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May sending warning letters to wholesalers be considered an act of unfair competition?

Miquel Montaña (Clifford Chance) · Monday, September 13th, 2010

On 12 July 2010 the Supreme Court handed down a long-awaited judgment, dismissing a complaint filed by a manufacturer of generic medicaments against a patent owner that had threatened more than one hundred wholesalers with patent infringement actions. The facts of the case go back to 2003, when a Court of First Instance of Madrid rejected an application for a preliminary injunction sought by the patentee. This then sent warning letters to the wholesalers highlighting that this decision was not a “green light” to infringe and threatening them with patent infringement actions. This prompted the generics company to file a legal action against the patentee alleging that the latter was committing acts of unfair competition. The action was dismissed by the Court of First Instance and then by the Court of Appeal of Madrid. The Supreme Court, in the aforementioned judgment of 12 July 2010 has confirmed the judgment of the Court of Appeal after noting that this type of warning letter cannot justify actions for unfair competition when its content is accurate.

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