

IP landscape unveiled: IP frameworks for synthetic media

A trade mark perspective

Nedim Malovic
TM/IP Counsel, ASSA ABLOY

Agenda

1. Non-conventional trade marks

- Introduction

2. Case studies

- *Maartje Verhoef* – Distinctiveness of facial marks
- *Puck Schrover* – The limits of recognizability
- *Jan Smith* – Ongoing Grand Board review

3. From faces to gestures

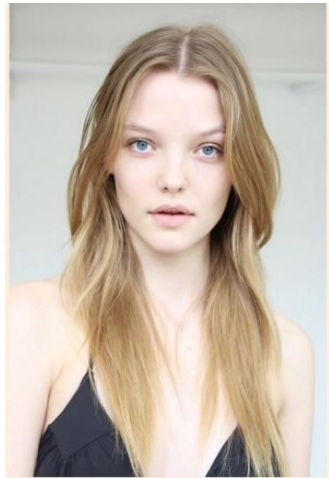
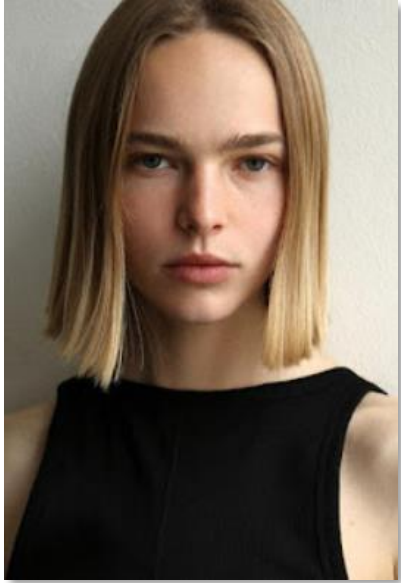
- The “Salt Bae” case and parallels in non-traditional marks
- Emerging approaches toward a multi-factor test

4. Global perspective

- The U.S. approach: *Usain Bolt*, *Michael Jordan*, *Bruce Lee*

5. Concluding remarks

- Lessons from jurisprudence



Non-conventional trade marks

- **Context**
 - **Synthetic media blurs** the line between reality & creation
 - AI can now generate human-like **voices, faces & expressions**
 - Raises key question: Can trade marks protect something as personal as a **pose, gesture, or face?**
- **Focus of today's session**
 - **Non-conventional trade marks** – faces, gestures & poses
 - **Distinctiveness** – ability of a sign to communicate origin
 - Lack of distinctiveness → **absolute ground for refusal**



Absolute grounds of refusal: distinctiveness

Distinctiveness - Art. 7(1)(b) EUTMR

“[The sign did not consist of] a banal representation of people in general”, but rather “a specific individual, with her unique facial features”, with the result that the image at issue “does in fact enable the public to distinguish the goods and services concerned from those with a different commercial origin, and in particular from the specific person depicted”

**R 2063/2016-4, Giraffen houden van Wodka
BV v EUIPO, Maartje Verhoef**

Absolute grounds of refusal: descriptiveness

Descriptiveness Art. 7(1)(c) EUTMR

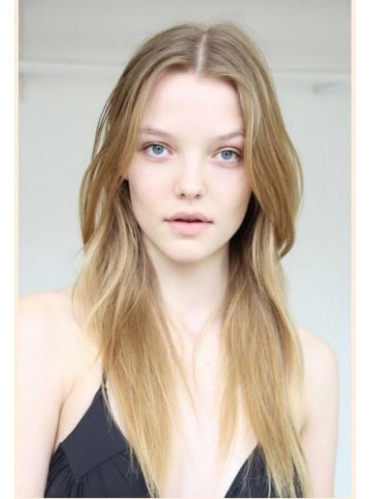
- No direct and specific relationship between the sign and the goods and services in question (ie., jewelry, clothing and hygienic items)

- Public will not automatically assume a woman's image points only to women's goods

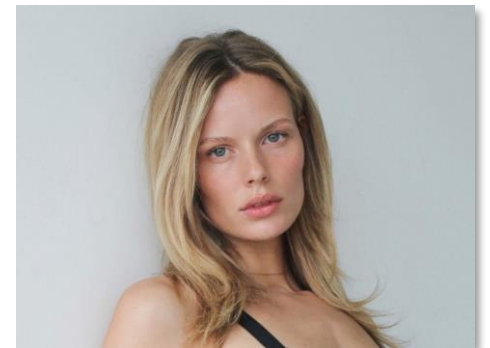
**R 2063/2016-4, Giraffen houden van Wodka
BV v EUIPO, Maartje Verhoef**



Maartje Verhoef



**EUTM: 017393125, Roos
Abels**



**EUTM: 017355066, Marlijn
Hoek**



EUIPO 4th Board of Appeal, R 2173/2023-4, PS Holding B.V, v EUIPO, Puck Schrover

Figurative mark depicting Dutch model **Puck Schrover**
Applied for services in **Classes 35 & 41** (models,
mannequins)

✗ Application rejected – lack of distinctiveness
Image seen as a **standard model photograph**, not a trade
mark

No striking or memorable elements to indicate origin

Consumers viewed the portrait as a **promotional image**,
not as a **source identifier**.

*EUIPO 2nd Board of Appeal, R
50/2024-2, Johannes
Hendricus Maria Smit v EUIPO*

Figurative mark of Dutch entertainer Jan Smith

Covered various goods & services

Decision

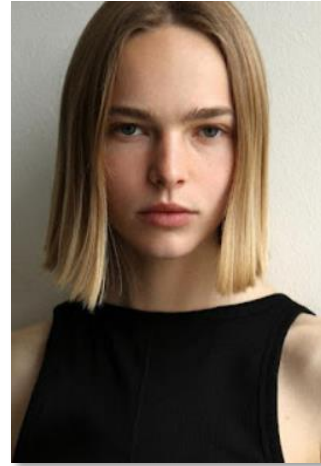
- Rejected – lacked distinctive character
- Seen as a **generic image of a man**, not a source indicator
- Portrait viewed as a **common, banal representation used across goods/services**

Current status

Pending before the Grand Board of Appeal



Evolving approach: Faces, gestures & commercial origin



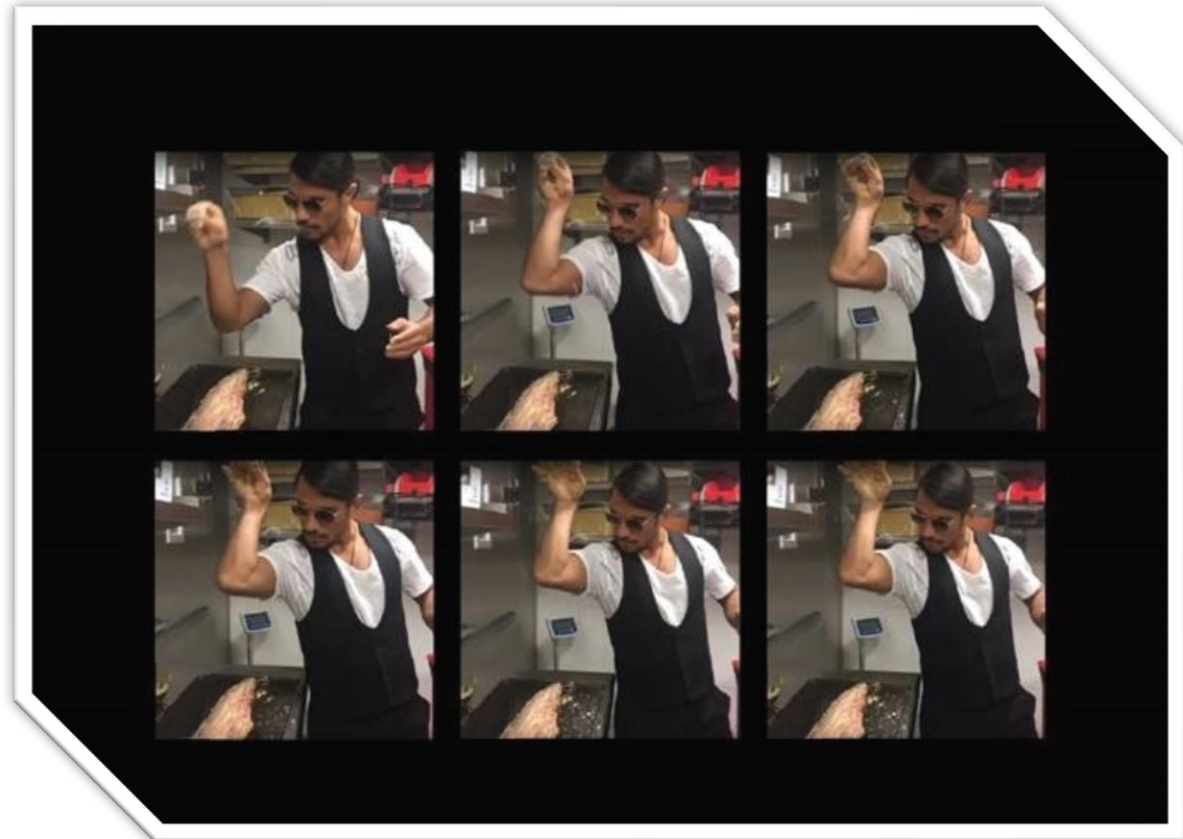
Key observations:

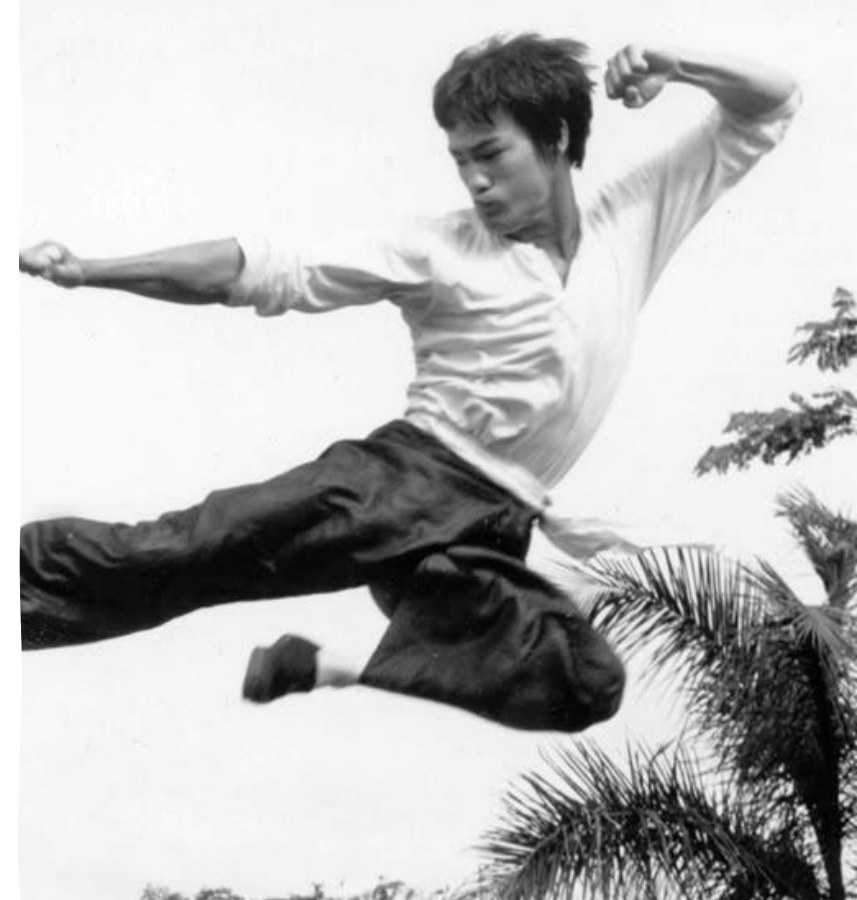
- Real-life portraits rarely act as indicators of origin
- Celebrity images → usually endorsement, not trade marks
- Faces not excluded per se, but inherent distinctiveness is hard to prove

Possible direction (Grand Board):

- Move towards a multi-factor test for “face marks”
- Familiarity or recognizability
- Stylization and presentation
- Consumer perception

Parallel with other jurisprudence: *Salt Bae* decision – gesture seen as common action, not brand indicator





A global perspective – US success stories – poses as trade marks

Usain Bolt – “Lightning Bolt” Pose

- Registered as a figurative trade mark in the US
- Covers clothing, bags, jewelry, sunglasses
- No objections during USPTO examination

Other iconic pose marks:

- *Michael Jordan* – “Jumpman” dunk
- *Bruce Lee* – flying kick silhouette

Conclusion

Key takeaways:

- Faces are even more commonplace than gestures → higher bar for distinctiveness
- Fame or recognition alone is not enough — must show consumer association
- Law still grappling with *when* human form becomes a commercial signifier
- Likely move toward a multi-factor test (stylization, distinctiveness, context, perception)

Looking ahead:

- In the age of synthetic media, the line between *identity* and *brand* is increasingly blurred — raising new challenges for trade mark law

Thank you for your attention!



NEDIM MALOVIC
TM/IP COUNSEL (ASSA ABLOY)

NEDIM.MALOVIC@ASSAABLOY.COM

WWW.LINKEDIN.COM/IN/MALOVIC