

# ABCOR's ABChronicle



## Trademarks

### The Bulldog bites the dust

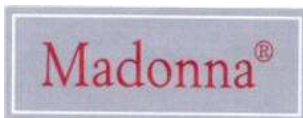
Red Bull and The Bulldog have been entangled in a legal battle over the use of the name THE BULLDOG for an energy drink since 2003. In 2007 the District Court decides that there is no infringement on the trademark RED BULL. The average consumer does not assume there is a connection between the two trademarks. According to the court there is also no risk of damage to RED BULL's reputation. The European Court, however, issued a very significant decision in the L'Oreal vs Bellure case, which will have large implications on the fortune of The Bulldog.



In the meantime Red Bull has filed an appeal against the earlier decision of the District Court. The Appeal Court, backed by the decision of the European Court, agreed with Red Bull. The Appeal Court decided that BULL is the most distinctive element in the trademark RED BULL and since this word is also found in BULLDOG, there is a certain similarity. Since RED BULL is a famous trademark it is not necessary that actual confusion between the two marks exists. The protection scope of a famous trademark is larger to the extent that any similar mark that tries to profit from the reputation of the famous trademark, without a financial contribution, is acting unlawfully. This was the case with THE BULLDOG. In fact, in the past The Bulldog has states that they wish to cash in on the success of the energy drink market, which exists mostly due to Red Bull.

### MADONNA an offensive mark in Zwitserland, FUCKING HELL accepted in EU

Swiss Trademark authorities continue to amaze us. Earlier this year the trademark I-phone was denied. This time the Swiss authorities decided to refuse the registration of the mark MADONNA for clothing, jewelry and perfumes. The reason for this being that the Italian part of the Swiss population uses the name Madonna to refer to Mary of Nazareth. Since 75% of them is Catholic the trademark was deemed to be offensive, when used commercially, to this part of population. The fact that there were already 233 other MADONNA trademarks and the fact



that it is also the name of a famous artists had no desicive influence on the decision.



In a mildly related case the European Union's stance seems to differ greatly. Recently the trademark FUCKING HELL

has been registered for beer. This trademark was deemed not to be offensive, since Fucking is a place in Austria and "hell" is the German word for light colored beer.

### Protect your typography

Typography may give a trademark the much needed distinctiveness. A good example of a distinctive typography is the one used by Coca Cola. Being a famous mark, however, is not a prerequisite to invoke your typography, as the following case demonstrates.



CTM 4212841

The trademark 4 OUT LIVING was refused because the typography was deemed almost identical to the older CTM registration Living & Co. Of course the goods of the trademarks were identical. Typography is the red headed stepchild of a mark's distinctive characters. Often seen as nothing more than a decoration and certainly not seen as a contributing distinctive element. This case clearly demonstrates that this view is wrong and that there is more to typography. A certain typography may, in fact, give you a wide scope of protection.

### Heineken defeats Olm based on layout of bottle

Recently OLM proudly introduced the new design of her beer bottles. Even those who may not be a fan of beer, however, would quicky note that the bottle is composed of a number of elements that can all be found on the Heineken bottle. It was quite clear that OLM was emulating market leader Heineken. The bottle was green and sported a red star in the top-middle of a white label, as well as on the bottle's collar. The name itself is printed in white letters on a dark square.



Heineken, as a multinational company should, has protected all these elements of her design. Under penalty of a law suit Heineken forced OLM to revise the visual characteristics of her beer

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bottles. This case clearly illustrates how important it is to protect all the distinctive elements that comprise the package of a product.

### Trademarked slogans making a comeback

Slogans that are protected as a trademark are making a real comeback. Since the judgment of the European Court in VORSPRUNG DURCH TECHNIK, proprietors are readily and successfully invoking their rights. The Benelux is no exception.



Benelux appl. no 1162579

In a recent Benelux case Nike successfully invoked her trademark rights on the slogan JUST DO IT against the trademark JUST DO HET. The marks were considered too similar. Furthermore, since JUST DO HET was applied for athletic and cultural events, which was seen as similar to Nike's activities the trademark application was cancelled.

### Advertising

#### A man from Greece on the label of Turkish yoghurt in Sweden

This may sound like the beginning of a bad joke but nothing could be further from the truth. A new line of Turkish yoghurt was recently introduced in Sweden containing a picture of a man on the label. The yoghurt company bought this picture from a stock agency. This means that the copyrights have been bought and the picture is supposedly safe from any claims. However, since it concerns someone's portrait there are still portrait rights to be dealt with.



The pictured man eventually invoked his portrait rights and demands 5 million euro in damages. Therefore please bare caution when buying photo material that is supposedly stock free.

### Designs

#### European design more potent than expected

The European Court of First Instance has given its first judgment on the scope of protection offered by a Community Design. It appears that this scope is larger than most experts generally assumed it was. The case concerned the protection of a so called flippo. A flippo is a small disc shaped toy that usually has a picture of a cartoon character or any other decoration on it. Often an advertisement is printed on the flippo as well.

Pepsico registered a disc shaped toy in 2003. On the basis of an older registration a cancellation procedure is started against Pepsi. The older design was registered for "metal discs for games".



top: new 74463 Bottom: old 53186

The two designs were not identical in appearance at all. One design has a profound curvature and sports two circles. Despite these differences the Court of First Instance still decided that the two designs were similar enough to create confusion with the consumer.

### Domain Names

#### Use of Adwords is not without risk

Earlier this year the European Court gave a decision on the admissibility of using someone else's trademark as an adword. An adword is a search word that enables users of Google to find sponsored links to websites. These sponsored links may be seen on the right hand side of Google. Sometimes trademarks are used as adwords by the competition in order to lure more people to their website.



Luis Vuitton was the victim of such use. The European Court decided that Google did not infringe the trademark rights of Louis Vuitton by selling adwords to third parties. A third party, however, may not use an adword on Google if it will lead to confusion with the consumer. The use of an adword may not in any way leave the suggestion that there is a relation between the third party and the holder of the mark. This puts an end to the myth that you may use someone else's trademark as an adword in order to generate more hits on your website.

#### 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

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