

React

Landlord liability Programme

Paris, 26 January 2017

- WHY
- React has a very simple concept regarding intermediaries:
- *“when an intermediary has been put on notice and when that person is in the position to stop the infringement, that intermediary should hold responsibility and be liable”*

- This concept can be applied:
- In transportation towards declarants, customs agents, shipping agents, forwarders ...
- Online against host ISP's, registrars, search engines
- Towards financial service providers: banking, payment processors ...
- **At physical market places**

- Which intermediaries should be addressed?
- Our general concept is simple:
 - those who have (indirect) benefits,
 - those who are in the position to suspend the infringement with reasonable effort (contract);
 - those who have been made aware

- By initiating test cases, React forces the introduction of this simple concept.
- Online: pretty much set concept; world wide (ebay/LÓreal); ISP's usually cooperative
- Transportation: more difficult to get this accepted. Pending matters in Slovenia; Bascap had recent success; MOU with transporting companies
- Marketplaces: China Silk case; Canalstreet NY, Thailand ..
- Not in EU though; intermediaries uncooperative!

- Czech markets for long time pose huge problem
- Illegal Vietnamese citizens selling fakes
- Landlord Delta Center refused our claim to stop renting sales areas in their premises to persons committing counterfeit trade
- Article 11 Enforcement Directive
- ***Member States shall also ensure that rightholders are in a position to apply for an injunction against intermediaries whose services are used by a third party to infringe an intellectual property right,***

- First local courts: claims rejected
- Supreme Court decided to ask for a preliminary ruling with the outcome mentioned:
 - *Conditions for an injunction issued by a judicial authority against an intermediary who provides a service of letting sales points in market halls are identical to those applicable to injunctions addressed to intermediaries in an online marketplace (L'oreal/Ebay)*
- Very positive outcome:
- Escape clauses?
- Demands by rights owners have to be reasonable and proportionate

- React set up programme EU wide to inspect markets and seek responsibility/liability of landlords
- First inspections are made and evidence of infringements collected
- Landlords are now being held responsible to ensure that infringements stop
- If this is not the case, landlords will be summoned
- The infringers will be bypassed
- Regardless if landlord is a private or public person

- The claim of the rights owner to the landlord will in most cases refer to application of the rental contract that the seller is not allowed to sell illegal goods
- In one way or other always foreseen in the contracts
- This is why we believe that the claim to apply the contract for the sake of rights owners and consumer protection, is in general reasonable and proportionate.
- To be continued on national level!

Market being investigated in Spain

- Ponferrada Market (Leon)
- ES Canar Open Market (Punta Arabi, Ibiza)
- Fuengirola Open Market
- C.C.Yumbo Centrum (Las Palmas)

SPAIN

Ponferrada Market

- Ponferrada market is operated by the Town Council
- It has around 14 stands selling counterfeits
- January 20th a meeting was held with the Town Council.
- As a result police surveillance will be intensified and sellers are now required to display their licenses.

Ponferrada aumentará la vigilancia en los mercadillos semanales para evitar la venta de productos falsificados

elbierzodigital.com/ponferrada-aumentara-la-vigilancia-los-mercadillos-semanales-evitar-la-venta-productos-falsificados/174343

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El Ayuntamiento de Ponferrada incrementará la vigilancia policial en los mercados semanales de miércoles y sábado con el objetivo de evitar la venta de productos falsificados, según informaron hoy fuentes del consistorio de la capital berclana. Tras reunirse con los responsables de la asociación React de lucha contra las falsificaciones, el concejal de Comercio de Ponferrada, Carlos Fernández, reconoció que "nos han solicitado mayor presión y presencia de la Policía para tratar de evitar que se vendan este tipo de productos". "Vamos a procurar que en los mercados de Ponferrada no se vendan productos falsificados", destacó el concejal.

En ese sentido, la asociación, a la que pertenecen destacadas marcas de moda, complementos y joyería Internacionales, había pedido al Ayuntamiento que llevar a cabo un "mayor control" sobre estas prácticas, después de comprobar que los mercadillos semanales ofrecían al público diversos productos falsificados. Al respecto, Fernández insistió en que la labor de vigilancia y control "ya se está llevando a cabo desde el ámbito municipal". Como fruto de ese trabajo, el edil destacó las regulas de más de un centenar de objetos falsificados a principios de mes en tres puestos del mercadillo.

La asociación React tiene entre sus objetivos la identificación y erradicación de la venta y comercialización de falsificaciones, ya que esto vulnera los derechos de propiedad intelectual. A la reunión de hoy, asistió también el responsable de la Unidad de seguridad ciudadana de la Policía Municipal de Ponferrada, Aquilino Borraz.

ES Canar Open Market (Punta Arabi, Ibiza)

- This market is sited at Santa Eulalia del Rio.
- 15 stands were found offering counterfeits.
- A C&D letter was sent to the landlord but we received no response.
- A new letter will be sent in March in view of the opening of the market on April 5, 2017.
- New investigations will also be initiated.

- NETHERLANDS

Bazaar Beverwijk and Utrecht Bazaar: immediately positive response; cooperative landlord

Weersselo Markt: c&d letter sent; first negative response from landlord but trader immediately complied.

CZECH R

PORTUGAL

GREECE

POLAND

Markets visited; Landlords summoned; waiting for responses