

6. Abstract

The purpose of my master's degree thesis is to analyse mainly all the grounds for refusal of protection of the applied marks, i.e. grounds on which the marks applied for can be refused by a competent authority to be registered in a register of trade marks. One of the main aims of the thesis is also to compare three trade mark law systems (i.e. European Community system, WIPO system and finally Czech system) in relation to the subject of the thesis. Other important goal of my thesis is to analyse decisions issued by the competent bodies on the grounds for refusal.

The first reason for my research is permanent (and to me, surprising) development being reached in this matter in spite of the very long tradition of many kinds of marks used in the trade (e.g. branded domestic animals, various signs on 6,000-year-old Egyptian masonry, etc.). The above mentioned development relates particularly to the non-traditional trade marks constantly more used on the market and new concluded treaties, such as the Singapore Treaty on the Law of Trade Marks of 27 March 2006 (hereinafter referred to as the "**Singapore Treaty**"). In this respect, it is very important to protect such trade marks as intensively as the classic kinds of the trade marks are protected to boost their use. Regarding the second reason for choosing my thesis subject, having been working as a legal assistant during my academic years I have come often into contact with the trade mark issues, therefore I was strongly motivated to penetrate the trade mark law.

The thesis is composed of five chapters. Needless to say that I have chosen an unusual thesis structure since just only three of the chapters concern my thesis subject.

Chapter One is introductory. It explains why I have chosen the subject at issue and defines basic terminology used in the thesis. The chapter is subdivided into three parts. As a matter of fact, Part One deals with the crucial term thereof, a word "*trade mark*", which is defined under Section 1 of Act No. 441/2003 Coll., on trade marks (hereinafter referred to as "**Trade Mark Act**"), as "*a sign capable of being represented graphically, particularly words, including personal names, colours, designs, letters, numerals, the shape of goods or of their packaging, provided that such signs are capable of distinguishing the goods or services of one person from those of other persons*". It also provides the comparison of various definitions of the word "*trade mark*". Part Two describes kinds of divisions of trade marks. Part Three subdivided into three subparts focuses on describing the three basic trade mark registration systems from the view of a Czech applicant of the trade mark.

It especially outlines how the procedure of the registration of (i) a Czech trade mark, (ii) a Community trade mark and (iii) an international trade mark works and which competent institutions are in charge of the registration of them. Thus, there are anatomized (i) the Czech Intellectual Property Office in Prague, (ii) the Office for Harmonization in the Internal Market (trade marks and designs) in Alicante and (iii) the International Bureau of WIPO in Geneva.

Chapter Two examines single absolute and relative grounds for refusal set out in the Trade Mark Act, Council Regulation (EC) No. 207/2009 of 26 February 2009 on the Community trade mark (codified version) and Directive No. 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks (codified version). The chapter consists of two parts. Part One generally explains absolute grounds for refusal of the protection and deeply examines each of them. The most attention is dedicated to the grounds on which shall not be registered (i) the signs which cannot create a trade mark within the meaning of Section 1 of the Trade Mark Act and (ii) the trade marks which are devoid of any distinctive character. Further, it investigates the registration of the non-traditional trade marks. Then it also explicates overcoming the lack of distinctiveness of a trade mark by acquiring its distinctiveness in relation to the goods or services for which registration is requested in consequence of the use which has been made of it. Part Two addresses the issue of relative grounds for refusal and explains terminology regarding relative grounds, in particular (i) identity and similarity of the mark applied for to the earlier trade mark, (ii) identity and similarity of the goods or services covered by the trade marks and (iii) a likelihood of confusion.

Conclusions are drawn in Chapter Three. Regarding the non-traditional trade marks, according to the principles on which the lately concluded Singapore Treaty is based and under Article 15(1) of the Agreement on Trade-Related Aspects of Intellectual Property Rights of 15 April 1994 I recommend to amend Section 1 of the Trade Mark Act by leaving off the formal condition of capability of graphic representation of a sign. Further, I suggest to remove Sections 4(1)(c) and 4(1)(d) of the Trade Mark Act and transpose them to the wording of Section 5 of the Trade Mark Act. These above mentioned amendments to the Trade Mark Act are also necessary to be made in relation to trade mark law of European Communities. The whole paper is closed by showing some differences between Czech and European Community trade mark law.