

**Report Q155**

in the name of the Hungarian Group  
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**Conflicts between trademarks and company names and business names**

1.a) i) and ii) The Hungarian Civil Code (hereinafter referred to as CC) contains the basic provisions for the protection of company and business names. Section 77(3) of CC sets forth that the name of a legal entity shall differ from those registered earlier if the activity of the latter entity covers a similar scope on the same fields of activity.

On the basis of Section 77(4) of CC, violation of the right of denomination occurs especially if any party unlawfully uses the name of a third party, or unlawfully uses a similar name.

1.b) i) The acquisition of the right to use a company name, representing the company as an independent legal entity, effectuates by the registration of the company and the company name. There is no register for business names. Their protection is based on prior use.

1.b) ii) The denomination of companies is regulated by Section 15 of Act CXLV of 1997 on the Registration of Companies, Public Company Information and Court Registration Proceedings. Inasmuch as the company name does not comply with the subsequent criteria, the Company Court may refuse the registration.

- The company name shall represent the basic activity and actual form of the company, it shall not be contrary to these.
- The company name may contain a lead word; a lead word is an expression or abbreviation which has initial position in the company name and facilitates the identification of the company as well as its distinction from any other companies of identical or similar activity.
- The company's short name consists of the lead word and the description of the form of the company.
- The company's name may contain the name(s) of the owner(s) or the member(s) of the company. In case of Hungarian affiliates of foreign companies or direct business representation, the name of the original entity shall be present in the company name.

- The company name, except for the lead word, may only contain Hungarian words according to the rules of Hungarian spelling. Only the lead word and the description of the form of the company may be abbreviations.
- Names of outstanding historical personalities may only be used in company names with the approval of the Hungarian Academy of Sciences, denominations concerning a third party's legal rights may only be used with the authorization of the proprietor of the rights.
- The company name and/or the abbreviated name shall be clearly discernible from names of other companies conducting the same business in Hungary. If two or more companies have the same name, the right of use is granted to the party which filed its application for registration earlier. This provision does not concern the right of owners and members of companies to use their names in the company name as a lead word.

From the viewpoint of the present Question, exclusiveness, set forth in the previous paragraph, bears primary significance. The principle of exclusiveness of company denominations means that the company names shall differ from the name of any other company to an extent that any possibility of confusion with other companies can be excluded. This regulation, however, only concerns companies registered and functioning in Hungary, and only in case the main fields of activity, obligatorily stated in the company name, coincide.

However, attention shall be called upon the fact that the criteria applied by the Company Court in proceedings at the adjudication of the suitability of company names, differ from those applied by other Courts in trademark lawsuits. According to current legal practice, the mere fact that the defendant did not violate regulations of company registration proceedings during the registration of the company name at the Company Court does not mean that he cannot have committed trademark infringement. In lawsuits initiated for the prohibition of the use of a given company name on grounds of trademark infringement, it is not an excuse that the Company Court had accepted the given company name according to the regulations of company registration proceedings.

- 1.c) i) On the basis of the Act XI of 1997 on the Protection of Trademarks and Geographical Indications (hereinafter referred to as TA), Section 5(1)(a), the trademark may be cancelled if it conflicts with a company name registered earlier. Section 5(1)(a) of TA sets forth that a mark shall not be granted trademark protection if it would violate a third party's personal rights, especially concerning name and representation.
- 1.c) ii) The trademark may be cancelled on the basis of Section 5(2)(a) of TA, if it conflicts with a non-registered business name., Section 5(2)(a) of TA, sets forth that regarding similar goods or services, a mark shall not be granted trademark protection if it has been genuinely used by a third party in Hungary even without trademark registration, provided that the use of the mark without the authorization of the prior user would be contrary to law. On these legal grounds, on the basis of

Section 58 of TA an observation may be lodged at the Hungarian Patent Office, cf. Section 77(4) of TA.

- 1.d) and e) Use of a company name and/or a business name can be forbidden on grounds of an earlier trademark application or registration, provided that the specification of goods and services of the trademark covers the field of activity where the trade name is (or is intended to be) used, or even in case of different field of activity, provided that the trademark enjoys a reputation on the Hungarian market and the use of the trade name is (would be) detrimental to the distinctive character or reputation of the trademark or takes (would take) unfair advantage thereof.
- 1.e) Please see the answer under 1.d) and e).
- 1.f) On the basis of Section 15(1) of TA, the owner of the trademark may not prohibit any third party from using its own name during its business activity, in compliance with the rules of fair business practices.

In the company name the name(s) of the owner(s) or member(s) of the company may be present. In case of Hungarian affiliates of foreign companies or direct business representation, the name of the original foreign entity shall be present in the company name. The right of the owner(s) or members of the company to use their names in the company name as a lead word is an exception to the principle of exclusiveness. Yet attention shall be called upon the fact that the grounds of refusal applied by the Company Court during its proceedings at the adjudication of the suitability of company names differ from the criteria applied by other Courts in lawsuits initiated for the violation of personal rights. The mere fact that the defendant did not violate regulations of company registration proceedings during the registration of the company name at the Company Court does not mean that another person could not successfully apply for the prohibition of the use of a given name on the basis of the provisions of the CC regulating the violation of personal rights concerning the use of name and representation. In this case, it is no excuse that the Company Court accepted the given company name according to the regulations of company proceedings.

Yet it is to be recalled, that if somebody uses his family name as company or business name, the name qualifies as industrial property of the enterprise, and the person may not request later the prohibition of its use by the enterprise.

- 1.g)i), ii), iii) There is no connection between the Company Court, dealing with the registration of companies, and the Hungarian Patent Office, keeping the Trademark Register, non of these authorities is obliged to check the Register of the other.

However, this does not exclude the possibility of any party to make an observation in the trademark registration proceedings to prohibit the registration of a mark identical with or similar to its own earlier company name.

The trademark owners are not given such possibility of observation in company registration proceedings.

- 1.h) i) The Company Courts authorizing the company names do not deal with such conflicts.
- 1.h) ii) There are no opposition proceedings, observations are dealt with by the Hungarian Patent Office.
- 1.h)iii) The Hungarian Patent Office, the Metropolitan Court and the county courts.
- 1.i) The territorial effect of the protection of a business name may be country-wide. Provided however that a non-registered business name is not known country-wide and it is actually used only in a restricted territory, it is questionable whether it can be a relative ground for refusal or cancellation of a later trademark application or registration, respectively, and it is also uncertain if the registration and use of a later company name could be forbidden on such a ground.
- 1.j) -
- 2.a) According to the provisions of TA, on the grounds of trademark infringement the trademark owner may prohibit the use of identical or similar company or business names.
- 2.b) Section 5(1)(a) and Section 5(2)(a) of TA are to be applied.  
Section 5(1)(a): A mark shall not be granted trademark protection if it violates any third party's earlier personal rights (especially concerning name and representation.  
  
Section 5(2)(a): Regarding identical or similar goods or services, a mark shall not be granted trademark protection if it has been in actual use by a third party in Hungary without registration if the use of the mark without the authorization of the earlier user would be contrary to law.
- 2.c) The Register of Companies kept by the Company Courts contains the company names. Business names shall not be registered.
- 2.d) I) i) The Company Court examines it.  
2.d) I) ii) The Company Court does not examine it.  
2.d) I) iii) The Company Court does not examine it.  
2.d) I) iv) The Company Court does not examine it.
- 2.d) II) Yes.
- 2.d) III) i) The Hungarian Patent Office examines confusing similarity during the registration and in trademark cancellation proceedings in case of conflict between trademarks and company names according to the provisions of TA (absolute and relative grounds for refusal).
- 2.d) III) ii) A real demand emerges that the register of trademarks and the data base of the Company Courts should be connected, however, it is not the case currently.
- 2.e) i) and ii) On the ground of an earlier trademark, the owner of the application or registration may demand prohibition of other parties from using an identical or

confusingly similar company or business name and vice versa, an earlier company or business name which is actually used in Hungary may be a ground for refusal or cancellation of a later trademark application or registration, respectively. The above provisions do not depend on whether or not the company or business name is registered.

- 2.f) According to the TA, the identity or similarity of goods or services bears primary significance. Trademark protection only protects trademarks against the use of marks identical with or similar to the trademark with regard to goods of services identical with or similar to those appearing in the specification of the given trademark registration.

While trademark protection generally relates to specific of goods and services, the system of domain names incorporates all types of goods and services. Therefore, as identical or similar trademarks covering different goods or services generally do not conflict, a domain name can only belong to one applicant under a given top-level.

However, present provisions grant special protection to trademarks of good reputation in Hungary. On these grounds the owner of the trademark may initiate proceedings against any party which uses a mark (domain name included) during its business activity without the owner's authorization which is identical with or similar to the trademark, in relation to goods or services not identical with or similar to those occurring in the specification of the trademark, provided that the trademark enjoys a good reputation in Hungary, moreover, if the use of the mark would be detrimental to the distinctive character or reputation of the trademark, or take unfair advantage thereof.

It obviously follows from the above provisions that business use of a domain name identical with or similar to any third party's trademark without the owner's authorization may qualify as trademark infringement, especially if the mark is used in business correspondence related to electronic trade or in Internet advertising activity. Similarly, it may qualify as trademark infringement if the competitor's consumers are intended to be seduced with the unauthorized use of a domain name containing his trademark.

Concerning the conflict of domain names there are no such carefully defined criteria applicable in case of a conflict. Moreover, because of the specific situation of domain names detailed above, conflict could only occur in case of domain names registered on different levels. However, criteria applicable in conflicts between trademarks could be applicable in respect of conflicts between domain names as well.

## **Summary**

The general background law for the protection of both the trademarks and the company and business names is the Civil Code, Chapter VII: Personal Rights and Intellectual Property Rights. Provisions relevant to the protection both of trademarks and business

names are also provided by the Unfair Competition Law. The special provisions for the protection of company and business names are certainly independent from the Trademark Law. The Company Law and the provisions of company registration provide guarantee for the exclusivity of a registered company name in a specific field of activity. The protection for non-registered business names is provided by the Civil Code and the Unfair Competition Law.

Though there is no direct communication between the Company Register and the Trademark Register, there are applicable legal actions and competent forums (the Patent Office and the competent Courts) for the enforcement of the protection of earlier rights deriving from a trademark against the registration and use of confusingly similar company/business names, and vice versa.

### **Résumé**

En ce qui concerne la protection des marques et des noms commerciaux, chacune d'eux se fonde sur le Code Civil, Chapitre VII: Droits personnels et propriété intellectuelle. La Loi sur la Concurrence prévoit également des règles sur ce sujet. La Loi sur les Sociétés et les règles sur l'enregistrement des noms commerciaux assurent l'exclusivité pour les noms enregistrés concernant leur champ d'application. En ce qui concerne la protection des noms commerciaux non-enregistrés, la protection de ceux-ci est assurée par le Code Civil et la Loi sur la Concurrence.

Quoiqu'il n'y a pas de communication directe entre le registre des noms commerciaux et le registre des marques, il existe la possibilité d'actions juridiques, ainsi que celle des juridictions (l'Office de brevets, des cours) pour assurer la protection en faveur des droits antérieurs concernant les conflits entre les marques et les noms commerciaux.

### **Zusammenfassung**

Die Hintergrundsrechtsnorm für die Marken und Handelsnamen ist das Kapitel VII des Bürgerlichen Gesetzbuches. Das Wettbewerbsrecht enthält auch relevante Anordnungen, die sich sowohl auf Marken, wie auf Handelsnamen beziehen. Die speziellen Rechtsnormen, die die Handelsnamen und Geschäftsnamen schützen, sind jedoch unabhängig von dem Markenrecht. Das Zivilrecht und das Firmenrecht sichern die Ausschließlichkeit der Firmennamen von auf einem bestimmten Gebiet tätigen Firmen. Die nicht eingetragenen Handelsnamen sind durch das Zivilrecht und das Wettbewerbsrecht geschützt.

Obwohl es besteht keine direkte Kommunikation zwischen dem Markenregister und dem Firmenregister, stehen entsprechende rechtliche Mittel und Jurisdiktion (Patentamt und zuständige Gerichte) für die Rechtsverfolgung von Rechten, die aus früheren Marken stammen, gegen die Benutzung und Registrierung von irreführenden Firmennamen und auch umgekehrt zur Verfügung.