

THE CONFLICT BETWEEN THE RIGHT TO THE COMPANY NAME AND TO THE TRADEMARK

Ina Bostan, *Associate Professor of Law, PhD*, ORCID: 0000-0001-9191-8885

Marin Turuta, *Master of Law*

Technical University of Moldova, 168, Ștefan cel Mare Blvd., Chisinau, Republic of Moldova

Abstract: In the current economic context, both in the Republic of Moldova and in other jurisdictions, the protection of the company name (trade name) and the trademark is essential for defining the identity of a business. Usually, an entrepreneur registers a business and assigns it a name, and simultaneously or subsequently, he may also request the registration of a trademark, in order to protect his products or services and consolidate his presence on the market. In certain cases, the right to the company name may conflict with the right to the trademark, which can lead to litigation and significant financial implications for entrepreneurs. The conflict arises when a company name, registered in the state register, is identical or very similar to a registered trademark, thus creating a risk of confusion for consumers. A conflict also exists when, after the registration of a trademark, a company name is also registered that is similar to the registered trademark. In order to avoid these conflicts, it is necessary to understand the legal regime of each of these identification elements separately. Thus, the purpose of this research is to analyze and clarify the legal and practical aspects related to the conflict between the right to the company name/trade name and the right to the trademark, highlighting the applicable national and international regulatory framework, the methods of acquiring and exercising these rights, as well as the legal solutions for preventing and resolving any conflicts that may arise between the holders of these rights.

Keywords: identification element, company name, trade name, trademark, fair competition.

I. Introduction

In an economy based on competition and innovation, in the era of continuous technological advancement, identifying a business on the market for a product or service is an essential aspect for the success of the entrepreneur. In this context, the company name or trade name and the trademark have become important legal instruments, through which a company defines its identity, protects its image and ensures its recognition among consumers. However, the interaction between these two identifying elements can sometimes generate significant legal conflicts, affecting both the right holders and the third parties involved.

The conflict between the company name and the trademark occurs when a company name, registered in the state register, is identical or similar to a protected trademark, which can create confusion for the consumer. This situation raises issues related to the priority rights, consumer protection, and legal certainty for those practicing entrepreneurial activity. In this regard, we highlight that the regulatory differences regarding the registration and protection of rights to a name/trade name and trademark can further complicate the process of resolving disputes.

Analyzing the legislation of the Republic of Moldova and that of the European Union, we find that both in our state and in other jurisdictions, specific mechanisms are provided for the prevention and resolution of these conflicts, emphasizing the principle of priority and avoiding the risk of confusion. Thus, in this paper we aim to analyze the legal regime of the name and trademark, identifying the main causes of conflicts between the company name and the trademark, having as objectives the complex examination of the relevant legal regulations, including those of European Union law, which govern the protection of the company name and the trademark. We will also highlight the specific legal characteristics of each, analyze the collisions between the two rights, with an emphasis on situations in which the use of an identical or similar sign may generate confusion among consumers, identify the legislative gaps or inconsistencies that may lead to conflicts between the right holders of the company names and the

trademarks and propose legal and practical solutions for the prevention and resolution of these conflicts, including the legislative measures.

II. Methodological basis of the study.

In general, in order to achieve the proposed objectives, an analysis of the problem addressed was necessary, both from the perspective of national and European legislation, and from the perspective of judicial practice. Therefore, a complex research methodology was adopted, which constantly integrated the two types of analysis because approaching them separately would have significantly diminished the quality and rigor of the study. In particular, the study included other methods, such as the comparative method, which is inevitable in the study of two legal concepts; interdisciplinary approaches, integrating perspectives from different branches of law, but also from different branches of social life, such as economics, sociology and other fields, which would provide a complex understanding of the company name as an element of identification of a commercial company, with that of the trademark - as an element of identification of the good or service offered by the company.

III. The obtained results and discussions.

The company name/name, along with the trademark, is part of the category of distinctive signs used by professionals who practice entrepreneurial activity to identify and carry out their economic activity. Although both are elements of business identification, the company name is an element of identification of the economic agent, that is, of the subject practicing entrepreneurial activity, and the trademark is an element of identification of the product/service of this subject. Thus, in order to understand the differences and similarities between these elements, it is necessary to mention the legislation that regulates these identification elements.

Referring to the local legislation, we highlight that the company name and the trademark are regulated by the following normative acts:

- Civil Code of the Republic of Moldova no. 1107 of 06.06.2002. Published in: Official Gazette No. 66-75 of 01.03.2019, art. 13 [6];
- Law no. 220 of 19.10.2007 on state registration of legal entities and individual entrepreneurs. Published in: Official Gazette No. 184-187 of 30.11.2007, art. 711; [17]
- Law No. 845 of 03.01.1992 on entrepreneurship and enterprises. Published in: Official Gazette No. 2 of 28.02.1994, art. 33 [21];
- Law No. 38 of 29.02.2008 on the protection of trademarks. Published in: Official Gazette No. 99-101 of 06.06.2008, art. 362 [20];
- Law No. 25 of 15.02.2024 on trademarks. Published in: Official Gazette No. 130-134 of 02.04.2024, art. 198 [18];
- Law no. 183 of 11.07.2012 on competition. Published in: in the Official Gazette no. 351-354 of 15.09.2023, art. 620 [16].

The following international and European normative acts refer to the protection of the company name/trade name and the trademark:

- Paris Convention for the Protection of Industrial Property of 20 March 1883, Parliament Decision no. 1328 - XII of 11 March 1993, in force for the Republic of Moldova since 25.12.1991 [7];
- Madrid Agreement Concerning the International Registration of Marks, Parliament Decision No. 1624-XII of October 26, 1993, in force for the Republic of Moldova since December 25, 1991 [1];
- Geneva Treaty of October 27, 1994 on the Law of Trademarks (TLT), Parliament Decision No. 614-XIII of October 27, 1995, in force for the Republic of Moldova since January 8, 1996 [25];
- Singapore Treaty on the Law of Trademarks, Law of the Republic of Moldova No. 214-XVI of October 23, 2008, in force for the Republic of Moldova since March 16, 2009 [26];
- Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks of June 27, 1989, Parliament Decision No. 1252-XIII of July 10, 1997, in force for the Republic of Moldova since January 12, 1997 [23];
- Nice Agreement of June 15, 1957 Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, Parliament Decision No. 1251-XIII of July 10, 1997, in force for the Republic of Moldova since January 12, 1997 [2];
- Vienna Agreement of June 12, 1973 Concerning the International Classification of Figurative Elements of Marks, Parliament Decision No. 1250-XIII of July 10, 1997, in force for the Republic of Moldova since January 12, 1997 [3];

- Directive 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (text with EEA relevance), Official Journal of the European Union L 169/46 of 30 June 2017 [11];

- Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (text with EEA relevance), published in Official Journal of the European Union L 157 of 30 April 2004 [10];

- Directive (EU) 2015/2436 of the European Parliament and of the Council of 16 December 2015 to approximate the laws of the Member States relating to trade marks (text with EEA relevance), published in Official Journal of the European Union L 336/1 of 23 December 2015 [9];

- Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark (text with EEA relevance), published in the Official Journal of the European Union L 154/1 of 16 June 2017 [24];

- Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) [4].

Analyzing the national normative acts, which regulate the legal regime of the company name and the trademark, we conclude that unlike the trademark, the company name is not legally defined. Art. 182 para. (1) of the Civil Code of the Republic of Moldova provides that, „*A legal person shall participate in legal relations only under its own name, established by the constituent documents and registered in the appropriate manner*” [6]. Law No. 845 of 03-01-1992 on entrepreneurship and enterprises provides that “*The entrepreneur and the enterprise established by him shall carry out their activity under a certain firm (name)*” [21, art. 24, para. (1)]. Similar provisions can be found in Law No. 220 of 19.10.2007 on state registration of legal persons and individual entrepreneurs, which in art. 9 para. (1) provides that “*The legal person carries out its activity under its own name, which is registered with the state registration body*” [17]. Article 4 paragraph (3) of Law no. 114 of 03.07.2014 on the State Agency for Intellectual Property provides that „*The field of intellectual property also includes other goods that have a separate regulatory system, such as: a) trade secret (know-how); b) trade name*” [15].

In Romania, Law no. 265 of 22 July 2022 on the trade register and for amending and supplementing other normative acts with an impact on registration in the trade register, published in the Official Gazette no. 750 of 26 July 2022, at art. 3, letter j) defines the company as „*the name under which the professional who is obliged to register in the trade register carries out his activity and under which he signs*” [19].

The specialized doctrine defines the company as „*a mandatory attribute for the identification and individualization of the commercial company, it represents the name under which it will carry out its economic activity*” or „*the name under which the company carries out its activity and under which it signs, distinguishing it from any other trader registered in the trade register*” [27, p.183; 22, p.236].

Analyzing the national legal provisions, as well as the specialized doctrine, we also observe that both the doctrine and the legislator use different terms to identify the legal person as a subject of law, namely, the terms „*name*” or „*firm*”, using them as synonyms. This can be easily explained or, according to the explanatory dictionary of the Romanian language, the company is „*The name or the designation under which a trader is registered in the trade register and under which he signs*” or „*Conventional name under which an enterprise operates*” [8]. The same explanatory dictionary defines the name as „*Name given to a being or a thing; word with which we call something*” or „*Mandatory element (along with the headquarter) for identifying a legal entity*” [8]. Thus, in the legislator’s understanding, both the term “name” and the term “firm” mean nothing more than the name under which the subject of collective law is registered in the state register and under which it enters into legal relations with third parties.

However, in common everyday language, „*firm*” is a generic term that designates an economic entity, regardless of its legal form, thus being frequently used as an equivalent for the term „*company*”, „*enterprise*” or „*business*”. In this regard, we draw attention to the fact that the lack of an express legal definition of „*firm name*” in the Republic of Moldova has led to a non-uniform practice, in which the terms “firm” and “name” are used interchangeably, without clear distinctions, which may generate confusion in the interpretation and application of the rules regarding the identification and legal protection of legal entities. Taking into account the fact that the definitions establish the precise meaning of the terms used within a normative act, *de lege ferenda* (the law as it should be) we propose to amend art. 24, 25, 26 of Law 845/1992 on entrepreneurship and enterprises, by replacing the term „*firm*” in the content of these provisions with the term „*name*”, avoiding in this sense ambiguities and contradictory interpretations. This proposal also comes in the context of the harmonization of national legislation with that of the EU, or in the legislation of the union, for example in art. 2 of Directive 2017/1132 of the European Parliament and of the Council of 14 June 2017 on certain aspects of company law, the term „*name*” is used [11].

We also propose to introduce in art. 24 para. (1) of Law 845 a definition of the concept of name, as follows: „The term represents the name under which a legal person is registered in the state register and under which it carries out its activity, participating in legal relations and signing legal acts”.

Regarding the similarity between the terms „name” and „corporate name”, in the light of national and European legislation, we can state that these terms, although not identical from a terminological point of view, are identical in terms of birth, legal nature and protection they benefit from.

The emergence of **the right to the name** occurs with the registration of the name in the state register, the national legislation being uniform in this regard, the following legal provisions being relevant:

- Art. 182 para. (6) Civil Code of the Republic of Moldova „A legal person whose name is registered has the right to use it” [6];

- Art. 26 para. (1) of Law No. 845/1992 on entrepreneurship and enterprises „An enterprise whose name has been registered in the manner established by this Law has the right to use it in accordance with the legislation. A person who uses a foreign name that has already been registered is obliged, at the request of the holder of the right to the name, to cease using it and to recover from him the damages caused” [21];

- Art. 9 paragraph (3) of Law No. 220/2007 on state registration of legal entities and individual entrepreneurs „A legal entity shall have the exclusive right to the registered name and shall be obliged to use the name only in the form that is registered in the State Register” [17];

- Art. 4 paragraph (4) of Law No. 114 of 03.07.2014 on the State Agency for Intellectual Property „In the case of industrial property objects, the right to them shall arise following the registration of the object, the granting of the protection title by the national intellectual property office or under other conditions provided for by national legislation, as well as on the basis of international treaties to which the Republic of Moldova is a party” [15].

Speaking in this research about the conflict between the two identification elements, it is essential to understand whether the right to the name falls within the scope of the notion of „industrial property right”.

At the national level, the answer to this question can be found in art. 4 para. (1) and (3) of Law No. 114 of 03.07.2014 on the State Agency for Intellectual Property, which provides that „Any result of intellectual activity, confirmed and protected by the corresponding rights regarding its use, is considered an intellectual property object. (...) Other goods that have a separate regulatory system are also part of the intellectual property field, such as: a) trade secret (know-how); b) trade name” [15].

The answer to this question is also positive in relation to the provisions of the Paris Convention, to which our state is a party:

- art. 1 para. (2) „The protection of industrial property shall cover patents, utility models, industrial designs, trademarks, service marks, trade names and indications of provenance or appellations of origin, as well as the suppression of unfair competition” [7];

- art. 8 „A trade name shall be protected in all the countries of the Union, without the obligation of filing or registration, whether or not it forms part of a trade mark” [7];

- art. 9 para. (1) „Any product that unlawfully bears a trademark or trade name shall be seized while being imported, in those countries of the Union where the trademark or trade name is entitled to legal protection” [7].

Regarding the trademark, as the subject of this research, we mention that in the Republic of Moldova, at present, the protection of trademark rights is regulated by Law No. 38 of 29.02.2008 on the protection of trademarks, a law that will apply until 02 April 2027, when Law No. 25 of 15.02.2024 on trademarks will enter into force, Published in the Official Gazette No. 130-134 of 02.04.2024, art. 198 [18, 20].

In art. 2 of Law No. 38/2008, the trademark is defined as „any sign (visual, sound, olfactory, tactile) which serves to individualize and distinguish the products and/or services of a natural or legal person from those of other natural or legal persons” [20].

Unlike Law No. 38/2008, the new law that will enter into force in 2027 does not give a definition of the trademark, but it is perfectly outlined in art. 3, through the signs that can constitute trademarks, namely „all signs, in particular words, including persons' names, designs, letters, numerals, colors, the shape of the product or of the product's packaging, sounds, provided that such signs are capable of: a) distinguishing the products or services of a natural or legal person from those of other natural or legal persons; and b) being represented in a register in a way that enables the competent authorities and the public to establish with clarity and precision the subject matter of the protection conferred on their holder” [18]. Thus, the new law that will apply from 2027 defines the brand functionally and operationally, through its signs and effects, but not through a theoretical and formal phrase.

We believe that the legislator's decision not to include an express definition of the trademark in Law No. 25 of 2024 actually reflects the desire for convergence with EU law and the need for flexibility in the face of technological and economic innovation, as well as the orientation towards open regulation, based on function, not

form. This approach is in line with the new trends in intellectual property law and encourages a flexible interpretation, more adaptable than the old rigid rules.

Moreover, the new law faithfully transposes the Directive (EU) 2015/2436, which also does not include a classic definition of the trademark, but which in art. 3 also outlines it through its elements/signs, regulating that „*All signs, in particular words, including persons' names or designs, letters, numerals, colours, the shape of the product or of the product's packaging or sounds, may constitute trademarks, provided that such signs are capable of: (a) distinguishing the goods or services of one undertaking from those of other undertakings; and (b) being represented in the register in a way which enables the competent authorities and the public to establish with clarity and precision the subject matter of the protection conferred on their proprietor*” [9]. Thus, instead of a rigid definition, the European approach is based on a functional formulation: any sign capable of differentiating the goods or services of one economic agent from those of others, with the obligation to be registered in a register.

Despite the fact that a definition gives meaning to terms in general, in this case the choice of the local legislator to exclude the definition of the trademark from the new law is not accidental, but reflects a deliberate option, with multiple theoretical and practical justifications. In this sense, we consider that the legislator has offered more extensive interpretative flexibility to the courts, State Agency for Intellectual Property and practitioners, favoring an application of the norm oriented towards the effective protection of rights, avoiding legal obstacles in the registration of modern trademarks, encouraging innovation and economic competitiveness. Therefore, the absence of a strict definition allows the adaptation of the trademark concept both to the realities of the modern market and to the recognition of new forms of visual, auditory, digital expression, etc. In conclusion, we note that through this approach the legislator has preferred a definition through elements, signs and effects, not through closed formulas, which reflects a maturation of the legislation in the field of intellectual property. Moreover, this modern approach strengthens the law's capacity to respond to the dynamic needs of the digital economy and global trade, which is constantly expanding.

Analyzing the specialized literature on trademarks, we can state with certainty that, although it is a fairly studied subject, the doctrine has not yet outlined a complex definition, unanimously accepted in the scientific community in the field of law and economics. However, a good part of these definitions focus on the same defining elements provided for in the legislation „*a name, a term, a sign, a symbol or a design, or a combination of these elements, allowing the identification of the goods or services of a seller, or group of sellers, and their differentiation from the competition*” [14] or „*a name, sign or symbol used to differentiate the products or services of one enterprise from those of others ... The brand may consist, in certain cases, of musical jingles ... colors ... even smells ... as long as it fulfills the main role of distinguishing the products (or services) of one manufacturer from those of others*” [5].

By carefully examining these definitions, we note that although the authors use slightly different formulations, they reflect a fundamental convergence regarding the functions of this identification tool. Thus, although the style of formulation varies, both definitions converge on the idea that the trademark is a distinctive sign that has the essential role of identifying and differentiating the products or services of an economic agent from those of others. The differences appear only at the level of extensibility, namely that the second definition also includes unconventional forms of trademarks.

We will analyze **the acquisition of trademark rights**, taking into account both normative acts that regulate the legal regime of trademarks, in this case Law No. 38/2008 currently applicable, but also Law 25/2004 which will enter into force in 2027.

In this regard, we highlight that art. 3 of Law No. 38/2008 on the protection of trademarks, entitled “*Legal Protection*”, regulates the ways in which trademark rights are acquired and protected in the Republic of Moldova [20]. The text provides a complete and clear regulation of all legal ways through which a trademark can benefit from legal protection, highlighting the existence of a national, international and *sui generis* system, which refers to well-known trademarks. Regarding the conflict between the right to a trademark and the right to a name/denomination, art. 7 para. (3) of the law reflects the interdependence of the intellectual property rights system, stating that the right to a trademark cannot prevail over rights previously acquired by the third parties. Thus, this norm projects the right to a trademark, as a conditional right, subject to a filter of legality and good faith, in order to protect the legitimate interests of other right holders and to maintain the coherence of the intellectual property regime in the Republic of Moldova.

Art. 4 of Law No. 25 on trademarks, which will enter into force in 2027, also enshrines the constitutive system of acquiring the right to a trademark, offering protection exclusively through registration, either nationally at the State Agency for Intellectual Property or internationally under the Madrid Agreement or the Protocol relating to the Agreement. This approach strengthens the legal certainty and clarity in the field of industrial rights and excludes,

at least formally, the protection of unregistered trademarks. Art. 9 para. (5) of the new trademark law introduces detailed regulation of cases of refusal of trademark registration, by way of opposition and reflects an alignment with European and international standards in the field of intellectual property, highlighting the same principle of the priority of the previously acquired right.

Concluding on the emergence of the trademark right, we note that both the provisions currently in force and the new ones applicable from 2027, enshrine the same principle of respecting the previously registered right, so that the trademark right cannot be obtained if it infringes the previous rights of other right holders, ensuring in this regard the balance between the trademark holders and other beneficiaries of the intellectual rights. In this regard, there is also the judicial practice of the Republic of Moldova, or in file No. 2ra-728/15 the supreme court admitted the plaintiff's request for the defense of the trade name by contesting the act of registration of the verbal trademark and annulled the decision of the State Agency for Intellectual Property to register the subsequent verbal trademark.

The comparative research of the legal regime of the name/denomination with that of the trademark highlights the nature of these distinctive signs, which can be the subject of legal protection, both for the name/denomination and for the trademark. Thus, the clear delimitation of these concepts is essential to prevent the legal conflicts related to unfair competition, conflict of rights, or confusion among consumers. Below, a comparative table is presented, highlighting the main legal and functional differences between brand and name/denomination, in order to facilitate a clear understanding in the analysis of conflicts between distinctive signs.

Table 1: Comparative aspects between name/trade name vs. brand

Criterion	Name/trade name	Brand
Definition	The name under which a legal entity is registered in the state register and under which it carries out its activities, participating in legal relations and signing legal documents.	All signs, in particular words, including personal names, designs, letters, numerals, colours, the shape of the product or of its packaging, sounds, provided that such signs are capable of distinguishing the goods or services of one natural or legal person from those of other natural or legal persons and are represented in a register in a manner which enables the competent authorities and the public to determine with clarity and precision the subject matter of the protection conferred on their proprietor.
The emergence of law	Once the name is registered in the state register.	According to Law 38/2008 by registration with the State Agency for Intellectual Property, international registration and recognition of the trademark as a well-known one. According to Law 25/2024 by registration either nationally with the State Agency for Intellectual Property or internationally.
Legal framework	Civil Code of the Republic of Moldova, Law No. 845/1992 on entrepreneurship and enterprises, Law No. 220/2007 on state registration of legal entities and individual entrepreneurs.	Law No. 38 of 29.02.2008 on the protection of trademarks, Law No. 183 of 11.07.2012 on competition, Law No. 25/2024 on trademarks, Law No. 114 of 03.07.2014 on the State Agency for Intellectual Property.
Function	<i>Identifier</i> - allows the legal and unique identification of a legal entity within legal relations; <i>Organizational</i> - is used in all official documents of the entity; <i>Legal protection</i> – it is protected against abusive use by other entities.	<i>Identifier</i> - identifies and differentiates the products/services of a natural or legal person who practices entrepreneurial activity from those of others; also allows consumers to identify the commercial origin of a product or service; <i>Guarantee</i> - provides a guarantee of constant quality and predictable expectations for consumers; <i>Communication</i> - transmits values, emotions, brand image - being a communication bridge between the trader and the consumer; <i>Investment</i> - is an intangible asset that can attract investments, partnerships, and customer loyalty;

		<i>Advertising</i> - the brand can be used as a promotional tool; <i>Legal protection</i> - the owner can prevent third parties from using identical/similar signs without his consent.
Protection period	Throughout the entire duration of the legal entity's operation.	Typically, 10 years, with the possibility of successive renewal.
Obligation to use	The name must be officially used in all documents of the entity as long as the legal entity exists.	The trademark must be actually used, otherwise the right may be lost.
Distinctive features	It must be unique within the state registry..	It must be distinctive, not misleading, not generic.

From the entire research of legal norms and doctrine, we observe that the same distinctive sign can be protected simultaneously by the same owner and by the right to the trademark, but also by the right to the name/denomination. It is also possible that the same sign or a similar sign can be protected separately by different owners, under distinct rights, which can generate conflicts of interest or overlaps in the exercise of these rights.

From the provisions of art. 1 paragraph (2) of the Paris Convention, according to which: *The protection of industrial property covers patents, utility models, industrial designs, trademarks, service marks, trade names and indications of provenance or appellations of origin, as well as the repression of unfair competition* [7], as well as from the provisions of art. 4 paragraphs (1) and (3) of Law No. 114 of 03.07.2014 on the State Agency for Intellectual Property, according to which „*Any result of intellectual activity, confirmed and protected by the corresponding rights regarding its use, is considered an intellectual property object. (...) Other goods that have a separate regulatory system are also included in the field of intellectual property, such as: a) trade secret (know-how); b) trade name*” [15] it follows that the right to distinctive signs, whether it is a trademark or a name/denomination, reflects the legislator's concern to protect both the identity of participants in economic life and the products and services offered by them, all of which have a single purpose - to avoid confusion for the public between the distinctive signs used by traders on a certain market.

In order to eloquently understand the notions of „*unfair competition*” and „*confusion*”, it is essential to refer to the provisions of art. 10 bis para. (2) and (3) of the Paris Convention which provide that „*Any act of competition contrary to honest practices in industrial or commercial matters constitutes an act of unfair competition. The following shall be prohibited in particular: 1. Any act which is likely to create, by any means, confusion with the undertaking, products, or industrial or commercial activity of a competitor; 2. False statements, in the course of trade, which are likely to discredit the undertaking, products, or industrial or commercial activity of a competitor; 3. Indications or statements the use of which, in the course of trade, is likely to mislead the public as to the nature, method of manufacture, characteristics, suitability for use or quantity of the goods*” [6]. Relevant in this regard are also the provisions of art. 19. paragraph (1) letter a) of the Competition Law No. 183 of 11.07.2012, which states that „*Any actions or facts which are likely to create, by any means, confusion with the undertaking, products or economic activity of a competitor are prohibited. Such actions can be carried out by: a) the illegal, full or partial use of a trademark, service emblems, company names, an industrial design or model or other objects of industrial property likely to create confusion with those legally used by another undertaking*” [16].

Analyzing these provisions, we find that neither international nor domestic norms make a distinction regarding the means by which confusion may arise, which means that the law does not exclude the possibility that the distinctive sign used by one trader as a trademark may be used by another as a name/denomination, as long as this may generate confusion on the market. In such a situation, if the risk of confusion is real, and the sign registered as a name/denomination for one subject could also have been admitted as a trademark for another subject, the objective criterion of registration priority may serve as an instrument for resolving the conflict between rights, in accordance with the principles of protection of distinctive signs and fair competition.

The conflict could arise, however, in the situation where the distinctive sign previously registered as a trademark was subsequently registered as a name/denomination.

We will also treat the answer to this question through the lens of both normative acts, which regulate the legal regime of trademarks. As mentioned above, the exclusive right conferred on the owner by registration is not absolute, but is subject to limitations intended to protect certain legitimate interests of the third parties, as well as the proper conduct of entrepreneurial activity within a fair and competitive market. Such limitation is expressly enshrined in art. 10 para. (2) of Law No. 38/2008 according to which, the owner of the trademark does not have the right to prohibit a third party from using his own name in commercial activity, provided that honest practices are

respected [20]. This limitation is probably justified by preventing the abusive monopolization of signs that have a personal or identifying meaning. In this context, this legal provision provides a framework for balancing the right to identify the subject carrying on an entrepreneurial activity and the right to exclusivity over a distinctive sign. It is important to underline here that this protection is conditional on good faith and honest practices, so that any use that is likely to mislead consumers or harm the reputation of a trademark owner can still be sanctioned.

In contrast, Law No. 25/2024, which will be applicable from 2027, in art. 11 para. (3), adopts an expanded vision of the scope of protection conferred on the trademark owner, expressly providing that „*The trademark owner may prohibit, in particular, the following actions by the third parties:(...) d) the use of the sign as a trade name or as the name of the legal person or as part of them*” [18], and in art. 15 para. (1) and (2) regulate the limitation of the exclusive right to the trademark, indicating that “*A registered trademark does not confer on its owner the right to prohibit a third party from using, in the course of commercial activity: a) the name or address of the third party, if the third party is a natural person; (...) Para. (1) shall apply only if the use by a third party of these elements is in accordance with honest practices in industrial or commercial activity*” [18].

Analyzing these legal provisions comparatively, we note that the new law, applicable from 2027, restricts the protection of the right to the name in favor of the trademark owner, allowing only natural persons to invoke this limitation and only in accordance with honest practices. Thus, legal persons with a profit-making purpose, that is, those who practice entrepreneurial activity, can no longer justify the use of a name similar to the registered trademark, invoking the right to their own name.

We consider that the legislator's reasoning, to exclude the legal person from the benefit of the limitation of the exclusive right to the trademark as it emerges from the economy of Law No. 25/2024, can be understood through an analysis of international legislation and practice; the main explanations we consider to be the following:

- Unlike the natural person, who has a natural and non-patrimonial right to the name, falling into the category of personality rights, expressly enshrined in art. 43 Civil Code of the Republic of Moldova [6], the name of the legal entity is a legally-conventional identification element, freely chosen by the subject of entrepreneurial activity, within the formalities of establishing and registering his business, so that within legal entities there is no personal attachment or a naturally protected „*identity*”. In this regard, the legislator considered that legal entities can adapt their name/denomination, depending on the availability of names and the trademark regime, without affecting a fundamental right. When establishing a legal entity, the registration body, according to art. 9 paragraph (11) of Law 220/2007, checks the availability of the name and may refuse registration, if it is identical or similar to an existing name or to a registered trademark or a well-known foreign trademark [17].

- By limiting the exception to natural persons only, the legislator aims to prevent situations in which legal persons act in bad faith in order to exploit the notoriety of an existing trademark. Thus, the legislator assumes that a legal person has the obligation to avoid conflicts, and protection by the exception to the exclusive right is not justified.

- We draw attention to the fact that art. 14 of EU Directive 2436/2015 also regulates the limitation of the effects of the trademark, (1) “*The trademark shall not entitle its proprietor to prohibit a third party from using, in the course of trade: (a) the name or address of the third party, where that third party is a natural person*” [9], so that the European rules also allow the trademark proprietor to oppose the use of the sign in the name of a legal person, if there is a risk of confusion.

- Also in the Court of Justice of the European Union Case Law, in case C-17/06 Céline, the Court confirms that the use of the trademark as part of the trade name may be prohibited, if it affects the functions of the trademark [12].

Thus, the exclusion of the legal person from the benefit of invoking the right to the name, as a limit to the exclusive right to the trademark, reflects a clear legislative policy option, justified as mentioned above, by the lack of a natural right to the name/trade name of the legal person, by the need to combat commercial confusion, by making legal persons who practice entrepreneurial activity responsible for avoiding conflicts upon registration and, last but not least, by harmonizing the national legislation with the European law, reflecting in this regard a balanced vision between the trademark owners and the third parties' good faith.

Regarding the good faith of the third parties, we draw attention to the fact that, although the new law makes general reference to the correct use of signs by the third parties in commercial activity, the content or limits of the notion of „*fair practices*” are not expressly detailed, this absence being likely to create legal uncertainty and favouring either an abusive extension of the trademark owner's right or insufficient protection of signs legitimately used by third parties.

Therefore, we consider that an amendment to the new law is required by supplementing art. 15 para. (2) with a new content, as follows:

“The use of a sign by a third party shall be considered to be contrary to the honest practices in industrial or commercial activity, in particular in the following situations:

a) when it creates, in the consumer's perception, an appearance of association between the third party and the proprietor of the trademark, unreasonably suggesting the existence of a commercial or contractual link between the parties;

b) when the use is intended to take unfair advantage of the distinctive character or the name of the trade mark, or is detrimental to its image and commercial value, without the third party being able to invoke legitimate reasons justifying such conduct.

This approach is also found in the consistent case-law of the Court of Justice of the European Union, which ruled, for example, in case C-487/07, L'Oréal Joint Stock Company and others v. Bellure NV [13], that taking economic advantage of the reputation of a registered trademark, without the consent of the proprietor and without due cause, constitutes an infringement of the function of advertising and prestige of the trademark.

Moreover, in the Celine case C-17/06 the Court of Justice of the European Union provided a uniform interpretation of the concept of „use” and clarified the conditions under which the proprietor of a trademark may prohibit the use by a third party of a sign identical to its trademark. Thus, the Court explains that in order to prohibit a third party from using a sign identical to the trademark, four conditions must be met:

a) the use of the sign must take place in the course of trade;

b) the use of the sign must take place without the consent of the proprietor of the trademark;

c) the use of the sign identical or similar to the trademark takes place for goods or services identical or similar to those for which the trademark was registered, and is likely to cause a risk of confusion in the consumer's perception, including the risk of association of the trademark with the sign;

d) the use affects or is likely to affect the essential function of the trademark, namely to guarantee consumers the origin of the products or services [12].

In conclusion, this proposed legislative amendment would contribute to the predictability of the norm, reduce the risks of abuse of law and align domestic regulation with the current requirements of the market economy and European standards in the field of intellectual property.

IV. Conclusions.

The analysis of the conflict between the right to the name/denomination and the right to the trademark highlights a complex interaction between two distinct legal concepts, but which often overlap in practice. Although both are considered elements of identification of entrepreneurial activity, their purpose and functions are completely different, the name/denomination being an element of identification of the subject practicing entrepreneurial activity, while the trademark is an element of identification of the products and services of an enterprise, from those of other enterprises. Thus, they have different legal regimes, benefiting from autonomous protection regimes.

With reference to the name/denomination, the analysis of the regulatory framework confirms, without any doubt, the inclusion of this identification sign in the scope of objects protected by industrial property law. This legal recognition is essential in the context of conflicts that may arise between the name/trade name and the trademark, because it clarifies the fact that the name/denomination benefits from its own protection, independent of the registration as a trademark. Thus, the holder of a right to the previously registered name/denomination can oppose this right to a subsequent trademark that would generate confusion for the public.

As for the trademark, the evolution of regulations in the Republic of Moldova reflects a complex process of adapting the legislation to the new requirements of both European Union law and the European market. We note in this regard that the transition from Law No. 38 of 2008 to Law no. 25 of 2024, illustrates a total paradigm shift, namely from a classic definitional approach, anchored in more theoretical formulations of the trademark, to a functional approach, focused on the effects and functions of this distinctive sign. Thus, by abandoning a purely theoretical and rigid definition, the new law adopts the European standards, offering a flexible and adaptable vision of the trademark concept. However, this approach of the legislator is justified not only by modern trends in intellectual property law, but also by the need to respond to the realities of a constantly changing market, in which the trademarks take on increasingly diverse forms, such as olfactory or digital ones. The new law thus relies on a regulation focused on the function of differentiation, identification, and guarantee of commercial origin, encouraging innovation and the extension of legal protection in the face of new challenges. Therefore, we conclude that the national legislation aligns with a modern and functional vision of the trademark, which, in the absence of an express definition, becomes an open concept, susceptible to being interpreted in the spirit of an effective protection of fair competition, innovations and, last but not least, of the consumer's interest.

The comparative analysis of the legal regime of the trademark also reveals a fundamental continuity regarding the acquisition and nature of the right to the trademark, highlighting at the same time that this right is limited by the existence of prior rights, such as those on the name/denomination, highlighting the principle of priority of the right. In this sense, we can highlight that the right to the trademark does not arise in isolation, but in interaction with other legitimate rights and interests, so that the new rules reflect a balance between the protection of trademark owners and the defense of holders of prior rights, such as the right to the name/trade name.

As a final conclusion, we highlight the fact that in practice the conflicts between these identification signs arise, so that in such situations the competent authorities and courts are called upon to resolve these conflicts, comprehensively analyzing which of the rights was previously acquired, taking into account the good faith of the holders, the territorial scope, the field of activity and, last but not least, the risk of confusion among consumers.

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