

SUMMARY ANALYSIS OF THE JUDGMENT RENDERED BY THE SVEA COURT OF APPEAL IN STOCKHOLM ON 20 DECEMBER 2017 IN A CRIMINAL CASE REGARDING FRAUDULENT INVOICES SENT TO APPLICANTS FOR COMMUNITY TRADE MARKS

The Court of Appeal in Stockholm, Sweden, handed down its judgment on 20 December 2017 following the trial against twenty persons charged with fraud in view of their involvement, from 2011 to 2014, in the sending out of fake invoices, which appeared to have been sent out by OHIM (now EUIPO). The invoices were addressed to several hundred recipients in several countries. All victims had previously applied to register Community trade marks with OHIM.

Following the appeal by the prosecutor against the judgment of the District Court in Uppsala, Sweden, the Court of Appeal re-assessed the question as to whether the recipients who made payments in accordance with the fraudulent invoices were misled to make such payments.

The Court of Appeal found, in the light of the circumstances of the case, that other explanations than that the recipients who made payments were misled by the fake invoices were so unlikely that they could be disregarded.

In its judgment, the Court of Appeal reversed the reasoning of the District Court regarding the dismissal of the charges for completed fraud. It did not accept that the absence of concrete information from the recipients of the fraudulent invoices as to why they had actually made the payments had prevented the District Court from arriving at the conclusion that the recipients in question had been misled.

Accordingly, the Court of Appeal convicted the main charged person, Mr. SR, not only for attempted gross fraud, but also for completed gross fraud, in 355 cases. The other main charged person, Mr. DN, was further convicted for being complicit in the completed gross fraud committed by Mr. SR, and also for completed gross fraud in 33 cases in respect of which Mr. DN had committed the fraud on his own.

Mr. SR was sentenced to imprisonment for 4 years and 8 months and Mr. DN to imprisonment for 2 years and 9 months.

Eighteen additional persons were charged with completed gross fraud and with assisting completed gross fraud as they allowed their bank accounts to be used in the fraudulent

scheme, and in a few cases also assisted in mailing the fraudulent invoices. Two of those persons were also sentenced to imprisonment.

The sentence is at the higher end of the scale for gross fraud in Sweden. The Court of Appeal took into account as aggravating circumstances not only the massive scale of the well planned and organised fraud but also the fact that the fraudulent invoices appeared to have been sent out by and had derived from OHIM.

Since the Court of Appeal found that the money that was paid in accordance with the fraudulent invoices derived from completed gross fraud, it also found the other charged persons guilty of criminal handling and receiving stolen money.

Finally, the Court of Appeal also approved all 74 claims for damages (corresponding to the payments made in accordance with the fraudulent invoices plus interest) presented by some of the recipients who had made payments in accordance with the fraudulent invoices in the criminal proceedings.

The ruling of the Court of Appeal is based on the principle of free assessment of evidence that applies in Swedish procedural law. In applying this principle, the Court of Appeal found that it was not necessary for the prosecutor to present evidence to demonstrate that all and any of the recipients who had made payments had been misled when making payments when the circumstances in the case were such that there was no other perceptible reason for paying the invoices other than being misled to do so by the fraudulent invoices.

EUIPO and user association MARQUES actively supported the Swedish prosecutor during the investigation and gave witness statements before the Court of Appeal.