

I. Introduction

“Unlike most paintings, photographs or novelty items, a character can take on a life of its own, and thus may be protected against copies in postures, settings and attitudes far removed from any in the author's original depiction”.¹

In a multitude of ways, fictitious characters are being employed in the marketing of goods: Be it as spokes-characters in advertisement campaigns, or be it by adding substantial value to bulk products in ways of merchandising. Characters are semantic units consisting of name, visual appearance, voice and an underlying scheme of personality traits and experiences. And just by their mere presence, they are able to serve as designators of source. It is because of their complex structure and their relative novelty, that characters are rarely granted clear-cut protection as such under one IP right, but benefit from a historically grown patchwork of protection for selected aspects.

In recent years, the advertisement industry has been increasingly reliant on the use of these advertising characters in the creation of brand images. Reasons for this development are not only to be found more sophisticated graphical representations following great advancements in the creation of CGI (and their popularity in the general audience), but also in the stronger incorporation of psychological theory in advertisement. Characters are able to create more trust than traditional brands, thus selling more products. Advertising characters have enormous recognition and identification value, and bear higher integrability in interactive marketing measures, and more importantly in modern social media, than conventional marks. Needless to say, their creation is connected with substantial investments.

But just like their human models, fictitious characters are not static but are subject to constant evolutionary change, be it in reply to a market demand, or as a logical consequence of reasons inherent to the character's structure. This leads to difficulties in distinction not only

1 Paul Goldstein & P. Berndt Hugenholtz, International Copyright: Principles, Law and Practice § 2.11.3. at 158 (2d ed. 2010).

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whether protection is to be awarded at all, or in the determination when a threshold of protection is met, but also to what degree the protection of these alterations can be tucked to the object originally protected.

My goal is to thoroughly analyse the eligibility for protection under traditional trade mark law and adjacent matters, paying special attention to the protection of character changes, modernisation and alteration.