

**Microeconomics**

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**TRADEMARKS MANAGEMENT:
STRUGGLE AGAINST PARASITISM****Abstract**

Essence and forms of ambush marketing as display of unethical competition and its effects on the authentic firm have been determined in the article. The author of the article has also defined directions of multipronged resistance to parasitism and has revealed its contents. Administrative-judicial and legal protection of trademark rights, which were outraged, have been proven in the article.

Key words:

Intellectual property, trade designations, commercial symbols, trademark, brand, unethical competition, ambush marketing, administrative and legal protection of intellectual property rights, Antimonopoly Committee of Ukraine, judicial protection of intellectual property rights.

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Introduction

Each product or service we deal with in everyday life is the product of a great number of large and small innovations, which are the result of human intellectual activity. It's quite fair, that economic agents, who have created or legally bought items of intellectual property, have exclusive rights for their usage in their economic activities. In the meantime, successful completion of one's intellectual property rights, especially at the level of business structures, is impossible without working out a comprehensive strategy of managing immaterial goods.

Among the items of intellectual property, owned by the company, the management of trade designations – trademarks and other means of personalization (commercial names and geographical names), that provide identification of economic agents and/or goods, produced by them – is of great importance. The differences between trademarks and other means of personalization are to some degree conventional. Yes, trademarks can coincide with commercial names, if the manufacturer is willing to mark its goods manufactured with his name. They also have a number of similar characteristics with geographical names, which allows many countries (in accordance with national legislation or existing practice) to use geographical names as a trademark or its part.

The usage of trademarks provides advantages either for entrepreneurs or for consumers. Yes, they open up better opportunities for business agents to protect from unethical competition, provide facilities for distinguishing among the competitors, build up and solidify positive company image, allow distinct segmentation of the market (definition of one's market segment in order to influence it orderly, what provides cost cutout in comparison with marketing expenditures on development of a market), and, eventually, providing sales promotion, increase in company's profitability and competitive recovery of the firm in the market. For consumers trademarks are equally essential, in particular, they submit information about the item of goods, its quality, its manufacturers, provenance, etc., cut transaction expenses (for example, expanses on searching the necessary product and information on it, on identification of basic product characteristics). Trademarks guarantee consumers a number of assets and merit grade of particular goods, afford an opportunity to compare similar products and services. Thus, on arm's length terms, the usage of trademarks can assure congruence of manufacturers' and consumers' interests stimulate economic growth by means of competitive mechanism.

However, without legal seat, a trademark is just a marketing designation, which does not provide legal protection from its usage by competitors. In western marketing literature the process of trademark (brand name) creation, trademark registration and popularization is called «branding». Well-known status of a

trademark conditions the success of a particular item of goods in the market and vice versa; conversely, the popularity of a brand is eventually converted into awareness of a producing company and its name among consumers. At the same time, successful business projects, that have built brands and have been using them, often become targets of unscrupulous competition. Such actions that, according to Ukrainian legislation, are called as «misuse of trademarks' names» (Uriadovyy kurier, 2009.), in western sources and, since recently in national research works, have been described through the concept «ambush marketing». The research of particular aspects of resistance to unethical competition in general and misuse of trademarks' names were pursued by V. Belyayev (Belyayev, 2009), N. Voronytska-Haydak (Voronytska-Haydak, 2011; Voronytska-Haydak, 2011), I. Nevinchanyi (Nevinchanyi, 2010) V. Makoda (Makoda, 2012), T. Romat (Romat, 2011), L. Rommanadze (Rommanadze, 2006), V. Solovyova and S. Tomchyshen (Solovyova and Tomchyshen, 2007) and by other researchers. However, research investigations of this problem are mainly dedicated to the analysis of judicial protection of trademarks and consider cases, when rights to trademarks have already been outraged. On the other hand, researchers overlook such problems, as preventive impact on competitors and consumers, organizational, economic and social aspects of anti-ambush marketing strategy. It puts on an agenda the need for scientific rationale of a comprehensive struggle strategy against manifestations of unethical competition either at the level of an organization or at the level of society as a whole, and systematization and generalization of national and foreign experience in settlement of disputes, related to violation of rights to trademarks. With allowance for this, the purpose of this article is to cast light on theoretic aspects of trademarks management and to work out tips for carrying out anti-ambush marketing comprehensive strategy.

The main part

As already mentioned, copying of another popular trademark for one's own trademark promotion is called «ambush marketing». Lesser-known companies can aim their efforts at imitation (counterfeiting) of a package design, its shape, company logo, its name, and the name of a particular brand. Moreover, some elements of a company's advertising image or its product are borrowed more often than not. Consequently, almost any component of a company image or its goods that, among the consumers, call up everlasting positive associations can be used by unscrupulous competitors.

As a rule, copyists give attention to forgery of text elements of the brand. For this purpose they use some fundamentals: names that sound the same (phonetic similarity), the usage of similar letters or signs (visual similarity), and

the usage of similar or antonymic names (semantic similarity/semantic antithesis) (Yerkov). Except text elements, they make heavy use of design imitation. In such cases the following elements are forged: colour or colour scheme, location of details on the packaging, the packaging shape. Complex imitation is widely used, when several elements of text or graphic design are forged.

Dishonest firms can either act as direct competitors of an original trademark (for instance, toothpastes «Aquafresh» and «Aquarelle», beauty aids «Nivea» and «Livea»), or may extend another brand to the goods, uncharacteristic of this brand. In such a manner once appeared cigarettes «Baltika» and toothpaste «Orbit», that didn't belong to original manufacturers.

Ambush marketing is most common in the mass market. As large-scale goods are purchased quite often and their share in combined income of consumers is small, attention to such goods in the process of their purchase is diminished. Ambush firms (parasitic firms) hope for consumers' inattention and illiteracy in other markets also, *exempli gratia*, in the market of business machines. As often as not, a common buyer cannot remember all the elements of packaging design and their accurate location. It can also be difficult to remember the company name or/and the trademark name, especially if these trade names are written in a foreign language. Besides, it is not infrequent that, buying a forgery, a customer considers a certain alteration in packaging design of an article of merchandise he is familiar with, to be a version of this product or another product of the same company.

As practice shows, the number of ambush firms (parasitic firms) in the market can reach 3–5%. These are usually small companies, which do not last long in the market. Average life of ambush firms (parasitic firms) is 1,5 year (Kot), though there are examples of long-living clones. Imperfect legislation and ill-considered policy of brand firms can establish favorable conditions for longer continuance of ambush (parasitic) companies in the market. In the event that there is ill-considered policy of brand firms, there are two through scenarios. Firstly, in the situation, when the firm, which owns the brand, deliberately ignores the activity of the ambush (parasitic) firm, the latter is enabled to enlarge its market share and to penetrate into other spheres. Secondly, overactive judicial war against clone companies can serve them as free publicity that will make them notorious and even popular among ordinary consumers with all subsequent perspectives.

Undoubtedly, the activity of ambush (parasitic) companies damages original firms. First of all, an ambush (parasitic) company, which copies a household name, in fact, takes advantage of the resources of the original firm. In other words, not spending money on the promotion of its goods, such a company attracts a lot of customers. Secondly, due to the activity of a clone company, a brand owner loses some customers, and thus significantly cuts his revenue. Thirdly, in case that an ambush (parasitic) company makes goods in low quality,

the reputation and image of the original company suffer losses, as customers, who have bought forgeries, often associate low-quality products with the well-known brand. Fourthly, it may happen so, that an ambush (parasitic) company has considerable financial resources, which enables it to enlarge its market share up to complete driving the original firm out of a market. Thus ambush marketing constitutes a menace for leading manufacturers and can render null all their perspectives in a particular fraction of market.

For this reason, in order to evade or eliminate such problems, brand owners should make a provision for the protection of their fictitious assets in the form of trade names. Economic agents yet at the stage of setting up their business and/or launching process should perform a number of acts, aimed at preventing copying or parasitism towards their trademarks and commercial names in future. So, when choosing a business name, one ought to take into account not only its possible influence on consumers, but also its ability to be judicially protected. Actually, the procedure of a trademark's official registration is intended to protect the market from identical names for identical goods and services. In the meantime, modern legislation and the practice of its appliance allows government bodies to register commercial names, which have only technical distinctions, for example, in one or several letters or numbers, what breaks a new ground for ambush marketing (parasitism). Specialists cite a number of words that are not recommended for usage in commercial names because of their constant operation in such cases. These are, particularly, combinations with letters of the Greek alphabet (alpha, beta, gamma, delta), human names (Max, Valeria), indication of an activity category (tour, trade, service, consulting, inform, market) and others. In other words, word-combinations like «prombud» (short for «industrial engineering»), «avtoservis» (short for «car service»), «copycentre» (short for «copy shop»), «alphabank», «sihmakabel», «agroproduct» are condemned to constant coexistence with clones in different fields. Moreover, one should not use class names as trademarks for goods and services. As practice shows, there have been registered such trademarks as: biscuits «Oatmeal biscuits», juice «Apple juice», bread «Rye-bread» and etc., which are completely «defenseless» in the market, as their competitors can quite legally use them as vernacular names for some goods and services (oatmeal biscuits, apple juice, rye-bread).

Choosing a product name, one must take into account legal restrictions. Thus, in accordance with Act of Ukraine №6 «About Preservation of Rights to Trademarks for Goods and Services» as amended on 05.22.2003 legal protection cannot be given to commercial names, which represent or imitate symbols of state (national emblems, flags and others); legal names of states; emblems and names of international intergovernmental organizations; official countersigns, responsibility hallmarks, standard marks, stamps; rewards and other badges of merit. According to this law, legal safeguard cannot be given to such trade names, as: the ones, that do not usually have distinguishing force and have not acquired it through usage; the ones that consist only of designations or data, that

describes goods and services, referred to in the application, in particular, denote their kind, quality, mix, quantity, qualities, intended use, value, time and place of production or sale; the ones that are deceptive or may deceive as to goods, services or the personality of the manufacturer, who produces goods or renders services; the ones that consist exclusively of common symbols and terms; the ones that reflect only configuration of goods, stipulated by nature of goods or by the necessity to obtain underwriting result, or which attaches great value to the goods (Vidomosti Verhovnoi Rady Ukrainy, 2003).

Choosing a trade name it's also advisable to take into consideration that tying in to famous words is not a ticket to success, as a lot of modern brands have been created on the basis of imagination of their authors as absolutely new words that had no parallels in most common world's languages. For example, the Swiss watch brand «Rolex» was created in 1908 and, in the opinion of its author Hans Wilsdorf, it was associated with the movement of clock hands on the clock face and was easy to remember and to pronounce. In his turn, the Dane Ole Kirk Christiansen in 1932 called the company that produced tinker toys «Lego», basing on the fact that «Leg got» translated from Danish means «play well». The trade name «Nissan» was created in 1933 by curtailing two Japanese words «Nippon (Japan)» and «sangio (industry)». Company name «Tefal», which was set up in 1956 in France, was derived from two words – «Teflon» and «Aluminum». The name of »Sony» company was invented in 1957 by derivation from the Latin word «sonus», which means «a sound» (see: for example: Kleiner, 2004).

Before entering the market with one's own trade name, it's necessary to check the existence of analogous registered trademarks belonging to other economic agents. Rather common are cases when companies – undetected ambush (parasitic) companies – register the most popular trade names, and then wait for the occasion to resell them to potential manufacturers. If the trademark is really original, it is necessary to register it according to the corresponding course of law. An enterprise that invests in the development of its own original brand without its registration and legal support, risks losing vested capital with no hope of a return. Such a blunder is a real catch for competitors, as a trademark with similar characteristics can be registered by them «proactively». Par example, the fact of buying a trademark «MMCIS» from a Ukrainian businessman Anton Savchenko by a company «Forex Ememsis Group» for 100 million has become publicly known in Ukraine. This ambitious businessman recorded the trademark patent at the beginning of 2010, when the exchange market «Forex» had just began cultivating the domestic market. Two years later the public company «Forex Ememsis Group» expended its market presence in Ukrainian market and took the lead in its fraction of market, thus the company's management team decided to overcome legal obstacles to further business development and in June 2012 bought out the trademark «MMCIS» for the amount, the Ukrainian owner wanted for it.

For the firm, which launched successfully and has been working in the market for a long time, brand portfolio optimization for the purpose of finding out assets, legal protection of which makes no economic sense, plays a critical part. Taking into account one's own manufacturing and commercial interests, a company has an opportunity to refuse from usage of trademarks, unliable to legal protection, and of outdated brands, obsolete means of individualizing and etc. and can focus on the usage of original designations, what, on the one hand, will allow to mitigate risks of initialization ambush (parasitic) technologies by competitors, and on the other hand will cut losses of a firm with the perspective of market expansion and increase in a company's shareholder value. A trademark can «become redundant» in case of marketing hopelessness (phase-out) of goods it marks, registration by a firm of an analogous, but up-dated mark, that displays changed goods design, shifts in a company's strategy, according to which some lines of business are withdrawn and etc.

At the same time success and brand awareness can sometimes offend a firm-owner, especially if its output does not have substitutes, namely, a company is a monopolist for some time, e.g. is the first company to come into the market with these goods. A lot of Western firms with a well-known trademark, which is heavily used in advertisement, pay attention to the fact, that such a trademark runs a risk of transformation into a generic name, «come» into the language as a generic term. Once it happened to a lot of material names (cellophane, celluloid, nylon), names of medicine and products (aspirin, mineral butter, saccharin), and even to such names that have come into common use long ago, like hairdryer, dictaphone, kerosene stove, gramophone, escalator and thermos. All these are trade names, under which firms, which were first movers, released these inventions in the market for the first time ever. Having turned into a generic name, a trade name basically loses the owner, passing into a common command. After that the renewal of its owner's registration certificate at the patent office becomes impossible.

In judicial practice there are known cases, when the owners of trademarks under the court decision were divested of their exclusive rights to use their trade names because the trademark had lost its function of identification of particular goods and became a generic term. Let's give a cautionary example of an American company King-Seeley Thermos Co., the owner of 8 trade-mark registrations on the basis of the word «thermos». This company filed an action with the Court against the company Aladdin Industries, Inc. on grounds of threat of infringement of rights to pre-nominated trademarks. The litigant, in his turn, acknowledging his intention to sell containers with air-free heat guard as thermoses («thermos bottles»), claimed, that the word «thermos» or «thermos bottle» is a generic term, and asked the court to quash the record of the trademark «Thermos», which belongs to the plaintiff. As a result of the examination the court of primary jurisdiction issued decree, according to which the plaintiff's trademark registrations stand good in law, but the word «thermos» in the English language had become

a descriptive generic term, and is a synonym of an air-free heat guard. Correspondingly, the bearer of responsibility may use the word «thermos» only with a small letter «t»; and may never use the words «original» or «genuine», when describing his product. The plaintiff preserves the exclusive right to all the forms of the trademark «Thermos» without alterations as well (Adroshchuk, 2004, p. 12).

Owners of the business can run into severe problems when changing the legal corporate form of their subsidiary facilities and dividing their corporate assets. Therefore, researchers insist on the importance of thorough judicial examination of intellectual property distributive mechanisms, in particular, rights to trademarks. Adjustment of proprietary interests between the founders in writing is very important, as well as identification of a trademark's appurtenance after some of the owners have left the enterprise. The fact is that rupture of partnership relations between former co-possessors is followed by their attempts to obtain the greater part of assets – from plant assets to fictitious assets and, if a trademark is a brand, the game is worth the candle. After reshaping of a business a brand holder should for some time scrutinize marketing mixes of the former partners in order to pick out attempts of ambush (parasitic) marketing in time, and also so as to assess the possibility of tackling intellectual assets after the partition of a parent enterprise.

A substantial part of an anti-ambush (anti-parasitic) strategy of the firm-brand holder is modelling of possible attacks by unscrupulous competitors. As a general rule, such jobs are put on patent agents. In reliance on careful study of the trademark's components: name, logo, packaging, colour scheme, investigation of consumers' associations with the product and elements of its design, the expert tries to model logic and modus operandi of ambush (parasitic) companies, in other words, to find text, visual or combined imitations of the product image, which can be used by unscrupulous competitors. After that all the combinations, that were found, are registered and the holder of the original trademark becomes their rights holder. For example, the firm Procter & Gamble only in Ukraine registered three word-combinations – variants of famous detergents: «MR. PROPER», «MEISTER PROPER», «MR PROPER», and the company «Astelyt» («Астеліт») took out patents for the following trademarks: «Life», «Life :)», «:»)». It is rather difficult at this stage to find out fewest possible imitations, which ensure maximum protection of the brand.

It's necessary to warn some entrepreneurs with irresponsible attitude towards legal defense of the brand, who themselves induce the attacks of parasites. It happens so, that tied agents call hands to mass media concerning trademark launch and name future brands. As induction of ambush (parasitic) marketing we can consider such policy of a trademark holder, when a firm determines a price for brand goods, that is too high, and at the same time refuses to bring on the market cheaper substitutes. According to expert opinion, «it's better to attack oneself, launching product innovations and cheaper substitutes, than to allow your competitors or ambush (parasitic) companies do it» (Kot). For ex-

ample, the forgoing company Procter & Gamble, producing comparatively expensive brand detergent powders Ariel, Tide, at the same time manufactures cheaper analogues Bonux, Gala, DAX. Under such conditions ambush (parasitic) businesses almost stand no chance, as the original firm mastered putting a wide range of goods on the market, each of which is aimed at a particular fraction of market.

At the same time it occurs, when anti-ambush (anti-parasitic) measures were assumed too late, incorrectly or not to the full extent, which did not allow to evade the problem of clone appearance. In that case it's very important for the damaged firm to ensure judicial protection of intellectual property rights to its trademarks in time. The legislation of Ukraine creates administrative-legislative and judicial defense of infringed rights. Administrative-legislative defense of intellectual property rights is often ensured by appealing to Antimonopoly Committee of Ukraine, which considers cases within the context of fair competition violation through designations misuse. Judicial defense of intellectual property rights makes provision for filing a claim in court for the purpose of recognition or restoration of infringed trademark rights, breach of a law termination, and reimbursement of damages, caused by a law-breaker.

As practice shows, the aforementioned defense methods can be quite effective and often supplement each other. For instance, an applicant, when appealing to Antimonopoly Committee of Ukraine, may claim recognition of unfair competition, termination of unfair competition, official denial at infringer's cost of false information, disseminated by him, of incorrect or incomplete information and imposing a fine on the infringer. If the Antimonopoly Committee of Ukraine recognizes some activities of a lawbreaker as unlawful use of designations, then an applicant has a right to file a claim in court for deletion of corresponding products with misused designations either from a manufacturer, or from a seller. Besides, based on the decisions of the Antimonopoly Committee of Ukraine an applicant can file a court action for compensation of damage, impaired by an infringer's wrong acts.

Either judicial or administrative-legislative defense of rights to trade names has unique features. Corresponding remedy mechanisms differ significantly in methods (demands, which can be made on an infringer by an applicant or a prosecutor), degree of legal investigating a case (the court, unlike the Antimonopoly Committee of Ukraine, cannot go outside the bounds of claims under the lawsuit), the level of perfection of proceedings on the reference (the procedure in court is more formal), subject matter (the Antimonopoly Committee of Ukraine reviews cases involving only agents of economic activity, who are competitors), legal efficacy of a decision (decisions of the Antimonopoly Committee of Ukraine can be challenged in court) and etc. (Zhuhevyh, 2010, p. 29). Taking into consideration these peculiarities, an agent of economic activity chooses the most acceptable defense of infringed intellectual property rights to a trademark.

For example, the Italian company «Ferrero», a manufacturer of famous sweets «Raffaello» in Ukraine has successfully maintained its rights in the Antimonopoly Committee of Ukraine for many times. In 2005 the Antimonopoly Committee of Ukraine stopped towards its unfair competition of the SOE «Sevastopol winery» and Ltd «TD «Market Group», having prohibited these enterprises to produce and merchandise champagne «Raffaell», as the elements of its wrapping design on a compositional and graphical level coincided with the packing of the sweets «Raffaello». In 2009 the Antimonopoly Committee of Ukraine admitted one more fact of ambush (parasitic) marketing concerning the «Ferrero» company, this time on the part of Ltd «Viva» (Lutsk city). The party in fault was mulcted a sum of 300 000 hryvnas. It emerged, that Ltd «Viva» manufactured and sold the sweets «Extaza» and «Moonlit Raphael» in the package that imitated the style of sweet pellets «Raffaello». In 2010 Ltd «Viva» was again caught in unethical competition towards the corporation «Ferrero» and was fined at a rate of 30 000 hryvnas. As the Antimonopoly Committee of Ukraine determined, the Ltd «Viva» manufactured and sold chocolate sticks «Bonutti» and «Benitto» «in the package that imitated the style of the chocolate stick «Kinder Bueno», manufactured by the corporation «Ferrero». Besides the designations «Bonutti» and «Benitto» they bore similarity to the words of the Italian or Spanish languages, what evoked associations from the consumers with the trade name «Bueno». By the decision of the Antimonopoly Committee of Ukraine in 2009 and 2010 actions of the Ltd «Viva» were acknowledged as an attempt to use someone else's business reputation with the help of consumer fraud. The conspicuous fact is that in both cases of ambush (parasitic) marketing the wrongdoer firm has not advertised fabricated sweets at all.

By the way, in the same 2010 the mentioned above Ltd «Viva» was mulcted a sum of 20 000 hryvnas by the Antimonopoly Committee of Ukraine for unscrupulous competition towards the chocolate-maker «Mars Inc» (the USA). As the Antimonopoly Committee of Ukraine found out, the offender manufactured the sweets «Twist», «Success», «Bambo», «Milka» («Milla») in the packages that imitated the style of chocolate sticks «Twix», «Snickers», «Bounty» and «Milky Way», manufactured by »Mars» companies. In sweets' design they used the main graphical and compositional elements of famous confectioneries' wrapping. Thereby, the Lutsk confectionary tried to use someone else's business reputation, what contravenes honest commercial customs in entrepreneurial activity. The showed examples testify that Ltd «Viva» approved ambush (parasitic) marketing as its basic competitive strategy, but in each case original companies skilfully protected their business interests, turning to the Antimonopoly Committee of Ukraine.

As national practice shows, very often the subjects of ambush (parasitic) marketing go to the law, appealing against the decision of the Antimonopoly Committee of Ukraine or the decision of the first-instance court in all existing courts of appeal. Agreeably, while the case is being litigated, it is considered not

to be solved finally. Judicial proceedings are lengthy, while all this time the ambush (parasitic) trademark is in the market, gains improper profits and continues to injure reputation of the original trademark. However, as experts claim, judicial remedy is the most effective among security arrangements against ambush (parasitic) marketing, as it allows for the most complete satisfaction of the claimant's interests, though it supposes rather complicated procedure of proving illegal actions of the imitator, necessity to engage lawyers and necessity to stand one's ground, including courts of cassation and courts of appeal.

The successful legal defense of violated rights is the litigation ««Nycomed» versus «Pharma Start»». Norwegian company «Nycomed», the owner of the household name «Cardiomagnyl» filed an action with the economic court against Kyiv firm «Pharma Start», which in 2010 registered a trade mark «Cormagnyl» for a suchlike domestic medical drug. Having come through several judicial instances, this litigation came to Superior Economic Court of Ukraine, which affirmed the decision of previous courts to disuse in economic activity the trade name «Cormagnyl», storage and sale of this product, its import and export and other claimant's demands. Consequently, attempts of the enterprise-defendant to turn out analogous to branded, but much cheaper medical drug, using semantic similarity in the names, were stopped as a result of long-term legal investigations.

Simultaneously, there are also examples of legal proceedings, unsuccessful for the original firm. For instance, in 2008 Russian pharmaceutical company «Nizhpharm» launched into the market medicinal product from arthritis «Chondroxide», to which Ukrainian factory «Pharmak» replied with medicine, which had similar formula and name – «Chondrasil». In 2010 «Nizhpharm» filed a suit, claiming to close down manufacturing and realization of medical drug «Chondrasil» and also to render ineffective the warrant of registration by the company «Pharmak» a trade mark «Chondrasil» and hereafter not to use this trade name in marketing communication. After the two-year lawsuit Superior Economic Court of Ukraine put the matter to rest and on November 14, 2012 dismissed the plaintiff's claims and did not ban to sell medical drug «Chondrasil», produced by the company «Pharmak».

In general, the survey of homeland and world practice of adjudicatory jurisdiction, connected to trademark rights, testifies to the necessity of further improvement of Ukrainian legislation in this branch. To contemporary problems of legal regulation of trademarks, which require additional attention of scientists and law-makers, experts assign the following ones: the questions of administrative-judicial defense of rights to trademarks, legal responsibility for deeds of crime, happening at the stage of pendency of applications and expertize, the mechanism of administrative hearing of the mentioned cases, legal protection of well-known trademarks and prevention of their registration by the third party and etc. (Makoda, 2012, p. 28).

Conclusions

Ambush (parasitic) marketing as the culture of borrowing successful trademarks by less successful competitors has become profitable business in many countries of the world. The name of a particular brand or design of goods' packing that are a great draw and are sold readily, are imitated most often. Correspondingly, cases of ambush (parasitic) marketing happen mainly in consumer's markets. The activity of a clone-firm brings it large income with minimal engineering-manufacturing and merchandising efforts; at the same time it causes significant losses for an original company and dupes the public. Imperfect legislation in some countries makes the activity of clone-firms almost unpunished, what encourages unethical competition in the field of intellectual property. Simultaneously, in highly developed countries, where legal protection of trademarks and their legal defense, as well as legal consciousness of the citizens, are at rather high level, cases of ambush (parasitic) marketing are also fairly common. Significant factors that stimulate ambush (parasitic) marketing in this case, are blunders of well-known firms in management of their own trademarks. That's why the most effective remedy for ambush (parasitic) marketing is preventive actions. Every brand holder should realize that countermeasure and stopping of future infringement is more effective and profitable than struggle with ambush (parasitic) companies in operation. Anti-ambush marketing strategy ought to be shaped yet at the stage of new product development and its launching into the market. In particular, the trademark should be original (*sui generis*), and take into account regulatory restrictions. Trademark registration has to be ahead of its aggressive advertising. Except the main trademark, well-established companies often register analogous (similar in sounding or visualization) trademarks, what prevents any possible attacks of unscrupulous competitors. At the stage of growth and maturation the company-brand holder should wage prudent canvassing campaign of its trademark, taking into consideration the risk of brand name's turning into a generic name. It is always important for a top company to conduct cautious pricing policy in order not to allow extremely high price, what may attract competitors. Every step of the way a firm can be reorganized, what provides for its owners the necessity of scrupulous processing of intellectual property distributive mechanism. In the event that offered actions did not allow evading problems, connected with ambush (parasitic) marketing, effective means of one's defense of rights can be appeal to competition support agencies and recourse to a court. As national practice shows, proceedings in cases of unfair business practices in Antimonopoly Committee of Ukraine and courts of different jurisdiction hold judicial promise, but require considerable financial, intellectual and time expenses.

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