TSZ – 218/16

IN THE NAME OF THE PEOPLE OF REPUBLIC OF MACEDONIA

Court of Appeals in Bitola, panel of judges composed of Petre Srbinovski president of council, Lile Naumovska and Riste Ristevski council members, in the legal matter of the plaintiff AB ELECTROLUX St. Goransgatan 143 SE 105 45 Stockholm of Sweden, represented by representative lawyer Zivka Kostovska Stojkovska from Skopje, vs. the defendant Company for Production of Household Appliance and Professional Equipment, Stainless Steel, Industrial Brushes, Palenzo, Rubber Products, Electrical Heaters, Vacuum Cleaners Irobat, Design Lab, Wholesale and Retail Services, Sport Academy and Cooperation, Import-Export, Ltd. Electrolux (Electrolux Bitola) from Bitola, represented by representative lawyer Nikolce Lazarov from Skopje, for infringement of industrial property, value 40 000.00 denars, appeal lodged by the plaintiff filed against the judgement of the Basic Court in Bitola TS 15/15 from 26.01.2016, during the council session held on 14.07.2016, adopted the following,

JUDGEMENT

The appeal of the plaintiff, **IS REJECTED AS UNFOUNDED.**

The judgement of the Basic Court in Bitola TS 15/15 from 26.01.2016, **IS CONFIRMED**.

The plaintiff IS OBLIGATED to reimburse the defendant the appeal fees in the amount of 11 645.00 denars, within eight days after the receipt of the judgement.

The rest of the request for appeal costs of the defendant than the amount awarded in the amount of 28 556.00 denars **IS REJECTED AS GROUNDLESS**.

EXPLANATION

The Basic Court in Bitola for the disputed verdict rejected the claim of the plaintiff as unfounded same as the sentence of the First Instance verdict and obliges the plaintiff to reimburse the defendant for the costs of the proceedings in the amount of 73 699.00 denars within eight days after receipt of the judgement and the rejected the demand for higher costs as unfounded.

An appeal stated by the prosecutor through representative lawyer Zivka Kostovska Stojkovska refuting it entirely on all grounds provided by LJP with a proposal to accept the appeal, the verdict be revoked, and the case returned to the first instance court for retrial.

Response to a complaint filed by the defendant representative lawyer Nikolce Lazarov which contested the allegations of the plaintiff and proposed the complaint be rejected as unfounded, and the sentence be confirmed

With the response the defendant requested for cost reimbursement of complaint in the total amount of 28 556.00 denars.

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Court of Appeal in Bitola, ruling according to Article 354 of LJP examined the disputed judgement, reviewed the records on the case and after assessment of the complaints and suggestions, has found

The appeal of the plaintiff is unfounded.

(AB ELECTROLUX St. Goransgatan 143 SE 105 45 Stockholm from Sweden)

Unfounded are the objections to complaints of the plaintiff for committed substantial violation of the civil proceedings under Article 343 Paragraph 2 Section 14 on adoption of the disputed verdict. Unfunded are because the disputed judgement has no flaws upon which it cannot be examined or contradictions do not exist between the reasons for rejection of the complaint claim and the content of the adducted evidence.

First Instance Court in Evidentiary proceeding brought all the evidence proposed by the parties and based on their conscientious, careful, and complete analysis found evidence to properly decide on the set claim. For the rejection of the claim and its insubstantiality, the First Instance Court has presented enough and clear grounds. The plaintiff with the proposed and presented evidence by the court did not prove that the defendant (Electrolux Bitola) has violated the trademark of the plaintiff (AB ELECTROLUX St. Goransgaten 143 SE 105 45 Stockholm from Sweden)

Unfounded also are the objections upon the complaints of the plaintiff (AB ELECTROLUX St. Goransgaten 143 SE 105 45 Stockholm from Sweden) that upon the conclusion of the disputed verdict the First Instance Court significantly violated Article 343 paragraph 1 in conjunction with Article 236 of the LJP, when accepted to bring as evidence the opinion of the lecturer Zdravko Bozinovski. Unfounded are because the defendant (Electrolux Bitola) as evidence presented the opinion of Lecturer Bozinovski, on which the plaintiff did not object and on the hearing when the opinion was presented as evidence even though the representative of the plaintiff was present on the named hearing. Facts regarding that the person Zdravko Bozinovsi is not an expert listed in the register of experts, the plaintiff did not present in order the objection to be accepted as grounded objection. After the evaluation of the Second Instance Court and in the case so as the plaintiff argues, it is of relative essential violation of the civil procedure which does not affect the legality of the decision for reasons that the First Instance Court the decision on the claim of the plaintiff (AB ELECTROLUX St. Goransgaten 143 SE 105 45 Stockholm from Sweden) is not based on this evidence when it refused the request for the same reasons for rejection the claim of the plaintiff AB ELECTROLUX St. Goransgaten 143 SE 105 45 Stockholm from Sweden) content in the disputed verdict.

Unfounded are the complaint objections of the plaintiff on the ground erroneous and incomplete established factual situation. Unfounded are on the grounds that the plaintiff (AB ELECTROLUX St. Goransgaten 143 SE 105 45 Stockholm from Sweden) with the lawsuit and the defendant (Electrolux Bitola) with the response on the lawsuit and until the first hearing had represented all of the evidence which had been in their disposition. The court heard all the proposed evidences and based on the same, determined the facts in accordance to the claim of the

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plaintiff whether the defendant (Electrolux Bitola) violated the right of trademark ELECTROLUX and ZANUSSI, by registering many domain names listed in the lawsuit. The First Instance Court based on the presented evidence indisputably found that the plaintiff has registered the trademarks ELECTROLUX and ZANUSSI in the State Office of Industrial Property, the defendant (Electrolux Bitola) is registered in the Trade Register of Republic of Macedonia in the year 1999 as ELEKTROLUX LTD. Bitola, with a code of business 95.22 and is registrant of 13 domain names listed in the lawsuit of the plaintiff, which the plaintiff request to be erased by the Macedonian Academic Research Network. The plaintiff (AB ELECTROLUX St. Goransgaten 143 SE 105 45 Stockholm from Sweden) except the claim supported by the analysis of websites has emphasized the titles of the domains did not prove that the plaintiff thus suffers some harm nor that it produces and sells products with the name which associates the name of the now plaintiff ELECTRLUX, and more the name ZANUSSI which in any case does not result that the defendant (Electrolux) used as domain names or on a website. The Plaintiff did not present evidence and the court did not find that the defendant (Electrolux Bitola) by registering domain names has mislead the consumers or has caused unfair competition. The court also indisputably finds that the defendant (Electrolux Bitola) in the Trade Register of Republic of Macedonia is registered as ELEKTROLUX Ltd. From Bitola in 1999, with occupancy permit as craft shop with activity code 95.22 – repair of electrical household appliances and household and garden equipment which was established by the current status of the Central Register of Republic of Macedonia. The court also finds indisputably that the defendant (Electrolux Bitola) is registrant of domain names listed in the lawsuit and the claim of the plaintiff (AB ELECTROLUX St. Goransgaten 143 SE 105 45 Stockholm from Sweden) for what it is requested erasing from the Macedonian Academic Network.

On the basis of properly established factual state, the First Instance Court correctly applied the material law when it refused the claim of plaintiff, and here it implies the provisions of the Law for Industrial Property for the plaintiff claimed that upon the registration of domain names the defendant (Electrolux Bitola) violated the right of trademark of the plaintiff (AB ELECTROLUX St. Goransgaten 143 SE 105 45 Stockholm from Sweden). Therefore as ungrounded are the claims of the plaintiff ELECTROLUX on the basis of misapplication of substantive law. Ungrounded because the plaintiff (AB ELECTROLUX St. Goransgaten 143 SE 105 45 Stockholm from Sweden) in the procedure did not prove that with registration of domain names violated the trademark of the plaintiff. The defendant (AB ELECTROLUX St. Goransgaten 143 SE 105 45 Stockholm from Sweden) apart from registering the domain names which match the names of his firm which is registered in the register of legal entities – trade companies since the year 1999 nothing else has done which could pose violation of trademark of the now plaintiff ELECTROLUX and ZANUSSI. The defendant (Electrolux Bitola) acted according to business practices because upon registration of domain names the intention of the defendant (Electrolux Bitola) was not to use the trademark of now plaintiff (AB ELECTROLUX St. Goransgaten 143 SE 105 45 Stocholm from Sweden) in his self-interest, but according to the

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legislative regulations the defendant registered domains which correspond to the name of his firm (Electrolux Bitola). Pursuant to Article 207 of the Law for industrial property of the custody on the trade mark, does not grant the right to the plaintiff (Electrolux) as a bearer of the trademark to prohibit a third party the use in the commodity market their names, last names, signs or trade names, no matter the fact that that information is identical or similar to the trademark, under condition to be used in accordance with good business traditions and not cause unfair competition. The now defendant (Electrolux Bitola) did not produce nor places in the market products with the trademark of the plaintiff (AB ELECTROLUX St. Goransgaten 143 SE 105 45 Stockholm from Sweden) nor by registration of the domain names has not mislead the customers or has not caused unfair competition for in that way to harm the trade mark of the now defendant (Electrolux Bitola) as it is stated by the now plaintiff (AB ELECTROLUX St. Goransgaten 143 SE 105 45 Stockholm from Sweden). This especially less to the trademark ZANUSSI which now the defendant does not mention, nor applies, or written in any domain in order to harm the right of that trade mark.

The First Instance Court when refused the claim of the plaintiff decided on the expenses of the procedure which weighted in accordance with the submitted expense report and the provisions of LLP and the Act and Court Fees.

The Second Instance Court pursuand to Article 160 LPP has obliged the plaintiff, to compensate the Second Instance expenses to the defendant in the amount of 11 645.00 denars, which are related to the constitution of response to an appeal by increasing according to the Tariff for Awards and Compensations of the Cost of the Work of Lawyers 9360.00 denars + 18% VAT or 1685.00 denars, and 600.00 denars per name Fee for Responding to Complaints.

Growing demand for secondary costs, the Appellate Court rejected as unfounded on the grounds that the request is set too high and is not consistent Tariff for Reward and Compensation of Costs incurred by Lawyers.

Given the above, and pursuant to Article 357 of the LJP is decided as in the judgement.

PS/HX

President of council –
Judge
Petre Srbinovski S.R.

Stamp
Appellate Court
Bitola
RM

Преводот е верен на оргиналот
м-р Милевска Весна, трајно судски преведувач
од англиски на македонски и обратно
16.10.2016

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The translation is authentic to the original
M.A Milevska Vesna, permanent legal translator
from English to Macedonian and vice versa
16.10.2016

VESNA MILEVSKA