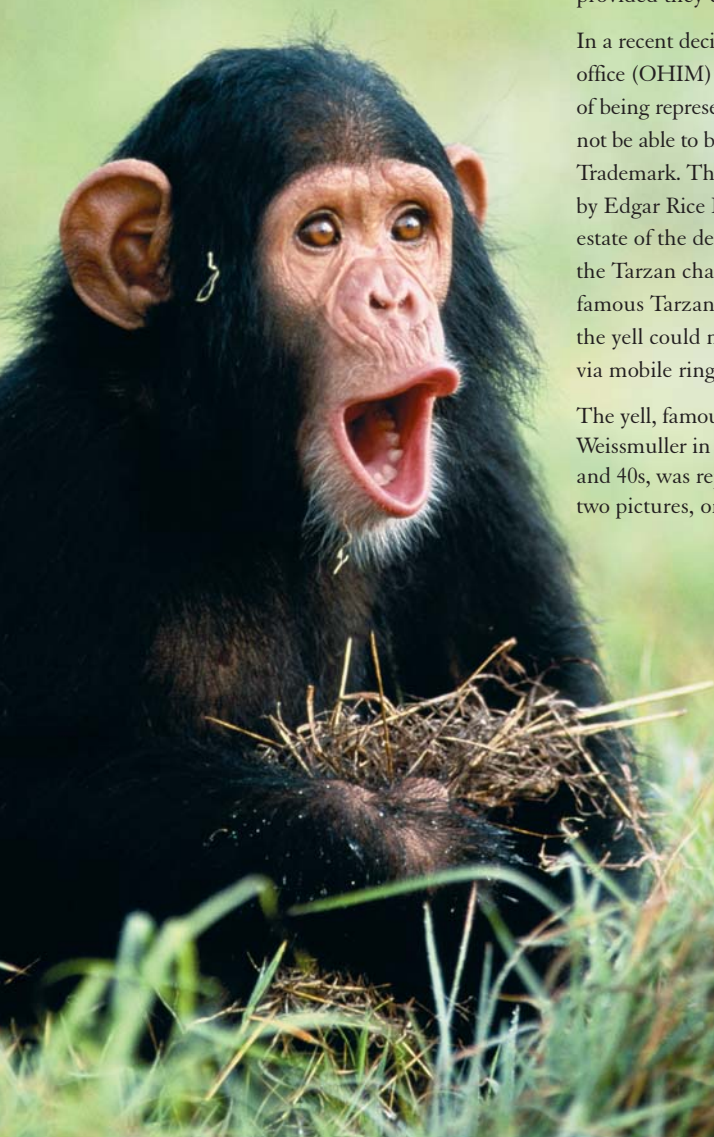


# To yell or not to yell?

## Tarzan trips a trademark hurdle



For several years, it's been possible to trade mark not only logos and words, but also shapes, colours, smells and even sounds – provided they can be represented graphically.

In a recent decision the European trade mark office (OHIM) stated that sounds incapable of being represented by musical notation will not be able to be registered as a Community Trademark. The decision related to an attempt by Edgar Rice Burroughs Incorporated, the estate of the deceased author and creator of the Tarzan character, to register the now famous Tarzan “yell”. It was believed that the yell could make a vast sum of money via mobile ring tones across the EU.

The yell, famously delivered by Johnny Weissmuller in the MGM movies of the 1930s and 40s, was represented in the application by two pictures, one a wave form representation

of the yell and the second a spectrogram which displayed the frequencies of the yell. On appeal the OHIM found that the pictures were “not capable of serving as a graphic representation of the applied for sound”. The pictures failed three points of the “Sieckmann” test, a seven-point test used to decide if something can be registered as a trademark. As neither picture could be read like musical notation, the pictures were said not to be self-contained, clear or intelligible.

A further application has now been made using a sound file, but at the time of going to press a decision had yet to be made.

Someone ought to ask Cheeta what he thinks of it all.

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