



Foreign equivalent of geographical name may be registered if average public would not understand its meaning

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- **The Trademark and Patent Office refused to register Škoda Auto AS' mark SUEDIA for automobiles on absolute grounds**
- **The Re-examination and Evaluation Board found that, although the term 'Suedia' means 'Sweden' in Romanian, such meaning would not be readily perceived by the average Turkish consumer**
- **This decision adopts a broader interpretation of distinctiveness for marks that include a geographical name in a language that is not widely known to the relevant public**

A recent decision of the Re-examination and Evaluation Board of the Turkish Trademark and Patent Office demonstrates that trademarks that include geographical names do not necessarily designate the geographical origin of the goods/services for the relevant public, especially when the knowledge of the average consumer is taken into account.

Facts

Škoda Auto AS' trademark application for SUEDIA was rejected in its entirety by the Trademark and Patent Office on absolute grounds under Articles 5/1(b) and 5/1(c) of the Industrial Property Code 6769 (IP Code). Article 5/1(b) prevents the registration of "signs which are devoid of any distinctive character", while, according to Article 5/1(c), "signs which consist exclusively of, or includes as an essential element, signs or indications which serve in trade to designate the kind, type, characteristics, quality, quantity, intended purpose, value, geographical origin or time of production of the goods or of rendering of the services or other characteristics of goods or services" may not be registered as trademarks.

Although the decision lacked a comprehensive reasoning, it was presumably based on the ground that SUEDIA is a non-distinctive term which indicates geographical origin, as it means 'Sweden' in the Romanian language. The office is known for applying a strict interpretation of Article 5 of the IP Code in

general and, specifically, in cases where the mark includes an expression referring to a geographical name.

The appeal petition filed before the board emphasised that the trademark at issue did not attempt to designate the country of Sweden as the geographic origin of the goods to be supplied to Turkish consumers, namely “automobiles and their parts or accessories”. More importantly, the petition argued that the term ‘*Suedia*’ is sufficiently distinctive because the average Turkish consumer, who has no knowledge of the Romanian language, will not easily recognise it as meaning ‘Sweden’. Considering that the SUEDIA trademark was found to be distinctive in the European Union, where Romanian is spoken in relevant circles and is one of the 24 official languages, the application at issue should have been considered as sufficiently distinctive to pass the absolute grounds examination in Turkey.

Decision of the board

In its decision dated 22 August 2019, the board acknowledged the abovementioned arguments, stating that, although the term ‘*Suedia*’ means ‘Sweden’ in Romanian, such meaning would not be readily perceived by the average consumers in Turkey, as Romanian is not a commonly known or spoken language in the country. The term ‘*Suedia*’ was accordingly found to be distinctive under Article 5/1(b) of the IP Code. Since it was also found that the term is not directly indicative of the goods covered by the disputed application under Article 5/1(c) of the IP Code, the appeal against the refusal decision was upheld.

Comment

This board’s decision is significant in that it adopts a broader interpretation of distinctiveness for word trademarks that include a geographical name in a language that is not widely known to the relevant public. The Trademark and Patent Office’s general approach has been not to register geographical names, unless accompanied by additional verbal elements. Arguably, the registration of the same mark in the European Union may have affected the board’s decision.

The decision also shows that, when it comes to trademark applications that include geographical names, one should first consider whether the mark is understood as a geographical term by the average consumer, before examining whether the mark denotes a geographical origin in the minds of the consumers.

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