Supreme Court

REVIEW

of Case Law of the Commercial Cassation Court within the Supreme Court in Cases Concerning the Protection of Intellectual Property Rights in the Context of the Case Law of the Court of Justice of the European Union

35 YEARS
COMMERCIAL JUSTICE:
EXPERIENCE, TRUST, EFFICIENCY

Contents

List of Abbreviations

Berne Convention	– Berne Convention for the Protection of Literary and Artistic Works
WIPO	– World Intellectual Property Organization
SC Grand Chamber	– Grand Chamber of the Supreme Court
Directive EU 2015/2436	– Directive EU 2015/2436 of the European Parliament and of the Council of 16 December 2015 approximating the laws of the Member States relating to trade marks
EUIPO	– European Union Intellectual Property Office
European Patent Convention	– European Patent Convention / Convention on the Grant of European Patents of 5 October 1973
SC CommCC	– Commercial Cassation Court within the Supreme Court
Nice Classification (ICGS)	– International Classification of Goods and Services for the Purposes of the Registration of Marks
OHIM	– Office for Harmonization in the Internal Market (Trade Marks and Designs). Renamed in 2016 to the European Union Intellectual Property Office (EUIPO)
Paris Convention	– Paris Convention for the Protection of Industrial Property of 20 March 1883
Regulation EU 2017/1001	– Regulation EU 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark
Regulation EC 469/2009	– Regulation EC 469/2009 of 6 May 2009 concerning the supplementary protection certificate for medicinal products
CJEU (Court of Justice of the EU)	– Court of Justice of the European Union
Association Agreement	– Association Agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their Member States, of the other part
UANIPIO	- Ukrainian National Office for Intellectual Property and Innovation
CC of Ukraine	- Civil Code of Ukraine

Welcome Address by the President of the Commercial Cassation Court within the Supreme Court Larysa Rohach

For 35 years, the commercial courts of Ukraine have played a key role in ensuring the rule of law in the business environment, contributing to the protection of the rights of entrepreneurs, investors, and citizens. Ukraine possesses strong technological and creative sectors with significant potential for growth and the attraction of foreign investment. However, their development and the creation of added value are impossible without a reliable system of judicial protection of intellectual property and the safeguarding of fair competition.

A professional and effective judiciary that enjoys public trust forms the foundation of a country's economic prosperity at both the national and international levels. A high level of judicial expertise in the fields of intellectual property and antimonopoly law is critically important for fostering innovation and technological progress.

The Judicial Chamber for the Consideration of Cases on the Protection of Intellectual Property Rights, as well as those related to Antimonopoly and Competition Law, of the Commercial Cassation Court within the Supreme Court has already resolved a significant number of complex disputes. Its decisions have substantially influenced the development of the law and the protection of the interests of both individuals and legal entities.

It is important that the judges of the Chamber actively contribute to aligning Ukrainian legislation with European standards, thereby bringing Ukraine closer to integration into EU structures. In addition to administering justice, they continuously work to enhance the qualifications of colleagues from lower courts and court staff. The Chamber's activities, even under extremely challenging conditions, demonstrate its resilience and professionalism. I am confident that the work of the entire system of commercial courts will continue to shape the success story of our state.

Welcome Address by the Secretary of the Judicial Chamber for the Consideration of Cases on the Protection of Intellectual Property Rights, as well as those related to Antimonopoly and Competition Law, of the Commercial Cassation Court within the Supreme Court Ihor Benedysiuk

Thirty-five years of commercial jurisdiction provide an opportunity to assess what has been achieved, focus on current challenges, and reflect on and anticipate the future of the commercial courts and the Judicial Chamber for the Consideration of Cases on the Protection of Intellectual Property Rights, as well as those related to Antimonopoly and Competition Law.

The system of commercial courts continues to evolve, change, and adapt to the demands of the time. Specialization plays an exceptionally important role in ensuring the effective functioning of commercial justice.

Since its inception, the specialised chamber responsible for intellectual property rights, the protection of economic competition and the fight against monopolies has focused on ensuring the consistent application and enforcement of the law, and on establishing important precedents that balance the legal system and promote healthy competition in the interests of both consumers and businesses.

The judges of the Chamber, implementing the provisions of the memorandum concluded between the Supreme Court and WIPO, actively participated in the 2025 Intellectual Property Judges Forum and in training under a specialized program completed by more than 70 judges and experts, including those from local courts. Work is ongoing to ensure access to national court decisions within WIPO LEX Judgments.

In the context of Ukraine's European integration aspirations, we are focused on adapting as effectively as possible to the European legal framework through the adjudication of specific cases, ensuring a high level of human rights protection, participating in the development of acts that implement European Union legislation, and engaging European and international institutions in legal dialogue.

The judges of the Chamber are members of negotiating groups responsible for preparing Ukraine's positions on intellectual property law in the course of negotiations with the European Union regarding Ukraine's accession to the European community.

In connection with the implementation of European Union competition law provisions into Ukrainian legislation, the Supreme Court, jointly with the Antimonopoly Committee of Ukraine, held a conference in June 2025 that served as a platform for expert discussion of current law enforcement issues.

We highly appreciate the European Union's willingness to share its experience, in particular during the participation of the Chamber's judges in the 10th Regional Intellectual Property Seminar for Judges held in Latvia, where the case law of the Supreme Court in trademark protection disputes was also presented.

Discussions on the transformation of the intellectual property sphere in the digital age became an important part of the IP UKRAINE NOW 2025 conference, which also emphasized the role of intellectual property in economic recovery, technological development, and European integration. Within the framework of the annual forum "Intellectual Property: Law, Economy, Technology", key issues concerning the further development of this field were examined.

To continue professional development in 2026, we submitted proposals to engage technical assistance from the European Commission under the TAIEX program.

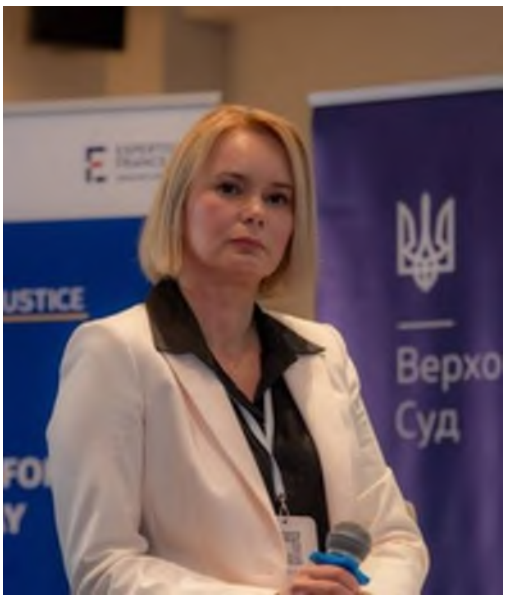
The Judicial Chamber has come a considerable way, marked by both challenges and achievements. I believe that the systematic work and professionalism of the Chamber's judges form the foundation for strengthening the rule of law in Ukraine and allow us to look with optimism toward the future of commercial jurisdiction.

On the Judicial Chamber

The Commercial Cassation instance introduced specialization in disputes related to the protection of intellectual property rights on 23 February 2003, and in disputes related to the application of competition and antimonopoly law on 13 April 2004 – more than twenty years ago.

The need for such specialization is driven by the complexity of these categories of disputes. Judges are required to understand not only the law, but also technical, creative, and economic aspects. These cases concern the investment climate, the development of innovation, and the functioning of the market economy.

The appropriateness of this specialization has been confirmed by amendments to the legislation of Ukraine, on the basis of which, concurrently with the establishment of the Supreme Court in 2017, a chamber was created to adjudicate cases on the protection of intellectual property rights, as well as those related to antimonopoly and competition law, and the functioning of the High Court on Intellectual Property in Ukraine was provided for.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of the Overview of the Case Law of the Commercial Cassation Court within the Supreme Court in Cases Concerning the Protection of Intellectual Property Rights in the Context of the Case Law of the Court of Justice of the European Union*, prepared by the Commercial Cassation Court within the Supreme Court*

General characteristics of the publication. The Overview *of the Case Law of the Commercial Cassation Court within the Supreme Court in Cases Concerning the Protection of Intellectual Property Rights in the Context of the Case Law of the Court of Justice of the European Union* (hereinafter – the Overview) is an applied analytical and summarising publication of an auxiliary, guidance-oriented and methodological nature. Its value lies in the systematisation of selected legal positions of the Supreme Court in intellectual property cases and in demonstrating how the case law of the Court of Justice of the European Union may be used as an interpretative reference point for the application of national legislation. The Overview combines Ukrainian judicial material with relevant European approaches, which is particularly important in the context of the harmonisation of Ukrainian law with EU law. The publication itself emphasises that the case law of the EU Court of Justice may contribute to the correct interpretation of national provisions harmonised with EU law, as well as to ensuring consistency of judicial practice. Therefore, the Overview is of practical interest to judges, staff members of the IP Office, patent attorneys, attorneys-at-law, scholars and applicants.

The relevance of preparing the Overview is determined by a combination of European integration, law-enforcement and institutional factors. The publication was prepared at a time of active approximation of Ukrainian intellectual property legislation to the EU acquis, when national courts are increasingly required to interpret Ukrainian legal provisions in the light of EU directives, regulations and the case law of the Court of Justice of the European Union. The introduction to the Overview rightly notes that the issues arising in intellectual property disputes have become significantly more complex in recent years, in particular due to the intensification of European integration legislative processes. Therefore, for judicial practice it is important not only to apply national law, but also to view it in conjunction with EU law, which contributes to the consistency of case law and predictability of law enforcement.

The relevance of the Overview is further reinforced by the institutional cooperation between the Supreme Court and WIPO, in particular in relation to consistency of training of judges, WIPO Lex-Judgments, and the development of the *Intellectual Property Benchbook for Ukraine*.

The purpose of the Overview is to provide practical guidance on case law concerning the protection of intellectual property rights, taking into account the relevant approaches of European Union law. The subject matter of the Overview consists of selected legal positions of the Commercial Cassation Court within the Supreme Court and the corresponding approaches of the Court of Justice and the General Court of the

European Union in cases concerning trade marks and supplementary protection certificates. This approach makes it possible to correlate national judicial material with European standards of interpretation. Functionally, the Overview has educational, methodological, law-enforcement and European integration significance, as it assists courts and the legal community in exercising current approaches to the resolution of intellectual property disputes. Its target audience includes judges, legal practitioners, patent attorneys, UANIPIO examiners and members of the UANIPIO Appeals Chamber, scholars, lecturers, applicants and businesses.

The Overview has a coherent subject-matter structure, which corresponds to its applied, analytical and summarising purpose. The main body of the document is devoted to disputes concerning trade marks, in particular issues relating to the registration of a colour as a trade mark, signs which have become customary or generic, well-known trade marks, the legal consequences of their recognition, as well as the early termination of a trade mark registration on grounds of non-use. A separate section is devoted to patent disputes, namely supplementary protection for pharmaceutical inventions. This structure is logical, as it makes possible to combine an analysis of the most relevant categories of trade mark disputes with a patent-related block that is of significant importance for the pharmaceutical sector, innovation policy and Ukraine's fulfilment of its European integration commitments. The subject-matter approach to the structure of the Overview also facilitates its practical use.

In general, the Overview provides appropriate coverage of the selected subject matter, taking into account its reference-oriented and applied nature. It should be positively noted that the publication is not limited to a single category of disputes, but systematises various types of cases.

The source base of the Overview covers relevant acts of EU law, in particular Directive (EU) 2015/2436, Regulation (EU) 2017/1001 and Regulation (EU) No 469/2009, as well as examples from the case law of the Supreme Court. This allows to demonstrate the relevance of the case law of the EU Court of Justice for understanding the essential function of a trade mark, the criteria of distinctive character, good faith, non-use of a trade mark, and the mechanism of supplementary patent protection. Such an approach gives the Overview not only informational, but also methodological value for the law enforcement.

The methodology of the Overview is based on a combination of comparative law and case approaches. The document is based on a comparison between the legal positions of the Commercial Cassation Court within the Supreme Court and the relevant case law of the Court of Justice of the European Union, which makes it possible to assess Ukrainian law application in the broader context of European standards of interpretation. An important methodological feature is the applied sequence of presentation: first, the national and European legal framework of the relevant issue is outlined; then the approaches of the EU Court of Justice are presented; and thereafter a specific case of the Supreme Court is analysed.

A methodological advantage of the Overview is its case-based format: the European legal standard is not presented in abstract terms, but is correlated with a specific category of Ukrainian disputes and a corresponding judgment of the Supreme Court. It is precisely this combination of Ukrainian case law with EU law that gives the Overview practical value for courts and the professional community.

One of the key advantages of the Overview is that it correctly proceeds from the significance of the case law of the Court of Justice of the European Union as an important interpretative reference point for Ukrainian courts in intellectual property cases. This approach is particularly justified in those areas where Ukrainian national legislation is being harmonised with EU law or must be interpreted in the light of the relevant directives, regulations and standards of European law application.

The Overview does not substitute EU law for national law, but demonstrates how the case law of the Court of Justice of the European Union may assist in the proper understanding of the content of harmonised provisions, the functions of intellectual property rights and the limits of their judicial protection.

In the section concerning the registration of a colour as a trade mark, the Overview correctly emphasises the high evidentiary requirements for establishing the distinctive character of a colour per se. The practical significance of this approach lies in the fact that the applicant must prove not merely the general recognisability of a certain decorative design or brand, but the perception by the relevant public of the specific colour itself, without additional word or figurative elements, as an indicator of the commercial origin of the goods or services. Such approach corresponds to the essential function of a trade mark – to guarantee to the consumer the origin of the goods or services and to distinguish them from the goods or services of others.

The section concerning common or generic signs is also important. Its practical value lies in the possibility of distinguishing between two different legal situations: first, where a sign was already in general usage for the relevant type of goods or services on the filing date of the application; and second, where a registered trade mark, after registration and as a result of actions or inactions of the proprietor, has become the common name for a product or service. This distinction is of substantial importance, since the first situation concerns the conditions for the grant of legal protection and the potential invalidity of the registration, whereas the second relates to the termination of rights in an already registered trade mark. A clear distinction between these legal constructs is therefore of methodological significance for courts and parties to disputes.

The Overview also rightly addresses well-known trade marks. Emphasising the legal significance of recognising a trade mark as well known, the limits of such recognition and the consequences for persons who were not parties to the relevant case is important for the formation of predictable practice. Of particular value is the reference to the approaches of the Supreme Court according to which the recognition of a trade mark as well known in a specific judicial dispute must be assessed in connection with the protection of the right against a specific infringement and should not automatically

extend to persons who did not participate in the proceedings. This approach contributes to a proper balance between the protection of the rights of the proprietor of a well-known mark and the procedural safeguards of other market participants.

The inclusion in the Overview of a section concerning the early termination of a trade mark registration on grounds of non-use is of practical significance. In this context, it is important that the Overview draws attention to the criteria for genuine use of a trade mark, the allocation of the burden of proof, and the need to assess use in relation to the specific goods or services for which the mark is registered. It should be separately noted as positive that, under the approach reflected in the Overview, courts must examine evidence of use of the contested trade mark, assess whether such use is relevant in respect of each specific good or service concerned, and avoid any de facto reversal of the burden of proof. This is of special importance for ensuring procedural equality between the parties and for the proper application of the legal mechanism of termination of a trade mark based on non-use.

The separate patent-related section concerning supplementary protection for pharmaceutical inventions is of substantial importance in view of the reform of Ukrainian patent legislation, the pharmaceutical sector and Ukraine's European integration commitments. The Overview correctly links this subject matter to the Article 220 of the Association Agreement and notes that the Law of Ukraine "On the Protection of Rights to Inventions and Utility Models" was supplemented by the Article 27-1 on supplementary protection, whereas under EU law the supplementary protection certificate for medicinal products is governed by Regulation (EU) No 469/2009. Such approach provides the possibility to consider the national model of supplementary protection not as an exception, but in the context of the European legal framework for supplementary protection certificates, its objectives and limits of application.

Generally, the legal approaches underlying the Overview are methodologically sound: the case law of the EU Court of Justice is used not as a mechanical source for resolving Ukrainian disputes, but as an instrument of interpretation, comparison and development of law-application reasoning. This is precisely what gives the Overview significant practical value for judges, UANIPIO examiners, patent attorneys, attorneys-at-law, scholars, applicants and businesses. At the same time, in order to further improve the quality of the publication, it would be advisable to maintain clarity in distinguishing between the Court of Justice of the European Union in the narrow sense and the General Court of the European Union, as well as in differentiating between distinct legal regimes – declaration of invalidity, termination, acquired distinctive character, well-known marks and marks with reputation. These clarifications are editorial and methodological in nature and do not alter the overall positive assessment of the Overview as an important instrument for the Europeanisation of Ukrainian judicial practice in the field of intellectual property.

Since the Overview is not an academic monograph, its significance should be assessed primarily in terms of its doctrinal and methodological value. The Overview is not limited to a mere summary of court decisions; rather, it provides a broader context

for understanding them through the standards of European Union law, thereby contributing to the development of a Europeanised methodology for interpreting Ukrainian intellectual property law. Its value lies in the systematic correlation of the legal positions of the Supreme Court with the case law of the Court of Justice of the European Union, demonstrating the gradual convergence of Ukrainian law application with European approaches. The Overview may be used as methodological material for the training of judges, legal practitioners, patent attorneys and staff members of UANIPIO, as well as in the teaching of intellectual property law and EU law.

The practical significance of the Overview lies in the fact that it may serve as a working reference point for various participants in the system of protection and enforcement of intellectual property rights. For judges, the Overview is a useful source for interpreting national intellectual property legislation in the light of European Union law and the case law of the EU Court of Justice.

For UANIPIO, the Overview is of interest as a source for aligning administrative practice with the approaches of the courts, in particular in matters concerning the distinctive character of signs, well-known trade marks, non-use of a trade mark and supplementary protection for pharmaceutical inventions. For patent attorneys and attorneys-at-law, the publication may be used as practical material for developing legal arguments, assessing evidence, determining procedural strategy and assessing litigation risks.

For applicants and businesses, the Overview has applied value as an instrument for understanding risks in the field of the registration, use and protection of trade marks, as well as in matters concerning patent protection for pharmaceutical products.

For scholars and lecturers, it may serve as teaching material in courses on intellectual property law, European law and case law. This cross-professional nature of the Overview reinforces its significance as a methodological document that combines judicial practice, administrative law enforcement and European standards of legal interpretation.

The Overview has clearly positive practical significance; at the same time, certain provisions may be subject to further methodological clarification. In particular, in the patent-related section, it would be advisable to draw a clearer distinction between cases where the case law of the EU Court of Justice concerning Regulation (EU) No 469/2009 is relevant for the interpretation of the concepts of “product”, “first placing on the market”, “scope of protection” and the conditions for the grant of a supplementary protection certificate, and situations where the conclusion of the Supreme Court is based primarily on national principles governing the operation of law in time. In this respect, the caveat already included in the Overview is appropriate, namely that case No. 910/12688/24 is based primarily on the constitutional principle of non-retroactivity of laws and Article 5 of the Civil Code of Ukraine, rather than on the direct application of the tests developed by the Court of Justice of the European Union under Article 3 of Regulation (EU) No 469/2009. Such a clarification would strengthen the analytical precision of the Overview.

The *Overview of the Case Law of the Commercial Cassation Court within the Supreme Court in Cases Concerning the Protection of Intellectual Property Rights in the Context of the Case Law of the Court of Justice of the European Union* is a timely, practically significant and methodologically useful publication. Its value lies in combining the analysis of the legal positions of the Supreme Court with relevant approaches of European Union law, which is of particular importance in the context of Ukraine's European integration and the further harmonisation of national intellectual property legislation.

The Overview may be recommended for use by judges, staff members of public authorities, intellectual property professionals, patent attorneys, attorneys-at-law, scholars and lecturers as auxiliary analytical material for understanding contemporary approaches to the enforcement and protection of intellectual property rights in Ukraine in the light of the case law of the Court of Justice of the European Union.

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Introduction

The field of intellectual property is one of the most dynamic areas of law, constantly facing new challenges. An analysis of the categories of cases considered by the Supreme Court shows that over the past few years, the issues involved have become significantly more complex. Substantial changes have occurred in the legal regulation, primarily due to the intensification of Ukraine's European integration legislative processes.

Legislative innovations accumulated in recent years have found concrete expression in court decisions.

The Association Agreement provides that the case law of the Court of Justice of the European Union must be taken into account in the process of adapting legislation, as well as for the purpose of interpreting the provisions of the Agreement itself. At the same time, decisions of the Court of Justice of the EU may serve as a guideline in resolving issues of application of national legislation.

Decisions of the Court of Justice of the EU form a body of case law that interprets the provisions of European directives and regulations. These decisions constitute a generalized interpretation of the norms, which reduces the risk of inconsistencies in judicial practice.

By taking such decisions into account, the court can correctly interpret national norms that are being harmonized with European Union law.

By virtue of the clear criteria set out in the precedents, judges can avoid contradictory interpretations of norms, which is particularly important in complex disputes concerning intellectual property, competition, copyright and related rights. This helps ensure the uniformity of case law and increases confidence in the national justice system.

At the same time, familiarization with the approaches to resolving legal issues applied in the decisions of the Court of Justice of the EU contributes to raising the professional level of judges and the development of a legal culture in national judicial practice oriented towards EU standards. Thus, the case law of the EU not only promotes the harmonization of Ukrainian legislation with European law, but also serves as a reliable guideline in resolving new and complex legal situations arising in the process of European integration reforms.

In order to enhance the qualifications of judges and implement international judicial experience into the practice of dispute resolution in Ukraine, the Supreme Court signed a Memorandum of Understanding with the World Intellectual Property Organization, providing for the implementation of a continuous education program on intellectual property issues for the judiciary of Ukraine, as well as the inclusion of court decisions in the global WIPO Lex-Judgments database.

This memorandum is also implemented through the development of an Intellectual Property Benchbook for Ukraine. The decision to create such a benchbook arose as a result of discussions held during the inaugural session of the WIPO seminar on the

adjudication of intellectual property cases for representatives of the Ukrainian judicial system.

We offer an overview of selected examples of law enforcement in disputes related to intellectual property, in the context of the Court of Justice of the European Union case law.

1. Trade Marks

1.1. Issues Concerning the Registration of a Trade Mark Consisting Exclusively of a Colour

The Law of Ukraine "On Protection of Rights to Marks for Goods and Services" (Part 2 of Article 5) provides that any designation or any combination of designations, in particular colours (a single colour or a combination of colours), may constitute a trade mark. Under this Law, designations that do not inherently possess distinctive character and have not acquired such character through use shall not be eligible for legal protection (p. 2 Art. 6).

This provision of Ukrainian legislation corresponds to the EU acts in the field of trade mark protection — Regulation EU 2017/1001[1] and Directive EU 2015/2436[2] on the approximation of the laws of the Member States relating to trade marks.

In its case law, the Court of Justice of the European Union sets high requirements for proving distinctive character in order to grant legal protection to colours as trade marks.

In the landmark case C-104/01 Libertel Groep BV v Benelux-Merkenbureau,[3] the Court of Justice of the European Union examined whether a colour per se could possess distinctive character and qualify as a trade mark. In particular, the Court noted that, in the case of a colour per se, distinctive character without any prior use is inconceivable, except in exceptional circumstances, and especially where the number of goods or services for which the mark is claimed is very limited and the relevant market is very specific. However, even if a colour per se initially lacks any distinctive character, it may acquire such character in relation to the goods or services for which it is claimed following its use. This distinctive character may be acquired, inter alia, through the usual process of familiarization of the relevant public. In such cases, the competent authority must carry out an overall assessment of the evidence that the mark has come to identify the relevant product as originating from a particular undertaking,

thereby distinguishing it from the goods of other undertakings. In conclusion, in response to the questions referred, the Court held that a colour per se, without spatial limitations, may have a distinctive ability in relation to certain goods and services provided that, inter alia, it can be represented in a clear, precise, self-contained, easily accessible, intelligible, durable and objective manner. The latter condition cannot be satisfied merely by reproducing the colour on paper; it can be satisfied by designating the colour using an internationally recognized identification code. When assessing the potential distinctive character of a particular colour as a trade mark, account must be taken of the general interest in not unduly restricting the availability of colours for other traders offering goods or services of the same type as those in respect of which registration is sought. A colour per se may be recognized as having distinctive character if, from the perspective of the relevant public, the sign is capable of identifying the product or service for which registration is sought as originating from a particular undertaking and distinguishing it from the products or services of other undertakings. The fact that the registration of a colour as a trade mark is sought for a wide range of goods or services, or for a specific product or service, or for a specific group of goods or services, is relevant, together with all other circumstances of the particular case, in assessing both the distinctive character of the colour for which registration is sought and whether its registration would be contrary to the general interest in not unduly restricting the availability of colours to other operators offering for sale goods or services of the same type as those for which registration is sought.

When assessing whether a trade mark has distinctive character, the competent trade mark registration authority must conduct an examination taking into account the actual situation, considering all the circumstances of the case and, in particular, any use of the mark. Similar findings are set out in the judgments of the Court of Justice of the EU and the General Court of 11 June 2025 in Case T-38/24 OMV AG v EUIPO[4], of 24 June 2004 in Case C-49/02 Heidelberger Bauchemie GmbH[5], of 27 September 2018 in Case T-595/17 Demp v EUIPO[6] (combination of yellow and grey colours), and others.

The panel of judges of the SC CommCC followed similar reasoning when adopting its resolution of 20 August 2024 in case No. 910/13105/21.

In case No. 910/13105/21, Wizz Air Hungary Zrt. applied to the UANIPIO for the registration of a specific shade of pink colour as a trade mark for the services in Class 39 of the Nice Classification indicated in the application.

Following the conclusion of the qualification examination, which acquired the status of a decision, and the subsequent decision of the UANIPIO Appeals Chamber issued upon consideration of the company's objection, registration of the trade mark was refused. The refusal was based on the grounds that the materials submitted did not prove that the claimed colour per se had acquired distinctive character in relation to the applicant's services.

Disagreeing with these decisions, the company applied to the commercial court to declare them invalid. The local commercial court granted the claim. The court of appeal cancelled the decision and issued a ruling dismissing the claim.

The panel of judges of the Commercial Cassation Court of the Supreme Court reviewed the appealed ruling of the appellate court within the limits of the arguments and cassation appeal grounds put forward by the company, which served as the basis for opening cassation proceedings.

In assessing the conclusions of the previous court instances, which in turn were based on the results of the expert examinations available in the case file, the SC CommCC, in particular, noted the following.

When a colour is submitted for registration as a sign, it is mandatory to determine whether the designation in the form of a colour has acquired distinctive character when applied to the goods or services claimed. The decisive criterion for this assessment is the test of whether the claimed colour performs the essential function of a trade mark, enabling the consumer, without any likelihood of confusion, to distinguish the goods or services of one producer from those of another. Consumers must unambiguously perceive the colour itself (without any additional graphic or verbal elements) as a sign for the specific goods or services in question. Therefore, the registration of a colour as a sign requires convincing evidence of acquired distinctive character of that colour alone for the goods or services claimed.

The full text of the resolution of the Commercial Cassation Court of the Supreme Court dated 20 August 2024 in case No. 910/13105/21 is available at the following link: *https://reyestr.court.gov.ua/Review/121174235*

1.2. Invalidation of a trademark certificate consisting of a designation that is commonly used for the relevant type of goods

Pursuant to paragraph 2 of Article 6 of the Law of Ukraine "On the Protection of Rights to Marks for Goods and Services", signs that have become generic within the meaning of this Law shall not be eligible for legal protection, except where they have acquired distinctive character as a result of their use prior to the filing date of the application.

Article 18 of the said Law provides that the validity of a certificate shall be terminated by a court decision if the trade mark has

become a generic designation for certain goods or services after the date of publication of the information on the issuance of the certificate.

According to Article 20 of Directive EU 2015/2436, a trade mark shall be liable to revocation if, after the date of its registration:

(a) as a result of acts or omissions of the proprietor, it has become, in the course of trade, the common name for the goods or services in respect of which it is registered.

In the case-law of the Court of Justice of the European Union, the starting point is whether the sign is capable of performing the essential function of a trade mark, namely, identifying the commercial origin of the goods or services. For the purposes of the absolute ground provided for in Article 7(1)(d) of Regulation EU 2017/1001, it is assessed whether the sign has become customary in the current language or in the bona fide and established practices of the trade for the goods or services concerned. For revocation under Article 58(1)(b) of Regulation EU 2017/1001, it must additionally be established that the transformation of the trade mark into a common name occurred as a result of acts or omissions of the proprietor.

In paragraph 49 of the judgment in Case T-322/03 Telefon & Buch Verlagsgesellschaft mbH v OHIM – Herold Business Data (WEISSE SEITEN)[7] of the General Court, it is stated that Article 7(1)(d) of Regulation EU 40/94 [the content of which has been retained in Regulation EU 2017/1001] must be interpreted as precluding registration of a trade mark only where the signs or indications of which the mark consists exclusively have become customary in the current language or in the bona fide and established practices of the trade for designating the goods or services in respect of which registration of that mark is sought (see, by analogy, Case C-517/99 Merz & Krell [2001] ECR I-6959, paragraph 31, and Case T-237/01 Alcon v OHIM – Dr. Robert Winzer Pharma (BSS) [2003] ECR II-411, paragraph 37). Accordingly, whether a sign is generic can be assessed, first, by reference to the goods or services in respect of which registration is sought, even if the relevant provision does not expressly refer to those goods or services, and, second, on the basis of the perception of the mark by relevant circle of consumers.

In paragraph 47 of its judgment of 12 November 2002 in Case C-206/01 Arsenal Football Club plc v Matthew Reed,[8] the Court of Justice of the EU noted that trade mark rights constitute an essential element in the system of undistorted competition which

the Treaty [Treaty establishing the European Community] seeks to establish and maintain. In such a system, undertakings must be able to attract and retain customers by virtue of the quality of their goods or services, which is possible only through distinctive signs enabling their identification (see, in particular, Case C-10/89 HAG GF [1990] ECR I-3711, paragraph 13, and Case C-517/99 Merz & Krell [2001] ECR I-6959, paragraph 21). The Court also defined the essential function of a trade mark as guaranteeing to the consumer or end-user the identity of the origin of the marked goods or services, thereby enabling him, without any possibility of confusion, to distinguish those goods or services from others which have a different origin. In order for a trade mark to be able to fulfil its essential role in the system of undistorted competition which the Treaty seeks to establish and maintain, it must offer a guarantee that all the goods or services bearing it have been manufactured or supplied under the control of a single undertaking which is responsible for their quality (see, in particular, Case 102/77 Hoffmann-La Roche [1978] ECR 1139, paragraph 7, and Case C-299/99 Philips [2002] ECR I-0000, paragraph 30).

Case C-371/02 Björnekulla Fruktindustrier AB v Procordia Food AB[9] concerns the interpretation of Article 12(2)(a) of Directive 89/104 [currently Article 20(a) of Directive 2015/2436]. The Court stated that, in assessing whether a trade mark has become a common name in the trade, account must be taken of the perception of consumers or end users and, depending on the characteristics of the market, also of the perception of traders who commercially deal with the goods in question.

In the case C-409/12 Backaldrin Österreich The Kornspitz Company GmbH v Pfahnl Backmittel GmbH[10], the Court observed that Article 12(2)(a) of Directive 2008/95 concerns situations in which a trade mark is no longer capable of functioning as an indication of origin. If final consumers perceive the sign as a generic name for the goods, this may constitute grounds for the revocation of rights, even if traders are aware that it is a registered trade mark. The proprietor's failure to act may include a failure to take measures to encourage traders to use the sign specifically as a trade mark. It is not necessary to establish whether alternative names for the goods exist if the sign has already become a generic name.

Case T-246/20[11] concerns invalidity proceedings relating to the EU trade mark "SPINNING" on the grounds that it has become a

common name in the trade. The Court formulated two cumulative criteria: first, that the trade mark has become a common name in the trade for the goods or services for which it is registered; and second, that such transformation is the result of acts or omissions of the proprietor.
Similar conclusions are reflected in the resolution of the Commercial Cassation Court of the Supreme Court dated 6 May 2025 in case No. 910/16093/18.

In case No. 910/16093/18, the Company (a legal entity established under the laws of the Republic of Latvia) filed a lawsuit seeking to invalidate the trade mark certificates for «ПРОМЕДОЛ-ЗН» and «PROMEDOL ПРОМЕДОЛ», owned by the Company, and to oblige the UANIPIO to take appropriate actions.

The claim was filed in respect of trade marks registered for a pharmaceutical preparation that has been manufactured for a long time by various producers and is widely used in medical practice. The claimant argued that these trade marks did not meet the conditions for legal protection, as they consisted exclusively of designations that are generic for goods of a particular type and of commonly used terms.

The commercial court of first instance upheld the claim. The appellate commercial court reversed the decision of the court of first instance and adopted a new decision dismissing the claim.

The Commercial Cassation Court of the Supreme Court, upholding the decision of the court of first instance and resolving the key issue of whether the designation “Promedol”, protected by the disputed certificates and used for pharmaceutical preparations, is generic, noted, inter alia, the following.

The appellate court, when ordering a repeated expert examination, failed to state the reasons and justification as required by Article 107 of the Commercial Procedure Code of Ukraine. In adopting the contested ruling, it limited itself to examining certain evidence (expert conclusions) and disregarded the arguments that the medicinal product “Promedol” is manufactured by a number of producers from different countries and whether the said designation is generic.

The content of a trade mark must have an independent and arbitrary character in relation to the object being marked. It must be perceived as a fanciful symbol that does not reflect the commodity nature of the products, i.e., their inherent qualities and properties. Only in this case can a trade mark perform its distinctive function and distinguish the product from a multitude of similar goods that possess the same consumer qualities.

The court of first instance established that the medicinal product “Promedol” had been manufactured for a long time by a number of producers from different countries prior to the registration of the trade marks by both the claimant and the respondent.

The claim was brought on the grounds that the designation “Promedol” is a generic name for goods of this type and quality. This is evidenced, in particular, by a number of

resolutions of the Cabinet of Ministers of Ukraine concerning the procurement of the preparation for the needs of military units and other documents.

Thus, the registration of such a designation as a trade mark in favour of a particular person, without indicating in the trade mark a specific manufacturer in a way that allows it to be recognized and identified, effectively monopolizes the name of the medicinal product for one of its manufacturers and, therefore, does not perform the function of a trade mark.

The full text of the resolution of the Commercial Cassation Court of the Supreme Court dated 6 May 2025 in case No. 910/16093/18 is available at the following link: *https://reyestr.court.gov.ua/Review/127249567.*

1.3. Recognition of a Trade Mark as a Well-Known Mark and Issues Related to Its Functioning

The provisions of Part 3 of Article 6 of the Law of Ukraine "On the Protection of Rights to Marks for Goods and Services" prohibit the registration as trademarks of signs that are identical or similar to such an extent that they may be confused with, in particular, or associated with:

trademarks previously registered or applied for registration in Ukraine in the name of another person for the same or related goods and services;

trademarks of other persons, if such trademarks are protected without registration in the territory of Ukraine on the basis of international treaties of Ukraine, in particular trademarks recognized as well-known in accordance with Article 6bis of the Paris Convention, for the same or related goods and services.

At the same time, a special provision regarding the protection of well-known trademarks is Article 25 of this Law. It provides for the recognition of a trademark as well-known by the Appeals Chamber or a court, regardless of whether it is registered in Ukraine, and determines indicative factors for assessing the well-known status.

It is necessary to distinguish well-known marks from marks with a reputation under Article 8(5) EUTMR, since these are different legal constructs. Although there is a certain overlap between them, they are not identical.

In EU law, Article 8(2)(c) of Regulation (EU) 2017/1001 establishes a trademark protection regime similar to that applicable to well-known marks under Article 6bis of the Paris Convention, while Article 8(5) of that Regulation provides enhanced protection for earlier trademarks with reputation, which have extended protection regardless of whether the goods or services are identical, similar, or dissimilar, where the use of the

later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or reputation of the earlier mark.

It is necessary to distinguish well-known marks from marks with reputation under Article 8(5) EUTMR, since these are different legal constructs. Although there is a certain overlap between them, they are not identical.

This distinction is important in the context that Part 3 of Article 6 of the Law of Ukraine "On the Protection of Rights to Marks for Goods and Services" also applies to unrelated goods and services if the use of such a sign would indicate a connection with the owner of the well-known mark and could harm the owner's interests. In EU law, a similar approach regarding unrelated goods is closer not to Article 8(2)(c), but to Article 8(5) of Regulation (EU) 2017/1001 and Article 5(3)(a) of Directive (EU) 2015/2436.

The provision analogous to Article 8(2)(c) of Regulation (EU) 2017/1001 in Directive (EU) 2015/2436 is Article 5(2)(d), according to which earlier trade marks include those which, on the filing date or priority date, are well known in the Member State concerned within the meaning of Article 6bis of the Paris Convention.

Protection in relation to unrelated goods and services is governed by Article 5(3)(a) of Directive (EU) 2015/2436.

Under Regulation (EU) 2017/1001, a well-known trade mark within the meaning of Article 6bis of the Paris Convention is considered an earlier trade mark pursuant to Article 8(2)(c). This provision may serve as grounds for refusal of registration or for invalidation of an EU trade mark if the conditions set out in Article 8(1)(a) or Article 8(1)(b) are met, in particular the existence of identity or similarity between the signs and the goods or services and, where appropriate, the likelihood of confusion, for example, in the following judgments: judgment of 10 November 2025 in case C/2025/5804 Duca di Salaparuta SpA v Ministero dell'Agricoltura[12]; judgment of 3 May 2018 in case T-2/17 J-M.-E.V. e hijos, SRL v European Union Intellectual Property Office[13]; judgment of 22 November 2007 in case C-328/06 Alfredo Nieto Nuño v Leonci Monlleó Franquet[14]; judgment of 25 May 2005 in case T-288/03 TeleTech Holdings, Inc. v European Union Intellectual Property Office[15].

At the same time, the Supreme Court, in its resolution of 17 April 2024 in case No. 910/1388/20 concerning the recognition of a trade mark as well known and the invalidation of the certificate

for a conflicting trade mark, referred to the substance of the judgment of the Court of Justice of the European Union of 22 September 2011 in case C-482/09 Budějovický Budvar, národní podnik v Anheuser-Busch Inc.[16], which contains an interpretation of the doctrine of acquiescence, in order to illustrate the legal significance that the good faith of the registration of a conflicting sign may have in limiting the scope of protection afforded to the proprietor of a well-known trade mark.
That doctrine is reflected in Article 9, "Limitation in Consequence of Acquiescence", of Directive (EU) 2015/2436. However, as noted by the Supreme Court in its resolution, Ukrainian legislation does not contain an equivalent provision.

1.3.1. Recognition of a trademark as well-known as a prerequisite for the protection of rights and the importance of good faith in subsequent registration

In case No. 910/13988/20, the Pharmaceutical Company brought an action in which it sought recognition of the designation "Citramon" as a well-known trade mark in Ukraine as of 1 January 1997 in respect of Class 5 goods of the Nice Classification, namely pharmaceutical preparations, in the name of the claimant; invalidation in full of the Ukrainian certificate for the trade mark "Citramon," the proprietor of which is the Company (application dated 24 February 1997), on the grounds that it is confusingly similar to the claimant's trade mark recognised as well known as of 1 January 1997 in respect of identical goods; and an order requiring the UANIPIO to take the appropriate actions.

The court of first instance allowed the claim. The court of appeal upheld that decision.

The SC CommCC referred the case to the Grand Chamber of the Supreme Court, as the case raised an exceptional legal issue whose resolution was necessary to ensure the development of the law and the consistency of judicial practice.

The Grand Chamber of the Supreme Court adopted a resolution based, inter alia, on the following conclusions:

- recognition of a trade mark as well-known by the Appeals Chamber or by a court does not constitute a means of acquiring rights in a trade mark. These procedures also have different legal significance;
- the examination by the Appeals Chamber of applications for recognition of a trade mark as well-known in Ukraine is not aimed at protecting the rights of the proprietor against infringements by another person. Rather, a decision of the Appeals Chamber, being binding on the Ukrainian National Office for Intellectual Property and Innovations (Ukrpatent), serves as an instrument for safeguarding the rights of the proprietor of a well-known trade mark (as it has legal effect in relations with Ukrpatent) and does not constitute a means of acquiring rights in the mark;

- recognition of a trade mark as well-known by a commercial court is carried out for the purpose of protecting the rights in that mark and therefore has a different legal significance. It cannot be regarded as an alternative to recognition of a trade mark as well-known by a decision of the Appeals Chamber.
- recognition of a trade mark as well-known as of a particular date constitutes the establishment of a legal fact which, in adversarial proceedings conducted by way of an action, is necessary for the claim to be upheld against a specific infringer. Such recognition does not have binding effect on persons who are not parties to the proceedings;
- in view of the foregoing, the lower courts reached erroneous conclusions as to the existence of grounds for allowing the claim seeking recognition of the designation "Information_2" as a well-known trade mark in Ukraine as of 1 January 1997 in respect of Class 5 goods of the Nice Classification, namely pharmaceutical preparations, in the name of the claimant as a separate claim. Such a claim cannot be allowed as a stand-alone claim in contentious proceedings, since it is not aimed at protecting an intellectual property right against a specific infringement but rather constitutes a prerequisite for the granting of such protection. Accordingly, that claim must be dismissed;
- in the absence of bad faith in the registration of a trade mark by another person, a claim by the proprietor of a well-known trade mark seeking cancellation (invalidation) of the certificate (registration) of that person's trade mark may be allowed within the general limitation period, which may not be less than five years from the date of registration of the trade mark.

Obiter dictum, not as a source of law but rather to illustrate the legal significance that the good faith of the registration of a conflicting sign may have in limiting the scope of protection afforded to the proprietor of a well-known trade mark, the Grand Chamber of the Supreme Court referred to the case law of the Court of Justice of the European Union, which, in its judgment of 22 September 2011 in case C-482/09, interpreted the doctrine of acquiescence under European Union law, as set out in Article 9(1) of Directive 2008/95/EC[1], to the effect that where the proprietor of an earlier trade mark has knowingly acquiesced, for a period of five consecutive years, in the use of a later trade mark registered in the same Member State, that proprietor is no longer entitled, on the basis of the earlier trade mark, to seek a declaration of invalidity of the later trade mark or to oppose its use, unless the later trade mark was registered in bad faith.

According to the findings of the Court of Justice of the EU, in circumstances such as those in the present proceedings, "the prolonged period of honest concurrent use of two identical trade marks in relation to identical products has not had, and cannot have, an adverse effect on the essential function of a trade mark, which is to guarantee to consumers the origin of the goods or services" (paragraph 82 of the judgment). "It should be added that, if in the future any dishonesty were to be associated with the use of the Budweiser trade marks, such a situation could, if necessary, be assessed in the light of the rules relating to unfair competition" (paragraph 83 of the judgment).

[1] The doctrine of acquiescence is laid down in Article 9(1) of Directive EU 2015/2436

According to the findings of the CJEU, the four conditions for the commencement of the five-year period under Article 9(1) of the Directive are as follows: 1) registration of the later trade mark in a Member State (the registration of the earlier trade mark, that is, the mark whose proprietor seeks protection, is not a condition for the commencement of that period); 2) filing of the application for registration of the later trade mark in good faith; 3) use of the later trade mark by its proprietor in the Member State concerned; 4) awareness on the part of the proprietor of the earlier trade mark that the later trade mark has been registered and used following its registration.

The full text of the resolution of the Grand Chamber of the Supreme Court of 17 April 2024 in case No. 910/13988/20 is available at the following link: *https://reyestr.court.gov.ua/Review/118601114*.

1.3.2. Consequences of the Recognition of a Trade Mark as Well Known for Persons Who Are Not Parties to the Proceedings

In case No. 910/6518/19, Company_1 brought an action seeking termination of the validity of the Ukrainian certificate for the mark for goods and services “KASHTAN”, owned by Company_2, on the grounds that the designation protected by that certificate had become customary in trade in relation to Class 30 goods of the Nice Classification, namely ice cream, and seeking an order requiring the UANIPIO to take the appropriate actions.

In the course of these proceedings, the issues of the reputation of the trade mark and its status as a well-known trade mark were examined.

The court of first instance, by a judgment upheld by the court of appeal, allowed the claim in part.

One of the arguments advanced by the defendant, Company_2, in the dispute was the existence of judgments in other cases in which the mark for goods and services “KASHTAN” had been recognised as a well-known trade mark in Ukraine in respect of the goods “ice cream” in Class 30 of the Nice Classification as of 16 April 2001 and 29 September 2000, respectively, in the name of a natural person who is not a defendant in the present case. At the same time, the claimant was not a party to any of those cases.

The SC CommCC, while upholding the contested judicial decisions, took into account, in addressing the issues of the reputation of the trade mark and its status as a well-known trade mark, the legal position set out by the Grand Chamber of the Supreme Court in its resolution of 17 April 2024 in case No. 910/13988/20 and stated as follows:

recognition of a trade mark as well-known by the Appeals Chamber or by a court does not constitute a means of acquiring rights in a trade mark. These procedures also have different legal significance;

recognition of a trade mark as well-known as of a particular date constitutes the establishment of a legal fact which, in adversarial proceedings conducted by way of an

action, is necessary for the claim to be upheld against a specific infringer. Such recognition does not have an erga omnes effect, i.e., it is not binding on persons who are not parties to the case. By its judgment in contentious proceedings, a commercial court resolves a dispute between the parties to the case. The court adopts its judgment following consideration of the case on the basis, inter alia, of the principles of party disposition and adversarial procedure, which include the right of a party to admit the claims of the opposing party and the facts relied upon by that party. As a result, the court is limited in its ability to establish facts ex officio, including facts indicating that the mark is well-known or refuting such recognition. At the same time, in the present case, having regard to the subject matter of the dispute, the courts of the lower instances reached a lawful conclusion that the claims in these proceedings concerned a specific object of intellectual property rights, namely the trade mark "KASHTAN", which is protected on the basis of a Ukrainian certificate.

the judicial decision in another case relied upon by the appellants, in which the claimant was not a party, did not concern the dispute between the parties in the present case.

The full text of the resolution of the Commercial Cassation Court within the Supreme Court of 30 May 2024 in case No. 910/6518/19 is available at the following link: *https://reyestr.court.gov.ua/Review/119470199*.

1.4. Early Revocation of a Trade Mark Registration on the Ground of Non-Use

Article 18(4) of the Law of Ukraine "On the Protection of Rights to Marks for Goods and Services" provides that a trade mark registration may be revoked where the trade mark has not been used in Ukraine, either in respect of all or part of the goods and services specified in the registration, for a continuous period of five years from the date of publication of the information on the grant of the registration, or where use of the trade mark has been suspended from another date following such publication for an uninterrupted period of five years. In such cases, any person is entitled to apply to the court for revocation of the registration, in whole or in part.

The validity of a trade mark registration may not be revoked if use of the trade mark has commenced or resumed during the period between the expiry of the five-year period of non-use and the filing of an action for revocation of the registration, except where preparations for the commencement or resumption of use of the trade mark began within three months prior to the filing of such an action and after the proprietor of the registration had become aware that such an action might be filed.

This approach to the early termination of trademark rights due to non-use corresponds to Articles 197 and 198 of the Association Agreement: Article 197 establishes the requirement of genuine use of

the trademark, while Article 198 provides for the consequences of non-use as grounds for termination of rights.

Under Article 16(1) of Directive EU 2015/2436, if, within a period of five years following the completion of the registration procedure, the proprietor has not put the trade mark to genuine use in the Member State in connection with the goods or services in respect of which it is registered, or if such use has been suspended for an uninterrupted period of five years, the trade mark shall be subject to the sanctions provided for in Articles 17, 19(1), 44(1) and (2), and 46(3) and (4), unless there are proper reasons for non-use.

Article 19(1) of Directive EU 2015/2436 provides that a trade mark shall be liable to revocation if, within a continuous period of five years, it has not been put to genuine use in the Member State in connection with the goods or services in respect of which it is registered and there are no proper reasons for such non-use.

No person may claim that the proprietor's rights in a trade mark should be revoked if genuine use of the trade mark has been commenced or resumed during the interval between the expiry of the five-year period and the filing of the application for revocation.

Commencement or resumption of use within the three-month period preceding the filing of the application for revocation, and occurring no earlier than after the expiry of the continuous five-year period of non-use, shall be disregarded if preparations for the commencement or resumption of use began only after the proprietor became aware that an application for revocation might be filed.

Revocation of a trade mark on the ground of non-use is provided for in Articles 18 and 58 of Regulation EU 2017/1001.

The CJEU has examined a number of disputes concerning the revocation of trade marks on the ground of non-use.

In the judgment of 11 March 2003 in case C-40/01 Ansul BV v Ajax Brandbeveiliging BV[17], the Court interpreted the concept of genuine use of a trade mark. The case arose from the fact that Ansul had not placed any new fire extinguishers on the market under the Minimax mark but had carried out inspection and servicing of used equipment. The Court noted that Article 12(1) [concerning the revocation of a trade mark on the grounds of non-use for an uninterrupted period of five years] of First Council Directive 89/104/EEC [now repealed] on the approximation of the laws of the Member States relating to trade marks must be interpreted as meaning that there is genuine use of a trade mark when the mark is used in accordance with its essential function, which is to guarantee the identity of the origin of the goods or services for which it is registered, for the purpose of creating or

preserving an outlet for those goods or services; genuine use does not include token use made solely for the purpose of preserving the rights conferred by the mark. In assessing whether use of a trade mark is genuine, account must be taken of all the facts and circumstances relevant to establishing whether the mark has been put to real commercial use, in particular whether such use is regarded as justified in the relevant economic sector for the purpose of maintaining or creating a market share for the goods or services protected by the mark, the nature of the goods or services concerned, the characteristics of the market, and the scale and frequency of use of the mark. The fact that a sign is used not for goods that have only recently appeared on the market but for goods that were marketed in the past does not mean that such use is not genuine, provided that the proprietor actually uses the same sign for component parts forming an integral part of the composition or structure of those goods, or for goods or services directly connected with the goods previously marketed and intended to meet the needs of purchasers of those goods.

The issue of the genuine use of an earlier trade mark was also examined in the judgment of 11 May 2006 in case C-416/04 P The Sunrider Corporation v European Union Intellectual Property Office[18]. In the judgment of 14 June 2007 in case C-246/05 Armin Häupl v Lidl Stiftung & Co. KG.[19], the Court examined whether Article 12(1) of Directive 89/104/EEC should be interpreted as meaning that proper reasons for non-use of a trade mark existed. In particular, in paragraphs 54 and 55 of that judgment, the Court set out the criteria for determining proper[2] reasons for non-use of trade marks.

In the judgment of 14 March 2016 in case C-252/15 P Naazneen Investments Ltd v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM),[20]

the Court examined the need to establish proper reasons for the non-use of a trade mark during the five-year period (see, in particular, paragraph 78 of that judgment).

The General Court, in the judgment of 13 October 2021 in case T- 12/20 Markus Schneider v European Union Intellectual Property Office[21], the Court examined, inter alia, the issue of the non-use of the contested trade mark by a party to the proceedings. In paragraph 30 of that judgment, the Court stated that the transfer of a trade mark cannot have the effect of depriving its new proprietor of the possibility of relying on evidence of genuine use of the mark during the relevant period in which that proprietor was not yet the owner of the mark. Any

[2] According to Ukrainian law – "respectable"

contrary approach would expose the new proprietor to the risk of revocation of the rights acquired in respect of the goods and services for which he or she could not reasonably have used the contested trade mark, without being able to rely on the legal protection arising from the use actually made of that mark during the earlier relevant period prior to the acquisition of his or her rights, either by the previous proprietor or by a third party with the latter's consent.

In disputes concerning the early termination of a trademark certificate due to non-use, the key issue is establishing the fact of genuine use of the trademark in relation to the specific goods or services for which it is registered, or the existence of proper reasons for non-use. The legal standard for such use should not be assessed in the abstract, but rather in light of commercial reality, including the nature of the goods or services, the specifics of the relevant market, and the volume, duration, frequency, and form of use. At the same time, a change in the owner of the trademark does not interrupt or restart the five-year period of non-use, since the subject of assessment is the use of the trademark itself as an object of rights.

This approach is consistent with the EU acquis. Article 16 of Directive EU 2015/2436 and Article 18 of Regulation EU 2017/1001 establish the requirement of genuine use of the trademark in relation to the goods or services for which it is registered. Article 19 of Directive EU 2015/2436 and Article 58(1)(a) of Regulation EU 2017/1001 provide for the revocation of rights in the event of non-use of the trademark for a continuous period of five years in the absence of proper reasons for non-use. Article 21 of Directive EU 2015/2436 and Article 58(2) of Regulation EU 2017/1001 confirm the possibility of partial revocation of rights only in respect of those goods or services for which the grounds for revocation exist.

Disputes concerning the application of Article 18(4) of the Law of Ukraine "On the Protection of Rights to Marks for Goods and Services" have come before the Commercial Cassation Court within the Supreme Court, in particular in the context of the conditions of proper use of a trade mark, the requirement for the claimant to prove non-use of the trade mark for a continuous period of five years, and the use of the trade mark by different proprietors during that five-year period.

1.4.1. Conditions of Genuine Use of a Trade Mark and the Requirement to Prove Non-Use of the Trade Mark for Five Years in Proceedings for Early Revocation of a Trade Mark

In case No. 910/5815/21, the Company, a legal entity incorporated under the laws of the United States of America (hereinafter referred to as the "Claimant"), filed a claim against the Company seeking early partial termination of the validity of Ukrainian certificates in respect of services in Classes 37 and 42 of the Nice Classification.

The claim was substantiated by the fact that the trade marks protected by the contested certificates had not been used by the Company during the preceding five years, and by the Claimant's objective need to obtain legal protection in the territory of Ukraine, on the basis of its application, for the trade mark "NEST" in respect of services in Classes 37 and 42 of the Nice Classification.

The local commercial court delivered a judgment dismissing the claim. The court of appeal set aside that judgment and adopted a resolution allowing the claim.

The panel of judges of the Commercial Cassation Court within the Supreme Court, upholding the contested resolution, stated as follows.

In proceedings concerning claims for early revocation of a trade mark certificate on the ground of non-use, the most significant issue is establishing, by proper, admissible, reliable and sufficient evidence, the fact of non-use of the trade mark. Although the burden of proof in such cases rests with the person in whose name the certificate has been issued and against whom the claim for revocation has been brought, one of the fundamental principles of civil and commercial proceedings is the adversarial principle, according to which each party must prove the circumstances on which it relies as the basis for its claims or objections.

In view of the legal nature of a trade mark, a condition for its genuine use is that the registered proprietor uses the trade mark specifically in relation to the goods and services specified in the certificate.

To confirm the use of a trade mark, the proprietor of the certificate must submit to the court evidence demonstrating at least some of the acts referred to in paragraph 4 of Article 16 of the Law of Ukraine "On the Protection of Rights to Marks for Goods and Services". Such evidence may include, in particular, samples of goods bearing the relevant trade mark and documents containing representations of the trade mark (catalogues, price lists offering services or the supply of goods, etc.).

The full text of the resolution of the Commercial Cassation Court within the Supreme Court of 6 April 2023 in case No. 910/5815/21 is available at the following link: *https://reyestr.court.gov.ua/Review/110107005*.

1.4.2. The Need to Establish Valid Reasons for Non-Use of a Trade Mark in Disputes on Early Revocation Due to Non-Use

In case No. 910/5510/24, a company incorporated under the laws of Canada filed a lawsuit seeking the early revocation of the defendant's trademark certificates

protecting the designation “INKAS” and a figurative element in the form of a griffin with a sword, as well as an order obliging UANIPIO to take the relevant actions.

The Claimant argued that the trade marks owned by the defendant had not been used in the territory of Ukraine for the preceding five years, which prevented the Claimant from registering its own trade mark under the application dated April 5, 2024, for identical and related goods and services in Classes 35 and 39 of the Nice Classification. Therefore, the certificates at issue in the case should be terminated on the grounds provided for in Clause 4 of Article 18 of the Law of Ukraine “On the Protection of Rights to Marks for Goods and Services”.

The local commercial court granted the claim. The court of appeal cancelled the decision and issued a ruling dismissing the claim.

The panel of judges of the Commercial Cassation Court within the Supreme Court reviewed the contested appellate decision within the limits of the arguments and claims set out in the cassation appeal and, finding grounds for cassation review, remitted the case for a new consideration to the court of appeal.

The Court noted that, for the purposes of applying Clause 4 of Article 18 of the Law of Ukraine “On the Protection of Rights to Marks for Goods and Services”, the date from which the use of a trade mark under international registration must commence is the date of publication in the official bulletin of the UANIPIO of information on the grant of protection to such trade mark in Ukraine.

In such cases, the validity of the certificate or the effect of the international registration in Ukraine may be terminated in whole or in part only if the holder of the certificate or the international registration fails to demonstrate valid reasons for non-use. Such valid reasons include circumstances that prevent the use of a trade mark, irrespective of the will of the holder of the certificate or international registration, in particular import restrictions or other requirements relating to goods and services laid down by law.

In the context of the application of the provisions of Article 198 of the Association Agreement, the Court emphasised that both that article and paragraph 4 of Article 18 of the Law of Ukraine "On the Protection of Rights to Marks for Goods and Services" contain provisions indicating the need to establish that there are no valid reasons for the non-use of the trade mark.

However, the court of appeal, whilst reviewing the legality and validity of the first-instance court’s decision and referring to the provisions of the Law, failed to consider the existence or absence of valid reasons for the defendant’s use or non-use of the disputed trade marks, whilst taking into account the provisions of the Commercial Procedure Code of Ukraine regarding the procedure for submitting evidence and the parties’ obligation to submit it, as well as established legal positions concerning the burden of proof.

The Commercial Cassation Court within the Supreme Court proceeded from the position that the validity of reasons for non-use of a trade mark must be determined by the courts in each individual case on the basis of the evidence submitted by the parties.

The burden of proof regarding the use of a trade mark in this type of case - namely, the early revocation of a certificate pursuant to the provisions of clause 4 of Article 18 of the Law of Ukraine "On the Protection of Rights to Marks for Goods and Services" - rests with the defendant, namely the proprietor of the disputed trade mark.

The court also examined the issue of the application in the dispute of the provisions of the Law of Ukraine "On the Recognition as Repealed of the Law of Ukraine 'On the Protection of the Interests of Persons in the Field of Intellectual Property During the Period of Martial Law Imposed in Connection with the Armed Aggression of the Russian Federation against Ukraine'", which ceased to be in force on 31 May 2025.

The full text of the resolution of the Commercial Cassation Court of the Supreme Court dated 11 November, 2025 in case No. 910/5510/24 is available at the following link: *https://reyestr.court.gov.ua/Review/131821224*

1.4.3. Early Termination of a Trade Mark Certificate Due to a Change in the Identity of the Certificate Holder

In case No. 910/8781/23, the Company (a legal entity under the laws of the Republic of Poland) filed a claim against another Company seeking early termination of the Ukrainian trade mark certificate for the mark "EUROCASH" on the grounds of its continuous non-use in Ukraine for five years with respect to services in Classes 35, 41, and 42 of the ICGS, and requesting that the UANIPIO take appropriate action pursuant to Clause 4 of Article 18 of the Law of Ukraine "On the Protection of Rights to Marks for Goods and Services" and Part 1 of Article 198 of the Association Agreement.

The court of first instance dismissed the claim. The court of appeal set aside that decision and adopted a new judgment partially granting the claim.

By its ruling of 7 November 2024, the panel of judges of the SC CommCC referred the case to the Grand Chamber of the Supreme Court, considering it necessary to depart from the legal conclusion set out in judgment of the Civil Cassation Court within the Supreme Court of 9 June 2021 in case No. 757/34959/18-ц, according to which the five-year period of continuous non-use of a trademark, as a ground for early termination of proprietary rights under Part 4 of Article 18 of the Law of Ukraine "On the Protection of Rights to Marks for Goods and Services", should be calculated from the date on which a person acquired the rights to use the disputed trade mark from the previous owner.

Departing from this conclusion, the SC Grand Chamber noted, inter alia, the following.

The CJEU case law concerning the application of the above-mentioned provisions - namely, Article 19 of Directive EU 2015/2436 and Article 58 of Regulation EU 2017/1001 - demonstrates that the relevant five-year period of use of a trade mark encompasses periods of use by all successive owners, and not solely the most recent one (see, for example, paragraphs 29–31 of the judgment of 13 October 2021 in case T-12/20). This approach supports the conclusion that the calculation of the five-year period should be made from the date of publication of information on the registration of the trade mark or the granting of legal protection to a trade mark under international registration in Ukraine, irrespective of any subsequent change in ownership.

The validity of a trade mark registration certificate may be terminated early if the trade mark has not been used in Ukraine for a continuous period of five years in relation to the goods or services for which it is registered and there are no valid reasons for its non-use. The calculation of the said five-year period does not depend on the change of the owner (authorised user) of the trade mark.

The Law of Ukraine "On the Protection of Rights to Marks for Goods and Services" and the Association Agreement establish a requirement for the continuous use of the trade mark itself, rather than its continuous use by a specific owner, who may change over time.

Ukrainian legislation does not make the possibility of early termination of a trade mark certificate dependent on a change in the identity of its holder. A person acquiring trade mark rights under an agreement on the assignment of exclusive intellectual property rights must assess the risks associated with the terms of exercise by the previous owner of his rights to the trade mark.

The full text of the resolution of the Grand Chamber of the Supreme Court dated 05 March 2025 in case No. 910/8781/23 is available at the following link: *https://reyestr.court.gov.ua/Review/126153470*.

1.4.4. On the Use of a Trade Mark Specifically in Relation to the Goods and Services Specified in the Certificate as a Condition for Proper Use in a Dispute Concerning the Early Termination of a Trade Mark

In case No. 910/10906/22, a Company incorporated under the laws of the United States of America filed a claim seeking partial early termination of the Ukrainian trade mark certificate for the mark “StarLink”, owned by the defendant, in respect of services in Classes 37, 38, and 42 of the ICGS, as well as an order obliging UANIPIO to take appropriate action.

The court of first instance dismissed the claim, and this decision was upheld by the court of appeal.

The court of first instance noted that the trade mark had been used, and that the evidence provided by the defendant, taken as a whole, confirmed that the contested trade mark had been used during the five years preceding the date on which the claim was filed.

However, the SC CommCC setting aside the judgments handed down in the case and remitting it for a new trial, noted that the courts had failed to take into account that a condition for the proper use of the disputed registered trade mark is that the defendant must use it specifically in relation to each of the services listed in the disputed certificate, rather than the use of the trade mark in general.

The Supreme Court further emphasized that courts of first and appellate instance must examine the evidence contained in the case file concerning the use of the disputed trade mark and assess whether such use was proper in relation to each of the relevant services.

The Court also noted that, when adjudicating disputes of this category, and having regard to the fundamental principles of commercial proceedings, the burden of proof

must not be shifted from the person whose trade mark certificate is subject to an application for early termination.

Any interested person may file a claim for early termination of a trade mark certificate, as Clause 4 of Article 18 of the Law of Ukraine "On the Protection of Rights to Marks for Goods and Services" does not establish specific eligibility criteria for claimants. However, it is clear that a person making such a claim must have at least a legitimate interest (taking into account the provisions of Articles 15 and 16 of the Civil Code of Ukraine).

The full text of the resolution of the Commercial Cassation Court of the Supreme Court dated 30 November 2023 in case No. 910/10906/22 is available at the following link:: https://reyestr.court.gov.ua/Review/115409007.

2. Patent Disputes

2.1. Supplementary Protection for Pharmaceutical Inventions

As part of the reform of patent legislation, and in particular in order to implement the requirements of Article 220 of the EU–Ukraine Association Agreement, on 16 August 2020 the Law of Ukraine "On the Protection of Rights to Inventions and Utility Models" was supplemented with Article 27-1, which introduced the institution of supplementary protection (extension of the term of intellectual property rights). This mechanism applies to inventions relating to an active pharmaceutical ingredient, a process for manufacturing a medicinal product, or the use of a medicinal product, as well as to plant and animal protection products, and is implemented through the issuance of a supplementary protection certificate upon application by the patent holder.

In European Union law, supplementary protection certificates are sui generis rights that supplement patent protection after the expiry of the basic patent. For medicinal products, this regime is governed by Regulation EC 469/2009[22], and for plant protection products by Regulation EC. 1610/96. These instruments operate alongside the European patent system established under the European Patent Convention (EPC), the Unitary Patent Regulation, and the Unified Patent Court Agreement (UPC Agreement) but do not form part of the EPC system itself.

The CJEU has developed substantial case law regarding the conditions for obtaining SPCs under Regulation EC 469/2009, including, inter alia, its judgment of 24 November 2011 in case C-322/10 Medeva BV v Comptroller General of Patents, Designs and Trade Marks,[23] of 24 November 2011 in case C-422/10 Georgetown University and Others v Comptroller General of Patents, Designs and Trade Marks,[24] of 12 March 2015 in case C-577/13 Actavis

Group PTC EHF, Actavis UK Ltd v Boehringer Ingelheim Pharma GmbH & Co. KG,[25] of 09 July 2020 in case C-673/18 Santen SAS v Directeur général de l'Institut national de la propriété industrielle,[26] of 21 March 2019 in case C-443/17 Abraxis Bioscience LLC v Comptroller General of Patents,[27] etc.

At the same time, SC CommCC, when resolving disputes concerning supplementary protection certificates in the pharmaceutical sector, has encountered a key issue relating to compliance with statutory time limits and the determination of the moment when the right to supplementary protection arises. This is due to the fact that the amended legislation effectively altered the point in time at which such a right emerges. In doing so, the SC CommCC took into account the need to compensate the patent holder for part of the effective term of the patent during which the invention covered by the patent could not actually be used. Relevant legal positions are set out, in particular, in the resolutions of the SC CommCC dated 14 August 2025 in case No. 910/12688/24 (regarding the one-year period pursuant to paragraph 4 of part 1 of Article 27-1 of the Law) and 14 December 2023 in case No. 910/8295/21(regarding the six-month period for submitting a request for supplementary protection to the National Intellectual Property Authority pursuant to part 3 of Article 27-1 of the Law)[3].

In case No. 910/12688/24, a Danish pharmaceutical company (the Company) filed a claim seeking to declare unlawful and annul the decision of the UANIPIO refusing to grant supplementary protection for an invention under a Ukrainian patent relating to the medicinal product “Antibody that binds to CD38 for the treatment of a disease mediated by CD38”, and to oblige the defendant to carry out state registration of such supplementary protection.

On 16 August 2020, the Law of Ukraine "On the Protection of Rights to Inventions and Utility Models" (hereinafter – the Law) was supplemented by a new provision, Article 27-1. Paragraph 4 of Part 1 of this Article provides that the holder of a patent for an invention, the subject matter of which is a medicinal product, plant protection product, or animal protection product, is entitled to an extension of the term of intellectual property rights, provided that an application for authorization by the competent authority to place the medicinal product, plant protection product, or animal protection

[3] Article 27-1 of the Law of Ukraine “On the Protection of Rights to Inventions and Utility Models” establishes a one-year period between the filing of the first application for marketing authorization anywhere in the world and the filing of the corresponding application in Ukraine (paragraph 4 of part 1 of Article 27-1); and a six-month period for submitting a request for supplementary protection to the National Intellectual Property Authority, calculated from the date of publication of information on the state registration of the invention or from the date of issuance of the first marketing authorization by the competent authority, whichever is later (part 3 of Article 27-1).

product on the market in Ukraine is filed within one year from the date of filing the first such application in any country. The Law does not contain transitional provisions governing the application of this rule.

The refusal by UANIPIO challenged in the proceedings was based on the conclusion that the Company had failed to comply with the time limit established by Paragraph 4 of Part 1 of Article 27-1 of the Law.

The court of first instance dismissed the claim, and this decision was upheld by the court of appeal.

The SC CommCC, setting aside the decisions of the lower courts and remitting the case for a new trial, addressed the application of Paragraph 4 of Part 1 of Article 27-1 of the Law in the context of this dispute and noted, in particular, the following.

Given that, at the time of filing the first application for registration of the medicinal product worldwide, as well as at the time of obtaining authorization for its use in Ukraine, the claimant neither knew nor could reasonably have foreseen that, as a result of the amendments introduced on 16 August 2020, the Law would establish a requirement whereby a patent holder for an invention relating to a medicinal product would be entitled to an extension of the patent term only if an application for authorization to place the product on the market in Ukraine was filed within one year from the date of filing the first such application in any country (Paragraph 4 of Part 1 of Article 27-1 of the Law). Accordingly, imposing on the claimant an obligation to perform such actions retrospectively (to file the application for authorization to place the product on the market in Ukraine within one year from the date of filing the first such application in any country) before 9 July 2016 – and attaching adverse consequences in the form of refusal to grant supplementary protection for failure to comply with that obligation, amounts to retroactive application of the legal norm. Such retroactive effect is contrary to Article 58 of the Constitution of Ukraine and Article 5 of the Civil Code of Ukraine, as it results in the denial of additional protection of rights to the invention to the plaintiff due to non-compliance with a one-year time limit that had already expired on 9 July 2016, before the claimant became subject to the relevant legal requirement. This constitutes a restriction of the claimant's rights and is therefore unacceptable.

If the one-year period established in paragraph 4 of part 1 of Article 27-1 of the Law began and ended before the entry into force of this provision of the Law, namely before 16 August 2020, then the specified norm does not apply to the legal relations concerning the extension of the term of validity of intellectual property rights; if the one-year period established in paragraph 4 of part 1 of Article 27-1 of the Law began before the entry into force of this provision, namely before 16 August 2020, and ended after its entry into force, then the one-year period is extended until 16 August 2021; if the one-year period established by this norm began after its entry into force, namely after 16 August 2020, then the specified period is calculated from the date of submission of an application for authorization by the competent authority to place a medicinal product into market for the first time in any country to the date of submission of an application

for authorization by the competent authority to place a medicinal product, animal protection product, or plant protection product into market in Ukraine.

The full text of the resolution of the Commercial Cassation Court of the Supreme Court dated 14 August 2025 in case No. 910/12688/24 is available at the following link: *https://reyestr.court.gov.ua/Review/129522111*

[1] Regulation EU 2017/1001 — *https://zakon.rada.gov.ua/laws/show/984_003-17#top*

[2] Directive EU 2015/2436 – *https://zakon.rada.gov.ua/laws/show/984_031-15#top*

[3] Judgment of the Court of Justice of the EU of 6 May 2003 in Case C-104/01 Libertel Groep BV v Benelux-Merkenbureau – *https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62001CJ0104&qid=1772282093275*

[4] Judgment of the General Court of 11 June 2025 in Case T-38/24 OMV AG v EUIPO – *https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62024TJ0038&qid=1771864186171*

[5] Judgment of the Court of Justice of the EU of 24 June 2004 in Case C-49/02 Heidelberger Bauchemie GmbH - *https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62002CJ0049&qid=1771864186171*

[6] Judgment of the General Court of 27 September 2018 in Case T-595/17 Demp v EUIPO - *https://eur-lex.europa.eu/legal-content/FR/TXT/?uri=CELEX:62017TJ0595*

[7] Judgment of the General Court of 16 March 2006 in Case T-322/03 Telefon & Buch Verlagsgesellschaft mbH v OHIM – Herold Business Data – *https://eur-lex.europa.eu/legal-content/FR/TXT/?uri=CELEX:62003TJ0322*

[8] Judgment of the Court of Justice of the EU of 12 November 2002 in Case C-206/01 Arsenal Football Club plc v Matthew Reed – *https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62001CJ0206*

[9] Judgment of the Court of Justice of the EU dated April 29, 2004 in Case C-371/02 Björnekulla Fruktindustrier AB v Procordia Food AB – *https://ipcuria.eu/case?reference=C-371%2F02*

[10] Judgment of the Court of Justice of the EU dated March 6, 2014 in Case C-409/12 Backaldrin Österreich The Kornspitz Company GmbH v Pfahnl Backmittel GmbH – *https://ipcuria.eu/case?reference=C-409%2F12*

[11] Judgment of the General Court of 6 July 2022 in Case T-246/20 – *https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62020TJ0246*

[12] Judgment of the Court of Justice of the EU of 10 November 2025 in Case C-2025/5804 Duca di Salaparuta SpA v Ministero dell'Agricoltura – *https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62024CA0341*

[13] Judgment of the Court of Justice of the EU of 3 May 2018 in Case T-2/17 J-M.-E.V. e hijos, SRL v European Union Intellectual Property Office – *https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62017TJ0002*

[14] Judgment of the Court of Justice of the EU of 22 November 2007 in Case C-328/06 Alfredo Nieto Nuño v Leonci Monlleó Franquet – *https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62006CJ0328*

[15] Judgment of the Court of Justice of the EU of 25 May 2005 in Case T-288/03 TeleTech Holdings, Inc. v European Union Intellectual Property Office – *https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62003TJ0288*

[16] Judgment of the Court of Justice of the EU of 22 September 2011 in Case C-482/09 Budějovický Budvar, národní podnik v Anheuser-Busch Inc. – *https://eur-lex.europa.eu/legal-content/FR/TXT/?uri=CELEX:62009CJ0482*

[17] Judgment of the Court of Justice of the EU of 11 March 2003 in Case C-40/01 Ansul BV v Ajax Brandbeveiliging BV – *https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62001CJ0040*

[18] Judgment of the Court of Justice of the EU of 11 May 2006 in Case C-416/04 P The Sunrider Corporation v European Union Intellectual Property Office – *https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62004CJ0416*

[19] Judgment of the Court of Justice of the EU of 14 June 2007 in Case C-246/05 Armin Häupl v Lidl Stiftung & Co. KG – *https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62005CJ0246*

[20] Judgment of the Court of Justice of the EU of 14 March 2016 in Case C-252/15 P Naazneen Investments Ltd v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) – *https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62015CJ0252&utm_source=chatgpt.com*

[21] Judgment of the Court of Justice of the EU of 13 October 2021 in Case T-12/20 Markus Schneider v European Union Intellectual Property Office – *https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62020TJ0012*

[22] Council Regulation (EC) No 469/2009 **–** *https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32009R0469*

[23] Judgment of the Court of Justice of the EU of 24 November 2011 in the case C-322/10 — Medeva BV v Comptroller General of Patents – *https://eur-lex.europa.eu/legal-content/FR/TXT/?uri=CELEX:62010CJ0322*

[24] Judgment of the Court of Justice of the EU of 24 November 2011 in the case C-422/10 Georgetown University and Others v Comptroller General of Patents, Designs and Trade Marks – *https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62010CJ0422*

[25] Judgment of the Court of Justice of the EU of 12 March 2015 in the case C-577/13 Actavis Group PTC EHF, Actavis UK Ltd v Boehringer Ingelheim Pharma GmbH & Co. KG – *https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62013CJ0577*

[26] Judgment of the Court of Justice of the EU of 09 July 2020 in the case C-673/18 Santen SAS v Directeur général de l'Institut national de la propriété industrielle – *https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62018CJ0673*

[27] Judgment of the Court of Justice of the EU of 21 March 2019 in the case C-443/17 Abraxis Bioscience LLC v Comptroller General of Patents. – *https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62017CJ0443*

Review of Case Law of the Commercial Cassation Court within the Supreme Court in Cases Concerning the Protection of Intellectual Property Rights in the Context of the Case Law of the Court of Justice of the European Union. Compiled by: the Analytical and Legal Work Division of the Commercial Cassation Court of the Department for Analytical and Legal Work; Responsible for the issue: Secretary of the Judicial Chamber for Cases on the Protection of Intellectual Property Rights, as well as those related to Antimonopoly and Competition Law of the Commercial Cassation Court of the Supreme Court — I.M. Benedysiuk. Kyiv, 2026, p. 41

Disclaimer:

1. This review contains summaries of Supreme Court decisions. For a correct understanding of the legal positions expressed, reference should be made to the full texts of the relevant judgments available in the Unified State Register of Court Decisions.

2. The texts of decisions of the Court of Justice of the European Union are automatically translated from the original language using Google Translate; they are unofficial and may contain inaccuracies. To fully understand the legal conclusions set out above, please refer to the original text published at: *https://curia.europa.eu/juris/recherche.jsf?language=en* and *https://eur-lex.europa.eu/eli/dir/2019/1/oj*

3. The information is provided for guidance and reference purposes only and is intended to give a general overview of the approaches to resolving the legal issues set out in the Review.