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Denmark: The High Court confirms that an injunction on the prevention of internet access to future and unidentified trademark infringements cannot be granted

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Recently we published an article regarding the decision from the Danish Maritime and Commercial Court on blocking of domain names and websites containing trademark infringing material in the matter between Skechers U.S.A., Inc. II (Skechers) and HI3G DENMARK ApS (HI3G) and others (being telecommunications and internet access providers). Read the article [here](#).

As written in our previous article the Danish Maritime and Commercial Court found that by providing access to domain names and websites which contain trademark infringements, the defendants (being telecommunication providers) contributed to the infringement of Skechers' trademarks and copyrights. The Danish Maritime and Commercial Court also found that since it was not possible to identify the creators and registrants of the domain names in question, Skechers had proven that an injunction directed at the defendants was necessary.

However, the Danish Maritime and Commercial Court did not find that that Skechers' claim regarding the obligation of the defendants to block future unspecified infringing websites could be upheld as this claim lacked sufficient clarity and precision and the urgency that is required for interim relief measures.

Not satisfied with this specific part of the decision, this was appealed by Skechers to the Danish High Court (the High Court). A decision in the appeal case was issued on 9 November 2022 (BS 24168/2022 OLR).

Consequently, the case before the High Court only concerned the question whether the telecommunication providers could be prohibited from providing access to future and unidentified infringing websites.

Skechers claimed that an injunction should be granted by which the defendants should be prohibited from providing access to any unidentified (at the time of the injunction) websites infringing Skechers' trademarks and copyrights 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.

According to section 413 of the Danish Administration of Justice Act, the conditions for an interim

injunction are that the party applying for the injunction proves on a balance of probabilities:

- that the party holds the right for which protection is sought;
- that the conduct of the opposing party necessitates the granting of the injunction; and
- that the ability of the party to enforce his right will be lost if the party has to await a full trial.

The High Court stated that it could not be excluded that the use by third parties of Skechers' trademarks and copyright protected pictures for marketing purposes in domain names and on websites may be lawful. Thus, it was not established that Skechers necessarily has the right for which protection was sought in all circumstances potentially covered by the requested injunction.

Furthermore, the High Court found that since it was not possible to identify an actual and specific infringement committed by an identified third party at the time of the High Court's consideration of Skechers' request for an injunction, the condition that the conduct of the opposing party necessitates the granting of the injunction, was not met.

The High Court therefore assessed that the conditions for granting an interim injunction regarding the prevention of access to future and unidentified infringements were not fulfilled, and Skechers' claims were therefore rejected.

The High Court also mentioned that it can furthermore not be excluded that considerations regarding proportionality may be an obstacle as well for granting an injunction as requested by Skechers. In this regard the Danish Administration of Justice Act provides that a court may refuse to grant an injunction if this would cause the opposing party to suffer a detriment or disadvantage which is clearly disproportionate to the party's interest in obtaining the injunction.

With the decision, the High Court makes it clear that such far-reaching injunctions on future infringements, which at the time of the request for injunction have not been sufficiently identified, cannot be granted.

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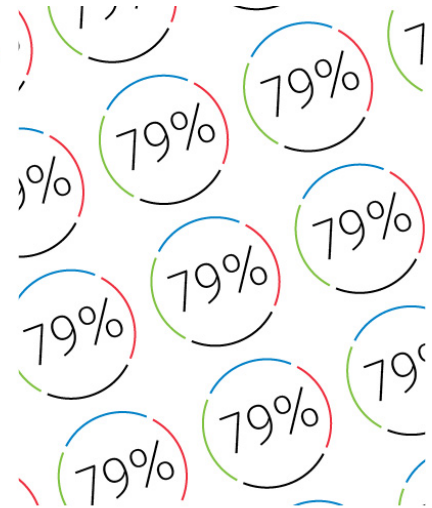
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