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Swiss Federal Supreme Court confirms trademark protection for the “Lindt Gold Bunny”

Peter Schramm (MLL Meyerlustenberger Lachenal Froriep AG) · Friday, September 30th, 2022

With Judgment of 30 August 2022 the Swiss Federal Court has fully granted Lindt & Sprüngli’s injunction against Lidl and has prohibited Lidl from producing and distributing copies of the Lindt Gold Bunny. This Judgment implies that Lidl is no longer allowed to sell Gold Bunny look-alikes in Switzerland and must destroy any remaining stock ([click here for the Judgement of 30 August 2022](#)).

The injunction relief was filed in 2018 with the Commercial Court of the Canton of Aargau, requesting that Lidl be prohibited from advertising, offering or selling its similar looking chocolate bunnies packaged in golden foil or in a different color. The Swiss Federal Court as the highest instance court has upheld Lindt & Sprüngli’s infringement claims and prohibits Lidl from distributing these similar products.

Lindt’s lawsuit was based on the following 3D trademark, which protects the Lindt Gold Bunny in black and white.



The Swiss Federal Supreme Court held that the outstanding results of the demoscopic surveys submitted by Lindt & Sprüngli proved that the shape of the Lindt Gold Bunny, irrespective of its color, has become established as a trademark through use. Furthermore, it is notorious that consumers perceive the shape of the Gold Bunny as an indicator of Lindt. Therefore, the court granted the 3D trademarks protecting the shape of the Gold Bunny a broad scope of protection and

issued a broad cease-and-desist order against Lidl, encompassing also Gold Bunny look-alikes that are offered in another color than gold. Interesting was, among other things, the Supreme Court's finding that the label "Favorina" was not suited to eliminate the likelihood of confusion with the 3D mark. Particularly in the case of food products it cannot be assumed that the consumer acting with average attention will orient himself by reading the labels. He will choose products known to him above all on the basis of the shape and the main features, without necessarily consulting the label.



The ruling of the Federal Supreme Court is of great importance for the protection of the Lindt Gold Bunny on the Swiss market and cross-border. It will help to further protect the iconic form of the Lindt Gold Bunny against dilution from unauthorized copies and will likely serve as a precedent also in other jurisdictions. In another milestone decision in 2021, the German Federal Court of Justice in Karlsruhe already confirmed the protection of the color mark gold for the golden color of the Lindt Gold Bunny.

But it is also a good decision for the protection of 3D trademarks in general. Particularly in the case of iconic products that have been available on the market unchanged for decades, consumers base their purchasing decisions primarily on their product design. For this reason, such product designs also deserve trademark protection. This was correctly recognized by the Swiss Supreme Court.

** Lindt & Sprüngli was represented by the authors of this post.*

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