Kluwer Trademark Blog

EU Trademark and Claim to Information and Compensation: BGH I ZR 253/14 of 12.1.2017 World of Warcraft II

Ulrich Hildebrandt (Hildebrandt.) · Sunday, March 12th, 2017

World of Warcraft (WoW) is a massively multiplayer online role-playing game (MMORPG) released in 2004 by Blizzard Entertainment. World of Warcraft takes place within the fantasy Warcraft world of Azeroth. Alone or together with others the player has to solve quests in order to level up and have more possibilities. Since some of these quests are more or less boring third party producers – in this case Bossland – offer bots who undertake the task for the player automatically. This gives the chance to the player to relax, to find some sleep, to go to school, and to do homework – nonetheless being able to play in a higher level during the next weekend. Not thinking about the outcome for the next German Pisa Study results, the German Bundesgerichtshof (BGH) forbid these beneficial helpers on the basis they allegedly violated unfair competition law in a decision of January 12, 2017.

But Blizzard Entertainment not only based its claims on unfair competition but also on a EU trademark. As a consequence, the BGH had to think about the jurisdiction concerning a damage claim based on this trademark. As a specialty of this case the defendant was a German company acting EU-wide from Germany. Although normally damage claims based on EU trademarks are governed by various parallel jurisdictions, in this case the defendant's centralistic organisation paved the way for a unified damage claim based on German law:

"Claims to information and to obligation to compensate due to the violation of an EU trademark depend on German law according to Art. 101 (2) EUTR, Art. 8 Abs. 2 Rome-II-Regulation if the infringing act is located in Germany because the infringing goods were advertised and offered on the internet by a company domiciled in Germany."

However, Blizzard Entertainment lost a part of the case. Whilst the damage claim and the corresponding claim for information were centralised they were not EU-wide:

"Claims based on § 125b No. 2, § 14 (6), § 19 (3) No. 2 MarkenG, § 242 BGB to information and to obligation to compensate due to the violation of an EU trademark are only founded in relation to those member states of the European Union where a damage has been incurred due to the infringing act."

Germany is the only country where such bots are prohibited. According to press reports Bossland did not accept the decision and filed a constitutional complaint to the Bundesverfassungsgericht (BVerfG). They claim a violation of Art. 12 and Art. 3 (1) Grundgesetz (GG), the right of freedom

of occupation and the principle of equality. Successful constitutional complaints are rare but always spectacular. Let's wait and see.

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Justice in Karlsruhe, Germany, and is the highest court in the system of ordinary jurisdiction.”>Bundesgerichtshof, Case law, Community Trademark, Damage claims, EUTM, Germany, Jurisdiction

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