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# If you came up with a trademark, it does not mean that it will be yours in the future

The intellectual property court upheld the position of the lower courts in the position on the use of a trademark by one of the business partners after the end of the partnership, in the case when the trademark is not used by the party on which the mark is registered.

An individual entrepreneur appealed to the Arbitration court with a claim against his former business partner, with whom they used a registered trademark in the process of entrepreneurial activity. The claim was for the recovery of compensation for violation of the exclusive right to the above trademark. The trademark was developed during the period of joint business activity, was registered to the plaintiff, and the extension of the exclusive right to the mark was paid by the defendant.

The plaintiff referred to the fact that after the termination of the partnership, the defendant continued to use the trademark, despite the fact that there was neither an alienation agreement nor a license agreement between them.

The court of the first instance refused to satisfy the plaintiff's claims, as did the appellate instance. They noted that the disputed means of individualization was developed by the parties jointly, at the time when they carried out joint business activities, in addition, the defendant paid a state fee for the extension of the exclusive right. The plaintiff did not use the trademark. Also, the plaintiff tried to initiate criminal proceedings against the defendant for illegal use of means of individualization.

That is, thus, the plaintiff did not try to protect his exclusive right, and tried to harm the defendant, that is, abused the right.

The plaintiff fully disagreed with the conclusions of the courts of first and appellate instance, and then appealed to the court of intellectual rights, pointing out that the courts, paying attention to the plaintiff's non-use of the trademark, departed from the dispute, since this circumstance is important in the early termination of legal protection of the trademark.

The court for intellectual property rights drew attention to the fact that according to explanations of the Supreme court of the Russian Federation, to assess the actions of the parties as good and bad, should be based on the expected behavior of both parties, as participants of civil turnover, which takes into account the rights and legitimate interests of the parties, and it is assisted (p. 1 resolution of the Plenum of the Supreme Court of the Russian Federation from June 23, 2015 No. 25).

Moreover, the Supreme arbitration court of the Russian Federation draws attention to the fact that the recognition of the actions of one of the parties abuse the right, you need to prove that a party knowingly tried to apply unfair law, and the sole purpose of the parties was the cause harm (paragraph 17 of the Resolution of Plenum of the Supreme Arbitration Court of the Russian Federation of 17 February 2011 № 11).

Thus, the court of intellectual rights agreed with the position of the lower courts in the issue of abuse of the plaintiff's rights and left the appeal of the plaintiff without satisfaction, and the decisions of the courts of first and appellate instance unchanged.

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## Байршил



