



Annual EU-China Forum 2023: Comparative Approach to Judiciary Procedures: advertising on Facebook of fake Tommy Hilfiger clothes

中欧知识产权司法论坛：Facebook上的假冒汤美费格服装广告

Unified Patent Court
Einheitliches Patentgericht
Jurisdiction unifiée du brevet

Edger F. Brinkman, Senior Judge A, Court of The Hague
Edger F. Brinkman, 海牙法院高级法官
Presiding Judge, UPC Local Division The Hague
统一专利法院海牙本地法庭主审法官

PVH/Facebook /// PVH诉Facebook案

- Case about advertisements on FB for fake TH clothes /// 案由系Facebook（以下简称FB）上的假冒汤美费格（以下简称TH）服装广告【译注：PVH为汤美费格母公司】
- Various cases (PI's, appeals, merits) /// 多案（诉前禁令、复议审查、主体诉讼）



PVH/Facebook /// PVH诉Facebook案

- Main issues: /// 主要问题：
 - Cross border reach vis-a-vis non-Dutch entities FB Inc and FB Ltd (IR) /// 非荷兰实体FB Inc和FB Ltd的跨境联系
 - Does FB infringe PVH's copyrights and trademark rights? /// FB是否侵犯了PVH的著作权和商标权?
 - Mere conduit exemption /// 是否适用“单纯通道”豁免
 - Personal details advertiser /// 广告主详细信息的披露
 - Filter /// 关于过滤机制



PVH/Facebook /// PVH诉Facebook案 Cross border reach vis-a-vis FB Inc and FB Ltd (IR) /// FB Inc和FB Ltd的跨境联系



- Only in as far as the advertiser infringes in Benelux or Dutch territory /// 只有当广告主的侵权发生在比荷卢经济联盟或荷兰领土范围内时适用
- Court can hear case against Facebook NL BV but not foreseeable for foreign co-defendants as BV not involved in alleged infringements /// 法院可以审理针对FB荷兰公司的案件，但不能确定外国共同被告，因为FB荷兰公司可能并未参与涉嫌侵权行为
 - Court assessed involvement NL BV summarily /// 法院经简易程序对FB荷兰公司的参与情况进行了评估

PVH/Facebook /// PVH诉Facebook案 Does FB infringe PVH's copyrights and trademark rights? /// FB是否侵犯了PVH的著作权和商标权?



- Court: no copyright infringement since no communication to the public applying CJEU case law /// 法院：未侵犯著作权，因为未向公众传播（适用欧盟法院判例)
 - Eg. GS Media, C - 160/15, EU:C:2016:644 /// 判例：GS Media, C - 160/15, EU:C:2016:644
 - FB is for profit but this does not outweigh that FB does not control the communication by the fake advertiser. /// FB是以盈利为目的的企业，但是FB不控制假冒广告商的营销信息。不能认定前者较后者更为重要。

PVH/Facebook /// PVH诉Facebook案 Does FB infringe PVH's copyrights and trademark rights? /// FB是否侵犯了PVH的著作权和商标权?



(...)

- Just filtering (many but not all) advertisements is not exercising control. /// 仅仅对（许多但不是全部）广告实施过滤并非对广告实施控制。
- When FB publishes the fake advertisement, she does not know it is fake /// FB发布该广告时，对其涉及假冒产品并不知情。
- NTD works well (TD within 24 hrs or less) /// 通知-删除机制正常运行（侵权信息在24小时内删除）
- Also no TM infringement, FB does not offer fake clothes /// 亦未侵犯商标权：FB未许诺销售假冒服装产品

PVH/Facebook /// PVH诉Facebook案 Mere conduit exemption (MCE) /// 单纯通道豁免



- Court: yes, FB can invoke MCE of E-commerce Directive -> FB not liable /// 法院：适用。FB可以援引电子商务指令中的单纯通道豁免条款 -> FB不承担责任
- NTD is fast and efficient /// 通知-删除快速高效
- Prescreening of advertisements 99% effective /// 广告预筛机制99%有效
 - Even if 1% still comes through, so perhaps hundreds of advertisements /// 尽管未能拦截的1%不合规广告数量可能依然庞大（以千计）

PVH/Facebook /// PVH诉Facebook案 Personal details advertisers /// 广告商详细信息



- FB act of tort by failure to provide the personal details of the fake advertising accounts /// FB未能提供假冒广告账户的详细信息，涉嫌侵权
 - for the hacked FB accounts: only payment info /// 对于被盗用的FB账户：仅有付款信息
- No infringement GDPR, as exempted in art 6(1)(f) /// 未违反通用数据保护条例（适用第6(1)(f)条豁免条款)
- For future fake advertising: only provide personal details if FB does not contest /// 对于将来出现的假冒广告：FB未提出异议的，可以提供详细信息

PVH/Facebook /// PVH诉Facebook Filter /// 关于过滤机制

- FB only needs to apply automated filters /// FB 只需要开启自动过滤器
 - Eg. filtering for “high discounts or low prices”, “language errors” or “unnecessary descriptions” is difficult to do automated /// “大促销”“低价”“语病”“非必要描述”等内容，很难实现自动化过滤
 - Overturning earlier decision in PI /// 推翻原判
 - Decision was few months before ECJ Cyando and Youtube -> similar outcome /// 几个月后，欧盟法院对Cyando诉YouTube案作出判决 -> 结果类似
 - Pre-DSM directive but perhaps similar result? /// 作出判决时，数字单一市场的版权指令尚未生效；但或许生效后，判决结果也大同小异？



- Thank you for your attention!
感谢聆听!