

PROTECTION OF TRADEMARK RIGHTS

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Summary: *Administrative trademark protection is reflected in imposing administrative measures against those persons who have violated a trademark right, but also in the supervision over the implementation of regulations directly referring to the trademark propriety. Customs play essential role in implementing trademark protection measures. Legal regulations of the European Union member states and TRIPS agreement regulate in detail the implementation of customs control with the aim to prevent infringement of a trademark. In order to ensure efficient work of customs offices against piracy and counterfeiting across national borders, it is necessary to ensure an efficient protection system, its implementation and a data base on registered trademarks available to customs officers. A special form of administrative control is carried out by means of inspection control. Inspection control ensures the control of enforcement of laws, bylaws and other regulations that are directly or indirectly related to trademark, with the aim to protect constitutionality and legality. Trademark Act contains provisions that regulate the issue of misdemeanour trademark protection as one of the forms of penalty sanctions in case of an infringement of a trademark is established. Although the issue of misdemeanour trademark protection in legislation of Bosnia and Herzegovina is characterized as a new area, and the number of court decisions is relatively small to go in favour of a relevant jurisprudence, in normative terms, Bosnia and Herzegovina is not lagging behind the neighbouring countries whose experience in the field of trademark protection has lasted longer and the number of their court decisions related to this field is higher.*

Key words: *trademark, trademark protection, trademark infringement, piracy, counterfeiting.*

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1. ADMINISTRATIVE PROTECTION OF A TRADEMARK

Trademarks Act directly regulates issues related to the right to a trademark. Besides this law, other legal regulations which indirectly regulate issues related to the right to a trademark, as well as measures and protection procedures that are implemented as part of the administrative protection of a trademark are also applied. Justification of application of those regulations is reflected in a timely and efficient protection of jeopardized and infringed rights of a trademark holder. Administrative protection is reflected in enunciating administrative measures against persons who have infringed a trademark right, as well as surveillance over the implementation of regulations that are directly connected to the right to a trademark.

Customs play an important role in implementing intellectual property rights measures of protection. Legal regulations of the European Union member states and the TRIPS agreement regulate in a detailed manner the implementation of customs surveillance with the aim to prevent infringement of a trademark right. In order to ensure efficiency of customs services with the aim of preventing and fighting piracy and forgery beyond the state borders, the existence of an efficient protection system, its implementation, as well as the existence of a database on registered trademarks accessible to customs officials, are necessary.

Special aspect of administrative supervision over the implementation of measures of trademark rights protection is realised by means of inspection supervision. This kind of supervision ensures control over the implementation of the law, by-laws and other regulations that are directly or indirectly connected with the right to a trademark, with the aim to protect constitutionality and legality.

2. CUSTOMS MEASURES

Indirect Taxation Administration (hereinafter: ITA) implements the process of customs measures, in accordance with the Decision on implementing customs measures to protect trademark rights of holders, and namely:

in relation to goods that are subject of customs procedures of import, transit or export, and for which there is a reasonable doubt that it has infringed exclusive rights prescribed by the Trademark Act, as well as

in relation to goods which are subject to customs procedures of import, transit or export, and for which it has been determined by a legally binding decision of the competent court that it violates the trademark.²

² Article 1, Paragraph 1 *Decision on implementing customs measures for the protection of the rights of trademark proprietor*; the Official Gazette of B&H, no. 41/12

Natural or legal person that is the proprietor of exclusive rights of a trademark may require ordering of customs measures for the protection of rights due to infringement of trademark rights. The proprietor of trademark exclusive rights is the person to whom the trademark has been recognised and registered (*trademark holder*), a subject onto which the trademark has been transferred and only for that kind of goods on which the trademark has been transferred (*right transferee*), entity to which the trademark proprietor has conceded the right to use the trademark via a licence contract or franchise contract for the period of validity of the licence or franchise contract, and namely for the goods for which licence or franchise has been given, and if according to the scope of conceded disposition of goods that person may require customs measures (*authorised user of rights*), the person who is the proprietor of internationally registered trademark that is protected in B&H (*internationally registered trademark proprietor*).

Trademark exclusive rights holder, who reasonably doubts that goods which have not been produced in accordance with the provisions of the Trademark Act are ready to be imported, transited or exported, may submit a request for the protection of their rights by means of customs measures of temporary holding the goods until further release into circulation by the competent customs body.³

The request is submitted to the Central Office of ITA and has to contain as much data about the goods as possible, in order to facilitate identification of the same by the customs body.⁴

Together with the request, the trademark holder is obligated to deliver a notary-processed statement by means of which he undertakes the responsibility for damage which may occur to persons that are participating in the implementation of customs procedure, in case when customs measures have been interrupted because of the procedure or failure of the right holder, or if it is established that the relevant goods do not infringe the trademark right. Upon receiving the request, the Central Office may reject it and pass a decision on the same, or it may approve the request and allow implementation of the required customs measures for the protection of rights due to the trademark infringement, passing the decision on the same and delivering a copy of the decision to the applicant. The time period for which the implementation of customs' measures upon the application submitted by the holder of rights may not be longer than two years from the date of submitting the said request. Prior to passing the decision by means of which it approves the request of the rights holder, the customs body may require the rights holder to deposit securement for the costs of storing and transporting goods, as well as for the compensation of damage, which could

³ Article 94, Paragraph 2, *Law on Trademark Act of BiH*, the Official Gazette of B&H, no. 53/10

⁴ Article 5, Paragraph 2, *Decision on implementing customs measures for the protection of the rights of trademark proprietor*

occur to the customs body as well as to the party against which the request has been accepted. If the customs body approves the request, it shall notify all customs branch offices and the right holders accordingly.

If in the course of implementing the customs procedure the customs body identifies goods that corresponds to the description of goods from the decision passed by the competent customs body, and for which there exists a reasonable doubt that its trade and circulation shall infringe the trademark rights, the customs body shall hold the goods temporarily until releasing it into trade, that is, circulation. If necessary, the customs body shall consult the rights holder in relation to the decision to temporarily hold the goods. The competent customs body shall examine the goods, after which it shall make a report and deliver it to the Central Office. After it has examined the report, the Central Office shall pass a decision on interrupting the required customs procedure and temporary holding of goods. Likewise, the decision shall state the title of the right which is assumed to have been violated, the real or assumed kind of goods, as well as the real or estimated amount of goods. The deadline for the importer of goods to declare in relation to the circumstances whether the subject goods are forged goods or not, or any other violation of rights in connection with the trademark, amounts to ten days, and in case of easily perishable goods the period amounts to three days. By means of this decision the Central Office establishes the obligation of the trademark rights holder to submit, within ten working days, evidence of the complaint submitted for the establishment of trademark infringement or a notary-processed statement of the importer that upon agreement temporarily held goods shall be destroyed. If the importer fails to deliver a written statement agreeing with the destruction of temporarily held goods in the envisaged time period, the goods shall be destroyed at the request and expense of the rights holder. If the importer of goods has submitted a statement that the goods in question are not forged, but some other violation of rights ensued, the rights holder may file a complaint due to violation of rights within ten working days from the receipt of notification of such statement. At the request of the rights holder, the customs body may determine an extended time period for the submission of a complaint, which may not be longer than ten working days. In case that the rights holder fails to file a complaint due to violation of rights within the time period envisaged for such action, or within the extended deadline, the held goods shall be released into customs-approved use, that is, circulation. If the rights holder initiates a court proceeding, the customs body shall pass a decision on confiscated goods until legally binding court decision is passed. At the request of the rights holder, the customs body may determine an additional period for filing a lawsuit which may not be longer than ten working days.

By means of decision passed by the Central Office on the interruption of the required customs procedure and temporary holding of goods, as well as at the request of the rights holder, the temporarily held goods may be taken away and destroyed. The rights holder, who organises and covers the costs for the destruction of the goods, including the agreements and/or permits issued by competent bodies that are required for the destruction of the related goods, is responsible for the destruction of temporarily confiscated goods. Through the decision on confiscating goods, and on the basis of a legally binding decision passed by the competent court, the goods for which it is determined to be violating a trademark, will not be:

- set into free circulation,
- taken out of the customs area of Bosnia and Herzegovina,
- exported (except in the case when it is necessary to conduct goods destruction abroad),
- re-exported (except in the case when it is necessary to conduct goods destruction abroad),
- put into the process of suspension of payment or a process with economic effect,
- placed into free zone or free warehouse.⁵

2.1. Ex officio proceeding

During the implementation of customs procedure of supervision and examination of goods, the customs body may, in case of justified doubt that the subject goods infringes a trademark, interrupt the customs procedure and temporarily suspend the release of goods into circulation and notify the Central Office accordingly. The Central Office shall notify the holder of the rights in writing about holding the goods for which it doubts that they violate its rights related to the trademark. Within five days from receiving the written notification from the Central Office, the trademark rights holder has the possibility to submit a request for ordering customs measures for the protection of rights due to the violation of the trademark. If the holder of rights has submitted such a request, the goods will be kept until the decision of the customs body is made. If, on the other hand, the rights holder fails to submit such a request, the Central Office shall notify the competent customs body accordingly, and the latter shall then approve placing the held goods into the required customs procedure pursuant to the submitted customs report.

⁵ Article 15, *Decision on the implementation of customs measures for the protection of trademark proprietor's rights*

The rules of procedure after the temporary holding of goods, as well as the procedure that the customs body is conducting *ex officio*, does not pertain to import, transit or export of goods in small quantities, intended for private and non-commercial use, which is taken in or taken out as part of personal luggage or is sent in small parcels.

3. CIVIL PROTECTION OF A TRADEMARK

With an end to protecting the rights of a trademark, holder of the trademark rights has the option to file a complaint. Trademark rights holder is an active, legitimised entity provided that a complaint has been filed at the moment when the trademark rights have been infringed, that is, in the course of hearing, the holder is also the trademark rights holder. The infringement of trademark rights has to be done in one of the ways that are stated in the Trademark Act, and which pertain to unauthorised usage and imitation of a trademark, all on condition that the same has been done in legal circulation. Actively legitimised person for the filing of complaint due to the infringement of trademark rights, that is, the rights from the report is the holder of a trademark, the submitter of report, acquirer of exclusive licence, the user of collective trademark with the agreement of the holder of collective trademark and user of trademark guarantee with agreement of the guarantee trademark holder.

Trademark rights holder, that is, claimant, may, in case of violation of trademark or right from the trademark report (provided that the trademark is subsequently recognised), require the following:

- a) determination of the infringement of rights,
- b) prohibition of further infringement and future similar violations by stopping or abstaining from actions that infringe that right,
- c) rectification of the condition created by the infringement of rights,
- d) withdrawal of articles of infringement from the commercial trade with respecting the interests of third conscientious parties,
- e) complete removal of the subject of infringement from the commercial trade,
- f) destruction of tools by which the infringement of rights was done,
- g) destruction of assets that were exclusively or to the largest extent intended for violating rights and which represent the property of violators,
- h) leaving the articles of infringement to the rights holder with the production costs compensation,
- i) compensation of property damage and justified costs of the procedure,
- j) publishing the verdict on the cost of respondent.

In the course of deciding on the request of the trademark rights holder, the competent body is obliged to take into consideration all the circumstances of the case, as well as the relation between the seriousness of the infringement done and the request, as well as the interest of authorised persons for the securement of effective protection of the right. The procedure related to the complaint shall be urgent, by which the position of the trademark rights holder is additionally secured in legal circulation. Likewise, in that manner, cost-effectiveness of the procedure becomes free from unnecessary expenses and procrastinations.

Any unauthorised use of trademark by third parties is categorised as the violation of the trademark rights, under the Trademark Act. Therefore, the trademark rights holder has the right to prohibit unauthorised use to other persons.

A common form of unauthorised usage of trademark by a third party is the use of someone else's trademark to label goods, known as forgery. Inspection supervision procedure shall determine whether the goods are forged or not, whereby the goods will be confiscated and destroyed, thus preventing their placement on the goods market. A much more common form of a trademark infringement is the use of a trademark which in its nature reminds of other trademarks already present on the market of goods and/or services, by the use of which an unauthorised user misleads an average consumer when it comes to the origin, quality and other properties of the goods and/or services.⁶ Imitation, transcription and transliteration of a trademark shall also be categorised as trademark infringement.

In the Republic of Srpska, competent commercial courts are responsible for disputes related to trademark rights infringement. Lawsuit for trademark infringement and/or violation of the right from report may be submitted within the period of three years, starting from the day when the injured party found out about the infringement and the tortfeasor, and not later than five years from the day the infringement was made for the first time.

General rules related to damage compensation and liability for damage shall be applied to all claims for compensation arising from a trademark infringement, unless otherwise determined by the Trademark Act. A person infringing a trademark is obligated to indemnify the holder of the right in the scope determined according to general rules on compensation for damages, or in the scope corresponding to contracted or common compensation for authorised use of the trademark. In cases when a trademark has been violated intentionally or by extreme negligence, the holder of a trademark may require compensation up to three times the agreed amount from the person that infringed the trademark,

⁶ More on this: Pavle Tijanic, „Civil protection of trademark” *Pravni zivot no. 11 (1995)*, 815
Milenko Manigodic, „Civil protection of trademark – trademark infringements” *Pravni zivot no. 11 (2002)*, 915

and if the amount has not been agreed, the corresponding common licence fee that it would receive for using the trademark. When deciding the request for penalty payment, the Court shall consider all circumstances related to the case, and in particular the scope of damage, the tortfeasor's degree of guilt, the amount of contracted or common licence compensation and the preventive goal of penalty. In case that the caused damage is higher than the penalty, holder of the right shall be authorized to require the difference up to the amount of the entire damage compensation.

In order to secure the request, the Court shall determine provisional measures, under the condition that the applicant makes it likely that he is the holder of the right pursuant to the Trademark Act, and that his right has been infringed or that there is a likelihood of infringement which may cause the irreparable harm. In addition, the holder of the right has to render possible one of the bellow stated assumptions:

- a) a risk that fulfilment of the application shall be disabled or considerably more difficult,
- b) that the provisional measure is required to prevent damage that would be difficult to recover later, or
- c) that by taking provisional measure that would in subsequent proceeding prove to be unreasonable, the assumed tortfeasor would not suffer greater adverse consequences than those the holder of the right would have suffered had such provisional measure not been passed.

Holder of the right may propose provisional measure without previous notification and hearing of the opposing party under the condition that he makes it likely that any postponement of ordering provisional measure may cause irreparable damage to the holder. In that case, the court may order provisional measure under the condition that it has notified the other party immediately after the implementation thereof.

For the purpose of securing the claim, the court may determine any provisional measure that would achieve the purpose of securing. Thus, the court may order the suspected tortfeasor not to take actions that would infringe a trademark right, and/or the court may order confiscation, removal from trade and storage of all subjects to infringement and means of infringement that are solely or predominantly intended and/or used for the actions of infringement.

A provisional measure may be ordered even before filing a lawsuit, but the court shall in that case pass a decision to determine a period in which the proposer of the provisional measure shall have to file a lawsuit. The period may not be longer than 20 working days and/or 31st calendar day from the day of

delivering the decision to the proposer, depending on which expires later. The court has to pass a decision on the complaint against the decision on provisional measure within the period of 30 days from the day of submitting a response to the complaint and/or from the expiration of the term for submitting the response. The procedure referring to ordering provisional measure shall be urgent.

A holder of the right in the procedure of exercising the right to protection may require the court to pass a decision on securing the evidence. In that case, the proposer shall be obliged to provide the court with reasonable evidence in order for the court to pass a decision on securing the evidence. The proposer shall be obliged to prove that he is the holder of the right pursuant to the provisions of the Trademark Act, as well as that his right has been infringed or threatened to be infringed and that the evidence on infringement of his right shall be destroyed or that there is a risk that evidence may not be brought to court afterwards. If the proposer provides all the required evidence, the court shall pass a decision to secure the evidence and shall deliver it to the other party immediately after presentation of all evidence.

In the process of securing the evidence, the court has to ensure the protection of confidential data provided by either party and make sure that the court proceeding are not misused exclusively with the intention of acquiring confidential data of the other party. The procedure of securing evidence shall be urgent. Securing evidence may be required even after legally completed proceeding if it is required for initiating the procedure according to extraordinary legal remedies, or in the course of such proceeding. If on the grounds of additional circumstances, the proposal to secure evidence proves to be unjustified, or if the holder of the right fails to justify the proposal, the other party shall be entitled to require:

- a) return of seized objects,
- b) ban on the use of the acquired information,
- c) compensation of damages.

Relevant provisions of the Code of Civil Procedure shall be applied to the procedure of securing evidence, which refers to provisional measures, unless otherwise determined by the Law on Trademark.

4. PROTECTION OF A TRADEMARK AGAINST UNFAIR COMPETITION

Article 58 of the Law on Trade of the Republic of Srpska⁷ defines the term unfair competition as an action of a trader which is contrary to good business practices and which causes or may cause damage to other trader, other legal person or a consumer. It can be concluded from the legal definition of the general term unfair competition that certain conditions have to be met for the existence of an unfair competition act, and namely:

- that an action of a trader is in question,
- that the action is done in the course of doing a commercial business,
- that the action is contrary to a good business practice,
- that the action causes or may cause damage to another trader, another legal person or a consumer.

The key element of an unfair competition is an action which is contrary to a good business practice. Trade law of the Republic of Srpska do not define the term good business practice. However, good business practice presumes a generally accepted practice of doing business within a business activity. In this regard, legal entities are expected to compete in the market in accordance with generally accepted business practice.

Pursuant to the provision of Article 10bis paragraph 1 of the Paris Convention for the Protection of Industrial Property, the countries of the Union are bound to assure to nationals of such countries effective protection against unfair competition. Member states are not obliged to pass special laws to regulate matters related to unfair competition and therefore it is possible to regulate it within the existing legal regulations. In the group of countries of the Union of Paris with civil law tradition (France, Italy and the Netherlands), the protection against unfair competition is regulated by regulations determining the matter of general responsibility for damage. Most countries of the Union provide for a combined approach to protection against unfair competition and namely general civil law principles and/or regulations, court practice and in particular legislation referring to this field.⁸

An action of unfair competition which is an unauthorised use of somebody else's trademark includes marking of goods or services by somebody else's trademark (goods or services), and placing on the market goods marked in such a manner, thus confusing the consumers in terms of identity of the goods (and/or services). Unauthorized use of somebody else's trademark shall lead

⁷ The Trade Act „Official Gazette of the Republic of Srpska” no. 6/07

⁸ More about this topic: Dragan Zlatović, *Law on trademark* (Zagreb: 2007), 785.

to responsibility for damage for an action of unfair competition only with the assumption that it has brought confusion to average customers when it comes to the product. An unfair competition action presumes not only the use of somebody else's equal trademark, but also the use of a mark which is similar to another person's registered trademark. Resolving on the existence of similarities, the court shall take the role of an average consumer and attempt to confirm if such a consumer is able to tell the difference between the protected trademark and the used mark at a first glance. Similarity is assessed from the aspect of visual and acoustic similarities.⁹

In countries where there are no special laws for the protection against unfair competition, special sanctions are applied. Sanctions may be civil and punitive measures. Also, sanctions may be determined by state authorities in the form of administrative measures. In legal systems where laws on unfair competition are grounded on responsibility, rules of common principles of civil procedure are applied.

Cases relating to claims filed against unfair competition actions are resolved by applying the provisions of the Code of Civil Procedure.¹⁰ Most cases related to the right on unfair competition are resolved in regular civil procedure. Given that the Code of Civil Procedure does not contain special provisions referring to disputes arising from unfair competition, general rules on procedures before commercial courts competent to settle these cases are applied.

In countries where protection against unfair competition is based on tort law, each person whose interest is likely to be violated is entitled to file a lawsuit even without the potential competition relation. Newer legislations offer certain consumers the right to sue, while they also ensure consumer organizations a separate right to stop unfair actions. Pursuant to Article 10ter of the Paris Convention, member countries have to envision measures by which federations and allies representing the interested industrialists, manufacturers or traders are allowed to file a lawsuit before courts in cases when actions of unfair competitions are made, and in the scope in which the right of the country in which the protection is required permits such lawsuits. However, here we deal with a particular protection of consumers beyond the unfair competition right.

The most important requirement based on the civil legal protection against the actions of unfair competition is the compensation for a damage caused by the act of unfair competition. A person suffering the damage is entitled to compensation for the damage according to the rules of common law. Compensation for the damage caused by unfair competition is provided in all legislations. Compensation

⁹ WIPO: *Protection Against Unfair Competition*, Zeneva: 1994, 32.

¹⁰ Civil Procedure Code „Official Gazette of the Republic of Srpska”, no. 58/03

and the amount of claim for compensation have to be proved, as well as cause-and-effect relationship between a harmful action and the damage suffered. Given that the damage occurred in business activity, the responsibility is both for the damage suffered and for the profit lost. In some countries, a claim may be grounded on the calculation of profit that the respondent achieved, and based on ungrounded acquisition, instead of real damage suffered by the petitioner. In this manner, the respondent is deprived of the profit he acquired based on unfair competition action, which in most cases is higher than the real damage suffered by the petitioner.¹¹

5. CRIMINAL AND MISDEMEANOUR PROTECTION OF TRADEMARKS

5.1. Legal protection of a trademark

Trademark Act contains provisions that regulate the matter of misdemeanour protection of a trademark, as one of the modes of criminal sanctions in case violation of a trademark right is established. In order to ensure an appropriate (double) protection of a trademark, in addition to misdemeanour protection, it is necessary to provide an appropriate criminal legal protection of a trademark. Criminal legal protection of a trademark is also regulated by some fundamental international documents which basically regulate matters related to the field of industrial property and in particular the Paris convention for the protection of industrial property and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

The Paris convention for the protection of industrial rights indirectly regulates the criminal legal protection of a trademark and obliges the countries to regulate in their national legislation sanctions and procedures in case of a trademark infringement. Thus, article 9 of the Paris convention defines the mandatory measure of seizure with the import of any product which bears an unauthorised label of a factory or a trademark or a trade name. The seizure shall be executed at the request of a public prosecutor or another competent authority, an interested person (either natural or legal).

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) also provides for regulations that provide for criminal legal protection of a trademark. To characterise an action as a criminal act against a trademark right, it has to be done with intent and on commercial grounds. Like the Paris

¹¹ Zlatović, *Trademark Law*, 810-815.

convention, TRIPS also provides for seizure, but also confiscation and destruction of the goods illegally marked by a trademark and destruction of tools by which the goods have been marked. In terms of criminal sanctions, TRIPS agreement provides imprisonment or a fine, depending on the type and seriousness of crime.

Although criminal legal protection of a trademark in the legislation of Bosnia and Herzegovina is characterised as a new field, and the number of court decisions is relatively small to talk about a relevant case law, in the normative sense, Bosnia and Herzegovina is not lagging behind the neighbouring countries having a longer experience in the field of trademark protection and where the number of court decisions related to this field is far greater. Certain legal-technical problems, which appear when conducting proceedings before the courts in the territory of Bosnia and Herzegovina, related to a trademark right, should be ascribed to the lack of experience, and not to the lack of knowledge of individuals in judiciary and those who directly or indirectly cooperate with them.

Criminal laws of the Republic of Srpska, the Federation of Bosnia and Herzegovina and the Brčko District contain provisions that provide for sanctions for a criminal act of unauthorised use of somebody else's firm, sample or model.¹² The Act primarily protects a manufacturer and/or a service provider against unfair competition, but also a user as a consumer and/or end user of services against fraud. An act of committing a criminal offence of using somebody else's firm, a sample or a model consists of an unauthorised use of somebody else's firm or a protection mark, somebody else's trademark or protection mark, a mark of geographical origin or other special marks of goods or introduction of certain marks from somebody else's mark into a firm, a stamp or a trademark or a special marking of goods. Criminal law of the Republic of Srpska provides for a fine or imprisonment for three years for a criminal offence of an unauthorised use of somebody else's firm, sample or model.

5.2. Misdemeanour trademark protection pursuant to the Trademark Act

A misdemeanour referring to a trademark right means any unauthorised use of a protected trademark. Trademark law contains misdemeanour provisions regulating types and sanctions in case of infringement of a trademark right with elements of an offence. Article 98 of the Law on trademark prescribes a fine as the main sanction for a committed misdemeanour, so it is provided that a legal person shall be punished for the misdemeanour by a fine amounting from 5.000 BAM up to 200.000 BAM, while an entrepreneur shall be punished for a

¹² Article 272, Criminal Code of RS „Official Gazette of the Republic of Srpska” no. 49/03

Article 264, Criminal Code of the BiH Federation, „ Official Gazette of BiH”, no. 36/03

Article 258, Criminal Code of the Brčko District, „Official Gazette of the Brčko District BiH”, no. 10/03

misdemeanour of a trademark or a right from the application by a fine amounting from 5.000 BAM up to 20.000 BAM. The responsible person in the legal person or with the entrepreneur shall also be punished for the misdemeanour by a fine amounting from 3.000 BAM up to 20.000 BAM, while the natural person shall be punished for the misdemeanour by a fine amounting from 3.000 BAM up to 10.000 BAM. Articles intended or used for the committed misdemeanours shall be seized and destroyed, while supporting means and tools used for marking the goods or intended to designate the goods shall be seized. The misdemeanour proceedings shall be urgent.

A legal person or an entrepreneur who have committed a misdemeanour referring to a trademark right in pursuing their activity may be ordered a protection measure of prohibition of the activity or parts of the activity infringing the right of a trademark holder, for the period up to one year, if the misdemeanour committed is particularly severe because of:

- the manner of execution,
- the consequences of the act or
- other circumstance of the misdemeanour committed.

A legal person or an entrepreneur who has committed a misdemeanour related to a trademark right offense in recidivism may be ordered a protection measure of prohibition of the activity or parts of the activity infringing the trademark for the period of at least one year.

Inspection control related to misdemeanours regulated by the provisions of the Trademark Act shall be carried out by the inspection competent to carry out the inspection control in the market in the Republic of Srpska, the Federation of Bosnia and Herzegovina, Brčko District of Bosnia and Herzegovina. The inspection control shall be urgent.

CONCLUSION

The procedure of acquisition and legal protection of a trademark right in Bosnia and Herzegovina is regulated by the Law on trademark and Regulations on the procedure for registration of a trademark. Provisions of the General Administrative Procedure Act and the Administrative Disputes Act of Bosnia and Herzegovina shall be applied to all process matters that are not directly regulated by the Law on trademark. In addition to the Trademark Act, other legal regulations are applied which indirectly regulate the matters related to trademark right and measures and procedures of protection which are implemented as part of administrative legal trademark protection. Validity of applying these regulations

is reflected in timely and efficient protection of threatened and infringed rights of trademark owners. Administrative legal protection is reflected in ordering administrative legal-administrative measures against persons having violated a trademark, but also in surveillance over the implementation of regulations are in direct connection with trademark right. Customs have an important role in the implementation of a trademark right protection measures. A special type of administrative supervision over the implementation of a trademark right protection measures is realised through inspection control. Law on trademark provides provisions to regulate the matter of misdemeanour of trademark right in the legislation of Bosnia and Herzegovina. Legal protection of trademark right in the legislation of Bosnia and Herzegovina is characterized as a new field, however, from normative aspect Bosnia and Herzegovina is not lagging behind the neighbouring countries. Quality cooperation has been established between the Institute for intellectual property protection and institutions at all levels of the government, in particular with Indirect taxation authority, Market inspection of the Republic of Srpska and the Federation of Bosnia and Herzegovina, courts, State inspection and protection Agency - SIPA and the Ministry of foreign affairs and economic relations.

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ЗАШТИТА ПРАВА ЖИГА

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Апстракт: *Управноправна заштита жига огледа се у изрицању управноправних-административних мјера против лица која су извршила повреду права жига, али и надзора над спровођењем прописа у директној вези са правом жига. Битну улогу у спровођењу мјера заштите права интелектуалне својине има царина. Правни прописи земаља чланица Европске уније и „TRIPS“ споразум на детаљан начин регулишу спровођење царинског надзора у циљу спречавања повреде права жига. Да би се обезбиједила ефикасност рада царинских служби у циљу спречавања и борбе против пиратерије и кривотворења преко државних граница, нужно је постојање ефикасног система заштите, његовог спровођења у пракси и постојање базе података о регистрованим жиговима доступне царинским службеницима. Посебан вид управног надзора остварује се путем инспекцијског надзора. Путем инспекцијског надзора остварује се контрола над спровођењем закона, подзаконских аката и других прописа који су на директан или индиректан начин повезани са правом жига, а све то са циљем очувања уставности и законитости. Закон о жигу садржи и одредбе којима се регулише питање прекршајноправне заштите жига, као један од видова казнене санкције у случају утврђене повреде права жига. Иако је питање кривичноправне заштите права жига у законодавству Босне и Херцеговине окарактерисано као ново подручје, а број судских одлука релативно мали да би се могло говорити о релевантној судској пракси, Босна и Херцеговина у нормативном смислу не заостаје за земљама у окружењу чије искуство у области заштите права траје дуже и чији је број судских одлука у овој области већи.*

Кључне ријечи: *жиг, заштита права жига, повреда права жига, пиратерија, кривотворење.*

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