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OBLIGATIONS OF THE PARTIES UNDER THE CONTRACT OF COMMERCIAL CONCESSION

The research of the specific features of a commercial concession contract is a burning issue regulating the process of disposing of intellectual property rights. The concept of a commercial concession is a novelty for Ukrainian legislation, which was enshrined in the Civil Code of Ukraine in 2004 as a new type of commercial agreement, which is equivalent to the concepts of franchise, known in the Western law.

According to the Civil Code of Ukraine, under commercial concession agreement one party (a titleholder) shall be obliged to grant the other party (a user) for a fee the right of use pursuant to its claims of a set of rights belonging to it aimed at manufacturing and/or sale of a specific type of goods, and/or providing services. That means, that the purpose of the franchise is that the user buys the right, which allows them to engage in certain time in a certain area of a particular business under the brand name of the right titleholder using its technology, commercial information, and others.

The parties to a commercial concession agreement may be physical and legal entities - subjects of entrepreneurship, called “a titleholder” and “a user”.

The titleholder and the user have their own duties (obligations), which are defined in the Civil Code of Ukraine.

The essence of the duties is that the subject must perform certain actions taken voluntarily or by law, or refrain from them.

Article 1120 of the Civil Code of Ukraine specifies the obligations of the titleholder, which can be divided into two categories. The first category includes obligations that are of a mandatory nature, namely: obligation to transfer to the user technical and commercial documentation and provide other information necessary for executing the rights granted to him under

the commercial concession agreement, and also to inform the user and its employees on the issues connected with exercise of these rights. The second category involves the titleholder's duties, but allows the parties in the contract of commercial concession to provide other conditions. They are

- 1) obligation to ensure state registration of the agreement;
- 2) obligation to provide constant technical and consultative assistance to the user including assistance in training and upgrading its personnel;
- 3) obligation to supervise over the quality of goods (jobs, services) manufactured (performed, rendered) by the user based on the commercial concession agreement.

A much wider list is the user's responsibilities. One of its main responsibilities is to conduct business under a trademark and other designations in an exclusively specified manner in accordance with a commercial concession contract.

Granting the right to use the titleholder's name or another right has the purpose of distributing his/her own model of the product on the market. That is why the duty of the user to ensure the quality of goods (jobs, services) manufactured (rendered) according to a commercial concession agreement pursuant to the quality of similar goods (jobs, services) manufactured (performed, rendered) by the titleholder fixed the duty on the legislative level. This duty is related and such as to observe the titleholder's instructions and orders aimed at ensuring the correspondence of the nature, methods and conditions of a set of granted rights use to the use of these rights by the titleholder. In addition, customers have the right to receive the same additional services under a contract concluded with the user, as if they entered into a contract with the titleholder, which must be provided by the user, and he also must inform the buyers (customers) in the most obvious way the use of a trademark and other indicators of the titleholder under a commercial concession agreement.

A commercial concession contract provides for the transfer of rights constituting commercial secrets, which is why the user is under obligation to keep the confidentiality of the information transmitted.

Article 1122 of the Civil Code of Ukraine provides for special conditions related to the realization of rights and fulfillment of obligations of the parties to the agreement.

In fact, the restriction of the rights of the rightholder is, in particular, a duty not to be granted to other persons similar sets of rights to be used on the territory reserved for the user or refrain from its own similar activity on this territory. The obligation of the user not to compete with a titleholder on the territory covered by the agreement regarding entrepreneurship performed by the user using the rights granted by a titleholder means the prohibition for the user to compete with the rightholder during the term of the commercial concession contract. Also, the obligation of the user not to receive similar rights from the titleholder's competitors (potential competitors) is provided by law.

So, a commercial concession contract is one of the contracts in the field of intellectual property, which determines the possibility of disposal of intellectual property rights. The Civil Code of Ukraine regulates the relations that arise as a result of such an agreement, in particular, outlining the range of obligations that belong to the parties of the contract. From the above mentioned duties it is seen, that the user is assigned a much larger range of obligations than the titleholder. This is understandable, since the titleholder holds a special place: he is the primary user of his rights and, as the right-holder, establishes the conditions which are more acceptable to him.

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