

**Higher Court: forwarding agent is jointly and severally liable for infringement with importer**

**Dilution  
Enforcement**

**Slovenia - ITEM doo**

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In *Louis Vuitton Malletier Société Anonyme v Interkop 2006 doo* (Case No I Cpg 1184/2013, April 9 2015, released in June 2015), the Higher Court has held that a forwarding agent is jointly and severally liable for infringement with the company that imported the infringing goods into European Union, and that both companies are jointly and severally liable for arranging the destruction of the infringing goods at their own expense under customs supervision.

In November 2010 [Slovenian Customs](#) found and suspended 12,960 belts and 12,090 handbags suspected of infringing various Community trademarks - representing the LV monogram and the famous quatrefoils design - belonging to [Louis Vuitton Malletier Société Anonyme](#). The goods originated from China, and the importer was Italian company Pelleteria Great Walls SAS. The forwarding agent, Slovenian company Interkop 2006 doo, filed a declaration with Customs to obtain the release of the goods into the European Union.

Louis Vuitton confirmed to Customs that the goods infringed its trademark rights and requested the destruction of the goods under the customs procedure set forth in the Act on the Implementation of EU Customs Measures. The destruction was prevented by a statement filed by Interkop, which declared that the goods were not counterfeit and that they should not be destroyed under the customs procedure. The Act on the Implementation of EU Customs Measures states that, if such a statement is filed, the trademark holder must file an infringement action under the [Industrial Property Act](#), otherwise the goods are released.

Consequently, in December 2010 Louis Vuitton filed an infringement action under the Industrial Property Act with the Circuit Court in Ljubljana against both Pelleteria and Interkop. Louis Vuitton claimed, among other things, that:

1. Pelleteria and Interkop should jointly and severally arrange for the destruction of the infringing goods at their own expense under customs supervision; and
2. Pelleteria and Interkop should be restrained from further infringement of Louis Vuitton's trademarks.

In April 2013 the Circuit Court issued a judgment (Case No IV Pg 5539/2010) finding that both Pelleteria and Interkop had infringed Louis Vuitton's trademarks and restraining both companies from further infringement. However, surprisingly, the Circuit Court refused Louis Vuitton's claim for the destruction of the infringing goods at the infringers' expense. The court explained that the destruction claim under the Industrial Property Act was not justified in this particular case as the goods had been suspended by Customs and, therefore, their potential destruction had to be decided upon and carried out in accordance with the Act on Implementation of the EU Customs Measures, which belongs to the administrative body of law. The court concluded that the destruction of the infringing goods could not be obtained within the framework of the (civil) infringement action under the Industrial Property Act before the civil court.

Louis Vuitton appealed, arguing that, regardless of whether the goods were found by Customs, a trademark holder may claim, within the framework of an infringement action before the civil court, all remedies provided for by the Industrial Property Act, including the destruction of the infringing goods at the infringer's expense. While it is true that the Act on Implementation of the EU Customs Measures also provides for the destruction of suspended goods under customs supervision if the court finds that the goods infringe trademark rights, such provisions do not preclude the trademark holder from suing before the civil courts for the destruction of the infringing goods according to the Industrial Property Act, even in cases where the goods were suspended by Customs.

Interkop also appealed, arguing that a forwarding agent cannot be held liable for infringement if it has merely filed a Customs declaration for the release of the goods into the European Union. Interkop further argued that the statement had been filed on behalf of Pelleteria, so that Interkop could not be held liable for representing a potential infringer within the customs procedure. Forwarding agents are not obliged to inspect the goods and, in fact, never inspect them; therefore, they do not know whether the goods infringe any rights in the European Union.

In June 2015 the Higher Court upheld Louis Vuitton's appeal and rejected Interkop's appeal.

The Higher Court held that a trademark holder may successfully sue for the destruction of infringing goods at the infringer's expense under the Industrial Property Act in cases where the goods were found and

suspended by Customs, because the Industrial Property Act has no limitation on the remedies (eg, the destruction of the goods) available to trademark holders.

The Higher Court also held that forwarding agents are liable for infringement regardless of the fact that they might not have been in contact with the goods and are not obliged to inspect them. The mere filing of a customs declaration for infringing goods makes forwarding agents liable for infringement because, by doing so, they assist the infringers in putting the infringing products on the market. Further, the Higher Court held that the forwarding agent in such cases is jointly and severally liable for infringement with the importer of the infringing goods; therefore, if the latter does not comply with the destruction order at its own expense, the trademark holder can obtain the destruction of the goods at the forwarding agent's expense.

This judgment is important in that it clarifies procedural and material issues in infringement cases originating from Customs procedures; it also makes it easier for trademark holders to enforce their rights by suing the forwarding agents.

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