

Communication concerning the decision of the Curia of Hungary
in the civil case n° Pfv.IV.20.292/2012/9.

It constitutes an infringement of community trademark if a sign can be mixed up by customers with a community trademark due to the identity or similarity of the two and due to the identity of services for which the sign and the trademark is applied or registered.

The final judgement – modifying the decision of the first instance court in part – established that the defendant infringed the community trademark BACD because as of June 2010 in the name of its hotel as well as in advertisement of its services of accommodation and catering it used the sign BACD and a sign including a figure in which between the first two letters of the series BCD it features a square standing on one of its terminal points, reminiscent of an Arabic motive.

According to the reasoning of the final judgement the word within the sign used by the defendant is identical with the community trademark. The other elements of the sign (Hotel, Superior, Continental) that refer to the kind and quality of service do not provide sufficient distinction. That the defendant specified the service covered with the contested sign does not exclude infringement. There is no doubt that the defendant's services in question are identical with those in section 42 of the classification of goods and services for which the trademark is registered. Furthermore, that the trademark is known as a supplier of clothing products and the plaintiff does not use it within the services involved in the case does not have any relevance.

The defendant submitted a motion for review of the final judgement by the Curia of Hungary. According to the standpoint of the defendant as expressed in the motion for review the final judgement violates substantive and procedural law and is based on outstandingly inconsistent reasoning. According to the defendant the final judgement wrongly considered the use of the sign with the figure unlawful. The sign with the figure is not a part of the name of the hotel but a separate logo that reflects and emphasises the uniqueness and speciality of the hotel and its pronunciation is not necessary since the name of the hotel can be identified without it as well. According to the defendant, when comparing the trademark and the contested sign it shall be taken into account that the trademark in question is also a female Christian name and therefore it is more difficult to distinguish it from other signs than in the case of invented names. According to the defendant the standpoint of the final judgement according to which the possible pronunciation of the sign with just one sound of difference is not sufficient to distinguish it from the trademark is unfounded and such an interpretation would extend the protection of trademarks unreasonably.

The Curia upheld the final judgement. In its reasoning the Curia emphasised that the sign used by the defendant in respect of services for which the trademark is registered can be mixed up by customers with the trademark in question, therefore, an infringement of community trademark can be established. The violation is not excluded by the fact that the defendant used the sign with the figure not in the name of the hotel but only together with it as a logo “emphasising uniqueness and speciality.” That the trademark is a female Christian name as well does not have any significance. The standpoint of the final judgement according to which the possibility to pronounce the sign with the figure with just one sound of difference involves the danger of mixing it up with the trademark does not constitute an unreasonable extension of trademark protection.

Budapest, the 7th of November 2012

Civil Department of the Curia of Hungary