

LETTER FROM EUROPE

The TAKE OFF Campaign

Cavalli-er attitude or religious hyper-sensitivity?

There is a general rule that you don't talk about sex, religion or politics at work. I did politics in my last *Letter from Europe*, and this time, I'm touching on the religious theme. (As I don't think the firm would take kindly to me discoursing on sex in any way, I'll have to settle for breaking the rule with two out of three, which as you'll recall from Meatloaf's song, ain't bad!)

If you venture down Sloane Street, one of London's most upmarket shopping areas, chances are that you'll come across a small knot of people demonstrating outside Roberto Cavalli's store.

The demonstrators identify themselves as members of a religious order called Maktab Tarighat Oveyssi Shahmagsoudi (or MTO), and they are protesting Cavalli's use of a design that they claim is demeaning of their religious symbol.

The design in question is used in relation to the company's 'Just Cavalli' mark. The particular complaint is that the use of the religious symbol by Cavalli in adverts depicting young people in various states of undress makes a mockery of the beliefs of MTO followers. Hence, why they feel so strongly about it and are prepared to spend their spare time demonstrating outside the shop.

This strength of feeling may lie in the fact that this particular order's followers are Sufis, whose adherents believe in the inner, mystical dimensions of Islam. As such, followers believe this is the purest original form of Islam. It's no stretch

to assume that, over the centuries, followers have suffered persecution at the hands of other Islamic believers, who consider it outside the sphere of Islam itself.

So on the surface, this would appear to be all about being disrespectful to a religious minority. But like any dispute, there's more to it than that.

Though it's not much help to those of you listening to this podcast, in the transcript I've included the Just Cavalli design (with a red 'X' added) taken from MTO's TAKE OFF campaign website, along with MTO's registered trade mark and the trade mark registered by Cavalli.

Yes, everyone, this dispute is also a trade mark dispute.

The Cavalli trade mark shown above was registered at the Office for Harmonization in the Internal Market (OHIM) in October 2011. Invalidity proceedings were brought by MTO in July 2013, seeking invalidation of Cavalli's Community Trade Mark (CTM) on the grounds that it was contrary to public policy or principles of morality.

The interesting point, from a trade mark law perspective, is that first, MTO produced exhibits: eight letters from the UK (all of which read very similarly) and a list of people (and their addresses)



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who had apparently telephoned complaints or personally complained about Cavalli's adverts. MTO claimed these supported their argument that the two symbols were similar. By doing so, they were attempting to establish some sort of 'link'—in other words, on seeing the later mark, the earlier mark was called to mind. Those from the EU will recognise this as being an essential requirement in order to establish damage to marks of repute (under the dilution principles).

In its decision, the Cancellation Division rightly pointed out that the provision in the Community Trade Mark Regulation (CTMR) upon which MTO relied was extremely broad, but that the underlying principle was to balance the rights of traders wishing to use words or images with the right of



the public (or as they might have said more accurately, the relevant section of the public) not to be confronted by insulting (in the widest sense) trade marks. The Cancellation Division reflected that if they interpreted the provision too widely, there was a risk that commercial freedom would be curtailed; if too narrowly, the risk would be that deeply offensive marks, or ones that flout the tenets of public policy, would be registered and used.

The Cancellation Division's conclusion was that unless a mark was blasphemous, it would be unreasonable to restrict a trader from using words or images that have a religious connection.

As the ultimate test in relation to all things religious, that may well be correct. However, the first part of the test has to be: Is the mark or symbol identical or similar to the religious icon? Only then should the Tribunal go on to consider whether, as a result of the use of the identical or similar mark or symbol, public policy should prevent that mark being registered. In this case, Cavalli's mark is clearly a depiction of two serpents arranged in a particular way. (It is claimed to show the letters 'J' and 'C', for 'Just Cavalli', but I'm afraid that's lost on me!) It's also worth noting that MTO rotated the symbol 90 degrees, so that it runs along the same axis as their religious icon. Not exactly a fair comparison. Simply because a third party believes the mark mocks their religious symbol does not mean public policy will agree with them.

Having carried out a visual analysis of the two symbols side-by-side, the Cancellation Division decided there were clear differences. And in considering the evidence, the Division

also pointed out that it was not as a CTM that the evidence went to, but some unspecified logo (i.e. the advert appearing in magazines—but the evidence did not make that clear). So MTO failed in its quest to invalidate Cavalli's CTM.

And there could end this piece of legal review. But there was something that struck me as not quite right about MTO's approach—and the evidence itself—so I decided to channel my inner Sherlock Holmes and look deeper into this.

First, and as Cavalli's lawyers had also pointed out to the OHIM, MTO had applied for a trade mark (UK only) for their religious symbol. Actually, that's not quite true; it was applied for by an individual who assigned it to MTO at the end of December 2013. That in itself raises all sorts of questions as to MTO's standing before the OHIM. But the bigger question to my mind is: who on Earth considers a sacred religious symbol as appropriate subject matter for a trade mark?

It was, however, my brief perusal through the 'evidence'—particularly that from a considerable number of individuals in Atlanta, Georgia—that caused me to wonder what the true religious feeling was. Time and time again, over the course of a two-day period, tens of people gave the same address.

Living in this modern era, we have the benefit of Google Maps, which not only shows you precisely where the address is, but also what the state of its roof is in, as well as the attractiveness or otherwise of the doorway.

With all those names, I was expecting a block of flats. In fact, it is a simple

doorway sandwiched between a Turkish restaurant and a cheap shoe store. Further searching on Google established that a previous restaurant (presumably to the Turkish one) was stated as having an attached Muslim prayer room located at the back of the restaurant.

So, basically, and judging by the fact that some of the individuals are listed as contacted by 'telephone' or 'personally', this was simply a petition orchestrated by MTO, and not the groundswell of a religious protest this campaign has been portrayed as being.

I started this piece intending to write about the fact that Western culture might, in some instances, be clumsy in its treatment of the religious sensitivities of other cultures, and perhaps we should be more careful.

I finish it believing that this is a deliberate manipulation by those running MTO to orchestrate a campaign in reaction to a misguided analysis of Roberto Cavalli's trade mark. You'd think the fact that part of the advert uses snakeskin (a material favoured by Cavalli, I believe), that the symbol is of two snakes, and the words 'Just Cavalli' are at 90° to where it should be, might give those protesting an inkling that they may just be barking up the wrong tree. Or else have been misled by MTO.

Being tolerant of other religions and cultures is essential in any sophisticated society. The real issue is whether there is a limit as to how far that society is obliged to go. Unfortunately, campaigns such as this one, over a trade mark, belittle the plight of all those experiencing true religious persecution—and true suffering—elsewhere in the world right now. ■