

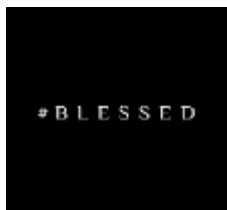
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“BLESSED”: Owning a Trade Mark Is Not Always a Blessing

Michaela Ring (Hoffmann Eitle) · Wednesday, December 28th, 2022

The Higher Regional Court Frankfurt (OLG Frankfurt) held in its decision 6 U 40/22 of June 2, 2022 that the imprint of a commonly known verb on the front of a garment would be perceived as a descriptive term by the public. This led the Court to decide that the word had not been used as a trade mark and thus its use could not infringe prior trade mark rights for the identical term “BLESSED”.

In 2020, the word and figurative mark shown below was filed inter alia for the goods “clothing” in class 25 and was successfully registered.



The defendant was Puma, who had launched a clothing line in collaboration with their brand ambassador, Neymar. One of the offered clothing items was a hoodie with the word “BLESSED” written in capital letters on the front:



Source: OLG Frankfurt a. M. Urt. v. 2.6.2022 – 6 U 40/22, GRUR-RS 2022, 22858

The trade mark owner claimed that his trade mark rights had been infringed, and he applied for

injunctive remedies.

The Frankfurt District Court (LG Frankfurt) dismissed the case in first instance^[1] and the appeal to the Higher Regional Court (OLG) Frankfurt was unsuccessful.

A necessary prerequisite for a claim for injunctive relief is that the sign “BLESSED” of the defendant is used as a trade mark. Generally, a sign is used as a trade mark if it is capable of distinguishing the goods of one undertaking from those of other undertakings. For this purpose, the perspective of the relevant public, i.e., the average consumer who is reasonably well informed and reasonably observant and circumspect, is taken into account.

The question which the Court had to address was: will a sign or word that is placed on a clothing item be perceived as an indication of origin or as a mere decorative element by the relevant public? As usual, the answer was: there is no easy answer.

The Court regarded the answer as depending very much on the individual placing of the sign in question, which ought to be assessed on a case-by-case basis. Generally, when using images, motives, symbols, or words on the front or back of garments, the public will not perceive them as an indicator of origin, unless the images, motives, symbols, or words are well-known to the public as a brand. In particular, a sign will not be understood as an indication of origin when the sign consists of words or phrases used in the German language or a common foreign language that are solely understood as such and not as an indication of origin. Insofar as this is the case, it cannot be assumed that, in the mind of the average consumer, such letterings and logos on clothing will be associated with a trade mark.

In the present case, the Court found that “BLESSED” would be perceived as a word of purely descriptive nature. Although the average consumer is most likely not familiar with the fact that Neymar has the word “BLESSED” tattooed on his neck to express gratitude for his life and career, its imprint on the defendant’s hoodie will be thought of as a decorative element. In this context, the Court held that most people would recognize “BLESSED” as an English word which translates into the German word “gesegnet”. Even those consumers who are not familiar with the English term “BLESSED” may still easily, due to the ending in “-ed”, identify “bless” as a verb used to describe something.

The Court further stated that the word “BLESSED” can be frequently found printed on T-Shirts, which could result in the public being somewhat accustomed to such imprints on clothing items. Since the applicant’s mark was in addition rather unknown, the Court concluded that, overall, the imprint lacked a trade mark-corresponding usage. As such, the trade mark could not be enforced against the defendant for that specific usage.

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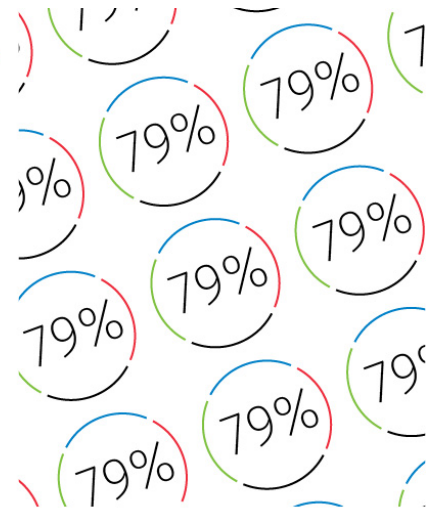
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