

LEGO mini-figures stand up to scrutiny as court dismisses intrusive imitation

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Maritime and Commercial Court 17th of May 2013
Case No. V-96-11:

LEGO Juris A/S

Vs.

1. Plastic Factory COBI S.A.
2. COBI-Klodser.dk by Frank Sorensen
3. COBI-klodser.dk by Lisbeth Saxil.

The plaintiff LEGO apart from the LEGO Bricks manufactures and sells a number of products, among these LEGO mini-figurines which had been sold from 1978.

LEGO owns a Danish patent registration DK 140 394 concerning a LEGO mini figurine. Also LEGO has obtained a 3D EU trademark registration for a mini figurine in 2000 (CTM 50450). The registration is subject to a pending opposition.

COBI manufactures and sells different play figurines of which some according to LEGO are violating LEGO's rights.

The Court found for LEGO and stated that it must be found that the LEGO mini figurine is the result of an extensive R & D effort. The expert opinion obtained in the matter had confirmed that the figurine is the result of an original, personal and independent creative contribution and in accordance with this The Court found that the LEGO mini figurine has such an individual and original appearance that it must be considered an independent work which is protected under The Act on Copyright § 1.

LEGO as mentioned had obtained European trademark right in 3D. The Court discusses that trademarks which exclusively consist of shapes which are necessary to obtain a technical result or a shape which gives substantial value to the goods, are except from trademark protection, cfr. The Act on Trademarks § 2, 2 and The Community Trademark Regulation art. 7. It was uncontested that the main characteristics by the LEGO mini figurine are the shape of the head, the trapezoid torso, the design of the arms, the legs and the feet. However it appears from the expert's opinion that a number of form elements are not functional and that these elements may be manufactured such that they differ from the LEGO mini figurines even though they may be compatible with the LEGO system.

Also the expert witness confirmed that the above mentioned patent does not contain directions on how the front of for example the torso, the head, the arms and legs should be designed.

Following this and other observations The Court found that the essential features of the LEGO mini figurine could not be considered to correspond to a technical function. The Court also stated that the LEGO mini figurine is characteristic, well-known and well-liked.

Thus the LEGO mini figurine enjoys trademark protection. In addition The Court found that the LEGO mini figurine is protected according to The Act on Marketing §§ 1 and 18.

The Court found that the COBI figurine is an intrusive imitation of the LEGO mini figurine and that risk of confusion exists and consequently COBI's marketing and sale of its figurine imply a violation of LEGO's rights according to the Act on Copyright, The Act on Marketing, The Act on Trademarks and The EU Trademark Regulation.

The question of compensation and damages will be decided at a later stage in the matter.

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