

International Team



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Community Trademarks

Bad news for LEGO



On November 12, 2008 the CFI rejected the appeal filed by the Danish company Lego against OHIM's Board of Appeal's decision that the Lego brick shape is not registrable as a CTM. OHIM argued that the CTMR is aimed at prohibiting the registration of shapes which essential features have only a technical function.

Community Trademark Judgment

Camper vs Frau

The Judgment of the Court of First Instance of the European Union of November 5, 2008 confirmed the Spanish footwear company CAMPER duly represented by **ABRIL ABOGADOS** owns the exclusive rights of the device mark consisting on an arch (or bridge) and rejected the application filed by the Italian company Calzaturificio Frau consisting on a similar mark as considering a likelihood of confusion could arise. Dated on 2.003, the OHIM rejected the CTM application filed by Calzaturificio consisting on the representation of a stylized arch (or bridge) bent to the right claiming



protection for clothing, shoes, headgear, leather and imitations of leather, trunks, cases and umbrellas. OHIM rejected the CTM application in class 25, and Camper appealed such decision, asking the prohibition to also include goods in class 18. The Board of Appeal considered the CTM application intended to be used by Frau designates identical goods as CAMPER's prior mark, extended therefore such prohibition to class 18. Frau filed an appeal before the CFI which has confirmed both the Board of Appeal and OHIM's decisions.

Promotional items do not constitute trademark use



A short, sharp ruling of the Court of Justice of the European Communities was delivered on January 15, 2009 in Case C-495/07 *Silberquelle GmbH v Maselli-Strickmode GmbH*, a reference from Austria for a preliminary as to whether giving away free drinks as a promotional support for the sale of clothing constitutes genuine use of a trade mark (registered both for clothing and for drinks) in respect of drinks. According to the Court, "... where the proprietor of a mark affixes that mark to items that it gives, free of charge, to purchasers of its goods, it does not make genuine use of that mark in respect of the class covering those items".

Copyright

Google has been acquitted by the Spanish Courts

The world largest web search engine Google has been acquitted by the Spanish Courts that have considered the company not infringing the copyright rights of the author of a web site which contents were partially reproduced when included in Google's search engine. The Courts have stated the legality of the caching (downloading documents or retransmission, the digitalization of pre-existing works, temporary or transitional reproductions) performed by Google. They have considered it is not detrimental to the author's rights, since it has implicitly been accepted by those who upload their works into the internet without preventing or restricting the free-access to them.

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New Director for our Patent Department



Jesus Sahuquillo

He holds a degree in Electronic and Industrial Engineering from the University of Valencia. His experience includes more than seven years as a professional expert on the field of mechanical and electronic patents, including software and robotic patents. He has gained broad experience in the drafting, prosecution and defense of both national and international patents. His expertise and professionalism will undoubtedly consolidate one of the most important areas of the firm.

Spanish plastic artists obtain their Copyright Law

Dated on December 23, 2008 the Spanish Law performing the so called "droit de suite" or the right of artists to share in profits from sales or resale of their work, was approved. The authors' benefit of the resale of their work was already provided for the Spanish Copyright Law of 1987. However it was necessary to harmonize all the European national copyright laws. Therefore this new act is the result of adapting the EU Directive 2201/84 into the Spanish legal framework. This law states the percentages of the resale price of their work corresponding to the artists. Only transactions made between individuals would be exempted, where a



professional is not involved in the art market. The new law only foresees the right to share in profits when the resale price is more than 1.200, 00 Euros. The maximum amount that can be obtained by the artist is 12500, 00 Euros. This new regulation has been welcomed by the plastic artists but has not satisfied the art galleries' interests. In comparison with the protection provided in the music market, plastic artists had been somewhat unprotected. The problem could now arise among young and unknown artists whose priorities consist of obtaining support from art galleries and finding a room to exhibit their works, rather than making money.

Jurisprudence of the European Union

Famous brand owners will have to prove dilution



The ECJ answering the long expected questions referred from the Court of Appeal in London in a dispute in which Intel sought to stop the use of the mark Intelmark, which is owned by CPM, on the ground that it would dilute its famous mark.

The case concerns the interpretation of Article 4 (4) (a) of the EU Trade Marks Directive. This article bars the registration of trademarks that are identical or similar to earlier registered marks for non similar goods or services, where the prior mark has a reputation and the use of the later mark "would take unfair advantage of, or be detrimental to, the distinctive character or repute" of the earlier mark. The Court did say that the use of the later mark may be detrimental to the distinctive character of the earlier mark with a reputation ". But it said that proof of this detriment "requires evidence of a change in the economic behaviour" of the average consumer buying the goods or services covered by the earlier mark, "or a serious likelihood that such a change will occur in the future". This means famous brand owners wanting to oppose or invalidate a later mark will have to provide evidence showing such a change in consumers' "economic behaviour".

Parallel Exports



The pharmaceutical industry has welcomed a European Court of Justice (ECJ) decision which states that even dominant companies can take reasonable and proportional steps to protect their own commercial interests against parallel trade. In *Sot Lelos Kai Sia*

EE (and Others) v GlaxoSmith Kline AEEVE, the ECJ ruled that a dominant pharmaceutical company may refuse to supply wholesales involved in parallel exports if the orders are deemed to be "extraordinary". The EJC did not offer guidance on what is understood to be "extraordinary" or "ordinary" orders, leaving this to the determination of national courts, but it did state that historical relations between the parties and the size of the orders compared to national demand are relevant factors.

Patents

Biotech Protection



The EPO has shed some light on the patentability of stem cells and genes. The Office has confirmed it will not grant patents on human stem cells that involve the destructions of a human embryo. The Board of Appeal of the EPO explained "what needs to be looked at is not just the explicit wording of the claims but the technical teaching of the application as a whole as to how the invention is to be performed Technology has moved on and it is not necessary to destroy an embryo now".

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