

ARTICLE I

Shein v Temu: High Court declines to find platform liability for copyright infringement

Overview:

The High Court has dismissed Shein's copyright claims against Temu, relating to product listing photographs. The Court found that Temu had not committed any acts of copyright infringement but, even if it had, its role in hosting merchant-uploaded photos was "technical, automatic and passive," entitling it to rely upon the hosting defence.

Full article:

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In brief:

- The High Court has dismissed all of Shein's copyright infringement claims against Temu, holding that Temu did not commit any acts of copyright infringement (nor authorise any acts) in relation to product listing photographs uploaded to the Temu UK website by third party merchants.
- Even if the court had found Temu to have committed acts of infringement, it would have been entitled to rely on the hosting defence under Regulation 19 of the E-Commerce Regulations 2002.
- The decision demonstrates the challenges in establishing platform liability, with the judge finding Temu's role in relation to the use of the disputed photographs to be "of a mere technical, automatic and passive nature".
- The case also emphasises the risks of large-scale intellectual property enforcement without a verified chain of title, and highlights that specific, precise knowledge of infringing content is an important element to defeat the hosting defence.

Introduction

Landmark rulings from the CJEU in [*Christian Louboutin v Amazon*](#) to the English Court of Appeal in [*Montres Breguet \(Swatch\) v Samsung*](#) have demonstrated that rightsholders can enforce against online intermediary platforms on the basis that, in certain circumstances, the platform operators are responsible for the acts of third parties occurring on the platform.

However, the recent High Court's decision in [*Roadget Business Pte Ltd and Shein Distribution UK Ltd v Whaleco UK Limited \[2026\] EWHC 2165 \(Ch\)*](#) (Shein v Temu), highlights the evidential hurdles that rightsholders face when seeking to enforce their IP against platforms.

Background

Shein and Temu compete in the online fast-fashion sector. The case concerned products supplied to Shein under its ODM (original design manufacturer) model, under which suppliers create initial product designs for Shein. All product listings on the Shein website include photographs of the relevant product, taken either by a Shein employee, an agency or the supplier of the product. Due to the way in which Shein's procurement processes work, its suppliers often have unsold stock which they tend

to clear through other sites, including Temu. Until Shein intervened to put a stop to the practice, suppliers listing these products on the Temu website used the same photographs that had been used on the Shein website.

Shein alleged that Temu had infringed its copyright under the Copyright, Designs and Patents Act 1988 (CDPA) by using the relevant product photographs on Temu's UK website. Temu denied infringement and also brought a counterclaim alleging that Shein had violated competition law, and for damages as a result of a significant number of product listings that were taken down from the Temu site pursuant to orders made at an earlier stage of the case. The competition aspect of the dispute was transferred to the Competition Appeal Tribunal and is scheduled to be heard in 2027.

In her [judgment](#) of 13 August 2026, Mrs Justice Bacon dismissed all of Shein's copyright claims and upheld Temu's counterclaim for damages.

Ownership and chain of title

Shein's claim initially targeted 2,559 product listings across employee, supplier, and agency photographs. To manage the litigation, the court directed a trial by sample. However, due to defects in the documentary chain of title for third-party photographs, by the time of trial, only five samples remained: four employee photographs and one single supplier photograph (the Strawberry Nightdress). This became the focal point of a detailed examination of supply-chain dynamics, Chinese contract law, and copyright assignment.

The Strawberry Nightdress had been supplied to Shein by a merchant that had commissioned photographs from a freelance photographer. Because the photographer retained first ownership and had no knowledge the photos were destined specifically for Shein, Shein was left with no copyright title or enforceable rights of action under its initial supplier agreement, other than a non-exclusive licence to use the photographs.

Shein's claim in relation to the Strawberry Nightdress photograph ultimately failed on consent. After Shein delisted the dress due to slow sales, the merchant sought to clear surplus "dead stock" by arranging to sell the items on Temu, amounting to consent to the photos being uploaded.

No infringement through authorisation of reproduction or communication to the public

Shein's claims on the remaining four employee works failed on all of its asserted grounds under the CDPA:

- Shein ultimately did not pursue its claim against Temu for reproduction of the photographs on its website, because such acts of infringement took place outside the jurisdiction, given that Temu's servers are located outside the UK.
- Shein argued that Temu had authorised its users to reproduce the photographs by viewing them on their web browser, which led to copies being made in the RAM of the device used to view product listings. However, Temu was able to rely upon the temporary copies defence in the CDPA, meeting all of the criteria for this defence to apply. In particular, the court concluded that temporary copying inherent in users viewing photos on the Temu website had no independent economic significance (which had to be assessed by reference to the user of the site). In any event, merely providing a retail platform which enabled merchants to upload copyright images and for users to view them, did not constitute 'authorisation' of any infringement on this ground.
- The claim of infringement on the ground that the works had been communicated to the public was also dismissed, as there was no deliberate intervention by Temu with the aim of providing

the public with access to the protected works. For Shein to succeed in this claim, Temu was required to have knowledge that the relevant content was being made available unlawfully. However, whilst it was no doubt generally aware that some photos uploaded by merchants may infringe copyright, its platform did not incorporate tools specifically intended to facilitate uploading of infringing images, and Temu did not encourage this. In fact, it contractually prohibited merchants from doing so and maintained an IP complaints process which enabled notification and takedown to take place.

- For similar reasons, the court dismissed Shein's secondary infringement claim which was based on using the photos to advertise products on the Temu website. Knowledge in the abstract that some merchants might post infringing content was not enough. Temu had no reason to believe the relevant listings were infringing before notification, and it removed them expeditiously upon receiving court orders.

Hosting defence

Whilst these findings meant it was not necessary to consider the availability of the hosting defence, the judge addressed it for completeness, thus providing useful guidance on how the defence may be interpreted in future cases.

Regulation 19 of the E-Commerce Regulations 2002 provides that a platform storing information for a recipient of their service is not liable in damages for storing infringing content, provided its activities are of a "mere technical, automatic and passive nature", it lacked actual knowledge of unlawful content, it acted expeditiously to remove it once notified, and did not control the person who supplied it.

The English courts have previously clarified when the hosting defence will not be available, by identifying circumstances in which a platform's activities are treated as active rather than neutral. For example, in *Montres Breguet v Samsung*, the Court of Appeal held that Samsung's acts including pre-listing IP infringement review, and active encouragement of app developers, took it outside the hosting defence as these acts were "*active, and gave it knowledge of and control over that content*".

Shein ran similar arguments against Temu, pointing to its control over pricing and product listings, management of promotions, image-editing tools, and the offer of delivery, customer service and warehousing facilities, as evidence it was a "hybrid operation" rather than a passive marketplace. However, the judge rejected these arguments, holding that the relevant question was not an assessment of a platform's character in the abstract, but whether it played an active role in relation to the specific content in dispute.

Here, the photographs were uploaded via Temu's standard template, and were subject only to an automatic technical check, with optional editing tools. Temu's conduct was therefore "*of a mere technical, automatic and passive nature*".

Shein liable for wrongful takedowns

Temu also advanced a counterclaim seeking damages under the cross-undertaking in damages that Shein had given when it obtained orders earlier in the dispute requiring Temu to take down certain product listings. Temu argued that Shein's notifications wrongly caused the removal of several product listings.

The judge agreed that removing the notified images inevitably meant removing the listings (since Temu's platform does not allow a listing without a photograph) and that this was not only reasonable but practically inevitable. It was also unrealistic to suggest that Temu could have mitigated any loss by alerting merchants to obtain replacement photographs, within the two-day deadline for removal of

notified allegedly infringing photographs. As a result, Temu's counterclaim succeeded, with the amount of damages to be determined.

Takeaways for rightsholders and platforms

Shein v Temu provides helpful guidance on when a platform may be liable, building on the guidance in *Montres Breguet*, offering practical examples of platform activity that may meet or not meet the criteria for the 'safe-harbour' hosting defence.

Due to the nature of the dispute, Shein were only able to rely on copyright infringement allegations and the outcome may have differed if other IP rights were available to them. It is worth rightsholders considering their entire portfolio and how best to use it to take action. In addition, rightsholders wishing to take action against a platform will likely require evidence of the platform's active involvement in the infringing listings or a failure to act once put on notice.

Finally, there is a clear message for rightsholders regarding chain of title. Those running large-scale takedown campaigns need precise evidence (including proof of their own ownership) to fix a platform with the requisite knowledge. A scattergun approach is unlikely to succeed, and may also expose a rightsholder to a successful damages action for wrongful takedowns.

Authors: [Cassandra Hill, Partner](#), and [Mark Dean, Associate](#), Mishcon de Reya LLP

Mishcon de Reya LLP