



Press Summary

6 March 2024

Lifestyle Equities CV and another (Respondents) v Amazon UK Services Ltd and others (Appellants)

[2024] UKSC 8

On appeal from [2022] EWCA Civ 552

Justices: Lord Hodge (Deputy President), Lord Briggs, Lord Hamblen, Lord Burrows, Lord Kitchin

Background to the Appeal

This appeal concerns the application of EU and UK trade mark law to the cross-border marketing and sale of goods on the internet. The respondents (together, “**Lifestyle**”) are the owners and exclusive licensees of a number of UK and EU trade marks relating to the “**BEVERLY HILLS POLO CLUB**” brand (the “**UK/EU Marks**”). Corresponding trade marks in the USA are owned by a commercially unrelated entity, which produces goods identical to those for which Lifestyle’s trade marks are registered in the UK and EU (the “**USA Branded Goods**”). The appellants (together, “**Amazon**”) marketed and sold the USA Branded Goods on their USA website, which Lifestyle claims infringed its rights in the UK/EU Marks.

It is important to note that the dispute relates entirely to events that occurred before the UK left the EU, and these proceedings began before 31 December 2020, the end of the implementation period provided for by section 1 of the European Union (Withdrawal Agreement) Act 2020. Thus, UK trade mark law was at that time substantially governed by EU legislation and case law. It was agreed before the Court of Appeal that the issues arising on the appeal concerning the EU Marks might be decided by reference to Regulation 2017/1001 on the European Union trade mark (the “**EUTM Regulation**”). It was also common ground that these issues were unaffected by Brexit. Article 9(2) of the EUTM Regulation provides (among other things) that the owner of an EU trade mark is entitled to prevent third parties from using in the course of trade, without the owner’s consent, any sign which is identical with the EU trade mark in relation to goods identical with those for which the EU trade mark is registered. Section 10(1) of the Trade Marks Act 1994, which applies to UK trade marks, is in this respect in materially the same terms as Article 9(2) of the EUTM Regulation.

Lifestyle claims in particular that Amazon targeted consumers in the UK/EU, in contravention of the above trade mark laws, by advertising and offering for sale the USA Branded Goods on its USA website. The High Court dismissed Lifestyle's claims, concluding that the listings of the USA Branded Goods on Amazon's USA website were not targeted at consumers in the UK/EU. The Court of Appeal allowed Lifestyle's appeal, holding that the advertisements and offers for sale of the USA Branded Goods were targeted at consumers in the UK/EU. The Court of Appeal granted an injunction against two of the Amazon defendants, and permitted Lifestyle to pursue an enquiry as to the damages caused by the same defendants' acts of infringement. Amazon now appeals to the Supreme Court.

Judgment

The Supreme Court unanimously dismisses Amazon's appeal. It holds that Amazon targeted consumers in the UK by displaying the USA Branded Goods on its USA website and marking them available for shipment to the UK, which in turn infringed the UK/EU Marks. The injunction and order relating to an enquiry as to damages made by the Court of Appeal therefore remain in place. Lord Briggs and Lord Kitchin give a joint judgment, with which the other members of the Court agree.

Reasons for the Judgment

The concept of targeting of a commercial activity carried on through a website was first explored by the Court of Justice of the European Union (the "CJEU") in considering the jurisdiction of national courts of a member state over consumer contracts. However, it was adopted by the CJEU in the trade mark context in *L'Oréal SA v eBay International AG* (Case C-324/09). There the court accepted that the rules of Council Regulation (EC) 40/94 on the Community trade mark applied as soon as it was clear that an offer for sale of a trade marked product located in a third state was targeted at consumers in the territory covered by the trade mark. Were it otherwise, operators of foreign websites carrying advertisements of trade marked goods targeted at consumers in the EU would have no obligation to comply with EU intellectual property rules [15], [19].

In order to determine whether the marketing of goods on a foreign website is targeted at consumers within the relevant territory, here the UK, the question to be answered by the court is whether the average consumer, being someone who is reasonably well informed and reasonably observant, would consider the website to be directed at him or her. The mere accessibility of an overseas website to a UK consumer is not enough on its own to establish targeting of that consumer. The court must carry out a multifactorial assessment of all the relevant circumstances to assess the reaction of the average consumer and answer the question whether there is targeting [24]-[25], [27]-[29].

In this case it is therefore necessary for the court to conduct a close, contextual examination of the way in which Amazon's USA website presents itself when accessed by a consumer situated in the UK. Following a review of the successive pages of the website which present or refer to the USA Branded Goods (or similar sample goods), the Supreme Court concludes that an average consumer in the UK/EU would consider the Amazon USA website to be directed at him or her. Particularly significant factors include: (i) a message on the landing page and almost all subsequent pages offering to deliver to the UK; (ii) specifying which of the goods displayed can be shipped to the UK; and (iii) a "Review your order" page offering to sell the relevant goods to a consumer at a UK address, with UK specific delivery times and the option to pay in sterling [60], [70]-[73], [80].

There are some contrary indicators, such as the option to use Amazon's UK website and the default display of prices in US dollars, but these are greatly outweighed by the factors that

point in the direction of targeting. The Supreme Court acknowledges that delivery times for UK consumers are likely to be faster, and charges lower, on the UK website as compared to the USA website, but it notes that this would not be easily apparent to the average consumer, and would not be relevant where, as in the present case, the branded goods are not to be displayed for sale on the UK website. The Court also disagrees with the judge's view that Lifestyle's motive for bringing these proceedings is relevant to the targeting question [70], [74]-[79].

The Supreme Court notes that an appellate court should not interfere with the evaluative decision of a first instance judge unless he or she has made an error of law or principle, or there is a flaw in the judge's treatment of the evaluation, such as a gap in logic, a lack of consistency or a failure to consider some material factor, which undermines the cogency of the decision. It is not enough simply that the appellate court would have arrived at a different conclusion. The Supreme Court explains, by reference to the reasoning of the judge and the Court of Appeal, the reasons why it has carried out the balancing exercise afresh, rather than merely deciding that the Court of Appeal was entitled to reach the conclusion it did [49]-[50], [82]-[83], [86]-[87].

Lifestyle also contends that, even if the marketing of the USA Branded Goods was not targeted at consumers in the UK/EU, Amazon nonetheless infringed the UK/EU Marks by selling and delivering the goods through its USA website to consumers in the UK/EU. This argument relies on the decision of the CJEU in *Blomqvist v Rolex SA* (Case C-98/13). However, the report of that case does not provide a sufficiently detailed description of the underlying facts for the Supreme Court to form a reliable view as to whether it laid down a legal principle applicable to this case. Moreover, and in any event, in the present case the relevant marketing and offers for sale were targeted at consumers in the UK. Accordingly, the Supreme Court declines to decide this point [32], [88]-[89].

References in square brackets are to paragraphs in the judgment.

NOTE:

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: [Decided cases - The Supreme Court](#)