

# Kluwer Trademark Blog

## Germany: The Black Friday Trademark Battle

Oliver Löffel (Löffel Abrar) · Monday, November 20th, 2017

The Black Friday shopping storm 2017 will kick off soon. However, the Black Friday battle has already begun in Germany. The dispute circles around a German trade mark Black Friday, the owner of the trademark being based in Hong Kong, and its German licensee. In fact, all traces “lead to Vienna”, as media summarized the results of their investigations in this “thriller” ([tn3, December 8, 2016](#)).

Since 1952, Black Friday, generally known as the day following Thanksgiving Day, has been regarded as the beginning of the Christmas shopping season in the U.S. Today, retailers in different countries all over the world offer promotional sales on or before Black Friday. In Germany, Apple was the first company that ran a special Black Friday campaign for the German market in 2006 ([Wikipedia, last downloaded November 18, 2017](#)). Today, even Deutsche Bank [informs German clients about Black Friday](#) as one of the most important “dates this week” (following the news that coalition government talks in Germany unexpectedly collapsed). If you don’t have (Black) Friday yet on your mind, here are some impressive pictures about Black Friday, [shown in Germany in 2011 by Spiegel Online](#), the most widely read German-language news website.

In 2013, a trade mark application for Black Friday was filed in Germany. Today, the German trade mark is [registered for Super Union Holdings Ltd., Hong Kong](#) which has licensed the trade mark “Black Friday” to Black Friday GmbH, a company based in Vienna.

Since 2016, Super Union Holdings Ltd. has started to attack companies using the term Black Friday by sending warnings, such as the US e-commerce marketplace Groupon in 2016, [as media reported](#). Another party concerned is a German entrepreneur who hosts the domain [black-friday.de](#), a platform offering Black Friday deals.

In 2017, Super Union Holdings Ltd. sued Amazon for its use of the sign „Black Friday“ in Germany by raising, inter alia, forbearance and damage claims (*„Black Friday“ wird Fall für die Gerichte*, [Frankfurter Allgemeine Zeitung, November 6, 2017](#)).

Of course, some companies, affected by the attacks of Super Union Holdings Ltd., have started to fire back. It is no surprise that there are more than twelve pending cancellation actions against the German trademark Black Friday. In addition, just recently a court in Düsseldorf / Germany has issued a preliminary injunction against Super Union Holdings Ltd. and its licensee Black Friday GmbH to refrain, inter alia, from claiming against clients of the operator of the aforementioned website [black-friday.de](#), that the use of “Black Friday” in an ad is a trade mark infringement (*Lebensmittelzeitung, November 17, 2017, p. 20*).

The litigation public relations of black-friday.de was keen to inform the public about the preliminary injunction against Super Union Holdings Ltd. and the licensee Black Friday GmbH by indicating their names. Black Friday GmbH wasn't happy about that and got a preliminary injunction on November 15, 2017 preventing the operator of the website black-friday.de from informing the public about the Düsseldorf injunction against Super Union Holdings Ltd. and Black Friday GmbH indicating those names in a press release (anonymous information not challenged).

Of course, the question whether one of the parties is allowed to mention the name of the other party in litigation public relations, e.g. press releases, is only a secondary battlefield. The quintessential and more interesting question in this battle is: will the subject German trade mark Black Friday be cancelled?

In Germany, the registration of a trade mark shall be cancelled on request of any third party if it has been registered despite absolute grounds for refusal, e.g. if the mark is descriptive or does constitute an indication which needs to be kept freely available. So, what is your opinion?

My opinion is that the trade mark should be cancelled and announced non-valid from the beginning as this advertising claim is not perceived as an indication of origin. The media in Germany reported about Black Friday in the U.S. years before the subject German trade mark Black Friday was filed in 2013, and businesses, inter alia major international companies like Apple, started Black Friday sales in Germany before 2013. Further, even if the trademark were unexpectedly not to be declared invalid at the end of the day, the defendants in most cases might have a reasonable case to win a trade mark fight, as the use of the term "Black Friday" in the course of a late November shopping campaign might not be considered trade mark use.

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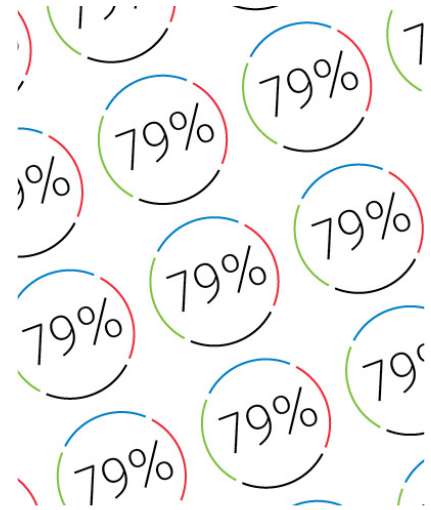
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