

4. Firma (trade name), §17 HGB

a) General remarks

Trade name is a registered name of a merchant which he uses in his commercial activities.⁶⁶ It identifies the trader (a natural or legal person) in his activities on the market, thereby allowing for the recognition of the market participants and their activities. Trade name differs from commercial symbols in that it points to a person or entity rather than to a commercial activity, therefore a trader can have only one trade name, while at the same time owning different commercial symbols, identifying different activities that he exercises.⁶⁷

b) Trade names that may conflict with a Community design

Trade names must be distinctive and capable of identifying their owner and may not include information that might be misleading for the market participants.⁶⁸ Therefore they can consist only of words and symbols possessing a recognised meaning that can be pronounced (e.g. &).⁶⁹ As such – they might be used in a Community design, especially of a pattern or logo.

5. Names §12 BGB

a) General remarks

§12 BGB regulates the protection of names, i.e. designations which allow for an individualization of natural or legal persons and other entities,⁷⁰ allowing them to act against unauthorised uses of those names by others, potentially also use in a Community design. Since trade names are seen as names, and names – may be seen as company symbols, while at the same time they all may constitute trade

66 §17, §29 HGB.

67 Heidinger in: *Münchener Kommentar zum HGB* [2010] C.H. Beck §17 para. 35.

68 §18 HGB.

69 Heidinger in: *Münchener Kommentar zum HGB* [2010] C.H. Beck §17 para. 12.

70 Thomas Nägele *Das Verhältnis des Schutzes geschäftlicher Bezeichnungen nach §15 MarkenG zum Namensschutz nach §12 BGB* [2007] GRUR 2007, 1007, 1008 (hereinafter: Nägele).