

L'Oreal SA v. Ebay (UK).., Case C-324/09,
12 July 2011

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Keyword and Procedure

- Trade mark (TM), liability of Internet Service Provider (ISP), customer protection, injunction, data protection, intellectual property rights, product counter fake.
- L'Oreal (Oreal) is company producing cosmetic products filing complaint against Ebay in UK court which is sale online web service regarding putting on sale of unpacked product of Oreal without permission of the producer..
- UK Court decided and for warded case to the European Court of Justice (ECJ) for legal construction. The court decided and rendered judgement on 12 July 2011.

Applicable Rule/Standard

- The Court based on a number of directives:
 - Directive 89/104 and Regulation No 40/94 relating to trade mark.
 - Directive 2000/31 on Directive on electronic commerce.
 - Directive 2004/48 on Directive on the enforcement of intellectual property rights.
 - Directive 76/768 on Directive on cosmetic products.

Arguments/evidence

- TM owner is entitled to refrain sale of TM registered product, yet in the market, in third State but for customers in the EU, with permission of TM owner.
- Placing in market does not include placing in market a few sample of TM product free of charge, by authorized distributor.
- TM owner has exclusive rights to object a sale of unpacked product removing important information of the product or such a removing affecting reputation of TM owner.
- TM owner has right to prevent online marketplace operator from sale advertisement if such a doing make online users unclear about TM owner..

Arguments/evidence

- The ECJ indicated that substantial playing operators are ones knowing the management of stored data. They are still liable, even not a substantial playing role, if they know illegal sale and failed to take immediate action.
- EU regulations required national courts take actions to protection IP rights via ordering online market not only to end violation but also to prevent future abuse. These actions shall be effective, proportionate and not unreasonable bar to commerce.

Conclusion (Remarkable Quotation)

- In the second place, a trade mark, the essential function of which is to provide the consumer with an assurance as to the identity of the product's origin, serves in particular to guarantee that all the goods bearing the mark have been manufactured or supplied under the control of a single undertaking which is responsible for their quality (see, inter alia, Case C-206/01 Arsenal Football Club [2002] ECR I-10273, paragraph 48, and Case C-59/08 Copad [2009] ECR I-3421, paragraph 45).

Note on Resource

- For whole judgement:

- <http://www.measboralaws.com/images/pdf/verdict/a02957c720277cc71b4ac640bdf272b1.pdf>

- For summary of judgement:

- <http://www.measboralaws.com/images/pdf/books-magazines/51cf3428d4c50d55ba8fd027e8d8bb3c.pdf>