

наси́льства, кореспондує обов'язок суб'єктів, уповноважених на те законом, здійснювати заходи, спрямовані на захист особи, і передбачені Законом України «Про запобігання та протидію домашньому насильству». В рамках інтеграції українського законодавства до європейського законодавства, це є вкрай актуальним [6].

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Pysana T. O., judge,
Kyiv Court of Appeal, Kyiv, Ukraine

SOME CHALLENGING ISSUES OF TRADEMARK INHERITANCE

The question of inheritance of intellectual property rights to a trademark is quite problematic due to the very object of such a right, which is a means of individualizing goods (services) produced (provided) by one person from goods (services) produced (provided) by others persons and differs from other objects of intellectual property law (results of intellectual, creative activity). The right holder acquires exclusive intellectual property rights, the content of which in

relation to this object of intellectual property rights is determined in Chapter 44 of the Civil Code of Ukraine (hereinafter referred to as the Civil Code of Ukraine), the Law of Ukraine “On Protection of Rights to Marks for Goods and Services” dated December 15, 1993 No. 3689-XII and other laws.

More attention is paid to the issue of inheritance of intellectual property rights to a trademark compared to other objects included in the group of objects of individualization (commercial name and geographical indication), at the same time, more questions arise regarding the choice of ways to solve them.

Firstly, there is a different approach of scholars regarding the entity that acquires the right to a trademark, as some scholars believe that the ownership of a trademark is inextricably linked to the implementation of entrepreneurial activity, and therefore its owner can only be a legal entity and an individual entrepreneur. In this regard, in their opinion, the exclusive right to a trademark can pass only to the subject of entrepreneurial activity, and if there are several heirs, and all of them have the status of an entrepreneur, then the dispute regarding its inheritance must be resolved in court, since the right to a trademark cannot belong to several persons at the same time.

At the same time, there is an opinion of other scientists that the Ukrainian legislation does not provide for the limitation of the acquisition of the right to a trademark only by a special entity, despite the fact that a trademark individualizes the results of business activities, in particular, goods and services.

Moreover, in accordance with the provisions of the Civil Code of Ukraine (hereinafter referred to as the Civil Code of Ukraine), the intellectual property right to a certain trademark may belong to several individuals and (or) legal entities at the same time, but there is no definition of which "certain" types of trademark may belong to several persons.

Acquisition by several heirs of the right to a trademark in the order of inheritance, taking into account the general principles governing inheritance legal relations, must be acquired by all heirs jointly without allocating a share, therefore the question also arises regarding the regime of use of such an object of legal succession.

The acquisition of the right to a trademark is certified by a certificate. The term of validity of the certificate is 10 years from the date of submission of the application to the National Intellectual Property Authority (hereinafter – NOIP) and is extended by NOIP at the request of the right holder each time for 10 years, subject to payment of the fee in accordance with the procedure established by Article 2.18 of the Law of Ukraine “On Protection of Rights to Marks for Goods and Services”. The procedure for extending the term of validity of the certificate is established by the central executive body, which ensures the formation and implementation of state policy in the field of intellectual property law. The exception, in this case, is the right to a well-

known trademark, since it does not depend on the expiration of certain terms. The right of the previous user to the trademark is also not limited in time, however, the transfer of this right to other persons must occur only together with the enterprise or business practice, i.e. in this case, the term of validity is determined by the term of entrepreneurial activity.

Thus, the legislation of Ukraine provides for legal subjects who acquire the right to a trademark in different ways: by submitting an application and registering the corresponding right; by acquiring the right of the previous user to the trademark and on the basis of recognition of the trademark as well-known by the Appellate Chamber or a court, regardless of its registration in Ukraine.

In particular, the current legislation of Ukraine provides for several types of primary entities that acquire the right to the same trademark: in the order of prior use, or by registering such a right. At the same time, both the right of the previous user and the right to the trademark, certified by the certificate, provide for their transfer to inheritance, which requires research into the settlement of the differences in the legal regime of such succession.

Legal relations regarding the inheritance of the right to a trademark, as the right to an object of intellectual property, are subject to the general provisions on inheritance, taking into account their specific features.

At the same time, the right to a trademark is a special object of legal succession. Such a right has specific features that distinguish it from other objects of inheritance, as it is intangible, indivisible and exercised jointly by the heirs within the prescribed period. The primary subject of the trademark right acquires such intellectual property rights as: 1) the right to use the trademark; 2) the exclusive right to allow the use of a trademark; 3) the exclusive right to prevent improper use of the trademark, including prohibiting such use; 4) other intellectual property rights established by law.

Therefore, the right of inheritance to a trademark differs from inheritance to other objects of intellectual property rights, as it gives its owner exclusive rights, which gives them negotiable power, that is, the right to a trademark itself can be the subject of a deed.

According to Article 1218 of the Civil Code of Ukraine, the inheritance includes all rights and obligations that belonged to the testator at the time the inheritance was opened and did not cease due to his death. According to the nature of the rights acquired by the subject of the right to a trademark, they are property, and do not terminate as a result of the death of their subject, so they must be included in the composition of the inheritance.

The peculiarity of the inheritance of the right to a trademark is that the heir must not only accept such inheritance, but also properly formalize the right to it.

In Methodical recommendations for notarial actions related to taking measures to protect inherited property, issuing certificates of the right to

inheritance and certificates of ownership of a share in the common property of spouses, approved by the Decision of the Scientific Expert Council on Notarial Affairs under the Ministry of Justice of Ukraine 29.01.2009, the issues of starting an inheritance case, taking measures to protect the inherited property, proceedings on the inheritance case are highlighted, clarifications are provided regarding the issuance of a certificate of the right to inheritance for certain types of inherited property.

Clause 3 of the specified Methodological Recommendations provides for objects of inheritance of intellectual property rights, which, in particular, include commercial (brand) names, trademarks (marks for goods and services), geographical indications.

The law stipulates that the primary entity acquires the right to use the trademark with the acquisition of the certificate, so there are no problems with the registration of inheritance rights at the notary in this regard. At the same time, the rights arising from the certificate are valid from the date of submission of the application. Thus, the Law demarcates the right of ownership and the right of use of the corresponding object in time, as a result of which a problem arises, which is actively discussed in the circle of scientists, regarding the possibility of acquiring the right to a trademark in the order of inheritance, provided that the testator submitted an application during his lifetime, but not managed to get a certificate, and as practice shows, the realization of the right to a trademark takes a long time from the time of application. In addition, in addition to the need to register trademark rights for heirs, it is also necessary to make changes to the State Register of Certificates of Ukraine for signs for goods and services.

At the same time, there is no procedure for issuing a certificate of the right to inheritance in cases of inheritance of the right to a well-known trademark or the right of prior use of a trademark.

Thus, the Law provides that any person, association of persons or their legal successors has the right to receive a certificate in accordance with the procedure established by this Law. That is, the Law provides for the right to obtain a certificate, but the issue of registering the rights of successors to a trademark before issuing a certificate for the relevant object remains unresolved.

A special feature of the inheritance of the right to a trademark should also be noted is the limitation of the validity of property rights for 10 years from the date of submission of the application to the IP and the extension of the IP at the request of the owner of the certificate every 10 years. However, the possibility of extending the term of validity of the certificate each time does not indicate that such a right is indefinite, since such a right can be terminated in case of non-payment of the fee for extending its term of validity; by a court decision, in particular, in connection with the transformation of a trademark into a

commonly used designation of a certain type of goods or services after the date of publication of information on the issuance of a certificate.

At the time of the opening of the inheritance, the validity of the right to the trademark is subject to verification.

Taking into account the above, there is a need to study the subject of the right to a trademark in the plane of distinguishing subjects according to the order in which they acquired the right to a trademark and, depending on this, to regulate the procedure for the registration of the corresponding right for the heirs; determining the grounds for acquiring trademark rights by several entities, as well as the procedure for the transfer of trademark rights to several heirs; determining the procedure for registration of the rights of heirs, provided that the testator did not have time to obtain a certificate during his lifetime; examination of the trademark object for the diversity of its expression and the possibility of registering the corresponding right to settle the issue of the inheritance of this object.

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Smirnov O. G., judge,
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SOME PROBLEM ASPECTS OF TRADE SECRET AND KNOW-HOW PROTECTION

The protection of the right to trade secrets and know-how is one of the elements of their legal regime, which reveals the nature of the rights and obligations established by law.

As you know, the protection of the right is carried out using the appropriate form and methods. The form of protection refers to a set of internally agreed organizational measures to protect subjective rights and legally protected interests. The science of civil law distinguishes two main forms of protection of the violated right: jurisdictional (Articles 16–18 of the Civil Code of Ukraine) and non-jurisdictional (Article 19 of the Civil Code of Ukraine).

The non-jurisdictional form of protection includes the actions of individuals or legal entities regarding the protection of rights and interests protected by law, which are carried out independently, without recourse to state and judicial authorities. However, when it comes to trade secrets and know-how, the right to such information is protected in court. Although, in the case when the right of the person who actually controls the trade secret and know-how has been violated, then as a way of self-defense, he can take the following actions: independently neutralize and disable the technical means that were illegally