

# ABCOR's ABChronicle

## Trademarks

### Ambush marketing at the World Cup in Brazil

Big sporting events are always a good venue for predatory forms of advertising, the World Cup in Brazil will be no exception. The first actions have already taken place.



FIFA WORLD CUP  
Brasil

The question, however, remains which type of advertising is allowed and which is not. The FIFA tries to allow as little as possible. The FIFA actually demands that there is special

legislation in the host country against certain types of advertising. Many of these rules are designed to allow a greater flow of money to end up with the FIFA. In the Netherlands the FIFA has some guidelines that try to regulate aggressive forms of advertising.

An important element is that no commercial tie is suggested between the advertiser and the sporting event. Use of the official logo "FIFA World Cup Brasil", the mascot and the slogan "All in one rhythm" are prohibited. All these elements have been registered as a trademark. Only official partners and sponsors (such as Adidas, Sony, VISA etc.) are allowed to use these. Making a reference to Brazil, samba, salsa, soccer and orange is no problem.



Marketing Week claims that the FIFA is very active in taking action against social media accounts such as Facebook and Twitter. Several advertisements have already been removed as a consequence.

### Beatles Flower Region Beer prohibited

Fifty years ago the Beatles had their first (and last) performance in the Netherlands. That first special concert was on June 5 in Treslong in Hillegom. In order to celebrate the occasion of this anniversary Beatles Bollenstreek Beer was launched.



The label was made in conjunction with the Beatles museum in Alkmaar and is based on a painting that has been there since 1963. It seemed like a good idea, except that it was somehow forgotten that the name BEATLES is also a registered trademark. After the launch of the beer a cease and desist letter was immediately sent in the name of Apple Corp (the Beatles record company) who owns the trademark rights to BEATLES. The case has been settled and the beer is now for sale under the name Bollenstreekbier (Flower Region beer).

### Michelangelo's David and Botticelli's Venus, a valid trademark when together

Often the question is asked whether words or images with a great societal significance, religiously or otherwise, can be registered as trademarks. Since there are no specific provisions for these signs the authorities often refuse them on different grounds, not always rightfully so. The image below, in which the head of Michaelangelo's David appears to be looking at Botticelli's Venus, had been applied for

KvK 3329 6694  
IN 6739 12914  
IBAN NL56 INGB 0673 9129 14  
BICG INGB NL2A

T +31 (0) 71 576 3116  
F +31 (0) 71 576 8947  
I www.abcor.nl  
E info@abcor.nl

Abcor BV  
Frambozenweg 109-111  
Postbus 2134  
2301 CC Leiden

cosmetics and pharmaceutical products.



The trademark authorities claimed that both world famous images were often used in advertising as symbols for male and female beauty respectively. For this reason the images would be unsuitable for registration as a trademark for cosmetics and pharmaceutical products. The applicant appealed against the refusal and was awarded. In this case it does not concern two separate images but a unique combination of two statues. Through its composition a manipulated and unusual image is created, which gives the logo a distinctive character. A just decision, although it is rather unfortunate that the Court did not issue a statement on the use of images from the public domain.

### European campaign Vlaams Belang infringes Westmalle trademarks

Campaigns from Belgian political party Vlaams Belang often lead to court cases. The latest campaign for the European Parliamentary elections was no different: "Westmal of halal". In the campaign we see Philip Dewinter drinking from a dome shaped glass, which is filled with a dark brown liquid. This image is the main visual on the Facebook campaign and the Twitter message announcing the campaign.



Abdij der Trappisten van Westmalle did not wish to be associated with this

multimedia political campaign and started a procedure with the district court of Antwerp. The abbey did not only register the word WESTMALLE TRAPIST as a trademark, but also the distinctive shape of her Westmalle glass. The court ruled that the campaign does infringe the trademark rights. Westmal is a shortened version of Westmalle, which is the dominant element of the trademark WESTMALLE TRAPPIST. The dome shaped glass is also similar to the abbey's registration. In the campaign it is also clear that reference is made to the Westmalle beer and not the like named village. This means an unfair advantage is being taken of the trademark's reputation. The campaign may furthermore also damage the reputation of the trademark. The campaign was therefore prohibited for the European elections.

### Granade as a shape mark for a drink

A special packaging is often enables a manufacturer to distinguish himself from the competition. Most of the times, however, a shape cannot be registered as a trademark. The authorities usually refuse to register a trademark because the consumer will not see it as a sign of origin. An exception is sometimes made if the shape of a product is distinctly different from what is customary.

A fine example of this is the packaging of a new supplement, meant for burning fat, in the shape of a grenade. The trademark has been applied for by the English company Grenade. The trademark has



already been accepted. OHIM appears to be more liberal than national trademark authorities in accepting this mark. The Victor & Rolf Spicebom perfume (also in the shape of a grenade) was previously prohibited in Denmark because it would be contrary to public order and good taste.

## Stricter policy figurative marks OHIM

The law dictates that not any sign may be registered as a trademark. If a trademark purely describes the product it is applied for the authorities will refuse to register it. The word E-BIKE for electrical bicycles is refused for this reason. Often it is still possible to register the word when accompanied by a figurative element. Except not every logo is accepted. It used to be somewhat unclear what was and what was not acceptable. For this reason OHIM now has a new directive, which clearly illustrates that a stricter course will be followed than has been the case in the past.



**Blue Sardine**

*Stylized logo insufficient*

As previously use of a common font (such as Helvetica) is not sufficient. The combination of a descriptive word and a simple graphic shape (a line or circle) is also insufficient. Now, however, deemed insufficient are as well: 1) a figurative element that is too small; 2) elements that are used a lot (such as in labels); or 3) if the image is a depiction of the goods and services. Especially this last point is a great concern, because it does not only apply to photographic images, but also to drawings and stylized images. The question whether the new policy to reject (highly) stylized pictograms is fair or not, is one to be answered by the European Court, for which we probably will have to wait several years. It may be the case, however, that national trademark authorities take a different route than OHIM.

### Copyrights

#### **Glorious Gun purse Loes Vrij for sale at Zara?**

Loes Vrij is a new Dutch designer who became famous overnight with her

innovative designs for purses. Her style is best described as a mix of rich, chic and elegance. The purses are made of high quality materials. One of her designs, the Glorious Gun, is a rolled up purse with compartments for change, credit cards, lip stick and a mirror. A leather flap can be rolled around the purse to close it and a belt with bullets finishes the design. The exclusive purse is for sale at the more exclusive stores for € 798. A European design has been applied to protect the purse.

After the presentation of the purse at the fashion week in Paris events unfold rapidly. The purse is currently for sale in over



25 countries, from Japan to Canada. This success did not go unnoticed, as Zara introduced a cheap knock off version of the bag at the beginning of this year. It seems the distinctive elements of the Glorious Gun have all been copied, which means the general impression on the consumer will not be different. Loes Vrij notified Zara of this infringement of her design rights. Zara immediately responded by removing the fake purse from her website and from all stores.

### Advertising

#### **Parody of hamsters and broiler chickens.**

Campaigns from Wakker Dier (an animal rights organization from the Netherlands) are always highly criticized. More often than not the complainant is not the company that is being criticized, but the "innocent" consumer. Prior to the hamster weeks at Albert Heijn, a new campaign is started in which two hamsters speak with a cripple broiler chicken.

(To explain, Albert Heijn is the largest super market chain in the Netherlands. Hamsters are being used as mascots for bargain weeks.)



A complaint was filed against this commercial.



The complainant claims that the campaign is too negative for Albert Heijn and therefore contrary to good taste and morals. It is commonly known that the Advertising Code Commission is very liberal when it comes to good taste and morals. In a way anything is allowed, as long as it is not contrary to the truth, public interest, or unnecessarily damaging. Research from the University of Wageningen has proved in 2011 that of all live stock, broiler chickens have the worst life. It is also not contrary to the Advertising Code to mention a supermarket by name. In 2013 the ACC had already indicated in other complaints that Wakker Dier is free to ventilate her opinion. The parody with hamsters not excepted. It is allowed to use advertising properties as long as there is no confusion. The complaint was therefore rejected.

#### Internet

#### Ex-publisher loses rights to dirkjan.nl

Mark Retera (winner of the comic prize 2004) has been publishing the comicbook Dirkjan since 1989. The main character Dirkjan has been registered as a trademark in the Benelux since 2013. The domain name DIRKJAN.NL has been registered in 1999 and acquired by defendant in 2011. In the period between 2004 and 2009 the defendant has published the comic. When the cooperation ceases, defendant refuses to transfer the domain name. The domain name redirects to defendant's website, where he sells Dirkjan comics, but also other comics.

In a domain name conflict, a fast and relatively inexpensive procedure may be started with WIPO (the UDRP procedure). In case of a Dutch (.nl) domain name the plaintiff has to prove, 1) that the domain name is similar to a trademark 2) that the holder of the domain name does not have his own rights 3) that the domain name has been used or registered in bad faith.



Important in this matter is the fact that the domain name redirects to defendant's website, where other products are also being sold. Defendant may just as easily sell the other comics as the actual Dirkjan ones. Therefore, the domain name dirkjan.nl is not essential. Defendant furthermore does not have any right of his own on the domain name, and the use is in bad faith. The domain name therefore had to be transferred. We recommend that in order to prevent these type of conflicts that clear agreements are made on 1) whether domain names (and social media accounts) are to be registered by partners; 2) if yes, in whose name; 3) under the condition these must be transferred when parties split.

#### Abcor BV

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.

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, PCM-newspapers, Quote, SIDN, Trademark Reporter and WIPO