

GULDE & PARTNER

NEWSLETTER
Trademarks &
Designs

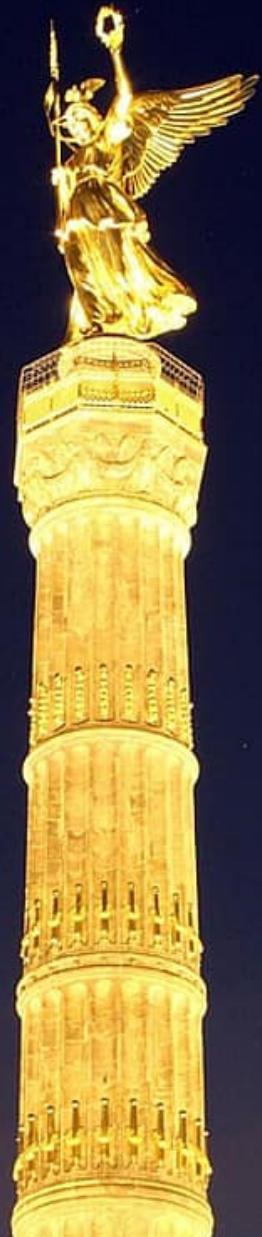
4th Quarter 2025

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Labubu Learnings

How (not) to protect your IP before entering EU markets

Pop Mart's runaway success with the Labubu character has been matched by an equally dramatic wave of knock-offs ("Lafufus"). The episode shows how late or fragmented IP protection in the EU can seriously limit enforcement options (customs seizures, EU-wide border measures and opposition proceedings), even for globally powerful brands.

The globally popular Labubu character of the Chinese toy manufacturer Pop Mart has become one of the most recognizable designer toys of recent years. Yet its European market entry illustrates how even dominant brands can undermine their own enforcement strategy, if intellectual property rights are filed too late or in an incomplete manner. As counterfeit so-called "Lafufu" figures spread through online marketplaces and even into physical retail, Pop Mart quickly discovered that fragmented or delayed IP protection in the EU makes swift action significantly harder.

A key issue was timing. Although Labubu products had circulated widely since 2019, Pop Mart extended its international wordmark registration "LABUBU" to the EU only in September 2024 and pursued further national filings, e.g. in France, Benelux and Germany, thereafter. By then, the brand had already gained substantial visibility among European consumers.

Because EU design protection requires novelty at the time of filing, many earlier Labubu editions could no longer be protected as registered EU designs, since they had already been on the market for years.

These gaps reduced the availability of powerful EU-wide enforcement tools such as uniform customs seizures.



Compounding the problem, Pop Mart is currently confronted with an opposition against its IR mark based on the pre-existing EU mark



of a Turkish competitor. The result: instead of securing an uncontested EU trademark as a basis for continent-wide enforcement, the company must now navigate a slower and more uncertain administrative process. At the same time, large quantities of counterfeit products entered the European market, many of which failed safety checks and triggered public warnings – a reminder that insufficient IP protection can quickly spill over into regulatory and reputational risks when consumer goods are involved.

The Labubu case shows that commercial success alone does not guarantee effective IP enforcement in Europe. What matters is whether the legal foundation is in place before a product becomes a social-media sensation. Filing early, filing broadly and coordinating trademarks, designs and customs applications are all essential steps. Companies planning a European launch should therefore secure EU trademarks and designs ahead of public disclosure, conduct clearance searches to avoid later oppositions, maintain verifiable records of first use and marketing, implement layered protection (word marks, figurative marks, packaging, design filings) and register their rights with EU customs as soon as possible. Only this combination allows authorities to act quickly against counterfeits and ensures that enforcement efforts are not hampered by avoidable procedural obstacles.

The lesson is clear: IP strategy must be part of product launch planning, not a post-launch reaction. Pop Mart's experience underscores how costly it can be when this order is reversed.

Marking your rights

When and how to use IP symbols in Germany

Marking your IP with the symbols ®, ™ and © are simple but powerful communication tools — and, if misused, legal risk multipliers. Understanding their meaning, the relevant case law and the newly introduced EU rules for design marking helps companies create transparent, compliant and enforceable IP strategies for the German market.

The symbols ®, ™ and © are familiar elements of US intellectual property practice. Under US law, ® may only be used for a trademark that is formally registered with the USPTO. Misusing it can lead to statutory penalties and the loss of certain remedies. The ™ symbol – as well as SM for service marks – is used for unregistered marks to provide notice to potential infringers that rights in the mark are claimed in connection with specific goods or services. ©, while no longer legally required under the Berne Convention, is still widely used as an indicator of copyright ownership and the year of creation.

In Germany, the legal situation is different mainly because incorrect IP marking can constitute misleading commercial conduct under the German Unfair Competition Act (UWG). German case law has repeatedly confirmed that the symbol ® may only be used for signs that are protected by a registered trademark in the country where the product is marketed. The placement of the symbol is equally important, as ® must not be used in a way that suggests descriptive or unprotected elements (e.g., product names or slogans) are registered. Similarly, composite marks must be marked carefully so that consumers can identify which element is protected.

Comparable standards apply to trademark applications. The ® symbol may not be assigned to any part of the mark that would not be registrable on its own. Otherwise, the registration will be rejected as misleading.

Often overlooked is Article 12 EUTMR, according to which a trademark owner may demand that dictionaries and similar reference works include a note indicating that the trademark mentioned therein is a registered trademark. This note is typically the ® symbol and can prevent a registered trademark from becoming diluted into a generic term.

By contrast, use of the ™-symbol is typically unproblematic as it does not claim official registration

but merely communicates the proprietor's intention to treat a sign as a trademark. According to case law, German consumers generally do not interpret ™ as a registration claim, meaning that its use rarely triggers UWG liability. However, adding ™ (as well as ®) to a trademark may help prove its sufficient use.

The © symbol is also widely accepted. Because copyright protection arises automatically upon creation, © does not claim a legal status that might mislead. Instead, German practice treats it as a useful notice that helps document authorship and first publication – often relevant in enforcement cases involving packaging, artwork or manuals.

A significant new development concerns design rights. As part of the EU design law reform 2025, rights holders may now use the circled D symbol



to indicate that a product is protected by a registered EU design. Marking can include the design registration number or even a hyperlink to the EUIPO design register, enhancing transparency and strengthening deterrence. While the marking is voluntary, it improves evidence of intentional infringement, which can significantly influence damages.

In conclusion: IP symbols are concise tools with substantial legal impact. When used correctly, they strengthen deterrence and facilitate enforcement. When used incorrectly, they expose companies to potential liability and risk undermining credibility in infringement cases. German case law shows that compliance hinges not only on the existence of rights but also on how symbols are presented. A consistent, well-documented marking strategy is therefore essential for any company operating in the German market.

Tariffs & Trademarks

Impact of trade tariffs on portfolio strategy

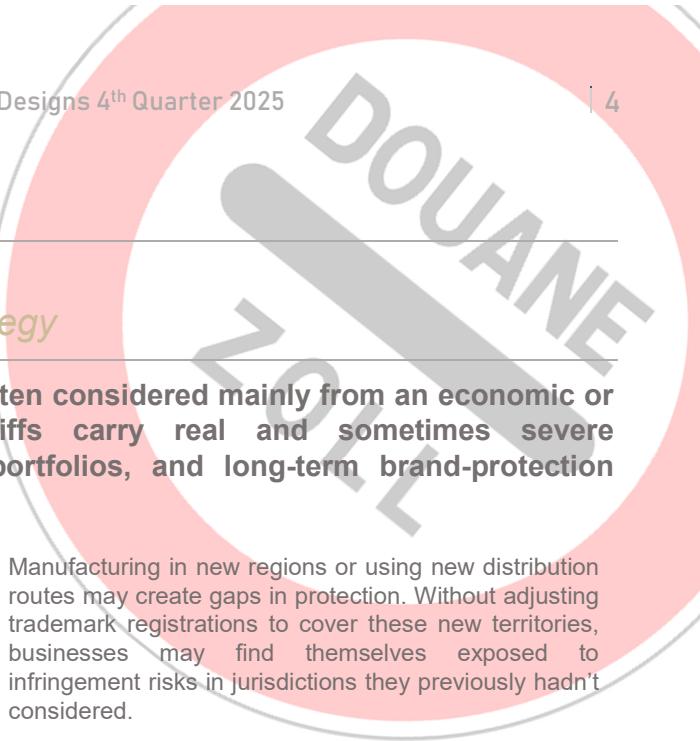
Recent increases in global trade tariffs are often considered mainly from an economic or supply-chain perspective. But these tariffs carry real and sometimes severe consequences for trademark owners, IP portfolios, and long-term brand-protection strategies.

As global trade tariffs increase in response to shifting trade policies and geopolitical tensions, many businesses are starting to see the impact not just on their supply chains and product costs, but also on their trademark portfolios and brand protection strategies.

When tariffs on imports rise, the cost of goods in the destination market inevitably increases. This creates a price gap that often benefits counterfeiters and grey-market operators who can offer cheaper alternatives or diverted originals. The result? An increase in counterfeit goods, market dilution, and the erosion of brand value. But the effects are not only seen in market competition – tariffs can also directly impact the legal standing of trademarks. If high tariffs make it unprofitable for a business to sell its goods in a region, it could result in non-use challenges, where trademarks risk being cancelled for lack of commercial use. This is particularly concerning for businesses that have heavily invested in trademark registrations in multiple jurisdictions. If sales slow or stop in certain markets due to tariff pressures, businesses may face the prospect of losing trademark protection due to non-use, as many jurisdictions require continued commercial use for trademark renewals.

In addition to the risk of losing protection, trademark owners may also find themselves needing to rationalize their portfolios. With rising tariffs, the cost of maintaining a global portfolio may become unsustainable, especially in regions where the brand is no longer commercially viable. Trademark owners need to prioritize renewals in their core markets, while allowing registrations to lapse in marginal regions. However, this approach, though cost-effective in the short term, can weaken a brand's position if it later decides to re-enter those markets. Without the protection of active trademarks in place, it is more difficult to enforce rights, leaving the door open for competitors or counterfeiters to register similar trademarks in those jurisdictions.

As businesses shift their supply chains or adjust their market strategies in response to tariff increases, they also need to adapt their trademark coverage.



Manufacturing in new regions or using new distribution routes may create gaps in protection. Without adjusting trademark registrations to cover these new territories, businesses may find themselves exposed to infringement risks in jurisdictions they previously hadn't considered.

Finally, the rise in tariffs may also affect licensing and distribution models. Increased costs for licensees and distributors may result in renegotiations of royalty agreements, adjustments in distribution strategies, or even requests to change the terms of the agreements. As these changes unfold, businesses need to ensure their contracts are adapted to address the financial strain tariffs may place on their licensees and distributors, potentially affecting their royalties and overall business model.

To navigate these challenges, businesses should review and prioritize their trademark portfolios, ensuring that trademarks are maintained in jurisdictions with ongoing commercial activity and high market potential. At the same time, they should ensure that trademark protection is aligned with supply-chain changes, adjusting coverage to include manufacturing, transit, and distribution hubs that may have shifted due to new tariff regimes. Companies should also consider strengthening their anti-counterfeiting efforts by implementing proactive market surveillance, improving customs recordation, and using authentication tools to protect against grey-market activities.

In conclusion, the rise in trade tariffs is not just a cost issue: It directly impacts a business' ability to maintain brand integrity and enforce trademark rights. Brands that recognize the ripple effects of these tariffs and adapt their trademark strategies accordingly will be better positioned to protect their value and safeguard against brand dilution in an increasingly unpredictable global trade environment. By taking a proactive approach to trademark portfolio management, supply-chain alignment, and anti-counterfeiting enforcement, businesses can mitigate the negative impact of trade tariffs on their brand protection efforts.

MIO & Konektra

CJEU sheds light on copyright standard for applied art

On 4 December 2025, the CJEU issued a watershed ruling in the joined cases Mio (C-580/23) and Konektra (C-795/23), clarifying how "applied art" can qualify for copyright protection under EU law. With this decision, the Court confirmed that the same originality standard applies to furniture and other design-rich objects as to conventional artistic works while reaffirming that copyright and design protection are separate but potentially cumulative systems.

Swedish manufacturer Asplund claimed that a table sold by retailer Mio replicated its own "Palais Royal" design. While the claim was upheld in the first instance, Mio continued to dispute both the protectability and any infringement before the Swedish Court of Appeal which referred a number of questions to the CJEU.



Table *Palais Royal*

The well-known Swiss manufacturer USM Haller alleged that the German retailer Konektra was selling a furniture system identical to its modular system, constituting a copyright and unfair competition law infringement. The German Federal Court of Justice referred questions to the CJEU – primarily about whether functional objects such as tables or furniture systems could count as "works of applied art", and under what criteria.



USM's modular furniture

In its decision, the CJEU held that there is no elevated originality threshold for applied art compared to other work categories. What matters is whether the object embodies the author's "own intellectual creation" – in other words, whether it reflects free and creative choices sufficiently expressive of the author's

personality. Features that stem purely from technical constraints, ergonomics or functionality do not qualify for copyright protection; only those design choices made independently of purely functional necessity and that reflect genuine creative freedom may count.

Regarding the relationship between design law and copyright, the CJEU confirmed they are distinct and parallel protection regimes. There is no 'rule – exception' dynamic giving preference to design rights over copyright (or vice versa). Rather, in suitable cases, a single object may enjoy both design protection (registered or unregistered) and copyright protection – each under its own criteria.

As to infringement, the Court clarified that the proper test is recognition of protected creative elements, not a vague "overall impression" nor an "artistic value" threshold. The allegedly infringing object must replicate specific creative choices of the original work in a recognizable way.

The CJEU's decision clarifies some long-standing legal uncertainties and significantly strengthens the position of creators of applied art across the EU. For many design-rich businesses, it opens the door to long-term, robust protection beyond mere design registrations.

However, to benefit, the design must reflect genuine, free, creative choices and rights-holders need good documentation to support that. For borderline cases, outcome will likely depend heavily on fact-specific analysis.

In practice, for design-intensive companies: It is now more important than ever to combine design registrations with copyright-aware documentation, and adopt a multi-layered IP strategy (design rights, copyright, possibly trademarks) to maximize protection and deterrence. Furthermore, it is yet to be determined how national courts will apply the CJEU's standards.



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