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Slovenian Courts Follow CJEU Rulings, but the Administrative Interim Injunction gets Lost in Transition

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A store in Ljubljana (Slovenia) was selling genuine Levi's® trademarked goods intended only for the US market. The store was buying the goods online in the USA by providing payment details of the owner's American home address (he is a US citizen residing in SLO) and by having goods delivered to an address in the US. The goods were then shipped to Slovenia in unknown, but likely not-so-small quantities.

Levi Strauss & Co. (hereinafter: LC&Co.) US online store explicitly indicated, on the website, that goods ordered on that website cannot be shipped outside of the US. However it did not contain an explicit prohibition of re-selling the goods in the EEA or anywhere else.

The infringement lawsuit in Slovenia was filed in **September 2014** requesting prohibition of sale, withdrawal of goods from the market, destruction of goods, publication of the court ruling and litigation costs.

The defendant maintained the following:

- in the past Levi Strauss & Co. US page contained an explicit prohibition of export to EEA. This prohibition was removed;
- the defendant was buying large quantities of goods, which should have risen a red flag with LC&Co. who was supposed to be diligent and check where these goods are going;
- the goods were delivered to a forwarding agent, and LC&Co. should have assumed that they were going to leave the country;
- the defendant had a long-term business relationship with the plaintiff and the plaintiff never objected or stopped sale to the defendant.

The defendant claimed **implied consent** to import goods to the EEA market. In addition, the defendant insisted the goods are genuine, properly paid and should not be destroyed.

A first instance court (and now also the Higher Court as well) refused defendant's argumentation and found that they failed to prove implied or expressed consent. Both courts also insisted that all circumstances of the case show there was no implied consent, that there was no real long term business relationship (the defendant was simply buying goods online in the US until they got caught) and that the plaintiff did not have to explicitly prohibit sale in the EEA on the online store website, since lack of consent to do so was obvious. The Higher Court also stated that it is

irrelevant whether goods are genuine or not since, without consent of the trademark holder, they are infringing goods. The Higher Court referred to EUCJ rulings in cases C-127/09 Coty Prestige Lancaster Group and C-414/99 – C 416/99 Zino Davidoff and Levi Strauss & Co.

The ruling is now final and the defendant only has extraordinary legal remedies available which cannot affect enforcement of the final first instance decision.

Administrative Interim Injunction

Interestingly, in order to obtain an interim injunction, in late 2014 a request with the **Slovenian Trade Inspectorate** was filed, based on Competition Protection Act provisions, which stipulated that the **Trade Inspectorate MUST temporarily prohibit suspected acts of unfair competition for which a lawsuit was pending**. The Trade Inspectorate had no choice but to prohibit such acts until the decision of the court became final and was not allowed to examine whether the lawsuit is substantiated or not. This was a very effective (though sometimes abused) remedy in unfair competition cases. In this case, the Trade Inspectorate and, on appeal, the Ministry of Economy refused to issue an injunction in spite of very clear and unified court practice. It was later realized that they did so because they already had the intention to propose the Competition Protection Act to cease to be valid (competition provisions were moved to another law) and that **interim administrative injunction** would be abolished altogether. They even proposed the law (and it was adopted with this wording during expedited parliamentary proceedings) terminating all pending administrative procedures and disputes, which were initiated on the, now abolished, interim administrative injunction provision. This means that even the administrative dispute filed against Trade Inspectorate and Ministry of Economy will likely remain unsuccessful (unless the judge initiates constitutional revision of the new law *ex officio* – which is unlikely). More on this particular topic here: <https://www.petosevic.com/resources/news/2016/01/3410>

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