Unauthorized Product Placement – An Infringement of IP Rights?

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In the modern media landscape, industrial products and trademarks are displayed in many different ways and under a variety of circumstances. Whether in films, television series or in social media distributed content, product placement has a long history of creating visibility for products and therefore helping companies reaching consumers. In many cases, however, products or brands appear on screen in a rather unfavourable light.

These specific forms of negative product incorporations into movies or other media raise a broad range of legal issues. In most cases, they are unauthorized, unpaid and unsolicited and leave the IP owning companies contemplating legal defensive measures. In terms of IP rights, claims may possibly be based, for instance, on infringements of trademarks, design patents or copyright.

Regarding European intellectual property law, the infringement of IP rights by unauthorized product placements resembles a rather unclear legal situation. The law grants the IP owner a bundle of exclusive rights, whereas, at the same time, no clear limitations regarding the unauthorised use of IP in product placements are determined. Neither copyright law, nor design patent law provide definitive exceptions for on-screen uses of content or products protected by intellectual property rights.

This paper follows a doctrinal approach and will analyse European legal principles regarding Product Placement without consent of the IP owner. Furthermore it will conduct comparative legal research as the continental European situation will be compared with the corresponding “Fair Use - Principles” of the common law tradition.