

**BANNING**

## **MEMORY not used as a trade mark according to Presiding Judge of the District Court Amsterdam**

donderdag, 5 november 2015

Memory games: who has not been brought up with them? The game, also referred to as Concentration or Pairs, is played with - often themed - cards which are laid face down on a surface, the objective of the game being to find pairs of matching cards by turning over two cards each turn.

Ravensburger registered the trade mark MEMORY on 7 July 1971 in the Benelux for games and toys. In the Netherlands, MEMORY has been used for the card game since 1961.

Before the Presiding Judge of the District Court Amsterdam, Ravensburger started proceedings against Jaludo, a company who published online games by the names, inter alia, Garfield Memory, Spiderman Memory, Jungle Memory and Justin Bieber Memory. Ravensburger claimed Jaludo be ordered to cease and desist the use of the MEMORY trade mark, to post a rectification on its websites for a period of three weeks in Dutch and English and to provide to the attorney-at-law of Ravensburger a statement checked and certified by a registered accountant of certain data as requested by Ravensburger in the writ of summons (which data are not specified in the judgment). In addition, Ravensburger claimed Jaludo be ordered to compensate the legal costs incurred by Ravensburger in these proceedings.

The judgment mentions that Jaludo on 7 October 2015 started proceedings before the District Court Midden-Nederland against Ravensburger to obtain a declaration of invalidity for the MEMORY trade mark.

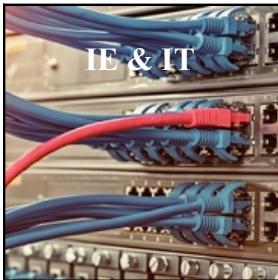
Jaludo in its defence in the proceedings before the Presiding Judge of the District Court Amsterdam stated that it uses the term 'memory' descriptively, in such a way that it is the content of a particular game is immediately clear to the visitors of its websites. The Presiding Judge of the District Court agrees with Jaludo and adds that there are many games on the relevant market which include in their title the word 'memory'. 'Memory' being an English term, the judgment also elaborates that the (English) term 'memory' is generally known in the Netherlands, for example as it is used in words such as 'memory stick' and 'memory card'. The average consumer will therefore immediately understand the term 'memory' as referring to the content of the game and will not consider it a trade mark. According to the Presiding Judge, the combination as used by Jaludo of the word 'memory' and another word (such as 'Spiderman' or 'Garfield') means that the term is not used as a sign indicating origin, but as a description of the game offered to the public.

The Presiding Judge therefore rejects Ravensburger's claims and orders Ravensburger to compensate the legal costs incurred by Jaludo. As Jaludo did not claim compensation of legal costs in accordance with the Enforcement Directive (article 1019h of the Dutch Code of Civil Procedure), the costs were calculated on the

basis of the court-approved scale of costs. Ravensburger was therefore ordered to pay EUR 1,429,-.

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