



Former authorised Daimler dealers are not responsible for advertisements which, despite their efforts to have them removed, continue to associate their name with the trade mark ‘Mercedes-Benz’ on the internet

Furthermore, Daimler cannot require those dealers to take steps to remove such advertisements from the internet where they have not been ordered

Együd Garage is a Hungarian company specialised in the sale and repair of Mercedes cars. For over five years, it was a party to a contract for the supply of after-sales services with Daimler, the German manufacturer of Mercedes cars and proprietor of the international trade mark ‘Mercedes-Benz’ which is also protected in Hungary. Under that contract Együd Garage was entitled to use that trade mark and to describe itself as an ‘authorised Mercedes-Benz dealer’ in its own advertisements.

Following the termination of that contract, Együd Garage tried to remove any online advertisement that might lead the public to assume that it was still in a contractual relationship with Daimler. Despite the steps taken, advertisements indicating such an association continued to be distributed online and identified by search engines.

Daimler then brought an action before the Fővárosi Törvényszék (Budapest Municipal Court, Hungary) seeking an order that Együd Garage remove the advertisements at issue from the internet and refrain from further infringement of the rights connected with its trade mark. That court asks the Court of Justice whether the Trade Marks Directive¹ allows Daimler to require a former contractual partner to take extensive measures to prevent it from causing harm to its trade mark.

By today’s judgment, the Court finds that the publication on a website of an advertisement referring to a trade mark constitutes a use of that trade mark by an advertiser who has ordered it. However, **the appearance of the trade mark on the site in question no longer constitutes a use by the advertiser where he has expressly requested the operator of the site, from whom he had ordered the advertisement, to remove it and the operator has disregarded that request.** Thus, the omissions of such an operator cannot be attributed to an advertiser who specifically seeks to prevent unauthorised use of the trade mark in question.

By the same logic, **the advertiser cannot be held liable for the acts and omissions of operators of other websites who, without his consent, have put the advertisement on their own site.**

In so far as Együd Garage is in just such a situation, **Daimler is not entitled to require, by means of legal action, that publication of the advertisement online be terminated.**

However, the Court states that the proprietor of the mark may, first, claim reimbursement from the advertiser for any financial benefit that he may obtain from advertisements still online and, secondly, bring proceedings against operators of websites that infringe the rights connected with its trade mark.

¹ Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks (OJ 2008 L 299, p. 25, and Corrigendum OJ 2009, L 11, p. 86).

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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