

Germany: Regional Court Finds Clothing Model Name Non-Infringing

Higher Regional Court Frankfurt a. M., Urt. of. 1.10.2019 – 6 U 111/16

[By Robin N. Baydurcan](#)

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In the case at issue, the clothing manufacturer BRAX asserted its trademark SAM, registered for clothing, against an online company selling jeans with the model name SAM contained in the product description. The trademark infringement claim was initially upheld by the Higher Regional Court Frankfurt am Main on the ground that the use of SAM as a model name would be perceived as a secondary brand name by the average consumer, rejecting the idea that SAM was merely descriptive of, for example, the cut of the pants. However, after the Federal Court of Justice overturned this initial decision and remanded the case to the Higher Regional Court in March 2019, the latter court ruled on the matter again, this time denying trademark infringement.

The final decision reasoned that the text in question, "Model: SAM," would not be perceived as an indication of source because it only appeared in an inconspicuous part of the product description and was not highlighted or emphasized in any way. The court added that model designations in online sales

offerings are generally not considered by consumers to be secondary brand names. Regional courts in Cologne and Hamburg have reached similar conclusions about apparel model names.

Following these decisions, fashion companies hoping to avoid infringement claims in these parts of Germany should use clothing model names with as little emphasis as possible, in an inconspicuous manner and place, and not on the labels of the clothing items themselves. Thus, these appear to be narrow circumstances that do not necessarily excuse all uses of clothing model names.

Compare to a recent [decision](#) in Australia (*Pinnacle Runway Pty Ltd v Triangl Limited* [2019] FCA 1662) holding that clothing style names are generally not source identifiers and therefore not trademarks. The court in Australia gave guidance that the style name should be de-emphasized in terms of positioning, font style, size and color and should not be applied to the products themselves, but emphasized that each case would be analyzed on its own facts which seems consistent with the position in Germany thus far.

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