



TW64 To What Extent is Slavish Imitation of Non-IP Protected Products Lawful?

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The appearance of a product can be protected by design, trademark (2D/3D) or copyright laws provided that their respective conditions are fulfilled. The question arises whether the imitation, even slavish, of a product which does not or no longer qualifies for protection under IP laws must be prohibited by way of unfair competition laws. This topic touches upon the interplay between IP laws and unfair competition and in particular various situations – such as the copy of a competitor's entire line of products or the systematic imitation of a competitor's commercial initiatives – which may be considered unlawful by courts.

A. Introduction

B. Available IP rights to protect the appearance of a product

1. Trademarks:

- 2D
- 3D
- Distinctive character: original/acquired

2. Designs:

- Limitations regarding industrial products?
- Functionality
- Duration

3. Copyright:

- Limitations regarding industrial products?
- Functionality
- Duration, *inter alia* if author is unknown

C. Unfair competition

4. Freedom to copy:

- Applicable?
- Limitations?
 - Risk of confusion
 - Exploitation of the reputation: distinctiveness relevant?
 - Particularly refined imitation
 - Bad faith
 - Evitability
 - Systematic imitation
 - Imitation of a whole line of products
 - Obstruction
 - Other situations

5. Interplay with IP rights which have been cancelled, withdrawn or have expired
