

‘Max’ Spectacles **Case 1¹**

Established Facts

Max Co is a famous designer and manufacturer of fashionable spectacles. Its spectacles are distributed under the trade mark “**Max**”, which is a trade mark registered at the OHIM as a CTM for spectacles, but also at EU Member States level as national trade marks. In addition, the shape of the spectacles is protected by Community and national design rights, and the originality of the spectacles’ designs also enjoys copyright protection. Some aspects of the glasses are also patented

Max spectacles are known to be fashionable products and are commercialised in the EU through networks of opticians or through Max Co’s own network of franchised shops.

Genuine Max spectacles are manufactured in China and imported in Portugal and other EU Member States by Max Co, which then manages the logistics from its warehouse.

One day, Max Co’s attention is drawn to the fact that Max spectacles are offered for sale in various EU countries, including Portugal, by the aggressive chain of supermarkets “**Bastamark**”.

According to the investigation made by the private detective hired by Max Co:

- The Max spectacles sold by Bastamark stores are counterfeit.
- Bastamark imports these counterfeit Max spectacles from China.
- The counterfeit Max spectacles enter the EU via France, Italy and Portugal.
- The counterfeit Max spectacles are then commercialised in Portugal but also in Spain, Ireland, Greece, Germany, The Netherlands, Belgium and Poland. They are distributed through affiliates, franchises and wholly-owned shops.

Economic Facts

1) Market Information

- Importation of genuine Max spectacles by Max Co at its warehouse costs EUR15 per item.

¹ The facts and circumstances of the case are invented by the author. However, most of the elements are extremely close to cases he experienced. Also the economic facts are not that far from real ones. Only the legal setting has been somewhat simplified for the purpose of the workshop.

- The Max spectacles are sold to distributors at EUR 45 per item.
- The normal resale price to the customer is EUR 90.
- 500,000 Max spectacles are sold per year in Europe, and 35.000 in Portugal.

2) **Counterfeiting Information**

- Bastamark imported 30,000 counterfeit Max spectacles at EUR 10 per unit, for a specific promotional operation; 10,000 of them were for the Portuguese market .
- The counterfeit Max spectacles were offered to customers at EUR 33 each.
- Stocks of counterfeit Max spectacles ran out after two weeks.
- The average amount spent on a shopping trolley-load of purchases is EUR 200, with a net profit of EUR 15.
- The immediate profit of the fake Max spectacles for Bastamark is EUR 450,000, but probably much more, perhaps 10 times that amount if one takes into account the clients who came to Bastamark because of the promotion, and left with a trolley-load of products but without Max spectacles. In other words, looking at the total return on Bastamark's publicity for the promotion which targeted, *inter alia*, new clients who will come back to the stores, etc...

Max Co's Claims

Max Co is furious with this counterfeiting, and explains to its attorney the different courses of actions it wants to initiate:

- It wants the offer for sale of these counterfeits to stop immediately, to the extent that there is any remaining stock of products and advertising materials.
- It wants Bastamark to be declared liable for infringement of its rights, and for this finding to be publicized at Bastamark's cost.
- It wants to receive proper compensation from Bastamark.
- It wants Bastamark to be deterred from engaging in such an operation again.
- It wants to access Bastamark's accounting documents to identify better the profits really made over the period of this promotional offer.

YOU ARE IN CHARGE OF THE FILE

WHAT DO YOU DO?