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RECOVERY OF COMPENSATION IN THE SYSTEM OF WAYS TO PROTECT THE EXCLUSIVE RIGHT TO TRADEMARKS IN RUSSIA AND FOREIGN COUNTRIES

Specialisation: 5.1.3 Private law (civilistic) sciences

Abstract

of the dissertation for the degree of Candidate of Legal Sciences

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Relevance of the research topic.

Socio-economic aspect. The modern market structure, commodity-money relations cannot be imagined without trademarks that serve as a designation of the main exchange unit of these relations-the commodity. Trademarks allow you to individualize products, which is an important factor in the event of increased competition. Currently, there is a positive trend in the submission of Russian applications for trademark registration due to the need for import substitution and the development of national brands. According to Rospatent's Annual Report for 2024, 137,436 applications for trademark registration were filed in 2024, which is 12 % more than in 2023, and 9% more than in 2023 trademark certificates were issued (91,285 certificates)[1]. There is an increase in the turnover of trademark rights, with 19.5 thousand commercial contracts concluded in 2024[2]. A trademark is a significant intangible asset of the company, and its illegal use negatively affects the economic situation of the copyright holder. Illegal use of a trademark entails such costs for the copyright holder as a decrease in profit and competitiveness. In this regard, it is important to improve the effectiveness of ways to protect trademark rights in general and such a way to protect trademark rights as compensation, in particular.

Legislative aspect. A number of countries, including the Russian Federation, realizing that such a method of protecting rights as compensation for losses does not sufficiently restore the balance of interests in the field of intellectual property, tried to correct this situation by introducing such a method of protection as compensation. This method of protection implies a different process of proof, it is necessary to prove the fact of violation of the exclusive right to a trademark. Unlike compensation for damages, the recovery of compensation does not require proof of the actual

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[1] Annual Report 2024 // Rospatent URL: https://rospatent.gov.ru/ru/about/reports#:~:text=27.02.2025%2016%3A49-,%D0%93%D0%9E%D0%94%D0%9E%D0%92%D0%9E%D0%99%20%D0%9E%D0%A2%D0%A7%D0%81%D0%A2%202024,-%D0%9A%D1%80%D0%B0%D1%82%D0%BA%D0%B0%D1%8F%20%D0%B2%D0%B5%D1%80%D1%81%D0%B8%D1%8F%20%D0%93%D0%9E (accessed on 21.01.2025).

[2] Ibid.

amount of damages, which facilitates the proof process. However, imperfect legal regulation has led to abuses, such as serial claims, preferential use of trademarks not for production purposes, but for collecting compensation, receiving compensation in the absence of objective harm, etc. In this regard, it is important to analyze the recovery of compensation as a method of protecting the exclusive right to trademarks, clarify the criteria for determining the amount of compensation for violation of the exclusive right to a trademark, and further improve the legal regulation of this method of protecting the exclusive right to trademarks.

The doctrinal aspect of this study is that the doctrine of private law has not yet developed a definite and clear doctrine on the recovery of compensation for infringement of the exclusive right to trademarks. In particular, there are ongoing scientific discussions about the definition of compensation, the relationship between recovery of compensation and other methods of protecting an exclusive right, the search for the borderline with compensation for losses, and the definition of differentiation of recovery of compensation depending on various factors. Significant issues raised in the scientific discussion relate primarily to the legal nature of compensation collection, its purpose, functions, and methods of calculating compensation in specific situations. In particular, these issues are considered by E. P. Gavrilov[3], Yu. S. Danilov[4], L. A. Novoselova[5], and E. Yu. Pashkova[6]. Discussions are ongoing on the legal nature of compensation, including at meetings of the Scientific Advisory Council of the Intellectual Property Rights Court[7]. The problem

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[3] See: Gavrilov, E. P. Compensation for Violation of Exclusive Rights and Some New Aspects of Its Application // Khozyaistvo i Pravo. 2013. No. 7. Pp. 3–21.

[4] See: Danilov, Yu. S. Protection of the Property Interests of Copyright Holders in Cases of Violation of Exclusive and Other Property Rights to Copyright and Related Rights: Abstract of the Dissertation for the Degree of Candidate of Legal Sciences (Specialty 12.00.03 "Civil Law; Business Law; Family Law; Private International Law") / Danilov, Yuri Sergeevich – ; [Russian State Academy of Intellectual Property]. – Moscow, 2019. – 28 p.

[5] See: Novoselova, L. A. On the Mechanism of Compensation for Violation of Exclusive Rights // Khozyaistvo i Pravo. 2017. No. 3. Pp. 3–17.

[6] See: Pashkova E. Yu. Compensation for Violation of Exclusive Rights to Trademarks: Trends in Judicial Practice // Journal of the Court for Intellectual Rights. October 2013. // SPS ConsultantPlus.

[7] See: Pavlova E. A., Kalyatin V. O., Korneev V. A., Radetskaya M. V., Yevstigneyev E. A., Kolzdorf M. A., Turkina A. E., Spiridonova N. B. Compensation as a Measure of Liability for

of fair determination of the amount of compensation remains relevant. The legislator has not yet been able to find an answer to these and other questions, as have the courts.

Law enforcement aspect. RTM Group's research has shown that one of the three main categories of trademark-related disputes is disputes over the protection of the exclusive right to a trademark[8]. The number of court proceedings is increasing: if 3,916 decisions were made in 2021, then only in the first half of 2022, the courts issued 2,617 decisions[9]. Courts collect significant amounts of compensation, if in 2022 the maximum amount of compensation was collected by the courts in the amount of 5 million rubles, then in 2022 this amount became almost 3 times more and amounted to almost 13 million rubles.[10] Judicial practice on the recovery of compensation for infringement of the exclusive right to trademarks is not uniform. It is particularly worth noting that the Constitutional Court of the Russian Federation pointed out that certain provisions of Article 1515 of the Civil Code of the Russian Federation (hereinafter referred to as the Civil Code of the Russian Federation) do not comply with the Constitution of the Russian Federation[11]. There was no systematic reform of the compensation institution, taking

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Violation of Exclusive Rights. Part 2 // Journal of the Court for Intellectual Rights. September 2022. Issue 3 (37). Pp. 118–211.

[8] Trademarks as a Means of Individualization: Judicial Practice and Legislation // RTM Group URL: https://rtmtech.ru/wp-content/uploads/2022/07/Issledovanie-Tovarnye-znaki-kak-sredstvo-individualizatsii-2022.pdf (accessed: 30.04.2026).

[9] Ibid.

[10] Ibid.

[11] See: Resolution of the Constitutional Court of the Russian Federation No. 40-P dated July 24, 2020, "On the Case of Checking the Constitutionality of Subparagraph 2 of Paragraph 4 of Article 1515 of the Civil Code of the Russian Federation in Connection with the Request of the Fifteenth Arbitration Court of Appeal" // Collection of Legislation of the Russian Federation No. 32 dated August 10, 2020, Article 5362; Resolution of the Constitutional Court of the Russian Federation No. 28-P dated December 13, 2016, "On the Case of Checking the Constitutionality of Subparagraph 1 of Article 1301, Subparagraph 1 of Article 1311, and Subparagraph 1 of Paragraph 4 of Article 1515 of the Civil Code of the Russian Federation in Connection with the Requests of the Arbitration Court of the Altai Territory" // Collection of Legislation of the Russian Federation No. 52 (Part V) dated December 26, 2016, Article 7729; Resolution of the Constitutional Court of the Russian Federation No. 8-P dated February 13, 2018, "On the Case of Checking the Constitutionality of the Provisions of Paragraph 4 of Article 1252, Article 1487, and Paragraphs 1, 2, and 4 of Article 1515 of the Civil Code of the Russian Federation in Connection with the Complaint of the Limited Liability Company "PAG" // Collection of Legislation of the Russian

into account the constitutional interpretation of these norms. The amendments to the Civil Code of the Russian Federation, which came into force on January 4, 2026, are fragmented and do not take into account all existing problems[12]. In this regard, it seems appropriate to note the importance of a comprehensive understanding of such a method of protecting the exclusive right to a trademark as recovery of compensation.

The degree of development of the research topic. At the moment, the degree of development of the topic is not high enough. R. L. Lukyanov's dissertation "Compensation as a measure of civil liability for violation of an exclusive right", devoted to compensation for violation of an exclusive right, does not generally consider the amendments to the Civil Code of the Russian Federation that entered into force on January 4, 2026, does not analyze the specifics of compensation for violation of an exclusive right to a trademark, and does not provide specific mechanisms for changing the punitive nature of compensation[13]. The issues of protecting the exclusive right to objects of copyright and related rights and applying the institute of compensation were considered by Yu. S. Danilov[14], F. A. Muzyka[15] and O. V. Bogdanova[16]. Some small-format publications in scientific periodicals have been published by such authors as: A. A. Alekseychuk, A. S. Vorozhevich, D.

Federation No. 9 dated February 26, 2018, Article 1435; Resolution of the Constitutional Court of the Russian Federation No. 57-P dated December 14, 2023, "On the Case of Checking the Constitutionality of Paragraph 3 of Article 1252 and Subparagraph 2 of Paragraph 4 of Article 1515 of the Civil Code of the Russian Federation in Connection with the Request of the Court of Intellectual Property Rights" // Collection of Legislation of the Russian Federation No. 52 dated December 25, 2023, Article 9760.

[12] Federal Law No. 214-FZ of July 7, 2025 "On Amendments to Part Four of the Civil Code of the Russian Federation" // Collection of Legislation of the Russian Federation. - July 14, 2025. - No. 28. - Article 3854.

[13] Lukyanov, R. L. Compensation as a Measure of Civil Liability for Violation of an Exclusive Right: Dissertation. Moscow, 2024. 225 p.

[14] Danilov, Yu. S. Protection of the Property Interests of Copyright Holders in the Event of Violation of Exclusive and Other Property Rights to Copyright and Related Rights: Abstract of the Dissertation for the Degree of Candidate of Legal Sciences: (Specialty 12.00.03 "Civil Law; Business Law; Family Law; Private International Law") / Danilov, Yuri Sergeevich – ; [Russian State Academy of Intellectual Property]. – Moscow, 2019. – 28 p.

[15] See: F.A. Muzyka, Compensation as a Means of Protecting Intellectual Rights to Works and Related Rights: PhD Thesis in Law. Moscow, 2011. 211 p.

[16] Bogdanova, O. V. Protection of Intellectual Copyrights by Civil Law Methods: Diss. ... Cand. of Law. Moscow, 2018. 222 p.

E. Bogdanov, E. P. Gavrilov, N. V. Ivanov, L. M. Kupriyanova, A. L. Makovsky, I. A. Mikhailova, S. V. Nikolyukin, L. A. Novoselova, E. Yu. Pashkova, M. V. Radetskaya, O. A. Ruzakova, V. V. Starzhenetsky, O. V. Sushkova, A. E. Turkina, V. F. Yakovlev and others. The issue of collecting compensation was indirectly addressed in scientific publications devoted to the protection of exclusive rights, intellectual property, the rights of entrepreneurs,and the civil process. At the same time, all the listed studies consider certain aspects of collecting compensation for violation of an exclusive right, and a fragmented approach prevails in the research.

The object of the dissertation research is public relations in civil circulation related to the recovery of compensation for violation of the exclusive right to trademarks.

The subject of the study is a comparative legal analysis of the legal regulation of compensation for infringement of exclusive rights to trademarks in Russia and foreign countries.

Objectives and tasks of the dissertation research. The purpose of the dissertation research is to form the main provisions related to the institute of compensation recovery.

The goals and objectives of the dissertation research. The goal of the dissertation research is to conduct a comprehensive study of the institution of compensation recovery and to reveal its significance in the system of methods of protecting the exclusive right to trademarks in the context of legal regulation in Russia and in foreign countries.

In the process of achieving this goal, the following **tasks were set and solved:**

- to identify the legal grounds for the application of methods of protecting the exclusive right to trademarks;

- to determine the legal nature of compensation recovery for the violation of the exclusive right to a trademark;

- to characterize the place of compensation recovery in the system of methods of protecting the exclusive right to trademarks;

- to analyze the models of legal regulation of compensation recovery for the violation of the exclusive right to trademarks in foreign countries;

- to identify the problems of judicial practice in the field of compensation recovery for the violation of the exclusive right to trademarks and to propose ways to improve the current legislation;

- to develop criteria for determining the amount of compensation that would allow for maintaining a balance of interests between the parties.

The methodological framework of the study is determined by the purpose and objectives of the work. General scientific and interdisciplinary methods of scientific research were used, such as abstraction, analysis, synthesis, deduction, induction, idealization, classification, concretization, comparison, and juxtaposition, as well as other methods of formal logic. A systematic, conceptual, functional, pragmatic, and historical approach was employed. In addition to these general scientific methods, specific legal research methods were used, including: formal legal method, which was used to determine the content of legal norms governing compensation; structural-functional method, which was used to identify the functions of compensation and their impact on civil circulation in general and the protection of trademarks in particular; legal modeling method, which was used to propose alternative criteria for calculating compensation for violations of exclusive rights to trademarks and to propose new versions of legal norms governing compensation in civil legislation; historical legal method, which was used to trace the development and dynamics of the main idea of compensation at different stages of legal history and the causal relationships of these changes; and the method of legal interpretation (teleological, philosophical, linguistic, systemic, historical, legal-technical, etc.), which was used to clarify the current regulatory framework governing compensation.

The information base of the study. The list of sources and literature used by the author in the study of the thesis topic includes: 124 sources by Russian scholars; 25 sources in foreign languages; 13 international legal acts; 45 legal acts of foreign countries; 11 legal acts of the Russian Federation; 2 draft laws; 47 materials from

Russian court practice; 26 materials from court practice in foreign countries; and 5 sources related to electronic resources.

Scientific novelty of the dissertation research. The dissertation is one of the first monographic studies of the recovery of compensation for violation of the exclusive right to trademarks under Russian law, performed in a comparative manner. The dissertation provides a doctrinal definition of compensation recovery; compares it with compensation for losses; reveals the legal nature of compensation, shows the genesis of its main idea; explains the place of compensation in the system of ways to protect the exclusive right to trademarks; defines global models of liability within compensation (restorative and punitive in private law and criminal, administrative in public); the main problems of applying regulatory regulation by courts are revealed; cases that are not violations of trademark rights that should not be protected by compensation are presented; ways to reform the current legislation are proposed.

Arguments to be defended.

1. The conclusion is substantiated that the legal nature of collecting compensation for violation of the exclusive right to trademarks under Russian law is punitive. The punitive nature of compensation is manifested in the fact that the current legal norms allow the plaintiff to claim compensation in the absence or insignificance of losses, or in an amount significantly exceeding them. *This regulation applies to items 10, 19 of the passport of the scientific specialty 5.1.3 "Private law (civil) sciences".*

2. The necessity of using a recovery model instead of a penalty model for the legal regulation of relations on the application of compensation for violation of the exclusive right to trademarks is proved. The restorative model fully corresponds to the private law nature of relations for the protection of exclusive rights, based on the principles of proportionality and fairness. *This regulation applies to items 12, 19 of the passport of the scientific specialty 5.1.3 "Private law (civil) sciences".*

3. The theoretical and practical validity of an open system of methods for protecting the exclusive right to trademarks (numerus apertus) in relation to the

current conditions of the Russian legal order, implemented through the mechanism of reference to general civil methods of protection, is substantiated. Analysis of foreign experience in legislative regulation of trademark protection systems has shown that a closed system of protection methods provides legal certainty and predictability of law enforcement, but limits the rights holder's ability to choose tools for protecting the violated right, creating the risk of refusal of judicial protection. *This regulation applies to items 10, 19 of the passport of the scientific specialty 5.1.3 "Private law (civil) sciences".*

4. In order to prevent abuse on the part of copyright holders, it is necessary to change the mechanism for collecting compensation by fixing the guaranteed minimum amount of compensation, determined on the basis of an objective criterion of the violator's turnover or license remuneration. An example of such a change may be the legislation of the Republic of Kazakhstan. This mechanism provides the plaintiff with the opportunity to independently determine the amount of compensation, without being limited to the upper limit, on the one hand, and excludes the possibility of unjustified enrichment at the expense of the offender, on the other. *This regulation applies to items 10, 19 of the passport of the scientific specialty 5.1.3 "Private law (civil) sciences".*

5. Models of legal regulation of property liability for violation of exclusive rights in the countries of the Romano-German legal family are developed: classical continental model (Estonia, Hungary, Slovenia, Uzbekistan), modified continental model (Germany, Spain, France, Switzerland), mixed model (Russia, Kazakhstan, Kyrgyzstan, Moldova, etc.), public law model (Argentina, Egypt). TheGreek continental model is based solely on compensation for damages under the general rules of tort liability without special mechanisms for simplifying evidence. The modified continental model provides for compensation for damages with legally established presumptions and simplified calculation methods based on the license analogy or the violator's profit. The mixed model combines compensation for damages and the institution of compensation as alternative means of protection. The public law model is based primarily on administrative or criminal penalties. *This*

regulation applies to items 10, 19 of the passport of the scientific specialty 5.1.3 "Private law (civil) sciences".

6. A classification of violations of the exclusive right to trademarks has been developed: direct (counterfeit products) and indirect (parallel import, blurring, similarity to the point of confusion, etc.); group (one trademark is used on the site and on the product/one counterfeit product contains more than one trademark) and single; electronic (violation only in electronic form). in the form, for example, in the domain name) and real (marking of real products). This classification is of practical significance for establishing differentiated liability for infringement of the exclusive right to a trademark. Depending on the type of violation assigned, the amount of compensation will be determined.*This regulation applies to items 12, 19 of the passport of the scientific specialty 5.1.3 "Private law (civil) sciences".*

The theoretical significance of the study lies in the fact that for the first time in the Russian scientific discourse, the practice of applying legislation on compensation collection was not only analyzed, but also on the basis of this analysis and advanced scientific demographics, a theoretical basis for compensation collection in Russian and foreign law was formed. The key conclusions of this theoretical framework can enrich the relevant sections of the science of private law, intellectual property law.

The practical significance of the study is confirmed by the fact that the developments presented here can be further used by the legislator and judicial instances to improve the current legal regulation of collecting compensation for violation of the exclusive right to a trademark, as well as to develop new, more optimal and relevant approaches to its application from a practical point of view. This study may be of interest to practicing lawyers who work in the field of intellectual property law.

The main results of the work can also be applied in the educational process when reading, in particular, training courses on civil law, intellectual property law, contract and tort law.

The degree of reliability and approbation of the research results. The dissertation was completed at the Higher School of Law of the Institute of Public Administration and Management of the Russian Presidential Academy of National Economy and Public Administration, where it was discussed and reviewed[17].

The main points of the work are published in 4 scientific articles in journals included in the List of peer-reviewed publications recommended by the Higher Attestation Commission of the Ministry of Science and Higher Education of the Russian Federation for publishing the results of dissertation research, including in journals included in the List of journals recommended by the RANEPA Academic Council for publishing articles on jurisprudence.

Some provisions of the dissertation were discussed at scientific and practical conferences of various levels: XX-VIII International Scientific and Practical Conference "Interdisciplinary Research: Past experience, present opportunities, future strategies" on the topic "The possibility of free use of trademarks without the permission of the copyright holder".

List of the author's publications.

1) Ligai, V. Y. Problems of collecting compensation for illegal use of a trademark // Bulletin of Arbitration Practice. - 2023. - No. 5. - pp. 72-78[18].

2) Legal nature of compensation for infringement of exclusive rights to trademarks // Law and economics. - 2022. - No. 4. - pp. 48-51.

3) Ligay, V. Y. Compensation as an alternative civil law method of compensation for losses caused by violation of exclusive rights to trademarks // Bulletin of Arbitration Practice. - 2021. - No. 5. - pp. 34-40.

4) Ligay, V. Y. Compensation for violation of exclusive rights to a trademark / / Yurist. - 2020. - No. 5. - pp. 39-44.

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[17] In 2025, due to reorganization, the Department of Higher School of Jurisprudence was included in the structure of the Institute of Law and National Security of the Russian Presidential Academy of National Economy and Public Administration.

[18] The author's last name has been changed. Until 04.06.2026, publications were made under the last name Ligay, the current last name of the author Li.

Structure of the study. The structure of the work is determined by the goals, objectives, and range of problems studied. The dissertation consists of the following structural elements: an introduction, three chapters combining eight paragraphs, a conclusion, and a bibliographic list. The main conclusions of the study are presented in the dissertation in paragraphs.