

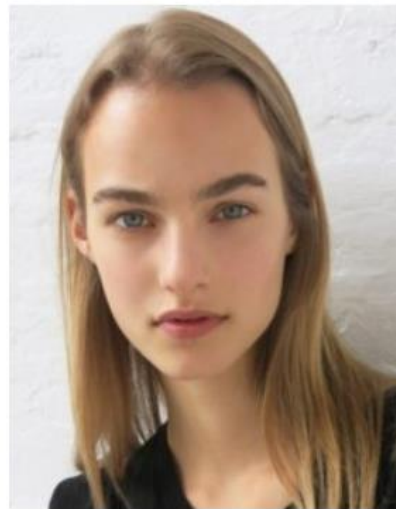
Can a face constitute a valid trademark?

Following a filing for a trademark featuring a baby's head for foodstuffs, Nestlé's trademark was refused registration by the EUIPO on the grounds of lack of distinctive character with regard to the goods applied for. The Board of Appeal hearing the case upheld the EUIPO's decision according to which *"the mark applied for does not have any characteristic capable of creating an impression which is remote from that produced by the mere representation of a child's head so that it would confer the minimum distinctive character that is necessary for it to be registered as an EU trademark"*.

In a similar case, the trademark composed of a portrait photograph of the applicant, Maartje Verhoef, designating goods and services intended for female consumers, was also refused by the first EUIPO examiner for lack of distinctiveness. However, the Board of Appeal overturned the examiner's decision and considered that this trademark had sufficient distinctive character to qualify for trademark protection: *"the sign at issue may consequently fulfil the essential function of a trademark, which is to distinguish the goods and services for which registration is sought from those of another commercial origin"*.

These two decisions raise the issue of the application of the criteria for assessing the distinctive character of trademarks formed by faces or composed of images.

We would be happy to assist you with obtaining the most adequate protection for your project.



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