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Black panther mark rejected on grounds of public interest

Examination/opposition

Slovenia - ITEM d.o.o

National procedures

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In *Hervardi v Slovenian Intellectual Property Office* (Case U 2369/2008, September 15 2009, released only recently), the Administrative Court has upheld a decision of the **Slovenian Intellectual Property Office** (SIPO) in which the latter had rejected an application for the registration of a figurative mark representing a black panther under Article 43(k) of the **Industrial Property Act**.

Article 43(k) provides that a trademark will not be eligible for registration if it includes or imitates badges, emblems or escutcheons other than those covered by Article 6^{ter} of the **Paris Convention for the Protection of Industrial Property** and which are of particular public interest, unless the competent authorities have consented to it.

Hervardi, an association for the preservation of patriotic traditions, applied for the registration of a purely figurative mark consisting of the image of a black panther on a white background for goods in Classes 16 (printed matter) and 25 (clothing), and services in Class 41 (education) of the **Nice Classification**.

SIPO found that the sign consisted of the heraldic image of a black panther. This historical symbol originates from Carantania, a Slavic principality that emerged during the seventh century in the territory of present-day southern Austria and north-eastern Slovenia. Therefore, SIPO found that this symbol was of particular public interest. SIPO also cited Article 40 of the Decree on Uniforms, Rank Insignia and Police Symbols, which provides that the symbol of a special unit of the Ministry of Internal Affairs comprises a stylized image of the black panther. Consequently, SIPO requested that Hervardi ask the Ministry of Internal Affairs for consent.

Hervardi failed to provide the requested consent and argued that the black panther symbol was not of particular public interest since:

- such public interest had not been defined in any official document; and
- the symbol was not protected by the state.

Hervardi also argued that SIPO was not authorized to decide whether a sign was of particular public interest. Moreover, it claimed that SIPO had registered a mark consisting of the black panther symbol in 1995.

SIPO pointed out that the earlier mark had been registered under the former Industrial Property Act, which did not contain Article 43(k) or any analogous provision. SIPO reiterated that the black panther has a long history in Slovenia and is defined in Article 40 of the decree as the symbol of a special police unit. SIPO concluded that the mark applied for was of particular public interest and could not be registered without the consent of the ministry.

Hervardi filed an administrative action before the Administrative Court.

The court first held that the mark applied for was confusingly similar to the symbol of a special police unit, as defined in the decree. Therefore, the mark was of particular public interest in Slovenia. The court pointed out that the symbol of the special police unit may be used by its members only. The fact that the black panther symbol has a historical meaning in Slovenia did not change that finding. The appeal was thus dismissed.

The decision is significant in that it is the first time that SIPO or the court has rejected a trademark on the grounds that it consists of a symbol of particular public interest under Article 43(k) of the act.

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