Wine through the lens of intellectual property[1]

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Abstract

Intellectual property is at the heart of the existence and functioning of the knowledge economy. Relevantly, it is part of all aspects of business activities in modern times, including those in the agrarian economy. It provides added value and increases competitiveness. This phenomenon is very distinct in winemaking, where the final product is a collection of objects of intellectual property and at each stage of its creation and existence one such object can be found.

Key words: wine; intellectual property; intellectual property in wine; technologies in wine; trademark in wine

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Introduction

The traditional economy has been out of date for decades. To date, the economy is oriented in another direction, which shapes it as a knowledge economy. It is this reorientationthat requires purposeful active use of intangible assets, among which intellectual property objects stand out as the most valuable. It is what, to a large extent, ensures competitiveness andadded value for the final products, including those from agricultural production. To an extremely large extent, the above is relevant for wine and winemaking, since wine as a final product is a collection of objects of intellectual property. At each stage of winemaking and thewine forming process, there can be found an intellectual property object, starting from the variety of the vine, through the production technology, to the registered geographical indication and reaching the trademark and design of the final product. The purpose of the present work isto present wine as a complex set of intellectual property objects. The methodology used to conduct the research is interdisciplinary. The complexity, specificity, and wide scope of the research object, the subject, and the purpose of the research, determine the need for the simultaneous application of different types and complexity of scientific research methods, of a qualitative and quantitative nature. Among the methods used are the methods of study, analysis, and synthesis, incl. analysis of various sources and synthesis of relevant normative acts. Despite the growing actuality of intellectual property as a matter, theory and element of the knowledge economy, within which the world as a whole functions today, the topic of wine as an object of intellectual property is still extremely poorly developed in Bulgaria. Among the single scientific materials related to the topic stands the work of Georgi Dimitrov and Mina Angelova titled "Intellectual Property Rights (patents): Essentials and innovative potential in the wine industry" by.

Among the foreign scientific materials discussing the topic, the stand out Peter M. Brody, with his work "Intellectual Property and the Wine Sector", which examines various objects of intellectual property involved in wine. Due to some fundamental differences in the American and European intellectual property systems, Brody's research and its results are of little relevance and applicability to Bulgarian conditions. The issue of intellectual property in wine has been addressed by the European Intellectual Property Office in a report entitled "The Economic Cost of IPR Infringement in Spirits and Wine". This paper analyzes the consequences of the infringement of intellectual property rights in the wine sector, which is directly related to the intellectual property rights arising in wine. In particular, the topic of geographical indications in relevance to wine is addressed in a paper by Felix Oddor and Alexandra Grazioli, entitled „Geographical Indications Beyond Wine and Spirits".

The conclusions of the work provide unequivocal information of existence of intellectual property in wine and the formation of wine as a collection of objects of intellectual property

Wine as a collection of objects of intellectual property

In order to understand the essence of the relationship between wine and intellectual property, it is necessary first to determine how many objects of intellectual property can be detected in the final product. In fact, every single element, every step of the wine production process, can qualify for an object of intellectual property. Starting from the grape variety, passing through the various stages of wine production, reaching the moment when the bottle is presented to the final consumer, wine is a diverse collection of intellectual property objects.

The first object that is formed from the very beginning of the winemaking process is the grapes and vines, as the main raw material for wine production. They consist the plant varieties as intellectual property objects.

The second object is the technology of wine production, which can be considered as a patent or can be treated as a trade secret or know-how.

As third object, the qualities of the wine, which are directly related to the way or placeof its production, concerning geographical indications.

The fourth object of intellectual property is implemented in the final product, presented to the customer. Namely, those are the shape and design of the bottle.

The fifth object is the name of the wine, i.e. its trademark.

Bulgarian national intellectual property legislation related to wine

The legal regulation of intellectual property objects is laid down in a number of normative acts, including international, European, and national ones. For the purposes of this work, only the primary Bulgarian normative acts are considered. The national normative acts indicate in detail the objects, define them, and set the requirements for protection, limitations, terms, scope, rights, and everything else relevant to each ob-

Fig. 1. Objects of intellectual property contained in a bottle of wine

ject of intellectual property. Legislative text that need to be considered in the context of the subject and can be directly related to it are contained in a number of Bulgarian laws, namely Law on Trademarks and Geographical Indications, Industrial Design Act, the Act on Protection of New Varieties of Plants and Animal Breeds, the Law on the Protection of Trade Secrets, the Patents and UtilityModels Registration Act**.**

Patents and Utility Models Registration Act (PUMRA)

The subject of this act is inventions from all fields of technology. Discoveries, scientific theories, and mathematical methods; results of artistic creativity; plans, rules, and methods for intellectual activity, for games or for business activity and computer programs; presentation of information; the human body at various stages of its formation and development, as well as the mere discovery of one of its elements, including the sequence or partial sequence of a gene, cannot constitute a patentable invention; an element isolated from the human body or otherwise obtained by a technical process is not considered inventions. The invention must solve a technical problem.

According to PUMRA, in order for an invention to receive a patent, it must meet three conditions simultaneously. These three conditions are respectively novelty, inventive step, and industrial applicability. Art. 8 of the act states that an invention is new if it is not part of the state of the art or so called "prior art". Prior art means anything that has already become generally available in any way, anywhere in the world, by the time the patent is filed. According to Art. 9, the inventive step implies that the invention does not derive in an obvious way from the already mentioned state of art for a specialist in the field of the invention. In other words, the inventive step implies complexity, intentionality in creation, and innovation. Regarding industrial applicability, Art. 10 requires the invention to can be recreated and produced or used repeatedly in any field of industry and agriculture.

The term of protection is 20 years, and for this period, it is necessary all the corresponding state and administrative fees to be paid duely. The term of protection cannot be extended. After its expiration, the invention that is patented falls into the public domain.

With regard to wine technologies, innovations, and methods directly related to the production of wine can be brought under the texts of PUMRA, as far as they cover the requirements for patentability. Some other texts from the act, related to biotechnological inventions, can treat wine also. According to those texts if a product is consisting of or contains biological material or a method by which biological material is obtained, processed or used, a protection under this act can be applied.

Industrial Design Act

This act considers industrial design, which in its essence is the visible appearance of a product or part of it, determined by the features of the form, lines, pattern, ornaments, color combination.

The right of ownership over design belongs to the person who has created the design or has the right to register it. The conditions for protection of industrial designs are twofold: novelty and originality. The novelty is expressed in the fact that, before the date of submission of the application, there was no other identical design that became generally available through use, registration, disclosure, publications, or other ways. Designs that differ from each other in non-essential elements are considered identical. Originality refers to the fact that the overall impression left by the design on the informed user differs from the overall impression created on that same user by another design made generally available at an earlier stage. An informed user is an average user who does not have special knowledge, does not make a direct comparison between different designs, is not an expert, and does not have in-depth technical skills and professional knowledge. An informed consumer can also be considered a person who has above-average vigilance, which is due to previous personal experience, broad knowledge in a given field, personal interest, high general culture, and others in a certain field and in relation to certain products and goods.

The term of protection of industrial designs is relatively short. The period is 10 years from the date of submission of the application. The possibility of renewing the protection is provided only

for three consecutive periods of 5 years with payment of the due fees.

As for wine, the design as an object of intellectual property is found in the design of the bottle and the design of the label, when there are prerequisites for obtaining protection and these elements of the wine as a final product meet the legal requirements and are therefore registrable.

Law on Trademarks and Geographical Indications

The subject of the law is two separate objects of intellectual property, which are similar in their nature. The first object is the trademark as a sign that can distinguish the goods or services of one person from those of other persons and can be represented graphically. The second one is geographical indications, divided into appellations of origin and geographical indications. In this sense, the appellation of origin is the name of a country, region or particular locality, used to designate a good that originates there and whose quality or properties are due primarily or exclusively to the geographical environment, including natural or human factors. As for the geographical indication, the law defines it as the name of a country, region or particular locality in that country, serving to designate a commodity that originates there and has a quality, fame or other characteristics that can be attributed to that geographical origin. The thin dividing line between the appellation of origin and the geographical indication is that in the first case the characteristics of the final product can be determined by geographical or human factors and in the second case only by geographical factors.

Trademarks

Trademark protection is granted through registration under this law. The right to register a trademark belongs to whoever first applied for it. There are two most important conditions for trademark protection. The first is distinctiveness, i.e. to distinguish/differentiate goods and services of the same type but of different origins. The second is a graphical representation, i.e. to be able to be presented precisely enough so that their distinguishing characteristics are unambiguously perceived.

The trademark is among the objects of intellectual property with the longest term of protection. In reality, the term of protection is unlimited and the duration of protection depends on two factors: whether the dues are properly paid and whether the trademark has become generic. The term of protection is 10 years from the date of application and can be renewed an unlimited number of times for 10 years, provided that the due fees are paid.

Geographical indications

The legal protection of a geographical indication arises after proper registration with the Patent Office. Registration can be requested by any person who carries out his production activity in the specified geographical place and the goods produced meet the established qualities or characteristics. In order for an object to receive protection as a geographical indication, it is necessary to unequivocally establish that the qualities and characteristics of manufactured goods are directly related to the qualities and characteristics of the geographical environment or geographical origin. However, even if such a connection is proven, registration may be refused if the name has become generic on the territory of the country; there is an identity with the name of a variety of plants or breeds of animals that have received earlier protection; an identity with a previously registered geographical indication or trademark is found.

The term of protection, as with a trademark, is practically unlimited, provided that the due fees are paid. But, apart from being tied to fees, the duration of protection is also related to the existing relationship between the goods and the production environment. That is when there ceases to be a connection between the qualities, features, and characteristics of the goods on the one hand. On the other hand is the situation when the link between the geographical environment in which these qualities, features, and characteristics are produced and determined, and the protection is terminated. Private cases of termination of protection are suspension of the activity of the legal entity or deliberate refusal of the right owner to use his right when he is also the sole user of the geographical indication.

As for wine, the law should be considered in two directions - in the direction of trademarks on the one side and geographical indications on other. In terms of trademarks,they are the name and brand of the wine as a final product. The trademark is the way in whichthe wine will be named and recognized by the consumers. At the same time, the trademark is what binds the product to its manufacturer, its reputation, its history, its capabilities, and other factors along the product–manufacturer axis. In addition, brings additional value, because as Nikolova - Minkova states "in the conditions of increasing competition, trademarks and their commercialvalue assume a critical role in the market success and competitiveness of trademark owners"[2]. The geographical indication has a direct relation to the qualities of the wine. Wine is a productin which the terroir features, including geographical location, soil characteristics, meteorological features, and a number of others, have a great influence. All of them are of tangible importance and significance in shaping the final product and its characteristics. Unequivocally, wine is among the products for which the most frequent, strongest and most unshakable binding is obtained to require the application and use of the term geographical indication and protection under the relevant law.

Trade Secret Protection Act

The trade secret protection act covers any commercial information, know-how, and technological information, in case it has economic significance and value, and is kept strictly confidential from its owner.

Trade secret protection does not require administrative actions and is informal. The only condition for the protection of a trade secret is that its confidentiality is protected by the rights owner. A trade secret has no statutory term of protection. Protection continues until the disclosure of confidential information. In this regard, a trade secret is a good alternative for intellectual property protection, since most of the other means of protection are limited in time. In the case of a trade secret, the term of protection, directly and indirectly, depends on the owner - as long as he is able to protect it, he can take advantage of its precedences.

This object of intellectual property can be found at every stage of the wine production. As an object that does not require formalities, the trade secret is the most easily applicable object, therefore its formation and existence in winemaking are extremely reasonable and rational. As a trade secret, the processes and technologies of wine production are mainly protected, as well as the know-how, which is an invariably present element in them.

Act on Protection of New Varieties of Plants and Animal Breeds

From the point of view of wine as an object of intellectual property, the new varieties of plants are of particular interest. The subject of the law is the new varieties of plants, which are conditionally divided into two groups – plants making up the first group and vines and treesmaking up the second group. In this part the act engages with created or discovered and developed plant varieties of any botanical genus and species, including a branch, line, hybrid or rootstock, regardless of the method (artificial or natural) of obtaining them, which are brieflycalled "varieties".

This act grants protection to new varieties of plants under certain conditions. These conditions are in the form of protection criteria and form specific requirements that need to be met. A variety can receive legal protection if it is new, distinguishable, homogeneous, and stable and at the same time has its own variety name directly related to its origin. The novelty is expressed in the fact that until the date of submission of an application for registration, the plant, its reproductive material or its crop has not been subject to purchase and sale or other commercial activities for more than a certain period. On the territory of the country, the new variety must not have been subject to commercial activity for more than one year, and abroad this term must not have exceeded 4 years for plants and 6 years for trees and vines. Distinctiveness refers to the fact that the variety is clearly distinguishable from other commonly known varieties at the date

[2] Nikolova - Minkova, V. (2022). Bulgarian and Foreign Trademark Activity in Bulgaria and Bulgarian Trademark Activity Abroad for the Period 2000-2019. – Economic Studies (Ikonomicheski Izsledvania), 31 (2),pp. 173-196.

of filing of the application, and varieties realized in any form are considered to be commonly known. The homogeneity of the variable refers to the fact that, even with small deviations of the plants from it, there is an identity of their essential signs. This feature, also known as uniformity, also includes the identity of the reproduction of plants. The stability of the variety is determined by its ability to remain unchanged essential characteristics after repeated breeding and to maintain change-resistant basic characteristics.

The term of protection is 25 years for plants and 30 years for varieties of trees and vines. In the event that 5 years from the submission of the application or 3 years from the issuance of the certificate, the variety is not used by the right holder, his inability to realize and use the variety is proven, a third party can submit a request for a compulsory license.

In relation to wine, new plant varieties have close connection to its presentation as an object of intellectual property. The possible use of new varieties of grapes in wine production not only increases competitiveness, but also forms an exceptional added value in an economic aspect. In a purely sensory aspect, since the new and distinctive variety used in the production of the wine forms new taste-aromatic qualities, changes the feeling for the specific wine, as well as creates a completely new experience when consuming it, this intellectual property object is highly appreciated.

Conclusion

Intellectual property is a complex matter, which forms the economy of knowledge. The structure of this economy also includes the agrarian economy, which conditions the interrelationship of the agrarian economy with intellectual property. This interrelationship is most clearly exemplified in wine and winemaking, where the complexity of intellectual property objects is undoubtedly detectable and leads to some economic benefits. In a bottle of wine one can find any intellectual property object known in the theory and practice. And each interrelation between the wine and intellectual property, brings in addition economic added value to what the end consumer of the wine will receive, and a kind of opportunity for a different taste and emotional experience from consumption. When the wine is produced from a new and different variety, using innovative technology, with a proven connection between the qualities and the place where the grapes are grown or the creation of a wine shaped in a distinctive visual form, with a different design and a memorable name, the final result is highly competitive product, which worth its fame. For this reason, the consideration of wine as an object of intellectual property far exceeds the purely theoretical and scientific aspect of such a study and enters the practical-applied sphere.

In this sense, the presented work achieves the set task, namely presenting wine as a complex set of intellectual property objects, using the interdisciplinary methodology of research, what is the query at the beginning of the topic consideration. The main results of the work are the derivation and characterization of individual elements of the wine in its role as a process and final product, as objects of intellectual property. The author suggests that the topic be continued and deepened in examining wine in its role as an object of intellectual property, but in the context of the relevant European regulations and good practices.

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