

Newsletter

IP / Media

July – August 2025

VPNs in the crosshairs of the law: towards dynamic blocking of illegal access

The Paris Court of Justice orders the blocking of illegal IPTV sites via VPNs, affirming their role in the fight against infringements of the audiovisual rights of the 2025 WTA tournament.

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NEWS INTELLECTUAL PROPERTY



Prior use: only the filing date counts

[Court of Justice of the EU, 1 August 2025, C-452/24, EU:C:2025:618, Lunapark Scandinavia Oy Ltd v Hardeco Finland Oy](#)

In a judgment of 1 August 2025, the CJEU clarified that only the filing and registration of a trademark confers an enforceable right. Prior use, even if longstanding, is not sufficient to preclude this right.

In fact, the Finnish company Lunapark is the owner of the DRACULA trademark, filed in 2003 and registered in 2009 for confectionery products. However, prior to this registration, another Finnish company, Karkkimies, was already using the same sign to market similar confectionery products. In 2019, Hardeco acquired the rights from Karkkimies and continued to use the DRACULA sign.

In October 2020, Lunapark initiated legal proceedings in Finland, arguing that Hardeco's use of the sign constituted an infringement of its registered trademark. Hardeco contested this accusation, arguing that Lunapark, by not reacting for many years, had implicitly accepted the coexistence of the two uses and could not now oppose it.

The Finnish court acknowledged that the simultaneous use of the same sign for identical products was likely to cause confusion among consumers. Nevertheless, it rejected Lunapark's claim. In its view, since Hardeco had no exclusive rights to the DRACULA sign, trademark law did not apply. Furthermore, a general principle of Finnish private law requires that action be taken within a reasonable time. As Lunapark had waited too long to take action, it lost its right to bring an infringement action.

The case was brought before the Finnish Supreme Court, which referred it to the Court of Justice of the European Union (CJEU) to verify the compatibility of this national principle with European Directive 2015/2436 on trademarks.

The CJEU replied that the directive provides for foreclosure by tolerance only when the later trademark is registered. However, neither Karkkimies nor Hardeco had registered the DRACULA sign; they therefore had no exclusive rights. Consequently, the exclusive right conferred by the registration of a trademark cannot be limited by a national principle not provided for in the directive.

The CJEU points out that trade mark law is fully harmonised at European level. Member States may not introduce additional rules, even if based on general principles of their national law. Only the filing and registration of a trademark confers an enforceable right. Prior use, even long-standing use, is therefore not sufficient to preclude that right.

NEWS INTELLECTUAL PROPERTY



Originality of the verses "La mer qu'on voit danser"

Paris Court of Appeal, M. FE and Éditions Raoul Breton v Maison June, 11 July 2025, No. 24/16927

In a ruling dated 11 July 2025, the Paris Court of Appeal found that the words "La mer qu'on voit danser" (The sea that we see dancing), taken from Charles Trénet's song "La mer" (The sea), are original and that the judge hearing the application for interim relief has jurisdiction to assess whether they clearly constitute an original work.

In this case, the sole heir of Charles Trénet and the publisher of most of his works brought summary proceedings against a company that reproduced the words "La mer qu'on voit danser" on cushions, water bottles, tote bags and beach bags.

The Court of Appeal considered that the verse in question was clearly original and that its unauthorised use, without mentioning the name of Charles Trénet, for the purpose of promoting the sale of customisable items infringed the economic and moral rights of the author and his beneficiaries.

The Court of Appeal ruled on the assessment of originality in summary proceedings. According to the defendant, only the trial judge could rule on originality when it is disputed. The Court of Appeal did not accept this argument and ruled that the judge hearing the summary proceedings remained competent to put an end to a manifestly unlawful disturbance, even in the presence of a serious dispute, if the work was manifestly original.



Only the judge competent in matters of seizure for counterfeiting may arrange for seizure for counterfeiting in order to preserve a trade secret.

Paris Court of First Instance, AFELEC v GRANIOUR AZUR, 13 August 2025, No. 25/50266

On 2 January 2025, AFELEC brought summary proceedings against GRANIOUR AZUR, requesting the amendment of an order dated 12 November 2024 authorising the seizure of counterfeit goods from it. AFELEC wanted to add a sequestration measure to protect trade secrets. It also requested validation of the summons, admissibility of its claim, and €10,000 under Article 700 to cover its legal costs.

GRANIOUR AZUR contested the jurisdiction of the judge hearing the application for interim relief to modify this order. It also requested that the summons be declared null and void, that the application for sequestration be declared inadmissible, and €25,000 under Article 700.

The judge pointed out that only the judge who issued the order could modify or revoke it. He emphasised that the judge hearing the application for interim relief did not have jurisdiction to rule on an order issued on request. Jurisdiction therefore lies with the judge hearing the application, even if he rules in accordance with the rules of summary proceedings. The judge therefore declared that he lacked jurisdiction and designated the judge hearing the application at the Paris Judicial Court as the competent court.

NEWS INTELLECTUAL PROPERTY

Hermès sandals: the Court of Appeal confirms the copyright protection of the "Oran" and "Izmir" models

Paris Court of Appeal, Hermès Sellier v. Mulanka, 11 July 2025, No. 23/17558

In a ruling dated 11 July 2025, the Court of Appeal granted copyright protection to the famous "Oran" and "Izmir" models produced by Hermès Sellier, recognisable by their "H"-shaped uppers.

The dispute concerned mules sold by a shop operated by the company Mulanka, some of whose designs were strongly reminiscent of those of Hermès. At first instance, Mulanka was found guilty of copyright infringement, but the claims based on designs and unfair competition were dismissed.

On appeal, the Court confirmed that the Oran and Izmir sandals clearly reflected the personality of their designer, known for his geometric and minimalist designs inspired by tribal art. As the designer had transferred his economic rights to Hermès, the company was entitled to take legal action.

Infringement was found only for the models referenced as "1155" and "1180", which reproduce the distinctive features of Hermès sandals: "H"-shaped upper, rectangular notches, similar proportions and aesthetic choices. However, the other disputed models are excluded from the counterfeiting claim because their central leather piece does not resemble the "H" shape.

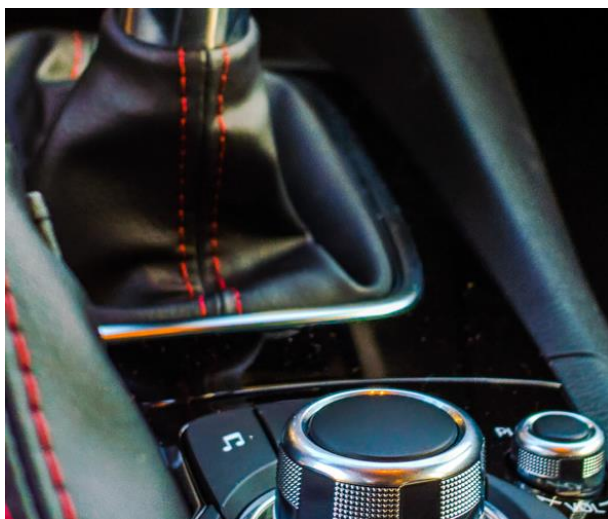
The total damages were thus set at €25,282, including approximately €15,000 in lost profits, €5,000 in moral damages and €5,000 in investment savings, to be paid by Mulanka. In addition, the Court prohibits Mulanka from marketing the "1155" and "1180" models, subject to a penalty of €500 per infringement found, for a period of six months from the date of notification of the judgment.



NEWS INTELLECTUAL PROPERTY

The Court of Justice of the European Union clarifies the genuine use of a trademark for used cars

Court of Justice of the European Union, 2 July 2025, Case T-1103/23 Ferrari SpA v European Union Intellectual Property Office



In a judgment dated 2 July 2025, the General Court of the European Union overturned a decision by the Board of Appeal of the European Union Intellectual Property Office, which had declared Ferrari's "TESTAROSSA" trademark invalid due to lack of use.

Ferrari is the owner of the word mark TESTAROSSA, registered internationally to designate, in particular, vehicles in the European Union. In 2015, a third party requested the revocation of this trademark on the grounds of non-genuine use. The EUIPO partially upheld this request, maintaining the trademark only for "automobiles". Ferrari and the third party applicant each lodged an appeal; the Board of Appeal once again ruled in favour of the third party applicant and revoked the trademark for all products.

Ferrari brought the case before the EU General Court to challenge this decision. The General Court examined the concept of genuine use of the trademark for used cars. It noted that the resale of used goods may constitute genuine use if it is done with the consent, even implicit, of the proprietor.

The Court recognised that Ferrari had implicitly consented to the use of the trademark for used cars. It also considered that the certification service offered by Ferrari constituted genuine use of the trademark. The Court then examined the use of the trademark for spare parts and accessories. It found that these products had been marketed by authorised distributors, with Ferrari's implicit consent.

It also points out that the use of the trademark for parts may constitute use for the main products, unless an autonomous subcategory is established, which the Board of Appeal has not done. The Court therefore annuls the decision of the Board of Appeal and recognises the genuine use of the TESTAROSSA trademark.



NEWS MEDIA, ENTERTAINMENT AND ADVERTISING



A dynamic blocking injunction may be issued against a "VPN" that encrypts or masks the user's IP address

Paris Court of First Instance, belN Sports France v. Proton, Cyberghost and NordVPN, 18 July 2025, No. 25/05968

beIN Sports France, the holder of the exclusive audiovisual rights to the 2025 WTA tournament, has brought summary proceedings against VPN providers Proton, Cyberghost and NordVPN before the Paris Court of First Instance. It accuses them of allowing access to IPTV sites and services that illegally broadcast the tournament matches to which it holds the exclusive rights.

The defendant companies are contesting the claim, arguing in particular that they have standing to defend themselves, that beIN Sports has standing to sue, that Article L. 333-10 of the French Sports Code complies with European law, and that the measures are proportionate.

The court rejected all defenses. It recognised beIN Sports' standing to take action as the holder of exclusive audiovisual exploitation rights for the WTA tournament and considered that VPNs are "persons likely to contribute to remedying" infringements of audiovisual exploitation rights. It also specified that Article L.333-10 of the Sports Code complies with European law and considered that the bailiff's reports and the evidence provided demonstrated serious and repeated infringements of broadcasting rights.

The court orders the blocking of the seven identified websites and IPTV services within three days, until 10 November 2025, the end date of the 2025 WTA tournament, while leaving the choice of technical methods to the VPNs.



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