



**Journal Website:**  
<https://theusajournals.com/index.php/ajast>

**Copyright:** Original content from this work may be used under the terms of the creative commons attributes 4.0 licence.

## **INTERNATIONAL LEGAL PROTECTION AND MECHANISM FOR THE PROTECTION OF TRADEMARK RIGHTS**

**Submission Date:** February 17, 2023, **Accepted Date:** February 22, 2023,

**Published Date:** February 27, 2023

**Crossref doi:** <https://doi.org/10.37547/ajast/Volume03Issue02-06>

**Rakhmonova Mohichehra Nodirbekovna**

**Department Lecturer Intellectual Property Right Of Tsul, Uzbekistan**

### **ABSTRACT**

This article analyzes the procedure for resolving disputes in the field of intellectual property, in particular the mechanism for the protection of trademark rights at the national and international levels, identifies the main problems existing in the legislation and law enforcement practice on the issues of parallel import and introduction into civil circulation of counterfeit products in the Republic of Uzbekistan. The concept of terms such as counterfeit and parallel imports, which includes practices and international acts in the field of intellectual property, is also investigated.

### **KEYWORDS**

Unlike objects, which include the results of intellectual activity, the means of individualization are not associated with the creative process of an individual subject, but as indicated in article 97 of the Civil Code of the Republic of Uzbekistan, they are equated in their legal regime with them.

### **INTRODUCTION**

Objects of intellectual property have always been subject to unauthorized use, unlike other objects of civil circulation. This is due to the fact that the process of protecting the created intellectual labor is complex,

multifaceted and has its own nuances. Any actions of third parties aimed at the use and distribution for commercial purposes without permission are tantamount to an encroachment on the exclusive

rights of the real creators or copyright holders of intellectual property.

This paper analyzes the need to register one of the most popular means of individualization - a trademark and a service mark (hereinafter referred to as a trademark), in particular the international registration system.

The extent of the exclusive right to a trademark is limited to the territory of the state where the trademark is registered. The need to register a trademark in the territory of other countries today is explained by many factors. In particular, with the entry of enterprises of the Republic of Uzbekistan into world markets, the widespread development of cross-border relations and communication systems, the distinctive feature of the goods and services of all companies must be properly formalized and confirmed by the protection Documents.

In his speech on measures to improve the system of protection of intellectual property objects on October 12, 2020, the President of the Republic of Uzbekistan Shavkat Mirziyoyev stressed the importance of registering trademarks, especially at the international level. As mentioned in his speech: "In our country, about 4.5 thousand objects of intellectual property are registered annually, including more than 2 thousand trademarks." [1]

However, the international registration system today lags far behind. To date, only 78 domestic brands have passed such registration. Incoming international applications to the market of Uzbekistan are several times more - 66671 for all time, and 45401 are valid[2].

Growing competition is forcing world-famous brands to think through increasingly creative and complex trademark design, resorting to expensive advertising

campaigns to maintain exclusivity. This, in turn, creates a fertile ground for unfair competition, as most companies are looking for easy ways to get rich quick at the expense of well-known brands, rather than coming up with their own ways of development and recognition. Also, the main problem is expressed in the fact that trademarks on the principle of territoriality have restrictions in protection on the territory of other states. Most unscrupulous enterprises, having learned that potentially developing trademarks do not have protection in their state, register these trademarks, receive protection and act on behalf of real copyright holders.

The question arises of how to improve this mechanism, what international standards to implement in their normative documents and to strengthen their position in the international market for goods and services.

Law No. 534 of May 2, 2019 increased responsibility and made appropriate changes and additions to the Code of the Republic of Uzbekistan on Administrative Responsibility for the Illegal Use of Goods in order to ensure the exclusive rights of right holders. This also gives reason to believe that the protection of trademarks at this stage has reached a new level.

The Agreement on Trade-Related Aspects of Intellectual Property Rights (hereinafter referred to as TRIPS) is currently the basic document within the framework of the World Trade Organization (hereinafter referred to as the WTO), which regulates the protection of intellectual property, and also sets standards for IP protection for WTO member states.

The peculiarity of the provisions of TRIPS is the content in it of reference rules to other existing multilateral international agreements, for example, to the norms of the Paris Convention for the Protection of Industrial Property (1967), the Berne Convention for the

Protection of Literary and Artistic Works (1971), the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961) and the Treaty on Intellectual Property in Respect of Integrated Circuits (1989) year).

Unlike other international agreements in the field of intellectual property, TRIPS has a very broad scope due to the fact that it establishes the requirements that the legal systems of the participating States must meet in the field of enforcement and effective protection of intellectual rights.

Thus, the study of the international system of registration of trademarks, mechanisms for protecting the rights of trademark owners, according to the author, is a priority for both beginners and modern lawyers who perform a variety of legal work: developing the terms of a contract in the field of intellectual property (complex business license agreement, copyright agreement, license agreement, etc.), drawing up and accompanying the transaction, advising on the protection of intellectual property rights, representing the interests of a party in a court that considers and resolves a dispute in the field of intellectual property.

Features of the international trademark registration system. The territorial effect of a trademark does not make it possible to fully use this asset. For example, when an enterprise enters the markets of other countries, it becomes necessary to think about protecting its product in this territory. The trademark is no exception. Being one of the ways of advertising and leaving behind the perception and memory of the company's products and activities, we can safely say that a trademark is a brand image.

As is often the case in practice, there may be various situations that a trademark owner may encounter

during the initial stage of entering a new market. For example, a similar or exactly the same trademark has already been registered in this state, and the right of priority has already exhausted itself, or, according to some internal national rules, this trademark cannot be registered. To do this, you need to study the market in advance, conduct a preliminary search and identify acceptable and possible scenarios for the development of events. Thus, all the grounds for registering a trademark in one's own country are applicable to the commercialization of goods or services in foreign markets.

These reasons are not an obstacle to skip the registration step, since a protected designation is many times better than when there are no rights to it, especially in a foreign country. When a foreign enterprise does not have security or licensing documents, this may affect the rights of third parties. Moreover, not only large enterprises, but also those who have small businesses seek to protect their products from mixing or counterfeiting. Since, starting your own business, you can significantly expand it in a couple of years, offering your products in many regions, which will require not only its protection against counterfeiting, but also the difference between the products of this manufacturer and similar products from other manufacturers.

To prevent such problematic situations, as well as to expand the scope of the territorial influence of the enterprise, it is necessary to resort to the international registration of a trademark. There are several registration methods and systems for this.

The first way, which is provided for in the Paris Convention for the Protection of Industrial Property of 1883, is the use of national treatment. With regard to the protection of industrial property, the nationals of each country shall enjoy in all other member countries

the same benefits as are accorded or will be accorded to their own nationals [3].

Based on the right of priority, each applicant may register a trademark abroad at any time, subject to the condition that the application abroad must be filed within six months of filing the application for registration in the country of origin [4]. In other words, if a mark is applied for in another country within six months and the registration is successful, then the mark will be considered registered in that country from the date the mark is filed in the country of origin.

To prevent the theft of a new individualizing designation, it is recommended to have time to register it within this period of time. Of course, this cannot be done everywhere. But with the main initial registration of a trademark with enterprises aiming to cover specific sales regions, they can use this procedure. Due to the fact that many countries use the provisions of the Paris Convention in their internal rules, and other international documents duplicate the rules from this convention [5], this method is still one of the best options.

Moreover, unlike patents or industrial design rights, in the case of which, if the deadline for claiming the right is missed, the possibility of filing subsequent applications may be lost, in the case of trademarks, if the six-month period is missed, the application filed outside the country will be dated on the day of its actual filing, rather than the filing date of the original application[6]. This means that filing a trademark application directly with the country in which protection is needed is also possible. This procedure is called national.

The national procedure for registering a trademark means that the applicant applies to the authorized national departments of a particular country on his

own. In this case, the applicant must follow all the formalities prescribed in the legislation of this country. These include filing an application in the state language of that country, paying fees for consideration of the application and issuing a certificate, and in some countries the obligation to apply to the services of patent attorneys for trademarks. The terms for consideration of an application in each country are individual, depending on those international acts that were adopted in a particular state.

There is also the possibility of receiving an application in one region, that is, in several states at once. This procedure is called regional. It makes it possible to obtain protection in countries that are members of the regional trademark system. Thus, by submitting an application to a specific regional office, you can get protection that is valid on the territory of all countries participating in the system. The most demanded system of regional procedure is the system of the European trademark, the registration authority which is the European Union Intellectual Property Office (EUIPO). 135,000 register with this office every year, and all members of the European Union are members [7].

Whereas previous methods of registration referred to filing an application directly with the country or region in which protection is sought, while respecting all the domestic rules provided for in those systems, the International Procedure has been created to unify this process. The so-called Madrid System got its name from the adoption of the Madrid Agreement of 1891, and the subsequent adoption of the Madrid Protocol of 1989. The system is administered by the World Intellectual Property Organization (WIPO).

On April 14, 1891, the Madrid Agreement on the International Registration of Marks entered into force, providing for the possibility of providing citizens of the



states that signed the agreement with the protection of their registered marks in other countries participating in the agreement by filing applications with the International Bureau of the World Intellectual Property Organization.

The Protocol to the Madrid Agreement Concerning the International Registration of Marks was adopted on June 27, 1989. The most important innovation is that an international application is now based not only on registration, but also on an application for registration with the Office of the country of origin of the basic application. All countries that have joined the Protocol are members of the union. Membership of the intergovernmental organization on special terms is also envisaged.

A very important condition of this protocol is the provision on the relationship between the protocol and the Stockholm version of the Madrid Agreement on International Registration. According to this article, if, in respect of a specific international application or a specific international registration, the Office of origin is the Office of a State that is both a party to the protocol and the Madrid Agreement in its Stockholm version, then the provisions of the said Protocol will not have effect in the territory of any other State that is also simultaneously party to the Protocol and the Madrid Agreement.

But as of November 2015, all Contracting Parties to the Madrid System are parties to the Madrid Protocol, which governs all transactions by or against Contracting Parties and users [8].

The created system has two goals:

- facilitating the acquisition of protection for marks (trademarks and service marks);

- simplification of the registration management process.

These objectives are implemented as follows: the registration of a mark in the International Register provides its protection in the contracting parties to the same extent as if this designation were the subject of an application for registration in each of the contracting parties[9].

Since an international registration is equivalent to a set of national registrations, the subsequent management of such protection is greatly simplified. While the sign will be protected in all Madrid Member States, only one registration will need to be renewed, and the entry in the register of changes such as a change in ownership or a change in the name and address of the owner, or a limitation in the list of goods and services, may be carried out with a single procedural action that will cover multiple registrations[10]. On the other hand, if there is a wish to transfer the registration for only some of the designated Contracting Parties, or only for some goods or services, or to limit the list of goods and services for only some of the designated Contracting Parties, the Madrid System is flexible enough to achieve this.

Other features of the Protocol to the Madrid Agreement include the possibility of converting an international registration into national or regional registrations. For example, if an international registration is canceled at the request of the Office of the country of origin of the mark, the applicant has the right to file an application for registration of the same mark in any of the countries that have signed the Protocol. At the same time, the priority of filing an application is retained under certain conditions from the date of its receipt by the International Bureau of WIPO.

As WIPO explains on its website, the Madrid System is a convenient and cost-effective mechanism for registering and managing trademarks around the world.

The simplification of the procedure lies in the fact that by submitting only one application to the authorized office for the registration of trademarks, in the protocol such an office is referred to as the “office of origin”, it is possible to obtain legal protection for a trademark simultaneously in several states at the choice of the applicant. At the moment, the system includes 124 states. The language of the registration process is also fixed. The applicant chooses one of three languages - English, French and Spanish. However, if some countries put under the conditions in which particular language to draw up an application, then these conditions will have to be met. Moreover, WIPO has developed uniform forms that the applicant must complete in order to file a registration, which is very convenient and efficient. The international registration procedure saves a lot of time. The period of examination of an international trademark application has clear time limits: no more than 12 months for the countries of the Madrid Agreement and no more than 18 months for the countries of the Madrid Protocol.

The economy lies in the fact that by choosing this procedure, the applicant receives a fixed fee from WIPO and a calculated individual fee in each country where protection is required in a single currency - the Swiss franc. At the same time, everyone can calculate the fee online on the WIPO website; this fee calculator is designed for the convenience of applicants. Thus, an analysis of approximate costs is made in advance, and no extra funds are spent.

The Madrid System greatly simplifies the subsequent management of trademarks, as it is possible to record

subsequent changes or renewals in a single procedural step[11]. The application processing time is extended. The Office of the country to which the application for registration has been sent must notify the International Bureau of WIPO of a total or partial refusal of protection no later than 18 months[12].

However, the holder does not have to wait for the Office of each Contracting Party in which protection is sought to take a positive decision on the registration of the mark; if, within the prescribed period of 18 months, the Office does not give notice of refusal, the mark shall enjoy protection in the Contracting Party concerned. In some cases, the holder does not even have to wait for the expiration of this period to find out whether the mark is protected in a particular Contracting Party, since he may receive a statement of grant of protection from the Office of that Contracting Party before the expiration of this period.

The validity of an international registration is 10 years, according to Art. 6 of the Protocol to the Madrid Agreement (in the Madrid Agreement itself, this period was 20 years). This period of international registration can be extended for 10 years an unlimited number of times, subject to payment of the established fees.

As Krylepova A.O. points out, speaking about the extraterritorial effect of the legal protection of trademarks that have received international registration, the following should be noted. The establishment of issues included in the intellectual statute in relation to trademarks, it seems appropriate to carry out under the law of the state of origin of the object (*lex loci originis*). The law of the state of origin of the trademark is the law most closely related to the relation, in view of the fact that protection in the state of origin of the mark in question is dependent on international registration, and, as a consequence, protection in other states[13].

At the expiration of a period of five years from the date of the international registration, that registration becomes independent of the basic application or the registration based on it, or of the basic registration, as the case may be (Article 6 of the Protocol to the Madrid Agreement).

Perhaps this is one of the shortcomings of the Madrid system, that for five years, the status of an international registration directly depends on its status in the national office. That is, if during this time there is a refusal, cancellation of a trademark in the state where the mark was created, then the international registration will be terminated. Only after the expiration of the five year period does the international registration become independent of the national registration[14].

International registration, however, gives advantages to Trademark Offices. They do not need to conduct due diligence, or classify goods or services, or publish marks. These responsibilities are assumed by the International Bureau, carrying out a formal examination.

According to WIPO, Offices of Contracting Parties are compensated for their work: the individual fees collected by the International Bureau are transferred to the Contracting Parties in respect of which they were paid, and additional and additional fees are distributed annually to Contracting Parties not receiving individual fees, in proportion to the number of designations, made for each of them. If the International Bureau closes its biennial accounts at a profit, the proceeds are distributed among the Contracting Parties[15].

So, speaking about the procedure itself, it is initially necessary to register or file an application for registration of a trademark (basic application) with the

office of a member country with which the legal entity has a direct connection by virtue of doing business or is connected with the fact of being in this country. This office is called the "office of origin". It sends an application for international registration of a trademark to the International Bureau of WIPO, where a formal examination of the designation is carried out, lasting on average no more than 6 months.

An international application filed by the applicant directly with the International Bureau will not be treated as such and will be returned to the sender.

The international application must contain an image of the mark and a list of the goods and services for which protection is sought, classified in accordance with the International Classification of Goods and Services (Nice Classification) and the Vienna Classification[16].

The correctness of paperwork and payment of fees is checked, information about the application is published in the international register. If the international application complies with the established requirements, the information about the mark is entered in the International Register and published in the Gazette.

At this stage, the applicant receives the status of an international registration and is listed in the Madrid Monitor database. At this stage, it is important to indicate in which countries the legal protection of the mark is sought. If you wish to expand the scope of the trademark, you can select Contracting Parties throughout the international application.

Further, the Office of each designated Contracting Party conducts the substantive examination of the international registration in exactly the same manner as in the case of an application filed directly. The deadlines are fixed. If within the prescribed period (12

or 18 months, depending on whether the country belongs to the Madrid Protocol or the Agreement) a decision on the refusal of registration is not received from the Office of the designated Contracting Party, the trademark receives legal protection in the territory of the declared state [17].

An international application is subject to the payment of the following fees: a basic fee, an additional fee for each designated Contracting Party in respect of which no individual fee is payable, and an additional fee for each class of goods and services in excess of three; No additional fee is payable, however, if all the designations are those in respect of which an individual fee is payable.

The levying of an additional fee for each additional class of goods, as provided for by international legal registration, is another of its shortcomings, while the creators of the Madrid Trademark Registration System name its advantages precisely the possibility of saving efforts and money by participants in commercial circulation when registering used designations by them. The payment of each additional class can significantly hit the budget, since in some states its amounts reach half of the amount of the individual fee.

Thus, the Madrid System is the best choice among manufacturers to protect their trademarks worldwide. The system is especially popular among multinational companies trading all over the world. Potential applicants should take into account a number of factors when deciding whether to choose a system - national, regional or international - and compare the advantages and disadvantages of all three application systems.

The most important factor in choosing to protect a trademark through an international registration under the Madrid System is probably its low cost compared

to other protection options. It is also easy to file an international application by completing a single application form and sending it to one Office. In practice, multinational companies that meet the “basic application” requirement may file an international application directly through the Office of origin, without the use of a representative. Thus, in addition to the low cost of this option, it also saves the applicant time and resources. An international registration also benefits the Trademark Offices of the Contracting Party.

They do not need to check compliance with formal requirements, or classify goods or services, or publish marks. When considering the choice of this path, attention should be paid to the shortcomings of the Madrid system, which are also the subject of this work. However, when the advantages and disadvantages of the Madrid system are weighed, its advantages prevail, as reflected in the increase in the number of international applications filed by multinational companies. To date, the WIPO database contains more than 600,000 international applications registered under this system, and every year the interest in this procedure is growing.

General Provisions and Fundamental Principles of the TRIPS Agreement. The provisions of TRIPS, first of all, determine the range of objects related to intellectual property. According to TRIPS, these include copyrights, related rights, trademarks, geographical indications, industrial designs, patents, topologies of integrated circuits, closed information. It is worth noting that this list is not exhaustive, since TRIPS also includes the norms of other international agreements, according to which the category of protected may fall into the category of protected and other types of IP.



Speaking about the legislation of the Republic of Uzbekistan in the field of intellectual property, first of all, we refer to Section IV of the Civil Code of the Republic of Uzbekistan (hereinafter referred to as the RUZ GK). Based on the meaning of Chapter 59 of the Civil Code of the RUZ, it can be concluded that the general provisions and range of objects relating to intellectual property do not differ from the provisions of TRIPS and are similar.

Thus, according to Art. 1031 of the Civil Code of the RUZ, the objects of IP include the results of intellectual activity, works of science, literature and art, performances, phonograms, transmissions of broadcasting organizations, programs for electronic computers and databases, inventions, utility models, industrial designs; selection achievements; undisclosed information, including production secrets (know-how); trade names, trademarks and appellations of origin of goods.

A similar point is that the list of IP objects given in Art. 1031 of the Civil Code of the RUZ is not exhaustive, as indicated in the General Provisions of TRIPS.

One of the basic principles of IP protection in TRIPS, in accordance with Article 3, is the principle of "national treatment". This principle obliges WTO Member States to accord to nationals of other Member States the same treatment that they accord to their own nationals with regard to IP protection.

It should be emphasized that Member States have the right to derogate from national treatment if this is expressly provided for in international agreements in the field of IP protection. For example, if the Republic of Uzbekistan becomes a member of TRIPS, it can apply the provisions of the Paris Convention for the Protection of Industrial Property or the Berne Convention for the Protection of Literary and Artistic

Works and derogate from the national treatment established by TRIPS, since it has ratified these two Conventions. In the case of exceptions to the principle of national treatment, Member States shall adhere to the most-favoured-nation principle in their relations with other WTO Members (Article 4) and shall not allow any discrimination or disguised restrictions on trade with respect to WTO Members.

TRIPS under Article 1 also does not limit the right of Member States to grant greater IP protection by States on their territory than trips requirements.

An important feature of TRIPS is that it has not settled the issue of the principle of exhaustion of intellectual property rights (national, regional or international), which is why some states may allow "parallel imports" into their territory of goods legally acquired in other states, others require the consent of the right holder to import the relevant products. Thus, in accordance with Art. 6 TRIPS, this issue is not among the resolved and states enjoy great discretion as to which principle of exhaustion of rights they will follow in their national legal systems.

On this issue, the Republic of Uzbekistan, according to Art. 11071 of the Civil Code of the Republic of Uzbekistan adheres to the "national principle" of exhaustion of intellectual property rights. And so, Article 11071 states the following: "It is not an infringement of the exclusive right to a trademark that the use of this trademark by other persons in respect of goods that have been lawfully introduced into civil circulation directly by the owner of the trademark or with his consent." In this case, it should be noted that the Civil Code of the RUZ establishes a "national regime of exhaustion of rights" only in respect of one object of intellectual property - trademarks.

Scope and use of intellectual property rights of the TRIPS Agreement. This section will provide a comparative analysis of the provisions of TRIPS and the

legislation of the Republic of Uzbekistan regarding the scope and use of trademark rights.

No.	Provisions of TRIPS	Legislation of the RUZ
1	<b>Trademarks</b>	
	<b>Article 15</b> A trademark may be any sign (including names of persons, letters, numbers, figurative elements and color combinations, as well as any combination of such signs), provided that such sign has distinctiveness, i.e. its ability to distinguish goods and services of different enterprises in the eyes of the consumer. Moreover, such a distinctive ability can be both initial and acquired in the process of use.	<b>Article 3. Trademark and Service Mark (Law on Trademarks, Service Marks and Appellations of Origin).</b> A trademark and service mark (hereinafter referred to as a trademark) is a duly registered designation that serves to distinguish goods and services (hereinafter referred to as goods) of some legal entities and individuals from similar goods of other legal entities and individuals. <i>"Registration of the designations specified in subparagraphs "e" - "h" of this paragraph is admissible subject to the provision of evidence that the designation has actually acquired distinctness as a result of its use for specific goods.</i> <b>(Rules for compiling, submitting and reviewing trademark and service mark applications. Appendix to the Order of the Director of the SAP of 24.06.2009 N 72, registered by the Ministry of Justice on July 29, 2009 N 1988).</b>
	Members shall publicly disclose each trademark, either prior to or immediately after its registration, and shall provide a reasonable opportunity to apply for cancellation of registrations. In addition, members may provide the opportunity to object to the registration of a trademark.	<b>Article 19 Publication of registration information (Trademark Law)</b> Information on the registration of a trademark, an appellation of origin and (or) the right to use an appellation of origin is published in the official bulletin of the Agency, which is also posted on its official website. Compound published information determined Agency .
	The owner of a registered trademark has the exclusive right not to allow third parties, without his consent, to use in the course of trade identical or similar designations for goods or services that are identical or similar to those for which the trademark is registered, where such use could lead to the possibility of confusion . Where an identical designation is used for identical goods or services, the likelihood of confusion is considered to exist. The	<b>Article 26 Exclusive right to a trademark (Trademark Law).</b> The trademark owner has the exclusive right to use and dispose of the trademark. The exclusive right to a trademark is valid for the goods specified in the certificate. In this case, the exclusive right is exercised during the period of validity of the registration, starting from the date of registration of the trademark in the State Register of Trademarks, and information on the registration of the trademark

	rights described above do not prejudice any existing rights that have arisen previously, and do not affect the ability of members to make the existence of rights contingent on their exercise.	on the same day is posted on the official website of the Agency. An infringement of the exclusive right to a trademark is the unauthorized manufacture, use, importation, offer for sale, sale, other introduction into civil circulation or storage for this purpose of a trademark or product marked with this sign, or a designation confusingly similar to it, in for similar goods.
	Article 6 bis of the Paris Convention (1967) applies mutatis mutandis at your service. In determining whether a trademark is well known, Members shall take into account the familiarity of the trademark in the relevant circles of society, including the familiarity in the Member country which has been achieved as a result of the advertising of the trademark.	Section 321. Well-Known Trademark (Trademark Law) At the request of a legal or natural person, a well-known trademark in the Republic of Uzbekistan may be recognized as a trademark protected on the territory of the Republic of Uzbekistan on the basis of its registration, a trademark protected on the territory of the Republic of Uzbekistan without registration in accordance with an international treaty of the Republic of Uzbekistan, as well as a designation, used as a trademark, but not having legal protection on the territory of the Republic of Uzbekistan , <b>if such trademarks or designation as a result of their intensive use became widely known among the relevant consumers in relation to the goods of this person as of the date indicated in the application in the Republic of Uzbekistan.</b> A well-known trademark shall be granted legal protection provided for by this Law for a trademark.
	The duration of the initial registration and each renewal of a trademark registration shall be at <b>least seven years</b> . Registration commodity sign Maybe resume unlimited number times .	<b>Article 21</b> A trademark certificate or a certificate of the right to use an appellation of origin is valid <b>for ten years</b> from the date of filing the application.
	If the use is a requirement for the continued validity of the registration, then the registration may be canceled only when the mark has been uninterrupted for at least three years, unless the trademark owner provides good reasons based on the existence of obstacles to such use. <b><u>Circumstances arising independently of the will of the trademark owner that</u></b>	<b>Article 25</b> The validity of a trademark certificate may be terminated early, in whole or in part, on the basis of a court decision made at the request of an interested person, if the trademark has not been used continuously during the last three years of its validity, as well as in case of violation of the agreement on the use of a collective mark. When resolving the issue of early termination of the

	<u><b>create an obstacle to its use, such as import restrictions or other government requirements for goods or services protected by the trademark, should be recognized as valid reasons for not using the mark.</b></u>	validity of a trademark certificate due to its non-use, <u><b>evidence submitted by the trademark owner of the non-use of the trademark due to circumstances beyond his control may be taken into account.</b></u>
	The use of a trademark by another person under the control of the owner of the mark is recognized for the purposes of the continued use of the trademark in registration.	Article 27. Use of a trademark The use of a trademark is considered to be its use on goods for which the trademark is registered, and (or) their packaging by the owner of the trademark or a person to whom such a right is granted on the basis of a license agreement, in advertising, printed publications, on official letterheads, signboards, during demonstration exhibits at exhibitions and fairs, on labels, packaging of goods that are produced, offered for sale, sold or otherwise introduced into civil circulation or stored and (or) transported for this purpose, or imported into the territory of the Republic Uzbekistan ;
	The use of a trademark in commerce must not be unreasonably restricted by special requirements, such as use with another trademark, use in a particular form, or use in a manner that would prejudice its ability to distinguish the goods or services of one undertaking from those of other undertakings. This does not change the requirement to use a trademark that identifies an enterprise that produces goods or services, along with, but without connection with, a trademark that distinguishes certain goods or services of the said enterprise.	Absent

Based on the results of comparing the provisions of TRIPS and the legislation of Uzbekistan, we can conclude that many of the fundamental provisions regarding the procedure for granting protection to trademarks are similar. Among the distinguishing features we can include the following:

1. In the TRIPS Agreement, the requirements for the term of trademark protection are at least seven years, i.e. The TRIPS Agreement basically specifies the minimum term of protection, and in accordance with the legislation of the Republic of Uzbekistan is the term of protection is ten years.



2. With regard to the early cancellation of a trademark certificate, both the TRIPS Agreement and the legislation of Uzbekistan provide for the condition of non-use of the trademark for the last three years, and there is also a reservation on the possibility of providing by the owner of the trademark evidence of non-use of the trademark for independent reasons . circumstances from him. However, the TRIPS Agreement, in addition to this clause, discloses a list of situations that can be attributed to circumstances beyond the control of the owner: “import restrictions or other state requirements in relation to goods or services protected by a trademark must be recognized as good reasons for not using the mark.”

3. In terms of recognizing a trademark as used by third parties in the legislation of Uzbekistan, the list of recognized actions as use is much wider than the requirements of the TRIPS Agreement itself. The presence of the scope and use of rights to trademarks both in the TRIPS Agreement and in the legislation of the Republic of Uzbekistan and the absence of significant differences between them indicates the compliance of the legislation of the Republic of

Uzbekistan with the requirements of TRIPS in terms of the scope of rights for trademark protection.

TRIPS requirements for the protection of trademark rights. According to the TRIPS Agreement, in addition to the existence of appropriate intellectual property rights in national legislation, it is also necessary to provide for effective remedies to combat potential intellectual property infringements, as well as to ensure the proper functioning of law enforcement authorities.

In order to become a member of the WTO, it is not necessary to create specialized courts for the protection of intellectual property rights, but national legislation must contain procedures and mechanisms to ensure the observance of intellectual property rights. Appropriate criteria have also been established for these procedures and mechanisms: effective, equal for all and fair (in terms of procedural guarantees). However, these procedures should not be unnecessarily complicated or expensive in terms of accessibility, and should not lead to unreasonable delays or unreasonable delays.

TRIPS STANDARDS FOR GENERAL REMEDIES			
	TRIPS criteria	Requirements By TRIPS standards	Comments ( legislation of the Republic of Uzbekistan)
<i>Criteria in civil and administrative cases</i>			
1.	Justice procedures ( TRIPS Article 42)	<ul style="list-style-type: none"> <li>- the right of copyright holders to apply to the court for the protection of their rights;</li> <li>- the right of the defendants to be promptly notified in writing of the basis of the claim and the merits of the claims;</li> <li>- the right of the parties to be represented by independent legal advisers (lawyers);</li> <li>- the absence of overly onerous requirements for mandatory personal attendance at meetings;</li> <li>- equal right of the parties to protect their</li> </ul>	These TRIPS requirements are provided for in the legislation of the Republic of Uzbekistan, namely the Civil Code of the Republic of Uzbekistan, the Civil Procedure Code, the Economic Procedure Code.

		interests, substantiate claims, present evidence in the case; - the right to the protection of confidential information, unless it is contrary to existing constitutional requirements.	
	Disclosure evidence (Article 43 TRIPS)	The right of the judiciary to require disclosure of information (issue appropriate court orders) that a party needs to substantiate its claims and which is under the control of the opposing party (to which the interested party does not have access), subject to the requirements of maintaining the confidentiality of information. The possibility for WTO Members to provide in their legislation adverse consequences (up to and including an unfavorable decision on the merits of the dispute) against a party that intentionally and without good reason refuses access to the necessary information or does not provide it within a reasonable period of time, or significantly makes it difficult to access.	These TRIPS requirements are provided for in the Law of the Republic of Uzbekistan “On Trade Secrets”.
	Reimbursement of losses (Article 45 TRIPS)	In connection with the infringement of intellectual property rights, right holders should have the right to file a claim for damages and compensate for the damage they caused to a person who knew or should have known that he was committing illegal acts. The right to damages also includes the right to recover legal costs (including attorneys' fees) at the expense of the wrongdoer. WTO Members are also free to provide in their legislation for such types of remedies as the recovery of all proceeds received or pre-established damages (i.e. statutory damages or compensation for violation of exclusive rights), even if the infringer did not know or had no good reason to know that he was carrying out illegal actions.	The right to compensation for damages is provided for by the Civil Code of the Republic of Uzbekistan. In addition, the rules regarding compensation for lost profits are provided for in the Law of the Republic of Uzbekistan “On Copyright and Related Rights”, however, unlike the requirement of the TRIPS Agreement, the maximum compensation should not exceed 1000 basic calculated values.

	Confiscation of goods, materials and equipment (TRIPS Article 46)	Copyright holders have the right to demand the withdrawal from circulation and destruction of counterfeit goods without any compensation. Rights holders also have the right to demand the removal from circulation of materials and equipment that were mainly used in the creation of counterfeit goods, without any compensation. In considering requests, courts should take into account the proportionality of such measures, taking into account the seriousness of the offense, the consequences of such court orders and the interests third parties <sup>[19]</sup> .	The possibility of withdrawal from circulation and destruction of counterfeit goods without any compensation in relation to trademarks is not provided for in the legislation of the Republic of Uzbekistan, however, there is an administrative responsibility for violating the rights of authors in the form of confiscation of materials and equipment that were used to create counterfeit goods.
<b>Criminal procedures</b>			
	Criminal penalties and procedures for infringement of intellectual property rights (Article 61 TRIPS) [20]	WTO Members are required to provide for criminal penalties and procedures in their legislation for willful infringement of copyright and trademark rights committed in commercial circulation. Members of the WTO retain the ability to provide for criminal penalties and procedures also for other infringements of intellectual property rights. Criminal penalties and sanctions should be sufficient to fulfill their preventive role (the role of deterring potential infringers) and should include: a) imprisonment; b) monetary fines; c) confiscation and destruction of materials and instruments of production.	Criminal punishment in the legislation of the Republic of Uzbekistan is provided only for violation of rights to objects of copyright. Unfortunately, at the moment there are no rules that allow to prosecute persons who mass-produce counterfeit products using foreign trademarks. Types of punishment also do not include imprisonment. According to article 149 of the Criminal Code of the Republic of Uzbekistan, persons who violate the rights of authors and inventors are fined or deprived of certain rights and sent to corrective labor.

<b>Border measures ( TRIPS Articles 51-60)</b>		
	Are common obligations	WTO members are required to provide in their legislation measures to control the movement of goods across the border with another state so that right holders who have
		Provided by the Customs Code of the Republic of Uzbekistan.

	<p>reasonable grounds to suspect that goods with an illegally used trademark or goods produced with copyright infringement may be imported can submit a written application to the competent administrative or judicial authority for the suspension by the customs authorities of the release into free circulation of such goods .</p> <p>Members of the WTO have the right, but are not required to:</p> <ul style="list-style-type: none"> <li>- extend the regime of border measures to goods that contain other violations of intellectual property rights (in addition to violations of trademarks or copyrights);</li> <li>- provide for appropriate procedures regarding the suspension by the customs authorities of the release from their territories of counterfeit goods intended for export;</li> <li>- extend the application of such measures to imports of goods placed on the market in another country by the right holder or with his consent (cases of parallel imports), or to goods in transit;</li> <li>- apply border measures to a small amount of goods of a non-commercial nature contained in the personal luggage of passengers or sent in small lots.</li> </ul>	
Procedure for taking border measures at the request of the right holder	<p>1. As a general rule, in order to suspend the release of counterfeit goods into free circulation by the customs authorities, an application from the right holder is required. At the same time, he must provide:</p> <p>a) convincing evidence that there is a violation of his intellectual property</p>	Provided by the Customs Code of the Republic of Uzbekistan.



	<p>rights;</p> <p>b) give a detailed description of the goods for their easy identification by the customs authorities.2. The competent authority has the right to require the applicant to provide a reasonable security or equivalent guarantee sufficient to protect the defendant and the competent authority and prevent abuse of rights by the right holder.3. The competent (judicial or administrative) authority must, within a reasonable period of time, inform the applicant of the acceptance of his application, as well as immediately notify the applicant and the importer of the suspension of the release of goods into circulation.4. The competent authorities should have the authority to provide the right holder with a reasonable opportunity to inspect any goods detained by the customs authorities in order to substantiate his claims. The competent authorities are also empowered to provide the importer with an equivalent opportunity to inspect any such goods.5. The duration of the suspension of the release of goods for free circulation, as a general rule, should not exceed 10 days. If within this period the applicant or other interested party has not initiated legal proceedings on the merits of the dispute, the goods may be released for free circulation.6. The competent authority should have the right to issue a decision</p>	
--	---	--

		ordering the destruction or withdrawal from circulation of counterfeit goods [22]. 7. If the detention of the goods is found to be unlawful, the relevant authority has the right to issue a decision ordering the applicant to pay the importer, consignee and owner of the goods adequate compensation for the damage caused.	
	Procedure for the adoption of border measures at the initiative of the competent authorities	The TRIPS provisions allow for a situation where border measures are taken by the competent authorities on their own initiative, if they have sufficient information about the import of counterfeit goods. In this case, the competent authorities have the right to contact the right holder for any information that may assist them in exercising these powers. The importer and right holder must be immediately notified of the suspension of the release of goods for free circulation so that they can subsequently resort to the necessary remedies for their interests. The competent authorities retain the right to issue a decision ordering the destruction or withdrawal from circulation of counterfeit goods. In case of good faith actions, public authorities and their employees are released from any liability.	Absent

Based on the analysis carried out for the availability of protection mechanisms that meet the TRIPS criteria, which are provided for in the legislation of the Republic of Uzbekistan, it should be concluded that the measures applied in terms of civil liability against persons who violate the rights of trademark owners

fully comply with the provisions of the TRIPS Agreement. Despite this, there are points that do not meet the requirements of TRIPS, namely:

1. Absence of criminal liability in relation to persons who grossly violate the rights of owners to trademarks;
2. Lack of a clear protection mechanism applied within the borders of the Republic of Uzbekistan (border protection measures):

also no application of the notification procedure for the right holder about the violation of his rights in the border territory of the Republic of Uzbekistan. The competent authorities do not have the right to issue a decision ordering the destruction or withdrawal from circulation of counterfeit goods.

Based on the results of the legal analysis, some inconsistencies between the provisions of the legislation of the Republic of Uzbekistan and the requirements of the TRIPS Agreement regarding the application of criminal liability and the application of border measures, which, in particular, arise in the protection of trademark rights, were identified. The presence of such inconsistencies may become an obstacle to Uzbekistan's accession to the WTO and the compliance of the provisions of the law with the standards of the TRIPS Agreement.

The conducted comparative legal analysis became the basis for the formulation of proposals and the following recommendations, which, in our opinion, will speed up the process of compliance of the mechanisms for protecting rights to trademarks with international standards:

1. In order to successfully combat negative phenomena in the sphere of ownership and use of intellectual property objects, in particular, those aimed at the individualization of goods, it is necessary to clearly understand what the legislator means by the term "counterfeit". Thus, in accordance with the Law of the Republic of Uzbekistan "On Trademarks", goods, labels, packaging of goods on which a trademark or a confusingly similar designation is illegally used are counterfeit. We propose to give 3 tbsp. 27 of the Law of the Republic of Uzbekistan "On Trademarks, Service Marks and Appellations of Origin of Goods" No. 267-II dated August 30, 2001 as follows: "goods, labels, packaging of goods on which a

(a) According to the latest amendments to the Civil Code and the Law on Trademarks, Service Marks and Appellations of Origin of Goods of the Republic of Uzbekistan, provisions have been introduced on the exhaustion of exclusive rights to a trademark (Article 1071<sup>1</sup> and Article 26 respectively) according to which: - The use of this trademark by other persons in relation to goods that were lawfully introduced into civil circulation directly by the owner of the trademark or with his consent is not a violation of the exclusive right to a trademark. This novel introduces the principle of exhaustion of trademark rights into the legislation. Exhaustion of rights to a trademark means that the owner of the mark does not have the right to prohibit the use of the trademark by other persons in relation to goods introduced into civil circulation by himself or with his consent. Exhaustion of rights becomes relevant in the context of foreign trade relations, in particular in matters of the so-called "parallel imports". However, the fact that this article does not clearly indicate the territory for introducing goods into circulation may lead to different interpretations of this rule and lead to the fact that the international principle of exhaustion of rights to trademarks is in force in the Republic of Uzbekistan;

(b) The legislation of the Republic of Uzbekistan also does not provide for the application of border measures by the competent authorities on their own initiative, if they have sufficient information about the import of counterfeit goods. At the same time, there is

trademark is illegally used, confusingly similar to it the designation, as well as original products, the import of which was carried out without the consent of the copyright holder, are recognized as counterfeit”

2. Include the term “parallel import” in the Customs Code of the Republic of Uzbekistan and give it the following definition: “is the import of original products into the territory of the Republic of Uzbekistan without obtaining the consent of the copyright holder.”

3. Assign to the customs authorities the authority to suspend the import of counterfeit products without filing an application from the right holder and sending a notification to the right holder, which will lead to the launch of a mechanism for the customs authorities to independently respond to such violations ( ex officio ).

4. The customs authorities should be given the right to independently, without judicial authorities, within the framework established by law, control and make decisions on the suspension of cargo already on the basis that trademarks are included in the TRIP. This will save the customs authorities from constant litigation, relieve the courts and protect the rights of both domestic and foreign right holders.

5. Grant the customs authorities the right to bring the offenders in the field of intellectual property to administrative responsibility for violations of the relevant norms established in the customs legislation.

6. Create a new body under the Ministry of Internal Affairs of the Republic of Uzbekistan, which would be directly involved in the elimination of offenses in the field of intellectual property, entrusting it with the obligation to confiscate counterfeit products and impose fines on violators in order to prevent the sale of such goods, and thereby protect

the copyright holder from the occurrence he has lost profits.

7. Provide for in the Code of Administrative Liability the confiscation of counterfeit products and goods on the spot in the form of a fine for the sale and production of counterfeit goods.

8. Provide in the Criminal Code liability for large-scale production and import of counterfeit products.

The implementation of these proposals in practice would contribute not only to the protection of the rights and interests of trademark and service mark holders, but would also raise the prestige of our state as an active fighter against intellectual property infringement. In addition, it would also protect consumers of goods from deception by unscrupulous sellers.

## REFERENCES

1. <https://president.uz/ru/lists/view/3887>
2. <https://www3.wipo.int/madrid/monitor/en/>
3. Article 2 of the Paris Convention for the Protection of Industrial Property of 1883, as amended on October 2, 1979
4. Article 4 of the Paris Convention for the Protection of Industrial Property of 1883, as amended on October 2, 1979
5. This refers to paragraph 2 of Article 4 of the Protocol to the Madrid Agreement Concerning the International Registration of Marks, as well as Article 15 of the Singapore Treaty on the Law of Trademarks.
6. Making a mark: An introduction to Trademarks for SMEs. WIPO Publication No. 900.1. With. 62
7. <https://euipo.europa.eu/ohimportal/trade-marks>
8. Adapted from WIPO Publication No. 418 ® ISBN: 92-805-1373-7 Madrid System.



9. Nikulina V.S. Legal protection of a trademark and fight against unfair competition. - M.: Statute, 2015. - p.100
10. Adapted from WIPO Publication No. 418<sup>®</sup> ISBN: 92-805-1373-7 Madrid System.
11. Obtaining legal protection of a trademark abroad under the international procedure. Tashkent: Intellectual Property Agency of the Republic of Uzbekistan, 2015.: p.512. Abs. b Clause 2, Article 5 of the Protocol to the Madrid Agreement Concerning the International Registration of Marks.
12. Krylepova. Mechanisms for extraterritorial protection of trademarks
13. Orlov. The impact of the Madrid system of international trademark registration on the development of intellectual property.
14. WIPO Publication No. 418R Madrid System for the International Registration of Marks. Goals, features, benefits. 2018.
15. Making a mark: An introduction to Trademarks for SMEs. WIPO Publication No. 900.1. With. 64
16. Абдурахманова, Нодирахон. "Вопросы регулирования и внедрения смарт-контрактов в национальное законодательство." Общество и инновации 3.11/S (2022): 170-178.
17. Рахмонова М. Analysis of the legal practice of Uzbekistan and EU countries in the field of legal regulation of blockchain and cryptocurrency //Общество и инновации. – 2022. – Т. 3. – №. 11/S. – С. 270-282.
18. Abdurakhmanova N. ISSUES OF REGULATION AND IMPLEMENTATION OF SMART CONTRACTS IN NATIONAL LEGISLATION. – 2022.