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TRADEMARK PROTECTION: THE PRACTICE OF KAZAKHSTAN AND THE EUROPEAN UNION

Abstract

This article is devoted to a comparative legal analysis of trademark protection mechanisms in the Republic of Kazakhstan and the European Union. The relevance of the study is обусловлена the increasing number of infringements of exclusive rights in both jurisdictions, as well as the ongoing convergence of regional legal systems within the framework of the EAEU and their harmonization with international standards. The purpose of the study is to identify common approaches and key differences in enforcement practice and to formulate recommendations for improving Kazakhstani legislation, taking into account the experience of the EU. The methodological framework comprises comparative legal analysis, examination of judicial practice, and statistics. The article reviews key cases from Kazakhstan and precedents of the Court of Justice of the EU. Kazakhstan's system effectively combats counterfeiting, while EU practice is more focused on protecting brand reputation and preventing actions that may undermine brand prestige; therefore, to incorporate European experience into Kazakhstan's legislation, following measures are proposed: amend Article 43 of the Law on Trademarks, Service Marks, Geographical Indications and Appellations of Origin to include brand reputation protection; establish a procedure for the prompt removal of unlawful digital content; and strengthen pre-trial dispute resolution by developing mediation mechanisms.

Keywords: trademarks, protection, infringement, exhaustion of rights, parallel import.

Introduction

According to the definition provided by the World Intellectual Property Organization (WIPO), a trademark is “a sign capable of distinguishing the goods of one enterprise from those of other enterprises” [1]. This concept has been incorporated into national legal systems. In Kazakhstan, a trademark is defined as “a designation registered or protected under international treaties that serves to differentiate the goods (services) of certain entities from homogeneous goods (services) of others” (subpara. 8, Art. 1) [2], thereby emphasizing its role in combating unfair competition. A similar approach is reflected in the European Union: pursuant to Article 4 of Regulation (EU) 2017/1001, a trademark must be capable of distinguishing the goods or services of one undertaking from those of other market participants and is subject to mandatory registration [3]. Thus, in both legal systems, the emphasis is placed on the identifying and differentiating functions of the mark, which constitute the foundation of its legal protection [4, p. 607].

The development of the trademark institution is closely linked to the doctrine of exhaustion of rights. In the European Union, the principle of regional exhaustion applies, whereby the right holder loses control over the further distribution of goods after their first lawful sale within the Union. This mechanism ensures a balance between the protection of intellectual property rights and the free movement of goods, as enshrined, inter alia, in Article 7 of Directive 89/104/EEC [5].

Republic of Kazakhstan, as a member of the Eurasian Economic Union (EAEU), applies a similar regime of regional exhaustion (Annex No. 26 to the EAEU Treaty) [6]. However, unlike the EU, its trademark registration system remains national in character. Prospective harmonization is envisaged through the EAEU Trademark Treaty (2020), which provides for the establishment of a Unified Register of the Union, enabling protection across all Member States on the basis of a single application. Accordingly, a process of convergence between regional legal orders in the field of trademark protection can be observed.

The exclusive right to a trademark encompasses both its use and control over its disposition. Infringement of this right not only prejudices the interests of the right holder but also creates a risk of misleading consumers, thereby undermining the stability of market relations. To prevent such violations, EU law, in particular Article 10 of Directive 2015/2436, prohibits the use of identical or similar signs liable to cause confusion [7]. Comparable regulation is established under the national legislation of Kazakhstan [2].

At the same time, statistical data indicate the persistence of a high incidence of infringements in both jurisdictions. In the European Union, according to the European Union Intellectual Property Office (EUIPO), 180,447 applications for trade mark registration were filed in 2024, representing a 2.7% increase compared to 2023 [8]. The number of oppositions filed against trade mark registrations remained consistently high, amounting to 18,069 [7]. In Kazakhstan, by the end of 2025, the local justice authorities identified 293 infringements related to the unlawful use of trade marks, which resulted in the initiation of 303 administrative proceedings, with 294 individuals held liable [9]. These indicators confirm that enforcement challenges in the field of trade mark protection remain significant, thereby necessitating the further development and refinement of enforcement mechanisms, including through a comprehensive analysis of judicial and administrative practice.

Materials and methods

The methodological basis of the study comprises general scientific and specific legal methods, including comparative legal analysis, formal-dogmatic interpretation, case law examination, and statistical evaluation. The normative framework encompasses the legislation of the Republic of Kazakhstan (notably the Law «On Trademarks, Service Marks and Appellations of Origin» and the Civil Code), the legal acts of the European Union (Regulation (EU) 2017/1001, Directive (EU) 2015/2436, Directive 89/104/EEC), international treaties (TRIPS, Paris Convention), and the founding documents of the Eurasian Economic Union, including the EAEU Treaty and the EAEU Trademark Treaty (2020). The comparative analysis is structured around key criteria: the legal definition of a trademark, the scope of exclusive rights, the exhaustion regime, and enforcement mechanisms.

The empirical component draws on judicial and administrative practice from 2021–2025. For Kazakhstan, the study examines published decisions of specialised economic and administrative courts (cases involving «LEGO», «PENOPLEX», «MILLIONAIRE») retrieved from the official judicial database, as well as statistical data from the justice authorities (number of inspections, administrative proceedings, fines, and seized counterfeit goods). A total of 15 published decisions from the period 2021–2025 were analysed, selected on the basis of the presence of disputes concerning the unlawful use of trade marks (including counterfeiting, likelihood of confusion, and “grey” imports). For the European Union, the analysis focuses on the jurisprudence of the Court of Justice of the European Union (landmark rulings in *Silhouette*, *Viking Gas*, *Merck*, *Copad*) and quantitative data from the EUIPO 2023 Annual Report. To assess the dynamics of enforcement activity, a comparative analysis of absolute indicators was employed, along with the calculation of growth rates (expressed as percentages). The synthesis of findings is achieved through systemic interpretation and logical-legal reasoning, culminating in evidence-based legislative recommendations for the Republic of Kazakhstan.

1. Protection of Trademarks and Service Marks in the Republic of Kazakhstan

In order to ensure the effective protection of intellectual property rights in the Republic of Kazakhstan, the justice authorities systematically identify and suppress infringements, acting upon applications submitted by right holders. Pursuant to paragraph 2 of Article 21 of the Law of the Republic of Kazakhstan “On Trademarks, Service Marks and Appellations of Origin,” the right to use a trademark is granted exclusively by its owner on the basis of an assignment agreement, a licence agreement, or a franchising contract. This legal structure affirms the trademark as an object of intellectual property and a means of individualization, the use of which without the consent of the right holder constitutes a violation of the exclusive right protected under national legislation and international instruments, including Article 16 of the TRIPS Agreement and Article 6 of the Paris Convention. The transfer of rights requires the conclusion and registration of a licence agreement (Article 22); in the absence thereof, the use of the trademark is deemed unlawful and entitles the owner to judicial protection.

The enforcement practice in 2025 demonstrates not merely active measures to counter infringements, but also a stable positive trend in key indicators compared to 2024. The total number of initiated cases increased by 7% (from 283 to 303). Of these, 11 cases were referred by the Police Department and the Economic Investigations Department of the city of Shymkent, and 2 cases by the Police Department of the Ulytau region, indicating an expansion of inter-agency cooperation and a geographical diversification of sources for detecting violations. Particular attention should be drawn to the initiation of 3 cases under Article 462 of the Code of Administrative Offences of the Republic of Kazakhstan (obstruction of officials), a relatively small yet indicative figure reflecting instances of resistance to inspections.

The effectiveness of enforcement remains high: 294 individuals were held administratively liable, representing a 10.1% increase compared to 267 in 2024. The financial dimension is even more pronounced: the total amount of fines imposed increased by 48.5% (from KZT 22.1 million to KZT 32.9 million), while the volume of counterfeit goods removed from illegal circulation rose both in quantitative terms (205,222 units) and in monetary value (KZT 174.4 million, an increase of 16.6% compared to 2024). Notably, the growth in fines outpaces the increase in the value of seized goods, which may indicate either a tightening of sanctions or the detection of larger-scale infringements per case. The range of protected trade marks includes both global corporations (Toyota, Apple, LEGO, Xiaomi, Louis Vuitton, among others) and Kazakhstani right holders (LTS Kazakhstan LLP, Kyzylzhar, Tau Samal, Sinyaya Gora, Stolichnaya, Rodnaya Step’), thereby confirming the systemic and cross-sectoral nature of intellectual property infringements [9].

The above quantitative data acquire greater analytical depth when complemented by illustrative examples from enforcement practice. A representative case in this regard concerns the unlawful use of the “LEGO” trade mark (2024). Following a complaint submitted by the representative of the right holder, LEGO Juris A/S, an unscheduled inspection was conducted at B LLP, a company engaged in wholesale trade. During the inspection, more than 3,000 units of children’s construction sets unlawfully bearing the “LEGO” designation were identified, with a total value exceeding KZT 4 million. As a result, the responsible parties were held administratively liable under Article 158 of the Code of Administrative Offences of the Republic of Kazakhstan, and the counterfeit goods were destroyed [10].

This case is illustrative in several respects. First, it demonstrates the mechanism for detecting infringements initiated by the right holder, thereby confirming the effectiveness of public–private cooperation in this field. Second, even where the unit value of goods is relatively low, the aggregate damage and the scale of seizure (thousands of units) highlight the economic significance of combating such violations. Third, the “LEGO” case complements the overall statistics for 2025 by concretising how the measures reflected in the data – namely, the increase in initiated cases, higher fines, and larger volumes of seized goods – are implemented in practice. Thus, the aggregate data and the specific example mutually reinforce the conclusion regarding the intensification and effectiveness of enforcement activities in the field under study.

Such conduct misleads consumers into purchasing counterfeit goods instead of original products and constitutes a manifestation of unfair competition [11, p. 61]. It infringes the rights of trademark owners, distorts market conditions, and undermines consumer trust. In the long term, it may reduce overall product quality, as counterfeit goods are not oriented toward maintaining high standards. At the same time, the “grey market” creates competition for genuine products by offering goods at reduced prices without the authorization of the right holder [12].

Although the acquisition of “grey” goods attracts consumers due to lower prices combined with acceptable quality, it produces adverse consequences for the economy and trademark owners. Importers of such goods do not provide after-sales services or quality control, thereby undermining brand reputation and long-term reputational stability. Official distributors, who invest in logistics, marketing, and quality assurance, are placed at a competitive disadvantage, which reduces the profitability of lawful business activities, decreases employment opportunities, and diminishes tax revenues. The expansion of the grey market weakens fair competition, discourages investment in innovation, and slows economic development.

Particular attention should be given to cases involving the unlawful use of trademarks in the digital environment. In 2021, the Specialized Interdistrict Administrative Court of Almaty considered a case against LLP “Firma Demeu,” which was held liable under Article 158 of the Code of Administrative Offences for the unlawful use of a registered trademark. During the proceedings, it was established that LLP “Firma Demeu,” for the purpose of promoting its products, had unlawfully used the trademark “Penoplex (Пеноплэкс)” on various online resources, including its official website. The trademark in question was registered with the Committee on Intellectual Property Rights of the Ministry of Justice of the Republic of Kazakhstan in the name of Penoplex (Пеноплэкс) SPb LLC, which holds the exclusive right to use the mark [13].

Under paragraph 9 of Article 1 of the Law of the Republic of Kazakhstan “On Trademarks, Service Marks and Appellations of Origin,” the use of a trademark includes its placement on goods, packaging, advertising materials, business documentation, and the introduction into civil circulation of goods marked with the relevant designation. Violation of these provisions constitutes an infringement of the exclusive rights of the trademark owner and entails legal liability under Article 43 of the Law. The court found LLP “Firma Demeu” guilty of committing an administrative offence under Article 158 of the Code of Administrative Offences. This decision demonstrates the strict approach adopted in Kazakhstan toward the protection of intellectual property and highlights the importance of compliance with legal requirements in commercial activities, including in the digital sphere [13]. At the same time, the case revealed a procedural gap: the absence of an оперативный mechanism for the removal of unlawful online content. Currently, the right holder must initiate court proceedings, a process that requires considerable time, during which the infringer continues to benefit from the unlawful use of the brand. The introduction of a simplified procedure for interaction with hosting providers and domain administrators, similar to European practice, would significantly enhance the effectiveness and promptness of protection.

Another notable case, decided on 10 October 2022 by the Specialized Interdistrict Economic Court of the East Kazakhstan Region, upheld the claim of LLP “Millioners” for the protection of its exclusive rights to the trademark “Millionaire”. According to the registration certificate issued on 20 May 2019 by the National Institute of Intellectual Property of the Ministry of Justice of the Republic of Kazakhstan, LLP “Millioners” owns the exclusive rights to the combined trademark “MILLIONAIRE,” registered in Classes 35, 41, and 43 of the International Classification of Goods and Services and actively used in restaurant activities. The defendant, an individual entrepreneur, conducted similar business activities using the designations “Restobar & karaoke Millionaire,”

“Karaoke Club Millionaires,” “Клуб Миллионеров,” and “Millionairoff,” which were found to be confusingly similar to the claimant’s trademark [10]. Despite receiving a cease-and-desist letter and promising to rename the establishment, the defendant continued to use the disputed designations on signage and social media platforms (Instagram, 2GIS, ZOON.kz).

Relying on expert examination in the field of intellectual property, the court established the fact of infringement of the exclusive rights of LLP “Millioners.” The defendant’s actions were also found to violate paragraph 2 of Article 1029 of the Civil Code of the Republic of Kazakhstan, which prohibits, without the consent of the right holder, the use of designations confusingly similar to a registered trademark where such use may mislead consumers as to the goods or their producer. Pursuant to paragraph 6 of Article 1032 of the Civil Code, the court ordered the defendant to cease using the disputed designations, remove them from signage and online resources, and pay compensation for the infringement as well as court costs.

Judicial practice underscores the importance of compliance with legal requirements by all market participants, as even seemingly minor infringements may entail significant legal consequences. Such enforcement contributes to fair competition, strengthens consumer confidence, and encourages lawful business conduct. The legal protection of trademarks is aimed not only at safeguarding the proprietary interests of right holders but also at protecting consumers by guaranteeing the authenticity and quality of goods. Infringements in this sphere may mislead consumers, thereby undermining trust in brands and in the market as a whole. However, the growing number of online infringements (as illustrated by the “Penoplex” case) necessitates further refinement of procedural mechanisms. The absence in the Law [2] of provisions obliging online platforms to respond promptly to right holders’ complaints, in our view, reduces the effectiveness of enforcement in the digital environment and calls for legislative reform.

2. Protection of Trademarks and Service Marks in the European Union

An analysis of the European pharmaceutical market shows that parallel imports occupy a stable niche: their annual volume is estimated at €6-7 billion, corresponding to 2–3% of the total market. According to updated data for 2024, this figure reached €7.67 billion (2.8%). Despite the economic significance of parallel imports – particularly their role in reducing medicine prices – they are associated with heightened risks of trade mark infringement, since the importation of genuine pharmaceutical products without the consent of the local right holder may be deemed unlawful in jurisdictions applying national or regional exhaustion of rights.

Data from the European Union Intellectual Property Office (EUIPO) for 2023 confirm a high level of disputes in this area: right holders submitted 18,421 infringement claims concerning trade mark rights. Of these, only 7,880 cases (36%) were brought before the courts, while 11,761 cases (64%) were resolved through out-of-court settlements [8]. Such a high proportion of pre-litigation resolution indicates a well-developed system of mediation and alternative dispute resolution mechanisms within the EU, significantly reducing transaction costs and alleviating the burden on the judiciary. For Kazakhstan, where legislation (Article 42 of the Law [2]) formally permits mediation but does not actively incentivise its early-stage use, this experience is of particular relevance. The introduction of mandatory conciliation procedures for selected categories of disputes – such as cases concerning the early termination of trade mark protection due to non-use – appears to be a justified measure, taking into account successful EU practice.

In parallel with the resolution of trade mark disputes, European enforcement practice demonstrates substantial results in combating counterfeit goods, which are often imported under the guise of parallel trade or distributed through similar channels. In 2023, approximately 152 million counterfeit items with a total estimated value exceeding €3.4 billion were seized at EU external borders and within the internal market. When compared with the volume of parallel imports (€7.67 billion), the value of seized counterfeit goods (€3.4 billion) corresponds to approximately 44% of the legitimate parallel import market, underscoring both the severity of the threat to right holders and the effectiveness of EU customs and law enforcement authorities. Notably, the success of the EU in intercepting counterfeit goods correlates with the high rate of out-of-court dispute resolution: effective border enforcement reduces the number of cases reaching the judiciary and creates favourable conditions for mediation.

Thus, the European model demonstrates a comprehensive approach combining stringent border control, a well-developed alternative dispute resolution framework, and statistically measurable outcomes. For countries with developing legal systems such as Kazakhstan, the integration of these

elements – namely, a mandatory pre-litigation mediation stage and strengthened customs enforcement – could substantially enhance the effectiveness of trade mark protection without a proportional increase in judicial workload. These statistical trends are further supported by consistent case law of the Court of Justice of the European Union, which has progressively expanded the scope of trade mark protection.

The significance of the principle of exhaustion of rights is clearly illustrated by the case of *Silhouette International Schmied GmbH & Co. KG v. Hartlauer Handelsgesellschaft mbH* (C-355/96, 1998) [15]. The Court of Justice of the European Union (CJEU) held that a trademark proprietor may oppose the importation of goods into the EU even if those goods were lawfully placed on the market outside the EU. Accordingly, international trade as such does not imply the proprietor's consent to the free circulation of goods within the internal market. The application of the exhaustion principle, enshrined in Article 7 of Directive 89/104/EEC [5], is limited to the intra-Union context, and any expansive interpretation creates legal risks for distributors and parallel importers. This approach was subsequently codified in Regulation (EU) 2017/1001, which provides that the use of a trademark without the proprietor's consent is impermissible where the goods were first placed on the market outside the European Economic Area (EEA) [3].

An additional dimension of legal protection was addressed in *Viking Gas A/S v. Kosan Gas A/S* (C-46/10, 2011) [16], which concerned the modification of products lawfully placed on the market with the proprietor's consent. The Court held that unauthorized alterations to the visual characteristics of a product, capable of creating misleading associations among consumers, are contrary to the objectives of trademark protection, even where the initial distribution was lawful. Thus, the right holder retains the ability to control subsequent modifications of products where such changes affect protected brand elements and create a risk of consumer confusion.

These judicial findings have been reflected in legislation. Article 15 of Directive 2015/2436 [7] limited the scope of the exhaustion principle, while Article 9(2)(c) of Regulation (EU) 2017/1001 [4] granted trademark proprietors enhanced protection of their reputation by prohibiting the use of signs that take unfair advantage of, or are detrimental to, the distinctive character or repute of the mark. Consequently, EU judicial practice and legislative development demonstrate an evolution from the protection of formal proprietary rights toward a comprehensive safeguarding of business reputation and market stability.

The CJEU has consistently clarified that a trademark proprietor may oppose further distribution of goods where their presentation damages the reputation of the mark. In *Merck, Sharp & Dohme GmbH v. Paranova Pharmazeutika Handels GmbH* (C-443/99, 2002) [17], the Court confirmed that alterations to packaging or labelling without the proprietor's consent may preclude the application of the exhaustion principle. Repackaging that distorts the original appearance of the product or negatively affects consumer perception undermines the commercial reputation of the brand and does not exhaust the proprietor's rights. These principles were subsequently extended to other categories of goods, including luxury products [18].

The principle of preserving the intangible characteristics of goods received particular emphasis in *Copad SA v. Christian Dior Couture SA* (C-59/08, 2009) [18]. The Court recognized that the proprietor of a trademark positioned in the premium segment may object to the marketing of goods through distribution channels inconsistent with its brand image. It was established that damage to the “aura of luxury” may, in itself, constitute sufficient grounds for refusing to apply the exhaustion principle under Article 7(1) of Directive 89/104/EEC [5]. In this way, the Court expanded the concept of “quality” to encompass not only physical characteristics but also image-related elements, such as prestige and brand attractiveness [19].

This jurisprudential line has been further developed in subsequent decisions. The Court has indicated that exceptions to the exhaustion principle may be justified by the need to preserve the commercial reputation of a trademark as an intangible asset and to prevent misleading associations among consumers (as in *Viking Gas* and related cases). The concept of “controlled availability” has thus become a central element in the legal protection of luxury brands, ensuring the maintenance of exclusivity and market value [20]. Notably, such an approach – aimed at safeguarding not merely formal rights but also the reputational capital of the brand – has not yet been directly incorporated into the legislation of the Republic of Kazakhstan. Article 43 of the Kazakhstani Law [2] primarily focuses on preventing consumer confusion as to the goods or their producer and does not extend to situations where the prestige of a brand is undermined through the sale of genuine goods under inappropriate

conditions (for example, in informal markets or discount outlets inconsistent with the image of a luxury brand).

At the normative level, these approaches are enshrined in Regulation (EU) 2017/1001. In particular, Article 9 grants proprietors exclusive prerogatives to prohibit the use of identical or similar signs where such use is liable to cause confusion or to be detrimental to the reputation of the mark [21]. Accordingly, EU case law and legislation have developed a comprehensive system of trademark protection aimed not only at safeguarding formal proprietary rights but also at preserving the reputational value of the brand as a strategic intangible asset.

Regulation (EU) 2017/1001 does not merely prohibit the direct copying of trademarks; it also equips right holders with mechanisms to control the initial placing of goods on the Union market. The principle of exhaustion of rights codified therein restricts parallel imports of goods from third countries without the proprietor's consent, thereby preventing the dilution of a brand's premium status and price erosion. This is particularly relevant for luxury brands, whose business models rely on exclusivity and selective distribution: legal protection prevents the unauthorized expansion of distribution channels and preserves market differentiation strategies. Furthermore, Article 9(2)(c) provides proprietors with the possibility to prohibit uses of the mark outside the sphere of direct competition where such use undermines its distinctive character or reputation. In the context of digital commerce, this provision acquires particular significance: the use of original brand symbols on websites selling counterfeit goods, or their algorithmic association with undesirable content, may mislead consumers and necessitates prompt legal intervention [21, p. 935].

These provisions correlate with Directive 2006/114/EC concerning misleading and comparative advertising, forming a coherent legal framework for combating not only direct copying but also indirect forms of brand exploitation, including unfair comparative advertising. Thus, Regulation 2017/1001 reflects the adaptation of the EU legal system to the challenges of globalization and the digital economy: the rules set out in Article 9 strike a balance between the protection of exclusive rights and the maintenance of a competitive environment, minimizing consumer risks and strengthening the innovative potential of the internal market, where the brand functions as a key source of added value.

The comparative analysis conducted reveals not only common approaches but also key differences in the enforcement practices of the Republic of Kazakhstan and the European Union. While the Kazakhstani system demonstrates considerable effectiveness in detecting and suppressing clear infringements (such as counterfeiting and unlawful online use), EU practice is more strongly oriented toward the protection of the brand's intangible assets – its reputation, prestige, and image-related characteristics. The cases of *Copad v. Dior* and *Viking Gas* illustrate the proprietor's ability to control not only distribution channels but also the preservation of the “aura” of a luxury product. For Kazakhstan, where the premium brand market is actively developing, the adaptation of such an approach represents a promising direction. However, the current wording of Article 43 of the Law of the Republic of Kazakhstan [2] does not contain an explicit prohibition of acts that discredit the prestige of a trademark, thereby creating a legal gap in the protection of reputational assets and necessitating appropriate legislative amendments. Such reform would enable the protection not merely of the form, but of the substance of the brand as a strategic asset – an issue of particular relevance in the context of digitalization and the expansion of the grey market.

Conclusion

The conducted study confirms that the institution of the trademark in the Republic of Kazakhstan and the European Union performs a key function in the individualization of market participants and the protection of consumer rights. An analysis of the regulatory framework and judicial practice demonstrates a shared orientation of both legal systems toward combating unfair competition. The application of the principle of regional exhaustion of rights within the frameworks of the EAEU and the EU establishes a balanced mechanism that safeguards the interests of right holders while preventing uncontrolled parallel imports. With regard to the Republic of Kazakhstan, the current regime of regional exhaustion of rights (within the framework of the Eurasian Economic Union) generally corresponds to the European model. However, enforcement practice has not yet developed clear criteria for distinguishing lawful parallel imports from infringements of exclusive rights.

Unlike the European Union, where cases such as *Copad* and *Viking Gas* afford protection to brand reputation even in the context of the importation of genuine goods, Kazakhstani legislation does

not provide mechanisms for assessing damage to the prestige of a trade mark in situations involving parallel imports.

The enforcement practice of the Republic of Kazakhstan, as illustrated by the cases involving “Zara,” “Lego,” “Penoplex,” and “Millioners,” indicates the emergence of a consistent approach to suppressing infringements in both traditional commerce and the digital environment. By contrast, the jurisprudence of the Court of Justice of the European Union (notably in *Silhouette*, *Merck*, *Copad*, and *Viking Gas*) elevates trademark protection to a qualitatively different level, recognizing the trademark as an independent intangible asset possessing reputational value. The comprehensive approach embodied in Regulation (EU) 2017/1001 provides important guidance for the further development of national legislation.

On the basis of the comparative analysis, the following legislative and enforcement recommendations appear appropriate.

First, given that the current wording of Articles 6 and 43 of the Law of the Republic of Kazakhstan does not encompass the protection of the brand’s image-related characteristics, it is proposed to supplement paragraph 1 of Article 43 with a provision recognizing as infringement the use of a trademark that causes harm to its reputation or prestige, including through distribution via inappropriate commercial channels. This measure shifts the focus from the mere existence of consent for sale to the conditions under which such sale occurs, thereby ensuring the protection of the brand’s reputational capital.

Second, it is recommended that the Supreme Court of the Republic of Kazakhstan adopt a normative resolution clarifying that damage to business reputation may be recognized as an independent category of loss, and that evidence thereof may include sociological survey data and expert opinions demonstrating a decline in the prestige of the trademark.

Third, in order to reduce the burden on the judicial system and to promote out-of-court dispute resolution, it is proposed to amend Article 42 of the Law by introducing a mandatory conciliation procedure (mediation) for cases concerning the early termination of trade mark protection due to non-use, while in other categories of disputes imposing on courts the obligation to inform the parties of the possibility of mediation. This would optimize enforcement processes, drawing upon the experience of the European Union, where the proportion of pre-trial settlements reaches 64%.

In sum, the proposed measures are aimed at harmonizing national legislation with advanced EU standards and at creating an effective legal environment for the protection of the innovation economy and creative industries in the Republic of Kazakhstan.

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ТАУАР БЕЛГІСІН ҚОРҒАУ: ҚАЗАҚСТАН МЕН ЕУРОПАЛЫҚ ОДАҚ ТӘЖІРИБЕСІ

Андатпа

Мақала Қазақстан Республикасы мен Еуропалық Одақтағы тауар белгілерін қорғау тетіктеріне салыстырмалы-құқықтық талдау жасауға арналған. Зерттеудің өзектілігі екі юрисдикцияда да айрықша құқықтарды бұзу жағдайларының көбеюімен, сондай-ақ ЕАЭО шеңберінде өңірлік құқықтық жүйелердің жақындасу үдерісімен және халықаралық стандарттармен үйлестіру қажеттілігімен айқындалады. Зерттеудің мақсаты – құқық қолдану тәжірибесіндегі ортақ ұстанымдар мен негізгі айырмашылықтарды анықтау, сондай-ақ ЕО

тәжірибесін ескере отырып, Қазақстан заңнамасын жетілдіруге бағытталған ұсынымдар әзірлеу. Зерттеудің әдіснамалық негізін салыстырмалы-құқықтық талдау, сот тәжірибесі және статистикалық деректер қамтиды. Мақалада Қазақстан тәжірибесіндегі негізгі істер мен Еуропалық одақ Сотының прецеденттері қарастырылды. Қазақстан жүйесі контрафакцияға қарсы тиімді күрес жүргізеді, ал ЕО тәжірибесі көбіне бренд беделін қорғауға және оның абыройына нұқсан келтіруі мүмкін әрекеттердің алдын алуға бағытталған; осыған байланысты еуропалық тәжірибені Қазақстан заңнамасына енгізу мақсатында келесі шаралар ұсынылады: «Тауар белгілері, қызмет көрсету белгілері, географиялық нұсқамалар және тауарлар шығарылған жерлердің атаулары туралы» заңның 43-бабына бренд беделін қорғауды енгізу арқылы өзгерістер енгізу; заңсыз цифрлық контентті жедел жою рәсімін белгілеу; сондай-ақ медиация тетіктерін дамыту арқылы дауларды сотқа дейін реттеуді күшейту.

Тірек сөздер: тауар белгілері, қорғау, құқық бұзушылық, құқықтардың сарқылуы, параллельді импорт.

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ЗАЩИТА ТОВАРНЫХ ЗНАКОВ: ПРАКТИКА КАЗАХСТАНА И ЕВРОПЕЙСКОГО СОЮЗА

Аннотация

Настоящая статья посвящена сравнительно-правовому анализу механизмов защиты товарных знаков в Республике Казахстан и Европейском союзе. Актуальность исследования обусловлена ростом числа нарушений исключительных прав в обеих юрисдикциях, а также процессом сближения региональных правопорядков в рамках ЕАЭС и гармонизацией с международными стандартами. Цель работы – выявить общие подходы и ключевые различия в правоприменительной практике, а также сформулировать рекомендации по совершенствованию казахстанского законодательства с учетом опыта ЕС. Методологическая основа включает сравнительно-правовой анализ, изучение судебной практики и статистических данных. В статье рассматриваются ключевые дела из практики Казахстана и прецеденты Суда Европейского союза. Система Казахстана эффективно противодействует контрафакции, тогда как практика ЕС в большей степени ориентирована на защиту репутации бренда и предотвращение действий, способных подорвать его престиж. В этой связи для имплементации европейского опыта в законодательство Казахстана предлагаются следующие меры: внести изменения в статью 43 Закона «О товарных знаках, знаках обслуживания, географических указаниях и наименованиях мест происхождения товаров», предусмотрев защиту репутации бренда; установить процедуру оперативного удаления незаконного цифрового контента; а также усилить досудебное урегулирование споров посредством развития механизмов медиации.

Ключевые слова: товарные знаки, защита, правонарушение, исчерпание прав, параллельный импорт.

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