SZECSKAY
Ügyvédi Iroda · Attorneys at Law

NEWSLETTER
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Szecskay - Attorneys at Law is a progressive firm, recognized as one of the top legal advisers in Hungary. The Firm was founded in 1992 by Dr. András Szecskay who had a well established practice with over twenty years of experience in the legal profession at that time.

The Firm is comprised of 20 attorneys, including local counsel and foreign attorneys admitted to practice in Austria, Canada, England, France, Germany and the US.

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- Labor
- Real Estate
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- Telecommunications, Information Technology and E-Commerce
- Environment
- Energy
- Litigation Dispute Resolution / Arbitration

Content

In Focus - Subject of the Month: The Decision of the European Court of Justice in the *Adam Opel* case

The European Court of Justice (the "**ECJ**") rendered its judgment in case no. C-48/05 concerning Adam Opel AG and Autec AG on January 25, 2007, in which it interpreted the provisions of the First Council Directive (89/104/EEC, the "**Trademark Directive**") during the course of its preliminary ruling.

Autech AG manufactured and distributed remote-controlled scale model cars of Opel Astra V8 Coupes under the name of Cartronic in Germany, on which it used the Opel logo without authorization from Adam Opel AG. Adam Opel AG is entitled to use the Opel logo, protected by an international trademark, in Germany in respect of vehicles and toys.

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According to Adam Opel AG, the above-mentioned act of Autech AG constitutes trademark infringement and therefore it asked the court to enjoin Autech AG from using the Opel log.

Autech AG, however, claimed that the use of the protected trademark on Opel scale model cars does not constitute utilization of the trademark since in the present case the original function of the Opel logo is not affected since the use of the "Cartronic" and "AUTEC" trademarks makes it obvious to consumers that the scale models are not made by the company that manufactures the original vehicles. In addition, for more than one hundred years, consumers have become accustomed to scale models that are authentic replicas of existing products, including their display of trademarks used on the original products.

The question referred under the preliminary ruling procedure sought to clarify whether the use of a logo identical to the trademark by a third party on the scale models of the mentioned make for the purpose of realistically depicting those makes qualifies as utilization within the scope of the Trademark Directive that the trademark proprietor may prohibit when that trademark is registered in respect of all vehicles and toys.

In connection with this, the ECJ found that based on the Trademark Directive, third parties may only be prohibited from displaying on scale models a logo that is identical to a trademark registered in respect of toys if by doing so the fundamental functions of the trademark are or could be infringed.

The German court proceeding in the matter found that the Opel logo is protected in respect of vehicles, that the case concerns a trademark that enjoys a good reputation in Germany in respect of these products and that the vehicles and the scale models thereof are not similar products. Pursuant to these factors, the utilization at issue in the underlying procedure may only be prohibited under the Trademark Directive if, pursuant to the utilization, the third party exploits, unjustifiably or without reasonable cause, the distinctive quality or good reputation of the mentioned trademark as a trademark registered in respect of vehicles or if the third party infringes the rights in connection with it. The task of the referring court is to decide in the given case whether the utilization constitutes such utilization without reasonable cause that unjustifiably exploits the distinctive quality or good reputation of the registered trademark or if it infringes on the rights in connection with it.

The second question sought for an interpretation of the provisions defining the scope of trademark protection of the Trademark Directive according to which the trademark proprietor, based on trademark protection, may not prohibit others from using a designation denoting the type, quality, quantity, use, value, geographical origin, time of production or completion or any other characteristic of goods or services in the scope of their commercial activities. In connection with this, the ECJ found that in the event a trademark is registered in respect of a vehicle, the placement on the mentioned make of scale model cars of a logo that is identical to the trademark, done by a third person without the authorization of the trademark proprietor with the intention of realistically portraying these cars and the distribution of these scale models do not constitute utilization that is a

designation in respect of a feature of the scale models in the scope of the Trademark Directive. The use in question is merely an element in the realistic depiction of the scale model toys and its purpose is not to provide an indication of any characteristic of the mentioned models.

The above decision of the ECJ resolved the question of whether the use of a trademark may only be prohibited if that use infringes upon the functions of the trademark and thus particularly its main function, which is to guarantee the origin of goods to consumers.

Employment Law: Changes in the rules relating to the granting of holidays

Act no. XIX of 2007 concerning amendments to certain labor matters and other laws has significantly modified Act no. XXII of 1992 on the Labor Code (the "**Labor Code**") in various areas.

Most of the public attention has been centered on the amendment of the provisions concerning the granting of holidays, which has been carried out in view of Decree no. 74/2006 (XII.15) issued by the Constitutional Court. In addition, the amendments have also affected the rules applicable to the loaning of employees.

The Labor Code has already provided that the employer must grant one-quarter of the basic holidays at the time requested by the employee. The employee must submit his or her claim regarding such requests at the latest 15 days before the commencement of the holiday. With regard to the granting of holidays, it is a novel factor that in the event a circumstance affecting the employee arises due to which his or her work obligation would result in disproportionate or significant injury in light of his or her personal or family circumstances, he or she is to notify the employer immediately. In such a case, the employer must, in derogation of the fifteen-day notification deadline, grant three working days out of one quarter of the basic holidays – at most on three occasions – at the time requested by the employee.

The main rule, according to which holidays must be granted in the year in which they become due, remains unchanged. The possibilities for derogation from the main rule have been specified in the Labor Code. Holidays may only be transferred to the year following the year in which they become due pursuant to the employer's exceptionally important economic interest or other causes that directly and significantly affect the employer's operations. In these cases, the granting of holidays cannot be later than March 31st of the year following the year in which holidays have become due or, where the provisions of collective agreements apply, by June 30 of the year following the year in which holidays have become due. The available deadlines for granting holidays have this become stricter based on the amended rules of the Labor Code.

Furthermore, another important guarantee rule is that in the event the above-mentioned rules are applied, only one quarter of regular holidays may be transferred to the year following the year in which holidays have become due. Derogations from this rule are allowed only pursuant to causes that seriously and directly affect the employer's operations, thus in particular events such as accidents, natural disasters or serious damages as well as to prevent or avert dangers threatening life, health or the bodily harm.

Legal application is aided by the fact that the Labor Code defines the notion of exceptionally important economic interest. According to the Labor Code, only circumstances where the granting of regular holidays fully in the year in which they become due would significantly influence the operations of the employer in a detrimental way will qualify as an exceptionally important economic interest that are independent of the organization of the work but arise in connection with the granting of holidays. The commentary attached to the amendment states, however, that the granting of holidays in the year following the year in which they have become due is a tool that may only be used exceptionally. The definition allows for a wide scope in the interpretation and practice relating to the cases where a detrimental effect on the employer's operations of a "significant rate" will be found to exist.

The amendment of the current legislation will be effective as of April 1st, 2007. The rules regarding the granting of holidays must already be applied when granting regular holidays for the year 2007. Holidays that became due in 2006 and that have not been granted prior to the entry into force of the amendments must be granted by June 30th, 2007.

Real Estate Law: Changes in real estate registration fees

The so-called Fee Act (Act LXXXV of 1996) that determines the fees in connection with real estate registration proceedings will be amended effective as of February 4th, 2007.

According to the amendments, in the absence of alternative provisions in the Fee Act, the fee for proceedings in the first instance is HUF 6,000 per property. The fee for registration of mortgages as well as that for proceedings to modify registrations is HUF 12,000 per property. The amendment has completed the provisions of the Fee Act applicable in respect of the deregistration of interests in intangible property and thus proceedings for the deregistration of interest in intangible property remains HUF 2,000. However, the Fee Act defines what may be viewed as intangible property rights. Intangible property rights therefore include leasehold rights, usufructuary rights, rights of use, permanent right of use of housing co-operations and trustee rights.

An important amendment of the Fee Act concerns its provisions regarding the fees applicable to proceedings related to apartment buildings. Earlier there had been some confusion as the Fee Act did not contain special rules for proceedings in connection with apartment buildings and thus it was not obvious whether the proceedings fees had to be paid after each individual apartment or the building as a whole. Following the interpretation used in practice, the Fee Act expressly states that the registration fee for the establishment of an apartment building is HUF 6,000 per land registry sheet (i.e. apartment) up to a maximum of HUF 100,000 in total. For amendments to the articles of establishment of apartment buildings, if the amendment affects the separate land registry sheets of the building, the fee for the registration of the amendments is HUF 6,000 per separate land registry sheet up to a maximum of HUF 100,000 in total.

The purpose of this Newsletter is to provide general information regarding the issues set out above. This Newsletter is a publication of Szecskay Attorneys at Law and cannot be regarded as legal advice or legal opinion under any circumstances. Szecskay Attorneys at Law do not warrant or guarantee the accuracy, completeness or adequacy of the information set out in this Newsletter. With respect to any specific legal queries and more information, please seek legal assistance.

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