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When is the claim for infringement of trademark considered as time-barred?

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In front of the Basic Civil Court Skopje, in Skopje, Republic of North Macedonia (“The Civil Court”) in 2022 a case has been initiated between two companies in the konditorei industry, one from Republic of Serbia (the plaintiff) and the other one from the Republic of North Macedonia (the defendant). The basis of the dispute was infringement of trademark right for a very famous brand of candies.

The Civil Court decided that the lawsuit was time-barred because both the subjective and objective deadlines for filing a lawsuit had lapsed. Namely, under the positive legal regulations in the Republic of North Macedonia (Article 295 of the Law on industrial property), the subjective term for filling a lawsuit in which infringement of intellectual property right is claimed is 3 (three) years from the moment when the plaintiff became aware of the infringement and the objective deadline is 5 (five) years from the moment when the infringement commenced. According to the reasoning of The Civil Court the plaintiff in 2014 filed lawsuit for the same legal matter and a request for preliminary injunction against the defendant in front of the Commercial Court in Belgrade, Republic of Serbia. The Commercial Court in Belgrade, Republic of Serbia rejected the lawsuit and dismissed the requested for preliminary injunctions as unfounded. Having this in mind, the plaintiff was aware of the alleged infringement of its right in 2014, and therefore filling a lawsuit in North Macedonia in the year 2022 is obsolete. Although the first lawsuit from 2014 was filed in Republic of Serbia, it concerned the same parties and the same trademark. In sense of this, for The Civil Court it was evident that the plaintiff cannot argue lack of awareness of the alleged infringement prior to the year 2022, when it filed the lawsuit in North Macedonia. The fact that there is no difference in the essence of either dispute, in the Republic of Serbia and North Macedonia, was decisive for The Civil Court to rule that the lawsuit is time-barred, because the plaintiff failed to meet both the subjective and the objective deadlines provided in the law.

Unsatisfied by this decision of The Civil Court, the plaintiff filed appeal to the Appellate Court Skopje, in Skopje, Republic of North Macedonia. In its appeal the plaintiff claimed that the court of first instance made an essential breach of the provisions of the civil procedure, wrongfully and incompletely determined the factual situation and improperly applied the substantive law. However, the Appellate Court upheld the first instance decision. Namely, for the Appellate the fact that the plaintiff was aware that eventual infringement of trademark exists can be proven by the mere fact that the plaintiff 10 (ten) years ago filed lawsuit for the same legal matter in front of the Commercial Court in Belgrade, Republic of Serbia. Therefore, for the Appellate Court it is undisputable that the lawsuit was filed outside of the scope of the statutory limitations provided in

the Article 295 of the Law on industrial property. In light of this reasoning, the Appellate Court did not take into consideration the arguments of the plaintiff whether the claim for infringement of the trademark is disputable or not. Moreover, the Appellate Court decided that Macedonian courts are not competent in the case of possible infringement of trademarks that occurred out of the territory of the Republic of North Macedonia (namely in Serbia).

Having in mind the fact that no extraordinary remedy was filed it is considered that the dispute is finished by legally valid and enforceable decision.

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This entry was posted on Friday, February 21st, 2025 at 9:54 am and is filed under [Case law](#), [Infringement](#), [North Macedonia](#)

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