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Władysław Andrychiewicz's views on the protection of the business name

The issue of the protection of a business name constitutes nowadays one of the most important aspects of effective business management. Quite a similar conclusion may be drawn by analysing this issue with reference to the time when the Kingdom of Poland existed (1815–1918).¹ It was Władysław Andrychiewicz (1848–1902)² who was by far the most outstanding figure among the lawyers of the period, aware of the significance of such issues and, more importantly, engaged in academic research on issues related to the business name. This researcher belonged to the last, fourth generation of the native coryphaei within the area of law, i.e. academics born in the mid-nineteenth century who carried out academic research until the end of the Kingdom of Poland.³ Andrychiewicz was a graduate of Szkoła Główna (the Main School), and then he completed judges' training. He slowly climbed the judicial career-ladder: he was granted the office of the signatory in the Warsaw court of peace, an assistant judge of the tribunal, a signatory of the Court of Appeal of the Kingdom of Poland, and was then appointed to perform the duties of a sub-prosecutor. After the judicial reform of 1876,⁴ he lost his current position and became a secretary of a commercial court. Sometime later, he became the judge of that court.⁵ Being unable to develop his

¹ There is the term of “Congress Poland” often alternatively used in historical-legal academia.

² The second, slightly junior researcher of note that dealt with the issues of business names in the Kingdom of Poland was Jan Namitkiewicz (1880–1958).

³ See W. Witkowski, *Warszawa jako ośrodek polskiej nauki prawa w dobie zaborów*, “Kra-kowskie Studia z Historii Państwa i Prawa” 2015, no. 1, pp. 52–53.

⁴ The Russian judicial reform of 1864, extended to the territory of the Kingdom of Poland in 1876.

⁵ See A. Suligowski, *Wspomnienie o Władysławie Andrychiewiczu*, “Gazeta Sądowa War-szawska” 1902, no. 22, p. 342; idem, *Studia Władysława Andrychiewicza poprzedzone wspomnie-niem o nim skreślonym przez Adolfa Suligowskiego*, Warszawa 1903, p. IX.

great abilities and passions (due to the political situation in the Kingdom of Poland), Andrychiewicz did not avoid didactic work (he gave lectures on law at the Kronenberg Trade School)⁶ and actively contributed to the development of legal literature, i.e. he was involved in editing *Przegląd Sądowy* (Court Review) and was one of the founders of *Biblioteka Umiejętności Prawnych* (Library of Legal Skills). He also worked for *Gazeta Sądowa Warszawska* (Warsaw Court Gazette) from the very beginning of its existence (1874) until his death⁷.

Władysław Andrychiewicz was one of the few native researchers who, within the period of the existence of the Kingdom of Poland, profoundly dealt with studies on the issue. Therefore, it may be confidently stated that he dealt therewith in an academic manner. His theoretical and practical knowledge of the principles of business name protection, though not supported by a title or even by an academic degree, allows us to consider him as a scholar and an undisputed authority in this field.⁸ This knowledge, covering other commercial law issues as well, was appreciated by the Warsaw legal community, who published (shortly after his death) a printed work devoted to the memory of the scholar.⁹

Andrychiewicz presented his views and remarks on the business name in extensive articles, published in parts in *Gazeta Sądowa Warszawska* in 1885¹⁰ and 1886,¹¹ and then in a publication devoted to the activity of Warsaw merchants and lawyers for the benefit of introducing new business name regulations.¹² The author's achievements in this field are supplemented by two more publications, i.e. by the article: *Jawność handlowa i rejestr handlowy* (Commercial transparency and commercial register)¹³ constituting an introduction to the aforementioned article, *Pojęcie firmy* (The concept of a business name), and the term

⁶ A three-year private school opened in 1875, financed by a banker, Leopold Kronenberg. There were, apart from commercial law, inter alia, commercial arithmetic, bookkeeping or principles of commercial correspondence in its curriculum. The quality of teaching was a high tier by virtue of employing respectable professorial staff. The Trade School had great distinction in educating Polish commercial cadres, economists and bank staff. After its closure in 1900, its traditions were continued by the subsequent Higher School of Commerce, and currently by the Warsaw School of Economics (i.e. the SGH, Szkoła Główna Handlowa). See K. Ślusarek, *Leopold Kronenberg (1812–1878)*, [in:] *Wybitni Polacy XIX wieku. Leksykon biograficzny*, ed. T. Gąsowski, Kraków 1998, p. 150.

⁷ A. Suligowski, *Wspomnienie...*, p. 342; see also K. Pol, *Władysław Andrychiewicz (1848–1902)*, "Rzeczpospolita" 1999, no. 109, p. 15.

⁸ Andrychiewicz, as an alumnus of the Main School, held a Master's degree (*magister*) in Law and Administration.

⁹ A. Suligowski, *Studia...*

¹⁰ W. Andrychiewicz, *Pojęcie firmy*, "Gazeta Sądowa Warszawska" 1885, no. 27, 28, 40, 44, 47, 48, 51, 52. He also outlined the legal solutions on the business name under many legal orders across the world in this work, including the leading ones: French, German, and Swiss.

¹¹ W. Andrychiewicz, *Rodzaje firmy i zasada jej prawdziwości*, "Gazeta Sądowa Warszawska" 1886, no. 31, 32, 36, 40, 41, 48, 49.

¹² K. Nowakowski, *Prace przygotowawcze do prawa o rejestrze firmowym*, part 1, Warszawa 1887.

¹³ W. Andrychiewicz, *Jawność handlowa i rejestr handlowy*, "Gazeta Sądowa Warszawska" 1885, no. 24.

Firma (Business name) — an encyclopaedic synthesis of that academic's scientific views.¹⁴ Moreover, Andrychiewicz played a significant part in the unfinished works on the amendments to the regulations remaining in force regarding the business register in the Kingdom of Poland.

Andrychiewicz's theoretical views made direct references to French doctrine, which, apart from German and English, was one of the leading doctrines within the field of the protection of business names.¹⁵ Andrychiewicz fully agreed with French doctrine — his academic views were based on and supported by the binding force of the French Commercial Code¹⁶ and its regulations within the scope of the business name.¹⁷ Upon formation of the Kingdom of Poland, the fact that the aforementioned provisions of the French Commercial Code remained within the legal order of the Kingdom was a completely natural step. French solutions were among the most modern at the time. The regulations have been referred to and construed by Andrychiewicz, who wrote:

Article 20 provides that the purpose of a commercial partnership is to conduct business under the business name. Article 21 refers to the elements of the business name. Article 22 determines the liability of partners in a "named" partnership as to agreements executed by one of the partners on behalf of the partnership and under its business name. Article 23 provides for a definition of a limited partnership and indicates the composition of the business name under which the partnership's management board is run. Article 25 prohibits including the names of limited partners into the business name. Article 29 states that a "nameless" partnership may not use a partnership name, and is not to be marked with the names of the partners. Article 30 provides for an indication of the enterprise objects as a method of specifying the partnership. Article 43 stipulates that an extract of the partnership's deed presented to a commercial Tribunal's writer should contain, among other details, the business name of a partnership or a company. Finally, article 46 of the Commercial Code imposes an obligation to notify the court of any changes to the business name.¹⁸

Moreover, the author pointed out other legal acts being in force in the Kingdom, which contained the term "business name". However, they were not directly related to the protection of the business name in the meaning of the law on intellectual property.¹⁹

In his views on the business name, Andrychiewicz clearly opposed the then-popular thesis that the business name is a simple name of the enterprise. He consistently tried to defend the position that the business name is a specific name, with which the entrepreneur (an individual, a partnership, or a company) marks

¹⁴ *Wielka encyklopedia powszechna ilustrowana*, vol. 22, Warszawa 1899, pp. 612–614.

¹⁵ This is apparent in particular when deliberations on the construction of the veracity of a business name principle are concerned, where under three systems may be discerned.

¹⁶ The French Commercial Code (*Code de commerce*), which was promulgated in 1807 and then introduced within the Duchy of Warsaw, remained in force in the period during which the Kingdom of Poland existed.

¹⁷ These provisions (i.e., articles 20–23, 25, 29–30, 43, and 46 of the French Commercial Code) had no comprehensive nature that would regulate that issue in its entirety. Yet, allowed an introduction of certain principles which enabled the works of academia and case-law.

¹⁸ W. Andrychiewicz, *Pojęcie...*, p. 423.

¹⁹ See *ibidem*.

their existence on the market and all its commercial activity.²⁰ Therefore, the business name constituted a reflection of the merchant not as a person (a surname served this purpose), but as a trader. “It is the realization of his existence and his activity in the world of commercial relationships” — wrote the scholar, about the relation of the business name to the trader.²¹ The purpose of the existence of the business name was to give the possibility of flawlessly distinguishing one trader from another. The author illustrated this by the following example:

In a case where there are two bankers in a given city, of the same names and surnames, but differing from each other in their conscientiousness, the extent of relations and wealth, in order for them not act to a detriment of each other [...], it is necessary for these persons to differ from each other characteristically as traders and therefore to use permanent names such as the business names.²²

This distinction was of practical importance not only for traders, but also for the other party involved in the trade — the customers (consumers).

In addition, he explained in detail how he understood and what it meant in practice to conduct business under the business name of a given merchant:

Having chosen one or another business name, the merchant usually tries to make it as known as possible [...]. It uses it for its enterprise, shops, warehouses, currency exchange offices and merchants' books, places it on files that go out from its currency exchange office or uses it when signing its correspondence or agreements, searches it while trying to identify the commercial debts in court, defends under the business name against the claims made against him or her due to trading etc., and in other words, he or she runs its business under the business name.²³

In this context, according to Andrychiewicz, the business name constituted a permanent name, that is, established for the entire period of the business existence²⁴ in its original personal composition.

Andrychiewicz also gives a definition, stating that: “‘a business name’ is a permanent name which a trader, an individual, a partnership, or a company starting trading accepts for mutual distinction, and which they use to mark their existence and activity in its entire area”.²⁵

In the doctrine of that time, usually three types of business names were distinguished: personal business names — when the business name originates from the trader's name, material — when the business name originates from the objects of the enterprise, and mixed — when the business name originates from the name of the trader and the objects of the enterprise. According to Andrychiewicz, one can also distinguish a fourth type — imaginative business names — consisting of originally sounding words, aimed at drawing the attention of customers to the

²⁰ See *ibidem*, pp. 806–807.

²¹ *Ibidem*, pp. 818–819.

²² *Ibidem*, p. 819.

²³ *Ibidem*, p. 820.

²⁴ The concept of an “undertaking” should be understood as either a company or a partnership (be it commercial or civil-law), or as a sole trader of a given entrepreneur.

²⁵ W. Andrychiewicz, *Pojęcie...*, p. 821.

existence of a given undertaking.²⁶ Pursuant to the French Commercial Code in force in the Kingdom of Poland, which governed the business names issues, the business names²⁷ of the registered and limited partnerships could only be personal. However, the legislator did not prohibit the inclusion in the business name such elements which would indicate the objects of the business. In other words, it was allowed to use both personal and mixed business names.

The Commercial Code governing issues related to business names of partnerships or companies did not deal with the business name of sole proprietorships. Under article 21 of the French Commercial Code, a business name of a registered partnership could only include the names of partners, whereas pursuant to the regulations contained in article 23 of the Code, the business name of the limited partnership had to consist of the name of one or more partners jointly and severally liable.²⁸ On this basis, Andrychiewicz drew three conclusions: firstly, that the French legislator formulating the rules on business names had taken into account only the partners actually engaged in the business, whose participation in the business was significant and only their names could be included into the business name of the partnerships; secondly — in the event of the death of a partner or leaving the partnership by the partner or several partners, the names of such partners should be definitely removed from the business name; thirdly — the French regulations did not allow for the sale of the partnership together with its

²⁶ See W. Andrychiewicz, *Rodzaje...*, pp. 491–492.

²⁷ The French Commercial Code discerned three principal types of “commercial companies”: simple (“proprietary”, “named”), limited partnerships, and public limited companies (“nameless”). As distinguished civil law scholar and advocate Karol Dunin wrote: “*A proprietary partnership*, i.e. a simple one, likens wholeheartedly to the civil-law partnership, *id est* it serves as an amalgamation of two or more persons, to conduct a business under a common name to a mutual benefit, *id est* under a common business name. Under that business name, names of all the partners, or only some of them may be displayed. However, third parties’ names may not come thereunder. The partners are jointly and severally liable with all of their assets [...]. Managing business interests of the partnership belongs to all of the partners therein, who may divide that management freely.

A limited partnership consists in two kinds of Partners, *id est* those who are proprietary (one or more) and those who are limited. The first are jointly and severally liable with all of their assets, as if they were partners in a proprietary partnership, while those who are second are liable only with the sum which they have contributed to the partnership. They are akin to the creditors, to a degree, for they provide the partnership with capital, yet they differ in that they take part in profits and losses. Their surnames may not be displayed within the business name and they may not take any part in the management of the partnership’s interests [...]. The relationship of the proprietary partners vis-à-vis one another, provided there are several of them, is the same as in a simple partnership [...].

A public limited company, or a ‘nameless’ one, is one where there are no proprietary partners (i.e. those who are jointly and severally liable), but all of them are liable only in regard to their contribution, that is the sum they have provided to the company” — K. Dunin, *Zasady prawa handlowego poprzedzone wykładem prawa cywilnego oraz ogólnych wiadomości o prawie*, Warszawa 1911, pp. 121–122. As to a slightly posterior work, see F. Kramsztyk, *Wykład popularny prawa cywilnego i handlowego obowiązującego w Królestwie Polskim*, Warszawa-Lwów 1917, pp. 97–101.

²⁸ W. Andrychiewicz, *Rodzaje...*, p. 507.

business name.²⁹ Consequently, strict adherence to the provisions of the French Commercial Code and their interpretation in a manner consistent with the majority of French case-law resulted in Andrychiewicz becoming an avid advocate of the principle of veracity of the business name,³⁰ which consisted in unconditional compliance of the business name with the name of the entrepreneur running the business.³¹ Andrychiewicz, similarly to the majority of French doctrine at that time, opposed the practice of including in the business names the surnames of persons who in fact did not take part in the business activity and whose only contribution was giving permission to “use” their names. Such an action was considered to be contrary to law, morality, and the essence of the business name. As he wrote:

If a business name is used to indicate the existence and activity of traders, then where there are no data of persons, where there is no activity of such persons, the business name including their names is not allowed to exist; therefore, including the names of persons who do provide services, do not take part in the activities of this collective body, which is a partnership, is something contradictory in itself.³²

As to the principle of veracity of the business name in other legal systems (apart from the French system and, as a consequence, the Polish one as well), German and Austrian legislation permitted the use of the original business name despite the fact that a partner was joining an existing partnership or leaving the partnership.³³ Swiss legislation adopted a completely opposite principle. Thereunder, if a partner whose name was included in the business name of a registered or limited partnership left the partnership, it would result in a mandatory change to the business name, regardless of his/her possible consent of remaining its surname in the existing business name. It was, therefore, the legislation in favour of the principle of the veracity of the business name. According to Andrychiewicz, the Swiss regulations of this issue were not, however, original and innovative solutions. They only constituted a clear confirmation of the principles contained within

²⁹ Ibidem.

³⁰ Which was noticed by later academia. J. Namitkiewicz, while discussing the views of Andrychiewicz, refers to him as an “enthusiastic adherent of the principle of veracity of a business name” — J. Namitkiewicz, *Firma. Studium z zakresu teorii i praktyki prawa handlowego*, Warszawa 1917, p. 83.

³¹ Which was meant to protect the interests of competitors (traders) and the clientele against unfair competition consisting in using the business name of another, or in artificial impersonation thereof. However, the principle of veracity of the business name, in and of itself, constituted one of the rules of business name law (apart from the principles of exclusivity and of the continuity of a business name). See J. Namitkiewicz, op. cit., pp. 61–166.

³² W. Andrychiewicz, *Rodzaje...*, p. 770.

³³ In the event where a partner left the partnership, his or her consent to using the business name unaltered was required, where his or her surname was displayed within the business name. The principle of veracity of a business name, under the Austrian legislation, is discussed by A. Górski, *Zarys prawa handlowego austriackiego*, vol. 1, Kraków 1900, pp. 130–133. See also A. Doliński, A. Górski, *Zarys prawa handlowego*, vol. 1, Lwów 1912, p. 169.

the French Code (under articles 21 and 23).³⁴ At this point, however, Andrychiewicz was seriously mistaken, because the French Code contained the principle of the veracity of business name of the newly established partnership and that of the relative truth of the acquired partnership.³⁵ Such an interpretation of the French Commercial Code, although erroneous, proves how avid a supporter of the veracity principle of the business name Andrychiewicz was.³⁶ His views, however, were not shared by contemporary lawyers and merchants of the Kingdom of Poland, members of the Business Name Committee, who rejected³⁷ the relevant draft provisions of his authorship.³⁸

According to Andrychiewicz, the business name is not only a “name” or “surname” of a given entrepreneur, but also constitutes a kind of legally protected good closely related to the existence and activity of the merchant, which makes it a purely personal mark (right).³⁹ This determined the inalienable nature of the business name. Therefore, he was a strong opponent of the admissibility of the business name transfer, with⁴⁰ or without the enterprise. On the one hand, he illustrated his view by the personal nature of the business name, which gained the reputation of specific entrepreneurs (owners), and on the other hand — compared the business name to the surname of a natural person and by analogy referred to the French provisions on the prohibition of the transfer of surnames. In addition, he referred to the intention of the Civil Code of the Kingdom of Poland of 1825, which also did not provide for the possibility of arbitrary disposition of the surnames.⁴¹ He assumed that as the surname was not a property that a person could

³⁴ W. Andrychiewicz, *Rodzaje...*, pp. 771–772.

³⁵ Such a view was confirmed by later academia — J. Namitkiewicz, op. cit., p. 86.

³⁶ In other words, Andrychiewicz stressed that he subscribes to the French solutions, yet in actuality (somewhat inadvertently) he followed the Swiss solutions, which (contrary to the French ones) were characterized by the application of the principle of unconditional veracity of a business name, in its entirety.

³⁷ Above all, it was because of the lack of consent to introduce the principle of unconditional veracity of a business name into the regulations on business names.

³⁸ After a great many years of French provisions on a business name remaining in force within the Kingdom of Poland, lawyers and the commercial circles of the Kingdom of Poland noticed the need for introducing new regulations. To that end, attempts were made at effecting changes that would take account of the Polish state of affairs and of the newest achievements in European scholarship. Work on new regulations with regard to the business name bore no fruit however, as the envisaged provisions had not come into force. The works of the committee furthering the changes to legislation on business names and the activities of Andrychiewicz therein is further described by T. Dolata, *Prawo własności intelektualnej w Królestwie Polskim (1815–1918)*, Wrocław 2019, pp. 212–225.

³⁹ He highlighted that a business name was always followed by goodwill, which attracted the clientele and was decisive as to the gain of an entrepreneur.

⁴⁰ A vast majority of European legal academia at that time advocated against the possibility of selling the business name on its own, i.e. without the undertaking to which it pertained.

⁴¹ See W. Andrychiewicz, *Rodzaje...*, pp. 571–573.

freely dispose of, then one should treat the business name, which in a sense is the merchant's name, in the same way. Therefore, according to Andrychiewicz, the legal possibility of selling the business name would only be admissible if the business name constituted the property of the merchant,⁴² something he strongly disagreed with. He expressed his view literally in the following statement:

A business name, which is not a property, may not be sold. It is the name which denotes the existence and activity of the merchant and as such cannot be separated from its object, its content, and cannot be sold even together with an enterprise or a plant, because through such a sale it would be transferred to another entity, often only temporarily connected with it.⁴³

Andrychiewicz argued that accepting the possibility of the business name disposition would also allow one to carry out other legal activities connected with the business name, such as leasing the business name together with the plant, transfer for use, pledge, etc. Why “limit the possibility of the business name disposal only to some of the relations?” — he asked in one of his articles contained in *Gazeta Sądowa Warszawska*.⁴⁴ He stressed that advocates of the theory in favour of the sale of the business name referred to in its definition as a certain type of good. This good was of a non-material (moral) character resulting from the personal qualities of the entrepreneur; from their hard work, talent, integrity etc. These qualities attract clients, who determine the success of the business. However, these qualities are purely personal, not transferable from one entrepreneur to another. Thus, the business name should not be the subject of dealings. Moreover, Andrychiewicz, in his theoretical arguments, tries to challenge the arguments of the business name sale supporters, who state that the business name should share the fate of the business and therefore should follow it in the economic and legal transactions. He also disagrees with the statements providing for the admissibility of a business name sale justified by a custom.⁴⁵ He found the view where the principle of the business name transferability had to be introduced into the Kingdom inappropriate, partially because it was accepted by the legislation of neighbouring countries (Germany and Austria-Hungary).⁴⁶ The most significant, although also incorrect according to Andrychiewicz, was the argument of the business name transfer admissibility supporters, who stated that it is necessary to inform the clients that the new owner runs the existing business under the original business name and the business enjoys a certain reputation on the market. He points out a solution that is much better in his opinion, which eliminates the risk of misleading clients,

⁴² Ibidem, p. 573.

⁴³ Ibidem, p. 639.

⁴⁴ Ibidem.

⁴⁵ Ibidem, pp. 639–642. K. Dunin indirectly agrees with Andrychiewicz, given that as to the issue of commercial customs, the former stated that “our Commercial Code [i.e. the French one — T.D.] does not provide such a provision on the general importance of customs, and it only refers thereto in passing at some points. This brings instability in case-law as to the application of customs, in particular where they are in contravention of the provisions of civil law” — K. Dunin, op. cit., p. 107.

⁴⁶ W. Andrychiewicz, *Rodzaje...*, pp. 652–654.

and consists in introducing the surname of a new owner into the business name, preceded by a previous business name.⁴⁷

Andrychiewicz's views on the business name have been noticed and appreciated by later doctrine. Another expert on business name issues — Jan Namitkiewicz — in the introduction to his monograph stated that Andrychiewicz's work was the only study devoted to this subject.⁴⁸ In his study on the business name, Namitkiewicz refers to the views of Andrychiewicz in a broad and mostly approving manner. Namitkiewicz discusses the position contained in the Polish literature based solely on the position represented by Andrychiewicz,⁴⁹ stressing the most important of his views. He emphasises, therefore, that Andrychiewicz had argued it is improper to interpret the business name as a simple name of the enterprise. He quotes Andrychiewicz's view under which a business name in commercial relations is in a way the name of the trader, which is not owned, and therefore it may not be transferred together with the undertaking.⁵⁰ He notes that the lack of permission to sell the business name together with or without the enterprise is a consequence of Andrychiewicz's support for the principle of the veracity of the business name. Moreover, Namitkiewicz drew attention to the diversity of arguments used by Andrychiewicz to defend the necessity of applying the veracity of the business name principle.⁵¹ Another prominent lawyer — Stanisław Posner — describes Andrychiewicz, appreciates his views on the business name, and points out the author's literary legacy in a *post mortem* memoir specially dedicated to him.⁵²

While Andrychiewicz's theoretical views were symbolically appreciated by the lawyers of the Kingdom of Poland (although only upon his death),⁵³ his activity in the field of business name legislation in the Kingdom of Poland turned out to be fruitless and ineffective.⁵⁴ His views have been rejected during the work of a specially appointed Business Name Committee (Andrychiewicz's position did not meet

⁴⁷ Ibidem, pp. 654–655.

⁴⁸ J. Namitkiewicz, op. cit., p. 5.

⁴⁹ That followed principally from the fact that Andrychiewicz was the only author that addressed the issue of a business name in the Kingdom of Poland.

⁵⁰ J. Namitkiewicz, op. cit., pp. 83–84, 159.

⁵¹ See ibidem, pp. 84–85. This author subscribes to Andrychiewicz's reasoning.

⁵² S. Posner, *Władysław Andrychiewicz (1848–1902). Wspomnienie pozgonne*, Warszawa 1902.

⁵³ In his funeral speech, a distinguished civil-law scholar and a brilliant advocate Henryk Konic referred to Andrychiewicz as one of the most distinguished alumni of the Main School, and he addressed the deceased scholar's academic work thus: "Works that were called forth by his pen, while not great in number, ensured a prominent place for him in the realm of commercial law. Treatises on the business name, on the business register, full of daring and broad views, may serve as an example not only as far as their scientific value is concerned" — H. Konic, *Mowy pogrzebowe wypowiedziane w dniu 15 marca 1902 roku nad grobem ś.p. Władysława Andrychiewicza*, "Gazeta Sądowa Warszawska" 1902, no. 22, p. 352.

⁵⁴ Andrychiewicz, as one of the first, noticed the propriety of amendments to legal provisions related to the issue of business names. He explained that by the following choice of words: "An ordering of the issues related to the business name constitutes one of the most serious legislative tasks; for largely on it depends not only ensuring the foundations of credit, but also the promotion

the approval of mainly Warsaw merchants, who took a different position on the principle of the veracity of the business name, whereof he was a committed supporter).

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Władysław Andrychiewicz’s views on the protection of the business name

Summary

The most prominent lawyer involved in research on issues related to the protection of the business name within the Kingdom of Poland (1815–1915) was Władysław Andrychiewicz. In his views on the business name, Andrychiewicz clearly opposed the popular thesis at that time that the

of the principles of morality among the vast masses” — W. Andrychewicz, *Firma*, [in:] *Wielka encyklopedia...*, p. 613.

business name is a simple name of the enterprise. The scholar consistently tried to defend the thesis that the business name is a specific name, with which the entrepreneur (an individual, a partnership or a company) marks their existence on the market and all their commercial activity. Therefore the business name constituted a reflection of the merchant not as a person (a surname served this purpose), but as a trader. Moreover, the scholar has clearly explained how he understands and what it means to conduct the business under the specific merchant's business name. Andrychiewicz was an advocate of the principle of the veracity of the business name, which consisted in unconditional compliance of the business name with the name of the entrepreneur running its business. This researcher, as well as the majority of the contemporary French doctrine opposed the practice of including in the business names the surnames of persons who in fact did not take part in the business activity, and whose only contribution was consenting to the use of their names. Such an action was considered to be contrary to law, morality, and the essence of the business name. According to Andrychiewicz, the business name was a certain type of legal good closely related to the existence and activity of the merchant, which made it a purely personal mark (right). It determined the inalienable nature of the business name. Therefore, the scholar was a strong opponent of the admissibility of selling the business name, both without the enterprise as well as together with the enterprise. The scholar has tried to implement his theoretical knowledge into the field of practice. He worked for the benefit of the amendments to regulations regarding the protection of the business name in force in the Kingdom of Poland. As a result, however, his efforts have been unsuccessful.

Keywords: Kingdom of Poland (Congress Kingdom), industrial property, business name protection, principles of the business name law, Władysław Andrychiewicz.

Die Ansichten von Władysław Andrychiewicz betreffend den Schutz des Geschäftsnamens

Zusammenfassung

Der prominenteste Jurist, der sich im Königreich Polen (1815–1915) mit den Forschungen betreffend den Schutz des Geschäftsnamens beschäftigte, war Władysław Andrychiewicz. In seinen Ansichten über die Firmenbezeichnung widersprach er eindeutig der damals gängigen These, dass die Firma eine einfache Bezeichnung eines Unternehmens ist. Der Wissenschaftler bemühte sich konsequent, die Behauptung zu verteidigen, dass die Firma ein Sondername ist, mit dem sowohl der Händler als auch das Handelsunternehmen sein Bestehen im Verkehr und seine ganze Handelstätigkeit bezeichnet. Die Firma stelle also keine Widerspiegelung der Person eines Kaufmanns als eines Menschen (dazu diene sein Name) dar, sondern als eines Händlers. Darüber hinaus erklärte der Forscher genau, wie er das versteht und worauf es in der Praxis beruht, den Handel unter der Firma eines gegebenen Kaufmannes zu führen. Andrychiewicz war ein Befürworter des Grundsatzes der absoluten Firmenwahrheit, der darauf beruhte, dass die Firma mit dem Namen des sein Unternehmen führenden Kaufmannes unbedingt zu übereinstimmen hatte. Der Forscher, ähnlich wie die Mehrheit der französischen Doktrin, war gegen die Praxis, in den Geschäftsnamen die Namen der Personen aufzunehmen, die in Wirklichkeit an der Tätigkeit des Unternehmens nicht beteiligt waren und deren einzige Beteiligung darin bestand, dass sie der Verwendung ihrer Namen zustimmten. Derartige Handlung sei rechtswidrig und sittenwidrig, und solle gegen das Wesen der Firma verstoßen. Nach Meinung von Andrychiewicz stellte die Firma ein gewisses strikt mit der Existenz und Tätigkeit des Kaufmanns verbundenes Rechtsgut dar, was sie zu einem rein persönlichen Zeichen (Recht) machte. Das entschied über die Unveräußerlichkeit der Firma. Daher war der Forscher entschieden gegen die Zulässigkeit der Veräußerung der Firma, sowohl ohne das Unternehmen als auch mit dem Unter-

nehmen. Er versuchte, sein theoretisches Wissen in die Praxis umzusetzen, er arbeitete nämlich an der Änderung der Vorschriften betreffend den Schutz der Firma, die im Königreich Polen galten. Letztendlich erwiesen sich seine Bemühungen jedoch als erfolglos.

Schlüsselwörter: Königreich Polen (Kongresspolen), przemysłowe własności, Firmenschutz, Grundsätze des Firmenrechts, Władysław Andrychiewicz.

Władysław Andrychiewicza poglądy na ochronę firmy handlowej

Streszczenie

Najwybitniejszym prawnikiem zajmującym się badaniem zagadnień dotyczących ochrony firmy w Królestwie Polskim (1815–1915) był Władysław Andrychiewicz. W swoich poglądach na temat firmy jednoznacznie sprzeciwiał się popularnej ówczesnej tezie, że jest ona prostą nazwą przedsiębiorstwa. Uczony konsekwentnie bowiem starał się bronić twierdzenia, że firma jest nazwą specjalną, którą handlujący (osoba czy spółka) oznacza swoje istnienie w obrocie i całą swoją działalność handlową. Firma stanowiła więc odzwierciedlenie osoby kupca nie jako człowieka (do tego służyło nazwisko), ale jako handlującego. Nadto uczony dokładnie tłumaczył, jak rozumie i na czym w praktyce polega prowadzenie handlu pod firmą danego kupca. Andrychiewicz był zwolennikiem zasady bezwzględnej prawdziwości firmy, która polegała na bezwarunkowej jej zgodności z nazwiskiem przedsiębiorcy prowadzącym przedsiębiorstwo. Badacz ten, podobnie jak przeważająca część ówczesnej doktryny francuskiej, sprzeciwiał się praktyce umieszczania w firmie nazwisk osób, które w rzeczywistości nie brały udziału w działalności przedsiębiorstwa, a jedynym ich wkładem było udzielenie zgody na używanie nazwiska. Działanie takie miało być sprzeczne z prawem, moralnością oraz z istotą firmy. Zdaniem Andrychiewicza firma stanowiła pewnego rodzaju dobro prawne ściśle związane z bytem i działalnością kupca, co czyniło ją znakiem (prawem) czysto osobistym. Decydowało to o niezbywalnym jej charakterze. Stąd też uczony był zdecydowanym przeciwnikiem dopuszczalności zbywania firmy, zarówno bez przedsiębiorstwa, jak i razem z nim. Swoją wiedzę teoretyczną próbował przenieść na grunt praktyki. Pracował bowiem na rzecz zmiany przepisów dotyczących ochrony firmy obowiązujących w Królestwie Polskim. W konsekwencji jednak jego wysiłki okazały się bezskuteczne.

Słowa kluczowe: Królestwo Polskie (Królestwo Kongresowe), własność przemysłowa, ochrona firmy, zasady prawa firmowego, Władysław Andrychiewicz.