



The Perilous Path to Global Reach

Presented by:

Members of the

Global Advertising Lawyers Alliance (GALA)

www.gala-marketlaw.com

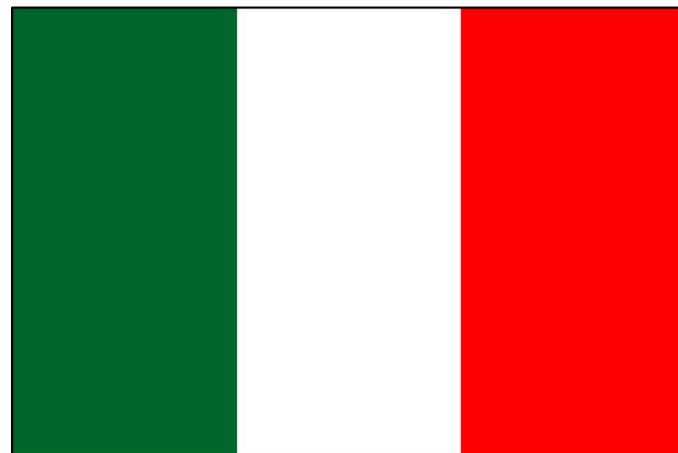


Introduction

- MODERATOR
 - Italy
 - Felix Hofer, Hofer Lösch Torricelli
- PANELISTS
 - Brazil
 - Valdir Rocha, Veirano Advogados
 - China
 - Justina Zhang, TransAsia Lawyers
 - Germany
 - Florian Geyer, Heuking Kühn Lüer Wojtek
 - South Africa
 - Jenny Pienaar, Adams & Adams
 - Turkey
 - Başak Gürbüz, Mehmet Gün & Partners



ITALY



Felix Hofer

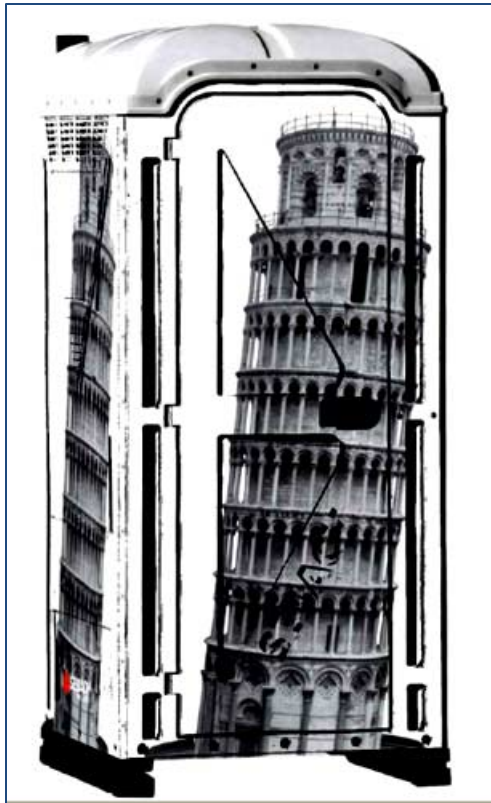
Hofer Losch Torricelli

Tel: +39 055 553 5166

Email: fhofer@hltlaw.it

www.hltlaw.it

Leaning Tower of Pisa & Sistine Chapel Painting



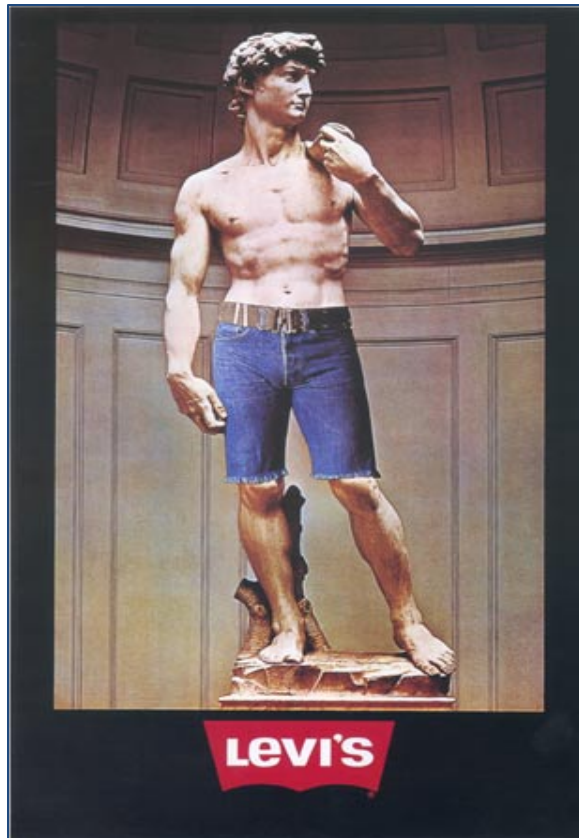
Portable
Construction
Site Toilet



Phone Manufacturer



The David





Unexpected Testimonial: *Leonardo's Mysteriously Smiling Monna Lisa*

Mineral Water Ad:





“Colosseo” in Rome

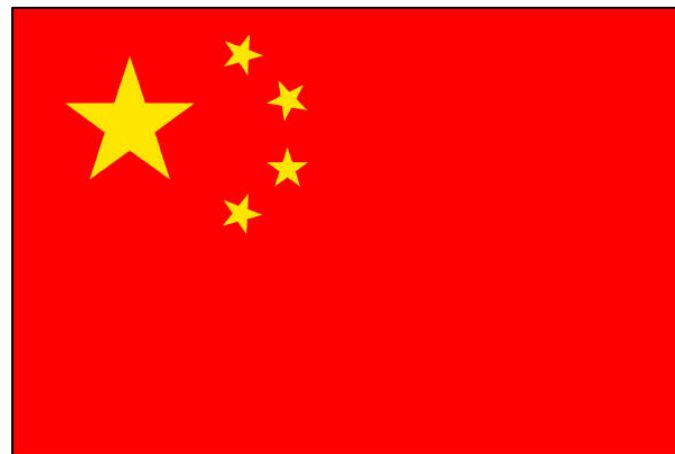
- Built in 1st Century AD
- Publically Owned
- Architects, athletes, etc. – all dead

- Free for use?
- In public domains?





CHINA



Justina Zhang

TransAsia Lawyers

Tel: +39 055 553 5166

Email: whzhang@transasialawyers.com

www.transasialawyers.com



Nike footwear ad

Scene 1:
Chinese kungfu master gets knocked out



Intended meaning:
Nike shoes have substance,
not just style.



Nike footwear ad



Scene 2:
Chinese ancient flying fairies do seducing



Intended meaning:

With Nike shoes, you can withstand tests of the will.



Nippon Paint's ad

Pillar
without
using
Nippon's paint



Pillar
after using
Nippon's paint

Old and rusty

New and glossy,
but the dragon falls



McDonald's TV Commercial





Toyota Magazine Ad “The Lion Ad”

霸道，你不得不尊敬。

2002年 PRADO 霸道 4x4
全國上市

PRADO 2.7 4x4	PRADO 3.0 4x4	PRADO 4.0 4x4
18.88	22.88	28.88

SALES OFFICE: 400-810-0710

TOYOTA



Toyota Magazine Ad: "The Military Vehicle Ad"

可可西里方圆8万平方公里无人烟, 你却有两个 对手要作殊死搏斗: 身体的极限和亡命的盗猎者。
所以, 没有LAND CRUISER 陆地巡洋舰是无法想象的!

LAND CRUISER 陆地巡洋舰, 越野车之王, 也是唯一能带你征服任何地形、任何天气、任何恶劣环境的越野车。它让你在任何恶劣环境中都能保持冷静、沉着、从容、自信。它是你征服任何恶劣环境的最佳伙伴。LAND CRUISER 陆地巡洋舰, 带你征服任何恶劣环境。

LAND CRUISER 陆地巡洋舰, 带你征服任何恶劣环境。

LAND CRUISER 陆地巡洋舰				TOYOTA
4.7L V6 24V 3.0L	4.7L V6 24V 3.0L	4.7L V6 24V 3.0L	4.7L V6 24V 3.0L	
4.7L V6 24V 3.0L	4.7L V6 24V 3.0L	4.7L V6 24V 3.0L	4.7L V6 24V 3.0L	
4.7L V6 24V 3.0L	4.7L V6 24V 3.0L	4.7L V6 24V 3.0L	4.7L V6 24V 3.0L	



GERMANY



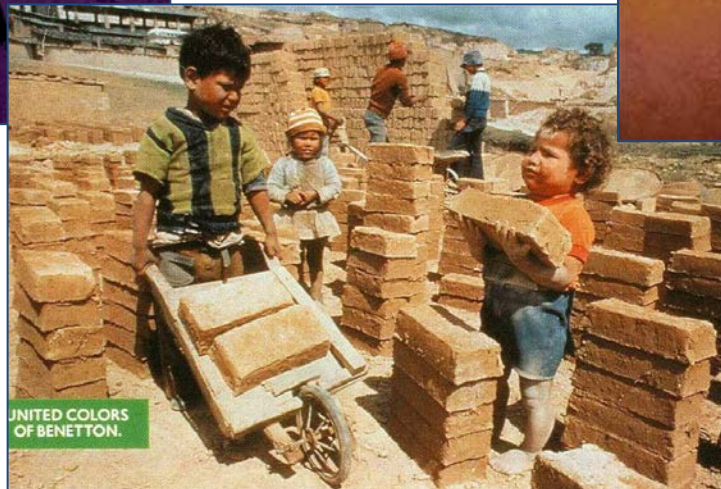
Florian Geyer
Heuking Kuhn Luer & Wojtek
Tel: +49 069 975 61 - 435
Email: f.geyer@heuking.de
www.heuking.de



Benetton – Shock Advertising



,'oil-polluted duck' (2000)



,'child labor' (2000)



,'H.I.V. POSITIVE' (2001, 2003)



PETA: The Holocaust on Your Plate

A PETA advertisement featuring a black and white photograph of a severely emaciated man on the left and a healthy cow on the right. A red banner with white text is positioned across the middle. Text on the left compares the number of people who died in the Holocaust to the number of animals killed in the U.S. for food.

During the seven years between 1938 and 1945, 12 million people perished in the Holocaust.

THE HOLOCAUST ON YOUR PLATE

The same number of animals is killed **EVERY 4 HOURS** for food in the U.S. alone.



Advertising with Politicians



Lust auf eine neue Frisur?

Mieten Sie sich ein Cabrio.

Mercedes RLE für DM 150,-/Tag inkl. 500 km nur online: www.e-sixt.com



Advertising with Politicians II



Joschka Fischer

(Hamburg District Court 2006):

Not admissible, no relevant connection to current events but exploitation of image



Oskar Lafontaine

(German Federal Court 2006):

Admissible, satirical analysis of his resignation from office as a current political event



Religion in Advertising: MTV 'Popetown'



- high barriers for legal sanctions
- voluntary Codes of Conduct of German Advertising Council must be considered

(Munich District Court 2006)



BRAZIL



Valdir Rocha

Veirano Advogados

Tel: +55 21 3824 4747

Email: valdir.rocha@veirano.com.br

www.veirano.com.br



Legal Framework

- Argentina
 - No authorization is required for using pictures of public buildings and people may use them for free. Nevertheless, taking photographs of these buildings requires a special federal permission for ports and maritime activity control, and drawing plots and layouts of military facilities can also be considered a crime.
- Chile
 - The reproduction of works of architecture is free and is not subject to any payment, which can be a separate, complete or partial collection, as long as it has express and written permission by the author.
- Colombia
 - The Copyright Act requires that the reproduction of artistic works is publicly noted, and a potential claim from the author may only be raised considering his moral rights and the way his work is being used. Trademark use is an exception for that permission for some Courts.
- Costa Rica
 - The reproduction of such artworks without commercial intent is allowed.



Christ Redeemer case #1



Plaintiff:

Associação Brasileira dos Direitos dos Autores Visuais - AUTVIS

Defendant:

H. Stern Comércio e Indústria S/A

Case no. 0103897-94.2007.8.26.0100

Object:

Indemnification and injunctive relief action for the use of Christ's image.

Decision: Active illegitimacy of AUTVIS

8th Civil Court of São Paulo



Christ Redeemer case #2



Lingerie Ad.

Complaint filed by: CONAR

Advertiser:

Joly moder de roupas S.A

Decision:

Ad removed by the advertiser.



São José do Ribamar Sanctuary case



Plaintiff: Sival Floriano Veloso

Defendant:

Telemar Norte Leste S/A

Case no. 18102-83.2001.8.10.0001

Object:

Indemnification and inhibitory action for the use of Sanctuary's image.

Decision:

Payment of loss and damage to the plaintiff

1st Civil Court of Maranhão



Mexico

- The reproduction of such monuments for commercial purposes is allowed with previous permission.
- Payment of fees for the unlimited reproduction of each authorized monument.
- All reproduction must contain the legend *“Reproduction authorized by the competent institute”* .



Source: Marina Hurtado

AROCHI, MARROQUÍN & LINDNER, S.C.



SOUTH AFRICA



Jenny Pienaar

Adams & Adams

Tel: +27 12 432 6000

Email: jenny.pienaar@adamsadams.com

www.adamsadams.com



GLOBAL STRATEGY: Learn to speak the right language

SOUTH AFRICA



“If you talk to a man in a language he understands, that goes to his head. If you talk to him in his language, that goes to his heart”

– Nelson Mandela



Laugh it Off v SAB International



- Parody: BLACK LABEL versus BLACK LABOUR
CARLING BEER versus WHITE GUILT
- Trade mark infringement = dilution – hijacking advertising goodwill
- Defence: freedom of expression
- Supreme Court of Appeal and Constitutional Court:
 - balance trade mark proprietor's right to property versus freedom of expression
 - freedom of expression prevailed in this matter

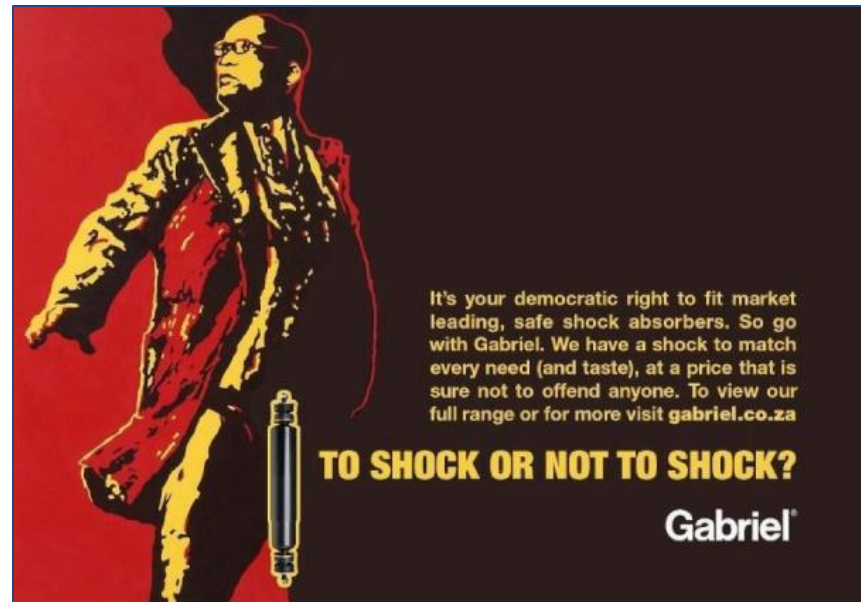
“The Spear”

- Painting of our State President, Jacob Zuma, by Brett Murray
- Nobody in South Africa escapes public ridicule
- Inspirational for advertisers





Socially offensive?



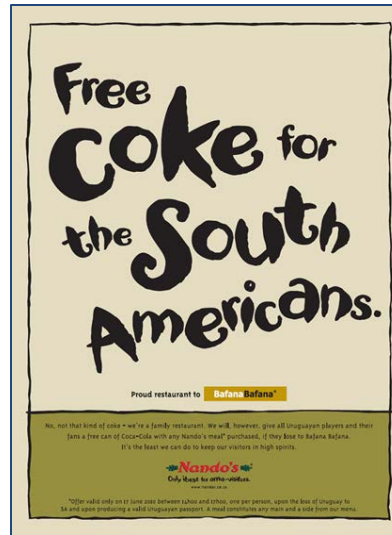
- Good content grabs attention
- Political over correctness “kills” creativity



NANDO'S



“Our irresistibly delicious Peri-Peri chicken annihilates hunger, not dictators”.



“No, not that kind of coke we’re a family restaurant. We will, however, give all Uruguayan players and their fans a free can of Coca-Cola with any Nando’s meal purchased, if they lose to Bafana Bafana. It’s the least we can do to keep our visitors in high spirits”.



“Our flame-grilled Peri-Peri chicken is rumoured to be an aphrodisiac, which means it enhances your performance, if you know what we mean...”



DULUX: Adam & Eve

“ESSENTIALS” magazine



Advert: Add some “green” colour

ASA Complaint: the ad is offensive, as women with children generally purchase the magazine. The painting of Adam is “*overexposed, untasteful and lewd*”.

ASA Directorate: the ad not offensive, because:

- target market for magazine: women aged 25 years and up;
- children are not likely to be exposed to the magazine;
- ad is placed in a tasteful environment. The figures appear in a classical, tasteful pose; and
- the offence is not widespread, as only one complaint was received

Thus, nudity, *per se*, is not always offensive

THIS AFRICA cigarettes



African Tobacco Control Alliance:

"We are deeply offended by KT&G's shameless and insulting use of this mocking imagery"

KT & G:

"The negative reactions were totally unexpected as nobody raised the racism issue during the design process"

"We absolutely had no intention to offend anyone and only chose monkeys because they are delightful animals that remind people of Africa"



TURKEY



Başak Gürbüz
Mehmet Gün & Partners
Tel: +90 212 354 0000
Email: basak.gurbuz@gun.av.tr
www.gun.av.tr



**Alkol, şiddet, dinle
alay ne ararsan var!**



The Supreme Council of Radio and Television (“RTUK”) penalized the TV show:

“Alcohol, violence, blasphemy are all in there. Alcohol consumption is promoted . This is contrary to Turkish family structure and fundamental broadcasting principles.”

MONETARY FINE



Advertisement Board penalized the Vodafone ad due to appearance of a baby in the ad watching a video from the smart phone. The Board found it contrary to child development and accordingly to the advertising principles.

**CEASE OF BROADCAST &
MONETARY FINE**



RTUK penalized the strip ad for Zeki Triko (an internationally known Turkish woman swimwear brand) due to obscenity:

“This strip ad shown at the beginning of a football match on TV push the limits of obscenity and contrary to broadcasting principles.”

MONETARY FINE



Sanction request from the RTUK Member: “The Pepsi Coke ad abuses women and associates sexuality. The ad should be sanctioned.”

RTUK assessed the ad and found no reason to sanction the ad.

NO SANCTION



Advertisement Board penalized the ad campaign for Pepsi Coke:

“Due to the participation condition as “Photos with turban (head scarf) will not be accepted”, the ad has been found discriminative and infringing the personality rights.”

**CEASE OF ADS &
MONETARY FINE**



THANK YOU!

Any questions??