

Abstract

The theme of this PhD thesis is The Trade Name and Trade Secret. The aim of the thesis is to describe, analyze and review legal regulation of these in the Czech legal system. Doing this it is necessary to explore not only the Commercial Code (Obchodni zakonik), where both institutes are regulated, but also the civil, procedural, administrative and criminal law. Comparison with the foreign legal regulations, mainly the German, American and English, was made. How the law relating to those areas works in practice is illustrated on the judicature, not only present, but also the past one, for there is a loose link between the present regulation and the one of the First Republic. Because the Czech Republic is in the process of recodification of not only private, but also public law, regard was taken to the proposed legal regulation.

The thesis is composed of seven chapters, each of them dealing with different aspects of the trade name and trade secret.

Chapter One is introductory and describes the historical development of the trade name and trade secret in the Czech territory, from the times of Austria-Hungary to the present day. Further, the legal principles relating to those topics are discussed. The last part of this chapter contains thoughts about the legal character of the trade name and trade secret in the present regulation and in the new proposed Civil Code.

Chapter Two is looking at the international law relating to the trade name and trade secret. In relation to the trade name, the most important piece of legislation to this day is the Paris Convention for the Protection of Industrial Property from 1883, which in its Article 8 requires informal protection of trade names; nevertheless the definition of the trade name is left to the national law. On the contrary the TRIPS

agreement from 1994 contains the definition of the trade secret in its Article 39. The EU law deals with the procedural aspects of intellectual property law in the Directive 2004/48/ES, on the enforcement of intellectual property law.

Chapter Three describes the present law on the trade name. The law defines the trade name in the Commercial Code in § 8 to 12. There is the distinction between the trade name of those persons registered in the commercial registry (Obchodni rejstrik), and those who are not registered. Those registered have the so called trade firm (obchodni firma) and those not registered have the trade name (obchodni jmeno). What are the rules governing the creation of the trade firm and trade name is outlined.

The following chapter, Chapter Four, is about the trade secret. As the trade name, the trade secret is regulated in the Commercial Code, namely in its § 17 to 20. What can be the trade secret, who can have it, what is the difference between the trade secret and related rights like patent law, know-how and undisclosed information (§ 271 of the Commercial Code) is included in this chapter.

The legal protection of the trade name and the trade secret is the subject of Chapter Five. This chapter is subdivided into two parts and describes both the private and public law protection. Private law protection, means that the proceeding is started from the initiative of the person, whose right was infringed, is contained in the Commercial Code. There is the distinction between the absolute protection against any person (*erga omnes*), which is in § 12, resp. § 20 and the relative protection under the unfair competition rules (*inter partes*) contained in § 53 and 54. Consideration, how the trade secret is protected during the court proceeding closes this chapter.

Chapter Six contains the thoughts about the new proposed Civil Code, which changes the system of the private law. The new aim is to include as much of private law in the one Civil Code as possible. The proposed Civil Code was approved by the Government and is currently in the House of Representatives for consideration. It contains not only the civil law, but also the family law and partly the commercial

law. In the future, the regulation of the trade name and the trade secret should be contained in the Civil Code.

Conclusions are drawn in Chapter Seven. The thesis comes to the conclusion that the present regulation of the trade name and the trade secret suits in principle the practical needs of the developed economy. Nonetheless certain weak points are pointed out and possible changes are proposed. In relation to the trade name it is suggested to subsume the trade firm under the trade name, which would help the consistency of the legal regulation and would be in accord with the international agreements of the Czech Republic. Further on, it is proposed to liberalise the rules regulating the creation of the trade firm of the individual. Finally, the thesis contains the thoughts about suitability of one central commercial registry, instead of having seven courts to administer it. In relation to trade secret, the thesis concludes that the definition and protection of it is satisfactory, but emphasizes the need of preventative steps to avoid its breach. The proposed regulation of the trade secret in the new Civil Code and especially the simplification of legal protection in case of its breach are generally welcomed.