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Puma formstrip well-known trademark



Between 1960 and present Puma has obtained nearly 90 trademark registrations in Europe for its formstrip. When Monshoe launches sneakers with a similar imprint, Puma argues this constitutes an infringement of its serial trademark. Monshoe defends itself claiming that the consumer does not perceive a trademark in this, just a decorative print. The design hardly calls an association with Puma in the public's mind.

Court disagrees. Puma has been using the strip on its shoes since 1960. Significant advertising costs have been made to promote the trademark to the public. As a result

of this long and intensive use, the formstrip has even become a well-known trademark. The design on Monshoe's shoes bears high similarity to this brand and is used for the same goods. By mimicking this, Monshoe benefits from the reputation of the formstrip. There is also a risk of dilution of the brand's reputation. The Puma formstrip becomes commonplace when a similar design is used by others. This is detrimental to the distinctive character and reputation of the formstrip trademark. As a result a ban is issued, damages awarded, a recall of sold goods and rectification.

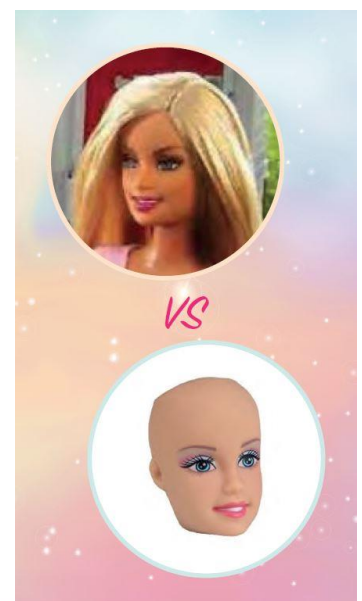
Design law

Barbie tackles copycat

Mattel has been a producer of the Barbie fashion doll for over 60 years. When Jieyang Defa Industry applies for design protection in the European Union for a comparable doll's head, Mattel starts an invalidity proceeding against the application. A design can only be protected if it is novel and has its own distinctive character. This model lacks such character (does not leave a different general impression) given Barbie CEO doll from 2008.

The case eventually goes to Court. A designer can shape a doll in many ways. The only limitation is that it ought to be a human figure. The registered community

design features the same light skin tone, oval-shaped face, curvy brown eyebrows, blue eyes, black eyelashes, thin lips with a small smile, delicate nose and the same facial expression. There are a few differences, such as the slightly different shape of the (bald) skull. In normal use, the head is placed on a doll's body and the doll is given a wig. The mentioned differences disappear. The remaining minor differences are insufficient to yield a different overall impression. As a result, the design does indeed lack its own distinctive character. The requested design is deemed invalid.



Trademarks

NFT: trademark registrations in the metaverse

Ever since Mark Zuckerberg announced his plans to turn his social media platforms into a metaverse business, NFTs and metaverse have been in the spotlight. The metaverse is the new internet, in which all 3D spaces are linked together.

Participants in the metaverse use an avatar, a virtual character, with which someone communicates, meets, flirts, et cetera with others.

NFTs (non-fungible tokens) are unique, non-exchangeable digital items. NFTs were initially introduced for digital forms of art. Much like in the physical world, someone will want to present themselves in a certain way.

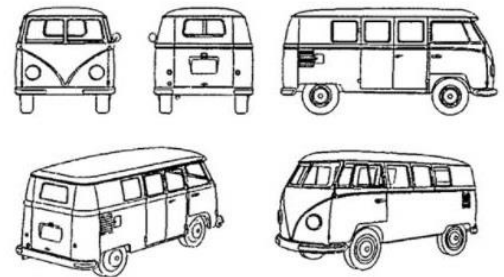
Also companies are now starting to fully anticipate this. Products and services are offered/sold as NFT. In order to maintain one's unique market position in the new online world, trademark registrations are now also being sought for NFTs by companies like Yves Saint Laurent, Heineken and Nike.



Fraud with NFTs is commonplace according to OpenSea (a large marketplace for NFT items). Nike has recently sued online platform StockX, because a virtual sneaker from Nike was offered virtually as NFT there. Consumers might conclude this is with consent from Nike, but this isn't the case. (Nike had announced to launch sneakers as NFT with another party, RTFKT). Although an NFT is just a representation of the actual product, legally it is not the same (just like a miniature car and a real car aren't the same). For that reason, more and more companies are protecting their brands not only for the actual products, but also for NFTs.

Volkswagen trumps cult camper

The shape of a product can be protected as a trademark. In order to do so, it must differ significantly from what is already present in the market or has become very well known (acquired distinctiveness). When a trademark application is filed for the Cultcamper logo, Volkswagen successfully opposes it on the basis of its registered shape mark.



The Board of Appeal concludes that the trademark is indeed distinctive because of the characteristics like the split windscreen, the v-shaped hood and the headlamps on both sides. The trademark applied for is almost identical to the front view. They are deemed similar. Consumers may think that this is a new trademark from Volkswagen. The trademark is therefore rejected.

Yoko Ono and John Lemon

In 2015, two young entrepreneurs started Kever Genever. The aim is to get the younger generation to drink the traditional Dutch Gin (jenever). Last year, four readymade mixed drinks were launched in half-litre cans. The name John Lemon was chosen as a designation for the mix with lemon, syrup and water. This spring a summons letter arrived, on behalf of Yoko Ono. She is not swept away by this initiative. The young entrepreneurs seek media attention as they found the letter unjust, but in our view they're wrong. The JOHN LENNON name was registered as a trademark for a wide range of products, including beverages.



There has been a similar case against John Lemon gin some years before in Poland, resulting in the name being changed to On Lemon.

Yoko Ono's lawyer states that she does not want the name John Lennon to be commercialized. On the other hand, she also does not want to hamper young entrepreneurs.

The crowdfunding that is currently running will probably be used to pay the costs of a name change. Lessons learnt for the young entrepreneurs: first check whether a new name can be used.

Logo PUMN: spot the differences

It is still a strange but given fact. Sometimes companies apply for trademarks for which the source of inspiration is beyond obvious. A senseless operation, so it seems. When Shenzhen Tiannuwei Technologies applies for trademark protection for its PUMN logo for apparel and sporting goods, PUMA objects based on its logo. The PUMA logo is a registered trademark in the European Union for exactly the same products.

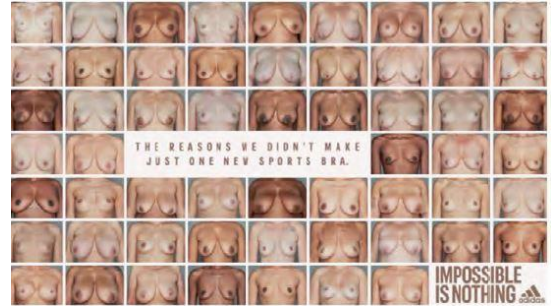


The EUIPO does not mince words with this. Visually, both trademarks are pretty much the same due to the same typography, which is enhanced by a jumping feline animal. The brands are also conceptually identical (the consumer will read the last letter N as an A). Puma had put the well-known trademark argument in position just to be sure, but that argument was not even necessary. The logo has of course been rejected. trademark.

Advertisement law

Adidas: bare breasts and sports bras

In a campaign ad for its sports bras Adidas states that not all breasts are the same. Adidas acknowledges this and launches a new line of sports bras with 43 different sizes. Visually, this is supported by displaying different women's breasts (on Twitter with 24 different breasts and on posters with 62 breasts and the pay-off: 'The reasons we didn't make just one new sports bra').



The campaign went viral and soon complaints to the ASA (Advertising Standards Agency) followed. The use of breasts is unnecessary, it sexualizes the female body and the posters are harmful as they can be seen by children.

ASA partially agrees with this. The use of pictures of breasts has a purpose, it shows the diversity therein, but only in the text the connection with bras is made. Children can also see these ads. In the current form the ads are therefore inappropriate and may be offensive. The ASA ruling is therefore more pointed towards the chosen media type (untargeted e-mails / banners / twitter messages) rather than the campaign itself.

Online

Prohibition on fake online reviews

Since May 28, it has been prohibited to post false consumer reviews on online stores, marketplaces or social media. The law is based on a EU directive to better protect consumers online. Reason: many consumers place great value on reviews of products and services on the Internet. If consumers can post reviews, administrators must from now on assess them for authenticity. Writing positive reviews by the sellers themselves is out of the question.

Negative reviews cannot be removed just like that anymore, unless they are false. There is also a prohibition to post a false consumer review against payment (unless this is expressly stated).



One is not allowed to place likes on social media to promote one's own site anymore. On the website it must be clearly indicated what the reviews policy is and what is being done to prevent fake reviews. The ACM and AFM will enforce this and fines can amount to 4% of annual turnover.

Hikvision: liability online marketplaces

Hikvision is a worldwide supplier of security and surveillance products. The company has an EU trademark registration for the word mark HIKVISION. Hikvision makes an undercover test purchase via the online marketplace/webshop <lightinthebox.com>. The product received is manufactured by Hikvision, but it is a parallel imported item (a



product destined for sale outside the European Union with a different price tag). Hikvision claims that it has not permitted the sale of these products in the European Union (as these products are sold at a higher price there). With an EU trademark registration, a company has the right to be the first to sell its products in the European Union at a

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.

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

price to be determined by itself.

The online marketplace <lightinthebox.com> claims not to be liable for the infringement of this right. A Chinese seller offers these products and posts the online ad with the photos, so that the actual seller. A platform/online marketplace can rightly rely on this as long as it is just the hosting provider (i.e. the website merely displays the information, the products are offered by a third party and the page is immediately removed if notified of an infringement). However, in the proceedings before the Court and in the general terms and conditions, the online marketplace states that it enters into a purchase agreement with the consumer itself. The online marketplace is therefore liable in this case. A ban is ordered on the sale of the HIKVISION products and the marketplace must give disclosure of the amount of product sold.

Abcor makes headlines

Abcor featured in WTR1000 again

Every year there are many rankings for trademark agencies. These are important for us as an office, especially when it is based upon an independent assessment by our customers. This year, our company was listed again in the WTR1000 (World Trademark Review 2022) as a leader in the Benelux. advance). The accompanying quote is too flattering not to share:



'Domestic and international players appreciate its creative, outside-the-box thinking and in-house insight, which inform their legal and commercial advice'

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