

Some questions of legal regulation of business names in Kazakhstan

Author: N.B. Doschanov¹

Abstract. This article deals with the current legislation of the Republic of Kazakhstan on the legal protection of different means of individualization of business entities and their products, as brand names, trademarks, appellations of origin. The most problematic is the definition of a business name as a means of individualization of participants in civil commerce.

Keywords: business name, the object of civil rights, civil law, commercial designation.

Introduction. The scientific and practical interest to the problem of legal regulation of using business names and commercial designations in the civil legislation of the Republic of Kazakhstan is based on the fact that they are important tools for creating an image of business in the minds of current and potential customers and in positioning the business in the market.

Traditionally, business names and commercial designations received little attention in the characterization of the means of individualization, and in existing scientific works, mainly the contents of the brand name and commercial designation and the legal nature of the rights to it have been disclosed.

Main body: The term "business" (business name) was given by many scientists.

For example, Tsitovich P. P. determined the business name as the name under which trade is conducted by particular individual [1]. In turn, Shershenevich G.F. identified the "firm" with the name of the company, as a separate private legal person [2]. Kaminka A.I., who analyzed the two definitions of enterprise, namely the enterprise's name as the name of the commercial enterprise and the designation as the proprietor of commercial enterprise, came to the conclusion that it makes no sense to identify the enterprise with the legal or moral person, as such recognition would lead us for a ban on transferring property from one enterprise to another enterprise of the same person or conduct under the same firm several different enterprises [3].

¹ N.B. Doschanov, 2 year Undergraduate student Faculty of Law of the al-Farabi Kazakh National University, Almaty, Kazakhstan. Research advisor: S.Z. Suleimenova, Doctor of Law, Professor of civil law and civil procedure, labor law of the al-Farabi Kazakh National University, Almaty, Kazakhstan.

In the literature of the Soviet period we can find following definitions: "Firm - is the name under which the owner of the company, alone or as a legal entity, acts for trade turnover"; "The enterprise is called by the name under which trade (including commercial and industrial) acts in circulation and individualizes the enterprise in a number of other members of turnover. Thus, the main purpose of a business name - is the individualization of participants in civil commerce, among other similar business entities, that is, legal entities engaged in entrepreneurial activity. This immediately makes it clear that non-profit entities cannot have a business name.

According to Art. 38 of the Civil Code of the Republic of Kazakhstan it is not allowed to use a business name which is identical to the trade name of another legal entity or similar to the point of confusion, if these entities are engaged in similar activities and business name of the second legal entity is included in the Unified States Register of Legal Entities earlier than business name of the first legal entity [4].

Based on the purpose of this article, it can be concluded that an entity may have a name that:

1. has not been used by another business entity for the implementation of similar activities (for example, there can be two travel company called "Neo-tour", etc.). The legal form is not important;
2. has not been included in the state register of legal entities and reserved for the enterprise that has a similar legal form to become a registered entity.

Moreover, these two components must be combined. Requirements to the business name and referred principles of the company determine the structure of the latter. The model of this structure was proposed by Rosenberg V.V. in 1914 and, until recently, has not undergone any significant changes [5].

In the structure of business name two elements have to be distinguished: the basic and necessary. The main part of the body is called firm, and necessary - additions. In literature there are different views of the structure of these parts. According to Rosenberg V.V. the content of the body of the company is an indication of the owner of the enterprise, and "those other relations are reflected in the addenda to the enterprise. Among these is the relationship of the enterprise including:

1. the legal form of ownership of business enterprises (sole, a general partnership, joint stock company);
2. indications serving to distinguish the identity of the owner or the company (such as the "successor", "widow", "brothers", the designation of the subject of the enterprise, etc.);
3. promotional allowances ("central", "unique", "old", etc.) "[6].

This joint-stock company, as a general rule, is not a company name, and is not a substantive. The name of the company is borrowed from the object of its activity, or is specially invented name.

Analyzing the scientific literature on the structure of business name, we can conclude that the body is an indication of the company's legal form, and additions is the actual name of the entity that identifies a specific party business.

Current legislation of the Republic of Kazakhstan provides the basis of the legal protection of means of individualization for different businesses and their performance, as brand names, trademarks, name of goods origin.

In our view, the definition of a brand name as a means of individualization of participants of civil turnover is the most problematic. The definition of a brand name, in the strict sense of the word, is not enshrined in law. In accordance with Article 38 of the Civil Code of the Republic of Kazakhstan legal entity as the subject of civil rights must have its own name. Name of the legal entity which is a commercial organization, after registration of the legal entity becomes its business name. Under this business name entity is entered in the Unified State Register of Legal Entities.

On the basis of the above provisions can be concluded that the company's name - is the name of a commercial legal entity as a legal entity. Among the commercial legal entities legally include the following organizations- legal forms of legal entities: business partnerships (full, limited partnerships, limited liability and additional liability), joint stock companies, cooperatives, state-owned enterprises. Consequently, the names of these entities can be regarded as business names.

It should be noted that both commercial and non-profit entities may be participants in civil commerce, in particular, they can be participants in obligations to engage in certain business activities. This seems unfair position on the recognition of one of the exclusive right to the trade name, but for others - no. The essence of the right to a company name is to protect it from the use of others [7, p.30-31].

The Civil Code of the Republic of Kazakhstan in Sec.3 of Art.1020 establishes the position by virtue of which brand name, like the company name that is already registered as a legal entity, cannot be used as this can lead to the identification of the relevant legal entities, it can also lead to misunderstandings about its proprietary products or services. As noted by Kaudyrov T.E, this is the essence of the rights of holding business name [8, p.35].

In the case of absence of the actual definition of the business name and right to hold such one, there exists a set of legislated requirements for the content of business name, namely, it must include a name and an indication of the legal form of legal entity.

The given provisions (that is the name of the company is only the name of commercial organization and the indication of the organizational and legal formula of the brand name) allow us to conclude, first, the possible use of a business name under law by other commercial legal entities if they are made in a different legal form, than indicated in a similar corporate name of another organization. Second is on the legality of the use of business name owned by a commercial organization by non-profit organizations in its name.

The legitimacy of the use should be supported in this and in another case of a mismatch of legal entities, this fact does not allow to mislead consumers.

The legitimacy of the use will be argued in the first case of a mismatch in terms of business names indicate the organizational and legal form, in the second case - a total mismatch between the organizational - legal form and the discrepancy of the concept of corporate name of the commercial organization and the name of the legal entity - a non-profit organization.

Next, in accordance with Articles 38, 1020 of the Civil Code of RK, business name is indicated as the name of the legal entity under which it appears in public circulation, i.e. a means of individualization of legal entity, however, the legislator is not always consistent in that definition.

Nevertheless, the Civil Code of RK contains provisions allowing the company name to be interpreted as a means of individualization of the enterprise as an object of civil rights. In accordance with Art. 119 of the Civil Code of Kazakhstan part of an enterprise's assets may include the right to the designation individualizing its activity (company name, trademarks) and other exclusive rights, unless otherwise provided. Business name defined as a means of individualization of participants in civil commerce, in our opinion, by its nature cannot be identified with the trademark, which is a means of individualization of the subjects of performance [9, p.23-27].

These contradictions until recently were not allowed to say which concept was embodied in the Civil Code of the Republic of Kazakhstan for sure - the individualization of the enterprise or the individualization of its owner.

According to Art. 1023 of the Civil Code of RK alienation and transfer of rights to the business name of a legal entity is not allowed, except in the case of reorganization of a legal entity and the alienation of the enterprise as a whole. Legislator almost identified the situation of the subject of restructuring and alienation of the property and allowed the possibility of individualization of an enterprise object using the brand name.

This legal ambiguity in relation to the corporate legal entity name is unacceptable, this contradiction can be resolved only by making appropriate amendments in the concept of "enterprise" (Art. 119 of

the Civil Code of RK) and the norm of the rules of alienation of the right to a company name (Art. 1023 Civil Code of the Republic of Kazakhstan), or by changing the concept of "business name" used in connection with the designation of legal entities.

These provisions lead to the idea of the need for early ordering of the term "business name" in the domestic legislation and the establishment of a single legal regime of company name. This is possible through amendments to the existing legislation of Kazakhstan, as well as through the adoption of a separate legal act governing the emergence, change and termination of rights to the company name.

As a means of individualization of business entity, company name can be regarded as object of rights and can be transferred to other entities for usage, or can be alienated.

It seems that legislative consolidation of the foundations of this legal regime of a trade name will be more responsive to the needs of legal support of property relations, to promote the entry of our sovereign state in the market.

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Prof. Dr. Otto Luchterhandt,
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Ostinstitut Wismar
Philipp-Müller-Straße 14
23966 Wismar
Tel +49 3841 753 75 17
Fax +49 3841 753 71 31
office@ostinstitut.de
www.ostinstitut.de

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