



Arbitration CAS 2006/A/1109 SC FC Politehnica Timișoara SA v. CS FCU Politehnica Timișoara, award of 5 December 2006

Panel: Prof. Michael Geistlinger (Austria), Sole Arbitrator

Football

Misuse of the name and colours of a club by another club

Distinction between “name” (eventually “tradenname”) and “mark”

Competence of the national association to decide on the name and the colours of one of its member clubs

Sanction

1. A “name” is a word or combination of words by which a person is regularly known. It is a prerequisite to identify a person. Every collective unit needs names of its individual parts in order to be able to address them individually. It is a self-evident need, therefore, for a national sports federation to have an influence on the name of its members, as it must be able to distinguish its members and address them individually. It is a necessary element of the process of admission of members to such a sports federation to also decide on the differentiability of the name of a new member.
2. The “name” of a club must be differentiated from its “mark”. As a result, the rules of the law on marks do apply to personal names only as far as such names are legally recognized as a mark. In the case of such recognition, these rules do not apply to the other dimension of such a mark, namely being a personal name. Thus, the Romanian Football Federation, when deciding on the name of a club in the process of admission to membership does not interfere with the Romanian Law on Marks and Geographical Indications. It simply uses its autonomy as a sport federation under general and Romanian civil law to admit only such a new member whose name can be distinguished from the names of all other members of the federation.
3. The colours of a club must be seen as an element of the identity of a football club. They are signs of its differentiability from any other club and have significance for the identity of a club. Given the fact that the only purpose of a decision of a national football federation with regard to the names of its members is to guarantee their individuality, identity and differentiability, the colours follow the name of a club. In the admission process of a new member, the Romanian Football Federation must guarantee to its other members and to FIFA that the new member does not set out to imitate the colours of an old or existing member.

The Appellant, the SC FC Politehnica Timișoara SA, is a joint stock company under the Romanian Companies' Act (no. 31/1990).

The Respondent, the CS FCU Politehnica Timișoara (Clubul Sportiv FCU Politehnica Timișoara), is a sports association, a non-profit organization, structured and functioning in accordance with the Romanian Act on Associations and Foundations (Decree of the Romanian Government no. 26/2000).

The Appellant is a Romanian football club which, according to a confirmation by the Romanian Football Federation dated 28 June 2006, was founded in 1920. Until the season 1948/49 the club participated in the regional championships under the name Politehnica. During the season 1948/49 it bore the name CSU Timișoara, for the period 1950 – 1966 it changed its name to Stiința, and since 1966 is called again Politehnica. Since 1948/49 the club has always been in the Romanian A or B division. In the years 1950, 1956, and 1957/58 Politehnica under the name Stiinta came 3rd in the Romanian Championship. In the seasons 1957/58 and 1979/80 Politehnica won the Romanian Cup. In the seasons 1973/74, 1980/81, 1982/83, 1991/92 Politehnica played in the Romanian Cup Final. In the seasons 1980/81 and 1981/82 Politehnica took part in the European Cup of the Cups, in the seasons 1979/1980, 1990/91 and 1992/93 in the UEFA Cup.

The Appellant reports in its Appeal Brief, dated 4 July 2006, that in August 2002, the Appellant had been forced by “*a part of the political class from Timișoara*” in a general political climate of deep involvement of politics and business in football to leave its stadium in Timișoara and to move to Bucharest, whereas the AEK București team, which had played in Bucharest before, moved to the stadium of Timișoara. On 9 August 2002 the AEK București team changed its name to CS FC Politehnica AEK Timișoara, which as a matter of fact has been confirmed by the Secretary General of the Romanian Football Federation by letter dated 4 May 2005.

In the same letter of confirmation, the Secretary General of the Romanian Football Federation confirmed that CS FC Politehnica AEK Timișoara changed its name into CS FC Universitar Politehnica Timișoara on 31 January 2005. The letter shows that in all cases, i.e. when the AS Fulgerul Bragadiru changed its name into F.C. AEK București on 8 February 2002, when F.C. AEK București merged with CSU Politehnica Timișoara and adopted the new name CS FC Politehnica AEK Timișoara, as well as in the case of the last change of name of this club so far, this happened either by decision of the Emergency Committee of the Romanian Football Federation (changes of name) or by decision of the Executive Committee of the Romanian Football Federation (affiliation of CS FC Politehnica AEK Timișoara with the Romanian Football Federation). The decision on affiliation of the merged club with the Romanian Football Federation under the name FC Politehnica AEK Timișoara took place on 9 August 2002, which is five days before the new name had been decided by the Emergency Committee of the Romanian Football Federation (14 August 2002).

The Appellant further mentions that the last change of the name of the club on 31 January 2005 resulted from a change in the structure of the ownership of the club due to investment of the economic group Balkan Petroleum and from intervention by local state bodies in the Romanian

Football Federation. In mass-media the club uses the name “Politehnica Timișoara”. In parallel, the club started to use the history and track record of the Appellant which dates back to 1920.

The history and track record of the Appellant has been confirmed by letter of the Secretary General of the Romanian Football Federation dated 28 June 2006 as follows:

- “- *Politehnica Timișoara club was founded in the year 1920. Until the season 1948 – 1949 Politehnica Timișoara has been present in the regional championships. Starting with this season it has evolved only in the A and B divisions. (We attach a short diploma, with the achievements of the club – annex 1).*
- *Until 1990, the Politehnica Timișoara club belonged to the Politehnical institute from Timișoara. In 1991, FC Politehnica Timișoara club became a non-profit organization FC Politehnica. In the general meeting of FC Politehnica Timișoara from 07.12.2001 the transformation from non-profit organization into a corporation was decided, with regards to the Law of Sport 69/2001. In conformity with art. 44 from the Law 69/2001, RF of Football approved the affiliation to sport share associations FC Politehnica Timișoara. The president of the new sport share association was Mr. Claudio Zambon.*
- *In conformity with the decision of the Law of Sport 69/2001, FC Politehnica S.A. obtained the Certificate for Sport Identity from the Ministry of Youth and Sport at 05.06.2003 (annex a copy of CIS).*
- *At the meeting of the Emergency Committee of RFF from 21.08.2003 the change of the name and the fusion of the AS Dor Marunt team and FC Politehnica Timișoara were approved, under the new name of FC Politehnica Timișoara S.A. Beginning with the season 2003/2004 FC Politehnica Timișoara moved its new location, and now it is active in Bucharest”.*

All documents and certificates mentioned in this letter were added to the letter as attachments and duly submitted to the CAS. This goes in particular for the Certificate for Sport Identity of the Romanian Ministry of Youth and Sport certifying that the ministry has advised “*the formation and authorized the function of sport structure as Fotbal Club Politehnica Timisoara S. A. having its premises in Timișoara, Aries Street, no. 1, Timis county*” upon respective request of this club.

The Appellant further submitted a document showing that the Romanian Football Federation by letter of its Secretary General dated 19 February 2002 answered a request of the Respondent for registration to use the name “Clubul Sportiv Universitar “Politehnica” Timisoara” dated 12 February 2002, by not allowing the bearing of the name “Politehnica Timisoara”.

The Appellant attached to its Appeal Brief a poster of the F.C.U. Politehnica Timișoara using the logo, history and track record of the Appellant, in particular with regard to the start of sporting activity, major Romanian sporting results (1958, 1980), major European sporting results (1978, 1980, 1981, 1990, 1992) and other important sporting results (1958, 1976/77 and 1974, 1981, 1983 and 1992). A visit to the website of this club (<http://www.poliaektimisoara.ro/foto/index.php?cat=61&lang=english>) dated 4 July 2006, submitted to the CAS as a print document, shows similar examples of use of the logo, history and track record of the Appellant by the Respondent.

The Appellant further reports on the case of an effort of the Respondent to mislead a solidarity payment under FIFA Rules for the transfer of the player Cosmin Contra from Atletico Madrid in the 2004/05 championships. This effort failed due to an intervention of the Appellant with FIFA.

The Appellant brought the case before the Player's Status Committee of the Romanian Football Federation, which decided on 28 February 2006 by decision no. 19. The SC FC Politehnica Timișoara SA appealed against this decision to the Federal Appellate Commission of the Romanian Football Federation, which decided on 12 June 2006 by decision no. 23. The Federal Appellate Commission requested the Respondent to certify the trademark "Politehnica Timisoara", which it obviously contended to hold. The Respondent submitted a respective registration certificate no. 6730/29.11.2006 (must read "2005"), trademark holder "Universitatea 'Politehnica'" in Timișoara. The Appellant, on the other hand, showed to the Federal Appellate Commission as well as to the CAS that upon its request dated 6 June 2006, the Romanian State Office for Inventions and Trademarks (OSIM) answered that the required documentary research regarding trade marks and requests for submitting the trademark having identical verbal part (CD type 1), for the name "Fotbal Club Politehnica Timisoara" for the classes 35 and 41 resulted in a finding that neither at the national nor at the international level such trademark had been registered. OSIM confirmed that the Appellant has a registered request (no. M 2005 10230) for the registration of the trademark "FC Politehnica Timisoara". The letter on behalf of OSIM is signed by the "Șef Servici Analize și Sinteze Documentare" (Ovidiu Dinescu) and "Examinator" (Adina Ciurea). In addition, the Appellant explained to the Federal Appellate Commission and to the CAS that OSIM orally communicated to the Appellant that the name "Politehnica Timisoara" is a common name and cannot be registered, therefore, as a trademark.

The Federal Appellate Commission of the Romanian Football Federation held in its decision of 12 June 2006 that it was not entitled to solve a request regarding the use of a trademark, but could only solve a request regarding the risk of confusion created by the Respondent against the Appellant by using sports related identification elements of a club, i.e. name, colours, logo, and sport records.

The Respondent by "Memorandum in cancellation of the Recourse" dated 4 August 2006 drew the attention of the CAS to the fact *"that it is not admissible to ban the use of a certain name or of certain colors through a football-related action, such ban being outside the competence of any football authority. As long as the establishment of football clubs is governed by the same legislation applicable to trade companies and/or associations and foundations, who might have other activities, different from those related to football, included under their scope of activities, any alleged infringement of any provisions, and which might result in damages produced to third parties, must be settled by such institutions as clearly regulated under the applicable legislation, and not through the stipulations of any bylaws or articles of incorporation"*.

The Respondent by the same memorandum raised the question of who could compel the Romanian Football Federation, which has been established under the same regulations as its affiliated members, to change its name. Therefore the Appellate Committee of the Romanian Football Federation had decided not to be competent to enforce a non-statutory obligation, because such a decision would be illegal. The Respondent points at articles 71 and 68 of the Romanian Football Federation Bylaws which – according to the quotation of the Respondent – reads as follows:

“any litigation derived from or associated to the Romanian football activities, involving affiliates or football clubs and their officials ... shall be settled exclusively by the competent courts of law stipulated under Article 68 hereunder”.

The Respondent draws the conclusion that

“Therefore, it is obvious that only such conflicts related to football activities fall under the football commissions competence, such aspect being endorsed also by the material competence set forth under the Regulation on the Status and Transfer of Football Players – Article 85, paragraph 2; and the main claim under the said Resource is “to cancel (d)the right to use the colors, the track record and the name of the ... Club, and, moreover, not even a similar name”. But the competency to settle such a conflict is not stated under any of the Regulations or Bylaws of FRF” (Romanian Football Federation)”, or under any of the set attributions of the FRF commissions. In order to have such a right, one must be a trademark owner. And the rights related to trademarks are granted in Romania by a single institution: The State Office for Patents and Trademarks, which is governed by the special law no. 84/1998, and the Court competent to settle such conflict, in compliance with the Romanian Civil Procedure Code (Article 2, paragraph 1, letter e) is Bucharest Tribunal”

(emphasized by the Respondent).

The Respondent as a consequence holds, that the Appellant, in order to protect its name should have registered such name with the OSIM, but such application would have been rejected by OSIM, because the name “Politehnica Timisoara” was reserved since 2004 by the Polytechnic Institute Of Timisoara, a higher education body “*who is the actual moral owner of the name*”. The Respondent attached a copy of the certificate of registration of a trademark for “Politehnica Timișoara” showing as owner “Universitatea ‘Politehnica’ Din Timișoara”, Piața Victoriei, Nr. 2, Timișoara, Județul Timiș, 300006, Romania, for the classes 16, 25 and 41. The Respondent further added one page of extract of the law no. 84/1998. No part of the attachment was certified, no part was translated into English. The letter of confirmation on behalf of OSIM is signed by the “Șef Birou Eliberăr Certificate” (Maria Udrea) and by the “Referent” (Gabi Barbulescu).

The Federal Appellate Commission of the Romanian Football Federation based its decision on “*the provisions of the Romanian Football Federation regulations and football practice*”. Regarding the name, the Federal Appellate Commission held that it could not take any decision “*due to on the one hand by the registration with OSIM and on the other hand by the practice using the name of a club by the media without taking into consideration the exact name of the clubs from the Certificate of Sports Identity*”. With regard to the use of colours, the Federal Appellate Commission did not find any regulations which could provide for assigning exclusivity to one club.

The Federal Appellate Commission of the Romanian Football Federation makes reference to the official review of the club FCU Politehnica Timișoara and to the personal knowledge of the Committee members, which showed that the Respondent “*very often presented the sport records of FC Politehnica Timișoara as being their own*”. The Federal Appellate Commission held that in fact, “*the sports records belong(s) to a single sports club and follow(s) the respective club regardless of its location or name*”.

The Federal Appellate Commission of the Romanian Football Federation also found that the Appellant had used its logo since 1977 and also after leaving Timișoara, so that the use of the same

emblems by the Respondent *“leads to and maintains a risk of confusion regarding the full right holder of the sports records of the team of FC Politehnica Timișoara SA”*.

The Federal Appellate Commission of the Romanian Football Federation in its above decision estimated,

“that by the use of all four elements, a risk of confusion persists, so that although they can not decide about the right to use the name and to force FCU Politehnica Timișoara to change the colours of the club, they forbid FCU Politehnica Timișoara to use the sports records of the team FC Politehnica Timișoara SA (București) in official communications of the club, in reviews, presentations – written or electronic, as well as in any communications, documents issued by the club or other persons controlled by the club. Also FCU Politehnica Timișoara is forbidden to use the logo of FC Politehnica Timișoara SA (București) and if otherwise to pay FC Politehnica Timișoara SA (București) an amount of 5 000 EUR for every infringement of this decision”.

Upon request of the Counsel to the CAS, on behalf of the Sole Arbitrator, the Appellant submitted further documents concerning the alleged violation of its rights by the Respondent. These contain the English translation of a transcript of Mr Sorin Cartu, the head coach of the Respondent, dated 11 August 2006, showing the use of the history and track records of the Appellant, a copy of the page “Galerie” of the Respondent, also showing the use of the logo, history and track record of the Appellant by the Respondent. The copy evidences that updates of the website page “gallery” of the Respondent took place on 5 March, 29 May, 15 June, 14, 15, 19, 24, 25, 26, 27, 30, 31 July, 1, 11 and 13 August 2006. A further copy of a press note from Pro Sport (Sunday, 30 July 2006) (Mugur Gusatu) shows a joint use of the history and track record of the Appellant and the Respondent by the press. The Appellant further brought to the knowledge of the CAS the offer for a sponsorship contract for the period 2006 – 2007 for the total amount of 350,000 € to Unimpresa Romania, dated 25 July 2006, which was not accepted by Unimpresa Romania by letter dated 3 August 2006. The Appellant argues that this failure of sponsorship was caused by the misuse of its name, logo, history and track records by the Respondent. In addition, the Appellant submitted to the CAS print copies of visits to the website of the Respondent on 12, 13, 14, 17, 18, 21, 24, 25, 26, 27 and 28 July 2006 and 3, 4 and 7 August 2006. All of these copies show updates of various parts on the Respondent’s website, where new photos of the Respondent are added to old photos from the track record of the Appellant and to the history of the Appellant. Some updates took place on a daily basis, some on a weekly, some on a fourteen day basis.

The Appellant argues in its Appeal Brief that because of the conflict and confusion created by the Respondent, the Appellant had registered various economical damages, being forced to move its headquarters for sport activities to Bucharest, loosing an average of approximately 20,000 supporters which used to frequent the stadium in Timișoara, every match, and all local and national supporters that the Appellant had until the year 2002.

The Appellant contends that the finding of the Federal Appellate Commission of the Romanian Football Federation in favor of the Appellant, imposing a sanction of 5,000 € for every violation of the Appellant’s track record, history and logo is *“incomplete and unclear”*. Thus the decision can be interpreted that *“each violation means a general penalty in the sense that the Respondent can use abusively and illegally paying for that just once 5,000 Euro and may also mean that he will pay each time this amount, for each minute, day or even more, for the violation of the decision”*. The Appellant requests the CAS to keep in mind

“that each accessing of the official site of the Respondent, each press release, TV appearance, football match or other activity the Respondent violates this decision ...”. Also according to the Appellant, the Federal Appellate Commission of the Romanian Football Federation did not make a decision regarding the damages made by the Respondent since 31 May 2005, when the name was changed, until the date of the decision, which is the 12 June 2006, and how to calculate these sums.

The Appellant, requests the CAS

1. *to establish that FC Universitatea Timișoara shall change its name in a way that cannot be confused with the Appellant;*
2. *to establish that the FC Universitatea Politehnica Timișoara shall pay compensation to the Appellant for damage caused by the illegitimate use of this name;*
3. *to condemn the Respondents to the payment of the legal expenses incurred to the Appellant;*
4. *to condemn the Respondents to the payment of the proceedings costs before the CAS”*.

LAW

The Jurisdiction of the CAS

1. None of the parties dispute the jurisdiction of the CAS in the present case in principle. The Panel holds that the requirements set forth in art. 71 para. 4 Statute of the Romanian Football Federation, in effect at the relevant time, have been met. The provision reads as follows:
 4. *Under FIFA Regulations the decisions passed by the Federal Appellate Commission as instance of last resort may be appealed against only before the Court of Arbitration for Sport (TAS) based in Lausanne (Switzerland), which is an independent arbitration court whose jurisdiction in football-related cases is acknowledged by FIFA.*
 - a) *TAS has competent jurisdiction over any dispute that involves FIFA, any regional confederation, national federation, league, club, player, official, licensed players’ or match agent.*
 - b) *TAS Arbitration Code governs the hearing procedure in relation to any dispute submitted to TAS. There are also applicable the relevant FIFA provisions or those of the regional confederations, national federations, leagues, clubs, and subsidiary the Swiss law.*
 - c) *TAS has exclusive appellate jurisdiction in respect with appeals from last resort decisions in disciplinary matters provided that all due proceedings available at FIFA, UEFA, national federation, league or club level have been completed. The appeal shall be filed with TAS within 10 days as of the service of the decision.*

- d) *TAS is not competent in any case:*
- *relating to the breach of the Laws of the Game;*
 - *involving a 4-match or 3-month suspension;*
 - *in relation to any decision passed by an arbitration commission or an arbitration tribunal pertaining to a federation or a confederation”.*

2. The argument of the Respondent that it is not admissible to ban the use of a certain name or of certain colours through a football-related activity, because such ban falls outside the competence of any football authority, is an argument as to the merits of the case, since the respective competence for the Romanian Football Federation is ruled by art. 85 par 2 Regulation on the Status and Transfer of Football Players, and does not relate to the jurisdiction of the CAS.

The Applicable Law

3. Pursuant to art. R58 of the Code, the Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties, or in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body that has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the present case, the parties did not expressly agree on any choice of law. However, by their arguments both of them implicitly show that they consider Romanian law to apply subsidiarily. Due to the fact that also the body of the federation responsible for the decision that was appealed against to the CAS, the Federal Appellate Commission of the Romanian Football Federation, is domiciled in Romania, the Panel considers Romanian law to apply subsidiarily, both based on an implicit agreement between the parties and on the domicile of the respective federation. Romanian law applies, however, only as far as there are no applicable regulations on level of the Romanian Football Federation or FIFA.
4. With regard to FIFA, the Panel would also like to point at art. 60 para. 1 FIFA Statutes. This provision, which is the reason why the Romanian Football Federation included the provision of art. 71 para. 4 in its Statute, reads as follows:
- “1 *FIFA recognizes the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, Members, Confederations, Leagues, clubs, Players, Officials and licensed match agents and players’ agents.*
- 2 *The Provisions of the CAS Code of Sports-Related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law”.*
5. The Panel reads article 71 para. 4 of the Statutes of the Romanian Football Federation as an obligation to apply Swiss law subsidiarily, whenever Romanian law is in disharmony with Swiss law.

The Merits

6. The Appellant does not appeal against the whole of the decision of the Federal Appellate Commission of the Romanian Football Federation no. 23/12.06.2006. The Appellant feels satisfied that the Commission forbade the Respondent to use the sports records of the team of the Appellant in official communications of the club, in reviews, presentations – written or electronic, as well as in any communications, documents issued by the club or other persons controlled by the club, and to use the Appellant's logo. The Appellant also does not appeal against the sanction imposed by the Federal Appellate Commission for violation of its decision. The Appellant raised an appeal against the part of the decision of the Federal Appellate Commission where the Commission rules that it cannot decide on the question of misuse of the Appellant's name by the Respondent and where it holds that there are no regulations according to which a colour can be used exclusively by one club. Further to that, the Appellant finds the decision of the Appellate Commission of the Romanian Football Federation unclear as to the definition of violation and the respective sanction. In particular, the Appellant asks the CAS to fix the amount of payment to be settled by the Respondent for the total of period of violations since 31 January 2005 until 12 June 2006 of the Appellate Commission's decision to the Appellant.
7. The Respondent explicitly recognizes the existence and the track record of the former Politehnica Timișoara and holds that its institution is *"a new Politehnica Timișoara, with different identity from the old football club and with a new logo as representative sign of the club"*. On the other hand the Respondent is of the opinion that *"it is not admissible to ban the use of a certain name or of certain colours through a football-related action (activity), such ban being outside the competence of any football authority"*. Also nearly all arguments of the Respondent in its letter received by the CAS on 13 October 2006 relate to the name and to who may use this right. The Respondent argues in this letter that no sport arbitration court, neither at the national, nor at the international level, has respective jurisdiction, the Litigation Counsel within OSIM being the only institution to impose such measure. As an additional argument, going well beyond, the Respondent raises the issue that the right to use the record of the team Politehnica Timișoara was transferred by contract to the Appellant by the Respondent's club. The Respondent admits that this issue falls outside the scope of the decision of the Federal Appellate Commission of the Romanian Football Federation and, thus, was contested by a revision request of the Respondent. Based on this submission of the Respondent, this last argument, therefore, is not taken into consideration by the Panel.

A. *Name and Colours of a Club*

8. The Panel holds that both parties in their respective argumentation are mixing "name" (eventually "tradename") and "trademark". Also the Federal Appellate Commission of the Romanian Football Federation showed that it was undecided and unsure about and did not see the underlying difference according to international, European, but also Romanian legal traditions. A "name" is a word or combination of words by which a person is regularly known. A name specifies the individuality of a person. It is a prerequisite to identify a person.

Every collective unit needs names of its individual parts in order to be able to address them individually. It is a self-evident need, therefore, for a national sports federation to have an influence on the name of its members, as it must be able to distinguish its members and address them individually. It is a necessary element of the process of admission of members to such a sports federation to also decide on the differentiability of the name of a new member. In order to be able to function smoothly, a sport federation must achieve a situation in the process of admission of new members whereby the new members can be recognized as being different from all members already in the respective federation.

9. A “tradenname” is a name under which a firm does business. Football clubs do business and this is the reason why they are held by many legal orders to organize themselves in the organizational types and legal framework of commercial law. Nevertheless, doing business can never be considered the primary purpose of the activity of a member of a national sports federation. Doing business might be necessary to keep such a member existent, but the primary purpose of a football club as a member of its national football federation will always be to fulfill its role in exercising the respective sport, be it by participating in competitions, or be it by providing players for competitions. Thus, sport federations deal with the names of their members not from the perspective of a use of a tradenname, but from the perspective of a use of a (personal) name.
10. A “mark” (“trademark”) is usually understood to be a device (as a word) pointing distinctly to the origin or ownership of merchandise to which it is applied and legally reserved, to the exclusive use of the owner as maker or seller. According to chapter 1.3.a of the Romanian Law on Marks and Geographical Indications, no. 84/1998, a mark “*means a sign capable of graphic representation serving to distinguish the goods or services of a natural or legal person from those of other persons; marks may be constituted by distinctive signs such as: words, including personal names, designs, letters, numerals, figurative elements, three-dimensional shapes and, particularly, the shape of goods or of packaging thereof, combinations of colors, together with any combination of such signs; ...*”. Thus, the Romanian Law on Marks and Geographical Indications makes clear that it is possible that a “personal name”, e.g. the name of a football club, can be recognized as a mark in Romania, but such recognition is an additional process which adds to the character of a personal name the character of a mark (trademark).
11. The system of the respective Swiss law is not different from what has been elaborated above, as far as the key elements are concerned. It differs with regard to the details, but these are of no further relevance for deciding the present case (see for all major aspects of the topic eg. CELLI A. L., *Der internationale Handelsname*, Zürich 1993).
12. As a consequence of the above terminology to be differentiated, the rules of the law on marks do apply to personal names only as far as such names are legally recognized as a mark. In the case of such recognition, these rules do not apply to the other dimension of such a mark, namely being a personal name. Thus, the Romanian Football Federation, when deciding on the name of a club in the process of admission to membership does not interfere with the Romanian Law on Marks and Geographical Indications. It simply uses its autonomy as a sport federation under general and Romanian civil law to admit only such a new member whose

name can be distinguished from the names of all other members of the federation. The list of changes of names of clubs approved by the Emergency Committee or Executive Board of the Romanian Football Federation and confirmed by its Secretary General by letter dated 4 May 2005 gives evidence of such general practice within the Romanian Football Federation. This practice ensues from the obligations of the Romanian Football Federation as member of FIFA for Romania. As such member, the Romanian Football Federation is obliged according to art. 13.1.a FIFA Statutes *“to comply fully with the Statutes, regulations, directives and decisions of FIFA bodies at any time as well as with the decisions of the Court of Arbitration for Sport (CAS) passed on appeal on the basis of art. 60 par. 1 of the FIFA Statutes”*. According to art. 13.1.d of the FIFA Statutes, the Romanian Football Federation must ensure that its own members comply with the FIFA Statutes, regulations, directives and decisions of FIFA bodies. No contractual stability between professionals and clubs as required by chapter IV of the FIFA Regulations for the Status and Transfer of Players can be achieved in cases where there is not a clear line of delimitation of the identity of clubs as members of the respective national federation. One of the tools of guaranteeing such delimitation is the name of the club, the other important tool, given the tradition of the sport of football, are the colours of a club.

13. Having a member legitimately being called “SC FC Politehnica Timișoara”, which has not been objected to by the Respondent, the Secretary General of the Romanian Football Federation was correct, therefore, in informing the Clubul Sportiv Universitar “Politehnica” Timișoara by letter registered on 19 February 2002, no. 517, that no other sporting formation can bear the name “Politehnica Timișoara” and also the decision of the Emergency Committee dated 14 August 2002 to have the two parts of the name separated by the word “AEK” could be accepted as a minimum requirement for distinguishing the names and identities of the two clubs. However, the Panel finds that the decision of the Emergency Committee dated 31 January 2005 which allowed the CS FC Politehnica AEK Timișoara to change its name into “CS FC Universitar Politehnica Timișoara” did not further guarantee the differentiability of the names and identities of the two clubs. As a consequence, media, being held to abbreviate names and to work with short names in order to save space and time have been mixing the names and identities of the clubs, and a FIFA solidarity payment was addressed to the wrong club.
14. With regard to the colours of a club, the Panel holds that they must be seen as an element of the identity of a football club. They are signs of its differentiability from any other club and have significance for the identity of a club. Football games are games between two teams and their respective fans shown to the other team, to the public, to the media, to TV by the colours of the respective club. Given the fact, that the only purpose of a decision of a national football federation with regard to the names of its members is, to guarantee their individuality, identity and differentiability, the Panel holds that the colours follow the name of a club. In the admission process of a new member, the Romanian Football Federation must guarantee to its other members and to FIFA that the new member does not set out to imitate the colours of an old or existing member.
15. As a consequence, the Panel holds that the Romanian Football Federation is competent and responsible for guaranteeing the respect of the name and colours of any of its members by all

other members, in particular by any new member through its admission process. The decision no. 23 dated 12 June 2006 of the Federal Appellate Commission of the Romanian Football Federation, therefore, was incorrect, in so far as the Commission did not decide on the question of the name and colours of the two clubs. The Panel, therefore, orders the Respondent to continue to use its earlier name CS FC Politehnica AEK Timișoara or to adopt another name, approved by the Romanian Football Federation, that does not include the risk of confusion with the name of the Appellant.

16. As the Respondent recognized that it was not allowed to use the track record, history and logo of the Appellant, the Panel wishes to emphasize that the Respondent is also not allowed to imitate the colours of the Appellant in conjunction with the above-mentioned usage of the track record, history and logo of the Appellant. The Respondent is interdicted, therefore, to use the colours, track record, history and logo of the Appellant.

B. Violation of the Personality Rights of the Appellant and Respective Sanction

17. The differentiation between name and mark of a club has an influence on the question of protection of name or mark against violations. The Panel has found above that the name and colours as elements of the personality of a club have been violated by the Respondent. The law and practice of the Romanian Football Federation do not extend to the sphere of protection of a mark, should a personal name of a club have been registered by OSIM as a mark. The Respondent and the Federal Appellate Commission of the Romanian Football Federation are right as far as the competence for violations of a registered mark and for the settlement of eventual disputes with regard to the registration of a mark are seen by them. Therefore, the Panel does not see a necessity to open a debate on the question raised by both parties as to whether and for whom an application for registration of a mark or a mark was registered at or by OSIM.
18. The Federal Appellate Commission did not specify in its decision, which and how many violations of the personality rights of the Appellant by the Respondent took place. The Commission ordered the Respondent not to use the sports records of the Appellant's team in official communications of the club, in reviews, written or electronic presentations, as well as in any communications, documents issued by the club or other persons controlled by the club, and not to use the logo. For every future infringement of this decision, the Respondent is held to pay an amount of € 5,000. The Panel has added to this any use of the name and colours of the Appellant. The Panel understands the amount imposed by the Federal Appellate Commission of the Romanian Football Federation as a sum which must be paid for every future case of violation of the Appellant's personality rights by the Respondent and not as a sum covering all or a certain number of violations as a total sum. The Panel holds that a violation will have occurred when the Respondent plays an official match whilst using the Appellant's name, track record, history and logo and colours.
19. The Panel has noted that the Federal Appellate Commission did not impose any financial sanction on the Respondent with respect to the infringements committed between 31 January

2005 and 12 June 2006. The Panel therefore refers this aspect of the dispute back to the Federal Appellate Commission. It shall be for the Federal Appellate Commission to decide the amount of compensation to be paid to the Appellant by the Respondent for each usage of the Appellant's name, track record, history and logo and colours between 31 January 2005 and 12 June 2006 inclusive. For the purposes of calculation of the entire amount of compensation to be paid to the Appellant by the Respondent, a usage shall be defined as an official match played by the Respondent whilst using the Appellant's name, track record, history and logo and colours. The Federal Appellate Commission shall calculate and notify to the parties the amount of compensation to be paid by the Respondent to the Appellant for each violation of the Appellant's personality rights by the Respondent between 31 January 2005 and 12 June 2006 inclusive.

The Panel will now examine the sanction to be imposed on the Respondent for the infringements committed after 12 June 2006.

20. The Panel finds it reasonable to impose a sum of € 5,000 per infringement as ordered by the Federal Appellate Commission. Such a sum per infringement looks high when being compared to the average Romanian monthly income of approximately € 380 and when compared to sanctions introduced by the Romanian legislation in the context of preparation of the Romanian legal order for accession to the European Union. Thus, e.g. art. 22 of the Romanian Act on Electronic Commerce, no. 365 of 7 June 2002, provides for a sanction of ROL 10,000,000 – 500,000,000, which is about € 300 – 15,000 in the case of contraventions. Art. 52 read together with art. 41 of Title III on Preventing and Fighting Cyber-Crime of the Romanian Anti-Corruption Act, no. 161/2003, provides for a sanction of ROL 5,000,000 – 50,000,000, which is about € 150 – 1,500 to be imposed for a violation of the obligations of the owners or administrators of computer systems concerning information of users of restricted access. Art. 142 of the Romanian Act on Copyright and Neighbouring Rights, no. 8 of 14 March 1996, provides for a sanction of ROL 700,000 – 7,000,000, which is about € 20 – 200 for reproduction of a work in its entirety or in part. Art. 5 para. 1 read together with art. 13(1)e and 13(2) of the Romanian Act on the Processing of Personal Data and the Protection of Privacy in the Electronic Communications Sector, no. 506/2004, provides for a sanction of ROL 50,000,000 – 1,000,000,000, which is about € 1,500 – 30,000, for contravention to the obligation that traffic data relating to subscribers processed by the provider of a public electronic communications network must be erased or made anonymous. This act differentiates, however, considering the turnover of companies. Companies with a turnover exceeding € 1,500,000 can be fined up to 2 % of their turnover according to this act.
21. On the other hand, art. 16 of the FIFA Disciplinary Code provides for fines in the amount of CHF 300 – 1,000,000 without nation criteria. Considering the fact that the CAS has to deal with a football club of the A division in Romania, which also is entitled to receive FIFA solidarity payments under the general FIFA scheme in case of transfer of one of its players, and lacking any information of the Appellant or Respondent or the Romanian Football Federation of whether there exists Romanian court case law in relation to the violation of personality rights of a football club by a football club having a comparable turnover to the Respondent, the Panel wishes to uphold the amount of sanction imposed by the Appellate

Commission of the Romanian Football Federation for every case of future violation of the Appellant's personality rights by the Respondent.

22. Since 12 June 2006, the date of the decision challenged, almost six months have passed and the Panel has been presented with evidence of further violations of the Appellant's personality rights by the Respondent during this period. The Panel therefore rules that a pecuniary sanction shall be imposed upon the Respondent for the period starting from 13 June 2006, up to the date that the Respondent changes its name and ceases its use of the Appellant's track record, history and/or logo in accordance with the present award. The Respondent shall therefore compensate the Appellant in the amount of € 5000.00 for each official match played by the Respondent whilst using the name FCU Politehnica Timisoara, from 13 June 2006 until the Respondent changes its name back to CS FC Politehnica AEK Timișoara or any other name that does not include the risk of confusion with the name of SC FC Politehnica Timișoara SA, by inclusion in its name of the term "Politehnica Timișoara".
23. On the other hand, the Panel decides to exclude any kind of damage calling for indemnification by the Appellant that cannot be seen in the context of violation of its personality rights (e.g. transfer of the club from Timișoara to Bucharest, relegation to another division in Romania, loss of supporters etc.). The Panel further holds that all kinds of damages (pecuniary and moral) for violation of its personality rights are covered by the sum of € 5,000 per case of violation. The Panel further does not see a direct link between the rejection of the offer of a sponsorship contract with the Appellant and the violation of its personality rights.
24. The Panel holds that for violations of the personality rights of the Appellant in the period 13 June 2006 – 4 December 2006, the sum of € 90,000 is imposed on the Respondent, corresponding to € 5,000 for each match played by the Respondent in the first division of the Romanian football league since 13 June 2006. This amount is to be paid within 1 month from the receipt of this award. In case the sum has not been paid to S.C.S. F.C. Politehnica Timișoara S.A. by this deadline, FCU Politehnica Timișoara or whoever might be its legal successor at present, is ordered to pay 5% interest p.a.
25. In addition to the amount of € 90,000, the amount of € 5,000 will be payable by the Respondent for each match played from 4 December 2006 until the Respondent changes its name in accordance with this award.
26. The Panel wishes to remind the Respondent and the Romanian Football Federation of their obligations under FIFA law to respect and implement the decisions of the CAS.

The Court of Arbitration for Sport rules:

1. The appealed decision of 12 June 2006 of the Federal Appellate Commission of the Romanian Football Federation is set aside.
2. FCU Politehnica Timișoara is ordered to continue to use its earlier name CS FC Politehnica AEK Timișoara or to adopt another name, approved by the Romanian Football Federation, that does not include the risk of confusion with the name of SC FC Politehnica Timișoara SA. FCU Politehnica Timișoara is ordered to pay the amount of € 5,000 as compensation to SC FC Politehnica Timișoara SA for each official match played from 5 December 2006, until it effects a name change in accordance with the present award.
3. FCU Politehnica Timișoara is interdicted to imitate the colours, or use the track record, history and logo of SC FC Politehnica Timișoara SA.
4. FCU Politehnica Timișoara is ordered to pay the amount of € 90,000 as compensation for violation with regard to the use of the name, colours, track record, history and logo of SCS FC Politehnica Timișoara SA between 13 June 2006 and 4 December 2006 inclusive. This amount is to be paid within 1 month from the receipt of this award. In case the sum has not been paid to SCS FC Politehnica Timișoara SA by this deadline, FCU Politehnica Timișoara is ordered to pay 5% interest p.a.
5. The Federal Appellate Commission of the Romanian Football Federation shall render a decision, within a reasonable timeframe, deciding the amount of compensation to be paid to SC FC Politehnica Timișoara SA by FCU Politehnica Timișoara for each usage of SC FC Politehnica Timișoara SA's name, track record, history and logo and colours between 31 January 2005 and 12 June 2006 inclusive, and shall multiply this amount by the amount of official games played by FCU Politehnica Timișoara during that period to calculate the entire amount of compensation to be paid by FCU Politehnica Timișoara to SC FC Politehnica Timișoara SA for violation of SC FC Politehnica Timișoara SA's personality rights during that period.

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