

FOCUS IP

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“SAISIE-CONTREFAÇON”: RECOGNITION OF THE TRADE SECRET BY THE PARIS JUDICIAL COURT IN THE PRESENCE OF COLLECTION PLANS AND PURCHASE INVOICES



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IMPACT: In the context of a “référé-rétractation” procedure following a “saisie-contrefaçon”, the Paris Judicial Court conducted a detailed review to determine whether collection plans and purchase invoices could fall within the scope of trade secret protection under Article L.151-1 of the French Commercial Code.

As a result, a confidentiality ring was established in order to govern the disclosure and consultation of documents, some of which were redacted.

➤ The Facts

Following a customs detention by the Belgian authorities of 4,932 pairs of shoes suspected of infringing their trademarks, Crocs companies obtained an order from the Paris Judicial Court authorizing them to carry out a “saisie-contrefaçon”, at the headquarters of the company importing the disputed shoes.

During the operation, some documents were seized, while others were subsequently transmitted to the bailiff by email.

At the request of the seized party, some of these documents were kept confidential on the grounds that they contained information falling within the scope of the trade secret, namely:

- annual collection plans from 2020 to 2023, including:
 - a table of references for the disputed products;
 - their unit purchase price, stock, and purchase value;
 - the balances at specific dates;
- purchase invoices from 2020 to 2024, detailing:
 - the name of the supplier and,
 - for each purchased reference, the quantity purchased, the unit purchase price, and the total price in U.S. dollars.

In the context of a “référé-rétractation” procedure, the seized party requested that the confidentiality measures be maintained by the judge who had authorized the “saisie-contrefaçon”.

➤ Determination of protected documents

The judge begins by assessing whether the documents seized constitute information falling within the scope of the trade secret within the meaning of Article L.151-1 of the French Commercial Code, meeting the following three cumulative conditions:

- they are not generally known or readily accessible to persons familiar with this type of information due to their professional sector;
- they have commercial value by virtue of their confidential nature; and
- their legitimate holder has taken reasonable measures to maintain their secrecy.

The judge concludes that this is the case for documents containing sensitive data such as purchase volumes, gross sales prices, supplier files, and unit purchase prices, since they:

- *“contain accounting and commercial information that has actual or potential intrinsic commercial value”;*
- *“are not known to or readily accessible by third parties, as they are stored on Sogema’s intranet”;* and
- *“are subject to reasonable protection measures (...) accessible to a limited number of people (...) through dual authentication via individual passwords for computers and access rights for management software”,* as evidenced by the submission of a certificate from the IT manager.

➤ ***The disclosure of the confidential documents seized and the establishment of a confidentiality ring***

Although the company subject to the seizure demonstrates that it can benefit from trade secret protection, this does not prevent the disclosure of certain documents that are necessary for the

resolution of the dispute. The judge notes that they *“relate to the infringing products object of the infringement proceedings”* and *“are therefore necessary both for proving the case and for assessing the scope of the alleged infringement”*.

The existence of a dispute over the validity of the trademarks on which the “saisie-contrefaçon” is based is not taken into account at this stage, according to the judge, who refers the matter to the trial on the merit for assessment.

Consequently, the judge orders the disclosure of the annual collection plans in their full version, as well as the purchase invoices with the name of the supplier blacked out, as it is not necessary for the resolution of the dispute and could undermine trade secret protection.

The need for a preliminary sorting of documents is also dismissed, given the limited volume of the files and the parties’ agreement on their relevance to the disputed products, making such an operation unnecessary.

The judge then sets the terms and conditions for consulting these documents through a confidentiality ring, providing for the presence of:

- the lawyer of each party, with their collaborators and/or employees;
- a person representing each party, with consultation taking place only at their lawyer’s office and under a written commitment to use the materials solely for the proceedings and not to copy or reproduce them.