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THE METHODS OF JUDICIAL PROTECTION OF THE EXCLUSIVE RIGHTS TO THE TRADEMARKS USED ON THE INTERNET (BY THE LEGISLATION OF THE REPUBLIC OF BELARUS)

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The paper investigates the possibility of applying of the methods of judicial protection of the exclusive rights to the trademarks used on the Internet. It explains why special methods are ineffective to protect these rights. It is proposed to complement the legislation by the new method of protection of the trademark rights.

Relevance of the subject is caused by the opportunities which the Internet offers today (hereinafter – the Internet, the Web). This is not only communication and access to information but also the purchase of goods and services. Trademarks and service marks (hereinafter – trademarks) mean any sign capable of being represented graphically, and of distinguishing goods and services of one undertaking from those of another. The importance of the trademarks is magnified on the Internet, where consumers are not able to see the quality and safety of goods, as well as the integrity of the seller. The exclusive rights to the trademarks are often the objects of the offence on the Web. As a result, trademark owners have to expend significant resources to control the billions of web pages and the protection of exclusive rights to the trademarks.

The purpose of the article is the identification of methods that you can apply for judicial protection of exclusive rights to the trademarks used on the Internet.

We use the formal-logical method and the methods of system analysis and synthesis of a legal material.

The objects of research are the methods of protection associated with the so-called non-contractual infringement of the trademark rights used on the Internet. This is a situation in which between the trademark owner and the person who is using the trademark on the Internet, there is no agreement on granting the right to use the mark. If the owner believes that the exclusive trademark rights are violated as a result of such use, he is entitled to apply to the court for protection of the rights. The trademark owner needs to decide on method of the protection and to specify it in the statement of the claim.

In the legal literature all methods (measures) of protection of the industrial property rights are divided into the general and special [1, p. 83; 2, p. 65; 3, p. 99]. A list of the general methods to protect all civil rights contained in the Civil Code of the Republic of Belarus (hereinafter – the Civil Code), Art. 11 [4]. These include: 1) recognition of the right; 2) recovery of the provision existing before violation of the right; 3) suppression of acts infringing the right or threatening to infringe; 4) recognition of avoidable transaction as invalid and the application of consequences of its invalidity, determine whether the nullity of the transaction and the application of the consequences of its nullity; 5) invalidation of an act of public authority or local government and self-government; 6) self-protection of the right; 7) award to discharge of duty in nature; 8) recovery of damages; 9) penalty; 10) compensation of moral harm; 11) termination or change of legal relationship; 12) non-use by court of an act of public authority or local government and self-government; 13) the different ways provided by the legislation [4].

The last point testifies that the list isn't exhaustive. Trademark owner can choose one or at the same time some methods of the protection (as it is stipulated in the Resolution of Plenum of the Supreme Court of the Republic of Belarus of September 28, 2005, № 9, Paragraph 10) [5]. The choice of the most suitable method and the procedural mechanism of its application depend on character of a perfect offence and a being of the violated right. D.V. Ivanova pays attention that suppression of the actions violating the right or creating threat of such violation is one of the most widespread ways from all possible ways [6].

The protection of the civil rights against illegal use of the trademark can be carried out by requirements about the termination of violation and recovery of damages and also the different ways provided by the Trademark Act (Art. 29, Paragraph 2) [7]. The specified ways can be applied and to protection in a judicial proceeding of the rights for the trademarks used on the Internet.

The requirement about the termination of violation of an exclusive right to the trademark corresponds to the essence of this right. A trademark right is the exclusive right to use a registered trademark with respect to designated goods or services. It is an absolute right. This means that the exclusive right is effective against the general public. "Trademark owner has an exclusive right to use the trademark and to dispose of it, and also the right to forbid the use of the trademark to other persons. Nobody can use the trademark protected in the territory of the Republic of Belarus without the permission of his owner" (the Civil Code, Art. 1019) [4].

It is required to provide proofs about existence of losses and their size for indemnification. This circumstance often causes difficulties in practice including when the exclusive right to the trademark is violated by use of the trademark on the Internet. According to the Civil Code (Art. 14) damages have to be paid in full, i.e. the real damage (loss or damage of property) and the missed benefit are subjects to compensation [4]. The sum of the missed benefit which is subject to compensation can be estimated at a rate of income gained by the offender. As physical infliction of harm is impossible for the trademark owing to non-material nature of this object, collecting real damage in this case is difficult. Collecting the missed benefit is represented to more real.

The analysis of practice on lawsuits shows that trademark owners don't declare property requirements (compensation of real damage or the missed benefit) in the claims for protection of the rights to the trademarks used on the Web. The requirement about the termination of violation of exclusive rights to the trademarks on the Internet was in most cases imposed [8, 9, 10]. On one of claims the requirement about cancellation of registration of the domain name in which trademarks of the claimant were used illegally was declared [8]. In our opinion, the lack of property claims is explained by that on such categories of affairs it is difficult to define and prove the size of losses.

The measures provided by the Civil Code (Art. 989) can be carried to the general methods of protection of exclusive rights to objects of industrial property, including on trademarks. There are: 1) withdrawal of material objects by means of which exclusive rights are violated and the material objects created as a result of such violation; 2) the obligatory publication about the allowed violation with inclusion of data in it about the one who possesses the violated right [4].

The second methods can be effective for the termination of the lasting violation of exclusive rights to the trademark used on the Internet (see more about it [11, p. 52]). There is no concretization in the legislation how this way can be exactly realized. We agree with opinion on that the publication has to be carried out at the expense of the person guilty of an offense and the way specified by court [6]. For example, if a trademark right is violated by use of a sign in a domain name, data on such violation, including information containing in the notice are entered by the registrar in the register of domain names (the Instructions about an order of registration of domain names in space of hierarchical names of a national segment of the Internet, Paragraph 9) (hereinafter – the Instruction) [12].

The withdrawal of material objects by means of which the exclusive rights are violated, and the material objects created as a result of such violation is carried out in the ways [6].

1) Removal from the goods or its packing of illegally used trademark or the designation similar to it to extent of mixture, and (or) destruction of the made images of the trademark or designation similar to it to extent of mixture;

2) Arrest or destruction of the goods to which the trademark was illegally applied. These measures of protection are provided by the Trademark Act (Art. 29, Paragraph 2, Subparagraphs 2.1-2.2) [7]. These are special ways of protection of the rights to trademarks, as well as a penalty in favour of the dissatisfied party at a rate of the cost of goods to which the trademark was illegally applied (the Trademark Act, Paragraph 2, Subparagraph 2.3) [7].

In our opinion, the above-named special ways can't be applied to protection of the rights to the trademarks used on the Internet. These measures belong to cases when the trademark is actually applied. It is placed on goods for which it is registered and (or) on its packing. Therefore, such goods can be arrested or destroyed, or to remove from them illegally used trademark or the designation similar to it to extent of mixture, or to determine the penalty size proceeding from the cost of goods to which the trademark was illegally applied.

On the Web the trademark isn't applied directly on goods and (or) its packing. Use is carried out by placement of information making the designation registered as the trademark concerning goods for which the sign is registered or uniform goods. Such information can directly be placed on the Web pages on which goods are offered to sale, in advertising, domain names or at different ways of addressing. When similar actions are carried out without the owner's consent, they can be recognized as the illegal. "Violation of trademark rights may be deemed an unauthorized use of a trademark not only on the goods themselves, but also other introduction into civil circulation, to which can be attributed to use of a trademark or similar to it to confusingly in a domain name on the Internet in relation to similar goods and services" [8]. In the Republic of Belarus all known cases were connected with use of trademarks in domain names in the zone BY.

The cases on the protection of exclusive rights to the trademarks used on the Internet are considered by the judicial board for the intellectual property of the Supreme Court of the Republic of Belarus. The jurisdiction is defined proceeding from belonging of a Web resource of the offender to a national segment of the Internet [13, p. 51]. The national segment of the Internet is a set of the information networks, systems and resources having connection to the Internet, located in the territory of the Republic of Belarus and (or) using hierarchical names of the national segment of the Internet [14].

Thus, judicial protection of the rights to the trademarks used on the Web can be carried out by presentation of requirements: about the termination of violation of an exclusive right to the trademark on the Internet and the obligatory publication about the allowed violation with inclusion of data in it about the one who possesses the violated right. Whether there are enough these measures for restoration of the rights to the trademark? Obviously, there are not. "The claimant often can't achieve full compensation of the economic and competitive losses. At the same time chosen method of protection that is designed to compensate for economic losses, as well as to prevent further violations" [6].

For example, in December 15, 2008 the Supreme Court of the Republic of Belarus considered the case between the companies "Google Inc." (USA) and JSC "IDB" (Republic of Belarus) and citizen T. about the termination of violation of the exclusive rights to the trademarks and a trade name used by respondents in the domain name on the Internet. (A domain name (domain) – the symbolical (alphanumeric) designation created according to the international rules of addressing of the Internet, intended for the named appeal to information resource of the Internet and corresponding to a certain network address) [12]. The court met the requirement of the claimant about the termination of use of trademarks of the claimant in a domain name on the Internet, but refused the requirement to cancel registration of the domain name addressed to the citizen T. and to pass the domain name to the company "Google Inc." because this method of protection is not in the legislation of the Republic of Belarus [8].

Indeed, there is not such measure among the above-mentioned ways of protecting. In connection with this position the Paragraph 44¹ provided by the Instruction is of interest: "The court may decide to change the domain administrator in the cases provided by law including in violation of the same domain administrator rights to the means of individualization of participants in civil commerce, goods, works or services by transferring the right to administer of this domain to the legal owner of the mean of individualization event of his consent" [12].

The analysis of the contents of this rule leads to the conclusion that the court so decides on its own initiative with the consent of the trademark holder. In other words, the right holder cannot claim in court requirements about transfer of the right for administration of the domain to him. This moment seems disputable from the point of view of the procedural rule about an obligation of court not to go beyond claim requirements (the Civil Procedure Code of the Republic of Belarus (hereinafter – the Code of Civil Procedure), Art. 298). However, the court in deciding is not entitled on its own initiative, without the consent of the plaintiff to change the subject and causes of action, except in cases provided by this Code and other legislative acts (the Code of Civil Procedure, Art. 298) [15]. Thus, the content of Paragraph 44¹ of the Instruction is completely consistent with the requirements of the Code of Civil Procedure.

The introduction of the norms of the Paragraph 44¹ of the Instruction to the Belarusian legislation on domain names should recognize as the step towards improving the latter. But this is not enough. To prevent repeated violations of the trademark owner we consider it appropriate to include in the Trademark Act the extra special way to protect the exclusive rights to trademarks. In particular, we propose to supplement the Paragraph 2 of Art. 29 of the Trademark Act with the Subparagraph 2.4 as follows: "exclusion of the domain in which the trademark was used illegally from the registry of domain names and (or) transfer of the right to administer the domain to the trademark owner". As a result of this innovation, the Paragraph 44¹ provided by the Instruction will comply with the Trademark Act. In turn, trademark owners will have an additional opportunity for effective judicial protection of the exclusive rights.

There is a set of methods of the protection of the exclusive rights to the trademarks in the legislation of the Republic of Belarus. As a result of research it is established that not all from them can be applied to the protection in a judicial proceeding of the exclusive rights to the trademarks used on the Internet.

In particular, the special methods are ineffective due to the facts that do not consider the specifics of the use of trademarks on the Web. Trademark owners are limited in a choice of measures for judicial protection of the exclusive rights. This has a negative impact on the effectiveness of such protection. Actually trademark owners can use only two ways: to demand the termination of violation of an exclusive right to the trademark on the Internet and (or) the obligatory publication about the allowed violation with inclusion of data in it about the one who possesses the violated right.

In this regard it is offered to provide a new special method of the protection in the Trademark Act: exclusion of the domain in which the trademark was used illegally from the registry of domain names and (or) transfer of the right to administer the domain to the trademark owner. Application of this measure by court will serve as a guarantee of those similar offenses won't repeat in the future. This will increase the effectiveness of the protection of the rights to the trademarks used on the Web.

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INFORMATION TECHNOLOGIES IN TEACHING BUSINESS ENGLISH AT SPECIALIZED SECONDARY SCHOOLS

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The application of information technology in English teaching has become the hotspot in English education. This paper mainly expounds the technologies used in language teaching and gives advantages of their application.

As the Republic of Belarus broadens its foreign economic relations to know a foreign language is absolutely necessary nowadays for every educated specialist. That is why a Business English course has been introduced in many specialized secondary schools. It is a three-semester course for second and third year students of economic specialities. The main aims of the course are:

– to develop students' verbal skills and written language skills that allow them communicate, conduct business talks and read business correspondence in English;
– to develop reading and translation skills necessary for reading business and economic literature;
– to develop better understanding of oral economic information [1].