


HERMÈS INTERNATIONAL'S CLAIMS UPHELD ON APPEAL IN KOREA

An appellate decision upholding a trial court's decision recognizing Hermès International's trademark and unfair competition claims against the manufacturers of confusingly similar products has become final and conclusive in Korea.

Background of the Case

Hermès International (the "Plaintiff") had filed a lawsuit against the parties (the "Defendants"), which were manufacturing products confusingly similar to the products of the Plaintiff. On January 31, 2008, the Seoul Central District Court (the "District Court") ruled in favor of the Plaintiff regarding its trademark infringement claim against

the Defendants' use of the  mark (the "Subject Mark") and its claim under the Unfair Competition Prevention and Trade Secret Protection Act ("UCPA") (Case No. 2007Gahap44687).

Especially, the District Court recognized the Plaintiff's unfair competition claim by holding that since the Plaintiff's Kelly and Birkin bags have established its source identifying function to the consumers, the Defendants' acts of manufacturing and selling bags confusingly similar to the Plaintiff's Kelly and Birkin bags constitute unfair competition.

Trademark Claim	
Genuine Bags	Defendants' Bags
	
UCPA Claim	

Genuine “Kelly” and “Birkin” Bags	Defendants’ Bags
	

Appeal at the Seoul High Court

Against the decision of the District Court, the Defendants appealed to the Seoul High Court (the "High Court"). Upon completing its review, the High Court upheld the District Court’s decision by holding that (1) the shapes of the Plaintiff’s Kelly and Birkin bags can be recognized as being well-known source identifiers and (2) the Defendants’ use of the Subject Mark constitutes trademark infringement (Case No. 2008Na35359; decided on December 9, 2008).

Further, the High Court rejected the Defendants’ arguments that due to the placement of another indicator (HENRY HIGHCLASS KELLY) on the Defendants’ bags and the price difference between the bags of the Plaintiff and Defendants, there would be no consumer confusion as to the source of goods.

With respect to the placement of another indicator on the Defendants’ bags, the High Court found that since one of the Plaintiff’s bags was manufactured for actress “Grace Kelly” and consumers have referred to this bag as the “Kelly Bag”, merely affixing the “HENRY HIGHCLASS KELLY” mark on the Defendants’ bag is not enough to prevent the arise of consumer confusion as to the source of goods.

As to the price difference between the bags of the Plaintiff and Defendants, the High Court found that even though the Defendants’ bags are much cheaper than the Plaintiff’s bags, since (i) a company can launch lower priced goods according to its marketing strategy and (ii) parallel imported goods, which are much cheaper than those sold by authorized distributors, are actually imported and sold in Korea, such difference would not be enough to dissuade a finding of consumer confusion as to the source of goods.