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Denmark: Internet service providers' provision of access to websites with trademark infringing content was contributory to the infringement

Lasse Skaarup Christensen (Gorrissen Federspiel) · Friday, November 4th, 2022

On 2 June 2022, the Danish Maritime and Commercial High Court (the Court) issued a decision (BS 6088/2022 SHR) between Skechers U.S.A., Inc. II (Skechers) and HI3G DENMARK ApS (HI3G) and others regarding blocking of domain names.

Skechers operates in the business of selling shoes and sports products and the company has registered word and figurative trademarks in classes corresponding to such activities.

HI3G and the other defendants are providers of telecommunications and internet access.

Skechers brought proceedings against the defendants claiming that they should be prohibited from providing access to websites at four specified domain names which were using Skechers' trademarks and copyright protected pictures. Skechers also claimed that the defendants should be ordered to take the necessary steps to prevent access to identical content, as on those specific websites, if this could be accessed via other domain names and if Skechers expressly would inform the defendants about these domain names.

A third set of claims regarded that the defendants should be prohibited from providing access to any websites infringing Skechers' trademarks and copyrights in the future, as long as Skechers would make the defendants aware of such websites and agree to be economically and legally liable in case the websites would not be found to contain infringements of Skechers' rights.

The Court began its ruling by establishing that by providing access to the four domain names in question, the defendants contributed to the infringement of Skechers' trademarks and copyrights. The Court went on to find that since it was not possible to identify the creators and registrants of the four domain names, the applicant had proven that an injunction directed at the defendants was necessary.

Moreover, Skechers had proven that the possibility of obtaining their rights would be wasted by awaiting a full trial of the matter and that the general rules on penalties and compensation under Danish law would not provide Skechers with sufficient protection against infringement of their rights. Hence, the Court found that the conditions for granting a preliminary injunction were fulfilled and it upheld the applicant's claim that the defendants should block the websites at the four domain names in question, as Skechers had proven obvious infringement of their rights. The

defendants were also ordered to take the necessary steps to prevent access to identical content on other domain names.

Lastly, the Court assessed that Skechers' claim, regarding the obligation of the defendants to block future unspecified infringing websites, lacked sufficient clarity and precision and that it could therefore not be upheld. It furthermore lacked the urgency that is required for interim relief measures.

The decision underlines that even though internet service providers may not be liable for compensation due to article 12 of the E-commerce Directive (Directive 2000/31/EC of 8 June 2000), their acts can still be considered contributory infringement if they provide access to websites and/or domain names that infringe intellectual property rights. Consequently, as also provided for in the Court of Justice's judgement of 27 March 2014 in Case C-314/12 UPC Telekabel Wien, internet service providers can be ordered to block access to domain names giving access to websites with infringing content.

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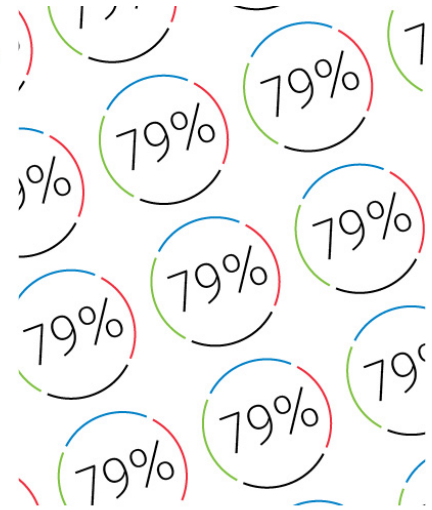
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