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Claiming the look and feel



Signs of commercial origin are more than just word marks. Sophisticated brand owners therefore also secure stand-alone figurative marks and, increasingly, the entire facing, the overall look and feel of the packaging, as a trademark. A very sensible strategy, especially once copycats start circling.

When the label MASTELLA is filed for, among other things, chocolate, coffee and ice cream, alarm bells ring at Ferrero. A different word appears on the MASTELLA label, but the overall get-up looks suspiciously close to NUTELLA's. Ferrero has not only registered NUTELLA as a word mark, but has also registered several distinctive elements, including the label itself, as separate trademarks.

Ferrero invokes unfair advantage taken of the reputation of a well-known mark. Once reputation comes into play, the test is no longer confined to likelihood of confusion, it is sufficient that the relevant public makes a mental association with the earlier mark. Ferrero easily demonstrates that NUTELLA is a well-known mark.

The verbal elements are not particularly similar, but the combination of red and black lettering, the slice of bread, hazelnuts, glass of milk and yellow flower makes the overall impression strikingly close. As the later mark is also filed for foodstuffs, consumers will make the link. The application is rightly refused.

SWITCH – trademark owner MIA

A trademark registration grants its proprietor an exclusive right: a legal monopoly over use of the sign for specified goods and services. This allows the proprietor to act against third parties using an identical or similar sign.

Enforcing and structuring those rights is a niche sport for IP professionals – yet some undertakings still opt for DIY. The snag? One typo can undermine the entire strategy.

EHF obtains a registration for SWITCH covering food supplements. When another company markets comparable products under



SWITCHME, the dispute lands before the court. There it emerges that SWITCH is registered in the name of EHF Group Holding BV. Minor detail: that company does not exist (the word "Holding" is missing from the actual corporate name).

EHF calls it a clerical slip; the court is unimpressed. From the register it must follow, unequivocally, who owns the right.

The mark remains valid, but no one can enforce it. Word to the wise: always proof-read the owner's name.

Trademarks

Abba, gluten-free beer and hotels

According to Wikipedia, Abba ranks among the most famous and successful pop groups of all time. When an EU logo mark ABBA NUTRITION is filed for a broad range of goods, the Swedish pop icons step in and invoke the reputation of the Abba name. Once a mark is reputed, the owner can reach beyond similar goods, the comfort zone of classic likelihood-of-confusion, into dilution and unfair advantage.



In the opposition, it is convincingly established that Abba qualifies as a well-known mark. The real battleground is whether, for the specific goods, the relevant public will make a mental association with the band. For products such as food supplements and gluten-free beer, the EUIPO says yes: consumers will naturally think of the pop group. For plasters, hotel services or growing marijuana, however, the Office finds that mental leap a bridge too far.

One may reasonably raise an eyebrow. I still immediately think of the group (perhaps a matter of age). In any event, Abba has appealed, so the story is not over yet.

Ford and product liability

As a starting point, the producer is liable where a defective product causes damage. The tricky question is who exactly qualifies as the producer. The concept is broader than the physical manufacturer. It also captures the supplier, although the latter normally steps out of the firing line by timely identifying the actual producer.



STRACCIARI

In 2021, an Italian consumer purchases a Ford car from dealer Stracciari. The vehicle is manufactured by Ford WAG in Germany and supplied by Ford Italia. When the airbag fails to deploy in an accident, the consumer sues Ford Italia as importer. Ford Italia argues that liability should be directed at Ford WAG, the entity whose name and mark appear on the vehicle. Against the backdrop of consumer protection, the Court takes a wide view. The notion of

producer also includes an undertaking that presents itself to consumers as being involved in the production process. Ford Italia is therefore held jointly responsible for the product's safety and quality.

What remains unclear is how far this reasoning stretches. Does it only cover companies within the same group, or could it also catch authorized dealers, franchisees or agents allowed by the trademark owner to use the brand and present themselves as its public face? Riding on the strength of a mark is attractive, but it may come with a liability price tag

ALASKA: North Pole or cannabis?

Using a geographical name as a mark is generally a risky strategy in IP. Such signs are often refused because they may indicate the geographical origin of the goods (think ICELAND, or GE's such as Champagne). Where that link seems implausible, brand owners may feel safe, but it is still wise to check, for example via an online search or AI, what else the term evokes.

ALASKA

When the mark ALASKA is filed in the EU for tobacco products, the application is refused. Not because anyone believes tobacco is actually grown at the North Pole, but because ALASKA is also a well-known cannabis strain with a high THC content. The sign is seen as promoting recreational cannabis use and is considered contrary to the fundamental values on which the European Union is founded. A rather surprising outcome at first glance, in my view.

Lacoste: EU mark and crocodiles from UK

Since the 1930s, Lacoste has been selling polo shirts bearing the famous crocodile logo. From the 1950s onwards, the brand goes global. Over the decades, the now-iconic reptile has spawned a steady flow of enforcement actions aimed at keeping other crocodiles off shirts and sweaters. These days, Lacoste does not just argue similarity, it routinely plays the well-known-mark card as well. When a logo with two crocodiles is filed as an EUTM, Lacoste opposes, relying inter alia on the reputation of its earlier mark.

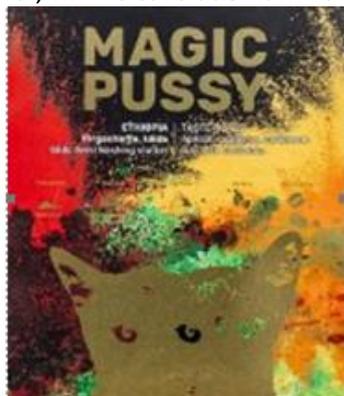
To substantiate this, it produces extensive evidence of use and market presence.



A sizeable part of that material concerns use in the UK which, post-Brexit, no longer counts as use in the European Union and therefore drops out of the equation. What remains, combined with survey evidence, is still sufficient to establish that the crocodile is well known for polo shirts, particularly in France. Visually, the marks show some similarity; conceptually, they are very close, as both signs feature a crocodile. Given the reputation of the earlier mark, the French public is deemed to make the link and to perceive the later sign as free-riding on Lacoste's reputation in order to boost sales of its own clothing. For those goods, the application is refused. No mental link is assumed, however, for online marketing and advertising-type services, given the different public, markets, purposes and nature of those services.

MAGIC PUSSY shocking or simply poor taste

From time to time, marks are refused because they are considered contrary to accepted principles of morality or public policy. The usual suspects tend to be the F-word and its colorful relatives, but the real challenge is drawing the line between genuinely shocking and merely tasteless. Trademark law is not meant to operate as a general decency police. When the mark MAGIC PUSSY is filed for coffee, the EUIPO refuses registration. The sign is seen as vulgar street slang for the female genitals and therefore contrary to accepted principles of morality, especially given that children may also encounter these products. The applicant argues that the sign simply refers to a cat and that MAGIC PUSSY is a fanciful, whimsical trademark name.



On appeal, the Board stresses that a mark may only be refused on morality grounds where it clearly and seriously offends fundamental values. Bad taste alone is not enough. "Pussy" has several meanings, and there is no direct sexual link between coffee or chocolate and the term. The Board finds that the sign will not generally be viewed as seriously shocking. At most, it creates a double entendre or may be perceived as being in poor taste, which is not sufficient to deny trademark protection.

Jägermeister: stag's head and hunter's hat

Jägermeister is a well-known herbal liqueur with a market share of around 38% in Germany. The bottle is as iconic as the drink itself: the dark-green label, the stag's head and the Gothic script are instantly recognizable at the bar. When Alten Kräuterfrau launches a bottle with a similar overall look and feel, Jägermeister objects. Initially the case goes sideways because the authorities look only at likelihood of confusion, which is rejected as the word elements are entirely different.



Jägermeister, however, has a second iron in the fire: the reputation of its earlier mark. The goods are identical. The later sign uses a similar shade of green, Gothic-style lettering and a hunter's hat, naturally evoking the idea of hunting deer. Together, these elements lead the relevant public to make a mental association with Jägermeister, even without literal confusion. The later mark is found to take unfair advantage of the earlier reputation and the application is refused. Free-riding on a famous look and feel may seem clever, but as an "inspired" trademark strategy, it rarely ends well.

Advertising law

The Olympic Games rank among the world's biggest sporting events. They are spectacular and spectacularly costly to stage. Sponsors are therefore the IOC's lifeblood, and to keep them on board the IOC maintains a strict

anti-ambush-marketing policy aimed at companies that try to hitch a ride on the Olympic halo without paying for official sponsorship rights.

On the basis of an arsenal of trademark and design registrations, the IOC has effectively monopolized the key Olympic identifiers: the name, the five rings and the mascots. Brands are free to “surf the wave”, but the rule of thumb is simple: no use of Olympic marks or symbols, and no unauthorized exploitation of imagery of the athletes or the Games themselves.



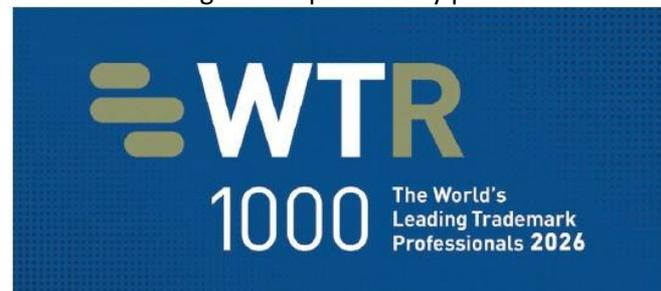
HEMA’s “neutral” reaction to Jutta Leerdam’s gold-medal race is a masterclass in compliant ambush. Jutta is not only a top-tier speed skater, but also an influencer with a highly recognizable make-up look. After her victory, the world saw her tears of joy and smudged mascara. Within 30 minutes, HEMA posted a razor-sharp Instagram post picking up on the running mascara – no rings, no logos, just smart contextual branding.

Bavaria, by contrast, has form when it comes to pushing the ambush envelope (remember the Bavaria Babes / Dutch Dress saga in South Africa). This year, Carnival partly overlaps with the Olympic Games. Bavaria’s Carnival campaign, themed around top-level sport, ends with five beer glasses on the bar, lined up in a way that looks suspiciously like the Olympic rings. After a complaint from the IOC, the commercial is swiftly pulled and reedited, this time featuring four glasses. Bavaria cannot resist adding a tongue-in-cheek disclaimer that any similarity with other well-known five-element symbols is “purely coincidental”.

Abcor in the news

Abcor once again in WTR1000

We are genuinely delighted to be listed once again this year in the WTR1000 as one of the leading trademark firms in the Benelux. The WTR1000 (World Trademark Review 2025) is widely regarded as one of the key global rankings in the trademark world, so appearing in it is something we are particularly proud of.



The client testimonials are so flattering that we cannot resist sharing them.

“A hub of precision and pragmatism, Benelux boutique ABCOR does not skip a beat when it comes to delivering premium legal services. It has most certainly earned its reputation through strategic trademark and design prosecution, offering global reach with a distinctly personal touch. The team operates as in-house partners, not just external counsel, valued for their seamless communication, practical solutions, and unwavering focus on outcomes.”

*At the helm is **Theo-Willem van Leeuwen**, a trademark attorney whose multidisciplinary background in marketing, advertising, and legal practice makes him a rare asset to brand owners. He serves as a treasured proactive strategist and a trusted sounding board for clients navigating complex IP landscapes both nationally and regionally...*

***Mirjam de Werd** brings a global outlook and a service-first ethos. She is effortlessly able to translate legal nuance into actionable strategy, aligning seamlessly with her clients’ business styles and commercial targets.”*

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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