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Unfair competition: problems and methods of trademark protection in Uzbekistan

As of this date, cases of unfair competition are increasing not only in Uzbekistan, but all over the world which, in turn, affect both producers and consumers. As we can notice, the range of counterfeit products is not limited only to high-consumption goods; in the Uzbek market, they can also be found among famous brands of clothing, food products, infant formula, medicines and software.

Thus, the issue of protecting intellectual property rights is becoming a matter of current interest in our country. Trademark owners, both citizens of Uzbekistan and foreign citizens, are actively trying to protect the results of their work.

The trademark owner, who has protected his trademark by registering the intellectual property object with the Agency on Intellectual Property under the Ministry of Justice of the Republic of Uzbekistan (the "Agency"), or having an international registration with the territory of validity in the Republic of Uzbekistan in accordance with the Protocol to the Madrid Agreement Concerning the International Registration of Marks dated 27 June 1989, acquires exclusive rights to these objects and, thus, can protect "his object" from using it by third parties without his consent.

Unfortunately, "unfair competitors" intentionally use the names and logos of well-known brands, copy and imitate the appearance and design of the owner's products, thereby misleading consumers and easily enriching themselves through the work of an owner in good faith. Sometimes, the reason for this is the legal illiteracy of the violator, who does not realize the fact of violation of the rights of the trademark owner, not to mention the subsequent consequences, the losses that the owner will suffer, as well as the responsibility that the violator himself may bear.

As stipulated in Article 4 of the Law of the Republic of Uzbekistan "On Competition" No.3PY-319 dated 6 January 2012 (the "Law on Competition"), *unfair competition means the actions of a business entity or a group of persons aimed at acquiring advantages in the implementation of economic activities, which contradict the legislation, business customs and cause or may cause losses to other business entities (competitors) or cause or may damage their business reputation.*

Unfair competitors produce and sell counterfeit goods, thereby violating the rights of the owners.

As stipulated in the Law of the Republic of Uzbekistan "On Trademarks, Service Marks and Appellations of Origin" No.267-II dated 30 August 2001, *counterfeit goods are goods, labels, packages of goods on which a trademark or a designation that is confusingly similar is illegally used.*

The legislation of Uzbekistan provides for various methods of combating infringements in the field of intellectual property, the most common of which will be considered in this article.

1. Pre-trial dispute settlement.

It should be noted that one of the most effective methods to combat unfair competition is pre-trial settlement of disputes. Commonly, a letter of claim is sent to the violator, the purpose of which is the voluntary elimination of infringements by the violator. Experience has proven that serious conflict situations can be resolved by sending a letter of claim to the violator, as a result of which the revealed infringements are eliminated and there is no need to appeal to the courts.

2. Antimonopoly Committee of the Republic of Uzbekistan.

In case of unfair competition in the domestic market of Uzbekistan, trademark owner also has the right to file a complaint with the Antimonopoly Committee of the Republic of Uzbekistan (the “Antimonopoly Committee”), which in accordance with the Competition Law, along with other authorities, is authorized to identify violations of competition law; initiate and consider cases, make a decision in a case on violation of competition law in accordance with the procedure established by law, including, the decision on the dispensation of income (profit) from business entities, unreasonably obtained as a result of anticompetitive actions; also, send materials to the relevant authorities to resolve the issue of initiating a criminal case on the basis of crimes related to violation of competition law.

On the basis of the decision of the Antimonopoly Committee in case of violation of Competition Law, an order is issued to the person in respect of whom the decision has been made. The orders of the Antimonopoly Committee are subject to fulfillment within the prescribed time limits and the failure to fulfill them on time entails liability.

Moreover, it should be noted that in order to further improve the system of consumer protection and ensure the implementation of a unified State policy, there has been created **the Consumer Protection Agency** under the Antimonopoly Committee. When counterfeit products are detected, consumers can report on the helpline of the Consumer Protection Agency, which will facilitate the monitoring and detection of violations in the field of competition law.

3. Agency on Intellectual Property under the Ministry of Justice of the Republic of Uzbekistan.

This body also takes measures to ensure the legal protection of intellectual property objects.

According to the Resolution of the Cabinet of Ministers No.609 dated 20 July 2019, one of the main objectives of the Agency is to interact with law enforcement, tax and other State bodies to identify and suppress infringements in the field of intellectual property.

In addition, the **Department for Monitoring the Compliance of Intellectual Property Rights (the “Monitoring Department”)** deals with cases of illegal use of intellectual property and interacts with law enforcement, customs, tax and other State bodies to identify and suppress intellectual property violations, to take measures against the import and circulation of counterfeit products on the territory of the Republic of Uzbekistan.

Recently, the Monitoring Department has been actively detecting cases of infringement of rights to intellectual property objects. For example, the officers of the Monitoring Department discovered a violation in the use of a well-known public catering trademark without the consent of the owner. Accordingly, explanatory work was carried out and a fine was collected from the violator by court.

4. State Customs Committee.

Another State body that is working to combat counterfeit products is the State Customs Committee of the Republic of Uzbekistan (the “Customs Committee”).

The Customs Committee plays an important role in combating counterfeit products. In accordance with the Customs Code, in order to ensure the protection of intellectual property rights imported into the customs territory and under customs control, the customs authorities may suspend the release of goods containing signs of infringement of intellectual property rights and cancel the decision to suspend the release of goods containing objects of intellectual property.

The system of the Customs Register of Intellectual Property Objects (the “Customs Register”) has been introduced. The inclusion of intellectual property objects in the Customs Register will provide owners with an additional measure to prevent illegal use of intellectual property objects on the territory of Uzbekistan. To include objects in the Customs Register, the owner or his authorized representative files an application with the Customs Committee with the attachment of copies of documents

confirming the existence and ownership of rights to the intellectual property object, certified by the owner. The application is considered by the Customs Committee within 10 days from the date of its receipt and a decision is made to include or refuse to include intellectual property objects in the Customs Register.

After the objects are included in the Customs Register, the owner or his authorized representative has the right to apply to the customs authorities for the protection of intellectual property rights to take measures to suspend the release of goods under customs control. At the same time, the application must necessarily contain: *description of the goods, information about the manufacturer, exporter, importer or consignee, the possible place and date of movement of goods across the customs border, the peculiarities of transportation and the type of packaging, the location of the goods or the planned destination.*

After considering the application, the Customs Committee takes measures to protect intellectual property rights and may decide to suspend the import of goods for a period not exceeding 10 business days. This makes it possible for the owner to apply to the judicial bodies, and, further, transfer the court decision for consideration to the customs authorities. If during this period a court decision on the seizure of goods, the imposition of seizure or the application of other measures to enforce the court decision is made, the receipt of the goods is suspended.

It is necessary to note that violation of customs legislation, namely, the movement of goods across the customs border of the Republic of Uzbekistan or with concealment from customs control or with fraudulent use of documents or means of customs identification, or associated with non-declaration or declaration by a different name, entails administrative and criminal liability.

5. State Tax Committee of the Republic of Uzbekistan.

The responsible authority for taking measures to prevent the sale of adulterated and counterfeit goods in retail outlets is the State Tax Committee. It should be noted that one of the new tools introduced in 2020 was the launch of the mobile application "Soliq", which records the appeal and sends it to the State tax service authorities for conducting tax audits in the prescribed manner.

6. Legal procedure.

Appeal to the authorized courts with a statement of claim for the establishment of a ban, production, sale of counterfeit products on the territory of the Republic of Uzbekistan.

Moreover, other mechanisms to combat unfair competition are being developed.

For instance, in order to fundamentally improve mechanisms for preventing cases of illegal import into the Republic of Uzbekistan, production and sale of products and ensuring the legal circulation of certain types of products, the Cabinet of Ministers adopted a Resolution "On the introduction of a mandatory digital marking system for certain types of goods" No.737 dated 20 November 2020 (the "Resolution No.737"). According to this document, a list of goods for which a requirement for mandatory digital marking with identification means in 2021-2022, as well as a "Roadmap" for the effective implementation of a mandatory labeling system for certain types of goods have been approved.

In accordance with the Resolution No.737, starting from 1 March 2021 the import of non-labelled alcohol and tobacco products into the territory of the Republic of Uzbekistan is prohibited, and a mechanism of public control over the production and sale of non-labelled products is implemented by introducing information products and mobile applications that allow real-time notification of authorized bodies on violations of legislation in the field of mandatory digital labeling of products. Since July 2021 in Uzbekistan, a new stage of the project, labeling of medicines, has been initiated, and in the near future it is planned to establish this process in the production and import of soft drinks and household appliances. It should be noted that the responsibility for labeling goods is assigned to manufacturers and importers.

In addition, in order to improve the system of protection of intellectual property objects, the Presidential Resolution “On measures to improve the system of protection of intellectual property objects” No.ПП-4965 dated 28 February 2021 was adopted (the “Resolution No.ПП-4965”). According to the Resolution No.ПП-4965, in order to improve the system of public administration in the field of intellectual property and ensure the target orientation of the work conducted in the structure of the Intellectual Property Agency, *Centers for the Protection of Intellectual Property* are being created, the main objectives of which will be to take direct part in the fight against the production and circulation of counterfeit products and infringement of intellectual property rights. In addition, under the Resolution No.ПП-4965, there was approved the “Road Map”, which provides for real mechanisms to suppress the sale of counterfeit products.

It is worth to note that there are other mechanisms for combating unfair competition and the methods of protection are not limited to the methods mentioned in this article. Control by State authorities is also being intensified day by day and the position of the trademark owner is being strengthened at the legislative level. The legal consciousness of violators is increasing, which is due to the fact that the number of entrepreneurs, who initially correctly structure their business is growing, and, of course, before using “someone else’s” objects of intellectual property, they take the consent of the owner or come to a single decision with him on a contractual basis.

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