Domain-Name "www.rechtsanwaelte.de" Found to Violate Competition Law

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[1] In a decision, rendered on 16 November 2000 and recently published, the *Landgericht* of Munich (Regional Civil Court) denied a law firm in Munich and Berlin the right to hold the domain-name "www.rechtsanwaelte.de", which, when translated, would be "www.lawyers.com". After using it for some time to offer their services, exclusively in the internet, not on business cards or on their stationary, the lawyers ceased to use the link but retained the rights to the domain-name. While such a domain-name can be debated, as either a clever or manipulative business move, the Court's decision fails to provide an adequate and ingenuous interpretation of the law.

[2] The Court found this domain-name to be a violation of Section 1 of the *Gesetz gegen den unlauteren Wettbewerb* or UWG (German Code Against Unlawful Competition). This statute, which protects against competitive practices that run counter to public policy, is a brief and nebulous provision that fits Napoleon's standard for his Code Civil of 1804. In order to be a success, Napoleon said, the Code needed to be "court et obscure". The commentary to Section 1 UWG fills libraries and the newly emerging debate on the competitive use of domain-names that denominate *Gattungen* (class, category or type) is difficult to place in the regime. The *Bundesgerichtshof* (Federal Court of Justice) has not yet spoken on the matter and, for the time being, all commentators aim to predict, based on the rulings of regional and state supreme courts, what the settled law will be. There are conflicting paths issuing from the decisions of the state supreme courts and the Munich Regional Court clearly struggled to settle on one of the possible trends.

[3] The Regional Court in Munich relied on the Hamburg Supreme Court decision of July, 1999, for two points. First, the Hamburg decision was used to justify the Munich Court's authority to evaluate "search practices" in the Internet. Second, the Munich Court followed the Hamburg decision's approach to the substantive legal question, primarily drawing distinctions between Internet search behavior that, according to the Court's, ranges from direct links to web addresses to search machine surveys relying on informed guesses and ending with blind "base-word" guessing. The Court concluded that search machines are not relied upon exclusively, but that, instead, a lot of Internet searching still take places at the blind "base-word" end of the spectrum as Internet users presumably treat "base-words" as World Wide Web addresses. The Court further held that while the searcher may well be aware of the likelihood of finding a great number of useless information when typing "base-words", the Court concluded that an especially unknowledgeable Internet user may, nevertheless, give it a try (a search of "www.food.com", which eventually will lead him or her to an online food ordering service, or "www.carrental.com" bringing him or her to AVIS).

[4] The Court held, in essence, that a blind "base-word" search for *Rechtsanwaelte* (Attorneys) would channel everyone to this specific firm at the exclusion of all other competing law firms, thereby giving this particular law firm an unfair competitive advantage. The Court's view is clearly dependent on the breadth of the class distinction (or "base-word" class) at issue in this case. The domain-name at issue, for example, does not involve descriptors like firm size, geographic description or specialty of practice. The Court refused to approach this distinction, holding that it was bound only to review the domain-name at issue in the case. Certainly it holds little direct relevance to the case at hand, but the Court would have given its holding greater strength and would have significantly contributed to this infant body of jurisprudence if it had more thoroughly addressed the issue, undertaking an analysis of more specific "base-word" constructions that contain the word *Rechtsanwaelte* in combination with the name of a city or the specific name of firm.

[5] The other basis on which the Court rested its decision is an alleged violation of the *Bundesrechtsanwaltsordnung* or BRAO (German Federal Rules for the Legal Profession), the (BRAO). The Court found the domain name held by plaintiffs to conflict with Section 43(b) of the BRAO, which prohibits a lawyer from advertising in any other way then to provide *sachlich* (neutral) information. The Court found that, by using the disputed domain-name, the plaintiffs acquired an exposure which runs contrary to that permitted by the advertising rules. The Court compared the domain-name to a highlighted entry in a phone book, which is also prohibited by the BRAO.

[6] The fate of such jurisprudence remains to be seen. An early decision from the Regional Civil Court in Cologne (7 September 1998 - 31 O 723/98) concerned a very similar domain-name ("rechtsanwaelte-koeln.de") and opened the way to the following decisions. While it is expected that the Federal Court of Justice will, this year, address the matter of the domain-name *"mitwohnzentrale.de"* (flat-sharing agency), which was found to constitute a violation of competitive practice by the Hamburg Supreme Court, it is difficult to predict the outcome. It is clear that the matter of class or category related domain-names figures among the most intricate questions within competition law, and it might be necessary to dwell even further on the nature of the Internet as information and market forum in order to find an adequate answer.

For more information:
Decision of the Landgericht München, November 16, 2000 - 7 O 5570/00,
in: BETRIEBS BERATER 2001, p. 488 w. a brief commentary by Niko Härting.

Decision of the Oberlandesgericht Hamburg, July 13, 1999 - 3 U 58/99, in: K & R 2000, p. 190 (=MMR 2000, p. 40).