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BRAND PROTECTION

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The Bulldog bites back!

€ 49 MILLION SEIZURE
AT RED BULL

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The Bulldog bites back



Leidseplein Beheer, the company behind the Amsterdam coffee shop The Bulldog, has seized for € 49 million at Red Bull Netherlands. According to Leidseplein Beheer, this is the total amount of damage the company has suffered due to the long-running conflict with Red Bull regarding an energy drink with the trademark The Bulldog.

Trouble

Twenty years ago, Leidseplein Beheer introduced their Bulldog drink in the Netherlands. From that moment on, there was trouble with Red Bull because they believed that the new energy drink was trying to piggyback on Red Bull's fame and would cause confusion in the market.

Ten years of struggle

What followed was a decade-long battle in which the two fighters were alternately proved right. In 2007, Red Bull lost the case in court, but the Austrian group won the appeal at the Court of Appeal. The case ended up at the Dutch High Court before returning to the Court of Appeal in 2014, which issued the final judgment in 2017: the trademarks are not similar. Back to square one after ten years.

Between € 0.6 million and € 313 million

According to Leidseplein Beheer, their company has suffered considerable

damage as a result, and they now seek reimbursement. To substantiate this, the company called in an expert who concluded *'damages of between € 0.6 million and € 313 million, and a probability-weighted average*

damage of € 49 million'. Based on this calculation, the seizure by Leidseplein Beheer was done at Red Bull. At the end of October 2022, the district court of Amsterdam rejected a request from Red Bull to lift this seizure.



Coffeeshop The Bulldog in Amsterdam.

Apple claims Smart Keyboard



Apple is trying to register for the trademark Smart Keyboard in America. After the American trademark office USPTO refused Smart Keyboard because it is generic, Apple now has sued USPTO. According to Apple Smart Keyboard is not generic, but a distinctive name associated with the iPad.

Integration

Apple argues that if the trademark is not registered 'this would leave consumers confused as to the source of iPad accessories and risk a significant degradation of Apple's brand if third parties are allowed to market and sell inferior tablet covers, stands, and keyboards under Apple's valuable brand name.' Well, let's just wait and see.

Old men's quarrel

The Spanish vineyard Vintae created catchy labels for its Matsu wines with photos of three generations of wine-makers, from young to old. Vintae registered the three portraits, which act as trademarks, in the European trademark register.

Confusion

When an Italian competitor applied for a trademark registration of a wine label also showing an old man, the Spanish Vintae sprung into action. Another old man on a bottle would surely cause confusion.

Old man concept

On the 4th of November, the Opposition Division of the European Trademark

Office EUIPO rejected Vintae's claim. EUIPO first explained that trademark registration doesn't protect "the concept of the old man" in itself, but it's more about the similarity of the two images.

Sad vs good-humoured

And yes, of course, there is some similarity because both are images of old men, but that's where the likeness ends. Particularly the men's expressions and moods are different; a tired, old, even sad man, compared to a happy, contented, good-humoured fellow, according to EUIPO. There is no risk of confusion, the consumer will immediately see that it's a different person.



Good-humoured Italian on the right, sad Spaniard on the left



My drink is Bomb, James Bomb

Do you think Red Bull and Danjaq, owner of the rights to James Bond, sat at the table and flipped a coin? Which one of us is going to take down this new Benelux trademark registration by Luxembourg national Daniele Vanhove? Vanhove's energy drink is a cheery copycat: bearing the brand name 'James Bomb' and the design of a can of Red Bull.

Joker from Luxembourg

Danjaq won the coin flip and led the opposition against this James Bomb label but also against a second trademark application from the Luxembourgish joker: the slogan *My drink is Bomb, James Bomb*.

Infringement

On the 13th of October, 2022, the Benelux Office for Intellectual Property BOIP issued the predicted ruling: Vanhoven's registrations are rejected because they infringe the rights of James Bond. If Red Bull had taken on the case, the outcome regarding the label wouldn't have been any different.

Take care with Red Cross



If you see a red cross as part of a trademark, it should set all the warning bells off. The International Red Cross symbol is off-limits to trademark holders, as it is protected under the Geneva Convention. If you include a red cross in your trademark, however small it may be, registration will be refused by the European trademark office. And that's why this Prävention-mit-Kopf logo also didn't get European trademark protection on November 24, 2022.

George Floyd not a fashion trademark



The name George Floyd cannot be registered as a trademark for clothing, as was decided in August 2022 by the European trademark office EUIPO. The trademark name is not distinctive for clothing and, moreover, the registration breaches public order.

Not distinctive

EUIPO believes that if the general public sees the globally recognised name George Floyd on a T-shirt, they won't perceive it as a trademark but rather as a political or ideological expression, comparable to Black Lives Matter, for example. Therefore, the

brand name is not distinctive and unsuitable as a trademark.

Civilised society

Above all, EUIPO refuses registration because it is morally reprehensible. By claiming the name George Floyd for clothing, the applicant violates

certain fundamental values of our civilised society, according to EUIPO. "We want to prevent a commercial company from 'banalizing' the George Floyd name and abusing or trivialising the tragic death of George Floyd," said EUIPO. The applicant, US George Floyd IP Holdings, has appealed.



Rihanna takes out Puma



Design registration Puma.

2D or 3D design can be protected via a *design registration*. In design law, there is a strict rule: your design must be *new* and have an *individual character*. In general, design protection is no longer possible if you have made the design public before registration.

Rihanna's Instagram

That's why, recently, Puma fell hard. Dutch company Van Hilst successfully attacked a European design registration of a Puma sneaker. In August 2022, the EUIPO ruled that Puma's registration was invalid. A 2014 Instagram post by Rihanna, showing the singer with the sneaker in question, contributed to taking out Puma. It means that at the time of registration in 2016, the Puma design was, therefore, not new and did not have individual character.

Grappling with tattoos

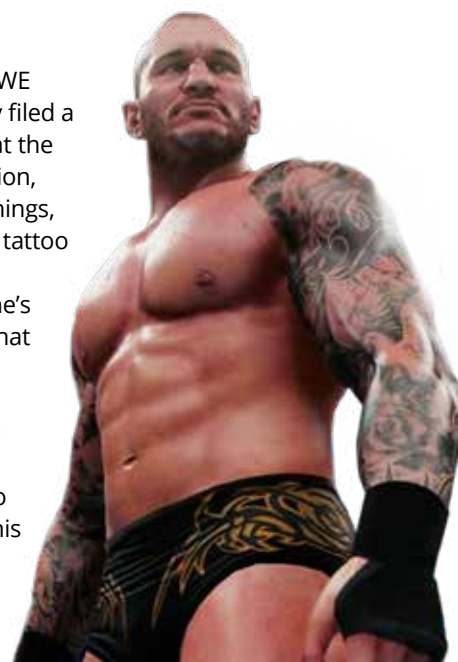
Does a video game featuring World Wrestling Champion Randy Orton and all of his tattoos infringe the copyrights of tattoo artist Catherine Alexander?

According to the U.S. court, this is a case of infringement, and both companies behind the game (producer Take-Two Software and wrestling organisation World Wrestling Entertainment WWE) must pay compensation to Alexander.

Not a painting

However, Take-Two and WWE disagree, which is why they filed a motion at an Illinois court at the end of October. In the motion, they argue, among other things, that you should not treat a tattoo as a painting. A tattoo is a permanent part of someone's body and is connected to that person's rights.

According to Take-Two and WWE, the function of copyright is not intended to prohibit this type of use. This is referred to as 'fair use'. It remains to be seen what, if anything, the court will do with these arguments.



THAT'S WHY CHIEVER'

The Chiever Newsletter obviously doesn't tell you much about what Chiever does and how we work. We prefer to talk about our profession rather than about ourselves. But we do like to offer a few words below.

Chiever is an international trademark firm that offers companies advice on the legal protection of trademarks and designs. And we don't just do this in the Netherlands or Europe but worldwide. We conduct availability searches, we advise on risks and we register and protect our clients' trademarks. You might, of course, say that we are not the only agency doing that. So why choose Chiever?



PRACTICAL, CONCISE ADVICE

We are creative and offer unambiguous, compact, and practical advice that always includes a clear proposal for the next step.



ALWAYS A FAIR PRICE

Our rate: often as a fixed fee but sometimes on an hourly basis and always clearly quoted. We don't charge for simple phone calls to ask a short question.



PERSONAL AND SERVICE-ORIENTED

'Big enough to cope, small enough to care': we believe in a personal approach, short lines of communication, and a focus on speed and service.



SPECIALIST IN CONFLICT SOLUTION

We are resourceful and creative when solving trademark conflicts. If possible, we first opt for the road of mediation but, if necessary, we will start opposition proceedings. We invest heavily in this and with good results.



PASSION FOR WHAT WE DO

And last but not least: our team is a group of committed people who all share a passion for what they do and offer a very pleasant collaboration.

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