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RECHTSANWÄLTE UND FACHANWÄLTE  
FÜR GEWERBLICHEN RECHTSSCHUTZ

***Trademark Rights and the Individual –  
New rules after ECJ's Blomqvist v. Rolex  
decision?***

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## Rolex v. Blomqvist – 1/2



- Martin Blomqvist, Danish citizen, orders Rolex watch from Chinese online shop.
- The order was placed and paid for through the English website of the seller.
- The seller sent the watch from Hong Kong by post
- On its arrival in Denmark, the parcel is inspected by the customs authorities: they suspend customs clearance, suspecting that it was counterfeit (and that it infringed copyright), and told both Rolex and Blomqvist accordingly.

## Rolex v. Blomqvist – 2/2



- Rolex, pursuant to Council Regulation (EC) No 1383/2003 of 22 July 2003, requests suspension of customs clearance. Rolex also requests Mr Blomqvist's consent to have the watch destroyed, but to no avail.
- Rolex takes Mr Blomqvist to court in Denmark (Sø- og Handelsretten, i.e. Maritime and Commercial Court) and wins
- Mr Blomqvist appeals to the Højesteret, the Danish Supreme Court.

# Blomqvist v. Rolex

ECJ C-98/13



- Højesteret questions IP violation in Denmark, refers case to the ECJ for preliminary ruling pursuant to Art. 367 TFEU (ex art. 234 TEC)
- Questions to consider include whether it is TM infringement if individual procures counterfeit from a seller residing outside of the zone of protection of the trademark for private use



## Issue



- Whether a trademark is infringed when offered on a website was determined on a case-by-case basis, primarily looking at, *inter alia*,
- whether the website targeted the consumer's jurisdiction (language, currency, advertising etc.), whereas
- mere accessibility insufficient (L'Oréal, C-324/09).



## ECJ, Blomqvist v. Rolex, C-99/13



Council Regulation ... 1383/2003 ... must be interpreted as meaning that the **holder of an IP right** over goods sold to a person residing in the territory of a Member State through a website in a non-member country **enjoys the protection afforded** to that holder by that regulation **at the time when the goods enter the territory of that Member State** merely by virtue of the acquisition of those goods. It is **not necessary**, in addition, for the goods at issue to have been the subject, prior to the sale, of an **offer for sale or advertising targeting consumers of that State**.

## Take aways / Discussion points



- Online sale to EU customer = sale „into EU“ = infringement
- Private sale by tourist no sale „into EU“, i.e. website purchase viewed stricter => appropriate ?
- Websites do not need to target consumers, but isn't shipping to their home targeting? At least not clear: L'Oréal (C-324/09) says mere accessibility insufficient, but highlights information regarding countries where product is shipped to.

A good speaker is done  
talking before the  
audience is done listening





**THANK YOU VERY MUCH**

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