

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.

UDC 347.122:007(043.2)

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Economic Court of Zaporizhzhia region,
Zaporizhzhia, Ukraine

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

implemented by third parties in order to obtain commercial secrets and know-how; take operational measures to disinform persons who illegally obtained secret information, in order to prevent possible damage from their disclosure; may apply other sanctions in relation to business contract counterparties and employees who violate obligations regarding non-disclosure of commercial secrets and know-how.

Jurisdictional form of protection, on the contrary, is the activity of authorized state bodies to protect violated or disputed rights. In the event that a person's rights and legitimate interests are violated by illegal actions, he applies for protection to state or competent authorities (court of general jurisdiction, commercial court), which are authorized to take the necessary measures to restore the violated right or stop the offense. Within the framework of jurisdictional protection, general (judicial) and special (administrative) procedures for the protection of violated rights are distinguished. The first is of greater interest to us, so we will consider it in more detail.

The judicial procedure for protection includes a person's application to the court for the protection of the violated right. According to Article 16 of the Civil Code of Ukraine, every person has the right to apply to the court for the protection of his personal or property right or interest. The methods of civil legal protection are provided for in the same article: 1) recognition of the right; 2) recognition of the deed as invalid; 3) restoration of the situation that existed before the violation of the right, and termination of actions that violate the right; 4) forced performance of duty in kind; 5) termination or change of legal relationship; 6) compensation for damages; 7) compensation for moral damage; 8) recognition of an act of a state body or local self-government body as illegal. The court protects civil rights and interests in other ways provided for by law.

Next, we will consider the methods of civil protection of the rights of a person who actually controls trade secrets and know-how, since not all of the methods of protection specified in Article 16 of the Civil Code of Ukraine can be applied to such atypical objects of civil law, which are trade secrets and know-how. Therefore, in the event that the right of a person who actually controls trade secrets and know-how has been violated by a third party, he can demand from the violator (which must be proved personally) recognition of the right and cessation of unlawful actions. A claim for recognition of the right is filed when the right to trade secrets and know-how is denied.

Such a defense as restoration of the position existing before the infringement of the right and cessation of the actions that violate the "right" can be used by the person who actually controls the trade secret and know-how in the event that the infringement has not yet led to a complete cessation of the regime undisclosed information (disclosure of commercial secrets and know-how) and there is an actual possibility to eliminate the consequences of the violation. In such a case, the person who illegally obtained the trade secret and

know-how may be required to return the relevant documentation or other material media to the person who actually controls the trade secret and know-how. However, in this case, the leakage of information may lead to its disclosure and the loss of the commercial value of such information, since certain information or knowledge obtained by the violator will remain in his mind. The only possible way seems to be the prohibition to use illegally obtained commercial secrets and know-how by the violator in the personal sphere, or to transfer them to third parties.

Most often, in the judicial practice of Ukraine, there is such a way of protecting the right of a person who actually controls a trade secret and know-how, as compensation for damages. Unfortunately, the current legislation of Ukraine does not define norms and criteria for assessing damage and the amount of damages related to the violation of the right to trade secrets and know-how.

In addition, the plaintiff in court must personally prove that the confidential information, the right to which was violated, is exactly a trade secret or know-how and has potential value; that there are binding relationships between the plaintiff and the defendant; there is a valid violation of obligations regarding the confidentiality of information, which is expressed in the improper disclosure of secret information, use or assignment of such information. Since the issue of the amount of damages is not regulated by law, some scientists believe that the plaintiff must also prove the fact of the existence of damages, their amount, and that these damages were caused by the wrongful actions of the defendant. The plaintiff must determine and prove the amount of such damages, which in many ways complicates the application of the indicated method of legal protection in court. However, many questions remain undefined: the plaintiff should collect compensation for actual damage, or what he himself determined; whether he can claim compensation in court for unjust enrichment caused by the illegal use of trade secrets and know-how, which is not taken into account when calculating compensation for actual damage; whether the plaintiff is prohibited from demanding compensation for damages that exceed the amount of the actual damage; what will be the penalties for willful or malicious misappropriation?