

" MECHANISM OF PROTECTION OF RIGHTS TO TRADEMARKS IN UZBEKISTAN".

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Annotation: In this thesis, a legal analysis of the legislation of the Republic of Uzbekistan in the field of intellectual property is noted, and the main types of offenses occurring in practice are noted and the mechanism of protection of rights to trademarks is studied, ways to restore the violated rights of owners of means of individualization of goods and services and issues of prosecution for an offense in the field of intellectual property.

Keywords: Means of individualization, trademarks, counterfeit products, exclusive rights, civil circulation.

Violation of the rights to trademarks that belong to their rightsholders (owners) not only causes significant damage to the owner's reputation and the goods they produce but also entails a violation of their economic rights and interests.

Practice shows that the most common violations today are: registration by Uzbek entrepreneurs of world-famous trademarks in their own name, the release of counterfeit products by copying and imitating someone's trademark already known on the market, as well as violations related to the import into the territory of the Republic of Uzbekistan of goods with the use of intellectual property objects on them without the consent of the copyright holder. First of all, it should be noted that under the legislation of the Republic of Uzbekistan, only registered trademarks are subject to legal protection [1].

Thus, under Article 1103 of the Civil Code of the Republic of Uzbekistan *"the owner of the right to a trademark has the exclusive right to use and dispose of the mark belonging to him. The owner of the right to a trademark also has the exclusive right to make changes and additions to the trademark."* Accordance with Part 1 of Article 26 of the Law "On Trademarks, Service Marks and Appellations of Origin of Goods" (hereinafter - "Law on Trademarks"), *the owner of the trademark has the exclusive right to use and dispose of the trademark.* At the same time, the legislator notes the breadth of distribution and application of exclusive rights, stating that the exclusive right to a trademark is valid concerning the goods that are presented in the certificate, and is carried out during the registration period.

It should be noted that the legislator also defines the concept of *"violation of the exclusive right to a trademark"*. Thus, according to Part 3 of Article 26 of the Law of the Republic of Uzbekistan "On Trademarks", a violation of the exclusive right to a trademark is recognized as unauthorized manufacture, use, import, offer for sale, other introduction into civil circulation or storage for this purpose of a trademark a mark or a product designated by this sign, or a designation confusingly similar to it, concerning similar products. Accordingly, any unauthorized use of a duly registered trademark and the sale of goods marked with a protected mark is an offense. When this kind of offense is revealed, the legislation provides for ways to protect exclusive rights. Their list is specified in Article 1040 of the Civil Code of the Republic of Uzbekistan (accordance with Article 11 of the Civil Code of the Republic of Uzbekistan) and includes recognition of rights; restoration of the situation that existed before the violation of the law; suppression of actions that violate the right or create a threat of its violation, etc. Protection can also be carried out by seizure of material objects, by the power of which exclusive rights were violated, and material objects created as a result of such a

violation with the mandatory publication about the violation and the inclusion in it of information about who owns the violated right [2].

In addition, the disposition of Article 1107 of the Civil Code of the Republic of Uzbekistan provides for civil liability for such violations, according to which a person who illegally uses a trademark is obliged to stop the violation and compensate the owner of the trademark for the losses incurred by him. Losses, according to Article 14 of the Civil Code of the Republic of Uzbekistan, mean expenses that a person whose right has been violated has made or will have to make to restore the violated right, loss or damage to his property (real damage), as well as lost income that this person received under normal conditions of civil turnover, if his right had not been violated (loss of profits).

Further, for a better understanding of other methods of protection, we will conditionally divide the mechanism of protection of trademark rights into three parts, based on the most common violations today and the methods of protection used in the commission of each of the offenses separately:

1. Registration by entrepreneurs in their name of world-famous trademarks or designations confusingly similar to other people's well-known trademarks.

If such a violation is detected, under the current legislation of the Republic of Uzbekistan, the following methods of protecting trademark rights can be applied:

a) Appeal of the copyright holder to the Appeal Council of the Ministry of Justice of the Republic of Uzbekistan (hereinafter - the Appeal Council) to invalidate a certificate for a trademark that was registered contrary to the current legislation of the Republic of Uzbekistan.

b) The possibility of the rightsholder's appeal to the economic court of the Republic of Uzbekistan with an application for the cancellation of the certificate for a trademark registered contrary to the established norms, which must be considered and a ruling issued on the appointment of the case for proceedings or refusal to accept for proceedings within 5 days.

2. Release of counterfeit products by copying or imitating someone else's trademark known on the market (unfair competition). When such violations are detected, the existing methods of protecting trademark rights can be conditionally divided into pre-trial and judicial.

a) Pre-trial procedures: negotiations, filing a claim, and appeal to the Antimonopoly Committee of the Republic of Uzbekistan.

Under the general provisions of the Civil Code of the Republic of Uzbekistan, as a rule, copyright holders themselves contact the violators and negotiate to stop violations of the rights of trademark owners (if necessary, letters of claim are sent). And if the negotiations are successful, a letter of commitment is signed by the offender to stop his illegal activities.

Article 13 of the Law of the Republic of Uzbekistan "On Competition" prohibits unfair competition. Unfair competition is understood as the actions of an economic entity or a group of persons aimed at gaining advantages in the implementation of economic activities that contradict the legislation, business customs, and cause or may cause losses to other business entities (competitors) or cause or may damage their business reputation. The law also classifies the following illegal actions as unfair competition:

1) incorrect comparisons that can cause losses to another business entity or damage its business reputation. In this case, under an incorrect comparison, the law recognizes the comparison of a product of an economic entity with another product of another economic entity (competitor) by using words or designations that create the impression of the superiority of the product without specifying characteristics or comparison parameters that have objective confirmation, or cases when statements, containing the indicated words or designations are false, inaccurate or distorted.

2) Sale of goods with illegal use of the results of intellectual activity and equated means of individualization of a legal entity, means of individualization of goods, including the sale of goods with illegal use of a designation identical to a trademark, firm name of an economic entity (competitor) or similar to it to the extent mixing, by placing it on goods, labels, packaging or otherwise using it concerning goods that are sold or otherwise introduced into civil circulation, as well as by using it in a domain name. It should be emphasized that the goods, on the packaging and labels of which the designations, identical (identical) or similar to the degree of confusion with the previously registered trademarks, are illegally used, are recognized as counterfeit.

3) *Misleading consumers about the nature, method, and place of production, consumer properties of the product, its price and quality, warranty obligations of the manufacturer (contractor); imitation of a product introduced into civil circulation by an economic entity (competitor) by reproducing the external design of the product and its shape, name, marking, label, packaging, color scheme, trademark, copying advertising materials or other elements that individualize the product of an economic entity (competitor) [3].*

So, the presence of such a special article in the Law of the Republic of Uzbekistan "On Competition" provides the right holders of trademarks with the opportunity to apply to the Antimonopoly Committee of the Republic of Uzbekistan (hereinafter referred to as the Committee) to initiate an unfair competition case. When choosing this method of protecting trademark rights, liability arises for failure to comply with the order of the Antimonopoly Authority under Part 2 of Article 178 of the Code of Administrative Responsibility (CAR) of the Republic of Uzbekistan. And in the case of the fourth violation, the offender is prosecuted under Article 183 of the Criminal Code (CC) of the Republic of Uzbekistan.

Pre-trial procedures are not mandatory, and the copyright holder has the right to apply for the protection of his rights and interests directly to the judicial authorities, without resorting to the negotiation process or appeal to the Antimonopoly authority.

b) Litigation: Consideration of cases of infringement of trademark rights by courts of general jurisdiction.

Per the current legislation, the owner of a trademark, who believes that his exclusive rights to a trademark have been violated, has the right to apply for protection of his rights to the judicial authorities of the Republic of Uzbekistan, with the following claims:

- *on the termination of the violation of the rights of the owner of the trademark;*
- *on the restoration of the situation that existed before the violation of the right, and the suppression of actions that violate the right or create a threat of its violation;*
- *on compensation for damages, on the recovery of a forfeit, on compensation for moral damage.*

The restoration of the situation that existed before the violation of the law includes such actions as removal of a trademark or designation of a product similar to it to the point of confusion, or its packaging, prohibition of its production and sale, termination of promotions, etc. If it is impossible to fulfill the above, the goods are subject to destruction.

In addition to the above, since the establishment of the administrative courts, the jurisdiction of cases related to "appeal against actions (inaction) and invalidation of decisions of state bodies" is attributed to the competence of the administrative courts. In this regard, another way to protect trademark rights is to appeal to the court of the copyright holder with the requirement "to invalidate the decision on registration of a trademark of the Intellectual Property Agency under the Ministry of Justice of the Republic of Uzbekistan", in cases where the trademark is registered contrary to the established norms legislation and in violation of the rights of copyright holders.

3. Import of goods into the territory of the Republic of Uzbekistan using objects on them of intellectual property without the consent of the copyright holder (parallel import).

Customs protection measures. The customs legislation of Uzbekistan contains provisions on the inadmissibility of violations of intellectual property rights of third parties when importing goods into the territory of the Republic of Uzbekistan and exporting from it [4].

Under the amendments to the Customs Code, which entered into force on April 21, 2016 [5], the institution of the Customs Register of Intellectual Property Objects (CROIPO) was introduced, according to which the copyright holder, who has reasonable grounds to believe that there is a violation of his rights when moving through the customs border of goods that, in his opinion, are counterfeit, or when performing other actions with goods under customs control, he has the right to submit an application to the customs authorities for taking measures related to the suspension of the release of such goods. It was also stipulated that intellectual property objects, in respect of which a decision will be made on the application of special protection measures, shall be entered into the customs register of intellectual property objects.

However, even though a new procedure was introduced to protect the exclusive rights of rightsholders, today the problems associated with the illegal and unauthorized import by third parties of goods marked with the trademarks of rightsholders into the territory of the Republic of Uzbekistan have not yet been reflected in the legislative acts of the Republic of Uzbekistan.

So, Chapter 56 of the Customs Code is devoted to the protection of intellectual property rights. It defines the measures applied by the customs control authorities to violators. Under Article 382, the following is included in the competence of the customs authorities regarding the protection of intellectual property: a) suspension of the release of goods containing signs of infringement of intellectual property rights; b) cancellation of the decision to suspend the release of goods containing objects of intellectual property. For these measures to be taken by the copyright holder or his authorized representative, he must apply for inclusion in the customs register of intellectual property objects.

The term for which the IP object is entered into the Customs Register should not exceed three years. In the course of identifying counterfeit goods by the customs authorities, they do not independently apply measures to protect intellectual property rights. For this, a prerequisite is the filing of an application for the adoption of measures to protect IP rights from the rightsholders.

The copyright holder who submits this application undertakes the obligation to compensate for property damage that may be caused to the declarant in connection with the suspension of the release of goods. Thus, the customs authorities suspend the release of goods containing IP objects for a period not exceeding ten working days. If the rightsholder submits a court ruling on the appointment of the case to trial, the specified period is extended by another ten working days.

Summing up, we can conclude that at the moment the legislation provides for quite extensive systems of measures to protect the rights to trademarks, and which method of protecting rights to a trademark to use remains for the copyright holder. However, we cannot talk about the perfection of this system due to the presence of some gaps, in particular: the customs authorities, by virtue of the competence granted to them, do not have the right to act independently when identifying goods using intellectual property objects, and the "launch" of this mechanism remains in the hands of the owner of exclusive rights to IP, as well as the existing mechanism for the application of administrative responsibility, namely 1771 Art. CAR is also imperfect due to the absence of cases of bringing violators to administrative responsibility on the grounds provided for by this article in law enforcement practice. Therefore, this suggests that the issue of improving mechanisms for the protection of trademark rights is on the agenda.

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