[CH] Federal Tribunal Rejects Time Warner's Claims in the Friends Case

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Time Warner Entertainment Company L.P. (referred to here as Time Warner) produces the famous television series "Friends", some sequences of which take place in a fictional café called "Central Perk". Time Warner has owned the name "Central Perk" in the United States since 1995 for "class 25" products (clothing, shoes, hats), and registered the name "Friends" in Switzerland in 1996 for products in the same category. The company Gengenie S.A. runs a café in Geneva called "Central Perk". In November 1998, the company's sole director registered the name "Central Perk where we're your Friends" in Switzerland. The courts in Geneva rejected Time Warner's application for provisional measures to prevent the use of the terms "Central Perk" and "Friends". Time Warner then appealed to the Swiss Federal Tribunal.

In a decision delivered on 19 February 2001, the Federal Tribunal found that the activity carried out by Time Warner, namely the production and broadcasting of a television series, could not be held to be in competition with the operation of an ordinary company. The *loi fédérale sur la concurrence déloyale* (Federal Act on Unfair Competition - LCD) requires the disputed act, when considered objectively, to be such as to give an advantage or disadvantage to an undertaking in its efforts to acquire clients or increase or reduce its share of the market. Thus the act has to be directed against the normal play of competition and be objectively such as to exert an influence on the market. The Federal Tribunal held that this was not the case here, since the acts carried out by the defendant party were not such as to influence the situation of economic competition between the two parties.

The Federal Court noted, moreover, that the names in question were not identical. Time Warner could not oppose the use of the disputed name unless it comprised similar signs and was intended for use with identical or similar products or services, and was likely to give rise to confusion. However, the word "Friends" in the disputed name was only of secondary importance and scarcely distinctive, as the name placed more emphasis on the term "Central Perk". The two names were therefore sufficiently distinct to exclude the risk of confusion. Furthermore, they did not refer to the same products and services. Lastly, the Federal Tribunal held that the American brand-name of "Central Perk" was not sufficiently wellknown in Switzerland on the date of registering the defendant's brand-name, to enable Time Warner to claim any prior right despite the absence of registration of its

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brand-name in Switzerland.

Arrêt du Tribunal fédéral suisse du 19 février 2001 N° 4P.291/2000

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