

What's in a face?

Advertising trends: Influencers, intellectual property and image rights

07 May 2025  Faye McConnell

Adverts sell products. The more people that see your adverts, the more products you sell (or so the theory goes). So how could you create an advertising campaign where up to 836 million people see your advert? By engaging Cristiano Ronaldo as an influencer.

Some influencers have staggering numbers of followers across social media platforms such as Instagram, TikTok, YouTube and X. According to a [recent study](#), Ronaldo is currently the world's biggest social media influencer with an extraordinary 836 million followers, followed by musician Selena Gomez with 581 million and content creator MrBeast with 563.6 million. An important emerging trend is the popularity of virtual influencers such as Nuero-Sama, Hatsune Miku, and Code Miko: according to a [recent report](#), 300 virtual creators on YouTube earned over 15 billion views across videos, live streams and shorts last year.

There are two recent legal developments that relate to influencers: firstly, the registrability of faces as [trade marks](#); and secondly, the explosion of deepfakes.

1. Registration of faces as trade marks

An interesting case is pending before the EUIPO Grand Board of Appeal. It concerns an application to register an EU trade mark for the photograph of Dutch singer and TV presenter Jan Smit for various goods and services in Classes 9, 16, 24, 25, 35 and 41.

Over the past decade, the EUIPO has received at least 80 EUTM applications for faces - many of them for models, actors and singers. These applications have generally been rejected by the examiner on the grounds that they were devoid of distinctive character, or even descriptive of the intended goods. However, the Boards of Appeal have held in several decisions (such as R2063/2016-4 and R2574/2018-1) that such marks are capable of distinguishing goods and services and should be registered.

In the Jan Smit case, the Second Board of Appeal (in decision R0050/2024-2) noted that, while the EUIPO systematically refuses registration of trade marks containing the face of a person, the Board of Appeal has consistently held that such marks are not inherently devoid of distinctive character. The referral to the Grand Board is now pending and a hearing can be expected within the next year. Should such marks should be capable of being registered? If so, what criteria should be applied? What are the potential tensions with personality and image rights? Faces – even those advertising anti ageing products - will of course change over time. Trade marks tell a consumer the trade origin of goods or services. Does a face provide that function; do the goods come from the individual's own brand, or a brand they are affiliated with? Perhaps these trade marks provide an endorsement function. These are all interesting issues that will need to be addressed.

2. Explosion of deepfakes

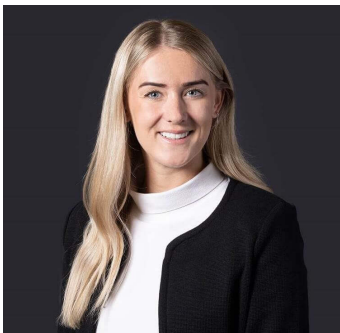
One of the motivations behind the filing of face trade mark applications may be the growing use and sophistication of deep fakes, which use [artificial intelligence](#) (AI) tools to create highly realistic replicas of people's faces, voices and other characteristics.

The US is debating various legislative initiatives to address deep fakes (also known as digital replicas), and in light of that, the International Trademark Association (INTA) Board of Directors recently approved a [resolution](#) on the topic.

The resolution sets out proposals to address the harm from deep fakes that affect the individuals being replicated, consumers and brand owners, whilst also promoting innovation and free speech. It rightly says that protection should be available against unauthorised, confusing or deceptive digital replicas, and that mechanism should be in place to facilitate practical enforcement.

Deepfakes are being addressed elsewhere too. The EU's AI Act requires AI generated or manipulated media to be readily identifiable as such, by a technical marker or label - but this doesn't provide redress for unauthorised use, and bad actors are less likely to watermark the replicas anyway. The [UK Government's AI and Copyright consultation](#) which concluded in Feb 2025 asked for views on whether the proposed regime for rights-holders to opt out of data mining would protect against deepfakes. This only works where there is a clear right – the UK recognises false endorsement as passing off but it does not recognise personality rights as such.

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