

## **Report By Prof. Herman Cohen Jehoram**

The Dutch Supreme Court has recognized copyright in the scent of a perfume, in a decision of June 16, 2006. The perfume “Trésor” of the French firm Lancôme had been counterfeited by a small Dutch firm Kecofa, and been marketed under the trademark Female Treasure. Lancôme started a lawsuit, basing itself on infringement of its copyright in “Trésor”. Lancôme won its case in all three instances, District Court, Court of Appeal and Supreme Court.

The Supreme Court adhered to a doctrine which had been proposed by the then young scholar Verkade in the sixties, presently Advocate General at the Supreme Court. According to Verkade, copyright should not only exist in works which can be seen or heard, but in all works which can be perceived by the human senses, also the senses of smell, feeling and taste. In this way, Lancôme was protected in its copyright in “Trésor”. The same would be true for ‘original’ tastes of food and beverages. The Netherlands now enjoy the privilege of being the only country in the world which has now been covered by monopolies of the international scent, food and beverage industries.

Also the imports in the Netherlands of these products can now be stopped contrary to the free movement of goods in the EU. The decision of the Supreme Court has been applauded by most of the copyright lawyers in the Netherlands.

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