



EU TRADE MARK RIGHTS ENFORCEMENT IN BELGIUM IN CASE OF AN ONLINE INFRINGEMENT

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Taking into account the predominant position of internet in our (professional and personal) lives, it is more and more common that EU trade marks are used online without authorisation. Global access to the internet however triggers questions as to the territory in which European Union trade mark rights can be enforced.

When a EU trade mark is infringed, the trade mark rights can be enforced in Belgium in the following cases pursuant to the EU trade mark Regulation 2017/1001:

option A: domicile or country of establishment to enforce against infringements in the entire EU	option B: location infringement to enforce against an infringement in Belgium
The infringer has to be domiciled in Belgium or, in case of no domicile in the EU, the infringer has to have an establishment in Belgium (article 125.1 EU trade mark Regulation 2017/1001).	Enforcement in Belgium is always possible (irrespective of the domicile country or the country of establishment) in case the act of infringement has been committed or threatens to be committed in Belgium (article 125.5 EU trade mark Regulation 2017/1001).
If the infringer has no domicile or establishment in Belgium, the European Union trade mark owner has to be domiciled in Belgium or, in case of no domicile in the EU, the EU trade mark owner has to have an establishment in Belgium (article 125.2 EU trade mark Regulation 2017/1001).	

In a recent decision of 27 April 2023 (C-104/22), the Court of Justice of the European Union (“CJEU”) has provided additional guidance in determining how to locate an online infringement within the framework of the use of paid referencing on a search engine website (e.g. Google Ads). Based on this decision, trade mark rights could for example be enforced in Belgium in case of an online infringement if:

- the products bearing the infringing sign are or can be supplied to customers in Belgium;
- the website of the infringer is translated in any of the Belgian official languages (which will not be sufficient on its own, as these languages are used in other EU countries as well);
- the infringer offers its products on a website with a “.be” top-level domain;
- the infringer mentions a telephone number with a “+32” or “0032” international code; and
- as confirmed in the recent decision, the infringer uses the paying advertisement services of an operator of a search engine website as a result of which advertisements are displayed on the search engine website with a “.be” top-level domain (e.g. Google Ad displayed on google.be).

Even if the infringer or the EU trade mark owner is not located in Belgium, enforcement in Belgium based on article 125.5 EU trade mark Regulation 2017/1001 should be considered due to Belgium’s notable IP enforcement proceedings.

For example, Belgium’s unilateral summary seizure proceedings allow a trade mark owner to obtain descriptive and/or seizure measures for evidence purposes against an alleged infringer within a matter of hours/days. To obtain descriptive measures, the trade mark owner must only prove a seemingly valid trade mark right and indications of a (threatened) infringement. To obtain seizure measures, the trade mark owner must prove a seemingly valid trade mark right, that the infringement cannot be reasonably contested and that a balance of rights is in its favour. The evidence gathered can be used by the trade mark owner during as in summary proceedings (fast track proceedings on the merits) to obtain an injunction and/or during ‘classic’ damages proceedings.

Are you or is your client a victim of an online infringement and do you wish to enforce your rights in Belgium, please do not hesitate to reach out to one of the members of the IP/IT/data protection team of Liedekerke on their individual e-mail address or via ip-team@liedekerke.com. We are more than happy to explore all possible enforcement actions.

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