

Trademark held to offend religious feelings

Switzerland - Meisser & Partners

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Examination/opposition
National procedures

The Federal Administrative Court has **affirmed** a decision of the **Federal Institute of Intellectual Property** (IGE) in which the latter had refused to register the trademark MADONNA on the grounds that it was contrary to public moral and could offend religious feelings (Case B-2419/2008, April 12 2010).

German company TMS Trademark-Schutzrechtsverwertungsgesellschaft mbH sought to extend protection of its international registration for the trademark MADONNA (and design) for various goods in Classes 3, 9, 14, 18, 20, 24, 25, 26 and 28 of the **Nice Classification**. The mark consisted of the verbal element 'Madonna' in red letters within a framed silver rectangle. The IGE refused to register the mark on the grounds that Christians use the name Madonna for the Virgin Mary, or Saint Mary. Therefore, a large portion of the Swiss population would be offended by the use of this word as a trademark for the goods at issue.

The trademark owner appealed to the Federal Administrative Court, which affirmed the decision of the IGE. The court noted that the Italian-speaking part of the Swiss population, in particular, would understand the word 'Madonna' in a religious way. According to the court, 75% of the population in Canton Tessin (the Italian-speaking part of Switzerland) belong to the Roman Catholic Church and worship the Virgin Mary.

The court went on to analyze the role and importance of Saint Mary in the Catholic religion. It noted that 'Madonna' was not a name of the Catholic dogmatic theology - rather, the 'Madonna' is called *Maria, Madre di Cristo, Madre di Dio, Madre della Chiesa* or *Santa Vergine*. The court concluded that the word 'Madonna', although used in other contexts, was not only understood as 'Saint Mary', but rather as a title such as 'Almighty', 'Messiah' or 'God'. Therefore, the other meanings of the word (ie, a given name or the singer Madonna) were irrelevant. The court did not take into account the fact that trademarks containing the element 'Christ' had been registered, as 'Christ' is also a family name which is more common than the given name Madonna. Foreign registrations for the MADONNA mark did not change the court's conclusion.

The decision shows, once again, that the Swiss practice is very strict compared to other jurisdictions - especially as the mark at issue is registered as a Community trademark and thus covers the territory of Italy, where the importance of Saint Mary is even greater than in Switzerland. The trademark owner may appeal to the Swiss Supreme Court.

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