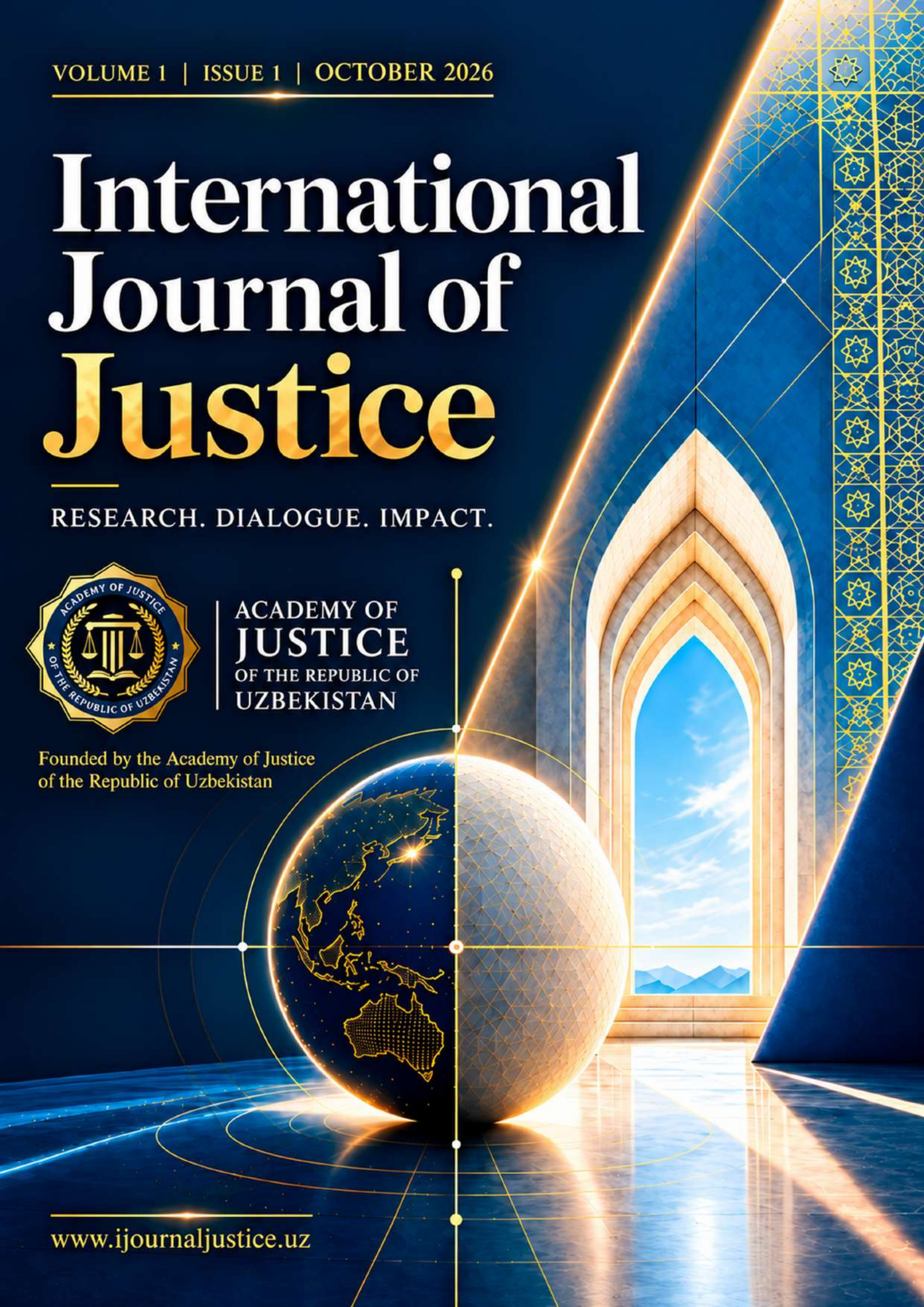
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CONTENTS

IMPROVING THE INSTITUTION OF APPEALS: TIME LIMITS, RESPONSE QUALITY, MONITORING **10**
Achilova Liliya Ilkhomovna; Rozmetova Asal Anvarzoda

LEGAL ASPECTS OF INVESTIGATIVE JOURNALISM **18**
Jahonov Shohruh Shuhrat ugli

LEGAL BASIS OF CIVIL SOCIETY INSTITUTIONS IN THE LEGISLATION OF THE REPUBLIC OF UZBEKISTAN **25**
Sharipov Asrorjon Safar ugli

DIGITAL TRANSFORMATION OF INTERNATIONAL COMMERCIAL ARBITRATION IN UZBEKISTAN: LEGAL AND INSTITUTIONAL PROSPECTS **30**
Otakhonov Foziljon Khaydarovich

THE LEGAL NATURE OF SUBSIDIARY LIABILITY IN INSOLVENCY PROCEEDINGS INVOLVING AGRICULTURAL BUSINESS ENTITIES **39**
Rakhmatjon Tojinorovich Berdiyarov

CIVIL LAW ASPECTS OF GOODS DELIVERY BY SELF-EMPLOYED COURIERS **49**
Ruzinazarov Shukhrat Nuralievich

NATIONAL AND INTERNATIONAL EXPERIENCE IN LEGAL PROTECTION OF A COMPANY NAME: IMPROVING THE LEGISLATION OF UZBEKISTAN **63**
Allayarova Maftuna Almardanovna

ORGANIZATIONAL AND LEGAL MECHANISMS FOR COMPENSATION OF CONSTRUCTION CONTRACT DAMAGES **69**
Donayev Abduqodir Haydarovich

JURISDICTION AND VENUE OF CIVIL CASES ARISING FROM INHERITANCE RELATIONS: A NATIONAL AND FOREIGN ANALYSIS **76**
Soliyeva Kamola Rustamjon-qizi

ISSUES OF USING COURT NOTICES IN ENSURING THE OPENNESS OF CIVIL PROCEEDINGS IN COURTS **84**
Sabirov Erkinjon Kuchkarbaevich

DIGITAL EVIDENCE IN SUPPLY-CONTRACT DISPUTES BEFORE ECONOMIC COURTS: AUTHENTICATION, INTEGRITY AND EVIDENTIARY RISK IN UZBEKISTAN **91**
Mahmudova Saida Rayimjonovna

CONTENTS

FROM HUMAN CAPITAL TO INSTITUTIONAL TRANSFORMATION: A NEW STAGE IN THE STRATEGIC DEVELOPMENT OF THE JUDICIAL PERSONNEL TRAINING SYSTEM 104
Aripov Dilshod Urinbaevich

THE ROLE OF INTERNATIONAL STANDARDS IN GOVERNING ARTIFICIAL INTELLIGENCE IN JUDICIAL SYSTEMS: A COMPARATIVE AND CRITICAL ANALYSIS 109
Sadikov Khurshid Primkulovich

INDEPENDENCE — A SOLID FOUNDATION OF JUSTICE AND HUMAN DIGNITY (35 years of the evolution of the judicial and legal system of the Republic of Uzbekistan) 117
Israilov Dilshod Shavkatovich

INSTITUTIONAL MODELS OF JUDICIAL QUALIFICATION BOARDS: INTERNATIONAL STANDARDS AND FOREIGN EXPERIENCE 128
Jamolov Azizjon Nodir ugli

THE DEATH OF FREE WILL. WHO BEARS CULPABILITY WHEN ARTIFICIAL INTELLIGENCE INDUCES A PERSON TO COMMIT A CRIME? 140
Salaev Nodirbek Saparbaevich

ON EUROPEAN CRIMINAL-LAW INTEGRATION – FROM MUTUAL RECOGNITION TO LIMITED SUPRANATIONAL CRIMINAL POWER 148
Krisztina Karsai

CRIMINAL LIABILITY OF OFFICIALS OF NON-GOVERNMENTAL COMMERCIAL ORGANIZATIONS: PROBLEMS OF THEORY AND PRACTICE 158
Akramova Muazzam Turdikul qizi

DISTINGUISHING OFFENCES AGAINST SEXUAL FREEDOM FROM RELATED OFFENCES IN UZBEKISTAN 162
Achilov Izzat Tulkinovich

CRIMINAL-LAW MEASURES AGAINST THE LEGALIZATION OF PROCEEDS OBTAINED THROUGH MISAPPROPRIATION OR EMBEZZLEMENT: QUALIFICATION, EVIDENCE AND ASSET RECOVERY 170
Sadullaev Bokhodir Oybekovich

CONCEPT OF HELPLESSNESS AND ITS SIGNIFICANCE IN THE QUALIFICATION OF CRIMES 178
Khalilova Zarnigor Zafar qizi

LEGAL SIGNIFICANCE OF THE INSTITUTION OF CRIMINAL RECORDS IN PROTECTING HUMAN RIGHTS 182
Yoqubjonov Omonjon Burkhonjon ugli

CONTENTS

THE APPLICATION OF CRIMES WITH BLANKET NORMS: CURRENT STATUS AND ISSUES 189
Pulatov Bekzod Adilbaevich

THE FORMATION AND DEVELOPMENT OF THE INSTITUTION OF CRIMINAL LIABILITY IN THE FIELD OF PUBLIC PROCUREMENT: A HISTORICAL-LEGAL ANALYSIS 202
Shukurova Shahnoza Mukumjonovna

ATTORNEY'S PARTICIPATION IN THE PRE-TRIAL STAGE OF CRIMINAL PROCEEDINGS: LEGAL AND PRACTICAL ASPECTS 214
Medetbaeva Aksungul Sharapatdin kizi

INTERNATIONAL COOPERATION IN OBTAINING ELECTRONIC EVIDENCE: THE EUROPEAN PRODUCTION AND PRESERVATION ORDERS 221
Bujosa Vadell, Lorenzo Mateo

COOPERATION BETWEEN THE SUBJECTS OF INVESTIGATION IN CROSS-BORDER INTERNET FRAUD CASES 230
Khabibiddinov Nodirjon Musinjon ugli

PROBLEMS OF PROCEDURAL REALITY IN CRIMINAL PROCEEDINGS 238
Aykhan Khankishi Rustamzade, Matanat Pasha Asgarova

DETENTION OF FOREIGN NATIONAL PRISONERS IN PENITENTIARY INSTITUTIONS: A COMPARATIVE ANALYSIS OF INTERNATIONAL PRACTICES AND NATIONAL LEGISLATION 246
Rikhsimov Komron Abrorovich

CRIMINALISTIC FOUNDATIONS FOR INTEGRATING GAIT IDENTIFICATION WITH FORENSIC PORTRAIT EXAMINATION 249
Nizomova Shahrigul Karimboy qizi

INTERNATIONAL LAW CRISIS: UN PEACE OPERATIONS AND INSTITUTIONAL REFORM 258
Kudaybergenov Bakhtiyar Abdumajit-ugli

ARTIFICIAL INTELLIGENCE AND CHILDREN'S RIGHTS: PROTECTION OPPORTUNITIES AND EMERGING LEGAL RISKS 267
Ergashev Gayrat Shavkatovich

ACTIVITIES OF INTERNATIONAL NON-GOVERNMENTAL ORGANIZATIONS IN THE FIELD OF HUMAN RIGHTS 276
Nosirova Marjona Negmat kizi

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NATIONAL AND INTERNATIONAL EXPERIENCE IN LEGAL PROTECTION OF A COMPANY NAME: IMPROVING THE LEGISLATION OF UZBEKISTAN

Allayarova Maftuna Almardanovna
PhD student at Tashkent State Law of University
E-mail: allayarovamaftuna1@gmail.com
ORCID ID: 0009-0003-1328-6220



Abstract. *This article studies the issues of legal protection of rights to a company name, the legislation of Uzbekistan and the experience of a foreign state from a comparative legal perspective. The importance of a company name as an individualizing tool in the entrepreneurial activity of a legal entity, especially its relationship with a trademark and domain name, is substantiated. This article examines the principle of protection of company names without the obligation to register, established in Article 8 of the Paris Convention, international obligations under the TRIPS Agreement, and the legal approaches of Germany and the United Kingdom to the legal protection of a company name. It is emphasized that in the legislation of Uzbekistan, the absolute right to a company name arises from the moment of state registration of a legal entity, and at the same time, its protection in the digital environment, collocations between a company name and a trademark, the criterion for determining the likelihood of confusion, and the need to improve law enforcement practice. As a result of the studies, scientific and practical proposals were developed for national legislation on the protection of company names.*

Keywords: *company name, exclusive right, intellectual property, means of individualization, trademark, domain name, Paris Convention.*

Introduction

First of all, it is advisable to distinguish between the concepts of "protection" and "conservation". While protection is characterized by the restoration of a person's violated rights and the establishment of responsibility for them when their rights are violated, protection includes relations related to the legal guarantees of individual rights and legal liability measures applied to a person who violates these rights.

Studying the experience of developed countries in protecting rights to a company name and implementing its recommendations into our national legislation can be a guarantee of effective results. Today, in world practice, one of the most widely used means of individualization after a trademark is the company name, and the name of legal entities often includes the name of the owner of the enterprise (for example, "Nobel", "Toyota"), and in some cases, names corresponding to the field of activity and reputation of the company may be reflected. As a result of the popularity of the company name, it becomes an object of industrial property. And before this process, it brings prestige to the enterprise, strengthens the current position of the company in a competitive environment, and as a result, begins to acquire financial significance.

A company name is not only a requisite representing the official name of a legal entity, but also an intangible asset related to its market reputation, business reputation, and commercial activity. Therefore, the illegal use of a company name has a negative impact on the interests of the entrepreneur as well as on the rights of consumers.

However, in practice, there is no effective mechanism for determining the similarity of a

company name with a trademark, using a company name as a domain name, and protecting rights. Therefore, studying the advanced experience of foreign countries and adapting it to the legal system is important in protecting rights to a company name.

Material and methodology

The article uses formal-legal, comparative-legal, systematic, logical methods of scientific knowledge. WIPO data on the Paris Convention and the TRIPS Agreement were studied in determining international standards. As a comparative-legal method, the protection of brand names in the legislation of Uzbekistan, Germany and Great Britain was compared. The methodological basis of the study was general logical methods (analysis and synthesis, dialectics, generalization, analogy, transition from abstract to concrete and from concrete to abstract), empirical research methods (comparison, grouping) and special scientific methods (formal-legal, comparative-legal) and other methods of scientific knowledge.

Results and discussion

In world practice, any words can be used in a company name, except for names prohibited by law. In addition, the company name of a legal entity must also reflect the organizational and legal form of the company through words or certain abbreviations. For example, “Angels LLC”, where the expanded form of LLC can be understood as a limited liability company. In Greece, France and other continental European countries, it is mandatory for individual entrepreneurs to indicate their name in the company name.

In some countries, the right to a company name arises after the company is registered in the local registry of the country in which it is established, while in others, the fact of using a company name that reflects the name of the owner of the enterprise serves as a sufficient basis for the emergence of this right.

Article 8 of the Paris Convention, which serves to facilitate and simplify the right to trade names, states that a trade name shall be protected in the member states of the Paris Convention without the need for an application or registration.[1] This provision establishes that a trade name shall be protected without the obligation to register it separately. WIPO's intellectual property resources also note that in many countries, trade name protection is provided for under civil and competition law, in addition to trade name laws. A trade name or business name may also be protected by registration as a trademark. Typically, both the full corporate name and the abbreviated business name may be registered.[2] In some countries, a mandatory condition for registering a company name may be established, and each country should establish rules on the conditions for protecting the right to a company name and the procedure for doing so.

Article 8 of the Paris Convention does not define a specific model for the protection of a trade name. Therefore, the creation, use and combination of the right to a trade name with a trademark are regulated differently in different countries.A. Casado Navarro, analyzing Article 8 of the Paris Convention, emphasizes that this norm has caused many problems of interpretation in practice. In particular, the author examines the relationship between international trademark protection and national legal systems from the perspective of comparative law.[3] WIPO considers the norms of the Paris Convention to be an important element of the international protection system in protecting trade names from unlawful

use.[4] In our opinion, the right to a company name means the right of the owner of the right to use the company name without any restrictions in a particular country or one of its regions, and even abroad.

The primary function of a company name is to individualize the entity carrying out entrepreneurial activity, not the product. In this respect, a company name differs from a trademark. A successful company name can subsequently reflect the image of a product or service in the minds of consumers. According to BA Alserhan's research, the process of choosing a company name by entrepreneurs in the United Arab Emirates affects the entrepreneur's subsequent activities and reputation. In his opinion, the distinctiveness of a company name, its ability to distinguish it from others, justifies the fact that it is an integral part of the entrepreneurial strategy.[5] It follows that a brand name is an intangible asset that will have economic value over a period of time.

In the legislation of Uzbekistan, a trademark, along with a company name, is considered an independent legal entity. According to Article 1098 of the Civil Code The right to a company name arises from the moment of state registration of a legal entity.[6] The right to a trademark arises upon its registration. It is important to note that the presence of a legal entity's company name in the state register does not mean that this name is legally protected as a trademark for all goods and services. Therefore, it is advisable for business entities to check the availability of trademarks with this name when choosing a company name.

In practice, conflicts between company names arise not through absolute similarity, but through phonetic, graphic or semantic similarity. In our opinion, the transition from the criterion of "identical name" to the criterion of "similar name with a likelihood of confusion" brings the legal protection of company names closer to modern international standards.

It would be appropriate to propose that the terms "degree of confusion", "identical names" and "similar names" be defined in our national legislation as follows:

Same names – letters, numbers, symbols (special characters) in company names and their sequence and spelling (regardless of transliteration and translation) must fully correspond to each other. In this case, punctuation marks, the use of uppercase or lowercase letters, as well as the distance (space) between words, synonymous equivalents of special characters and the presence of suffixes indicating the legal form are not considered distinguishing features of names.

Similar names – the phonetic (pronunciation), visual (appearance) and semantic (meaning) similarity of letters, words, numbers, symbols in the company name and their sequence and spelling (regardless of transliteration and translation) with the name or trademark (service mark) of another legal entity.

Level of deception – the likelihood of a company name being similar or identical in phonetic (pronunciation), visual (appearance) and semantic (meaning) terms to another company name or trademark (service mark) that would lead to the perception of these legal entities or their activities as being related.

It is proposed to introduce this norm into the legislation in order to ensure legal certainty when registering a company name, eliminate "visual fraud" (for example, mixing similar letters of the Latin and Cyrillic alphabets) and

artificial differences (adding a space or writing with a capital letter) that mislead consumers. For example: by definition, “FIVE & FIVE” and “FIVE AND FIVE”, “2x2” and “Double Two”, “TOP-10” and “TOP TEN” are considered the same names. International practice and the experience of foreign countries (for example, the “Substantially Identical” rule of the USA and the European Union) show that relying solely on technical features (punctuation marks, case or transliteration) to distinguish names leads to unfair competition and devaluation of brands in the market; Therefore, this provision allows registering authorities to assess the exact identity of names not technically, but in terms of content, and guarantees the transparency of the register of legal entities.

According to the results of studying the experience of international organizations and foreign countries, the similarity of names is studied based on three main criteria (phonetic (pronunciation), visual (appearance) and semantic (meaning) similarity), and letters, words, numbers, symbols and their sequence and spelling are analyzed. Based on this, the similarity of names is determined.

In the article “The Contradiction Between Domestic and International Law Regarding Trade Names”, published in the journal GRUR International in 2023, the authors emphasize that the obligation under the Paris Convention should be taken into account in the collation between national rights and obligations. They also indicate that when assessing similarity with trade names, the signs do not have to be absolutely identical, and the possibility of consumer confusion should also be taken into account.[7]

The mechanism for resolving disputes over company names in the UK is one of the foreign experiences for Uzbekistan. P. Johnson's 2008 study analyzes the formation of the institution of objection to a company name based on the Companies Act 2006. According to the scientist, the mechanism allowed for a legal objection to the registration of a similar company name by another person in cases where there was goodwill in relation to the name.[8]

The Business Names Act of 1985 is a law that consolidates certain pieces of legislation in the UK relating to the names under which individuals may carry on business. 1stformations for protecting a business name in the UK[9] You can set up a limited liability company through 1st Formations using the company name reservation package on the company name website. By reserving a company name, the company name of your choice is registered with Companies House and the documents are filed on behalf of the business. Confidentiality is protected by providing a company address in central London.

The advantage of reserving a company name is that it allows a company to reserve the chosen company name so that no one else can register it with Companies House.

One of the most important aspects of setting up a limited liability company in England is to register the company name so that it cannot be used by a competitor. The only way to register a company name is to form a limited liability company. In other words, the process of registering a company name is the same as registering a limited liability company at Companies House. The first step in setting up a limited liability company is to choose a company name. There are certain rules that must be followed in order to set up a company successfully.

Every company name must be original. Two variations of a company name cannot be registered. The register of existing companies can be searched to see if a particular company name is already taken. In addition, the proposed name cannot be too similar to an existing company name, especially in cases where another company is a competitor. Attempting to register a company name that is too similar to an existing company name may result in the rejection of the application for company registration.

The German experience was also studied in the issue of protecting company names. The German Trade Mark Act-MarkenG includes "commercial designation" as a separate category.[10] According to Section 5 of the Act, company signs and names of works are protected as trademarks. Company signs include signs used in commerce as the name of a business.

According to Section 37 of the German Commercial Code, a person whose right to a company name is directly violated may demand that the use of the company name be stopped. This also includes the right to claim compensation for the damages caused.[11] In Germany, the company name is viewed not only as a technical requirement in the state register, but also as a means of commercial individualization in entrepreneurial activity. The essence of this approach is that the legal protection of a company name is not limited to its presence in the register, but also in its status in real economic circulation.

Nowadays, the company name is used not only in documents, but also on websites, domain names, and e-commerce platforms. As a result, new forms of illegal use of the company name are emerging. For example, a domain name similar to a well-known company name is being registered in advance and then offered to the right holder at a high price.

While the Paris Convention provides for the international protection of brand names, disputes related to the Internet and domain names require national legislation and special mechanisms.

Therefore, a mechanism of norms regulating the combination of the right to a company name with domain names should be developed in Uzbekistan.

Conclusion and suggestions

First, an integrated electronic search system should be introduced during the state registration of company names, which would identify not only the similarity with company names, but also conflicts with trademarks, well-known company names, names of international organizations, and related domain names. The "name generation" mechanism serves as a preventive mechanism aimed at preventing conflicts.

Secondly, we believe that the formation of a single name for such means of individualization as a company name, trademark and domain name will be one of the acceptable ways to protect exclusive rights to a company name. Also, the authorized body registering company names should strengthen the practice of not registering a company name if a trademark similar to the company name has been previously registered. Although this rule is stipulated in the legislation, in practice there are cases of circumvention of the law. We believe that this increases the likelihood of disputes between business entities, given the increasing number of entrepreneurs today.

Thirdly, in our national legislation, namely the Law "On Company Names"[12], the concepts of "degree of confusion", "identical

names" and "similar names" should be clearly defined and the criteria for their assessment should be established. In this regard, factors such as phonetic similarity, graphic similarity, semantic similarity, type of activity, and popularity of the company name should be taken into account.

In conclusion, a company name is a means of individualization of a legal entity. In international law, the Paris Convention is the fundamental basis for the protection of company names without the obligation to register them. The TRIPS Agreement further strengthens this international standard. The fact that the right to a company name arises in Uzbekistan from the moment of state registration of a legal entity constitutes legal certainty. However, in the conditions of the digital economy, it is necessary to develop a special mechanism to prevent conflicts between company names, trademarks, domain names, and to identify the possibility of confusion. The experience of Germany with a wider protection of company names as a commercial sign and the Company Names Tribunal Institute of the United Kingdom will be a source for improving the national legislation of Uzbekistan. These recommendations will help to form a system of preventive legal protection of rights to company names.

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