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EXPERT STUDY OF THE STATE FLAG IMAGE OR IMITATION BY TRADEMARK

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The article is devoted to the theory and practice of expert researches of the state flag image or imitation by trademark, including the State Flag of Ukraine. The study reviews flag origin – banner of arms, standards, pennons, gonfalons, streamers and banderoles – and their classification and links with traditions and rules of flag colors and their combinations. It also addresses ordinary and heraldic figures and other issues of flag study science.

In the paper, the legal status of state flags and the procedure for their use are addressed and determined.

The forensic expert studies are reviewed in the paper to explore the following question: "Is a trademark XXX an image or an imitation of the national flag?", examined within a specialty framework "Researches relating to commercial (company) names, trademarks (marks for goods and services) and geographical indications".

The article shows the study of identical or similar figurative designations such as trademarks and state emblems, being so alike that one can easily confuse them with each other, is usually determined by two criteria: First, graphic (visual) similarity and second, conceptual (semiotic and semantic) resemblance.

Keywords*: state symbol, flag, national flag, forensic examination of intellectual property objects, trademarks, expert examination of trademarks and imitation.*

State or national flags are an important state symbol protected by law. Some flags were recognized by peoples and nations in their struggle for national statehood, others evolved in the process of state building and became a symbol of the unification of many peoples into a single state and political nation. Therefore, in many countries of the world, the day of the state, or national, flag is a public holiday.

In the 21st century, it remains a common practice to publicly demonstrate both the conventional formal adherence of legal entities and individuals to the state and patriotism of the former through the display of the state (national) flags in public authorities and institutions; in the armed forces and law enforcement agencies; in diplomatic missions and institutions abroad; on merchant ships during navigation; at space and polar stations; during sports competitions; on central squares and city street; in towns and villages, and even in private houses and courtyards.

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merchant ships during navigation; in space and polar stations; sports competitions; on central squares and city streets; in towns and villages; and even, in private houses and courtyards.

In some countries, the law defines the so-called "state colors", in particular, colors that are used in national flags, as well as in banners, standards, ribbons and other related symbols. The latter, as a rule, are used in mass celebrations of public holidays, to stress their national prominence and significance.

In international law and military affairs, there is an expression "under the flag" of a particular state, which means the exercise of international relations or participation in the war on behalf of a particular state. The Geneva Convention of 1864 introduced a special distinction (emblem), a red cross on a white background, which was used in the Red Cross flag. International law prohibits the misuse of this flag [1, p. 74-75].

Regulations on flags and their use are governed by international law. In particular, Article 23 of the Hague Convention of 1907 (point f), forewarns the belligerents "To make improper use of a flag of truce, of the national flag or of the military insignia and uniform of the enemy, as well as the distinctive badges of the Geneva Convention" [2].

State (national or republican) flags, or "state colors", along with state emblems, are enshrined in constitutions as state symbols, which are symbols of sovereign power and fall under the protection of the state. For instance, Part 2 of Article 28 of the Constitution of Poland provides the following: *"The colors of the Polish Republic are white and red"* [3, p. 20]. The description of colors is given in the special law of the Commonwealth of Poland.

Article 2 of the French Constitution determines that *"The national emblem shall be a blue, white and red tricolour flag"* [4, p. 18]. Thus, the legislator identified the national flag of France with its national emblem. At the same time, as you know, modern France does not have its own official coat of arms. The Italian Constitution, Article 12, defines the state flag, its colors and the order in which they are placed even more precisely: *"The flag of the Republic is the Italian tricolour: green, white and red, in three vertical bands of equal dimensions"* [5, p. 21].

The Constitution of Ukraine provides an accurate and exhaustive definition of the State Flag of Ukraine and classifies it as a state symbol that falls under the state protection. Part one and two of Article 20 of the Constitution of Ukraine establish the following: "The state symbols of Ukraine are the State Flag of Ukraine, the State Coat of Arms of Ukraine and the State Anthem of Ukraine. The State Flag of Ukraine shall deem a banner of two equally-sized horizontal bands of blue and yellow" [6]. *(Fig. 1).*



Fig. 1. Image of the State Flag of Ukraine

Currently, the domestic media are paying attention to the growing popularity of the State Flag of Ukraine and note that only "in February and March 2022, the Canadian company *World of Maps* produced and sold 155 Ukrainian flags, which is the largest number of flags of one country that they have sold, for exception of the flags of Canada on Canada Day" [8].

A similar situation with an increase in demand for the State Flag of Ukraine is observed in other countries of the world.

Popularity and recognition of the State Flag of Ukraine makes it attractive for trademarks to either imitate it or use its image. Furthermore, the world has witnessed the trademarks using images of state (national) flags of other countries, particularly, the United Kingdom, the United States, Switzerland, Armenia and Georgia.

Taking into account the above, the issue of intellectual property expertise relating to state flag image use and imitation becomes very relevant.

Status of research on the issue. At present, there are not so many scientific researches on state flags. As M.Pasturo said (he was already quoted above), *"flags scare away scientists, at least the scientists of Western Europe. It becomes discouraging to study them because their use is so incredibly deeply rooted in the modern world that it is almost impossible to maintain the necessary distance when trying to analyze their origin, history and functioning"* [9, p. 261].

Furthermore, vexillology, or flag study (from Latin *vexillum* – "banner" and Greek *λογος* – "science"), appeared much later than heraldry, only in the 50ies of the 20th century, while the subject and sources of the flag study continue to evolve to this day. Western European researchers argue that vexillology is "not a science yet", as it does not rely on the use of semantics, semiotics and other cross-disciplinary studies [9, p. 264].

As for trademarks and their comparative study with other objects, in particular, state symbols, it was the subject of the research presented in the scientific publications "Methodology for forensic examination of trademarks for goods and services" (2009) and "Methodology for the study of trademarks (signs for goods and services)" (2021) [10; 11].

This issue was also previously studied by the authors of this publication [12; 13; 14**]. Yet the issue of theory and practice of expert study of the state flag image and imitation by the trademark, including that of the State Flag of Ukraine, remains scarcely explored in forensic expertise.**

The purpose of the study is to lay the scientific and methodological foundation for forensic examination on intellectual property issues when deciding on the state flag image use or imitation by a trademark, including the use or imitation of the State Flag of Ukraine.

Outline of the main issues. Before state flags were brought in circulation as national symbols, flags emerged as insignia that embodied the universal national code. In dictionaries and encyclopedias, different definitions of the term "flag" are provided.

According to the authors of the Ukrainian *Legal Encyclopedia*, the flag is one of the state symbols and "looks like a cloth of a fixed size, shape and color (colors) bearing an inscription, decoration, or a certain image" [15, p. 54].

In the *Ukrainian Defining dictionary*, the entry "flag", within the bounds of our study, is interpreted as *"a cloth of a certain color or color combination, often with a certain image, attached to*

a cord; it is the official emblem of the state, and a symbol of its sovereignty. Such a cloth may be an emblem of a military unit, subdivision, formation, or ship; it shall symbolize belonging to a certain social group, organization, or party" [16, p. 1073].

Hence, a flag is a piece of fabric with a distinctive size and shape, color or colors combined in a certain sequence, usually in the form of vertical or horizontal bands, which may contain ordinary and heraldic figures, inscriptions and/or decorations and is intended to embody the origin, the status and nature of its bearer: namely, a nation, state, international organization, head of state, political party, state body, army and navy, as well as a separate branch of the armed forces or their unit, professional association or a civil society organization.

There is a very wide variety of flags. They can be grouped according to the following criteria:

1) Based on their legal status:

a) State or national flags as symbols enshrined in constitutions and/or other laws;

b) Flags of international organizations (UN, European Union, and others);

c) Institutional and other flags;

2) Based on the flag content (color, image/figures, inscriptions and decorations):

a) One-color and multi-color, bearing heraldic or non-heraldic colors;

b) Containing no images/figures; bearing images of non-heraldic and heraldic figures; showing an image of a coat of arms;

c) Flags bearing inscriptions and decorations, or flags without inscriptions or decorations;

3) Based on the flag shape (structure):

a) *A flag* is a rectangular piece of fabric of a certain color or a combination of colors, figures, inscriptions and decorations;

b) *A banner* is a unique product of an expensively decorated flag; until the 12th century, a banner stood for a feudal lord flag bearing the image of their coat of arms; later on the meaning of the word *banner* evolved to signify a flag of a specific military unit or, less often, a trade union; the loss of a banner may signify their liquidation;

c) *Stiahs* (pennons) are military banners in the times of Kyiv and other Slavic principalities, as well as the Golden Horde and other hordes (8-14th centuries). Pennons were also known in the Cossack time (15-18th centuries), in particular, *bunchuks*, or pennons in the form of a long stick, decorated with a horse's tail (hair from a mane), with a triangular cloth attached to it (the so-called "wedge") of bright color to indicate the place of military gathering;

d) *Korogvas (khorugves)* are religious rectangular flags with an embroidered or painted image of the Savior, the Mother of God, the Archangel Michael and other saints, decorated with tassels along the edges, which are attached to the transverse perpendicular to the shaft, or "korogva cord", topped with a cross, which was used for the festive Holy Cross Processions, and were also part of the *Cossack Kleinods* system;

e) *A standard* (from German *standart* – "flag") originally had a triangular shape and was the flag of the cavalry units, later on it became the flag of the head of state, which has the form of a shaft with a crossbar, to which a quadrangular flag is attached, which shall be raised during the head of state's stay in the residence, on a military ship and during diplomatic events;

f) *Gonfalons* (from ancient Frankish *gundfano* – "war banner") are rectangular flags that have been used since the 16th century by Italian communes, religious and guild organizations; gonfalons were attached transversely to a long shaft and had several ribbons or stripes at the bottom, contained images of coats of arms or saints;

g) *Transporants (banners)* (from French *transparent* – "transparent thing") – a kind of flag, a wide ribbon of fabric (at first transparent, later painted in national or other colors such as party colors), containing inscriptions (slogans) and / or emblems (symbols); attached along the edges to two long sticks for use during demonstrations and rallies;

h) *Pennants* are narrow long flags hoisted on military and civil ships to indicate their nationality, as well as raised during sports competitions with the same purpose; as a rule, pennants are bifurcated at the ends.

By geometric shape, the flags can be divided into the following groups:

a) Rectangular;

b) Square;

c) Triangular;

d) Polygonal.

4) By material, the flags are divided into the following groups:

a) Textilpoe flags;

b) Images of flags, including holograms, etc.

To ensure objectivity in the flag study science, one has to admit that the original textile flags have hardly been preserved, especially those that were produced before the 16th century. Therefore, the statements by some experts and researchers about the "flags of the times of Antiquity" or earlier periods of human history shall not deem accurate.

That being said, the original textile flags that have been kept for centuries and have survived to this day usually represent the relics or military trophies currently remaining and/or being exhibited in temples or museums. They acquire ritual significance, in addition to being very important for the national history.

Although very few originals of ancient flags made of fabric have survived to this day, there are very many flag images known to historians and other researchers. In most cases, it is flag images that become the research subject for scientists and experts. However, such flag images may be often inaccurate and even represent erroneous reproduction of the original, especially with regard to the flag colors and their combination.

Design of modern flags, as well as that of coats of arms, is guided by historically established rules and traditions for placing colors and figures that symbolize the origin and character of their bearers, namely: ethnicities, states, monarchs, or chivalry orders. In the history of Western Europe, in the Middle Ages, the shape of flags was identical to the shape of shields. Over time, the rectangle became the universal geometric flag shape. It was convenient for both weaving and decorating the fabric as well as for placing flags in medieval palaces and fortresses.

The colors of famous historical flags often correlated with the colors of metals – gold and silver – and the colors of furs and cloths produced by using four to five traditional coloring pigments

available, which were utilized to decorate the coats of arms of monarchs, knightly orders, free cities, and others. The tinctures used in the Western European heraldry were called "heraldic enamels".

When heraldry arose, the colors (enamels) in coats of arms were given a symbolic meaning. So, in the coats of arms of princes, gold was called *Soleil* ("sun"); in peers' coats of arms, the name *topaze* was used, while in all others insignias, it was called *or*; silver had different names in all three types of coats of arms, in particular: *Lune*, *perle*, *argent*; red color was called *Mars*, *rubis*, *queules*; blue – *Jupiter*, *saphir*, *azur* [17, p. 128-129]. It is noticeable that, depending on the legal and social status of a coat of arms' bearer, the colors were given the names of planets or precious stones, or the Latin names of the color or metal the emblem was made of. The above does not represent the exhaustive list of color naming rules, as in the heraldry there were other schemes used to impart the meaning to the colors ("enamels").

Heraldic colors ("enamels") bearing different symbolic meanings were also reproduced in flags. In this way, green, red and black colors simultaneously had religious, dynastic and political significance. That being said, the green color on the flag could not be combined with either black or red, or had to be separated from them by white or yellow.

As far as most modern state flags of the world countries are concerned, they mostly follow the heraldry traditions established in Western Europe. In particular, M. Pasturo concludes that 187 out of 214 flags of independent states, i.e. more than 80%, observe the rules for combining signs that were "invented" on a tournament ground somewhere between the Loire and the Rhine in the first half of the 12th century. Yet some of them, for instance, the flag of Portugal, contradict all the traditions of heraldry. In 1911, following the revolution of 1910, the Portuguese flag changed from blue and white, which were the heraldic colors of the Portuguese kings since the 12th century, to a combination of green and red [9, pp. 268, 281-282].

Therefore, the observance of heraldic traditions in state flags is a preferred, but not necessary condition of their existence. Today, any state (national) flag has got its own history premised on real historical facts closely intertwined with folk culture and mythology, traditions of heraldry and politics. It would be logical to conclude that modern state (national) flags symbolize the connection between traditions and modern realities in the creation of a state and a nation.

Popularity, recognition and authority of the State Flag of Ukraine and the state flags of other world countries make them very attractive objects to utilize and imitate in trademarks. This allows you not only to save money on advertising and promotion of such a brand, but also contributes to its association with the benefits and merits that an ordinary consumer associates with a country whose state flag is being referred to. Thus, the US flag can be associated with high technology, Switzerland – with precision and reliability, Ukraine – with heroism and military courage, etc.

Let us consider some examples of using the flag style in trademarks.

We have analyzed the website of the World Intellectual Property Organization (*WIPO*), in particular, the *Global Brand Database*, hosted on the WIPO website [18]. As a result of this review, we established the general trend to borrow the ideas and colors from the flags of the economically developed countries, in particular, the Western European countries.



For instance, a trademark using the colors of the national flag of Germany:.

According to the Global Brand Database, this is a trademark application filed under the number 018678914 within the international EUIPO Trademark system – GERMAN quality:



for goods of class 21 of the International (Nice) Classification of Goods and Services.

Let us consider other cases of trademarks that benefit from the visual style of the state flags of the economically developed countries.

Let us consider, for instance, a trademark application utilizing the colors of the national flag of Switzerland:



According to the Global Brand Database, this is an international trademark application (German Trademark) under the number 3020130148517 – Edition SWISS:



for goods of classes 20, 22 and 24 of the International (Nice) Classification of Goods and Services.

Let us consider the applications to register trademarks that adopt the style and colors of the Italian flag:



- international trademark application (EUIPO Trademark) under number 018682921 - ITALIA STUFE:



for goods of class 11 and services of class 35 under the International (Nice) Classification of Goods and Services;



- international trademark application (EUIPO Trademark) number 018676352 –

for goods of classes 7, 9 and services of class 42 under the International (Nice) Classification of Goods and Services.

The above cases show that although the trademarks use colors and styles of the national flags, they are neither full identical copies of them nor so alike that one can easily confuse them with each other.



Yet the international application (EUIPO Trademark) under number 018676352 – represents a combination of colors. It would be interesting to find out what decision is made by experts regarding the registration of such an emblem? Will the experts find it sufficient to justify this emblem registration by the color combination outlined by a diamond shape, or, perhaps, they shall consider whether the requester has applied to register the trademark resolution? Registration of a color or color combination as a trademark must be the subject of a separate study.

In cases similar to the above, within the framework of specialty 13.6, subject to a decision taken by a forensic expert, we think the following 23

tion can be posed:

"Is the trademark XXX an image or an imitation of the State Flag of Ukraine?"

If a forensic expert is asked to explore this question, it means he or she will have to conduct a study on the emblem to see if there are any grounds for refusing to grant it the legal protection. Its interpretation shall be determined by the normative content of Paragraph 1 of Article 6 of the Law of Ukraine *On the Protection of Rights to Marks for Goods and Services*, namely: "Designs depicting or imitating:

state coats of arms, *flags* and other state symbols (emblems)

…

cannot receive legal protection."

Such images may be included in the trademark as non-protectable elements, if there is the consent of the relevant competent authority or their owners. The competent authority for granting permission to use the official name and international letter code of the state of Ukraine in a trademark is a collegial body established by the National Intellectual Property Authority (NIPA)" [19].

When examining the application on the merits, the expert shall check whether there are grounds for refusing to grant a trademark the legal protection in accordance with Paragraph 1 of Article 5 and Paragraphs 1, 2 of Article 6 of the Law of Ukraine *On the Protection of Rights to Marks*

for Goods and Services [19]. According to Paragraphs 4.3.1.2 of the *Rules for Drawing Up and Filing an Application for Issuing a Certificate of Ukraine as a Mark for Goods and Services* (hereinafter referred to as the *Rules*):

"When checking an emblem to be registered as a trademark, in order to verify if there are grounds for refusing to grant it the legal protection, in accordance with Paragraph 1 of Article 6 of the Law, it shall be established: whether the *emblem in question reproduces entirely state coats of arms*, *flags* and emblems; official names of states; emblems, abbreviated or full names of international intergovernmental organizations; official control marks, guarantee and assay marks, seals; awards and other insignia, *or whether they are so alike that one can easily confuse them with each other*." [20]

An emblem is considered to be the one that imitates the signs specified in Paragraph 1 of Article 6 of the Law of Ukraine *On the Protection of Rights to Marks for Goods and Services* if it produces the impression on consumers that there is a connection between an emblem in question and a relevant state or organization [19].

According to the normative content of Article 6ter(1)(a) of the *Paris Convention for the Protection of Industrial Property*, the member states of the Paris Union shall be obliged to refuse registration of marks that use or imitate state symbols, in particular flags. This provision prohibits the registration and use of state symbols as signs or elements of signs, should no permission be granted by the competent authority of the relevant state to use such symbols. Apparently, the use of state symbols without the official permission of the state constitutes an infringement on its exclusive and sovereign rights.

In addition, *the use of a state symbol by a person not relating thereto may mislead the consumer as to the origin of goods for which such state symbol is used*, regardless of the nature of goods or services represented thereby [21].

In our opinion, the following international trademark application may mislead consumers about the origin of goods, as this trademark imitates the National Flag of Switzerland:



According to the Global Brand Database, this is the trademark under the international application number 2019366573 (Japanese Trademark) posted on the WIPO website [18] – SWIP:



Under the same Article of the *Paris Convention* quoted above, the registration denial shall also apply to any imitation of state symbols "*from the point of view of heraldry*" [21].

Such imitation is treated in a somewhat narrower manner than the imitation generally considered unacceptable in relation to marks (similarity of marks). As already mentioned, in 80% of cases, the design of state flags follows heraldry rules and traditions. It is manifested through both choice of colors or color combination (the so-called "state colors") and display of heraldic figures (the so-called "honourable ordinary" [9, p.139]) in state emblems or their central elements (the so-called "small emblems"). On the other hand, the flag design relies on the use of such common symbols as the sun, moon, lion, eagle, etc. Only in the case if the designation clearly and unambiguously reproduces the heraldic feature of a particular state flag, the imitation shall be disallowed.

That being said, a symbol or even a heraldic figure, or "heraldic ordinary" as a symbolic representation of an object that exists in nature like the sun, moon, lion, eagle [17, p. 140] does not fall under such a restriction and can be used as an element of the trademark sign [21]. In particular, a symbol shall not fall under ban if no heraldry rules are observed (for example, the rule to never place a heraldic eagle in a fall position, or to never break the figure symmetry [13, pp. 41-42]). Similarly, the trademark registration shall not be denied if the image depicted therein does not strictly follow special laws on state symbols that usually contain clear requirements for the description of the state symbol and/or the state flag.

In conclusion, the imitation of state symbols can manifest itself through one of the following forms: a) any heraldic features of state symbols, in our case, the state flag; b) the state flag not observing its legally established proportions; c) the state flag not observing the aspect ratio, the order of the stripes, the color, the width of the stripes, or the location of any images and letters thereon [22]. In addition, in many countries there are state mottos that constitute an independent part of their flag (inscriptions from sacred books), which can also be imitated in trademarks.

Therefore, when answering the question posed, a forensic expert shall conduct a research according to the following stages:

- Does the trademark reproduce entirely the national flag and do they look so alike that one can easily confuse them with each other?

- Does the trademark imitate the state flag?

When answering the question *"Does the trademark reproduce entirely the national flag and do they look so alike that one can easily confuse them with each other?"*, the expert shall be guided by the key criterion to establish the figurative designation resemblance: the general visual impression, as well as its semiotic and semantic meaning.

Therefore, the study of figurative designations such as trademarks and state emblems to establish their identity or similarity to the degree that they can be easily confused with each other is usually determined by two criteria: First, graphic (visual) similarity and second, conceptual (semiotic and semantic) affinity.

When analyzing the figurative designations, the following features shall be taken into consideration:

- Imag e type (a concrete or abstract image, a cartoon, a stylized image and so on);
- Conceptual (semiotic and semantic) content;
- Observance of heraldry rules and traditions in the reproduction of the national flag in general and its elements in particular;

- Geometric shapes (silhouette, outline, and lines);
- Combination of colors or shades of colors, and their sequence;
- Presence or absence of symmetry, etc.

The overall visual perception primarily consists of the outer contour. Besides, the semantic meaning of two emblems being compared with each other produces a significant impact on their similarity: the sameness enhances their kinship whereas the difference weakens it [23, p. 40].

Yet it is important for a forensic expert, when characterizing the type and essence of the state flag image, to rely on the legal instruments and/or official documents, or, in their absence, reference books and encyclopedias containing information about state flags, "state colors" and, heraldic symbols. It is also necessary to provide an assessment of the designation under review and give a reasonable answer to the following question: is it a heraldic image, or a simple drawing?

When establishing similarity, experts shall consider the emblem as a whole, without dividing it into separate elements. In this case, the main thing is the primary visual perception of the examined emblem, because it is the very first visual perception of any object that makes an impact on the human mind. In a similar way, the commercial trademark is perceived and remembered in the consumer's mind. It is also essential to prioritize the features that show similarity rather than differences, when comparing designations [23, p. 35].

Based on the analysis performed according to the stages outlined above, the expert can answer the question *"Does the trademark reproduce entirely the national flag and do they look so alike that one can easily confuse them with each other?"*

When answering the question "*Does the figurative designation imitate the state flag?*", a forensic expert shall take into account the following. Many dictionaries contain the definition of words "imitation", or "imitate". This word comes from the Latin *imitatio*, from *imitor* – "i mitate". The meaning of this word is two-fold: 1) *Accurate reproduction*, *imitation*, mainly of voices or sounds. 2. *Fake something*; a product that is a fake (compare: surrogate, ersatz) [24, p. 221].

Intellectual Property Encyclopedia, a special edition edited by Professor P. Krainiev, provides the following definition: "If an emblem produces an impression on consumers *without any doubt* that there is a connection with the corresponding state (or organization), or if it gives an impression of a possible connection between this emblem and the state, such an emblem is considered to be the one that imitates a state's name and its symbol" [25, p. 244].

Conclusions: to differentiate between the use and the imitation of the state flag by a trademark, one should consider the following: exact, "mirror" image of the state flag shall be considered the state flag use by a trademark, while the state flag imitation shall deem an arbitrary reproduction of the state flag or its elements, without strict observance of conceptual (semiotic and semantic), geometric-spatial, coloristic and heraldic (*if any*) features.

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ПРЕЗЮМЕ ДО СТАТТІ ЧЛЕНІВ РЕДКОЛЕГІЇ ЖУРНАЛУ «ПРАВО І СУСПІЛЬСТВО»

ПРЕЗЮМЕ ДО СТАТТІ ЧЛЕНІВ РЕДКОЛЕГІЇ ЖУРНАЛУ «ПРАВО І СУСПІЛЬСТВО»

Ключові слова: *Україна, Президент України, Конституція України, Конституційний Суд України, Верховна Рада України, Кабінет Міністрів України, Національний банк України, Рахункова палата України, Національна рада України з питань телебачення і радіомовлення, Уповноважений Верховної Ради України з прав людини, Національна академія правових наук України, Національна академія наук України, Національна академія педагогічних наук України, Національна академія мистецтв України, Національна академія аграрних наук України, Національна академія медичних наук України, Національна академія державного управління при Президентові України, Національна академія прокуратури України, Національна академія Служби безпеки України, Національна академія Державної прикордонної служби України, Національна академія Національної гвардії України, Національна академія Державної податкової служби України, Національна академія Державної служби України, Національна академія внутрішніх справ, Національна академія Служби зовнішньої розвідки України, Національна академія Державної фіскальної служби України, Національна академія Національної поліції України, Національна академія Державної служби України на транспорті, Національна академія Державної служби України з надзвичайних ситуацій, Національна академія Державної служби України у справах захисту державного кордону, Національна академія Державної служби України у справах захисту державного суверенітету

Հետազոտվում է հետևյալ հարցը. «Արդյոք ապրանքային նշանը XXX պատկեր՝ ը համապատ ած թե՞ ազգային որոշ նմանակում»՝ «Ինտերպային (ֆիրմային) անվանումների, ապրանքային նշանների (ապրանքների և ծառայությունների նշանների) և աշխարհագրական նշումների» հետ կապված հետազոտություններ մասնագիտության շրջանակներում:

Հիմնավորվում է գաղափարն այն մասին, որ նույնական կամ համանման փոխադրական նշանակումների ուսումնասիրությունը, ինչպիսիք են ապրանքային նշանները և պետական զինանշանները, լինելով ա ջ ան նման, որ որանք հեշտ է շփոթել միմյանց հետ, սովորաբար որոշում է երկու յատկանիշով՝ գրաֆիկական (տեսողական) նմանությամբ և հաջեպ ակագրային նմանությամբ (տեսա ատրանա ական նմանությամբ):

Բանալի բառեր. *պետական խորհրդանիշ, որոշ, ազգային որոշ, մտավոր սեփականության դատական փորձաքննություն, ապրանքային նշանների, ապրանքային նշանների փորձաքննություն և նմանակում:*

ЭКСПЕРТИЗА ИЗОБРАЖЕНИЯ ГОСУДАРСТВЕННОГО ФЛАГА ИЛИ ИМИТАЦИЯ ТОРГОВОЙ МАРКИ

Федоренко В.Л., Чабанетс Т.М.

Статья посвящена теории и практике экспертных исследований изображения или имитации государственного флага товарным знаком, в том числе Государственного Флага Украины. В исследовании рассматривается происхождение гербового знамени, штандартов, вымпелов, хоругвей, флажков, лент с эмблемой, а также их классификация, связь с традициями, правилами цветов флага и их комбинациями. Дано обобщенная характеристика обычных и геральдических фигур. Значительное внимание уделено вопросам науки о флагах.

В статье подведены некоторые итоги изучения и определения правого статуса государственных флагов и порядок их использования.

В статье дан анализ научных изысканий результатов судебно-экспертных исследований, в ходе которых исследуется следующий вопрос: «Является ли товарный знак XXX изображением или имитацией государственного флага?», рассматриваемой в рамках специальности «Исследования, касающиеся коммерческих (фирменных) наименований, товарных знаков (знаков для товаров и услуг) и географических указаний».

Обосновывается мысль о том, что изучение тождественных или сходных образных обозначений, таких как товарные знаки и государственные гербы, будучи настолько похожими, что их легко спутать между собой, обычно определяются двумя критериями: графическим (визуальным) сходством и понятийным сходством (семиотическим и семантическим).

Ключевые слова: *государственный символ, флаг, национальный флаг, судебная экспертиза объектов интеллектуальной собственности, товарные знаки, экспертиза товарных знаков и имитация.*

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