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## Companies see red over rights to the color magenta or use of stripes

By Doreen Carvajal

**PARIS** — For nearly six months, Erwin Giesbers has gazed every day at the cheerful company flags flapping in the breeze and pondered the hazards of choosing official corporate colors in a screaming shade of magenta.

His company, Compello - an information technology firm in the Dutch town of Zwolle - is locked in a legal struggle with the German giant, Deutsche Telekom, which is pressing the company to get rid of the vivid hues because it claims trademark rights to the color magenta.

"When I first heard of it, I thought it was a joke, but in the last month I've had so much pressure," said Giesbers, the chief executive of Compello, which he started in 1997. "In my opinion, colors are free where you make your own form and format."

The Netherlands - with its swift and relatively inexpensive legal system - has become an unlikely outpost where multinational companies are testing the boundaries of their rights, right down to the use of slender stripes and an old color, magenta, named for a bloody battle of 1859 in Magenta, Italy.


The nation has also become home to quirky consumer rebellions where recently graphic designers and a branding agency banded together to create a "Free Magenta" campaign with an online site mourning the death of the color and lamenting that "in kindergarten we used to share everything."


"Brands are in a position of power, and they need to act maturely rather than immaturely," said Paul Hughes, the creative director of Lava Graphic Design in Amsterdam, which last autumn organized the Free Magenta campaign that quickly spread through the blogosphere. "You're limiting what others can do. You're limiting the environment."


For the past 10 years, the Dutch courts have been debating the outer limits of the common stripe - two to be exact. The question is whether Adidas, one of the largest sporting-goods manufacturers in the world, can prevent Dutch garment makers from decorating clothing with two stripes that appear to reflect the "Adidas look" of its signature three-stripe motif.


The stripes imbroglio has now reached the European Union's highest court, the European Court of Justice, which is expected to issue a ruling on April 10 in a case referred to it by Dutch judges a year ago.

Adidas, which is also pursuing similar stripe claims in France and in the United States against the shoe store chain, Payless, has been rejected twice before by the top European

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court, which ruled that the possibility of confusion with another company's stripes did not constitute trademark infringement. But the company believes that it needs to mount a vigorous legal campaign to protect itself from counterfeiters and wannabes.

"The thing about famous trademarks is that they make strong images in people minds," said Tim Behean, associate general counsel for the Adidas Group. "But when consumers see imitations without the ability to compare products side by side, there is a resonance, there is a recognition: 'Oh, is that Adidas?'"

Adidas has waged its legal battle in the Netherlands against Marca Moda, C&A, Vendex and H&M in part because it considers the nation a more hospitable legal environment. "We are not focusing on the Dutch retailers," Behean said, noting ongoing lawsuits in the United States and France. "But it is a fact that legal rights are stronger and more readily protected in the Netherlands, which has a tradition of protecting famous trademarks."

Few companies can afford the legal costs of fighting for all their trademark claims. But they can reduce expenses by choosing the Netherlands, which also telegraphs their zeal and aggressiveness, according to Ralf Siekmann, a chemist and a lawyer in Germany who specializes in trademark law. "If you go to the U.K., the fees are much higher and not as efficient as in the Netherlands."

The strategy ultimately has a broader effect because multinational companies like H&M simply stopped making sportswear with two stripes for their markets because of the difficulty of creating clothing lines that are legal for particular companies. H&M has not produced sportswear with two stripes since 1997, according to the company's attorney, Gino Vanroeyen.

Last autumn, two radio stations in the Netherlands, Slam!FM and 100% Netherlands, along with Compello, were stunned to receive notices from Deutsche Telekom, warning them about ending their habits of using the color magenta as part of their corporate looks. Compello's flapping reddish-purple corporate flags could be seen from the highway and the two radio stations featured their color on their Web sites, although the shades were pinker and redder in each case than Deutsche Telekom's signature color.

The telecommunication company's effort to protect its color quickly provoked a flurry of news stories in the Netherlands and propelled the Free Magenta campaign.

But in public statements, Deutsche Telekom struck a far more muted diplomatic tone about its shade of magenta, a color that dates from 1859 when a small Italian city by the same name was site of the battle in which French and Piedmontese troops defeated the Austrian Army. A new reddish pigment was discovered the same year and was named magenta, to mark the bloodshed in the town of Magenta.

Marion Muhr, a Deutsche Telekom spokeswoman, noted that the company had registered magenta as its trademark color in Europe since 1996 and had to protect itself from competitors. The telecom has not sued Compello, she noted, and the Dutch company "is working on a change of its corporate color."

Giesbers, the director of Compello, confirmed that the company had spent more than €150,000, or \$234,000, to change its corporate color to a deeper, redder hue that it calls Red Rubin. But he said legal discussions have not stopped because Deutsche Telekom lawyers are not satisfied with the new shade.

"It's like Goliath and David," he said. "For us it's a big problem because they told us, 'We don't like the color. We want another color.' But we still don't believe it's possible to have a color for your own."

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