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Report Q195

in the name of the Hungarian Group
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Limitations of the Trademark Protection

Questions

Note: the following topics are **not** to be covered in the Group answers:

- Exhaustion
- Limitations on trademark rights by competition law
- Limitations on trademark rights by the right to freedom of expression
- Comparative advertising
- Acquiescence.

I) Analysis of current law and case law

The Groups are invited to answer the following questions under their national laws:

- 1) *Are there statutory limitations of trademark rights in your trademark law? If so, which ones? If not, have similar concepts been developed in case law? (Please only briefly list the limitations here; more detailed explanations will be required below).*

Act No. XI of 1997 on the Protection of Trademarks and Geographical Indications (the "Trademark Act") transposed Council Directive No. 89/104/EEC on the approximation of the laws of the Member States relating to trade marks (the "Trademark Directive") into Hungarian law. During its formulation, the codifier also took into account Council Regulation No. 40/94/EC on Community trade marks.

According to the European Court of Justice (the "ECJ"), the Trademark Directive provides a full harmonization regarding Article 5 that determines the scope of the exclusive right conferred by the protection (paragraphs 25 and 29 of the judgment of the ECJ in the Silhouette case under No. C-355/96; paragraph 39 of the judgment in the joined cases of Zino Davidoff and Levi Strauss & Co. under case No. C-414/99 and C-416/99).

Sections 15 to 18 of the Trademark Act determine, in a broad sense, the following limitations of the trademark protection:

- use of own name or address;
- use of a sign relating to a characteristic of the goods or service;
- indication of the purpose of the goods or service, in particular in the case of accessories or spare parts;
- exhaustion of trademark protection;
- acquiescence;
- failure to use the trademark.

Act No. LVIII of 1997 on Business Advertising Activities (the "Advertisement Act") provides a possibility for using the competitor's trademark in comparative advertising which can also be regarded as a limitation.

Current judiciary practice has not provided additional cases.

The scope of Q195 as determined by the Working Guideline excludes the majority of said limitations from this analysis. Accordingly, these limitations are not dealt with in our report.

- 2) *If descriptive use defences are recognised under your trademark law, what is descriptive use and what types of descriptive use defences are recognised? (Please only briefly list the types of descriptive use defences here; more detailed explanations will be required below)*

According to Subsection 15(1) of the Trademark Act:

"On the basis of trademark protection, the proprietor of a trademark may not prevent a third party from using the following in its business activities, in accordance with honest business practices:

- a) own name or address;
- b) indications of the type, quality, quantity, intended purpose, value, geographical origin, time of production or fulfillment, or any other characteristic of the goods or service;
- c) the trademark, to the extent that such use is required to indicate the intended purpose of the goods or service, in particular in the case of accessories or spare parts."

Accordingly, the descriptive use defenses are in accordance with Community law.

- 3) *Is use of one's own name permissible under your trademark law? If so, under which circumstances? Specifically, may anyone use his or her name as a trademark?*

Under Subsection 15(1) of the Trademark Act, trademark protection shall not entitle the holder to prohibit a third party from using in the course of trade and in accordance with the requirements of fair trade practice [...] (a) his own name or address. Under Subsection 15(2) of the same Act, on the basis of Subsection 15(1)(a), only a natural person may invoke his own name or address against the holder of the trademark.

According to Subsection 5(1)(a) of the Trademark Act, a sign may not be granted trademark protection if it would infringe earlier personal rights of others, in particular a right in a name or of personal portrayal.

From the foregoing provisions, Section 5 - being a relative ground for refusal of registration - serves as preliminary obstacle, while Section 15 - referring to the possibility of using a name against a registered trademark - constitutes a limitation of the exclusive right. The provisions related to the above data regarding natural persons shall be applied in line with the civil law rules applicable to the bearing of names.

Pursuant to Subsection 77(1) of the Act No. IV of 1959 (the "Civil Code"), everyone has the right to bear a name. Under Subsection 77(2), scientific, literary, or artistic activities or activities accompanying public performances may be pursued under an assumed name (artistic name) without injuring the rights and legal interests of other persons. Further, Subsection 77(4) provides that the illegal use of another person's name or a name similar to that of another person shall be deemed a violation of the right to bear a name. A person engaged in scientific, literary, or artistic activities, if his name can be confused with the name of another person who has already been engaged in similar activities, shall not even be entitled to use his own name without a distinctive addendum or omission while engaged in such activities.

According to the published court case No. BH2003.149, anyone may use his or her first name as an indicator of goods in his or her commercial activity. The court rejected the petition

of the plaintiff in which he claimed the establishment of the violation of his personal rights, especially his right to dignity because the defendant commercialized toilette paper and tissue paper under the brand name of "Nárcisz", which was identical to the plaintiff's first name. According to the court, the first name "Nárcisz" (just like any other first name) cannot be used exclusively by anyone. Anyone may use this name without violating Section 77 of the Civil Code. The use of this name in commercial activity could only serve as the basis of legal protection if its use infringed the rights of an identifiable person. Therefore, it is of no significance that the given product may be suitable for invoking negative associations.

There are no published court decisions regarding the interpretation of the phrase "one's own name" in the Trademark Act. Therefore, the questions of whether the use of a part of a name, the use of a nickname, initials, or artistic name fall within the scope of Subsection 15(1)(a) of the Trademark Act remain open.

With respect the use of assumed (artistic) names, it is to be noted that under the Civil Code, no assumed (artistic) name may violate the rights or rightful interests of others. However, an artistic name is eligible to the same level of protection as an original name. Consequently, an artistic name that is "earlier" than the concerned trademark forms an obstacle to the registration on the one hand, while on the other, once the trademark protection period commences, no artistic name can be assumed and used if it violates the rights of the trademark owner even if these rights are pending. It is to be further emphasized that the use of an assumed (artistic) name shall be done in line with the principle of fairness in commercial activity.

The case published under No. BDT2004.1077 related to company law rules is authoritative in connection with the use of nicknames. According to that case, owners and members of companies have the right to use their names as the subject heading in the company name but this right exists in respect of the display of the family name and nicknames are not included in this category.

There is another case for nicknames where the Metropolitan Court ruled that an earlier nickname did not constitute a relative ground for refusal for a later trademark application according to Subsection 5(1)(a) of the Trademark Act (SATCHMO case, decision No. 3.Pk.25.614/2000/4 of 30 May 2001).

- 4) *Is a company entitled to make use of the "own name" defence? Specifically, is the "own name" defence only available to a company whose name includes a surname (e.g. William Smith Limited)? How are conflicts between the company's use of its "own name" and confusingly similar trademarks resolved?*

Pursuant to Subsection 15(2) of the Trademark Act, only natural persons can rely on their own names or addresses as against the trademark proprietor. Consequently, no legal person or commercial association without legal personality may rely on this form of defense. It also follows that the owner of a commercial name may only rely on the right to use his name if it is identical with his name as a natural person.

Act No. V of 2006 on the Publicity of Companies, the Company Court Proceedings and Dissolution (the "Company Registration Act") contains the company law provisions related to company names. The name of a company may include the names of the owner or the members of the company, provided that the company name is unambiguously different from the name of any other already-registered domestic company name beyond the difference of the form of the company. The chosen company name cannot be misleading, especially with regards to the scope of the company's activity and the form of the company [Subsections 4(1) and 3(4) of the Company Registration Act].

According to judicial practice, the trademark of another person cannot be used even as a registered company name without the permission of the trademark owner (case No.

BH1995.397) and trademark infringement cannot be excluded by the infringing use of a registered company name (case No. BH1993.92)

Regarding private entrepreneurs, Subsection 15(1) of Act No. V of 1990 on Private Entrepreneurs sets forth that a private entrepreneur may be registered in the company register as a private company upon request.

The relationship between trademarks and company names has been thoroughly presented in our report to Q155.

- 5) *Is the use of indications concerning the characteristics of the goods or services, including the kind, quality, value, geographical origin or time of production of goods permissible under your trademark law? If so, under which circumstances?*

Under Subsection 15(1) of the Trademark Act, protection shall not entitle the holder to prohibit a third party from using, in the course of trade and in accordance with the requirements of fair trade practice, indications concerning the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of the goods or of rendering of the service, or other characteristics of the goods or service [Subsection 15(1)(b) of the Trademark Act].

There are no cases published regarding Subsection 15(1)(b) of the Trademark Act. Therefore, we will refer to related passing off cases in competition law.

According to the case published under No. BH2004.480, everyone who renders hospitality industry services in a given geographical area is entitled to use an indication of origin that refers to the given area of origin. However, the use of a geographical name in a given word combination may infringe the rightful interest of a competitor hence it can be contrary to the principle of commercial fairness. According to the facts of the case, the inn operated by the plaintiff - Bugaci Csárda (Inn of Bugac) - has been in operation since 35 years, is well-known in Hungary and abroad and visited by tourists in Bugac as a landmark of the lowland ("Puszta"). The defendants started to operate a restaurant named Bugaci Karikás Csárda (- the name contains a reference to the geographical location Bugac -) in the front part of the lowland. In the advertisement of the restaurant, the words BUGAC and CSÁRDA (inn) were printed with the same font in caps while the word KARIKÁS was displayed with a different font type. According to competition law, an indication of goods or services may be eligible for protection even if it does not enjoy trademark protection but it became known to the consumers because of its characteristics. There is no exclusive right to the use of the indication of geographical origin, thus the only limitation on its use is the principle of commercial fairness (based on the rules of geographical indications, both competitors are allowed to operate an inn-type hospitality service in the location of Bugac). The defendants are entitled to use the geographical name Bugac if their service will not be confused with the restaurant Bugaci Csárda of the plaintiff. As in the present case a reasonable danger of confusion exists, the defendants are not entitled to use the geographical name in the given word combination as it is contrary to the principle of fairness in its existing form. The indication of the origin of their services with another form of expression of the type of hospitality service - e.g. Bugaci Karikás Étterem (restaurant), Bugaci Karikás Vendéglő (inn) - is allowed and it would be also approved by the express declaration of the plaintiff. (We note that although we agree with the ratio decidendi of the decision, the obiter dicta in its last sentence can be interpreted as to prohibit the defendant from indicating the type of its hospitality services (in the given case: csárda) that is characteristic in the geographical region.)

According to the case published under No. BDT2003.886, the trademark proprietor may not prohibit a third person from using, in the course of trade and in accordance with the requirements of fair trade practice, indications concerning the geographical origin of the goods or services. However, in case the brand name of the good can be confused with the indication of good of the trademark owner, the geographical name - as designation of origin

- cannot be used by the competitor in the given word combination as it would be contrary to the principle of fair business.

- 6) *Is the use of another's mark to indicate product compatibility permissible under your trademark law? If so, under what circumstances? Is only the use of another's word mark in ordinary script or neutral letters permissible or also the use of another's logo or special script format of the mark?*

As mentioned above, according to Subsection 15(1) of the Trademark Act, trademark protection shall not entitle the trademark proprietor to prohibit a third party from using, in the course of trade and in accordance with the requirements of fair trade practice, the trademark where it is necessary to indicate the intended purpose of the goods or services, in particular in the case of accessories or spare parts [Subsection 15(1)(c) of the Trademark Act].

The question arises as to whether the trademark owner is entitled to claim that the advertiser shall use only the word form of the trademark in order to indicate product compatibility without using figurative element(s) of the trademark. In our view, the use of a logo allows for the exploitation of the reputation of the trademark, plus it could suggest that there is some business relation with the trademark owner. By using the figurative trademark in word form this problem could be overcome, as it would precisely refer to the product of the competitor in the advertisement to the consumers, yet it would not take unfair advantage of the reputation of the trademark.

- 7) *Is decorative use of another's mark permissible under your trademark law? If so, under what circumstances?*

According to Subsection 12(1) of the Trademark Act, on the basis of trademark protection, the trademark proprietor is granted the exclusive right to use the trademark. On the basis of this exclusive right of use, the proprietor of the trademark shall be entitled to prevent all third parties not having his consent from using the trademark in the course of trade [Subsection 12(2)]. In applying the conditions laid down in Subsection 12(2), the following in particular may be prohibited:

- a) the affixing of the sign to the goods or to the packaging thereof [Subsection 12(2)(a)], and
- b) the placement of the goods on the in commercial circulation under that sign, offering them for sale, or stocking them for the purpose of commercial circulation [Subsection 12(2)(b)].

According to the provisions of the Trademark Act, the fact as to whether the trademark use was "in the course of trade" is relevant. The term "course of trade" primarily denotes activity with the purpose of obtaining profit (i.e. this category is narrower than the category of market practices).

The judgment of the European Court of Justice in Case No. C-48/05 (Adam Opel AG v Autec AG) decided on 25 January 2007 provides that the proprietor of a trademark can only prohibit the use of the trademark if the use infringes upon the functions of the trademark.

- 8) *Is use of descriptive terms permissible regardless of whether it is in accordance with honest or fair practices or whether it constitutes unfair competition? If descriptive use of another's mark is only permissible if it is in accordance with honest or fair practices, what are typical examples of use which are not in accordance with honest or fair practices?*

Section 15 of the Trademark Act defines the limitations of trademark protection in case of trademark use in business activities, which types of use must be made in accordance with the requirements of honest practices. This condition must be regarded as constituting in substance the expression of a duty to act - according to Subsection 7(2) of the Trademark Directive - fairly in relation to the legitimate interests of the trade mark owner, similar to that imposed on

the reseller where he uses another's trademark to advertise the resale of products covered by that trademark (Paragraph 61 of the judgment of the ECJ in case No. C-63/97, the BMW Case).

The concept of fair business practices is used in the general clause (Section 2) of the Act No. LVII of 1996 on the Prohibition of Unfair Market Practices and of Restrictions of Competition (the "Competition Act"). According to the legal practice on the application of Section 2 of the Competition Act, customs, expectations, moral norms developed in the economy are authoritative in the adjudication of the nature of unfair business activities.

Use will be held to conflict with the concept of fair practices where, for example, it results in a likelihood of confusion (including also association).

- 9) *Do the above mentioned types of descriptive use constitute limitations of trademark rights because they would not be regarded as "use as a mark" or are they specifically exempted regardless of whether trademark use is involved?*

The exclusive right of use granted to the trademark owner on the basis of Section 12 of the Trademark Act means the entitlement to initiate proceedings against any party who uses the trademark in business activities without the trademark owner's consent. Section 15 of the Trademark Act defines the limits of trademark protection in case of use in business activities: this means that these activities shall be construed as trademark use but the trademark owner may not demand any remedies provided for infringement due to the limits defined in the Trademark Act.

According to the ministerial explanatory memorandum attached to the bill of the Trademark Act, trademark protection concerns the use of the trademark in business activities (in accordance with the Trademark Directive), which "entitles the trademark owner to prohibit the use of the trademark in the course of trade, meaning that only use that is relevant from a business point of view shall be considered as trademark use that is dependent on the consent of the trademark owner".

The use in business activities shall be examined from a special perspective with respect to the registration of domain names. In respect of domain names, this means that it must be examined whether business activities are carried on under the requested domain name and if so, what kind of activities these are. The decision on the use relevant from economic point of view, as defined in the Trademark Act, is subject to special rules concerning information society services under the domain name, namely it falls also under the scope of Act No. CVIII of 2001 on Certain Aspects of the Electronic Commerce Services and the Information Society Services (the "Act on Electronic Commerce").

According to Subsection 2(f) of the Act on Electronic Commerce, information society services entail: any remote service provided by electronic means usually for remuneration that is uniquely available to the recipient of the service. Meanwhile, under Subsection 2(a) of the same Act, electronic commercial services are services in connection with information society with the purpose of businesslike selling, purchasing and exchange of goods and services.

According to this, pursuant to the Act on Electronic Commerce, the service rendered regularly and for consideration (service rendered in a businesslike manner), namely the electronic commerce service shall be considered as economically relevant activity pursuant to the Trademark Act. The trademark type of use of a domain name cannot be a type of business activity that is different from electronic commerce service as defined in the Act on Electronic Commerce, namely in the special law related to domain names. Therefore, if the domain name is used by the defendant in scope of services rendered without remuneration, according to the Act on Electronic Commerce, the service rendered by the defendant shall not be considered as electronic commerce service, and consequently it shall not be considered as a business activity under the Trademark Act either.

The Metropolitan Court of Appeals established in its decision No. 8.Pkf.25.805/2005/3 of 18 October 2005 in which it refused a request for interim measures that in case a mark identical or confusingly similar to the trademark is used by a natural person as a simple domain name but it does not carry on any activities under the name with a view to acquiring income, such use shall not be considered as trademark use.

- 10) *If your trademark law recognises other types of descriptive use defences which have not been discussed above, please explain.*

The list in the Trademark Act is exhaustive.

A further limit of the trademark protection with respect to comparative advertising is defined by Section 7/A of the Advertisement Act. For the sake of completeness, we refer to the fact that while Directive No. 97/55/EC refers to the use of a competitor's trademark and the Advertisement Act accordingly contains special provisions in this respect, we could not find any explicit provisions for cases where the competitor's design is used in the course of comparative advertising (e.g. by presentation of the product or packaging). Although the questionnaire focuses exclusively on the limitation of trademark rights, with respect to the similarity of the problem, we refer also to the issue of using third parties' design. Preamble (15) of Directive No. 97/55/EC declares that "such use of another's trade mark, trade name or other distinguishing marks does not breach this exclusive right in cases where it complies with the conditions laid down by this Directive, the intended target being solely to distinguish between them and thus to highlight differences objectively." An interpretation of the term "such use of other distinguishing marks" that complies with the aim of the regulation comprises the design as well. Consequently, the rules with respect to the use of a trademark in comparative advertising shall be applied also in connection with design. It shall be emphasized that it would be reasonable to refer explicitly to this in the Advertisement Act also.

- 11) *Does your trademark law provide for a prior user right/defence? If so, under what circumstances?*

According Subsection 5(2) of the Trademark Act, the following marks may not be granted trademark protection: (i) a sign that has actually been used previously by a third party in the domestic territory without registration, if use of the sign without the consent of the earlier user would be deemed unlawful [Subsection 5(2)(a) of the Trademark Act], and (ii) with regard to identical or similar goods, a sign that is identical or similar to a trademark whose protection has terminated due to expiration at an earlier point in time, if two years have not yet passed since such termination, unless the earlier trademark was not used in accordance with the provisions of Section 18 [Subsection 5(2)(b) of the Trademark Act].

Upon initiating a trademark infringement litigation process, the defendant may initiate trademark cancellation proceedings at the Hungarian Patent Office. Until final judgment in the cancellation proceedings is rendered, the trademark infringement litigation process will generally be suspended.

With regard to the question on the prior user right defence, we refer to the special rules regarding the enlargement of the European Union in 2004. Council Regulation No. 40/94/EC on Community trademarks was amended with the addition of Article 142a (at present Article 159a) stipulating that as from the date of accession of the new member states, the Community trademarks registered or applied for before the accession date extend to the territory of these states in order to have equal effect throughout the Community. However, the use of such a trademark might be prohibited based on Articles 106 and 107, if an earlier trademark or another earlier right (as from the accession date) was registered, filed or acquired in good faith before the accession date; or if applicable, the priority date is earlier than the accession date of the given state.

- 12) *If your trademark law provides for other limitations of trademark rights which have not been discussed above, please explain.*

There are no other limitations on trademark rights in Hungary. (In the interest of presenting a complete picture, we would refer to the fact that our answer is to be read as to imply that there are no additional cases, based on the definition established in the Working Guidelines, beyond those cases that have been excluded from the analysis.)

II) Proposals for adoption of uniform rules

The Groups are invited to put forward proposals for adoption of uniform rules regarding limitations of trademark rights. More specifically, the Groups are invited to answer the following questions:

- 1) *Should descriptive use of another's trademark be permissible? If so, under what circumstances? Should descriptive use of another's trademark be permissible regardless of whether it is in accordance with honest or fair practices or whether it constitutes unfair competition?*

The aim of the so-called descriptive use defence is the demonstration of the type and intended purpose of the goods (e.g. accessories or spare parts), which necessitates the reference to other market participants (even to competitors) or to their products/services, even via using its trademark.

In the opinion of the Hungarian Group, the limitation of trademark use should be compliance with the requirements of commercial fairness. Referring to the commercial fairness provides a connection to the rules of law relating to the unfair competition.

- 2) *Should use of one's own name be permissible? If so, under which circumstances? What should the position regarding the use of corporate names be?*

According to the standpoint of the Hungarian Group, the use of one's own name cannot be prohibited, but it should be used in line with the principle of commercial fairness. Every natural person should be entitled to the right to use his or her own name.

In case of companies, it is the owners who decide on the name of the company. The name of the owners or members can be indicated in the company name but it cannot result in unfair market practice or the abuse of rights.

- 3) *Should the use of indications concerning the characteristics of the goods or services, including the kind, quality, value, geographical origin or time of production of goods be permissible? If so, under which circumstances?*

The answer is yes according to the standpoint of the Hungarian Group. The respective provisions must balance the interests of the competitor and the interests in properly and fully informing consumers.

- 4) *Should the use of another's mark to indicate product compatibility be permissible? If so, under what circumstances? Should only the use of another's word mark in ordinary script or neutral letters be permissible or also the use of another's logo or special script format of the mark?*

The answer is yes according to the opinion of the Hungarian Group. Again, the respective provisions must be balanced between the interests of the competitor and the interest in informing consumers. Although the use of the competitor's logo can lead to taking unfair advantage of the reputation of the competitor's trademark, it is to be decided in the given case, upon considering all of the circumstances whether the use is contrary to commercial fairness. Situations may occur where the use of a logo is necessary to duly inform the consumer (e.g. when there is only a figurative mark, and no word form of the mark). Therefore, it would not be reasonable to require the use of word form in every case.

5) *Should decorative use of another's mark be permissible? If so, under what circumstances?*

Decorative use should only be permissible, if it were outside the scope of the course of trade.

6) *Should trademark law provide for a prior user right? If so, under what circumstances?*

A sign shall not be granted trademark protection if it has actually been used previously by a third party without registration. Accordingly, when initiating a trademark infringement litigation process, the defendant may initiate a trademark cancellation procedure at the Hungarian Patent Office and until the final judgment of the cancellation procedure, the trademark infringement litigation process will generally be suspended.

There is a possibility for a regulation whereby the court adjudicating upon the infringement process would refuse the plaintiff's claim based on the defence of earlier use and consequently it would not be necessary for the defendant to initiate a separate cancellation procedure.

7) *Should trademark law provide for other limitations of trademark rights which have not been discussed above? If so, under what circumstances?*

It is an important question what is the legal basis of limitation of the exclusive right. Namely, whether the right of trademark use by third parties (as a limitation of the exclusive right of the trademark holder) is granted by explicit statutory provisions or by the legal practice.

The exact definition of the scope of protection granted by the exclusive rights - in compliance with the logical closed requirement of the legal system - justifies the adoption of appropriate statutory provisions.

According to the Hungarian Group, the scope of protection and its inner limitations must be defined by intellectual property laws (these rights receive absolute constitutional protection similar to protection of property right). The limitations developed through judicial interpretation would result in the dilution of legal certainty. The limitation of the exclusive right granted by trademark law shall be considered reasonable only in case the limitation is necessitated by reasons of competition policy (e.g. indication of the function of the product, comparative advertising, etc.) or exceptionally the exercising of constitutional rights that are on a higher level than the constitutional property protection (e.g. freedom of speech), and do not endanger the function of the trademark.

Summary

Hungarian trademark law contains provisions that are identical to those of the EU Trademark Directive.

According to the European Court of Justice, the trademark proprietor may only prohibit use of the trademark if that use infringes upon the functions of the trademark.

Regarding the use of a third person's trademark, it must first be analyzed whether the use takes place within the scope of commercial activities.

The aim of the so-called descriptive use is to demonstrate the type and intended use of the product (e.g. spare parts or accessories), which necessitates a reference to another market participant (even a competitor) or his or her product/service, even through the use of the trademark.

Compliance with commercial fairness constitutes the limitation upon such use. Reference to commercial fairness establishes a connection to the rules of the law relating to unfair competition.

Regulations have to find the appropriate balance between the interests of the trademark holder, its competitor and those relating to the informing of consumers.

Résumé

La loi hongroise sur les marques contient des dispositions identiques aux celles de la Directive sur les marques.

Selon la Cour de Justice des Communautés Européennes, le titulaire d'une marque peut interdire l'usage d'une marque si l'usage empiète sur les fonctions d'une marque.

Concernant l'usage de la marque par un tiers, on doit examiner si l'usage se présente dans l'étendue des activités commerciales.

Le but du soi-disant l'usage descriptif est de démontrer le type et l'usage prévu du produit (par exemple, accessoires ou pièces détachées) qui nécessitent une référence à un autre participant de la marché (même un concurrent) ou aux ses produits/services, même par l'usage de la marque.

La limitation de l'usage est la conformité avec l'équité commerciale. La référence à l'équité commerciale établit un lien aux lois concernant la compétition déloyale.

Les règlements doivent trouver l'équilibre entre les intérêts du titulaire de la marque, ses concurrents et ceux concernant le renseignement des consommateurs.

Zusammenfassung

Die Vorschriften des ungarischen Markenrechts entsprechen denen der EU Markenrichtlinie.

Nach der Rechtsprechung des EuGH kann der Markeninhaber die Benutzung der Marke nur dann verbieten, wenn die Benutzung die Funktion der Marke beeinträchtigt.

Bei der Benutzung von Marken von dritten Personen ist in erster Linie zu untersuchen, ob die Benutzung im Rahmen einer wirtschaftlichen Tätigkeit erfolgt.

Das Ziel der sogenannten descriptive use (Einreden der beschreibenden Benutzung) ist es, die Eigenschaft des Produktes und dessen Bestimmung vorzustellen (z.B. Ersatzteil oder Zubehör), wodurch ein Hinweis auf andere Marktteilnehmer (sogar auf Konkurrenten) bzw. auf deren Produkte/Dienstleistungen notwendig wird, eventuell sogar durch eine Markenbenutzung.

Die Grenze der Benutzung ist die Einhaltung der anständigen Gepflogenheiten im Geschäftsverkehr. Der Hinweis auf anständige Gepflogenheiten im Geschäftsverkehr schafft eine Verbindung zu den Regelungen des unlauteren Wettbewerbs.

Die Regelung muss ein angemessenes Gleichgewicht finden zwischen den Interessen der Markeninhaberin, der Konkurrenten und denjenigen Interessen, die mit der Verbraucherinformation im Zusammenhang stehen.