



## EU TRADE MARK PROTECTION AND CONFLICTS IN THE REPAIR AND SPARE PARTS MARKET IN CIRCULAR ECONOMY

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The article discusses the connection between the EU intellectual property framework and business activities on the automotive repair market in the circular economy. It examines a typical case scenario related to the reproduction of third parties' trade marks as an inherent part of the product's appearance. A review of the EU trade mark law and case law demonstrated that current trade mark rules are not comparable to the repair clause in the Community design and are inadequate for the circular economy. The author suggests directions for improving law enforcement and updating approaches to the principles of trade mark protection.

*Keywords:* trade mark, repair clause, right to repair, spare parts

**Introduction.** The growth of «consumer society» has resulted in a common consumer practice of replacing broken goods rather than repairing them. Multiple factors influence consumer choice, which, according to the scholarly literature, include, for example, repair costs, accessibility, location, and duration; the functionality of the repaired product; specific consumer needs; personal convenience; and even current fashion trends [1, para. 1.2]. The consequences of preferring the purchase of a new product over the repair of something that remains repairable are critical. The European Commission reports that this preference results in an annual waste output of 35 million tons, resource consumption of 30 million tons, and greenhouse gas emissions of 261 million tons in the EU [2].

In view of the above, the European Commission has recently adopted a new Proposal on common rules promoting the repair of goods [3], the New Consumer Agenda [4], and the Circular Economy Action Plan [5], with the primary objective of promoting the repair sector by encouraging sustainable business models and reducing the cost of repairs for consumers. The initiatives aim to make repairs more accessible, aligning with the European Green Deal's climate and environmental goals, and encourage consumers to choose repair over replacement.

Nowadays, the circular economy's implementation is a well-considered path of transformative evolution that the EU has already begun aiming for sustainable development, as outlined in Art. 11 of the Treaty on the Functioning of the EU [6]. However, to effectively promote repair services, it is crucial to identify and remove barriers that hinder access to repair, particularly those associated with legal matters such as intellectual property (IP) protection.

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The first IP regime that rushed to real steps to solve the problems of repair and access to spare parts in the EU was the Community Industrial Design system, where in 2002 a restriction known as the «repair clause» was introduced in Art. 110(1) of the Community Design Regulation (CDR) [7]. It limits the Community design right when it comes to component parts of a complex product that are used to repair such product and restore its original appearance. Although spare parts may be protected by design in the EU, they are exempt from infringement actions and liability if are sold for the purpose of restoring the product to its original state. In the spare parts market, the repair clause aims to avoid providing rightsholders with monopolies in respect of component parts of complex products and, as highlighted by the Court of Justice of the EU (CJEU), to avoid the creation of captive markets in certain spare parts. The Court pointed out that the consumer, having bought a long-lasting and perhaps expensive product (for example, a car), would, for external parts, indefinitely be tied to the manufacturer of the complex product. This could eventually create unhealthy conditions in the market as regards competition in parts, but also, in practice, could provide the manufacturer of the complex product with a monopoly lasting longer than the protection of his design [8, para. 38].

The practice reveals deficiencies in the introduced regulations, one of which is that the new limitation is not a horizontal law restriction and does not correlate with the EU trade mark (TM) law. Thus, when different regimes of IP protection overlap, TM proprietors often use their rights as a means to hinder competing circular businesses, circumventing restrictions in the design regime by using exclusive TM rights. In these circumstances, improving the current EU TM protection system is critical for the implementation of the circular economy.

The aforementioned goals of sustainable development and a circular economy are equally relevant in Ukraine. The European integration process entails adapting national legislation to the EU legal framework, which necessitates tracking the development vectors and current trends within the EU legal system. Moreover, the ongoing military actions in Ukraine have a significant impact on the domestic repair market due to a notable increase in used goods, primarily cars. If not now, then after the war, the repair of these vehicles may pose legal challenges, particularly in terms of excessive TM protection. Thus, European experience in promoting the right to repair, especially in the automobile aftermarket, is a crucial issue that warrants consideration.

**Literature review.** The problematic issues at the intersection of IP and the circular economy, particularly those related to the enforcement of the right to repair, have recently attracted more and more attention in the EU scientific literature. Certain aspects of using TMs according to the circularity concepts are addressed in the studies by Kur A., Perzanowski A., Tischner A., Stasiuk K., and Pihlajarinne T. However, approaches to resolving conflicts over the use of TMs on spare parts require in-depth analysis.

In Ukraine, specified subject matters are relatively new and unexplored.

**The purpose of the study** is to conduct a brief review of the EU TM framework and case law in order to analyse the impact of TM regulation on further implementation of circularity in the EU aftermarket, in particular when third parties' TMs are used as a component of the appearance of a spare part.

**Results of the study.** The use of TM rights in the context of repair can have a significant impact on efficiency, freedom, and balance in various industries and market segments. The automotive industry and electronics sector, which encompass the production of a wide range of contemporary products and devices, are prominent examples of market industries where the issue of aligning repair services with TM law is evident. By considering the automobile industry as an example, according to the CJEU, three main market segments where the manufacturing and distribution of spare parts take place are distinguished, namely:

- spare parts manufactured by car manufacturers;
- parts manufactured by operators other than car manufacturers, often on behalf of or in cooperation with car manufacturers; and
- parts manufactured by independent manufacturers which are not supplied to car manufacturers but are produced according to specifications and standards supplied by those car manufacturers [9, para. 44].

This distinction directly impacts the emergence of typical scenarios of potential conflicts at the intersection of TM rights and the right to repair, particularly those where a TM is used as a component of the appearance of spare parts. Such cases are caused by the very essence of spare parts that are used to replicate the original appearance of a complex product and are directly linked to the application of the aforementioned repair clause. They are the most prominent evidence of the lack of horizontal regulation regarding this restriction in the EU.

According to the repair clause set up by Art. 110(1) of CDR, spare parts need to have an identical appearance as the original parts in order to properly serve their purpose. Hence, it is imperative that these components adhere completely to the initial specifications in terms of their visual attributes, dimensions, form, connectivity, and other relevant aspects while also being visually indistinguishable from the original parts. If a constituent element of the initial product displays the manufacturer's TM, the identity stipulation necessitates its reproduction on the substitute part. Alternatively, changing or eliminating a TM on a spare part could result in a significant alteration to the overall appearance of the product and potentially hinder the ability of the part to effectively fulfil its intended function. Therefore, the use of a TM, which is an inherent element of the product's visual presentation, is often of utmost significance. Under these circumstances, it is crucial to permit the sale of these spare parts under the repair clause. This enables manufacturers to provide a range of products without concerns about TM infringement or the need to conclude a license agreement with the TM owner.

It should be noted that the use of a TM as a component of the product's appearance may occur in different circumstances. The first option to consider is the reproduction of spare parts that have received legal protection as a registered three-dimensional TM. This option is not typical for the EU and is more theoretical due to the legal restrictions on the registration of TMs whose appearance is determined by their functional purpose set up by Art. 7(1)(e) of the EU TM Regulation (EUTMR) [10], as well as the EU case law according to which only a mark that departs significantly from the norm or customs of the sector and thereby fulfils its essential function of indicating origin is not devoid of any distinctive character for registration purposes [11, para. 43]. Nevertheless, the figurative EU TM (No. 000525048) for Jeep vehicle front grilles, which was registered after a successful appeal against a refusal [12], demonstrates that exceptions are possible. The possibility to register the visual appearance of spare parts, such as vehicle grilles, as a three-dimensional TM is also present in other jurisdictions (e.g., US Registration No. 3,453,754 for the Ford Motor Company TM that consists of a configuration of an automobile grille) [13, p. 116]. This poses a serious barrier for independent manufacturers trying to enter the market.

Another option for consideration is more common and involves a scenario where spare parts, which bear a TM of another rightsholder (the original product manufacturers), are produced in order to replicate the identical appearance of the corresponding component. Jurisprudence on similar court cases has been developing for a long time, but even today it is not devoid of contradictions and has not provided answers to all essential questions. In particular, based on the CJEU ruling in *the Ford v Wheeltrims case* (2015), it was established that it is not possible to apply the repair clause, which is only applicable in the design regime, to the use of a TM through analogy [14, paras. 39–45]. However, from the later judgement in *the Acacia v Audi AG/ Porsche AG case* (2017) follows that a TM can be a crucial element of both the individual component and the overall appearance of a

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product [15, paras. 71–75]; examples here might include a car grille adorned with a brand logo or a branded phone screen. As concluded in the scholarly literature, «this stalemate situation proves that using a trade mark as an element of the product appearance in many cases is a must» [16, p. 396]. Although the judgement in *the Acacia v Audi AG/ Porsche AG case* does not provide a direct solution to the problem, it, as indicated by the researchers, «does include express conditions for reliance on the repair clause» [17, p. 32]. Supporting arguments include the following:

- the CJEU concluded that the repair clause applies only to component parts of a complex product that are visually identical to original parts [15, para. 75];
- as a balancing response to the extended interpretation of the repair clause compared to the approach in *the Ford v Wheeltrims case*, the Court emphasised a duty of diligence as regards compliance by downstream users with the conditions laid down in Art. 110(1) of CDR. Under such a duty, the manufacturer or seller must clearly inform downstream users that a spare part is intended for repair of a complex product and must ensure that downstream users do not use the part in a way that does not comply with the repair clause, or even refrain from selling the part if they know it will not be used in such a manner [15, para. 85–87].
- the CJEU upheld the perspective highlighted by the Advocate General Saugmandsgaard Øe, according to which, in order for the repair clause to be applied, the goal of the TM's reproduction and appearance of the component part as a whole is crucial: to permit the repair of a complex product. This means that the spare part must be necessary specifically for the regular functioning of the complex product [15, para. 69]. The Advocate General noted that this is the case when a complex product has become defective, inter alia, because an original part is missing or damaged, and such failure or absence would hinder the ability to use the product normally [18, para. 89, 100].

Therefore, if the spare part's named goal and function are absent, its use may be considered tuning, focusing on improving the visual appearance of the original product (such as a car) rather than repair.

Using a spare part that displays a TM of the original manufacturer for reasons such as personal preference, aesthetic purposes, personalization, or simply for convenience is not subject to the regulations outlined in Art. 110(1) of CDR. Such TM use that aims at customisation is not related to the circular economy. It should be evaluated separately from the mentioned legal provisions and be based either on the contractual grounds of paid use (e.g., a licence agreement) or, if there are sufficient legal grounds, be carried out in accordance with the requirements established for descriptive or referential use.

Therefore, the judgment in *the Acacia v Audi AG/ Porsche AG case* leads to the conclusion that the repair clause is an important due cause factor for the aftermarket. It comes, as noted by the scholars, «from the freedom of competition and the freedom to conduct business», and it is an objective reason for using a TM as «a necessary element of a spare part in a way enabling the aftermarket to fully benefit from this limitation» [19, p. 18].

Nevertheless, after *the Acacia v Audi AG/ Porsche AG* judgment, there was still a need to clarify the judicial understanding of the authorisation to use a mark identical or confusingly similar to an EU TM in the course of trade in respect of spare parts. An important question that arose was whether a TM identical or confusingly similar to the mark of the original manufacturer of the product, which is included in the form (appearance) of the spare part, performs the function of indicating the origin of the goods. In particular, determination was necessary in situations where visible parts of complex goods featuring a mounting fixture of a logo. Under such circumstances, the mark serves as a means of securing a specific part (accessory), which per se is the manufacturer's emblem for the original product, and it may or may not be technically possible to install it without reproducing a TM. Such situation was the subject of the recent CJEU ruling in *the Audi AG v GQ case* (2024) [20], where the functions exe-

cut by the mounting element of the vehicle's radiator grille, specifically engineered to accommodate the manufacturer's emblem (TM), were examined.

The situation was examined by the Advocate General Medina, who determined that the used logo mount element is the element [that], constitutes the support for a car manufacturer's emblem in a radiator grille, thus forming part of the product itself and fulfilling a mere technical function [9, para. 30].

The Advocate General found that it was justified to exclude the mere silhouette of an EU TM of a car manufacturer, as part of a faithful reproduction of an original radiator grille to inserting and mounting the emblem of that manufacturer, from fulfilling the functions of a TM, given the circumstances of the case, which included a special circle of consumers, such as professional retailers and workshops, and the perception of the original manufacturer's mark in the context of the sale of spare parts as a description of the product's characteristics, as an element that fulfils a technical purpose, rather than acting as an indication of origin [9, paras. 35–37, 40]. Therefore, according to her conclusion, provisions of the EU TM law must be interpreted as meaning that inclusion of an element in a non-original radiator grille for inserting and mounting the car manufacturer's emblem which reproduces the shape of an EU figurative mark would not constitute a use of a sign in the course of trade [9, para. 68(1)].

However, the CJEU apparently found the argumentation unconvincing and stated that the fact that the shape is an element of a vehicle spare part cannot alter that conclusion that it is a mark within the meaning of Art. 9(2) of EUTMR [20, para. 38]. Additionally, the Court pointed out the possibility of establishing the existence of a material link between that part, which a third party imports, advertises and offers for sale, and the proprietor of the AUDI TM [20, para. 40]. Hence, the Court came to the conclusion about the existence of TM use in the course of trade that is opposite to the position of the Advocate General. The Court held that a third party who, without the consent of the manufacturer of motor vehicles, which is the proprietor of an EU TM, imports and offers for sale spare parts, namely radiator grilles for those motor vehicles, containing an element which is designed for the attachment of the emblem representing that TM and the shape of which is identical with, or similar to, that TM, makes use of a sign in the course of trade in a manner liable to affect one or more of the functions of that TM, which is a matter for the national court to ascertain [20, para. 49]. In justification of its position, the Court made reference to *the Ford v Wheeltrims* case as clarifying the scope of Art. 110(1) of CDR, which imposes certain limitations only on protection conferred on designs and applies without prejudice to the provisions of EU TM law [20, para. 27]. On this basis, the CJEU clearly stated that it is impossible to interpret the repair clause in such a way that it could be applied by analogy to the TM regime and lead to the limitation of the rights conferred on the TM owner.

Despite the Court's decision, the position of the General Advocate still seems reasonable and clearly taken into account the circumstances of the case and the aftermarket's requirements, particulars, and conditions. The argumentation used by the Advocate General sounds quite convincing: in cases involving the installation of a special mount for further logo fixation, the technical role of such a mount is crucial. If the legal requirements of «use in the course of trade» and «use in relation to goods or services» are strictly interpreted as meaning «use as a TM», the circumstances in which the silhouette of the TM was reproduced in *the Audi AG v GQ case* do not point to the use of the sign as an identifier of a commercial source for goods. Moreover, the fact that the reproduced silhouette is not perceived as a TM that indicates and guarantees the origin of the goods is supported by the specifics of the circle of average consumers of such spare parts and the peculiarities of their commercialisation. At the same time, the Court's position rather looks like a narrow interpretation of the legal provisions based on pro-competitive arguments and demonstrates the undeniable preference for the rightsholder's interests, leaving aside the inter-

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ests of sustainability and circularity. Consequently, in the discussion that concerns the use of a special fixture for mounting the original manufacturer's logo, the conclusions of the Advocate General Medina apparently were deserving to be heard and taken into account, as well as the arguments of the earlier *Acacia v Audi AG/ Porsche AG case*, which remained unaddressed.

Nonetheless, the CJEU perspective might be more justified in cases where the original manufacturer's TMs are directly reproducing on spare parts as an inherent part of their appearance.

As noted in the scholarly literature, «the requirement of «use as a TM» is applied flexibly in the EU. It does not serve as a filter to exclude, from the outset, all instances where the TM is not used in the traditional manner, i.e., to indicate the commercial source of the user's own goods or services. In the light of the elastic standard developed by the CJEU, even decorative use of a TM may amount to actionable TM use» [21, p. 695]. Accordingly, such a broad approach to the interpretation of the legal requirements allows us to consider the use of the TM in the above conditions of spare parts manufacturing as the use of the mark in the course of trade. This consequently demands the determination of whether TM infringement has occurred and whether limitations stated in the TM law may be applied.

In the above circumstances the TM is essentially reproduced as an inherent element of the original manufacturer's spare parts or goods, and is not perceived as indicating the origin of the goods. Accordingly, the test for determining the identity of the marks and the goods in such cases should not be applied purely automatically, as in counterfeiting cases, but should be interpreted in light of the actual circumstances, the nature of the conflict, and the motivation for the use of the mark. Thus, in such case of TM use in the manufacture of spare parts under a repair clause, it is necessary not only to establish whether the function of the TM is endangered or the risk of endangerment is created, but also to establish whether «use of the TM in this case affects the origin function to a sufficient degree to trigger application of the double identity clause» [17, p. 34].

The origin function will not be adversely affected if there is effective prevention of consumer misconceptions regarding the origin of the goods or the relationship between the company using the mark and the TM owner. Regarding the fact that the context of use of a TM can neutralise its effect as an indication of a product's commercial origin, it is noted in the scholarly literature that offering a single part in controlled distribution «in packaging and/or with labels that clearly indicate its true commercial origin ... may significantly affect how buyers perceive such parts» [17, p. 33]. In this respect, placing an additional mark of an independent manufacturer on the packaging of spare parts with the original TM is maintained will limit and partially eliminate the effect of the original TM's origin function.

Another important aspect to consider in the context of TM use on spare parts is the peculiarities of signs' perception. In this regard, it is worth noting *the Adam Opel v Autec case* (2007) [22], which evokes the issue of «forced» reproduction of the identical appearance of goods through the use of another rightsholder's TM. A scale toy vehicle model of a famous company was made using the Opel mark. According to the national court, the case circumstances indicate that the average consumer of the products of the toy industry, normally informed and reasonably attentive and circumspect, is used to scale models being based on real examples and even accords great importance to absolute fidelity to the original, so that that consumer will understand that the Opel logo appearing on products indicates that this is a reduced-scale reproduction of an Opel car [22, para. 23]. A parallel can be drawn here to the automotive repair market and the use of TMs on spare parts. The aftermarket's function is based on the repair clause, which implies that it usually takes part not in the end consumers but rather in professionals who are familiar with the repair clause and differences between spare parts produced by original equipment manufacturers, official equipment suppliers, and independent manufacturers, e.g., in their features, price, quality, and labelling.

The implementation of the repair clause in the Community design regime and the national design laws of some Member States has significantly transformed the EU aftermarket. With the growth of the repair sector and the activity of independent professional repair providers, downstream users perceive that different companies may produce spare parts; the market is no longer monopolised by the original manufacturers. The reproduction of the original product TM on a spare part may no longer be perceived as a sign of origin not only by professional market participants but also by end consumers, who understand that the goods they are acquiring do not come from the original TM owner when they buy them at a price lower than the manufacturer's official representative offers. Instead, the TM is perceived as a description of the characteristics and function of the goods in question. Additionally, as follows from the CJEU's conclusions, a duty of diligence contributes to reducing consumer confusion within the repair market as a kind of precautionary measure [15, paras. 85, 89]. Hence, to prevent infringement, it is crucial to provide full information about offered spare parts, including details at the point of sale and on the goods themselves and packaging, if it is possible, so as not to affect the main function of the spare part.

Overall, in cases regarding using TM as a component of the appearance of a spare part, the legal ambiguity primarily stems from the absence of the horizontal nature of the repair clause restriction imposed in the design regime. In these cases, the mark on the goods "is necessitated by the need to realise the purpose of the repair clause fully", which is to make and sell spare parts that are exact visual copies of the originals [17, p. 33]. Consequently, such a reproduction does not inherently serve as an indicator of the spare parts' commercial origin. As can be seen, this position has common points with the position taken by the Advocate General in *the Audi AG v GQ case*, according to which an element reproducing the silhouette of a TM does not serve as an indication of origin [9, paras. 36, 40]. Additionally, comparable arguments are used by aftermarket participants, who, for instance, noted that «the affixing [another's TM] to the wheel covers it markets performs the function not of indicating the origin of such parts but of identifying the manufacturer with reference to the product as a whole, namely the motor vehicle on which the wheel covers are mounted. That use of the ... TM serves to reproduce, on the replacement part, an aesthetic and descriptive characteristic of the original part concerned, namely the wheel cover, a characteristic that must be regarded as essential for the purposes of restoring the original appearance of the complex product constituted by the motor vehicle as a whole» [14, para. 24]. Therefore, it can be concluded that in the above circumstances, the reproduction of the original manufacturer's TM on spare parts does not adversely affect the origin function of the TM since the used mark does not serve to indicate the origin of the product.

Considering all the above, the following shall be used as a guide in the cases about reproduction of the third parties' TM as an integral part of the products' appearance:

- despite the absence of provisions in the EU TM law similar to the repair clause in the Community design regime, when resolving cases in this scenario, the objectives of all areas of IP law should be considered to ensure a consistent interpretation and prevent harm to the rights or interests protected in one area by applying the rules of another area. The CJEU's statement in *the Audi AG v GQ case* that the provisions of the repair clause cannot be applied to TMs seems to be an unjustifiably narrow view that is not in line with the circularity path;
- in order to protect undistorted competition in the aftermarket, the freedom of conducting business and the interests of consumers in access to products from alternative sources, the circumstances of the TM use in the commercialisation of spare parts under the repair clause should be analysed in depth, considering the impact on the TM's function;
- it seems reasonable to consider the use of the TM of the complex product's manufacturer, which is an integral element of the appearance of the spare part, as permitted

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within the established limitation of descriptive use under the expanded version of Art. 14(1)(b) of EUTMR. In contrast, applying the regulation provided by Art. 14(1)(c) of EUTMR, which was mentioned by the Advocate General Medina, does not appear to be the most appropriate option in this scenario, as the TM is not used as an indication of the intended purpose of the goods, as an accessory or a spare part. This is consistent with *the Audi AG v GQ case* judgment, which stated that where a sign identical with, or similar to, an EU TM constitutes an element of a spare part for motor vehicles, which is designed for the attachment of the emblem of the manufacturer of those vehicles to it and is not used to designate or refer to goods or services as being those of the proprietor of that TM, but to reproduce as faithfully as possible a product of that proprietor, such use of that TM does not fall within Art. 14(1)(c) of EUTMR [20, para. 58]. Simultaneously, if the possibility of relying on the rights limitations is completely disregarded, it would result in a de facto ban on using the original TM in offers from independent manufacturers, making it virtually impossible to provide alternative spare parts in response to aftermarket demand.

Clearly, the judgment in *the Audi AG v GQ case* was highly anticipated by the EU aftermarket stakeholders since it could update existing approaches and allow them to better understand permissible behaviour in the production, importation, sale, and advertising of non-original spare parts. However, the CJEU's position, according to which the repair clause cannot be applied by analogy, next to its clarification that the terms of the case are not subject to the referential use limitations, is likely to lead to a step backwards in the growth of the spare parts market.

**Conclusion.** The rapid incorporation of circularity into the market has resulted in a situation wherein the legal framework does not keep up to promptly address and modify regulations to align with society's demands. Overprotection of TMs and legal ambiguity in the correlation between sustainability goals and EU IP limitations hinder the growth of the circularity-based repair market.

Adopting TM law provisions that mirror the repair clause in the Community design regime and enable the use of third parties' TMs in the aftermarket could address many of the above issues. However, such legal reform will take considerable time and costs. Market participants cannot afford to wait, acting at their own risk in the face of legal uncertainty about the bounds of permitted conduct. A prompt and adequately efficient solution might involve reassessing the current provisions of IP law to interpret TM limitations in a repair-friendly manner and in line with contemporary market demands. Given EU IP law and case law, potential directions for aligning the existing TM system with the principles of the circular economy and balancing the interests of stakeholders might encompass the following:

- reassessing the role and functions of TMs on spare parts in the repair market in order to review current regulation of TM rights limitations;
- extension of the referential and descriptive use rules for the cases of TM use on spare parts that reproduce the appearance of the original goods;
- a review of the concept of honest practice in the context of cases where third parties' TMs are used without authorisation in the repair market, and the recognition of the crucial importance of providing comprehensive and accurate product information adequate to market conditions as a mandatory criterion for honest practice. This would be logically consistent with the repair clause in the Community design regime, which requires a clear and visible indication that the proposed spare part concerned incorporates a design of which a party is not the holder.

The above modifications in defining the TM protection boundaries might be a perfect basis for achieving a balance between protecting TMs as a vital competitive factor that safeguards and strengthens products and ensuring the public interest in sustainable development and the extension of the circular economy.



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### **Охорона торговельних марок ЄС та конфлікти на ринку ремонту та запасних частин у циркулярній економіці**

У статті розглядається зв'язок між системою торговельних марок ЄС та комерційною діяльністю на ринку ремонту та запасних частин в умовах циркулярної економіки.

На основі огляду нормативно-правової бази ЄС щодо охорони торговельних марок та відповідної судової практики проаналізовано вплив, який здійснює чинна система регулювання прав на торговельні марки на досягнення цілей сталого розвитку та впровадження підходів циркулярної економіки на ринку ремонту. Аналіз проведено на прикладі типового сценарію використання торговельних марок при реалізації права на ремонт, коли торговельні марки третіх осіб (оригінальних виробників автомобілів) використовуються як компонент зовнішнього вигляду запасної частини. Розглянутий сценарій розкриває зв'язок між правом інтелектуальної власності та викликами кліматично-екологічної кризи, демонструючи, які правові бар'єри для впровад-

ження циркулярної економіки та збалансування інтересів зацікавлених сторін при правозастосуванні спричиняє надмірна охорона торговельних марок.

Автором надано оцінку ключовій судовій практиці Суду справедливості ЄС з окреслених спорів, яка свідчить про те, що і чинне законодавство ЄС щодо торговельних марок, і судова практика враховують інтереси сталого розвитку та циркулярної економіки лише поверхнево, віддаючи пріоритет інтересам власників торговельних марок. Зважаючи на вказане, в статті наголошено на доцільності переосмислення підходів, застосованих до наявного правового регулювання торговельних марок в ЄС, для того, щоб законодавство про торговельні марки не стояло на заваді трансформації економіки в напрямку розширення сфери ремонту і зменшення відходів.

В статті запропоновано можливі напрями вдосконалення застосування норм права та оновлення підходів до принципів захисту прав на торговельні марки, які включають:

- 1) переоцінку ролі та функцій торговельних марок на ринку ремонту, в тому числі на ринку запасних частин для автомобілів;
- 2) розширення практики застосування встановлених правил референтного та описового використання торговельних марок на ринку ремонту та запасних частин;
- 3) перегляд концепції добросовісної практики та належного інформування споживачів про характеристики товару на ринку ремонту.

*Ключові слова:* торговельна марка, положення про ремонт, право на ремонт, запасні частини

Подано / Submitted: 15.04.2024

Доопрацьовано / Revised: 23.04.2024

Прийнято до публікації / Accepted: 07.05.2024