

Distinctiveness of slogans

- Food products and beverages only

“LET’S TOAST”

Distinctive	
Class	32
Reason	It does not have any specific sense in relation to <u>non</u> -alcoholic beverages. There is no immediate, apparent and descriptive content in respect of the goods. Sufficiently fanciful.
Date	07/08/2001
Jurisdiction	OHIM, Board of Appeal

“CHEESE FOR TODAY’S WORLD”

Not distinctive	
Class	29
Reason	The expression uses commonplace and clear wording to refer merely to the nature or the quality of the products. It does not possess an individuality sufficiently striking.
Date	06/11/2001
Jurisdiction	OHIM, Board of Appeal

“DES FROMAGES POUR LE MONDE D’AUJOURD’HUI”

Not distinctive

Class	29
Reason	The expression uses commonplace and clear wording to refer merely to the nature or the quality of the products. It does not possess an individuality sufficiently striking.
Date	06/11/2001
Jurisdiction	OHIM, Board of Appeal

“SAY IT WITH A CHOCOLATE”

Not distinctive	
Class	30
Reason	It would be perceived by the public as a promotional statement that the chocolates may be provided as a gift in order to convey a particular message.
Date	28/02/2002
Jurisdiction	UK Patent Office

“ONBEGRIJPELIJK LEKKER”

Not distinctive	
Classes	5, 29 and 30
Reason	In relation to sweets, the public will understand it as a promotional statement that the goods are particularly pleasant to the taste.
Date	13/03/2003
Jurisdiction	The Hague Court of Appeal (R98/606)

“100% IRRESISTIBLE”

Not distinctive	
Classes	29 and 30
Reason	It conveys exclusively the laudatory and promotional message that the goods cannot be resisted because of their quality. Even if no clue is given as to why it is not possible to resist.
Date	19/05/2003
Jurisdiction	OHIM, Board of Appeal

“DIRECTO DE LA NARANJA”

Not distinctive	
Class	32
Reason	It has no other meaning than the obvious description of some features of the juice. In addition, it contains no element of fantasy.
Date	18/06/2003
Jurisdiction	OHIM, Board of Appeal

“MEHR FÜR IRH GELD”

Not distinctive	
Classes	3, 29, 30 and 35
Reason	It will be perceived <u>first and foremost</u> by the relevant target public as a promotional or advertising slogan, because of its meaning, rather than as an indication of the origin.
Date	30/06/2004
Jurisdiction	EC CFI (T-281/02)

“GO COOK!”

Not distinctive	
Class	29
Reason	Assuming notional and fair use of the mark on the packaging as well as in advertising, it will simply be seen as an invitation to buy the goods and “go cook!” with them.
Date	16/07/2004
Jurisdiction	UK Patent Office

“Aus Lust am Genießen”

Not distinctive	
Classes	29, 30 and 43
Reason	The public will perceive it first and foremost as a promotional or advertising information (not as an indication of origin). There is nothing beyond the obvious promotional meaning.
Date	13/09/2004
Jurisdiction	OHIM, Board of Appeal

SUMMARY:

DISTINCTIVE SLOGANS

- | | |
|---------------|----|
| • Let's toast | 32 |
|---------------|----|

NON DISTINCTIVE SLOGANS

- | | |
|--------------------------------------------|---------------|
| • Cheese for today's world | 29 |
| • Des fromages pour le monde d'aujourd'hui | 29 |
| • Say it with a chocolate | 30 |
| • Onbegrijpelijk lekker | 5, 29, 30 |
| • 100% irresistible | 29, 30 |
| • Directo de la Naranja | 32 |
| • Mehr für Ihr Geld | 3, 29, 30, 35 |
| • Go cook! | 29 |
| • Aus Lust am Genießen | 29, 30, 43 |

Conflicts between packagings or 3D trademarks

- Food products and beverages only
- Likelihood of confusion accepted

LIKELIHOOD OF CONFUSION

Prior trademark		Second trademark
		
Class	29	Reason
Date	29/09/2004	Reproduction of dominant feature (green rim along the lid) for identical goods
Jurisdiction	Brussels Court of Appeal	

LIKELIHOOD OF CONFUSION

Prior trademark		Second trademark
		
Class	32	Reason
Date	18/10/2004	
Jurisdiction	OHIM, Opp. Div.	

Identical goods (energy drinks) using signs which are aurally and conceptually similar.

LIKELIHOOD OF CONFUSION

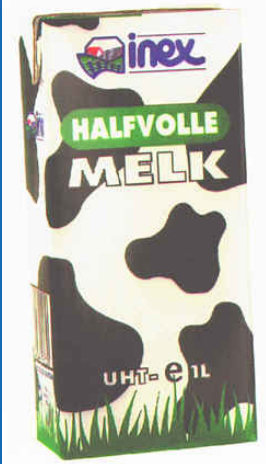

Prior trademark		Second trademark	
			
<p><i>Close-up:</i></p> 		<p><i>Close-up:</i></p> 	
Class	33	Reason	
Date	21/12/2004	Overall visual similarity (same kind of label with indented rim; similar colours) creates confusion in the mind of the public interested in wine for a good price.	
Jurisdiction	Voorzienr. Den Haag		

Conflicts


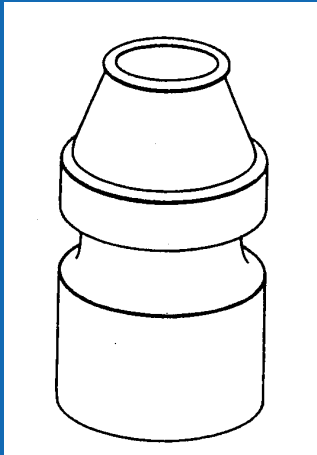
between packagings or 3D trademarks

- Food products and beverages only
- Likelihood of confusion not established

NO LIKELIHOOD OF CONFUSION

Prior trademark		Second trademark
		
Class	29	Reason
Date	04/02/2003	The 3D shape is ordinary. Only the word INEX is distinctive, but not dominant. The cow skin is visually dominant, but not distinctive for milk products.
Jurisdiction	OHIM, BoA (Appeal pending before CFI: T-153/03)	

NO LIKELIHOOD OF CONFUSION

Prior trademark		Second trademark
		
Classes	29, 30, 32	Reason
Date	10/03/2004	Shape not distinctive. The dominant and only distinctive element is the word VITAGEN, which will indicate the origin of the goods.
Jurisdiction	UK Patent Office	

NO LIKELIHOOD OF CONFUSION

Prior trademark		Second trademark
		
Classes	29, 30, 32	Reason
Date	20/07/2004	No sufficient visual similarity between the parties' jars. Different dominant colours. The flowering orchard on the first jar is not distinctive and not present in the second jar.
Jurisdiction	Brussels Commercial Court (KG)	

Any questions?