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The concept and correlation of legal protection and defence of well-known trademarks

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Abstract

The relevance of the study is due to the lack of attention on the part of international and national legislation to such an object of intellectual property as well-known trademarks, in particular, to the regulation of their legal defence, and therefore this issue requires research and coverage in scientific circles. The purpose of the study is to investigate the difference between legal protection and legal defence of well-known trademarks in Ukraine. General scientific methods of knowledge (generalisation, formal-logical, synthesis, axiomatic) and special-legal methods (formal-legal, logical-legal, comparative-legal) were used to examine this problem. The paper considers the key features of well-known brands. By analysing the Ukrainian regulatory framework, it is established that the legal protection of well-known trademarks in Ukraine complies with the norms of international legislation, namely the provisions of Article 6 bis of the Paris Convention. A detailed analysis of the concepts of protection and defence is conducted and applied to the object of the study. It was established that the peculiarity of well-known trademarks is that they acquire the status of a protected object of intellectual property rights not from the moment of state registration but from the time of their recognition in the

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country, which means acquiring the status of being famous. The practical value of the study is that the results obtained can be used to improve the procedure for recognising trademarks as well-known, namely, to justify the possibility of choosing the appropriate course of action: by applying to the appeals chamber or applying to the court

Keywords: civil law; intellectual property law; objects of intellectual property; National Intellectual Property Authority; Appeals Chamber; court

Introduction

Well-known brands play a substantial role in influencing the consumer. Naturally, due to the broad consciousness, reputation, and commitment of consumers, this category of trademarks needs special legal defence since it often becomes the object of illegal use for unscrupulous users. The world practice of recognising and using such trademarks dates back about a hundred years, and during this time many effective mechanisms for their legal defence have been developed.

Article 6. bis of the Paris Convention for the Protection of Industrial Property (1883) plays a decisive role in the protection of well-known trademarks, which states that the countries of the Union undertake, either at the initiative of the administration, if permitted by the legislation of that country, or at the request of the person concerned, to reject or invalidate the registration and prohibit the use of a trademark that is a reproduction, imitation, or translation of another trademark capable of causing confusion with a trademark that, according to the definition of the competent authority of the country of registration or the country of application, it is already well known in this country as the designation of a person who enjoys the privileges of this convention and is used for identical or similar goods.

In the world society, quite a lot of studies are devoted to the objects of intellectual property law, since human potential is quite time-consuming and expensive. Thus, for example, C.V. Trappey *et al.* (2021) specifically noted the protection of intellectual property through artificial intelligence techniques that will help users identify potential infringement issues and develop strategies to better protect trademarks in globally distributed electronic retailers. S. Kulshrestha and P.M. Singh (2021) investigated the conditions under which a trademark is recognised as well-known. S. Odintsov *et al.* (2020) considered the functions of trademarks since in theory there is a position that if a trademark does not perform its functions, then it cannot be considered generally known. J. Ciani *et al.* (2019) noted the protection and defence of well-known trademarks, highlighting the problems of implementing legal defence of the rights of owners of such stamps by applying to the court due to the corrupt use of their stamps by more well-known brands. P. Sáiz and R. Castro (2018) emphasised that the history of trademarks has a promising and complex future and that historians have a difficult task to investigate. M.O. Stefanchuk *et al.* (2021) state the urgency of introducing artificial intelligence, especially after the COVID pandemic. I. Koval *et al.* (2019) investigated the correlation of private and public interests that are realised in the relations of intellectual property and the balance of these interests in the mechanism of their defence.

H. Kostromina *et al.* (2022) distinguished the following types of intellectual capital: personalised, technical and technological, infrastructure,

client capital, and branded. Corporate capital was considered as trademarks, brand names, and service trademarks.

The following researchers devoted their papers to the protection of objects of intellectual property rights at the NULES of Ukraine: O. Piddubny and O. Svitlychnyi (2022), noting the need to regulate the patent protection of biotechnologies at the level of national legislation. Yu. Kanarik and B. Sergienko (2019) stated that an important step for the protection of intellectual property rights is the registration of an object as a trademark. M. Pushkar (2021) focused on the need to bring the norms of intellectual property rights for plant varieties to the norms of international legislation.

Insufficient research on this issue at the national level and the beginning of the formation of a legislative framework in Ukraine that meets generally recognised standards in the field of protection and defence of well-known trademarks determines the relevance of the chosen research problem. Such an object as well-known trademarks is poorly examined not only in national science but also in the world scale.

The purpose of this paper is to examine well-known trademarks for their security and compare the concepts of "protection" and "defence", which is the first study in the scientific literature.

Materials and Methods

In the process of writing the study, a number of methods generally accepted by legal science were used. Among the general research methods, the analysis method was used, for example, to highlight international standards for the protection of well-known trademarks. The formal-logical method contributed to the characterisation of the content of the categorical research apparatus. The synthesis method allowed determining the place of regulatory legal acts regulating relations in the field of intellectual property for well-known trademarks. The application of the axiomatic method allowed focusing on the use of well-known trademarks through statements that do not require proof, for example, when protection occurs without registration of such a brand. The comparative legal method is used when comparing national legislation, international legal acts, and EU legislation on the issues raised.

The main provisions and results of the article are formulated based on an analysis of international, European, and Ukrainian legislation, and the legislation of foreign countries. In particular, during the study, the following methods were used: provisions: Article 6 of the Paris Convention for the Protection of Industrial Property (1883) in respect of well-known trademarks; Parts 2 and 3 of the Agreement on trade-related aspects of intellectual property rights (1994), which defines well-known trademarks by referring to Article 6 bis Paris Convention without providing for the terms of use of trademarks in the state where protection is required; Directive (EU) 2015/2436 of the European Parliament and of the council to approximate the laws of the member states relating to trade marks (2015), which provides that the relative grounds for refusal of registration or grounds for relative invalidation may be: trademarks that are already recognised as "well-known" in the member states in question, in accordance with the provisions of Article 6 BIS Paris Convention; Council directive 2008/114/EC on the identification and definition of European Critical Infrastructures and assessment of the need to improve their protection and protectuion (2008), which defines that "protection" and "defence" is a single concept; and national legal acts, in particular, the law of Ukraine "On the Protection of Rights to Signs for Goods and Services" (1993).

Results and Discussion

Well-known brands are those that have become widely known in the relevant consumer sector in certain industries. Compared to conventional trademarks, there are many differences, including high recognition, wide use, and economic value. First of all, for these reasons, well-known trademarks have become an important object of industrial property and occupy a substantial place in the system of intellectual property rights protection around the world.

Factors of recognition of a trademark as well-known in Ukraine may include the following characteristics: the degree of popularity or recognition of the brand in the relevant sector of the economy; the duration of public recognition, the degree and geographical area of any use of the mark or its promotion, including advertising or publication, involvement of the trademark in fairs and exhibitions; recognition of the trademark as well-known in another country by the competent authority, etc.

The peculiarity of well-known trademarks is prescribed by Article 6 bis of the Paris Convention for the Protection of Industrial Property (1883) and consists in the fact that such objects are granted state protection without state registration by the competent authorities. The countries taking part in this convention are 175 countries of the world. In Ukraine, such state bodies are the Appeals Chamber of the National Intellectual Property Authority or the court (Law of Ukraine No. 3689-XII..., 1993). Therefore, it is necessary to determine what is included in the concept of protection of a well-known trademark, and what is related to the concept of defence of a well-known trademark.

It is advisable to start by investigating the concepts of "protection" and "defence", how they relate, differentiate and how they affect the object of intellectual property rights. Despite the fact that the definitions of "legal protection" and "legal defence" are used quite widely, there is no clear distinction between them. Ya. Vavzhenchuk (2018), who examined the relationship between the concepts of "protection" and "defence" in labour law, came to the conclusion that there is no clear distinction between these concepts. In his opinion, some researchers identify these concepts, while others refer protection to the implementation of protective functions of persons whose rights are violated.

D. Kusherets (2015), investigating the protection and defence of property rights in the law of obligations, notes that protection plays a role in the conclusion of contractual obligations, for example, the conclusion of a contract aimed at preventing violations. In turn, defence occurs during the active phase, when it is necessary to defend the rights in case of violation of the terms of the contract when prescriptions or other methods of securing the claim are applied to the violator, which cannot be disagreed with.

Notably, the legislation does not define clear concepts of the terms "protection" and "defence" and their differentiation, which leads only to scientific opinions and explanations of these categories and thus causes confusion in the terminological application of legal science (Vavzhenchuk, 2010). Although for the state, the main function is to protect and defend the rights and legitimate interests of its citizens and to exercise such rights (Marchenko, 2020).

In judicial practice, there is an opinion that each law establishes rules of conduct for citizens, depending on what relations are regulated by a particular legal act. Therewith, the rules of conduct also establish rules for protecting this object from illegal behaviour (Vavzhenchuk, 2010). Researchers S. Bulavina and T. Davydova (2017) note that most often these terms are used as

synonyms or concepts that are close in meaning to goals, tasks, and methods. However, this study cannot agree with this.

After analysing the terms "protection" and "defence", R. Maksymovych (2014) notes that they are united by the legal nature and constitutional priority, primarily of the individual and citizen, and the activities of the state and state bodies aimed at ensuring the rule of law. The researcher claims that the main difference between these concepts is their purpose since the object of protection is human rights and freedoms, and defence is called to action to protect these rights. The authors agree with this.

According to M. Legenchenko (2014), legal protection should be considered as the establishment of legal means invested in the implementation of subjective law, the prevention of its violation, and the legal regulation of these legal relations. Indeed, the norms on the defence of rights constitute only a part of the protective norms that include the prevention of violations, and those that establish a mandatory mechanism for their implementation.

V. Halunko (2007) believes that it is impossible to identify the concepts of "defence" and "protection" and supports the majority of members of the scientific community in this conclusion, since "protection" in the legal sense means a positive state of law aimed at preventing violation of subjective rights and legitimate interests of individuals, reflects the static nature of legal relations. In turn, "defence" is characterised by dynamics through the implementation of the means and forms provided for by law to restore the legal status of the victim, bring the perpetrator to legal responsibility and are applied when the subjective right has already been violated. V. Halunko (2015) provides a detailed analysis of the term "protection", noting that it is characterised by protecting the rights and interests of all citizens and deterring them from certain actions by threatening a public position.

It should be added that Council Directive 2008/114/EC (2008) clearly states that "protection" and "defence" are common concepts that apply to all types of activities of citizens and are aimed at preventing violations of legal rights.

There are positions that protection is a broader concept and includes the defence of the rights and interests of citizens (Vavzhenchuk, 2010). Also noteworthy is the position of researchers that protection establishes a legal regime, and defence is applied after the violation of such a legal regime (Bulavina & Davydova, 2017).

N. Khodieieva (2019) investigated the protection and defence in the field of the right to information about the state of one's health and concluded that these concepts are identical. P. Shumov (2013) emphasises that defence is fundamental in the exercise of personal rights and interests, which is why it is much more common than protection and is the driving force behind countering violated rights and interests.

Yu. Zhelikhovska (2015) concluded on separation of defence and protection. Summarising the positions of researchers on the question of the relationship between the concepts of protection, she formed the main positions: 1) these are almost identical rights; 2) this is a different measure of behaviour of subjects; 3) the right to protection already includes defence; 4) defence is a narrower concept and is included in protection. Such a variety of positions is based on almost the same initial attitude: both through the protection and the defence of the right, a person is allowed to exercise it in the proper way, and in case of violation – to restore the right. Perhaps this was the basis for the conclusion that the nature of the differences in the stated approaches to the concepts

of protection in no case allows considering the defence of rights as an independent legal phenomenon in relation to the protection of rights.

L. Kozhura (2015) treats the concept of "legal defence" as the legal activity of public administration bodies, conducted based on administrative and legal norms, supported by a system of legal guarantees; the essence of which is to ensure and protect by legal means the rights of individuals from illegal actions bringing offenders to legal responsibility. From the analysis of the above, it can be concluded that the object of legal defence is the violated legal rights, freedoms, and interests of individuals.

K. Harbuziuk (2019) notes that it is advisable to distinguish legal protection from legal defence because they have different functional purposes. The argument for this can be the well-known in the law theory opinion of O. Skakun (2021) that the same entity, such as a court, can protect and defend, or, conversely, only defend, such as a lawyer. Therewith, defence without protection is not possible, as well as protection without defence (Bulavina & Davydova, 2017). The specified is confirmed by K. Harbuziuk (2019). This position is close to well-known trademarks since the courts of Ukraine act as both protection and defence for such objects.

A special form of state registration of a well-known trademark in Ukraine and foreign countries is recognition by a special competent authority, while other trademarks must have a sign of originality. Taking examples of recognition of trademarks well-known in Ukraine, then in 2022 the competent authority recognised the following trademarks: Morosha, Intertool, RedBul, Korolivsky smak, and for 2020-2021, the following examples can be provided – ukr.net, Rozetka, 1+1, Nova Poshta, TSN etc (State System of Intellectual Property Legal Protection, n.d.).

Summarising the scientific positions, it should be noted that the concepts of "protection" and "defence" have different legal positions, in particular, protection is provided when registering an object by state institutions. Defence occurs when the rights and legitimate interests of the registered object of the owner of such an object are violated.

For all trademarks, protection occurs after the state registration of a trademark, and only later, when the rights of the trademark owner are violated, they apply for the defence of their right to the judicial authorities. However, this is not typical for well-known brands. A special feature of a well-known trademark is that it acquires the status of a protected object of intellectual property rights not from the moment of state registration, but from the moment of its recognition in the country. Foreign researchers S. Kulshrestha and P.M. Singh (2021) indicate: to prove the recognition of a trademark as well-known, the best evidence will be provided by potential licensees, manufacturers, distributors of goods of such a trademark, import, export, and use by consumers of a particular product. The survey is a vital factor in establishing public awareness of the definition of a trademark as well-known. The Office of the Comptroller General of Patents, Samples, and Trademarks of India has prepared a guide called the draft trademark guide, indicating important factors for determining the common knowledge of a trademark. Among them are the following:

1. Public knowledge of the trademark. The degree and scope of trademark promotion is very important in determining the status of a trademark as a well-known one.

2. Scope of use of the trademark. Sales volume is also an important factor. This factor will also be given importance in determining the status of well-known trademarks.

3. The role of advertising. A brand can become known in a very short time of use, considering advertising and technology.

4. The degree of recognition through advertising and registration in any geographical area (Kulshrestha & Singh, 2021).

Therefore, foreign sources point to a substantial number of references to recognise the trademark as well-known.

Trademarks, the images of which are inextricably linked with certain goods and services, form the consciousness of people and the system of social values. That is why, to avoid illegal manipulation of the consumer, on the one hand, and protect the rights of owners, on the other, it is necessary to develop effective mechanisms for the protection of well-known trademarks. In order for these mechanisms to really work, first of all, it is necessary to confirm the status of the information of a certain trademark, because this is what will prevent encroachments on intellectual property rights.

Conclusions

As a result of the study, the goal was achieved – the concept of legal protection and legal defence of well-known trademarks in Ukraine was analysed and it was concluded that these are different concepts in content.

The analysis of the above approaches to the definition of "protection" and "defence" in the field of intellectual property law allows stating that the protection function is fixed by the norms of law and determines the field of the behaviour of business entities, which ensures the protection of the rights of intellectual property subjects. The defensive function regulates the norms of behaviour in violation of the norms of intellectual property law, but for well-known trademarks, it is special, since the courts of Ukraine act both in the implementation of protection and defence for such objects.

Ukraine, having recognised the norms of the Paris Convention, undertook to protect well-known trademarks when a sign of their general information appears, that is, when they become known in the country to consumers without state registration of this brand. However, a lack of understanding of the implementation of the legal protection of well-known trademarks leads to violations of such rights, and then the owners are forced to seek defence of their rights.

It was investigated that the legal protection of a brand appears with a sign of its general statement, that is, when it becomes known in the country to consumers without state registration of this brand.

Legal defence of a well-known trademark is conducted based on decisions of the Appeals Chamber of the National Intellectual Property Authority or the court. Moreover, compensation measures are provided only by the judicial authorities.

The scientific originality of the study is that for the first time the issues of comparing legal protection and legal defence of well-known trademarks as an object of intellectual property rights, which is not typical for other objects of intellectual property rights, are analysed.

The conducted study encourages further analysis and research on the practice of trademark protection by judicial authorities, namely: recognition of them as well-known, determination of methods of protection, application of evidence, considering the conclusions of experts, experts in the field of law, compensation for losses incurred, etc.

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Conflict of Interest

None.

References

[1] Agreement on trade-related aspects of intellectual property rights. (1994, April). Retrieved from https://www.wto.org/english/docs_e/legal_e/27-trips_01_e.htm.

[2] Bulavina, S., & Davydova, T. (2017). "Protection" and "Security": Theoretical aspects of the legal terms. *History and Law Journal*, 1, 27-31.

[3] Ciani, J., Ghidini, G., Atkinson, V., & van Caenegem, W. (2019). A comparative study of fashion and IP: Nontraditional trademarks in Italy and Australia. *IIC – International Review of Intellectual Property and Competition Law*, 50(9), 1101-1130. doi: 10.1007/s40319-019-00881-2.

[4] Council Directive 2008/114/EC on the identification and definition of European critical infrastructures and assessment of the need to improve their protection and protection. (2008, December). Retrieved from http://data.europa.eu/eli/dir/2008/114/oj.

[5] Directive (EU) 2015/2436 of the European Parliament and of the Council to approximate the laws of the Member States relating to trade marks (recast). (2015, December). Retrieved from http://data.europa.eu/eli/dir/2015/2436/oj.

[6] Halunko, V.V. (2007). Administrative and legal protection and security of property rights. *Bulletin of Kharkiv National University of Internal Affairs*, 38, 192-198.

[7] Halunko, V.V. (Ed.). (2015). *Administrative law of Ukraine* (Vol. 1: General administrative law). Kherson: Publisher Grin D.S.

[8] Harbuziuk, K.H. (2019). To the problem of the relationship between the terms "administrative and legal protection" and "administrative and legal security". In *Modern problems of legal, economic and social development of the state: Abstracts of reports of the 8th International scientific and practical conference* (pp. 38-40). Kharkiv: Kharkiv National University of Internal Affairs.

[9] Kanarik, Yu.S., & Sergienko, B.B. (2019). Legal protection of computer programs as objects of intellectual property law. *Legal Horizons*, 19, 31-35.

[10] Khodieieva, N.V. (2019). Protection of subjective civil rights in terms of the right to information about one's health status – the relationship between such concepts as "protection" and "security". In *Kharkiv National University of Internal Affairs: 25 years of experience and a look into the future (1994-2019): Collection of abstracts of reports at the international scientific and practical conference for the 25th anniversary of the university* (pp. 485-487). Kharkiv: Kharkiv National University of Internal Affairs.

[11] Kostromina, H., Potishchuk, O., Rudenko, T., Pushkar, M., & Romaniuk, O. (2022). Intellectual capital as the basis for the development of creative industries. *AD ALTA: Journal of interdisciplinary research*, 12(1, S XXVI), 67-70.

[12] Koval, I., Dzhumageldiyeva, G., Derevyanko, B., Patsuriia, N., & Patiuk, S. (2019). Balance of interests in the mechanism of protection of industrial property rights. *Journal of Advanced Research in Law and Economics*, 10(3), 819-827. doi: 10.14505//jarle.v10.3(41).17.

[13] Kozhura, L.O. (2015). Administrative and legal protection and security: The concept and relation. *Uzhhorod National University Herald. Series: Law*, 35 (1 Vol. 2), 119-122.

[14] Kulshrestha, S., & Singh, P.M. (2021). Factors determining well known status for a trademark: A study in Indian context. *Bioscience Biotechnology Research Communications. Special Issue*, 14(09), 240-245.

[15] Kusherets, D.V. (2015). *Protection and security of property rights in the field of contract law: Problems of theory and practice* (Doctoral thesis, Legislation Institute of the Verkhovna Rada of Ukraine, Ukraine).

[16] Law of Ukraine No. 3689-XII "On the Protection of Rights to Signs for Goods and Services". (1993, December). Retrieved from https://zakon.rada.gov.ua/laws/show/3689-12#Text.

[17] Legenchenko, M.O. (2014). Concept of right's guard and protection through their correlation. *Current Problems of State and Law*, 72, 59-65.

[18] Maksymovych, R.O. (2014). Correlation between the concepts of "protection" and "secutity" of social and economic human rights and freedoms: theoretical and legal foundations. *Scientific Bulletin of Kherson State University. Series "Legal Sciences"*, 5 (Vol. 1), 101-106.

[19] Marchenko, V. (2020). Regarding the issue of protection of subjective civil rights by a notary public. *Entrepreneurship, Economy and Law*, 3, 31-35. doi: 10.32849/2663-5313/2020.3.06.

[20] Odintsov, S., Trubina, M., & Mansour, M. (2020). Comparative legal analysis of protectability of olfactory trademarks. ***A****mazonia Investiga*, 9(27), 129-139. doi: 10.34069/AI/2020.27.03.13.

[21] Paris Convention for the Protection of Industrial Property. (1883, March). Retrieved from https://www.unido.org/sites/default/files/2014-04/Paris_Convention_0.pdf.

[22] Piddubny, O., & Svitlychnyi, O. (2022). Fundamentals of patent protection in the field of biotechnology. *Law. Human. Environment*, 13(1), 43-49. doi: 10.31548/law2022.01.005.

[23] Pushkar, M.V. (2021). Urgency of changes in legal regulation of property relations on plant varieties in connection with recodification of the Civil Code of Ukraine. *Law. Human. Environment*, 12(1), 101-108.

[24] Sáiz, P., & Castro, R. (2018). Trademarks in branding: Legal issues and commercial practices. *Business History*, 60(8), 1105-1126. doi: 10.1080/00076791.2018.1497765.

[25] Shumov, P.V. (2013). Correlation of concepts of "protection" and "defense" of informational rights. *Criminal-Executory System: Law, Economics, Management*, 5, 12-14.

[26] Skakun, O.F. (2021). *Theory of law and state* (4th ed.). Kyiv: Alerta.

[27] State System of Intellectual Property Legal Protection. (n.d.). *Trademarks that are recognized as well-known in Ukraine and those that have been refused recognition*. Retrieved from https://ukrpatent.org/uk/articles/ap-tm-well-known.

[28] Stefanchuk, M.O., Muzyka-Stefanchuk, O.A., & Stefanchuk, M.M. (2021). Prospects of legal regulation of relations in the field of artificial intelligence use. *Journal of the National Academy of Legal Sciences of Ukraine*, 28(1), 157-168. doi: 10.37635/jnalsu.28(1).2021.157-168.

[29] Trappey, C.V., Chang, A.-C., & Trappey, A.J.C. (2021). Building an Internet-based knowledge ontology for trademark protection. *Journal of Global Information Management*, 29(1), 123-144. doi: 10.4018/JGIM.2021010107.

[30] Vavzhenchuk, S.Ya. (2010). Parity of concepts "protection" and "security" of the labor rights in the current legislation. *Forum Prava*, 1, 45-49.

[31] Vavzhenchuk, S.Ya. (2018). *Protection and security of labor rights of employees* (2nd ed.). Kharkiv: Pravo.

[32] Zhelikhovska, Yu. (2015). Denominated and distinction between "guard" and "protection". *Scientific Bulletin of the International Humanities University. Series: Jurisprudence*, 13 (Vol. 2), 18-21.

Поняття та співвідношення правової охорони й правового захисту добре відомих торговельних марок

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Анотація

Актуальність дослідження зумовлено недостатньою увагою з боку міжнародного та національного законодавств до такого об'єкта інтелектуальної власності, як добре відомі торговельні марки, зокрема до регулювання їхнього правового захисту, а тому це питання потребує дослідження і висвітлення в наукових колах. Мета статті – дослідити, у чому відмінність між правовою охороною та правовим захистом добре відомих торгівельних марок в Україні, Для дослідження вказаної проблематики використовувалися загальнонаукові методи наукового пізнання (узагальнення, формально-логічний, синтезу, аксіоматичний) та спеціально-юридичні методи (формально-юридичний, логіко-юридичний, порівняльно-правовий). У роботі розглянуто ключові особливості добре відомих торговельних марок. Шляхом аналізу української нормативно-правової бази встановлено, що правова охорона добре відомих торговельних марок в Україні відповідає нормам міжнародного законодавства, а саме положенням ст. 6 bis Паризької конвенції. Проведено детальний аналіз понять охорони та захисту й застосовано їх щодо об'єкта дослідження. З'ясовано, що особливістю добре відомих торговельних марок є те, що вони набувають статусу охоронного об'єкта права інтелектуальної власності не з моменту державної реєстрації, а із часу визнання їх у країні, що означає набуття статусу відомості. Практична цінність дослідження – у тому, що отримані результати можна використати для удосконалення процедури визнання торговельних марок добре відомими, а саме в обґрунтуванні можливості вибору відповідного способу дій: шляхом звернення до Апеляційної палати або звернення до суду

Ключові слова: цивільне право; право інтелектуальної власності; об'єкти інтелектуальної власності; Національний орган інтелектуальної власності; Апеляційна палата; суд