

RESEARCH ARTICLE

Open Access

PECULIARITIES OF PROTECTION OF RIGHTS TO TRADEMARKS BY CUSTOMS AUTHORITIES IN IMPORT AND EXPORT OPERATIONS IN THE REPUBLIC OF UZBEKISTAN

B.R. Ruziyev

Head of the Department for Legal Protection of Intellectual Property at the
Ministry of Justice of the Republic of Uzbekistan, Second-Class Legal
Adviser, Uzbekistan

Abstract

This article is devoted to highlighting some issues related to the problems of protection of rights to trademarks in import-export operations by customs authorities of the Republic of Uzbekistan and their solutions.

KEYWORDS: Intellectual property, trademark, brand, counterfeit, customs authorities, violation, foreign trade participants, cargo customs declaration, "Customs register of intellectual property objects".

INTRODUCTION

Over the past five years, our country has strengthened its trade and economic relations with economically developed countries. As a result, in 2023, the volume of trade with international partners increased by 23.8%, reaching \$62.6 billion.

These indicators demonstrate the steady growth of our foreign trade performance, which, in turn, contributes to enhancing Uzbekistan's international image, promoting entrepreneurship and business development, expanding production, and creating new jobs. This sets the foundation for Uzbekistan to secure a prominent position among economically and socially developed nations.

However, it is widely known that external economic activities, while attractive, can also lead to negative consequences that may harm human health and well-being, infringe upon citizens' rights, and affect the interests of the state and society. Such situations often arise when dishonest entrepreneurs import counterfeit goods—products that do not meet established standards and have not been inspected for quality, and where intellectual property rights are violated by failing to sign agreements with intellectual property owners or comply with trademark regulations.

For reference: counterfeit products are defined as any unauthorized use of an intellectual property object belonging to the rights holder.

Counterfeit goods frequently involve the misuse of trademarks, which are state-registered distinctive signs representing the names of products or services.

Since counterfeit products are not subject to necessary sanitary and hygiene checks, they not only infringe upon the interests of intellectual property owners but also harm society at large.

It is worth noting that 63% of counterfeit products are manufactured in China, and 4% in Turkey. Both China (\$8 billion) and Turkey (\$1.9 billion) are among Uzbekistan's major trading partners.

Globally, the value of counterfeit products seized and confiscated by customs services ranges from \$200 billion to \$360 billion annually.

Customs services play a crucial role as the primary state agency responsible for preventing the entry of counterfeit products into the country.

It is important to highlight that, before the new Customs Code was adopted on January 20, 2016, the rights to intellectual property objects were regulated by Article 9 of the Customs Code of December 26, 1997. This article allowed for the restriction of the import and export of intellectual property objects into and out of Uzbekistan to safeguard national security, public order, morality, human life and health, environmental protection, and consumer interests. However, this provision was insufficient to fully protect intellectual property rights, as it established only a general norm without specifying clear mechanisms for protection and enforcement.

In the revised Customs Code of the Republic of Uzbekistan, a dedicated chapter is devoted to the protection of intellectual property (IP) rights. This chapter outlines specific procedures and principles for customs authorities to determine which goods are subject to IP rights enforcement, the registration, maintenance, and removal of intellectual property objects from the customs register.

Moreover, amendments and additions to the Customs Code were introduced through Law No. LRU-913, dated February 27, 2024, aimed at strengthening the customs authorities' ability to

enforce IP rights and protect against counterfeit goods during export-import processes.

According to these amendments, customs authorities are now granted the right to monitor and take action regarding IP rights violations on goods not listed in the customs register and without a formal request from the rights holder, under the "ex officio" principle.

The adoption of such legal norms has created favorable conditions for foreign brand owners and major entrepreneurs to introduce their products into the Uzbek market, ensuring their protection from counterfeit goods. This contributes to fostering a healthy trade environment in Uzbekistan, improving the investment climate, introducing innovative technologies, and attracting investment.

The protection of intellectual property objects by customs authorities is carried out in two stages:

1. At the first stage, the rights holders or their authorized representatives register intellectual property objects in the "Customs Register of Intellectual Property Objects" (hereafter referred to as the Register).

For reference: The Register is maintained by the State Customs Committee and serves as software that allows customs officers to monitor and prevent the entry and exit of goods that infringe upon intellectual property rights during customs clearance. Currently, 331 trademarks are registered in the Register.

2. At the second stage, if signs of infringement are detected through a risk analysis system or at the request of the rights holder or their representative for goods listed in the Register, the release of such goods into the import regime is suspended for a period of 10 days. Following a court decision, these goods may either be removed from the territory of Uzbekistan or destroyed.

Additionally, customs authorities are empowered to independently identify and take action against counterfeit products, even if they are not listed in the Register and without a request from the rights holder, under the "ex officio" principle.

In the first nine months of this year, customs

authorities protected intellectual property rights in 9 cases of imported goods (worth \$13.2 billion) under the "ex officio" principle.

It is important to note that, on average, more than 2,000 goods are processed daily under the customs import regime and enter the markets and retail outlets of Uzbekistan.

Despite the ongoing efforts to effectively protect intellectual property rights, the number of protected intellectual property objects remains relatively low in comparison to the volume of goods entering the country's customs territory.

One of the main reasons for this challenge is that customs officers cannot physically inspect every imported product to verify compliance with intellectual property rights by comparing each item with those listed in the Register, due to the high volume of imports. This creates the possibility that counterfeit goods may bypass customs control.

According to Article 189 of the Customs Code of the Republic of Uzbekistan, during customs control, customs authorities apply a risk management system to identify the goods and vehicles that should be inspected, as well as the documents of legal and natural persons, in order to prevent violations of customs legislation. The system is also used to select the forms and scope of customs control to be applied.

The strategy and tactics of applying the risk management system are determined through the collection and processing of information, risk analysis and assessment, and the development of risk management measures.

One of the main advantages of the risk management system is that it automatically selects goods for inspection based on the principle of risk assessment, categorizing items as high-risk or low-risk, and customs officers then conduct inspections accordingly.

The system operates by creating risk profiles based on data analysis within customs authorities, categorizing goods into high risk (red), medium risk (yellow), and low or no risk (green) channels. For instance, if an indivisible product (such as a pipeline) is imported by an importer with no

history of violations, and is being shipped directly from the manufacturing plant, it is automatically classified as low-risk.

Conversely, if a product consists of multiple goods and is imported from a country or manufacturer unrelated to the product, or by an importer not typically associated with such goods (e.g., Italian furniture imported by a food importer from China), it is classified as high-risk.

As noted above, the Register serves as a database that assists customs authorities in monitoring compliance with intellectual property rights.

The Register is a separate software module within the Unified Automated Information System of the Customs Committee and is centrally managed by the main office based on information provided by the rights holders.

The data entered into the system is automatically organized into a registry format and published on the official website of the Customs Committee as publicly accessible information.

The Register contains the following information on intellectual property objects:

- Registration number and date of entry into the register;
- Name (description, characteristics, type);
- Protection number under the Harmonized Commodity Description and Coding System (HS code);
- Information about the rights holder;
- Document number, issuance date, and validity period of the protection certificate;
- Information about the authorized representative of the rights holder;
- Document confirming the powers of the authorized representative, including the issuance date and validity period;
- Period of registration in the Register;
- Reason for removal from the Register;
- Information on counterfeit products.

Since the Register is an open source, participants in foreign economic activity can access it during

customs clearance to verify whether their goods are subject to intellectual property rights or whether they are not counterfeit.

This, in turn, allows participants in foreign economic activity to avoid unintentionally violating the exclusive rights of intellectual property holders when exporting or importing trademarked goods, as well as to prevent the clearance of goods that are deceptively similar.

According to Article 258 of the Customs Code of the Republic of Uzbekistan, the customs cargo declaration is a document submitted to the customs authorities by the declarant or customs broker, containing accurate information about the goods being placed under a specific customs regime.

The customs cargo declaration (CCD) can be submitted either in electronic form or as a written document. The circumstances under which declarations can be submitted in written form, as well as the relevant goods and customs procedures, are determined by the Cabinet of Ministers of the Republic of Uzbekistan. In cases where goods are declared in written form, the written declaration must also be accompanied by an electronic copy.

Currently, CCDs are filled out electronically and entered into the Unified Automated Information System of the Customs Committee.

The process of completing and filing the CCD is governed by the Resolution of the State Customs Committee of the Republic of Uzbekistan, "On Approval of the Instruction on Completing the Customs Cargo Declaration," which was registered with the Ministry of Justice of the Republic of Uzbekistan on April 6, 2016 (registration number No. 2773).

In accordance with this resolution, when goods are placed under export or import customs regimes, information about the declared goods is entered in box 31 of the CCD ("Packages and Description of Goods. Marks, Numbers – Container Numbers – Description of Goods").

Each piece of information begins on a new line and is numbered, with item number 1 indicating the name of the goods (whether trade, commercial, or

traditional), trademarks, brands, models, articles, grades, standards, and other technical and commercial characteristics.

Additionally, the brand and name of the trademark are entered in a designated field (if the goods have no trademark or brand, this is indicated as "no trademark" or "no brand").

Moreover, information about the exporter or consignor is entered in box 2 of the CCD, and information about the importer or consignee is entered in box 8.

Given this structure, it would be logical to establish an automatic control system by comparing the information entered in the CCD with the data from the Register during the customs clearance process.

In this regard, it would be necessary to integrate the "Electronic Customs Clearance" (hereinafter referred to as ECC) software of the State Customs Committee's Unified Automated Information System with the Register, and to establish automatic control through the following algorithm:

- Box 2 of the CCD (Exporter/Consignor) and box 8 (Importer/Consignee) should be cross-checked with the Register's information on the "rights holder and authorized representative" (name and taxpayer identification number).
- Box 31 of the CCD (Packages and Description of Goods, Marks, Numbers – Container Numbers – Description of Goods) should be compared with the Register's information on the "name of the intellectual property object" (description, type, characteristics).

Based on this comparison, when the CCD is filled out electronically and submitted to the ECC system, the system will compare the name of the declared goods in box 31 with the intellectual property object listed in the Register. If they match, but the information in box 2 (Exporter/Consignor) and box 8 (Importer/Consignee) does not align with the "rights holder or authorized representative" in the Register, the system will signal that another entity is using the intellectual property object.

Subsequently, the customs officer can inspect the accompanying documentation for the goods or conduct a physical customs inspection. If an

intellectual property rights violation is detected, appropriate measures can then be taken.

An analysis of the actions undertaken by customs authorities to protect intellectual property rights reveals certain distinctive characteristics of the protection mechanisms in place.

Currently, legal frameworks have been established by customs authorities for the protection of trademarks, a type of intellectual property, and a number of measures have been implemented to safeguard intellectual property rights.

However, the identification of infringements of intellectual property rights, particularly the detection of trademarks that are deceptively similar or identical to the original marks, requires specialized knowledge on the part of customs officers. From this perspective, the introduction of new methods for protecting intellectual property rights, utilizing artificial intelligence, information technology, and automated systems, has become a pressing task.

REFERENCES

1. <https://www.gazeta.uz/oz/2024/01/22/trade/>
2. <https://www.centrattek.ru/novosti/1526/>
3. <https://daryo.uz/k/2024/09/28/ozbekiston-tashqi-savdo-aylanmasidagi-top-10-davlatlar>
4. https://timeseller.ru/news/2015/02/27/s_nachala_goda_v_moskve_arestovali_partiyu_kontrafakta_chasov_na_230 mln_rublej.html
5. <https://lex.uz/docs/2876354>