

II. Definitions, the scope of the thesis and case studies of the socialist brands

A. Socialistic brands

Today, various fields of social sciences offer an abundance of definitions of the notion of the brand.¹ Classically, brands were defined as labels carrying meaning and association.² However, more recent, contemporary studies, which take into account dematerialization of these signs, tend to suggest that brands are a set of associations in the minds of the end users.³ The changing role and nature of signs used to distinguish commodities plays a key role in consideration here presented.

For the purposes of defining the term ‘socialistic brand’ the notion of a brand should be understood as all signs that were used for the purpose of distinguishing commodities offered during the period of socialism within a territory of a given post-socialist country. This definition is necessarily broad and vague as it needs to encompass potentially all signs that were used as indicators of the source of goods or services, regardless of the basis and form in which the sign was used. The legal basis of the use of brands during the times of socialism were various and inconsistent. In some instances, these signs were registered as classical trademarks and later licensed to particular undertakings, in others they existed as collective trademarks. In certain other instances, various production units within a given country were eligible to use upon fulfilment of certain criteria. It was not uncommon for socialistic brands to be used by many partially separate actors belonging to the same large and concentrated industrial conglomerates, known as ‘combines’, functioning within one country and one commodity market.⁴

1 Paul Manning, “The Semiotics of Brand” (2010) *The Annual Review of Anthropology* 39, 34.

2 Philip Kotler, “Marketing Insights from A to Z” (John Wiley & Sons, Inc. 2003), 8.

3 Robert Moore, “From Genericide to Viral Marketing: On ‘Brand’” (2003) *Language & Communication* 23, 334.

4 A Polish example of this would be the Żołądkowa Gorzka wódka brand. Another particularly interesting instance of a situation created due to such circumstances

Socialistic brands were widely used within many states which were part of the Socialist Bloc, such as this author's home country of Poland. Each of the territories belonging to the socialist block has their own socialistic brands.⁵

During the period of socialism (1945-1989 with variations), in the states which embraced this ideology, the idea of prosperity was connected to the ideology of production. The identity of the citizens of these countries was embedded within state ideology, focusing on rituals of production and fetishizing physical, industrial labour.⁶ The majority (if any) of competition between the undertakings was taking place in the form of bargaining for and procurement of materials.⁷ Undertakings were deprioritizing the quality of commodities as the selling power of these was naturally high due to their constant scarcity.⁸ Many socialistic brands had little competition on their relevant markets. Often they were among a very limited group of brands, or even the only brand, for which certain types of commodities were available.

The anticapitalistic and collective ideals of socialism played a fundamental role in the position these brands had and still have in the collective

was a dispute in the subject of rights to a Horalka Tatransky wafer brand. The dispute arose between an undertaking from Czech Republic and a Slovak one. Years after dissolution of Czechoslovakia both of these entities claimed rights to the brand. The dispute ended with a settlement. Parties agreed to tolerate others' use of the brand name as long as the graphic representation used on the packages are different (See: "Horalky Budú Vyrábať Opavia – LU aj I.D.C. Holding" (*finance.sk*, 12.4.2006) <<http://www.finance.sk/spravy/finance/4993-horalky-budu-vyrabat-opa-via-lu-aj-i-d-c-holding/>>; "Dohoda o Používaní Názvu Horalka a Tatranka Více" (*Strategie.cz*, 8.11.2007) <<http://strategie.e15.cz/zpravy/dohoda-o-pouzivani-nazvu-horalka-a-tatranka-443643>>, both accessed on 27.5.2016).

5 Examples of such brands include the Slovak and Czech Horalka Tatransky wafer brand (supra n. 4), Russian Stolichnaya wódka brand, Hungarian Tisza Cipő street-wear brand and Romanian Arctic household appliance brand. For more examples *inter alia* see: Marta Karenova, "Soviet-Era Brands Rise On Socialist Nostalgia" (*Wall Street Journal* 15.11.2004), <<http://www.wsj.com/articles/SB110046692372873477>>;

Sergei Roganov, „Soviet Food Passes Taste Test for New Generation“ (*Rossiyskaya Gazeta, Telegraph* 3.1.2013) < https://issuu.com/rbth/docs/2012_12_dt_all/8 > both accessed on 27.5.2016.

6 Daphne Berdahl, "'(N)Ostalgie' For The Present: Memory, Longing, and East German Things" (1999) 64 *Ethnos* 2, 193.

7 *Ibid* 194.

8 *Ibid* 198.

psyche of post-socialist societies. These ideals dictated many particularities. Separate units located in different geographical locations within a country belonging to collective socialist structures, offering the same types of commodities under identical brands. Even in cases in which one of these units would stop offering commodities, the others would likely continue their production. This factor, combined with limited space for private initiatives legally offering competing products, further affected the unique position socialistic brands had on the markets. In majority of cases end users' choice was reduced to what could be described as 'you either buy this or someone else will'. This in turn led to a creation of a prospering black markets. Black market trading of various branded goods made the commodities even scarcer and thus more sought after. Finally, as innovation and providing for consumer choice were of very low priority⁹, many of the commodities remained literally unchanged through the socialist period, both with regards to their characteristics and their branding. This consistency strengthened the position of these brands even further.

Change only came after the fall of the iron curtain, which begun with the first partially free and democratic parliamentary elections in Poland in June 1989¹⁰ and quickly gained momentum within the Socialist Bloc, culminating in the fall of the Berlin wall in November 1989. Many socialistic brands were abandoned in favour of new local or western brands.¹¹ Other socialistic brands, through various measures, held on to their market position.¹²

Today, both socialistic brands that were abandoned, either with the fall of socialism or in later years, and the ones which are still in use today, share common historical characteristics. They were in use for a substantial time period during socialism, functioned on the markets that offered little alternative combined with meagre or no incentives to change the branding or the commodities themselves. Markets in which extremely limited end user choice and availability of commodities strongly influenced their desirability. Because of these circumstances socialistic brands still

9 *Ibid* 194.

10 Inter alia: Norman Davis, "God's Playground: A History of Poland: 1795 to the Present (Volume 2)", (2nd edn, Oxford University Press 2005), 482.

11 Berdahl (*supra* n. 6), 195.

12 Examples of this would be the Żołądkowa Gorzka brand in Poland and the Horalka Tatrasky brand in Czech Republic and Slovakia (*supra* n. 4).

strongly reside in the personal and collective memories of the post-socialist countries.¹³

By way of summary, the term socialistic brand, as used for the purposes of this thesis, should be understood as encompassing any sign that was used for the purpose of distinguishing goods or services offered for a substantial time during the period of the socialism. These signs share a historical pedigree of use in highly particular circumstances, which strongly affects the relation of these signs with the end users. These relations may be at the core of the attractiveness that socialistic brands evoke in the minds of end users within the territories these brands originated from.

B. Geographical and legal focus

The analysis of issues relating to socialistic brands is based on the example of a single post-socialism country: The Republic of Poland. This decision was based on a number of factors.

Firstly, Poland is characterised by a relatively big market and a population that makes it both the 6th most populous country in the European Union¹⁴ (hereinafter: ‘EU’) and the most populous post-socialist country to have joined the community. These characteristics translate into a relatively high number of examples of socialistic brands.

Secondly, Poland became a member state of the EU during the first wave of accession of the post-socialist states in May 2004¹⁵ and has fully implemented the framework of EU law regulating the area of intellectual property (hereinafter: ‘IP’). This thesis was therefore able to benefit from over 10 years of post-accession jurisprudential and court experience. The fact that Poland is a part of the shared EU legal framework also makes the results of this dissertation applicable to other post-socialist countries which share this framework. As the result of this, auxiliary invocation of case law and examples from other EU members was possible.

Thirdly, Poland’s borders have remained unchanged after the transformation. Polish territory was not subject to unification (as the territory of East Germany) or dissolution (as the territory of Czechoslovakia) which

13 Berdahl (*supra* n. 6), 203.

14 Official European Union profile of Poland <http://europa.eu/about-eu/countries/member-countries/poland/index_en.htm> accessed 27.5.2016.

15 *Ibid.*

limited the amount of potential factors needed to be analysed, allowing the author to focus on the most universal of these brands' characteristics.

Finally, the fact that Polish is this author's mother tongue helped facilitate access to various relevant materials.

This choice of primary focus means that the legal consideration presented herein is based on the Polish law and jurisprudence. Substantial parts of this national law implement EU law. As national law should be interpreted in line with EU law¹⁶, the analysis includes the jurisprudence of the Court of Justice of the European Union (hereinafter: 'CJEU'). The analysis also encompasses the European Union Trade Mark Regulation¹⁷ (hereinafter: 'EUTMR') and the jurisprudence on its basis. Even though this legal act is a separate body of law from the national law, it has been stressed by the CJEU on numerous occasions that the terms of both of the EU legal acts dedicated to the area of trademarks¹⁸ are to be interpreted identically¹⁹.

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- 16 Inter alia: Case C- 106/89 *Marleasing SA v La Comercial* EU:C:1990:395, [1990] ECR I-4135, p. 8.
 - 17 Council Regulation (EC) 207/2009/EC on the Community trade mark (codified version) [2009] OJ L78/1 as amended by Regulation (EU) 2015/2424 of the European Parliament and of the Council amending Council Regulation (EC) No 207/2009 on the Community trade mark and Commission Regulation (EC) No 2868/95 implementing Council Regulation (EC) No 40/94 on the Community trade mark, and repealing Commission Regulation (EC) No 2869/95 on the fees payable to the Office for Harmonization in the Internal Market (Trade Marks and Designs) [2015] OJ L 341.
 - 18 These acts being the Council Directive (EU) 2015/2436 to approximate the laws of the Member States relating to trade marks (recast) [2015] OJ L 336, (hereinafter: 'TMD') and the EUTMR.
 - 19 Inter alia: Case C-363/99 *Koninklijke KPN Nederland NV v. Benelux-Merkenbureau* EU:C:2004:86, [2004] ECR I-1619, p. 97; Case C-329/02 P *SAT. 1 Satelliten-Fernsehen GmbH v. OHIM* EU:C:2004:532, [2004] ECR I-08317, p. 26; Case C-320/12 *Malaysia Dairy Industries Pte. Ltd v. Ankenaevnet for Petendter og Varemaerk* EU:C:2013:435, [2013] ECR I-0000, p. 35.

C. Socialistic Brands – case examples

To highlight the subject of this dissertation and to present the complexity of this area in a more comprehensive way, four of the Polish brands are presented below as case studies. They are referred to in the further parts, which is signalled by a presence of a graphical presentation of the brand on the side of the text, for easier navigation through the text.

1. Unitra²⁰



Unitra (a fanciful name) was a brand used for Polish produced and designed audio equipment. Products offered under the brand were mainly intended for export, their availability on the domestic Polish market was limited, and thus these products were particularly sought after. After the economic transformation following the collapse of the Eastern Bloc, all the unions and associations which manufactured the branded products were either dissolved or restructured. Until recently only few companies using the name Unitra existed, their activity limited to exports of non-Unitra branded products and real estate management. The audio equipment brand was re-launched in 2014. Today, the majority of the products offered are manufactured outside of Poland which, in accordance to the information provided by Unitra, is due to the company being unable to find the required production capabilities in Poland.²¹ One of the products is a replica of the formerly produced headphones model Sn-50 which was one of the ‘cult products’ of the communist era in Poland.

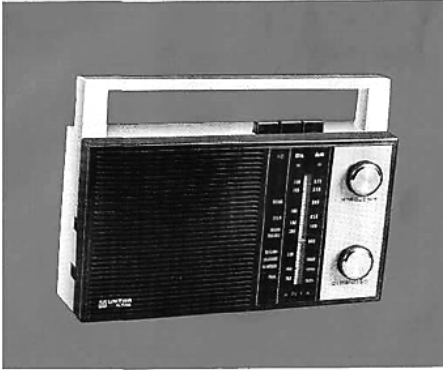
20 Dawid Kosiński, „Unitra – Kultowa Polska Marka Powraca na Rynek i Oferuje Produkty "Born in Poland"” (*Spider’s web*, 22.5.2014) <<http://www.spidersweb.pl/2014/05/unitra-wraca-na-rynek.html>> Unitra official page, <<http://unitra.pl/>>; Unitra club, <<http://unitraklub.pl/unitra-dom>> both accessed 26.9.2016.

21 *Ibid.*

pic. 1: An original advertisement of an Unitra radio set.

RADIOOBIJORNIK TRANZYSTOROWY
„ANIA” MOT-711
TRANSISTOR-KLEINEMPFÄNGER „ANIA”
MOT-711

 UNITRA



(source: http://www.olderadio.pl/foto_schematy/rek100129.jpg)

pic. 2: Original Unitra Sn-50 headphones and their 2014 counterpart advertised by the producer as a “faithful replica”.



(source: <http://www.sklepunitra.pl/>; <http://olx.pl/oferta/sluchawki-unitra-sn50-oryginalne-opakowanie-z-gwarancja-z-1975r-CID99-IDaMohh.html#a7499357c9>)

2. Pewex²²



The internal export company Pewex (a fanciful name), founded in 1972, operated a national chain of stores, with products unavailable elsewhere. The products offered in Pewex, both imported and domestically produced, were highly sought after and were widely considered as status symbols. This exclusivity was further increased by the fact that Pewex shops accepted only foreign currencies. In 1980 Pewex was operating more than 1000 shops. After the fall of the iron curtain, due to mismanagement, Pewex gradually reduced its business activities, was subject to privatisation and finally filed for bankruptcy. The original Pewex trademark which was granted in 1974 was abandoned in 2006.²³ Pewex has been re-launched in 2013 as a web page Pewex.pl and subsequently the trademark was re-registered.²⁴ The web portal was initially dedicated to materials evoking nostalgia of the socialist era. Currently, it is primarily used as an e-commerce platform. The online shop offers a wide variety of products of other brands, including clothing, games and stationary, along with a line of clothing that is inspired by socialist times and uses the Pewex brand.

22 „Pewex Wraca na Rynek” (*Rzeczpospolita Ekonomia*, 16.12.2013) <<http://www.ekonomia.rp.pl/artykul/1072971.html>>; Ewa Cander-Karolewska, „Atlantyda Ludowa” (*Onet wiadomości*, 1.07.2007) <<http://wiadomosci.onet.pl/prasa/atlantyda-ludowa/dxxm3>> both accessed 22.5.2016.

23 National no. of the right: 52219.

24 Grzegorz Marczak, „Dlaczego Chłopaki z Pruszcza Chcą Reaktywować Pewex? Na Moje Pytania Odpowiedział Sebastian Leśniak” (*Antyweb* 7.6.2013) <<http://antyweb.pl/dlaczego-chlopaki-z-pruszcza-chca-reaktywowac-pewex-na-moje-pytania-odpowiedzial-sebastian-lesniak/>> accessed 26.5.2016.

pic. 3: An original 1980s advertisement of Pewex stores from a weekly magazine “Motor”.



(source: <http://bufetprl.com/2013/05/25/srodek-transportu-dla-wyjatkowych-towarow/>)

pic. 4: The main page of the Pewex.pl store with an advertisement of the ‘citizen’s collection’ which includes clothing with the Pewex logo



(source: <http://www.ekonomia.rp.pl/galeria/706165,1,1072971.html#bigImage>)

3. Herbapol²⁵

Herbapol, Herbapol ('herbata' means tea in Polish, 'pol' is a common abbreviation used to indicate the Polish origin) is a brand introduced by a state company group Zjednoczenie Przemysłu Zielarskiego Herbapol, founded in the late 1940s. Herbapol was the leading manufacturer of herbal food, health and beauty products in socialist Poland. After the referred earlier market transformation of the 1990s, the group was split and privatised. Currently there are five competing undertakings on the Polish market using the name Herbapol. In most instances the brand Herbapol is used along with geographical designations indicating where a given company is located. At present there are numerous trademarks registered with the Herbapol name including national and collective European Union trademarks.²⁶

pic. 5: Primary logos used by each of the undertakings which currently operate under the Herbapol name.



source: <http://www.herbapol.poznan.pl/>; <http://herbapol.pl/>; www.herbapol.waw.pl; <http://www.herbapol.com.pl/>; <http://herbapol.krakow.pl/>)”

25 Herbapol Poznań < <http://www.herbapol.poznan.pl/historia>>; Herbapol Lublin < <http://www.herbapol.com.pl/o-nas/kim-jestesmy>>; Herbapol w Krakowie < <http://herbapol.krakow.pl/o-firmie/historia>>; Herbapol Warszawa <<http://www.herbapol.waw.pl/>>; Herbapol Wrocław < <http://herbapol.pl/>> all official pages accessed 26.5.2016.

26 OHIM no. of rights: 003868049; 003783016.

4. „Działka Moje Hobby” / Pan Tu Nie Stał



“Działka Moje Hobby” (which can be translated into ‘allotment garden my hobby’) is the title of one of the most re-printed books of the socialist period in Poland. Gardening and other recreational activities in allotment gardens were among the most popular ways of spending free time in socialist Poland, as many of state owned companies provided allotment gardens to their employees. The book was updated six times between 1977 and 1987 and had many editions and reprints including a translation into Slovak.²⁷ “Działka Moje Hobby” was never registered as a trademark, however its iconic cover designed by Jan Bokiewicz is inseparably associated by many Poles with the time spent caring for the allotment gardens. The cover design has recently found its way onto one of the t-shirts offered by a Polish small-medium size clothing brand Pan Tu Nie Stał²⁸ which offers products inspired by, evoking and utilising the designs which can be associated with socialism. Pan Tu Nie Stał brand originated in the 21st century.

pic. 6: Cover of the book “Działka Moje Hobby” and the Pan Tu Nie Stał t-shirt using the same design.



(sources: <http://pantuniestal.com/sklep/dzialka-moje-hobby-dla-pan/>)

27 Results for “Działka Moje Hobby” in the Polish National Library catalogue <http://katalogi.bn.org.pl/iii/encore/search/C__Sdzia> accessed 27.5.2016.

28 Could be translated as ‘you sir, have not been queuing here’. A play of words that refers to an inseparable aspect of a purchase of any commodities in the times of socialism, namely waiting in immensely long queues whilst keeping a careful eye for anyone who would dare to cut the queue.

