

Hungary

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1. Legal framework

National

The relevant national laws are as follows:

- Act/11 1997 on Trademarks and Geographical Indications;
- Act/9 1969 on Trademarks (only for certain aspects of trademark use before July 1 1997);
- Sections 184/ A and 187(b) of Act 53 1994 on Judicial Execution;
- Act 83/1995 on the Use of National Symbols or Other Appellations Referring to the Republic of Hungary;
- Decree 16/2004 (IV.27) of the Minister of Justice on the Formal Requirements of Trademark Applications and Applications for Geographical Indications; and
- Decree 19/2005 (IV.12) of the Minister of the Economy and Transport on the Administrative Fees of the Industrial Rights Related Procedures of the Hungarian Patent Office.

International

As a result of its membership of the European Union, the following laws apply in Hungary:

- the Community Trademark Regulation (40/94);
- the Commission Trademark Implementing Regulation (2868/95);
- Commission Regulation 2869/95 on the fees payable to the Office for Harmonization in the Internal Market;
- Commission Regulation 216/96 laying down the rules of procedure of the Boards of Appeal of the Office for Harmonization in the Internal Market;
- the First Trademark Directive (89/104/EEC); and
- Council Regulation 3295/94 providing for measures aimed at prohibiting the trade and export of infringing goods.

The Hungarian legal system also recognizes the validity of the following trademark laws and treaties:

- the Paris Convention for the Protection of Industrial Property (promulgated by Decree-Law 18/1970);
- the Madrid Agreement Concerning the International Registration of Marks (promulgated by Decree-Law 29/1973);
- the Madrid Protocol (promulgated by Act 83/1999);
- Common Regulations under the Madrid Agreement Concerning the International Registration of Marks and the Protocol Relating to that Agreement (promulgated by Decree 4/2005 (III.11) of the Minister of Justice);
- the World Intellectual Property Organization Trademark Agreement (promulgated by Act 83/1999);
- the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (promulgated by Decree-Law 18/1970); and
- the Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks.

2. Unregistered marks

An unregistered mark may constitute relative grounds for refusal of registration of a trademark if under the Paris Convention the unregistered mark is considered to be well known in Hungary.

Also, the trademark applied for shall not be registered if the mark has actually been used previously by a third party in Hungary, even without registration. However, this rule applies only if the use of the mark without the consent of the earlier user would be unlawful itself (eg, the use of the mark would breach the relevant competition rules of Act 57/1996 on the Prohibition of Unfair Competition).

3. Registered marks

Ownership

Any and all legal or natural persons are entitled to obtain trademark protection irrespective of whether they carry out business activity. It is also possible to obtain trademark protection jointly.

Scope of protection

Any signs capable of being represented graphically may be protected as a trademark, provided that such signs are capable of distinguishing goods or services from those of others.

A trademark may in particular consist of any of the following signs:

- words and combinations of words, including personal names and slogans;
- letters and numerals;
- designs/graphics;
- two or three-dimensional figures including the shapes of goods or of their packaging;
- colours, combinations of colours, light signals and holograms;
- sounds; and
- combinations of the above signs.

The following shall not be registered (absolute grounds for refusal):

- signs that do not conform to the requirements set out above;
- signs that are devoid of any distinctive character (eg, which consist exclusively of signs or indications that may serve in trade to designate the kind, quality, quantity, intended purpose, value, geographical origin or time of production of the goods or of rendering of the services, or other characteristics of the goods or services). However, a sign may become eligible for registration if it has acquired a distinctive character through use;
- signs that consist exclusively of the shape which results from the nature of the goods

themselves, which is necessary to obtain a technical result or which gives substantial value to the goods;

- signs that are contrary to public policy or accepted principles of morality;
- signs that may deceive consumers, for instance as to the nature, quality or geographical origin of the goods or services;
- signs that were submitted for registration in bad faith;
- signs which consist exclusively of sovereign symbols of states or markings which are reserved for authorities or international organizations as set out in the Paris Convention;
- signs which relate exclusively to badges, emblems, escutcheons or to official warranty or certification stamps, which are of public interest;
- signs which consist exclusively of symbols strongly expressing religious or other beliefs; and
- signs that contain or consist of geographical indications registered under Hungarian or EU laws.

4. Procedures

Examination

Hungarian trademark applications are filed with the Hungarian Patent Office (HPO).

The trademark application must contain:

- an indication that trademark protection is sought;
- information identifying the applicant (name, address);
- a representation of the sign, indicating its type;
- a list of goods and services; and
- the name of the representative (if any).

The goods and services claimed in the application must be listed in accordance with the

Nice Agreement. The current fees charged by the HPO for a trademark application for one class of goods is Ft74,800 (approximately €300); each additional class attracts a fee of Ft32,000 (approximately €128) per class. The application fee must be paid within two months of filing.

Trademark applications are examined by the HPO to determine whether the application fulfils formal requirements. If it does not, the HPO will request the applicant to remedy the deficiencies. Where the applicant does not reply to the invitation to rectify the irregularities within the deadline set by the HPO, the application shall be considered withdrawn.

Once the HPO has established that the applicant satisfies the formal requirements, the HPO shall draw up a search report for earlier trademarks on the basis of the sign and will send the search report to the applicant. At least one month after sending the search report to the applicant, the HPO will publish the trademark application in its *Official Journal*.

At the request of an earlier trademark owner, and on payment of a fee of Ft6,500 (approximately €25) per month, the HPO will notify the owner of the earlier trademark of any later trademark application, by sending a copy of the search report in which reference to the earlier trademark is made.

If the trademark application satisfies formal requirements, the HPO will carry out a substantive examination of all legal requirements of the trademark application.

Opposition

The HPO will not refuse the registration of a trademark on the basis of an earlier trademark *ex officio*. Substantive examination regarding earlier trademarks is carried out only in the case of an opposition. An opposition may be filed where there are relative grounds for refusal of a trademark registration, which include the following:

- if the sign is identical to an earlier trademark in respect of the same goods and services;
- if the sign is likely to confuse consumers because of its identity or similarity to an earlier trademark, where the goods and services covered by the two marks are identical or similar; or
- if the sign is identical or similar to an earlier trademark in relation to goods or services that are not similar to those for which the earlier mark is registered, where the latter has a reputation in Hungary and where use of the sign without due cause would take unfair advantage of or be detrimental to the distinctive character or reputation of the trademark.

The opposition must be filed within three months of publication of the trademark application in the *Official Journal*. Opposition must be in writing and must specify the grounds on which it is made. The parties may request the HPO to hold a hearing regarding the opposition. The parties may also make an amicable settlement in respect of the opposition. The losing party must reimburse the costs of the opposition.

Registration

If the trademark application fulfils all legal requirements, the HPO will register the trademark and publish the registration in the *Official Journal*. Trademark protection is for 10 years as from filing the application, and can be renewed for additional 10-year periods.

Removal from register

Cancellation/surrender: Trademark protection terminates if the term of the protection expires without renewal.

The trademark may be surrendered in respect of some or all of the goods and services for which it is registered. Surrender must be declared to the HPO in writing and cannot be withdrawn.

Revocation: If the trademark is not used within five years of registration, or is not used for five consecutive years, it may be cancelled for non-use at the request of any party. The trademark may be revoked for all goods and services or only for those for which it was not used.

The trademark may also be revoked if:

- as a consequence of an act of the owner, the trademark has become the common name in the trade for a product or service in respect of which it is registered; or
- as a result of its use, the trademark is liable to mislead the public in particular as to the nature, quality or geographical origin of the goods and services.

Invalidation: A trademark will be invalidated if, among other things, it did not fulfil the registration requirements when registered (absolute and relative grounds for refusal). Any party may apply for invalidation; however, only the owner of the earlier right may apply for invalidation referring to relative grounds for refusal.

5. Enforcement

Complexity

The enforcement of registered trademarks and unregistered marks is complex.

The owner of a trademark may bring an infringement action before the Capital Court against any party using the same mark without the authorization of the owner, if the later mark is used in the same area of business as the earlier mark and in connection with goods and services covered by that mark. Among other things, it is prohibited:

- to use the same or similar signs to those covered by a trademark;
- to sell, offer for sale or store for the purposes of sale goods bearing another party's trademark;

- to export or import the type of goods outlined above; or
- to use another party's trademark in business correspondence or in commercials.

In the event of trademark infringement the owner of the mark may, among other things:

- request the court to establish that trademark infringement has occurred;
- request the court to oblige the infringer to cease the trademark infringement or any threatened infringement and to prohibit the infringer from continuing to infringe the trademark;
- demand that the infringer provide information on third parties involved in the manufacture and trade of goods that infringe the registered trademark, as well as of business relations developed for the sale of such products;
- demand that the infringer make amends by a statement or by other suitable means and, if necessary, make an appropriate public disclosure of the same;
- demand that the infringer deliver the profit produced by the infringement;
- demand the seizure, the handing over, the withdrawal from the market or the destruction of the assets and materials used for the infringement, as well as of the goods and packaging infringing the trademark; or
- claim compensation for damages (if any).

If the trademark is not yet registered, the applicant may also raise the above claims; however, the procedure must be suspended until the trademark is registered.

If the infringer does not comply with the decision of the court, the trademark owner may initiate a judicial enforcement procedure under special rules applicable to IP rights. The court may impose a fine on the infringer in an amount of up to Ft200,000 (approximately €800) per day, which will be doubled each month as long as the decision is not fulfilled.

The Capital Court has exclusive jurisdiction to hear trademark infringement cases. The panel consists of three judges.

In the case of unregistered marks, the Unfair Competition Act may be applicable. Pursuant to this act, it is prohibited to manufacture, distribute or advertise goods with a characteristic, packaging, labelling, name or mark by which a competitor or its goods are usually recognized without that competitor's consent. Accordingly, this protection is available even without registering the mark as a trademark, but only if the goods of the owner:

- can be distinguished from other similar goods; and
- are already known by Hungarian customers.

In the case of a breach of the above rules, the right owner will have very similar rights to those available to registered mark owners in trademark infringement cases.

As a criminal law remedy, the Criminal Code may also apply to trademark infringement cases. If a party violates the rights of the trademark owner by copying the object of the mark and thus causes monetary damages, this will qualify as the violation of industrial property rights. In this case the infringer can be punished with a fine or even with imprisonment of up to eight years.

The Criminal Code may also apply to unregistered trademark rights, according to which any party that (without the consent of the competitor) produces a product with a distinctive appearance, packaging, labelling or name from which the competitor or its product can be recognized commits a felony and can be punished with imprisonment of up to three years.

Timeframe

Trademark infringement lawsuits usually take one to two years, but can take longer in the case of an appeal. However, the mark owner may

request the court to issue an injunction within the lawsuit or even in a separate procedure beforehand. In its injunction the court may oblige the infringer to fulfil any of the above obligations before the commencement of the lawsuit.

The owner of the trademark may also request the court to take security measures on the basis of the Act on Judicial Enforcement against the infringer before the final judgment is issued. On the basis of a security measure ordered by the court, the court bailiff can immediately seize the goods affected by the infringement or can demand the immediate payment of the claimed amount or freeze bank accounts. If the claim is dismissed, the costs of the security measures must be paid by the owner of the trademark.

6. Ownership changes - legalization requirements

Rights in connection with trademarks can be transferred by contract or by legal succession. It is also possible to transfer the trademark protection in respect of a particular selection of the goods covered by the trademark. The contract is null and void if the transfer may deceive consumers.

7. Related rights

There are overlaps between trademark rights and other rights in Hungary:

- A trademark with artistic merit can also be protected by copyright (if it has an individual and original nature deriving from the intellectual activity of the author) on the basis of the Act on Copyrights;
- It is possible to file a design application simultaneously with the trademark application for the same mark (eg. for the

shape or the packaging of the goods) on the basis of the Act on Design Protection; and

- Pursuant to Hungarian judicial practice (Supreme Court Decision 1995.397) it is also prohibited to use a registered trademark as a company name without the consent of the trademark owner.

8. Online issues

In Hungary, domain names are registered by the Hungarian Internet Service Providers Council. The council is not a state organ, but an independent society which acts on the basis of its own Domain Registration Rules and Procedures. Pursuant to these rules and procedures, the domain name applicant shall act with utmost care in selecting the domain name to ensure the domain name does not violate the rights of other parties. Domain name applicants shall be expected to check the commercial register or the trademark database before filing the application. However, the council is not liable for checking whether the domain name and the use thereof would infringe an existing trademark.

Therefore, a trademark owner may file suit against a domain name owner since, pursuant to the applicable judicial practice (Supreme Court Decision 2005.145), it is forbidden to use a word mark as a domain name if it:

- is identical to a registered trademark; or
- may be confused with such a trademark.

If the domain name is used in economic activity in connection with the same goods or services that are covered by the trademark, the court will make a finding of trademark infringement.

