"Acquis communautaire" and the National Legal Practice

(With Respect to the "Ad Hoc Competitor")

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The winged expression "acquis communautaire" does not refer only to the facts that the individual EU member states apply the immediately effective norms of Community law, that the European directives are properly transposed, and that the decision-making practice of the European Court of Justice is being respected. A significant body of normative solutions, decision-making principles, and purposeful procedures is also provided by the legal practice in the individual member states, i.e., by practices of norm-making, legal advisory, company law, judicial judgments, and administrative decisions. The present article points out how the familiarity with two Austrian decisions could have facilitated and speeded up the decision in a Czech case, whose nature was not unique.

The case of using a part of song lyrics for an advertising slogan[1]

Recently, Czech courts adjudicated a dispute concerning an advertising campaign in which the defendant (B.) advertised a concrete mixer. The billboard advertising the product was dominated by a photograph of the technological machine and contained information about its price, guarantee, and supplier. In addition, the billboard showed a wall, a picture of a woman, and a prominent text reading "bake…" [upeč…] and continuing one line underneath with the words "…a wall, for instance" […třeba zeď].

This billboard was challenged for breach of copyright law in a suit filed with the Regional Court in Brno. The judgment of the court – under No. 23 C 22/2005-58 of 16 December 2005 – started from the fact that the plaintiff (Z.S.) was the author of the lyrics to the famous song "Put one brick to another" [Dej cihlu k cihle] (popularly known in the Czech Republic also under the title of "Doing" [Dělání]). The plaintiff's lyrics contain, among others, the following verse: "bake some bread, for instance, build a wall, for instance" [upeč třeba chleba, postav třeba zeď]. The advertisement thus used, without the author's approval, a part of the said lyrics, which are commonly brought to mind to those people who perceive the billboard and know the text of the song.

As regards the legal qualification, the court based its decision on the fact that the text of the said song constitutes a "work" in the sense of Act No. 121/2000 Sb.

on Copyright and Rights Related to Copyright, as subsequently amended and as amending some other laws (hereinafter referred to as "the Copyright Act"), and that Section 2 (3) of the Copyright Act protects, among other, parts of a work. Where a part of a work is used for advertising purposes, the author of the work must issue an approval for such a use. The first-instance court found it quite indisputable that the advertisement for the product did use a part of the plaintiff's work and that the text could cause a wide segment of the public to think of the text of the song "Put one brick to another." In this way, the defendant unlawfully infringed on the plaintiff's authorship rights because the wide public, including artists, may have believed that the plaintiff had given his consent to the defendant for the purpose of using a part of his work. The defendant was, thus, sentenced to the payment of the amount of CZK 200,000 to the plaintiff and the publication, at her own expense, of an apology printed in a nation-wide newspaper and worded as follows: *"Apology. In an exterior billboard placed in September, our company used the phrase "Bake…a wall, for instance" to advertise the sale of a mixer of construction materials. By this act, we made the unauthorised modification and use of a part of the song lyrics "Put one brick to another," which reads "Bake some bread, for instance, build a wall, for instance." We hereby apologize to Mr. Z.S., the author of the text of the song "Put one brick to another." B., k.s."*

The defendant's appeal was heard by the Supreme Court in Olomouc. Its judgment of 13 September 2006, ref. No. 1 Co 64/2006-93, started by stating the fact that the fundamental authorship rights include the right to the inviolability of one's work and the right to give approval to any disposal with one's work, as well as the right to reasonable satisfaction where an unauthorised infringement of copyright law occurs. Such an infringement was found by the court to consist mainly of any alteration of a work, or some other interference with one's work, without the author's approval and any use of and disposal with a work without a licence having being provided. In the opinion of the appeal court, the advertising slogan copies, in its entirety, a part of the plaintiff's text. The conclusion – that it is a part of the lyrics of the song "Put one brick to another" – is justified also thanks to the presence of dots in the slogan because it is obvious that a part of the text was omitted. Because of the familiarity of the song with the general public and the uniqueness of the text, it was not possible – in the opinion of the appeal court – to arrive at anything else than the conclusion that the advertising slogan uses a part of the plaintiff's song lyrics. By using the disputed billboard, the defendant, thus, infringed unlawfully on the plaintiff's work and violated his authorship rights to the lyrics of the song "Put one brick to another."

Thus, the appeal court upheld the judgment of the first-instance court by accepting its opinion that the unauthorised use of the plaintiff's work gave rise to the plaintiff's right to satisfaction, while deeming the form and manner of apology as reasonable with respect to the infringement. In addition, the unauthorised use of the work without the author's approval resulted in the defendant's unjust enrichment. Its amount was set on the basis of information about the amounts of usual payments for the use of one's work for advertising purposes on billboards.

The defendant did not accept this judgment and filed an appellate review to the Supreme Court of the Czech Republic. Her main argument was that the disputed advertisement did not accompany the text with the music, while the plaintiff's text forms an inseparable whole with the music. The agreement between the text of the song and the text of the slogan was considered as insignificant in the defendant's petition, allegedly a chance combination of three words of the advertising slogan with three words of the song lyrics. What was significant from the legal perspective was mainly the argument that the text "Bake… a wall, for instance" does not meet the statutory elements of a work, being neither a work nor its part but merely individual words from which statutory features of a work cannot be deduced. Such words could not – according to the opinion expressed in the petition for appellate review – determine any individualization of a work with respect to copyright law.

The plaintiff's position on the petition for appellate review stated that the ruling of the appeal court was correct. The correspondence between the advertising slogan and a part of the plaintiff's lyrics could not be accidental. The results of the plaintiff's creative activities were, thus, clearly used for the defendant's advertising purposes.

In its judgment (see Note 1), the Supreme Court found the appellate review as admissible. It stated that the crucial issue in the case was whether the said text of the advertising "slogan" for the concrete mixer unlawfully infringed on the authorship rights of the plaintiff as the author of the lyrics of the song "Put one brick to another" (also known as "Doing"). The Supreme Court referred, among others, to the following sections: Section 2(1) of the Copyright Act, which provides for the general characterisation of a work that is subject to copyright law, Section 2(3) of the Copyright Act, which provides what parts of a work are covered by copyright law and under what conditions, and Section 2(4) of the Copyright Act, which deals with the issue of a processed or translated work. For the purpose of the said dispute, these provisions state that copyright law protects, among others, works of art, which constitute the unique result of creative activities of the author and are expressed in any objectively perceivable form … regardless of its extent, purpose or significance. More-

over, copyright law protects also parts of a work as long as they meet the general characteristics of a work, pointing out that further re-working cannot affect the rights of the original author. The judgment also cited extensively Section 1(6) of the Copyright Act, which provides a negative definition of a work that is subject to copyright law.

The judgment of the Supreme Court further extensively presented the key ideas on which the protection under copyright law is based, relying on the work of the major Czech copyright law expert I. Telec[2]. The judgment states and emphasizes that "copyright law is special protective law, rather than some universal or some 'collective' protective law (system) – as it appears from its nature. That means that *"the subject matter of copyright law may be only whatever corresponds, with respect to meeting all the statutory elements of a work according to the Copyright Act, to the said functional nature of this private law,"* which is present in all the statutory conceptual elements of its subject matters.[3]

On the basis of this and some other general findings about the nature of copyright law, the appeal court arrived at the conclusion that "when assessing whether the defendant infringed on the plaintiff's authorship right or not, it was necessary to reliably establish whether the use of the disputed (though minimal) text really did have the character of an intermediate use of the plaintiff's work (which is, in the public consciousness, known as a song, i.e., a composition with a closed form and based on a verbal text), or whether this concerned the re-working of the plaintiff's work or whether it is none of these two cases. What must be taken into account is that this case does not concern the protection of an actual topic or idea of a work or its part, but the author's creative – and, thus, protected – activity consisting in the manner in which this topic was processed in its internal and external forms. The solution of this issue requires, among others, a professional expertise which the present court cannot perform itself. Given this situation, the conclusions of the appeal court (as well as the first-instance court) appear as premature where they already admitted that the plaintiff's authorship rights had been infringed."

On the basis of the above-mentioned consideration, the Supreme Court quashed the judgments of the first-instance court and the appeal court and returned the matter to the first-instance court for further proceedings. Before commenting on this decision, two decisions of Austrian courts will be pointed out in matters whose facts and legal assessments invite an interesting comparison with the Czech case.

The case of a melody processed for advertising purposes[4]

The plaintiff in the next case was the famous composer, lyrics writer, and musician Stevie Wonder. The defendant was an Austrian advertising agency which prepared a promotion campaign to celebrate the anniversary of its client (an important banking institution). The campaign included a radio commercial with background music and a "congratulations" song with the text "Happy Birthday," which was identified by the plaintiff as an imitation of the well-known song "Happy Birthday", written by the plaintiff. The plaintiff sought a court judgment and an injuction forcing the defendant to refrain from the use of the plaintiff's musical work "Happy Birthday" for advertising purposes – even in a processed or modified form – unless it obtains the plaintiff's approval for such a use.

The plaintiff's case relied on the provisions of the Austrian Copyright Act and the general clause in Section 1 of the Austrian Act on Unfair Competition. Both the first-instance court (in its decision HG Wien of 21 August 1995, 38 Cg 101/95d) and the appeal court (in its decision OLG Wien of 19 December 1995, 3 R 205/95) confirmed the plaintiff's case. They based their decisions on the qualification of the case according to the law on unfair competition. The judgment of the appeal court stated that "acting against good competitive manners" is anybody who – without a significant effort on their part – simply takes over in whole or in part the result of the work of another, thereby competing with such a person that achieved – after expending efforts and expenses – the result as the first one. When qualified according to the law on unfair competition, this concerned a parasitical use of the results of another person's work. The court based its reasoning on the fact that the defendant used for advertising purposes a part of a song whose music and lyrics were written by the plaintiff, drawing on the general public knowledge of the song. Differences in rhythm, harmony, tempo, and interpretation of the song were considered as indecisive by the court as long as the average listener – careful and uneducated in music – could be under the impression that it is the same song. This is what represented the parasitical use of the performance of another person. The plaintiff faced – in the opinion of the court – both financial and non-financial loss because the public could form the impression that he gave the approval to the use of his song as an advertising congratulation on the anniversary of the bank.

The court dealt in an interesting and inspiring way with the pre-requirement of the existence of a competitive relation that needed to exist between the plaintiff and the defendant in order to justify the qualification of the whole matter as a case of unfair competition. *The court deduced that the plaintiff, as the author of the original song, had been in the position to be able to offer it himself for advertising relations. Therefore, an ad hoc competitive relationship arose between him and the advertising agency in this particular case*. The court did not deal with the issue of whether protection under copyright law might be applicable in this case, although it did admit the possibility of such a qualification. In the court's opinion, it was enough – in order to ban the contested act – that it indisputably contravened the general clause of the Austrian Act on Unfair Competition, which was by itself sufficient for the ban.

By contrast, the Austrian Supreme Court (in its decision specified in Note 4), in its position as the review court, assessed the matter mainly from the point of view of copyright law. Basing its decision on the general acoustic impression from both disputed compositions, it considered as insignificant certain changes in harmony present in the commercial song. At the same time, the court formulated important general ideas that go beyond the dispute and which may be inspiring for the above-mentioned Czech case. Thus the court stated, above all, that *the question of whether a given work enjoys protection under copyright law is a question of law that is up to the court's assessment. To make the assessment, it is essentially enough that the disputed work is submitted to the court. In the case of musical works, this includes the notation and a recording as prima facie evidence. This is because any evidence can be considered as "visible" evidence if it is commonly accessible to human senses, including acoustic evidence*.

A work worthy of copyright law protection was deemed by the court to be any result of creative intellectual activity in which the personality of the author is manifested and whose uniqueness differentiates the work from other works. In the case of musical works, the creative uniqueness consists in the individual aesthetic strength of expression. Where a dispute concerns an alleged plagiarized work, correspondences in the creative parts of the works are decisive. A correspondence in the characteristic part of the refrain represents an infringement of copyright where – despite deviations in individual features – the overall impression is identical and the similarity of both works is clearly perceptible. Such a reworking then requires that it be approved by the author of the original work. *The possibility of a free reworking is allowed only where the features of the original work on which the new work relies are entirely backgrounded. Free use of an authored work presupposes that the original work is neither taken over nor reworked and that the original was not used as a model or a base but served merely as an inspiration for one's own creative work.*

These considerations led the Austrian Supreme Court to conclude that the defendant did interfere with Stevie Wonder's authorship rights by reworking his song "Happy Birthday" and using it in its advertising campaign. The Supreme Court also stated that this legal assessment does not rule out a suit in the same case on the basis of some other legal titles, i.e., under the law of personality protection or the law on unfair competition.

The case of advertising photographs used by another competitor [5]

The plaintiff (a business company) was a manufacturer of sunglasses supplied by means of wholesalers and general importers. The company had photographs made of three well-known sportsmen, who were shown in the photographs as wearing glasses manufactured by the plaintiff.

The defendant was a seller of sunglasses in Austria. She included the said photographs in her advertising materials, after slightly altering them (probably electronically). Such use of the photographs had not been approved by the plaintiff or the sellers or wholesale agents authorised to issue such an approval.

The plaintiff applied to the court for a dilatory claim and the corresponding securing motion (a petition for an injunction). She sought that the defendant be forbidden to use commercially the disputed photographs and their parts (extracts) for advertising purposes. The action was substantiated by reference to the provisions of the Austrian Copyright Act and by pointing out that the take-over of the photographs from the advertising prospectus of someone else is against good manners in the sense of the general clause in the Austrian Act on Unfair Competition.

The defendant claimed that the action is inadmissible as far as the plaintiff referred to original copyright since only a natural person can constitute an author. In addition, the plaintiff failed to evidence the rights of usage to the said photographs. The defendant objected that she obtained the said glasses together with the advertising materials from a salesman in an EU country, while the salesman had, in turn, obtained them from a wholesale agent mentioned in the claim. She further stated that an infringement of the authorship rights of a third person cannot be prosecuted according to the law on unfair competition.

The first-instance court (in its decision LG Steyer 4 Cg 181/05h of 23 December 2005), did not grant the injunction request under the reasoning that it had not been specified from whom the plaintiff obtained the claimed rights of usage. The court did not even grant

the plaintiff's reference to the general clause in the Austrian law on unfair competition, whose application – in the court's opinion – was excluded by the existence of the special regulation under copyright law.

By contrast, the appeal court (OLG Linz, in its decision No. 4 R 18/o6d of 26 January 2006) did grant the injunction requested by the plaintiff because it considered it as verified that the plaintiff had the rights of usage to the said photographs. It decided so on the basis of the plaintiff's affidavit on the acquisition of usage rights, even though the affidavit included neither any data about the author of the disputed photographs nor any specification of the manner in which the usage rights were transferred to the plaintiff. The court argued that the proceedings concerning the preliminary injunction do not require such "full evidence". It stressed the fact that the defendant did not attest usage rights to the disputed photographs in any way whatsoever.

The defendant filed a petition for a review of this decision with the Austrian Supreme Court. According to the court's opinion (identified in Note 5), it was not possible to base the dilatory claim on copyright law because the plaintiff did not sufficiently attest her usage rights to the said photographs. The court of review, however, agreed with the plaintiff as regards her reference to the general clause of the Austrian Act on Unfair Competition. This differed from the opinion of the first-instance court, which had ruled that any application of the law on unfair competition is out of the question in the said case as long as there is a special regulation under copyright law. It admitted that copyright law affords exclusive rights only to certain persons (authors and subjects authorised on the basis of usage rights), while not specifying any general norms of behaviour. At the same time, however, it stated that the mere take-over of the results of another person's work for advertising purposes is in conflict with the general clause on unfair competition. The facts of the case were characterized by the Supreme Court as follows: The plaintiff had photographs made for her advertising materials, which meant – because of the nature of the persons photographed – significant financial expenses for her. The defendant took such advertising materials over only in a slightly modified form, thereby saving on costs that she would have had to expend on obtaining photographs of such prominent persons.

The Austrian Supreme Court argued mainly by stating that *the mere take-over of the results of another person's work, which are not specially "protected," may, where some other conditions are met, constitute behaviour in conflict with the general clause on unfair competition. Such a protection is not excluded by the fact that such results of work or any part thereof may also be subject to protection under copyright law with respect to certain persons*. This merely means that in some cases – where the plaintiff benefits from the point of view of the special regulation – it is not necessary to apply the qualification according to the general clause on unfair competition. The law on unfair competition, however, supplements – under certain conditions – the protection provided under laws of intellectual property, mainly copyright law. This, however, could not be applied in the said case because *the plaintiff did not sufficiently attest the facts required for allowing her protection under copyright law. The defendant, by contrast, interfered within the plaintiff's legal sphere by taking over her advertising material. Such a take-over is to be particularly denounced where it concerns an individual and unique result of work. In the event that the uniqueness is such that it might even enjoy protection under copyright law, any take-over of the result of another person's work must be considered as against good manners*. In the given case, this did not concern the mere infringement against the right of another person because the plaintiff was also affected in her competitive position.

In his extensive commentary on this provision, Walter[6] expresses the fundamental idea of the said decision as follows: the general clause of the Austrian Act on Unfair Competition provides a protection to a certain performance against its take-over for competitive purposes. Such a protection is given also where such rights cannot, for special reasons, be applied or where the plaintiff did not assert them. At the same time, Walter points out the two contrasting opinions on this issue. Some experts believe in the fundamental freedom to emulate where there are no special regulations limiting such a freedom, while others claim that protection under the law of competition serves also the purpose of complementing the not entirely complete and perfect system of special rights. Walter himself holds a compromise position, claming that two basic situations need to be distinguished. If the special protective laws do not provide a sufficient protection against the imitation of the performances of others, then law on unfair competition performs a supplementary role in the protection of such acts. However, it is a different case where protection against imitation is not afforded under special rights because it arises from the legislators' decisions and values applied in the legislative process. Then, there is no place for supplementary protection by means of law on unfair competition. This typically concerns situations where protection under special rights is no longer provided because the period specified for such protection has expired. The temporal limitation of such protection is based on the balancing of interests carried out by legislators who connect the expiration of the protective period of time with the right for a free emulation[7]. After the expiration of this period, the protection based on personality rights or the law on unfair competition may be admissible – in Walter's opinion – only under exceptional circumstances.

Notes on the judicial decisions in these cases

All three cases discussed above involved the parasitical usage of works of others in one's advertising activities (i.e., in the course of behaviour of a competitive nature), which could result in material or ideal damage to the original authors of such works. The plaintiff's cases and injunctions were most easily (even in the Czech dispute) qualified according to the law on unfair competition. In the case of the congratulations song, the authorship rights of another person were most likely concerned; while in the case of the sunglasses advertisement, such a qualification was not sufficiently evidenced, even though it could not be ruled out. In the Czech case (the use of a part of song lyrics as an advertising slogan), the possibility of seeking protection under copyright law seemed to be self-evident, but it eventually turned out to be legally equivocal. In all cases, however, there was always a potential conflict with both law on unfair competition and copyright law.

In the Austrian cases, the plaintiffs based their claims on both of these legal qualifications. The plaintiff's case in the Czech dispute was not properly anchored; it stood – metaphorically speaking – "on one leg," being argued only with respect to copyright law, although such a legal qualification was being challenged by the defendant from the very beginning and need not have been, for that reason, quite indisputable. Moreover, the Czech legal regulation did not rule out an action due to unfair competition. This appears already from the general clause on unfair competition in Section 44 (1) of the Commercial Code – the Act No. 513/1991 Sb., as subsequently amended ("the Commercial Code"). According to this provision, unfair competition in business relations is such behaviour which stands counter to good manners of competition and may cause harm to other competitors or consumers. The competitor is defined in Section 41 of the Commercial Code as a natural or legal person participating in business competition (a participant in business competition), regardless of whether it is an entrepreneur or not. Therefore, there need not be any intermediate relation between, on the one hand, the subject that is parasitical on the results of work or the popularity of someone else, and, on the other, another subject whose efforts resulted in creating the work.

The possibility of such an interpretation is also attested by the Czech decision-making practice, which makes it possible to apply the conception of the ad hoc competitor. The decision of the High Court in Prague, ref. No. R 3 Cmo 328/94l, states that "business competition cannot be narrowed down to competition between the directly competing producers or providers of service who regularly (i.e., not on an ad hoc basis) offer the same or similar service. The pre-condition for unfair competition is not the repetitiveness or regularity of one's acts, just as it is not the awareness of the unfair competitor that his acts constitute unfair competition."[8]

In the Czech case, another qualification was possible, namely the one provided for in Section 48 of the Commercial Code, where unfair competition extends to "the parasitic use of the reputation of a company, products, or services of some other competitor with the aim of obtaining a benefit – which the competitor would not be able to obtain otherwise – for one's own business activities or the activities of someone else." The term "product" used in this provision may analogically be extended to commercially applied products of intellectual creation, i.e., the song titled "Doing" in the said case, or, to be more precise, the text of the song.

If the plaintiff in the Czech case on the misuse of a part of song lyrics had suggested to the court that the dispute be qualified not only under copyright law but also under the law on unfair competition, he could have improved his chances of winning the case. The solution might have been simplified and the rather suprising decision of the Supreme Court of the Czech Republic might not have occurred: the court's decision cancelled the decisions of the lower courts and the case was returned to the first-instance court so that an expert opinion could be formed on the disputed issue of whether the defendant infringed on the plaintiff's authorship rights or not.

There is also the question of whether the lower courts could themselves decide the matter under the law on unfair competition or not since they are not generally bound by the qualification offered by the plaintiff. However, in order to meet the requirements of a certain legal qualification, the plaintiff would have to produce a corresponding statement and possibly evidence. In this case, this would mainly be the deduction that he could have and would have disposed of the lyrics of his song for commercial (mainly advertising) purposes, thereby assuming the position of the ad hoc competitor.

While such a statement was not made by the plaintiff, the lower courts could have proceeded in accordance with Section 118(a) of the Act No. 99/1963 Sb., as subsequently amended (the Rules of Civil Procedure). Where the presiding judge believes that the matter might be assessed differently from the party's legal opinion, this law provides for the judge's possibility of requesting the relevant party to supplement the description of the decisive facts in the necessary extent. This provision must be applied even to situations where a matter might be qualified "even differently" from the party's legal opinion.

It would have been quite easy for the plaintiff to qualify the matter under the law on unfair competition (as indicated above) since the evidence was very clear. Such a legal qualification would also have made the case easier to process since the parasitical use of an unspecified "performance" by someone else is subject

to less strict legal demands than the use of such a performance, supposed to meet the requirements of a work in the sense of the Copyright Act.

It cannot, of course, be ruled out that the lower courts did not perceive any need to consider any other legal qualification in the event that they were unequivocally convinced about the clear qualification under copyright law, regardless of the fact that the defendant questioned it. Such a conviction of the lower courts may have been the result of their opinion that the case did not concern so much the undisputed take-over of several words from song lyrics but mainly the author's personality rights under Section 11(3) of the Copyright Act, providing for the integrity of his work (i.e. the entire song lyrics) and his *right to give consent to any change or any other interference with his work.*

Regarless of these speculations, it remains a fact that the decision-making in many legal disputes could be made simpler, faster, cheaper, and often more just if all those involved in the settlement of such disputes, including the legal representatives of the parties, were not too entrenched within their own legal specializations and were willing to consider a broader range of possible legal solutions. *Quod erat demonstrandum.*

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[1] The case was reported by the journal *Právní rozhledy*, C.H. Beck, Praha, Vol. 21/2007, p. 795 and subsequent pages. The journal published – without any commentary – the judgment of the Supreme Court of the Czech Republic of 30 April 2007, ref. No. 30 Cdo 739/2007. This article is based on the text of the judgment obtained by the author directly from the Supreme Court of the Czech Republic. The latter text, however, differs from the text published in the journal in one small but not insignificant detail (see below).

[2] Cf. Telec, I. *Autorský zákon (komentář)* [*Copyright Law: A Commentary*]. C. H. Beck, Praha 1997.

[3] The text is emphasised in the actual judgment of the Supreme Court of the Czech Republic but not in the version published in the journal. As a result, the considerations which led the Supreme Court of the Czech Republic to arrive at its decision are less intelligible.

[4] The case was described by Walter, M. M. in a commentary on the decision of the Austrian Supreme Court (OGH of 12 March 1996; 4 0b 9/96), Medien und Recht 5/94, p. 202 and subsequent pages.

[5] The case was described by Walter, M. M. in a commentary on the decision of the Austrian Supreme Court (OGH of 20 June 2006; 4 Ob 47/o6z), Medien und Recht 1/2007, p. 28 and subsequent pages.

[6] See commentary mentioned in Note 5.

[7] The same conception is applied also in the judgment of the Supreme Court in Prague, ref. No. 3 Cmo 40/2004 of 20 September 2004. One of its legal sentences (which even the resolution of the Supreme Court concerning the appellate review, ref. No. 32 Odo 1889/2005, used) runs as follows: "The feature of conflict with good manners is not a permanent feature for certain acts, mainly where law on unfair competition should enable the entitled party to achieve, in a certain sense, a monopolous position in the market. Such a position, created for instance by the launch of a new product which significantly enriches the competitive offer, may be allowed to a competitor only for a certain period of time but not once and for all. The same also applies to industrial rights: they also create exclusive position for the owner of the rights for a limited period of time, and the same holds as regards the protection of competitors from unfair competition." In Horáček, R., Macek, J. *Sbírka správních a soudních rozhodnutí ve věcech průmyslového vlastnictví* [*A Collection of Administrative and Judicial Decisions in Industrial Property Issues*]. C. H. Beck, Praha 2007, p. 219.

[8] In Macek, J.: *Rozhodnutí ve věcech obchodního jména a nekalé soutěže* [*Decision-making in Trade Mark and Unfair Competition Disputes*]. C. H. Beck, Praha 2000, p. 68.