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RELATIONSHIP OF INTELLECTUAL PROPERTY LAW WITH CRIMINAL LEGISLATION AND LEGISLATION ON ADMINISTRATIVE OFFENSES

The article analyzes the norms of public law that regulate certain aspects related to intellectual property. Intellectual property law, being a sub-branch of civil law, includes not only the norms of private law, but also the norms of public law, i.e. is a complex branch of legislation. The right of intellectual property is regulated by the norms of criminal legislation, as well as legislation on administrative offenses. The article shows and analyzes judicial practice on administrative and criminal offenses in the field of intellectual property over the past three years. Thus, relations regarding intellectual property rights are regulated not only by the norms of civil law, but also by public law, the components of which are criminal law and legislation on administrative offenses.

The division of legal fields is carried out on the basis of two dimensions: the subject of legal regulation and the method of legal regulation. At the same time, not a single field of law takes place on its own, legal norms are closely related to each other. Intellectual property law is not exempt from this situation, it is interconnected with other areas of law, providing legal regulation of social relations within the framework of creative intellectual activity.

Key words: intellectual property law, criminal legislation, legislation on administrative offenses, complex branch of legislation, public law norms, liability, offense, judicial practice.

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Зияткерлік меншік құқықтарының қылмыстық заңдармен және әкімшілік құқықбұзушылық туралы заңнамалықтарымен байланысы

Мақалада зияткерлік меншіктің қандай да бір аспектілерін реттейтін жария құқық нормалары талданған. Зияткерлік меншік құқығы азаматтық құқықтың кіші саласы бола тұра, жеке құқықтың нормаларынан ғана емес, сондай-ақ жария құқықтың нормаларынан тұрады, яғни заңнаманың кешенді саласы болып табылады. Зияткерлік меншік құқығы сондай-ақ қылмыстық заңнамасының, сонымен қатар әкімшілік құқықбұзушылық туралы заңнаманың нормаларымен реттеледі. Мақалада зияткерлік меншік аясындағы соңғы үш жылдықта орын алған әкімшілік және қылмыстық құқықбұзушылықтар бойынша статистика мен сот тәжірибесі көрсетілген және талданған. Осылайша, зияткерлік меншік құқықтарына қатысты қатынастар азаматтық құқық нормаларымен ғана емес, сонымен қатар құрамдас бөліктері қылмыстық құқық және әкімшілік құқық бұзушылық туралы заңнама болып табылатын жария құқықпен реттеледі.

Құқықтық салаларды бөлу екі өлшем негізінде жүзеге асырылады: құқықтық реттеу пәні және құқықтық реттеу әдісі. Сонымен қатар, құқықтың бірде-бір саласы өздігінен өмір сүрмейді, құқықтық нормалар бір-бірімен тығыз байланысты. Зияткерлік меншік құқығы бұл жағдайдан ерекшелік емес, ол шығармашылық зияткерлік қызмет шеңберінде қоғамдық қатынастарды құқықтық реттеуді қамтамасыз ете отырып, құқықтың басқа салаларымен өзара байланысты.

Түйін сөздер: зияткерлік меншік құқығы, қылмыстық заңнама, әкімшілік құқықбұзушылық туралы заңнама, жауапкершілік, құқық бұзушылық, сот тәжірибесі.

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Взаимодействие права интеллектуальной собственности с уголовным законодательством и законодательством об административных правонарушениях

В статье проанализированы нормы публичного права, регулирующие те или иные аспекты, касающиеся интеллектуальной собственности. Право интеллектуальной собственности, являясь подотраслью гражданского права, включает в себя не только нормы частного права, но и нормы публичного права, т.е. является комплексной отраслью законодательства. Право интеллектуальной собственности регулируется нормами уголовного законодательства, а также законодательства об административных правонарушениях. В статье показана и проанализирована судебная практика по административным и уголовным правонарушениям в сфере интеллектуальной собственности за последние три года. Таким образом, отношения по поводу права интеллектуальной собственности регулируются не только нормами гражданского законодательства, но и публичного, составляющими которого является уголовное законодательство и законодательство об административных правонарушениях.

Распределение правовых сфер осуществляется на основе двух критериев: предмет правового регулирования и метод правового регулирования. При этом ни одна отрасль права не существует сама по себе, правовые нормы тесно взаимосвязаны. Право интеллектуальной собственности не является исключением из этой ситуации, оно взаимосвязано с другими отраслями права, обеспечивая правовое регулирование общественных отношений в рамках творческой интеллектуальной деятельности.

Ключевые слова: право интеллектуальной собственности, уголовное законодательство, законодательство об административных правонарушениях, комплексная отрасль законодательства, нормы публичного права, ответственность, правонарушение, судебная практика.

Introduction

Intellectual property rights are interconnected with civil rights. According to L.V. Shcherbacheva, the relationship and interrelationship between civil law and its sub-field, intellectual law, can be observed from the extensive legal relations in the system. In civil law, these are property relations, other material legal relations, etc., and in intellectual law, these are copyright legal relations within the scope of science, literature and art, inventiveness, selective achievement, and many others. Relations and subfields of intellectual property are listed in Article 1227 of the RF Civil Code (Shcherbacheva, 2014: 14-15). The analysis of legal relations regulated by the field of civil law and the subfield of intellectual law allows us to conclude that it is impossible to determine a significant difference between their subjects (Shcherbacheva 2014:17).

The subject of civil law and intellectual law is property relations and personal non-property relations, and the method of civil law and intellectual law is dispositive and imperative methods. It is possible to agree with L.V. Shcherbacheva's conclusion and, accordingly, it is necessary to recognize the right of intellectual property as a minor part of the civil right.

In my works, we have written about this several times and have followed this point of view (Amangeldy 2012a; Amangeldy 2015b). Intellectual property right is a sub-field of civil law, and its subject is property and personal non-property relations, which arise between the subjects of the realization of said relations arising in connection with the creation and use of intellectual property objects. In most cases, the dispositive method is used as a method of legal regulation of these relations, but in general, the use of the imperative method is not excluded. As L.V. Shcherbacheva rightly pointed out, the principle of dispositively in intellectual law also occurs in imperative norms related to permissive regulation characteristic of civil law and its sub-field under study, since intellectual relations are closely related to the individual, they touch the deep foundations of human thought and creativity, and the state provides them with interference should be strictly limited (Shcherbacheva 2014:23).

Also, the interrelationship between civil law and intellectual property rights is reflected in the fact that the exclusive right to intellectual property objects as a subjective property right is one of the civil legal objects. Article 116 of the Civil Code of the Republic of Kazakhstan was amended by the Law of the Republic of Kazakhstan No. 49-VI of Feb-

ruary 27, 2017 «On Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on Improvement of Civil, Banking Legislation and Improvement of Conditions for Entrepreneurial Activity», according to which «item» was replaced by the term «property», which, of course, is very important from a theoretical and practical point of view, because both property rights and exclusive rights to intellectual property objects were recognized as negotiable.

At the same time, in accordance with Article 14 of the Civil Code of the Republic of Kazakhstan, a citizen has intellectual property rights to inventions, works of science, literature and art, other works of intellectual activity; shall have the right to claim compensation for material and moral damage; have other property and personal non-property rights. It follows that the subjective right of intellectual property is the main legal component of legal subjectivity and constitutes the content of a citizen's legal capacity.

The sources of intellectual property rights as a complex branch of legislation are international conventions, such as the Paris Convention for the Protection of Industrial Property (Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised at Brussels on December 14, 1900, at Washington on June 2, 1911, at The Hague on November 6, 1925, at London on June 2, 1934, at Lisbon on October 31, 1958, and at Stockholm on July 14, 1967, and as amended on September 28, 1979), the Madrid Agreement on the International Registration of Marks (Madrid agreement concerning the international registration of marks), the Berne Convention for the Protection of Literary and Artistic Works (Berne Convention for the Protection of Literary and Artistic Works), these conventions also provide for liability for violations of rights in this area.

Aspects of the interaction of intellectual property law with branches of public law, namely with criminal and administrative law, deserve special attention, since criminal and administrative liability is provided for violation of personal non-property and property (exclusive) rights to objects of intellectual property rights.

Methods and materials

The article was prepared using general and particular methods of scientific knowledge: dialectical, formal-logical, systemic, comparative-legal, technical-legal.

Results and discussion

In particular, art. 198 of the Criminal Code of the Republic of Kazakhstan (hereinafter referred to as the Criminal Code of the Republic of Kazakhstan) provides for such offenses as violation of copyright and (or) related rights, art. 199 of the Criminal Code of the Republic of Kazakhstan – violation of rights to inventions, utility models, industrial designs, selection achievements or topologies of integrated circuits, art. 222 of the Criminal Code of the Republic of Kazakhstan – illegal use of a trademark, service mark, trade name, geographical indication and appellation of origin.

The public danger of the act provided for by Art. 198 of the Criminal Code of the Republic of Kazakhstan is expressed in the fact that as a result of its commission, exclusive copyright or related rights are violated, causing material damage to the author of the work or their other right holder. The object of the analyzed act is public relations for the realization by a person and a citizen of copyright and related rights guaranteed by the Constitution of the Republic of Kazakhstan, as well as the Law of the Republic of Kazakhstan «On Copyright and Related Rights" of June 10, 1996. The subject of the crime is scientific, artistic, musical, or literary works and other. The objective side of the act in question is expressed in the following actions:

1) assignment of authorship;

2) coercion to co-authorship;

3) illegal use of objects of copyright or related rights;

4) acquisition, storage, movement or production of counterfeit copies of works and (or) phonograms (Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised at Brussels on December 14, 1900, at Washington on June 2, 1911, at The Hague on November 6, 1925, at London on June 2, 1934, at Lisbon on October 31, 1958, and at Stockholm on July 14, 1967, and as amended on September 28, 1979).

The appropriation of authorship should be understood as the fact that a person proclaims himself the author of someone else's work, releasing it in whole or in part under his own name (pseudonym). The assignment of authorship also recognizes the release of a work created jointly with other authors without indicating the names of co-authors, the use of someone else's work in one's works without reference to the author. Coercion to co-authorship should be understood as the impact on the author in various ways (through threats, blackmail or the use

of violence) in order to obtain his consent to indicate as a co-author a guilty person (both coercive to co-authorship and otherwise) who did not take part in the creation of the work. Illegal use of objects of copyright or related rights means the reproduction, distribution, importation, demonstration, translation, or disclosure contrary to the law of someone else's work, performance or production, phonograms, broadcasts without the consent of the author, including without paying the latter in full or in part of the fee; in the unlawful publication of a work, performance or staging of phonograms, broadcasts with changes, additions or abbreviations made to it without the consent of the author, contrary to the law, in the reprinting of a work without the consent of the author, or their legal successors, etc. Under the illegal acquisition of counterfeit copies of works or phonograms should be considered the purchase, receipt in exchange for other goods and things, in payment of a debt, loan or gift, appropriation of what was found. Illegal storage should be understood as any intentional actions related to the actual presence of counterfeit copies of works (or) phonograms in the possession of the perpetrator, regardless of the place (with him, in a cache, indoors, in a vehicle and in other places) and the time of their storage. Illegal transfer should be understood as actions for the transfer, transfer, transportation of counterfeit copies of works and (or) phonograms from one place to another, including within the same locality. Illegal production should be understood as any deliberate actions related to the creation, copying, replication, as a result of which counterfeit copies of works and (or) phonograms were obtained. All these actions must be committed for the purpose of sale, which should be understood as any means of illegal sale or transfer of counterfeit copies of works and (or) phonograms from the possession of one person to the possession of others (sale, donation, payment of a debt, in exchange, lending and etc.), as well as other methods of distribution. By design, the analyzed composition is material, since in order to recognize it as a criminally punishable and completed act, significant damage or significant harm to their rights or legitimate interests is required (Borchashvili 2023). In subparagraph 2 of article 3 of the Criminal Code of the Republic of Kazakhstan, the legislator determines that significant damage and a significant amount – in articles: 198 and 199 of the Criminal Code of the Republic of Kazakhstan – the amount of damage or the cost of rights to use objects of intellectual property or the cost of copies of objects of copyright and (or) related rights or goods containing inventions, utility models, industrial designs, selection achievements or topologies of integrated circuits, two hundred times the monthly calculation index (https://online.zakon.kz CCRK). As criminal consequences, in addition to significant damage, significant harm is also provided for the rights or legitimate interests of the victim. Significant harm is an estimated category. Signs of «significant harm» are not specified in the law. The law defines harmful consequences in a generalized form. This construction of the crimes included in Chapter 6 of the Special Part of the Criminal Code is absolutely correct, since «... the harmful consequences can be very diverse and it is not possible to list them in the law» (Borchashvili 2023). From the subjective side, this act is characterized by guilt in the form of direct intent and purpose, which is a constructive feature of this act. The perpetrator is aware that he violates copyright and related rights in order to make a profit and wants to violate them (Borchashvili 2023). The subject of the crime is a physical sane person who has reached the age of 16. The criminal law recognizes the following circumstances as qualifying signs:

1) by a group of persons by prior agreement;
2) on a large scale or causing large damage;
3) by a person using his official position.

An infringement of copyright and related rights is recognized as committed by a group of persons by prior agreement, if it is committed by two or more persons, in advance, that is, before the commission, by conspiring to jointly implement it (Borchashvili 2023). According to subparagraph 38 of Article 3 of the Criminal Code of the Republic of Kazakhstan, acts are recognized as committed on a large scale or causing large damage if the amount of damage or the cost of the rights to use intellectual property objects or the cost of copies of objects of copyright and (or) related rights or goods containing inventions, utility models , industrial designs, selection achievements or topologies of integrated circuits, one thousand times higher than the monthly calculation index (https://online.zakon.kz CCRK). The infringement of copyright and related rights by a person using his official position is understood as actions that are performed by an official within his competence, but in their content are deliberately contrary to the goals and objectives for the achievement of which the relevant body functions. The act in question will be recognized as committed by a criminal group when a stable, cohesive group unites in advance to commit this crime (Borchashvili 2023). In accordance with subparagraph 24 of article 3 of the Criminal Code of the Republic of Kazakhstan, a criminal group is an organized group, a criminal organization, a crimi-

nal community, a transnational organized group, a transnational criminal organization, a transnational criminal community, a terrorist group, an extremist group, a gang, an illegal paramilitary formation (https://online.zakon.kz CCRK).

Let us consider the law enforcement practice of the Republic of Kazakhstan on the elements of crimes as a violation of copyright and (or) related rights, provided for in Article 198 of the Criminal Code of the Republic of Kazakhstan.

On September 15, 2017, the O-kiy District Court of the city of K. considered in open court a criminal case against a citizen accused of committing a criminal offense under Art. 198 part 3, paragraph 2 of the Criminal Code of the Republic of Kazakhstan. During the court session, the court found that in March 2017, a citizen, in order to regularly receive illegal profits, set out with criminal intent aimed at violating copyright and related rights, that is, the illegal use of objects of copyright and related rights in the form of manufacturing, storing, moving counterfeit copies of objects of copyright and related rights for the purpose of sale in circumvention of the established Law of the Republic of Kazakhstan "On Copyright and Related Rights". A citizen, realizing criminal intent in March 2017, in order to make a profit, by illegally using objects of copyright and related rights in the city of K., used a personal personal computer, and also purchased two more computers from an unidentified person for recording CDs of audiovisual works. Further, the citizen, intentionally violating the Law of the Republic of Kazakhstan "On Copyright and Related Rights", without having an agreement with the copyright holders to copy audiovisual works, using the installed equipment, began to produce counterfeit copies of objects of copyright and related rights in the form of CDs with audiovisual works in the form domestic and foreign films, songs and other works, acquiring them from sources unidentified by the investigation, then recording them on CDs. After that, the citizen, using a printer, personally printed labels with the names of audiovisual works. After that, the citizen, having created conditions for the realization of his criminal intent, from March 2017 to June 2017, sold counterfeit products through sellers at the point of sale. According to expert opinion No. 2982 dated July 20, 2017, the system units provided for the study have the technical capabilities to record on CD-DVD discs. According to the conclusion of the forensic commodity examination No. 3226/10.1 dated August 24, 2017, the submitted 699 DVD-R discs do not contain information about copyright holders in the territory of the Republic of Kazakhstan and signs of protection of Kazakh copyright holders. According to the conclusion of the forensic commodity examination No. 3227/10.1 dated August 24, 2017, on the presented 161 pieces of CD-R discs there is no information about the copyright holders in the territory of the Republic of Kazakhstan and signs of protection of Kazakhstani copyright holders. According to the response of the Republican Public Association "Kazakhstan Authors' Society", the amount of damage caused by the actions of a citizen is 2,060,000 tenge. Based on the results of consideration of this criminal case, the court found guilty of committing a crime under Article 198, Part 3, Clause 2 of the Criminal Code of the Republic of Kazakhstan and imposed a sentence of restriction of liberty for a period of 2 (two) years with the establishment of probationary control for 2 (two) years, with involvement in forced labor in places determined by local executive bodies for 100 (one hundred) hours (Delo № 3570-17-00-1/267 PRIGOVOR).

Article 222 of the Criminal Code of the Republic of Kazakhstan provides for criminal liability for the illegal use of a trademark, service mark, company name, geographical indication and appellation of origin.

The social danger of illegal use of a trademark, service mark, trade name, geographical indication and appellation of origin of goods is expressed in the fact that as a result of its commission, significant damage is caused to the economy of our state. The object of the crime is public relations arising in connection with the registration, legal protection and use of trademarks, service marks and appellations of origin. The subject of the crime under paragraph 1 of Art. 222 of the Criminal Code of the Republic of Kazakhstan is a trademark, service mark, appellation of origin of goods or similar designations for homogeneous goods. The subject of the crime under paragraph 2 of Art. 222 of the Criminal Code of the Republic of Kazakhstan is a warning label. A trademark is a necessary element of the language of the market. Since the total value of the product to the buyer is the sum of its price plus the cost of the buyer's expenses to find it, the benefits of the firm are clear: the higher the commercial reputation that the mark represents, and the greater the number of buyers whose trademark evokes positive associations, the more successful the firm is. which can sell more product at a higher price, and the better for the consumer, who can save money by reducing the cost of searching for information about the product. On the objective side, a crime under Part 1 of Art. 222 of the Criminal Code of the Republic of Kazakhstan, consists in the illegal (without the consent of the

owner) use of someone else's trademark, appellation of origin or similar designations for homogeneous goods. The act provided for by Part 2 of Art. 222 of the Criminal Code of the Republic of Kazakhstan, consists in the illegal use of warning markings in relation to a trademark, service mark, geographical indication and appellation of origin of goods not registered in the Republic of Kazakhstan. The illegal use of a trademark or similar designations for homogeneous goods should be understood as its exploitation without the permission of the owner of the mark. The use of the appellation of origin of goods or similar designations will be illegal in cases where there is no certificate, even if the true place of origin of the goods is indicated or the name is used in translation or in combination with the words "imitation", "genus, type", etc. if a similar designation is used that can mislead consumers regarding the place of origin and special properties of the product. Warning marking cannot be used in relation to a trademark, service mark, geographical indication and appellation of origin of goods not registered in the Republic of Kazakhstan. According to paragraphs 1 and 2 of Art. 222 of the Criminal Code of the Republic of Kazakhstan, a crime is considered completed from the moment of repeated (two or more) commission of these actions, or from the moment of causing major damage, the concept of which is given in Art. 3 of the Criminal Code of the Republic of Kazakhstan. The subject of the crime is a general, physical sane person who has reached the age of 16 at the time of the crime. The subjective side of the analyzed crime, depending on the structure of the composition under consideration, can be both in the form of direct and indirect intent. With repeated use, direct intent is seen, with causing major damage – both direct and indirect intent (Borchashvili 2023).

Consider law enforcement practice on the composition of the crime under Art. 222 of the Criminal Code of the Republic of Kazakhstan.

On May 10, 2018, the A-kiy district court of the city of A. considered a criminal case against a citizen who, via the Internet, purchased equipment for the manufacture and bottling of AY soy sauce, with a view to its further sale in the markets of the city of A. In the basement of a rented house, a citizen equipped a workshop for the production of concentrated ingredients of soy sauce, which he poured into plastic bottles with the existing logo of the trademark "AY" by sticking labels from "AY" soy sauce in them, giving them the originality of products, supposedly made in The People's Republic of China, misleading the citizens of the city of A., began to supply these products to the owners of the boutiques of the market. On February 8, 2018, employees of the Economic Investigation Service of the Department of State Revenues for the city of A., during the operational-search activities in the market, discovered and seized soy sauce under the trademark "AY" in the amount of 6,864 bottles, inside car No. 29018926, and 4,800 bottles of soy sauce called "AY" were seized and delivered by a truck driver. In order to find, seize and fix material evidence relevant to the case, namely the above goods, a search was carried out, as a result of which 33,744 bottles of soy sauce called "AY" were found and seized, 930,000 labels on caps, 524,172 pieces of labels for bottles, 14,400 plastic bottles, 672,672 bottle caps, 1,800 pieces of a box (corrugator) with the AY trademarks, as well as equipment (mixer, bottling machine, thermal label sealing machine) intended for the production and bottling of soybean AY sauce. Thus, the economic investigation service of the State Revenue Department for the city of A. exposed and prevented the fact of manufacturing, storage, offer for sale and sale of counterfeit soy sauce products called "AY" found in a citizen.

On the territory of the Republic of Kazakhstan LLP "DK K" is the owner of the verbal trademark "AY" according to the national certificate No. 44205 dated April 17, 2014. with priority from 05/23/2012. (29, 30 and 35 classes of the Nice Classification) and the term of protection until 05/23/2022. Also, DK K LLP is the owner of the combined trademark "AY" in the form of a multi-color label according to the national certificate No. 48815 dated 06/29/2015. with priority from 20.08.2014 (5, 29, 30, 35 and 43 classes of the Nice Classification) and the term of protection is up to 20.08.2024. and the owner of the three-dimensional trademark "AY" in the form of a 3D bottle according to the national certificate No. 49615 dated 18.09.2015. with priority from 20.08.2014 (5, 21, 29, 30, 35, 39 and 43 classes of the Nice Classification) and the term of protection is up to 20.08.2024. Thus, DK K LLP is the owner of 3 trademarks "AY" in the form of a word, a label and a 3 D bottle, each of which is protected in Kazakhstan in relation to the product in the form of soy sauce.

The court found guilty of committing a crime under Article 222 Part 1 of the Criminal Code of the Republic of Kazakhstan and imposed a fine under this article in the amount of 50 monthly calculation indices, which is 120,250 (one hundred and twenty thousand two hundred and fifty) tenge. With regard to the civil claim of the representative of DK K LLP represented by the representative of the victim for compensation for material damage in the amount of 12,714,240 tenge per citizen – refuse. To recover

from the convicted citizen the procedural costs of the amounts spent on the examination in the forensic examination bodies in the amount of 56,174 (fifty six thousand one hundred and seventy four) tenge to the state revenue. Material evidence: Keep a DVD with a record of the investigative action in the criminal case for the entire period of storage of the criminal case, 45,408 bottles, 930,000 labels on the cap, 524,172 bottle labels, 14,400 plastic bottles, 672,672 bottle caps, 1,800 boxes with trademark «AY» upon entry into force of the judgment to destroy (Delo 1-124/2018 PRIGOVOR).

The Code of the Republic of Kazakhstan on Administrative Offenses dated July 5, 2014 No. 235-V (hereinafter referred to as the Code of Administrative Offenses of the Republic of Kazakhstan) in Art. 158 provides for a sanction for the illegal use of someone else's trademark, service mark, appellation of origin or trade name.

Bringing the offender to administrative responsibility in accordance with Art. 158 of the Code of Administrative Offenses of the Republic of Kazakhstan is carried out only if there are no signs of a criminally punishable act in the actions of the offender. Otherwise, offenders – individuals or officials of a legal entity are subject to criminal liability for the illegal use of a trademark in accordance with the norms of the Criminal Code. In this regard, the initially illegal act of a person on the illegal use of someone else's trademark, service mark, appellation of origin or trade name should be checked by law enforcement agencies for the presence or absence of signs of a criminal offense and grounds for bringing the person who committed it to criminal liability. Generic object of the offense under Art. 158 of the Code of Administrative Offenses, is the procedure for carrying out entrepreneurial activities in the Republic of Kazakhstan, established in the legislation of the Republic of Kazakhstan and protected by the state. The direct object of the offense under Art. 158 of the Code of Administrative Offenses, is the procedure established by the legislation of the Republic of Kazakhstan and protected by the state for the use of a trademark, service mark, appellation of origin of goods or company name when selling goods, works, services in the territory of the Republic of Kazakhstan. The subjects of the offense under Art. 158 of the Code of Administrative Offenses, are individuals and legal entities – business entities that illegally use in their business activities someone else's trademark, service mark, appellation of origin or company name. The subjective side of the unlawful act under Art. 158 of the Code of Administrative Offenses, for offenders – individuals is characterized by guilt in the form of intent or negligence. The guilt of a person is revealed by his mental attitude to the unlawful acts committed by him and their harmful consequences. The subjective side of offenses, the subjects of which are legal entities, cannot be established due to the existence of a legislative requirement to establish guilt, as a condition for bringing to administrative responsibility, only in relation to individuals. According to the legislation of the Republic of Kazakhstan on administrative responsibility, legal entities bear administrative responsibility for the mere fact of their committing an illegal action or inaction, for which the Code of Administrative Offenses provides for administrative liability, without taking into account the fault of the officials of the legal entity who committed this act. The objective side of the offense provided for in Article 158 of the Code of Administrative Offenses of the Republic of Kazakhstan is characterized by the commission by a person of illegal (and for individuals – also guilty) actions, expressed in the illegal use of someone else's trademark, service mark or appellation of origin or confusingly similar designations for homogeneous goods or services, as well as the illegal use of someone else's trade name (https://adilet.zan.kz/rus/docs/T2000000005).

Under the use of a trademark or appellation of origin of goods, in accordance with paragraph 9) of Art. 1 of the Law of the Republic of Kazakhstan "On Trademarks, Service Marks and Appellations of Origin", refers to the placement of a trademark or appellation of origin on goods and in the provision of services for which they are protected, on their packaging, manufacturing, application, importation, storage , offer for sale, sale of goods with the designation of a trademark or appellation of origin of goods, use in signs, advertising, printed matter or other business documentation, as well as other introduction of them into circulation. Accordingly, such use should be recognized as illegal if a person using a trademark (service mark), appellation of origin or trade name does so without the consent and knowledge of the owner (right holder) of the trademark (service mark), trade name and without any or on that legal grounds and properly executed title documents.

By virtue of a direct indication in the commented norm, cases of using a trademark associated with the exhaustion of the exclusive right to a trademark are not an offense.

An offense under Article 158 of the Code of Administrative Offenses of the Republic of

Kazakhstan is considered committed at the moment when the offender:

1) has illegally placed someone else's trademark (service mark) or someone else's name of the place of origin of goods on their goods and when providing their services or on their packaging,

2) illegally carried out the manufacture, use, import, storage, offer for sale, sale of goods with an illegal designation on them of someone else's trademark (service mark) or someone else's name of the place of origin of goods, as well as,

3) illegally used them in his signs, advertising, printed matter or other business documentation, or otherwise illegally put them into circulation.

Provided by Art. 158 of the Code of Administrative Offenses, the composition of an administrative offense is formal. To bring to administrative responsibility for its commission, it is not required to establish the fact that the offender caused material damage to the state, organization or citizen. For committing an offense under Art. 158 of the Code of Administrative Offenses, an administrative penalty in the form of a fine is established. The amount of the fine for committing an offense under Art. 158 of the Code of Administrative Offenses, is differentiated depending on the legal status of the offender, and if the offender is a business entity, then also depending on which category of business entities he belongs to. In this regard, the body that brings the offender to administrative responsibility, before bringing the person to responsibility, must first establish the legal status of this person and the category of entrepreneurship to which he belongs (https://adilet.zan.kz/rus/docs/T2000000005). Depending on the legal status of the offender and the category of business to which he belongs, the amount of the fine is: for individuals – 20 MCI; for small businesses or non-profit organizations – 30 MCI; for medium-sized businesses – 40 MCI; for large businesses – 80 MCI (https://online.zakon.kz/). Also, as a punishment for committing an offense under the commented article, its sanction provides for the confiscation of goods containing an illegal image of a trademark, service mark, name of the place of origin of goods or confusingly similar designations for homogeneous goods or services (if any). Confiscation is a mandatory punishment along with a fine and cannot be applied at the discretion of the body imposing the penalty. According to the general rule provided for by the note to the commented article, counterfeit goods confiscated in accordance with the commented article are subject to destruction in the manner prescribed by Article 795 of the Code of Administrative Offenses of the Republic of Kazakhstan. An exception to this general rule, according to the note to Article 158 of the Code of Administrative Offenses of the Republic of Kazakhstan, is cases where the introduction of confiscated goods into circulation is necessary in the public interest and does not violate the requirements of the legislation of the Republic of Kazakhstan on consumer protection. At the same time, a prerequisite for the introduction of confiscated goods into circulation is the preliminary removal from the goods and its packaging, at the request of the note to the commented article, of an illegally used trademark or a designation confusingly similar to it. The administrative penalty under the commented article is imposed on the offender only by the court, since the case of an administrative offense, for which the law provides for a sanction in the form of confiscation, must be considered in court. Protocols on administrative offenses provided for in the commented article have the right to draw up officials of state revenue bodies and justice bodies (https://online.zakon.kz/).

Consider law enforcement practice on the composition of the offense provided for under Art. 158 of the Code of Administrative Offenses of the Republic of Kazakhstan.

On June 9, 2021, the A-ky district court of the A-th region considered the case of an administrative offense in relation to: SAL Limited Liability Partnership, during the trial, it was established that, according to the protocol on an administrative offense of May 25, 2021, in which it was indicated that on April 24, 2021, during the implementation of customs control, namely the inspection of the container, undeclared goods "brake pads for cars of the brand" TA "were found, in the amount of 5 packages, (20 pieces), net weight 6 .8 kilograms, gross weight 7 kilograms, packed in a cardboard package of the brand "TA", which indicates the presence of signs of infringement of the intellectual property rights of the trademark owner "TA" in the Republic of Kazakhstan, next to the address of the recipient "SAL" LLP, registered under the procedure "release for domestic consumption" according to the goods declaration. Thus, SAL LLP violated the customs legislation of the Eurasian Economic Union, which resulted in the illegal use of someone else's trademark, service mark, appellation of origin or company name, thus, committed an administrative offense, liability for which is provided for in Article 158 of the Code of Administrative Offenses of the Republic of Kazakhstan. As a result of consideration of this administrative case, the court ruled LLP "SAL" to

be found guilty of committing an administrative offense under Article 158 of the Code of the Republic of Kazakhstan "On Administrative Offenses" and to impose an administrative penalty under this article in the form of a fine in the amount of 87,510 (eighty-seven thousand five hundred ten) tenge with confiscation of goods that are direct subjects of an administrative offense. Detained goods: "brake pads for passenger cars of the TA brand, in the amount of 5 cargo pieces, (20 pieces), net weight 6.8 kilograms, gross weight 7 kilograms – to be confiscated to the state (Delo №1934-21-00-3/238).

Conclusion

Intellectual property law does not exist outside of connection with other branches of law and legislation, on the contrary, it is in close interaction with the branches of private, public law and legislation, and this is logical, since it is part of an integral legal system.

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