

Resume

A relationship between trademark protection and copyright protection under the czech law

Both trademarks and copyrights are imovable articles and are parts of intellectual property.

A Trademark is stated in the Trademark Code n. 441/2003 as a mark which is used to identify products or services produced by one person (an individual or a legal entity) and distinguish them from products and services produced by another one so that consumers are able to recognize the origin of the products or services. According to the law the mark is a name, word, phrase, logo, symbol, color, design, image, or a combination of these elements, it must be created in graphic form perceptible objectively. The mark must be distinctive, original and it must have a relationship with a product or service. A mark complying with all the above mentioned conditions can be registered at the particular Trademark office and subsequently obtain a trademark certification and protection.

A Copyright is protected under the Copyright Law n. 121/2000 as a creative and artistic work created by author's intellectual activity and expressed in a form objectively perceptible. The author has exclusive rights to his work. The rights are divided into exclusive personal and exclusive economy rights. In particular he has a right to be presented as the author of a work and to authorize a third party to dispose of a work, to obtain pecuniary rewards for such an authorization and to prevent all the others from unauthorized use of a work.

A trademark can be at the same time a copyright (created as a fine art, especially in a graphic form).

The relationship between trademarks and copyrights is simultaneous On the one hand a holder of a trademark has an exclusive right to use a trademark in relation to a product or a service. On the other hand there is an author's exclusive right to his copyright and to authorize use of his work by a third party. These rights exist contemporarily and it is necessary to rule use of a copyright by a third party by law in order to avoid to an unauthorized use.

With regard to particularities of the subjects of intellectual property and their particular law protection only a transformation of an ownership to copyright from an author to a third party in order to achieve a right to use a copyright by a third party is not sufficient (dislike a

transformation of property under the civil code or commercial code where a right to use is contained in a proprietary right).

A transformation of a property of a copyright and authorisation of use of copyright are two different matters. Author provides a third party with authorisation for use of copyright on the ground of Licence, Employee's work or a Explicit Author's Agreement.

Except from the three institutes above mentioned it is possible to use a regulation on the base of a Contract for work under the Commercial code or an Order for creation of work under the Copyright Law. According to law a contracting party has a right to use a copyright in accordance with the objection of a contract. It means that it is necessary to state and express the aim in the contract widely and clearly enough because in the case of lawsuit for an unauthorised use applied by the Author against the other contracting party the other contracting party must prove that it has used the copyright in accordance with the aim of the contract which can be very difficult and sometimes impossible. So these two contracts are not recommended for a regulation of use of copyrights with regard to a legal certainty.

Copyrights are protected, in particular, from presentation of false authorship to a work by another person or unauthorized making of a copy, reproduction, distribution, public performance and other unauthorized disposal of a work. Author can submit an objection in objection's procedure which takes part in a process of registration of a trademark. If he fails to submit an objection in a three months long period he can initiate a civil legal proceedings for unauthorized use of copyright or endanger or infringement of rights. Author is also protected under the administrative and criminal law.

As far as trademarks are concerned, protection focuses in particular on prevention from unauthorized use of an identical or similar mark which is, in the eyes of consumers, capable to evoke the registered trademark or to confuse the mark with the trademark or products or services protected under the trademark and thus profit from knowledge and reputation of the trademark illegally. Holders of a trademark are protected under the administrative and criminal law and they can ask customs authority for information and protection, enjoy protection under an unfair competition and are protected under international and European law, too.

A holder of a trademark can be, at the same time, author of an image (expressing a trademark) which is protected as a copyright. There can be concentrated more rights from both areas in one object or appertaining to one person and it depends on the person enjoying the rights

which kinds of legal instrument chooses as more suitable and effective one in order to achieve protection. There exist different principles and rules in these two areas of law but because they both are included in intellectual property the aim of protection is very common – it is to prevent from abusive behavior and action of other persons trying to obtain an illegitimate benefit or to harm reputation of the trademark or copyright protected under law.

This work deals with a detailed description of the principles and law institutes contained in both trademarks and copyrights and the relationship between them.