



Press and Information

Court of Justice of the European Union

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Judgment in Case C-567/18

Coty Germany GmbH v Amazon Services Europe Sàrl, Amazon Europe Core Sàrl, Amazon FC Graben GmbH and Amazon EU Sàrl

The mere storage by Amazon, in the context of its online marketplace ('Amazon-Marketplace'), of goods which infringe trade mark rights does not constitute an infringement by Amazon of those trade mark rights

A company which, on behalf of a third-party seller, stores goods without being aware that they infringe trade mark rights does not itself use that trade mark, so long as it does not pursue, like the seller, the aim of offering the goods for sale or putting them on the market

The German company Coty Germany, a distributor of perfumes, holds a licence for the EU trade mark Davidoff. It claims that two Amazon group companies¹ infringed its rights in that mark by storing and dispatching bottles of 'Davidoff Hot Water' perfume offered for sale by third-party sellers on Amazon-Marketplace (www.amazon.de) although those bottles were not put on the EU market with its consent. Coty Germany has requested the German courts to order the two Amazon companies concerned to desist from such storage and dispatch.

The Bundesgerichtshof (Federal Court of Justice, Germany) asks the Court of Justice to interpret the EU trade mark regulation.² **It seeks to ascertain whether a company which, on behalf of a third-party seller, stores goods which infringe trade mark rights, without being aware of that infringement, itself uses that mark.**³

By today's judgment, the Court answers that, in order for there to be an infringement of the rights in the trade mark by the **company providing the storage, that company must pursue, like the seller, the aim of offering the goods for sale or putting them on the market.**

In the present case, the Bundesgerichtshof has stated unequivocally that the two Amazon companies concerned have not themselves offered the goods for sale or put them on the market and that the third-party seller alone pursued that aim. It follows that the Amazon companies have not themselves used the Davidoff mark.

The Court recalls, however, that other provisions of EU law, in particular those on e-commerce⁴ and enforcement of intellectual property rights,⁵ allow legal proceedings to be brought against an intermediary who has enabled an economic operator to use a trade mark unlawfully.

¹ Amazon Services Europe, which enables sellers to place offers for sale in respect of their goods on 'Amazon-Marketplace', and Amazon FC Graben, which operates a warehouse in which the goods concerned were stored. The potential liability of Amazon EU and Amazon Europe Core is not the subject of the proceedings before the Bundesgerichtshof.

² Council Regulation (EC) No 207/2009 of 26 February 2009 on the [European Union] trade mark (OJ 2009 L 78, p. 1), in the version prior to its amendment by Regulation (EU) 2015/2424 of the European Parliament and of the Council of 16 December 2015 (OJ 2015 L 341, p. 21), and Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark (OJ 2017 L 154, p. 1).

³ By stocking those goods for the purposes of offering them or putting them on the market.

⁴ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') (OJ 2000 L 178, p. 1).

⁵ 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, corrigendum OJ 2004 L 195, p. 16).

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.

Press contact: Jacques René Zammit ☎ (+352) 4303 3355