

Beware of imitations!

About intellectual property, copying and related issues

Some time ago the Koelnmesse organised a meeting in Breukelen for Dutch companies considering participating in trade fairs in China. Gielissen was invited to initiate this group of potential exhibitors into the secrets of achieving a high return. At this mini-conference one of our profitability experts got talking to Marcoline van der Dussen, a lawyer at CMS Derks Star Busmann (CMS). CMS gave a talk about protection against copying, a topic of great interest to international exhibitors in general and those exhibiting in Asian countries in particular. This was an excellent reason for us to invite CMS to contribute an article to Global about copyright and other rights – matters that any big organisation will come up against at some time or other.

Questions put to Marcoline van der Dussen, a lawyer at CMS

What role did CMS play at the Breukelen meeting?

We wanted to tell the Koelnmesse customers about the most effective ways of protecting their products against copying. We also discussed what someone can and should do if copying occurs.

What exactly are intellectual property rights?

There is copyright, brand rights, model rights and patent rights. A brief explanation. Copyright can attach to any work that can be perceived by the senses. Tables, chairs, books, shoes, paintings, photos, poems, clothing, music, films and images – these are just a few examples of works that can qualify for protection under copyright legislation. Brand rights attach to (registered) symbols that distinguish a company's goods and/or services. Examples include words (Kodak, Rolex), images (the Shell shell), a combination of words and images (the word Coca-Cola with the image elements), letters (KLM, C&A), numbers (501), a combination of letters and numbers (SBS6), and colours (Milka lilac). The shape of a product can be a brand too (the Coca-Cola bottle). Model rights can attach to a product's external appearance. This can apply to any object such as a table, chair, lamp, watch or teapot. Registration is required for model protection. Patent rights can be granted for technological inventions. A patent application must be submitted to apply for these rights.



About CMS and trade fairs

CMS is part of a large international alliance of law firms. Various CMS offices work for the Koelnmesse. (This was also how the request for the talk at Breukelen came about.) They often have to take action on behalf of clients against third parties who offer products at trade fairs that infringe someone else's rights. This sometimes even involves seizing the products in question and any stock. CMS staff regularly give talks on the subject. Advantages: the audience learns something about a particular area of the law or a current legal theme and CMS puts itself in the spotlight.

Can you also 'loan out' your intellectual property rights?

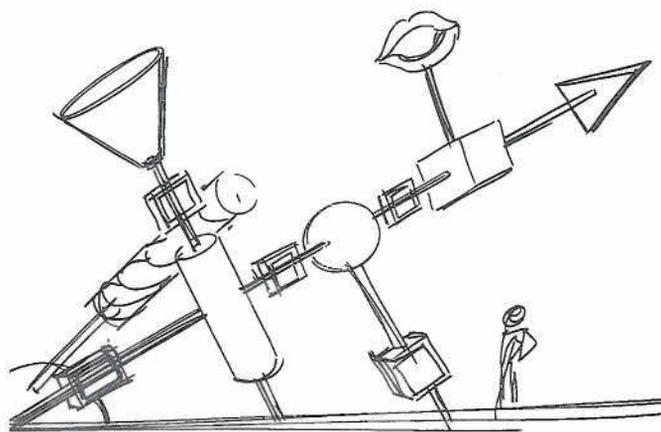
Yes, the holder of an intellectual property right can grant another person a licence or a usage right. In practice this means, for example, that another person is given the right to use the brand holder's brand for particular products, or that another person may reproduce a work protected by copyright.

Why are intellectual property issues always so complicated?

Because you always have to determine first whether the person claiming particular property rights actually has those rights. This can be a complex business. In the area of model rights, for example, a registered model is only protected by model rights if at the time of registration the model concerned was new and had a so-called character of its own. It takes research to establish this.

And if a person really does have rights, of course you have to look at whether those rights are being infringed?

That's right, you have to check whether all the infringement criteria are met. That can be complicated too. Often a product is protected by several intellectual property rights and they have to be tested one by one. This process involves reference to complicated (EU directives-based) laws, jurisprudence and literature.



Is there a good, accessible overview of intellectual property rights anywhere?

There are quite a few good manuals for lawyers, but because of the rapid developments in this area they're often out of date by the time they're published. CMS has recently prepared its own summary for non-lawyers and this will be available on our website soon under 'Protection against copying'.

This was Part 1 of the series 'Beware of imitations!'. In the next issue we look at some practical examples.

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