[AT] Supreme Court Rules Against

IRIS 1999-8:1/3

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In a recent case (jusline.com) involving an application for a temporary injunction, the applicant had failed to assert and prove that the defendant had already acted with an intention to obstruct by acquiring a disputed website name (see IRIS 1998-6: 5). However, in the same case, the Oberste Gerichtshof (Austrian Supreme CourtOGH), in proceedings concerning an action for a permanent injunction and deletion of the site name, ruled in the plaintiff's favour, since new evidence was now at its disposal. These two decisions are the first that the OGH has had to make in the problematic field of website names.

In the first instance, the OGH had rejected the applicant's claim (on the grounds that the company had only taken the name " JUSLINE" during the proceedings and that the name "jusline", which combined two descriptive words, was not protected by laws on brand and trade names because it had not been shown to be in current use). Concerning the plaintiff's allegation of unethical conduct, the Supreme Court had noted that "sitegrabbing" presupposed that the intention to obstruct had already existed when the disputed name was acquired - which the plaintiff had not asserted.

In the latest proceedings, however, the plaintiff was able to prove that when the defendants registered the disputed website name they were fully aware of the information service offered by the plaintiff at the address http://www.jusline.co.at/jusline. The defendants registered the website name solely for the purpose of obstructing the plaintiff's activities and in order to transfer the site to the plaintiff at a later date in return for compensation. They had acted with the sole motive of obstructing the plaintiff's market access in order to achieve financial gain when that obstacle was later removed; fortunately, the OGH judged that such behaviour was clearly unethical and contrary to the rules of fair competition (§1 Unfair Competition ActUWG).

Urteil des Obersten Gerichtshofs vom 27. April 1999, Aktenzeichen 4 Ob 105/99s.

Judgement of the Austrian Supreme Court, 27 April 1999, file no. 4 Ob 105/99s.

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