

NJORD case law news: Multimedia sign "Super Simon"

The EUIPO Board of Appeal on its 7 March, 2023 decision in case No. R 1490/2022-5, dealt with an interesting case involving a multimedia mark. The multimedia mark itself is a relatively new type of trade mark which consists of a combination of image and sound, filed in audiovisual file format.

The protection was sought for a 22-second long animated cartoon clip in regards to goods and services in Nice classes 16, 33 and 41. The clip shows a heroic, super hero cartoon character named "Super Simon", that is flying to a holiday destination. The cartoon video, as well as the goods and services applied for include references to the Benelux Office for Intellectual Property and their experts, through the cartoon characters in a symbolic and tongue-in-cheek kind of way showing the Benelux Office for Intellectual Property recent director change.

The EUIPO rejected the application for lack of distinctiveness, however, the appeal against this decision was successful. According to the Board of Appeal decision, the multimedia mark and the character "Super Simon" was found to be distinctive, and it was determined not to be necessary to indicate the manufacturer's own identity in the clip. The motive and possible intentions of the application of the unusual cartoon character mark were deemed to be irrelevant for the assessment of the inherent distinctiveness of the mark, however, the humor behind the application had been recognized by the authorities.

The decision available: <https://euipo.europa.eu/ohimportal/en/web/guest/-/the-multimedia-mark-s...>

"Super Simon" multimedia trademark for Nice classes 16, 33 and 41, applicants Chiever B.V., Barbara Strozilaan 201, trade mark application No 18 061 546, fragment used for informative and educational purposes.