

TRADE MARK PROTECTION DURING EURO 2012 IN POLAND

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With the EURO 2012 tournament, the protection of intellectual property has become a hot topic in Poland. With the event's status and Europe-wide visibility, it is only to be expected that there are many who want "a piece of the action" whether legally or otherwise.

Trade mark applications

Many trade marks pertaining to the tournaments have been registered by the official participants and sponsors. Among them are the word trademarks EURO 2012, UEFA EUROPEAN FOOTBALL CHAMPIONSHIP, POLSKA UKRAINA 2012, POLAND UKRAINE 2012, ME 2012, CREATING HISTORY TOGETHER and their figurative equivalents.

Trade marks which were similar or attempting to opportunistically piggy back on the renown of the event have been blocked in the process of examination. For instance, the Polish Patent Office (the PPO) refused to grant protection for the word-figurative trade mark "gol pASSiON EURO 2012 Poland – Ukraine"



in classes 25 and 31.

By contrast, trade mark applications which contain the date of the tournament have not been blocked, e.g. "Armagedon 2012" in classes 29, 30, 32, 33 for obvious reasons – UEFA does not have a right to monopolize a date.

As in some other EU countries, when examining a trade mark application, the PPO considers both absolute and relative grounds of refusal. The PPO thus verifies *ex officio* whether there are any other earlier identical/similar registered trade marks for identical/similar goods. As a result, trade marks similar to the official EURO 2012 ones were refused registration without right holders needing to initiate opposition proceedings.

In Poland the opposition may only be filed after a trade mark is registered. Before registration it is possible to file "observations" in which an observer informs the PPO of circumstances precluding the granting of protection for the trade mark in question; the observer may also point out other grounds of refusal, such as bad faith of the applicant or the infringement of a right to a company name. One drawback here is that an observer never becomes a party to the proceedings and is thus not informed of how the registration proceedings in question are progressing.

Infringements

Generally, if an entity that is not an official sponsor wants to use EURO 2012 trade marks, it needs to apply for a license. License agreements - another source of income for UEFA - give a limited right to use official EURO 2012 trade marks.

Nevertheless, as goods and services associated with EURO 2012 potentially mean big bucks (or euros) and the necessary licenses are beyond the pockets of many, trade mark infringements can and do happen.

In case of an infringement in Poland, a trade mark owner has a number of options. One is to initiate court proceedings and request that the infringer cease violating its rights, release any unlawfully gained profits and, if there was a culpable breach, redress the inflicted damage. Redress can be either on general rules or by payment of an amount corresponding to a license fee or other suitable remuneration which at the time of the claim would have been due in exchange for consent to use to object in question.

Another option is to seek a preliminary injunction, either before initiating court proceedings or alongside them. To obtain a preliminary injunction the trade mark owner must convince the court that its claim is likely to succeed; at this stage it is not necessary to prove the claim.

Polish law also provides some procedural tools to assert rights within the scope of securing evidence and disclosing information required to estimate the size of financial claims.

In the case of counterfeiting, aside from civil options, a right holder can consider bringing criminal proceedings against the infringer. Counterfeit trade marks are defined as identical trade marks which are used illegally or which in the course of trade cannot be distinguished from those registered for the goods covered by the right of protection.

Under this definition, although many trade marks may be considered as infringing a right deriving from the trade mark registration, since the test of similarity is much stricter, they cannot be considered counterfeit. Furthermore, as the goods covered by the trade mark registration must be identical to the counterfeit products, it is not possible to claim the protection under criminal law for reputed trade marks in other classes than those registered.

It is also worth trade mark owners applying for protection of their rights at borders on the basis of the Customs Regulation 1383/2003, since that is where most fake goods are seized.

Counterfeit goods seized by the Customs Office or police are mostly clothing bearing EURO 2012-related trade marks and sports equipment, such as footballs and shoes. Of course, it is physically impossible to seize all of the counterfeit goods before they are put on sale. For this reason the PPO advertises a list of Euro 2012-related trade marks to prevent the spread of non-licensed goods.

Apart from the protection of trade marks provided for in Industrial Property Law, Polish law provides protection on grounds of the Act on Suppression of Unfair Competition. This law should be taken into account by trade mark owners when initiating infringement actions in Poland. Generally, the protection is independent of trade mark registration. The Act defines unfair competition as any activity contrary to the law or good practice if it threatens or impairs the interest of another business entity or customer.

Going beyond this general definition, the Act also provides a list of activities deemed to be acts of unfair competition, among which are misleading identification of the entrepreneur (Article 5) or misleading identification of goods or services (Article 10).

The Act also protects against ambush marketing - which will also play an important role during Euro 2012, since parasitic advertising by entities that do not have sponsor status invariably goes hand-in-hand with any major sporting event.

Conclusion

Trade mark owners have many tools to protect their rights in Poland. Clearly rights holders should not sit passively and wait for the police to bring an infringement to their attention.

Businesses that wish to make a profit from the EURO 2012 Championship should make sure that their actions do not infringe others' rights. This may not be easy for the owners of a bar or restaurant, for

instance – when screening a match they must make sure that the television is no larger than a certain size and that products of non-sponsors are not advertised. Otherwise a license must be purchased or there is a threat of a lawsuit.

The championship has proved to be a great challenge in every imaginable respect, from travel infrastructure to mass event security to trade mark infringements discussed here. Which team finally raises the silver cup – the trade mark owners or the infringers - remains to be seen.

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