



Rights holders beware: criminal raid action deemed to be act of unfair competition

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- Defendant sought compensation from complainant after seized products were found to be genuine
- First Instance Court found that there was no connection between decrease in sales figures and revoked raid order
- Court of Appeals disagreed, holding that revoked seizure constituted act of unfair competition

In a recent decision, the Court of Appeals has held that a criminal raid action constituted an act of unfair competition against the defendant and that the complainant should pay compensation to the defendant for the damages incurred due to the raid.

Background

A criminal complaint was filed by the complainant (the sole distributor of a contractor brand), against the defendant (sells the same products under the same brand). The complainant claimed that the products sold by the defendant were counterfeit. A raid action was conducted and the products bearing the brand at issue were seized and put into custody.

During the criminal proceedings, it was determined by the expert report that the products subject to the complaint were original and had been parallel-imported from another country. Following this conclusion, the prosecutor decided for non-prosecution and revoked the seizure order against the products at issue.

The defendant subsequently filed a civil court action against the complainant on the ground that the unfair seizure order had discredited its activities and that filing such request unlawfully constituted an act of unfair competition. It asked the court to order the complainant to pay compensation for the pecuniary and non-pecuniary damages incurred.

After examining the commercial books of the defendant (the plaintiff of the subject case), the First Instance Court decided that there was no connection between the decrease in the sales figures and the revoked raid order, since the defendant's sales figures had fluctuated during the relevant time period and had not decreased consistently after the seizure.

The decision was appealed by the defendant before the Courts of Appeals.

Courts of Appeals decision

The Courts of Appeals decided to reverse the judgment of the First Instance Court, holding that the revoked seizure constituted an act of unfair competition against the defendant based on the following reasons:

- the criminal complaint and raid action were unjustified, as the products were found to be original;
- the criminal complaint and seizure of the products caused the defendant to lose profits and clients; and
- the filing of the related raid order request, without first trying other more suitable options, was deemed to be an act of unfair competition.

Comment

This decision is exceptional in that it recognises that the seizure of products suspected of being counterfeit following a criminal raid order constitutes an act of unfair competition if such seizure is later revoked. The court pointed out that claimants requesting a criminal raid order should first ensure that the products are counterfeit by conducting a proper and thorough pre-investigation.

Following this decision, it seems that the pre-investigation phase has become more important, as claimants must gather proper information about the counterfeiters and the counterfeit nature of the products. All the risks should be carefully taken into account by rights holders before submitting a raid order request so as to avoid facing potential compensation claims later on.

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