there seems to be some kind of after effect. In 1972, the Central Raiffeisen Bank and the Boerenleenbank (Farmer's Loan Bank) merged into the RABOBANK. The name Boerenleenbank disappeared from the streets.



This fall, an initiative was launched to start a new bank for the agricultural sector in the Netherlands under the name BOERENLEEN VERMOGEN MEER. Rabobank Netherlands objected and won. The court in The Hague based their decision on the after effect of a trade name. The cooperative banks were well known before the merger. Because a company can

appeal to the trade (even if not used) if the public makes a connection between the old and the new company name. Be forewarned therefore to use any tradename that used to be used by a different company.

Designs

Design registration protection against imitation

The Tri Tennis Wall is a tennis practice wall, which shows a tennis court on the fabric side of the device. Van Spaendonck is the creator and producer. In order to protect his rights, he registered his product as a European design in 2003.

Because the product is a success, the idea arises to market and sell the product abroad. In consultation with China Commodities the possibilities for this were explored in 2009. However, ultimately the inventor decided to back out of the negotiations.



In 2010 China Commodities introduces its own wall on the market. The product is markedly similar to that of Van Spaendonckseems. Van Spaendonck start of a procedure and based on its design registration and is awarded with a European wide ban.

First, the question whether the model is valid, because there are older tennis practice walls. The court finds that the overall impression of the new tennis wall is completely different. The claimant has therefore a valid design registration. The tennis wall that China Commodities delivers is almost identical, so that tennis wall is a violation.

Copyrights

Lego bricks war not over yet

Lego offers an entire range of products such as doors, trees and miniature figurines (e.g. fireman) to use in combination with their famous blocks. Banbao is a wholesaler of toys and comes with similar kits. Lego claims these are an infringement of its copyright and design rights. It is also illegal to copy products if you can deviate without sacrificing the quality of the product. The judge, agrees. The fact that the products have a technical aspect (they can latch onto each other) does not mean that the design should copies one on one.

Banbao's bricks are slightly different from Lego's (larger dent in the bobble, other kinds of colours), but these differences are



not sufficient to be perceived by consumers.



The toys must be compatible with Lego, but that does not mean the whole product may be copied. The products generate the same overall impression on the audience, so it was also a design infringement. The figures are however based on stereotypical characters, but Lego has many subjective decisions to make in the design. Infringement, again because copyrighted aspects were copied, also in the packaging (same building, frame, skyline). Result: a ban on the marketing of the toys and reimbursement of part of the legal fees of the opposing party (around € 65,000, -).

Advertising

Advertising agency liable for damages

For advertising campaigns clients often require that they are indemnified against possible infringements of intellectual property rights owned by third parties. The consequence of this is that a possible claim can be passed on to the advertising agency.

The logic behind this reasoning is that the advertising agency knows what it does and can regulate the rights to images.

Indemnification, however, does result in larger obligation to provide information to clients, especially if the concept is a combined idea.

De Lijst Dedecker used an advertising agency during the elections and was indemnified by this agency for potential claims. The election poster was a political cartoon based on comic characters Lucky Luke and the four Daltons. Parody

is fun, but dangerous especially if this IP rights of others are used.

The owners started a legal procedure. The Court held that parody is not correct. Because the advertising agency indemnified the client, they had to pay all the damages. The Court found this justified, because the advertising agency is "a professional service provider, who should be aware of the provisions of copyright law, or at least had to know."



Kissing Pope is unacceptable for the Vatican

Benetton has caused quite some commotion once again with her new campaign UNHATE. The campaign is based on polar opposites in the world, who greet each other intimately. Benetton hopes to contribute to greater tolerance between people and an end hatred between nations, ideologies and religions. The campaign features, six manipulated and edited photos of world leaders kissing each other. Including the Pope with the Islamic spiritual leader Mohammed Ahmed el-Tayeb, Barack Obama with his Venezuelan colleague Hugo Chavez and Benjamin Netanyahu with Mahoud Abbas. The Vatican was 'not amused' and at the behest of the Vatican the image of the kissing Pope kissing is withdrawn from the campaign.



Famous people generate a lot of attention, but may their image be used whenever one pleases? The answer is no. Often (think athletes and artists) there is a financial interest, but it could also be that the person does not want to be associated with the product or that the expression suggests that the known person supports the ad or contributed to it. In particular, with manipulated images there is a danger. Use of famous people still fun and exciting, but not without risks.

Zalando hostage

The new Zalando commercial humorously mocks people with a passion for shoes. In the commercial a bank robbery goes completely wrong at the moment the courier arrives with a consignment of shoes. The complainant felt that



kidnapping and robbery should not be a subject of advertising and that the ad is offensive to people who have been victims of a robbery.

info@abcor.nl
www.abcor.nl
KvK: 33296694
ING: 67.39.12.914
IBAN NL56 INGB 0673 9129 14
Tel.: + 31 (0)71 576 31 16
Fax: + 31 (0)71 576 89 47
BIC: INGB NL2A

ABCOR BV

Hoge Morsweg 54
Postbus 2134
2301 CC LEIDEN



The Advertising Code Commission did not agree with this claim. The commercial is clearly not realistic, because the women talk enthusiastically about fashion despite the grim situation. The latter is reinforced by the end of the commercial, where the women stormed at the robbers to get the concerned merchandise from their hands. The complaint is therefore rejected. The commercial is not contrary to good taste or decency.

Internet/ social media/ domains

Register your brand in the correct writing due to new Top-Level Domains

Starting January 12, , for a period of ninety days organizations (both public and commercial institutions) may apply for their own top level extension (a gTLD). The new gTLDs are mainly known as the new DOT BRAND extensions. Large international companies may have their brand or a generic term such as a gTLDs to put on record. So instead of .COM or .ORG the domain name will read. ABCOR,. Or .SHOP or .BANK (for the financial world). Much has been written about the advantages and disadvantages for trademark holders to own a DOT BRAND gTLD. But what consequences does this new option have for brand owners in general?



ICANN is expected to issue (the organization that regulates the new issue) between twenty and one hundred new gTLDs. Perhaps

the most important for brand owners to keep in mind: the new gTLD may be applied for in all languages and scripts are (including Japanese, Chinese, Arabic, Cyrillic, etc.). Trademark holders will be the first to obtain a gTLD. Since this is done on the basis of a trademark registration, it is important for brand owners to ensure that not only the major brands have been registered in our usual Latin script, but also in other scripts. The expectation is that many Asian and Arab organizations especially will claim new gTLDs. They may for example, claim, with the same priority, the domain name. SHOP (in Chinese). There must, however, be a valid trademark registration in Chinese writing. Therefore please check on time if your most important brands have been registered in the the portfolio or the most important brands are registered in the major scripts.

Twitter Account under a false name

TWITTER is hot. That makes it an attractive medium to exploit. Increasingly, there are Twitter accounts created under

the name of someone else. So the account HEROBRINKMANPVV account is not owned by the PVV MP. But he is not the only victim of this. There were also false accounts of Mark Rutte (prime minister of the Netherlands - now off the air), the TELEGRAAF, (I was here replaced by a i) and Benedicte Ficq a criminal lawyer. Applying for a Twitter account with someone else's name is not punishable in the Netherlands (it is for example in the U.S. state of California). It is not always equally clear that it is a 'fake account'. As a result, there is sometimes confusion on the origin of some Tweets.



Adopting a 'false identity' is basically fraud, deception or forgery, depending on how it is used. Some Twitter accounts are clearly parodies. A familiar example is koningin_NL (see Tweet from 11 January). In civil law there is not much to do at the registering of an account consisting of someone else's name. Partly because Twitter (but also other social media like Facebook) do not disclose the identity and personal data of the applicant for privacy reasons. Should there be a clear misrepresentation or breach of IP rights, file a direct complaint to Twitter / Facebook, they always deal with matters swiftly.

New at Abcor

Since January 1st Corina Wolfert has joined our team. Corina has over 14 years of experience working as a trademark attorney in the pharmaceutical industry (Abbott Healthcare- previously Solvay Pharmaceuticals). Corina offers very specific knowledge regarding pharmaceutical products and will be a true asset to our bioscience and pharmaceutical clients.



Abcor BV

Abcor is an IP Law firm, Located in 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.

Suggestions for ABCOR's ABCHRONICLE may be sent to info@abcor.eu

Sources: Adformatie, BIE, BMM, Boek9.nl, Class46.eu, Domjur.nl, Elsevier, GPD, IER, IE-Forum.nl, INTA bulletin, Nu.nl, OHIM.eu, PCMDagbladen, Quote, SIDN, Trademark Reporter and

Abcor BV, specialized in goodwill protection