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Many believe that the registration of a logo provides limited protection, but current jurisprudence shows the opposite. The LOCK case and the recent decision concerning the logo of Nationale Nederlanden lead to the conclusion that the figurative element of a logo with words should be protected also. But how far reaches this protection of merely the figurative element? This is the central question in the conflict between Slazenger (renown brand for tennis articles) and Arctic Cat (snow scooters). Arctic Cat files trademark protection (figurative) for a jumping black

catlike predator, among other goods for protective sportswear. Slazenger opposes on the basis of its registered figurative trademark of the black panther.

The European Court declares that the signs are similar. Both signs consist of a catlike black silhouette. It is irrelevant that the Slazenger panther looks more realistic than the fantasy figure of Arctic. Arctic's logo is refused. Therefore, do not only register the word element, but also the combination of word and logo. If the figurative element is special, it should be protected separately as well.

Copy rights

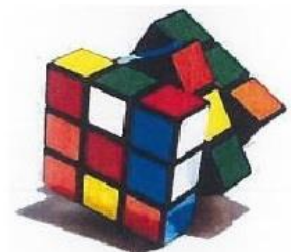
The Rubik Cube and freeriding

In 1974 Erno Rubik develops a 3D puzzle, a cube with 6 coloured surfaces. The mechanism is protected by a Hungarian patent. Each infringement of the invention can be prevented in this way, regardless of the print on its surfaces. Only after some years the cube becomes a success. Soon all kinds of varieties appear on the market, like the Sudoku Cube and the Kamasutra Cube. Rubik wants to act against these free riders, but how? The patent is already expired. For this reason, he initiates actions claiming copyright. However is that possible, given the fact that the cube is a technical invention and

therefore belongs in the regime of patents?

The court sees the cube as an invention and judges the mere shape, without colours, is not worthy of copyright protection.

The use of the contrasting colours on the surfaces however is copyright worthy. Therefore, cubes with similarly coloured surfaces are infringing the Rubik Cube and should be destroyed. However, the Kamasutra Cube and the Sudoku Cube give a sufficiently different overall impression and are allowed.



Crumpy Cat victorious in court

Presumably Crumpy Cat is the most famous cat in the world. The cat's (real name Tardar Sauce) career was launched in 2012 when its picture was published on Reddit. The dwarfish face of this grumpy creature goes viral (the official FB-page has 8.7 million likes). The cat's popularity soon motivates the owner, Tabettha Bundesen, to start the company Grumpy Cat Limited. The cat's face and the name, Grumpy Cat, are claimed as trademarks in the US and several other countries for a diversity of products.



Grumppuccino

US trademark reg 85879272

Through a license agreement, the portrait of the cat can be used by the company Grenade Beverage for the sale of a special type of coffee, Grumppuccino. When the image is being used for other products as well like t-shirts, Grenade is taken to court. The judge states that this use exceeds the license agreement and constitutes an infringement of Grumpy Cat's trademark and copyrights. Grenade is ordered to compensate the damages, an estimated 710,000 dollars.

Cheaper trademark protection in Indonesia

An International trademark registration provides relatively cheap and easy protection abroad. Therefore, an increasing number of countries is joining the treaty, like Indonesia. The registration process is not only cheaper, but quicker as well. Maintenance of the rights is also cheaper.

Colour trademark Red Bull invalid

Colours can be trademarks. For many, the colour combination of blue and silver, is sufficient to recognize the Red Bull energy drink. In order to protect this colour combination, Red Bull has filed two trademarks, consisting of a survey with the two colours, accompanied with a description.



cancelled colour mark

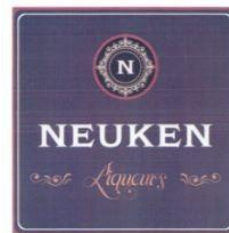


pending cancellation

The question here is, if these filing are sufficiently clear to meet the legal requirements. The European Court stated in 2004 that colours can be trademarks, as long it is objectively clear enough, how they are being used. A vague description saying that, "the ratio of the colours is approximately 50% 50%", is too broad, like the description "the two colours will be applied in equal proportion and juxtaposed to each other" (the descriptions of the two filings). For this reason these colour trademarks of Red Bull are declared invalid. But not all is lost. Red Bull also owns another registration showing the colour combination as actually used. In our opinion, this trademark is valid, although an invalidation action has been initiated against this trademark as well. Claiming colours is possible, as long as the claim is sufficiently specific

Obscene trademarks: law and advertising

Everybody knows that the Benelux trademark authorities are very liberal as it comes to accepting trademarks. By law, they can refuse trademarks that are contrary to the public order or immoral, but this almost never happens. This seems convenient, but remember that these trademarks may be refused abroad. In Switzerland trademarks are easily refused on religious grounds and the EUIPO refuses trademarks containing the word F*CK. However problems can arise in the Netherlands as well, due to stricter rules regarding advertising.



Benelux trademark registration



advertising material

Stiva filed a complaint against the commercial of *Neuken (to f*ck) Likeur*. The campaign contained texts like, "life is a matter of taking or being taken", which in Dutch can be read as "life is a matter of f*cking or being f*cked", or "when do you like *Neuken (to f*ck)* the most, before or after the act (accompanied by a picture of a lady in bed)?" The Advertising Code of Conduct Commission has confirmed that this campaign is contrary to good taste, because of the combination of the obscene

name “Neuken” and obvious hints to sex. The advertiser is therefore recommended to stop using this campaign.

Fraudulent invoices – rascals in jail

In our profession, fraudulent or misleading invoices remain an ineradicable evil, which is spreading all over Europe. It is important that companies file a report (in the Netherlands there is a specialised helpdesk, *Nationale Fraude Helpdesk* info@fraudehelpdesk.nl) in case they are victimised. Only then, it will be clear to everybody, how high the damages actually are.



Fortunately, there is some occasional success in this battle as well. A good example is a case in Sweden. For three years misleading invoices were sent to companies all over Europe. The invoices appeared to be sent by the EUIPO. The High Court in Sweden stated that the victims had been misled. The two main characters in this case received prison sentences of 5 and 3 years. Hopefully, new legislation will be introduced in the Netherlands to tackle this scam swiftly, fully and easily. Until then, don't be embarrassed and report every payment of a misleading invoice at the helpdesk for fraud.

Royal Dutch and the Royal predicate

There are strict rules regarding the use of the terms ‘Royal’ or ‘purveyor to the Royal household’. These are titles, granted by the King to companies with a prominent position in the Netherlands.

Further conditions are that a company must be at least a hundred years old, have no less than a hundred employees and have a formidable reputation. The grant by the King is a favour, not an enforceable right. Companies that use these titles, without the King's permission, give the impression that all conditions are successfully met. In order to prevent any abuse (and to protect the intellectual property rights of the Royal House), our former Queen Beatrix established a foundation.

The company, Royal Dutch Holding, is an investment company mainly active in North Africa and the Middle East.



The Royal predicate has not been granted to this company. According to Dutch tradename law it is forbidden to use a misleading tradename. It is obvious, that the Dutch word ‘Koninklijke’ for Royal would be misleading if the title is not granted. The same goes for its English translation, Royal, because the use of English is quite common in the Netherlands. The company is therefore condemned to refrain from using the names Royal or Royal Dutch, accompanied with a penalty of 1000,- per day in case of violation

Copyrights

Product photography on the house

Last year, an interesting ruling was passed by the judge regarding the use of stock photos. Normally, stock photos are protected by copyright law. The main rule is, that an intellectual creation has to be made independently. In short, creative choices have to be made. In case of pictures, these conditions are normally met given the composition, the angle, the use of light etc., but is this also the case with stock photos? Clearly not, according to a car company that used a close-up picture of a thermometer in a car.



The picture belonged to a Stock agency that wanted to be compensated (€ 3,200,-) for the use of the photo. However, the judge agreed with the car company. “For every

photo one has to adapt the use of light, the distance and the angle, if not already done automatically by the camera, but this does not signify that creative choices have been made. This is only the case, if the photo can be distinguished from other pictures in a way that demonstrates that the photographer made personal choices”

Does this mean that all stock photos can be freely used? No, certainly not. Most photos are still protected by copyright. However, in the case of photos of products it can go either way.

Advertising law

Jesus and Maria may stay

Advertising is legally protected by the constitutional right, freedom of speech. However, can this freedom be limited if certain advertising is harmful or insulting to certain religious groups? This question arises regarding the campaign of the Lithuanian clothing company, Sekmadienis. On the posters there is a man accompanied with the text: “Jesus, what a trousers!”, another poster shows a woman with a headscarf and the text “Maria, what a dress!” and on the last one Jesus and Maria together with the text: “Jesus Maria, what are you wearing!”



The Catholic church and a hundred others filed a complaint against the advertisements. In first instance, the campaign is prohibited for violating the public morals. Sekmadienis receives a fine of 580 euro, but appeals the decision at the European Court of Human

Rights. The Court declared that the advertisements are not unnecessarily offending or insulting, neither do they incite hatred. Furthermore, it is not motivated clearly why the use of religious symbols is violating public morals. The freedom of speech of Sekmadienis prevails and the state has to reimburse the fine.

Online - internet

Fake news – fake reviews

Reviews are very important for consumers and give guidance when placing orders (for example booking.com, Airbnb.nl or iens.nl). In a world that is overwhelmed by fake news, nobody will be surprised that there is an extensive production of fake reviews as well. How does as a company protect itself against such attacks?

Every two months, a daycare receives very negative reviews on Google Maps. “There is a lack of quality, children are crying and the management is a disaster”. Apparently, all the (falsely) placed reviews come from one single person (using old copies of reviews on other websites).



Google Maps

In order to make the appearance of the reviews more credible, online traceable pictures of women placed, even of an already deceased one. Google has to disclose the personal data of the infringer, when it is obvious that the reviews are incorrect and prove to be damaging to a company. Posting fake reviews is illegitimate, therefore the author has to compensate the damages of the daycare. So, besides moral grounds to refrain from these actions, fortunately there is a legal reason as well.

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

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