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Court confirms legality of actions which led to criminal procedure instruction in IP matter

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On 8 August 2022, Criminal Court No. 6 of Fuenlabrada issued an order confirming that the proceedings in an IP matter were legally compliant. One of the defendant companies had requested that they be declared null and void on the grounds of alleged irregularities during the police raid and at the beginning of the investigations.

Facts

In April 2022, suspecting a possible violation of its rights, a trademark owner contracted a private detective agency to verify whether certain products were being commercialised and, if so, to purchase some samples. Given the result of the investigation, the trademark owner filed a criminal complaint before the police. The detectives' investigation report was attached to the criminal complaint as an annex.

In May 2022, the police raided several premises belonging to the investigated companies, and seized thousands of allegedly counterfeit products. After acknowledging these facts, Criminal Court No. 6 of Fuenlabrada initiated criminal proceedings. The defence lawyer of one of the investigated companies requested the proceedings to be declared null and void on the grounds of certain irregularities. Two reasons were argued:

- The investigations had initially carried out by a private detective agency.
- The police's raid of the properties had not been carried out correctly.

Decision

The Court rejected the two arguments brought by the company under investigation. The company is unable to appeal the ruling and therefore it is final.

Nullity request based on Spanish Private Security Law

The company argued that there had been an infringement of Spanish Private Security Law 5/2014, of 4 April 2014, since:

- the investigation had been initiated by private detectives; and
- the criminal offence had been provoked.

Private detectives

Article 10.2 of the Spanish Private Security Law bans private detectives from accepting contracts relating to investigations that target criminal offences pursuable ex officio. It also states that they must report any cases which come to their attention to the competent authorities.

The Court held that the trademark owner's request to the private detective was to carry out a commercial investigation. Indeed, the purpose of the request was merely to verify the commercialisation of certain products and to see how such commercialisation was being carried out, facts which did not necessarily have to be criminally punishable.

Moreover, the Court held that it was only after the detectives' investigation report had been completed and following an analysis of the purchased samples that the possible counterfeit nature of the products could be acknowledged. The Court held that an appraisal of the possible falseness of the products required expert knowledge, which the private investigators did not have. It was only after the investigation had taken place that the trademark owner had filed a criminal complaint before the police for their investigation. Therefore, the Court concluded that no irregularity which would render the investigation null and void had taken place.

Provoked criminal offence

The Court also rejected the allegation that the criminal offence had been provoked, since the products were displayed for sale and offered to the clients in a normal fashion.

Nullity request based on police entry and search

The defendant claimed that the police raid of certain properties was illegal since it had been carried out without a court warrant or the express or tacit consent of the people on the premises at that time.

The Court held that while it was true that the constitutional protection for the inviolability of the home is also applicable to companies, it had to be noted that this protection is weaker than that provided to people. The Court also pointed out that a court warrant is only required for a company's main premises, not all premises.

Article 554.4 of the Spanish Criminal Procedure Law only protects the physical space that constitutes the management area of the investigated company or other places where documents or other day-to-day elements are kept from third parties. In this case, although the police raid had been carried out in the industrial unit designated as the registered office of the company, it only took place in the areas used for storage; the police did not enter the physical space used for management. As a consequence, the Court rejected this argument too.

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