



AUSTRIA
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Country Report

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www.greiter.lawfirm.at

1.	Use of Domain Name www.galtuer.at
When:	November 2001
Where:	Austrian Supreme Court
What happened:	<p>A private hotel operator was the owner of the web site under the domain "www.galtuer.at" and was offering tourist information on this web site.</p> <p>The plaintiff was the official tourist association of Galtuer and claimed that with the use of this web site the defendant was illegally using the plaintiff's name. The Supreme Court dismissed the case and pointed out that the holder of a name of a city or a village such as Galtuer would be the respective community and not a tourist association, not even the official tourist association for that city or village. Furthermore, a name is only protected against being used by another party if the justified interests of the holder of the name are adversely affected. As the defendant (the hotel operator) was providing information about Galtuer and its recreational facilities on the web site, no such violation of the justified interests of the holder of the name was given.</p>
Comment:	Even names of cities and villages may be used by private persons as domain names if the use of the web site does not violate the justified interests of the holder of the name.

2.	Use of the domain name " www.bundesheer.at " by a private person.
When:	September 2001

Where:	Austrian Supreme Court
What happened:	<p>The defendant, a private individual, was holder of the domain name "www.bundesheer.at" (which can be translated as ("'www.federalarmy.at'"). Under this web site critical reports about the Austrian army were published. The entire content of the homepage was negative and criticised the federal army.</p> <p>The Republic of Austria filed a claim against the defendant to refrain from the use of the web site www.bundesheer.at with the argumentation that the Austrian Bundesheer is an organization of The Republic of Austria and that therefore the Republic of Austria is the legitimate holder of this name. The defendant, by using this name, was violating the Republic's rights to this name.</p> <p>The Austrian Supreme Court admitted the claim and ordered the defendant to refrain from any further use of the name "Bundesheer". According to the Austrian Supreme Court The Republic of Austria is the legitimate holder of the name "Bundesheer". The justified interests of the holder of the name are adversely affected in this case, as no holder of a name must tolerate criticism and critical reports being published under its own name.</p>
Comment:	It would even be possible to use the name of public or state organizations as domain names in a private website, however the content of the web site is crucial.

3.	Transportation of Cigarettes through Austria.
When:	May 2001
Where:	Austrian Supreme Court
What happened:	<p>The defendant was selling cigarettes under the name "Boss". The defendant had its business in Slovenia, transported the cigarettes by rail through Austria and sold them in other European countries. The defendant had no licence and no right to use the name "Boss". No cigarettes however, were distributed in Austria.</p> <p>The plaintiff was the holder of the trademark "Boss", which was registered with the Austrian patent office.</p> <p>The plaintiff started court action against the defendant and argued that the defendant had violated his trademark.</p> <p>The Austrian Supreme Court admitted the claim and granted the court order. Regardless of the fact that no cigarettes were sold in Austria, the Supreme Court found that it is sufficient if goods, which are illegally marked with a trademark, are transported through Austria, as such behaviour is already a violation of the Austrian</p>

	Trademark Act.
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