

# Kluwer Patent Blog

## Belgian's popular bread spread not longer protected

Kristof Roox (Crowell & Moring) · Wednesday, February 2nd, 2011

On 20 January 2011, the [Commercial Court of Ghent](#) handed down a ruling nullifying the Belgian patent on “speculoospasta” held by biscuit manufacturer Lotus Bakeries. Speculoospasta is a bread spread based on crushed caramel cookies that took the Benelux market by storm when it was commercialized in 2007 by Lotus Bakeries (for every two jars of Nutella, a jar of the speculoos-based bread spread was being sold). In addition to an intense marketing campaign, the success of the spread was dramatically increased by a popular Belgian television show called “The Inventors”. The show is a televised competition for the best ‘invention’ of the year. Two participants presented virtually identical speculoos-based bread spreads, and although one participant held a patent on the bread spread, Lotus Bakeries decided to commercialize the spread of the other participant. Lotus Bakeries started a media offensive and eventually claimed the nullity of the patent. Since the patent owners were no match for Lotus Bakeries, they not only settled the matter, but signed over the patent to Lotus Bakeries in 2009. Immediately after acquiring the patent, Lotus Bakeries started invoking the patent against (possible) competitors, while the product generated an estimated revenue of more than 10 million EUR in 2009.

Belgian speculoos manufacturer Biscuiterie Willems (followed by several other manufacturers) decided not to wait for infringement proceedings by Lotus Bakeries and initiated proceedings to nullify the patent on “speculoospasta”. After a legal battle of almost two years, which included counterfeit search & seizures executed by Lotus Bakeries, Biscuiterie Willems seeking evidence from the editor of a small website in the north of the Netherlands, getting affidavits from the US, holding tastings of spreads and pies by judges, etc., the Commercial Court of Ghent sided with the arguments presented by Biscuiterie Willems. The patent in question was nullified because the Court decided that it was not new since its substance was already disclosed in a recipe for a speculoos-cake, with a stuffing that as identical to speculoospasta. The ruling contains some interesting wording with respect to the value of websites when it comes to proving prior art (a translation of which will be put online soon). It is also interesting to read that the Court ruled explicitly that the commercial behavior of Lotus Bakeries was “opportunistic”, but that even this “textbook example of lack of sustainable commercial ethics” had to be tolerated in a free market economy.

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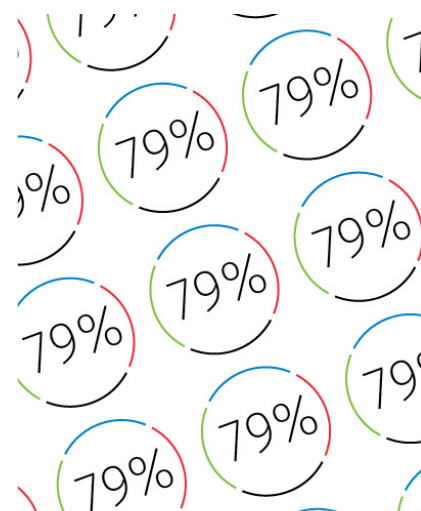
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This entry was posted on Wednesday, February 2nd, 2011 at 6:55 pm and is filed under [Belgium](#), [Novelty](#)

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