

Hungary

Contributing firm

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1. Legal framework

National

The laws and regulations governing trademarks in Hungary are as follows:

- the Act on the Protection of Trademarks and Geographical Indications (11/1997);
- Act 102/2003 amending industrial property and copyright legislation;
- Act 9/1969, for registrations before January 1 1997;
- the Act on the Use of National Symbols or Other Appellations Referring to the Republic of Hungary (83/1995);
- Section 184(A) of the Act on Judicial Litigation (53/1994);
- Minister of Justice Decree 16/2004 (IV 27) on the formal requirements of trademark applications and applications for geographical indications; and
- Government Decree 87/1998 (V 6) on the detailed rules concerning the protection of geographical indications of agricultural products and foodstuffs.

International

The following treaties and conventions apply in Hungary:

- the Paris Convention for the Protection of Industrial Property (promulgated by Decree-Law 18/1970);
- the Madrid Agreement on 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 and Protocol;
- the World Intellectual Property Organization Trademark Agreement (promulgated by Act 83/1999);
- the Nice Agreement on the International Classification of Goods and Services (promulgated by Decree-Law 18/1970);

- the Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks;
- the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (promulgated by Decree-Law 1/1982);
- the Regulation under the Lisbon Agreement (promulgated by Decree-Law 1/1982); and
- the Hungary-Swiss Agreement on Appellations of Origin and Other Geographical Indications (promulgated by Decree-Law 27/1981).

The following EU laws and regulations also apply:

- the IP Enforcement Directive (2004/48/EC);
- the First Trademark Directive (89/104/EEC);
- the Community Trademark Regulation (40/94);
- Council Regulation 2081/92/EEC on the protection of geographical indications and designations of origin for agricultural products and foodstuffs;
- Commission Regulation (EC) 2868/95 implementing the Community Trademark Regulation;
- Commission Regulation (EC) 2869/95 on the fees payable to the Office for Harmonization in the Internal Market;
- Commission Regulation (EC) 216/96 on the procedural rules of the boards of appeal of the Office for Harmonization in the Internal Market; and
- Council Regulation 3295/94/EC on measures to prohibit the release for free circulation, export, re-export or entry for a suspending procedure of counterfeit and pirated goods.

2. Unregistered marks

An unregistered trademark will enjoy protection if it is well known in Hungary under the terms of the Paris Convention. An unregistered well-known mark might thus constitute relative

grounds for refusal of a subsequent trademark application filed by a third party.

A mark will not enjoy trademark protection if another party has effectively used the mark on the national market, without registration, from an earlier date.

3. Registered marks

Ownership

Under Hungarian law, any natural or legal person may obtain trademark protection.

The trademark owner has the exclusive right to use the trademark in relation to the goods or services for which the mark is registered, or to allow others to use the trademark by agreement.

The owner is also entitled to take legal action against others who infringe the registration by using an identical or similar trademark for identical or similar goods or services.

Scope of protection

Any sign that is capable of being represented graphically can be protected as a trademark.

Protected: The signs that may be granted protection include:

- words and combination of words, including personal names and slogans;
- letters and numerals;
- figures and pictures;
- two and three-dimensional forms, including the shape of goods or their packaging;
- colours and combinations of colours, light signals and holograms;
- sound signals; and
- combinations of the above.

Not protected: Marks for which protection is excluded by law (absolute and/or relative

grounds for refusal) cannot be registered as trademarks. These include the following:

- marks comprised exclusively of signs that may, in the course of trade, refer to a characteristic of the goods or services (eg, their kind, quality, quantity or intended purpose);
- marks that are customary in the current language or practices of trade;
- marks comprised of a shape that results from the nature of the goods;
- marks that may deceive consumers as to the nature, quality or other characteristics of the goods or services;
- marks that are identical or similar to a mark that has already been registered in respect of the same or similar goods or services (although the owner of the earlier trademark may give written consent to the registration);
- marks that are identical or similar to a mark that has acquired a reputation in Hungary, even if registration is sought in relation to dissimilar goods or services; and
- marks that are identical or similar to a mark which is well known in Hungary, even if the well-known mark has not been registered.

4. Procedures

Examination

At a minimum, a trademark application must include:

- an indication that trademark protection is sought;
- information identifying the applicant (its name and address);
- a representation of the sign (if it is in colour or a logo, a printed layout must be enclosed); and
- a list of the goods or services for which registration is sought.

The application fee must be paid within two months of the filing date. This deadline may not be extended.

If the trademark application satisfies the formal requirements, the Hungarian Patent Office (HPO) will carry out a substantive examination of the application to ensure it satisfies all legal requirements. If this substantive examination reveals any irregularities, the HPO will invite the applicant to rectify the irregularities or to submit comments, depending on the nature of the objection. The HPO will reject a trademark application, in whole or in part, if it does not meet the registration requirements even after the irregularities have been remedied or comments submitted. If the applicant fails to respond to the invitation, the application will be considered to have been withdrawn.

Opposition

The owner of a registered trademark, or its licensee, may file an opposition against a trademark application within three months of official publication of the application.

The HPO will decide on the opposition on the basis of a written submission and a hearing, if necessary.

Registration

If the trademark application satisfies all legal and formal requirements, and any oppositions are successfully overcome, the sign will be registered as a trademark by the HPO and published in the *Official Gazette* of the HPO.

Cancellation/surrender

Trademark protection lapses if the registration is not renewed within the 10-year period of protection. However, once protection has expired, a six-month grace period begins to run during which renewal can still be requested.

Trademark protection may also cease if the trademark owner surrenders protection. The HPO must be notified in writing of the surrender and the date of surrender. If a third party's right of use or other right is recorded in

the Trademark Register, the surrender will take effect only if that third party has consented.

Revocation

Anyone may seek the revocation of a trademark for non-use if the trademark owner does not begin to use the mark within five years of registration, or if it fails to use the mark for five successive years.

Non-use can be established for all or only some of the goods and services for which the mark is registered.

Evidence furnished to show use must be 'serious' in order to prove continuous use.

Invalidation

A trademark will be revoked if it emerges that it did not meet the registration requirements at the time of registration (see section 3 above).

If the grounds for revocation apply only to some of the goods or services for which the trademark is registered, the protection will be restricted accordingly.

5. Enforcement

Complexity

The enforcement of registered and unregistered trademarks is complex.

Infringement proceedings against the unjustified use of a registered trademark may be brought before the Metropolitan Court. The trademark owner may seek the following civil law remedies, depending on the circumstances:

- a court ruling establishing that trademark infringement has occurred;
- cessation of the trademark infringement and a prohibition against further infringement;

- a court order requiring the infringer to provide information on other participants in the manufacture and marketing of the infringing goods or services, and on business relationships established through the infringement;
- an apology from the infringer in the form of a statement or other appropriate form, and publication of the same by the infringing party or at its expense, where necessary;
- restitution of the profits realized through the infringement; and
- seizure of assets and materials used exclusively or predominantly in the infringement, as well as of the infringing goods and their packaging.

In the case of an unregistered trademark, a legal action can also be initiated before the Metropolitan Court for violation of competition law.

If a person puts its own products on the market using the characteristic appearance, packaging, markings or description of a competitor without that competitor's consent, the aggrieved competitor can seek the following civil law remedies:

- a court order establishing that a violation of law has occurred;
- termination of the violation and a prohibition against any further violation;
- an apology from the infringing party in the form of a statement or other appropriate form, and publication of the same by the violating party or at its expense, where necessary;
- remediation of the injurious situation, restoration of the status quo prior to the violation, and confiscation or destruction of the goods manufactured or placed on the market as a result of the violation, as well as of any special devices or facilities used in their manufacture;
- compensation for damages in accordance with the rules of civil law;

- conclusion of a contract, in case of an unjustified refusal to enter into a business relationship corresponding to the nature of the transaction; and
- disclosure of information on other participants in the manufacture and marketing of the infringing goods, and on business relationships established through the infringement.

These remedies are based on civil law. Penal law remedies are also available where the infringement causes consumer confusion.

Anyone who produces, without authorization, a product with a distinctive appearance, packaging, labelling or name from which a competitor or its product can be recognized, or who acquires such product for the purpose of placing it on the market, is guilty of a felony and may be punished by up to three years' imprisonment.

If the infringer fails to comply with the court order, the trademark owner may seek the execution of the order by the court. However, this step is seldom needed in trademark matters.

In order to facilitate the swift identification of counterfeit products, a legal regulation has been established on the basis of which Customs may provide a continuous monitoring service, either *ex officio* or at the request of a trademark owner.

Timeframe

The timeframe for enforcement will depend on whether the unsuccessful party lodges an appeal. It takes between two and three years, on average, before a final decision is issued. This timeframe is sometimes even longer in cases involving cancellation, revocation or invalidation, as these proceedings involve an additional stage: they are initially decided by the HPO, whose decision may be appealed before the Metropolitan Court at first instance and finally before the Metropolitan Board of Appeal.

6. Ownership changes – legalization requirements

Trademark protection can be transferred by contract. Trademark protection for any of the goods or services for which a trademark is registered can also be transferred. The assignment document must be signed by both parties, but no legalization is required.

The same requirements apply in case of merger or changes of ownership.

7. Areas of overlap with related rights

Legislation in certain other legal fields is closely related to trademark law. For example, in the case of the unjustified use of unregistered marks, competition law provisions may apply (the Act on the Prohibition of Unfair and Restrictive Market Practices (57/1996)).

Moreover, where a trademark also qualifies for copyright protection, the copyright regulations will also apply (the Act on Copyright (76/1999)).

8. Online issues

Domain name registration is governed not by law, but by regulations issued by the Hungarian Council of Internet Providers. An English translation of the regulations is available at www.domain.hu/domain/English.

The regulations set out rules on the use of domain names that conflict with trademarks. Among other things, these rules provide that: “The applicant must act with the utmost care in selecting the domain name, so as to ensure that the selected domain name, and the application

for and use of it, shall not violate the rights of other persons or entities. Applicants are expected to ensure that the domain name selected is not included in the Commercial Register or the Trademark Register of the Hungarian Patent Office.”

However, it cannot be expected of either the domain name registrar or the recorder (ie, the party that keeps the documentation concerning the registration) to decide whether the choice or use of the domain name is justified.

A trademark owner may bring proceedings against the unjustified registration of a domain name that infringes its trademark. The registrar and the recorder will execute the final court decision on the choice or use of the domain name