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REGULATION OF TRADEMARKS IN THE BUSINESS SECTOR FROM A LEGAL PERSPECTIVE

Summary. A trademark refers to a specific symbol that can distinguish the goods or services of individuals or legal entities. The use of any registered trademark by anyone other than the owner is only possible with the consent of the owner. Actions related to goods and services offered on the market by the owner of the trademark or with their consent are not covered by the rights derived from the registration of the trademark. After gaining a good reputation, it becomes even easier for the product to enter new markets. The trademark protection system is considered a significant advancement in economic and social transformation. In the modern era, this system plays a crucial role as a platform for development. Today, due to the high level of competition in the economic sector, it is essential for business owners in the field of trade and service providers to register their trademarks. In the initial stages, a business owner should choose a specific brand name and logo in consultation with the expert legal group for their activities. In a competitive market, it is necessary to ensure that the chosen brand name and logo do not resemble other logos before introducing them. The registration of trademarks plays a significant role in the business environment and is often conducted electronically. One of the tools that entrepreneurs utilize for the development of their businesses is software. To encourage and enhance the provision of entrepreneurial products and services, innovative software with specific functionality should be available. Consequently, the registration of a software idea is always a subject of consideration to support their own initiatives. Entrepreneurs who register their trademarks more promptly must prevail in any legal proceedings related to this matter. Formerly, the use of the trademark in the business field or its proof thereof held little significance. To succeed in a legal dispute, an entrepreneur needs to have the appropriate registration document for the trademark, and only the entrepreneur who first registers this document can prevail in a legal dispute.

Key words: trademark protection, famous trademarks, business activities, property rights, brand.

Introduction. A trademark is any symbol that provides necessary information to customers about the origin of a product and its differentiation from the products of other manufacturers. The registration of a trademark ensures customers' recognition of the brand, provides a competitive advantage over other brands, and significantly reduces the costs of enforcing trademark rights. Moreover, trademarks also offer proactive protection against counterfeiters, cybersquatters, and those involved in the illegal importation of goods. In general, a "trademark is any visible sign or symbol used by an enterprise to identify and distinguish its goods from those produced or carried by others" [1].

A trademark, in addition to being an indicator of product ownership and manufacturer identification, serves as an essential element in determining product demand in the market. The

protection of trademarks can be achieved through registration or use, and these processes are regulated by the internal laws of various countries. It is possible that in one country, trademark protection may involve its registration as with other forms of intellectual property, or it may simply require its use. However, since other categories fall under the protection of national domains, if a trademark is protected in one country, this protection does not extend to other countries, and recourse must be made to the domestic laws of each country. Nevertheless, at the international level, countries have established international trademark registration systems to facilitate the support of trademarks internationally. The Madrid system grants trademark holders protection over a wide geographical area.

The extent to which the issue has been explored – Several aspects of this research have found their reflection in the studies of foreign scholars such as Al Rays [2], Laura Rays [2], Hong-bumm Kim [3], Vu Qon Kim [3], Jong A. An [3], Liza Wood [4], Turkey Dereli [5], Adil Baykasoghlu [5], Fatih Aydoghan [6], and Fatma Gul Bilginer Ozsaatci [7], among others from foreign countries.

While there is no independent work by Azerbaijani authors on the legal aspects of trademark regulation in business activities, various researchers, including Elnur Kerimov [8], Hicret Huseynzade [9], Seyfulla Aslanov [10], Seymur Quliyev [11], and others, have investigated different facets of the problem.

Purpose and Objectives. The purpose of this article is to examine the legal issues surrounding the protection of trademarks, determine effective methods for the legal regulation of conflict resolution related to trademarks, and comprehensively study the general characteristics of the legal regime of trademarks as a means of differentiation in business activities. The findings of this research may serve as a foundation for future scientific investigations.

To achieve this purpose, the following objectives are addressed during the research process:

- Providing an understanding of trademarks and recognizing their legal nature;
- Exploring the means of protecting trademark rights;
- Studying the legislation regulating conflict resolution among trademark holders;
- Investigating essential aspects of the legal regulation of trademarks in business activities;
- Formulating the general trends and prospects of trademark rights regulation in both national and international legislation;
- Defining and substantiating the concept of trademark rights infringement from a property law perspective.

Methods. The methodological basis of this study comprises general scientific and specific scientific methods widely utilized in the humanities, such as systematic-structural analysis, synthesis, and legal document analysis, among others.

The works of foreign and local scholars who have researched issues related to trademarks and their protection have also been used in this work.

Main Section

The Legal Characteristics of Trademarks as a Means of Differentiation in Entrepreneurial Activities

Entrepreneurship refers to the organization of economic, industrial, and other activities that generate income. When we talk about entrepreneurship, it encompasses commercial activities carried out in various fields such as industrial enterprises, agriculture, trade establishments, service providers, banks, legal administration, publishing, scientific research institutes, and so on. In certain types of entrepreneurial activities, operations involving the buying and selling of goods, commodities, semi-finished products, and the like can be conducted. Entrepreneurs always strive to acquire resources and utilize services in line with their commercial interests. Based on the responsibilities assigned by the market, an entrepreneur is engaged in the creation of quality products and their cost-effective sale. Therefore, the creation of trademarks is one of the fundamental prerequisites of entrepreneurship, and trademarks should be considered one of the most vital elements of entrepreneurship. Various aspects related to the acquisition, utilization, and enforcement of rights over trademarks, as well as the resolution of disputes in court and administrative authorities, are of significant importance.

Regarding entrepreneurial activities, the 7th article of the Law of the Republic of Azerbaijan on "Entrepreneur's Duties" includes the provision "comply with the requirements of legislation on trademarks and geographical indicators" [12], which reflects this concept.

The registration of trademarks bears notable significance in the following aspects:

1. It enables the presentation of products or services with a distinct trade symbol, thereby enhancing the potential for increased profitability and advantages;
2. Trademark registration serves as a protective measure for businesses, safeguarding their distinctive brand identities from potential competitors;
3. It plays a pivotal role in the commercialization process, ensuring that businesses align with both national and international standards;
4. Trademark registration facilitates success in legal proceedings related to trademark demand for official certification purposes;
5. It contributes to the differentiation of products or services in the labor market, offering a unique and recognizable identity.

In the context of granting the right to conduct commercial activities without registration to individual entrepreneurs, specific cases necessitate careful consideration. The State Agency for Standardization, Metrology, and Patent of the Republic of Azerbaijan carries out the registration of trademarks in accordance with the legislative framework, assuring compliance with state standards for products, services, and works. Additionally, it manages the unified state register overseeing the labeling of products and services [10, p. 427].

Upon the registration of a trademark, the author's rights holder is issued a certificate, which serves as the document confirming the exclusive right of the trademark owner concerning the designated goods. "The primary function of a trademark is to differentiate

goods or services and provide consumers with assurance about the origin and quality of the products or services. Typically, a trademark does not serve to identify the business owner, the manufacturer of the product, or the service provider" [6, p. 33].

In our era, despite having sufficient legal means to combat unlawful use of trademarks, the unfortunate reality is that numerous conflicts persist in practice. This can largely be attributed to discrepancies within the corresponding normative legal framework. If a trademark resembles another company's brand, registration will be rejected. "In the Republic of Azerbaijan, the widespread use of a well-known trademark by another person in all types of goods and services is considered a violation of the rights of the well-known trademark owner, and this action is regarded as causing damage to the owner of the well-known mark" [13].

The Essential Principles of Protecting Famous Trademarks from the Legal Standpoint

In the realm of commerce, trademarks encompass a range of elements such as words, graphics, letters, numbers, three-dimensional logos, and combinations thereof, all of which are eligible for trademark registration. A "famous" trademark is one that holds widespread recognition among consumers across an entire nation. Such renowned trademarks possess all the characteristics inherent to generic trademarks, including their role as commercial indicators, their significance in an enterprise's business operations, their role in enhancing competitiveness, and their contributions to market development. They serve as a means for various organizations and individuals to distinguish their products and services. A famous trademark enables consumers to promptly identify the type of product or service they are engaging with. Frequently, these distinguished commercial symbols attain a high degree of popularity and hold significant economic value.

In essence, a trademark should exhibit distinctiveness, facilitating differentiation from competitors. It should elicit positive and appealing connotations while avoiding negative associations and emotions. Originality is paramount; the trademark should not replicate existing trademarks but instead embody novelty. The utilization of a trademark extends to its incorporation on the product itself, its packaging, promotional materials, office documentation, printed publications, and various other mass communication channels.

In the global market, a brand is generally a prerequisite for the presence of a product. A brand is the most crucial factor in ensuring customer loyalty. "One significant advantage of a brand for entrepreneurs is its ability to prevent cases of unfair competition, such as counterfeit products, imitations, and forgeries, especially when introducing new products and facing competitors, and it also ensures the legal protection of the brand name and business in such cases" [5, p. 132].

Indeed, many well-known brands owned by companies play a decisive role in their assets, sometimes constituting a significant portion of their assets. In many cases, organizations can use their renowned brands as a form of capital for investment and business activities. Well-known brands can have a substantial impact on trade, the economy, and society as a whole.

Trademark and famous brands serve as highly effective tools in marketing, advertising, and the promotion of commerce. All marketing, advertising, and trade promotion activities are fundamentally based on the brand and are aimed at promoting the business of the products bearing that brand.

Manufacturing enterprises should be encouraged to continuously enhance the productivity, quality, and characteristics of their products and services in order to bolster their brand reputation, stimulate production, and contribute to business development. Renowned brands not only attract new and potential customers but also aid in retaining a traditional customer base.

Famous brands also assist consumers in conveniently selecting products and services in accordance with their needs, encompassing quality, price, advantages, and benefits, thereby contributing to the safeguarding of consumer rights.

One of the fundamentals for the swift resolution of cases involving the violation of intellectual property rights, the establishment of a robust competitive environment, and the protection of the rights of both producers and consumers is the utilization of trademarks and renowned brands by legislative authorities to distinguish genuine products from counterfeit intellectual property goods.

According to the report for the year 2023 compiled by “Brand Finance,” the world’s top 10 most valuable brands are as follows:

1. Amazon – \$299.3 billion;
2. Apple – \$297.5 billion;
3. Google – \$281.4 billion;
4. Microsoft – \$191.6 billion;
5. Walmart – \$113.8 billion;
6. Samsung – \$99.7 billion;
7. ICBC – \$69.5 billion;
8. Verizon – \$67.4 billion;
9. Tesla – \$66.2 billion;
10. Tik-Tok – \$65.7 billion [14, p.13].

In a broader context, the fundamental role of a brand resides in its capacity to persuade the consumer to engage in purchasing behaviors and instill trust. Brand trust manifests as the consumer’s belief that the company, under the aegis of which a product is acquired, will effectively address their concerns, faithfully deliver on its promises, and validate the consumer’s expectations. Among the cardinal functions of a trademark is its capacity to delineate the goods or services of a commercial entity from those offered by others. When consumers demonstrate a willingness to allocate greater financial resources for the acquisition of products or services bearing a particular brand, the brand owner gains a competitive edge. Within this context, the safeguarding of intellectual property assumes an exclusive and specialized role. This is due to the fact that if one of the competitors, wielding a similar trademark, introduces substandard products or services to the market, it inevitably detracts from the reputation and credibility of the principal brand.

The Legal Aspects of Brand Formation

In the global landscape of competition, the mere presentation of products and services no longer suffices to captivate the attention of consumers. A brand name, fundamentally, encapsulates the nomenclature, expressions, or designations chosen by individuals or corporate entities for their products or services. This branding process is open to registration for both individual proprietors and business entities, with the proviso that such brands do not inherently distinguish themselves significantly in terms of reliability and equitable trustworthiness. To ascertain the valuation of a brand, the typical recourse lies in three distinct methodologies: the financial modality, the consumer-centric approach, and a fusion of both paradigms [3, p. 336]. This phenomenon is especially discernible within the B2B (Business to Business) sector, where a brand flourishes through dynamic interactions between employees and customers.

Enterprises, with utmost diligence, endeavor to safeguard their brands from counterfeiting practices to prevent any erosions in their sales. In the event of an individual or entity deceiving consumers by vending counterfeit renditions of a product at substantially deflated price points, it behooves the understanding that not only the brand’s reputation is imperiled but also the trust vested by consumers in said brand. It is worth noting that online marketplaces of repute such as Amazon, eBay, and the Alibaba Group have honed their approaches to brand protection, particularly within the purview of legal safeguards.

There are distinctions between branding and its relevance among employees, as this is contingent upon various factors such as the expeditiousness of consumer engagement, the intricacy of service provision, and the necessity for expounding product attributes. Therefore, employees play a pivotal role in the development and fortification of a brand. Consequently, it is imperative for employees not only to adhere to the brand but also to embody it. As posited by [2, pp. 116–117], branding not only benefits the company but also enhances the efficiency of the country in which it is situated. For example, prominent brands such as “Coca-Cola,” “Microsoft,” “Intel,” “Dell,” “Cisco,” and “Hertz” are the brand embodiments that bolster the economic prowess of the United States and confer significant influence on global markets.

Brands are complex elements in our daily lives, engineered by both companies and consumers. As described in [11, p. 5], “Brand implies constancy. All major brands of the world have successfully upheld their core promises and values throughout the years.” In the wake of contemporary societal and cultural transformations, such as globalization, demographic shifts, knowledge culture, and individualization, brands are gaining increasing significance. They progressively serve as guiding beacons and sources of meaning for consumers, orienting and facilitating their alignment with evolving social and cultural structures. This transformation is so profound that people form emotional bonds with brands and attribute human qualities to them, cultivating a particular fondness for certain brands. Presently, in developed nations, the greater part of a company’s value and assets is shaped through branding. Each brand is an outcome of social compacts; hence, the primary objective of brand management should be the establishment of enduring and meaningful relationships between the brand and consumers. The regulation of consumer behavior is one of the chief determinants of the brand’s value proposition. The desire to determine the relationship between consumers and brands has fostered the development of the brand equity concept [4, p. 663].

The consumer’s relationship with a brand is indicative of their proclivity to select and evaluate the brand or product, thereby influencing consumer behavior. This relationship is institutionally intricate and encompasses perceptual, emotional, and motivational (incentive-driven) components. Understanding the relationships between individuals and brands is pivotal for explaining and comprehending human actions. Relationships between individuals and brands are feasible due to the progressive assignment of personal characteristics by consumers to brands. Nevertheless, brand relationships differ from interpersonal relationships in terms of emotional connection, as well as the intensity and rapidity of interactions. Yet, there are analogous instances in consumer behavior towards real individuals and beloved brands. People are willing to expend resources to ensure the existence of these relationships and alleviate negative effects, particularly for their favored brands.

The Principles of International Registration of Trademark Rights and Their Importance for the Trademark Owner

The process of international trademark registration bestows a legal shield upon its possessor, affording them the ability to employ it for product/service differentiation or grant others a license for its utilization in exchange for compensation. The exclusive utilization rights and licensing privileges, particularly in the context of desired goods and services, are unequivocally vested in the trademark's registered proprietor. A noteworthy aspect to consider is that the omission of specific information, such as additional elements within the trademark's color scheme and nomenclature, from the protective framework delineated in the trademark registration certificate signifies the vulnerability of a trademark, rendering it susceptible to acts of unfair competition [8, p. 204].

In the contemporary landscape, the global economy is rapidly progressing towards globalization, an enduring process governed by its unique set of principles, encompassing, among other facets, the worldwide proliferation of the English language. Significantly, this linguistic trend has ramifications for trademark nomenclature. Presently, a significant proportion of trademarks registered at the European Union Intellectual Property Office feature one or more English terms. It is essential to underscore that the compulsory registration of a trademark within a specific country does not constitute a prerequisite for its broad recognition in accordance with the stipulations of the relevant article. This implies that a trademark can attain widespread recognition without being formally registered within a particular nation [9].

The regulation and safeguarding of trademark rights in the realm of international commerce are profoundly influenced by various international agreements delineating the registration of trademarks, the international classification system for goods and services, most notably the Paris Convention for the Protection of Industrial Property, and the international convention governing the international registration of trademarks. A consortium of nations, signatories to the Paris Convention, have established international unions in alignment with the provisions of this convention. These unions are geared towards facilitating the process of international trademark registration and the acquisition of associated rights, with the Madrid System as their guiding framework. The monetary worth of international brand registration is measured in Swiss francs, and it becomes the prerogative of the applicant to disburse the prescribed fee after their application undergoes the requisite review and attains approval by the trademark registration authority. In a globalized milieu where the significance of brands in foreign trade is consistently on the rise, both nation-states and business entities must conscientiously acknowledge the profound implications of branding and craft strategies that can ensure sustained growth and competitive supremacy [7, p. 1394].

The renewal of international registration is obligatory at intervals of ten years, subject to stipulated fees. It is essential to note that the count of trademarks that can be registered globally is, for all intents and purposes, inexhaustible. Trademarks, in essence, are comprised of one or more letters, words, characters, or numerals, the specifics of which are determined by the prevailing legislations of individual nations. The foundational criterion that sets trademarks apart is their mandate to be distinctive, innovative, and pioneering [7, p. 1394].

Conclusions. The trademark is an indispensable attribute of a successful business. The acquisition of trademark rights enables the distinct use of a registered commercial symbol. A

trademark allows the recognition of a company by its customers. Establishing a trademark that garners the trust of customers forms the cornerstone of a thriving business. A business is not obliged to register its commercial symbol; however, it can create general rights specifically pertaining to this commercial symbol. Nevertheless, the advantages of trademark registration are numerous, with the most significant being the exclusive legal rights. The registration of trademarks provides the owner with essential measures against the import and export of counterfeit goods.

Transitioning to our country's market relations and the differentiation of products from various manufacturers necessitated the modernization of legislation and its application mechanisms regarding trademarks. Due to the increase in legal disputes related to trademark application, special attention is given to the respective field. Rights of entrepreneurs engaged in business activities are protected within the framework of laws regulating trademark legal matters. In the context of the existence of the global market, attention must be paid to both national and international legislation in this area.

Trademarks play a pivotal role, serving both producers and consumers within the business landscape. They confer substantial advantages concerning the promotion of commercial enterprises in the market. Unique designations notably impact consumer preferences, engender trust, and cater to specific product requisites. For entrepreneurs well-versed in market dynamics and rights protection, trademarks assume particular significance. This stems from the considerable risks associated with conducting business devoid of trademark protection. Ownership of a trademark enables a company to gain recognition within its potential clientele while concurrently augmenting trust in the brand. The legal framework governing trademarks in the realm of commercial activities assumes critical importance, safeguarding a firm's authority and reputation within the intricate web of market relations.

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Чингізаде Ч. Регулювання торговельних марок в бізнес-секторі з правової точки

Анотація. Під торговою маркою розуміють певний символ, який може відрізнити товари чи послуги фізичних чи юридичних осіб. Використання будь-якої зареєстрованої торгової марки будь-ким, крім власника, можливе лише за згодою власника. На дії, пов'язані з товарами та послугами, які пропонуються на ринку власником торгової марки або за її згодою, не поширюються права, що впливають з реєстрації торгової марки. Здобувши гарну репутацію, продукту стає ще легше вийти на нові ринки.

Система захисту товарних знаків вважається значним прогресом в економічних і соціальних перетвореннях. У сучасну епоху ця система відіграє вирішальну роль як платформа для розвитку. Сьогодні, через високий рівень конкуренції в економічному секторі, власникам бізнесу в сфері торгівлі та постачальникам послуг вкрай необхідно реєструвати свої торгові марки. На початкових етапах

власник бізнесу повинен обрати конкретну торгову марку та логотип, погодившись з експертною юридичною групою своєї діяльності. На конкурентному ринку необхідно переконатися, що обрана торгова марка та логотип не схожі на інші логотипи, перш ніж їх представити.

Реєстрація торгових марок відіграє важливу роль у бізнес-середовищі та часто здійснюється в електронному вигляді. Одним із інструментів, який використовують підприємці для розвитку свого бізнесу, є програмне забезпечення. Для заохочення та покращення надання підприємницьких продуктів і послуг має бути доступне інноваційне програмне забезпечення зі спеціальними функціями. Отже, реєстрація ідеї програмного забезпечення завжди є предметом розгляду для підтримки власних ініціатив.

Підприємці, які реєструють свої торговельні марки швидше, повинні отримати перевагу в будь-якому судовому розгляді, пов'язаному з цим питанням. Раніше використання торговельної марки в бізнес-сфері або її підтвердження не мали великого значення. Щоб досягти успіху в судовому спорі, підприємець повинен мати відповідний реєстраційний документ на торговельну марку, і лише той підприємець, який першим зареєстрував цей документ, може перемогти в судовому спорі.

Ключові слова: захист торгової марки, відомі торговельні марки, підприємницька діяльність, майнові права, бренд.