

Dissertation: 'Brand, God and Ban'

Van Woensel focuses on two issues that, in his view, should be subject to legal restraint: the use, or abuse, of symbols of a national, cultural-historical and religious nature, and the appropriation of exclusive rights to use such symbols. In Van Woensel's view, abuse occurs when the use of a symbol is misleading or offensive to a large group of people. This researcher identifies four criteria based on which the law currently determines whether the use of a symbolic name is liable for prosecution. He illustrates this using Shiva – the Hindu God of Destruction of all evil in the universe – a name that was used for erotic DVDs:

- The mere fact that a symbolic sign is used in a commercial context is not against the law.
- It is relevant to know whether the sign in question also has another meaning, besides the purely symbolic meaning; in the case of Shiva, it can be stated that Shiva is also used as a girl's name.
- The receiver has to be aware of the symbolic meaning of the sign; in the Shiva case, there was little to no awareness of this meaning among people.
- For the use of a symbol to constitute a legal offence, the sign will actually have to be used as a symbolic sign; Shiva DVDs only had the name Shiva printed on them, no images of this Hindu God.

Van Woensel argues that national and religious symbols with a strong positive symbolic value should not be able to be registered as brands (for example, names like Jesus, Mohammad and Mecca). Symbols with a strong negative symbolic value should also be excluded from trademark registration (such as the name Hitler, which is currently used for a wine). For the use of names of cultural-historical symbols, things are slightly different in the eyes of Van Woensel, as these generally do not offend anyone, and because such names have often been in use for quite a while (such as Rembrandt toothpaste).

Reference(s)

Woensel, C.P.L. van (2007), Brand, God and Ban; Improper Use and Monopolisation of Signs with a High Symbolic Value. Uitgeverij deLex, Amstelveen. *

*: available in the EURIB library.