

# European Intellectual Property Review

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In 2013 the Patents County Court found that a record company, All Around The World (AATW), had infringed the performer’s rights of the singer Jodie Aysha in the hit song “Heartbroken”. The Intellectual Property Enterprise Court has since conducted a damages inquiry. The court first assessed damages on the basis of a licence between a willing licensor and willing licensee. Significantly, however, it also clarified that when there has been a “knowing” infringement, under art.13 of the IP Enforcement Directive, a claimant is not entitled to both lost profits and any unfair profits accrued to the defendant. Further, the court found that additional damages under the Copyright, Designs and Patents Act 1988 (CDPA) and damages under art.13 of the Directive are not cumulative, and that additional damages under the CDPA have become redundant in light of the Directive.

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On October 17, 2014, the English High Court ordered the main domestic retail internet service providers (ISPs) to block subscribers’ access to certain websites that advertised and sold goods infringing registered trade marks owned by Richemont, a group of luxury brands. These website-blocking orders were substantially the same as previous orders that the High Court had granted in cases of online copyright infringement, and the legal bases were similar to the copyright context. This is in spite of the fact that the UK has no express legislation for granting injunctions when trade marks are infringed online. The case is significant in providing a remedy for trade mark holders by requiring ISPs to block websites infringing trade marks.

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*Tidnings AB Metro v Metro Italia Cash & Carry SpA and Metro Cash & Carry Services Ltd* is an interesting case concerning the use of the same trade mark for two types of products whose similarity was widely discussed (newspapers on one hand and advertising leaflets distributed by a supermarket on the other hand). The Italian Supreme Court took this opportunity to highlight important aspects of the analysis required when comparing goods and services in trade mark infringement cases and to criticise previous case law: when comparing goods and/or services the comparison one should enter into the details of those products and/or services and not merely refer to their generic functions.

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