



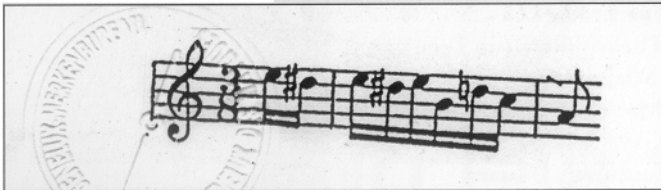
## NETHERLANDS



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<b>1. Civil Proceedings:</b>	
<b>Topic:</b>	Trademark infringement
<b>Who:</b>	Verstappen / Albion
<b>When:</b>	October 16, 2002
<b>Where:</b>	Civil Court Amsterdam, The Netherlands
<b>Advertisement:</b>	 
<b>What happened:</b>	<p>Jos Verstappen is the only Dutch Formula 1 racecar driver, and he is very well known. Verstappen has registered his name, Jos Verstappen, as a written trademark, and his portrait as a pictorial trademark with the Benelux Patent Office.</p> <p>Albion is the publisher of the monthly magazine Formula 1, which is dedicated entirely to the Formula 1 and everything that has to do with it. In addition to that magazine, Albion also issues a special guidebook at the beginning of each new racing season: Formula 1 Preview Special. In this magazine Formula 1 teams are regularly discussed, including that of Verstappen. Verstappen has no objection to this.</p>

	<p>This also occurs in the Formula Preview Special, and Verstappen does not object to this either. In this guidebook all Formula 1 circuits are also discussed, and there is also a column under the heading 'The view of Jos Verstappen', in which a commentary on the specific problems of the relevant circuit are discussed in first-person form. This creates the impression that Jos Verstappen collaborated on the publication and gave his permission for it. This is not the case. Jos Verstappen is claiming damages on the basis of trademark infringement. The publisher is appealing to freedom of expression. The court decided that a specification of the name of Verstappen with his portrait in the magazine Formula 1 goes no further than what is journalistically permitted. But it ruled otherwise with respect to the guidebook Formula 1 Preview Special. This is a series. For each circuit there is the same heading, and a text that suggests that Verstappen collaborated in the interviews and publications. Thus the publisher is obtaining a commercial advantage from the use of the portrait, the name, and the alleged interviews with Verstappen. This is an interest against which Verstappen can appeal on the basis of his brand and portrait rights, says the court. Therefore his claim will be granted and he will be granted damages of € 4,500.--.</p>
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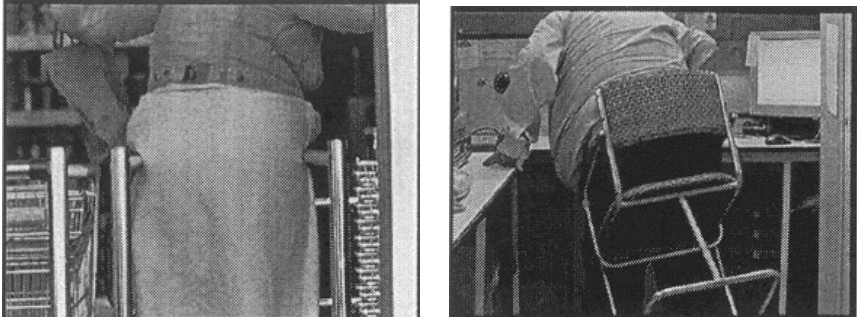
<b>2. Civil Proceedings:</b>	
<b>Topic:</b>	Trademark on sounds
<b>Who:</b>	Advice Solicitor General Colomère
<b>When:</b>	April 3, 2003
<b>Where:</b>	European Court of Justice
<b>Advertisement:</b>	
<b>What happened:</b>	<p>On June 5, 1992 the patent office Shieldmark, an inventive new agency that was beginning at that time, registered a logotype consisting of the first 9 notes of 'Für Elise' in the Benelux. Thus it had registered a sound patent. A competing patent office used the same notes, this time in the form of a crowing chicken. Parties instituted a test case in the matter, at which time the Court at The Hague ruled in 1999 that this brand registration was not valid, in particular because Benelux Patent Law does not include a specification of a technically adequate manner in which to register sound patents. There was an appeal against the ruling, and the Supreme Court presented a number of questions to the European Court of Justice.</p> <p>The Solicitor General stated that he felt that through the registration of staff notation, patent rights were indeed obtained by Shieldmark for the first notes of 'Für Elise'.</p>

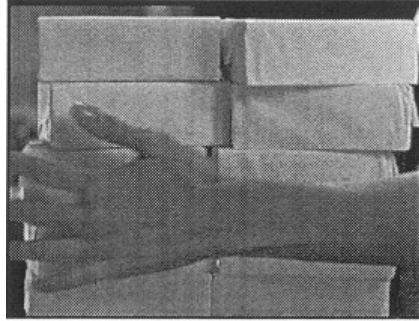
	One must wait to see whether the European Court of Justice will go along with the advice of Solicitor General Colomère.
<b>Comment:</b>	If the Court goes along with the Solicitor General, this will open up the option for all of Europe to register sounds or a melody as a brand by using staff notation.

<b>3. Civil Proceedings:</b>	
<b>Topic:</b>	Cutting offices
<b>Who:</b>	Court of Law Amsterdam and Court of Justice Leeuwarden
<b>When:</b>	September 4, 2002 and November 7, 2002
<b>Where:</b>	The Netherlands
<b>What happened:</b>	<p>In 1996 the Supreme Court ruled in the so-called Newspaper Cuttings case that a non-commercial collection of newspaper cuttings made of paper that was obtained locally must be viewed as a work to which the press exception referred to in article 15 of copyright law applies. So collections of cuttings were permitted. Such a situation does not represent an infringement upon the copyrights of the publication from which the cuttings are taken.</p> <p>In 2002 there were two new proceedings on this topic, this time concerning electronic collections of cuttings. The Court in Amsterdam feels that there is a significant difference between a non-commercially printed collection of cuttings and a commercial electronic one. This is remarkable, since with respect to granting or not granting a copyright the Court proceeds on the basis of the answer to the question of whether an action is or is not commercial in nature. The manner in which the work is exploited should not be relevant when it comes to the decision of whether copyrights are being infringed upon. In any case, the Court decided on a ban. In addition, in these proceedings an appeal was made to protection on the basis of the Databank Act. The Court rejected this appeal on the basis of the goal and purport of the EU Databank directive, referring to the explanation. In order to be eligible for databank protection, this collection must contain elements of a work of reference. A newspaper or magazine does not fulfil this criterion, says the Court.</p> <p>When asked the same question, the Leeuwarden Court of Justice ruled differently than the Court of Law at Amsterdam, indeed upholding the press exception as per the earlier ruling by the Supreme Court of 1996, but subsequently stating that the requested ban must nonetheless be granted on the basis of the Databank Act. The court believes that parts of a databank can also be viewed as an independent separate databank. This involves special columns of employment advertisements in the Saturday edition, equipped with an electronic access mechanism.</p>
<b>Comment:</b>	There are two conflicting rulings. The Supreme Court will have to make the final decision. It would be nice if a link were to be sought from the ruling of the German court concerning collections of cuttings (BGH 11 July 2002, Elektronischer Pressespiegel).

<b>4. Civil</b>
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<b>Proceedings:</b>	
<b>Topic:</b>	Online casino games
<b>Who:</b>	Court of Law Utrecht
<b>When:</b>	February 27, 2003
<b>Where:</b>	The Netherlands
<b>What happened:</b>	<p>In a previous newsletter I noted a ruling by the Court of Law Arnhem in which, pursuant to a claim by the National Lotto, the betting giant Ladbrokes had to close its virtual betting offices.</p> <p>Now, at the request of Holland Casino and with a similar argument, the Court of Law Utrecht has ruled that Universal Amusements and Paramount must refuse to admit Dutch players to Internet casinos that they run.</p> <p>The Lotto, and now Holland Casino as well, have commenced civil proceedings to obtain such a ban, because the Public Prosecutor is not enforcing any legal measures against these games of chance, but is allowing them pending a political decision concerning changes in the Act on Games of Chance.</p> <p>The Court feels that although, due to the absence of legal regulations in the Netherlands, Holland Casino is not yet able to offer its games via the Internet, other companies such as Paramount and Universal can indeed do this from outside the Netherlands without fulfilling very stringent permit conditions, the latter companies have an unfair advantage over Holland Casinos, which must be viewed as being unlawful.</p>
<b>Comment:</b>	<p>It is remarkable that in these proceedings, the EU aspects were hardly addressed at all. In the Italian Gambelli case, Public Prosecutor Albert concluded that the raising of funds as such is not enough reason to establish a (state) monopoly against offering games of chance. So the question is whether seemingly protectionist regulations on games of chance such as the Crown apparently intends to establish will indeed be able to meet the requirements of the European Crown Court.</p>

<b>5. Self-Regulation:</b>	
<b>Topic:</b>	Fat people
<b>Who:</b>	Advertising Code Commission
<b>When:</b>	July 7, 2003
<b>Where:</b>	Court of Appeals, Advertising Code Foundation, file 1259/03.0199
<b>Advertisement:</b>	



**What happened:**

Remia is a manufacturer of mayonnaise, sauces and oil that is well known in the Netherlands. The company sells such products as liquid deep-frying oil on a vegetable basis. It has been scientifically proven that using liquid vegetable oils for deep-frying is considerably healthier than using solid fats, whether vegetable or not. Remia wanted to use this fact for its TV commercial without wishing to explicitly state the health aspect. In the commercial we see a fat woman who becomes stuck in a shop door, and a fat man who becomes stuck in a chair and tries, at the end, to get on a motorbike chair and all. Use Remia deep-frying oil instead of 'solid fat'.

More than 20 complaints have come in about this commercial. To begin with the complaint was accepted, and it was re-addressed in appeal. In the opinion of the Court of Appeals, the manner in which the fat people were shown in the commercial is not of such a nature that it exceeds the limits of what is acceptable in the context of the Netherlands Advertising Code. Assessing the commercial as a whole, including the scene in which a man stuck in a chair attempts to get on a motorbike, depicts such an extreme exaggeration of the inconveniences with which fat people are confronted in daily life through no fault of their own that a reasonable connection with reality for the average member of the public is lacking. In these circumstances one cannot say that the commercial, which is unmistakably intended to be humorous – though not everyone will appreciate this humour – makes such fun of overweight people that it is unnecessarily hurtful to fat people.

**Comment:**

Although it finally turned out well for the advertiser, this situation showed once again that great reticence is called for when it comes to utilising certain groups of the population in commercials. Whether you're talking

	about Belgians, Chinese, Arabs, Catholics, business people, stewardesses, or fat people, obviously groups feel quickly that they are being pinpointed and are usually good for a large number of complaints with respect to advertisements in which those groups feature.
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<b>6. Self-Regulation:</b>	
<b>Rules</b>	
<b>Topic:</b>	Evaluation advertising code for children
<b>Who:</b>	Commission for the media
<b>When:</b>	April 19, 2003
<b>Where:</b>	The Netherlands
<b>What happened:</b>	<p>In the Netherlands Advertising Code, based on self-regulation, a stipulation has existed for many years that regulates television advertising aimed at children. In view of the contemporary nature of this topic, including in a European context, the commission has had a study carried out for the media of the practical execution of this article. This concerns article 13.2, which reads as follows:</p> <p><i>Advertising on television shall cause no mental or physical harm to minors and for their protection, shall therefore satisfy the following criteria:</i></p> <p><i>(a) it shall not encourage minors to buy a particular product by taking advantage of their inexperience or credulity;</i>  <i>(b) it shall not directly encourage minors to persuade their parents or others to buy (sic) advertised products;</i>  <i>(c) it shall not take advantage of the special confidence which minors have in parents, teachers or others;</i>  <i>(d) it shall not, without reason, depict minors in dangerous situations.</i></p> <p>Among other things it had an analysis carried out of the advertising messages that are broadcast during the children's programming of the stations Zeppelin, Foxkids, Yorkiddin and Kindernet / Nickelodeon. No advertising messages were found that infringed upon article 13.2.</p> <p>Studies have shown that children only become reasonably able to recognise advertising starting at age 8, and that they have a critical attitude with regard to it. The percentage of advertising messages that focuses on the relatively vulnerable group of children under 8 years of age proved to be 16% on all four channels mentioned above. The largest number was found on Kindernet.</p> <p>In addition very few commercials were broadcast on the four stations for sweets and snacks. Finally, it was noted that fewer commercials were broadcast during school hours. The advertiser bears in mind the times at which children most watch children's programmes. But the commercials were not specifically attuned to the programmes at the times at which they are broadcast.</p> <p>But there was one channel that did broadcast tele-shopping commercials aimed at children.</p>
<b>Comment:</b>	Source: co. media, no. 97, April 2003

<b>7. New Self-Regulation:</b>	
<b>Topic:</b>	SMS code of behaviour
<b>Who:</b>	Mobile operators
<b>When:</b>	August 1, 2003
<b>Where:</b>	The Netherlands
<b>What happened:</b>	<p>Mobile operators have established an SMS code of behaviour together with fourteen providers of SMS services. The Opta has published this code and it can be found on <a href="http://www.opta.nl">www.opta.nl</a>.</p> <p>The purport of the code is to erase any lack of clarity with respect to the costs of SMS services.</p> <p>When SMS services are offered for sale, the costs of receiving messages and the frequency of the messages must be specified. In addition there must be a reference to a web or teletext page on which background information can be obtained about the service. This basic information must always be available to subscribers by sending the word 'help' to the shortcode of the service. With respect to more expensive SMS services (from € 0.70 per message received) the user must specifically send a message 'ok' when he confirms his subscription.</p>

<b>8. Legislation:</b>	
<b>Topic:</b>	Electronic signatures
<b>Who:</b>	Act on Electronic Signatures (WEH) goes into effect
<b>When:</b>	May 21, 2003
<b>Where:</b>	The Netherlands
<b>What happened:</b>	<p>The Act on Electronic Signatures (WEH) went into effect on 21 May 2003. The objective of the bill is to execute the directive concerning a mutual context for electronic signatures.</p> <p>The first objective is to simplify the use of the electronic signature (EHT) and contribute to the legal recognition of the EHT in addition to the handwritten signature.</p> <p>Secondly a contribution will be made to decreasing nationally determined differences concerning the EHT and EHT service providers and removing impediments to the free traffic of services via the electronic highway.</p> <p>The Resolution on Electronic Signatures went into effect simultaneously with the WEH Act. This resolution includes a specification of the standards that must be met by certificate providers.</p>
<b>Comment:</b>	Source: Wereldwet.nl