

Can I register “coronavirus” as a trademark?

Does intellectual property law have the tools to prevent abuse in times of crisis?

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Crisis periods are usually a time for solidarity and responsibility, but also a time when some seek to reap personal benefits from an emergency. The Covid-19 pandemic is no exception. A study in publicly available trademark registers around the world shows numerous attempts to register trademarks containing the terms "coronavirus" or "covid". What is the purpose of such applications?

By definition, a trade mark is a sign capable of distinguishing one person's goods or services from those of others and which can be clearly defined. According to the Bulgarian legislation (Trademarks and Geographical Indications Act, SG 98/13/2019 “TGIA“ (ЗМГО)), the right upon a mark includes the right of its holder to use it, to dispose of it and to prohibit third parties without his/her consent to use in commercial activity any sign which is identical or similar to the mark and which is used for identical or similar goods / services. Therefore, the eventual successful registration of a mark containing words such as "coronavirus" or "covid" would give its holder a monopoly on the use of those indications for the specific goods and / or services for which the mark was registered.

Legislation in the field of trademark registration in Bulgaria and around the world places barriers to the acquisition of a monopoly on certain types of words and indications for specific types of goods and / or services - the so-called "absolute grounds" for refusal of registration. Registration offices monitor for them ex officio. The main types of absolute grounds for refusal can be summarized in the following categories:

- The mark applied for does not meet the criteria for a mark (a mark capable making the goods or services of one person distinguishable from those of others and that can be presented in such a way that the subject of the protection can be clearly and accurately identified);
- The mark applied for is not distinctive. A mark describing the characteristics of the goods or services is necessarily devoid of any distinctive character in respect of those goods or services;
- The mark applied for consists exclusively of signs or indications which have become customary in the spoken language or established commercial practice in relation to the goods or services claimed;
- The mark applied for consists exclusively of signs or indications which may serve, in trade, to designate the kind, type, quality, quantity, intended purpose, value, geographical origin, time or method of production of the goods, the manner in which the services are provided or other characteristics of the goods or services;
- The sign applied for consists solely of the shape of the goods or another characteristic which derives from the nature of the goods themselves; which is necessary to achieve a technical result or which gives significant value to the goods;
- The mark applied for is contrary to public policy or to accepted principles of morality;
- The mark applied for may mislead consumers as to the nature, quality, geographical origin or other characteristics of the goods or services;

Currently, there are pending applications filed in the last two months before the US, German and Spanish IP offices, for registration of trade marks containing the word "coronavirus". Covid-19 is also the subject of a number of recent applications for registration in the US, Italy, Spain, the United Kingdom, the Czech Republic and Benelux. It is very likely that these applications will be ex officio rejected on an absolute ground as devoid of distinctiveness, being descriptive or contrary to good morals. Of course, if the goods and / or services for which protection is sought are not related to the current epidemiological situation, the marks could receive protection. One such example is the EUTM "Ebola" which was registered in 2012 for services in classes 35, 41 and 42 in the field of online advertising, telecommunications, entertainment and software development. Indeed, the EUIPO has accepted that the word is not descriptive of services in the classes mentioned.

Just a few days ago, the French Industrial Property Institute (INPI) allowed the publication of a word mark "COVID-19" application, which was filed at the end of February. As the mark was only filed for goods in class 18 (leather goods) and 25 (clothing), the local office appears to not have made an ex officio objection on absolute grounds.

In both aforementioned cases, the registration offices applied a more liberal approach and did not issue ex officio refusal for the registration of trade marks consisting of the names of contagious diseases for goods and services falling outside the field of medicine and pharmacy. In other countries, however, the applied criteria are more stringent.

The Benelux Intellectual Property Office (BOIP) has issued an explicit announcement regarding increased trademark applications relating to the coronavirus epidemic. The announcement states that most of the applications received will be rejected because of their descriptive nature. It has also been pointed out that such a peak in registration applications for trademarks containing words intensively used in the media is not a new phenomenon and the approach of the Office will continue to be consistent. There are also explicit publications on the subject in relation to applications submitted in South Korea and China. Local experts comment that applications for registration of Corona Killer, CORONACOP and No Corona trademarks have a low chance of successful registration with the Korean Office. A Chinese regulator (Chaoyang District Market Supervision Bureau) has imposed a \$ 14,000 fine on an intellectual property agency that has filed for its clients trademark applications, consisting of the names of two of Wuhan's main hospitals, which treat patients with coronavirus. In this case, local law provides for an explicit sanction for industrial property representatives who apply for registration of trademarks contrary to fundamental principles in trademark law.

The established rules for trademark registration prevent the exploitation of words and expressions, the use of which is particularly intense in times of crisis. Such applications rarely succeed in the registration process as they fall within the scope of the absolute grounds for refusal. It should be noted that even with the successful registration of such a mark, every third party could, at any time, apply for the cancellation of the mark. It is important to emphasize that the purpose and scope of protection afforded by trademarks justifies the above limitations. The hypothesis regarding patents for scientific inventions that directly relate to an actual situation, such as the pandemic from Covid-19, is very different. By its purpose and scope, a patent on a drug or vaccine against a virus is completely dissimilar to the trademark protecting the name itself.

The patent gives its holder protection upon an invention that meets strict criteria for novelty, inventive step and industrial applicability. The monopoly granted by the patent allows the holder to reap the

economic benefits of the resources invested in the scientific development. At the same time, this monopoly is legally limited to 20 years. It is accepted that during this period, the inventor or patent holder will derive sufficient benefit from his/her discovery, after which it should be made freely available to the public at large. This is the reason why there are many patents in the registers relating to different types of coronaviruses and vaccines against them (other than the specific type of coronavirus that the world is currently fighting against). Contrary to recent claims of extraordinary discoveries, these patents are widely known to the scientific community. They are published in the public registers of the respective IP offices. Scientists who are currently looking for drugs and vaccines against the novel coronavirus SARS COVID-19 are aware of these developments and are likely to use them in their research.

In conclusion, the abuse of emergency situations and the attempts to reap benefits and create monopolies in the context of a crisis will continue to exist. However, such moments allow us to evaluate the readiness of the current rules to deal with such cases. The provisions of the trademark law make it possible to prevent the malicious application of such trademarks.
