

Tradeinn Retail Services S.L.

v

PH

(Request for a preliminary ruling from the Bundesgerichtshof (Germany))

Judgment of the Court (Third Chamber) of 1 August 2025

(Reference for a preliminary ruling – Intellectual property – Trade marks – Directive (EU) 2015/2436 – Approximation of the laws of the Member States relating to trade marks – Article 10(3)(b) – Rights conferred by a trade mark – Right to prevent a third party from offering the goods, putting them on the market or stocking them for those purposes under the sign – Online trade – Goods offered for sale from a Member State other than that in which the mark is registered – Concept of ‘stocking’)

1. EU law – Interpretation – Methods – Literal, systematic and teleological interpretation

(see paragraph 25)

2. Approximation of laws – Trade marks – Directive 2015/2436 – Rights conferred by a trade mark – Goods bearing a protected trade mark in a Member State – Goods offered for sale by a third party by means of online advertising from a Member State other than that in which the mark is registered – Right of the proprietor of that mark to prohibit that third party from offering to consumers of the Member State of registration the goods, putting them on the market or stocking them for those purposes

(European Parliament and Council Directive 2015/2436, Art. 10(2) and (3)(b))

(see paragraphs 27-37, 39, operative part 1)

3. Approximation of laws – Trade marks – Directive 2015/2436 – Rights conferred by a trade mark – Concept of stocking – Third parties having indirect but actual control over the goods concerned – Included

(European Parliament and Council Directive 2015/2436, Art. 10(2) and (3)(b))

(see paragraphs 44-47, operative part 2)

Résumé

By the present judgment, the Court clarifies the situations in which the proprietor of a trade mark may prevent a third party from using a sign ([1](#)) and interprets Directive 2015/2436. ([2](#))

PH is the proprietor of two German trade marks, registered for, inter alia, diving accessories.

Tradeinn Retail Services S.L. (‘TRS’), established in Spain, offered diving accessories for sale online under signs identical to those marks.

PH brought an action against TRS before the Landgericht Nürnberg-Fürth (Regional Court, Nuremberg-Fürth, Germany) seeking, inter alia, an order prohibiting that use. That court decided to order TRS to cease offering for sale or promoting diving accessories bearing signs identical to those marks.

On appeal by PH, the Oberlandesgericht Nürnberg (Higher Regional Court, Nuremberg, Germany) extended that prohibition to the distribution and stocking of those goods.

TRS brought an appeal on a point of law before the Bundesgerichtshof (Federal Court of Justice, Germany), which, having doubts as to the interpretation of Article 10(3)(b) of Directive 2015/2436,

asked the Court about the scope of the rights of a proprietor of a trade mark protected in one Member State and the concept of 'stocking' laid down in that article.

Findings of the Court

First of all, the Court notes that the wording of Article 10(3)(b) of Directive 2015/2436 does not contain any express indication as to the possibility, for the proprietor of a trade mark registered in one Member State, of preventing a third party from holding, in the territory of another Member State, goods under that sign.

Next, the Court recalls that the protection afforded by the registration of a national mark is, in principle, limited to the territory of the Member State in which it is registered, so that, in general, its proprietor cannot rely on that protection outside the territory. In addition, the purpose of the exclusive right conferred by the registration of a trade mark (3) allows the proprietor of the trade mark concerned to protect his or her specific interests as proprietor of that mark, that is, to ensure that the trade mark can fulfil its functions. The exercise of that right must therefore be restricted to cases in which a third party's use of the sign adversely affects one of the functions of the trade mark or is liable to do so. Those functions include not only the essential function of the trade mark, which is to guarantee to consumers the origin of the goods or services concerned, but also its other functions, such as that of guaranteeing the quality of those goods or services or those of communication, investment or advertising.

Thus, that purpose and the geographical scope of the protection conferred by the trade mark have a number of consequences for the interpretation of Article 10(3)(b) of Directive 2015/2436. In the first place, the proprietor of a national trade mark is entitled to prevent a third party from putting on the market, in the Member State in which the mark is registered, goods under the sign of which the use infringes that mark, it being understood, however, that such goods are not considered to have been put on the market if they are covered by a customs suspensive procedure such as that of external transit and have not been released for free circulation.

In the second place, the proprietor of a national trade mark may prohibit a third party from offering goods under that sign in the territory of the Member State in which the mark is registered. Accordingly, the trade mark proprietor may oppose such an offer, including where it relates to goods placed under the external transit customs procedure, provided that it necessarily entails the release of those goods for free circulation. In addition, the Court notes that the proprietor of a trade mark may prohibit a third party from offering, inter alia by means of online advertising, goods under that sign, including where that third party, the server of the website which it uses or those goods are located outside the Member State of registration, if that offer or advertisement is targeted at consumers in the territory of that Member State. If it were otherwise, operators who use electronic commerce and offer to consumers in that territory goods situated outside that territory would escape any obligation to respect the rights conferred by that trade mark, which would undermine the effectiveness (*effet utile*) of the protection guaranteed by Directive 2015/2436. However, the mere fact that a website is accessible in the territory of the Member State in which the trade mark concerned is protected is not a sufficient basis for concluding that the offers for sale displayed on that website are targeted at consumers in that territory. It falls to the national courts to assess on a case-by-case basis whether there are any relevant factors, on the basis of which it may be concluded that an offer for sale displayed on a website or an online marketplace accessible from that territory is targeted at consumers in that territory.

In the third place, Article 10(3)(b) of Directive 2015/2436 allows the proprietor of a trade mark to prevent a third party not only from offering and putting goods on the market under a sign, the use of which infringes that mark, but also from 'stocking them for those purposes'. That provision therefore applies to the stocking by a third party of such goods only if that is the preliminary step to offering or putting them on the market which the proprietor of a trade mark is entitled to prohibit.

The proprietor of a trade mark may prohibit a third party from offering, inter alia by means of online advertising, goods under that sign, notwithstanding the fact that that third party, the server of the website which it uses or those goods are located outside the Member State of registration, if that offer is targeted at consumers in the territory of that Member State. In such a situation, that proprietor is also entitled to prohibit that third party from stocking those goods outside that territory if that stocking constitutes a preliminary step to the making of such an offer or its implementation, with the result that it may be regarded as having been carried out for that purpose.

Lastly, the Court finds that the term ‘stocking’ in Article 10(3)(b) of Directive 2015/2436 covers not only cases in which the third party has direct and actual control over the goods concerned, but also those in which he or she has indirect but nonetheless actual control over those goods in that he or she has control or direction over the person who has direct and actual control over those goods. If that provision were applicable only to a third party with direct and actual control over the goods concerned, it would be impossible for the trade mark proprietor to have an injunction issued against an economic operator which, without the proprietor’s consent, in order to offer or put those goods on the market, sends them to a service provider so that that operator can provide services such as storage or transport of those goods for those purposes. Such an interpretation would be incompatible with the purpose of Directive 2015/2436 and would deprive the protection which it guarantees of part of its effectiveness.

(¹) Those situations are provided for in Article 10(2) of Directive 2015/2436.

(²) Directive (EU) 2015/2436 of the European Parliament and of the Council of 16 December 2015 to approximate the laws of the Member States relating to trade marks ([OJ 2015 L 336, p. 1](#)).

(³) That exclusive right is provided for in Article 10(1) of Directive 2015/2436.