

Court rejects Chanel's request to gather evidence regarding potential infringement

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Facts

Legislative background

Decision

Comment

The District Court of Midden-Nederland recently rejected a request by Chanel to access the administration of Bol.com, the most popular online marketplace and store in the Netherlands.⁽¹⁾

Facts

Bol.com was an online store which stocked millions of articles, including Chanel products. The online marketplace was not part of Chanel's selective distribution system and Chanel had not authorised Bol.com to sell its products.

Chanel requested that Bol.com provided information about the origin of the Chanel-branded products that were being sold. Chanel wanted to use such information as evidence to determine the extent of the infringement of its trademark rights and trace the origin of the Chanel products that Bol.com had offered and sold since 2015.

Legislative background

In the Netherlands, a general discovery trial is an unknown phenomenon. However, certain information may be obtained pursuant to Article 843a of the Code of Civil Procedure (CCP). Such requests can be lodged as a claim in a comprehensive procedure but also by means of a separate procedure. To award such a request, three requirements must be met (cumulatively):

- There must be a legitimate interest in the disclosure (gathering evidence to prepare a possible claim is a legitimate interest).
- The claim for disclosure must relate to specific documents (a 'fishing expedition' is not allowed).
- There must be a legal relationship between the two involved parties. Such relationship can exist by virtue of a contractual relationship but may also consist of a wrongful act (eg, an infringement of IP rights). According to standard Supreme Court case law, the existence of the legal relationship must be sufficiently plausible.

Decision

In this case, the requirement for a legal relationship proved problematic for Chanel. Specifically, Chanel had to be able to state the facts and circumstances of the alleged IP infringement and, where available, substantiate them with evidence to show that it was sufficiently plausible that a threat of an infringement of IP rights existed.

As a trademark owner, Chanel had the right to control the first marketing of its trademarked products in the European Economic Area (EEA). According to Bol.com, the sales of Chanel products involved authorised parallel imported goods, which were authorised by Chanel (or one of its distributors) to be sold in the EEA, following which any trademark rights had been exhausted.

As to the existence of a legal relationship, Chanel primarily took the position that Bol.com had infringed its trademark rights for the following reasons:

- Bol.com sold non-authentic Chanel products or traded in Chanel products that Chanel had not placed on the European internal market or given its consent therefor. However, the court rejected this argument because Chanel had been unable to evidence that the Chanel products sold by Bol.com had been counterfeit

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or concerned unauthorised parallel imports. Certain test purchases which Chanel had made concerned products with a track-and-trace code. At the hearing, Chanel had indicated that these specific test purchases were original and authorised for the EEA.

- Bol.com had purchased Chanel products from distributors selected by Chanel. However, such distributors had not been contractually allowed to resell the products, which, according to Chanel, prevented the exhaustion of its trademark rights. The court also rejected this argument. It held that a violation of an obligation by a distributor to not to resell outside a selective distribution system does not prevent the exhaustion of trademark rights.
- Both the act and method of selling the Chanel products detracted from the prestigious and luxurious image of Chanel, which meant that Chanel could continue to invoke its trademark rights. The court deemed this argument irrelevant in light of Chanel's request to access information. It held that regardless of whether Bol.com's sales were harmful to Chanel's image, Chanel had had no legitimate interest in the documents that it had requested under Article 843a of the CCP (namely, purchase agreements, product orders, order confirmations, delivery confirmations, purchase invoices, sales invoices and correspondence with and statements and guarantees from suppliers regarding delivery and origin). The court further stated that the requested documents by their nature could not be used to determine the manner in which Bol.com had offered and presented the Chanel products for sale or whether such sales had harmed the reputation of Chanel's trademarks.

Therefore, the court rejected Chanel's claim.

Comment

The specific procedure to obtain information under Article 843a of the CCP required Chanel to prove the existence of a plausible threat of IP infringement. The outcome of this case will be particularly bitter for Chanel in light of the fact that in a regular trademark infringement case, parallel importers normally have the burden to prove that the specific trademarked products that are sold are authorised to be sold in the EEA. In a regular trademark infringement procedure, Chanel would have had to state only that the goods were not authorised for the EEA and could have waited to see whether the parallel importer could prove (by means of a paper trail) that the specific goods were authorised.

Chanel will undoubtedly start a regular infringement procedure against Bol.com in the near future.

For further information on this topic please contact [Bram Woltering](#) at AKD by telephone (+31 88 253 50 00) or email (bwoltering@akd.nl). The AKD website can be accessed at www.akd.nl.

Endnotes

(1) *Chanel SAS v Bol.com BV*, District Court Midden-Nederland, 17 March 2021 (ECLI:NL:RBMNE:2021:1068).

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