

VISSER  
SCHAAP &  
KREIJGER

# **CIVIL REMEDIES IN THE NETHERLANDS**

Paris, May 7<sup>th</sup> 2019

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## CIVIL REMEDIES

- I. ex parte
- II. preservation orders
- III. Preliminary relief proceedings
- IV. Proceedings on the merits
- V. Claims

Example effect Nintendo/Big Ben

## Measures on the basis of application?

- trademark: registration required
  - \* urgent registration procedure
  - Benelux trademark
- design: damages only after publication of the design

■ I. EX PARTE

- In **urgent cases**, in particular where any **delay would cause irreparable damage** to the rightholder
- **Immediate provisional injunction to prevent any imminent infringement**
- Judge may grant request **conditional on the provision of security** (not very often applied)
- Alleged infringer can request urgent preliminary relief proceedings in order to **revise the ex parte decision**

- II. PRESERVATION ORDERS

- seizure of the infringing **goods**
  - has to be followed by proceedings on the substance of the matter
- Seizure of **evidence**

(article 1019b lid 1 jo. 1019c lid 1 Dutch Code Civil proceedings)

  - followed by proceedings for actual access
- **Request** providing evidence
 

(article 843a Dutch Code civil Proceedings)

  - Specific evidence, no fishing expedition

- III Preliminary relief proceedings

- Fast (depending on court and case *very* fast)
- Writ of summons, hearing, verdict
- Defendant *can* file statement of defence beforehand
- Defendant *can* file counterclaim
- Both sides can file evidence (24 hours)
- Judgement 2 weeks after hearing

- IV proceedings on the merits

- Writ of summons
- Statement of defence/counterclaim
- Hearing scheduled (*comparitie*)
- Until 2 weeks before hearing filing of evidence and statement of defence in counterclaim
- Verdict 6 weeks (often longer)
- In general: 9 months – 1 year



- V. CLAIMS

- I. Prohibition of infringement (use of sign)
- II. Transfer of ownership infringing goods
- III. Additional claims  
(recall/removal/destruction/information)
- IV. Publication of decision/rectification
- V. Compensation for damages/transfer of profits made  
with infringement\*
- VI. Litigation fees

I – IV under penalties, to be paid to the plaintiff

\* Not in preliminary relief proceedings, sometimes advance  
payment

- V. Claims

## I. PROHIBITION INFRINGEMENT

- Any and all use/sale/promotion
- Immediately or term
- Watch out for use on social media and you tube

- V. CLAIMS

## II. TRANSFER OF OWNERSHIP

Court may order, at the request of the proprietor of a trademark/design and by way of compensation, that ownership of infringing goods as well as the materials and implements principally used in the manufacture of those goods, be transferred to the rightowner

(not very often used)

- V. CLAIMS

### III. ADDITIONAL CLAIMS

- **Recall**  
(letters/mails with copies, be aware of confidential information)
- **Destruction** of infringing **goods** and **materials**
- **Information** about **source**, **sales**, **prices**, **stock**

→ All remedies carried out **at expense of infringer**

- V. Claims

## V. PUBLICATION/RECTIFICATION

- Publication/rectification on website
- How, where (top of homepage) and how long

■ V. CLAIMS

**VI. COMPENSATION FOR DAMAGES/PROFIT**

- Damages often difficult to calculate
- profit infringer as alternative (nett profit)
- Damage caused by losing exclusivity
- Trademark/design profit infringer in stead of damages: bad faith requirement  
(this is different in respect of copyright, no bad faith necessary)

- V. Claims

## VIII. Litigation fees

- Compensation of court costs and lawyer's fee, expert costs
- Lawyer's fee – calculation according to *indicatietarief*
- It **has** to be requested
- lawyer's costs need to be specified

- V. claims

*Indicatietarief:*

- Simple – normal – complicated
- Preliminary relief proceedings:  
6.000 – 15.000 – 25.000
- Proceedings on the merits:  
8.000 – 17.500/20.000 – 35/40.000

Parties can agree on lumpsum



- Court The Hague  
in preliminary  
relief proceedings  
5.2.2019  
FENIX -PHOENIX

Plaintiff: Arpa (Italian)

Defendants: Nolte Kuchen GmbH and several  
Dutch Nolte Kuchen Centers (dealers)

Order: prohibition for **all** the defendants to  
use the trademark Phoenix **in the EU**  
and order **to send** all costumers **recall letter**  
providing copies to the plaintiff's lawyer

**Jurisdiction based on:** regulation (eu) no 1215/2012  
on jurisdiction and the recognition and enforcement  
of judgments in civil and commercial matters and  
referring to Ninento/BigBen

# Thank you!

- [www.ipmc.nl](http://www.ipmc.nl)