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LEGAL REGULATION AND PROTECTION OF INTELLECTUAL PROPERTY IN THE FASHION INDUSTRY

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Due to the intensive development of fashion industry in the modern world there is a need for legal regulation and protection of the rights, possessed by professional subjects who are involved in the creative process. The article deals with the peculiarities of legal regulation of intellectual property in the fashion industry in the Republic of Belarus as well as in other countries abroad. The mechanisms of legal protection concerning the results of intellectual activity in the fashion industry are investigated.

Introductory part. FASHION INDUSTRY IS ACTIVELY DEVELOPING IN MODERN COUNTRIES AT THE MOMENT. EVERY YEAR DESIGNERS FROM ALL OVER THE WORLD ARE PRODUCING A HUGE NUMBER OF CLOTHES, ACCESSORIES, SHOES AND OTHER PRODUCTS, ALL THIS BRINGS HUGE PROFITS, WHICH IS ALIKE WITH THE INCOME OBTAINED FROM CINEMA AND MUSIC. IN THE CONDITION OF INTENSIVE DEVELOPMENT OF FASHION INDUSTRY, THERE IS A NEED FOR EFFECTIVE LEGAL REGULATION AND PROTECTION OF THE RESULTS OF INTELLECTUAL ACTIVITY, AS WELL AS ENSURING THE RIGHTS OF PROFESSIONAL SUBJECTS, INVOLVED IN THE CREATIVE PROCESS.

Main part. Nowadays the need for legal regulation of relations concerning the creation and the commercialization of the results of intellectual activity in fashion industry is obvious to all countries, both from economic and cultural points of view.

From a cultural point of view, the need to protect the results of intellectual activity in fashion industry is seen from the fact that work process in the fashion industry is directly related to a creative activity, and each new product is the result of the intellectual activity. Designers and fashion designers realize their creativity with the help of their products, through their vision of the world and with the help of the beauty in general. They put a huge amount of effort, involve resources and devote their time in order to create a fashionable product, and, of course, their work and the product of fashion industry itself needs legal regulation and protection.

From the economical perspective fashion industry is one of the most dynamic and profitable sectors of the economy which annually trade billions of dollars. A big problem in this sector of the economy is the problem of plagiarism, associated with the sale and fake creation. Until now, this problem is remaining unchanged, causing irreparable harm to the reputation and designers' profits, as well as to fashion designers and trading companies. Reputation is one of the key components of the success for the largest companies and the most famous designers, as reputation reflects their professionalism and brings fame to their names and brands. Plagiarism causes significant damage to the brands' right holders which is reflected in the loss, due to the decline in sales of their originals, and the fact that when someone detects any defect in purchased goods, goods that are not original, people complain to the real producers of the brand.

Legal regulation of the fashion industry in the Republic of Belarus is not commonly researched in the context of intellectual property. The need for such a research and for the regulation of intellectual property in the fashion industry in the Republic of Belarus covers the rules of civil law, intellectual property rights, trade, commercial, customs law and consumer protection. It should be noted that today fashion industry is profitable both for foreign economy and for domestic business, which can bring great profits to the country. Such a legal institution as the law in the fashion industry should support and protect the rights of subjects in a fashion sphere, which should include designers, fashion designers, makeup artists, trading companies and others.

There is no single approach to the regulation and protection of objects of intellectual property in the fashion industry in the Republic of Belarus. There are several ways of legal regulation concerning the results of intellectual activity in this area.

The first is the copyright protection. The Law of the Republic of Belarus "On copyrights and related rights" does not contain an exhaustive list of objects for copyrighting; in this article, works of art and applied art which are protected by copyrights are mentioned. For the adoption and the exercise of copyrights there should not be any compliance with formalities. The creator of an art object has personal non-property rights, which are protected indefinitely, and he or she has property rights. The exclusive right is valid during the author's life and fifty years after his or her death. The expiry of the exclusive rights to a work of art means that it is in the public domain afterwards [1].

To obtain a patent for an industrial design is another way of legal protection of objects of intellectual property in the fashion industry in the Republic of Belarus. The law of the Republic of Belarus "on patents for inventions, utility models, industrial designs" defines an industrial design as an artistic design solution of a product that determines its appearance. It should be noted that the object of legal protection is not the product itself, but a drawing, a scheme or other design solutions that are used or embodied in the product. As an industrial design, the original design of any product of industrial or handicraft production can be protected. In practice, industrial designs often protect the design of models of clothing and footwear, fabric drawings. The patent for an industrial design is valid for ten years with the possibility of its prolonging for five years more. After the expiration of this period, the industrial design is owned by the public domain and can be freely used by any individual or legal person without anyone's permission and without remuneration, but with respect to the right of the authorship [2]. The main problem of using this method of protection for a fashionable product is that the process of obtaining a patent is long and it is irrelevant for designers who produce seasonal lines of fashionable products. The difficulty appears also due to the fact that the industrial design must have the features which are necessary for its registration: the novelty and the originality. The criterion of novelty is that the industrial design for which the protection is sought must be new to all other designs that have ever been created in the world and have been made available to the public by any means of availability. Originality means that features of created product should be due to the creative work of the author (co-authors) of the industrial design.

The third method is a registration of the trademark. The trademark allows the consumer to identify the manufacturer's products. Verbal designations, including proper names, color combinations, alphabetic, numeric, pictorial, three-dimensional designations, including the form of the product or its packaging, as well as combinations of such designations can be registered as trademarks. A trademark owner has the exclusive right to use and to dispose the trademark, as well as the right to prohibit the usage of the trademark by other persons. Many famous brands try to protect their products by applying the trademark [3].

Many foreign countries have already recognized the need for legal regulation of objects of intellectual property in the fashion industry. Issues of legal protection of intellectual property and the rights of designers, fashion designers and trading companies are resolved differently on the national level of each state.

France was the first country to legislate the protection of intellectual property in the fashion industry. Under the French law, the results of intellectual activity in the fashion industry are protected by copyrights. In chapter 14 of Art. L112-2 of the Code of intellectual property of France it is said that even seasonal production of clothes and accessories is under legal protection. Fashionable products include clothing, furs, underwear, embroidery, shoes, and more [4].

In the USA, both the patent and the copyright law carry out the legal protection and the regulation of the results of intellectual activity in the fashion industry. The copyright law of the United States of America does not specify such a law enforcement object as a model of clothing or a fashionable product. This significantly complicates the ability of designers and trade companies to protect their products, unlike paintings, photographs, which are protected by this law or copyrights [5]. This is due to the fact that clothing is considered to be a consumer product, that is, the subject of "utilitarian purpose" in the USA. This means that copyright protection can only be applied to the creative work of the author. However elements of clothing and footwear design can receive copyright protection only if they are physically or conceptually separated from the "useful" elements of goods and can exist independently from them. But most elements of clothing and footwear models do not meet this requirement.

Speaking about patent protection in the USA it is possible to obtain a design patent for a 14-year period. However, obtaining a design patent is possible only if a product has such features as novelty, original decorative design, and only if it is considered as non-functional [6]. It is worth mentioning that in practice concerning the style of clothing or footwear, this form of legal protection is irrelevant and is not widespread in demand. That is why to fulfill all the requirements for obtaining a design patent is extremely difficult, since most authors take their ideas, being inspired by existing fashion products and designs, so it should be considered not like simple copying, as one must take into consideration the cyclical nature of fashion, in other words it is about the processing of pre-existence. Obtaining a design patent is also a very expensive procedure that young designers cannot afford. In addition, the process of obtaining a design patent is long, and till the time of having obtained a patent, a fashionable product remains unprotected.

In the European Union, the protection of objects of intellectual property in the fashion industry is based on the patent and the legal method of protection. One of the documents related to the protection of industrial

model in the European Union is the European Union Directive 98/71 according to which the concept of "design law" is introduced and legalized in all EU member States. In accordance with this Directive, in order to obtain legal protection with the help of registration an industrial model, the design of clothing must meet such requirements as individual character and novelty. The individual character of an industrial design will be recognized if the overall impression is different from that of another product that is already on the market. With this document the protection for the registered sample of clothing is provided for a period of 5 years and can be extended but for a period not exceeding 25 years. A person who submits an application for registration has the right to prohibit the use of his or her model by a third party without his or her consent on the condition that the model of another person creates a similar or the same impression as the applicant's model [7].

Due to European Council Regulation No. 6/2002/EC the protection for unregistered designs has been introduced. This type of protection is provided when the fashion product becomes publicly available. The protection for an unregistered sample is valid for 3 years, it should also be noted that unregistered samples are protected only from intentional copying; it is also true for all registered samples. This protection of an unregistered design can be useful for designers who create seasonal fashion lines, as it takes a lot of time to register an industrial model. Moreover, after some period of time their products become irrelevant and lose their ability to bring the amount of profit needed.

The results of intellectual activity in the fashion industry in the Russian Federation are regulated in the ways that are similar to the system of regulation and protection of intellectual property in the fashion industry in the Republic of Belarus. Protection of objects of intellectual property in the fashion industry can be carried out by copyrights, obtaining a patent for an industrial design and the trademark registration.

In December 2018, the Russian Federation adopted the Law "on the state registration of industrial model", which became one of the most important documents in the country, aimed at protecting the rights of designers, fashion designers, created models of clothing and footwear that require legal protection and can be registered as an industrial model. The most important innovation of this document is the provision of temporary legal protection of the object declared as an industrial model. Temporary legal protection will become active from the date of publication of information on the application of the industrial model until the date of publication of information on the patent grant. During the period of temporary protection, a right holder will be able to receive compensation from users, provided that the industrial model is registered. This document has made significant improvements for Russian designers and fashion designers [8].

Conclusion. At the moment the fashion industry is actively developing all over the world and the need for legal regulation of this sphere and the protection of the rights of its professional subjects is necessary for all countries.

The legal protection of objects of intellectual property in the fashion industry in foreign countries is carried out in different ways, depending on the national legislation in the field of intellectual property, which is improving and updating constantly in order to allow more effective protection of the rights of subjects in fashion industry.

In the Republic of Belarus, there is still no clearly structured legislation in the field of legal regulation and protection of the results of intellectual activity in fashion industry. It is necessary to pay attention to high-quality support and protection of professional subjects of fashion industry because this industry contributes to the development of the economy in Belarus.

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