

## LEGAL CHARACTERISTICS OF PROPERTY RIGHTS IN COMPLIANCE WITH CIVIL LEGISLATION

### ЮРИДИЧНА ХАРАКТЕРИСТИКА ПРАВА МАЙНА ВІДПОВІДНО ДО ЦИВІЛЬНОГО ЗАКОНОДАВСТВА

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The trademark is a symbol granted to the proprietor of a trademark to authorize its use by other organizations and individuals for the purpose of confirming the origin characteristics, composition, materials, manufacturing methods of goods, and the provision of services of the respective organization or individual. The registration of a trademark also serves the purpose of safeguarding the reputation of the brand by preventing unauthorized use by others. The registration of a trademark is a critical process that ensures legal protection for the owner of the trademark. One of the primary functions of a trademark is to determine the origin of a product or service. Exclusive rights and the right to use the trademark are registered in the State Register of Trademarks.

The article delves into the legal attributes inherent in trademarks, aligning with the principles enshrined in civil legislation. Trademarks assume a significant role as a tool for market selection due to their exclusive rights. Following the formal registration of a trademark, it effectively precludes others from employing the same mark in association with analogous products or services. In the wider context, trademarks serve as emblematic representations of the owner's goods or services, establishing recognition among commercial entities and consumers within the respective industry. The registration of trademarks can be executed either at the national or international level, adhering to the provisions delineated in the "Madrid Agreement Concerning the International Registration of Marks." Under this agreement, each nation maintains its individual national registries, collective trademarks, or participates in an international registration framework. The decision to register a trademark is of significant importance both at the national and European levels, as it grants certain advantages to the company.

**Key words:** intellectual property, trademark, property rights, ownership law, copyright.

Товарний знак – символ, який надається власнику товарного знака для дозволу його використання іншими організаціями та особами з метою підтвердження ознак походження, складу, матеріалів, способів виготовлення товарів, а також надання послуг відповідної організації чи фізичної особи. Реєстрація торгової марки також служить меті захисту репутації торгової марки шляхом запобігання несанкціонованому використанню іншими особами. Реєстрація торгової марки – це важливий процес, який забезпечує правовий захист власника торгової марки. Однією з основних функцій торгової марки є визначення походження товару чи послуги. Виключні права та право на використання торгової марки зареєстровані в Державному реєстрі товарних знаків.

У статті розглядаються правові ознаки, притаманні товарним знакам, узгоджуються з принципами, закріпленими в цивільному законодавстві. Торгові марки відіграють важливу роль як інструмент вибору ринку завдяки своїм виключним правам. Після офіційної реєстрації торгової марки вона фактично перешкоджає іншим використовувати цю саму марку в поєднанні з аналогічними продуктами чи послугами. У ширшому контексті товарні знаки служать емблематичними зображеннями товарів або послуг власника, забезпечуючи визнання серед комерційних організацій і споживачів у відповідній галузі. Реєстрація торгових марок може здійснюватися як на національному, так і на міжнародному рівні, дотримуючись положень, викладених у «Мадридській угоді про міжнародну реєстрацію знаків». Згідно з цією угодою кожна країна веде власні національні реєстри, колективні торговельні марки або бере участь у міжнародній системі реєстрації. Рішення про реєстрацію торгової марки має важливе значення як на національному, так і на європейському рівнях, оскільки дає певні переваги компанії.

**Ключові слова:** інтелектуальна власність, торгова марка, право власності, авторське право.

**Introduction.** The registered trademark constitutes a property right, distinguishing the origin of a commercial enterprise owner's services and products from their competition, both in the physical marketplace and on the digital landscape, often referred to as social networks. The trademark signifies a distinctive attribute that the entrepreneur possesses for their products or services and is characterized by its uniqueness, implying that it is not associated with a similar sign previously registered by another company. Any symbol can be eligible for trademark registration, provided it meets the condition of distinctiveness and innovation, meaning that no identical mark has been registered by another entity.

The decision to register a trademark is of significant importance both at the national and European levels, as it grants certain advantages to the company. Compliance with the requirements outlined in Article 6 of the Paris Convention is imperative when identifying trademarks with broad scope. Several factors come into play when determining the extent of trademark expansion: the extent of usage among consumers, the channels and areas of dissemination, the distinct characteristics associated with the trademark, including the territory of usage, duration, size, exhibition information, advertising, and announcements, regions where preference is accorded to the trademark, and the position the product or service holds in the market [1, p. 11].

Trademarks, in essence, represent distinctive symbols that convey the proprietary association of a given product or

service with a specific entity, be it a company or an individual. Leveraging the realm of intellectual property, consumers attain the capacity to discern and identify the intellectual products or services they engage with. Trademarks, as versatile and identifiable symbols, can take the form of various graphical representations and are utilized to demarcate goods manufactured in entrepreneurial endeavors from those originating from other enterprises. Broadly speaking, trademarks encompass a spectrum of elements such as words, numerals, letters, images, and even personal nomenclature. These trademarks constitute distinguishing emblems, serving both the producers and the sellers or importers of the products or services.

**The degree of problem elaboration** – The subject matter addressed in this work has not been extensively explored within the realm of scientific literature. Presently, there exists a dearth of comprehensive research works dedicated to the peculiarities of intellectual property objects and trademark rights. However, certain aspects of intellectual property issues have been touched upon in a number of works. Various scholars and researchers, such as D. Leslie Chernatoni [2], H. B. MacDonald Malcolm [2], K. L. Keller [3], T. E. Chamlybel [4], Y. Karakurt [5], and M. E. Bilge [6], have examined certain facets of this issue.

Certain issues pertaining to the research subject have been investigated by scholars in Azerbaijan as well. Notably, researchers such as Ali Rustamov [1], Elnur Karimov [7], Kamran Imanov [8; 9], Vusal Masmaliyev [10], Emil Bashirov

[11], among others, have conducted research on several aspects of the research topic.

**Purpose and objectives.** The principal aim of this research is to formulate concrete proposals for the enhancement of legal regulation concerning the relationships that arise during the intersection of the rights of intellectual property objects and trademarks. In this regard, the primary objectives of the research encompass the exploration of the historical development of legislation in the field of trademarks, the legal analysis of the nature of industrial property objects, the examination of the relationship between copyright and trademark objects, and the investigation of national and international legal instruments pertaining to legal regulation in the field of trademarks.

**Methods.** The research process employed various scientific methods, such as legal norms analysis and comprehensive legislative examination. The study gathered a wide spectrum of sources, including legislation, and other normative legal acts, official, scholarly, journalistic, and other information works related to trademarks and other intellectual property.

#### **Main section.**

##### **Intellectual Property Law**

Within the domain of electronic commerce, online businesses confront an array of intricate legal challenges pertaining to trademark rights. In contemporary times, e-commerce has emerged as a pivotal facet, safeguarding the preservation of brand rights for businesses. Intellectual property, an indispensable and preeminent component for businesses, is encapsulated within the Intellectual Property Code, where a trademark is delineated as a distinctive emblem that empowers a company to differentiate and distinguish its products and services from those of competitors. The responsibilities entrusted to the intellectual property system are intricately interwoven with the nation's innovation policy. They are designed to not only align with the objectives of economic reforms but also to provide support for audacious initiatives, thereby facilitating the selection and application of technologies with commercial potential originating from the fruits of scientific research [8, p. 5].

Intellectual property rights pertain to the proprietary rights through which individuals derive benefits from their creative intellectual endeavors, including, for instance, patent rights, trademark rights, and copyright. Intellectual property law, therefore, serves as the legal framework safeguarding these rights as an integral component of individual rights. At the forefront of these rights are property rights, with patent and trademark rights collectively referred to as "industrial property rights." These rights constitute proprietary entitlements and necessitate formal application and approval procedures under the purview of regulatory authorities.

Copyright and related exceptional rights associated with trade secrets are automatically conferred by law upon the conclusion of the respective creative activities. Upon submission, the propriety of an application for trademark registration is examined by the trademark registrar. In the event that the registrar raises objections to the proposed trademark, hearings are scheduled. In these hearings, both parties are afforded the opportunity to present their claims and provide supporting evidence. It is advisable to conduct a comprehensive investigation before filing an application, including an examination into whether the trademark can be registered. The application should clearly specify the intended use of the trademark for particular goods or services and identify the applicant. If no objections are raised or if, following the hearings, the registrar rules in favor of the applicant, the trademark will be officially registered. It is imperative for the rights holder to substantiate that they are indeed using the trademark in the class of goods and services claimed by the applicant. Otherwise, the application may be secured for those classes in which the trademark is not being utilized [11].

Intellectual property law encompasses all exclusive rights granted to intellectual creativity. Regardless of genre, expression format, or purpose, intellectual property law serves as the guardian of all intellectual works. "Trademark rights, a subset of intellectual property rights, play a pivotal role in the commercial sphere, as they are concerned with the origin and identification functions of a product, namely, those responsible for its manufacture or introduction into the market" [5, p. 1].

##### **Key Aspects of Trademark Rights**

The procedures related to trademark rights have a direct impact on the rights of trademark holders or their successors. The registration of a trademark is a critical step taken to ensure its protection. Online businesses must also approach third-party brand rights with respect. This involves being aware of already registered trademarks, as a preventive measure against fraud, unfair competition, or infringement risks. Respecting trademark rights is essential to mitigate disputes and ensure the continuity of online businesses. The trademark law pertaining to intellectual property is a fundamental concern for online businesses, as it allows them to safeguard their intangible assets and protect their influence. "The warranty function of a trademark is not legally protected. Nevertheless, the trademark owner may alert consumers by reducing the quality of products carrying the brand, even if there are no legal sanctions for it, which can harm the manufacturer's commercial activities" [6, p. 8].

The legal framework surrounding trademarks and service marks constitutes a critical dimension of contemporary issues related to the distribution of goods and the granting of exclusive rights to trademarks and service marks. The utilization of trademarks and service marks presents a vital legal concern, as it allows certain legal entities and individual entrepreneurs to engage with the goods, works, and services of other legal entities and individual entrepreneurs. Distribution aims to prevent the intermingling of an individual's goods, works, and services with those of others and is essential to preclude unauthorized use of such goods, works, and services.

It is an undeniable fact that trademark law is subject to property law. The characteristic nature of trademark law defines the whole essence of trademark rights. Trademark law and property law are different and include specific rights and general principles. Trademark law is an integral part of property law and is intricately linked to property rights. Integrating trademark legal developments into the legal framework is an important task to improve the effectiveness of our national legal framework. This is important in determining the nature and quality of the trademark.

**Operations Conducted in the Regulation of Trademark Rights** In general, trademarks are commercial goods. The function of trademarks is to distinguish the origins of goods and services. The trademark law system aims to establish a fair and regulated market to prohibit unfair competition that confuses the sources of goods and services. "The characteristics that serve as the basis for assessment in the Azerbaijani trademark law doctrine and court decisions are the uniqueness and recognition of the trademark, as well as the level at which each trademark is accepted within its unique consumer group" [7, p. 208].

It is an integral part of commercial activity, and for trademark producers, it is essential for realizing the value of their efforts. Among these, the process of demand and supply search by buyers and sellers is a crucial component of trade activity. This process demands both physical space and time. The resources required for these operations essentially include labor time, operational expenses, and real estate. When it comes to operations, the lower the operational costs and the shorter the operation duration, the better for achieving a win-win situation for both demand and supply. Trademarks play a significant role in determining operational expenses. Acting as a link between market demand and supply, trade

marks on one hand reduce the presentation space and time for goods and services providers, save on sales expenses, while on the other hand, they provide convenience to consumers and reduce search time.

The character of goods or services applied for a trademark should in no way serve as an impediment to trademark registration. Each trademark should be publicly promoted before or immediately after registration and there should be created adequate opportunities for canceling registration. In addition, members can object to trademark registration. The owner of the registered trademark has the exclusive right to prevent third parties from using the same or similar marks in trade for the goods or services for which the trademark was registered without their consent. If the same marks are used for the same goods or services, there is a likelihood of confusion. The rights described above should not infringe upon or affect the opportunities for exercise of any prior rights of the members.

#### **The role of a trademark in online business**

The selection and registration of domain names are crucial aspects of brand protection strategy for online businesses. To prevent conflicts and infringements, domain names should be chosen and registered, taking into account existing trademark rights. "The most significant development that brings brand names to the forefront is the necessity for manufacturers to maintain a certain level of control and effectiveness over their trade and consumers. This demand is directly related to the industrial revolution, the differentiation of manufacturer-consumer relationships, and the market structure dominated by wholesalers" [2, p. 23].

The use of brands on social networks and online sales platforms must be carried out with respect for the rights of third-party brands, and attention must be paid to mitigating the risks of confusion and unfair competition. "Brand owners can choose to offer some of their products without branding. Especially when the products don't meet a certain standard and don't conform to the brand's quality, the brand owner prefers this approach. Third parties branding unbranded products and offering them to consumers is a violation of trademark rights" [4, pp. 120-121]. Online businesses should ensure that their profiles, content, and advertisements respect trademark rights and do not infringe upon the influence of other businesses.

Online businesses should begin by identifying business elements that require protection, such as names, logos, slogans, colors, and shapes associated with the brand. Once these elements are identified, they should be assessed in terms of their commercial value and legal risks.

#### **Important Aspects of Legal Protection for Trademarks**

The legal protection of trademarks is granted to physical or legal persons. "Trademarks and service marks (trade names) are rights that enable their registered owners to oppose the use of similar marks by others that could create a false impression among consumers" [9, p.8]. Exclusive rights to a trademark arise from the date of registration in the State Register of Trademarks. The trademark right is confirmed by a certificate, and the confirmation of the removal of trademarks from the State Register is also certified. The format of the certificate is determined by the competent authority. The owner of the trademark has an exclusive right to use and ownership of the goods and services specified in the certificate in relation to the trademark.

A trademark, as a form of expression or sign, can consist of shapes, words, letters, numbers, physical marks, other symbols, or their combinations that allow one person's goods or services to be distinguished from those of others. A trademark can be registered in any color. Changes related to the registration of a trademark, including the alteration of the owner's surname, first name, patronymic, place of residence, and the description of goods or services covered by the trademark, are communicated to the owner.

Trademark rights, as a form of personal property, serve both as a means for individuals and businesses to generate wealth and as an object of state regulation and protection. The nature of public and personal rights is distinct, and the difference between them must be carefully observed. The government should not strictly adhere to the traditional endowment of a planned economic system and should refrain from excessive intervention in businesses. Therefore, both the procedures of the state department and the judicial procedures are designed and aimed at the creation and ownership of trademark rights, contributing to the establishment of a just and rational market order.

According to trademark law, the government does not have the right to depart from the provisions of the law and determine the ownership and acquisition of personal rights through its own discretion. The notion that private intellectual property rights have been nationalized in recent conditions is fundamentally unfounded. In the context of economic globalization, the government should support legal certainty and service concepts, implement regulatory principles effectively, simplify cumbersome procedures, enhance efficiency, and better serve the requirements of a market economy.

By protecting trademarks, we aim to safeguard the business reputation of those who use these trademarks and, in doing so, contribute to the development of industry while ensuring the interests of consumers. "Trademarks are based on associations in the consumer's memory" [3, p. 3]. As international trade expands through the internet and the import of goods by individuals becomes easier, instances of foreign companies exporting small quantities of counterfeit products without passing through intermediaries have increased. In the modern society where anyone can conduct operations with foreign countries through the internet, there is a possibility of emerging new methods that may threaten intellectual property rights. Therefore, it is crucial for not only the government but also companies engaged in intellectual property rights to remain vigilant.

#### **The Important Principles of Legal Regulation of Trademarks in Azerbaijan**

On June 12, 1998, by the order of the Great Leader Heydar Aliyev, the "Law of the Republic of Azerbaijan on Trademarks and Geographical Indications" was adopted. This law, consisting of 37 articles, has reflected the legal provisions of trademarks. "Trademark is a sign or a combination of signs that distinguishes the goods or services of one entrepreneur from the goods or services of another entrepreneur and is graphically represented" [12, p. 1].

The trust and reputation of customers in a trademark are the most significant factors that create economic value for a trademark. In the case of trademark imitation or unauthorized use of the trademark, the trademark owner may incur expenses that would otherwise be considered as profit. The existing court procedure is capable of establishing criteria for determining infringements based on general principles of liability and the specific characteristics of trademarks, thereby preventing the creation of hidden rules in the legislative acts of both countries. "For the legal protection of trademarks, while in some countries, including the Republic of Azerbaijan, it is obligatory to register them with the state, the legislation of a group of countries (such as the United States, the United Kingdom, Switzerland, and others) operates on the basis of the 'first to use' principle regarding this matter" [10].

**Conclusion.** Trademark consumers are provided with information that simplifies and expedites product and service selection, thereby reducing the search time for the consumer group, thanks to the assistance of trademarks. In other words, trademarks reduce the search time for products, enabling the target group to choose faster and more easily.

In relation to trademarks, we discuss their various functions, namely the origin function, warranty function, and competitive function. The origin function implies that

products marked with the same trademark should be the most original from the same commercial source. For example, when a consumer encounters certain logos in a store, they assume that these products all come from the same commercial source.

The primary purpose of trademark registration is to convey and protect creative and unique ideas. Your trademark is unique, not copied from anywhere else or similar to other

trademarks. The rules of trademark registration remain the same for everyone, and any businessperson can benefit from it. The registration procedures for a trademark also hold significant importance in promoting the introduction of products or services and increasing brand awareness. This registered trademark ensures the trust of your customers, enhances the quality and value of the brand.

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