

The Market Court's reconsidered decision in the Finnish LEGO imitation matter concerning unfair business practice

In Brief

The Market Court has rendered a landmark decision in the LEGO case which is in favour of LEGO and represents a significant change in the established Market Court practice on unfair business practice and imitation of product appearance. The Market Court – in line with the earlier ruling by the Supreme Court in the matter - now states that the criteria for distinguishing an imitation from the original must be set particularly high if the original product is well known among the consumers. The Market Court prohibits Biltema from marketing the COKO building blocks which are confusingly similar to the LEGO bricks. The resolution basically stretches the marketing injunction into a sales ban as the Market Court rules that the COKO bricks may not be shown or illustrated in marketing unless their appearance is clearly distinguished from the LEGO building blocks.

Background

The LEGO Companies initiated Market Court proceedings in 2002 against Biltema Suomi Oy claiming that Biltema was violating good business practices by marketing building blocks that created a risk of confusion with LEGO building blocks. In its initial decision rendered on 11 April 2003, the Market Court prohibited Biltema from continuing the marketing of the imitation blocks in its mail-order catalogue stating that a sales ban could not be issued based on Finland's Act on Unfair Business Practices (1061/1978). Among the first appeals on Market Court decisions, subsequent to amendment of the relevant law, LEGO was granted a leave to appeal and appealed the decision to the Supreme Court. The Supreme Court found, in its decision of 29 March 2004, that the concept of marketing should be interpreted broadly and should, in addition to active promotion measures, also include the offering of goods for sale in an outlet. In addition, and contrary to the Market Court's decision, the Supreme Court also found that selling may be considered marketing and, accordingly, it can be prohibited under the Unfair Business Practices Act. The Supreme Court returned the matter to the Market Court for reconsideration to the extent LEGO's claims had not been accepted.

Goodwill associated with the appearance of LEGO products enjoys protection

While reconsidering the matter, the Market Court interpreted the definition of marketing broadly. The Market Court found, in its decision dated 12 April 2005, that also marketing of building blocks that created risk of confusion with LEGO building blocks on Biltema's website and in Biltema stores, may have caused risk of confusion as to the commercial origin of the product. Biltema was therefore acting contrary to good business practices. In addition, Biltema's actions had been unfair also in respect of the use of goodwill related to LEGO products. The Market Court found that strict requirements should be set to prevent the risk of confusion, considering that Biltema's imitation had been systematic and that LEGO building blocks were very well known among consumers. The Market Court concluded that the risk of confusion could only be prevented if the appearance of the COKO building blocks themselves was clearly changed in order to distinguish them from LEGO building blocks. Therefore, the Market Court prohibited Biltema from marketing its building blocks in such a manner that a building block or a series composed thereof were shown or otherwise depicted, unless Biltema's blocks are clearly differentiated from LEGO building blocks to their very appearance.