

Intellectual Property - Hungary

Revised '.hu' registration rules: how should trademark owners protect their rights?

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Introduction

Hungary's domain name rules were amended with effect from June 1 2011. The main aim of the modifications was to shorten the registration procedure for '.hu' domain names. However, among other changes, the process no longer distinguishes between domain name applications based on an applicant's previous rights in a requested domain name.

Previously, a unique registration mechanism meant that it took at least two weeks to register a '.hu' domain name, which the applicant could not use until its final registration. This was a serious competitive disadvantage in comparison to other country-code top-level domains. The Hungarian system remains unique in enabling IP rights holders to prevent potential serious infringements before the final registration of a domain name. However, the period within which a trademark owner may object to the final registration of a domain name has been reduced.

Domain name registration system

Clause 1.1 of the Hungarian Domain Name Rules stipulates that an applicant for a '.hu' domain name must be:

- an EU citizen;
- a private person with right of domicile in Hungary;
- an entity that:
 - is established by law;
 - is entered in the records of an authority or court (or is registered therewith); and
 - files its respective application with the competent authority or court and commences its operations pursuant to the law before such entry or registration in the territory of the European Union; and
- the owner of a trademark that is registered with the Hungarian Intellectual Property Office or has been granted protection in Hungary.

Before the rule changes, the Hungarian system recognised two forms of application. A priority application could be filed if the applicant had an effective trademark in Hungary that was identical to the domain name for which it was applying. In such cases the application was granted immediately. A non-priority application was publicly announced on the registry's website for 14 days and was granted only if no objections were received during that period. If an objection was received to the final registration of the domain name (eg, from the owner of an identical or a confusingly similar mark), a consulting board of independent experts decided whether the application should be granted or rejected.

Since June 1 2011 the process has no longer distinguished between domain name applications based on an applicant's previous rights in a requested domain name. The new rules provide that all applications will be announced online and that domain names can be used from the date of application, although only on condition that no objections are received to the final registration. Domain names will be deemed to be finally registered eight days after the announcement. At this point the domain name and related technical data, as well as information about the registrant and the administrative

and technical contacts, will be registered in the '.hu' database.

Enforcement

The amended rules provide for the use of an alternative dispute resolution system before the registration of the domain name. The deadline for filing an objection cannot be extended; therefore, if a trademark owner fails to file its objection before the due date, the consulting board will not be called. In practice, applicants often withdraw obviously infringing applications on receipt of an objection; thus, the objection is not always decided by the consulting board.

Before the amendments, a trademark owner had 14 days to file its objection to the final registration of the domain name. This period has been shortened to eight days. An objection can be filed through an accredited '.hu' registrar electronically within the eight-day period, which begins on the date of the online announcement. However, a hard copy of the objection should also be filed with the registry within 14 days of the announcement.

Costs

The consulting board's fee is borne by the losing party. This will be invoiced by the registrar who has participated in the procedure, who may also invoice the client for its own fees. The fee of the procedure is Ft40,000 (approximately €150) and the registrar's fee is Ft5,000 (approximately €20).

Legal issues

Fair use

A domain name may not be unlawful, offensive or fraudulent, either in use or meaning.

The Trademark Act stipulates that if a party uses a designation that is confusingly similar or identical to a trademark in the course of business operations and without a licence, this constitutes trademark infringement.

If the applicant for a domain name that is identical or confusingly similar to an effective trademark is a company - whose activity is a business operation in itself - the application constitutes trademark infringement. In the case of a private person, the fraudulent and misleading nature of the domain name application should be emphasised and the trademark infringement can be examined after receipt of the applicant's response (if any).

List of goods and services

A further significant issue is whether the list of goods and services of the trademark, which is used as the basis of the objection, should cover the business activity that the applicant wishes to carry out under the domain name in question. The answer is derived from the technical characteristics of the domain name system, as a domain name consists of a given combination of characters that can be registered only once under one domain name space, but identical designations can be registered as trademarks in different classes of goods and services.

As the Supreme Court ruled in 2005, a trademark owner's exclusive right to use its trademark covers all business operations, including activity on the Internet. Therefore, only the trademark owner is entitled to register a domain name that is identical or confusingly similar to the trademark in question. On this basis, the list of goods and services will not be examined.

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