

**BENELUX OFFICE FOR INTELLECTUAL PROPERTY  
CANCELLATION DECISION  
N° 3000064  
of 11 June 2020**

**Claimant:** **Worldwide Brands Inc. (Zweigniederlassung Deutschland)**  
Richmodstrasse 13  
50667 Köln  
Germany

**Representative:** **Chiever**  
Barbara Strozzilaan 201  
1083 HN Amsterdam  
Netherlands

*against*

**Defendant:** **ERIC GUANGYU, WAN**  
3642 West 2nd Avenue  
Vancouver BC V6R 1J7  
Canada

**Representative:** **Knijff merkenadviseurs**  
Leeuwenveldseweg 12  
1382 LX Weesp  
Netherlands

**Contested trademark: International registration 406715**

CAMEL

## **I. FACTS AND PROCEEDINGS**

### **A. Facts**

1. On 19 November 2018 the claimant filed an application for cancellation, in accordance with Article 2.30bis (1) (a) of the Benelux Convention on Intellectual Property (hereinafter: "BCIP")<sup>1</sup>, based on the ground for revocation stated under Article 2.27 (2) BCIP, namely that no genuine use has been made of the contested trademark in accordance with Article 2.23bis BCIP.

2. The cancellation application is directed against International trademark registration 406715, designating the Benelux, which was filed by the defendant on 8 May 1974 and was registered for goods in class 25, for the following wordmark: CAMEL

3. The cancellation application is directed against all goods of the contested trademark, which are:  
Class 25 Clothing, in particular shirts.

4. The language of the proceedings is English.

### **B. Course of the proceedings**

5. The cancellation application is admissible and was notified by the Benelux Office for Intellectual Property (hereinafter: "the Office") to the parties on 30 November 2018. During the administrative phase of the proceedings both parties filed arguments. On 17 June 2019, the defendant's representative recorded the transfer of the contested trademark to Mr Wan Guangyu. The course of the proceedings meets the requirements as stated in the BCIP and the Implementing Regulations (hereinafter: "IR"). As the application only concerns the revocation ground for non-use, the defendant, in accordance with Rule 1.31 (2) IR, was first given the opportunity to respond in writing by submitting proof of use or to substantiate that there are proper reasons for not using the trademark, after which the claimant and subsequently the defendant were requested to respond. The administrative phase was completed on 2 August 2019.

## **II. ARGUMENTS**

### **A. Defendant's arguments**

6. In order to prove that the contested trademark has been genuinely used, the defendant has submitted several types of documents, namely invoices, screen prints of websites and brochures.

7. The defendant states that the evidence focuses on the use of the trademark on Ali Express and Amazon (both the German and French versions of these websites). According to the defendant, these websites are very relevant for the Benelux. The defendant argues that Amazon has no direct website in

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<sup>1</sup> This decision shall always refer to the laws and regulations applicable on the date of the decision, except in the case of provisions which have undergone a material change during the proceedings and which are relevant to the decision.

the Benelux and consumers are therefore forced to visit either the German or French websites. These websites therefore also target the Benelux public.

8. The defendant also states that the use of the trademark on the French and German websites of Ali Express and Amazon is also clearly directed at the Benelux public, since sales to the Benelux are being made.

### **B. Claimant's arguments**

9. The claimant states that the evidence does not show that the contested trademark has been genuinely used in the Benelux in the past five years. According to the claimant, the evidence does not demonstrate any link with the defendant. Furthermore, the invoices from the purchases on Ali Express and Amazon do not provide any information about the company that offers the products.

10. With regard to the invoices, the claimant also argues that the amount of sales is insufficient to comply with the standards of genuine use, especially because the goods concerned (clothing) require a high volume of sales to be profitable at all. The claimant also points out that the fashion industry in the Netherlands and Belgium is a multi-billion euro industry.

11. Furthermore, the claimant argues that the evidence does not show that the goods have been offered in the Benelux. The invoices only demonstrate that the delivery addresses are in the Benelux, however this gives no information on the territory of the actual offering of the products. According to the claimant, the German and French websites of Amazon clearly target the German and French public. The claimant also points out that Ali Express has a Dutch version of its website.

12. The claimant also states that some documents are not clearly dated. Furthermore, many of the screen prints of the websites seem identical (thus inserted double) and most of these screen prints mention the trademark CAMEL-CROWN with a reference to a different Chinese company.

13. The claimant concludes that the documents submitted by the defendant are insufficient to prove use for the goods in the Benelux territory. For this reason, the claimant requests that the Office revokes the contested trademark due to non (or insufficient) use by the defendant.

### **C. Defendant's final arguments**

14. In reply to the arguments of the claimant, the defendant submits additional evidence which explains the relation between the current trademark owner, Mr Guangyu Wan and the sellers on Amazon and Ali Express. According to the defendant, the sellers are responsible for the distribution of CAMEL products on behalf of Mr. Guangyu Wan.

15. The defendant disputes the claimant's argument that the sales numbers are too low. The defendant states that although the fashion industry is a large industry, there are also many participants in it. Furthermore, according to the defendant, a low amount of sales does not mean that there has not been a concerted and sincere effort to establish and increase a market presence. The defendant also argues that the websites of Amazon and Ali Express reach millions of potential consumers in the Benelux

and for this reason it must be concluded that the defendant did attempt, and succeeded, in selling products in the Benelux.

16. According to the defendant the goods are also offered on the Dutch version of the Ali Express website. However, according to the defendant, several documents which are collected by the trademark owner show the webpages in English, because he is not based in the Benelux.

17. In the light of the above, the defendant states that he has provided sufficient evidence of use and requests that the Office rejects the request for cancellation in its entirety.

### **III. GROUNDS FOR THE DECISION**

#### **A. Legal framework**

18. Pursuant to Article 2.30bis (1)(a) BCIP an application for revocation may be filed with the Office based on the grounds set out in, inter alia, Article 2.27 (2) BCIP. It is in that case for the defendant to prove that genuine use of the trademark has been made in the Benelux territory, in accordance with Article 2.23bis BCIP, in the five years previous to the filing of the application for revocation or that there are proper reasons for non-use.

19. The application for revocation was filed on 19 November 2018. Therefore the defendant was required to show use of the trademark during the period from 19 November 2013 to 19 November 2018 ('the relevant period').

20. Following Rule 1.41 IR in conjunction with Rule 1.25 IR the proof of use should contain evidence of the place, duration, extent and manner of use of the contested trademark for the goods and services on which the application for revocation is based.

21. In accordance with the decision of the European Court of Justice (hereinafter referred to as "ECJ") of 11 March 2003 (ECJ, Ansul, C-40/01, ECLI:EU:C:2003:145) there is genuine use of a trademark where the mark is used in accordance with its essential function, which is to guarantee the identity of the origin of the goods or services for which it is registered. This is done in order to create or preserve an outlet for those goods or services. Genuine use does not include token use for the sole purpose of preserving the rights conferred by the mark. In that regard, the condition relating to genuine use of the trademark requires that the mark, as protected in the relevant territory, be used publicly and outwardly (see also General Court of the European Union (hereinafter referred to as "EGC"), Silk Cocoon, T-174/01, 12 March 2003, ECLI:EU:T:2003:68; EGC, Vitafruit, T-203/02, 8 July 2004, ECLI:EU:T:2004:225; EGC, Charlott, T-169/06, 8 November 2007, ECLI:EU:T:2007:337).

22. The EGC held that use of the trademark need not always be quantitatively significant for it to be deemed genuine (EGC, Hipoviton, T-334/01, 8 July 2004, ECLI:EU:T:2004:223; EGC, Sonia-Sonia Rykiel, T-131/06, 30 April 2008, ECLI:EU:T:2008:135). The purpose of the notion of genuine use is not to assess commercial success or to review the economic strategy of an undertaking, nor is it intended to restrict trademark protection to the cases where large-scale commercial use has been made of the mark (EGC, Vitafruit, already referred to above).

23. In addition the EGC held that genuine use of a trademark cannot be proven by means of probabilities or suppositions, but must be demonstrated by solid and objective evidence of effective and sufficient use of the trademark on the market concerned (see EGC, Hiwatt, T-39/01, 12 December 2002, ECLI:EU:T:2002:316; EGC, Vitakraft, T-356/02, 6 October 2004, ECLI:EU:T:2004:292 and EGC, Sonia-Sonia Rykiel, already referred to above).

## **B. Analysis of the proof of use**

24. The defendant submitted the following exhibits in order to demonstrate genuine use of the contested trademark in the Benelux:

- 1) Copies of 5 completed orders of sales made through AliExpress.com, dated between 19 and 29 December 2018, addressed to the Netherlands;
- 2) Copies of 16 completed orders of sales made through Amazon.fr and Amazon.de, dated between May and September 2018, addressed to Belgium;
- 3) Copy of 1 completed order of a sale made through Amazon.fr, dated July 2018, addressed to Luxembourg;
- 4) Screen prints from Amazon.de and Amazon.fr that show one type of short and one type of sports bra which are offered for sale under the trademark CAMEL. Several screen prints are identical copies. The documents are either not dated or dated 28 December 2018. With regard to the sports bra, the customer reviews are dated between May – November 2018;
- 5) Copies of the CAMEL look book of 2015/2016 and 2017/2018;
- 6) Copy of a licence agreement between the defendant and the seller on Amazon;
- 7) Birth certificate of the defendant.

25. The claimant argues that the proof of use shows no connection with the owner of the trademark (see paragraph 9). However, now that the defendant has submitted these documents and apparently has obtained it from a third party, there is reason to believe that this trademark use occurred with the consent of the defendant (ECJ, C-416/04 P, The Sunrider Corp/OHIM, 11 May 2006, ECLI:EU:C:2006:310).

26. With regard to the sales made through AliExpress (no. 1) the Office has established that these documents do not show any date on which these orders have been made or delivered. At the top of documents there is a date which falls outside the relevant period. This is probably the date on which the document was printed. Therefore, these documents cannot be taken into consideration as they do not allow to come to any conclusion regarding use during the relevant period.

27. After examination, the Office concludes that the remaining sales in the Benelux, that fall within the relevant period, concern 9 shorts, 2 sports bras and 6 leggings and lead to an amount of EUR 229,- (no. 2 and 3). The period of time of use of the contested trademark that can be deducted from the evidence submitted is a total of five months in one year (from May to September in 2018).

28. Furthermore, the screen prints from the Amazon websites show that the trademark CAMEL has been used for shorts and sports bras (no. 4). The look books also show other types of clothing (no. 5). Although some of these documents are not dated or fall outside the relevant period, it should be noted

that the possibility that some of the proof of use falls outside of the relevant period, does not necessarily mean that these exhibits cannot be taken into consideration. They can still serve to support other proof that was submitted or can contribute to a better analysis of the scope of the use of the trademark in the relevant period (see ECJ, *La Mer Technology*, C-259/02, 27 January 2004, ECLI:EU:C:2004:50; ECJ, *Alcon*, C-192/03 P, 5 October 2004, ECLI:EU:C:2004:587 and the case law referred to there and ECJ, *Aire Limpio*, T-168/04, 7 September 2006, ECLI:EU:T:2006:245).

29. However, the Office considers that the screen prints and look books do not show that the trademark is used within the territory of the Benelux. With regard to the look books, it is completely unclear if these documents have been distributed, viewed, purchased or provided to the public in the Benelux or that they are aimed at the Benelux market.

30. With regard to the screen prints of the Amazon websites, the Office also finds that these documents cannot be considered as valid proof of use. The defendant's argument, namely that there is no special Amazon website for the Netherlands, Belgium and Luxembourg and that the French and German websites of Amazon are accessible to the Benelux public and therefore also target the Benelux (see paragraph 7), does not automatically mean that the trademark has been genuinely used in the Benelux. The internet is, by its nature, accessible worldwide and a website can, in principle, be visited by any user of the internet, anywhere in the world. However, the use of a trademark on a website does not result in genuine use in every country from which the website can be visited. Despite the possibility of shipping the goods to the Benelux, the *amazon.fr* and *amazon.de* websites are mainly addressed to the French and German public, considering their language and country code top-level domains (.fr and .de in this case). It could be possible that *amazon.fr* and *amazon.de* are frequently visited by customers from the Benelux territory. However, this cannot be concluded from the evidence provided. In this regard, the Office points out that genuine use of a trade mark cannot be proven by means of probabilities or suppositions, but must be demonstrated by solid and objective evidence of effective and sufficient use of the trade mark on the market concerned (*EGC, Vogue*, T-382/08, 18 January 2011, ECLI:EU:T:2011:9).

31. When assessing whether certain use of the trademark is genuine, all the facts and circumstances relevant to establishing whether the commercial use of the mark is real in the course of trade must be taken into account. In particular it is of importance whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods or services protected by the mark, the nature of those goods or services, the characteristics of the market and the scale and frequency of use of the mark (see ECJ, *La Mer Technology*, already referred to above). However, the smaller the commercial volume of the exploitation of the mark, the more necessary it is to produce additional evidence to dispel possible doubts as to its genuineness (*EGC, VOGUE*, already cited).

32. The Office finds that the sales amounts are insufficient to establish genuine use for the goods in question, which are by their nature directed at all consumers in the Benelux. Although use of the trademark need not always be quantitatively significant for it to be deemed genuine, it does need to demonstrate that the trademark has been used for the purpose of maintaining or creating market share within the Benelux. In this regard, the Office is of the opinion that the sale of only 17 items, which are very low in price, in Belgium and Luxembourg is not a sufficient commercial volume for a time frame of 5 years taking into account the type of goods involved.

33. Furthermore, as mentioned above, the remaining evidence does not give any additional information to demonstrate the extent of use. Therefore, after careful analysis of the proof of use provided, the Office considers that the evidence considered as a whole does not sufficiently demonstrate the extent, duration and way in which the trademark has been used in the Benelux.

#### **C. Other factors**

34. The defendant submitted additional evidence in its last reply (see paragraph 14). The Office finds that the nature and content of these documents, taking account of the principle of the right to be heard, do not give rise to the provision of an additional round within the meaning of Rule 1.31(2)(f) IR, as they do not impact the outcome of the decision.

#### **D. Conclusion**

35. It follows from the foregoing that the evidence submitted by the defendant, even when assessed overall, does not meet the requisite legal standard regarding the genuine use of the contested trademark in the Benelux during the relevant period. The defendant fails to prove that the contested trademark has been genuinely used or that there is a proper reason for non-use.

### **IV. DECISION**

36. The cancellation application with number 3000064 is justified.

37. International Registration 406715 will be revoked in its entirety for the Benelux.

38. The defendant shall pay the claimant 1,420 euros in accordance with Article 2.30ter, 5 BCIP in conjunction with Rule 1.44, 2 IR, as the cancellation application is awarded in its entirety. This decision constitutes an enforceable order pursuant to Article 2.30ter, 5 BCIP.

The Hague, 11 June 2020



Eline Schiebroek  
(*rapporteur*)

Pieter Veeze

Diter Wuytens

Administrative officer: Diter Wuytens