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easyJet v easyBet - hosting provider ordered to take down infringing website

Switzerland - [Walder Wyss](#)

- **easyJet filed an action against a Swiss hosting provider requesting that the latter cease and desist from hosting a website at 'easybet.com'**
- **The court found that the easyBet sign diluted the famous EASYJET trademark**
- **The hosting provider was ordered to cease and desist from hosting the website**

In a [decision](#) of 2 December 2019, the Commercial Court of Argovia, Switzerland, held that the website at 'easybet.com' infringed easyJet's famous trademark and ordered the Swiss hosting provider to take down the website. This is the first reported case in Switzerland in which a hosting provider has been ordered to cease and desist from hosting a website on the basis of trademark infringement.

Background

A Curaçao company operated a portal for online betting games at 'easybet.com'. The website contained numerous references to 'easyBet' and had previously imitated the appearance of the easyJet brand. A Swiss company acted as hosting provider for the website.

In August 2019 easyJet filed an action against the Swiss hosting provider with the Commercial Court of Argovia requesting that the latter cease and desist from hosting a website at 'easybet.com', to the extent that this website was accessible from Switzerland and used the easyBet sign. Among other things, easyJet argued that the website at 'easybet.com' infringed its famous EASYJET trademark and that the hosting provider took part in this infringement.

Decision

On 2 December 2019 the Commercial Court held that it had remained undisputed during the proceedings that the EASYJET trademark enjoys outstanding recognition, uniqueness and a generally positive reputation. Accordingly, EASYJET qualifies as a famous trademark under Swiss trademark law. As such, the EASYJET mark is protected against use of a third-party trademark for any type of goods or services, if such use threatens its distinctiveness or exploits or damages its reputation.

The court further found that the EASYJET trademark and the easyBet sign are very similar, which may lead the public to believe, wrongly, that easyBet is a brand of the group of companies to which easyJet belongs. Consequently, the easyBet sign diluted and threatened the distinctiveness of the famous EASYJET trademark.

Moreover, the court held that an action for trademark infringement can be brought against any person taking part in the infringement. A hosting provider from whose servers infringing content can be retrieved takes part in the infringement. Accordingly, the Swiss hosting provider of the website at 'easybet.com' was (also) responsible for the infringement of the famous EASYJET trademark.

The court thus ordered the hosting provider to cease and desist from hosting the website at 'easybet.com', to the extent that the website used the easyBet sign and was accessible from Switzerland. Further, the costs of the proceedings were to be borne by the hosting provider.

Comment

This decision is the first reported Swiss case in which a hosting provider has been ordered by a court to take down a website because of trademark infringement. It illustrates the broad interpretation applied by the Swiss courts when deciding who is responsible and may be sued for the online infringement of a trademark.

Taking action against the hosting provider of an infringing website may be an interesting route if the website operator and/or domain owner are located in jurisdictions where enforcement is burdensome. Not adding the domain owner and the website operator to the claim may also avoid lengthy service of court documents abroad. Moreover, the hosting provider may not be particularly eager to fend off an action brought against it. However, acting against the hosting provider alone includes the risk that the hosting of the website may be transferred to another hosting provider, as the decision is binding only on the parties to the proceedings.

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TAGS

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