

BOIP



Benelux Office for  
Intellectual  
Property

# CAN A PORTRAIT OF A PERSON FUNCTION AS A TRADEMARK?



Swipe!



EU 014711907




- ➔ **On 19 December 2023 EUIPO issued a provisional refusal for the portrait mark of Jan Smit which was applied for a wide variety of goods and services amongst which sound carriers, magazines, stickers, clothing, music education and services of nightclubs.**
- ➔ **The ground for refusal is lack of distinctiveness. According to EUIPO it has not been proven that the trademark has acquired secondary meaning in the EU for the goods and services applied for.**
- ➔ **Currently an appeal has been lodged against the decision.**

→ Recently, by decision of 30 October 2023, the Boards of Appeal overruled the decision to refuse the following portrait mark for services of mannequins.



EU 017916623

**To be continued...**

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- How distinctive is a face?
  - Is every face a face in the crowd? Or are some faces 'more equal than others'?
  - Can a hat, a nose (Barbra Streisand) or someone's haircut (Donald Trump) determine the distinctiveness of a portrait mark per se?



EU 017916623

- ➔ BOIP's guidelines on Examination of Absolute grounds state that portrait marks are in principle not distinctive per se
- ➔ The consumer needs to get accustomed to a face as a badge of origin for specific kinds of goods and services, that is distinctiveness should be acquired and proven
- ➔ Curious about the current state of play in the field of portrait marks in the Benelux and the EU? Replay or download our BOIP coffee break webinar of 24 May 2023

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