UNFAIR COMPETITION AS A FORM OF INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS

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ABSTRACT

This tezis provides detailed information on the concept of unfair competition, its essence, the forms encountered in the field of intellectual property, the manifestation of unfair competition in the form of illegal use of means of individualization.

Keywords: Competition law, unfair competition, objects of intellectual property, trademark, service mark, place of origin of goods, means of individualization, unfair trade practices.

In the conditions of healthy competition, the quality of goods and services will improve, the position of entrepreneurs who produce them will rise, and as a result, the country's investment attractiveness will increase. This will attract foreign entrepreneurs. On the contrary, there are cases today when some businesses allow unfair competition to make easy money using popular brands. In such cases, the infringement is manifested in the unlawful use of trademarks, service marks, appellations of origin, trade names and trade secrets, which are directly the objects of intellectual property rights. That is, as a result of unfair competition, the violation of the exclusive rights to the means of individualization is increasing, which is likely to have a negative impact on all participants in civil proceedings.

At present, the existence of competition is one of the indicators of normal development of a market economy and the most important means of regulating key economic processes, including the protection of the rights of businesses and consumers. At the same time, the legislature maintains the necessary conditions for the development of fair competition, while limiting its scope by prohibiting actions that could violate the rights and legitimate interests of competing businesses and third parties. Therefore, in such circumstances, the creation of a legal mechanism against unfair competition is of particular importance.

According to Paris Convention for the Protection of Industrial Property the most common forms of unfair competition are:

(a) all acts of such a nature as to create confusion by any means whatever with the establishment, the goods, or the industrial or commercial activities, of a competitor;

(b) false allegations in the course of trade of such a nature as to discredit the establishment, the goods, or the industrial or commercial activities, of a competitor;

(c) indications or allegations the use of which in the course of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods.

According to Article 13 of the Law of the Republic of Uzbekistan “On Competition”, any actions of business entities or groups of individuals

that are the result of unfair competition, including the following actions are prohibited:

• Incorrect comparisons that could harm another business entity or damage its business reputation;

• illegal use of the results of intellectual activity of the legal entity and the means of individualization equated to them, the means of individualization of the goods (brand name, trademark or service mark);

• distraction of consumers about the nature of the goods, method and place of production, consumer properties, price, quality, warranty obligations of the manufacturer (executor), its external decoration of the goods put into civil circulation by the business entity (competitor) and counterfeiting of the form, name, marking, labeling, packaging, color combination, trademark, copying from advertising materials or other elements that individualize the goods of the business entity 19 (competitor);

• obtaining, using or disclosing information on science and technology, production or trade, including trade secrets, without the consent of the owner;

• blocking access to the commodity or financial market by another business entity;

However, in an evolving market economy, such unfair forms of competition are not always sustained. They may change over time. One of the main reasons for this is the acceleration of information technology and the Internet, as well as the increase in their use.

In addition, the concept of unfair competition is now widespread and is used as an “unfair trade practice” in developed countries such as Japan, Germany and the United States. For example, in the U.S. Federal Trade Commission Act, the term “dishonest trading practices” is defined as the use of unfair, fraudulent methods to gain business advantage or mislead consumers, and such trade practices are illegal.

“Unfair trade practice” includes the following anti-competitive actions that are not included in the competition legislation of the Republic of Uzbekistan:

• “unreasonable coercion of consumers”;
• “exclusive dealing agreement”;
• “tied selling”;
• “false free prize or gift offers”;
• “economic boycott” and etc.

In general, “unfair competition” and “unfair trade practices” are synonymous terms, with the only difference being the forms of action prohibited by competition law. However, both of them are considered anti-competitive actions in the competition legislation of any country.

These actions, which are considered unfair competition, are often directly related to the objects of intellectual property rights. This is one of the peculiarities of its regulation. It is natural, therefore, that questions arise as to in which cases unfair competition is regulated by competition law and in which cases by intellectual property rights. If the legal status of intellectual property rights is determined by intellectual property rights, the relations related to their illegal use are regulated by competition law. For example, counterfeiting of a trademark, use or disclosure of a trade secret without the consent of the owner. Unfair competition legislation is currently one of the most effective tools for the legal protection of intellectual property rights, especially the exclusive right to individualization.

The analysis of judicial and law enforcement practice shows that the participants of civil litigation in the field of intellectual property are increasingly resorting to legal remedies provided for in the competition legislation of the Republic of Uzbekistan in the field of unfair competition. Such cases underscore the urgency of examining the interrelationships between intellectual property and unfair competition legal institutions.

There are many businesses involved in civic engagement, but they also sell a wide variety of goods and services. Therefore, it is important to identify both businesses and their goods and services. These distinctions and distinctions serve as means of individualization for the participants in civil proceedings. In the field of intellectual property, there are many forms of unfair competition in the form of illegal use of individualization means.

In civil law, the term “means of personalization” is used instead of “means of individualization”. However, these concepts have the same meaning and there is no difference between them.

Chapter 65 of the Civil Code of the Republic of Uzbekistan deals with the means of personalization of participants in civil transactions, goods, works and services, which include the name of the company, trademark (service mark), the name of the place of origin of goods. According to Article 1031 of the Code, the objects of intellectual property rights are the name of the company, trademark (service mark), the name of the place of origin of the goods.

The difference between these and other intellectual property rights (for example, the results of intellectual activity) is that the name of the company, trademark (service mark), the name of the place of origin of goods can not always be the result of creative activity. That is, in order to obtain the legal status of an intellectual property subject, they do not have to be the result of intellectual activity. What unites the results of intellectual activity and the means of individualization is that both are governed by the rules of absolute rights of right holders.

In other words, the owner of the means of individualization does not personalize the goods, works or services that belong to him, but has the absolute right to exercise the right to this mark.

It is known that as a result of the constant and rapid development of science and information technology, new intellectual property objects are emerging. For example, with the advent and development of the Internet, a new type of personalization tool has emerged - domain names. A domain name is a unique name given to an information resource or information system that serves to identify them on the World Wide Web.

The commercialization of the Internet has led to the fact that the competition for the correct and successful selection of domain names for sites that promote this or that product or service is acute, the transformation of known and popular names into domain names is looting. Domain names have become not only a convenient symbol to be used instead of a digital address, but also a means of individualizing goods and services and the entities that offer them. There is a worldwide practice that a trademark owner uses his trademark as a domain name that individualizes himself and his products on his website. Unlike other means of personalization recognized in civil law, domain names are dual in nature and often perform two functions simultaneously: individualizing both the information resource on the network and its owner.

Thus, the above analysis shows that the types of individualization tools are:

(i) company names;
(ii) trademarks (service marks);
(iii) the name of the place of origin;
(iv) domain names.

In addition, the literature interprets the means of personalization in a broad and narrow sense due to its legal nature. In a broad sense, it is the differentiation of subjects through the means of personalization in the process of production and sale of goods, performance of works and provision of services. By this means of personalization, it is understood that the same subjects have access to the conditions for the production of goods, the provision of services and the performance of work through their distinctive features. In the narrow sense, the means of personalization, in civil relations, the attitude of citizens and legal entities in the process of production and sale of goods, performance of works and provision of services using symbols, words and other features that have different personal characteristics. This means that intellectual property can be used by legal entities and individuals through the personalization of another person under a license agreement under the temporary control of the licensor.

There are also approaches to the division of the means of individualization as participants in civil law relations into two types: legal and economic. The essence of this is that it legally privatizes property rights in respect of trademarks, service marks and other objects of intellectual property in the manner prescribed by law. This results in the individual's ownership of these objects and includes the fact that others are not allowed to use them without his or her consent or to use them in accordance with the law (under a license agreement).

The economic meaning of personalization is understood to mean that the owner of the instrument can personally make a profit from it or give it to other persons for use.

Means of personalization are allowed to be used not only by the owner who has the exclusive right to them, but also by other persons. In this connection, the second person acquires the right to engage in production, services and other activities in the business activity, which have the consent of the licensor under a license agreement. But this rule is not always used in practice. Some businesses try to use unauthorized use of personalization tools that belong to other people in the manner prescribed by law. Below we will consider the unauthorized use of the Trademark, Service Mark, Place of Origin and Domain Name as a form of unfair competition.

Article 13, paragraph 1, part 2 of the Law of the Republic of Uzbekistan “On Competition” of January 6, 2012, stipulates from a trademark of a business entity (competitor), a name that is similar to the name of the company or, to the extent of misleading, similar to it by placing it on goods, labels, packaging, or other than sold or civilized the sale of a trademark through the use of the trademark in a different way, as well as the unlawful use of the trademark in the domain name, shall be recognized as a form of unfair competition.

It is a well-known fact that entrepreneurs want their products and services to be popularized as soon as possible in the production of a product or service. In this regard, they try to use well-known brand names to increase sales.

It should be noted that one of the most common forms of unfair competition is the use of a trademark (service) without the consent of the owner of the exclusive right. This is because the use of this individualization

tool allows businesses to quickly promote their products or services in the market and make a profit.

Important document regulating the relations related to the trademark (service mark) and names of place of origin of goods is Law of the Republic of Uzbekistan No. 267-II of August 30, 2001 “On trademarks, service marks and names of places of origin of goods”. The rules set out in Chapter 65 of the Civil Code, as noted above, also apply to contractual relations related to these means of individualization.

According to Article 3 of the Law “On trademarks, service marks and names of place of origin of goods”, a trademark and a service mark are duly registered marks that serve to distinguish the goods and services of one legal entity or individual from similar goods of other legal entities and individuals.

Trademarks can be individual or collective. A trademark belonging to an individual legal entity or individual is an individual mark, a trademark of an association of legal entities and individuals is intended to identify goods produced and sold by them that have the same quality or other general characteristics.

In foreign literature, words, names, or symbols used to identify and distinguish goods or services and to indicate their source are interpreted as trademarks.

The difference between a trademark and a service mark is that when a brand is used in product marketing (e.g. ADIDAS for footwear), the service mark in turn defines the service (e.g. STARBUCKS for retail store services).

According to Article 5 of the Law of the Republic of Uzbekistan “On trademarks, service marks and names of place of origin of goods”, the country, settlement, place or other geographical object used to mark the goods, its specific features the name of the place of origin of the goods, which is determined entirely or mainly by natural conditions specific to the geographical object or by other factors or natural conditions and a combination of these factors. In world practice, the term "geographical indications" is used as “place name of origin”. Geographic indexes are place names used to identify the origin and quality, reputation, or other characteristics of products (in some countries, place-related words, such as CHAMPAGNE or TEQUILA).

Article 1098 of the Civil Code of the Republic of Uzbekistan provides that a legal entity shall has the exclusive right to use the name of the company during exhibitions and fairs in the territory of the Republic of Uzbekistan. Also, in accordance with the Law of the Republic of Uzbekistan No. O‘RQ–51 of September 18, 2006 “On Firm Names”, a firm name is an individual name of a commercial organization that is a legal entity.

All means of individualization - trademark (certificate issued), service mark (certificate issued), place of origin (certificate issued) and company name (entered in the register of company names) on the basis of their legal registration in the manner prescribed by law, as well as in accordance with international treaties of the Republic of Uzbekistan. This creates a legal basis for the illegal use of these personalization tools by other businesses or groups of individuals. As a rule, the exclusive right of a citizen or a legal entity to the means of individualization of goods is recognized. Accordingly, these tools, which are the subject of an exclusive right, must be used by third parties only with the permission of the right holder.

Articles 1101, 1105 of the Civil Code; According to Article 8 of the Law “On Firm Names” and Article 30 of the Law “On trademarks, service

marks and names of place of origin of goods", the exclusive right to a firm name, trademark (service mark) The license agreement allows the use of another person, which is considered a legitimate use of the means of individualization and is considered a fair competition.

However, as an exception, it is not allowed to transfer the right to use the name of the place of origin of the goods, which is a means of personalization, to another person on the basis of a license agreement, to enter into agreements to waive this right in favor of other persons.

In conclusion, using the means of individualization (firm name, trademark, service mark, place of origin and domain name) in the field of business, production, services without the permission of the owner of the exclusive right to them, more preciously, without a license agreement is recognized as a form of unfair competition and such actions are prohibited.

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