

## BELGIUM



Jan Ravelingien  
Marx Van Ranst Vermeersch & Partners  
[jan.ravelingien@mvp.be](mailto:jan.ravelingien@mvp.be)  
[www.mvvp-law.be](http://www.mvvp-law.be)

<b>1. Topic:</b>	Passing-off/copyright infringement for a pay-off or slogan: "The World's Local Brewer" vs. "The World's Local Bank"
<b>Who:</b>	INTERBREW vs. HSBC BANK PLC
<b>When:</b>	26 December 2002
<b>Where:</b>	Court of First Instance, Brussels
<b>What Happened:</b>	<p>The Belgian brewer Interbrew commercialises a multitude of beer brands. In 1999, Interbrew found "The World's Local Brewer" as slogan, applied since 2000. Since 2002, The Hong Kong and Shanghai Banking Corporation HSBC uses the slogan "The World's Local Bank" in advertisements. HSBC finds that this use is not confusing and does not infringe any intellectual copyright.</p> <p>The Court first confirmed the Court of Justice of the EC ruling that copyright can offer larger protection than the protection under trademark legislation that can simultaneously apply.</p> <p>For copyright protection to apply, the slogan has to be original. Originality is the personal print of the personality of the author of the expression of his intellectual effort. HSBC considers that the underlying idea is sought to be protected by Interbrew, rather than the slogan itself. The idea is to oppose notions of globalisation to locality. Also, HSBC finds "World's local" part of the current language, too simple with references to use on the Internet.</p> <p>Interbrew contests that the protection of an idea is sought.</p> <p>The Court considers that the expression of an idea in a particular form is protected if that form is original. Not the originality of the idea is reviewed. The idea of opposing global to local can find expression in different forms. Interbrew had the choice between several forms to express the idea. But this choice does not suffice to confer originality to the form. The importance of the creative work (quantitative) is not relevant for the appreciation of the originality.</p> <p>Further according to the Court, the association of two words that are a priori antagonistic is not as such sufficient to grant the expression originality. This association seems to be quite commonly done. Many examples of expressions of "world's local" are found. The slogan therefore is too simple ("banal") to be original.</p> <p>The Interbrew claim therefore was dismissed.</p>
<b>Why This Matters:</b>	Copyright protection of slogans is generally accepted in Belgium and the

	<p>threshold “originality” has been applied in a way that copyright protection is quite easily accepted.</p> <p>This ruling shows that courts will set limits to copyright protection if defendants show in sufficient detail that parts of the slogan are too commonly used to be protected.</p> <p>Interestingly, The Brussels Court of Appeal had equally denied copyright protection to the slogan “so many people, so many shoes”, developed by Saatchi &amp; Saatchi for the shoe chain Brantano. The slogan is an adaptation of the old proverb or saying “so many heads, so many sentiments/feelings” (from the old Latin ‘Quot capita, tot sensus’ or ‘quot hominess, tot sententiae’). Brantano sued the Belgian furniture shop Top Mart that launched the slogan “so many people, so many furniture”. The idea to apply an old saying through adaptation to shoes in order to demonstrate the big variety of the offer of shoes was found clever/smart; but the Court of appeals found that this still was insufficient to claim originality on the basis of the personal imprint of the author (Ruling of 21 September 2001 thereby following the decision in first degree of 16 January 2001).</p> <p>The matter of Interbrew vs. HSBC is currently appealed.</p>
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<b>2. Topic:</b>	Misleading Advertisements – Ads for products without sufficient stock
<b>Who:</b>	The Belgian State vs. Carrefour (warehouse)
<b>When:</b>	15 January 2003
<b>Where:</b>	President of the Court of Commerce in Brussels – cease and desist order
<b>What Happened:</b>	<p>Carrefour Belgium advertises in massive scale through all kinds of print media, website and billboards to draw the attention of consumers to exceptionally advantageous sales for a large variety of products over time such as household electronics, wines, software.</p> <p>Many consumers returned disappointed from Carrefour as the advertised products were no longer on stock notwithstanding the promotional period that was still running.</p> <p>Several official protocols were drawn up and finally, the Belgian State accepted the payment of a fine. But complaints persisted: misleading ads for wines that in fact have a different year, television sets that were offered at higher prices than the advertised price, etc. A digital camera was out of stock as from the first day of the promotion.</p> <p>In view of the systematic and recurring nature of the misleading practices, a cease and desist order was pronounced with a very high daily penalty and a publication of the order at the cost of Carrefour in several newspapers.</p>
<b>Why This Matters:</b>	The practice was surprisingly general and persistent. The daily penalty was as high as 50,000 EUR.

<b>3. Topic:</b>	Domain Name "grabbing" between two leading publishers of legal publications
<b>Who:</b>	WOLTERS KLUWER BELGIUM vs. INTERSENTIA
<b>When:</b>	20 January 2003
<b>Where:</b>	President of the Court of Commerce in Brussels – Cease and Desist Procedure
<b>What Happened:</b>	<p>WOLTERS KLUWER is a publisher of legal periodicals and books and started in 2002 with the legal weekly "Nieuw Juridisch Weekblad" (New Legal Weekly-, abbreviated "NJW". The first issue appeared in September 2002.</p> <p>The new name was made public Mid 2002. INTERSENTIA is active in the same field as direct competitor and publishes, i.a., "Rechtskundig Weekblad" ("Legal Weekly"). Intersentia registered "NJW" as domain name ".be" in August 2002.</p> <p>The President of the Court accepted that the registration of the domain name was done in bad faith to damage the business of the competitor, even if the domain name of defendant was the abbreviation "NJW" of "nieuwe juridische wegwijzer" (or, freely translated, "new legal indicator").</p> <p>The President ordered a daily penalty of 15.000 EUR per further infringement through use of the sign as of the third day after notification of the decision and accepted that a short summary of the Court order be published in a publication of Wolters Kluwer at the costs of Intersentia.</p>
<b>Why This Matters:</b>	The abbreviation "NJW" for Wolters Kluwer was totally new; the infringing domain name was for a publication that exists since 70 years, but under a different name (abbreviated "RW").

<b>4. Topic:</b>	Media Law - Privacy – Disclosing names by journalists – proper journalistic practices
<b>Who:</b>	Food Dynamics N.V. vs. VTM (television station)
<b>When:</b>	10 January 2003
<b>Where:</b>	Court of First Instance, Brussels
<b>What Happened:</b>	<p>The Flemish commercial television station VTM was ordered to pay an amount of 10.000 EUR damages for improper journalistic practices.</p> <p>In its January 10, 2003 judgment NV Food Dynamics / Vlaamse Media Maatschappij, the Brussels court condemned the television station for bringing a news item in which the plaintiff was mentioned by name in relation to dealing in illegal hormonal products.</p> <p>The news broadcast showed footage of the sale of products, filmed with a hidden camera, in which a farmer was shown while buying some products out of the trunk of a car from an (unidentifiable) representative of the plaintiff. The footage actually was selected from a broadcast of a French television station. The next day the same footage was used and it was stated that the suspect works for the plaintiff and that the plaintiff has ties with trade in hormonal products. It was added that this company denied being part of such trade.</p> <p>The court states that hormonal products as such can be legal, but that</p>

	<p>the way of presenting in the news equated hormonal products with forbidden products.</p> <p>Soon after the incident, the judicial inquiry was stopped and the company was cleared, as the investigation showed that the sold products were only food additives on a herbal basis, in which the company normally trades.</p> <p>The court repeats principles of journalistic behaviour: a journalist must inform the public as objective and complete as possible, and with the most care, modesty, unselfishness and cautiousness as well in searching the news as while distributing it. This sounds very severe. It is added that a journalist must act like any normally careful journalist in the same circumstances. This sounds much less severe.</p>
<b>Why This Matters:</b>	<p>The interesting part is the application of these principles. In this particular case, the broadcasting company should have waited to make these allegations and to give the public a certain impression until it was clear what substances really were traded, certainly if this information could be obtained in a reasonable way. This was the case since a lab report could have revealed the true nature of the traded products.</p> <p>By linking the name of the company directly to the traffic of illegal hormonal products, without reasonable grounds, the news item clearly damaged the reputation of the company.</p> <p>Merely adding that the company denied the allegations, did not take away the impression of the public that the company was guilty.</p> <p>The news item itself was correct when saying that a certain judicial inquiry had been started against a certain company, but the circumstances in which the news item was brought went too far just by showing a "suspicious transaction", by making own comments on hormonal products. These circumstances raised a public impression that the company is actually linked to an illegal traffic without sufficient and reasonable grounds.</p> <p>As a result, the news report was as such not impartial or objective as one could expect from a normal careful journalist. For the court it seemed that the scoop was apparently more important than an objective and complete news report.</p>

<b>5. Topic:</b>	New Self-Regulation – Prior Vetting of all external promotional communication of the Belgian Pharmaceutical Industry
<b>Who:</b>	The Belgian Pharmaceutical Industry Association – AGIM – <a href="http://www.pharma.be">www.pharma.be</a>
<b>When:</b>	1 April 2003
<b>Where:</b>	Brussels
<b>What Happened:</b>	The Belgian Pharmaceutical Industry Association decided to put in place for all its members a prior vetting system of all external promotional and advertising communication.
<b>Why This Matters:</b>	This is an important step in the development towards uniform industry

	standards for promotional communication, not only through codes of conduct, but also in day-to-day application.
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<b>6. Topic:</b>	New Belgian Council for Journalism
<b>Who:</b>	Council for Journalism
<b>When:</b>	October 17, 2002
<b>Where:</b>	Brussels
<b>What Happened:</b>	<p>The "Raad Voor Journalistiek" (Council for Journalism) has been launched as a self regulatory body for media ethics in Belgium for the Flemish media. Its bylaws were published on October 17, 2002, the excellent website <a href="http://www.rvdj.be">www.rvdj.be</a> was launched and the first decisions are yet to be made.</p> <p>The Council for Journalism is characterised by the following: it is a private initiative; both journalists and media companies participate; external members from outside the profession are added to the Council; preliminary mediation is key.</p> <p><b><u>1. Private initiative vs. governmental initiative</u></b></p> <p>The Council for Journalism is incorporated as a private not for profit association and therefore radically chooses for self regulation. Its members are the professional associations of journalists, individual journalists, the professional associations of media companies (newspapers, magazines) and broadcasters and electronic media.</p> <p>Media ethics can be regulated upon governmental initiative or have a statutory basis. The media often prefer self-regulation.</p> <p>Self regulation is to be seen in the light of political pressure that an initiative for more regulation was needed. The media decided to promote self regulation and widen its scope. By lack of initiatives of the sector itself, the public authorities might have taken initiatives themselves, as there is a broad concern about the relationship between politics, society and media.</p> <p><b><u>2. Participation of journalists and media companies: bi-polar model vs. uni-polar model</u></b></p> <p>The forerunner of the Council for Journalism was the Council for Journalistic Ethics, which was organised within the professional association of journalists only.</p> <p>In order to obtain a wider platform, now also the media companies themselves are associated. The advantage is that the media companies will better understand the media ethics challenges that their journalists face. Making news is a collective responsibility of journalists and media companies and goes beyond the individual responsibility of an individual journalist.</p> <p>The media companies commit themselves to publish the decisions of the</p>

	<p>Council for Journalism in their own medium if they are concerned, which gives those decisions more weight and impact.</p> <p><b><u>3. Importance of mediation. Other tasks of the Council for Journalism</u></b></p> <p>Any person that considers that media ethics are at stake and who was directly involved or concerned by a publication or broadcast can introduce a complaint with the secretariat of the Council for Journalism. There is an obligatory mediation initiative to be taken by the secretary-general before the complaint is actually taken into consideration by the Council for Journalism. If the mediation leads to the end of the dispute, the complaint is no longer pursued.</p> <p>The complaint procedure itself is well organised. A reporting committee is installed for every complaint that the Council for Journalism decides to take into consideration. All parties can be heard. The Council for Journalism can always decide not to deal with a certain complaint if the complaint is not relevant.</p> <p>Finally the Council will also be instrumental in drafting a code, taking into consideration the existing international codes and company codes.</p>
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<b>7. Topic:</b>	Audio-Visual Works – Tax Shelter in Belgium – Fiscal Measures for Stimulating Investment in Audio-Visual Works
<b>Who:</b>	Belgian Parliament (Draft of Act and future Royal Decree)
<b>When:</b>	2003
<b>Where:</b>	Belgium
<b>What Happened:</b>	<p>1. The Belgian Parliament voted fiscal measures and benefits in the form of a tax shelter to encourage investment in Belgian audio-visual works by Belgian companies.</p> <p>Although these measures are mentioned in article 128 of the Program law of August 2, 2002 and officially published on August 29, 2002, they are at this moment still not applicable as there is no Royal Decree stipulating the moment of coming into force.</p> <p>2. Once this Royal Decree is published, a Belgian company investing in a Belgian audiovisual production can receive a tax benefit by which it can deduct 150% of the investment of his taxable profits.</p> <p>The investment however cannot exceed 50% of the company profits, with a maximum set at 750.000,00 EUR.</p> <p>The investing company cannot be itself a production company, nor can the production company be related to any Belgian or foreign television company.</p> <p>3. Investment according to these tax shelter rules can be done in two different ways: one can grant a loan to the production or one can invest/participate in the production (and in the benefits it would</p>

	<p>generate).</p> <p>4. In order to obtain the fiscal benefit, the law imposes obligations.</p> <p>The production budget can only be funded for 50% with tax shelter investment. The other 50% of the budget has to be raised by the production companies themselves.</p> <p>Once the tax benefit is granted, the production company has the obligation to spend 150% of the amount that was contributed by the investor as a participation investment in Belgium in production or exploitation costs.</p> <p>Also, both parties, the investor and the producer, have to agree in advance to a general financing contract for the production. To be in accordance with the tax shelter rules, amongst others, this agreement must include the amount of the investment for each party and a budget plan.</p> <p>5. Investments according to the tax shelter rule can only be done in the production of movies, documentaries or animated movies destined for movie theatres, and animated series or documentaries which are European productions (as stipulated in article 6 of the European guideline 89/552/EEG and changed by the guideline 97/36/EG).</p>
<b>Why This Matters:</b>	This statutory development can constitute a very substantial incentive for investments in the production of movies, documentaries or animated movies destined for movie theatres, and animated series or documentaries which are European productions.

<b>8. Topic:</b>	The Use of Product Images in Publications / Political Publications
<b>Who:</b>	The Publisher "DE BOECK & LARCIER" vs. Vlaams Blok (political party)
<b>Where:</b>	The Court of First Instance
<b>Where:</b>	Brussels – 24 February 2003
<b>What Happened:</b>	<p>Recently an extreme rightwing Belgian political party ("het Vlaams Blok") held a campaign by means of folders and posters concerning the theme of justice and safety. This campaign was held against the Belgian government and showed the opposition of the party against how the Belgian government deals with this theme.</p> <p>Hereto, the campaign folders showed a picture of a person clearly holding a code of law in his hands. However, only a part of the cover was visible and as such only the word "wetboek" (= code of law) was readable on the cover.</p> <p>The company De Boeck &amp; Larcier, as being the publisher of the codes "LARCIER", reacted against this picture because they were of opinion that it was clear to all that one of their publications was used in the picture. As this folder ventilated political ideas, De Boeck &amp; Larcier</p>

estimated that referring to one of its publications was inappropriate and damageable for its reputation now the public would assimilate the ventilated political ideas with the own opinion of the publisher.

Therefore, the publisher started a judicial procedure against the president of the political party, as being the responsible editor, for obtaining an interdiction of circulation of the folder.

The publisher stated that by using a picture showing one of their publications in a political publication of an extreme rightwing party, this would damage its outstanding reputation. Therefore, the political party must be held liable for the possible loss the publisher would suffer because of decreased sales now the public would think that the publisher had given its authorisation for using the publication in the picture.

The Brussels court stated in its judgment of 24 February 2003 that the used code of law could in fact be identified as a publication of De Boeck & Larcier, but that it also was clear that the name "LARCIER", as is normally mentioned of the cover of these codes, was not readable.

Although according to the court, the code could be identified as one of the publications of De Boeck & Larcier, it judged that there never was any danger of assimilation between the ventilated political ideas in the folder and the own opinion of the publisher of the code.

The court based its decision mainly on the fact that the main clientele of the publisher consists of jurists. As such, the court judged that it was clear to all that the goal of the publisher is not to defend certain political ideas and that its reputation is merely based on the scientific quality of its publications. The court continued by saying that these qualities were never doubted by anyone.

Also the court said that since the publisher did not invoke any infringement on copyright or trademark in its complaint, the reproduction of the code used as an illustration in a folder was acceptable, certainly now there is no other Belgian rule protecting the image of a product as such.

Further, now the name "LARCIER" could not be read, there also could not be any damage to one's reputation.

The claim for an interdiction of circulation was therefore dismissed on grounds that no fault was committed by "het Vlaams Blok" and that there was no question of any damage; no prejudice was suffered by the simple and adequate reproduction in the folder.