

Communication concerning the decision of the Curia of Hungary in  
civil case number Pfv.IV.21.584/2018

The court of first instance issued an interlocutory injunction to prohibit the defendant from abusing – by way of placing the applicant’s products in a bad light – certain trade marks in his business correspondence and on his websites, while it dismissed the remainder of the application and declared the injunction’s immediate enforceability. Proceeding upon the defendant’s appeal, the court of second instance reversed the first instance decision and completely dismissed the application for the issuance of the aforementioned injunction.

Proceeding upon a petition for judicial review, the Curia of Hungary was called upon to decide on whether the defendant’s utilisation of the trade marks concerned in his communications addressed to the applicant’s customers and business partners could be qualified as a trade mark use and whether such a use was justified and necessary.

The Curia found that the utilisation of the trade marks concerned in the defendant’s communications addressed to the applicant’s customers and business partners with the aim of offering goods and services identical or similar to the ones indicated in the above trade marks’ lists of goods and services led to the establishment of trade mark use. The rules limiting the scope of trade mark protection cannot be applied if the use of a trade mark is intended not only to identify and distinguish the products of different businesses, but also to generate a loss in consumer confidence in respect of a competitor’s products and to issue a call for boycott to induce a decline in a competitor’s sales and to promote the attractiveness of the trade mark abuser’s products. Such use is incompatible with honest practices in industrial and commercial matters and contrary to the requirement of business fairness. As a result of the defendant’s unauthorised trade mark use by way of unfair business practices, the establishment of trade mark infringement cannot be excluded by the fact that such business conduct may constitute a breach of competition law rules as well.

Budapest, the 11<sup>th</sup> of November 2019

Civil Department of the Curia of Hungary