

CENTRiiK

Centre of Intrinsic & Intellectual Knowledge



CENTRiiK'S NEWSLETTER

DECEMBER 2020



As the holiday season is upon us, we find ourselves reflecting on the past year. It's been quite a year for us all! We hope that 2020 has been just as memorable for you, your colleagues and your loved ones. Let's go back and revisit all that happened and made 2020 memorable.

In January,

1. ONE vs. figurative mark THE ONLY ONE: CFI ruled against Nestlé. When an earlier mark, which is also very well known, is fully integrated into a new mark, this is a stronger indication of likelihood of confusion - possibly even maliciously. However, Nestle lost before the CFI just before Christmas with its word mark ONE against the figurative mark THE ONLY ONE.
2. Apple and Google accused of patent infringement: Apple Watch and Chromecast in focus. The new year has hardly begun, and there are already several new spectacular patent infringement lawsuits against well-known and listed companies. Apple and Google are accused of patent infringement in Apple Watch and Voice Assistant respectively, and Varta is claiming patent infringement in Samsung headsets.
3. Brexit: IP Transitional period extended until 31.12.2020. UK extends the transitional period for the automatic conversion of registered trademarks and designs of the European Union until 31.12.2020. The protection rights in trademark and also in design protection are therefore also secured after today's Brexit.

In February,

1. Royalty rate for 'extended use' product in Germany. In the case of a dispute about an employee's invention in the pharmaceutical sector, the development of an 'extended use' product was in focus. The German Arbitration Board stated royalty rates for pharmaceutical products with or without expired active ingredient patents. This is because the active ingredient patent.
2. Corona virus: Restoration of time limits for patents and TM. China is not only reacting with large quarantine measures and areas, but is also adapting its patent and trademark law to the coronavirus. Anyone in China who would miss the deadlines with regard to patents or even trademarks due to the corona virus can apply for restoration of their rights.
3. 12th edition of the Locarno Classification in force. The 12th edition of the International Classification of Industrial Design (Locarno Classification) has been in force since 2019, and now the official Design 2020 list of products is also in force. The amendment concerns new design applications and also registered designs that are reclassified ex officio.

In March,

1. Halloumi vs BBQLOUMI - stage win for Cyprus. Cyprus has achieved a stage victory for the trademark Halloumi cheese before the ECJ - because in the contested judgment the CFI had ruled out a likelihood of confusion with the Union figurative mark BBQLOUMI only in abstract terms.

2. Disclosure of an earlier design: no mandatory format. In the invalidity proceedings concerning the Community design glass packaging, the CJEU clarified the evidence for the disclosure of an earlier design, in particular with regard to the proof of evidence: no binding format for the evidence is laid down.
3. Armani trademark 'Le Sac' loses against earlier national trademark. The case Le Sac versus Le Sac was decided today before the European Court in favor of the earlier national Spanish trademark 'Le Sac'. The later Armani trademark 'Le Sac' leads to a likelihood of confusion.

In April,

1. Mere storage of goods in Amazon Marketplace: no trademark infringement. If a third-party stores goods that are protected by trademark law within the framework of Amazon Marketplace, there is no trademark infringement in the mere storage - as long as the third party does not sell the goods. Whether Amazon is to be regarded as a trademark infringer was not examined by the ECJ.
2. Black Label vs. Labell: Marketing not relevant for similarity. Marketing conditions of disputed signs must be taken into account for the assessment of a likelihood of confusion, but they cannot be taken into account for the establishment of similarity, the ECJ ruled in the Black Label vs. The goods in question were identical 'perfumes'.
3. Enforceability of the first instance judgment when Appeal judgment set aside. If an appeal judgment is cancelled which has overturned a provisionally enforceable first-instance judgment, the provisional enforceability of the first-instance judgment is revived, the German Federal Court of Justice ruled as a leading principle.

In May,

1. Cimpress vs. Impress: Similarity of signs in Polish examined. An interesting case of likelihood of confusion was decided before the CJEU: in the trademark dispute Cimpress vs. Impress, the similarity of the signs was examined in Polish, although the intervener Impress GmbH operates mainly in Germany and both parties are German-speaking in the field of photo and print products.
2. Distinctiveness of 3D marks / shape marks with additional elements. The European Trademark Offices have agreed on a common decision-making practice in trademark law for the assessment of the distinctiveness of 3D marks / shape marks with additional elements. This has been in force since 1 April 2020 and leads to a further harmonisation of trademark law in the EU.
3. KENWELL vs. KENWOOD: CFI confirms likelihood of confusion. The CFI confirms the likelihood of confusion between the Union word marks KENWELL and KENWOOD, both

claimed for kitchen appliances and mixers. Although the second syllables -WELL and -Wood are different and English vocabulary, the signs have a medium degree of similarity.

In June,

1. Oreo vs. Oreo Twins: well-known earlier mark Oreo wins. Is a biscuit shape like Oreo distinctive? This question is at the Centre of a trademark dispute between Oreo and Oreo Twins that has lasted several years. The case has now been heard before the CJEU: The US owner of the earlier well-known Oreo trademark won.
2. Louis Vuitton chequerboard pattern wins before European Court. Louis Vuitton won the trademark dispute about its famous chequerboard pattern before the European Court. Although the chequerboard pattern is devoid of distinctive character, distinctiveness has been demonstrated through use, in particular through the presence of the mark on the internet.
3. No likelihood of confusion between the figurative mark 'B' for leather goods. Despite a high degree of visual and conceptual similarity between the two figurative marks 'B', the CFI held that there was no likelihood of confusion for leather goods in Nice class 18. Distribution and uses must be taken into account in the examination - and graphic stylization is not distinctive.

In July,

1. MP Government in India approaches Supreme Court over Basmati Rice GI Tag. In a new twist in the ongoing battle between the Madhya Pradesh (MP) government and the GI Registry going back to 2008, the MP government has filed a petition before the Supreme Court to challenge the Madras High Court's (HC) decision to not grant a GI tag to its Basmati rice-growing regions.
2. Hermès vs. PlayNoMore: Hermès won against Korean lookalikes. Hermès won before the Supreme Court of South Korea, the highest court. The case Hermès vs. PlayNoMore concerned imitations of the famous Hermès handbags and unfair competition. The luxury handbags from Hermès are inspiring in Asia - even the product imitators.
3. Car rear view cameras: GER Patent declared invalid. The BPatG has declared a German patent for optical traffic area monitoring invalid - relevant for the entire automotive industry. In detail, the court assessed the claimed dichotomy of power supply and optical unit - components used e.g., in car rear view cameras.

In August,

1. Biocidal composition for antibiotics: Clariant patent remains revoked. A German patent of Clariant on the biocidal composition for antibiotics, which has been revoked since 2016 for claims 1 to 5, remains revoked for those claims. Clariant's appeal against the revocation was unsuccessful before the Federal Patent Court.
2. Restrains Infringer from Using Its Mark. Business to business (B2B) portal Indiamart ('Plaintiff'), filed a suit before the Delhi High Court for a permanent injunction to restrain Akash Verma ('Defendant') from deceptively using its trademark, INDIAMART. The Plaintiff, an internet-based marketplace with free and paid listings of products and services, had claimed in the suit that it had started using the brand name since 1996 and is the registered holder of the trademark and the domain www.indiamart.com. The Court stated that the use of the mark INDIAMART involved not only cheating the company, but also defrauding innocent customers into believing that the Defendant is their representative and taking their money fraudulently. Therefore, the Defendant has been restrained from using the mark INDIAMART.
Citation: INDIAMART INTERMESH LIMITED vs. MR. AKASH VERMA & ORS (I.A. 5594/2020)
3. BGH and Ritter Sport: Product shape with functional features. Ritter sport keeps its trademark right at square commodity form of the well-known chocolate, judged the BGH some weeks ago. In the now public full judgement, the BGH states this as an important leading principle regarding a product shape with functional characteristics.

In September,

1. UK Supreme Court ruled in Huawei vs. Unwired Planet. The UK Supreme Court ruled in the important FRAND ruling Huawei vs. Unwired Planet at the end of August. The appeal of Huawei was rejected, and UK courts are responsible for SEP license terms of disputed patents, including foreign patents.
2. Indian IP Office and Website Accessibility for Persons with Blindness –Order of CCPDThe Rights of Persons with Disabilities Act, 2016 ("RPwD Act") was sanctioned with the target of offering impact to the arrangements of the UN Convention of Persons with Disabilities to which India is a part state. The RPwD Act requires Government and private foundations to give data, correspondences and reports in designs that are available to people with incapacities. The standards likewise give that archives must be made accessible in EPUB or OCR based configurations. In various requests in Rajive Raturi Vs. Association of India, the Supreme

Court has underscored the need to make sites and reports available to people with visual impairment. Citation: INDIAMART INTERMESH LIMITED vs. MR. AKASH VERMA & ORS (I.A. 5594/2020)

3. 3D Mark: Shape of a blade of grass in a bottle. Can a bottle shape that has been registered as a graphic representation of the 3D mark with a line in the bottle prove its use as a bottle shape with a blade of grass? No, the European Court ruled in its interesting judgment regarding the graphic representation of the 3D mark.

In October,

1. Airbus patent on positioning by GNSS revoked. Airbus patent for position determination with GNSS receiver was revoked by the DPMA already in 2017. The BPatG has since confirmed the decision. The focus was on the question of whether position determination by a single sensor unit involves the triangulation of an interference source using several sensors.
2. Amul Blocks Fraudulent Use of the Brand Online. In an ongoing decision by the Delhi High Court, Gujarat Co-Operative Milk Marketing Federation Ltd. ("GCMMF"), the owner of India's well known dairy brand 'Amul', got ideal orders against different parties that endeavored to utilize the Amul brand name fraudulently. The Court passed a sweeping request controlling the enlistment centers of such spaces from making any further deal or enrollment of any area names highlighting the Amul brand name. The order likewise called for admittance to these infringement sites to be obstructed. Citation: I.A. 7456/2020 in CS(COMM) 350/2020
3. Manipur's Tamenglong Orange soon to get GI Tags. One of India's states, Manipur is good to go to put another Geographical Indication (GI) in its kitty after the fruitful enlistment of its dark rice. The GI Registry has as of late promoted in its diary the Manipur's Tamenglong Orange, recorded by the Department of Horticulture and Soil Conservation, Government of Manipur.

In November,

1. BioNTech: Success with the Corona vaccine. The final results of the BioNTech vaccine were eagerly awaited, and today the German company reports success with the Corona vaccine. The Mainz-based company has been securing numerous patents for medical RNA treatment for many years - and has been successfully licensing them for years.
2. Word element, Carl: word/figurative mark carl touch. Does 'Carl' as a first name have little distinctiveness - or because it is part of famous brands like Carl Benz or Carl Zeiss? An

interesting ruling of the CFI, especially since a word mark generally has a stronger scope of protection than a word/figurative mark.

3. Instagram Files Opposition against the Mark “INSTAKARMA” Popular social media platform, Instagram, recently filed a notice of opposition against the mark ‘INSTAKARMA’ filed by R3 Media Corporation. Instagram has claimed in the opposition, which has been filed with the US Trademark Trial and Appellate Board (TTAB), that its own mark ‘INSTAGRAM’ has been in use since 2010, and therefore, Instagram has amassed a stellar reputation and a large user base. The use of the mark INSTAKARMA will dilute Instagram’s mark, and create confusion among the consumers.

In December,

1. Shape of a champagne bottle: likelihood of confusion? Several 3D Trademarks in the shape of a champagne bottle faced the question of likelihood of confusion before the CFI. Even non-distinctive elements of similarity must be taken into account for the assessment of likelihood of confusion, the European Court ruled.
2. Philips institutes lawsuit for patent infringement against Xiaomi Inc. Koninklijke Philips has filed a lawsuit for patent infringement against Xiaomi in the High Court of Delhi. The Dutch company has alleged the Chinese smartphone company of using its Universal Mobile Telecommunication Service (UMTS) technology. Philips has asked the High Court to restrain Xiaomi from “assembling, selling of phones through any of the online-commerce platforms and/or retail chains in the subcontinent.” It has also asked the Central Board of Exercise and Customs to stop all imports of Xiaomi’s cellphones to India.
3. India and USA sign MoU to strengthen intellectual property cooperation. On 2nd December 2020, India and USA signed a Memorandum of Understanding to strengthen intellectual property cooperation between the two countries.