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Master's paper:

Registration of a Trademark in Armenia

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“Everyone is entitled to freedom of literacy, artistic, scientific and technical creation, to benefit from the achievements of scientific progress and to participate in the cultural life of society. Intellectual Property shall be protected by Law.”

Constitution of the RA (Ch.2, Art.36)

Abstract

This paper focuses on registration of trademarks in Armenia. Trademark is one of the branches of Intellectual Property and has big influence on business, consumers and economics on the whole.

The paper focuses on process of registration of a trademark in Armenia, on improving steps of registration, search of trademarks and on creation of a center for educating people, which give a chance to learn and contribute to development a country.

Transaction description

This study is about trademark, which is a very old idea, as old as trade and sell of goods, but it had started to play important role in trade, industry, business from the period of industrialization till nowadays. Trademark has become the main component of market economy, competition and international market.

Trademark is one of the branches of intellectual property. It functions to identifying and distinguishing goods and services of one seller from those of another seller, represent that “all goods bearing the trademark are on equal level of quality and controlled by a single source”¹ and serves as a tool in advertising and selling goods.

¹ “Trademark” <http://www.okpatents.com>

Trademarks are defined as “one or a combination of words, letters and numerals. They may consist of drawings, symbols, three-dimensional signs such as the shape and packaging of goods and audible signs such as music or vocal sounds, fragrances or colors used as distinguishing features”².

An important requirement of trademark is distinctness that helps to identify and differentiate the source of the goods of one owner from those of others. For this purpose trademark must be in one of four categories: *descriptive* identify the quality, and/or characteristic of a good or service (“VISION CENTER” for an optic store); *arbitrary* means, that a trademark has no association with the goods or services it represents (“APPLE” uses for computers and does not describe quality or characteristic of a computer); *suggestive* trademarks indicate some quality of the associated goods and indirectly describes these goods (“ZOVK” for fruit juice); *generic name* is a class name, like “shoes”, “automobile”; it cannot help to distinguish goods of one seller from goods of others³.

Trademarks help potential buyers to distinguish goods and services of one company/owner from goods and services offered by another company/owner. This is important, because trademark ensures that consumers are not defrauded and can make the right choice. Therefore, every product or services that enter in a market must have a mark, which helps to identify a product or service.

Trademark is essential not only for protection of consumers’ rights, but also for that of producers (owners), because it not only indicates the origin of the goods and represents a certain quality, but also helps to attract consumers, create with them connection and protect them from deception⁴. Consequently, the purpose of trademark is to protect the consumer from false goods, to help them to associate the mark with the product and guarantee free competition among

² “Trademark”http://www.wipo.int/sme/en/ip_business/mark_procedure.htm.

³ “Trademark” <http://www.okpatents.com>

⁴ “Crash course on trademark: What are trademarks” <http://www.iusmentis.com/trademarks/crashcourse/whatis>

producer (owners). It results in creating a balance between the interests of producers and consumers.

This study will cover issues of registration of trademarks, requirements for registration, steps needed to improve the registration procedure. Amendments of Armenian law will coordinate these issues based on the practices of the other countries in this field.

Armenian Legal Framework

Trademark is a territorial concept. It means that national law should protect a mark. The protection of a trademark starts after registration of trademark.

The main aim of law on trademark is protection a producer from infringements of a trademark and prevention of unfair competition.

In many countries like Australia, China, India, Germany and others arise the issues like:

- Would the mark to be registrable in a country and under what conditions?
- If it is not registrable, can other protection be available?
- What are the steps for registration?

In Armenia the first **Law on Trademark** was adopted in May 1997 (before it was “Provisional regulation” (1995)). The Law sets out the terms and conditions of trademarks protection (Ch.1 Art.1-6), the kinds of trademarks that may not be registered, the procedures for registering trademarks, the circumstances in which trademarks may be used and also a documentary requirements for registration trademarks (Ch.2 Art.6-17).

The matters of a trademark regulates also by **Civil Code of RA** - Ch. 69 Art. 1171-1178, which regulates the conditions of legal protection of a trademark, the right to use a trademark, legal protection of a trademark on the territory of the Republic of Armenia, time period of effectiveness of the registration of a trademark, passage of the right to a trademark, permission to

use a trademark, form of contracts on the transfer of the right to a trademark or on the giving of a license and the registration of the transfer of rights, liability for infringing the right to a trademark, which means, if a person unlawfully uses a trademark, he/she should stop infringement and compensate losses to a holder.

With respect to the illegal use of a trademark article 197 of the **Criminal Code** provides that illegal use of a trademark, if this action has caused large damage to a holder, it must entail a fine in the amount of 300 to 500 minimal salaries or correctional labor for maximum term of 2 years, or imprisonment for a maximum 2 months.

Chapter 5 articles 11 and 12 of **Law on Protection of Economic Competition** also protect any business activity or conduct, which “causes confusion with the respect to the activities of another competitor, the activity or products offered by him/her, shall be considered as an act of unfair competition.”⁵

In addition to being protected in Armenia, a trademark also has international protection. If an owner has the desire to distribute or sell his product or service in other countries, then he can protect a trademark according to the **Paris Convention for the Protection of Industrial Property** (1883), which main principles are right to priority and national treatment. Right to priority means that “on the basis of a regular application filed by a given applicant in one of the member states, the same applicant may within 6-12 months, apply for protection in all the other member states.”⁶ National treatment means “each country party of the Convention must grant the same protection to nationals of the other member countries as it grants to its own nationals.”⁷

⁵ “Law on Protection of Economic Competition” translated by Tacis (technical assistance to Armenia to prepare for accession to the World Trade Organization and implement Obligations Related to WTO accession and Partnership and Co-operation Agreement)
<http://www.parliament.am>

⁶ “The Paris Convention for the Protection of Industrial Property” Ch.5 International treaties and conventions on Intellectual property

⁷ “The Paris Convention for the Protection of Industrial Property” Ch.5 International treaties and conventions on Intellectual property

Another agreement, which is in addition to Paris Convention, is the **TRIPS agreement** (the WTO agreement on Trade Related Aspects of Intellectual Property Rights). The purpose of this agreement is extending “to fill gaps around questions of intellectual property and guarantee sufficient standards of protection exist in all member states.”⁸

Armenia has also access to international treaties like **Madrid Agreement and Protocol**, which main goal is “enables mark owners to obtain a single International Registration that can extend protection to any country that has signed the Agreement, by a single filing in one language, under one procedure, with the payment of one fee”⁹ and **Nice Agreement** which provides for a classification of goods and services for the purposes of registering trademarks (there are 34 classes for goods and eight for services).

Case Study

In case “Sweet Land” LLC v. “Grand Candy” LLC issues of registration, priority and unfair competition were raised.

Armenian-France “Sweet Land” LLC registered “FRUTLANDIA”, “Cola” and “Sweet Land” trademarks in the Authorized Body of the Agency of Intellectual Property in 08.07.2004, which also had an earlier priority in international list of classification goods and had certificates.

In the same year (2004) American-Canadian “Grand Candy” LLC produced and sold products, the exclusive right to which belonged to “Sweet Land” LLC. In addition “Grand Candy” LLC during one month had produced some TV advertisements. “Sweet Land” LLC maintained that “Grand Candy” LLC violated their exclusive rights according to the Law on Trademark Art.4 (1), Art.7 of the Law on Advertising.

⁸ Summary of the Paris Convention for the Protection of Industrial Property (1883) <http://www.wikipedia.com>

⁹ Glossary of Industrial Property Terms. The Madrid Agreement (1891) http://www.hpo.hu/English/ip_glossza/mm.html

“Grand Candy” LLC objected, filed a counter-claim against “Sweet Land” LLC and insisted on the opposite suit, where “Grand Candy” LLC pleaded to recognize the same trademarks for them and deprived “Sweet Land” LLC of all right on these trademarks.

“Grand Candy” LLC argued, that types of the trademarks “FRUITOPIA”, “Cola” and “Grand Candy” were developed by the workers of the design department of “Grand Candy” LLC in 2003, had earlier priority and used on goods, on “Grand Candy” LLC’ s refrigerators, motorcycles and as a name of special shops. “Sweet Land” LLC did not present any arguments, except the certificates, registered in the Agency of IP.

Court decided to recognize the exclusive right of “Grand Candy” LLC on the ground of arguments and to deprive “Sweet Land” LLC rights on all trademarks.

In another case “International Masis tabak” LLC v. “Drustveno Preduzede Din” “Duvana Factory” was problem with registration the trademark “BEST”. “International Masis tabak” appealed to the Agency of IP for registration this trademark in 16.09.2004, but was rejected, because “Drustveno Preduzede Din” “Duvana Factory”, which was foreign firm, registered it earlier, in 13.02.1991, but after registration it didn’t use more thirteen years.

Court decision was premature suspending the registered trademark “BEST”, which was registered in 13.02.1991 by the “Drustveno Preduzede Din” “Duvana Factory”.

In case “Gallanter” CJSC v. The Agency of IP according to Articles 33,73,109 (7), 110, 130-133, 221.3, 221.4 and 221.6 of Civil Code court decided to stop the process (production) and compel, that the Agency of IP signed the “Agreement of Reconciliation” with regard to “DUCAT” trademark.

These cases show that issues about registration of a trademark exist in Armenia. The procedure of examination has gap, which creates disputes around the trademarks in the court.

Steps of the Transaction

Historically, the registration process of a trademark begins with the filing application in the trademark Office in each country, where an owner or legal entities want to register trademark.

In Armenia an application for registration of a trademark represents to the Agency of Intellectual Property (the Authorized Body). It can be representing by an owner or legal entity, in the name of which the registration of a trademark is sought, or can be present thought patent attorneys, who have registration in the Authorized Body. Foreign legal entities and persons can represent applications through attorneys, who registered with the Authorized Body. The Agency establishes a sequence of attest and registration of patent attorneys. Patent attorneys' actions are regulated by the State, which approved by the Government of the Republic of Armenia.

The application must attitude only to one trademark and contains:

- a) “a request for registration of the trademark, including the applicant's name and his place of residence or business”;
- b) “an image of the claimed mark and its description, as well as the color and color combination”;
- c) “a list of goods grouped in accordance with the classes of the International Classification of Goods and Services, for which registration of the mark is claimed.”¹⁰

An application shall be sign by an applicant, if an application presents through patent attorney, it should be signed by an applicant and attorney.

An application should accompany:

- a) “receipt for payment of the requisite fee for filing the application and carrying out an examination;”

¹⁰ “Law on Trademark, Service Marks and Appellations of Origin” Ch.2 Art.6 (6)

- b) “a document confirming the authority of a patent attorney (power of attorney), if an application is filed through such an attorney.”¹¹

The application must be filed in Armenian, but documents attached to the application can be submitted in another language.

Second step is establishment of a priority a trademark. It can be established according to:

a) *Date priority* - “the priority of a trademark shall be established according to the year, month and day on which an application is filed with the Authorized Body”;

b) *Convention priority* - “the priority of a trademark may be established according to the date on which the first application is filed in one of the States parties to the Paris Convention, if the application is filed with the Authorized Body within six months of the date in question”;

c) *Exhibition priority* - “the priority of a mark displayed among the exhibits at official, or officially recognized, international exhibitions, on the territory of one of the States parties to the Paris Convention, may be established according to the date on which the exhibit began to be displayed at the exhibition, if the application is filed with the Authorized Body within six months of the date in question”¹².

If during the exhibition it is established that trademarks are “ identical or similar to the point of confusion “, fully or partly with the a list of goods and have the same date of priority, the registration of a trademark may be registered on the name of one of the applicants according to agreement signed between them.

The third step is examination of an application, which fulfilled by the Authorized Body and consists from two steps:

¹¹ “Law on Trademark Service Marks and Appellations of Origin” Ch.2 Art.6 (7)

¹² “Law on Trademark...” Cn.2 Art.7 (3)

a) *Preliminary examination*, that conducts within one month. During the preliminary examination the content of an application should be verified. An applicant during this step may add, correct or amplify materials of application. According to the preliminary examination, an application accepts or rejects. When an application is accepted, an applicant shall be informed about a date of submission a trademark.

b) *Examination of a claimed designation* – conducts within six months, after preliminary examination. During this examination the priority of a trademark is established and checked “whether the claimed designation meets at least the requirements of Art. 11 and Art.12 (1) of this Law”.

Accords to the results of examination the Authorized Body takes a decision about registration a trademark or about rejects it. If an applicant does not agree with a decision taken as a result of an examination, he can within three months submit an appeal to the Board of Appeal (the Authorized Body of the Agency of IP). If an applicant does not agree also with the decision of Board of Appeal, he (an applicant) has a right to refer the matter to the court according to the established legal procedure.

After examinations and on the ground of decision about registration a trademark, the Authorized Body within one month from the date of receiving a receipt for payment duty fee registers a trademark in the *State Register of Trademarks of the Republic of Armenia*. The Register contains the trademark image, information about an owner, the priority date and date of registration, list of goods for which the trademark is registered, other information about registration a trademark and also the following changes of this information.

After all these steps the Authorized Body, within one month from the day on which the trademark is entered in the Register, issues a trademark certificate.

The registration of a trademark is valid for 10 years from the day on which the trademark is registered in the Register. The period of validity a trademark can be extended accords to the request of an owner. An owner must announce about extend a trademark during the last year of validity of registration. The Authorized Body may give also six months of the expiry of the period of validity to an owner, if owner provides additional fee. The Authorized Body enters in the Register details about extension of a period of validity of registration of a trademark and accords to the request of an owner – trademark certificate. If a trademark is registered for more goods during the validation period, its registration can be recognized invalid, because trademark certificate certifies the fact of registration, priority date and owner’s exclusive right of a trademark on goods, which states in the certificate (Art. 3(3)), Art11, unfair competition according to the Art.6septies of Paris Convention for the Protection of Industrial Property (1883) and also during 5 years from the time of publication information about registration of a trademark in Authorized body’s official journal.

The last step of the registration a trademark is publication information about registration a trademark in the official journal within three months of the day of registration.

Owners or legal entities Republic of Armenia may register a trademark abroad or internationally according to the Madrid Agreement. The applications form for international registration of a trademark files thought the Authorized Body

All steps explained above and studied cases (“Sweet Land” LLC v. “Grand Candy” LLC, “International Masis tabak” LLC v. “Drustveno Preduzede Din”) show that the process of the

registration is not full in Armenia because owners of the trademarks due to shortage of information collide with the problems of trademarks on the market.

International Best Practice

Laws on trademark and procedures to obtain a registration a mark are different in many countries. This part of the paper is based on methods and analyses on how the process of registration is regulated in civil law countries such as Japan, Brazil, Mexico, France, India, Georgia and a common law country such as Australia.

These countries have well developed procedure to obtain a mark, where laws make registration a requirement to set up a trademark rights, create a system to judge trademarks and divide trademarks into categories matching the international classification system. Specific procedures vary between the different countries. However, these countries have one essential difference: *in civil law countries* (Japan, Brazil, Mexico, France, India, Georgia) a trademark gets legal protection according to the registration; *in common law countries* (Australia, Great Britain, the USA) a mark must be used, when registered, i.e. a product must be marketed before registration.

Besides these differences all these countries also have some restrictions. A trademark is not registered, if it is not capable of distinguishing an applicant's goods from others in the marketplace and it is difficult to register a trademark that describes some aspects of a product and misleads a consumer about the nature of the goods; as well as those that are in conflict with an earlier trademark.

During the procedure to obtain a right on trademark in **Japan**, a mark is officially searched during several months before filing the order, in order to avoid unnecessary costs

caused by adopting a mark, which conflicts with someone's prior right. Only after the search does the Japanese Patent Office start to examine an application (formally, substantive) and in the end the experts give a decision. If a trademark successfully passes all steps and registers, the Office publicizes the trademark in the trademarks gazette. Even after a trademark is registered, any person may appeal for invalidation within two months of the trademark, if it has a flaw. The Office in this case sends a copy of the opposition to the registrant and at the same time examines the opposition. If an opposition is approved, the Office cancels the registration.

Another important point in Japanese law is cases of emergency, when the examination can be accelerated according to some requests: mark is in use, the mark is also filed in a foreign country or a third party is infringing on the trademark.

In **Brazil** before filing an application, the priority right must be exercised within six months as a date of fill out of the most former priority claim, which provide Paris Convention for the Protection of Industrial Property (1883). But the priority claim does not exempt an application from the legal provisions sets in the Industrial Property Law of Brazil. After this an application is preliminary examined. The application is publicized in the protocol of the National Institute of Industrial Property of Brazil and during sixty days, it is open for oppositions. If opposition is filed after sixty days or does not enough legal grounds, it cannot be acknowledged. After this step an application for registration will be subject to examination. If a registration is rejected, an applicant can appeal against this decision during sixty days as of the date of publication in the protocol. An Appeal also can be rejected, if it is filed after expiration of the term, is not accompanied by the receipt of payment and due to lacks of legal grounds.

Under **Mexican Law**, prior use does not constitute a legal requirement for registration of a trademark: the prior use over a trademark by a person, who does not register it in Mexican Institute of Industrial Property has a privilege in face of third party to the regard to the same

trademark, if his usage has been uninterrupted and can be proven. According to this the owner of an unregistered trademark has the right to register this trademark during “the 3-year term from the date of publication of the other person’s registration and provided his previously request and obtain the declaration of nullification of the exciting registration.”¹³

The registration of a trademark in **France** is different from all mentioned countries, because France is a member of European Union and therefore has possibility to apply for two type’s registration:

- national - trade mark protects exclusively in France according to national law
- European – uniform protection in all member states.

On the national level an applicant files an application and presents it to the National Institute for Industrial Property (INPI). Before filing an applicant must check that a mark is available and it is necessary to mention that INPI has no obligation to check on availability. Once the application is accepted, the INPI publishes it for objection by the third parties within two months. After expiry two months, the INPI must accept or reject this objection.

The European protection offers uniform protection in all countries of the European Union (EU) through single registration of a mark in the Office for Harmonization in the Internal Market (OHIM).¹⁴ In this case an application is presented to the OHIM. The application is checked, “then examined by OHIM on “absolute” grounds to ensure that the mark is appropriate for registration and not simply a laudatory term or other unregistrable mark.”¹⁵ At the same time OHIM sends details of application to the national offices in every member state. The national offices search is *advisory* and do not official object to the trademark. After these steps, if a

¹³ “Trademarks” [http:// www.alfainternational.com](http://www.alfainternational.com)

¹⁴ The Community Trademark was established by the European Council Directive No. 4094 of December 20, 1993

¹⁵ THE COMMUNITY TRADE MARK REGISTRATION
http://www.sethassociates.com/community_trade_mark_registration.php

problem arises with opposition, the proceeding can be decided “in oral hearings and cross examination of witnesses.”¹⁶

In **India** the registration of a trademark has some similarity with Japanese law. During the first step a mark searches. If the applicant overcomes this step successfully, during the second step the mark will precede to registration - the application proceeds to publication in the Indian trade Marks Journal. After publication any person can present opposition to registration within three months. If an application is published as accepted and is not opposed, the mark will be registered. Next, the fact of registration must be published in the Trade Marks Journal and if again any opposition will be against to the applicant in the period of publication, the registration will be final refusal based on this opposition.

In **Georgia** the process of registration has similarity with Indian and Mexican registration, but the step of publication of a mark comes after preliminary and sustentative examination.

According to **Australian Law** on Trademark, before filing an application to register a trademark it is sufficient to search all trademark records. A person does not pay a fee for search, because as a result of the search a person may find a mark similar to the one that he plans to use. If a similar trademark exists, the registration of that trademark can bar an application for registration of a similar one. If the application meets all necessary requirements of Trade Mark Acts, it is immediately accepted for registration in which case an applicant pays fee. After the application is submitted, the details are advertised in the official Trade Mark Journal and during three months anyone who thinks that this trademark should not be registered, may oppose its registration. A trademark registers from the date it was filed.

¹⁶THE COMMUNITY TRADE MARK REGISTRATION
http://www.sethassociates.com/comunity_trade_mark_registration.php

Another issue, which has connection with the trademark and its registration, is specialists. Some countries such as Brazil, India and Australia mentioned above have intellectual property centers at the national level, which were created thanks to WIPO Worldwide Academy.¹⁷ The main goal of these centers is to “ignite the power of the human intellect”¹⁸ through intellectual property teaching. Many seminars, symposiums and trainings are conducted in these countries by these centers. The purpose of these trainings or seminars is to teach lawyers, experts who work in the field of trademarks and to update information and practical capacity in the field of examination procedure, tools and techniques.

Evaluation Procedure

Armenia has made an effort to follow international norms in the field of trademarks. Currently Armenia like the countries discussed, has a separate Law on trademark, which specifies the process of registering a trademark. According to this study it can be confirmed, that the best procedure for Armenia will be the Indian version of registration a trademark. In Armenian Law on trademark a step should be added, which will help to examine the mark thoroughly and to avoid problems with the trademark on the market.

In Armenia, like in Australia, a person or legal entity can officially search a mark before filing the application and present it to the Authorized Body. But in Australia a person/ legal entity does not pay a fee for such a search, while in Armenia a state fee (20000AMD) must be paid to get access to the database of the Authorized Body.

¹⁷ “The WIPO Worldwide Academy was founded in March 1998 by the Director General of the World Intellectual Property Organization (WIPO), Dr. Kamil Idris in response to demand for knowledge and skills in intellectual property (IP). It serves as a center of excellence in teaching, training and research in IP. Its programs cater to different target audiences - inventors and creators, business managers and IP professionals, policy makers and government officials of IP institutions, diplomats and representatives, students and teachers of intellectual property and the civil society.” <http://www.wipo.int/academy/en/>

¹⁸ WIPO Worldwide Academy <http://www.wipo.int/academy/en/>

The search is important, but it deters small companies or persons from performing the search, because in result of search small companies/ persons may find a mark similar to the one, which they plans to use and they cannot register a mark and besides lost money. Therefore the Australian practice not taking a fee for searching is more preferable.

Next helpful implementation will be creation of a center of intellectual property as in India, Brazil or Australia, which will assist to teach Armenian lawyers and experts, who work in this field.

Reform

a) Recommendations

As was mentioned above, the best practice for Armenia can be India. Currently in Armenia does not requirement publication trademark before registration It is necessary to add a step of public examination (publication) of a trademark in the “Industrial Property” Official Gazette before registration. Adding such step will give a chance to owners of already registered trademarks, those filed for registration with an earlier priority to state their opposition against the registration of the mark during some period (two months). If there are any objections, it will allow examination of the opposition and in conclusion issues of an official decision to maintain or cancel the registration.

Armenia has a small market and the publication of a trademark after examination helps to preserve big companies like Grand Candy LLC, Champagne Factory, Yerevan Brandy Company, Massis Tobacco, SIL Croup from the registration infringement trademarks and also to help natural persons, who want to do business and work legally.

Another recommendations is to eliminate the fee for searching a mark in the database, like in Australia, because Armenia currently is in transition period with a high percentage of

unemployment and needs to encourage the fee structure. Therefore, it is necessary to take into account this and use the experience of country like Australia.

The third recommendation is creation of close relationship with WIPO Academy (like India, Brazil or Australia) and establishment a center, where an intellectual property culture will develop with education and research. Professors, government departments (economic, trade), lawyers and workers of Authorized Body of IP Agency should participate in this work.

b) Implementation

Authorized Body, as was mentioned in previous steps of this study, is a branch of the Intellectual Property Agency of the Republic of Armenia, which has the status of separate division acting within the Ministry of Trade and Economic Development. The Ministry of Trade and Economic Development also has a Department of Intellectual Property. All proposals about changes and amendments in laws of intellectual property develop in this department.

In order for Armenia to have success in the field of Intellectual Property and especially in the field of trademarks, implementation of these recommendations must be made not only by these bodies, but also by the support of the Armenian government. The government should addresses lawyers, professors, businesspersons and other specialists through mass media, papers and seminars to create an Intellectual Property culture and education.

Conclusion

The registration of trademarks is an important step in acquisition of a trademark, because the main purpose of registration is protection of the rights of trademark holders and protection of consumers being misled.

This paper described the procedure and steps of registration trademarks in Armenia. This study showed that, unlike India, the Armenian law on Trademark is missing an important step in registration, which can allow a more careful examination of trademarks and preservation of the rights of owners. Also contrast to Australia, where without paying fee, a person/legal entity can search for a trademark, in Armenia there is a fixed fee. There is also a problem with education in this field, in contrast to countries like Australia, India and Brazil.

This paper includes some recommendations for implementation of an amendment to the Law on Trademark, which introduces steps of registration in the law, protects the rights of owners of trademarks and preserves consumers from misleading marks.

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