

ORIGINAL ARTICLE

## Legal protection of green trademarks in the Eurasian Economic Union

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Rapid development of integration processes in the post-Soviet space leads to the formation of supranational legal regulation within the framework of regional international organizations. The Eurasian Economic Union is no exception. The authors study the process of harmonization of normative regulation of legal protection of trademarks in the national legislation of the Eurasian Economic Union member states taking into account the provisions of the Treaty on the Eurasian Economic Union and other international agreements. As a result of the analysis, the authors conclude that the national trademark legislation of the Eurasian Economic Union Member States is not sufficiently unified, which may have a negative impact on the legal protection of trademarks in individual countries.

**Keywords:** green trademark, ecology, urban, Eurasian Economic Union; trademark; exhaustion of exclusive right; holder of trademark; international law.

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### Introduction

The development of integration processes in the post-Soviet space and the emergence of dynamically developing regional organizations in the field of economic cooperation inevitably lead to new challenges related to the harmonization of national legislation and the formation of effective international legal regulation. The strengthening of economic ties between the member states of the Eurasian Economic Union (hereinafter - EAEC) and the proximity of national legal systems have already led to the fact that supranational sources of law are being formed and operating in the EAEC territory. A vivid example is the EAEC Customs Code, which came into effect on January 1, 2018. There are other areas of legal regulation, in which supranational regulation is actively implemented - legal protection of trademarks.

As a rule, supranational regulation is preceded by the process of harmonization of national legislation of the member states of an integration association. Thus, in the countries of Europe, the Council Directive No 89/104/EEC of 21 December 1988 was aimed at bringing together the legislation of states on trademarks and to overcome those discrepancies in national trademark laws that hinder the free movement of goods and freedom of service (Entin, 2018). Subsequently, the harmonization of trademark law in Europe has only intensified. In 2008, the Directive No. 2008/95/EC of the European Parliament and of the Council of the European Union on the approximation of the laws of Member States relating to trademarks and service marks was adopted (Official Website of the UE). Later its provisions were complemented by Directive No. 2015/2436 of the European Parliament and of the Council of the European Union on the approximation of the laws of the Member States on trademarks (Official Website), which is still in force today. It should be noted that the very possibility to register regional trademarks in the European area has appeared since 1996 (community trade mark, see Afanasyeva et al., 2016). Thus, 8 years have passed from the moment of initial harmonization of the national European trademark legislation to the appearance of the real possibility to register regional trademarks.

The Eurasian Economic Union Treaty (hereinafter - the EAEC Treaty) (Legal Portal) in Article 89 declares harmonization of national legislation as one of the objectives of cooperation between the EAEC Member States in the field of protection and enforcement of intellectual property rights. This is also stated in Article 2 of the Treaty on Coordination of Actions for the Protection of Intellectual Property Rights of September 8, 2015 (Legal Portal). However, the EAEC Treaty does not offer any road map in this direction. On the contrary, the Protocol on the Protection and Enforcement of Intellectual Property Rights (Annex No. 26 to the EAEC Treaty) immediately provided for the registration of the EAEC trademark and service mark, which are granted legal protection simultaneously in the territories of all EAEC Member States (Legal Portal).

However, to implement this in practice was not possible before the appearance of the relevant international treaty EAEC, which establishes the rules for registration of trademarks EAEC. The Treaty on Trademarks, Service Marks and Appellations of Origin of Goods of the Eurasian Economic Union was adopted in late 2018. However, to date, applications for registration of EAEC trademarks are not accepted. Although a detailed Instruction to the Treaty on Trademarks, Service Marks and Appellations of

Origin of the Eurasian Economic Union has already been prepared, which regulates most of the procedural aspects related to the registration of trademarks and contains the forms of necessary documents (Legal Portal). Thus, in the post-Soviet space the transition from harmonization of national trademark legislation to the possibility of registration of regional EEU trademarks took 4 years. However, to date the actual registration of such marks has not been carried out. It seems that one of the reasons for this is that there has been no consistent unification of rules on the legal protection of trademarks in the EAEC countries (at present: the Republic of Armenia, the Republic of Belarus, the Republic of Kazakhstan, the Kyrgyz Republic and the Russian Federation). Our goal was to analysis the trademark legislation of the EAEC member states regards owners of trademark rights and exhaustion of trademark rights.

## Methods

As the main method of research, the method of comparative jurisprudence is used, which allows identifying the features of national legal regulation of trademarks in the EAEC Member States. At the same time, the legislation on trademarks of the Russian Federation, the Republic of Kazakhstan, the Republic of Belarus, the Kyrgyz Republic and the Republic of Armenia is studied. The subject of the comparative analysis is the specifics of legal regulation of such issues as the circle of holders of the exclusive right to trademark and the principle of exhaustion of the exclusive right to trademark. In addition, the method of complex analysis and empirical method were applied in the course of this study, which allowed revealing the specifics of supranational regulation of the issues of legal protection of trademarks within the EEU borders.

The basis of the study was formed by international acts on intellectual property protection of the Eurasian Economic Union, which define the specifics of intellectual property rights protection for trademarks, as well as national legislation and judicial practice of EAEC Member States.

## Results and discussions

Holders of the exclusive right to the trademark. In accordance with Article 1478 of the Civil Code of the Russian Federation (hereinafter - the Civil Code) the owner of the exclusive right to trademark may be a legal entity or an individual entrepreneur. Both the Civil Code of the Russian Federation and the Russian law enforcement practice proceed from the fact that an individual not carrying out entrepreneurial activity (not registered as an entrepreneur) has no right to be the owner of the trademark. Cessation of entrepreneurial activity as an individual entrepreneur by the will of a citizen without the previous order of the exclusive right to the trademark indicates the loss of interest in further use of the trademark and preservation of its legal protection (Official Website). In Russia, the question of whether public legal entities may be owners of the exclusive right to a trademark is debatable. It is a common opinion that the rules on legal entities are applied to public legal entities in connection with their participation in the economic turnover, so registration of a trademark in the name of a public legal entity is allowed (Entrepreneurial Law, 2018).

According to Article 4 of the Law of the Republic of Kazakhstan dated July 26, 1999, No 456-І "On Trademarks, Service Marks and Appellations of Origin of Goods" (Law of the Republic of Kazakhstan, 1999), the legal protection of trademarks is granted to individuals or legal entities. In this case, the law does not require that an individual must engage in business activities for the purpose of trademark ownership. This conclusion is also confirmed by the provisions of Article 24 of the said Law that the effect of registration of a trademark is terminated due to the death of a physical person - owner (right holder) of a trademark.

Law of the Republic of Belarus "On trademarks and service marks" from 5.02.1993 № 2181-ХІІ [8] in Art. 2 provides that the trademark can be registered in the name of an organization or individual. In the Republic of Belarus the registration of a trademark in the name of a citizen is not conditioned by the latter's business activity. Thus, Article 26 states that legal protection of a trademark is terminated based on death of a citizen - trademark owner.

In the Kyrgyz Republic the Law "On Trademarks, Service Marks and Appellations of Origin of Goods" dated January 14, 1998, No 7 (The Law of the Kyrgyz Republic) is in force. In accordance with Article 3, a trademark may be registered in the name of a legal entity as well as in the name of an individual engaged in entrepreneurial activity. As in the Russian Federation the loss of the status of an individual entrepreneur by an individual in the Kyrgyz Republic terminates the effect of trademark registration (Article 26).

According to the legislation of the Republic of Armenia, the owner of the trademark can be both an individual and a legal entity (Law No ZR-059). The law of the Republic of Armenia "On Trademarks" does not mention the necessity of compulsory entrepreneurial activity by an individual.

Thus, the requirements to trademark owners - individuals - are different in EAEC member states. In Russia and the Kyrgyz Republic there are requirements for obligatory entrepreneurial activity by individuals for the purpose of trademark registration, while in other countries such requirement is not imposed. At the same time, an analysis of the provisions of the Treaty on Trademarks, Service Marks and Appellations of Origin of Goods of the Eurasian Economic Union (Article 2, paragraph 4, part 1, Article 16) leads to the conclusion that the owner of the EAEC trademark, along with a legal entity, can become any individual, regardless of whether he is engaged in entrepreneurial activity or not.

Exhaustion of the right to the trademark. The issue of the exhaustion of exclusive rights is one of the most pressing in the field of intellectual property. The principle of exhaustion of rights serves as a legal means to deter the legal monopoly of the intellectual property owner and is aimed at maintaining a healthy competitive environment. This principle is closely related to the import relations, and, therefore, without regulation of these issues within the EAEC it will be difficult to ensure trade turnover between the EAEC Member States. An additional factor that raises the importance of legal regulation of the exhaustion of the right to trademark is the widespread e-commerce and the active development of online sales market (Lindling, 2020).

Currently, national legislation and international law have developed three approaches to consolidate the principle of exhaustion of the exclusive right.

The first approach - international, according to which the territory of the first introduction of the goods into circulation for exhaustion does not matter, it is necessary only that the goods were introduced into circulation with the consent of the right holder. The second - regional approach, according to which the goods can be freely imported into the country and distributed in it, if it was put into circulation with the consent of the right holder in the territory of a certain circle of states - participants of the corresponding international treaty. The third approach - national - assumes that the goods can be freely distributed on condition that they were put into circulation with the consent of the right holder in the territory of this country (Ivanov, 2019). The analysis of the national legislation of the EAEC Member States indicates the implementation of various approaches concerning the principle of exhaustion of rights.

In the Russian Federation, the Article 1487 of the Civil Code of the Russian Federation fixes the national principle of exhaustion of the exclusive right to a trademark (Official Internet Portal). In the legislation of the Republic of Kazakhstan since 2018 the regional principle of exhaustion of the exclusive right to the trademark has been expressly established (Law of the Republic of Kazakhstan). The regional principle is also reflected in Art. 20 of the Law of the Republic of Belarus "On Trademarks and Service Marks" (Law of the Republic of Belarus). The issue of exhaustion of the right to trademark in the Kyrgyz Republic has been similarly resolved (Legal Portal). The international principle of exhaustion of the exclusive right to a trademark has been implemented in the Republic of Armenia (Law No ZR-059).

In spite of the variety of approaches reigning in the national legislation of the EAEC Member States, the Protocol on the protection and enforcement of intellectual property rights (Annex No. 26 to the Treaty on the Eurasian Economic Union of 2014) in the territories of all the EAEC Member States applies the principle of exhaustion of the exclusive right to a trademark, according to which the use of this trademark is not an infringement of the exclusive right to the trademark in respect of goods that have been lawfully introduced into the civil law.

At present conflicts of international legal regulation and national regulation for the Russian Federation and the Republic of Armenia are resolved in the following way. According to the Constitution of the Russian Federation, if an international treaty of the Russian Federation establishes rules other than those stipulated by law, the rules of the international treaty shall apply (Clause 4, Article 15) (Official Internet Portal). Thus, the provisions of the Treaty on the Eurasian Economic Union and the Protocol on the Protection and Enforcement of Intellectual Property Rights, establishing the regional principle of exhaustion of the right to a trademark, have more legal force than the provisions of Art. 1487 of the Civil Code of the Russian Federation, establishing the national principle of exhaustion. As far as the Republic of Armenia is concerned, according to the Treaty of Accession of the Republic of Armenia to the Eurasian Economic Union of May 29, 2014, the Republic of Armenia undertook to implement the transition from the international principle of exhaustion of rights to the regional principle (Kiryushina, Serebryakov, 2019). However, so far the national trademark legislation in the Russian Federation and the Republic of Armenia has not been brought in line with the provisions of the Protocol for the Protection and Enforcement of Intellectual Property Rights, which enshrines the regional principle of exhaustion of the exclusive right to a trademark.

## Conclusions

Despite the differences in national legal regulation on certain issues of legal protection of trademarks in the EAEC Member States, the principle of the rule of international law should ensure a uniform solution within the EAEC boundaries of such issues as the circle of holders of the exclusive right to a trademark and the principle of exhaustion of the exclusive right to a trademark. However, the remaining differences in the legal regulation of these issues in individual countries do not contribute to the achievement of such a goal of cooperation of EAEC Member States in the field of protection and enforcement of intellectual property rights as harmonization of national legislation. This circumstance may lead to the violation of the rights and legitimate interests of bona fide holders of the exclusive right to the trademark, engaged in economic activity in several EEE countries. At the same time, it is noteworthy that the Russian Federation, which plays a leading role in the Eurasian integration, so far has not explicitly enshrined in its national legislation the regional principle of exhaustion of the exclusive right to a trademark. This may give rise to certain doubts of other EAEC Member States as to Russia's commitment to ensure the implementation of its international obligations. In its turn, limitation of the number of holders of the exclusive right to the trademark to business entities only will inevitably lead to problems related to the protection of the rights of citizens (who are not entrepreneurs) - holders of EEU trademarks in the territory of certain states, in particular, the same Russian Federation.

Thus, the sustainable development of supranational regulation within the EAEC, requires a consistent audit of national legislation on the legal protection of trademarks and their subsequent unification.

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