

# Kluwer Trademark Blog

## In Vino Veritas – Family Name vs Trade Name

Aron Laszlo (Oppenheim Legal) · Saturday, October 6th, 2018



The Supreme Court of Hungary (Kúria) ruled that the registration of a family name as trademark is unlawful upon the permission of one family member, where several family members are active on the same field. Furthermore, the Supreme Court gave guidance upon what conditions a family name may become a separate trade name, which is independent from the family.

The Laposa family has a winery in Badacsony (Hungarian wine region near Balaton). Jozsef Laposa, a landscape architect, started producing wines in 1992 on a piece of land inherited from his father-in-law. The wines were marketed under the brand name ‘Bazaltbor’ (i.e. ‘basalt wine’), whereas the winery was called ‘Laposa Családi Pincészet’ (‘Laposa Family Winery’). The winery grew and Jozsef Laposa’s name was becoming well known as a winemaker.

Jozsef Laposa's son, Bence Laposa, who studied winemaking, was taking over the winery from his father, when he accepted an investor's offer to start a common business. Bence Laposa merged the family business into a joint venture with the investor, Bazaltbor-Badacsony Kft. The joint venture decided to market the wines under the brand name 'Laposa' and filed a trademark application for a figurative sign containing the word LAPOSA in Nice Class 33 for wines.

Around this time, the relationship between the investor and Bence Laposa started to deteriorate. While Bence Laposa was still hoping for a settlement, his father, Jozsef Laposa filed an opposition against the joint venture's trademark application based on his right to his family name. Some months later, Bence Laposa left the joint venture and started to make wines in a new firm, Laposa Birtok Kft. ('Laposa Estate'), started with his father and his sister, Zsolia, who was then studying winemaking in Bordeaux. Thereupon, both Bazaltbor-Badacsony Kft. and Laposa Birtok Kft. were selling their wines under the brand name LAPOSA.

The dispute escalated and soon seven separate IP-related court cases were pending between the parties. It soon became clear that the two main issues in the court cases were (a) whether one family member can assign or licence the family name, where other family members are active on the same market, and (b) whether the family name was detached from the family and became an independent trade name owned by the joint venture when Bence Laposa co-founded the joint venture, or it has always belonged to the family members and the joint venture was only allowed to use it while Bence Laposa took part in its operation.

Previous case law helped define the relevant factors whether or not a family name separated from the family, ceased to be a personal name and became an independent trade name:

- a) is the name used as a source indicator, i.e. is the name actually used on products or in marketing?
- b) is a person bearing the family name taking part in the manufacturing process or in the offering of services?
- c) are consumers associating the trade name with the person bearing the family name?
- d) have family members explicitly decided to turn their family name into a trade name?
- e) has the name been used for a longer period of time without the personal involvement of anyone bearing the family name, and if it has, have family members longer acquiesced such use?
- f) have family members authorised a third party to register and use a trademark incorporating their family name?

The matter was further complicated by the fact that the joint venture was at the time of the trademark application partly owned and managed by Bence Laposa, who had himself signed the power of attorney of the representative filing the trademark application. On the other hand, Jozsef Laposa claimed that he was still well known as a winemaker and his daughter, Zsolia Laposa, was also studying winemaking in Bordeaux, therefore, no third party and no single family member shall be allowed to monopolise the family name by way of trademark protection.

Following several twists and turns, the Supreme Court of Hungary finally decided in favour of Jozsef Laposa and refused the joint venture's trademark application (Pfv.IV.20.999/2016/5). The Supreme Court ruled that Bence Laposa had no exclusive right to authorise the registration of his family name as a trademark. The family name had been well known for wines prior to the trademark application. It follows from the very character of family names that the authorisation given by a single family member for a third party to use the family name is not sufficient. Therefore the use and registration of the family name Laposa without the authorisation of Jozsef

Laposa is unlawful.

Furthermore, the Supreme Court ruled that the family name was never separated from the family and never became a trade name. The family had used the family name before the joint venture was set up ('Laposa Family Winery'). A family name can indeed be separated from the family only if it is used for a long period of time, if the separation is intended or longer acquiesced by the family. The family name does not appear in the name of the joint venture, and Bence Laposa personally participated in the wine making and distribution while he was with the joint venture. Therefore, the use of the name as an independent trade mark could not be established.

Picture above (c) Peter Orban (<http://peterorban.hu/>)

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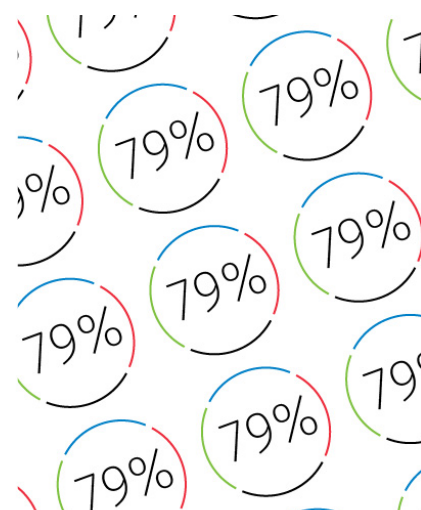
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