



Austrian Supreme Court: No Right to a Name Based Solely on the Basis of Ownership of a Building

In a recent decision (4 Ob 77/24p), the Austrian Supreme Court addressed the question of whether the owner of a building can assert a right to the building's name solely on the basis of its ownership. The Court denied this and clarified that name protection under Section 43 of the Austrian Civil Code only exists if the designation (the "name") of the building also identifies the owner (in this case, a legal entity) itself.

Facts

The claimant, a corporate entity, acquired a real estate in 2021 on which a building is erected that is basically a household name in Austria. The defendants held several internet domains containing the disputed building name since 2020.

After acquiring the real estate, the claimant, as the new owner of the building, demanded that the defendants cease using the building's name in the course of business transactions to identify a website, particularly through the use of the domains.

The claimant based its claim on the right to a name under Sect 43 of the General Austrian Civil Code (ABGB) as well as Sect 1 (in conjunction with 18) and Sect 9 of the Austrian Unfair Competition Act (UWG), citing misuse of a company's distinctive signs and domain grabbing. The claim under Sect 43 ABGB was based solely on its status as the owner of the real estate on which the building is located.

Lower Courts

The lower courts, in essence, ruled in favor of the claimant.

While they found that the claimant could not rely on Sect 9 UWG because the building's name did not identify the claimant's company, nor on Sect 1, 18 UWG (domain grabbing) because the defendants had no intention of commercializing the name of the building or obstructing the claimant at the time of registration. The lower courts held however, that the claimant as the owner of the real estate and thus the building, was entitled to protection under Sect 43 ABGB in respect of the building's designation, i.e., the name of the building. The defendants, the courts reasoned, had no legitimate interest in registering or using the domains.

The second instance court allowed an appeal to the Supreme Court on the grounds that there was no existing case law on whether—and if so, under what conditions—the name of a building is entitled to name protection.

Supreme Court

The Supreme Court dismissed also the claim based on Sect 43 ABGB.

The Supreme Court stated that, in principle, the designation of a building might fall within the scope of Sect 43 ABGB. It opined that a name identifies a natural or legal person and distinguishes them from others (the so-called identification and distinguishing function of a name). The object of name protection is not only the name itself, but can be any designation with a naming function—i.e., any designation that identifies a person and distinguishes them from others, i.e., „refers“ to them. Protection is granted to the person or legal entity identified by such a designation.

According to the Supreme Court, this was also in line with the literature quoted by the lower courts, regarding the designation of a sports facility named after a sponsor. The Supreme Court reasoned that the object of name protection for a natural or legal person is not only their name itself, but also a designation with a naming function that identifies that person and distinguishes them from others – in



the case of a sports venue named after its sponsor, this is the name of the venue. This designation then also has a naming function for the sponsor. In contrast, in the case at hand, the claimant had not asserted that the designation of the building also identified it as a legal entity with a naming function. Name protection under Sect 43 ABGB was thus not applicable.

Additionally, the Supreme Court referred to the highly personal nature of the right to a name and rejected an analogy to Sect 43 ABGB on the grounds that a “transfer” of the right to a name attached to a building to the respective current property owner would contradict its highly personal nature.

Comment

The decision underscores the highly personal nature of name protection under Sect 43 ABGB, clarifying that ownership of a building alone does not entitle the owner to claim rights in the building's name even if the name has been used by the public for the building almost a century and is widely known among the entire Austrian public. It emphasizes that the right to a name under Sect 43 ABGB first and foremost serves to protect the highly personal sphere of individuals and legal entities and the rights arising from such protection. It does not entail an instrument of economic protection that can be transferred and resold from person to person like real estate.