

CONSIDERATIONS ON THE SOCIAL RESPONSIBILITY TRADEMARK IN ROMANIA

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Abstract: *This study considers the legislative changes occurring in Romania in the social responsibility field and the need to develop a social responsibility trademark as a practical instrument quantifying a socially responsible behaviour in relation to all categories of stakeholders involved in the commercial activity performed in Romania.*

Key words: *social trademark, social responsibility trademark, Law no. 219/2015.*

1. Social economy, social enterprise and social trademark. Juridical regulation in Romania

The availability, in Romania, of a law regarding social economy, together with the methodological norms of implementing it, is beneficial also in respect of the evolution of the social responsibility in Romania. Obviously, the aspects elaborated and regulated by means of these legislative acts are in the spirit of social responsibility.

We will further on highlight a few elements showing general aspects of social economy, in the context of social responsibility.

Law no. 219 was adopted on 23 May 2015, juridically regulating the social economy field in Romania. According to art. 1 corroborated with art. 5 of Law no. 219/2015, the main objective of the law is to set the action meant to promote and support the Romanian social economy, which has the following objectives in its turn:

- 1) to consolidate the economic and social cohesion;
- 2) to occupy the labour force;
- 3) to develop the social services.

Art. 2 of Law no. 219/2015 sets the **definition of social economy** as the “entirety of the activities organized independently from the public sector, whose purpose is to serve the general interest, the interests of a collectivity and/or the personal non-patrimonial interests, by increasing the degree of employability of the persons belonging to the

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vulnerable group and/or manufacturing or providing goods, service provision and/or the execution of works." *Thus, the social economy is juridically seen as predominantly private, in the interest of the community, voluntary and focused on employing persons belonging to vulnerable groups or providing products and/or services of a significant social nature.*

The social integration enterprise is, according to art. 10 of Law no. 219/2015, the social enterprise which permanently has at least 30% employed personnel belonging to the vulnerable group, so that the cumulated working hours of these employees would be at least 30% of the total working time of all employees. The purpose of this enterprise is to fight against exclusion, discriminations and unemployment by means of the socio-professional integration of the disadvantaged persons.

Art. 8 of the law provides the fact that the **social enterprise** is that enterprise whose status is acknowledged by its granting a social enterprise certificate, a **certificate** implying the compliance with the following criteria:

- 1) acting with a social purpose and/or in the general interest of the community;
- 2) allocating minimum 90% of the achieved profit to the social purpose and the statutory reserve;
- 3) the obligation of sending the remaining goods after the liquidation to one or several social enterprises;
- 4) enforcing the social equity principle with the employee, providing equitable salary levels, among which there cannot be differences exceeding the 1 to 8 ratio.

In art. 6, they have also **defined** other **terms** used in Law no. 219/2015, thus:

The general interest activity is any activity in the economic, cultural-artistic, social, educational, scientific, health, sports, dwelling, natural environment protection, tradition preservation fields, whose final purpose is to meet the objectives of the social economy.

The social activity is an activity that pursues the general interest in meeting the social needs of the vulnerable groups, preventing and fighting the social exclusion risk and promoting social integration.

Economic activity means any activity that generates income.

The social enterprise is any private-law legal entity that performs activities in the social economy field, has a social enterprise certificate and complies with the social economy principles.

The social enterprise certificate is that form by means of which they acknowledge the contribution of the social enterprises to the development of the social economy.

The vulnerable group, according to Law no. 219/2015, is represented by the persons or families that risk losing their capacity of satisfying their daily living needs. The methodological norms for enforcing Law no. 219/2015, regulated by Romanian Government Decision no. 585 of 10 August 2016, set the manner of certifying the affiliation to the vulnerable group. The affiliation to the vulnerable group is proved by documents issued by authorities or documents issued by other categories of legal entities with competences in the field.

Law no. 219/2015 enumerates, as an example, in art. 3, a few categories of legal

entities that can be included in the social enterprises category, without limiting, however, the legal entities which can become social enterprises.

According to the Romanian legislative provisions, social economy is based on the following **principles**:

- 1) priority granted to the individual and the social objectives in relation to increasing the profit of the social enterprise;
- 2) solidarity and collective responsibility;
- 3) convergence of the interests of the associated members and the general interest and/or the interests of a community;
- 4) democratic control of the members, exerted on the performed social activities,
- 5) voluntary and free nature of the association in the organisation forms pertaining to the social economy field;
- 6) distinct juridical personality, management autonomy and independence from the public authorities;
- 7) allocating the largest part of the profit/financial overpayment in order to meet the general objectives of a community or in the personal non-patrimonial interest of the members.

The activities performed within the social economy are the following:

- a) manufacturing goods, services provision and/or the execution of works contributing to the welfare of the community or its members;
- b) promoting, as a priority, activities that can generate or provide jobs in order to integrate the persons belonging to vulnerable groups;
- c) developing professional training programs dedicated to the persons belonging to vulnerable groups;
- d) developing the social services in order to increase the integration capacity on the labour market of the persons belonging to vulnerable groups.

From what has been presented above, one can notice that Law no. 219/2015 deals with important aspects regarding the broader field of corporate social responsibility, highlighting from the voluntary and obviously optional nature of the social involvement of the business operators – and not only theirs – the practical advantages of adopting this type of social/socially responsible behaviour.

A negative aspect that can be noticed, upon a comparative analysis, is represented by a restriction to employees – only one of the categories of internal stakeholders of a social enterprise/socially responsible business operator.

3. Social Responsibility Trademark, Identity Element of the Social Enterprise

Law no. 84 of 1998 defines **trademark** as a susceptible sign of graphical representation serving to the distinction of the products or services of a natural or legal person from those belonging to another person. Trademarks can be distinctive signs such as: words, including person names, drawings, letters, figures, figurative elements, tridimensional forms, and especially the form of the product or its package, combinations of colours, as well as any combination of these signs.

The trademark right is acquired by registering the sign chosen by the applicant.

Registering the trademark grants the holder an exclusive right over it. The holder acquires, by registering the sign, an exclusive right to use or “occupy” it, which is restricted to the usage of this sign in relation to the designated product or service. The trademark right is a simple “occupation” right in the profile of the person who first made the registration, and that is why the validity of a trademark does not spell novelty, but originality. The occupation right granted by the registration is a particular type because the object and function of the trademark right is not to grant monopoly over a distinctive name, but to favour the commerce, to provide consumer protection. The right does not protect the sign itself, the trademark, but the commerce is protected.

The trademark has proved its importance by its capacity to attract and preserve its clientele, becoming an essential element of increasing the trader’s clientele.

A company may have high quality products and services. The trademark of such a company gives its customers the possibility to distinguish its products and services from those of its competitors.

Thus, the trademark has become an integral part of any commercial strategy. *We believe that corporate social responsibility may be assimilated to a trademark that distinguishes companies conducting their business in accordance with the social responsibility requirements.*

The product differentiating function stems from the concept according to which a brand is a sign, a signature that, once applied to a product, will allow the public to identify it, and distinguish it from other identical or similar products. Thus, the trademark becomes a reference point of the searched product, for a public which no longer links the trademark to its source. In this context, the trademark acquires a clientele determination function, the manufacturer’s differentiation function becoming a product differentiation or identification function. This phenomenon is called trademark objectification (Eminescu Y. 1983, pp. 19-25). *If social responsibility were seen as a trademark, it would differentiate the products or services that are created, traded or provided, in keeping with the social responsibility requirements.*

The trademark competition function starts from its quality to be a means of individualizing the product belonging to a certain manufacturer. As an external sign of product value, a trademark allows the consumers to easily and rapidly orientate towards verified products, from manufacturers who have earned a good reputation (Murzea C., et al. 2004 pp. 184-188). In some cases of new products, of a special type, the trademark starts to identify itself with the product to such an extent that it is designated through the trademark. For instance, the example in which, the buyer makes Xerox copies, identifying the trademark of the copying machine (“Xerox”) with the achieved action. In the case in *which we consider the social responsibility trademark, this would easily and rapidly orientate the consumers towards the products and services offered by the socially responsible companies. The consumer’s preference for this trademark may stimulate many companies to adopt a socially responsible behaviour.*

The commercial function is based on the attraction power of the trademark. By means of adequate advertising, the trademark can cause a real “conditioned reflex” to the consumer. Good advertising provides a high selling potential for the trademark, irrespective of the quality and price of the product to which it is associated. By seducing

the consumers, the trademark becomes an autonomous element of the commercial success. Thus, from an accessory of the product, the trademark has become an independent asset with its own value (Roș V. 2001, pp. 549-574). *A socially responsible attitude assimilated to a trademark would certainly grant a well-deserved advertising to the companies which integrate the social responsibility requirements into their business strategies – including marketing strategies.*

As for the consumer protection function, the consumer has the right to be correctly informed on the quality of the products he buys, and the information must be complete in order to help his choice. Consumer protection is achieved not only by means of correct information; the issue is much more complex, and makes the object of specific regulations, related to the consumption law. In the strict sense of law no. 84/1998 related to trademarks and geographical indications, **the consumer** is defined as any natural person acting with other purposes than those of his commercial or professional activities. The consumer protection function derives from the quality guarantee function and from the source guarantee function because the source implies a constant quality of the marked product. So the trademark is an important identification attribute of a trader in relation to his clients. The trademark of a trader applied on a product is for the consumer a proof of the individuality of that product. The trademark is thus a “guarantee” of the authenticity of that product for the client of that trader (Murzea C., Mureșan L. 2008, pp. 119-124). *We believe that the social responsibility trademark is a guarantee of products and services that meet the requirements of all stakeholder categories. In this regard, I believe that the social responsibility is a double guarantee: a guarantee of the company’s product and service quality and a guarantee of responsible production for the community as a whole and for the natural environment, on which the health of all the consumers ultimately depends.*

We believe that one can consider the possibility to assimilate social responsibility to a trademark, because social responsibility plays an essential part in creating the reputation of the company which it enjoys in several milieus. The fundamental idea which lays the ground of an identity program is that all that a company does or supports by means of its social responsibility actions must project a clear idea of the values in which the respective company believes, a clear idea of whom and what matters to it, of its objectives. In this respect, all the developed ideas must have continuity and be consistent with the mission and vision of the company, explained to the broad public by means of the communication action mix.

Reality proves that the great trademarks are not born overnight. They constantly need a mixture of strategy, finances, legal counselling, and marketing-communication in order to maximize their values. At the same time, they need a certain understanding from the owners, who must be updated on the new trends which are the object of the respective trademark, and maintain certain freshness.

Brands of the future will have to stand out not only thanks to the quality of the products and a desirable image, but also by symbolizing the commercial company behind the trademark. The trademarks of the future will have to make a difference not only thanks to the quality of the products and a desirable image, but also by symbolizing the commercial company behind the trademark. According to Wally Ollins, a consultant

in the corporate identity field, “the following major stage in the evolution of trademarks is social responsibility. It will be a smart choice to be able to say: there is no difference between our products and prices and those of the competition, but we behave nicely (to the environment and society)” (Oprea L. 2005, pp. 34-44).

In the case of the Romanian companies, it is known that it is a long way from attracting the consumer to keeping him, because the consistency is maintained by trust, and trust is the essence of the powerful successful trademarks, especially in the context of the global tendency to make clients loyal.

Almost anything can become a new successful trademark. Any product offers one opportunities to create an image in one’s mind, which is unique. Almost any product can exceed the narrow, tight limits of its category. In the end, products have classical life cycles. The well-managed trademarks could live forever.

Thus, the social responsibility, of course correctly applied to the strategies developed by a company, can offer that much needed element of novelty to a successful trademark. All the advantages of the corporate social responsibility can give value to the trademark of the products of the socially responsible companies. Thus, the functions of the trademark of certain products can be doubled by a socially responsible attitude, correctly and consistently promoted by certain companies (Murzea C., Mureşan L. 2009a, pp. 747-751).

In promoting and acknowledging the corporate social responsibility in Romania, an economic and legal instrument can also be used: the social responsibility trademark. In this way, the provisions of the Council Resolution 2003/C 39/02 intending to have the EU member states promote the social responsibility of the commercial companies at national level have also been applied in Romania, in parallel with the development of a strategy at community level, especially by making the companies aware of the benefits. This instrument can also be used in promoting the transparency of the social responsibility practices integrated by the Romanian commercial companies (Murzea C., Mureşan L. 2009b, pp. 193-196.).

The assimilation of the social responsibility of a trademark would lead to the differentiation of those products or services created, marketed or provided while complying with the requirements of the social responsibility, and would stimulate the companies into adopting this type of commercial behaviour; and this because the social responsibility trademark would easily and rapidly direct consumers towards the products and services offered by the socially responsible companies (Poţincu, L., 2012, pp. 237-242).

According to Law no. 219/2015 regarding the social economy, **the social trademark** is seen as the certification form of the integration social enterprises in order to acknowledge their direct contribution to achieving the general interest and/or to improving the situation of the vulnerable groups.

The social trademark/social responsibility trademark is, in the context of the occurrence of a legislation regulating the social responsibility field also in Romania, an advantage for the business operators in case they choose such behaviour. Obviously, it is extremely beneficial to develop such an instrument for attracting business operators in the sphere of social responsibility and include it in a legislative act.

3. Conclusions and Proposals regarding the Social Responsibility Trademark

As for the performed analysis, we conclude that including several social responsibility elements in the Romanian legislative instrument is, in our view, a necessity. Dealing with social economy separately from social responsibility is a mistake because the concept legally regulated by the complexity and dynamics of the social responsibility field is missing. Also, we consider the limitation of expressing the social implication only to the integration of a vulnerable group neither beneficial, nor representative for a social economy.

As for the social trademark, we consider it necessary to change its name into the social responsibility trademark, within Law no. 219/2015 and Government Decision no. 585/2016. Also, a larger enforceability of these legislative instruments adopted in Romania may be given by including new articles into these legislative acts, articles which would develop the concept of social responsibility in relation to other categories of stakeholders, both internal and external of a socially responsible operator within a social economy.

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*** Romanian Government Decision no. 585 on 10 August 2016 for the approval of the Methodological Norms on the application of the Law no. 219/2015 regarding the social economy, published in Romanian Official Journal no. 705 of 12 September 2016.