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Czechia: Clearly ungrounded take-down notice constitutes unfair competition

Michal Havlik (SAK ALO) · Saturday, November 5th, 2016

The Czech Supreme Court has recently confirmed that it is an act of unfair competition to file a take-down notice to a social media network claiming intellectual property infringement while omitting further relevant information. The court ordered the defendant to make a submission to the social media network withdrawing the take-down notice and to pay to the plaintiff financial compensation of immaterial injury of CZK 100,000 (approx. EUR 3,700) and costs of proceedings.

The case at hand concerned a dispute between the plaintiff, the governmental agency Czech Trade and the defendant CzechTrade Internet, s.r.o.. The defendant submitted a take-down notice to social media network Facebook seeking deactivation of Czech Trade's Facebook profile on grounds of alleged infringement of its European trademark „CzechTrade“. However, the defendant failed to provide Facebook with full information on the existence of the plaintiff's earlier trademarks and a final judgment of the Prague High Court prohibiting the defendant from using sign „Czech Trade“ otherwise than as part of company name.

The defendant's defense was mainly that it relied on its registered EUTM and that the profile deactivation was an independent decision of Facebook, for which the defendant cannot be held liable. Nevertheless, the courts in all three instances found that by submitting the take-down notice containing incomplete information the defendant violated its obligation imposed by the earlier judgment and deceived Facebook. The courts found the defendant's conduct as abusive and intending to harm the plaintiff.

It was not sufficient that the defendant actually held a registered trademark for word „Czech Trade“. The courts referred to the well established case-law principle that the use of a registered trademark may constitute an act of unfair competition.

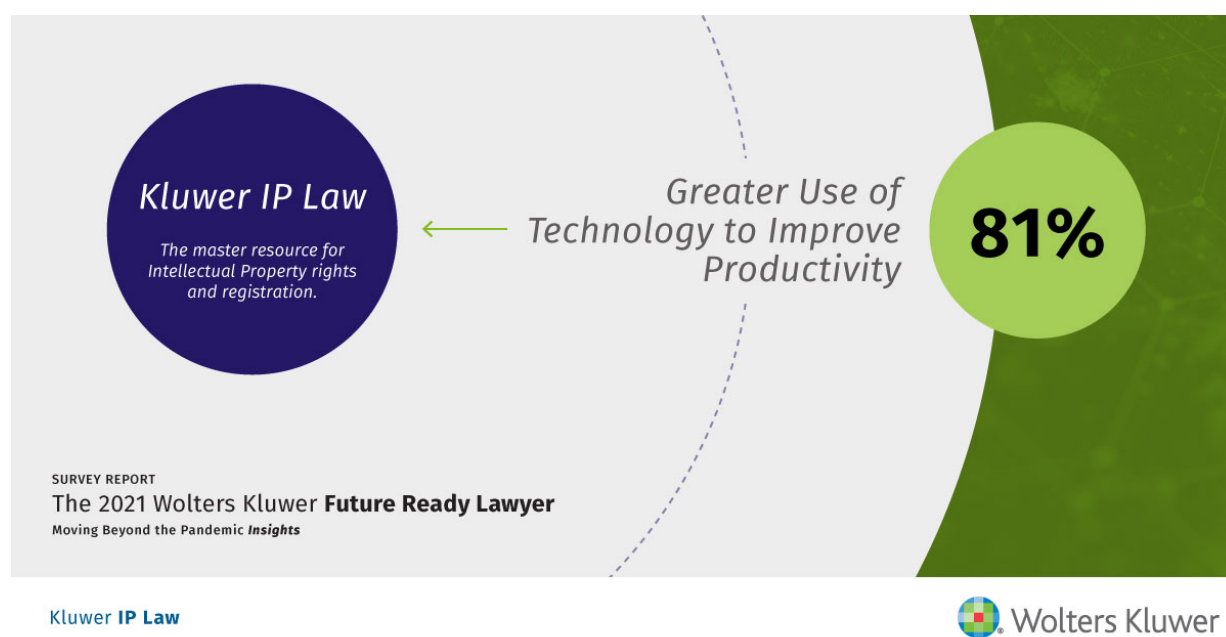
The lesson to be learnt from the judgment is that trademark owners must pay special attention when submitting take-down notices to social networks and other internet service providers that the submitted information is true, accurate and complete. Otherwise, they may be liable under unfair competition law.

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This entry was posted on Saturday, November 5th, 2016 at 12:38 pm and is filed under [Case law](#), [Czechia](#), [EUTM](#), [Infringement](#)

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