

Louboutin Vs. Amazon 鲁布托诉亚马逊案



Important decision from the CJEU
欧盟法院的重要判决

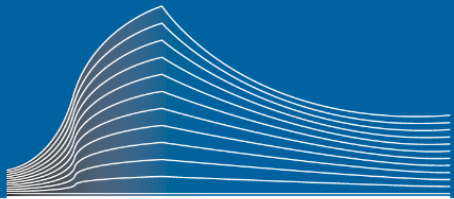
After a good question from a belgian court
暨对比利时法院重要司法问题的回应



Pierre-Yves de Harven
Judge at the Brussels Business Tribunal
布鲁塞尔商业法庭法官
pierre-yves.deharven@just.fgov.be



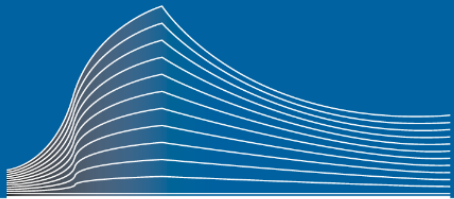
Shanghai /// 上海
September 2023
/// 2023年9月



I FACTS /// 一、案情

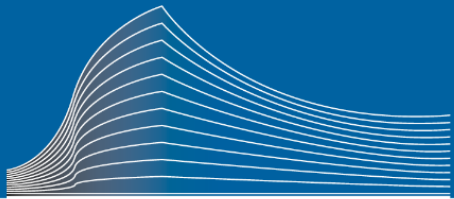
- Proceedings initiated by C. Louboutin (french designer proprietor of the red sole trademark-, added on high-heeled shoes) against Amazon. /// 鲁布托（法国设计师，高跟鞋红色鞋底商标权利人）对亚马逊提起诉讼。
- Because C. Louboutin considered that Amazon regularly displayed advertisements for red-soled shoes without his consent, C Louboutin brought two actions for infringement against the platform, before the Belgian and Luxembourg courts, mainly claiming that the infringing use of his trademarks by third parties via ads and shipping service could be attributed to Amazon. /// 鲁布托认为，亚马逊经常未经其同意展示红底鞋广告。他在比利时和卢森堡法院对亚马逊提起两项侵权诉讼，主张第三方商家在广告和物流服务中对其商标的侵权使用，责任应归咎于亚马逊。
- The services provided by Amazon were indeed provided via Amazon ‘hybrid’ online market-place, as it provides an online platform for third-party sellers, and also sells various goods which it offers directly in its own name, on its own behalf. /// 亚马逊提供的服务确实采用“混合”（自营+三方）模式。亚马逊为第三方商家提供了线上销售平台；亚马逊也以自营形式直接销售各类自有品牌商品。





II PROCEDURE /// 二、程序

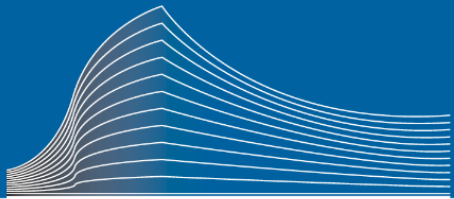
- Amazon disagreed, pretending that the use of the trademark could not be attributed to them, pointing to previous judgements of the CJ (Coty Germany), and arguing that it was merely offering services to third parties. /// 亚马逊不同意原告主张，认为商标的使用不应归咎于平台，并引用科蒂德国公司案判例（CJ），主张平台仅仅向第三方提供服务。
- Case reached the Court of Justice, following referrals from the Luxembourg and Brussels Court. /// 卢森堡和布鲁塞尔法院将案件移送欧盟法院。
- The referring courts asked in essence, the CJEU to consider whether, and under what conditions, the operator of an online marketplace may be found directly liable under Article 9(2) of the EU Trade Mark Regulation 2017/1001 for the display of advertisements and the delivery of infringing goods that are offered for sale by third party sellers. /// 下级法院要求欧盟法院明确的问题主要是：依据欧盟商标条例2017/1001第9条第2款，是否可以 / 在什么条件下可以认定电商平台经营者对第三方商家的广告展示、上架销售侵权商品行为负有直接责任。



III DECISION OF THE COURT: C-148/21 - C-184/21- 22 December 2022 - FIRST A GENTLE REMINDER

三、法院判决：2022年12月22日（C-148/21 – C-184/21）——先扬后抑：

- Court first noted that if an online marketplace simply creates the technical conditions necessary for third parties to use a sign, this does not mean that the marketplace providing this service is using the sign itself, even if it is in its own financial interest (31 – cf. Coty Germany). /// 法院首先指出，仅从电商平台提供了第三方使用涉案商标所需的技术条件出发，无法推断电商平台自身使用了商标，即便使用商标可以为电商平台带来经济利益（31 – 参考科蒂德国公司案）。
- Similarly, an online marketplace simply storing infringing goods, without being aware that they are infringing, without having the aim of putting them on the market, does not use the sign. /// 与此类似，电商平台在对商品侵权事实不知情、没有将商品投放市场的目的，而仅提供基本仓储服务的，不构成对商标的使用。
- However, the Court underlined the factual findings of the present case were different than in its earlier case-law regarding the same operator (Amazon). /// 然而，法院强调，本案的事实与涉及同一经营者（亚马逊）的判决先例存在差异。

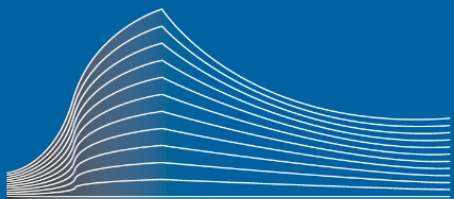


IV DECISION OF THE COURT: FACTUAL FINDINGS /// 四、法院判决：事实认定

The Court insisted on the importance of : /// 法院强调：

- The impact of the hybrid business models of Amazon (the fact that it host third-party sellers' goods alongside their own range of goods), /// 亚马逊（三方+自营）“混合”商业模式的影响（实际上，亚马逊常将第三方商家的商品与自营商品并置）；
- The significance of the perception of the user of the websites and of other circumstances (such as advertisement, shipment), /// 电商网站用户的认知以及其他因素（广告、物流）的重要性；

The Court found therefore that : an “hybrid” marketplace such as Amazon can be found liable under Article 9(2) when the normally (reasonably) informed and reasonably observant user of an online marketplace has the impression that the operator of online marketplace is the one who sells, in its own name and on its own behalf, the goods in question. /// 法院因此认定：依据欧盟商标条例第9条第2款，鉴于（具有合理知情度和留意度的）普通用户认为亚马逊等“混合”电商平台经营者系自营销销售涉案商品，电商平台对侵权行为负有责任。



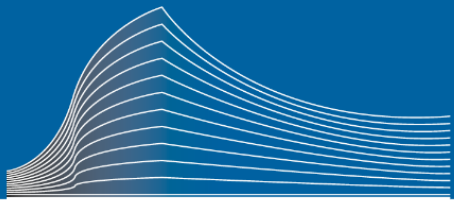
IV DECISION OF THE COURT: FACTUAL FINDINGS /// 四、法院判决：事实认定

The Court added that the overall assessment of the relevant circumstances, including user's perception, is based in particular: /// 法院进一步指出，对有关情况（用户认知等）的总体评估具体基于以下几方面：

- On the way in which the advertisements are presented and, /// 广告呈现方式；
- On the level of integration of the services surrounding the sale. /// 相关服务与商品销售的一体化程度。

It then held that the following was relevant in this regard to assess if the user might have the impression that the marketplace is using the brand: /// 法院同时指出，认定用户是否可能认为贴标产品系电商平台经营者自营销售，相关事实包括：

- The fact that the platforms uses a uniform method of presenting the offers published on its website, displaying at the same time its own advertisements and those of third-party sellers, /// 平台使用相同方式展示不同商品详情，并置自营及第三方商家广告；
- The fact that it places its own logo on the advertisements of third-party sellers, /// 平台标识在第三方商家广告上显示；
- That fact that it offers additional services to those third-party sellers in connection with the marketing of their goods such as the storing and shipping of their goods. /// 平台向第三方商家提供商品销售相关的增值服务，如仓储、物流等。



IV DECISION OF COURT: A SURPRISE ? /// 四、法院判决：意料之外？

- Departed from the Opinion of the General Advocate. Which had considered that CJEU should answer the referring questions in the negative. /// 法院判决不同于欧盟法院法务官的意见（法务官认为，欧盟法院应作出否定判决）。
- It will be the referring national courts to decide whether the online marketplace is using the Louboutin TM in its own commercial communication, looking at the user's perception and their necessary impression, for there to be a finding of infringement. /// 接下来，将由移送本案的国家法院就电商平台是否在商业活动中使用了权利人鲁布托的商标、用户对电商平台的认知情况作出具体认定，对是否存在侵权行为进行裁断。
- **TO BE CONTINUED NO SPOILER ALERT /// 未完待续（没有剧透）**

THE END



才疏学浅



请多指教

**THANKS FOR
YOUR ATTENTION
AND
PLEASE DON'T ASK
TOO MUCH**