

To: Olof Holmer, KTF Organisation AB
From: Stefan Brandt, Lindskog Malmström Advokatbyrå KB
Re: Court Cases and Other Cases that KHoF Has Pursued Regarding Illegal Products and Unfair Marketing.
Date: 11 september 2017

1. BACKGROUND

During recent years, the Cosmetics and Hygiene Companies Association, KoHF, has pursued several court cases and other cases regarding illegal products and unfair marketing. The reason is that both KoHF and its member companies noted that several companies selling cosmetic products on the Internet sold products that, for various reasons, did not comply with applicable legislation. It concerned unauthorized parallel imports, trademark infringement, manipulated packaging with changed or false labelling, products lacking the required warning labels in Swedish, etc. The products were marketed among other things with misleading and unjustified claims about the products' prices and properties. A few of the cases have been determined by the court while others have been settled through agreements where the counterparties subject to a contractual fine have agreed to cease with certain activities and pay compensation to KoHF. Below is a shorter description of the most important issues in each case. For formal reasons, the cases have been pursued by KoHF's service company KTF Organisation AB ("KTF").

2. VIVAMONDO

Illegal Parallel Trade/Trademark Infringement

The case concerned the company Vivamondo Limited, registered in Hong Kong. The company has a registered branch in Sweden, Vivamondo Limited Hong Kong branch, and is selling cosmetics and body care products online over the internet via the website www.vivamondo.se. KTF and member companies found that the products Vivamondo marketed and sold to consumers on the Swedish market were not placed on the EEA market by the right holders themselves or

with their consent. This means that it was a matter of illegal parallel imports and thus trademark infringement.

KTF and two member companies initiated legal proceedings against the Swedish branch regarding unauthorized parallel imports from non-EEA countries.

Vivamondo objected that the Swedish courts did not have jurisdiction since the parent company, Vivamondo Limited, is a foreign company resident in Hong Kong, which is engaged in online trading on the Internet. Vivamondo Limited operates all its business in Hong Kong and does not import goods to Sweden. The courts ruled that the Swedish courts have jurisdiction over the matter.¹

Thereafter, the question was whether Vivamondo's sale of the products was allowed or not. The Patent and Market Court found that the sale was unauthorized. The judgment² implies that Vivamondo

- 1) is prohibited subject to a fine of SEK 750 000 to market certain brands insofar as the goods have not been placed on the market within the European Economic Area ("EEA") by the right holder himself or with his consent
- 2) shall pay the legal costs and that the managing director is jointly responsible for part of the costs.

3. BRANDS4HAIR

Erroneous Labelling/Unfair and Misleading Marketing

Brands4Hair ApS is a Danish company that markets hair care products for hairdressers in Sweden, which hairdressers use themselves in their business or sell to consumers. Hair spray and styling products are often flammable, resulting in that the products shall have warnings labels and warning texts in Swedish. Hair coloring products may contain substances that may be allergenic, implying that warning texts must be provided if the products contain certain substances. The products Brand4Hair marketed and sold to customers in Sweden had been placed on the EEA market (permitted parallel imports) but since the products were intended for other EEA markets than Sweden, they lacked the required warning labels and warning texts in Swedish.

¹ NJA 2015 s. 798

² PMT 8651-12

Brands4Hair marketed the products with misleading and unfair price comparisons and claims regarding that Brands4Hair would offer customers the "Markets best brands", the markets "best" and / or "lowest" prices and other similar unfair and misleading claims

The Patent and Market Court found that the sale of erroneous labelled products was unlawful and that the marketing claims in question were misleading and unfair. The judgment³ implies that Brands4Hair is

- 1) subject to a fine of SEK 1,000,000 prohibited from marketing cosmetic products with aerosol dispensers and flammable cosmetic products lacking the required labels in the Swedish language in the manner that has occurred or in essentially the same manner
- 2) subject to a fine of SEK 1,000,000 prohibited from marketing cosmetic products that are hair colorants products lacking the required labels in the Swedish language in the manner that has occurred or in essentially the same manner
- 3) subject to a fine of SEK 1,000,000 prohibited from marketing cosmetic products and hair care products in the manner that has occurred or in essentially the same manner with the following expressions
 - a) "Save a lot of money on our quality products",
 - b) "The market's best brands to strong prices",
 - c) "We give you more for your money",
 - d) "Give you the best price on the market",
 - e) "Simply the market's lowest prices",
 - f) "Offer the best prices on the market",
 - g) "Ordinary price",
 - h) "Webprice",
 - i) "Normal price",

³ PMT 11078-16

j) "Guiding prices" and

k) "Have [...] saved",

or essentially the same expressions if this is not the case.

4) shall reimburse KTF for its legal cost

4. BEAUTY PLANET

Illegal and Erroneous Labelled Products

On the website www.beautyplanet.se was, among other things, cosmetic and hygienic products marketed to consumers. KTF sued the company that operated the business on the website for the sale of illegal and erroneous labelled products. Meanwhile the case was going on, the website www.beautyplanet.se was sold to another company. Thereafter, also the ownership of the company that have sold the website was changed. The new owners of the company that has sold the website took full responsibility for the costs KTF have had and agreed to subject to a contractual fine to not market illegal or erroneous cosmetic products in the future.

5. NORDIC FEEL

Erroneous Labelled Products

On the website www.nordicfeel.se was, among other things, cosmetic and hygienic products marketed to consumers. KTF sued the company that operated the business on the website for the sale of erroneous labelled products. Meanwhile the case was going on the management of the company that operated the business on the website was changed. The company introduced quality controls and collaborations to prevent the shortcomings from occurring in the future after which the parties could settle the case.

6. SNIPH

Trademark Infringement and Violations Against the Cosmetics Regulation

The company Sniph has the business idea to let customers to test different perfumes in small packages through subscription. Sniph "decant" perfume from original bottles and then transfer it to smaller custom packaging. For most products, Sniph did not have permission from the right holders to use their

trademarks, break the seal on their products and then repackage them which meant that the actions constituted trademark infringement. The actions also meant that Sniph, in legal terms, was the manufacturer of the perfumes of the smaller packages, whereby these products did not comply with the requirements regarding manufacture and labelling of the products according to the cosmetics regulation.

KTF addressed these shortcomings for Sniph and the parties entered into a settlement agreement. The agreement implies that Sniph, subject to a contractual fine of SEK 50,000, undertakes to market only products that comply with applicable legislation regarding manufacturing and labeling. In addition, Sniph shall, subject to a contractual fine of SEK 50,000 only to market products where the right holders in an agreement consents to that Sniph uses their trademarks, breaks the seal on their products and repackages them. In addition, Sniph will reimburse KTF for its legal costs in the matter.
