



Corporate Law Newsletter Switzerland

Is a Company Entitled to Monetary Compensation for Moral Damages? The Federal Supreme Court Finds Yes.

Introduction

Whether or not a legal person is entitled to compensation for moral damages has been the subject of many scholarly disputes. In the case decided by the Federal Supreme Court on April 11, 2012 the Federal Supreme Court had to decide, whether or not a company is entitled to monetary compensation for moral damages.

A disgruntled former employee of the plaintiff set up a defamatory home page by using the same domain as the employer however, using the top level domain .com instead of .ch. The employer filed an action against the former employee which amongst others included a request for the award of a compensation for moral damages. The court needed to decide, whether a legal person's personality rights may be seriously violated that the violation may not be corrected otherwise such that monetary compensation for moral damages may be awarded.

Decision

The Federal Supreme Court reaffirmed its continuing and largely undisputed practice that a legal person is entitled to the protection of its personality.

The Federal Supreme Court then argued that in principle there exists a unity in action between the corporate bodies and the legal person, such that the corporate bodies and the legal person are to be considered as one.

The court then concluded short by way of analogy that where a legal person is the subject of a violation of its personality, the corporate body suffers itself a moral damage, which permits the company to claim compensation for moral damages.

Comment

It cannot be disputed that according to the long standing and largely undisputed jurisprudence of the Swiss Federal Supreme Court, a legal person enjoys the benefit of the protection of its personality. This long standing jurisprudence has certainly its merits. However, to conclude, as in our view the Federal Supreme Court unconvincingly did, that consequently a legal person may request compensation for moral damages (and not financial damages suffered) is in our view at least debatable.

Interestingly enough, Article 49 Swiss Code of Obligations permits a judge to also award compensation in a different manner. The publication of the judgement would have been one.

Now, before getting all too excited about this decision, it must be noted that the Federal Supreme Court reduced the compensation for moral damages from CHF 25'000 to CHF 10'000. Traditionally in Switzerland, awards for compensation for moral damages were and still are contained at very low levels. Even in cases where children have lost one of their parents, compensation for moral damages in Switzerland was contained at very modest levels not exceeding low five digit figures.



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