

MULTIDISCIPLINE PROCEEDINGS OF
**DIGITAL FASHION
CONFERENCE**

KOREA, REPUBLIC OF

Multidiscipline Proceedings of

DIGITAL FASHION CONFERENCE

December 2022 (*Volume 2, No.6*)

Copyright © 2021
By Woongjin Think Big Co., Ltd.
All rights reserved.
Available at digitalfashionsociety.org
Published:
서울 합정역
파주출판도시
ISSN 2466-0744
Seoul
Korea, Republic of

EDITORIAL BOARD

Katharina Sand

*PhD Candidate - Faculty of Communication, Culture and Society, USI -
Università della Svizzera italiana*

Alice Noris

*PhD Candidate - Faculty of Communication, Culture and Society, USI -
Università della Svizzera italiana*

Michela Ornati

*Faculty of Communication, Culture and Society, USI - Università della
Svizzera italiana*

ELSEVIER



SRN
Societal Research Network

Universal
Impact Factor



LEGAL NATURE AND GENERAL CHARACTERISTICS OF TRADEMARKS.

Rahmonova Mohichehra Nodirbek kizi

Lecturer at the Tashkent State
Law University
rakhmnva@gmail.com

Concept, signs and types of trademarks.

Means of individualization are a special form of intellectual property objects, for which a similar legal regime is inherent, as for the results of intellectual activity. This is due to the fact that the means of individualization are intangible objects, have commercial value, are not subject to control by copyright holders if they are used by third parties, and must be protected by exclusive rights to them.

The main function of the means of individualization is the ability for each participant in civil circulation to name himself, his products, his services with his own original name, create a unique image, and thus individualize himself from others.

The institute of means of individualization of participants in civil circulation, goods and services covers the legal protection of three objects of intellectual property: trade names, trademarks and appellations of origin of goods.

The adoption of the Paris Convention for the Protection of Industrial Property of 1883 gave the main importance to a trademark as an object of intellectual property. It gives the status of a trademark as an object equated with other objects of industrial property. The purpose of the adoption of the Paris Convention for the Protection of Industrial Property of 1883 was to overcome the territorial effect of the protection of exclusive rights and the international protection of intellectual property rights. The Convention was one of the first to prove the effectiveness of the extraterritoriality of intellectual property rights, since after the successful accession of a number of countries, industrial property objects, including trademarks, were able to acquire protection outside the countries in which they were created.

Thus, it becomes clear to us that trademarks have become widespread with the development of market relations and with the transition to the capitalist system. If we trace the entire history of a trademark, it becomes obvious that this object of intellectual property at all times performed the main function of distinguishing one product from another, protecting both the manufacturer and the consumer from falsification.

In foreign literature, the modern definition of a trademark is that a trademark is a word, name, symbol or device, or a combination thereof, used by an individual, including a legal entity, with the good faith intent to use in trade in order to identify and distinguish its goods from other goods produced or sold [1].

The scientific definition of a trademark is in many ways similar to its legal definition. As indicated in the Law of the Republic of Uzbekistan "On Trademarks, Service Marks and Appellations of Origin of Goods", a trademark is a duly registered designation that serves to distinguish goods and services of some legal entities and individuals from similar goods of other legal entities and individuals [2]. The law equates the concepts of a trademark and a service mark, reducing them to a common generic concept of a trademark. This equality lies not only in the semantic meaning, but also in the conditions of registration of the mark and its legal regime.

The laws of some countries distinguish between trademarks and service marks proper. Both of them are designations that have a distinctive ability. Trademarks serve to distinguish one company's products from those of other companies, and service marks perform the

same function for services. This can be any kind of service, such as financial, banking, travel, advertising or catering services, etc. [3]. However, as you know, in the provision of services, the activity of the obligated party is inseparable from the result of this activity, and in the provision of services, unlike work, there is no embodied result.

Therefore, by a trademark, we mean a way invented by people to distinguish their product from a number of analogues by applying a designation that is unique to them. This designation serves as an indicator for the consumer about the quality and properties of a product or service, and also leaves a mark in memory, helps to distinguish one manufacturer from another, and choose goods that are more acceptable for consumption. In turn, trademarks help enterprises, both large and medium-sized, as well as small ones, to feel their importance in the market, to create an image of recognition and marketability of their goods and services.

A trademark in economic circulation performs a distinctive function of the product and its manufacturer, as well as advertising and protective .

The advertising function of a trademark allows you to distribute information about the manufacturer and its products. Thus, interest in them is formed and maintained.

Trademarks enable trade to accurately and clearly define the offer and guarantee the legal protection of goods. Trademarks may be subject to systematic promotional activities. Advertising, in principle, can be done without trademarks, but in this case it is anonymous and indefinite. Since a trademark is well remembered, attracts the attention of consumers and inspires their trust, it is an effective advertising tool that must be skillfully used.

Along with a distinctive function, a popular trademark gives consumers a certain idea of the quality of the product. Being a kind of hallmark of an enterprise, a trademark obliges the enterprise to value its reputation and constantly take care of improving the quality of its products. One of the important functions of a trademark is also advertising of manufactured products, since a trademark that has won the trust of consumers promotes any goods marked with this sign. On the world market, the price of products with a trademark is on average 15-25% higher than the price of anonymous products. Finally, a trademark serves to protect products on the market and is used in the fight against unfair competition [4].

The protective function consists in informing third parties that the release of products under the indicated sign is prohibited to them and can be carried out only with the permission of the copyright holder.

In the literature, a trademark as a social reality is given the following definition: "A trademark is a reflection in the public consciousness of an objectively existing established connection between the specific consumer properties of a product of a certain kind and a characteristic external feature of this product or its packaging"[5].

In the Republic of Uzbekistan, there are legislative acts in the field of intellectual property, but they do not contain a specific definition of the term "intellectual property". The Civil Code of the Republic of Uzbekistan (hereinafter referred to as the Civil Code of the Republic of Uzbekistan) also does not give the concept of intellectual property, although a whole chapter is devoted to this sub-branch of law and objects of intellectual property are defined. But from the meaning of Article 1031 of the Civil Code of the Republic of Uzbekistan, it can be understood that intellectual property means the results of intellectual activity, which include works of science, literature and art, performances, means of individualization of participants in civil circulation, goods, works and services. Article 1225 of the Civil Code of the Russian Federation, in contrast to our legislation, defines the term "intellectual property" as the results of intellectual activity and means of individualization.

Thus, it can be determined that intellectual property is the results of human creative

activity, which are united by the intangible nature of their existence, as well as the means of individualization of producers, goods, works, services equated to them.

Now it is necessary to analyze the concept of "means of individualization of goods". This term is quite often found in the legislative acts of the Republic of Uzbekistan, in particular, in the Civil Code of the Republic of Uzbekistan, in the Law of the Republic of Uzbekistan "On Trademarks, Service Marks and Appellations of Origin of Goods" (hereinafter referred to as the Law on Trademarks), as well as in the Law of the Republic of Uzbekistan "About competition". However, a specific definition of this term is not given in any of the above legislative acts.

Article 1031 of the Civil Code of the Republic of Uzbekistan refers to the means of individualization trademarks (service marks), trade names and appellations of origin of goods.

Therefore, we have clarified that a trademark is one of the objects of intellectual property and belongs to the group of means of individualization of goods or services.

In accordance with paragraph 1 of article 15 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), a trademark should be understood as "any designation or any combination of designations that can distinguish the goods or services of one enterprise from the goods or services of other enterprises". It should be noted that the list of such designations is not exhaustive, and verbal designations are given as examples, which include names of persons, letters, numbers, figurative elements and color combinations, as well as any phrases.

In the civil legislation of the Republic of Uzbekistan, a trademark and a service mark are understood as "registered in accordance with the established procedure, a designation that serves to distinguish goods and services of some legal entities and individuals from similar goods of other legal entities and individuals. From the meaning of this article, it becomes clear that a trademark is necessary for a subject, namely a legal or natural person, in order to introduce original goods into civil circulation, which are different from the goods of other manufacturers or sellers.

Also in the literature on the issue of the concept of "trademark" you can find many opinions, which in most are similar in meaning and content as defined in our legislation.

Some scholars suggest the existence of a relationship between the designation, its association with the object in relation to which it is used. So, for example, P. Matelli argues that a trademark is the ratio of a designation to the object it designates. From this it follows that a designation that does not individualize the goods of a particular manufacturer or seller cannot be a trademark. Consequently, the last statements characterize two "objective" signs of a trademark proposed by O.A. Gorodov "instrumental and service character".

In the first case, a trademark appears as a tool that evokes "an idea of the object it designates", in the second - a conventional designation, the purpose of which is to individualize specific objects - goods, works or services.

It should also be noted another sign of a trademark - the ownership of the exclusive right to a trademark by a specific subject. At the same time, the applicant himself, who registered it in the prescribed manner, or a person to whom such a right was transferred under an agreement on the alienation of the exclusive right to a trademark or transferred in another way prescribed by law, can act as this subject.

In accordance with civil law, namely with paragraph 2. Article 4 of the Law "On Trademarks" as such entities may be legal entities and individuals engaged in entrepreneurial activities (individual entrepreneurs), or associations of persons (including associations and unions) in relation to the collective mark provided for in Part 3. article 3 of this Law.

Thus, on the basis of the selected features of a trademark, it is possible to formulate its definition. A trademark is a conventional designation, which is an intangible object and at the same time has commercial value in civil circulation, which is intended to individualize goods, namely, to distinguish some goods of specific entities from the mass of other homogeneous goods.

We also consider it necessary to note the exclusivity of the right to a trademark, the presence of which is one of the important conditions for obtaining protection for a trademark by the right holder.

In accordance with Article 26 of the Law of the Republic of Uzbekistan "On Trademarks", the owner of the trademark has the exclusive right to use and trademark orders. But what does the term "exclusive right" mean?

Exclusive rights as an independent legal category have been distinguished in legal science and legislation since the end of the 19th century. The exclusivity of the right was based on the fact that the law established the monopoly of the author (or other right holder) on the use of the protected intangible object. At the same time, by analogy with such a classical absolute right as the right of ownership, the exclusive right also provided that the right holder is opposed by an indefinite circle of persons who are obliged to refrain from any violation of his right.

It is worth noting that the prominent civilist G.F. Shershenevich was also a supporter of the theory of exclusive rights, who argued that "since the goal of legal protection of rights to intangible objects in all cases is "to provide famous persons with an exclusive opportunity to commit certain actions, with the prohibition of all other opportunities for imitation. These rights should be called exclusive.

In accordance with Article 1229 of the Civil Code of the Russian Federation, a citizen or legal entity that has the exclusive right to the result of intellectual activity or to a means of individualization (right holder) has the right to use such a result or such means at its own discretion in any way that does not contradict the law. The right holder may dispose of the exclusive right to the result of intellectual activity or to a means of individualization. A similar rule can be found in Article 1103 of the Civil Code of the Republic of Uzbekistan, which states that the owner of the right to a trademark has the exclusive right to use and dispose of the mark belonging to him. The owner of the right to a trademark also has the exclusive right to make changes and additions to the trademark.

Thus, from the meaning of the above norms, we can conclude that an exclusive right is a set of rights to use, at one's own discretion, in any way that does not contradict the law, the results of intellectual activity or means of individualization. and to prohibit or permit such use by others, which belongs to the right holder (individual or legal entity).

In order to have the exclusive right to a trademark, a designation must be registered in accordance with the provisions of the Law of the Republic of Uzbekistan "On Trademarks" and with the "Rules for the preparation, filing and consideration of an application for registration of a trademark and service mark, registered by the Ministry of Justice of the Republic of Uzbekistan dated 30.09.2011 for No. 1988-1.

It is also worth noting that the legislation of the Republic of Uzbekistan provides for certain requirements for the external form, expression and type of a trademark. So, in accordance with the Law of the Republic of Uzbekistan.

"On Trademarks" figurative, verbal, three-dimensional and other designations or their combinations in any color or color combination can be registered as trademarks. At the same time, the list of types of designations that can be registered as trademarks is open.

Despite the wide choice of the external form of the designation, there are significant

restrictions on the internal component - the content of the designation. Any non-compliance with the presented requirements actually means the rejection of the application for state registration of the designation as a trademark. A number of designations that should not be registered as trademarks are provided for in Article 10 of the Law under consideration.

However, despite these restrictions, the legislator provides exceptions when such designations can be protected. For example, images of coats of arms, flags, insignia of public services can be included as non-protected elements in a trademark if there is the consent of the relevant state body or their owner. And designations that do not have a distinctive ability or are generally accepted symbols and have entered into general use may be included as unprotected elements in a trademark, if they do not occupy dominant position in it and if they have actually acquired distinctness as a result of their use. Designations that are identical (identical) or confusingly similar may also receive protection, subject to obtaining the consent of the trademark owner to register this designation.

Considering that trademarks occupy a special position among other objects of intellectual property, which is due to the functions they perform, it is necessary to understand a number of functions that they perform.

The main functions of trademarks are highlighted in the scientific literature:

a) advertising, when a trademark with the help of the media allows the manufacturer to point out the characteristic features of his product, and the consumer to distinguish the goods of a particular business entity from the mass of homogeneous goods. The use of a trademark in advertising contains a number of restrictions established by the Law of the Republic of Uzbekistan "On Advertising" dated December 25, 1998 No. 723-1: 1) advertise products under the guise of advertising other products, the trademark or service mark of which is identical or confusingly similar to trademark or service mark of a product for which advertising is prohibited or in relation to the advertising of which the relevant restrictions or requirements are established; 2) advertising is not allowed if it is unreliable (unfair, deliberately false), which, as a result of inaccuracy, ambiguity, exaggeration, silence, violation of requirements

in relation to the time, place and method of distribution and other requirements provided for by law, misleads or may mislead consumers of advertising, cause losses and moral harm to persons, as well as the state; 3) comparative advertising is not allowed, in which the material, essential, reliable properties of the product are compared in bad faith, if the advertisement does not and cannot introduce

misleading, does not confuse the identity of the advertiser and a competitor or trademarks (service marks), trade name, products of the advertiser and a competitor, and does not discredit, does not infringe on the business reputation of a competitor or its trademark (service mark), trade name, product or activity ;

b) the restrictive function (otherwise it is called protective) comes from the right of the trademark owner to the exclusive right to use and dispose of the trademark and therefore prohibits other persons from using it without appropriate permission, as indicated in Article 1103 of the Civil Code of the Republic of Uzbekistan and Art. 26 of the Law of the Republic of Uzbekistan on Trademarks. Such permission can be granted by the right holder based on a license agreement within certain limits, with or without indication of the territory where use is allowed, in relation to a certain area of business activity (Article 1105 of the Civil Code of the Republic of Uzbekistan).

According to D.V. Mazaev, there is another significant, but non-legal function of a trademark - economic, the essence of which is

in the accumulation of the value of the exclusive right to a trademark as an intangible asset of an economic entity. From this we can conclude that the value of a trademark as

an intangible asset of a legal entity or individual entrepreneur depends on the assessment by the owner of the exclusive right of the amount of damages or payment of compensation for the illegal use of the trademark, as provided for in Article 1107 of the Civil Code of the Republic of Uzbekistan, as well as in determining the amount of remuneration (price) in the agreement on the alienation of the exclusive rights to a trademark or the amount of remuneration for the use of the exclusive right to a trademark under a license agreement in accordance with Art. 1036 Civil Code of the Republic of Uzbekistan.

Thus, summing up our analysis regarding the legal nature of a trademark and returning to the definition of a trademark given in Art. 3 of the Law of the Republic of Uzbekistan "On Trademarks", it can be concluded that all the above definitions are similar with this provision of the legislation of the Republic of Uzbekistan. When interpreting this article of the law, there are no contradictions, since it clearly states what exactly is a trademark, and from which particular subjects a trademark can be registered, as well as the exclusive rights of owners that they can use after registering the designation as trademark.

It is important to note that international agreements sometimes use the concept of a symbol as a generic feature of a trademark.

However, in order for a designation to be called a trademark, it must fit certain characteristics, such as, for example, objects of industrial property, but related to the trademark. The signs of a trademark are determined by the main purpose of the mark to individualize the product and distinguish it from the mass of similar products produced by other manufacturers. Trademark features are:

- 1) symbol;
- 2) novelty;
- 3) distinctive ability;
- 4) registration of the mark in the prescribed manner [6].

These criteria may not be directly provided for in the legislation, but are indicated in the concept of a trademark. If the features of a trademark, for example, the criterion of novelty, are indicated in the very definition of Article 3 of the Law "On Trademarks, Service Marks and Places of Origin", then it will acquire a more precise wording.

As a generic criterion for a trademark, a symbol can be distinguished from the legal definition of a given object. The symbol is a kind of symbol that is placed on the manufactured product, its packaging or in the accompanying documentation, and replaces the sometimes long and complex name of the product manufacturer [7]. A trademark is only a conventional designation that is arbitrary in relation to the goods designated by it, that is, it does not act as a generally accepted name or term for them. Therefore, a trademark will not be considered to be complete information placed on the product regarding the manufacturer of the product, indicating the time and place of its production. Instead of such information, a symbol is used that can attract buyers.

Also, a necessary feature of a trademark, as mentioned earlier, is their novelty, that is, the ability to be different from similar products from other manufacturers, which will allow consumers to easily recognize and not confuse the product they need. It is worth paying attention to the fact that a trademark with novelty does not have to be completely unknown. An important aspect is that the designation registered as a trademark or service mark has not previously been used to designate the same kind of service or type of work that the applicant plans to engage in [8].

As we can observe, the criterion of novelty, although not mandatory, still carries the main meaning. The internal rules for registration in different countries indicate the reasons why a mark cannot be registered. It is obvious that if a trademark, one way or another, completely copies or repeats the special elements of a trademark (brand) that

is already protected, the possibility of protection is reduced to a minimum, and this mark, most likely, will not even be able to be registered. Therefore, it is an omission to not indicate this feature in the regulatory documents on trademarks of many states.

So part 1 of article 15 of the TRIPS agreement indicates the importance of having a distinctive ability. As indicated there, a trademark can be any designation or any combination of designations with the mandatory condition of being different. Signs such as words, including names of persons, letters, numbers, figurative elements and color combinations, and any combination of such signs, may be registered as trademarks. At the same time, such a distinctive ability can be both initial (during registration) and acquired in the process of use (these are situations when an enterprise first "promotes" its designation in the consumer environment, and only then registers it as a trademark). Moreover, as a condition of registration, members may require that the signs be visually perceptible.

The next and no less important criterion for a trademark is registration in the prescribed manner. Registration in accordance with the established procedure is understood as the obligation of the owner of the symbol to enter into administrative and procedural relations, where the authorized body will decide whether the above features are characteristic of a particular trademark. It is not for nothing that in all international acts on trademarks and in Article 3 of the Law on Trademarks of the Republic of Uzbekistan, this sign is given first in the definition. After all, without the recognition of the authorized bodies, the declared designation cannot be protected. If the state that is the place of origin of the mark or the actual application does not recognize and register the trademark, then the priority conditions and other methods of recognition in other states may exhaust their meaning.

Trademark literature indicates that specialty or non-traditional trademarks are signs designed to be perceived by the senses. Sound, light, olfactory and other designations that consumers associate with certain types of goods or services. Undoubtedly, all varieties of sound marks applied for registration must have the necessary criteria for the protection of trademarks, including a distinctive character. At the same time, as foreign experience shows, sound consisting of noise often does not have a distinctive ability. It can be assumed that certain difficulties may arise in the process of registration of non-traditional marks. As a rule, this type of trademark does not have a fixed written form capable of identifying, submitting it to the authorized body, since marks are provided in the usual sense.

The legislation of the Republic of Uzbekistan in its internal rules resolved this issue as follows: light, sound, olfactory or other designations are presented in graphical form.

The registration of a light designation requires the provision of characteristics of light symbols or signals, their sequence, the duration of the glow and other features, and for the registration of a sound trademark, it is necessary to provide a description of the sound (sounds) that make it up, as well as a musical notation or a frequency diagram. If an olfactory designation is applied for registration as a trademark, then the composition of the composition and the formula of the chemical compound characterizing the smell are given [9].

At the same time, the criteria capable of designating the distinctiveness of such trademarks are not clear. Moreover, it is not possible to find out for what reasons the registration of these designations will be refused. Obviously, the criteria specified in Article 10 of the Law of the Republic of Uzbekistan "On Trademarks, Service Marks and Appellations of Origin" will not always accurately describe the essence of refusal to register non-traditional trademarks.

In addition to the form of expression, trademarks are also distinguished, divided into:
- ordinary and well-known;

Common are trademarks, as a necessary condition for the legal protection of which is their state registration. In turn, a well-known trademark is a designation that enjoys a high degree of popularity among consumers and is associated in their view with certain high-quality goods.

- individual and collective.

An individual trademark is a designation registered in the name of an individual entrepreneur (legal entity or individual). In turn, a collective trademark is a trademark of an association of persons intended to designate goods produced and / or sold by persons belonging to this association and having uniform qualitative or other common characteristics.

So, we came to the conclusion that a trademark in conjunction with service marks is a designation - no matter how it is perceived, that satisfies the requirements of novelty and distinctiveness imposed by law, registered in the prescribed manner with the aim of individualizing the goods and services of a particular legal entity (legal entities) or an individual among similar goods and services of other legal entities or individuals.

Used literature.

1. Deborah E. Bouchoux. Intellectual property. The Law of Trademarks, Copyrights, Patents, and Trade Secrets. Fourth edition . Delmar __ Learning , 2013 , p.20

2. Article 3 of the Law of the Republic of Uzbekistan "On Trademarks, Service Marks and Appellations of Origin"

3. Making a mark: An introduction to Trademarks for SMEs. WIPO Publication No. 900.1. With. eighteen

4. Civil law: textbook: in 3 volumes. T. 3. - 4th ed., revised. and additional / ed. A. P. Sergeev, Yu. K. Tolstoy. - M.: TK Velby, Prospekt Publishing House, 2005.- p. 120

5. See: Mamiofa I. E. The concept and definition of a trademark // The practice of inventive and patent-licensing work. L., 1981. S. 9.

6. Anna Rabets. Legal protection of trademarks in Russia: current state and prospects. - M.: Publishing House "Legal Center Press", 2003 p.43

7. Sergeev A.P. The right to a trade name and trademark. SPb., 1995. S. 37.

8. Navruzalieva V.N. The concept and features of trademarks and service marks in modern conditions of a market economy. Legal research. 2013 No. 3.

9. Clause 24 of the Rules for the preparation, filing and consideration of an application for registration of a trademark and service mark No. 1988 07/29/2009