

**TRADEMARK PROTECTION AND  
FREEDOM OF EXPRESSION**

An Inquiry into the Conflict between  
Trademark Rights and Freedom of  
Expression under European Law

**Wolfgang Sakulin**



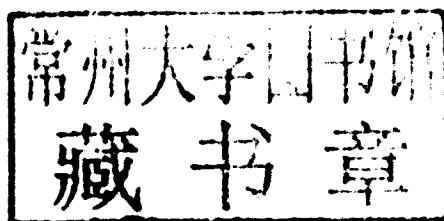
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# **Trademark Protection and Freedom of Expression**

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## Preface and Acknowledgement

This book is an adapted version of my dissertation entitled *Trademark Protection and Freedom of Expression: An Inquiry into the Conflict between Trademark Rights and Freedom of Expression under European, German and Dutch Law*, which I defended in April 2010. The current book is updated with new case law, it has been expanded to include discussion of law and cases from the United Kingdom, and now also incorporates valuable suggestions made by the members of my promotion committee, namely Prof. J.J.C. Kabel, Prof. P.B. Hugenholtz, Prof. A. Ohly, Prof. G.B. Dinwoodie, Prof. M.R.F. Senftleben, Prof. E.J. Dommering, and Dr L.M.C.R. Guibault.

The research for this book has been conducted at the University of Amsterdam's Institute for Information Law (IViR). It could not have been realized without the guidance of my promoter Prof. J.J.C. Kabel and my supervisor Dr L.M.C.R. Guibault nor without the support of the directors of the Institute Prof. P.B. Hugenholtz, Dr Mireille van Eechoud and Prof. N.A.N.M. van Eijk. Moreover, the Max Planck Institut für Geistiges Eigentum, Wettbewerbsrecht und Steuerrecht, supported my work with a scholarship enabling me to conduct research at its institute in Munich.

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## *Preface and Acknowledgement*

Working on this fascinating topic at the crossroads of trademark law, human rights, and cultural theories has been a great experience. It has led me to meet and discuss with many individuals, some of whom are mentioned here above. The responsibility for the ideas, and for the recommendations and errors made in this book is however entirely mine.

*Wolfgang Sakulin  
Rotterdam, August 2010*

## List of Abbreviations

AG	Advocate General
BenCJ	Benelux Court of Justice
BGH	<i>Bundesgerichtshof</i>
BIE	<i>Bijblad bij de Industriële Eigendom</i>
BMM-Bullettin	<i>Kwartaalblad van de Beneluxvereniging voor Merken- en Modellenrecht (BMM)</i>
BPatG	<i>Bundespatentgericht</i>
BVerfG	<i>Bundesverfassungsgericht</i>
BVerfGE	<i>Bundesverfassungsgerichtsentscheidungen</i>
BVIE	<i>Benelux Verdrag inzake de intellectuele eigendom</i>
CFI	Court of First Instance (as of 1 December 2009 ‘the General Court’)
CoE	Council of Europe
CompAdvDir	Directive 2006/114/EC of the European Parliament and Council of 12 December 2006 concerning Misleading and Comparative Advertising (Comparative Advertising Directive)
ECJ	European Court of Justice (as of 1 December 2009 ‘Court of Justice of the European Union’)
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECommHR	European Commission of Human Rights
ECtHR	European Court of Human Rights
ECR	European Court Reports
GG	<i>Grundgesetz (Germany)</i>
GRUR	<i>Gewerblicher Rechtsschutz und Urheberrecht</i>



## *List of Abbreviations*

GRUR Int.	<i>Gewerblicher Rechtsschutz und Urheberrecht, Internationaler Teil</i>
GRUR-RR	<i>Gewerblicher Rechtsschutz und Urheberrecht, Rechtsprechungs-Report</i>
HR	<i>Hoge Raad der Nederlanden</i>
IER	<i>Intellectuele eigendom en reclamerecht</i>
IRDI	<i>Droits Intellectuels-Intellectuele Rechten</i>
KG	<i>Kort Geding</i>
LG	<i>Landgericht</i>
MarkenG	<i>Markengesetz</i>
MMR	<i>MultiMedia und Recht</i>
NJ	<i>Nederlandse Jurisprudentie</i>
NJCM-Bulletin	<i>Nederlands Tijdschrift voor de Mensenrechten</i>
NJW	<i>Neue Juristische Wochenschrift</i>
NJWE-WettbR	<i>NJW-Entscheidungsdienst Wettbewerbsrecht</i>
OHIM	Office for the Harmonization of the Internal Market (European Union)
OLG	<i>Oberlandesgericht</i>
Rb.	<i>Rechtbank</i>
TRIPs	Trade Related Aspects of Intellectual Property Rights (Annex 1C of the Marrakesh Agreement Establishing the WTO)
TMDir	First Directive 89/104/EEC of the Council, of 21 December 1988, to Approximate the Laws of the Member States Relating to Trade Marks (European Trademark Directive)
TMReg	Council Regulation (EC) No. 40/94 of 20 December 1993 on the Community trade mark (European Trademark Regulation)
UWG	<i>Gesetz gegen den unlauteren Wettbewerb</i>
WIPO	World Intellectual Property Organization
WRP	<i>Wettbewerb in Recht und Praxis</i>
WTO	World Trade Organization

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