

COMMERCIAL NAME IN THE DRAFT OF THE CIVIL CODE

J. Pokorná, E. Večerková

Received: November 30, 2011

Abstract

POKORNÁ, J., VEČERKOVÁ, E.: *Commercial name in the draft of the Civil Code*. Acta univ. agric. et silvic. Mendel. Brun., 2012, LX, No. 2, pp. 271–278

Name of the firm is by the Commercial Code name of the entrepreneur registered in commercial register. The effective legal regulation distinguishes between the name of natural person (its first name and surname) and the name of company (its name and obligatory addition declaring its legal form). The name is not allowed to be deceptive and mistakable. It can be transferred only together with an enterprise. If the name is unwarrantedly interfered the injured person can require an unwarranted user to forbear his behaviour and to eliminate the defective state. He can also demand delivery of an unwarranted enrichment, adequate satisfaction and damages.

Reform of civil law transposes the regulation of name of the firm to Civil Code, but maintains some principles of existing legal regulations: the name is a designation for entrepreneurs registered in commercial register, it is not allowed to be deceptive and mistakable. However the draft bill of the Civil Code brings change in some elements of the regulation: natural person does not need to use obligatory name and surname, right to use the name by its transition on a new user is regulated in more detail and more detailed is also the regulation of using the names of natural persons in names of companies.

By way of contrast possibility of transfer of the name is not explicitly solved. It may be used the general regulation about transfer of the thing. Existing interpretative problems become this way deeper.

commercial name, draft bill of the Civil Code, Commercial Code, identification, competitive and investment function of the name

1. Existing legislation contained in the Commercial Code

The existing legislation defines a commercial name using a formal identity – a commercial name is the name under which an entrepreneur is entered in the Commercial Register (Sec 8(1) Commercial Code). The second sentence of the cited provision provides for the entrepreneur the obligation to undertake acts in law only under his commercial name.

From the stated rules arise the basic conceptual features of a commercial name:

- a) this concerns the designation of the entrepreneur, identifying him in business relations, considered generally known and binding for the entrepreneur and third parties alike,

- b) its scope is limited to only the entrepreneur entered in the Commercial Register. Therefore, all companies and collectives have a commercial name, and amongst natural persons, only those entrepreneurs who chose voluntarily to be entered in the Commercial Register, or those whom the obligation arose to be entered on the basis of their commercial scope (Sec 34(2) Comm. Code) or according to special statutory provisions (Sec 34(1)(d) Comm. Code).
- c) The commercial name is a designation reserved for establishing legal relations. Though a commercial name can also be used for other purposes (ex. advertisement and promotion), besides possible other designations, for cases of negotiations between the entrepreneur and third parties, it is indispensable.

Though the listed elements form the legal characteristic of a commercial name, they only speak partially of its legal character. They leave no doubt that the commercial name designates an entrepreneur, but do not address the question of whether some connection is made between the commercial name and the entrepreneur's enterprise. This connection may only be perceived from the rule listed in provision Sec 11(4) Comm. Code, which bans the independent transfer of a commercial name and binds it to the simultaneous transfer of an enterprise or at least part thereof. It is thus seen that for the characteristic of a commercial name, it is necessary to define not just its relationship to the entrepreneur, but also to his enterprise.

Czech doctrine regarding this question is satisfied with the statement that a commercial name is an important component of the enterprise; it is an estate occurring in dependence of constituting a new entity and the enterprise, and forming a certain interlink between the enterprise and its owner.¹ As an intangible component of the enterprise, it is one of the determining factors of its worth, because the clientele identifies the enterprise by the commercial name itself.² Thus, the commercial name from this identification designation changes into value, which, along with the enterprise, represents for the entrepreneur an important part of his assets.

A legal subject identified by a commercial name, but which is not an enterprise, but rather an entrepreneur running an enterprise. The commercial name represents the combining of the entrepreneur and his enterprise, and signals that the acts in law undertaken by an enterprise identified by its commercial name are commercial-law acts by whose means the entrepreneur runs his enterprise.³ The commercial name and the enterprise are understood to be mutually distinct, yet interrelated, whose relationship is expressed by the principle of corporate unity: "one enterprise – one commercial name".⁴

From this principle however, it is not possible to deduce whether it expresses the possibility for an entrepreneur to own multiple enterprises and designate them by differing commercial names, or if it leads to the conclusion that every entrepreneur

may only have one enterprise, and may only use one commercial name for its designation.

German doctrine differentiates, in terms of this question, the position of the entrepreneur – individual, for whom the existence of multiple enterprises and their managing under separate commercial names is permissible, and the position of an entrepreneur – trading company (partnership), which as a business entity more firmly connected with his enterprise is considered to be the sole property and business unit.⁵ Czech doctrine leaves this issue open; there are those of the opinion that the entrepreneur should only have one enterprise⁶, whereas others believe that he may have several enterprises.⁷ However, there is no mention of using a commercial name in case of a large number of enterprises. Due to the binding legislation of forming a commercial name in the provision Sec 9 Comm. Code, we believe that for natural persons, the legislation enables a distinction of a corporate designation for various enterprises of a single entrepreneur only by addendum; the trade name must always be formed by the first and last name of the entrepreneur. Even if we were, however, to acknowledge the possibility of various addenda, it would not be possible to enter into the Commercial Register such corporate designations for one entrepreneur, because that would lead to inadmissible plurality of commercial names registered for a single entrepreneur.⁸

For business companies, collectives, or other legal entities entered in the Commercial Register, the law gives no room for designating a possible large amount of enterprises by differing commercial names. The commercial name here is formed by its name entered into the Commercial Register and the addendum designating its legal form, whereas the registry entry may always contain only one commercial name for the given entity.

It is another question as to whether the entrepreneur may use, besides the commercial name, other designations when doing business. From the aforementioned point c) it is clear that the law does not prevent this; however, these designations may not serve for identifying the entrepreneur in legal relationships. They also do not

1 VEČERKOVÁ, E. in POKORNÁ, J., KOVAŘÍK, Z., ČÁP, Z. and coll., 2009: *Commercial Code. Commentary*. Part I Prague: Wolters Kluwer CR, ISBN 978-80-7357-491-8, page 33.

2 PELIKÁNOVÁ, I., 2003: *Commentary to Commercial Code*. part 1, 3rd updated issue Prague: Linde, a. s., ISBN 80-7201-420-X, p. 105.

3 SCHMIDT, K., 1999: *Handelsrecht*. 5. völlig neu bearbeitete Auflage. Köln, Berlin, Bonn, München: Heymanns, ISBN 3-452-24232-3, p. 339.

4 There also, p. 355.

5 Also found on p. 355–358.

6 PLÍVA, S. in ŠTENGLOVÁ, I., PLÍVA, S., TOMSA, M., 2009: *Commercial Code. Commentary*. 12th issue Prague: C. H. BECK, ISBN 978-80-7400-055-3, p. 14.

7 HORÁČEK, T. in POKORNÁ, J., KOVAŘÍK, Z., ČÁP, Z. and coll., 2009: *Commercial Code. Commentary*. Part I Prague: Wolters Kluwer CR, ISBN 978-80-7357-491-8, page 21, similarly DĚDIČ, J. in DĚDIČ, J. and coll., 2002: *Commercial Code. Commentary*. Part I, 1st issue. Prague: POLYGON, ISBN 80-7273-071-1, p. 58.

8 See decision of the Supreme Court of the Czech Republic Rc 47/96, in which the court expresses this conclusion for entering the abbreviated trade name (today commercial name) of the entrepreneur.

enjoy the exclusive protection of a commercial name (Sec 12 Comm. Code); rather, protection can only come from rules against unfair competition. In their use and in the use of the commercial name for promotional and advertising purposes, varying interests of the entrepreneur meet - interest to be positively identified, if entering in a commercial-legal relationship, and the interest to use one's good name in a competitive business environment. The commercial name here gains another direct competitive mission.

In a summarized view, we could define functions that the commercial name fulfills in relation to the entrepreneur and his enterprising:

- identification function: this is the exclusive designation determining its participant in a commercial-law relationship. It is necessary to use the commercial name in the form in which it is entered in the Commercial Register, minor deviations that do not raise doubt on the identification of the entrepreneur are not judged by the judiciary to be the nonexistence of the entity, in process relationships however, they mean a flaw in the submittal, which the participant must remove upon court appeal.⁹ If the commercial name is to fulfill the identification function, this means that the entrepreneur may only have one commercial name, which he has entered into the Commercial Register. The entry has constitutive effects, other designations, which the entrepreneur would use while running his enterprise, are not the commercial name, and their use during expressions of will by the entrepreneur means a flaw in the expression of will. The importance of this function in the legislation is emphasized by the requirement for non-confusability (Sec 10(1) Comm. Code), judged by the judiciary while applying the viewpoint of the average customer.¹⁰ Thus, this concerns a criterion understood as objective, independent of the opinion of the entrepreneur, his competitors or other persons. Registry courts have the obligation to examine this criterion upon registering the commercial name; this thus concerns one of the legal breakthroughs into an otherwise registration principle of register entries;
- competitive function: the commercial name belongs to a set of designations that the entrepreneur may use in business competition relationships. The commercial name in this function serves as information on the originator of goods or services offered on the market, and its distinction helps the entrepreneur to apply his own products in the competition of goods or

services of other competitors. In this function too, the commercial name fulfills its identification function, but this is not exclusive. It meets here with various types of designations of the entrepreneur or his products, which are used in advertising, in printed promotional materials, in catalogs offering goods, in eye-catching materials appearing along streets or in the media, etc. Here, the commercial name may not be confused with trademarks, whose task is distinction of goods and services of the given entrepreneur from identical or similar products of other entrepreneurs. The theory here also differentiates the commercial name from the trade name in the wider sense, which is understood as just such a designation used in business. It is necessary to clearly distinguish between the commercial name used for attaching signatures and other designations. Since the commercial name is a designation of a legal subject serving for identification, it is not acceptable for an entrepreneur to provide a license to use the commercial name for signing (legal documents). It is possible however to allow another to use the trade name in its wider sense.¹¹ Here as well, the provision Sec 10(1) Comm. Code stipulates the criterion for creating a commercial name, if this prohibits its false representation. The registration courts should assess this criterion too upon entering commercial names. However, because this concerns a criterion of a subjective nature, it is very difficult to examine, and upon registration and definitive judgment of false representation, it is thus affiliated with the decisions of courts in litigation involving protection of the commercial name or in unfair competition disputes over misleading designations;

- investment function: we are aware that the term used to define this function is not ideal, but it wishes to indicate that the commercial name is a very important property value, whose importance rises relative to its stability, length and frequency of use and active efforts of the entrepreneur to secure the overall good reputation of his products and his own person amongst customers and business partners. The commercial name in this function is a property value belonging to the enterprise of the entrepreneur, and forms an intangible component of the enterprise as one of its immaterial elements. In this meaning, it is important upon transfers of the enterprise, because the Commercial Code permits transfer of the commercial name only simultaneously with transfer of the enterprise or part thereof (Sec 11[4] Comm. Code). A fundamental problem related to transfers, or

⁹ See for example the Decision of the Supreme Court of the CR Odon 3/1995/Fa published in the magazine *Právní rozhledy* no. 1/1996, further the decisions 22 Cdo 2480/2000 and 21 Cdo 315/2001 published in the magazine *Soudní judikatura* in 2002 under No. 21.

¹⁰ See for example the decision of the High Court in Prague 3 Cmo 371/1995.

¹¹ PELIKÁNOVÁ, I., 2003: *Commentary to Commercial Code*. part 1, 3rd updated issue Prague: Linde, a. s., ISBN 80-7201-420-X, p. 105–106.

transitions, of a commercial name is the mutual contradiction of the investment function, which permits making use of appreciation of the commercial name upon its transfer to a new successor, and the identification function, which expects long life and stability, because it determines the identification of an entity as an entrepreneur in commercial-law relations, thus enabling customers to better orient themselves and to prefer engaging relations with proven and trustworthy partners. The legislation addresses this conflict with rules for use of a so-called old commercial name.

Relating to the investment function of the commercial name and the possibility of its transfer is the question of whether it is possible to classify the commercial name into the category of things in the legal wording or whether it concerns a right or estate *sui generis*. Classification of the commercial name amongst other property values is in line with the existing Civil Code, which divides objects of civil legal relationships into three groups - things, rights and other property values (Sec 118(1) Civil Code). In this group, the commercial name, similarly to a trademark for example, would fit in amongst industrial property rights.¹² This means that the commercial name is eligible to be transferred (with limitation listed in the provision of Sec 11(4) Comm. Code); it may be transferred to a legal successor of a deceased natural person or expired legal entity and is protected against unauthorized interferences. It in itself is not an eligible subject of certain real rights, especially lien. Its nature as intangible components of a collective thing - enterprise however does not exclude its lien, if a lien were placed on the enterprise. Neither the Commercial Code nor the Civil Code contain explicit legislation on lien placed on an enterprise, and application of general rules brings with it difficulties for which lien placed on an enterprise is not applied in practice. We believe this because placing a lien on an enterprise should be resolved by explicit legislation that would also contain rules for liens on a commercial name as an intangible component of the enterprise placed under lien.

2. New legislation regulating a commercial name in the draft bill of the Civil Code

In the draft bill intended to reform Czech private law, the legislation of a commercial name is classified into the Civil Code, because separate and independent regulation of commercial-law relations

is no longer expected, and special legislation on the level of a special law only applies to companies.

The basic legal definition for a commercial name is similar to what it has been until now, where the commercial name is defined as the name under which the entrepreneur is entered in the Commercial Register. It thus remains that the commercial name is a designation for the entrepreneur and not for entrepreneurs in general, but only for those entered in the Commercial Register.

The new legislation does not differ either from the identification meaning of the commercial name upon starting legal relationships, only its systematic expression is more complicated. This is derived from the general designation of any person, which is the person's name. The provision Sec 77(1) then determines that the name of the person is his own first and last name, and entitles the person to use his name in legal transactions. The name of a legal entity is, according to Sec 132(1), its name, which a person negotiating on behalf of the legal entity must use, since according to Sec 163, he attaches his signature to its name upon signing on behalf of the legal entity. A similar conclusion arises upon explanation a contrario from the provision Sec 415: if the rule expressed in its first sentence reads that an entrepreneur not having a commercial name legally negotiates during his business dealings under his own name, then it is clear that the entrepreneur having a commercial name uses this commercial name during legal negotiations.

For resolving the complicated question of mutual combining of the entrepreneur - plant¹³ - commercial name, the proposed legislation selects a shift towards strengthening property elements of the commercial name. According to the justification report, the "right to a commercial name is not understood exclusively as a personal right, but rather as a property right; therefore the commercial name is more released for property availability, whether it is realized separately or within the framework of a commercial plant, with which it is affiliated." The provision Sec 416(1) prohibits the entrepreneur from having multiple commercial names, on the other hand though, the existing tight bond of the commercial name to the entrepreneur's plant is broken. Though the commercial name continues to be bound to the plant as with a collective thing, it has the character of a thing in the legal wording, as newly defined in the provision Sec 482(2). Based on further separation of a thing regulated

12 There also, p. 105. For nature of a commercial name as other property value, see VEČERKOVÁ, E. in POKORNÁ, J., KOVAŘÍK, Z., ČÁP, Z. and coll., 2009: *Commercial Code. Commentary*. Part I., Prague: Wolters Kluwer CR, ISBN 978-80-7357-491-8, p. 21, similarly DĚDIČ, J. in DĚDIČ, J. and coll., 2002: *Commercial Code. Commentary*. Part I., 1st issue. Prague: POLYGON, ISBN 80-7273-071-1, p. 86.

13 The existing term enterprise however is replaced by the term plant. The main reason for this change is found according to the justification report mainly in the pressure *acquis* in using the term "enterprise" mainly for indicating a person, or in the more narrow sense of the word, as a competitor; the right of the European Union however also frequently uses the term "enterprise" to define space.

in provisions Sec 489(2) and Sec 491(2), in the case of a commercial name this concerns an intangible moveable thing. Thus separation of the commercial name and intangible estates generally into a separate category of other property values is omitted, for this, the legislation of things and real rights will continue to be applied. The new concept expands the space in which the entrepreneur will autonomously apply his will in relation to things serving to operating his business activities. Upon transfers, the commercial name will no longer be bound to the transfer of a plant; rather the entrepreneur will be able to handle it as a separate matter. In this direction, there is no doubt that the legal nature of the commercial name will fundamentally change, and only future practice will show whether unfavorable weakening of the identification function of the commercial name occurs. With the new concept of the commercial name as a moveable thing, room also opens up in which it will be possible in relation to the commercial name to use classic real rights such as lien. At this moment however, it is difficult to estimate what new problems with interpretation and application this option will bring.

In terms of the functions of the commercial name, as we defined them in the introductory part of this paper, we may state that in the new legislation as well, the commercial name will fulfill these functions, though the method of their implementation may differ from their existing effect.

Strengthening of the identification function of the commercial name is already mentioned by provision Sec 416(1) banning the entrepreneur from having multiple commercial names. The ban will also be a guide for deciding on a registry entry, because it excludes such entries from which it would be possible to derive the existence of two or more commercial names for one entrepreneur.

The name of the entrepreneur – natural person continues to form his commercial name, but provision Sec 418 permits for any other designation to be chosen, however without providing more detailed rules for creating such a commercial name. The second paragraph of Sec 418 attempts to decrease the danger that undefined space for fantasy of entrepreneurs – natural persons will interfere with their precise and fast identification, allowing them to form amongst customers and business partners the false impression that they are negotiating with a trading company. The requirement is stated therein for the corporate designation of a person who himself is an entrepreneur to be clearly distinguishable from the commercial name of legal entities. The requirement to differ however is again formulated only on a general level, without the Civil Code determining, at least supportively, the methods of such distinction. Again, it will thus depend on the decisive practice of persons, who will be entrusted with performing entries in the Commercial Register, so that clear differentiation in registry entries would be implemented.

The task of the Commercial Register upon entry of commercial names will continue to be important, but it is very difficult to estimate, as of yet in what measure its legislation will support the identification function of the commercial name. So far, the draft bill of the register legislation to be contained in a separate law is not known. It is thus uncertain to whom maintenance of the Commercial Register will be entrusted, how wide the scope of persons making register entries will be, and whether the constitutive effects of registering a commercial name will be upheld. We can only surmise that entering a commercial name will continue to be connected with constitutive effects, because the provision Sec 1094 determines that upon transfer of ownership rights to moveable things registered in a public list, the thing is taken into ownership by entry in such list. However, a special regulation may deviate from this principle.

For entrepreneurs – legal entities, the new Civil Code determines no method for creating a commercial name. It will therefore be necessary to start from the general legislation of the name of a legal entity in Sec 132(2) according to which the commercial name must have the eligibility of a legal entity to mutually differ, and must contain the designation of the legal form of the legal entity. The general legislation may then be augmented by special laws such as an act on commercial corporations, in which we find further rules for commercial designation of individual forms of trading companies and collectives, concerning the potential wording and selection of an amendment indicating legal form. The likeness of the trade name therefore remains the exclusive matter of partners or members of a collective, who must agree upon it when founding the company or collective, or upon change in the articles of association or company statutes.

Though the proposed legislation, in terms of forming a commercial name, is less strict and shifts the decision on forming the commercial name entirely to the sphere of autonomous will of entrepreneurs, it balances this freedom explicitly by the expressed principle of ban on non-confusability in part in the general rule in Sec 417, and in part for natural persons in Sec 418(2), if it differs from a personal commercial name, and for legal entities in Sec 132. It is a question whether the existing criteria for assessing non-confusability developed by the judicature will be possible to be applied for this modification as well. In our opinion, this will be necessary at least in the time immediately following the moment of effect of the new Civil Code. With growing experience with its application however, we do not eliminate further development of the judicature in the reaction to individual practical situations, which will be the subject of litigation.

In our opinion, the competitive function of the commercial name will not be affected in the new legislation. Corporate designation will continue to encounter other types of designations on the market

that relate to the entrepreneur or differ his goods and services from those of other entrepreneurs. The new legislation also preserves the obligation to limit false representation of a commercial name (Sec 417). It is therefore possible to expect that also the existing judicature in which the features of false representation are specified will continue to serve as a guide for practice and for decision-making by the courts.

The economic importance of the commercial name will not be affected by the new legislation, in which the efforts of the entrepreneur are concentrated to secure a good reputation and distinction, which he brings customers. Through a change in the legal concept of the commercial name and loosening of its ties to the enterprise, other options are offered of how a well-known and customer-respected commercial name can further increase in value upon its transfer. The draft bill of the Commercial Code contains rules for transfers and transitions of a commercial name, and for its use by a new successor in a basically briefer version than in the existing Commercial Code. The possibility of transferring a commercial name arises from its real character, and will be governed by the provision on transfer of ownership rights. Special rules (Sec 420(1)) only require for the successor to attach to the commercial name data expressing his legal succession. The law does not regulate further details on this successor data, so it will depend on practical application. We believe however that this very need to list the successor's addendum will significantly limit transfers of companies, because such an expanded commercial name will cause problems during use regardless of the possibility of the origin of unwanted satirical effects. Even upon relaxation of the legislation, we believe that certain dispositions with the commercial name will be excluded, because they would not allow implementation of their identification function. This conclusion is especially valid for providing another person the right to use the commercial name based on a licensing agreement.

3. Conclusions – the current legislation compared with the prepared reform

The current legislation considers the commercial name as a different property value, an intangible estate, which in its nature belongs to the group of industrial rights. It is of irreplaceable importance for certainty of business relations, since it serves for identifying the entrepreneurs who may enter legal relationships under their commercial name. However, it simultaneously constitutes an

important property value to the entrepreneur, since it represents the reputation of the entrepreneur on the market. If the reputation is solid and the commercial name becomes well known, it may represent a major competitive advantage in gaining customers. The legal nature of the commercial name thus unifies personal elements, since this concerns the right to designation of a legal entity or natural person, who as an entrepreneur engages in business relations, and property rights, since the commercial name itself may be the subject of legal relations, though here it is bound to the enterprise of the entrepreneurs. The commercial name thus interconnects the elements of personality rights with elements of property rights.¹⁴

The legislation in the Commercial Code prefers the identification function of the commercial name and contains a series of binding provisions, with whose help there is an effort to strengthen legal certainty of business relations, in terms of the identification of entrepreneurs engaging in commercial-law relations. It determines for entrepreneurs how their commercial name should be formed, it binds transfers of the commercial name to the simultaneous transfer of the enterprise, bans false representation of the commercial name and requires elimination of its confusion for another commercial name.

Though the commercial name forms an intangible property component of the enterprise, it is not a thing, because in the classification of objects of civil legal relationships, it is considered to be another property value. It therefore does not relate to the provision on things or legislation of real rights.

The prepared reform of private law breaks apart many of the existing characteristics of the commercial name. Though the identification function of the commercial name remains preserved as its main mission, and in the new legislation, the commercial name represents unity of personality and property elements, a fundamental change will occur in terms of understanding the commercial name as a subject of civil legal relationships. The commercial name is captured by expanded understanding in the legal sense, it takes on the character of an intangible thing and makes it independent of its bond to a plant (enterprise in existing terminology). The rules for its creation are loosened, free transferability is enabled without the simultaneous transfer of the plant. For the requirement of certainty in commercial-law relations, the draft legislation reacts to the ban on interchangeability and false representation.

14 About this character of a commercial name see KREJCI, H., 2005: *Handelsrecht*, 3. neu bearbeitete Auflage. Wien: Manzsche Verlags- und Universitätsbuchhandlung, ISBN 3-214-14674-2, p. 85.

SUMMARY

Functions that the commercial name fulfills in relation to the entrepreneur and his enterprising can be defined as identification function: this is the exclusive designation determining its participant in a commercial-law relationship, competitive function: the commercial name in this function serves as information on the originator of goods or services offered on the market, and its distinction helps the entrepreneur to apply his own products in the competition of goods or services of other competitors. Another function is investment function: the commercial name is a very important property value belonging to the enterprise of the entrepreneur, and forms an intangible component of the enterprise as one of its immaterial elements.

The legislation in the Commercial Code prefers the identification function of the commercial name and contains a series of binding provisions, with whose help there is an effort to strengthen legal certainty of business relations, in terms of the identification of entrepreneurs engaging in commercial-law relations. It determines for entrepreneurs how their commercial name should be formed, it binds transfers of the commercial name to the simultaneous transfer of the enterprise, bans false representation of the commercial name and requires elimination of its confusion for another commercial name. Though the commercial name forms an intangible property component of the enterprise, it is not a thing, because in the classification of objects of civil legal relationships, it is considered to be another property value. It therefore does not relate to the provision on things or legislation of real rights.

The prepared reform of private law breaks apart many of the existing characteristics of the commercial name. Though the identification function of the commercial name remains preserved as its main mission, and in the new legislation, the commercial name represents unity of personality and property elements, a fundamental change will occur in terms of understanding the commercial name as a subject of civil legal relationships. The commercial name is captured by expanded understanding in the legal sense, it takes on the character of an intangible thing and makes it independent of its bond to a plant (enterprise in existing terminology). The rules for its creation are loosened, free transferability is enabled without the simultaneous transfer of the plant. For the requirement of certainty in commercial-law relations, the draft legislation reacts to the ban on interchangeability and false representation.

REFERENCES

- DĚDIČ, J. a kol., 2002: *Obchodní zákoník. Komentář*. Díl I., 1. vyd. Praha: POLYGON, 847s. ISBN 80-7273-071-1.
- KREJCI, H., 2005: *Handelsrecht*, 3. neu bearbeitete Auflage. Wien: Manzsche Verlags- und Universitätsbuchhandlung, 448 S. ISBN 3-214-14674-2.
- PELIKÁNOVÁ, I., 2003: *Komentář k obchodnímu zákoníku*. 1. část, 3. aktualizované vydání. Praha: Linde, a. s., 614 s. ISBN 80-7201-420-X.
- POKORNÁ, J., KOVAŘÍK, Z., ČÁP, Z. a kol., 2009: *Obchodní zákoník. Komentář*. I. díl. Praha: Wolters Kluwer ČR, 1115 s. ISBN 978-80-7357-491-8.
- SCHMIDT, K., 1999: *Handelsrecht*. 5. völlig neu bearbeitete Auflage. Köln, Berlin, Bonn, München: Heymanns, 1072 S. ISBN 3-452-24232-3.
- ŠTENGLOVÁ, I., PLÍVA, S., TOMSA, M., 2009: *Obchodní zákoník. Komentář*. 12. vydání. Praha: C. H. BECK, 1397 s. ISBN 978-80-7400-055-3.

Address

prof. JUDr. Jarmila Pokorná, CSc., JUDr. Eva Večerková, Ph.D., Katedra obchodního práva, Masarykova univerzita, Veveří 70, 611 80 Brno, Česká republika, e-mail: pokorna@law.muni.cz, evcecerk@law.muni.cz

