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THE BUSINESS MODEL OF AN ENTERPRISE AS AN OBJECT OF INTELLECTUAL PROPERTY PROTECTION

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Purpose: The purpose of this article is to answer the question of whether business models that affect the resilience of entrepreneurs can be protected by them against their use by other entities, and if so, on the basis of what regulations, what claims entrepreneurs can use and in what proceedings they can pursue them.
Design/methodology/approach: The article uses critical analysis. First, it analyses regulations concerning copyright, databases, industrial property and combating unfair competition. Next, civil procedure regulations concerning separate proceedings in intellectual property cases were analysed. The considerations in this article are also based on literature on the subject and the case law of common and administrative courts. The adopted method of critical analysis constitutes the basic method of analysing legal regulations, taking into account the views of doctrine and jurisprudence, allowing conclusions to be drawn, although the small number of publications and court rulings on the subject matter discussed constituted a shortcoming of the research carried out in the article.
Findings: The analysis leads to the conclusion that a business model of an enterprise cannot be subject to exclusive rights, and only the protection of its elements, under certain conditions, is possible as a trade secret based on the provisions on combating unfair competition, while the use of someone else's business model may be classified as an atypical act of unfair competition.
Practical implications: The use of a specific business model by an entrepreneur necessitates its protection against use by other entrepreneurs. The article defines the legal basis for such protection, creating a framework for its practical application.
Originality/value: The issue of classifying business models from the perspective of intellectual property law has not yet been the subject of research, particularly in Polish literature. This research is aimed in particular at entrepreneurs who use diverse business models in their activities.
Keywords: business model of an enterprise, organisational resilience, intellectual property, know-how, intellectual property courts.
Category of the paper: viewpoint.

1. Introduction

The ability of a system or society exposed to threats to adapt to a new situation by resisting or introducing changes in order to maintain an acceptable level of functioning is referred to as resilience (United Nations, 2007). As K. Sienkiewicz-Małyjurek notes, resilience is considered a trait of individuals, organisations and communities that allows them to cope with threats. It can be a driving force for entrepreneurship in crisis situations. In turn, entrepreneurship, as the ability to use resources in the right way and at the right place and time, builds resilience to future threats, even in the event of failure (Sienkiewicz-Małyjurek, 2020). As J. Brzózka points out, dynamic and often turbulent changes in the environment require the application of new methods and principles of business management (Brzózka, 2009). One of the instruments that allows entrepreneurs to counteract threats arising in the environment in which they operate is the choice of a business model that allows them to counteract threats to the greatest extent possible. In this context, the issue of protecting the chosen business model from being exploited by other competing entrepreneurs operating in the same environment becomes particularly important. Consequently, analysis of this issue becomes important from the point of view of an entrepreneurs who wants to protect the business model they use. The aim of this article is to use critical analysis to answer the question of whether, and if so, on the basis of what regulations and in what proceedings, an entrepreneur can seek legal protection against such actions, and in particular whether a specific business model can be protected as the subject of exclusive rights or only under regulations combating unfair competition?

2. Qualification of a business model as an object of exclusive rights

There are many definitions of the concept of a business model in the literature. The lack of consistency in defining this term stems, among other things, from the different contexts in which it is use (Gajda, 2014; Bartczak, 2023). As a result, it is impossible to find a single generally accepted definition. At the same time, however, there are significant similarities between them. Consequently, it is recommended that any discussion of business models begin with an explanation of how the business model will be defined in that discussion. It is emphasised that reaching a consensus on the definition for the purposes of a given discussion is particularly important, as financiers, engineers, lawyers, operational and strategic management specialists, due to their education and the tasks they perform, usually have different approaches to defining and understanding the concept of a business model (Klincewicz, 2016; Wierzbicka, 2020).

The concept of a business model appears in both Polish and EU legislation in various contexts. However, there is no legal definition of this concept. For the purposes of further discussion, let us therefore assume that a business model is a company plan that defines how the company creates, delivers and earns value for its customers, thereby generating profits and maintaining a competitive advantage. A business model therefore includes key elements such as customer segments, value proposition, key activities, resources, partners, distribution channels, customer relationships, cost structure and revenue sources.

Before analysing the possible classification of a business model as an intangible asset, attention should be paid to the principle of *numerus clausus* governing intangible assets. This principle assumes that it is not possible to create new subjective rights of an absolute nature in any way other than by statute, in particular by means of a legal act or court ruling (Kurosz, 2021; Dybowski, 2003). Therefore, in order to protect a business model, it is necessary to classify it as one of the objects of exclusive rights specified by the legislator.

3. Classification of a business model as an object of exclusive rights

Firstly, it should be noted that Article $1(2^1)$ of the Act of 4 February 1994 on Copyright and Related Rights (consolidated text, Journal of Laws of 2025, item 24, hereinafter referred to as CRRA) explicitly excludes ideas and methods, among other things, from copyright protection. It is emphasised that, on the one hand, they are part of reality, being immanent in it, although they have not been noticed so far for various reasons, and therefore cannot be considered the result of creative activity, and on the other hand, that granting property rights to such intangible assets would mean their monopolisation and the impossibility of free access to them by other persons (Ferenc-Szydełko, 2021). This is how the following should be assessed in the provision of Article $1(2^1)$ of CRRA ideas that form the basis of a business model. It was previously possible for an entrepreneur to operate on the basis of a specific business model using specific methods, although this possibility was not recognised, and the monopolisation of a specific model would prevent its use in relation to a given type of organisation by other entities.

At this point, it is necessary to distinguish between a given business model of an enterprise as a potential subject of exclusive rights and its description. The model itself, like its description, is intangible, with the difference that the description of a given business model may be recorded on a tangible medium (*corpus mechanicum*). However, while the business model itself cannot be subject to copyright under Article $1(2^1)$ of CRRA, as is clear from that provision, its description may be classified as a work within the meaning of Article 1(1) of CRRA. For this to happen, the description of the business model must meet four conditions – it must be the result of human activity, it must be the result of creative activity aimed at the creation of a new product, i.e. it must be original, it must have an individual character,

i.e. bear the mark of the creator, and it must be fixed, i.e. externalised in a manner that allows it to be perceived by third parties (Article 1(1) of CRRA). The fact that a business model description is a literary work (Article 1(2)(1) of CRRA) should not pose any major difficulties in qualifying it as a work. However, it is the description itself that will be protected as a work, not the business model embodied in that description. In other words, copyright protection will cover the use of the business model description in any field of exploitation (Article 50 of CRRA), but not the model itself. This means that although a specific business model description will be protected as a work, the use of a given model for the purposes of another entrepreneur will be permissible.

While it will not be possible to protect a business model of enterprise under copyright law, it will be possible to protect the customer database used by a specific entrepreneur in activities based on a given business model. Protection of such a database may be sought in copyright law (Article 3 of CRRA) or in the provisions of the Act of 27 July 2021 on the Protection of Databases (consolidated text, Journal of Laws of 2024, item 1769; hereinafter referred to as PDA), and consequently covered by *sui generis* right. The condition for benefiting from such protection in the first case is that the specific database is classified as a work within the meaning of Article 1(1) of CRRA, provided that the creative nature of the database is manifested in the selection, arrangement or compilation of its elements, in this case the customers of a given entrepreneur. In the second case, the condition for the protection of an entrepreneur's customer database will be that the database meets the requirements specified in Article 2(1)(1) of PDA, in particular those relating to the significant financial outlay involved in creating the database, verifying its content (e.g. the accuracy of customer data) or its presentation.

Moving on to the assessment of the possibility of protecting the business model of enterprise under the Act of 30 June 2000 on Industrial Property Law (consolidated text, Journal of Laws of 2023, item 1170; hereinafter referred to as IPL), it should be noted that Article 28(1)(3) of IPL, which, based on Article 100(1) of IPL, applies mutatis mutandis to utility models, excludes the possibility of classifying as an invention, as well as a utility model, schemes, rules and methods for performing mental acts, playing games or conducting business activities. The lack of technical character of such solutions is cited as justification for this exclusion (Demendecki et al., 2015; Kostański, 2010). The sphere of technology does not extend beyond the domain of natural sciences, and its subject matter is the use of inanimate or animate matter. Therefore, the field of technology does not include solutions whose subject matter is abstract and conceptual ideas, including organisational ones, as they solve intellectual or organisational problems (Kondrat, 2021), and business models of enterprises fall into this category. The list contained in Article 28(1)(3) of IPL – similarly to the list contained in Article $1(2^1)$ of CRRA – explicitly lists the schemes (rules and methods) of conducting business activity, and therefore it should be considered that business models of enterprises are excluded from industrial property protection due to their non-technical but organisational nature.

4. Protection of business models outside the system of exclusive rights

When seeking protection for business models, the first step is to consider the possibility of classifying them as rationalisation projects. According to Article 7(2) of IPL, any solution that is suitable for use and is not an invention subject to patenting, a utility model, an industrial design or an integrated circuit topography may be considered a rationalisation project. This means that a business model could be classified as a non-technical, organisational solution constituting a business action plan aimed at solving a specific problem, i.e. the achievement of specific strategic and operational objectives in the conditions of a given type of enterprise. However, for such a model to be considered a rationalisation project, this type of company action plan must be recognised as a rationalisation project by the entrepreneur in the rationalisation regulations adopted by them (Article 7(2) *in principle* in conjunction with Article 7(3) of IPL). As follows from the above, the possibility of classifying a given business model as a rationalisation project applies only to those entrepreneurs who have adopted rationalisation regulations (Article 7(1) of IPL). However, it should be noted that the model of protection of rationalisation projects adopted by the legislator differs from other industrial property rights, which have been shaped as subjective rights of an absolute nature. As a result, an entrepreneur whose employee has created a rationalisation project in the form of a specific business model for the enterprise is not entitled to the protection afforded by absolute subjective civil rights. (judgment of the Provincial Administrative Court in Wrocław of 12 January 2010, I SA/Wr 1602/09, LEX No. 559606; Skubisz, 2012; Żelechowski, 2021)

Next, therefore, consideration should be given to the possibility of protecting the business model of an enterprise on the basis of tort liability regulated by the Act of 16 April 1993 on Combating Unfair Competition (consolidated text, Journal of Laws 2022, item 1233; hereinafter referred to as CUCA). Pursuant to Article 3(1) of CUCA, an act of unfair competition is an act contrary to the law or good practice if it threatens or infringes the interests of another entrepreneur or customer. It is assumed that an act should also be understood as an omission, i.e. a situation in which an entity committing an offence defined in the CUCA should behave in a certain way in order not to commit an act of unfair competition (Nowińska, Szczepanowska-Kozłowska, 2022; Michalak, 2013).

Article 3(1) of CUCA defines unfair competition in general terms, while paragraph 2 of that article lists examples of certain acts, which are further specified in Articles 5-17 of CUCA, which should be interpreted in such a way that the general definition and the provisions specifying acts of unfair competition remain in the following relationship: the acts listed in the Act do not constitute a closed catalogue, and actions not listed in Articles 5-17 of CUCA may also be considered unfair competition provided that they meet the conditions defined in Article 3(1) of CUCA (the so-called supplementary function); the requirements specified in the definition in Article 3(1) of CUCA refer to the acts listed in Articles 5-17 of CUCA,

and the general clause has a corrective function in relation to the specific provisions. When the facts of a case formally meet the conditions of Articles 5-17 of CUCA, but in reality the act does not display any of the characteristics of Article 3(1) of CUCA, it cannot be considered an act of unfair competition.

In the context of business model protection, it is worth noting the typified act of unfair competition in the form of a breach of trade secrets through the disclosure, use or acquisition of another party's information constituting trade secrets (Article 11(1) of CUCA) and the classification of the use of another entrepreneur's business model as a non-typical act of unfair competition, which will be protected on the basis of the general clause contained in Article 3(1) of CUCA, using its supplementary function.

Processes, including production, construction or design processes, marketing or organisational methods in business, work organisation or external relations may be classified as specific know-how. This term covers both know-how that is commonly known (so-called public know-how) and know-how that is confidential (so-called non-public, confidential know-how). The basis for the protection of the latter can be found in Article 11(2) of CUCA, which states that trade secrets are understood to mean not only technical or technological information, but also organisational information or other information of economic value which, as a whole or in a specific combination and collection of their elements, are not generally known to persons normally dealing with this type of information or are not easily accessible to such persons, provided that the person entitled to use or dispose of the information has taken, with due diligence, measures to keep it confidential. Trade secrets protected under Article 11(2) of CUCA can therefore be divided into technical and organisational information.

The first category includes technological information, confidential (technical) know-how, recipes, rationalisation projects, and technical solutions, even if they do not meet the inventive step requirement under the Industrial Property Law (Kępiński, Szwaja, 2024). Production, construction or design processes should be classified as such. The category of organisational information of an enterprise that can be classified as trade secrets in the literature includes methods of quality control of goods and services, marketing methods, or methods of work organisation (Kępiński, Szwaja, 2024), as well as the rules of cooperation between individual departments of the enterprise (Nowińska, Szczepanowska-Kozłowska, 2022). As such, some elements of the business model, such as product distribution methods or customer relations, can be classified as trade secrets.

For information to be covered by the concept of trade secrets, it must be confidential and subject to measures taken by the entrepreneur to maintain that confidentiality, as well as having economic value (Kępiński, Szwaja, 2024; Nowińska, Szczepanowska-Kozłowska, 2022). For this reason, it may be difficult to protect product distribution methods or customer relations as trade secrets due to their external, public nature. It is not necessary for such information to be applicable in another enterprise (Kępiński, Szwaja, 2024), i.e. a given method of product distribution or customer relations may not be possible to use in other enterprises due to its specific nature.

It is also possible to protect a business model from being used by another entrepreneur on the basis of the general clause of unfair competition (Article 3(1) of CUCA) as a so-called non-standardised act of unfair competition. The general clause may be the basis for protection against imitation of solutions, including those of an organisational nature (Kępiński, Szwaja, 2024), or ideas or concepts (Szwaja, 2006; Jasińska, 2010), including the conduct of business activity. An action consisting in the use of a business model of enterprise by a competing entrepreneur may be classified – at least *prima facie* – as contrary to good practice and, moreover, as threatening or infringing the interests of the entrepreneur who was the first to use such a business model. On the other hand, however, it should be remembered that classifying the use of another company's business plan as unfair competition cannot lead to a restriction of freedom of economic activity by granting protection to intangible assets that are not subject to exclusive rights. Therefore, the assessment of an act consisting in modelling one's business plan on another entrepreneur's business model will be made taking into account the circumstances of the case.

5. Claims for the abuse of business model as an act of unfair competition

The inability to protect a business model based on a system of exclusive rights, while at the same time being able to protect business models based on regulations combating unfair competition, raises the question of what claims an entrepreneur affected by such an act can pursue. The basic catalogue of claims available to an eligible entrepreneur in the event of an act of unfair competition includes, first and foremost, a claim for cessation of unlawful activities (Article 18(1)(1) of CUCA) and the removal of the effects of unlawful activities (Article 18(1)(2) of CUCA). In addition, an entrepreneur who has suffered damage as a result of an act of unfair competition may demand the surrender of unjust enrichment (Article 18(1)(5) of CUCA), provided that the surrender of unjust enrichment should take place on general terms, i.e. the terms specified in the Act of 23 April 1964 Civil Code (consolidated text, Journal of Laws of 2025, item 1071; hereinafter referred to as the CC), as well as compensation for damage caused to the injured party by an act of unfair competition on the general principles specified in the CC (Article 18(1)(4) of CUCA). Furthermore, an entrepreneur affected by an act of unfair competition, in a situation where the act of unfair competition was committed culpably, may demand that an appropriate sum of money be awarded for a specific social purpose related to the promotion of Polish culture or the protection of national heritage (Article 18(1)(6) of CUCA) a so-called penalty payment. Irrespective of the above claims, an entrepreneur affected by an act of unfair competition may demand a single or multiple publication of a statement with appropriate content and form (Article 18(1)(3) of CUCA). This request includes the possibility of demanding that the statement be disseminated not only in the press, but also in any other

way, including the press and the Internet. Finally, pursuant to Article 18(2) of CUCA, the court may, at the request of the entitled party, also rule on products, their packaging, advertising materials and other items directly related to the act of unfair competition. In particular, the court may order their destruction or inclusion in the compensation.

Irrespective of the above claims, the provisions of CUCA provide for specific legislative solutions addressed to situations of unfair competition involving the violation of trade secrets. Firstly, due to the difficulty in determining the causal link between the act of unfair competition and the damage, as well as the amount of the damage itself, an entrepreneur affected by an act of unfair competition in the form of a breach of trade secrets may, as an alternative to compensation on general terms (Article 18(1)(4) of CUCA), claim compensation in the form of a lump sum. 1(4) of CUCA) compensation in the form of a lump sum. This takes the form of a payment of a sum of money corresponding to the remuneration which, at the time of the claim, would be due for the consent of the entitled party to the use of information constituting a trade secret (Article 18(5) of CUCA).

Secondly, an entrepreneur affected by an act of unfair competition consisting in a breach of trade secrets may demand that the defendant be obliged to make public information about the judgment or the content of the judgment, in a specified manner and to a specified extent, if this is justified by the circumstances of the act of unfair competition, in particular the manner in which the act was committed, the value of the information to which the act related, the effect of the act and the likelihood of unfair competition being committed in the future, and if the defendant is a natural person, if this is not opposed by the defendant's legitimate interest, in particular the protection of his or her personal rights. However, the manner and scope of making the information about the judgment or the content of the judgment public must not lead to the disclosure of trade secrets (Article 18(3) of CUCA), and therefore, in the case in question, the methods of distribution or customer acquisition used in a given enterprise.

Thirdly, in the event of an act of unfair competition consisting in a breach of trade secrets, the court, instead of granting a request for cessation or removal of the effects of the unlawful acts, or ruling on the products, their packaging, advertising materials and other items directly related to the act of unfair competition, it may, at the request of the defendant, oblige the defendant to pay the claimant appropriate compensation, in an amount not exceeding the compensation that would be due at the time of the claim for the right holder's consent to use the information, for a period not longer than until the state of secrecy ceases, if three conditions are met, i.e. at the time of using or disclosing information constituting a trade secret, the defendant did not know and, even with due diligence, could not have known that the information was obtained from a person who used or disclosed it in the circumstances specified in Article 11(1) 4 of CUCA, granting the request for cessation would cause disproportionate damage to the defendant, and the obligation to pay remuneration does not infringe the legitimate interests of the claimant. (Article 18(4) of CUCA)

6. Pursuing claims for the abuse of business model

Claims for unfair competition are pursued in separate intellectual property proceedings before courts specialising in such matters. On 1 July 2020, intellectual property divisions were established within the district courts in Gdańsk, Katowice, Lublin, Poznań and Warsaw. Thanks to this measure and the entrusting of appeals against the rulings of these district courts to the Courts of Appeal in Poznań and Warsaw, a structure of specialised courts (hereinafter referred to as intellectual property courts) dealing with intellectual property cases was created (Kurosz, 2021).

The concept of intellectual property matters is defined in Article $479^{89}$of the Act of 17 November 1964 – Code of Civil Procedure (consolidated text, Journal of Laws of 2024, item 1568, as amended; hereinafter referred to as the CPC). In light of Article 479^{89}§ 2(1) of CPC, intellectual property cases also include cases concerning the suppression of unfair competition. Therefore, in a situation where elements of a specific business model are classified as a trade secret, claims for infringement of that secret, i.e. committing an act of unfair competition as defined in Article 11(1) of CUCA, will be heard before an intellectual property court. The situation will be similar if the use of someone else's business model is classified as an untypical act of unfair competition.

Classifying the above cases as intellectual property cases not only subjects them to the jurisdiction of intellectual property courts, but more importantly, means that they will be heard in separate proceedings in intellectual property cases covered by the provisions of Article 479^{89}-479^{129} of CPC. Thanks to this, an entrepreneur who has suffered damage as a result of an act of unfair competition will be able to take advantage of a special legal institution applicable only to proceedings in intellectual property cases, facilitating the pursuit of claims, in particular for damages and the surrender of unjust enrichment, which is the securing of evidence (Article 479^{96}-479^{105} of CPC) (Kurosz, 2025). The entrepreneur may make this request both before bringing an action and in the course of proceedings (Article 479^{97} § 1 of CPC).

However, such an entrepreneur will not be able to take advantage of the two other specific procedural measures provided for in the rules of procedure in intellectual property cases, i.e. disclosure or surrender of evidence (Articles 479^{106}-479^{111} of CPC) and a request for information (Articles 479^{112}-479^{121} of CPC). In the case of a request for disclosure or surrender of evidence and a request for information, the application of these institutions is limited, as follows from Articles 479^{106} *in principio* of CPC and Article 479^{113} § 1 of CPC – only to cases concerning the infringement of exclusive rights referred to in Article 479^{89} § 1 of CPC, and therefore it is not possible in cases of unfair competition (as stated by the Court of Appeal in Warsaw in its decisions of 20 November 2020, ref. no. VII AGz 497/20, unpublished, of 15 December 2021, ref. no. VII AGz 498/21, unpublished, of 28 January 2022, ref. no. VII AGz 613/21, unpublished, and of 6 September 2024, ref. no. VII AGz 483/24; contrary to the

Court of Appeal in Poznań in its decisions of 5 April 2022, I AGz 5/22, unpublished; of 2 August 2023, I AGz 54/23, LEX No. 3622487; of 18 March 2024, I AGz 240/23, unpublished, of 5 December 2024, I AGz 20/23, unpublished, and of 9 June 2025, I AGz 251/24, unpublished; Antoniuk, 2026; Pinkalski, 2025).

Furthermore, it should be noted that an entrepreneur who has been harmed by an act of unfair competition may use the institution of securing a claim (Articles 730-757 of CPC), which allows them, in particular, to stop a market competitor from exploiting their business model. This procedural institution in intellectual property cases is characterised by certain specific features relating to the securing of non-monetary claims (Gołaszewska, 2023). This is reflected in the departure from the rule of *ex parte* proceedings in such cases in favour of a hybrid model with predominantly adversarial proceedings and exceptions in favour of *ex parte* proceedings (Antoniuk, 2023).

7. Concluding remarks

The above considerations lead to several important conclusions. Firstly, it is not possible to protect a business model under copyright law as such, but only its description, which may be classified as a work within the meaning of the CUCA. This follows from the provisions of Article $1(2^1)$ of CRRA, which explicitly excludes ideas and methods, among other things, from copyright protection. The inability to protect a company's business model under copyright law does not preclude the protection of a customer database used by a specific entrepreneur in activities based on a given business model under copyright law or the PDA.

Secondly, the possibility of protecting a business model as a technical solution subject to industrial property rights, i.e. an invention or utility model, should also be excluded. The exclusion of business models from industrial property protection, due to their non-technical but organisational nature, is a consequence of the explicit mention in the list contained in Article 28(1)(3) of IPL of schemes (rules and methods) of conducting business activity as not qualifying as inventions. However, it is possible to classify it as a rationalisation project, provided that such a model is recognised as a rationalisation project by the entrepreneur in his or her adopted rationalisation regulations.

Thirdly, the elements of the business model used by a given entrepreneur may be protected as a trade secret, provided that these elements meet the requirements for classification as a trade secret. Regardless of this, the use of someone else's business model may be classified as an atypical act of unfair competition. In such a situation, an entrepreneur affected by an act of unfair competition will be entitled to a wide range of claims provided for in the CUCA. These claims will be pursued in separate intellectual property proceedings before specialised

intellectual property courts. As part of these proceedings, the entrepreneur will be able to take advantage of a special procedural measure supporting the pursuit of their claims, namely the institution of securing evidence.

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