

# ABCOR's ABChronicle



## Trademarks

HARRY POTTER is one of the biggest brands today. Its estimated value is over 25 billion. Needless to say Warner Bros and creator J.K. Rowling will go to any length to protect the trademark. Sometimes this is a success (for example against Tanja Grotter). Sometimes, however, it is not (for example the case of Bollywood movie Hari Puttar; Comedy of Terrors).

Since 2006 MagicX has been distributing HARRY POPPER condoms on the market. The packaging sports a condom wearing the typical Harry Potter glasses and twirling a magic wand. The manufacturer claims that all this is merely a coincidence.



Later this fall the new Harry Potter film will come out. This may very well be the reason that Warner Bros decided to act against MagicX in an attempt to preserve the child friendly reputation of HARRY POTTER. An amicable settlement was not reached so this case will be decided in court later this fall.

## MADONNA misses MATERIAL GIRL

Back in the 1980's Madonna scored a worldwide hit with her single "Material Girl". In almost all English speaking countries, and in most non-English speaking countries, the single landed a number one spot on the hit parades. Fast forward to 2010 as Madonna decides to launch her own clothing line MATERIAL GIRL. The clothing is inspired by fashion trends from the 80's and will be sold exclusively at Macy's.

Unfortunately for Madonna it became clear that LA Triumph has registered the trademark MATERIAL GIRL in 1997, for clothing. A subsequent court case followed, which is still pending. The claims made were: infringement of trademark rights, immediate cessation of all sales under this trademarks and that all profits should be transferred.



## Still no EGGception

In European trademark law there is very little, if any, room for parodies on trademarks. Very much to the dismay of many an artist.

The German novelty houseware manufacturer Koziol had the ludicrous idea of making an egg holder that has the same basic shape as an iPod. The egg holder was dubbed EIPOTT. Ei means egg in German. The circular "control panel" was concaved so you could put your egg in its place. On its "screen" you could put some salt.



Although meant as an honest parody, Apple was not amused at all. Apple claimed that the EIPOTT brought serious damage to the reputation of her well known trademark IPOD. The judge decided that although the idea of the EIPOTT was quite funny, it did infringe Apple's trademark rights. Koziol had to pay penalties of up to € 250,000 for each day the infringement continues and any further use of the name EIPOTT was expressly prohibited. Koziol will appeal the decision.

## A Striking Registration

The European soccer season has officially started and the first UEFA Champions League matches have already been played. Ever prominent in these matches is the UEFA logo, a soccer ball shaped by stars. Over the years it has become a very strong symbol and UEFA has decided to register it as a trademark in order to prevent other from using it to their own benefit. The trademark has been registered for many goods to avoid ambush marketing.



## I LOVE FOOD

As many know a trademark may not describe one, or more, of the qualities of the goods it is being used for. An application will be rejected if any Trademark Office deems the trademark to be too descriptive. Often a trademark that is not descriptive, but refers to one or more qualities is also rejected. The Benelux Office is notorious for rejecting trademarks with even the slightest hint of descriptiveness. If the Office is always consistent in applying her criteria remains to be seen. Recently the mark FOOD LOVERS for food products was rejected, the mark EYELOVE for contact lenses was not.



## Advertising

### Ferrari Logo Disappeared

In the past Ferrari's Formula 1 cars used to sport the name of their sponsor MARLBORO on the side of their cars.

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When tobacco ads were banned from Formula 1 the words were replaced by a bar code. Marlboro is, however, to this day, still a sponsor. Because of this the bar code was often seen as a disguised commercial, something Ferrari always denied. In order to put an end to this matter



Ferrari decided to remove the bar logo as well. Next year a new logo will be unveiled.

### Diesel Campaign too Offensive

A new Diesel campaign has made some shockwaves in England. The campaign has the credo. "Be Stupid" - "Smart may have the brains, but Stupid has the balls". As if this statement is not shocking enough, the accompanying posters certainly underline the message. One poster shows a woman flashing her breasts in from of a security camera, while on a ladder.



The second shows a woman taking a picture of her own genitalia. The English Media Regulator received a tidal wave of complaints in reaction to these posters. What Diesel claimed should have been empowering images of femininity was actually seen by the public as rude and offensive. It would lead to anti-social behavior, especially in children. Despite all of Diesel's counter claims, which included that it was not only an empowerment of women but also a protest against unbridled camera surveillance, the ads were prohibited.

### Freedom of Speech

In our second item on tobacco the "victim" is Davidoff. Davidoff is one of the main sponsors of the Swiss ATP Indoor Tennis Tournament. Apparently the connection between smoking and sports is a sensitive one, and according to some a mutually exclusive one. For that reason opponents of the tobacco industry launched an alternative website to clarify that sports and



tobacco cannot co-exist. In order to prove their point they changed the logo from the tennis tournament, it now said DAVIDEATH. Davidoff took immediate action against this, claiming that

be made based on trademark rights since there was no commercial use.) The court decided that freedom of speech was a fundamental right that cannot be limited very easily, even if the parody and criticism may hurt Davidoff.

### Designs

#### Quick Decision based on Design Rights

Design registrations are becoming increasingly more popular. A design registration may serve as the basis for an injunction. This fact was used by shoe manufacturer Bacup to their advantage. In 1997

Bacup introduced the Redfoot Folding Shoe,



which, as the name indicates, is a shoe that you can fold up. This product became an instant sales success. Fortunately Bacup registered their shoe as a European design. When their competitor Shoeland brought a similar shoe on the market Bacup was easily able to stop them based on the design rights. The court not only issued an injunction but Shoeland has to pay € 50,000.- in penalties for every day the infringement continues.

### Domain Names

#### Google Changes Adword Policy

Until recently trademark owners in Europe were given preferential treatment by Google. Owners were, for example, able to start a complaint procedure that would disable any and all third parties from ever using their trademark as an adword. Google changed her policy drastically, though. It is even suggested that any use of any trademark is now permitted. Google, however, has forgotten to mention that using someone else's trademark as an adword may constitute an infringement on the rights of the owner. The court will decide whether or not there is an infringement, not Google. It is important that should this happen, the proprietor of the trademark notifies Google. This way Google is liable as well for any damages that may be incurred. As far as we know several court procedures as already under way.



### 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, INTA bulletin, Nu.nl, OHIM.eu, PCM-dagbladen, Quote, SIDN, Trademark Reporter and WIPO