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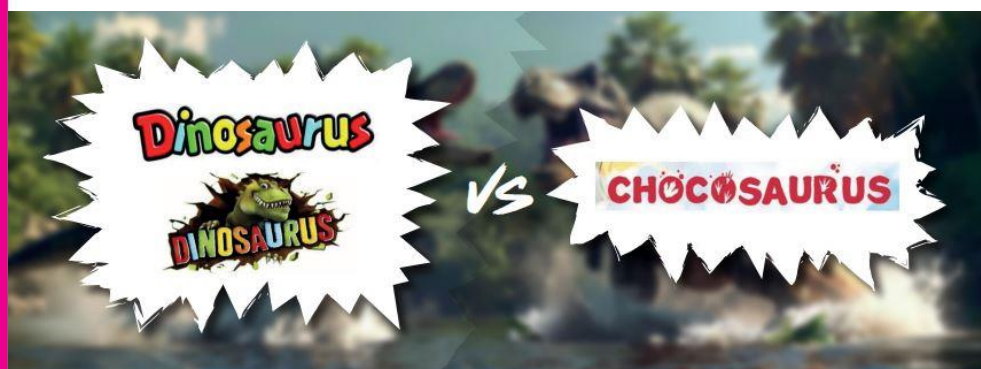
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A trademark grants a company exclusive rights to its use. If another company applies for a similar name to market identical products, there are several ways to challenge it. One cost-effective approach is filing an objection with the trademark authorities, which can lead to rejection (a process known as opposition). In 2013, Lotus introduced its DINOSAURUS cookies (available with or without a chocolate coating). To protect its brand, the company registered both the logo and the packaging design. When CHOCOSAURUS was applied for registration in connection with chocolate and cookies, Lotus objected.

The defendant claimed this was an overreaction, arguing that Chocosaurus was a made-up word, the packaging was completely different, and similar trademarks like BioSaurus and Veganosaurus were already on the market.

However, the trademark authorities ruled swiftly. Both names contain ten letters, with the last seven identical. CHOC is descriptive for chocolate, both have four syllables, and both reference dinosaurs. Since the products partially overlap, the authorities concluded there was a likelihood of confusion. As a result, the trademark was rejected for those products.

Design rights

Aldi Reed Diffusers Banned Within Four Hours

In 2019, Rituals Cosmetics launched a new line of reed diffusers. To protect its distinctive shape, the company immediately applied for an EU design registration. This is a smart move since courts assume a design is valid in disputes. To qualify, a design must be novel and have an individual character—meaning no similar product should already exist on the market. That was the case here: a cylinder with a narrow neck and ridges running along its entire length.

When Rituals learned Aldi was about to launch a similar product, it took immediate action through an



accelerated procedure. The Aldi reed diffuser was nearly identical —only missing the RITUALS brand name and featuring a slightly more angular top. Since this version did not create a different overall impression, it was deemed identical. The result: a ruling of design and copyright infringement.

Given Aldi's low prices, the court anticipated its products would sell out quickly, causing Rituals irreparable harm. The ruling required Aldi to halt sales within four hours or face a penalty of €15,000 per day or €500 per sold product.

Trademarks

Restyling Lidl Freeway Orange Soda

Consumers often shop thoughtlessly. Lidl supermarkets are well known for closely imitating major brands. Not just in name, but also in packaging design, increasing the likelihood that consumers grab Lidl's version instead of the major-brand product—only realizing their mistake once they get home. A classic case of indirect confusion.



That's why manufacturers must protect the look and feel of their packaging in time—by registering the the packaging as a design or trademark. Otherwise, some competitors may see it as an open invitation to copy major-brand designs when updating their own. This came to mind when seeing Lidl Freeway's latest orange soda redesign. In its new look, the Freeway name is nearly invisible. The orange background, font, and sliced orange image immediately make consumers think of Fanta.

Fortunately, research shows that consumers are increasingly rejecting this kind of parasitic behavior. The key takeaway? Competitors should keep a respectful distance, and manufacturers should secure their rights in time.

LANCÔME vs NINÔME

Since 1935, L'Oréal has sold skincare products worldwide under the LANCÔME brand. When the new cosmetics brand NINÔME was launched—including promotions via model Kim Feenstra's social media—L'Oréal demanded a ban. The court ruled in L'Oréal's favor.



Both names consist of two syllables, six versus seven letters, with an N in the third position and ending in ÔME. The circumflex (^) is rarely used in the Benelux, making it even more distinctive.

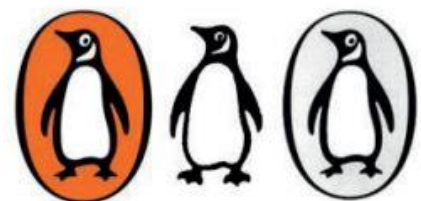
The similarities were deemed significant. Additionally, the products were identical. The NINÔME advertisements featured the brand name in large white letters on a dark background beneath a model's portrait, using a similar font. This further increased the likelihood of confusion. The proposed rebranding to NINOME was also rejected. Since an infringement had already taken place, consumer associations between the names were too strong. Had the product originally launched as NINOME, L'Oréal might have accepted it. Now, it was too late.

Trademark attorney of ChatGPT

The Benelux trademark authorities have likely made history: ruling on a trademark case where the defendant was represented by ChatGPT.



Trademark holders can represent themselves before the authorities, and the rules do not explicitly state that this must be a human. In theory, an AI program could qualify—if it were registered in the EEA. But was the AI's legal defense any good?



ARTPENGUIN

Penguin Books opposed the ARTPENGUIN logo based on its PENGUIN wordmark and logos (from 1996 and 2016). The AI's response was weak, prompting a snarky remark from the BBIE: *'That prompt could have been better.'*

The AI failed to request proof of genuine use, despite all cited trademarks being subject to use requirements. It also neglected to assess whether the products were similar.

Worse, ChatGPT mistakenly compared ARTPENGUIN with PENGUIN BOOKS—a trademark that wasn't even cited.

The result? A complete mess. The authorities had no choice but to rule that the trademarks were confusingly similar. The application was rejected, and the defendant was ordered to pay legal costs.

Restyling and logo registration

Companies often use logos to promote their products or services. Consumers see them as a symbol of recognition. That's why it's clever to claim trademark protection for them. However, the reality is that logos evolve—small restylings happen every few years. But does this mean you need to re-register every single new version? Not necessarily. However, if the distinctiveness of the logo is affected, it's a good idea to do so.



Take, for example, a trademarked logo for a liqueur: a squirrel surrounded by the words "NUTTS ORIGINAL" in a circular design. The company later starts using the logo in a reversed color scheme (white squirrel on a black background), replacing the text with an orange circle. Is this still considered valid trademark use?

Trademark authorities ruled that color variations (such as a reversed color scheme or adding colors) do not affect distinctiveness. However, removing the text and replacing it with a mere orange circle? That's a deal-breaker. Long story short: this is a different logo. Using the new version does not maintain the trademark rights for the old one, which will be canceled.

Restyling in progress? Check with one of our legal experts to see if re-registration is necessary to protect your rights.

Design Law

Design rights LEGO Flowers at Wibra

LEGO makes toys for all ages. The LEGO Botanical Collection—a modular building system for assembling flowers—is specifically designed for adults. Not only is the LEGO trademark name registered for toys, but many of its building blocks are also protected as registered designs.

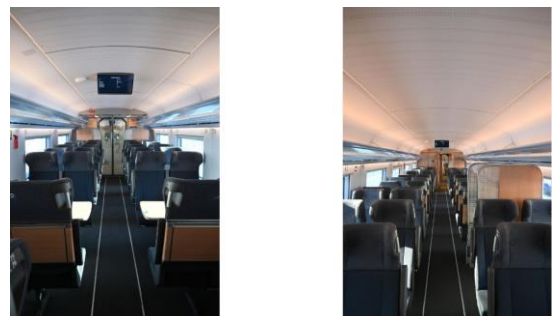


Wibra jumped on the trend and launched its own "Mini Block Flower Arrangement." On social media, these products were even marketed as "LEGO flowers." Unsurprisingly, it didn't take long for LEGO to send a cease-and-desist letter. Eventually, the matter ended up in court.

The social media advertisements referring to "LEGO flowers" were deemed trademark infringement, as they used the identical name for building blocks. Furthermore, Wibra's bricks also constituted a design infringement. The court ruled that Wibra's bricks did not create a different overall impression for the "informed user." A tiny indentation on the studs wasn't enough to make a difference. The verdict: both trademark and design infringement. Within two weeks, Wibra had to recall the products, pay fines for each unit sold, and cover LEGO's legal fees—a hefty €15,000.

EU Design Reform Package

This year, the European Union is introducing new design legislation to better align design rights with current and future needs. What are the key changes?



The definition of a "design" and a "product" has been broadened. It now covers not just physical products but also digital designs—such as virtual objects in the metaverse, user interfaces, animations, and store layouts. Even parts used for 3D printing a design are now considered a form of use. This means printing a protected design requires permission from the rights holder, making it easier to combat illegal copies. Additionally, the visibility requirement has been scrapped. Even if a part is not visible in the final product, it can still be protected (with the exception of components in composite products).

A new repair clause has also been introduced. No design protection is granted to replacement parts if the replacement must look exactly like the original. Furthermore, design holders can now oppose the transportation of counterfeit goods through the EU, even if the products are only passing through and are destined for a non-EU country. To indicate a product is a registered design, the (D) symbol can now be used.

Advertising law

Calvé's Misleading Sustainability Claim

Unilever values sustainable sourcing for its product ingredients. To this end, the company has developed its own sustainable agriculture program. Because peanut suppliers comply with this program, the Calvé peanut butter jar proudly displays a logo stating, "We use sustainably grown peanuts." On the back, near the ingredient list, there's a QR code linking to more information about the program. But is this claim compliant?



Sustainability claims must meet strict requirements: they must be clear, specific, accurate, and unambiguous.

The Advertising Code Committee ruled that the logo does not clarify whether the peanut butter is made exclusively from sustainably grown peanuts. The claim merely states that some sustainable peanuts are used—but not how many. In court, it emerged that around 95% of the peanuts qualify. This lack of clarity could mislead consumers. Additionally, it is unclear what criteria determine whether peanuts are "sustainable." The QR code on the packaging does not solve this problem. It is placed in a completely different location and merely leads to general principles on sustainable farming, without specifying how these apply to peanut cultivation. For these reasons, the sustainability claim was deemed unclear. Unilever has been asked to revise its Calvé packaging accordingly.

Abcor makes headlines

Abcor rises to Silver in the WTR1000

Once again, our firm has been recognized in the WTR1000 list of leading companies in the Benelux. A great honor, as the WTR1000 (World Trademark Review 2024) is regarded as one of the most prestigious global rankings for trademark firms and experts. What makes this recognition even more special? It's based on feedback from our own clients and peers worldwide. This year, we are proud to have climbed to the silver ranking! The jury's report was so exceptional that we can't help but share it:



"ABCOR's approach is refreshingly different. The team strives to be in-house legal partners, offering practical solutions and always delivering the best outcomes. Their mentality and seamless communication set them apart and this cohesive, informed approach creates a supportive and effective working relationship."

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:

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