

Abstract

Trade mark – grounds for refusal

The aim of this rigorous thesis is to provide a legal analysis and interpretation of the grounds for rejecting protection for a national trademark, focusing on the decision-making practice of the Industrial Property Office (ÚPV), the Czech court decision-making practice and the case law of the Court of Justice of the EU. For comparison, the grounds for rejecting protection under the European trademark system is presented in the introduction of each sub-chapter analysing the individual grounds for rejecting protection under the Trademark Act.

The method used when writing the rigorous thesis involved studying written sources, that being professional literature, articles or commentaries to laws, with an emphasis on administrative court decision-making practice in the field of grounds for rejecting trademark protection and their subsequent interpretation.

The rigorous thesis is divided into five chapters. The opening two are preparatory chapters. These chapters are focused on a historical excursion into trademark law in the Czech territory, with an emphasis on developing the reasons for rejecting protection over time.

To a large extent, the rigorous thesis' preparatory part also focuses on the major amendment made by Act No. 286/2018 Coll., which substantially changed the original legal regulation of trademarks, that being both in terms of the actual definition of the trademark, which is relevant in terms of the grounds for rejecting protection, but which also substantially modified the actual grounds for rejecting protection.

In the next part, there is a follow up discussion of the definition of a trademark and the types of trademarks, also in the context of the amendment to the Trademark Act. The institution of trademark ownership and the relationship between unfair competition law and trademark law is also addressed.

As part of a comprehensive look at the trademark system, the next chapter discusses the trademark registration process, including the legal regulation for revoking a trademark or declaring it invalid, since the proceedings for declaring a trademark invalid, pursuant to Section 32 of Act No. 441/2003 Coll., on Trademarks, have a close relationship to the relative grounds for rejecting protection under Section 7.

Chapters 4 and 5 tie in to the preparatory part of the rigorous thesis and are fully focused on the topic of the thesis itself, the reasons for rejecting trademark protection.

Chapter 4 analyses the absolute grounds for rejecting protection under Section 4 of the Trademark Act. It places an emphasis on the institute of distinctiveness and signs that lack such distinctiveness. Each of the subchapters then discuss the individual, absolute grounds for rejecting protection under Section 4(a) to (l) of the Trade Marks Act. Each of the absolute grounds are demonstrated through the decision-making practice of the ÚPV and an analysis of the ÚPV decisions in practice is provided for each absolute ground. The grounds for rejecting protection, in comparison with the European Union legislation, i.e. the Harmonisation Directive and Regulation 2015/2424, are also analysed.

Chapter 5 gives an analysis of the relative grounds for rejecting protection under Section 7. Compared to the legislation prior to the major amendment, this provision has undergone many changes, as some relative grounds have been completely revoked, others have been refined or merged, and therefore an attempt has been made to compare the amended legislation with the previous legislation. There is also a comparison with the European Union legislation on which the current national legislation is based.

Summarising the above, this rigorous thesis attempts to provide the reader with a comprehensive view of the grounds for rejecting trade mark protection, focusing on the decision-making and application practice of the ÚPV, the decision-making practice of national courts and the case law of the Court of Justice of the EU.