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Portrait trademarks: How distinctive is your face?



BOIP coffee break webinar

24 May 2023
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Poll: What do you see on the photo?



1. A trademark for services of an actor
2. A trademark for coffee
3. A distinctive portrait which can function as a trademark for all types of goods or services

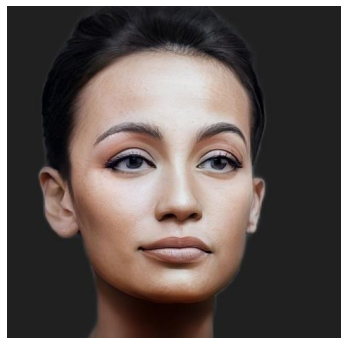
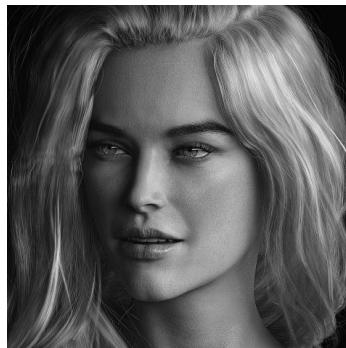
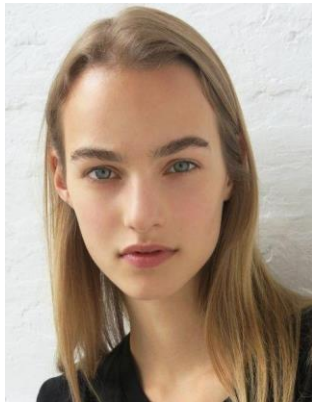


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Faces in the crowd?





BOIP Guidelines on Portraits

- 74. (...) these are in principle **not distinctive** because the public does not perceive them ab initio as trademarks. However, the portrait of a person may, by virtue of the use made of it, become a trademark for certain goods and services.
- (...) recognition of a person does not yet guarantee that the image of that person to the public also fulfils the function of the trademark as a badge of origin for the goods or services in question.
- The question is whether the portrait is recognised by the public as “the face” of a certain product, irrespective of his or her personal identity

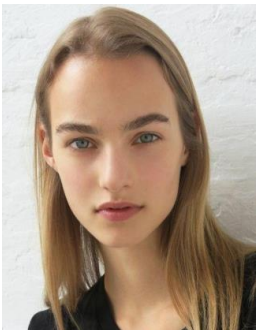




EUIPO BoA 16 November 2017 (Maartje Verhoef)

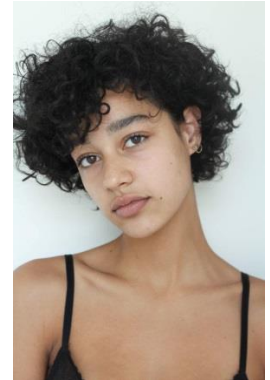
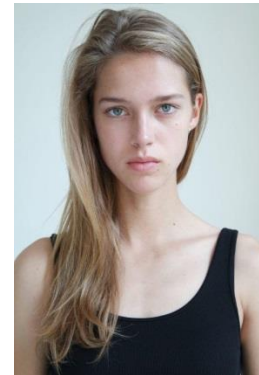
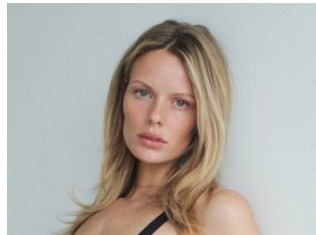
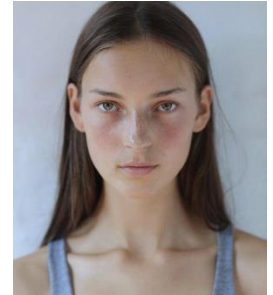
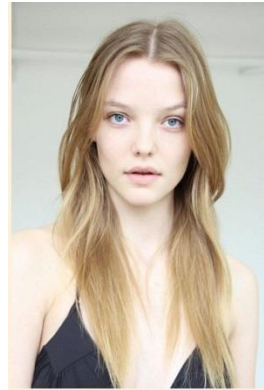
- "the image (...) consists of a realistic representation of the head/face of a woman (...), this image does in fact enable the public to distinguish the goods and services concerned from those with a different commercial origin, and in particular from the specific person depicted."
- "(...) a depiction of a person's face in the form of a passport photo serves to identify that person and therefore to distinguish him/her from others(...)"

R-2063/2016-4- device (photo) of the head of a woman (fig.)



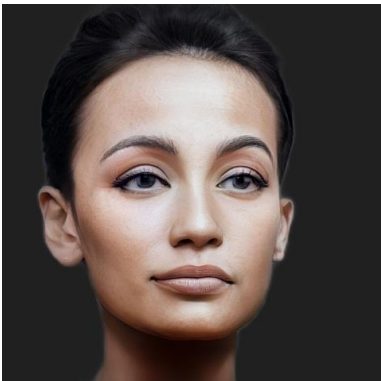


Servicemarks with acquired distinctiveness





Will the real Cleopatra please stand up?





A face in the crowd or a famous historical person?

- "Uniqueness and distinctiveness are two different concepts. Every face is unique, but this does not mean that it is immediately taken to indicate the commercial origin of the applicant's goods and services (...)"
- "(...) In other words, recognising is not the same as distinguishing by origin."
- Partial refusal? Sub b. as subject matter?





“Hi, I am your shopping assistant.”



“(…) it is unlikely that representations of a human face would be seen as anything more than a pleasant image reinforcing a positive promotional message. They will not be perceived as trademarks (…)”.



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Famous people, trademarks and coffee



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Do you have any questions?

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Thank you for sharing your coffee break with BOIP!

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Sources

Slide 3 from top left counter-clockwise

- Maartje Verhoef – Model BX 1332966 - CI 35, 41 (2016) partially accepted (acquired distinctiveness) and EUTM 14679351 - CI 3, 9, 14, 16, 18, 25, 35, 41, 42, 44 (2015) accepted – see BOA 16/11/2017;
- Nefertiti – Historical person EUTM 18585956 - CI 9, 35, 41 (2021) partial refusal;
- Virtual/digital assistant INT designating EU 1711641 - CI 9, 42 (2022) refusal;
- Doutzen Kroes – Model BX 1385315 – CI 25, 35, 41 (2018) accepted (acquired distinctiveness) and EUTM 17987149 - CI 25, 35, 41 (2018) under examination;
- Judith Stal – Hungarian tv personality (brunette in black and white) EUTM 11552321- CI 8, 9, 16, 21, 28, 29, 30, 31, 32, 33, 35, 39, 41, 43 (2013) accepted;
- Fallon Sherrock – Darts player EUTM 18192360 – CI 25, 28, under examination (2020);
- Cleopatra – Historical person EUTM 18585916 - CI 9, 35, 41 (2021) partial refusal;
- Elvan Ismail – Portrait of a natural person (blonde, black shirt in black and white) EUTM 18318511 - CI 3 (2020) accepted;
- Lia 27 – Computer generated portrait (blonde in black and white) EUTM 18608409 – CI 41 (2021) refusal.

