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PHD DISSERTATION ABSTRACT

Economic and legal aspects of unfair competition  
application

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Previous studies on the misleading use of marks by enterprises have been carried out with a clear division into research conducted in the field of economic sciences or in the area of legal sciences. Thus, there are no interdisciplinary studies analyzing both areas, which are closely related and have an intensive impact on the market and enterprises operating there. The author has put a number of questions, including: Why do some companies decide to use unfair competition? What could be the reason? Can social (moral) standards in a given society affect the scale of the phenomenon? What legal protection can an entrepreneur, whose interest has been infringed against, count on? What are the options for pursuing his rights in court? Is court proceedings an effective tool to protect an entrepreneurs rights in terms of unfair competition? Does it have a preventive role? The author recognized the scientific gap of significant importance for both economic and legal practice, and its fulfillment is a significant contribution to the science development. Research carried out under this dissertation complements the indicated gap by:

1. an original microeconomic theory of enterprises functioning in imperfect market competition in the context of the profitability of using misleading trademarks by unfair competitors in this type of market,
2. a comprehensive analysis of the act of using misleading marks, which consists in breaking into someone else's well-established customer circle, based on the reputation developed by another entrepreneur
3. conducting unique surveys on the national scale, which covered all districts courts in Poland regarding lawsuits of misleading marks application to these courts in 2006-2016,
4. conducting detailed files examinations, indicating, on selected examples, the profitability of using an act of unfair competition that is the use of misleading marks,
5. analysis of the studied phenomenon as a phenomenon going beyond the boundaries of the law, identification of possible causes of its occurrence and potential factors that may affect it.

The hypothesis of the dissertation is based on the assumption that unfair competition, and misleading marks within it, is a historical phenomenon, difficult to codify, and its application, despite the introduction of many legal solutions limiting this phenomenon, indicates that under certain conditions it can be profitable for unfair entrepreneurs.

The main objective of the study is to analyze economic and legal aspects of unfair competition application, which on the example of using misleading marks by entrepreneurs indicates that such activities, although illegal, are practiced because their economic severity for the infringer is negligible. For this purpose, the following auxiliary objectives have been appointed:

1. The analysis of the competition essence and role on the market in order to indicate its relevance for the economy and entities operating in a fair manner.
2. The identification of non-legal and legal tools to protect competition with regard to misleading marks.
3. The analysis of an unfair competition act essence and factors conducive to its use.
4. The identification of marks types in the context of their protection and assessment of similarity to marks already used on the market.
5. The analysis of cases in district courts in Poland regarding the act of unfair competition which is the use of misleading marks in terms of the structure of these matters and the severity to the infringer.

## CHAPTERS' SUMMARY

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The work is of a theoretical and empirical nature. The theoretical part was written on the basis of domestic and foreign literature, as well as on the basis of national and international legal acts together with an indication of the jurisprudence of Polish and foreign courts, mainly EU, also American. The work was based on the legal status as of March 31<sup>st</sup>, 2018.

The hypothesis and research goals implementation determined the scope and the chronology of subsequent chapters. First chapter presents principles of fair and unfair competition based on microeconomic assumptions. In particular, the author focused on costs that a unfair entrepreneur does not have to bear, because he uses already incurred expenditures on the brand and reputation of another entrepreneur and the time devoted to it. The undertaken analysis indicates that the use of unfair competition is, in some sense, economically justified.

As next there were discussed forms of competition and marks protection. These forms were divided into legal and non-legal (in particular good merchant customs). A legal-comparative analysis was carried out in the field of international legal protection, in the United States common law system and in the European Union law system. The US system serves as a reference to the continental system, which has significant implications for the national legal systems of the Member States, including Poland. On the other hand, international legal regulations and the trend of their changes are important in the context of conditions prevailing in Poland, because in the majority they are implemented due to their ratification. Thanks to this, in many countries there are similar legal conditions, which creates better conditions for the entrepreneurship development and protection of entrepreneurs' rights in the area of these marks.

Subsequently an unfair competition essence act analysis was presented. The subjective and objective premise was indicated, which is particularly important when it comes to the possibility of committing an unfair competition act. Functioning assumptions of the relevant market in the territorial and assortment aspect were presented to verify a specific action as honest or dishonest and thus threatening the interest of another entrepreneur or entrepreneurs. On the basis of the literature and research carried out so far, factors that may favour actions of unfair competition were indicated.

The fourth chapter was devoted to the analysis of misleading marks in the Polish law order. The main analytical part was preceded by an introduction about historical legal conditions concerning marks used by entrepreneurs for a misleading purpose. The company's legal name is the most frequently used mark, optionally also a trademark in a form of a logo or logotype. Trademarks of this kind, as a distinctive graphic element that is more easily remembered by consumers than a company's name, is often the object of an unfair imitation. Therefore, there are some law rules on the basis of which an entrepreneur can carry out an initial verification whether the mark proposed by him is lawful. In addition, the Patent Office of the Republic of Poland should check whether the graphic form and other mark elements are not confusingly similar to another mark that has already been registered and became recognizable on the market. Signs of this kind, i.e. reputable marks, belong to a special category of marks, which is why in this context the question of the brand importance in the economic turnover was also discussed.

The fifth chapter is a presentation of empirical research carried out in the field of the use of misleading marks. The trial covered all district courts in Poland and concerned the influence of unfair competition cases and industrial property rights in respect of trademarks in the years 2006-2016. The analysis of cases was preceded by an analysis of economic and legal

factors that could affect the number of claims. Files examinations were also carried out, on the basis of which examples of marks violations were identified.

During the research theoretical and empirical process, there was a care about the adequacy and coherence of the content of the chapters and their subtitles in relation to the dissertation. At each stage of the work, a multidimensional analysis of the problem under investigation was attempted. With respect to economic aspects, the significance of fair competition and the (economic) motivation of unfair entrepreneurs were analyzed. In turn, in relation to selected legal aspects, the positions presented in the case law broadening the perspective of the presented problem were attached. Thanks to undertaking work of an economic and legal nature, the issue of using misleading marks by entrepreneurs has been presented on the background of scientific achievements of representatives of both fields. Differences, similarities and relationships between existing sources of knowledge in relation to the subject under investigation were also indicated. This is the author's contribution to the study of the problem in literature and economic and legal practice.