



Amsterdam Court of Appeal overturns sticker decision in dispute involving famous satirical TV show

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Legal updates: case law analysis and intelligence

- Following the publication of the book *Jiskefet Encyclopedie*, the makers of the TV show *Jiskefet* filed suit against the publisher of the book
- The district court ordered that the book be put on the market with a sticker stating that the book was not authorised
- The appeal court disagreed, finding that such trademark use was not unfair and that the mark's reputation did not suffer

In [Noblesse Uitgevers BV v Jiskefet BV](#) (Case ECLI:NL:GHAMS:2022:1851), the Court of Appeal of Amsterdam has overturned the decision of the District Court of North Holland in a case initiated by the makers of a famous Dutch satire TV show, *Jiskefet*. The dispute involved an encyclopaedia about the show which was written and published without the makers' knowledge or cooperation, and without their consent. According to them, this constituted an infringement of their JISKEFET trademark. The Court of Appeal of Amsterdam disagreed.



Background

After the producers of the Dutch comedy TV show *Jiskefet* ('the plaintiffs') found out that publisher Noblesse was going to market a book called *Jiskefet Encyclopedie*, they started court proceedings in which they invoked their JISKEFET trademark, seeking to ensure that the public would be aware that they had nothing to do with the book. They argued that the use of the JISKEFET trademark by Noblesse would not be in accordance with honest practices in industrial or commercial matters and would, without due cause, take unfair advantage of, or be detrimental to, the distinctive character of the mark. They invoked Article 2.20(2)(c) of the Benelux Convention on Intellectual Property (BCIP), which is the equivalent of Article 9(2)(c) of the EU Trademark Regulation (2017/1001), and also invoked Article 2.20(2)(d). Under this provision, it is possible to act against the unfair use of a well-known trademark, or use which is detrimental to its reputation, even if the mark is not used in relation to goods or services. The plaintiffs claimed that Noblesse had to put a sticker on the book and/or use an insert stating that the book was unauthorised.

Even though the District Court of North Holland ruled at first instance that the use of the JISKEFET mark was not use in relation to goods, it did agree with the plaintiffs on the Article 2.20(2)(d) BCIP ground. It thus ordered that the unauthorised *Jiskefet Encyclopedie* be put on the market with a sticker and insert. The district court was able to grant the trademark infringement claim in relation to use of the JISKEFET trademark, other than for goods or services.

Court of Appeal decision

Noblesse put the *Jiskefet Encyclopedie* on the market with a sticker, insert and wrapper, thus complying with the ruling. It did however appeal the judgment issued by the court in the preliminary injunction proceedings. The Amsterdam Court of Appeal ruled that such trademark use did take advantage of the reputation of the mark (due to the reputation of the *Jiskefet* TV show)

but that, given the descriptive content of the book, it was not unfair use; nor did the trademark's reputation suffer from Noblesse's use - after all, the book was actually very positive about the *Jiskefet* TV show.

Nevertheless, the plaintiffs claimed that the book, contrary to the TV show, was not humorous and that the reputation of the trademark would therefore be damaged. However, according to the Court of Appeal, whether or not something is humorous is too subjective an assessment, and a sense of humour falls outside the scope of protection of trademark law. Therefore, the *Jiskefet Encyclopedie* can again be sold in bookshops without a sticker, wrapper or insert.

Outlook

The plaintiffs are reportedly appealing to the Supreme Court, so it remains to be seen whether stickers will need to be reapplied to the *Jiskefet Encyclopedie* in a few years.

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