A DIGITAL OFFER OF A REAL ESTATE – NATURE AND RIGHTS OF INTELLECTUAL PROPERTY /PROBLEMS AND SOLUTIONS/

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Abstract: *The purpose of this report is to define and clarify the nature and main characteristics of the digital real estate offer, to identify the objects of intellectual property in the digital real estate offer and to present the means for their protection through intellectual property rights (IPRs), the identified business problems and the possible solutions for them, as well as offering options for protection in case of infringed rights to intellectual property objects in the digital real estate offer. The conditions of digitalization, incl. and in the real estate business during the review and inspection, the author presents her point of view reading such kind of the IPR problems, without claiming to be exhaustive and to aim a discussion on the IP rights to the specified IP rights in a digital offer of real estate presented by business entities or natural person. The significance and topicality of the considered problem is derived from the current digital conditions of presentation and functioning of business entities, the forms of presentation and sale of their products (goods and services), which in turn raise a number of questions to management, including:*

- How to present and position your business and how to launch/ present your products - real estate offers in the digital business space;

- how to create and manage the use of the proposed offer by users while preventing direct copying/ borrowing of elements of the business offer from unfair disloyal participants in the real estate market.

The focus of this paper is to identify the possibilities of the intellectual property system for protection of elements of the business offer and for legal remedies /means of defense the IP rights of the subject-holder in case of identified infringement of IPRs.

Key words: real estate; digital offer; intellectual property.

1. Digital Offer for a Real Estate

The real estate offer usually contains the following main elements

– object of the offer – property with main characteristics in text, photos / sketches; virtual view through MMP

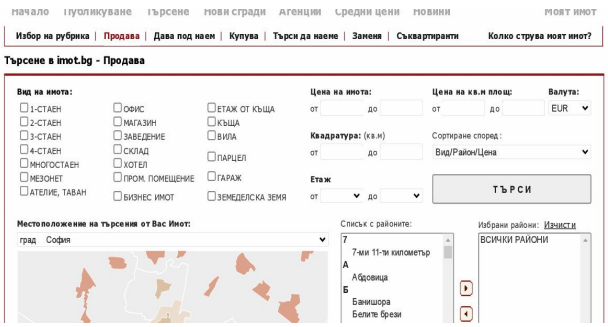
– building company – In case of new construction and in case of "green offer" with data: name, logo

– broker – a company with a name, logo or natural person as a name with communication coordinates.

Examples:

OFFER OF BUILDING COMPANY – INVESTOR

OFFER OF A BROKER:



2. The Intellectual Property in the Digital Offer for a Real Estate

The usual company name of a broker, photos, text and sometimes multimedia solutions in it are identified in the presence of an option for virtual viewing.

Some of the elements are subject to protection under the GDPR - not within the scope of this paper.

The individual elements of the digital business offer are subject to protection under the following legal mechanisms:

1. Text, graphics and photographic images - as an object of AP

2. Multimedia product /MMP / virtual tour and inspection - object of AP

3. Company name and domain name of a building company - as TM, as a registered domain name

4. Logo - as industrial design /ID/ and / or as TM.

5. Internet site - if it is indicated in the offer, through an object of copyrights and / or ID, class 14 – first official web site /main page and architecture of the site.

The legal means for protection of the above-mentioned possibilities are presented through IPRs, in particular: through copyright under the Law on copyright and related rights (LCRRR), through industrial design under the Law on industrial design and through a trademark under the Law on trademarks and geographical indications. These legal point and remedies again unfair use will be presented in the order in which they are listed.

The website, photographic images, graphic and multimedia design as intellectual products, computer technology results and the creative work of specialists in the field could be protected as intellectual property in one of the following ways:

A. As an object of copyright[1]

Computer programs, databases, word, color, image and graphics solutions are automatically protected as CR.

The objects of copyright protection are a wide range of works, among which the following are suitable for the purposes of this exhibition:

- Literary works, including works of scientific and technical literature, journalism and computer programs (CP);
- Films and other audiovisual works;
- Photographic works and works created in a manner analogous to the photographic one;
- Graphic design of a printed edition;
- projects, maps, schemes, plans and others related to architecture, spatial planning, geography, topography, museum work and any field of science and technology.

LCRRR protects the economic and moral interests of the creator (assignor) of the creative product against direct borrowing or other unauthorized use by interested parties.

Copyright holder can be:

- the author of a work such as: “The author is the natural person, as a result of whose creative activity a work has been created” (Article 5 of the Law on Copyright and Related Rights);
- other natural and legal persons - heir of the author after his death or for example the person providing the creation and publication of the website, his employer / assignor - in computer programs and databases created in the conditions of employment

Copyright is a complex right consisting of non-property and property rights.

The main non-property rights (Art. 15 of the Law on Copyright and Related Rights) of an author of works of science, literature or art consist in the possibility for the author to perform any of the following actions: to decide whether the work created by him can be disclosed , the place and the way to do it; to seek recognition of his authorship of the work; decide whether his work should be published under a pseudonym or anonymously; to ask for his name, his pseudonym or anonymously; request that his name, pseudonym or other identifying author's mark be marked accordingly in each use of the work; to demand the preservation of the integrity of the work and to oppose any changes in it, as well as any other action that could violate its legitimate interests or personal dignity; to change his work, if this does not infringe rights acquired by other persons; to stop using the work in case of changes in their beliefs.

The property rights of the author are a set of all possible forms of use of the work. The right of use is a fundamental property right of the author of each work. Actions such as: reproduction of the work are considered to be used; distribution of the original or copies to an unlimited number of persons; public presentation or performance of the work in a place accessible to the public - presentation hall, concert podium, restaurant and entertainment, cinema, fair, fashion show; transmission of the work by cable or other technical means; public display of the work, processing or offering it wirelessly or by cable or other technical means of access to an unlimited number of persons, allowing this access to be carried out from a place and at a time individually selected by each of them; the import and export of copies of the work in commercial quantity.

The author is entitled to remuneration for each type of use of the work and for each subsequent use of the same type.

Copyright protection is temporary. The principle is: copyright is protected as long as the author is alive and seventy years after his death. The deadlines start from January 1 of the year following the year in which the author's death occurred or the work was created, respectively publicized or published.

The company's website usually contains the sign C - copyright label, as well as information about the creator, the latest update, and a warning about

unauthorized copying. The website, as well as individual elements of it, as an object of copyright, may be used only with the consent of the copyright holder, except in cases provided by law. Any unauthorized or unauthorized by special texts of the Law on Copyright and Related Rights considered an offense with all the ensuing consequences under civil, administrative and criminal protection.

B. As an object of industrial property

The national legislation in the field of industrial property regulates the legal protection by revealing the legal nature of the objects outlines the main points in the proceedings for processing applications for registration within the Patent Office, regulates the rights of licensing, termination and deletion.

Individual graphic, color and other design projects and solutions in the form of images, graphics, images, emblems, colors and others are subject to protection as an industrial design and / or brand.

– As an industrial design (ID)[2]

Industrial design (ID) as an object of special regulation is applicable to the above possibilities for digital identification in classes of business identifiers in class 14 (screens for monitors and icons) and class 32 (graphic symbols and logos) of the Locarno classification of designs.

The focus of our attention here is protected design solutions in class 14-04 "Screen images and icons", including a graphical user interface, computer icons and computer screen layout.

World-famous successful companies such as GOOGLE, Microsoft Corporation, IBM and others protect created by them and icons, screens and typographic signs in EUIPO as RCDs in classes: 14.04, 18.03, 19.04, 21.01 and others. Many interesting and illustrative examples can be found at the official web site of EUIPO - European Union intellectual property office, www.euipo.europa.eu/ research – class 14.04 и class 32.[3]

According to Art. 3 of the Law on Industrial Design Act (LID) industrial design is: "the visible appearance of a product or part thereof, determined by the peculiarities of the shape, lines, pattern, ornaments, color combination or combination thereof".

The conditions for granting protection to an industrial design are two in the case of cumulativeness: novelty and originality.

1. Novelty - "The design is new if before the date of submission of the application, respectively before the date of priority, no other identical design is known, which has become publicly available through publications, use, registration or disclosure in any other way where and be in the world. " Designs are identical if their features differ only in insignificant elements (Art. 12).

2. Originality – art. 13 of the Design Law presents the definition of the criterion as follows: "A design shall be considered original if the overall impression it creates on the informed user differs from the overall impression created by a design which became public before the date of application for registration or when priority is claimed before the priority date."

The right of application belongs to the author. Where the right of application belongs to several persons, it shall be exercised jointly. The refusal of one person is not an obstacle for the others. It must also be explicit in writing. In certain cases, the right to apply belongs to the employer or the ordering party (Article 16, LID) occurs for all persons. They are co-authors. Persons who have provided technical, material or other assistance to the author are not co-authors (Article 4).

The right to a registered industrial design is a complex right consisting of three groups of powers for the owner of the design: the right to use the design, the right to dispose of it, and the right to prohibit third parties from copying or using it in commercial activity design included in the scope of protection.

The use of the design includes a number of economic activities such as: the production, supply or use of a product in which the design is included or to which the protection is applied, as well as the import, export or storage of the same product for these purposes.

The scope of legal protection is determined by the image, respectively by the images of the registered design and includes any identical design within the meaning of the LID - Art. 12, as well as any design that is largely a copy of the registered design. The law shall apply to bona fide third parties from the date of publication of the design registration.

ID rights may belong to one or more persons. Where the design right belongs to two or more persons, each co-owner may use it without the consent of the others and without reporting it to them, unless otherwise agreed between them in writing. All rights of the holder of a registered design may be transferred or licensed.

– As a TM[4]

In cases where web design or its elements such as graphic symbols, fonts, images, color solutions and the like could distinguish the company and its products on the market and serve the purposes of digital business identification, the owner has the opportunity to be protected as a trademark.

The specified design elements must meet the conditions for registration specified in the Trademarks and Geographical Indications Act, 2019 (LTMGI).

"A trademark is a mark that is able to distinguish the goods or services of one person from those of others and can be presented in the State Register of Trademarks in a way that allows a clear and precise definition of the subject of protection granted by registration. Such signs may be, for example: words, including names of persons, letters, numbers, drawings, figures, shape of the goods or their packaging, colors, sounds or any combination of such signs." (Article 9, paragraph1, Law on TM and GI).

Digital design solutions could be registered as a trademark if they do not fall within the scope of the grounds for refusal of registration. According to Article 11 of the LTMGI, the following is not registered: a sign that is not a trademark within the meaning of the definition of a trademark; a mark which is not distinctive; a trademark, which consists exclusively of signs or indications, which have become customary in the spoken language or in the established commercial practice in the Republic of Bulgaria with regard to the ordered goods or services; a mark consisting exclusively of signs or indications indicating the type, quality, quantity, purpose, value, geographical origin or other characteristics of the goods or services; ; a mark contrary to public policy or morals; a trade mark which is likely to mislead consumers as to the nature, quality or geographical origin of the goods or services; a mark consisting of or including coats of arms, flags or other symbols, as well as their imitations of member states of the Paris Convention, as well as coats of arms, flags or other symbols, abbreviations or names of international intergovernmental organizations and others.

A mark which is identical with an earlier mark may not be registered where the goods or services of the mark applied for and the earlier mark are identical; if there is a likelihood of confusion for consumers, which includes the possibility of linking to the earlier mark or consists of a registered geographical indication or its derivatives /Art. 12 of LTMGI/.

The trademark right is acquired through registration as of the date of filing the application. The right to a trademark is an exclusive right. The exclusive right has effect in respect of bona fide third parties from the date of publication of the registration. The right to a trade mark includes the right of its proprietor to use it, to dispose of it and to prohibit third parties from using a trade mark without his consent which: is identical with the trade mark for goods or services identical to those for which the trademark is registered; there is a possibility of consumer confusion, which includes the possibility of associating the mark with the brand or enjoying fame in the territory of the Republic of Bulgaria and the unjustified use of the mark would lead to an unfair advantage of the distinctive character or reputation of the earlier mark or would harm them. The validity of the registration is ten years from the date of submission of the application. The registration may be renewed indefinitely for further periods of ten years. All rights of the proprietor of a registered trademark may be transferred or licensed.

3. Problems in the field of IPRs in the real estate digital offer and possible solutions

In case of identified violation of IP rights, all administrative norms of LCRRR, LID and LTMGI come into force, incl. fines, property sanctions, destruction of the product - site of other building company, etc. These opportunities are carried out administratively. There is a possibility to implement measures in case of violations of legal protection under the Law on Copyright and Related Rights, the Law on ID and the Law on TM and GI.

In case of violations of rights in the field of IP, it is difficult to prove the first conceptual idea as an origin. LCRRR enters into force in case of direct copying, not in case of imitation and general borrowing of a site, of information.

In case of infringements in the field of the above-mentioned objects of industrial property: trademarks and IDs, the protection in case of infringed rights is more flexible and optimal. The norms of the Law on ID and the Law on TM and GI could come into force when proving imitation, borrowing and indirect copying.

The facts show that in the real estate business the mechanisms for this type of protection are not known, are not used effectively and therefore it is

difficult to prosecute violations.

For example: one of the well-known brokerage agencies on the Bulgarian market no longer maintains its brand, which is a prerequisite for use by another company without offense.

How to solve these and other similar IPRs problems in digital real estate business offers:

1. On each website to be indicated – creator, the rights of the IP to whom they belong, text that they are punishable under the Law on Copyright and Related Rights of the Republic of Bulgaria

2. Each photographic /graphic / project image to be accompanied by names / identifying mark of photographer, designer, accompanied by text: With the permission of /Courtesy by followed by the name of the owner of the copyright.

3. Each virtual walk, MMP should be accompanied by a following text: created by / by order of the name of the individual or legal entity - IPRs holder on the MMP under LCRRR.

4. Each company - broker, building company, investor or a natural person to provide and maintain protection for its web sites, company /business name, trademarks and logos,

In cases where the specified elements of a complex flexible and dynamic strategy in the field of IPR has been implemented and maintained over the years, in case of identified violation, administrative, civil and criminal means for protection and restoration of the correct legal environment come into force.

Conclusion

Here we would like to emphasize that the forms of protection of the digital business offer for a real estate made by of a natural person or by a company considered so far are not mutually exclusive, but on the contrary: when they accumulate, a synergistic effect is realized for the company or natural person - owner. Natural person or the company - owner of registered identification marks and design solutions, protected as a TM and/or industrial design, informs the public about this fact, incl. its counterparties and users, by placing the R / TM and ID /RCD signs for the existence of the respective registrations. This allows the company (Markova, M. 2013) to build and maintain a positive company image in society and realize economic benefits from possessed IPRs.

Notes

[1] Law on copyright and related rights, State gazette N 56, 1993;

[2] Law on industrial design, State gazette N 81, 1999;

[3] www.euipo.europa.eu

[4] Law on trademarks and geographical indications, State gazette N 81, 1999;

References

Markova, M. (2013) “Management of company innovations as IP”, *Ec. Alternatives, N 1*;

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