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Aytaj Mazahir Gurbanzadeh
Baku State University
master
aytaj.gurbanzadeh@gmail.com

INTERNATIONAL SOURCES AND TRADEMARK RIGHTS

Abstract

Intellectual property means the legal rights which result from intellectual activity in the industrial, scientific, literary and artistic fields. The World Intellectual Property Organization (WIPO) is one of the specialized agencies of the United Nations (UN). The "Convention Establishing the World Intellectual Property Organization" was signed at Stockholm in 1967 and entered into force in 1970. However, the origins of WIPO go back to 1883 and 1886, with the adoption of the Paris Convention and the Berne Convention respectively. A trademark as a form of intellectual property is any sign that individualizes the goods and services, and distinguishes them from the goods and services of competitors. Trademarks already existed in the ancient world. They started to play an important role with industrialization, and they have since become a key factor in the modern world of international trade and market-oriented economies. Industrialization and the growth of the system of the market-oriented economy allow competing manufacturers and traders to offer consumers a variety of goods in the same category.

The main purpose of this research is to identify and learn modern approach to the trademark rights, international sources of trademark protection as well as to focus on the role of trademark as a part of intellectual property.

Key words: *intellectual property, protection of trademarks, history of trademarks, trademark rights, international acts on trademarks*

Aytac Məzahir qızı Qurbanzadə

Beynəlxalq mənbələr və əmtəə nişani hüquqlari

Xülasə

Əqli mülkiyyət dedikdə sənaye, elmi, ədəbi və incəsənət sahələrində zehni fəaliyyətin nəticəsi olan hüquqlar başa düşülür. Ümumdünya Əqli Mülkiyyət Təşkilatı (ÜƏMT) Birləşmiş Millətlər Təşkilatının (BMT) ixtisaslaşmış agentliklərindən biridir. "Ümumdünya Əqli Mülkiyyət Təşkilatının yaradılması barədə Konvensiya" 1967-ci ildə Stokholmda imzalanmış və 1970-ci ildə qüvvəyə minmişdir. Ancaq Ümumdünya Əqli Mülkiyyət Təşkilatının (ÜƏMT) yaranması müvafiq olaraq 1883 və 1886-cı illərdə qəbul olunmuş Paris və Bern Konvensiyaları ilə əlaqəlidir. Əmtəə nişanı əqli mülkiyyətin bir forması kimi əmtəə və xidmətləri fərdiləşdirən və onları rəqiblərin əmtəə və xidmətlərindən fərqləndirən hər hansı işarədir. Əmtəə nişanları qədim dövrlərdən mövcud olmuşdur. Onlar sənayeləşmə dövründə vacib rol oynamağa başlamış və həmin vaxtdan beynəlxalq ticarət və bazar yönümlü iqtisadiyyatların müasir dünyasında əsas amilə çevrilmişdir. Sənayeləşmə və bazar yönümlü iqtisadiyyatlar sisteminin inkişafı eyni kateqoriyadan olan müxtəlif əmtəələrin rəqabət aparan istehsalçı və ticarətçilər tərəfindən təklif edilməsinə şərait yaratmışdır.

Bu araşdırmanın əsas məqsədi əmtəə nişanı hüquqlarına müasir yanaşmanı aydınlaşdırmaq və öyrənmək, əmtəə naslarının hüquqi mühafizəsinin beynəlxalq mənbələri, həmçinin əqli mülkiyyətin bir forması kimi əmtəə nişanlarının roluna nəzər yetirməkdir.

Açar sözlər: *əqli mülkiyyət, əmtəə nişanlarının mühafizəsi, əmtəə nişanlarının tarixi, əmtəə nişanı hüquqları, əmtəə nişanlarına dair beynəlxalq aktlar*

Introduction

The term "intellectual property" may sound pretentious, but it is an appropriate description for the subject matter of the laws that give rise to proprietary interests in creations of the mind. The principal legal intellectual property disciplines are copyright, which concerns artistic and literary works; patent,

pertaining to pragmatic innovations; and trademark, relating to commercial symbols. These three core fields are complemented by a number of statutes and common law doctrines in fields ranging from trade secrets, to the right of publicity, to false advertising. Although copyright, patent, trademark and related disciplines share much in common, they arose from distinct traditions and often operate in different ways (Stim, 2018: 19).

Trademarks consist of any word or symbol used by a merchant to identify its goods or services, and to distinguish them from those of others. To be subject to protection under the trademark laws, a mark must successfully distinguish the origins of its associated goods, and not be confusingly similar to marks used by others or merely describe the characteristics of those goods. Trademark rights arise under state law as soon as the mark is used on goods in commerce. However, trademarks may be

registered with the PTO, a step that affords significant substantive and procedural advantages. Trademark law also protects the appearance of product packaging and, in some cases, the actual physical configuration of the goods, if these serve as brand

identifiers. A trademark owner may prevent others from using any mark that creates

a likelihood of confusion as to the source or sponsorship of the associated goods or services. Trademark rights persist so long as the mark continues to be used and retains its distinctiveness. Trademarks form one arm of the common law of unfair competition, a collection of principles that encourage the maintenance of honest practices in commercial affairs. A number of other doctrines are grouped under this heading, including passing off, reverse passing off, dilution and false advertising (Schester, 2012: 144).

One hundred and seventy one nations, including the United States, comprise WIPO, a specialized agency within the United Nations. Membership in WIPO is open to all member countries of the United Nations and all countries that are signatories of the Paris and Berne Conventions. Applicants to WIPO must ratify either the Paris Convention or the Beme Convention in order to qualify for membership. WIPO serves an administrative function for the various multilateral intellectual property treaties recognized by member states. The adoption of GATT and TRIPs solidified WIPO's administrative role. First ratified in 1883, the Paris Convention for the Protection of Industrial Property protects intellectual property entities such as patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source, and unfair competition. WIPO administers the Paris Convention which operates under three major principles: the "national-treatment" doctrine, right of priority, and minimum standards for intellectual property protection. The Paris Convention also recognizes the common law doctrine of famous marks or well-known marks. This doctrine affords protection to marks that become famous or well-known within a certain nation even though the mark is not used or registered in that nation. These famous marks become known in a foreign country through magazines, television, returning travelers, and the Internet. Article 6b allows a famous mark owner to petition for cancellation of the registry of his or her identical mark in a foreign member state even though there was no previous registration of the famous work in that country. The Paris Convention does not define the term "a famous or well-known mark," so each country determines whether a trademark has become famous within its own territory. Article 4 of the Paris Convention establishes a "priority principle" for intellectual property. The "priority principle" recognizes the first registrant of a trademark as the true owner of the trademark. Consequently, subsequent registrants who seek to register previously registered marks are denied registration. Traditional trademark law employs the "priority principle" to protect (5).

The Madrid Agreement allows single registration of a trademark in an owner's home country with rights extended to other Member nations. Acceptance into the "Special Union," created by the Madrid Agreement, requires a signatory to promise protection for a foreign trademark owner whose mark becomes registered through the international registration system. Trademark registrants may file an international registration with their home country (referred to as "basic registration") and designate other Member nations for the mark to be registered. The home office then forwards the international portions of the registration to WIPO, which in turn publishes the application in its publication Les Marques International. WIPO then forwards the requests for registration in other Member countries to those states. Each Member country has one year to refuse the application based upon noncompliance with their trademark law. For example, a mark owner in Kenya may indicate on his Kenyan registration his

desire to extend the registration to Italy. Since both countries are signatories to the Madrid Agreement, Kenya's Registration Office would forward the Italian portion of the registration to WIPO. WIPO in turn would publish the application of the Kenyan mark owner and forward the request to register in Italy to the Italian Trademark Registration Office. Italy would have one year in which to refuse registration of the Kenyan mark. Italy may apply Italian trademark law to the Kenyan mark for registration in Italy (U.S. Presses, 1998: 241).

In hopes of luring the United States and other major countries to the Madrid Agreement, the Madrid Protocol was developed to address some of the issues that prevented adoption of the Madrid Agreement. The Protocol hinges international registration upon national "application" rather than national registration. This change levels the playing field for U.S. applicants and other nations that also have similar lengthy registration processes. The Protocol further eliminates the "central attack" provision that provided for international cancellation of a mark if the original basic registration was canceled. In such a case, the mark's international registrations convert to separate national registrations. The Protocol also allows applications to be submitted in English (as well as French), and each Member country may set its own fee schedule (Torremans, 2019: 49). Forty-one countries signed the Madrid Protocol, including China and the United Kingdom. Most recently, Japan signed the Madrid Protocol. In order to come into compliance with the Protocol, Japan amended its trademark laws to allow for monetary damages upon infringement; extended protection during the application process; and required the Japan Patent Office to publish information about applications (Schechter, 2003: 211).

In an attempt to streamline trademark registration and break down trade barriers, the Trademark Law Treaty (TLT) sought to formalize the more than 200 trademark registries in the world. Under Article 3 of the TLT, a registration office may require standard information on an application for trademark registration such as: name and address of the applicant, state where the applicant is a national, address for service, reproduction of the mark, names of goods or services associated with the mark, and intention to use the mark. Registration offices may impose a fee for the registration, and also require non-national, non-domiciled persons to appoint a representative with a Power of Attorney in that country. The TLT precludes imposition of application formalities outside those prescribed in the Treaty (8).

The 1994 Uruguay Round made a large move forward from traditional conventions of intellectual property protection through TRIPs, which links the protection of intellectual property rights with trade. Member countries that do not adhere to the minimum standards for intellectual property protection set out in TRIPs face penalties of trade barriers determined and enforced by the WTO. TRIPs establishes a universal legal definition of a trademark. The TRIPs definition reads in part: "Any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark". Trademark owners also gain an exclusive right under TRIPs to prevent third parties from using their marks where such use would result in a likelihood of confusion (1).

Trademark law consists of the legal rules by which businesses protect the names, logos, and other commercial signifiers used to identify their products and services. One of the principal goals of trademark law is to prevent consumers from being confused in the marketplace. Trademark law confers the most protection to distinctive names, logos, and other marketing devices. (Dinwoodie, 2018: 77) Trademarks become distinctive (or strong) in two ways: They are born distinctive (inherently distinctive) or they achieve distinction through sales and advertising. Inherently distinctive trademarks don't describe the goods or services for which they are used-for example, Arrow for shirts or Uber for transportation services. Trademarks that are classified as inherently distinctive consist of:

• creatively unique logos or symbols

• words that are created specifically to be a trademark ("fanciful" marks), such as Exxon, Pepsi, or Google

• common words that are used in a surprising or unexpected manner ("arbitrary marks"), such as Amazon for retail services or Guess for clothing, and

• words that cleverly connote qualities about the product or service without literally describing these qualities ("suggestive" marks), such as Safari Internet browser (Torremans, 2019: 355).

Conclusion

A trade mark identifies the goods or services with which it is associated. Thus, it is inherent that a mark must be distinctive, that is, able to be easily distinguished from the identifying features of the products and services of others. Identifying products in this way is of small value to modern consumers except in the indication that it also brings of a reputation for quality and reliability. The identification of products enables traders to build and maintain reputations. Trademark rights in each country depend solely on the trademark laws of that country; there is no set of international laws. Mark owners must start a new to establish rights to a mark in every new country they enter for commercial purposes, a concept known as "territoriality." In other words, previous use or registration in other countries is generally irrelevant. According to the mentioned feauters, trademark protection plays an important role as an integral part of intellectual property. Although the registration process and the means of protection can be differed from country to country, the main purpose of each of them is similar.

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