

**Court of Appeal upholds criminal sentence for import of counterfeit t-shirts bearing registered trademarks** **Counterfeiting Infringement Enforcement**  
**Spain - Grau & Angulo**

July 17 2018

- **Trial Court sentenced defendants for importing counterfeit t-shirts from China**
- **Court of Appeal found that Trial Court had not erred in assessing evidence**
- **Court of Appeal again rejected application of ‘consumer error’ theory to IP crimes**

On 6 April 2018 the Court of Appeal of Zaragoza confirmed the judgment issued by the Trial Court Number 1 of Zaragoza, which had sentenced the two defendants for importing thousands of counterfeit t-shirts from China.

The events date back to 2013, when the Spanish Customs and Special Taxes Administration at Madrid Airport seized a shipment from China containing a total of 2,861 counterfeit t-shirts under [Council Regulation 1383/2003](#).

In their appeal against the Trial Court’s condemnatory judgment, the defendants raised the following arguments:

1. the Trial Court had erred in assessing the evidence;
2. there had been a break in the chain of custody of the seized goods;
3. one of the defendants had not participated in the offence; and
4. there had been no consumer error.

These arguments were dismissed by the Court of Appeal of Zaragoza; it confirmed the Trial Court’s stance, which had been previously alleged by the private prosecutor.

Regarding the first claim (error in assessing the evidence), the Court of Appeal, drawing on extensive and consolidated case law from the Spanish Supreme Court on the assessment of evidence at the second instance, reasoned that the second instance is not the procedural moment to request a second assessment of personal evidence (cross-examination of the defendant, or witness and expert statements), because this assessment should be made by the Trial Court. The Trial Court, based on the principle of immediacy, had already considered the evidence presented during the trial hearing. The Court of Appeal ratified the conclusions reached by the Trial Court, which had found that there was sufficient incriminating evidence to sentence the defendants.

Regarding the second claim (break in the chain of custody), the Court of Appeal, also drawing on case law from the Spanish Supreme Court on this topic, stated that mere doubt is insufficient: those who question the chain of custody must specify when, why and to what extent the chain of custody was broken. The Court of Appeal thus dismissed this claim, finding that the defendant had provided no specific information as to this alleged break, but had merely claimed that such break was a possibility.

Regarding the third claim (non-participation of one of the defendants), it was alleged that that defendant was merely an employee who was not involved in the import of the goods. In this respect, the Court of Appeal of Zaragoza confirmed the Trial Court’s arguments that the defendant was not a mere employee, but the *de facto* administrator and manager of the company, and was responsible for making contact with customs agents for all matters related to the company’s import activity.

As to the final claim, and with reference to the ‘consumer error’ theory alleged by the defence, the Court of Appeal once again confirmed the Trial Court’s reasoning, in line with the majority case law on this topic. The Court of Appeal stated that the legal right protected in cases involving IP crimes is not the consumer’s interest but, rather, the holder’s right to use and exploit its trademark exclusively, due to the transcendental commercial and economic value of trademarks on the market. Therefore, the quality, price or place of sale of the products is irrelevant.

The Court of Appeal confirmed the prison sentence, the disfranchisement of the defendants and the fine, sentencing the defendants to pay damages to the trademark holder, as well as the procedural costs of the private prosecutor. The Court of Appeal also confirmed that the seized t-shirts should be destroyed.

This judgment is final.

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