

FOCUS IP

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E-COMMERCE: THE BURDEN OF PROOF RESTS WITH THE INTELLECTUAL PROPERTY RIGHTS HOLDER WHEN REPORTING AN ALLEGEDLY INFRINGING MARKETPLACE LISTING



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Paris Judicial Court, Interim Relief Division, 2 April 2026, Case No. 25/58038

IMPACT: *Following a notice submitted by DINH VAN to Amazon alleging that two product listings infringed its intellectual property rights, the seller initiated interim proceedings before the Paris Judicial Court seeking the removal of the notices and the reinstatement of its ability to sell the products concerned.*

In this context, the interim relief judge clarified the evidential burden resting on an intellectual property rights holder when justifying the removal of allegedly infringing listings.

➤ **Facts**

KRITZ marketed jewellery on the Amazon marketplace, including two necklaces. By emails dated 24 April and 29 July 2024, Amazon informed KRITZ that both listings had been removed following notices submitted by DINH VAN, alleging infringement of its intellectual property rights.

After DINH VAN refused to withdraw its notices, KRITZ commenced interim proceedings before the Paris

Judicial Court on 19 November 2025 seeking an order requiring their withdrawal, together with an interim award of damages for the loss suffered as a result of the allegedly unjustified removals.

Before the court, DINH VAN relied on three grounds to justify its notices:

- the unauthorised use of a photograph over which it claimed copyright;
- the infringement of one of its registered designs; and
- the infringement of its copyright in its iconic handcuff necklace.

➤ ***The burden of proving the content of the reported material rests with the party submitting the notice***

Before examining the merits of the various grounds relied upon, the interim relief judge clarified the allocation of the burden of proof between the parties.

Whilst KRITZ bore the burden of demonstrating that the notices gave rise to a manifestly unlawful disturbance (manifestly unlawful interference), the judge held that it was for DINH VAN to "*establish both*

the content of the material that was reported and the reasons which led it to submit that report."

The judge further observed that: *"only the party submitting the notice is capable of preserving evidence of its content, whereas the person who published the content cannot reasonably anticipate that it will subsequently be removed and therefore has no reason to preserve such evidence."*

It was against these principles that the court examined each of the three grounds relied upon in respect of the two disputed listings.

➤ ***Failure to prove the content of the allegedly infringing photograph***

With regard to the first disputed listing, DINH VAN argued that it had been accompanied by an original photograph protected by its copyright.

The judge noted that neither party had produced the photograph before the court and reiterated that the burden of proving its content rested with DINH VAN.

The court nevertheless observed that KRITZ had acknowledged in two emails that it had used a photograph belonging to DINH VAN, stating in particular:

- *"the photograph that was mistakenly uploaded belongs to you and has now been removed";* and
- *"I asked my supplier whether he could provide me with a photograph that I could use temporarily [...]. He inadvertently sent me a photograph belonging to DINH VAN."*

Despite this express acknowledgement, the interim relief judge held that *"this is by no means sufficient to establish that KRITZ used a photograph protected by copyright"*, apparently because KRITZ subsequently challenged that admission during the interim proceedings.

The judge therefore concluded that *"KRITZ has demonstrated that the removal based on the alleged use of an original photograph constitutes a manifestly unlawful disturbance."*

➤ ***Failure to record the transfer of the registered design relied upon in support of both notices***

DINH VAN also relied, in relation to both disputed listings, upon Registered Design No. 997737-001, which it had acquired following the merger by absorption of DINH VAN Diffusion.

Although the interim relief judge acknowledged that ownership of the design had indeed passed to DINH VAN, he strictly applied Article L. 513-3 of the French Intellectual Property Code, pursuant to which: *"any act transferring or modifying the rights attached to a registered design shall be enforceable against third parties only if entered in the national register of designs."*

As no corresponding entry had been made by DINH VAN, the judge held that the design could not be enforced against KRITZ. Accordingly, the notices based on that registered design were unfounded, and their submission gave rise to a manifestly unlawful disturbance affecting KRITZ.

➤ ***Likely infringement of copyright in the handcuff necklace justified the removal of the disputed listings***

Finally, DINH VAN relied, in respect of both disputed listings, upon its copyright in its handcuff necklace.

The judge first recognised the originality of the necklace, holding that it reflected creative and arbitrary choices, namely: *"interlocking handcuffs permanently fastened together so as to form a single motif; attached to the chain by two small gold rings passing through an opening in the upper part of the handcuffs; with the clasp positioned in the centre of a chunky gold-link chain evoking the imagery of a prisoner's chain whilst remaining extremely delicate and crafted from a precious metal, thereby creating an original contrast."*

The interim relief judge then applied the settled principle that copyright infringement is assessed "*by reference to the similarities between the original work and the allegedly infringing work, rather than by their differences*" ([*French Supreme Court, First Civil Chamber, 6 January 2021, No. 19-20.758*](#)).

He found that KRITZ's necklace reproduced "*this combination of features in identical proportions and presentation: a chunky gold-link chain, fine metalwork, and a central motif consisting of interlocking handcuffs connected by two gold rings positioned in the same location.*"

The differences identified – namely the absence of the opening in the handcuffs and a slightly different overlap between the two elements – "*do not alter the*

overall appearance of the necklace" and were insufficient to negate the reproduction of its essential characteristics.

Given the existence of "*similarities relating to a significant part of the original features of the earlier work*", the notices submitted by DINH VAN to Amazon were justified on copyright grounds.

Accordingly, KRITZ failed to establish the existence of any manifestly unlawful disturbance resulting from the removal of the two listings, and all of its claims were dismissed.

KRITZ's action was therefore unsuccessful.

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