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Brand protection in unfair competition in Russia (Saint Petersburg)

In a market economy, the issues of effective protection of rights to various results of intellectual activity and methods of their protection are increasingly of interest to market participants. The exclusive right to a trademark is a valuable intangible asset, in the acquisition of which an increasing number of business representatives are interested. All this is an excellent basis for the formation of mechanisms and methods of counteracting unfair competition associated with the acquisition and use of these rights.

A trademark is a designation that serves to individualize the goods of legal entities or individual entrepreneurs, to which an exclusive right is recognized.

Unfair competition is defined in clause 9 of Art. 4 of the Federal Law "On Protection of Competition" as any actions of economic entities (groups of persons) that:

- ▶ are aimed at obtaining benefits in the implementation of entrepreneurial activities;
- ▶ contradict the legislation of the Russian Federation, business customs, requirements of integrity, reasonableness and fairness;
- ▶ caused or may cause losses to other business entities – competitors or caused or may harm their business reputation.

The Presidium of the FAS Russia notes that in order to establish an act of unfair competition, it is necessary to have all the signs of unfair competition provided for in paragraph 9 of Art. 4 of the Federal Law "On Protection of Competition", in conjunction with special signs of the composition of the violation provided for by Art. 14.4 of the Federal Law "On Protection of Competition".

In order to prove a violation of the exclusive right to a trademark, it is enough to establish the existence of a hazard, and not a real confusion of designations in the eyes of the consumer. Moreover, in order to establish the existence of a risk of violation of the rights of the copyright holder, the court does not need to carry out an appropriate examination, but it is enough to resolve the issue from the standpoint of an ordinary consumer, since the issue of mixing controversial designations is a matter of fact.

To qualify the actions of an economic entity as violating the prohibition established by Part 1 of Art. 14.4. Federal Law "On Protection of Competition", it is necessary to establish a set of actions:

- ▶ by purchase;
- ▶ the use of exclusive rights to means of individualization.

Separately, the acquisition of the right or use does not constitute a violation under Art. 14.4 of the Federal Law "On Protection of Competition".

The main signs of unfair competition established in the Federal Law "On Protection of Competition" are:

- ▶ implementation of actions by an economic entity – a competitor;
- ▶ the focus of the business entity's actions on obtaining benefits in the implementation of entrepreneurial activities;
- ▶ conflict of these actions with the provisions of the current legislation, business customs, the requirements of integrity,

reasonableness and fairness;

- ▶ causing or the ability to inflict losses on another economic entity-competitor or damage to its business reputation by the said actions.

The copyright holder under Russian law has the right to:

- ▶ use your trademark on the Internet and offline;
- ▶ prohibit third parties from using your designations;
- ▶ claim compensation in the amount of up to 5 million rubles for the use of your trademark (and similar options) without permission.

The following are the most relevant situations and opportunities that copyright holders have in case of making a decision to actively protect their violated rights:

- ▶ in a situation where an intruder introduces a website with a domain name (address) that is confusingly similar to yours or differs from yours by just a couple of characters, it may turn out that your customers may confuse the site with yours and make a purchase from a competitor ... In this case, the copyright holder has the opportunity to achieve cancellation of the counterparty's trademark, and can also obtain rights to similar domains;
- ▶ if your trademark is used in someone else's advertisement, makes a profit from your reputation, then you can stop displaying advertisements by contacting the technical support of information systems;
- ▶ if you have established the fact of selling goods under your brand in marketplaces or in retail stores, then you have the opportunity to prevent further sales, as well as destroy counterfeit goods;
- ▶ if you notice your trademark on someone else's sign, then you can get this sign removed;
- ▶ if in the Internet space you have recorded the fact of using your trademark to promote or sell products, goods and services similar to yours, then you can request from the information intermediary to block groups, transfer you administration rights, stop displaying advertising posts.

It seems that the most effective and convenient is the following algorithm of actions of a person whose rights have been violated by the trademark right holder who has committed unfair competition:

- ▶ filing an application directly with the court;
- ▶ an appeal to Rospatent after a court has made a decision in order to invalidate the legal protection of a trademark on the basis of sub. 6 p. 2 art. 1512 of the Civil Code of the Russian Federation.

So, in the case of an initial appeal to the antitrust authority, the consideration of the case increases to the stage of the administrative order, since the right holder can in any case declare to the Intellectual Property Rights Court about invalidating the decision of the antitrust authority.

If there are no signs of unfair competition in the actions of a person, but there are grounds for reporting an abuse of the right, the person should:

- ▶ apply to Rospatent with an objection to the granting of legal protection to a trademark on the grounds set out in clause 2 of

Art. 1512 of the Civil Code of the Russian Federation (except for subparagraph 6 of clause 2 of article 1512 of the Civil Code of the Russian Federation, since the actions of the copyright holder have not yet been recognized in the established manner as an abuse of the right or unfair competition);

- ▶ in case of refusal to satisfy the objections, apply to the Intellectual Property Court with a statement to invalidate the decision of the Federal Service for Intellectual Property to refuse to satisfy the objection and, within the framework of the consideration of the case, based on the arguments of the objection, declare abuse of the right by the right holder.

It should also be noted that due to the development of the Internet space and the gradual transition of the activity of doing business online, the administrations of social networks, marketplaces are increasingly going to productive cooperation with copyright holders, thereby reducing the time and labor costs to suppress illegal actions aimed at violating the rights of copyright holders. Such cooperation has a positive effect on reducing the number of violations of trademark rights, including.

Thus, today there are several ways to protect a person whose right has been violated by registering a trademark. Depending on the actual circumstances, this or that method may have advantages in terms of a faster and more efficient dispute resolution.