

Joanna Adamczyk

“Trade mark registration in bad faith”

(abstract)

Dissertation prepared under the guidance of Professor Elżbieta Traple, PhD Habil.

The scientific problem which this dissertation serves to analyse is the issue of significance, system position and manner of operation in practice of an institution of trademark registration in bad faith in the Polish law, with due regard to the EU law and the German law.

The subject matter of analysis in this dissertation is hence the institution of trademark registration in bad faith. This institution, as a separate structure, one of the absolute grounds for refusal to register a trade mark and to invalidate a protection right, appeared in the Polish legal system with the Industrial Property Law of 2000 (currently: Article 129<sup>1</sup>.1.6 of IPL). A normative source of the analysed institution is the EU law. The application in the Polish law of the institution of trade mark registration in bad faith in its current shape has resulted from the implementation of the provisions of Directive 89/104/EEC.

Since the regulations of the Industrial Property Law entered into force in 2001, trade mark registration in bad faith is a separate normative structure, qualified as an absolute ground for refusal to register a trade mark and invalidation of a protection right for a trade mark.

The institution of trade mark registration in bad faith, and especially a criterion of “bad faith” used therein, as a premise for assessment of an application for trade mark registration, have been neither wrapped into any general normative definition nor clarified otherwise, either in the European Union law or in the Polish trade mark law. So the explanation of the subject legal structure has been left for the judicature and the science of law. An especially important role in this regard, due to the above-mentioned genesis of the institution of trademark registration in bad faith in the EU Member States, has the case law of the EU courts related to the interpretation and application of the provisions of EU legal acts regulating the issue of trade mark registration in bad faith.

The main area of the analysis carried out in this dissertation is the Polish law. It is so because the subject matter of interest is the institution of trade mark registration in bad faith in the Polish trade mark law. The next area of research, important from the perspective of the genesis of the Polish regulations and impact on the Polish law, is the EU trade mark law, especially the provisions of Trade Mark Directives constituting the source of the Polish regulation relating to bad faith in trade mark registration. The analysis also covers the German trade mark law concerning the issues of trade mark registration in bad faith, as a selected example of national regulation of an EU Member State other than Poland, wherein there is an operational institution of trade mark registration in bad faith, based on the same EU regulatory source.

In this dissertation, the following issues have been discussed (in individual chapters of the work). After an introduction to the dissertation topic, chapter two presents a concept of good and bad

faith criteria pursuant to the civil law. The next chapter (three) discusses the institution of trade mark registration in bad faith in the EU law. In this respect, special regard has been paid to the case law of the EU courts, including especially a judgment of the CJEU in the case of *LINDT*, which is of key importance for the understanding of bad faith in the EU law. Further part of the dissertation (chapter four) is devoted to the German law, as an example of implementation of the Trade Mark Directive provisions in national law. Chapter five of the dissertation concerns the manner in which the premise of bad faith is understood at the stage of trade mark registration in the Polish law (by the judicature and the science of law). The aim of the next chapters is to present the institution of trade mark registration in bad faith in the systematic context of the Polish trade mark law. Chapter six covers the structure, nature and legal effects of the institution under discussion. In this respect, the relation between the institution of trade mark registration in favour of an agent or representative (Article 161 of IPL) and trade mark registration in bad faith has also been presented. Whereas in chapter seven the institution under discussion has been pictured in the context of the fundamental principles operating in the system of trade mark law and its relations with some other institutions of the trade mark law. This part of the work also presents the importance of the institution of trade mark registration in bad faith as a specific mechanism for resolving the conflict of rights or interests, and moreover discusses the relation between the subject legal institution and regulations on combating unfair competition, as well as regulations on registrations of web domain names and the use thereof in bad faith. The final subject-related chapter of the dissertation presents a summary of the completed analysis, conclusions following from the analysis, and final conclusions for the hypotheses put forward in the introduction to this dissertation, relating to the importance and status of the institution of trade mark registration in bad faith.

Joanna Kłamek  
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