

## FRENCH COURT FINDS THAT ALIBABA IS A SITE EDITOR HELD TO MONITOR THE LICIT NATURE OF ALL THE INFORMATION PUBLISHED THROUGHOUT ITS WEBSITE

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■ In a decision rendered within summary proceedings on November 21, 2017, the President of the High Court of Justice of Paris has ruled that the **ALIBABA entities cannot benefit from the limited liability granted to internet service providers** (hosts) by the EC Directive 2000/31 but must be considered as editors, thus liable for the content posted on the platform, in consideration of its **active role** in the managing of such platform.

According to the Court, such active role of ALIBABA on the content of the website results in particular from the “premium” subscriptions offered to “big international groups” by ALIBABA (the income from which represents 27% of the global income of the ALIBABA group) as these subscriptions lead ALIBABA to favor certain companies, in particular through the ranking of offers and the possibility for the subscribers to create personalized shops. As a consequence, ALIBABA is influencing the content of the virtual shops and therefore has the status of an editor.

The Court also underlined the fact that ALIBABA states that it has enacted a policy to protect IP rights by which it reserves the right to withdraw infringing products, which implies that it exercises a prior control on the content of the offers published on its platform.

**As a consequence of the above, the Court states that ALIBABA is held to monitor the licit nature of the information posted on all of the website.**

In this case, ALIBABA has received an injunction from the Court to (1), cease all use and reproduction of the LAFUMA trademarks on its platform and (2) to take all appropriate blocking measures against the publishing of ads which infringe upon LAFUMA’s IP rights under a penalty of 4.000€.

The Court finally specifies that the blocking measure shall remain applicable until a decision is rendered on the merits of the case or until the parties have reached an agreement.

The French Court has thus taken a strong stance against ALIBABA in the frame of this summary proceeding; it remains to be seen whether this decision will be confirmed on the merits.