Trademark counterfeiting on the web and jurisdiction of French courts

publié le **17/06/2011**, vu **2664 fois**, Auteur : Maître Benjamin JACOB

In its« Hugo Boss » decision of January 11, 2005 , the Cour de cassation had laid down as a principle that with regard to trademark infringement the fact that a controversial website could be accessed from France was not a sufficient reason to confirm jurisdiction of French courts. While this decision of the Cour de cassation was in general followed by trial judges, the Paris Court of Appeal took a different position.

In its December 2, 2009 decision, it had considered that the French courts had jurisdiction since it was possible to access the controversial website from the French territory, without it being necessary to determine whether or not there existed any sufficient, substantial and significant link between the alleged facts and the French territory.

In this case, a company wanted the French Courts to sentence some companies part of the Ebay group, with regard to advertising announcements spelled out in English and reproducing its trademark.

The Cour de cassation had to remind the position it took in the decision delivered on January 11, 2005, and recalled that «the fact that access to a website may be performed from the French territory is not enough sufficient to give jurisdiction to French courts on the basis that the French territory is the stage of the alleged damages» (Cass, com., 29 mars 2011, n°10-12272).

The Cour de cassation thus considered that to give jurisdiction to French judges, the Court of Appeal had to «determine whether the controversial advertising announcements were meant for a French public». T

o bring an action against trademark infringement in an online offer, a plaintiff must prove that the website or the incriminated announcement is actually made for a French public, in particular by examining which language is used, and whether the products or services in question are available in France, or may be delivered in France.

Benjamin JACOB

PDGB Lawfirm

benjamin.jacob@pdgb.com