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German Football Association scores in Switzerland

Peter Schramm (MLL Meyerlustenberger Lachenal Froriep AG) · Thursday, October 26th, 2017

The German Football Association (DFB) owns the international mark “Deutscher Fussball-Bund” (with device) with basic registration in Germany (see image below), claiming protection for a wide variety of merchandise. The registration was notified to the Swiss Federal Institute of Intellectual Property in April 2014.

The Swiss Federal Institute of Intellectual Property refused to protect the mark. It argued that the graphic representation of the eagle, which is very similar to the German national emblem, would lead Swiss buyers to believe that the goods bearing the mark originate from Germany, which was misleading in case they were not actually produced in Germany.



On appeal, the Federal Administrative overturned the refusal. The judges conclude that the overall impression of the trade mark does not give rise to false expectations in terms of origin, but is identified by average buyers as the logo of a sports association. Regardless of whether or not the eagle in mark is confusingly similar to the German national emblem, the logo as a whole serves to identify the well-known German national football team.

The court also examined another aspect: Due to a bilateral treaty between Switzerland and Germany, the term “Deutscher” (German) is reserved for German products. However, the judges in St. Gallen acknowledge that the DFB has an overwhelming interest to be able to market its merchandise worldwide under a uniform logo which permits it in this case to use the term “German” even on goods not produced in Germany.

Note that the decision is not final yet; the Institute of Intellectual Property has a right to appeal to the Swiss Supreme Court.

Decision B-1428/2016 of August 30, 2017

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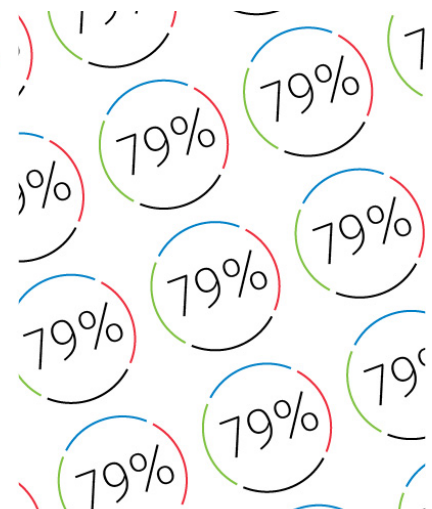
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