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According to Draft Act No.2696, which introduces legal securing of transparency for database and registration procedures, legislators impose publication of all trademark applications in open electronic databases. Will it procure more effective control of the import and sale of goods? What kind of difficulties could importers face?

Draft Act No.2696 was tailored to ensure the harmonization with the *EU-Ukraine Association Agreement* as the latter provides for an opportunity for a rights holder to lodge objections against applications for trademark registration. Clearly, to file an objection, one should first be informed about the issue. Thus, the Draft prescribes the obligation to maintain an electronic database and make the information about the trademark applications publicly available.

The Draft was developed in 2015 when the robust framework to introduce such a database was unavailable. However, Ukrpatent acted proactively and made such information publicly available on its website on a free of charge basis from October 2015. Under the Draft, examination of the application materials itself will be provided for a charge. This is reasonable to go behind the application and pay when identifying a

specific one, which may infringe your rights.

The Draft enables right holders to be informed about the intention of others to encroach on their rights and to use remedies at this early stage. It also helps to prevent a situation when unfair agents register trademarks which are similar to currently existing ones, but with minor differences, obtain a certificate and further lodge an application to a customs authority and block imports.



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The authors of the Draft Act No. 2696 are proposing to make changes to the Act of Ukraine On Protection of Rights in Marks for Goods and Services in the event of ensuring the national principle of exhaustion of trademark rights. How can it affect the investment attractiveness of the Ukrainian market?

Currently, the *On Protection of Rights in Marks for Goods and Services Act* establishes the principle of exhaustion of rights, but at the same time it does not determine the type of such principle – international or national. This results in different interpretations of the rule stated in paragraph 6 of Article 16 of this Act.

Draft Act No.2696 excludes any doubts related to the above-mentioned problem and enshrines the national principle of exhaustion of trademark rights directly. If this draft

is passed, the following provision will be effective: even if the products have been put on the market in the territory of another country, their import and sale in Ukraine can only take place with the consent of the trademark owner or an authorized person.

On the one hand, the proposed amendment can contribute to the investment attractiveness of Ukraine, because the national principle of exhaustion of rights implies an increase in the level of protection of trademark owners'

rights by directly prohibiting parallel imports. On the other hand, the national principle can lead to higher prices for some products due to mandatory consideration of license fees in pricing.

In general, such a proposal on the part of Ukrainian lawmakers looks quite strange when taking into account the possibility for Ukraine under the Association Agreement to establish its own regime of exhaustion of IP rights, in particular the international regime, which is supported by recent court practice.

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