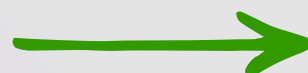




# EXPLAINER: KEY TAKEAWAYS WEBINAR 2024

Discover interesting cases!



**We highlighted several bad faith cases and asked the question:**

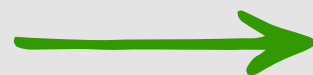
**Should BOIP in bad faith cancellation cases always grant a 2nd round to exchange arguments?**

**And 72% answered 'yes'.**

**This year we also focused on cases in which the distinctive character of a sign played a significant role.**

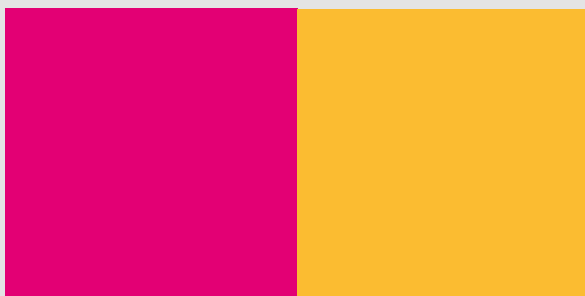


**Position mark case**

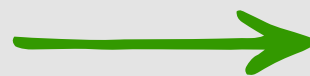


## Dr Martens Position mark case

- In this case it was decided that acquired distinctiveness must be shown for the position mark in any colour.
- This requirement raises questions, for example whether it is possible to register a position mark for a colour or the shade of a colour.
- The final word has not yet been said on this! The first Chamber of the Benelux Court is currently looking at the appeal in this case.



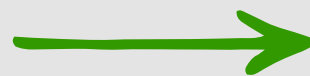
**Colour marks**



## Colour marks (T-Mobile & Chocomel)

- Distinctive character may grow (or shrink) over time. Not being on the market in a significant part of the Benelux does not help (T-Mobile)
- Enlarged distinctive character needs to be shown/proven. Using the colour in a consistent and dominating way on the product, packaging and merchandise helps (Chocomel)

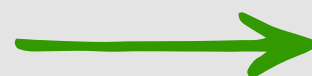
**Reputation**



## Reputation (Max Verstappen & McDonalds)

- If you are a famous Formule 1 driver this does not automatically result in your name being a well know trademark for all kinds of products.
- The extent of the reputation also determines the scope of protection vis-à-vis similar marks offering different products (McDonalds)

**Descriptive character**



## Descriptive character (The Bank)

- BOIP refused the word 'The Bank' for inter alia restaurant services.
- The Benelux Court overruled this decision, stating that:
  - There is no association of the indication THE BANK with qualities of the services indicated.
  - The services indicated are not intrinsically connected with banking.
  - In addition, it does not concern a quality which creates a positive feeling
- In short, the indication 'The Bank' is not descriptive for a restaurant.



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