



RIGHTS TO DESIGNATION FOCUSING ON PROTECTED DESIGNATIONS AND GEOGRAPHICAL INDICATIONS OF AGRICULTURAL PRODUCTS AND FOODSTUFFS

PRÁVA NA OZNAČENIE SO ZAMERANÍM NA OCHRANU OZNAČENIA A ZEMEPISNÉ OZNAČENIE POĽNOHOSPODÁRSKYCH VÝROBKOV A POTRAVÍN*

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I. Introduction

Industrial property rights representing a part of intellectual property have had an impact on the success of entrepreneur's goods and services on the market with certain prod-

Abstract (EN)

The paper deals with the issue covered by the field of industrial property, it deals with the right to designation, especially with characteristics of legal regulation of labeling of products with regard to their geographical origin at the Slovak, communitarian and international levels. Individual objects of the industrial property may be the result of intellectual creative activity of its creator/creators (e.g. inventions, utility models, designs) or they are not the result of creative activity of a particular natural person and are considered as industrial property rights to designation. The group of rights to designation includes: business names, trademarks, designation of origin for products and geographical indications for products. The rights to designation, inter alia, shall ensure uniqueness and competitive advantage for entrepreneurs and easy identification on the market of goods and services for the consumers. The paper closely analyzes the harmonized legal regulation of designations of origin and geographical indications of agricultural products, foodstuffs, spirit drinks, and wines. At the example of Tokaj wine region, it demonstrates the importance of protected designations at the EU level, in case of which demonstrable geographical origin of the product with controlled product specification by authorized national bodies brings a guarantee of quality of this product for consumers and the competitive advantage during their commercial implementation for the entrepreneurs.

Keywords (EN)

intellectual property, industrial property rights, business name, trademark, designation of origin, geographical indication

ucts and have accelerated the interest of consumers in the given products and services many times in the history. While the goods and services are sufficiently protected and their designation is properly used, they influence the regulation of the consumer demand and improve the position of entrepreneurs on the market. Industrial property can be considered as a tool for both promotion on the market and increase of

Abstrakt (SK)

Príspevok sa zaoberá problematikou spadajúcou do oblasti priemyselného vlastníctva, zaoberá sa právom na označenie, najmä charakteristikou právnej úpravy označovania výrobkov vzhľadom na ich zemepisný pôvod na úrovni slovenskej, komunitárnej a medzinárodnej. Jednotlivé predmety priemyselného vlastníctva môžu byť výsledkom duševnej tvorivej činnosti jeho pôvodcu/pôvodcov (napr. vynálezy, úžitkové vzory, dizajny) alebo nie sú výsledkom tvorivej činnosti konkrétnej fyzickej osoby a sú považované za priemyselné práva na označenie. Do skupiny práv na označenie sú zaradené: obchodné mená, ochranné známky, označenie pôvodu výrobkov a zemepisné označenia výrobkov. Práva na označenie okrem iného majú zaručiť podnikateľovi jedinečnosť, konkurenčnú výhodu a pre spotrebiteľov ľahkú identifikáciu na trhu tovarov a služieb. Príspevok bližšie analyzuje harmonizovanú právnu úpravu označení pôvodu a zemepisných označení poľnohospodárskych výrobkov, potravín, liehovín, vín. Na príklade Tokajskej vinohradníckej oblasti poukazuje na význam chránených označení na úrovni EÚ, kedy preukázateľný zemepisný pôvod výrobku s kontrolovanou špecifikáciou výrobku príslušným štátnym orgánov prináša spotrebiteľom záruku kvality tohto výrobku a pre podnikateľov konkurenčnú výhodu pri ich obchodnej realizácii.

Kľúčové slová (SK)

duševné vlastníctvo, priemyselné práva, obchodné meno, ochranná známka, označenie pôvodu, zemepisné označenie

^{*} The paper has been published in the Volume Proceeding: "Výzvy a perspektívy Agrárneho práva EÚ" Jean Monnet Chair [CD]. Nitra: Slovak University of Agriculture in Nitra, p. 203. ISBN 978-80-552-1200-5

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competitiveness of small and medium-sized entrepreneurs, who may largely include entrepreneurs aimed at cultivation, or alternatively those aimed at processing of agricultural products and foodstuffs.

II. Material and Methods

This paper addresses the issue falling within the field of the industrial property; it deals with the right to designation, in particular, with the characteristics of legal regulation of product appellation regarding their geographical origin at the Slovak, community, and international levels. Both the open market area in the EU states and the free movement of goods and services increase the consumer interest in identifying the origin of goods, and consumer responses to the quality of agricultural goods and foodstuffs are especially sensitive. In recent years, the importance of appellation of goods, which clearly indicates the origin of products both in terms of the geographical indication and the identification of a specific manufacturer, has increased⁽¹⁾.

The paper is based on available literary sources concerning this issue, as well as on the law laying down the rules in terms of the designation that are covered by the content of the Commercial Code, Act on trademarks, Act No. 469/2003 Coll. on designations of origin for products and geographical indications for products, as amended, Regulation of the European Parliament and of the Council (EU) No. 1151/2012 on quality schemes for agricultural products and foodstuffs. Another source of information of the paper was also provided by standards contained in international treaties, in particular, Paris Convention for the Protection of Industrial Property, Madrid Agreement Concerning the International Registration of Marks, Lisbon Agreement for the Protection of Appellations of Origin and their International Registration. The paper uses basic methods of legal science such as legal analysis and comparison.

III. Results and Discussion

The market environment, strong competition, complex international issues related to the transfer of technology, the possibility of any entrepreneur to participate directly in foreign import and export of products and services, give rise to the need to deal with the management of intangible property values, intellectual property and their sufficient protection as representing a part of the business property of every entrepreneur.

The intellectual property can be understood as a legal and economic abstraction made up of a set of various objectively expressed ideal objects (perceivable by the senses) that are neither objects in the legal sense nor rights, but they act as some intangible asset values and are capable of standing for an individual subject-matter of legal and economic relations.

The industrial property serving as a part of the intellectual property is characterized by specific features following, in particular, from the requirement of the industrial or eco-

(1) KELBLOVÁ, H. Konflikt zeměpisných označení a ochranných známek. In: Kvasný průmysl. 58 (11 - 12): pp. 343-349 ISSN 0023-5830. nomic usability and the existence of an official registration principle, because it is established not only on the basis of a business name, but also based on the decision of the Industrial Property Office of the SR.

Individual industrial property objects may be a result of creative intellectual activities of their originator/originators (e.g., inventions, utility models, designs) or are not the result of creative activities of specific natural persons and are considered to be industrial property rights to designation⁽²⁾. The rights to designation, inter alia, ensure and provide the entrepreneurs with uniqueness and competitive advantage, and the consumers with an easy identification on the market of goods and services.

The group of rights to designation includes: business names, trademarks, designations of origin of products and geographical indications of products. These rights may be also supplemented with other objects of designation that are, however, not specifically regulated, for example logos, domain names or designations of plants.

Legal Protection of Business Names: the legislation concerning the business name laid down by the Commercial Code (§ 8–12) applies to entrepreneurs within the meaning of § 2 par. 2, i.e. entrepreneurs that are registered in the Commercial Register, entrepreneurs conducting business on the basis of a trade or some other type of license issued pursuant to a specific regulation, as well as natural persons, self-employed farmers. In the alternative, the legal regulation of the business name is connected with the provisions of the Civil Code, which generally governs the protection of the name of a natural person, his/her civic honor and human dignity, the protection of the name of a legal entity and its goodwill.

According to the legal definition, a business name is a name, under which an entrepreneur carries out legal acts during the conduct of business. Business name acting as a designation fulfils a distinctive function, because it identifies, individualizes and distinguishes a specific entrepreneur from other entrepreneurs. It results in the requirement of noninterchangeability of a business name with a name of some other entrepreneur and the requirement of the truthfulness of the business name resulting from the regulation stating that the business name may evoke any false ideas neither about the entrepreneur nor about the subject matter of his/ her business. Registration of the business name (for instance in the Commercial Register, Trade Register, or a municipal authority register) entitles the entrepreneur the right to unlimited use of the business name and the right of priority in relation to protection (§ 12 of the Commercial Code).

Legislation concerning trademarks: a trademark acting as a right to designation belongs among the oldest tools of industrial property, although it is not uniformly defined in individual national regulations and international treaties (industrial or business mark). Act No. 506/2009 Coll. represents the current Slovak legislation on trademarks and implementing regulations, Decree of the IPO SR No. 567/2009 Coll. According to the explanatory statement to the mentioned law, the regulation should both transpose the provisions of the

⁽²⁾ VOJČÍK, P. et al. Právo duševného vlastníctva. Plzeň: Vydavatelství a nakladatelství Aleš Čeněk, s.r.o. 2012. 495 p. ISBN 978-80-7380-373-5.

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EU directives relating to the trademarks in a more precise manner and take into account judgments of the EC Court of Justice concerning preliminary proceedings initiated due to the need for the interpretation of individual articles set in directives, as well as the judgments of the EC Court of First Instance concerning the review of the decisions of the Office for Harmonization in the Internal Market issued in accordance with Council Regulation (EC) No. 207/2009 on the Community trade mark

The law does not define the trademark, however, it lays down what type of designation can represent a trademark. In accordance with the legislation, a trademark is a verbal, figurative, three-dimensional or combined sign capable of distinguishing goods or services of one person from goods or services of another person. Within the meaning of this definition, a trademark acting as a designation has the distinctive function, as it distinguishes products and services of one entrepreneur from products and services of other en-

The law explicitly specifies the reasons for refusal of registration of a designation in the Register of Trademarks. Designations may be refused if they do not possess the distinctive capability, are not capable be being presented graphically, contain state names, or are of types of products or services, generally known geographical indications, misleading designations, or if a designation is identical to a trademark registered for another person for identical goods or services.

The Industrial Property Office of the SR examines an application containing a new proposal for a designation that should become a trademark and if it fulfils the legal requirements, it is published in the Official Journal of the IPO SR. Within three months from the publication, an opposition procedure takes place and if the Industrial Property Office is given no objections, the designation is registered. Its protection period lasts for ten years and the registration can be renewed for further ten years every time.

The international registration of such designations can occur either on the basis of the Madrid Agreement Concerning the International Registration of Marks (the international registration is subject to the registration of the trademark in the country of origin) or based on the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (the international registration occurs on the basis of a national application and the registration of the trademark in the country of origin is not required).

A Community Trade Mark (CTM) is a trademark, which started to be granted on the basis of Council Regulation EU No. 40/94 and the current Council Regulation (EC) No. 207/2009 on the Community trade mark, which applies in the territory of the Community based on a single procedure and registration at the Office for Harmonization in the Internal Market - OHIM, and the owner of the Community trademark may be any natural or legal person, including public law entities. The Community trademark has a unitary character and the same effects within the whole Community. In addition to the registration, it can be transferred, abandoned, cancelled or declared invalid and its use may be prohibited only in the territory of the Community.

Unlike the business name representing a designation iden-

tifying entrepreneurs in legal relations, the trademark enables to distinguish products and services of one business entity from identical or similar products and services produced and provided by other entrepreneurs.

Protected indication of products: unlike the business name or the trademark, a protected indication acting as a designation cannot be created and applies only to specific products, the properties and other features of which are connected with certain geographical environment that characterizes and specifies them. Indications serve to inform consumers about the geographical origin of products and shall guarantee certain expected quality without any connection to a specific entrepreneur, they do not establish exclusive rights of their users and may not act as a subject matter of the property rights and their users cannot use them, transfer them and set up any security agreements and negotiate license agreements.

The regulation is laid down by Act No. 469/2003 Coll. on designations of origin for products and geographical indications for products, Regulation of the European Parliament and of the Council (EC) No. 110/2008 on definition, presentation, labelling and protection of geographical indications of spirit drinks, and Council Regulation (EC) No. 1234/2007 establishing a common organization of agricultural markets and on specific provisions for certain agricultural products.

Pursuant to Regulation of the European Parliament and of the Council (EU) No. 1151/2012 on quality schemes for agricultural products and foodstuffs, it is possible to register and protect the agricultural products and foodstuffs at the level of the European Community. The mentioned Regulation repeals Council Regulation (EC) No. 510/2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs, Council Regulation (EC) No. 509/2006 on agricultural products and foodstuffs as traditional specialities guaranteed.

According to the legislation, the following are the protected

- 1. a protected designation of origin for a product, which is a name of a specific place, region or, in exceptional cases, that of a country, used to identify a product originating from that place, region or country, both if the quality or characteristics of the product are exclusively or essentially given by a geographical environment and its characteristic natural and human factors, and if the production, processing and preparation of the product takes place solely in a specified place, region, or country. In comparison with the geographical indication, the protected designation of origin represents a "higher" form of protection and the product and its characteristics are very closely linked to the geographical environment, the name of which it bears, and all production processes from raw material acquisition to the final product are carried out in this area.
- 2. a protected geographical indication for a product is a name of a specific place, region or, in exceptional cases, that of a country, used to identify a product originating in that place, area or country, if the product has a specific quality, goodwill or characteristics attributable to the place, region or country.

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Unlike in the case of the protected designation, in this case, it is sufficient if just one production stage is carried out in the defined geographical area. For instance, the raw materials used in the production can come from another region and the specific quality, goodwill or a characteristic can be given by the geographical origin.

- 3. a designation of origin for wine is a name of a specific place, region or, in exceptional cases, that of a country, used to designate a product, the quality or characteristics of which are exclusively or essentially influenced by the geographical environment together with its characteristic natural and human factors, which is produced in this territory, it is obtained from vine varieties belonging to Vitis vinifera, and the grapes from which it is produced come exclusively from this territory,
- 4. a **geographical indication for wine** represents a name of a specific place, region or, in exceptional cases, that of a country, used to identify a product, which has a specific quality, goodwill or other characteristic features attributable to this area, which is produced in that area, it is obtained from vine varieties belonging to Vitis vinifera or a cross between the Vitis vinifera species and other species of the genus Vitis, and at least 85 % of the grapes used for its production come from this area.

On the basis of the Lisbon Agreement, the designation of origin or the geographical indication can provide protection for wines, spirit drinks, mineral waters, handicrafts and other products, the final quality or characteristics of which are affected by natural conditions or are connected with a specific geographical area by means of a tradition, goodwill, and have a goodwill that can be attributed to geographical origin, such as Modranská majolika, Piešťanské bahno, Trenčianska borovička "Juniperus", Budiš, Fatra, Korytnica, Korytnická, Soľnobanská čipka, Cígeľská prírodná liečivá voda, Baldovská minerálna voda, Levický zlatý ónyx, Poděbradská minerální voda, Tokajské víno zo slovenskej oblasti, and Karlovarská hořká at the national or international level. An association of producers or processors can file the application for the registration of a product processed and prepared in a given area with legal subjectivity irrespective of the legal form, and the applicant becomes a holder of the certificate of registration and the members of the association become users of the registered certification.

Agricultural products and foodstuffs can be registered and protected as designations of origin or geographical indications of origin only at the European Union level. It is possible to provide a transitional protection from the date of filing of the application to the European Commission until the issue of a decision on entry in the register kept by the Commission at the national level of the given member state (article 9 of the Regulation of the European Parliament and of the Council (EU) No. 1151/2012). At present, the register of the European Commission contains the following products registered as protected geographical indications: Skalický trdelník, Slovenská bryndza, Slovenská parenica, Slovenský oštiepok, Oravský korbáčik, Tekovský salámový syr, and Zázrivský korbáčik.

Spirit drinks can be protected both at the national level

and at the level of the European Commission, while, unlike wines, they can be identified only with the geographical indication. Spirit drinks registered in the EC register of geographical indications: Karpatské brandy špeciál, Bošácka slivovica, Laugarício vodka, Spišská borovička, Slovenská borovička Juniperus, Liptoská borovička, Slovenská borovička, Inovecká borovička, Demänovka bylinná horká, Demänovka Bylinný Likér.

Wines can be protected both at the national level and at the level of the European Commission. Act No. 313/2009 Coll. on viticulture and wine making, as amended, lays down conditions for the cultivation of vines in the registered areas situated in the wine regions, as well as conditions for the production of wine products and their placing on the market in order to ensure the wholesomeness and quality of wine. The issue of wines is also referred to by Council Regulation (EC) No. 479/2008 of 29 April 2008 on the common organization of the market in wine. In accordance with the legal definition, the territory of Slovakia is qualified as Slovak wine region, which is divided into 6 wine areas: Malokarpatská, Južnoslovenská, Stredoslovenská, Nitrianska, Východoslovenská and Vinohradnícka oblasť Tokaj. The division of wine products of the Act No. 313/2009 Coll. also regulates the issue of wines with protected geographical indications (§ 14 of the Act) and wines with protected designations of origin (§ 15 of the Act), which are subject to a certification occurring before they are placed on the market. The certification includes compliance with specifications (pursuant to art. 48 of Regulation (EC) No. 479/2008) or control of data in the wine register, chemical analysis and wine sensory evaluation. It is possible to produce the type of wine with the protected designation of origin in all wine areas of the Slovak wine region. In accordance with the law, the wine region of Tokaj is a closed area bounded by borders of the cadastral territories of Bara, Čerhov, Černochov, Malá Tŕňa, Slovenské Nové Mesto, Veľká Tŕňa and Viničky municipalities and the grapes used for the production of the Tokaj wines can be grown only in qualified vineyards. The law lays down the strictest rules for the wines from the Tokaj region labelled with the protected designation of origin.

For the first time, the conditions and requirements for the growing of Vitis vinifera, wine making, including trade in wine, wine labelling, wine packaging, as well as the vineyard registration were specified in the Slovak Republic in Act No. 332/1996 Coll. on viticulture and wine making with effect from 1 January 1997. At the same time, the mentioned act led to the approximation of the majority of the technical provisions set by the EEC regulation concerning the common organization of the market in wine and conditions for the production of high-quality wines. The act also governs the issue of the Tokaj wine region named **Tokajská vinohradnícka oblasť** representing one of the six wine areas in the Slovak wine region (§ 5, pursuant to the annex to the act, the areas of the region that can be used as vineyards approximately 908 ha).

The new regulation issued by the EU, in particular Council Regulation (EC) No. 1493/1999 on the common organization of the market in wine has required the adoption of six amendments to the mentioned act and, finally, the adoption

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of a new Act No. 182/2005 Coll. on viticulture and wine making, the purpose of which was, in addition to harmonization with the legislation of the European Communities, to set the conditions of wine growing, to lay down the obligations of the persons growing wine and working with wine and wine products. The wine region of Vinohradnícka oblasť Tokaj is specified in the fifth part of the Act (§34-39), as well as in the implementing regulations, the Decree of the Ministry of Agriculture of the SR No. 232/2005 Coll. on the wine region of Tokaj (in which its name is Vinohradnícka oblasť Tokaj and not Tokajská vinohradnícka oblasť as in the previous act). At the request of the SR, the European Commission entered the protected designation of origin "Vinohradnícka oblast Tokaj" in the list of quality wines published in the Official Journal of the EU (published on 17 February 2006 and 10 May 2007). On 31 July 2009, the day before the entry into force of the new regime of wine products and the introduction of the E-Bacchus electronic register, at the request of the SR, the protected designation of origin was changed into "Tokajská, Tokajské, Tokajský vinohradnícka oblasť" and the designation was taken over into the E-Bacchus database. Based on national legal regulation (Act No. 182/2005 Coll.), the Slovak Republic sent a letter to the European Commission on 30 November 2009 and requested the change of the protected designations of origin "Tokajská Tokajský Tokajský vinohradnícka oblasť" into the protected designation of origin "Vinohradnícka oblasť Tokaj" in the database of the quality wines. The European Commission complied with the request and changed the entry in the database. Hungary disagreed with the change and challenged the decision of the EC in the General Court with an application for cancellation of the "Vinohradnícka oblasť Tokaj" protected designation in the E-Bacchus database of quality wines produced in specified municipalities of the wine region of Tokaj in the Slovak wine region. In its judgment of 8 November 2012, the General Court rejected the application of Hungary as inadmissible on the ground of the "Vinohradnícka oblasť Tokaj" designation having been protected pursuant to the EU regulation already before the entry in the database and not producing any legal effects. On the basis of the application of Hungary, the Court of Justice of the European Union issued the decision (published on 13 February 2014), according to which the registration of the Slovak name of "Vinohradnícka oblasť Tokaj" in the electronic register of protected designations of origin does not constitute an actionable measure and cannot be challenged before the courts of the European Union.

The state border divided the historical wine region of Tokaj after the World War I. The first dispute on the name comes from the year 1964; the subsequent international negotiations did not change the fact that Hungary was an exclusive distributor of the Tokaj wines in foreign markets in that pe-

By joining the EU, the exclusive contract between Hungary and the EU concerning the export of Tokaj wine terminates, both Hungary and Slovakia were entitled to use the protected designation for wines from the region. Furthermore, the European Commission proposed that both Slovakia and Hungary agree on the same rules in terms of wine growing, wine production technologies, quality control, the same labelling and same bottling for the whole wine region named "Tokaj". In spite of several years of negotiations between the representatives of both states at both governmental and professional levels, the recommended agreement has not yet oc-

The abovementioned example of two states claiming the designation of origin of a product that historically comes from one territory, in which the wine growing and wine processing goes back to the 13th century, demonstrates the complexity of the relations resulting from it and the relevance of the claim, since the designation of origin is connected not only with guarantee of the quality of the product from the perspective of consumers, but also with the higher price of the product of special quality.

IV. Conclusion

The rights to designation in the form of a trademark, the function of which is to distinguish between entrepreneurs in legal relations, in the form of a trademark, the task of which is to distinguish between identical or similar goods and services coming from different producers, and in the form of protected designations and geographical indications for products that guarantee the quality, individuality, uniqueness of the products influenced by their geographical origin represent important industrial property rights, intangible assets, a significant value of business property of entrepreneurs.

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