

Mikołaj Rogowski

Socialistic Brands

A Unique Category of Vintage Brands



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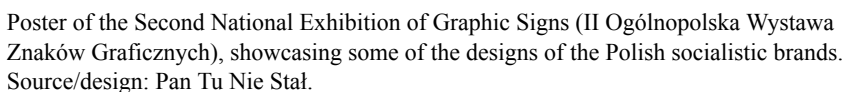
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and for the other All My Friends who I've met since – you know who you are.

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Mikolaj Rogowski

The author holds a master's degree in law from the Jagiellonian University (Kraków, Poland) where he is a Ph.D. candidate. He also studied in China, Italy, Sweden and Germany. Mikolaj wrote this thesis as part of his LL.M. in Intellectual Property and Competition Law at the Munich Intellectual Property Law Center where he serves as a member of the Alumni Advisory Board.

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Abstract

Socialistic brands are a group of signs which were used within socialist countries by many separate actors within one territory and one industry, on various and inconsistent legal basis. A shared historical pedigree greatly influences the unique attractiveness of these brands within these territories. Their attractiveness is shaped by the particularities of bygone times, namely the socialist culture and the socialist market rules. Due to these circumstances, even years after the re-introduction of the forces of the free market, socialistic brands, due to their collective use, hold a particular place in the memories of post-socialist societies. This translates to their high value on the markets of the once socialist countries.

The analysis of the issues relating to socialistic brands has been conducted on the basis of a concrete example of a post-socialist country: The Republic of Poland. The basis of legal considerations of this topic was the European and Polish law and jurisprudence. Additionally, the author employs in his considerations findings from various branches of social sciences including semiotics, anthropology and social psychology.

Taking into the account the changing role of trademarks in the modern world and the unique attractiveness of socialistic brands, it is argued that public policy interests justify differential treatment of these signs. The author attempt to answer in which instances registering these signs as trademarks should be allowed and when such registration should not be permitted.

An assessment of existing trademark case law concerning socialistic brands shows that the current legal provision can be evoked against cases of unfair appropriation of this group of signs. However, analysed provisions do not constitute a satisfying mean of addressing the issue in a comprehensive way that would guarantee that abandoned socialistic brands remain out of the scope of trademark exclusivity. Having that in mind, certain solutions are proposed in order to help untangle the socialistic brands dilemma.

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Acronyms and Abbreviations

EUTMR	European Union Trade Mark Regulation
CJEU	The Court of Justice of the European Union (before 2009 Court of Justice of the European Communities)
EU	European Union
IP	Intellectual Property
IPA	Polish Industrial Property Act (Prawo Własności Przemysłowej)
NSA	Supreme Administrative Court (Najwyższy Sąd Administracyjny)
TMD	Trademark Directive
UCA	Polish Unfair Competition Act (Ustawa o Zwalczaniu Nieuczciwej Konkurencji)