

legalNEWS

červen / june 2009



We are pleased to announce that our partner **Vlasta Kusák** was appointed by the **Board of Directors of the Czech Bar Association** as its representative in the competition law committee of the **CCBE**. This confirms **Vlasta's** reputation as one of leading **Czech competition & antitrust lawyers** and the long standing commitment of our law firm not only to its **Clients**, but to the **Bar** and the profession as such.



Successful IKEA patent litigation in Slovakia

We are pleased to announce that our law firm successfully closed one of the first patent litigations in Slovakia on behalf of our firm's Clients, the Swedish **IKEA**. The proceeding proved the high standard of Slovak courts competent for intellectual property litigation and the fact that intellectual property litigations can be conducted in a speedy manner, if properly managed. The whole proceeding lasted for three years, including two instances of preliminary proceedings. It also proves that Slovakia has become an important Central European market for industrial manufacturing and technological development, and not only in the field of furniture industry.

Sanctions for breach of Community law only if the law was published in Czech

Recently, the Czech Supreme Administrative Code granted extraordinary recourses filed by our firm of behalf of one of its Client (a total of 36 extraordinary recourses were filed, and all of them were granted) and cancelled all decisions issued in the respective proceedings by both customs authorities and first instance administrative court. The Supreme Administrative Court ruled that sanctions based on directly applicable European law may be imposed only if such law was properly published in the Czech language.

Breach of public law may amount to unfair competition

In two of its recent decisions, the Town Court in Prague dealt with the interesting legal question of unfair competition conduct committed by breach of legal norm of public law (known as “unlauterer Wettbewerb durch Rechtsbruch” in the German legal theory). Both cases show the sophistication of the legal system and the true independence of judiciary.

In the first case, the Court protected our Client by arguing that of course breach of public aid rules may and very likely would amount to unfair competition, but the liability and the breach of good morals of competition is excluded if the Client could have relied on case law and practice of one of the central administrative authorities (the Antimonopoly Office in the given case). The protection of good faith

and trust of the Client into the practice of a state authority must be given priority and such circumstances, under normal circumstances, exclude the breach of good morals of the competition.

In the second case, the Court prohibited the regional government from breaching the law under which it is mandatory to pay a certain fee for medicines (as this was a part of the very attractive election pledge of one of Czech political parties) by donations to patients financed from the public budgets. Such conduct, adopted by the regional government exclusively in respect of pharmacies founded by the regional government, breaches the law and distorts relations on the respective market and thus can be qualified as unfair competition conduct.

Czech Court Rules on Community-Wide Injunctions

The Town Court in Prague, acting as the Community trademark and Community design court, recently handed down two decisions in proceedings concerning infringement of Community trademarks and Community designs. In both proceedings on preliminary injunctions, the plaintiffs requested a preliminary injunction be issued and the Community-wide effect of the injunction be taken over into the verdict of decision.

In both cases, the Town Court in Prague issued the injunctions, but the court refused to take over the Community-wide effect of the decision into the verdict, since in the opinion of the court as expressed in the reasoning of the preliminary injunction in the Community design case, “...the Plaintiff requested the preliminary injunction be issued with effectivity in the whole territory of the European Union, in eventum in the Republic of Latvia. The Court has not found the request in this respect as justified / reasonable. According to the respective provision of the Regulation (EC) Nr 6/2002, on Community designs, this Court has the jurisdiction to issue a preliminary injunction that is /subject of the fulfillment of all necessary proceedings for the recognition and enforcement of the decision under part III. of the Convention on Jurisdiction and Enforcement/ effective in the territory of all member states. According to this legal regulation, in order to achieve effectiveness of the court decision on the preliminary injunction it is necessary that the plaintiff files in the respective member state a request for recognition and enforcement

of the respective decision according to the procedure as contained in the Regulation No 44/2001. Only if the conditions as contained in the said proceeding are fulfilled, the Plaintiff shall obtain the requested effects also in other member states of the European Union.”

Similarly, in the Community trademark case, the court argued that “...under Article 99 para 2 of the Regulation No 40/94, the jurisdiction of courts for Community trademarks for the issuance of preliminary injunction is given, while these preliminary injunctions are, subject of the fulfillment of all necessary proceedings for the recognition and enforcement of the decision under part III. of the Convention on Jurisdiction and Enforcement (now the Regulation EC 44/2001), effective in the territory of all member states. According to this provision, in order to achieve effectiveness of the court decision on the preliminary injunction it is necessary that the plaintiff files in the respective member state a request for recognition and enforcement of the respective decision according to the procedure as contained in the Regulation No 44/2001. Only if the conditions as contained in the said regulation are fulfilled, the Plaintiff shall obtain the requested effects also in other member states of the European Union.”

It remains to be seen whether this position shall remain or be changed in line with some of the foreign decisions, in which the territorial scope of the preliminary injunction is directly stated in the verdict of the decision.

Concentration of proceeding under Czech Trademark Act

Until recently, it was standard practice to advise Clients in cases of opposition proceedings that under Section 25 para 2 of the Czech Trademark Act the opposition has to include grounds on which it is made and the opposition has to be supported by evidence, since under the Trademark Act the Office shall not consider any amendments to the opposition or any evidence submitted in support of the opposition made after the time limit. Under Section 26 para 1 of the Trademark Act, the Office shall dismiss the opposition if it is not filed within the time limit, or if the opposition does not include grounds on which it is made or it is not supported by evidence.

The above provisions were interpreted as to meaning that all and any evidence must be submitted together with the opposition, but not later than on the last day of the opposition period, which meant that all and any evidence had to be already delivered to the Office or handed over to any post delivery service.

We have recently received two decisions of the Chairman of the

Czech Patent Office in opposition proceedings where the Chairman granted our appeals and overturned the respective first instance decisions refusing documents presented in support of the opposition and identified properly in the writ of opposition but submitted after the expiry of the opposition deadline.

The Chairman accepted our legal opinion that it is not necessary to present the evidence to the Office on the last day of the opposition period or to hand it over to any post delivery service, but that it is fully sufficient and in line with the Czech Trademark Act and the Czech Administrative Procedure Act if the evidence is properly identified in the writ of opposition and then submitted to the Office within the additional five day period under Section 37 para 4 of the Czech Administrative Procedure Act, under which any submission can be done by facsimile, electronically or by other technical means of communication, but it has to be presented in original within five days following the filing date of such filing.