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SWITZERLAND: RADIO SUISSE ROMANDE Has Become a Trademark

Contributor: Marco Bundi, Meisser & Partners, Klosters; Verifier: Christoph Gasser, Staiger, Schwald & Partner Ltd., Zurich. Mr. Bundi is a member of and Mr. Gasser is co-chair of the INTA Bulletin Law & Practice—Europe Subcommittee.

On September 20, 2006, the radio station Radio Suisse Romande (“Romande” is the denomination of the French-speaking part of Switzerland) filed an application for the registration of the trademark RADIO SUISSE ROMANDE in various classes. The Swiss Trademarks Office (IGE) allowed registration in Classes 16, 28, 35 and 41 (partially), while rejecting it in Classes 38 and 41 (partially). According to the IGE, the mark RADIO SUISSE ROMANDE could not be monopolized by a single applicant, as it would be indispensable for further competitors in the field of radio transmission. Therefore, the mark could not even be registered based on its having acquired distinctiveness through use.

On June 9, 2008, the applicant brought the case before the Swiss Federal Administrative Court, which ordered the IGE to register the trademark. Although the mark consisted only of a generic term—RADIO—and a geographical indication—SUISSE ROMANDE—the court held that it could indeed acquire distinctiveness through use. Because the mark was intensively used, registration was allowed in Classes 38 and 41 as well.

Subsequently, the IGE appealed the decision before the Swiss Federal Supreme Court (Case No. 4A_434/2009, Nov. 30, 2009). The Court analyzed thoroughly every element of the trademark at issue. It held that “radio,” as a generic term, could not be monopolized. Furthermore, “Suisse Romande” amounted merely to a geographical indication lacking distinctiveness. However, the Court stated that the radio stations in the territory of the French-speaking part of Switzerland did not necessarily need the trademark. It held that local radio stations could well state that they were active in the French-speaking area of Switzerland, and there was no need for the whole term to be kept free. As the applicant demonstrated acquired distinctiveness through use of the mark, IGE’s appeal was dismissed and the trademark registered.

According to Swiss practice, certain marks cannot be monopolized and are per se excluded from trademark protection, even where distinctiveness is acquired through use. The reason behind this practice is that the monopolization of such marks would lead to an unfair advantage for certain competitors. Therefore, marks such as ALPHA-TRAINING, ALPHA, MIRABELL, MARCHE or POSTKONTO have not been allowed for certain products or services. Usually, however, trademarks comprising more than just one verbal element have better chances of not being subject to the absolute exclusion of protection according to Swiss practice, as in such cases competitors have better chances to find alternatives.

The decision is available online in French at www.bger.ch.

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phone +1-212-642-1700 | fax +1-212-768-7796 | www.inta.org | bulletin@inta.org