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## IKEA's Battle Against Horror Games: The Importance of Intellectual Property Rights

By Jan-Diederik Lindemans and Christopher Dumont

It has recently been reported that IKEA, a globally well-known furniture company, sent a cease and desist letter to the gaming studio Ziggy following the announced release by the latter of a video game called "The store is closed." The video game is still in development, but it has been characterized as a survival horror game set in an IKEA-like furniture store called "STYR." The idea of the video game is to explore, craft weapons, build fortifications and try to survive the night in the furniture store.

Although the video game is unreleased, IKEA discovered that the gaming studio Ziggy was raising funds through a Kickstarter campaign. In total Ziggy was able to already raise several tens of thousands of dollars in a short period of time. From its discovery, IKEA immediately sent a cease and desist letter demanding certain changes as the "game uses a blue and yellow sign with a Scandinavian name on the store, a blue box-like building, yellow vertical striped shirts identical to those worn by IKEA personnel, a gray path on the floor, furniture that looks like IKEA furniture, and product signage that looks

like IKEA signage. All the foregoing immediately suggest that the game takes place in an IKEA store."

See the side-by-side comparison on the following page.

Ziggy voluntarily complied but commented that it was unaware of any wrongdoing. Ziggy claims that it did not design the game with IKEA in mind and that it even "bought generic furniture asset packs to make this game." Ziggy further claims that it never mentioned IKEA but that the association was made by its fanbase and the press.

### INTELLECTUAL PROPERTY RIGHTS

The demands made by IKEA were based on its intellectual property rights. As opposed to what is commonly raised in video game disputes (i.e., copyright), IKEA has invoked article 15 U.S.C. 1125, a section of the U.S. Trademark Act that makes any unauthorized user of a company's trademarks or "trade dress" (in other words the "look and feel") liable for damages related to that infringement.

IKEA's choice was not illogical as trademarks serve to protect the brand of a company. A trademark is a sign which distinguishes the goods and services of one company from those of another. As indicators of business origin, trademarks can be words, logos, devices or other distinctive features, or a combination of these. In this case, IKEA has

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argued that it is known as a company using “a blue and yellow sign with a Scandinavian name on the store, a blue box-like building.”

IKEA’s concern is the association that the public makes when they are contemplating buying the game as a consequence of the unauthorized use by Ziggy of their trademarks and trade dress. From a trademark perspective, it does not matter what the intention of Ziggy was. What matters is how the public will perceive it and the press articles made clear that an association was made.

While it may come across as flattering that third parties are inspired by the IKEA brand, IKEA has good reasons to stop third parties from using its trademarks without its consent. Not only would these third parties gain an unfair advantage, this could lead to the infringement and/or dilution of the trademark. If IKEA does not act when its trademarks are misused, the trademark rights could be lessened or lost entirely.

## KEY TAKEAWAYS

While trademark protection may vary slightly from country to country – with the protection of unregistered signs as one of the main differences – the principles are usually the same. Therefore, game developers, wherever they are situated, have to be careful when they are inspired by objects in the real world. It is all fun and games until you get served a cease and desist letter.

It should be clear that intellectual property rights not only have an important role to play in the real world involving physical objects, but that they can be a powerful tool against misappropriation in a digital world too. Clearly, owners of trademarks have a legal imperative to protect them, lest they lose them and their brand becomes recognized as generic. Presumably that’s part of IKEA’s motivation here, as overreaching as it might seem to anyone not familiar with trademark law.

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