



PLOUGMANN VINGTOFT®



Real stupidity always trumps AI – registrable and enforceable seen from an European view?

FICPI, Toronto, 5-10 June 2018

What's in a word?



Merriam-Webster SINCE 1828

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slogan

DICTIONARY THESAURUS

Definition of SLOGAN

- 1 a : a war cry especially of a Scottish clan
b : a word or phrase used to express a characteristic position or stand or a goal to be achieved
- 2 : a brief attention-getting phrase used in advertising or promotion

Vertical navigation icons: f, Twitter, group of people, heart, and a partial circle.

The purpose of a slogan?

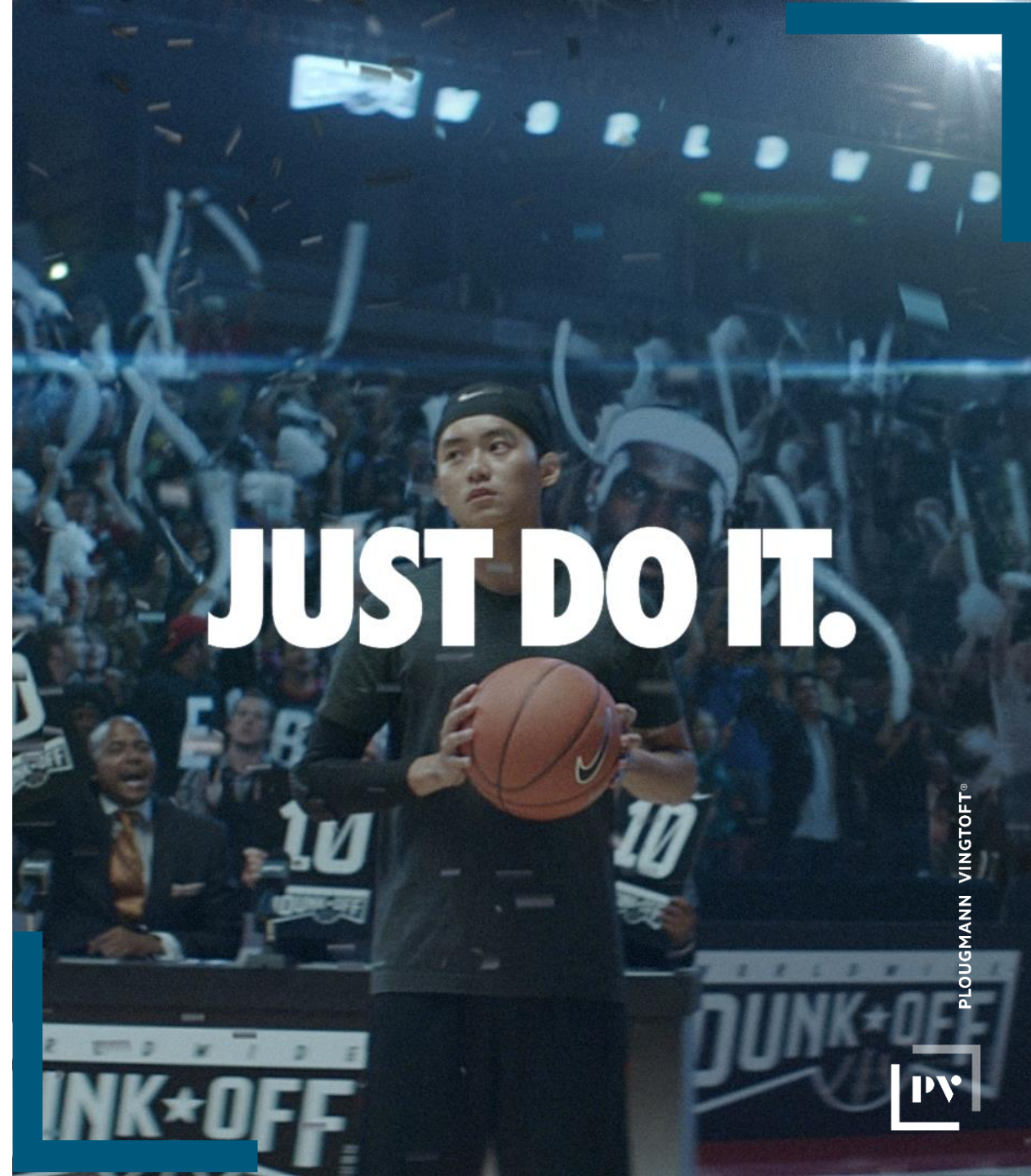
› Companies have slogans for the same reason they have logos:

› **Advertisement!**



What makes a great slogan?

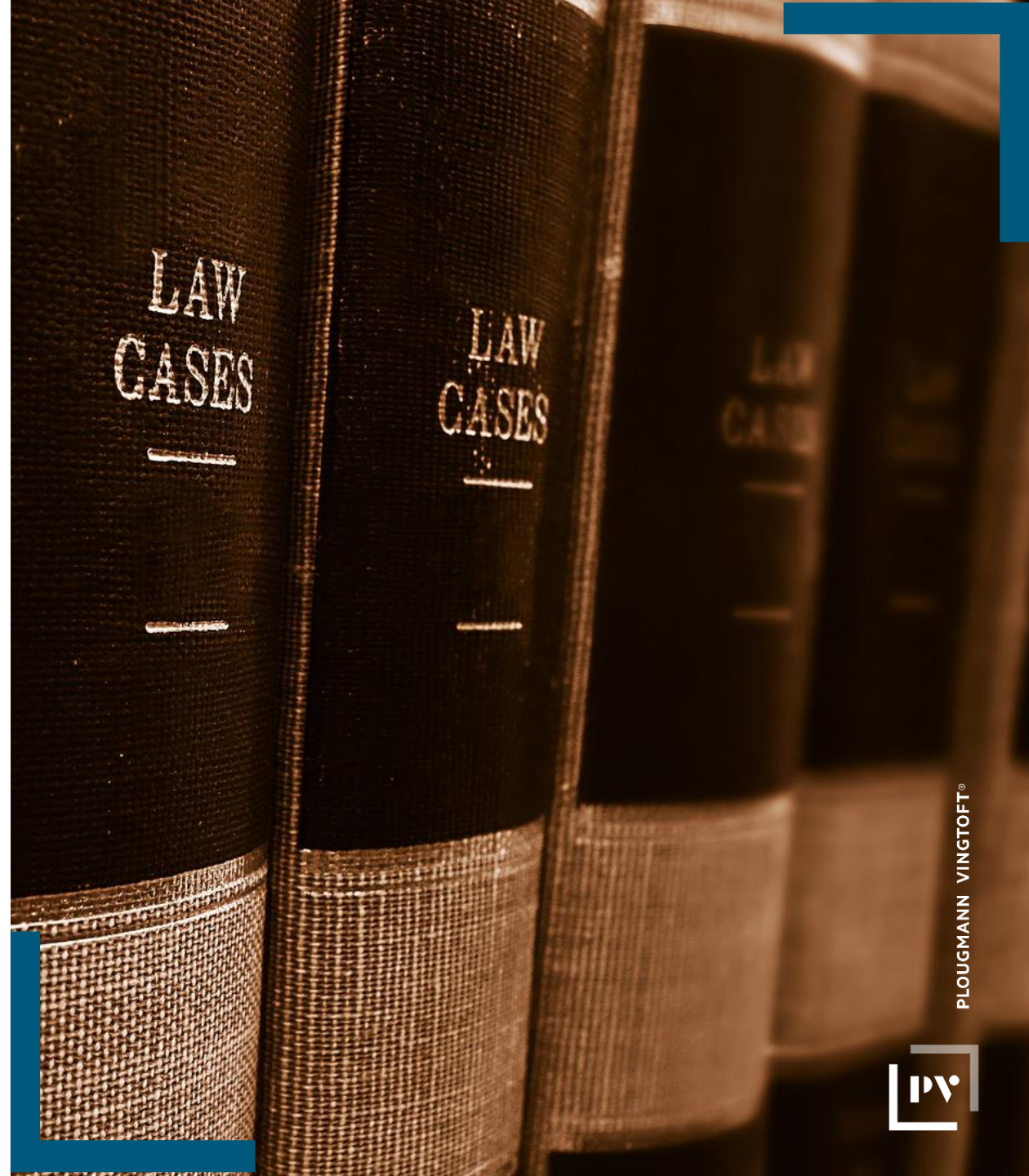
- › It's memorable
- › It uses rhymes or rhythms or both
- › It impacts positive feelings about the company
- › It is short and to the point
- › It has clarity and sometime a punchline
- › Use humor
- › Use emotion



And then came the LAW...

Art. 7 in EUTMR No. 2017/1001

- *The following shall not be registered:*
 - *b) trade marks which are **devoid of any distinctive character**;*
 - *c) trade marks which **consist exclusively** of signs or indications which may serve, in trade, to **designate the kind, quality, quantity, intended purpose, value**, geographical origin or the time of production of the goods or of rendering of the service, **or other characteristics** of the goods or service;*



EUIPO's old Guidelines

- A slogan is always registrable if
 - it contains a word (or words) which is (are) distinctive on its (their) own. Example: “**Carlsberg - Probably the Best Beer in the World**, or
 - if they contain an element of fancifulness
- However, a slogan can be descriptive if it
 - Highlight desirable characteristics, **Mehr für Ihr Geld**
 - Contain a general invitations to buy, **TASTE ME**
 - Is a laudatory statements **Making improvements in life possible** or
 - It seek to promote the superior knowledge **GOLD REWARDS PLUS**, client friendliness, economic success **GREEN TECHNOLOGICAL DAMPER**, or availability **ON TAP**



EUIPO's new Guidelines

- It is inappropriate to apply to slogans stricter criteria than those applicable to other types of signs when assessing their distinctive character (judgment of 12/07/12, C-311/11 P, *Wir machen das Besondere einfach*)
- Use of:
 - An unusual syntactic structures
 - A linguistic and stylistic devices, such as alliteration, metaphors, rhyme, paradox, etc.may contribute towards a finding of distinctiveness
- Advertising slogans or promotional formulas are objectionable, for example *Safety 1st*



Help from the Court of Justice

- ...likely to be distinctive whenever it is seen as more than a mere advertising message extolling the qualities of the goods or services in question because it:
 - constitutes a ***play on words*** and/or
 - introduces elements ***of conceptual intrigue or surprise***, and/or
 - has some particular ***originality or resonance*** and/or
 - triggers in the minds of the relevant public a ***cognitive process*** or requires an interpretative effort.



Accepted marks

- > TRULY COVERED
- > SITEINSIGHTS
- > BRAIN INSPIRED
- > ALL YOU NEED IS LOVE
- > WET DUST CAN'T FLY
- > LOVE TO LOUNGE

ACCEPTED



Examples of rejected marks

- › INNOVATION FOR THE REAL WORLD
- › PASSION FOR BETTER FOOD
- › FOREVER FASTER
- › LET'S GET COMFORTABLE
- › TO CREATE REALITY
- › MOBILE LIVING MADE EASY
- › 2good

REJECTED



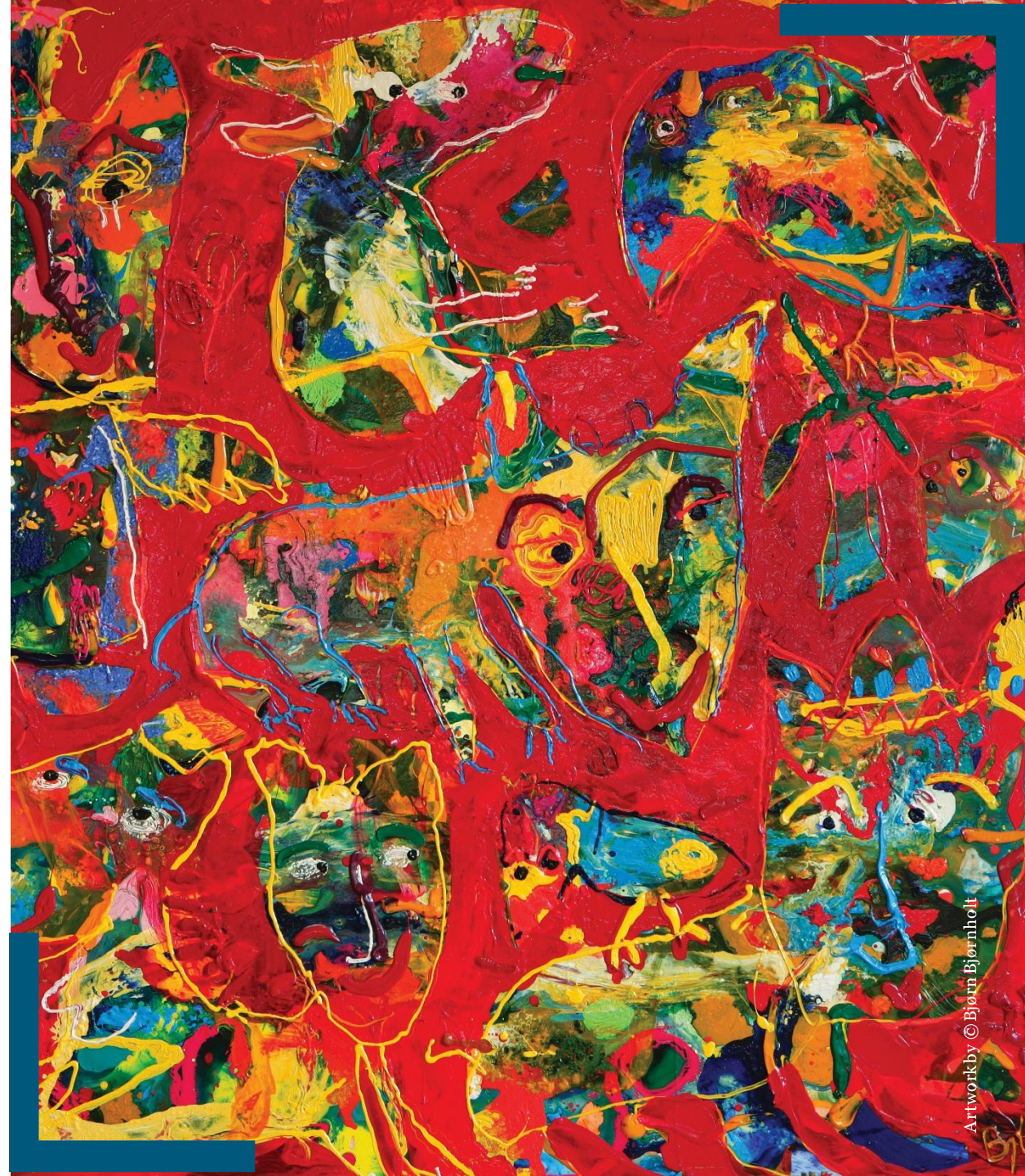
Let's take a look at the slogan from the beginning:

- **Real stupidity always trumps AI**
- Does it fulfill the criteria's?
 - Is it a play on words?
 - Does it introduce a elements of conceptual intrigue or surprise?
 - Does it have some particular originality or resonance?
 - Will it trigger in the minds of the relevant public a cognitive process or requires an interpretative effort?



And...where would we be without slogans like...

- › THERE ARE SOME THINGS MONEY CANT BUY – AND THEN THERE IS MASTERCARD
- › JUST DO IT
- › THINK DIFFERENT
- › BECAUSE YOUR WORTH IT
- › MELTS IN YOUR MOUTH NOT YOUR HAND
- › A DIAMOND IS FOREVER
- › I'M LOVING IT



Thank you for your attention!



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