

FOOTBALL ASSOCIATION PREMIER LEAGUE LIMITED V LUXTON [2016] EWCA CIV 1097

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Sports Alert

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Sports rights holders and sports broadcasters will be reassured as a result of a recent Court of Appeal ("CoA") decision, which prevented a pub owner in Swansea from using a foreign-purchased domestic decoder card to show live Premier League football matches in his pub. The judgment is of particular importance, as in reaching its decision the CoA dismissed the defence put forward by the pub owner that the action brought by Football Association Premier League Limited ("FAPL") was in reality an illicit attempt to stop people in the UK from using foreign-purchased decoder cards.

This note assess the implications of the CoA judgment for sports rights holders and broadcasters, who aim to protect their media rights from copyright infringements through unauthorised uses of decoder cards.

BACKGROUND

The case arises from an action for copyright infringement brought by FAPL against a pub owner, Mr Luxton. Mr Luxton had purchased and used a domestic satellite decoder card from Danish broadcaster Viasat to show FAPL football coverage in his pub. Viasat was one of FAPL's licensed foreign broadcasters and the subscription incorporated in the card purchased by Mr Luxton was restricted to domestic use only. FAPL argued that Mr Luxton infringed its copyright materials, by using a decoder card authorised only for domestic use in commercial premises.

Mr Luxton raised the defence that the use of a domestic card at the premises of his pub was the consequence of unlawful arrangements between FAPL and its broadcasters (exclusive licensees) to restrict the supply of commercial cards outside the territory in which each broadcaster operated. These arrangements, Mr Luxton argued, had the effect of partitioning national markets and were therefore in breach of competition law. In January 2014 the High Court dismissed Mr Luxton's competition defence and ruled in favour of FAPL. Mr Luxton appealed the decision.

COA RULING

The CoA agreed with the High Court's decision that the competition defence raised by Mr Luxton was not valid, as there was not a sufficient link as a matter of law between FAPL's alleged unlawful practices and Mr Luxton's infringement of the FAPL's copyright, and dismissed Mr Luxton's appeal.

In reaching this conclusion, the CoA first noted that the right relied upon by FAPL to prevent the unauthorised communication of its copyright material to the public arose from the fact that the card being used was only

authorised for use in domestic premises. That right did not depend in any way on the card being used by Mr Luxton being a "foreign" card and, therefore, FAPL's right was not in breach of competition law, precisely because it was not a right which depended in any way on the territory in which the use of the card was being made.

IMPLICATIONS FOR SPORTS RIGHTS HOLDERS AND BROADCASTERS

The CoA judgment does not overturn the finding in Football Association Premier League v QC Leisure (for a report on that judgment click [here](#)), which found that the reception of satellite broadcasts of sports events across the EU, and the import, sale or use of foreign decoder cards to achieve this, cannot be prohibited by national law, or by a system of exclusive licensing. Accordingly, sports rights holders will still be unable to prevent, outright, the use and importation of foreign decoder cards in order to broadcast or view live sport.

The judgment is however important, as it reinforces the key distinction between lawful enforcement of IP rights from any alleged anti-competitive agreements, by finding that the use of a domestic decoder card in a commercial setting amounts to an infringement of the rights holder's copyright, regardless of whether that card was purchased in the UK or abroad. This means that sports rights holders are, in principle, allowed to restrict the use of satellite decoder cards to commercial or domestic premises and to lawfully enforce their IP rights on that basis without breaching competition law.

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