



International Distribution Institute

Can a third party promote my products on the Internet in competition with my network?

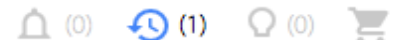
Torino, Friday 3 June 2016

Examples of this recent trend

- Companies offer on the internet products of various producers without having any contractual relation with them.
- Some of them act as resellers, others as agents (mandataires) on behalf of the customer




International Distribution Institute



TILE.EXPERT

SMART PRICING. WORLDWIDE SHIPPING

Chi siamo

Pagamento e consegna  VERIFIED

Domande frequenti

Contatti

Collezioni

(1938)

Marchi

(200)

Effetto

Stile

Prezzo, €/m²

Colore

Ricerca
avanzata

Mostra

Pagamento e consegna



Siamo spiacenti di dovervi annunciare che non trattiamo temporaneamente gli ordini inferiori a 500 euro (le spese di consegna non incluse), perché al momento sia impossibile organizzare la spedizione al prezzo ragionevole.

La minima quantità ordinabile di 500 Euro si applica solo al primo ordine. Questa limitazione non si applica a tutti gli ulteriori ordini effettuati dallo stesso account. Però per evitare le spese di consegna aggiuntive legate alla consegna di materiali mancanti, ti consigliamo di prevedere che alla quantità di piastrelle ottenuta sia aggiunta una percentuale di maggiorazione per sfridi e scarti.

PREZZI, COLLOCAMENTO DI UN ORDINE E CONSIGLI



I prezzi pubblicati sul nostro sito Web sono i prezzi EXW (franco fabbrica), cioè le merci sono spedite dai magazzini dei produttori.

I prezzi **includono l'IVA**.

Nelle fatture proforme che emettiamo ai nostri clienti privati non c'è nessuna informazione relativa all'IVA, siccome la ditta TileExpert Retail OÜ non è iscritta come pagatore dell'IVA (non ha la PIVA). Però l'assenza dell'IVA non implica che dovrai pagarla da sé. Acquistando la merce con la spedizione all'interno dell'Unione europea, non devi pagare nessuna tassa aggiuntiva. I prezzi indicati nella fattura proforma sono i prezzi definitivi.

Presta attenzione, alcuni articoli sono venduti solo a confezioni intere (a scatole o, più raramente, a pallet). Se vuoi acquistare tali articoli, la loro quantità nella fattura sarà convertita in funzione della quantità delle confezioni intere.

I prezzi sul nostro sito web si applicano ai materiali di prima scelta. Le piastrelle di seconda scelta e di scelta commerciale, non le forniamo.

Per fare le domande, calcolare il costo di consegna e collocare un ordine invia un messaggio all'indirizzo italy@tile.expert.

Tile Expert Conditions

- Acts as reseller without VAT if sale to consumer
- Apparently purchases from producer after having received order and delivers within 14-15 days
- It is likely that he purchases from distributors of the producers



International Distribution Institute



POUR NOUS CONTACTER
02 38 45 34 92

VOTRE DEMANDE DE PRIX
AUCUN ARTICLE

CATALOGUE &
DEMANDE DE PRIX

ACCUEIL LA SOCIÉTÉ TRANSPORT CONSEILS QUESTIONS FRÉQUENTES TROUVER UN POSEUR ESPACE PRO TÉMOIGNAGES



PRIX DIRECT USINE

DE 30 A 80 % MOINS CHER !
en 1er Choix Garanti

ACHAT CARRELAGE PAS CHER
pour les Particuliers, les Pros, et les Négociants



Découvrez notre catalogue
avec des milliers de références
parmi les plus grands
fabricants du monde

Rechercher une info dans le catalogue

Saisissez votre recherche...

Vous ne trouvez pas le carrelage que vous recherchez dans notre catalogue ?

DEMANDE HORS CATALOGUE

ACTUALITÉS

CONTACTS

NEWSLETTER

Caro Centre

- Acts as agent (mandataire) for the customer
- The customer confers a mandate to search for the products
- The agent receives a commission
- The customer pays the products to the carrier on delivery

The impact on the existing network

- Very competitive prices
- Members of the off-line network complain

Possible defenses

- Unlawful use of the producer's trademarks
- Unfair competition
- Other: rules on mandate, tax issues
- Producer's refusal to sell on this channel or different prices to outsiders

Unlawful use of the producer's trademarks

Assumptions

- The trademark is not only used to attract visitors to the internet website, the products with the trademark are effectively available.

- Genuine products (limitations of the effects of a trademark)

- Not a case of illicit parallel imports (in EU – better EEA - there is the principle of regional exhaustion but not of international exhaustion: leading case EUCJ, July 16, 1998, case C-355/96, Silhouette). The goods are put on the market by the trademark owner or with his consent.

- Trademark with reputation



Unlawful use of the producer's trademarks

The latest reform in EU trademark law (one of the main goals is to adequate the system to the era of Internet):

- DIRECTIVE (EU) No 2015/2436 OF THE EUROPEAN PARLIAMENT AND THE COUNCIL, of 16 December 2015, to approximate the laws of the Member States relating to trade mark
- REGULATION (EU) No 2015/2424 OF THE EUROPEAN PARLIAMEN TE AND THE COUNCIL, of 16 December 2015, amending COUNCIL REGULATION (EC) No 207/2009 of 26 February 2009 on the European Union trade mark



Unlawful use of the producer's trademarks Directive, whereas 27

The exclusive rights conferred by a trade mark should not entitle the proprietor to prohibit the use of signs or indications by third parties which are used fairly and thus in accordance with honest practices in industrial and commercial matters. [...] Furthermore, the proprietor should not be entitled to prevent the fair and honest use of the mark for the purpose of identifying or referring to the goods or services as those of the proprietor. Use of a trade mark by third parties to draw the consumer's attention to the resale of genuine goods that were originally sold by, or with the consent of, the proprietor of the trade mark in the Union should be considered as being fair as long as it is at the same time in accordance with honest practices in industrial and commercial matters. [...]



Unlawful use of the producer's trademarks Regulation, whereas 9

It follows from the principle of free movement of goods that the proprietor of an EU trade mark must not be entitled to prohibit its use by a third party in relation to goods which have been put into circulation in the Union, under the trade mark, by him or with his consent, save where there exist legitimate reasons for the proprietor to oppose further commercialization of the goods.



Unlawful use of the producer's trademarks EUCJ 4 November 1997, C-337/95, case Dior/Evora

On a proper interpretation of Articles 5 and 7 of Directive 89/104, when trade-marked goods have been put on the Community market by the proprietor of the trade mark or with his consent, a reseller, besides being free to resell those goods, is also free to make use of the trade mark in order to bring to the public's attention the further commercialization of those goods.



Unlawful use of the producer's trademarks EUCJ 4 November 1997, C-337/95, case Dior/Evora

The proprietor of a trade mark may not rely on Article 7(2) of Directive 89/104 to oppose the use of the trade mark, by a reseller who habitually markets articles of the same kind, but not necessarily of the same quality, as the trade-marked goods, in ways customary in the reseller's sector of trade, for the purpose of bringing to the public's attention the further commercialization of those goods, unless it is established that, given the specific circumstances of the case, the use of the trade mark for this purpose seriously damages the reputation of the trade mark.



Unlawful use of the producer's trademarks EUCJ 4 November 1997, C-337/95, case Dior/Evora

On a proper interpretation of Articles 30 and 36 of the EC Treaty, the proprietor of a trade mark or holder of copyright may not oppose their use by a reseller who habitually markets articles of the same kind, but not necessarily of the same quality, as the protected goods, in ways customary in the reseller's sector of trade, for the purpose of bringing to the public's attention the further commercialization of those goods, unless it is established that, having regard to the specific circumstances of the case, the use of those goods for that purpose seriously damages their reputation.



Unlawful use of the producer's trademarks

- EUCJ 8 July 2010, C-558/08, case Portakabin/Primakabin
- EUCJ 12 July 2011, C-324/09, case L' Oreal/e-Bay

Unfair competition

The sale by “free riders” / “unauthorized” dealers of genuine goods through the internet cannot be considered *per se* an act of unfair competition

May be considered as unfair competition:

- misleading statements;
- images and promotional material of the manufacturer;
- deep linking;
- Other (...)



I- GENERAL CONSIDERATION

- THE RESELLER OR THE INTERMEDIARY IS FREE TO PROMOTE PRODUCTS ON THE INTERNET IN COMPETITION WITH A NETWORK OF SELECTED OR EXCLUSIVE DISTRIBUTORS

EC GUIDELINES PT.52: « *IN PRINCIPLE ANY DISTRIBUTOR MUST BE AUTHORIZED TO USE INTERNET TO SELL PRODUCTS* »

- THE RESALE ON THE INTERNET HAS TO BE FAIR REGARDING :
 - THE CONDITIONS OF COMMERCIALIZATION (RESALE BELOW COST PRICE TO ATTRACT CONSUMERS TO BUY OTHER PRODUCTS : FCC ART L. 442-5)
 - THE CONDITIONS OF COMPETITION (ECONOMIC FREE RIDING, COURT OF PARIS APRIL 18, 2008 AND COMPETITION AUTHORITY JULY 25, 2006)



II- PROSPECTIVE CONSIDERATION

-WHAT ABOUT THE ROLE OF THE « RESELLER » OR INTERMEDIARY?

- THE USUAL RELATIONSHIP BETWEEN THE THIRD PARTY AND HIS SUPPLIER OR HIS PURCHASER IS REVERSED :

- AS A RESELLER HE SELLS TO THE CONSUMER BEFORE BUYING FROM THE SUPPLIER

- AS AN AGENT HE TAKES OVER THE INITIATIVE OF THE OPERATION OF BUYING IN THE PLACE OF THE CONSUMER

- SO COULD IT NOT BE CONSIDERED AS AN UNUSUAL WAY TO BUY/SELL AND CONSEQUENTLY JUSTIFY A SUPPLIER'S REFUSAL TO SELL TO THE THIRD PARTY?



-WHAT ABOUT THE « SALE »: PASSIVE OR ACTIVE?

-WHAT ABOUT THE SALE: PASSIVE OR ACTIVE SALE?

- THE CONSUMER IS SOUGHT AND APPROACHED BY THE THIRD PARTY SO IT IS AN « ACTIVE » SALE
- AND THE SUPPLIER (MEMBER OF THE NETWORK) OF THE THIRD PARTY MIGHT BE POSSIBLY SUBJECT TO SANCTION FOR A VIOLATION OF THE PROHIBITION OF SUCH A SALE IN APPLICATION OF FCC ART L.442-6,1,6°



- WHAT ABOUT THE RULES APPLICABLE TO THE SALE TO OR THROUGH THIS THIRD PARTY?
 - THE THIRD PARTY BUYING FOR THE ACCOUNT OF A CONSUMER MIGHT BE CONSIDERED:
 - AS A CONSUMER SUBJECT TO CONSUMER LAW
 - OR AS A PROFESSIONAL SUBJECT TO COMMERCIAL LAW AND SO AT LEAST MAY BE SUBJECT TO SPECIAL CONDITIONS OF SALE
- AND CONSUMER LAW AND COMMERCIAL LAW IMPLY VERY DIFFERENT OBLIGATIONS ON THE PARTIES
- **THE PRODUCER MAY DECIDE THAT HE DOES NOT SELL TO CONSUMERS. THIS SHOULD COMPLY WITH ANTITRUST RULES. SO HE MAY REFUSE SUPPLYING THE AGENT WHO IS ACTING ON BEHALF OF THE CONSUMER.**

Price differentiation

- Establishing a standard (discounted) price for members of the network
- Higher (non discounted price for:
 - non members of the network
 - consumers



Establishing a selective distribution system

- This solution enables to make sure that the parallel resellers cannot purchase from official distributors