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Information claim the Czech way: smell of partial victory for Chanel against online retailer

Michal Havlik (SAK ALO) · Wednesday, March 13th, 2024

The Prague High Court as an appellate court issued its judgment in the case of Chanel S.A.S. against Notino s.r.o. (3 Cmo 107/2022-384 dated 28 November 2023) after an almost six-year legal battle with the Czech based online retailer Notino, a major European player in online sales of perfumery and cosmetics.

The good news for trademark owners is that the court granted the claim as to a broad interpretation of the information claim under national law implementing Article 8 of the Directive 2004/48/EC on the enforcement of intellectual property rights. Notino was ordered to provide information on previous holders and quantities and the price obtained in relation to all goods bearing the Chanel trademark sold by Notino on the grounds that Chanel successfully demonstrated through a test purchase that Notino sold illegal parallel imports originating from outside the EU/EEA. The court applied the relevant provision of the Czech Code of Civil Procedure stating that if a sample of goods is examined and found to be infringing, the conclusion shall be made concerning all relevant goods.

The court rejected Notino's feisty defence arguing incompatibility of Chanel's selective distribution system with EU competition law due to inconsistency and discrimination.

The bad news for trademark owners is that the court only granted the claim partially in relation to the time up to the receipt of the pre-litigation notice by Notino. Under Czech practice, the information claim is only enforceable if the defendant fails to comply with a pre-litigation notice demanding voluntary provision of such information.

The court found that a pre-litigation notice can only relate to information existing at that time. Accordingly, the court reasoned that the claim is not permissible in relation to information for the period after receipt of the pre-litigation up to the date of compliance.

In this particular case, Chanel has now obtained an enforceable judgment to receive from Notino information relating to Notino's sales of Chanel products over the period of 02/2015-02/2018.

This second finding of the court is likely to make future litigation for information in Czech courts more complicated for rightholders and reduce the practical benefits of obtaining such information if it is to be used for immediate anti-counterfeiting measures against sources of infringing goods.

For the same reason, this interpretation may serve as an incentive for defendants to engage in

delaying tactics to postpone the judgement.

Both parties may file an extraordinary appeal to the Czech Supreme Court, so the Czech information claim saga may still continue...

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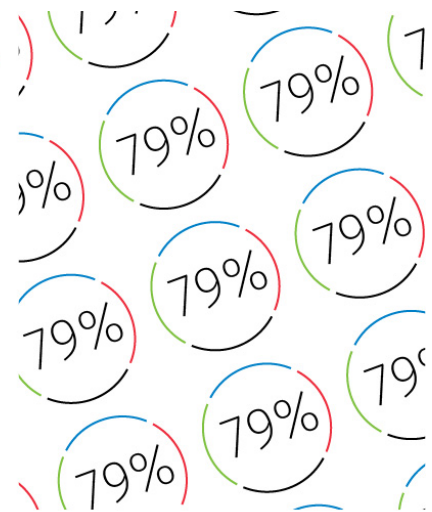
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