

ABSTRACT

of a PhD dissertation entitled 'Likelihood of confusion as a form of EU trade mark infringement', Lublin 2023

The subject of this dissertation is the analysis of the likelihood of confusion as the most important form of infringement of an EU trade mark. The analysis of this concept is preceded by the characteristics of sources of law and aspects related to EU trade mark infringement .

The fundamental thesis of this work is the statement that the assessment of the likelihood of confusion pursuant to Article 9(2)(b) of Regulation No. 2017/1001 is a normative assessment of an abstract nature. This assessment takes into account, first and foremost, normative factors i.e. similarity of goods and services, similarity of marks and the distinctive character of an earlier trade mark. This does not, however, exclude the possibility of considering factors other than normative ones as well as evidence of actual confusion among the public. The evidence may not, in principle, constitute the sole ground for a decision. This is due to the fact that the assessment of the likelihood of confusion resides in certain normative structures therefore, conclusions based on empirical evidence can not always parallel the conclusions based on a normative examination. Empirical evidence is only of ancillary value. In the overall assessment of the likelihood of confusion one should also consider the conditions in which goods are sold and services provided as well as, in principle, possible neutralisation of visual and phonetic similarities of the marks due to their conceptual differences. The stage of the examination of the similarity of the marks is, in principle, not appropriate for this.

The structure of the dissertation is determined primarily by the subject matter and scope of research. It corresponds to the adopted methodology of the assessment of EU trade mark infringement insofar as it relates to the likelihood of confusion. This dissertation consists of an introduction, seven chapters, conclusions and bibliography.

In Chapter 1 the essential aspects concerning the legal protection of an EU trade mark are presented. Chapter 2 contains a general characteristics of an infringement of an EU trade mark. It depicts grounds common for all the types of the infringement as well as main and specific types of infringement. Furthermore, this chapter provides characteristics of respective circumstances which exclude an infringement.

Chapter 3 deals with the concept of likelihood of confusion and its relation to the concept of likelihood of association. It also includes the methodology of the assessment of likelihood of confusion. Chapter 4 and Chapter 5 are dedicated to the grounds directly laid down in Article 9(2)(b) of Regulation No. 2017/1001 essential for the likelihood of confusion to be found i.e. identity or similarity of goods and services and identity or similarity of marks. Chapter 6 refers to the other important factors which may affect the assessment of the likelihood of confusion, with particular consideration given to the distinctive character of an earlier trade mark.

Chapter 7 elaborates on the overall assessment of the likelihood of confusion. Additionally, it addresses the aspects related to the principle of interdependence and principle of neutralization. This chapter also depicts the concept of an average consumer and the relevant public. Moreover, this chapter considers the normative and abstract character of the assessment of the likelihood of confusion, which, however, does not preclude the assessment of empirical evidence from being taken into account in its course.

The research done has been based on methods typical of research within the field of private law which involve the analysis and synthesis of legal acts and the case-law, i.e. historical and legal research methodology as well as a formal and dogmatic method.

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