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Criminal sentence for importers of shoes which infringed adidas trademarks and designs

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ABOGADOS

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Introduction

On 1 March 2019 the Valencia Court of Appeal, acting as a trial court, sentenced two defendants to one-and-a-half years in prison for importing thousands of pairs of counterfeit shoes for commercial purposes. The court also ordered the defendants to pay:

- a fine;
- procedural costs, including those of the private prosecutor; and
- damages and destruction costs.

Facts

In 2016 the Italian police warned the Spanish police of the impending arrival of a number of illicit trade products. The Spanish police subsequently set up surveillance measures at the defendants' premises in order to seize the shipment. A total of 2,764 pairs of shoes which infringed different adidas brands and designs were seized.

Notably, the products were not delivered directly to the defendants, but rather to the entrance of their establishment. As such, there was no effective reception of the products.

Decision

During the trial hearing, the defendants denied that they had been the recipients of the seized goods and claimed that there had been a mistake in the shipment. However, in view of the evidence submitted during the hearing, the court considered it proven that the defendants had been the intended recipients of the seized products. In particular, the court considered the delivery notes and the fact that the defendants' establishment where the goods had been delivered was dedicated to selling shoes.

The court considered that:

- the crime had been committed beyond reasonable doubt; and
- although the defendants had not taken immediate possession of the goods, they had indirectly possessed them as they had been made available thereto.

In addition to their criminal sentence, the court ordered the defendants to pay for the damages caused to the owner of the infringed trademarks and designs. These were quantified at €60,485, taking into consideration the court-appointed expert's damages report. The court also ordered the defendants to pay €1,296.12 in destruction costs, which had initially been assumed by the trademark and design owner.

Comment

This is one of the first judgments to be issued by an appeal court acting as a trial court in an IP criminal case. This new approach is due to the increase in prison sentences in IP crimes which was brought about by the most recent reform of the Criminal Code. Now, crimes such as these, in their aggravated form, are sent directly to the appeal courts for trial, rather than the regular trial courts.

For further information on this topic please contact David Daura at Grau & Angulo by telephone (+34 93 2023456) or email (d.daura@ga-ip.com). The Grau & Angulo website can be accessed at www.ga-ip.com.

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