

CHIEVER

BRAND PROTECTION

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Usain Bolt's gesture mark

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Usain Bolt's gesture mark



Usain Bolt is not only known for his world records in the 100 and 200 meters, but also for the specific posture that he took after each victory: leaning back slightly, with two fingers in the air, as if shooting an arrow.



Gesture can be a trademark

Bolt must have thought he could still earn a few dollars after his retirement with this gesture, when he applied for trademark protection in the US in August 2022 for this pose for all kinds of goods, including sunglasses and clothing. A gesture or pose as a trademark: why not? Trademarks are distinctive signs, and just like a word or a logo, a gesture or a pose can also be distinctive.

Sports and entertainment

Bolt is certainly not the first celebrity to try to monopolize his signature gesture or pose as a trademark. In sports and entertainment, this type of trademark registration occurs more often. It's not always a smooth process, though.



Gene Simmons with the devil's horn

Gene Simmons

In 2017, Gene Simmons, bass player in the rockband Kiss, registered the devil's horn hand gesture as a

trademark in the US. Simmons has used this gesture since 1974 at Kiss gigs. The registration generated a storm of criticism, especially because other famous people, like John Lennon and Spiderman, also used the devil's horn. As a result, Simmons decided to withdraw his application.

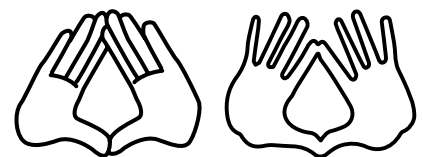
Gesture mark Jay-Z

When Rapper Jay-Z started using the diamond gesture to promote a new album in 2007, he immediately got into a fight with wrestler Diamond Dallas Page. The wrestler profiled himself in the ring for years with his diamond pose and registered the gesture as a trademark. Jay-Z quickly backed down and bought him out for an undisclosed amount.

Years later, in 2018, Jay-Z had his 'diamond' gesture registered as a trademark.



Spiderman and John Lennon also make the devil's horn gesture



Left the diamond-registration of Jay-Z (2018), right the registration of Diamond Dallas Page (2003).

Can Marie-Stella-Maris prevent German brewer Karl Sturm GmbH from launching a beer with the trademark name Marie? Is it confusing? It's not, so ruled the Opposition Division of the European Trademark Office EUIPO in August of this year.

The battle for Marie



Significant differences

According to EUIPO, there are significant differences between the trademarks Marie-Stella-Maris and Marie: the structure, the rhythm and the intonation. The words Stella and Maris likely attract more attention than the rather 'ordinary' Marie.

Surname

Moreover, according to EUIPO, in practice, no likelihood of confusion is usually assumed if two trademarks have the same first name (Marie) and a type of surname (Maris) is added to one of them. And the addition of the extra name Stella makes the risk of confusion completely unlikely. In short, the German brewer can simply hit the market with its Marie beer.

The dot doesn't get it for Deloitte

Deloitte's consultants were unsuccessful in claiming exclusive rights for the green dot in the international consultancy's corporate identity. In July this year, the European Trademark Office EUIPO Board of Appeal rejected Deloitte's trademark registration of the green dot.

Acquired distinctiveness

During the procedure, Deloitte submitted an enormous amount of figures and advertising material. This was their way of demonstrating the acquired distinctiveness of the green dot, i.e., that the general public recognises it as a Deloitte trademark.

Insufficient evidence

Unfortunately for Deloitte, EUIPO was not impressed by the

submitted material. Turnover figures and advertising expenditure in themselves say nothing about the reputation of the dot, according to EUIPO. And all those advertisements featuring the green dot as an object weren't rated very highly by EUIPO. The latter is striking, because you could say that these campaigns emphasise the trademark function of the green dot. In any case, the green dot doesn't make it into the register.



Auing

auping

THE LETTER P

Auing, an excellent furniture and mattress brand, is what the Chinese company Shenzen Aoyin Lighting must have thought. The Chinese applied for European trademark protection in preparation for the European introduction. That went wrong, of course. There's already a reasonably well-known bed brand Auping. The fact that the P is missing does not mean that Auing has distanced itself sufficiently from Auping. The registration was rejected in August 2022. The Chinese will have to look for a new brand.



Nike

cröcs

POPSICHÉ



ADIDAS

Samsung



Cartier

ИДЕЯ семейная



Trademark hijackers are going wild in Russia. In response to the Western sanctions following the war in Ukraine, Russian entrepreneurs have started to file applications for world-famous trademarks in the Russian trademark register on a large scale. The motives are unclear: there may be a financially-driven aspect, but it also looks like bullying

H&M

TRADEMARK HIJACKERS GO ALL OUT



More than 300 trademarks are involved, according to a recent study published by two Americans, Irene Calboli, a professor at Texas A&M University School of Law and Vera Sevastianova, a PhD student at the Hanken School of Economics.

What does Putin do?

Rospatent, the Russian trademark office, has yet to process the applications. According to Russian trademark law, Rospatent should refuse all these registrations because they are too similar to existing registered trademarks. It all depends, of course, on Putin's instructions to Rospatent.

On the next page you can read more about the logo of the 'new' Starbucks.

An abridged version of this article previously appeared in the Volkskrant.

PHILIPS

INTEL.



Copy and parody

Some registered trademarks are exact copies of the actual trademark, and others are more of a parody or look-alike. The research shows that two companies and a single individual are responsible for half of the applications.



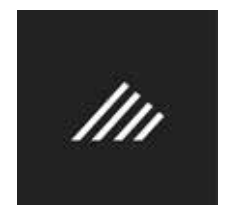
LOREAL.

AMERICAN EXPRESS



COCA COLA

CHANEL



Tina Turner loses

Singer Tina Turner cannot object to a poster of the show *'Simply the Best - Die Tina Turner Story'* - as advertised by the producer of the show in Germany. This was determined by the Bundesgerichtshof a few months ago in a lawsuit filed by Turner.

No permission from Tina Turner

The poster features the show's actress Dorothea Fletcher, who looks just like Turner. Tina Turner did not permit the use of her portrait.

Artistic freedom

According to the Court, the use of look-alikes in advertising a tribute show falls under the *artistic freedom* of the producer. The only difference in the scenario would be if the show gave a false impression that the real Tina Turner supports or is involved. But that's not the case here.



Machine gun Obelix

Les Edition Albert René, the company behind the cartoon characters Asterix and Obelix, cannot prevent the Polish arms manufacturer Works 11 from registering the name *Obelix* in Europe as a trademark for firearms and ammunition.

Very old Obelix registration

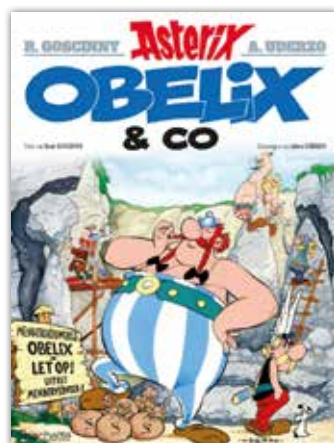
The French thought they had a secret weapon to bring a halt to the trademark registration. Albert René turns out to own a very old French trademark registration of the name Obelix for firearms. The French thought that would come in handy now, so they filed an opposition to the Poles' application.

Use is required

But that came to nothing. In trademark law, the rule is that you only maintain your rights by *using* the trademark. So if you do not use the trademark for five consecutive years, you can no longer rely on your registration.

Comics and merchandise

During the opposition procedure, it was quickly apparent that the French had never used the Obelix brand for weapons. Their business is in comics and merchandise, not bombs and grenades. And so the opposition failed. Here is an important lesson for those in opposition: always check you can prove usage of your trademark for the registered products.



Starbucks' twin sister

A look-alike of the Starbucks logo also appears to be on the market in Russia. Stars Coffee, features a mermaid that could be the twin sister of the famous Starbucks mermaid.

No hijacking

In fact, you probably can't call it trademark hijacking. After all, in May this year, Starbucks decided to move out of Russia. The company has since sold its 130 restaurants to Russian rapper Timati and entrepreneur Anton Pinskiy. At the time of the takeover, these Russian gentlemen undoubtedly came to some agreement with Starbucks about their new Stars logo. Moreover, they likely did this with the permission of Starbucks. In that case, of course, there is no question of hijacking.

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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