



9.7.2020

NOTICE TO MEMBERS

Subject: Petition No 0754/2019 by D.P.S. (Belgian) on consumer rights in the context of Regulation (EU) 608/2013

1. Summary of petition

The petitioner ordered an LCD screen on the on-line shop platform in good faith. After having identified this LCD as being counterfeit, a not-for-profit organization specialised in anti-counterfeiting on the basis of the before mentioned legislation asked him to bear the costs for its destruction. The petitioner refers to the Regulation (EU) 608/2013 and in particular to its recital 24, which he finds in contradiction with his rights as a European consumer under Article 38 of the Charter of Fundamental Rights of the EU.

2. Admissibility

Declared admissible on 18 December 2019. Information requested from Commission under Rule 227(6).

3. Commission reply, received on 9 July 2020

The petition

It is commonly known that goods offered on some platforms do not always respect intellectual property rights (IPRs). The Commission is making efforts to strengthen the enforcement of IPRs on digital platforms and to raise awareness of consumers.

In general, one can also expect a reasonable awareness from consumers regarding the risk of buying counterfeit goods on the internet, taking into account certain parameters like nature of the website, identity of the company offering goods, comparison between the normal price of the product and the price on the website etc., and thereby indirectly supporting organised crime.

The Commission's observations

The petitioner claims that Regulation (EU) No 608/2013 of 12 June 2013¹ and in particular its Article 29 and recital 24 contradict Article 38 of the European Charter of Fundamental Rights, insofar as those provisions allow the right-holder to seek compensation for the costs of destruction from the infringer or from other persons liable.

It should be noted that Regulation (EU) No 608/2013 contributes to the aim of providing consumers with reliable and high-quality products and protecting them from products which could in some cases be endangering their health and safety. The Regulation does so in particular by empowering customs to prevent suspected IPR infringing goods from entering the EU market where they can be detrimental to EU consumers.

The petitioner is of the view that Regulation (EU) No 608/2013 undermines consumer protection, since the right-holders may seek compensation for the destruction of detained IPR infringing goods from the infringer or other person liable, even when that person is a consumer. Consequently, the good faith consumer needs to suffer the costs of the implementation of the anti-counterfeit policy.

The Commission observes that Regulation (EU) No 608/2013 concerning customs enforcement of IPR requires the right-holder, if requested, to reimburse the costs incurred by the customs authorities for the storage and handling of the goods, and when applicable, the destruction of the IPR infringing goods. This is without prejudice to the right of the right-holder to seek compensation from the infringer or from other persons that might be considered liable under the legislation of the Member State where the goods were found (Article 29 of the Regulation and its recital 24).

It follows from these provisions that the request of the right-holder to be reimbursed for the costs incurred is not a matter governed by Regulation (EU) No 608/2013, but instead by the legislation governing the right to claim damages from the infringer or from other persons which might be considered liable under the legislation of the Member State where the goods were found. The scope of the right to claim compensation will differ according to the legislation applicable to the infringement.

Conclusion

Contrary to what the petitioner claims, Regulation (EU) No 608/2013 is not contrary to Article 38 of the European Charter of Fundamental Rights. It should be noted that Regulation (EU) No 608/2013 also pursues the aim to protect EU customers from counterfeit products. As regards the right of the right-holder to seek compensation from the infringer or from other persons that might be considered liable under the legislation of the Member State where the goods were found (Article 29 of Regulation (EU) No 608/2013 and its recital 24), this right is not governed by Regulation (EU) No 608/2013, but instead by the legislation applicable to the infringement.

¹ Regulation (EU) No 608/2013 of the European Parliament and of the Council of 12 June 2013 concerning customs enforcement of intellectual property rights and repealing Council Regulation (EC) No 1383/2003, *OJ L 181*, 29.6.2013, p. 15–34.