

CIVIL LAW FOUNDATIONS OF THE JOINT EXERCISE OF ABSOLUTE RIGHTS

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Abstract

This article examines the civil-law foundations of the joint exercise of absolute rights from both theoretical and comparative legal perspectives. It analyzes the traditional legal nature of absolute rights and explores the distinctive features of their joint exercise by multiple independent persons based on the consent of the right holder. Particular attention is devoted to coexistence agreements developed in the legal practice of the United States and the European Union, as well as to legal approaches concerning the right holder's consent, the likelihood of consumer confusion, and the prevention of unfair competition. The article further substantiates the concept of the joint exercise of absolute rights as a distinct civil-law mechanism that facilitates the lawful coexistence of identical or similar intellectual property rights while maintaining a balance between the interests of right holders, market participants, and consumers.

Keywords

absolute rights; intellectual property; right holder's consent; joint exercise of rights; coexistence agreement; limited derivative absolute right; unfair competition; likelihood of confusion; civil law.

Introduction

In civil law, absolute rights confer upon their holder exclusive legal control over a specific tangible or intangible asset that is enforceable erga omnes, that is, against all third parties. Their defining characteristic is that they may be exercised independently by the right holder, while all other persons are under a corresponding legal duty to refrain from infringing those rights. Consequently, absolute rights have traditionally been

regarded as a legal institution designed to protect the interests of a single right holder. By contrast, the possibility that such rights may be exercised simultaneously by several independent persons remains one of the most controversial issues in contemporary civil-law doctrine.

The digital transformation of the economy, the expansion of cross-border trade, the growing integration of business entities, and the increasing economic significance of intellectual property have substantially intensified the need for the joint exercise of absolute rights. In commercial practice, situations are becoming increasingly common in which several independent entities exercise identical or similar absolute rights within defined limits on the basis of the consent of the original right holder. Nevertheless, existing civil legislation does not clearly define the legal nature of such relationships, the grounds for their establishment, their legal regime, the scope of the parties' rights and obligations, or the legal consequences arising therefrom.

Trademark rights, as one of the principal categories of intellectual property, constitute an important element of modern commercial transactions. In the context of increasingly diversified economic relations and globalization, trademarks are frequently used not by a single undertaking but by several legally independent entities. Consequently, the contractual authorization permitting multiple persons to use the same or similar trademark—commonly implemented through a coexistence agreement—has acquired independent theoretical and practical significance and has become an important subject of civil-law scholarship.

In comparative legal practice, particularly within the legal systems of the European Union, the United States, Japan, and other developed jurisdictions, trademark coexistence agreements are widely employed in corporate groups, franchise networks, joint ventures, and industrial cooperation arrangements. As a rule, such agreements are concluded within a carefully structured legal framework designed to safeguard fair

competition, minimize the likelihood of consumer confusion, and ensure transparent management of exclusive trademark rights.

This section examines the theoretical and legal foundations of trademark coexistence agreements, their civil-law nature, their distinction from licence agreements and other contractual arrangements, the deficiencies of the national legal framework, and the approaches developed in comparative and international law. It further substantiates the necessity of improving legal mechanisms capable of ensuring the lawful, transparent, and bona fide joint exercise of trademark rights by multiple independent persons.

Pursuant to Article 10 of the Law of the Republic of Uzbekistan "On Trademarks, Service Marks and Appellations of Origin" (30 August 2001), the registration of a designation in the name of another person where that designation is identical with or confusingly similar to an existing trademark is permissible only upon the written consent of the holder of the prior exclusive right. This provision reflects the principle of party autonomy in civil law, according to which the right holder is entitled to determine the conditions under which the intellectual property right may be exercised by another person. At the same time, the practical application of this provision raises a number of important legal questions. The most fundamental of these is whether such written consent should retain legal effect where the concurrent use of similar trademarks continues to create a likelihood of consumer confusion.

Resolving this issue first requires clarification of the legal nature of the right holder's consent. In particular, it must be determined whether such consent gives rise to a contractual relationship or merely constitutes a unilateral juridical act. Although legislation and legal doctrine frequently describe such consent as a trademark coexistence agreement, its legal character cannot invariably be equated with that of a traditional bilateral contract. This is because the principal legal obligations concerning

the conditions, territorial scope, and manner of trademark use are generally imposed upon the person acquiring the derivative right, whereas the original right holder primarily grants permission for such use.

Article 102(2) of the Civil Code of the Republic of Uzbekistan provides that a legal relationship in which obligations arise exclusively for one party does not constitute a contract. Accordingly, from a civil-law perspective, the written consent of the trademark proprietor should be regarded as a unilateral declaration of intent authorizing another person to use a trademark that remains subject to the proprietor's exclusive right. By issuing such consent, the proprietor voluntarily permits the registration, in the name of another person, of a designation that is identical with or confusingly similar to the trademark protected by the proprietor's exclusive right. Such consent therefore constitutes the legal basis for the subsequent joint exercise of absolute rights within the limits established by law and by the will of the right holder.

Nevertheless, the right holder's consent should not be regarded as an expression of unfettered contractual autonomy. Rather, its legal effect must be constrained by the overarching objectives of protecting consumers and preserving fair competition in the marketplace. Where the consent granted by the proprietor creates a likelihood that consumers may be misled as to the commercial origin of goods, the identity of the manufacturer, or the source of the products or services, such consent cannot, in itself, constitute a sufficient legal basis for state registration. Consistent with contemporary principles of consumer protection and trademark law, the consent of the proprietor should not operate to legitimize circumstances that create a likelihood of confusion or otherwise mislead consumers.

Accordingly, in addition to obtaining the proprietor's consent, the holder of the prior exclusive right and the holder of the derivative right should expressly agree upon the essential civil-law conditions governing the joint use of the trademark. In particular,

the agreement should specify that the derivative right may be exercised only within a defined geographical territory; that use of the trademark is limited to specified categories of goods or services; that the goods manufactured or marketed by the holder of the derivative right comply with the agreed quality requirements and applicable standards; and that sufficient distinctions are maintained in the visual presentation of the mark, advertising strategies, packaging, distribution channels, and other means of commercial identification in order to minimize the likelihood of consumer confusion.

The legal validity of such consent should therefore depend not only upon the voluntary expression of the proprietor's will but also upon the absence of prejudice to consumer interests, the preservation of fair competition, and the maintenance of an appropriate balance between the legitimate interests of the parties concerned. Consequently, consent may be recognized as legally effective only where it takes into account not merely the subjective intentions of the right holder but also the broader social and economic consequences that may result from the concurrent use of similar trademarks.

The admissibility of registering identical or confusingly similar trademarks has long been the subject of both practical and theoretical debate in international intellectual property law. In particular, the International Trademark Association (INTA) has consistently identified the likelihood of confusion **as the principal criterion for assessing such situations in its policy recommendations and trademark examination guidance. Accordingly, where two identical or confusingly similar designations are used concurrently in commercial practice and are capable of creating confusion regarding the commercial origin of goods or services, or the identity of their producer, the mere existence of the prior proprietor's written consent should not automatically be regarded as a sufficient legal basis for registration. Rather, the competent registration authority

should independently assess whether the proposed coexistence is compatible with the public interest, consumer protection, and the fundamental objectives of trademark law.

This approach, as articulated by the International Trademark Association (INTA), is fully consistent with the principles governing the prevention of unfair competition embodied in Article 10bis of the Paris Convention for the Protection of Industrial Property. From this perspective, where there is a substantial likelihood of consumer confusion, the subjective will of the proprietor should not prevail over the broader public interest. Rather, the legal validity of the proprietor's consent must be assessed in light of the civil-law limitations designed to safeguard consumer interests, preserve fair competition, and maintain the stability and integrity of commercial transactions.

Accordingly, the proprietor's consent should not be regarded as an unconditional legal basis for the registration or concurrent use of identical or confusingly similar trademarks. Instead, it constitutes only one element of the legal assessment, which must be balanced against overriding public-law considerations, including the protection of consumers from deception, the prevention of market distortion, and the maintenance of an effective and competitive marketplace. This approach reflects the modern understanding of trademark law, according to which the exclusive right serves not only the private interests of the proprietor but also broader public interests by ensuring market transparency, protecting consumer confidence, and promoting fair competition.¹

Accordingly, when concluding a trademark coexistence agreement, the legal relationship between the holder of the prior exclusive right and the holder of the derivative right should be structured not only in accordance with the principle of freedom of contract but also with due regard to the protection of consumer interests and the preservation of fair competition. In particular, the agreement should clearly specify

¹ International Trademark Association (INTA). Model Trademark Coexistence Agreement. INTA, New York, 2018; International Trademark Association (INTA). Likelihood of Confusion — Fact Sheets. URL: <https://www.inta.org>

such essential terms as the visual presentation of the trademark, the geographical scope of its use, the categories of goods and/or services for which the mark may be used, and any additional conditions necessary to eliminate the likelihood of consumer confusion. Properly drafted coexistence agreements therefore constitute an effective legal mechanism for preventing confusion between competing products, avoiding false impressions regarding their commercial origin, and safeguarding fair competition in the marketplace.

More broadly, trademark coexistence agreements perform several important functions within the civil-law system.

First, such an agreement is not merely a written expression of the proprietor's consent but also an independent legal instrument for ensuring the stability of civil-law relations. By consenting to the registration and use of a designation that is identical with or confusingly similar to its own trademark, the holder of the prior exclusive right expressly or implicitly undertakes, within the limits established by the agreement, to refrain from asserting infringement claims against the holder of the derivative right. This contractual undertaking provides the latter with legal certainty and strengthens the stability of its legal position in civil commerce.

Second, trademark coexistence agreements frequently serve in administrative and judicial practice as an important legal mechanism for overcoming relative grounds for refusing trademark registration based on the likelihood of confusion. When applying for the registration of a trademark, the holder of the derivative right may submit the coexistence agreement to the competent intellectual property authority as documentary evidence that the proprietor of the prior exclusive right does not object to the registration of the similar designation. In this context, the agreement functions as formal evidence of the proprietor's written consent and may facilitate the removal of objections that would otherwise prevent registration. Likewise, it may be relied upon in administrative

objections or judicial appeals challenging decisions refusing trademark registration. Consequently, the agreement provides the holder of the derivative right with an independent legal basis for obtaining trademark protection while simultaneously institutionalizing the parallel use of similar trademarks by both parties under mutually agreed conditions.

Accordingly, a trademark coexistence agreement should be regarded not merely as a civil-law contract but also as a legal instrument possessing independent procedural significance in trademark registration proceedings. By combining contractual autonomy with regulatory safeguards designed to protect consumers and preserve fair competition, this legal mechanism enhances legal certainty, promotes the efficient administration of trademark rights, and facilitates the lawful coexistence of similar trademarks within the marketplace.

Third, trademark coexistence agreements are widely employed in international practice as an effective legal mechanism for defining the conditions governing the concurrent use of similar trademarks and for preventing potential disputes between right holders. In particular, within the practice of the United States, coexistence agreements are frequently submitted to the United States Patent and Trademark Office (USPTO) to address one of the most common relative grounds for refusing trademark registration—the likelihood of confusion**. Nevertheless, the mere existence of a coexistence agreement does not guarantee that the application will be approved.**

Instead, the USPTO evaluates such agreements together with all other relevant circumstances of the case. Particular attention is given to the likelihood that consumers may be confused or deceived, the nature and commercial relationship of the goods or services concerned, the degree of similarity between the respective trademarks, and the broader public interest underlying trademark protection. Accordingly, a coexistence agreement constitutes persuasive—but not conclusive—evidence that concurrent

registration and use of similar trademarks may be permissible. The final determination remains subject to an independent assessment by the trademark authority as to whether the proposed coexistence is compatible with the objectives of trademark law, including consumer protection, the prevention of unfair competition, and the preservation of an orderly and transparent marketplace.

This approach reflects the modern understanding of trademark coexistence agreements in comparative intellectual property law. Although such agreements embody the parties' contractual autonomy and their mutual consent to the concurrent use of similar marks, they cannot override mandatory legal principles intended to protect consumers and the public interest. Consequently, the effectiveness of a coexistence agreement ultimately depends not only on the agreement reached between the parties but also on the competent authority's determination that the coexistence of the relevant trademarks will not create a material likelihood of consumer confusion or otherwise undermine the proper functioning of the market.²

A comparable approach has been adopted within the legal framework of the European Union. The European Union Intellectual Property Office (EUIPO) takes trademark coexistence agreements into account both during the examination of trademark applications and in opposition proceedings. However, such agreements are not legally binding upon the EUIPO and do not automatically result in the registration of the contested trademark.

Where the parties have agreed upon the conditions governing the concurrent use of their respective trademarks and the terms of the coexistence agreement demonstrate that the likelihood of consumer confusion has been eliminated or reduced to an acceptable level, the EUIPO may consider the agreement as one item of evidence when assessing

² McCarthy J. T. McCarthy on Trademarks and Unfair Competition. 5th ed. Thomson Reuters, 2024. §§18:79–18:82; Trademark Manual of Examining Procedure (TMEP). §1207.01(d)(viii). Consent Agreements. United States Patent and Trademark Office (USPTO).

the overall circumstances of the case. In such situations, the coexistence agreement may support a finding that registration is permissible, but it is never determinative of the outcome.

The final decision remains subject to the EUIPO's independent assessment of all relevant legal and factual circumstances, including the degree of similarity between the respective signs, the nature of the goods and services concerned, the perception of the average consumer, and the compatibility of the proposed registration with the public interest and the fundamental objectives of European Union trademark law. Accordingly, under EU trademark practice, a coexistence agreement serves as persuasive evidence of the parties' intention to avoid commercial conflict rather than as conclusive proof that concurrent registration is legally permissible. The competent authority must ultimately determine whether the coexistence of the trademarks is compatible with the principles of consumer protection, legal certainty, and fair competition that underpin the European Union trademark system³.

Trademark coexistence agreements are likewise recognized in the judicial practice of jurisdictions such as France and Germany. In these legal systems, courts may treat such agreements as relevant evidence when resolving trademark disputes. Their legal effectiveness, however, is subject to the overriding condition that they do not prejudice consumer interests or undermine the principles of fair competition. For example, the French Court of Cassation has repeatedly emphasized that coexistence agreements capable of misleading consumers as to the commercial origin of goods or the identity of their producer cannot be regarded as legally valid or enforceable.

³ European Union Intellectual Property Office (EUIPO). Guidelines for Examination of European Union Trade Marks. Part C: Opposition, Section 2: Double Identity and Likelihood of Confusion, Chapter 6: Other Factors, § 3.1 "Coexistence between the marks involved in the opposition". Edition 2025; Judgment of the Court of Justice of the European Union of 20 July 2017, *Ornua Co-operative Ltd v Tindale & Stanton Ltd España SL*, Case C-93/16, paras. 41–48.

Accordingly, comparative legal practice recognizes trademark coexistence agreements as an important legal instrument for regulating relationships between trademark proprietors, providing a legitimate basis for the concurrent existence of identical or confusingly similar trademarks in the marketplace, and facilitating the resolution of objections arising during trademark registration proceedings before intellectual property offices. Nevertheless, both their legal validity and their practical effectiveness depend fundamentally upon ensuring adequate consumer protection against the likelihood of confusion and preserving conditions of fair competition. Consequently, if this legal institution is to be incorporated into the legal system of the Republic of Uzbekistan, it should be implemented in accordance with internationally accepted standards, under which the decisive criterion is not merely the mutual consent of the right holders but also the effective protection of consumer interests and the public interest.

Fourth, trademark coexistence agreements acquire particular legal and practical significance in the context of corporate reorganization, including mergers, divisions, and demergers. In such circumstances, a single legal entity transfers its rights and obligations to two or more successor entities, with the result that the exclusive right to a trademark may become associated with several independent undertakings. Where different versions of the same trademark or derivative signs are subsequently used by the entities created through the reorganization, a coexistence agreement provides the necessary legal basis for their lawful use within specified geographical territories or in relation to agreed categories of goods and services. In other words, each successor entity is authorized to use the relevant designation only within the market segment, territorial scope, or product categories expressly defined by the parties.

This approach has become well established in comparative practice. In both the United States and the European Union, rights to use identical or confusingly similar

trademarks that arise as a consequence of corporate reorganization are frequently allocated through trademark coexistence agreements. Such agreements are taken into consideration by intellectual property offices when determining issues relating to the registration and continued use of the relevant trademarks. This practice not only minimizes disputes between right holders but also promotes legal certainty in commercial transactions while simultaneously providing an effective mechanism for protecting consumers against the likelihood of confusion.

References

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3. European Union Intellectual Property Office (EUIPO). Guidelines for Examination of European Union Trade Marks. Part C: Opposition, Section 2: Double Identity and Likelihood of Confusion, Chapter 6: Other Factors, § 3.1 “Coexistence between the marks involved in the opposition”. Edition 2025; Judgment of the Court of Justice of the European Union of 20 July 2017, Ornua Co-operative Ltd v Tindale & Stanton Ltd España SL, Case C-93/16, paras. 41–48.