



The operator of a physical marketplace may be forced to put an end to trademark infringements committed by market-traders

Legal injunctions issued to that effect are subject to the same conditions as those for operators of online marketplaces

The company Delta Center is the tenant of the marketplace ‘Pražská tržnice’ (Prague market halls). It sublets to market-traders the various sales areas in that marketplace.

Manufacturers and distributors of branded products discovered that counterfeits of their goods were regularly in Prague market halls. On that basis, they asked the Czech courts to order Delta Center to stop renting sales areas in those halls to people who committed such infringements. The intellectual property directive¹ allows trademark holders to bring an action against intermediaries whose services are used by a third party to infringe their trademarks.

The trademark holders consider that, like the operators of online marketplaces covered by the judgment in L’Oréal,² the operator of a physical marketplace may, pursuant to the directive, be forced in law to bring trade mark infringements committed by market-traders to an end and to take measures in order to prevent new infringements.

The Nejvyšší soud (Supreme Court, Czech Republic), before which the case is now pending, asks the Court whether it is actually possible to order the operator of a physical marketplace to put an end to trademark related infringements committed by market-traders and to take measures seeking to prevent new infringements.

In today’s judgment, the Court finds that an operator which provides a service to third parties relating to the letting or subletting of pitches in a marketplace, and which thus offers the possibility to those third parties of selling counterfeit products in that marketplace, must be classified as an ‘intermediary’ within the meaning of the directive. The Court states that whether the provision of a sales point is within an online marketplace or a physical marketplace is irrelevant because the scope of the directive is not limited to electronic commerce.

Consequently, **the operator of a physical marketplace may itself also be forced to put an end to the trade mark infringements by market-traders and to take measures to prevent new infringements.**

Similarly, the Court states that the conditions for an injunction issued by a judicial authority against an intermediary who provides a service of letting sales points in market halls are identical to those applicable to injunctions addressed to intermediaries in an online marketplace.

Thus, not only must those injunctions be effective and dissuasive, but they must also be equitable and proportionate. They must not therefore be excessively expensive and must not create barriers to legitimate trade. Nor can the intermediary be required to exercise general and permanent oversight over its customers. By contrast, the intermediary may be forced to take measures which

¹ Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (OJ 2004 L 157, p. 45, and corrigendum OJ 2004 L 195, p. 16).

² Case: [C-324/09](#) L’Oréal and Others, see also Press Release [69/11](#).

contribute to avoiding new infringements of the same nature by the same market-trader. In addition, the injunctions must ensure a fair balance between the protection of intellectual property and the absence of obstacles to legitimate trade.

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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