

Sunday, 31 January 2010

[How genuine is OMEL/ONEL?](#)



The IPKat has caught the distant sound of Dutch trade mark personalities discussing the recent and still controversial *OMEL/ONEL* case, in which use of a Community trade mark in just one of the 27 Member States was not considered to be genuine use of an earlier mark in Benelux opposition proceedings (see the IPKat [here](#), [here](#) and [here](#)). What the Kat heard, from a little bird, runs like this:

"[ONEL](#) -- the opponent in the proceedings in question -- is believed to be related to another firm, [Knijff](#) (the two share the same address and PO Box number), and some folk have asked whether this may case may have been cleverly crafted in order to stir up debate and perhaps obtain an authoritative ruling on an issue which certainly needs clarification.

OMEL, the opposed trade mark application, was filed by Hagelkruis Beheer B.V., a holding/real estate company with no employees and just a single shareholder, his wife being the "acting" director. The company registered a Benelux mark without a trade mark attorney. That is not very odd by itself, but rather odd if you consider that this application was filed only in the Benelux in order to secure a basic registration in order to obtain through the Madrid system some registrations in Scandinavia. I have never heard of small, non-represented clients in the Benelux using the Madrid system. What's more, the arguments that Hagelkruis raised are "too good" to have come from a person who has not specialized in trade mark law ...".

The IPKat is prepared to keep an open mind, since the ways of both businesses and trade mark practitioners around Europe are bound to differ from country to country; what's more, any lay person who regularly reads this blog and [Class 46](#) would soon be expected to obtain a good education in European trade mark law. Merpel's not so sure: she still wonders about the European Court of Justice references in [Case C-283/01 Shield Mark](#) and [Case C-273/00 Sieckmann](#), where the principal actors were IP practitioners themselves. Nothing to wonder about, says the IPKat -- intellectual property attorneys are allowed to use trade marks too, and any system that leaves gaps in its legislative details deserves to have those gaps filled in. But even so, it would be good to know a bit more about the background of this dispute.

Posted by Jeremy at [1/31/2010 06:45:00 PM](#)



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