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*Service mark as a normative category of trade marks*

SUMMARY

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Service marks are a normative category of trade marks. They are distinguished by their subject, which is a service rather than a good (product) as is in the case of traditional trade marks. Currently, both – marks for goods and marks for services – are referred to collectively as “trade marks”. Nevertheless, this does not mean that there are no differences between marks used to distinguish goods and those used to distinguish services. The aim of the dissertation is to propose a definition of the concept of a service in trademark law, to identify the similarities and differences between trade marks for goods and trade marks for services and, finally, to answer the question of whether service marks are an independent normative category of trade marks.

Dogmatic method was the primary research method adopted in the dissertation. The directives of linguistic, functional and systemic interpretation were proven useful during the writing process. Moreover, the rules of legal reasoning have also played a significant role. In addition, the historical and comparative legal methods have been applied to a limited extent.

The dissertation is divided into six chapters and concludes with a final section. The first chapter presents the origins of the service mark as a distinctive sign and introduces to the main subject of dissertation. The main purpose of this part is to identify the rationale for the inclusion of service marks in the scope of trademark law protection.

The second chapter revolves around the concept of a service in trademark law. The discussion is preceded by references to economic sciences as well as other areas of law – namely, the European Union’s primary law and civil law. The main aim of this chapter is to present the author’s own position on the matter. Final conclusion of this chapter is that the concept of a service in trademark law should be regarded independently, irrespective of how this concept is understood in other areas of science or other branches of law. This concept must be viewed functionally – as the object (substrate) of the mark (sign). A service is a behavior (action) provided in the market for third parties and aimed at satisfying their needs. A service is characterized by a strong connection with the one providing it. It is intangible and impermanent, but it may have a material carrier. The Nice Classification should play a significant role in the interpretation of this concept.

The third chapter addresses the substance of the service mark viewed as an intangible asset belonging to the category of distinctive signs and as the subject of a subjective right. This chapter also delineates the functions of the service mark. It concludes with a comparison of the service mark and trade name as two separate categories of distinctive signs.

A service mark performs the same function as a trade mark for goods. Practically, its most significant function appears to be the advertising one. Nevertheless, from a legal point of view, the distinguishing function of a service mark creates it as a distinctive sign.

The fourth chapter presents the issue of the distinctiveness of a service mark. The discussion focuses on three absolute grounds for refusal of registration, which together constitute the subject. The final part of this chapter addresses the topic of acquired distinctiveness of service marks. The analysis of absolute grounds for refusal of registration should take into account the connections between the service and material objects, including goods which are the results of the service, the objects used to perform the service and the objects subjected to the services. Another issue is the inherent vagueness and broadness of the terms used to describe services.

The fifth chapter depicts the exclusive right to a service mark. The analysis covers the rights comprising the exclusive right to use a service mark, the obligation to genuine use of a service mark and the problem of exhaustion of the right to a service mark. The analysis leads to the conclusion, that the subjective right to a service mark includes the right to put the mark on objects associated with the services, particularly on their material results. Consequently, it is needed to recognize the exhaustion of rights to a service mark to the extent that the mark is applied to the material result of the service.

The sixth chapter examines the infringement of the subjective right to a service mark. The discussion focuses on two traditional forms of infringement: double-identity and the likelihood of confusion. The main attention is devoted to the requirement of identity or similarity of services or services and goods. The analysis reveals that there are no significant differences in assessing the infringement of trade marks and service marks. The main issue concerns the proper identification of the substrate on which a third party uses the mark. Sometimes, it is unclear whether the sign is used for goods or for services. In the dissertation it is assumed that primary importance should be given to the main function performed by the mark.

The conclusion serves as a summary of the discussion. A service mark constitutes a normative, independent category of a trade marks, distinguished by its subject – a service. The differences between goods and services affect key construct of trademark law. However, this does not mean that service marks should be regulated separately from trademarks. They share common primary function: indicating the origin of market

products, whether goods or services. Proper interpretation of trademark law provisions is sufficient to ensure the functioning of service marks in the marketplace.