

Benelux Trade Marks Update

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Tjeerd Overdijk

Vondst Advocaten

Van Leijenberghlaan 199

1082 GG Amsterdam

The Netherlands

t: + 31 20 504 20 00

f: + 31 20 504 20 10

e: tjeerd.overdijk@vondst-law.com

Themes:

- Adwords decisions after “Google”;
- The protection of well-known trade marks after L’Oréal v Bellure;
- Genuine use and territoriality of use.

Decisions on Google AdWords (i)

Sponsored Links

The screenshot shows a Google search for "bangkok hotel reservation". The search bar includes the text "bangkok hotel reservation" and a search button. Below the search bar, there are tabs for "Web", "Images", "Groups", "News", and "More". The search results are displayed on a light blue background. A red box highlights the "Sponsored Links" section on the right side of the page, which includes several advertisements for hotel reservations in Bangkok. The organic search results on the left side of the page are also visible, including links to "Bangkok Hotels", "Bangkok Hotels Online", and "Official Bangkok hotels - THAILAND".

Google Web Images Groups News More

Search: Search [Advanced Search](#) [Preferences](#)

Search: the web pages from Thailand

Web Results 1 - 10 of about 800 for **bangkok hotel reservation**. (0.17 seconds)

Sponsored Links

Bangkok Hotel Reservation
Mandarin Oriental Internet Specials
Delightful Rooms At Our Best Rates
www.MandarinOriental.com

Hotel Reservation
Instant secure hotel booking. Room
and facilities in centre of Bangkok
www.WindsorSutesHotel.com

Thailand Discount Hotels
Instant confirmation at over 375
hotels in Bangkok, Pattaya & more.
www.HotelThailand.com

Hotel Reservation
Featured Deals with Low Rates,
Attractions, Reviews & Hotel Photos
travel.yahoo.com

40 Hotels in Bangkok
Book your Bangkok hotel online
All hotels on a city map.
www.booking.com

Did you mean: [bangkok hotel reservation](#)

[Hotels.com > Book Its Hotels Hotels in Bangkok](#)
You'll find that making hotel reservations and booking a Its Hotels Hotels in Bangkok ... the asia hotel bangkok is located 30 kilometers from the bangkok ...
[deals hotels.com/brand.asp?brand=1.s.%20hotels&city=bangkok&country=thailand](#) - 61k - [Cached](#) - [Similar pages](#)

[Official Bangkok hotels - THAILAND](#)
Bangkok hotels, discounts, hotel reservation, luxury, cheap, budget, hotel ... The Asia Hotel Bangkok is located 30 kilometers from the Bangkok ...
www.rapiesnet.com/city/bangkok/ - 85k - [Cached](#) - [Similar pages](#)

[Asia bangkok hotel thailand -raihwi bangkok hotel - map asia bangkok](#)
bangkok hotel - asia hotel bangkok, located for easy access to World Trade, Siam Road, Siam City Centre, Mahoon krong center bangkok thailand hotel bangkok ...
www.asishotel.co.th/bangkok/map_asishotel_bangkok.htm - 14k - [Cached](#) - [Similar pages](#)

[Travel review of Diamond City Hotel, Bangkok \(28 hotel reviews\)](#)
Reviews of recent stays, Comment on the hotel, The reservation service ... hotel as it is within walking distance to the various shopping malls in Bangkok ...
www.sxwdee.com/hotel/bangkok/diamondcity/review.html - 21k - [Cached](#) - [Similar pages](#)

Decisions on Google AdWords (ii)

- ECJ 23 March 2010, C 236-238/08 (Google France)
- ECJ 25 March 2010, C 278/08 (BergSpechte)
- ECJ 26 March 2010, C 91/09 (Bananabay) (German)
- ECJ 8 July 2010, C 558/08 (Portakabin)



Decisions after Google AdWords

- District Court Rotterdam, 18 August 2010, Bacardi v. Mevi
- District Court The Hague, 20 December 2010, Tempur v. The Energy+ Company



Tempur v. The Energy + Company

Tempur matras

Eerst 14 dagen
gratis thuis proefslapen
Pas daarna beslist u!

€199,-

energy+
NASA MATRAS
Naar de matraspagina >

Inleiding over het Tempur matras
De Nasa staat aan de basis van het traagschuim. Het materiaal was oorspronkelijk bedoeld om het lichaam van de astronauten te beschermen tegen de hoge g-krachten tijdens ruimtereizen. Het Temper foam, waarvan de naam Tempur is afgeleid, bleek uiteindelijk niet geschikt te zijn voor gebruik in het heelal. Wel bleek dit Tempur foam voor andere doeleinden goed te kunnen worden toegepast. Het werd verwerkt in medische hulpmiddelen, waaronder rolstoelen, sportattributen zoals helmen voor American football spelers en vliegtuigstoelen.

Fabrikanten van polyurethaan schuim lieten al snel hun oog vallen op dit Temper foam, waarvan de officiële benaming visco-elastisch polyurethaan schuim is. Dit schuim wordt ook wel traagschuim, visco schuim of NASA schuim genoemd. matrassen van traagschuim worden daarom ookwel NASA matrassen genoemd.

Een van de bedrijven die zich ging specialiseren in het temper foam was de Deense onderneming Dan Foam. Voor de productie en verkoop van het traagschuim werd een aparte divisie in het leven geroepen: Tempur-Pedic. Het traagschuim kreeg de merknaam Tempur. Begin jaren 90 van de vorige eeuw bracht Tempur-Pedic in Zweden de Tempur matrassen op de markt. Daarna volgde een wereldwijde expansie.

Vandaag de dag heet de onderneming Tempur World Inc. en is het hoofdkantoor gevestigd in de

Well-known trade marks: the BNL+



Trademarks Directive 2008/95/EC

Article 5(5):

Paragraphs 1 to 4 shall not affect provisions in any Member State relating to the protection against the use of a sign other than for the purposes of distinguishing goods or services, where use of that sign without due cause takes unfair advantage of, or is detrimental to, the distinctive character or the repute of the trade mark.

Benelux Convention on Intellectual Property

Article 2.20(1)(d)

1. A registered trademark shall provide its owner with an exclusive right. Without prejudice to the possible application of ordinary law in matters of civil liability, the exclusive right to a trademark shall permit the owner to prevent any third party, without its consent, from: [...]

(d) using a sign for purposes other than those of distinguishing the goods or services, where use of the sign without due cause would take unfair advantage of or be detrimental to the distinctive character or the repute of the trademark.

L'Oreal v. Bellure

ECJ 18 june 2009, C-487/07 L'Oreal v. Bellure

Article 5(2) . The advantage arising from the use by a third party of a sign similar to a mark with a reputation is an advantage taken unfairly by that third party of the distinctive character or the repute of that mark where that party seeks by that use to ride on the coat-tails of the mark with a reputation in order to benefit from the power of attraction, the reputation and the prestige of that mark and to exploit, without paying any financial compensation, the marketing effort expended by the proprietor of the mark in order to create and maintain the mark's image.



After L'Oreal v. Bellure (i)

- District Court The Hague, 7 October 2009 (Red Bull v. Winters):
- Global appreciation with a view to all relevant circumstances of the case:
 - Red Bull is market leader;
 - Visual similarities: trapezoid background, same blue/grey colouring, trade mark in bright red, prominent mention of energy drink all point in the direction of coat-tail riding.



After L'Oreal v. Bellure (ii)

- Amsterdam Court of Appeal, 2 February 2010, (Red Bull v Bulldog):
- Introduction of Red Bull: Austria 1987; BNL 1995; Bulldog 1997;
- Unfair advantage in view of the following circumstances:
 - Red Bull is very well-known mark;
 - Use of the identical element “bull”;
 - The fact that the goods are identical (energy drinks);
 - Tail-coat riding plausible in view of public statements of Bulldog official.



After L'Oreal v. Bellure (iii)

- District Court The Hague, 4 September 2009, Formula One Licensing v Goldzade:

The Formula One trademark is a well known trademark with reputation. Signs are similar (“F One1”) and although the goods and services are not similar (energy drinks), the relevant public will associate the products of Goldzade with Formula One. Goldzade profits from the reputation of Formula one and influences the economic behaviour of the consumer.



After L'Oreal v. Bellure (iv)

- District Court The Hague, 14 October 2009, Coty v FM
- District Court The Hague, December 2009, Westland Kaasspecialiteiten v X
- District Court The Hague, 2 September 2010, Grohe v R&M
- District Court Amsterdam, 24 December 2010, ABN AMRO (ex parte)



Genuine use in the territory (i)

- BOIP, 15 January 2010, N° 20044489 Onel v Omel
- Hague Court of Appeal, 30 November 2010, Onel v Omel

Onel trademarks®

100%
HELDER

Onel / Omel: Preliminary questions:

Should Article 15(1) of the Community Trade Mark Regulation be interpreted in such a way that the use of a trade mark within the borders of one Member State is sufficient, provided that this use will qualify as genuine use in the concerning Member State?

Genuine use in the territory (ii)



- District Court The Hague, 27 October 2010, Euprax v Zobu

Could the use of a Community trademark in solely one member state be regarded as genuine use?

To be continued... the outcome in the Onel/Omel case at the Hague Court of Appeal will be awaited.

Use (within the territory)

- Supreme Court, 19 February 2010 (Red Bull v. Winters):
- Is filling cans an act of use under art. 5 HD? Also when is being done as a service for 3rd party?
- Does type of infringement make any difference?
- What if no public knowledge?
- Relevant public?



Tjeerd F.W. Overdijk

+3120 504 2000

tjeerd.overdijk@vondst-law.com

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