Newsletter

IP / Media

First Quarter of 2026

The EUIPO and the assessment of the distinctive character of a position trademark

The EUIPO has rejected Nike's position trademark, ruling that the sign affixed to the sole is neither inherently distinctive nor recognised by the public as an indicator of origin, despite the use cited.

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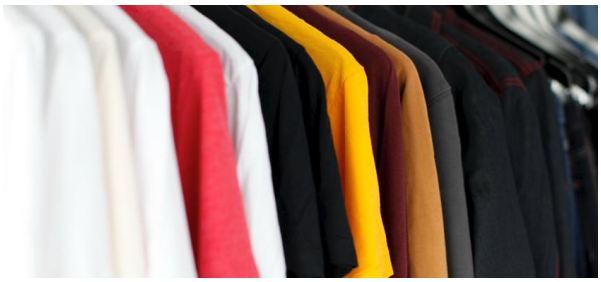


No limitation period for actions to invalidate a trademark

Court of Cassation, Commercial Chamber, VF v Artexyl, 28 January 2026, No. 24-14.760

In a judgment of 28 January 2026, the Court of Cassation clearly sets out the rules applicable to trademark invalidity proceedings following the reform of 22 May 2019, known as the 'Pacte Law'.

The dispute was between VF (notably the proprietors of the Napapijri trademark) and Artexyl, the operator of the "Geographical Norway" trademarks. VF alleged, in particular, fraudulent trademark registrations as well as unfair and parasitic competition practices.

Firstly, the Court reiterates a key principle arising from the Pacte Law, namely that actions for the invalidity of trademarks in force as at 24 May 2019, the date on which the Pacte Law came into force, are in principle not subject to any limitation period.

By overturning the Court of Appeal's decision, which had declared certain claims inadmissible on the grounds that they were time-barred, it confirms a major development in trademark litigation, strengthening the ability of rights holders to take action without any time limit, except in cases of res judicata.

The Court also criticises the analysis carried out by the trial judges regarding bad faith at the time of trademark registration. It emphasises that this concept must be assessed holistically, taking into account all relevant circumstances, such as knowledge of an earlier trademark, the applicant's intention, or their commercial conduct. However, by limiting itself to a partial analysis, the Court of Appeal failed to provide sufficient grounds for its decision.

The Court of Cassation quashed and set aside the judgment of the Paris Court of Appeal, in particular in so far as it declared the claims of the VF companies inadmissible on the grounds of limitation and in so far as it dismissed the VF companies' claims for the invalidity of the registration of Artexyl's trademarks, and referred the parties back to the Paris Court of Appeal sitting in a different composition.

New regulations on the granting of compulsory licences

Regulation (EU) 2025/2645 of the European Parliament and of the Council of 16 December 2025 on the granting of compulsory licences for crisis management and amending Regulation (EC) No 816/2006

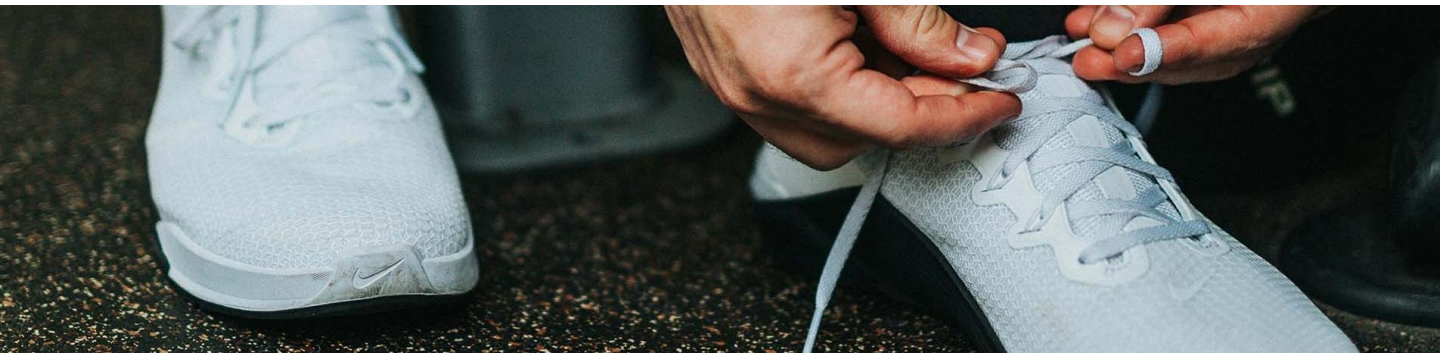
Regulation (EU) 2025/2645 of the European Parliament and of the Council establishes a legal framework for the granting of compulsory licences at European Union level in crisis situations. It aims to ensure access to essential products protected by intellectual property rights where voluntary mechanisms are insufficient or unsuitable.

This mechanism applies exclusively in officially recognised crisis or emergency situations at Union level, in particular in the event of a health crisis or a major disruption. Compulsory licensing is a measure of last resort and may only be granted if it is necessary to ensure the availability of products related to crisis management within the internal market.

The European Commission is responsible for issuing these licences, in accordance with a regulated and harmonised procedure. These licences have territorial scope covering the entire Union, are limited in time to the duration of the crisis and concern various types of industrial property rights, such as patents or supplementary protection certificates.

The Regulation also provides safeguards for rights holders, in particular appropriate remuneration, as well as strict obligations for licencees. Products manufactured under this framework are intended exclusively for the Union market and may not be exported. In the event of non-compliance with these obligations, financial penalties may be imposed.

Finally, this text supplements and adapts the existing framework on compulsory licences to address cross-border crises, ensuring a coordinated and effective response at European level.



EUIPO rules on the distinctiveness of a position mark

EUIPO, Nike, 9 February 2026

The European Union Intellectual Property Office (EUIPO) has rejected the application for registration of European Union trademark No 019169533 filed by Nike Innovate C.V., relating to a 'position mark' applied to footwear (Class 25). This decision is based primarily on the sign's lack of distinctive character.

The EUIPO considers that the sign, consisting of a shape affixed to the midsole of a shoe, does not deviate sufficiently from industry standards and practices. It is perceived by the relevant public (average consumers across the European Union) as a common decorative or functional element and not as an indicator of commercial origin. Despite the applicant's arguments highlighting the design's alleged originality, aesthetic appeal and recognisability, the Office considers that these characteristics are not sufficient to confer inherent distinctiveness.

The EUIPO also rejects the argument that the specific position of the sign on the shoe confers distinctiveness in its own right. According to the analysis adopted, consumers are not accustomed to identifying the origin of a product on the basis of this type of design element, except where such elements are particularly striking, which is not the case here.

Furthermore, the claim based on the acquisition of distinctive character through use was also rejected. Although Nike provided evidence demonstrating significant commercial exploitation of the model in question (Air Max 90), the Office considers that this evidence relates primarily to the product as a whole or to the Nike trademark, and not to the specific sign claimed. Furthermore, the evidence provided, in particular the consumer surveys limited to certain Member States, does not establish recognition of the sign across the European Union.

Thus, the EUIPO considers that the sign does not meet the necessary requirements, either in terms of inherent distinctiveness or acquired distinctiveness. The application for registration is therefore rejected, with the possibility of appeal within the time limits laid down in the Regulation.

NEWS INTELLECTUAL PROPERTY

Clarifications on the application of the criterion of inventive step in patent matters

Court of Cassation, Commercial Chamber, Medtrum v Insulet Corporation, 28 January 2026, No. 23-16.425

Insulet Corporation, holder of a European patent for a fluid dispensing device, alleges that Medtrum has developed and marketed devices likely to infringe it. The Paris Court of Appeal had ordered provisional measures prohibiting marketing.

The Court of Cassation upheld this decision, ruling that the likelihood of infringement was sufficient to justify the interim measures. It also rejected the arguments regarding the patent's invalidity, in particular the lack of inventive step or the improper extension of the patent, deeming them unfounded.

It reiterated that an invention is considered obvious only if a person skilled in the art can arrive at it immediately and without effort, relying solely on their own knowledge. Consultation of documentation from a related technical field is permissible, particularly if it aims to solve the same technical problem, but seeking the advice of experts from other specialisms is not permitted.

The Court also emphasises that a mere undertaking not to market the disputed products has no enforceable effect and cannot replace the measures ordered by the court. Prohibition orders subject to a penalty payment therefore remain proportionate and necessary to effectively protect the patent.

Protection of food packaging by copyright

Paris Court of Appeal, APHINITEA CORPORATION v. S.A.S. FIRST FAST FOOD COLLECTIVE - FIRST FFC, 23 January 2026, Case No. 24/11223

A designer created a cardboard box called "Magnolia", characterised by a folding system inspired by origami, which, when opened, forms a flower with rounded petals. The plaintiffs allege that FIRST FFC marketed competing boxes incorporating the essential features of the "Magnolia" design, particularly following their presentation in trade catalogues and at specialist trade fairs.

At first instance, the court dismissed the designer's claims of copyright infringement, ruling that the disputed box was not protected by copyright.

On appeal, the judges adopted a holistic approach to originality and recognised that the combination of the shapes, the folding and the closure system of the design reflected free and creative choices, revealing the imprint of its creator's personality. The Court concluded that the design was eligible for copyright protection.

As regards infringement, the court held that the differences cited by the defendant were not such as to rule out any reproduction, given that the essential characteristics of the protected design were reproduced. The assessment was based on the overall impression produced by the products in question.

The Court therefore partially overturns the judgment at first instance, recognises the existence of acts of infringement and orders the defendant to pay compensation for the damages suffered. It also points out that the action for unfair competition can only succeed on a subsidiary basis, in the presence of facts distinct from those already sanctioned on the grounds of infringement, which was not the case here.

NEWS INTELLECTUAL PROPERTY

Ownership of copyright is a condition for the admissibility of a claim for infringement

Court of Cassation, Civil Chamber 1, Optima Brand Design v Maison Villevert, 28 January 2026, No. 24-11.394

Optima Brand Design and its manager had brought an action against Maison Villevert, alleging that designs they had created had been used without authorisation. The crux of the dispute centred on standing to sue and, in particular, the plaintiffs' legal capacity to bring an infringement action.

The Bordeaux Court of Appeal had ruled that the plaintiffs did not hold the necessary economic rights to support their claim and had therefore declared their action inadmissible. In other words, even if the designs existed and were protected, the plaintiffs had not demonstrated that they held the rights enabling them to sue the defendant company.

The Court of Cassation upheld this analysis by dismissing the appeal. It thus reiterated that the mere creation of or involvement in a work does not automatically confer the capacity to bring legal proceedings. One must therefore hold the economic rights or have been granted a legal authorisation to act. The decision also emphasises that failure to meet this condition results in the dismissal of the claim and an order to pay costs.

Clarifications on the registration of a motion mark

General Court of the European Union, Kct GmbH & Co. KG v EUIPO, 14 January 2026, T-9/25

Kct GmbH & Co. KG had applied for registration of a motion mark depicting the opening and closing of a hinged window intended for delivery vehicles. EUIPO rejected this application on the grounds that the mark constituted solely a feature necessary to achieve a technical result, namely to allow light and air to enter an enclosed space by opening the window.

Kct then brought an action before the General Court of the European Union seeking the annulment of that decision. The General Court began by noting that signs consisting exclusively of a feature of the product necessary to achieve a technical result are excluded from protection, as trademark law must not confer an unlimited monopoly on technical solutions which must remain freely available to competitors.

Having examined the animated sequence of the sign, the General Court concluded that the only essential feature of the sign is the movement of the window opening and closing. Even though the black struts visible during the movement are indeed essential elements of the sign, they fulfil a technical function as they stabilise the window and accompany the sash as it moves. As for the change in colour of the frame, this is merely a simple play of light and shadow inherent in any three-dimensional object in motion and therefore has no decorative or distinctive significance.

The Court adds that the existence of other technical solutions to achieve the same result does not preclude the application of the ground for refusal provided for in the Regulation, since the sign claims a characteristic that is indispensable to the function of the product. Consequently, all the essential characteristics of the sign fulfil a technical function justifying the refusal of registration by EUIPO.

NEWS INTELLECTUAL PROPERTY

New system for the protection of protected geographical indications

The new European protection system for artisanal and industrial geographical indications

Since 1 December 2025, the European Union has introduced a new system for the protection of protected geographical indications (PGI) for artisanal and industrial products. This framework, established by European Regulation 2023/2411, aims to strengthen the protection of know-how, shared heritage and the authenticity of products benefiting from a PGI throughout the European Union.

A Protected Geographical Indication (PGI) is a European label that guarantees a product's geographical origin as well as its quality or reputation linked to that area. For a product to obtain a PGI, at least one stage of its production must take place within the relevant geographical area. This label thus helps to promote local products and protect their authenticity on the European market.

The recognition of a PGI now takes place in two stages: first at national level, with the INPI, then at European level, with the EUIPO. At each stage, objections may be raised if a person or company considers they have a legitimate interest in challenging the registration.

The old PGI system was phased out on 1 December 2025. Products already recognised at national level have until **2 December 2026** to be notified to the EUIPO in order to officially become European PGIs, via a simplified procedure. This timetable allows producers to adapt and ensure the continuity of protection for their products under this new regime.

NEWS INTELLECTUAL PROPERTY

Clarifications on the conditions for protection of a Community design

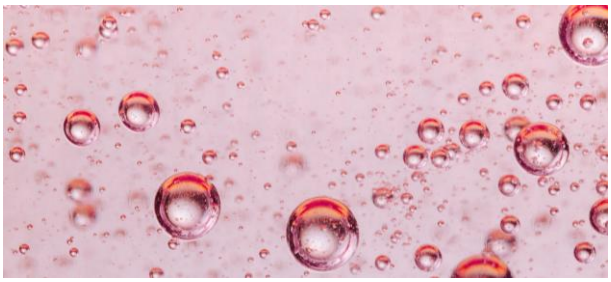
CJEU, Deity Shoes v Mundorama Confort & Stay Design, 18 December 2025, C-323/24

Case C-323/24 before the Court of Justice of the European Union (CJEU) concerns the protection of Community designs. The dispute is between Deity Shoes, S.L., the proprietor of several shoe designs, and *Mundorama Confort*, S.L. and Stay Design, S.L., who are challenging the validity of that protection. The Spanish court referred the matter to the CJEU to clarify the criteria applicable for determining whether a design is eligible for protection under European law.

The central issue concerned the level of creativity required, the impact of pre-existing elements and the influence of fashion trends on the individual character of designs.

The Court states that the protection of a design rests exclusively on its novelty and individual character, that is to say, that it produces a different impression on the informed user compared to earlier designs, without it being necessary to demonstrate a 'minimum degree of creation'.

It specifies that the customisation of pre-existing designs, including using options offered by a supplier, may result in a design eligible for protection provided that the overall impression differs from that of existing designs. Fashion trends do not constitute a constraint capable of limiting the designer's freedom and do not lower the threshold for individual character. The assessment must be made in light of the overall impression produced on the informed, observant user who is aware of trends in the sector, and not on the degree of originality or complexity.



Well-known trade mark and free-riding

EUIPO, Parfums Christian Dior v Dmytro Volodymyrovych Savenko, 13 January 2026, No 3 220 731

On 13 January 2026, the EUIPO issued a decision concerning the protection of well-known trade marks. It rejected in its entirety the application for registration of the trade mark 'ADORE Professional', filed for personal care products, on the grounds that it was likely to damage the reputation of the trade mark *J'ADORE*, owned by Parfums Christian Dior.

Parfums Christian Dior had opposed this application, citing both a likelihood of confusion and the reputation of its trademark within the European Union. The opposition was based on evidence of reputation, including market research, advertising campaigns and previous decisions confirming the reputation of *J'ADORE* in the perfume and beauty sectors.

The EUIPO found that the signs '*J'ADORE*' and '*ADORE* Professional' were sufficiently similar, particularly through the dominant element 'ADORE', to create an association in the mind of the relevant public. This similarity was deemed significant even though the goods were not identical, as it could result in an unfair advantage for the applicant of the new trademark.

The Division also emphasised that the use of 'ADORE Professional' could have capitalised on the prestige and luxury image of *J'ADORE*, which constitutes a case of trademark parasitism. The applicant's argument of good faith was not accepted.

NEWS INTELLECTUAL PROPERTY

Possibility of invoking parasitism for the first time on appeal

Court of Cassation, Commercial Chamber, Richemond International SA & Cartier v Tism, 18 March 2026, No. 24-17.016

In its judgment handed down on 18 March 2026, the Court of Cassation clarified the conditions under which an action for parasitism may be brought on appeal.

The High Court confirmed that it is possible to bring such an action even if it was not raised before the court of first instance, provided that it is based on the same facts as an initial infringement action. This decision thus offers rights holders a second opportunity when their infringement action fails.

The case pitted Panerai, whose rights are held by Richemont International—the owner of the rights to the 'Radiomir' watch, for which Cartier was responsible for distribution in France—against Tism, which marketed a competing watch named 'Augarde'. Officine Panerai and Cartier had initially brought an infringement action against Tism, but the Paris Commercial Court had invalidated the trademarks relied upon, thereby depriving the action of its legal basis. Faced with this situation, Officine Panerai sought to pursue Tism on the grounds of parasitism.

The Court of Cassation noted that an action for unfair competition differs from an action for infringement in that it is not based on the existence of exclusive rights, but on the improper exploitation of another's efforts or reputation. It also clarified that an action for unfair competition may be brought even if the products are not in direct competition on the market. Consequently, the Court ruled that the action for parasitism brought on appeal was admissible since it was based on the same facts as the initial action for infringement.

Clarification of the evidential requirements to oppose a request for cancellation

Court of Appeal of Aix-en-Provence, S.A.S. FRANCE TECHNOLOGIE ASCENSEURS v S.A.S. SODIMAS, 15 January 2026, No. 25/01456

In a judgment of 15 January 2026, the Court of Appeal of Aix-en-Provence upheld the order of the President of the Judicial Court of Marseille, who had refused to lift two seizures for software infringement carried out at the request of Sodimas at the premises of France Technologie Ascenseurs, concerning the 'Basicboard' software, suspected of infringing the 'NG240' software.

The Court noted that, when considering an application for the lifting of a seizure, it must first verify the grounds for the action, namely the scope of the software, the likelihood of originality, the date and the ownership of the rights. Secondly, it verifies the existence of evidence of infringement, taking into account the findings of the seizure itself.

In this case, it finds that Sodimas has established copyright in the NG240 software (developed by its employees) and a likelihood of originality (source code comparison), and that there remain serious indications of infringement: strong similarities between the NG240 and Basicboard manuals, an analysis of source codes showing numerous similarities, and the deletion of Basicboard codes from the France Technologie Ascenseurs server during the seizure.

Consequently, the application for the lifting of the injunction is dismissed and the order upheld.

NEWS MEDIA, ENTERTAINMENT AND ADVERTISING

Generative AI: a legal battle between US publishers and Google

Brief in support of the application to intervene, Cengage Group & Hachette Book Group, 20 February 2026

In the United States, the legal battle over the use of copyrighted works to train generative artificial intelligence systems is intensifying with a new front against Google.

On 15 January 2026, the Association of American Publishers (AAP) announced a new phase in the legal battle over generative artificial intelligence. Two major publishers, Cengage Group and Hachette Book Group, have filed a motion to intervene in the case *In re Google Generative AI Copyright Litigation*, which has so far been brought by a group of illustrators and writers.

Google opposed this motion in late January 2026, and the publishers responded or to this opposition on 5 February 2026, stating in particular that Google was misrepresenting the publishers' clear legal interests in this case and reiterating the importance and necessity of publishers standing alongside authors in the fight to protect copyright.

In this case before the US District Court for the Northern District of California, publishers Cengage Group and Hachette Book Group are seeking to be recognised as representatives of all rights holders whose works were allegedly used without authorisation to train Gemini, Google's generative artificial intelligence system. They emphasise the importance of their expertise in strengthening the legal and evidential aspects of this action. The complaint alleges that Google copied millions of copyright-protected works without compensation or licence, citing several representative titles in particular. The case is still pending before the Californian court.

NEWS MEDIA, ENTERTAINMENT AND ADVERTISING

Generative AI: a legal battle between US publishers and Google

This move forms part of a wider debate in the United States regarding the application of the fair use doctrine in the context of artificial intelligence. Beyond this specific action against Google, numerous similar lawsuits have been brought against various players in the technology sector for the unauthorised use of protected works in the training of AI models.

At the same time, in Europe for example, legislative initiatives aim to increase transparency regarding the works used in training datasets and to clarify the legal framework applicable to these technologies. Following an initial stage in the Committee on Legal Affairs, the 'Voss report' on generative artificial intelligence and copyright was adopted in plenary on 10 March 2026. With this vote, the European Parliament reaffirmed its support for legislative action aimed at effectively protecting copyright and related rights in the context of generative AI. MEPs are calling on the European Commission to propose targeted measures to address persistent imbalances and practices deemed unfair in this rapidly expanding market, particularly regarding the transparency of training datasets and respect for rights holders' rights.

In the same vein, attention is now turning to the follow-up the European Commission will give to this call, as well as to national parliamentary proceedings. In France, the Senate is due to examine shortly the bill introduced by Senator Laure Darcos in December 2025 concerning the presumption of use of cultural content by AI providers.

NEWS MEDIA, ENTERTAINMENT AND ADVERTISING

Whistleblowers and public defamation

Court of Cassation, Criminal Division, 13 January 2026, No. 24-86.344

In a judgment dated 13 January 2026, the Criminal Chamber of the Court of Cassation dismissed the appeal against a judgment convicting a former partner of public defamation against a private individual, following the publication of an article on LinkedIn questioning the management and practices of his former partner in a cosmetics company. The defendant invoked, in particular, his status as a whistleblower to justify his comments.

The Court clarified that Article 122-9 of the Criminal Code, relating to the justifying ground of whistleblowing, is not applicable in proceedings for defamation. However, where a defendant claims to have acted as a whistleblower, the judges must assess the defence of good faith in the light of Article 10 of the European Convention on Human Rights and, in particular, the Halet v. Luxembourg judgment. This analysis is based on several specific criteria, notably the possibility of using other means of reporting than public disclosure, the reasonably credible nature of the information disclosed, the absence of a personal gain, and the balancing of the public interest in the disclosed facts against any harm caused by their dissemination.

In this case, the Court of Cassation noted that, even though the information disclosed might have concerned a matter of public interest and arose in a context of professional conflict, the Court of Appeal had, in its discretion, found that the defendant's good faith was not established. The trial judges noted, in particular, the lack of sufficient verification of the serious allegations made, their dissemination in the context of a personal dispute, and an intention to harm the former partner. The evidence cited to establish the truth of the facts, which was produced after the disputed remarks were made, was not deemed decisive.

This judgment clarifies the relationship between the whistleblower regime and defamation law, affirming that the constitutional protection of freedom of expression may apply, but subject to strict scrutiny of good faith in light of the criteria established by European case law.

NEWS MEDIA, ENTERTAINMENT AND ADVERTISING

Retweets and parasitism

Paris Judicial Court, FRENCH RUGBY FEDERATION v MANSE INTERNATIONAL, 6 January 2026, No. 23/08148

On 6 January 2026, the Paris Judicial Court handed down a judgment in the case between the French Rugby Federation (FFR) and Manse International, the publisher of the 'Royaltiz' platform which allows users to invest in celebrities, particularly sportspeople.

The FFR accused the company of having, during the 2022 Six Nations Championship, conducted a digital marketing campaign closely linked to the French national rugby union team's matches, to promote the arrival of new international rugby players on the platform. The disputed actions consisted of retweeting numerous posts on social media from the accounts of rugby players and the FFR, as well as the use of a photograph taken after the France v England match on 19 March 2022. According to the federation, these posts constituted both an infringement of its exclusive right to exploit the sporting competitions it organises and parasitic conduct.

In its judgment, the Court found a breach of the exclusive right to exploit the sporting event in relation to the unauthorised use, for commercial purposes, of a photograph taken during a match organised by the FFR, which holds the rights by virtue of its role as organiser.

The judges also characterised the conduct as parasitic, finding that the repetition and regularity of the posts demonstrated an intention to capitalise on the reputation of the French national rugby union team in order to derive an economic advantage, including through simple 'retweets' for which the author is liable.

However, the court dismissed the FFR's claim for €280,000 in damages, considering that the amount of the alleged loss was not sufficiently justified. The removal of the disputed posts was ordered, subject to a penalty of €100 per day of delay for 90 days, following a one-month period after the judgment was served.

NEWS MEDIA, ENTERTAINMENT AND ADVERTISING

Defamation and unfair competition

Court of Cassation, Commercial Chamber, Full Motion Video Systems (FMVS) v Procomm-MMC, 7 January 2026, No. 24-18.085

On 7 January 2026, the Commercial Chamber of the Court of Cassation delivered a judgment in a dispute between two competing companies in the professional audiovisual technology sector: Procomm-MMC, specialising in communication systems and audiovisual solutions, and Full Motion Video Systems (FMVS), a video and multimedia solutions integrator.

The case concerned allegations of unfair competition following the departure of an employee from Procomm-MMC, who had become a shareholder and director of FMVS. Procomm-MMC accused FMVS and the former employee of misappropriating and using confidential information, as well as engaging in acts of disparagement against its business, citing internal emails and the alleged poaching of customers.

In this judgment, the Court of Cassation reiterates that disparagement constitutes an act of unfair competition only if it is made public. However, comments contained exclusively in internal emails, without being disclosed to third parties, do not satisfy this condition.

It also specifies that compensation for material damage requires concrete and quantified proof of its existence and extent. The award of damages cannot be based on an insufficiently substantiated assessment of the alleged economic loss.

The appeal judgment is therefore partially quashed. With this decision, the Court thus reaffirms the strict requirements governing the classification of acts of unfair competition and the proof of compensable damage.

NEWS MEDIA, ENTERTAINMENT AND ADVERTISING

Opinion of the Competition Authority

Competition Authority, Opinion 26-A-02, 18 February 2026

The Competition Authority initiated an ex officio investigation to examine the functioning of competition in the online video content creation sector in France, which is now part of the audiovisual industry. It analyses the market structure, the evolution of the legal framework with the implementation of the DMA, DSA and the 'influencers' law, and the role of platforms, creators, agencies and advertisers.

The Authority observes rapid growth in the number of creators on a few key platforms. These platforms wield significant market power, enabling them to unilaterally set the rules for revenue sharing and the conditions for content visibility. Barriers to entry for new platforms and the difficulty creators face in adapting to multiple environments reinforce this imbalance.

The Authority is also examining the impact of generative artificial intelligence on the sector. It is analysing how these technologies are changing production, distribution and competition among creators, in particular by facilitating the automated creation of content and influencing market conditions.

Following its analysis, the Authority has made seven recommendations aimed at improving the balance of economic relations within the sector:

- Training content creators through professional organisations so that they are aware of their rights in their dealings with commercial partners;
- Operators of generative artificial intelligence systems and online platforms should identify content generated by generative artificial intelligence, insofar as this may constitute a factor in competition between content;
- Ensure fair and transparent revenue sharing by platforms between themselves and content creators;
- Increasing the transparency of platforms regarding the implementation of their recommendation algorithms, as well as changes and updates to how the algorithms operate;
- Greater vigilance on the part of platforms regarding the transparency of measures to moderate hosted content;
- Provide creators, regardless of their profile, with genuine human and material support from platforms to help them understand drops in visibility or sanctions;
- Prevent any unfair use of recommendation or moderation algorithms by platforms that could constitute an abuse of a dominant position and seriously undermine competition and content diversity (such as promoting the most profitable content or content produced by artificial intelligence).

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