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The BIBBY case: bad faith and bad karma

Netherlands - [Hoogenraad & Haak, Advertising + IP Advocaten](#)

- **This dispute involved Samsung and EBB Development Limited, an entity of which the notorious Michael Gleissner is the sole director**
- **The Court of Appeal of the Hague ruled that EBB had acted in bad faith when applying for the trademark BIBBY**
- **EBB would have been better off not appealing the first-instance decision, as the Court of Appeal overturned the decision on legal costs in Samsung's favour**

Notorious trademark filer Michael Gleissner is the sole director of EBB Development Limited. He has been involved in many disputes with famous brands and, in the present case, was embroiled in a dispute concerning Samsung's trademark BIXBY. On 22 June 2021 the Court of Appeal of the Hague [ruled](#) that EBB was acting in bad faith when applying for the Benelux trademark BIBBY.

Background

On 10 October 2016 EBB filed three word marks for the sign BIBBY in the Trademark Register of Pakistan. On 2 November 2016 Samsung applied for registration of the EU word mark BIXBY. Beforehand, it had carried out research on the availability of the sign, which revealed no conflicting brands or marks, including the trademark BIBBY. However, BIBBY would not have appeared no matter how thoroughly Samsung might have searched, as the Trademark Register of Pakistan does not publish applications within one year.

On 28 February 2017 Gleissner's company EBB applied for the Benelux trademark BIBBY, invoking the priority of the unpublished Pakistani trademark application. EBB also filed an opposition to BIXBY.

At first instance, the District Court of the Hague [declared](#) BIBBY to be invalid and ordered its cancellation. The court considered that EBB acted in bad faith when applying for the mark. BIBBY had never been used and there were no concrete plans for its use. According to the court, the application for BIBBY had been filed with the intention of opposing the BIXBY mark. Therefore, the court ruled that BIBBY was not being used in accordance with the essential function of a trademark and that the application was made solely for speculative purposes.

Further, the District Court found Gleissner to be personally liable towards Samsung, and EBB was ordered to pay the legal costs. Because the District Court found that this procedure concerned the validity of a trademark and, therefore, did not concern the enforcement of IP laws, the full legal costs were denied and only formal costs of €1,793 were awarded.

Decision of the Court of Appeal of The Hague

On appeal, EBB argued that there was no hidden priority trap or bad faith involved. As far as BIBBY was concerned, EBB's intention was to use this mark for an app. EBB also believed that each trademark application should be assessed on its own merits. Therefore, EBB's other trademark registrations should be deemed irrelevant.

The Court of Appeal of The Hague disagreed with EBB. The fact that there are hundreds of trademark registrations in the name of EBB was relevant when assessing the entity's subjective intent. After all, it followed from the documents submitted by Samsung (including foreign judgments) that the trademark strategy of EBB showed a pattern of unfair practices. It appears that Gleissner is notorious for a reason.

The Court of Appeal came to the same conclusion as the District Court: BIBBY was not being used in accordance with the essential function of a trademark and, therefore, EBB was acting in bad faith.

Legal costs

In hindsight, EBB would have been better off not appealing the decision of the District Court. Not only did the Court of Appeal reject all of EBB's arguments, it also overturned the decision on legal costs.

Contrary to the District Court, the Court of Appeal ruled that this case did concern the enforcement of an IP right. Taking into account the indication tariffs for IP cases, this amounted to an award of €17,500 for the costs in the first instance - which is almost 10 times more than what the District Court ordered. In addition, costs of €20,000 were awarded for the appeal.

Comment

One may argue that acting in bad faith results in bad karma.

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