



Design Protection in Switzerland

by Michael Ritscher

ECTA Roundtable 23 March 2007

M & L

MEYER LUSTENBERGER
RECHTSANWÄLTE – ATTORNEYS AT LAW

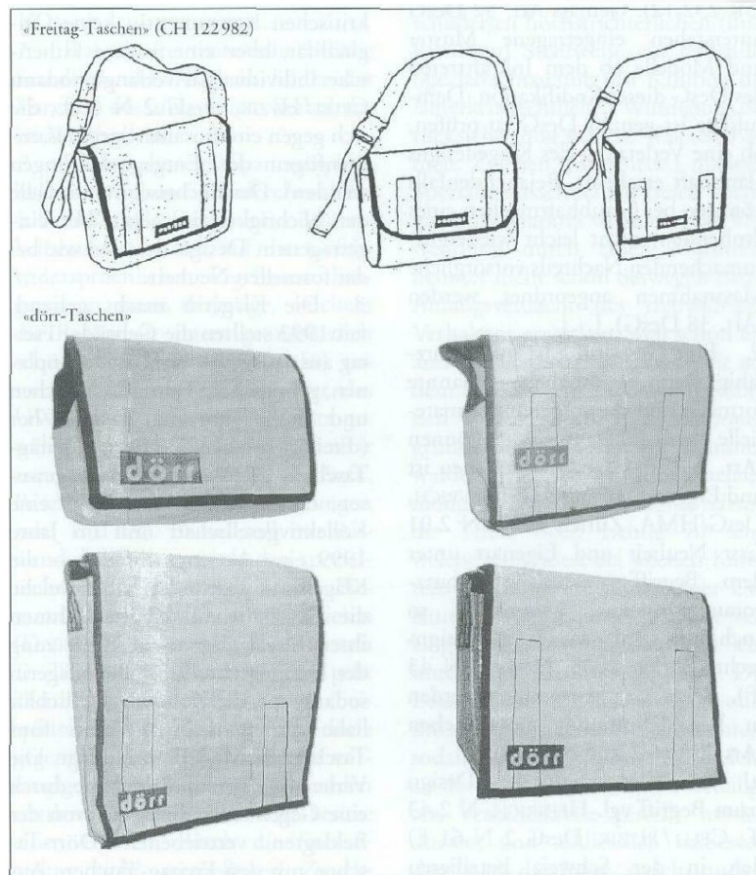
Some Swiss Peculiarities

- not member of the EU, but: model pupil
- too small for a legal system of its own
- 26 procedural laws
- 4 commercial courts (federal patent court to come),
appeal: Swiss Supreme Court
- the „Referentenaudienz“ at the Zurich Commercial Court
- arbitration

The New Swiss Design Act

- amended 2002: „**Design**schutzgesetz“
- registration: Federal Institute of Intellectual Property (www.ige.ch)
- but: not searchable (but www.swissreg.ch)
- novelty (Neuheit)
plus originality (Eigenart), but: assumed if registered
- broader scope of protection (no synoptic comparison)
- no **un**registered design

Design Protection by Design Law: the Novelty Requirement



„Freitag-bag“ (Zurich, 2003)

- recycled materials (truck-covers, safetybelts and bicycle tubes)
- court asserts prior publication and nullity of registration
- no unfair competition (no confusion, no unfair imitation)

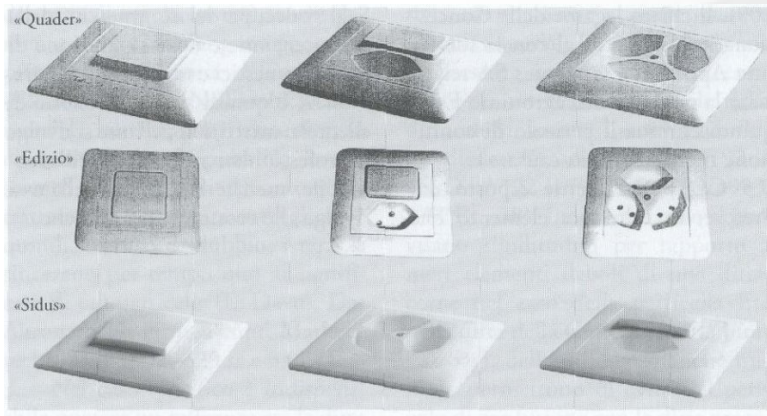
Design Protection by Design Law: the Originality Requirement



„Ice Cube“ (Basel, 2004)

- „pavé“-technique (laminary diamonds) jewellery
- prior art only originality destructing if infringing
- (but: not infringed because different overall impression)

Design Protection by Design Law: the Scope of Protection 1/3

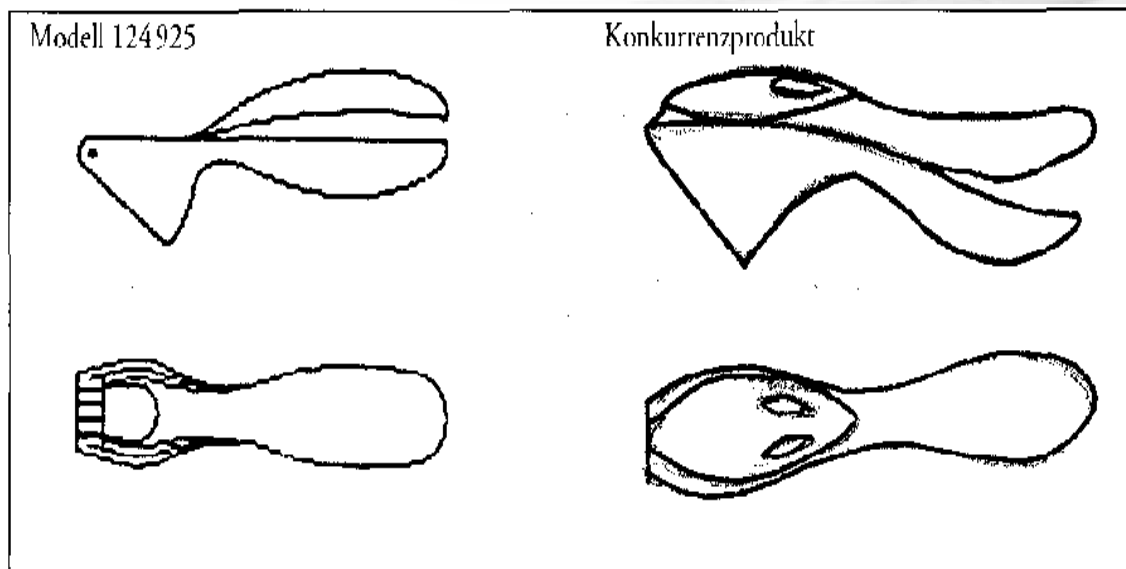


„Power-Socket“ (Zurich, 2002)

- concentric, unostentatious arrangement of geometric elements
- validity confirmed, but:
- sufficient distance, because:
design limitations by intended use; but:



Design Protection by Design Law: the Scope of Protection 2/3



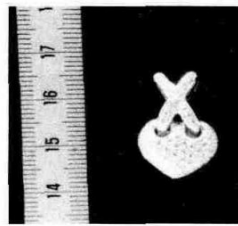
„Garlic press“
(Supreme Court, 2003)

- not: „synoptic“ comparison
- not: likelihood of confusion
- new: short-term memory of average consumer
- irrelevant: common and technical features

Design Protection by Design Law: the Scope of Protection 3/3



Hinterlegtes Modell der Klägerin
DM/034 196



Umstrittenes Modell der Beklagten

„Heart with Crossed Bands“
(Basel, 2004)

Originality of (very common)
heart
covered with diamonds

= two crossed bands
= copied (worth copying is
worth protecting)

and therefore infringed.



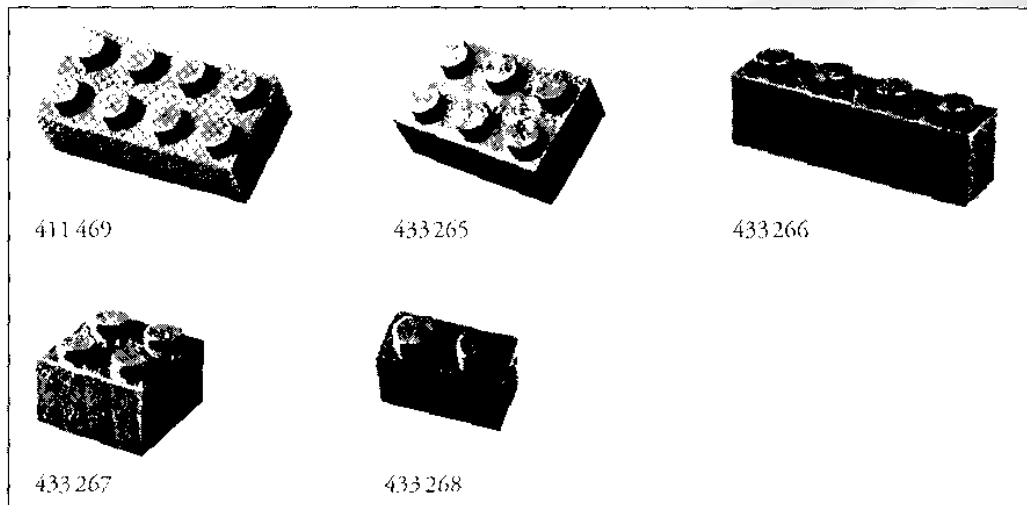
Design Protection by Copyright Law



M&L

MEYER LUSTENBERGER
RECHTSANWÄLTE – ATTORNEYS AT LAW

Design Protection by Trademark Law 1/2



„Lego“
(Supreme Court, 2003)

Technical necessity?

Only if a reasonable alternative exists. Not, if the alternative is

- less practical;
- less solid; or
- more expensive to produce.

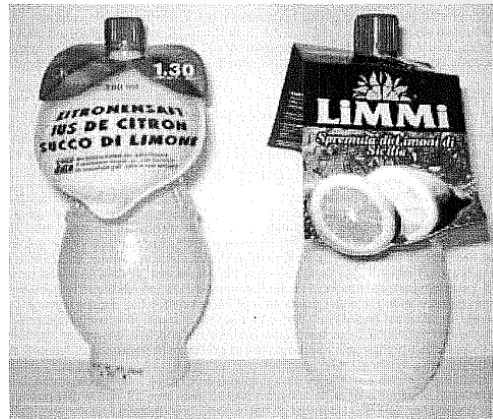
Alternative is reasonable even if it is not functionally compatible with LEGO blocks.

Design Protection by Trademark Law 2/2



„Alu Chair“, CH P-428 440, IR 763 550

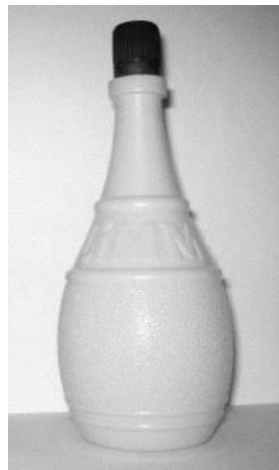
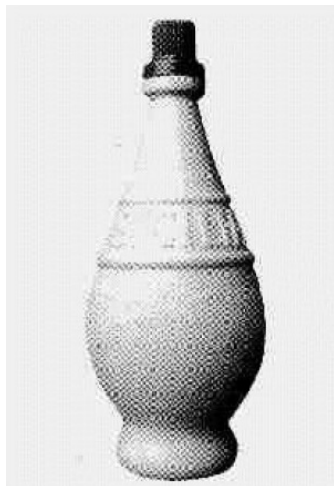
Design Protection by the Law against Unfair Competition 1/2



„Sicilia“

CH P-415 071

„Limmi“



„Lemon Concentrate Bottle“
(Supreme Court 2004)

Likelihood of confusion confirmed

- based on longtime use of the product and on the law against **unfair competition**

- despite of trademark (3D) registration

- and despite of different labels „Sicilia“ / „Limmi“ (post-sale)

Design Protection by the Law against Unfair Competition 2/2



= CH 524 249

„Maltesers / KitKat POP CHOC“
(Supreme Court, 2006)

Likelihood of confusion confirmed

- based on acquired distinctiveness on the law against **unfair competition**
- despite of trademark (2D) registration
- and despite of different names: „Maltesers“ / „KitKat POP CHOC“



Michael Ritscher

thanks you!



MEYER LUSTENBERGER
RECHTSANWÄLTE – ATTORNEYS AT LAW