



INTA Judges Workshop

**Welcome to INTA's International
Court!**

The Judges:

- Presenting the Case: **Dr. David Aschmann**,
Federal Administrative Court, Switzerland
- For the EU position: **Marianne Grabrucker**,
former Presiding Judge at the German Federal
Patent Court and current President of the CET-J

- **Richard Arnold**, High Court of London
- **Hugo Gómez Apac**, Andean Community Court of Justice
- **Rajiv Sahai Endlaw**, High Court of Delhi

- **Sanjay Kishan Kaul**, Supreme Court of India
- **Michael Manson**, Federal Court of Canada
- **Motoyuki Nakashima**, IP High Court of Japan

- **Elisabeth Ohm**, Deputy Director,
Norwegian Board of Appeal for Industrial
Property Rights
- **Luis Rodriguez Vega**, Court of Appeal
Barcelona
- **Junli Xia**, Presiding Judge of 3rd Civil Division
of the Supreme People's Court



The Goldbären Case

**Dr. David Aschmann, Federal
Administrative Court,
Switzerland**

Goldbären

**Swiss Federal Administrative
Tribunal**

Decision of 1 February 2016

Trademark **GOLDBÄREN**

- **GOLD** → descriptive, laudatory
- **BÄREN** → commonly used shape
- **simple combination**

no distinctive character

- similar earlier registrations
- constant actual practice
- no overriding interests

**registration based on equal
treatment**

Goldbären

1. Similar registrations

- «gold» + animal/thing name
- official languages or English

2. Constant unlawful practice

- 19 comparable cases
- recent cases
- no change of practice

3. No overriding public interest

- not essential
- bear form remains free



Consistency

- **Enforcement of administrative actions**
- **Equal treatment in a bipolar world**
- **Reasons of consistency**
- **Alternatives**



Equality in injustice

1. Comparable registrations

- similar sign
- similar sign concept



2. Constant unlawful practice

- no «isolated» single cases
- applicant's own cases do not co
- no actual chngement of practice

Red Bull



3. No predominating interests

- public interests
- private interests



Constitutionality



- **Legitimacy and lawfulness of administrative conduct**
- **Private interest overrides public interest, as in e.g.:**
 - **acquired distinctiveness**
 - **notorious trademarks**
 - **geographical trademarks of communities**
- **Registration as «semi-protection»**
 - **legal effect of a registration due to equal treatment?**

Discussion

- **Consistency**
- **Equal treatment in injustice**
- **Constitutionality**





Questions?

Thank you!



International
Trademark
Association