

Question B (Prague)

German Report

Should or could an undertaking obtain protection against the usage by non-competing undertakings of their trademark, distinctive signs and other components of their image and identity?

1. 1. Brand Image and defence of the brand image

1. 1.1 The term „brand image“ is not used in German statutory law nor can it be found in German court decisions. It is considered to belong to marketing literature where it indicates the psychological aspects attributed to a product or service. If used at all in legal literature, “branding” means quite broadly any distinguishing of a product (or service) from other products (or services) by means of a distinctive name, title, colour, get up etc.
1. 1.2 Instead of “brand image”, German statutory law speaks of the “reputation“ of marks or other distinctive signs (see 1.4). As one of the (unwritten) criteria for assessing the exploitation of a reputation, German courts and literature refer to the “product image” and the “image transfer”.
1. 1.3 In Germany, the legal instruments to defend a “brand image” (as interpreted in the sense above) are two-folded: (1) trade mark law and (2) unfair competition law. Both are distinct fields of law of high economic importance that can look back on almost 100 years of application. Both sets of law have, however, been replaced by modern laws during the last two decades: the Trade Mark Act (TMA) in 1994 and the Act Against Unfair Competition (UWG) in 2004. There is an interaction between both laws insofar as unfair competition law has a “gap filling” function – it steps in where IP law lacks in (justified) protection. Since 1994, many

constellations that were previously decided under unfair competition law e.g. the protection of well-known marks against the exploitation of the reputation are now encompassed by trade mark law. As a consequence, the legal protection of the “brand image” is not the same today as it was twenty years ago.

1. 1.4 The *current statutory framework* for the protection of the “brand image” can be characterized as follows:

(1) *Trade Mark Law*

The German Trade Marks Act (TMA) of 1994 is extremely broad. It not only implements the Trade Mark Directive 89/104/EC – including all its optional provisions – but extends protection to all distinctive signs, unregistered marks with secondary meaning, company names, work titles and geographical indications of origin etc. Trademark protection is open to names, pictures, designs, colours, shapes etc. The scope of protection for trade marks is defined in Sect. 14 TMA. Similar to Sect 6 of the Directive, trade marks can be infringed not only by the use of an identical sign for identical products or the use of an identical or similar sign for identical or similar products which causes the risk of confusion, but also if the trademark is well-known and

“the use of that sign, without there being a justifiable reason, unfairly exploits, or is detrimental to, the distinctive character or the repute of such trademark.”

The statutory text speaks of “goods or services that are not similar to those with respect to which the trademark enjoys protection” but according to the “Davidoff”-decision of the ECJ, the extended protection also applies to cases where the products are identical or similar.

Other distinctive signs than trade marks that fulfill the requirements for “*commercial designations*” in the sense of Sect. 4 TMA (all company symbols, titles of works) enjoy similar protection. Sect. 15 TMA protects well-known

designations even without any likelihood of confusion against unjustifiable use that unfairly exploits, or is detrimental to the distinctive character or the repute of such commercial designation.

As an unwritten statutory requirement, German courts additionally require the infringing sign (or commercial designation) to be used in *business and “as a mark”*. The requirement of “trade mark use” was originally interpreted as a use to name the infringers’ own products. Following the decisions of the ECJ in “Céline” and “L’Oréal”, the German Federal Supreme Court (BGH) has adopted a broader definition of trade mark use: encompassed is any use that might impair the functions of the mark; it is sufficient that it evokes an association with the mark, even if it is used in a satirical or ornamental context. This has extended the scope of trade mark protection for well-known trade marks against the exploitation of their image considerably (but has not necessarily extended protection as such – because the incidences now decided under trade mark law were formerly decided under unfair competition (see 1.3)).

(2) *Unfair Competition Law*

Unfair competition law is regulated in the “*Act Against Unfair Competition*” (UWG) of 2004. Although originally derived from general tort law, it is now a distinct field of law that protects competitors, consumers and the general public alike. As its predecessor, the UWG of 1909, it is of a high practical importance in Germany.

Centre piece of the UWG is a general clause in Sect. 3, prohibiting all unfair commercial practices. The term “unfair” is explained by a list of examples of unfair practices (Sect. 4) and three additional provisions on misleading, comparative and intrusive, harassing practices (Sect. 5 to 7 UWG). Pursuant to Sect. 8 et seq., the UWG is enforced almost exclusively through civil law sanctions (injunctions, removal, damages, and confiscation of profit). In practice, the focus is on requests for injunctive relief, often enforced through interlocutory injunctions. The right of action is given to competitors, their organizations, consumer organizations, and the Chamber of Commerce.

There is no specific prohibition of “*parasitic commercial behavior*” in the UWG. The element of parasitism can, however, be taken into account in the assessment of unfairness under the general clause (although German courts are increasingly reluctant to do so - see BGH GRUR 2005, 349 - Lego).

This does not mean that the protection of the “brand image” is without basis in the UWG. Insofar several provisions of the UWG can play a role.

- - Pursuant to Sect. 5 II UWG, a commercial practice shall be deemed unfair (misleading) “if in connection with the marketing of goods or services, including comparative advertising, it creates a risk of confusion with other goods or services or with the trade mark or other distinguishing mark of a competitor.”
- - Pursuant to Sect. 6 II No. 4 UWG, comparative advertising is not allowed if it “takes unfair advantage of the goods, services, activities or personal or business circumstances of a competitor.”
- - Pursuant to Sect 4 no. 9 b UWG, it is considered unfair to market an imitation of a good or service if it “unreasonably exploits or impairs the assessment of the replicated goods or services.”
- - Pursuant to Sect. 4 no. 10 UWG, it is considered unfair to “impede a competitor through a targeted action.”

- *Competitive relationship*

- (1) For *trade mark law*, a competitive relationship is *not a prerequisite for protection*. The protection against the exploitation of the reputation of well-known trade marks (sect. 14 I 3 TDA) explicitly extends protection for the use

of products that are not identical or similar to those for which the well-known mark is known. The factor that the products are in competition with each other can, however, be taken into consideration by the courts in the assessment of the “image transfer” necessary for the exploitation of a reputation or for defining the element of “unfair.”

- (2) It can be different under *competition law*. Although the application of the UWG does not require a competitive relationship but only an action “objectively connected with the sale of goods or services” and most provisions of the UWG can be applied without any competitive relation (e.g. the general clause), some provisions explicitly refer to “a competitor”. This is the case for all four statutory provisions named above. Furthermore, the right of action is granted to “competitors” (Sect. 8). Consequently, the protection of the “brand image”, based on the prohibitions in Sect. 4 nos. 9, 10 and 5 II, 6 II UWG and enforced through the owner of the distinctive sign would require a competitive relationship.

Pursuant to Sect. 2 no. 3 UWG a “competitor” is any person who is in a “concrete competitive” relationship with another person. As the ECJ has defined this for comparative advertising, the products must be interchangeable. German courts have consistently used similarly broad concepts and also acknowledged so-called “ad hoc”-competition. A “concrete competitor relationship” not only exists between enterprises that actually (or potentially) deal with goods or services in the same sector but also between enterprises on different levels and even between enterprises that compete in the licensing market for certain marks or products. The German Federal Supreme Court decided as early as 1982 - in a case concerning the Rolls Royce trademark “Flying Lady” in an ad for whisky – that “it is sufficient that both parties (.....) come to the *advertising business* with the same offer, e.g. the chance to use pictures of Rolls Royce automobiles as a support for their own advertising, so that to that extent a competitive relationship exists between them.”

It should be noted that the Supreme Court's decision (which affirmed an unfair exploitation of the famous mark's reputation) was before the passing of the 1995 Trade Mark Act and cannot any longer be considered the leading case in this field. The broad interpretation of the term "competitor", however, still applies in unfair competition law.

To sum up, the "competitive relation" is not a requirement for *trademark law* (but may be considered in assessing the unfairness of the exploitation of the reputation of a well-known mark or sign). It is required in *unfair competition law* for all provisions directed towards competitors and consequently for all provisions that might potentially protect the "brand image." It is further required for the competitor's right of action. The term "competition" is, however, interpreted quite broadly by established court decisions.

2. Trademark, principle of speciality and competitive relations

2.1 Connections between the principle of speciality and competitive relations

As mentioned, the German Trade Mark Act protects all trademarks and distinctive signs against (1) the use of an identical sign for identical products; (2) the use of an identical or similar sign for identical or similar products if there is risk of confusion; and (3) the use of a sign identical or similar to a well-known mark without due cause which takes unfair advantage of the well-known marks reputation or is detrimental to its distinctive character.

In the third incidence (the protection of well-known marks) the principle of specialty is irrelevant. In the first one (identical signs, identical products) it is evident, in the second one (identical or similar signs/identical or similar products causing a risk of confusion) it is required.

Neither the notion of "similar products" nor the notion of "*risk of confusion*" requires

a competitive relationship between the claimant and the respondent. However, in determining the likelihood of confusion - which in turn depends on the similarity of the products - all relevant factors have to be taken into account. Relevant factors are, for instance, the characteristics of the product, the intended purpose of use, the method of use etc. The similarity (and the risk of confusion) is determined according to the perception of the average (actual or potential) user of the product. Insofar, courts may also take into account whether the products, according to their characteristics, are regarded as being in competition with each other or are considered as complementary products.

Although a competitive relationship is not a statutory requirement, in practice the risk of confusion will be more likely if the products compete with each other. Pursuant to ECJ case law there is an interaction between the degree of distinctiveness of the earlier trademark, the identity (similarity) of the mark and sign and the identity (similarity) of the goods and products. This is, however a much broader notion than that of a “competitive relation”. “Similar products” were for instance seen in cigarettes and apparel for smoking (BGH GRUR 1999, 496 – Tiffany); tomato products and olive oil (BPatG Mitt. 2001, 7 – DelMonte) etc.

2.2 In which situations and conditions may trade mark rights be opposed to the use of the trademark by a non-competing undertaking?

As discussed above, German trade mark law protects well-known marks against the exploitation of their reputation outside of the principle of speciality. A competitive relation between the undertakings is not required. The latter is considered as one of the (several) factors that the courts may take into account while assessing the risk of confusion/similarity of goods or the extended protection for well-known marks (exploitation of the repute).

2.3 Protection of well-known marks against exploitation of repute or lessening of distinctive character.

Again, it has to be distinguished between protection provided by trade mark law

and protection provided by unfair competition law. Although in most cases the outcome will be similar, the requirements for protection can be different.

a. (1) *Trade Mark Protection*

Section 14 of the German Trade Mark Act corresponds to Article 5(2) of the Directive 2008/95/EC. Consequently, the statutory text requires a well-known mark that has a reputation in Germany, and a use of a sign that “without due cause” either takes “unfair advantage of the repute of the trademark” or is “detrimental to its distinctive character”. As discussed above, German courts further require the infringing sign to be used in business and “*as a trademark.*”

According to the ECJ (see, e.g., the 2007 “Chevy”-case), an exploitation of reputation adheres to the principle of correlation – the more distinctive the trademark is, and the more it tends to resemble a famous mark, the more likely seems an image transfer and thus an appropriation of its reputation.

The “taking advantage” of the repute of a well-known mark is considered as evident if there is an *image transfer*. An image transfer is not restricted to competing products. On the contrary, German courts have frequently dealt with cases in which the products were totally different, e.g. the Rolls Royce trade mark (Flying Lady) used in an ad for whisky. There only has to be the possibility that the buyers of one product come into contact with the other product (assumed with “Dimple”-buyers of whisky and cosmetics, see BGH GRUR 1985, 550). The well-known mark has to be original per se or must have acquired a strong secondary meaning, it must have a concise image. This was, e.g. denied for McDonalds as the image as an efficient franchise was considered too vague; OLG München, GRUR 1996, 63 – MacFish).

The protection granted to well-known trademarks under sect. 14 TMA is, however, not restricted to cases of an image transfer. Equally important are constellations where well-known marks are used as an *attention-getter*. The use of the (in Germany famous) mark “TÜV” (for technical testing services) in “Erster privater

TÜV” (“first private TÜV”) for services offered on the internet was without any risk of confusion considered to be a trade mark infringement because of the unfair exploitation of the well-known mark’s reputation (BGH GRUR 2011, 1043).

The exploitation of a product’s reputation in order to obtain attention for one’s own product often implies a surprising, *satirical use* of the mark (which in turn can be highly *unpleasant* for the famous mark; see, for instance BGH GRUR 1995, 57 – use of the well-known mark Nivea for cosmetics for condoms; in the same direction GRUR 1994, 808 – Mars; GRUR 1986, 759 – BMW).

Another group of cases concerns the so-called *ornamental use*, in which for instance, a trademark is used as a pattern of a sweater (BGH GRUR 1994, 635 – Pulloverbeschriftung).

It should be kept in mind, however, that not every reference to a well-known trade mark is considered a trademark violation. The mark has to be used “*as a trademark*”, “*without due cause*” and “*unfairly*.” “Unfair” means that according to a balance of interests considering all relevant aspects, in particular all aspects that might justify the respondents use of the mark, the latter has not to be accepted by the trade mark owner. Insofar *constitutional aspects* can also play a role.

The attitude of German courts towards all these criteria named above is best demonstrated in the “*violet postcard*”-case, decided by the BGH in 2005 (published in English in 38 IIC 119 (2007)).

The case concerned a well-known colour trademark in a specific shade of lavender, registered for chocolate by the producer of “Milka”, and often used for a “lilac cow”. The same shade of lilac was used for a commercially marketed postcard with a satirical adaptation of a famous German poem by Rainer Maria Rilke. The first line of the poem “Über allen Gipfeln ist Ruh” was supplemented with the line “irgendwo blökt eine Kuh, Muh”^{*} and the author’s name was changed into “Rainer Maria Milka.”

As to a violation of sect 14 TMA, the Federal Supreme Court (BGH) stated:

A use as a trade mark is to be assumed if the sign is used in a manner such that it distinguishes the goods and services bearing the sign from the goods or services of other enterprises within the framework of the marketing of the product. ... For the scope of application of Article 5(2) of the Trade Mark Directive (Sec. 14 (2) No. 3 of the Trade Mark Act), it is also sufficient according to the judicial practice of the ECJ for the public concerned to regard the conflicting sign as decoration while associating it mentally with the famous trade mark on the grounds of the high degree of similarity. ...

bb) The question whether a use is a use in the manner of a sign is a question of law, but the answer depends largely on the findings of fact concerning the interpretation of the averagely informed, attentive and reasonable consumer as determined by the trial judge (...).

In the case at issue, there is no need to determine whether the target public, as the appeal court assumed and as contested by the appeal on the law as being contrary to experience, assumes that the postcard in question originated from the plaintiff's enterprise. Even if the public interprets the term „Milka" and the violet colour of the postcard purely as a product get up, it will mentally associate these elements with the plaintiff's trade mark on the grounds of the plaintiff's identical word trade mark and the background colour of the defendant's postcard, which is very similar to the plaintiff's colour mark. The appeal court rightly held that the stylistic means used by the defendant unmistakably refer to the plaintiff's trade marks. The association between the design of the postcard and the plaintiff's trade marks is precisely what constitutes the joke of the postcard. Thus, a use as a trade mark within the meaning of Sec. 4(2) No. 3 of the Trade Mark Act is to be assumed in the case of the issue.

As the appeal court also assumed, the defendant exploits the particular degree of attentiveness that is associated with the use of the plaintiff's trade marks in the form of the name of a fictitious poet and the violet-coloured background of the postcard. The humorous character that the defendant aims to achieve through the design of the postcard can only be obtained if the target public recognizes the reference to the plaintiff's trade marks, which presupposes that they have a reputation. In this way, the defendant exploits the particular attentiveness aroused by the association between a designation and a trade mark with a reputation.

However, the appeal on the law successfully contests the appeal court's assumption that the defendant was dishonestly using the plaintiff's signs without due cause.

aa) Nevertheless, where a trade mark with a reputation is used in identical or similar form for the purpose of exploiting the attentiveness associated with its use, a conduct establishing dishonesty within the meaning of Sec. 14(2) No. 3 of the Trade Mark Act is to be assumed as a rule.

bb) In the case at issue, however, a trade mark infringement by the defendant's postcard in question can be excluded by taking into account the defendant's right to the freedom of art as protected by Art. 5(3) of the Constitution. The protection of the freedom of art applies not only, as the appeal court apparently assumed, to works that have a certain creative level (...).

(2) *Unfair competition law*

As mentioned, there is an interaction between IP-laws and unfair competition law insofar as the “gap filling function” of the UWG becomes less important the more protection is granted through IP-laws. This can also be seen in the protection of well-known marks. Before the enactment of the Trade Mark Act 1994, no protection outside of the principle of specialty existed. Consequently, the appropriation of a famous mark's reputation without any risk of confusion could only be dealt with on the basis of the general clause in Sect. 1 UWG 1909 (prohibition of all acts of competition that were against “*bonos mores*”). On this basis, the BGH decided for instance the famous “Rolls Royce”-case cited above where the use of the Rolls Royce in an ad for whisky was declared unfair competition. After the enactment of Sect. 14 TMA and its extended protection for well-known marks, constellations like this are mainly decided under trademark law.

Unfair competition law, however, still plays a role in constellations where *trade mark use* is missing (see 4.2).

Other cases concern *comparative advertising*. Pursuant to sect. 6 II UWG, comparative advertising is not allowed if it exploits the competitor's mark - which, contrary to trademark law, has not necessarily to be a well-known mark. German case law emphasises that the use of a competitor's mark as such in a comparison, even one with a strong image, is not an exploitation of reputation. There has to be an additional element of unfairness, e.g. an unusual focus on the competitor's mark that is not justified by the comparison itself or consumer interests. As the ECJ has indicated in its L'Oréal-decision, the notion of unfair exploitation is

determined in accordance with the criteria developed in trademark law. Consequently, the outcome of a case decided under unfair competition law and under trade mark law will often be similar. For instance, in a recent decision on the basis of sect. 6 UWG, the Federal Supreme Court denied a denigration of the trademark "Bild" (registered for a daily yellow paper) although the – humorous - comparison between its readers and those of the advertiser's newspaper presented the "Bild"-reader as extremely primitive (BGH GRUR 2010, 161 – Gib' Zeitung). The arguments used in this decision were quite similar to those of the "violet postcard"-decision cited above.

Outside of comparative advertising, the Supreme Federal Court (GRUR 2005, 163) had decided that the use of a picture of a famous sports car in an ad for car wheels is not an unfair exploitation of reputation because it is justified by the consumer's interest to be informal about the concrete use of the wheels and the fact that the image of the car's mark was not unnecessarily put forward (as to a different assessment see the "Rolls Royce"-case, discussed under I 1).

Unfair competition law further can be applied in cases of *product imitation* that lead to an exploitation of the reputation of the original (sect. 4 no. 9 lit. b UWG). As early as 1985 the BGH has decided that the mass marketing of cheap copies of a luxury product (Rolex watch) can constitute unfair competition because it may destroy the exclusivity of the famous mark (BGH GRUR 1985 – Tschibo/Rolex). Recent decisions, however, have been more restrictive. In a case that concerned the imitation of the famous handbags of Hermès (which were, however, marketed under a different brand), the BGH neither saw a risk of confusion nor an exploitation of reputation - it was assumed that the buyers of such products are well aware of copies and thus pay close attention also to minor differences; consequently there is no "post sale confusion", and no image transfer (BGH GRUR 2007, 795). The imitation of famous sports cars as toys was equally not considered unfair (BGH GRUR 1994, 732 – MacLaren).

As to the offence of the *impediment of an individual competitor* through a targeted action (sect. 4 no. 9 UG), German jurisprudence considers trade mark protection

as *lex specialis*. The BGH, for instance, refused to examine this point in the “lilac postcard”-case, discussed above. It can be different if there is no “trade mark use” so that a protection based on sect. 14 TMA fails (for Adwords see 4.2)

2.4 Overlaps between trademark law and unfair completion law

Although Sect. 2 of the German Trade Mark Act explicitly states that additional protection on the basis of other statutory provisions, e.g. unfair completion law, is not excluded, the exact demarcation between both areas of law is more disputed than ever. Until recently, the prevailing view considered trademark protection as *lex specialis* so that unfair competition law was restricted to its function of filling the gap or to incidences where the requirements for trade mark protection were not met (e.g. infringement without “trade mark use”) or additional aspects that play no role in trademark law were involved (e.g. deception). Since the Directive 2005/29/EC introduced a prohibition of so-called “imitation marketing” (deception through confusion between signs or marks), it is emphasised that both laws can *in principle be applied side by side* because they pursue different goals and have at least partly different requirements. It is, however, equally stressed that unfair competition law may not undermine the principles of trademark law, in particular not its conditions and terms of protection, and its right of action which is much broader in unfair competition law than in trade mark law.

The outcome of this discussion is still open. In areas without any European harmonization, like the impediment of competitors, which is regulated in sect. 4 no. 10 UWG, the Federal Supreme Court still sees trademark law as *lex specialis*.

3. Trademark, economy of the trademark and relations with competition

- 3.1 Section 14 TMA requires the trade mark to be used in the course of trade and as a “trade mark.” Consequently, trade mark law does not apply to any use “*outside business.*” It was already mentioned that the German courts, following the ECJ, have quite broadly interpreted the notion of trade mark use. However, a behavior that is purely private, political etc. is not encompassed by trade mark law, e.g.

politically motivated boycotts against certain enterprises or marks or the use of a trade mark as a motto for a private party or the modification of a branded watch by a private person (OLG Karlsruhe GRUR 1995, 417 – Rolex).

The same rule applies to unfair competition law. Purely private or social behavior is not “objectively connected” with the sale of goods (although it may have an effect on the sale of goods). The offer of goods on the internet (Ebay) by private persons is neither trade mark use nor a commercial practice under the UWG (as to Adwords see 4.2).

- 3.2 The first three functions (origin, quality, communication) are undisputed. The fourth function (investment and advertising) has met some criticism from (some) legal scholars. It was argued that the explicit recognition of investments as a function might strengthen the property right character of a trade mark to a degree that endangers the mark’s tradition function to guide consumers through an increasingly complex consumer world.

4. Other distinctive signs

- 4.1 Distinctive corporate signs can be infringed through all other signs, including marks. The prevailing view (at least before the ECJ’s “Céline”-decision) sees the use as a trade mark and a company name as intertwined because the business name at least indirectly also identifies the commercial source of the goods or services.

As mentioned, distinctive corporate signs and work titles enjoy protection against the exploitation of their reputation even if the infringing sign is not used for similar goods (sect. 15 TMA). As with the extended protection for well-known marks, the use has to be unfair, which is determined according to a balance of interest. This is not restricted to any competitive relationship. For example, the use of “Dr. Sommer” for a rock band was regarded as an unfair exploitation of the title “Dr. Sommer” for a well-known column in a magazine.

- 4.2 The registration of a *domain name* is considered as “trademark use” (or use of a distinctive corporate sign) if it used in relation to goods or services and not purely as a private address. According to the Federal Supreme Court, the use of *Adwords* as such is not a trade mark use (BGH BGH 13.1.2011, MMR 2011, 590 – Bananabay II). It can be different if the “Adword” is taken up in the ad of the respondent so that there is a clear reference to the mark (LG Nürnberg-Fürth 29.2.2012, WRP 2012, 879). If trade mark protection fails, unfair competitive law becomes crucial. In its “Adwords”-decision, the German Supreme Federal Court denied, however, any impediment of the owner of the mark as a well as any deception of the public (mainly because there was no image transfer and the recognizable reference to the mark).

The reputation of well-known marks and other distinctive signs can be exploited through the use of domain names, even for not similar goods or services. It is considered to be “unfair” if the owner of a well-known company name is prevented from using his name as a domain because this has been registered by another undertaking in order to attract attention. For instance, the domain “shell.de” registered for translation services was considered an exploitation of the famous mark and company name “Shell” (BGH 22.11.2001, MMR 2002, 382).

5. Reprehensible conduct and lack of relation of competition

- 5.1 Trade mark protection against the exploitation of the reputation of well-known marks and other distinctive signs does not require a competitive relationship, unfair competition law only for those provisions that refer to “a competitor”. For other provisions, e.g. the general clause in sect. 3 UWG, it is not a prerequisite. If neither trade mark law nor unfair competition law applies, mainly because the behaviour is not within business, the general tort clause (sect. 823 BGB) or the protection for names (12 BGB) may step in.

6. Infringement, unfair competition and parasitism

As to the relation between trade mark law and unfair competition law, see above.

7. To finish

In general, enterprises are well protected against the exploitation of their reputation, even through the use for totally different products. The German Trade Mark Act is very broad and protects marks and all distinctive signs alike. Recent case law has found a convincing way to separate “fair” from “unfair” behavior, e.g. in cases of “humorous” use. Unfair competition law grants equally broad protection but is restricted to those cases that cannot be solved under trade mark law. Whether this traditional view can be upheld in the light of Article 6 of the Directive 2005/29/EC (imitation marketing) remains to be seen. In general, it is to be regretted that Community law increasingly blurs the demarcation between the IP-laws and unfair competition law (or tort law in other countries) by introducing provisions that do not take into account the existing “Acquis Communautaire.”

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