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ORIGINAL PAPER

Right to a name-a Puzzle: Identification Atributte. Trademark. Domain Name

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Abstract:
The issue of the name arouses interest both from a historical point of view and from the point of view of the origin of the different onomatological systems since analyzing evolutionarily, this institution has benefited from a wider legal framework with the development of society. The name is not only a purely individual attribute but also a family right. Moreover, a way of accessing privacy by violating the right to a name can also be noticed in areas such as literary-artistic or audiovisual programs. Furthermore, the professional use of the name in the exercise of the professional activity gives it another value. The right to a name shall be protected in the light of the provisions of intellectual property law from the point of view of copyright, trademark and domain name. Summarizing the issues related to the dissemination of the name, in a few lines is a major challenge because the names must be examined under differentangles in the process of their use by the media/ society/persons. The aim of this article is to emphasys the complexity of the name matter, in a society where the name is omnipresent and where the evolution of technology is constantly generating new debates in this field. It is therefore essential to monitor the evolution of these techniques and how the law, jurisprudence, try to combine all the interests in providing the right protection through the provisions that reffer to fundamental human rights and individual freedoms.

Keywords: *right to name; protection; intellectual property; domain name; trademark.*

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1. Right to a name-preliminary issues

"What is in a name?" (Shakespeare, 2006:948-958)... a name represents a unique individual- Victor Hugo, for example, without a priori recognition of a certain property, says John Stuart Mill. According to Saussure, a name would not be a linguistic sign, while for Freud the name is a connection, a binder with one's own personality (Nietzsche, 1993:15-18). The name-constitutive element of the language of each people, is basically a sound sequence constantly used in the community to designate a particular person (Ionescu, 1975:8). The appearance of names (Plastara, 1927:153) is in connection with the existence of a human group, of man as a social being. At the same time, the name becomes a legal notion from the desideratum to establish a unitary way of identifying the persons, the object of the regulations being in fact, its structure and rules of acquisition and not the name itself. Thus, in the composition of the name as an attribute of identification of the person, it is "family name" and "first name"; the first element being established by the existing links between the different families, while voluntarism characterizes the procedure for determining the first name by the parents.

From the point of view of aspects regarding the legal nature of the name, a thorough analysis reveals an evolution in its regulation from property law (especially in the French (Cornu,1991:203) system) to extra-patrimonial law with personal values (currently the vast majority of legal systems adopt this direction (Jugastru, 2004:347). Nicolae Titulescu, in support of the non-patrimonial character of the right to name, considers that the object of property cannot be divided, without diminishing "the usability of each owner". "Take the name of Popescu or Ionescu. Whole families enjoy this name, they use it, they derive from it all the utility they are likely to have without being harmed by anything, because there are other Popescu and Ionescu families. Or, does this perfect cumulative use of the name fit in with the exclusive property right? Not". In his argument, Titulescu adds that: "the patronymic name was born from the addition of an orbiquet drawn from the profession, from the home, from the physical qualities, etc. which have not the slightest relation to the idea of property "(Titulescu, 2004: 136).

The name (Retea, 2018) is not only a purely individual attribute but also a family right, a context in which there is the prerogative of descendants to act in the direction of protecting the names of their ancestors, not being conditioned by the name, but also by inaction by family members in the meaning of defending a name that does not affect in any way the intervention and action of others in order to protect the family heritage (Ungureanu, 2007:227). Thus, the name belongs to both the rights of the personality and the state of the person, being the result of filiation and the bearer of the person's identity.

The protection of the right to a name, as well as a non-patrimonial personal right (Dogaru&Cercel, 2007:118; Bîcu, 2016:69), is achieved from several perspectives. First of all, this right is recognized at the level of legislation by express regulation within the Civil Code (article 59 identification attribute, articles 82 to 85 the structure and method of attribution, establishment, respectively change through administrative procedure, article 74 component of privacy, article 254 defense as a non-patrimonial right, etc.). We consider that by including the right to names in the sphere of the right to intimate life (Retea, 2016:133-141), to which we add the premise according to which the name is an element that also belongs to the family, it also knows a constitutional regulation through article 26 the right to intimate, family and private life from the Romanian Constitution (Cioclei, 2008:254). Secondly, it also benefits from a criminal

protection (art. 327 of the Penal Code - false identity), being considered the highest degree of defense. In addition, its enshrinement in various special laws (Law No. 272/2004 on the protection of children's rights, Government Ordinance No. 41/2003 which includes the administrative procedure for changing the name, Law No. 273/2004 which includes issues related to adoption, Law No. 119/1996 which addresses issues related to civil status documents, etc.) is the next degree of protection allocated to this category of rights. Also, the existence of institutions whose main purpose is to supervise activities closely related to the right to a name (for example, the Population Registry Service) increases the indirect protection afforded to it.

A way of accessing privacy by violating the right to a name can also be noticed in areas such as literary-artistic or audiovisual programs. From the perspective of the difficulty in establishing the names of the character, the authors encounter many problems. In this context, a significant example is that in which the author of a work names his characters, with or without intention, with the names of third parties. Thus, he gives birth to fictional characters who actually use the names of his friends or enemies in order to slander them, thus being incidental the provisions of art.253 Civil Code (Ungureanu&Munteanu,2015:244). Likewise, the fiction author assigns a name to a certain character, without knowing the fact that it belongs to a third party. As a result, a procedure for obtaining the consent of all persons bearing that name cannot be applied for the purpose of approving the use of the name in question, for which reason others who have not given their consent may apply to the court in the absence of a consent authorizations from them. In addition, it is quite difficult to demonstrate the malicious intent that the author is supposed to have had when choosing that name. In such a situation it proves impossible to hold the fictional author accountable because it could not be verified by whom that name was borne.

Approaching the issue of the name as an identifying attribute from another perspective, we distinguish between the name used for commercial purposes and the civil name. Thus, we find that the civil name refers to the personality, family and individual while the trade name detaches itself from the individual becoming the object of a real "property right", in other words the name can be treated as "an element of goodwill" (Ungureanul&Munteanu, 2015:241-242). It is entitled to defend a civil name its legitimate bearer, thus having a faculty and not an obligation, unlike the legal person that has an obligation in this regard, an obligation that arises precisely from the social function that the name performs (name/title (Boroi,2010:438)). The holder of a name is not entitled to challenge the use of one who regularly bears the same name, except in the case of unfair competition for those who skillfully exploit a namesake. Unlike the name of the natural person, in the case of the name (name) of the legal person there is an exclusivity of its use, as well as the possibility of reserving it. Therefore, the probability of the uniqueness (Cornu, 1991:613) of a surname or a first name is very small and it is not related to the observance of exclusive rights with respect to that name.

Like the name of the natural person, the name of the legal person, from the perspective of non-patrimonial law has prerogatives such as: its use in the sense of individualization in the legal reports in which it participates and the request of other subjects of law to use it and not infringement in this process, otherwise the right can be restored (Dogaru&Cercel, 2007:296).

In addition, the professional use of the name among the liberal professions (lawyers, notaries, doctors, etc.) has given another value to the name of the individual. In this context, in art. 8 of Law no. 51/1998 regulates the way of naming the professional

lawyer according to the forms of exercising the profession provided (Article 8, (1) The forms of exercising the profession of lawyer and the grouped law firms shall be individualized by name, as follows: a) in the case of the individual law firm - the name of the titular lawyer, followed by the phrase law firm; b) in the case of associated law firms - the names of all the holders, followed by the phrase associated law firms; c) in the case of professional civil societies and professional limited liability companies - the name of at least one of the partners, followed by the phrase civil society of lawyers or, as the case may be, professional society of limited liability lawyers; d) in the case of grouped law firms - the name of each law firm holder, followed by the phrase grouped law firms. (2) The name of the form of exercising the profession, individualized according to par. (1), may be kept after the death or departure of one of the partners, with his consent, or, as the case may be, of all the heirs of the deceased, expressed in authentic form). Therefore, the name of the natural person carrying out such an activity is used in the way of naming the practicing professional. In other words, the lawyer can carry out his activity only under the names imposed by the law on the organization of the profession, and not under any other name. Thus, the name can be used even after the death or departure of one of the partners, requiring the authentic consent of the heirs and the partner (Cercel, 2018:73). As a result, the <association of words> that identifies the natural person at the level of society is also used as a way of identification and in the exercise of a profession as a result of the existing regulations in each field (medical, architectural, etc.).

2. Intellectual property rights perspective

According to Law no. 8/1996 (published in Official Gazette no. 60 of March 26, 1996) which contains provisions on copyright and other related rights, the right to name is enshrined in art. 10 lit. c) under the name of the author's right to decide under what name the work will be brought to public knowledge, being sometimes included in the scope of application of the author's right (Florea, 2011:69). According to the regulations in force, this right designates the word or words that the author of a work uses to indicate the person who is the author of the intellectual creation. Thus, the real name of the author or a pseudonym(Cătuna, 2013:73) can be used, differing, however, from the name of the work that fulfills the function of identifying the work in relation to other such creations (Bodoaşcă, 2012:45).

In this context, the authorship (Grigoraş, 2014:21-27) can be held only by natural persons, those who actually created the work, while the right to name may designate either natural or legal persons who had the initiative or under whose name the work was performed (Muscalu, 2013:90-99).This is possible precisely due to the provision that gives the option of publishing the work either in an anonymous form or under a pseudonym.We show that the right to a name is not transferable by inheritance, compared to the right to authorship that belongs to the successors.

The right to the name is respected, respectively the right to the quality of author in the situation when the will of the author regarding the name under which he decides to publish his creation is violated (name, first name with / without initial, etc.).Also, another violation of the right to a name concerns the hypothesis in which another author publishes under his own name the work that does not belong to him (Florea, 2011:68).We find that there is a similarity between the violation of this moral right and the violation of the non-patrimonial right to names. What should be noted is the legal regime applicable to each hypothesis, so that when an infringement of non-patrimonial

law is infringed, the name is protected by the provisions of the Civil Code, while non-compliance with the moral right to decide under which name the intellectual creation will be published falls under provisions contained in the special law governing copyright and other related rights (Cătuna, 2013:74).

In addition, a name can also be registered as a trademark (Florea, 2014:9-25).In such a situation, homonyms can be created, causing confusion. As a result, a monopoly may occur due to the trademark owner's right to use only his name, which is his own, but at the same time belongs to other persons. Thus, the mark requires the observance of certain characteristics in the sense of combining certain elements, such as color, graphics, positioning of the letters in a certain way. What enjoys legal protection is the final product represented by the shape of the characters used, their arrangement, color, all being used to write that name, and not the name itself.

As an example, we remind you that the French manufacturer Renault was sued by several French citizens because the electric car to be produced in 2012 was called Zoe - a name quite used in France, which led to the revolt of citizens. The French court ruled in favor of the producer because the use of this name does not affect any privacy as alleged.Also in France, in 2018, the dispute between the members of the Rothschild banking dynasty was finalized in order to decide how to use the name of the founding father, Mayer Amschel Rothschild (February 23, 1744 - September 19, 1812). Edmond de Rothschild, a 156-billion-euro French-Swiss private bank and asset manager who owns several vineyards and the new Four Seasons Megève Hotel, has filed a lawsuit against French bank Rothschild & Cie, arguing that its owners are he incorrectly declares himself to be the "Fathers of the Rothschild Group." The agreement between Rothschild & Co, the Anglo-French owner of Rothschild & Cie and Edmond de Rothschild, states that none of the groups has the right to use, in branding, only the name Rothschild. For future business, both groups are firmly committed to "working together to protect the family name in the banking sector.".

At national level, we identified a conflict over the name "Arsenie Boca" (emblematic figure of the Romanian Orthodox Church, born on September 29, 1910, in Vața de Sus, Hunedoara - died on November 28, 1989, in Sinaia ; he was a Romanian Orthodox hieromonk, theologian and plastic artist (muralist), abbot at Brâncoveanu Monastery in Sâmbăta de Sus and then at the Prislop Monastery, where due to his personality thousands and thousands of believers came, a fact for which he was harassed by the Security. For more details see: https://ro.wikipedia.org/wiki/Arsenie_Boca, accessed on 13.05.2020. He was buried at the Prislop Monastery, his grave becoming a real place of pilgrimage for all those who knew and cherished him. In September 2019, the Diocese of Deva proposed its canonization. The process is a long one, until now, the Romanian Patriarchate not finalizing the whole approach. https://episcopiadevei.ro/index.php/2019/09/05/sedinta-de-lucru-a-sinodului-mitropolitan-al-mitropoliei-ardealului-la-deva/ , with last accessed on 13.05.2021) in the context in which Daniel Gheorghe from Arad stated that he registered the trademark "Father Arsenie Boca" at the European Union Intellectual Property Office (EUIPO), obtaining a license for the use of the trademark on the Romanian territory, which implies that the use of his name on church objects attracts the remuneration of the Arad resident. The situation is still unclear The Church expressing an official point of view in the sense that ‹Father Arsenie Boca is a spiritual personality and can not be assumed as a brand, the approach of the foreign company being classified as a matter" totally out of place "› but from the point of legal view things are to be elucidated in court

(http://basilica.ro/vasile-banescu-numele-parintelui-arsenie-boca-este-parte-a-patrimoniului-memorial-al-bisericii-ortodoxe-romane/ , last accessed on 13.05.2021).

Therefore, a thorough investigation reveals that the Hungarian citizen Andor Sandor registered at EUIPO only "Arsenie" (https://euipo.europa.eu/eSearch/#details/trademarks/015760382, with last accessed on 14.05.2021) as a European trademark, for goods and products such as: nutritional supplements not for medical use, decorative articles for personal use, dairy beverages, meat products, oil, sugar, rice, flour, dried pasta, bread dough, products for cleaning teeth and mouthwash, detergents, etc. He also registered as a trademark in the European Union the phrase "Our daily bread Fr. Arsenie Bread" (https://euipo.europa.eu/eSearch/#details/trademarks/016722712, with last accessed on 14.05.2021) which refers to goods and services such as: bakery products, advertising services, marketing and promotion, conducting promotional campaigns, advertising, brand strategy services, etc.

In addition, a Romanian woman from Satu Mare, Diana Talpoș, recorded the phrase "Father Boca" (https://euipo.europa.eu/eSearch/#details/trademarks/015773997 , with last accessed on 14.05.2021) as a trademark in the European Union, having an applicability to goods and services such as: printed educational materials, images, lithographs, graphic representations, sketches, art , beer, water, white / red wine, matches, charity fundraising, etc. In other words, the name "Arsenie Boca" was not registered as a European trademark, because in such a situation EUIPO would have notified and refused such a request, as it was aimed at a religious symbol of the Romanian Orthodox Church. What is certain is that the claims made by the persons mentioned above indicate their possible complicity precisely in order to mislead the Office. The actions of capitalization of the rights obtained under the registered trademark, by prohibiting the use of the face of Father Arsenie Boca on various products that were to be marketed determined the Prislop Monastery, respectively, the Romanian Orthodox Bishopric of Deva and Hunedoara to act in court (File no. 19485/3/2018, Bucharest Tribunal http://portal.just.ro/3/SitePages/Dosar.aspx?id_dosar=300000000824089&id_inst=3, with last accessed on 14.05.2021). The Bucharest Tribunal rejected the request to cancel the trademarks of the two owners as unfounded (Decision no. 1692/2019 dated 11.07.2019), although through the actions taken the two demonstrated that they had behaved precisely in the sense of misleading EUIPO which did not realize that by separately registering the 2 trademarks they will offer exclusivity on a symbol of the Romanian Orthodox Church. The jurisdiction of the Bucharest Tribunal strictly concerns the annulment of a national trademark, not of a European trademark. What is certain is that none of them has exclusivity over the "Father Arsenie Boca" brand, the Church being able to continue to use it, their exclusive property right referring only to the phrases "Father Boca", respectively "Arsenie".

Steps that can be taken should be directed to the General Court in Luxembourg, the only responsible for annulment of a European mark. Such a procedure is set out in detail on the EUIPO website, assuming a prior procedure before the Office, and subsequently before the EU General Court. The procedure for cancellation of a trademark is regulated in Regulation no. 2001/2017 on the European Union trademark (https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:32017R1001&from=RO, with last accessed on15.05.2021), in Chapter VI - Waiver, Revocation, Nullity, art. 58-60 (causes), art. 63 (procedure). EUIPO's decision on the application for revocation or for a

declaration of invalidity may also be challenged before EUIPO before the Board of Appeal, which in turn may be challenged by the General Court of the European Union by a final judgment.

Moreover, the domain name is an internet address in the form of an alphanumeric string (According to the World Intellectual Property Organization (WIPO), domain names are in fact easy-to-remember forms of Internet addresses that are frequently used to find websites. https://www.wipo.int/amc/en/processes/process1/report/finalreport.htmlwith last accessed on 14.05.2021). In essence, the domain consists of several characters that provide information about the site, especially the category to which it belongs. Thus, a commercial site can end with the particle <.com>, while an educational one will have <.edu>, those that are characteristic of a country with the ending that indicates its location <.uk / .ro>. What characterizes the domain name is its uniqueness, the method of assigning them being regulated and the onerous, unnamed contract that is concluded has as parties the applicant, respectively the National Computer Network through the Domain Register. But what we want to emphasize is that the name of the individual can be used as a domain name, thus acquiring new values. The phrase that can become a domain name follows a procedure depending on the existing availability on that domain.

The use of the domain name will be made when a site will be done under that name assigned by the registry, where an activity will take place, exercising the right of use thus conferred. As a result, on a page, the holder can publish various information, can make presentations, offers, advertising, commercial operations, etc., the legal framework being represented by Law no. 365/2002 on electronic commerce. At the same time, the Criminal Code incriminates in Chapter IV, frauds committed through computer systems and electronic means of payment (art. 249-252), and Law no. 161/2003 on certain measures to ensure transparency in the exercise of public dignity, public office and in the business environment, the prevention and sanctioning of corruption, contains certain provisions aimed at ensuring security in the areas used in electronic commerce.

The unitary policy for resolving domain name disputes was adopted on August 26, 1999 by ICANN (Internet Corporation for Assigned Names and Numbers). In essence, the adoption of this unitary policy means that one who wants to register a domain name declares on his own responsibility that by registering the respective domain name he will not violate the rights of any person, the registration not being done in bad faith or in violation of any law. Thus, the person who submits a domain name for registration actually signs a contract that also contains an arbitration clause.

There are currently many disputes (either in court or in arbitration) because prior to registration there is no verification of the domain name in terms of intellectual property rights. Thus, in the current system it can happen that a domain name interferes with a registered trademark, the owner of a trademark discovering that the domain name formed by his trademark is registered by another person. The acquisition of a domain name for exclusively speculative purposes constitutes an illicit deed and can be sanctioned by canceling its registration.

In applying the principles of tortious civil liability (art. 1349 of the Civil Code), the plaintiff may request the cancellation of the domain name that violates his rights or the transfer of the domain name, which is a more advantageous option. In international jurisprudence, in the vast majority of disputes, the plaintiff requests the transfer and not the cancellation of the domain name. If the applicant is the proprietor of a trademark, he

has at his disposal certain specific means of defending his right, distinct from the application of the principles of tortious civil liability. It is about the action in counterfeiting and about the action in unfair competition.

Through these actions, the cancellation or transfer of the domain name could be obtained, as well as compensations for the eventual damage suffered. Through an extensive interpretation, art. 83 para. 2 and art. 86 para. 1 of Law no. 84/1998, which criminalizes counterfeiting and unfair competition, could also find application in the matter of domain names.

Bucharest Tribunal, in civil sentence no. 1682 of 06.11.2001, stated that "The principles of tortious civil liability are applicable to abusive registrations of domain names.The acquisition of a domain name for exclusively speculative purposes constitutes an illicit deed and can be sanctioned by canceling its registration. By registering a domain name, its owner does not acquire a property right over the name in question and no exclusive right similar to an intellectual property right, but a simple right of use, the exercise of which is conditioned by the good faith of the owner. "

Unlike counterfeiting or unfair competition, which can only be promoted if there is "use", so the domain name leads to an operational website, the presidential ordinance could be used even when the domain name was only registered, without being (yet) activated. The major disadvantage is that the procedure does not allow claiming and obtaining compensation for the damage caused. It is obvious that the court could order the suspension of the domain name, because this measure has an inherent provisional character, but it could also order the transfer or cancellation of the domain name. French case-law has consistently accepted this possibility in a similar procedure (procedure de refereé) (TGI Nanterre, order of 16 September 1999 (L'Oréal v. Vichy.com), TGI Nanterre, order of 31 January 2000) SARL Axinet and Eric Griffaut), TGI Paris, order of 23 May 1996 (Relais et Châteaux v. Calvacom), TGI Paris, order of 17 April 1999 (Radio France v. Christian Fouchet).

As a registrar, National Computer Network has the obligation, if there is a court decision in this regard, to proceed with the cancellation or transfer of the domain name. The entity, does not have to appear as a party in the process, being sufficient for the court to find that for the full repair of the damage it is necessary to cancel or transfer. Instead, given that a repair in kind is not really possible, the owner of the domain name could have been ordered to pay compensation for the damage caused.

Therefore, in order to prevent the initiation of lengthy and costly procedures, it is desirable that trademark owners also consider their registration as a domain name. Otherwise, it may happen that they are already registered and the fact that the owner was diligent and registered the trademark at OSIM is not enough because another person can take advantage of the brand's reputation to achieve, in bad faith, benefits.

Therefore, the registration of a domain name does not confer a property right or an exclusive legal right similar to intellectual property rights, but a simple right of use over that name.

3. Conclusions

To some classic issues already evoked are added, over the years, questions relating to names taken and distributed by networks. In the context of the evolution of telematic justice determined by the Covid pandemic19, there is a major importance given to the Internet and all components related to the virtual development of activities. Thus, it is necessary to analyze the identification attribute that is starting to become

more and more often used in this environment and in close connection with the aspects previously discussed.

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