Intellectual Property - Netherlands

Amsterdam District Court denies authority for seizure of Community trademark

Contributed by **AKD**

June 08 2015

Introduction

On January 26 2015 the Amsterdam District Court, on an application for protective measures, decided that it was not authorised to grant permission to seize trademarks registered as a Community trademark before the Office for Harmonisation in the Internal Market (OHIM).

The court reasoned that its authority to grant permission for a seizure stems from Article 700 of the Code of Civil Procedure. Article 700 authorises the court to grant permission for the seizure of property, provided that the property is within the geographic remit of the subject court. The court argued that, as OHIM has its seat in Alicante, Spain (ie, outside the Netherlands), the trademarks were outside the court's remit and it therefore had no authority to grant permission for seizure.

The decision came as a surprise to many. One would not expect local courts to deem themselves not competent to grant permission for seizures. The decision also seems to have an unwanted effect – that is, according to the reasoning of the court, requests for permission to seize Community trademarks must be filed at the Community trademark court in Alicante. This places an unnecessary burden on creditors seeking protective measures against the holder of a Community trademark. Further, evidence supports the argument that the decision is wrong.

Article 700 of Code of Civil Procedure

Article 700 of the Code of Civil Procedure authorises the court to grant permission for the seizure of property, provided that the property is within the geographic remit of the subject court.

However, the laws of the Netherlands define 'property' as either physical objects or immaterial rights. Further, Article 700 distinguishes between situations in which the property is a physical item and those in which it is an immaterial right. Article 700 states that if the property is not a physical item but a right, the court is competent to grant permission for the seizure if and when the debtor is domiciled in the Netherlands. This in itself is arguably sufficient for the court to deem itself competent to grant permission for the seizure.

In this case, the property to be seized was an immaterial right (ie, a registered Community trademark) and the debtor was a limited liability company, organised and existing under the laws of the Netherlands, with its seat and registered address in Amsterdam. It seems that the court overlooked the distinction between physical items and immaterial rights in concluding that it could not grant permission for the seizure of the Community trademark.

EU Community Trademark Regulation

The EU Community Trademark Regulation (207/2009) does not establish unified and complete provisions for the levy of execution for Community trademarks or applications thereof. Rather, Article 16 of the regulation refers to the law of the relevant member state regarding the procedure for levy of execution.

Article 16 states that (with limited exceptions):

> "*a Community trade mark as an object of property, shall be dealt with in its entirety, and for the whole area of the Community, as a national trade mark registered in the Member State in which, according to the register of Community trade marks:*

(a) the proprietor has his seat or his domicile on the relevant date;

(b) where point (a) does not apply, the proprietor has an establishment on the relevant date."

So a Community trademark registered by a legal entity organised under the laws of the Netherlands and domiciled in the Netherlands should be treated as an object of property under Dutch law.

This implies that a Community trademark held by a Dutch person – whether a natural person or a legal entity – is a national (ie, Dutch) object of property. That places it within the geographical remit of the Dutch courts. Further, the territory covered by a Community trademark is the territory of the European Union as such, without any further internal boundaries. When considering applications for seizure of a Community trademark, courts should consider themselves as a court in the European Union, rather than a court in the Netherlands (or another member state). Any Community trademark is thus within the remit of any EU court and jurisdiction can be granted or denied only by the relative rules of competence. In this case the debtor was domiciled in Amsterdam, causing the court to be competent.

Further, Article 20(2) of the EU Community Trademark Regulation provides that:

"*As regards the procedure for levy of execution in respect of a Community trade mark, the courts and authorities of the Member States determined in accordance with Article 16 shall have exclusive jurisdiction.*"

In this case, concerning Dutch property held by a legal entity domiciled in Amsterdam, only a court inside the Netherlands would be competent to grant permission for the seizure. Courts outside the Netherlands (eg, a trademark court in Alicante) have no jurisdiction on the basis of Article 20(2).

Comment

The key point in this case is that a trademark right is an immaterial right of property that ought to be treated as if it were a national mark; therefore, only the court defined in Article 16 of the EU Community Trademark Regulation has jurisdiction. The Amsterdam District Court should have interpreted Article 700 of the Code of Civil Procedure on that basis.

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