11/01/2010 Events

A joint working meeting of the responsible persons within the State Agency on Intellectual Property (AGEPI) and the National Agency for Protection of Competition (NAPC) was held on 25 October 2010. The meeting focused on discussing legislative convergences in the field of protection of trademarks and services, as well as joint actions to be undertaken by the AGEPI and NAPC for this purpose.

During the meeting, the NAPC representatives reiterated that, according to art. 8(1)d) of the Law of the Republic of Moldova No. 1103-XIV on the Protection of Competition of 30.06.2000, "the trader is forbidden to carry out acts of unfair competition, including the unauthorized use, in whole or in part, of trademark, logo of other industrial property objects, the company of another trader, to copy the shape, appearance and packaging of the goods of another trader".

On the other hand, the legislation in the field of trademarks does not require carrying out of production, trade or service provision activities on the date of filing the trademark application.

So AGEPI has no right to ask the applicant to submitting information on its activities, for the purpose of registration etc., all his actions being permissible on the basis of principles of good faith.

“The Republic of Moldova has conformed its national legislation to international standards, informed the audience Mr. Andrei Moisei, Director of Legal Department of AGEPI. In particular, the Trademark Law Treaty, to which the Republic of Moldova acceded by the Parliament Decision no. 614-XIII of 27 October 1995, stipulates: the following may not be required in respect of the application throughout its pendency:

(i) the furnishing of any certificate of, or extract from, a register of commerce;

(ii) an indication of the applicant’s carrying on of an industrial or commercial activity, as well as the furnishing of evidence to that effect;

(iii) an indication of the applicant’s carrying on of an activity corresponding to the goods and/or services listed in the application, as well as the furnishing of evidence to that effect;

(iv) the furnishing of evidence to the effect that the mark has been registered in the register of marks of another Contracting Party or of a State party to the Paris Convention which is not a Contracting Party, except where the applicant claims the application of Article 6quinquies of the Paris Convention”.

So unfair competition can not be found or invoked by the AGEPI directly at any stage of examination of application and the procedure for submission, examination and registration of the trademark application can not be considered as an act of unfair competition.

Similarly, the legislation does not provide for cancellation of trademark registration on the grounds of finding an act of unfair competition, given the fact that unfair competition has different forms of action from competitors. Examination is required to pursue only those actions that lead to the creation of a misunderstanding involving the examined trademark.

Natural and legal persons involved in civil legal relations shall exercise their rights and perform their obligations in good faith, in accordance with the Law, the contract, the ordre public and morality (Civil Code of the RM). Good faith is presumed until proven otherwise. Violation of obligation to engage in an activity of good faith leads to the invalidity of a trademark registration. The trademark is declared invalid after an application for cancellation filed with the Chisinau Court of Appeal, which considers that the trademark has been registered in bad faith if, at the time of its filing, the applicant knew or could know about existence, including abroad, of such a trademark that enjoys a reputation in the country of origin and is promoted in the Republic of Moldova or is negotiated such a promotion. Currently, there are 23 court rulings to cancellation of trademarks on the ground of

registration in bad faith.

At the end of the session, the AGEPI leadership stressed that as receiving office that receives and examines trademark registration applications, the Agency is limited in its opportunity to highlight and to reject registrations on the grounds of unfair competition or filing in bad faith of the application, but is willing to cooperate with all bodies and organizations designed to provide both consumer and producer protection, to the extent that its partners, within the existing legal provisions, may initiate proceedings for opposition, appeal or cancellation of a trademark registration. The correct carrying out of actions that will clearly demonstrate the finding of an act of unfair competition and the effects of such findings on registered IPO, will contribute to strengthening an effective practice in order to respect both the rights of persons concerned and the principles established by international and national legislation in the field of intellectual property.

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