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Grace Period From Association Agreement With the EU Directly Applicable in Ukraine

Slobodan Petošević (PETOSEVIC) · Wednesday, August 22nd, 2018



As reported earlier this year, in a ruling dated February 12, 2018 by the Commercial Court of Kyiv in the case no. 910/14972/17, the judge effectively applied a five-year non-use grace period, as provided for under the Association Agreement with the EU (Art. 198), and rejected the non-use cancellation action, which was based on the three-year grace period, as per current Ukrainian Trademark Law. The court held that the EU-Ukraine Association Agreement is a binding international agreement, thus its provisions should prevail if they differ from the rules provided by the Ukrainian law. The judge argued that, since Art. 198 provides for a different grace period, the Agreement's provisions are directly applicable. The ruling also emphasizes that the Association Agreement does not foresee any particular means of implementation of these provisions in the Ukrainian national law. This ruling was appealed before the Kyiv City Commercial Court of Appeal, which upheld the judgement of the Commercial Court of Kyiv on April 23, 2018. The case ended up in the Ukrainian Supreme Court, which upheld the decisions of the lower courts on July 17, 2018.

While the Supreme Court's arguments were similar to those of the Commercial Court of Kyiv, it did not explicitly address the issue of **direct applicability of the Association Agreement**. On the other hand, the Commercial Court of Kyiv and the Kyiv City Commercial Court of Appeal ruled that the Agreement's provisions may be directly applied because Art. 198 sets forth new standards of protection of IP rights (i.e. a different non-use grace period), and no instruments for implementation of Intellectual Property provisions of this Agreement were provided for or deemed necessary.

https://en.wikipedia.org/wiki/European_Union_Association_Agreement

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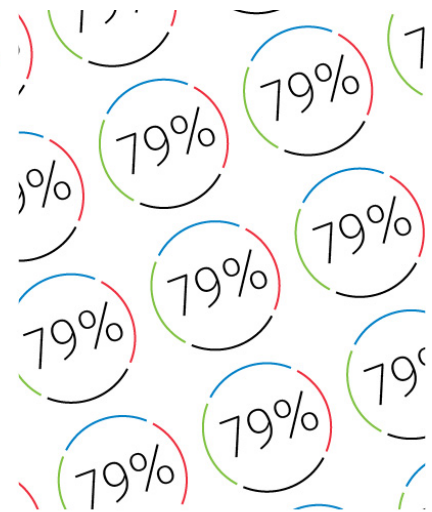
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