

THE LAW OF AZERBAIJAN REPUBLIC
"ON TRADEMARKS AND GEOGRAPHICAL INDICATIONS"

This Law shall govern the relations arising out the registration, legal protection and use of trademarks and geographical indications in Azerbaijan Republic.

Chapter I
General provisions

Article 1. Basic notions

The notions used in the present Law have the following meanings:

trademark - any sign or combination of signs which can be represented graphically and is capable of distinguishing the goods and services of one undertaker from those of another undertaker;

geographical indication - indication which identify a goods as originating in the territory of a State, or a region or locality in that territory (geographical area) reflected special quality, reputation or other essentially characteristics of the goods;

collective mark - any sign, or combination of signs, registered under the name of union, association, and any other union;

transliteration - representation of letters of one alphabet with letters of another alphabet.

Article 2. Legislation of the Azerbaijan Republic on trademarks and geographical indications

Legislation of the Azerbaijan Republic on trademarks and geographical indications consist from Constitution of the Azerbaijan Republic, this Law and other legislative acts and intergovernmental agreements to which of the Azerbaijan Republic is party.

If an international treaty to which the Azerbaijan Republic is party lays down rules that differ from those sets in this Law, the provisions of such international treaty shall prevail.

Article 3. Legal protection of trademarks and geographical indications

The legal protection of trademarks and geographical indications in the Azerbaijan Republic shall be afforded on the basis of registration of respective body of executive power carried out in accordance with regulations determined by this Law and with the international registration of the signs - in accordance with the provisions of this Law and any international Agreement to which the Azerbaijan Republic is a party.

Trademarks and geographical indications, which have not registered in the Azerbaijan Republic, but having force under the international treaties to which the Azerbaijan Republic is party, shall have protection in according to present Law.

Article 4. Signs, registered as trademarks

The following signs may be registered as trademarks:

Words, personal names, letters, numerals, figurative elements, shape of the goods or their packaging, combinations of colors as well as any combination of such signs.

Article 5. Absolute grounds for refusal of registration of trademark

The following signs shall not be registered:

- a)** signs, which do not satisfy the notion of "trademark" determined in paragraph 2 articles 1 and article 4 of this Law;
- b)** because of their character cannot constitute trademarks;
- c)** signs that are to designate the kind, quality, quantity, intended purpose, value of the goods or services or other their characteristics and also place of origin of the goods and the time of their production;
- d)** trademarks for wines and for spirits contain of geographical indication identifying wines or spirits with respect to such wines or spirits, which do not have this origin;
- e)** the shapes, which result from the nature of the goods themselves, or the shape which gives substantial value to the goods, or the shape of goods which is necessary to obtain a technical result;
- f)** signs that are consisted of expression that are contrary to public order, morality and ethics, of any elements that can inflict damage to the reputation of the personality, religious and State symbols;
- g)** trademarks which consist exclusively of sings or indications which have become customary in the Azerbaijan Republic or in the bona fide and established practices of the trade;
- h)** trademarks that are liable to mislead the consumer, notably as to the nature, quality or geographical origin of the goods or service;
- i)** trademarks, which are considered impossible to register under the article 6th of Paris Convention on the protection of industrial property (hereinafter Paris Convention);
- j)** rewards or other distinguishing features without of the approval of respective body of executive power.

If the above-mentioned signs have been registered before the validity of the present Law, their registration shall be liable to be declared invalid.

A trademark shall not be refused registration or be declared invalid in accordance with subparagraphs (b), (c), (d) of the first part, if before the date of application for registration and following the use which has been made of it, it has acquired a distinctive character.

It is prohibited to use trademarks, consisted of signs, specified in the subparagraph (h) of the first paragraph of the present article.

Article 6. Other grounds for refusal of registration of trademark

Signs may not be registered as trademarks if they are identical or similar, to the point of misleading:

- a)** trademarks registered or filed for registration earlier in the Azerbaijan Republic in the name of another person for identical or similar goods or services;

b) trademarks protected earlier in the territory of the Azerbaijan Republic by virtue of international treaties to which the Azerbaijan Republic is party;

c) well-known trademarks protected in the Azerbaijan Republic in accordance with article 7 of this Law;

d) signs with the trade names provided that they are published in an official bulletin owned by other persons, who acquired the right to use these trade names in the Azerbaijan Republic before the of filing date of the application for trademark on identical goods or services;

e) geographical indications protected in the Azerbaijan Republic, except where the geographical indications are incorporated as unprotected elements in a trademark registered in the name of a person authorized to use the said geographical indication;

f) registered certificate signs.

These signs shall not be registered as trademarks or elements thereof that constitute reproductions of:

a) industrial designs in which the rights are owned by another persons in the Azerbaijan Republic;

b) titles of scientific, literary or artistic works known in the Azerbaijan Republic or names of personages, quotations or fragments from of such works, without the consent of the owner of the copyright or his successors in title;

c) family names, surnames, pseudonyms and derived expressions thereof of known persons without the consent of those persons or their heirs.

In the absence of heirs or known persons themselves and if the designations represent part of the historical and cultural heritage of the Azerbaijan Republic, in this case only the respective body of executive power can allow for their registration.

The following shall not constitute grounds for refusal of registration as a trademark:

a) if the applicant does not use the trademark before to the filling of the application of this trademark for registration;

b) the nature of the goods or services rendered;

c) trademarks, differs from the signs protected in the country of origin only in respect of elements that do not alter its distinctive character and do not affect its identity of the signs as registered in the country of origin.

Article 7. Criteria with respect to well-known trademarks

Well-known trademarks shall be those that satisfy the criteria set out in 6th of the Paris Convention.

When it is determined that the trademark is well known, the respective body of executive power shall take the followings into account:

- the extent of the knowledge in the territory of the Azerbaijan Republic by prospective users of goods or services for which the sign is used;
- distribution channels and commercial sectors of goods or services for which the sign is used;
- consumers opinion as to the quality level of goods in relation with the use of the trademark in the Azerbaijan Republic and international markets;
- the distinctiveness of the trademark either primary or acquired through its use;
- territorial scope and duration of any use of the sign in particular extent, duration, territory and any promotion (campaign) including advertising, marketing of posters, exhibiting in the course of fairs or exhibitions in association with goods or services for which it is used;
- the place of goods or services in the market system, where the sign is used in the territory of the Azerbaijan Republic, as well as in the territory of foreign countries.

The protection of well-known trademarks registered in the Azerbaijan Republic may also extend to any goods or services, where the use of well-known trademark for such goods or services may infringe the rights of the owner of the registered trademark.

Article 8. Signs registered as geographical indication

Signs, which do satisfy the notion of geographical indications determined in article 1 of this Law is to be registered as geographical indications.

Legal protection of the geographical indication shall extend both to its graphic or figurative representation and to the geographical representation of the country, city, region or locality whose names constitute the geographical indication. A geographical name may be used as a characteristic element of goods or service if it does not signify misleading or false origin.

The use of geographical indication shall be intended for undertakers of services rendered in the locality.

The official name of the geographical area, its historical name or any derivatives from them may be constituted as a geographical indication.

Sign shall not be registered as a geographical indication if it does not meet the conditions prescribed in this article.

Designations, which represent or contain the name of a geographical area that does not refer to the geographical area in the Azerbaijan Republic, shall not be registered as a geographical indication.

Geographical indication, not protected in the country of origin is not to be registered in the Azerbaijan Republic.

Chapter II

Registration of trademarks and geographical indications

Article 9. Filing of the application for registration trademarks and geographical indications

The application for registration of a trademark and a geographical indication is to be filed with the respective body of executive power by the applicant.

The applicant may file the application with the respective body of executive power in following order:

- directly;
- act through a patent attorney registered with the respective body of executive power.

Foreign legal entities or natural persons shall file the application with the respective body of executive power only through patent attorney, excluding persons of engage undertaking activity in the Azerbaijan Republic, if an intergovernmental treaties to which the Azerbaijan Republic is party are provided by other provisions.

The application shall contain a request and the required documents attached thereto and shall relate to one trademark or geographical indication only.

A request for registration of a trademark shall contain:

- the name of the applicant, his headquarters or residence, signature (the name, surname, address and signature of the patent attorney, if the application is filed through the patent attorney);
- the reproduction of the claimed sign or three-dimensional forms;
- the list of goods or services for which registration of the sign is sought, grouped according to the classes of the Nice Classification of Goods and Services;
- the color of the trademarks;
- transliteration and translation of the trademark and its definite part.

A request for registration of a geographical indication shall contain:

- a request for registration;
- the name of the applicant, his headquarters or residence, signature (the name, surname, address and signature of the patent attorney, if the application is filed through the patent attorney);
- the reproduction of the claimed geographical indication;
- the designation of a goods or service which geographical indication is sought;
- the borders of the geographical area where the product is manufactured or service are to be rendered;
- the description essentially characteristics of the goods.

The request for registration shall be accompanied by the following:

- document, confirming payment of state fee;
- where the application is filed through a patent attorney, a document certifying the powers of the patent attorney;
- the regulations of the collective mark including the name of the authorized association to have the collective mark registered in its name, the names of all constituting members of the association that are authorized to use the collective mark, the list of goods or services in respect to which the collective mark is intended to be used specifying qualitative or other common characteristics thereof;
- in case of necessity the document, confirming the priority of the trademark, to the article 10 of the present Law;
- document and reference of the respective body of executive power about location of the applicant at the specified geographical area, reputation, production of goods or rendering of services, specialties of which are essentially a consequence of its geographical location;
- a document, attesting the right of a foreign applicant in the claimed geographical indication in the country of origin of the goods.

Documents specified in the part of 7 of present article shall submitted to the respective body of executive power within 2 months from the filing date of the request.

The request for the registration of the trademark and geographical indication is to be signed as applicant wishes only by him or his authorized representative.

The request for the registration of trademark and geographical indication is to be submitted in Azerbaijan language.

Other documents accompanying the application may be submitted in Azerbaijan language or in another language. The translation of materials of the application, submitted in other languages should be provided into Azerbaijan language within 2 months after the date of document submission.

If the applicant fails, within the prescribed time limits, to submit the documents to the respective body of executive power referred to in parts 7 and 11 of the present article, or fails to file a request for extension of the mentioned time limits containing reasonable grounds therefore, the application shall be considered not submitted. After the payment of additional state fee the established term can be extended up to 2 months.

The date of the submitted request, conforming to the requirements, set up in the 5 and 6 parts of the present article to respective body of executive power is to be deemed the date of filing of application.

The respective body of executive power determines the Regulations concerning the file of application.

Article 10. Priority of the trademark

The priority of a trademark shall be determined by the date of receipt by the respective body of executive power of an application corresponding to the conditions set forth in article 9 of

this Law.

The priority of trademark may be determined by the filing date of the first application in a State party to the Paris Convention (Convention priority). In this case the application should be submitted to respective body of executive power within 6 months following said date.

The priority of a trademark affixed to a product displayed at an official international exhibition held on the territory of one of the States party to the Paris Convention may be determined by the date as from which the product in question was on public display at the said exhibition (exhibition priority). In this case the application of trademark should be submitted to respective body of executive power not later than 6 months since the same date.

The exhibition priority shall not extend the term of the Convention priority.

The applicant wishing to enjoy either Convention or exhibition priority shall so declare on filing the application for registration or within 3 months following the date of receipt of the application by the respective body of executive power.

Article 11. Examination of the application of a trademark and geographical indication

The preliminary examination and examination of the application of trademark and geographical indication shall be carried out in accordance to the provisions of this Law and Regulations established by the respective body of executive power on the basis thereof.

During the examination of the application and before a decision is taken thereon, the applicant shall have the possibility on his own initiative, to pay the prescribed State fee, to introduce supplement, to specify or to correct the documents of the application.

Where the additional materials modify the substance of the claimed sign or incorporate non-identical goods in the list of goods specified in the application, they shall not be taken into consideration, and the applicant may submit them as a separate application.

The application may be divided by the applicant or at his request into several divisional applications by way of distribution among them of the goods or services specified in the initial application. The divisional applications shall retain the filing date of the initial application and the priority date of the trademark claimed therein.

During the examination the respective body of executive power can demand additional materials necessary for the examination from the applicant.

Following the demand of the examination additional materials can be submitted within 2 months since the obtaining of a demand. That period may be extended on 2 months at the request of the applicant subject to payment of an additional State fee. On the basis of the request and provided that State fee is paid the term can be extended for 2 months. Where the applicant fails to observe the prescribed time limit or to reply to the examiner's demand, the application shall be deemed withdrawn and the applicant shall be notified accordingly.

Article 12. Withdrawal of application

The application for the registration of a trademark or a geographical indication may be withdraw at the request of the applicant at any time during its examination.

The application for the registration of a collective mark may only be withdrawn with the consent of all constituting members of the association who are authorized to use the collective mark.

Article 13. Preliminary examinations

A preliminary examination of the application for the registration of trademark or geographical indication shall be carried out within one month following the date of receipt of documents accompanying the request in accordance with article 9 of this Law.

A preliminary examination of the application for the registration of a trademark or geographical indication shall be carried out in order to verify the contents of the application, the presence of the necessary documents and their compliance with the prescribed conditions. Depending on the finding of the preliminary examination, the applicant shall be notified whether the application has been accepted or rejected.

Where the application for the registration of a trademark or a geographical indication is accepted, the applicant shall at the same time be notified of the priority of the trademark, except where he claims Convention priority or exhibition priority without having, by the date on which the application is accepted, submitted the necessary documents substantiating the validity of his claim.

Article 14. Examination of trademarks and geographical indications

The examination of trademarks is to be carried out within 6 months since the completion of the preliminary examination. The examination shall be carried out in order to verify the compliance of the claimed sign with the term of "trademark" set forth in paragraph 2 of article 1 and the conditions prescribed in articles 4, 5 and 6 of this Law, and to determine of its priority date.

The examination of the claimed geographical indication shall be carried out in order to verify its compliance with the term of "geographical indication" set forth in paragraph 3 of article 1 and the conditions prescribed of article 8 of this Law.

Following the results of the examination the well-grounded decision is to be made on the registration or refusal to registration a trademark or geographical indication.

Any decision taken on the basis of examination result shall be notified to the applicant within 10 days from its date. The applicant shall have the right to get familiar with the materials specified in the examiner's decision. The applicant may request a copy of the said materials within one month following the date of receipt of the decision.

The decision on the registration of the trademark taken by the examiner may be reconsidered in accordance with article 10 of this Law.

Where the applicant receives a notification about the registration of trademark or geographical indication, he shall be, within 2 months following the date of receipt of the notification, to pay the prescribed State fee for the registration and publication of particulars of the registration and the grant of the certificate.

The examination of the application filed in accordance with the article 9 of this Law might be carried out within 1 month on the basis of applicant's request and by paying the established State fee.

Article 15. Opposition to decision on the application

If the applicant disagrees with the decision taken by examination concerning the applications of the trademark or geographical indication, within 3 months following the date of receipt of the decision, he may appeal against such decision to the commission of Appeal of the respective body of executive power, provided that he pays prescribed state fee.

The appeal shall be examined within 2 months from the date of its receipt by the commission of Appeal.

The applicant or patent attorney shall have the right to participate in the proceeding of the commission of Appeal in connection with his application and shall have the right to acquaint him with all documents cited in the examiner's decision.

The applicant may make an appeal to the Court against the mentioned decision within 3 months following the date of receipt of the decision of commission of Appeal.

Article 16. Restoration of rights contingent on time limits

If the applicant fails to respect the time limit for lodging an appeal with the commission of Appeal provided in part 1 of article 15 of this Law, at the request of the applicant to this end, filed no later 6 months after the expiration date of the said time limit, yet reinstate his rights.

Article 17. Registration of the trademarks and geographical indications in the State register

On the basis of the examiner's decision or in the case of a favourable decision of commission of Appeal concerning the opposition, as well as, in accordance to the part 6 of article 14 of this Law the respective body of executive power shall register within 1 month thereof in the State registers (hereinafter referred to as the Register) of trademarks and geographical indications respectively.

The following elements shall be entered or recorded in the Register: a reproduction of the trademark, the particulars concerning the owner of the trademark, the priority date of the trademark, the date of registration thereof, the grouped list of the goods or services for which the trademark is registered on the basis of the classes of the Nice Classification.

The Register shall include particulars concerning the registration, renewal of the term of registration or cancellation of the trademark and any subsequent amendments. When a collective mark is registered the information on the users authorized to use the collective mark shall be added into the Register.

The Register shall include the reproduction of geographical indication, the particulars concerning the owner who has right to use the geographical indication, a description of specific peculiarities of the product, the date of registration thereof and renewal of the term of registration and any later amendment of the foregoing particulars.

The respective body of executive power shall provide the copy of the record contained in the

Register after the payment of state fee.

The respective body of executive power determines the order of conducting the State Registers.

Article 18. Publication of particulars of the registration

The particulars that have been recorded in the Register in accordance with article 17 of this Law shall be published in the Official bulletin by the respective body of executive power.

During the publication of particulars concerning the registered collective mark, additionally, an extract from the regulations of the collective mark specifying the common qualitative or other characteristics of product, which the mark is registered, shall be published in the Official bulletin.

Article 19. Certificate concerning trademark and geographical indication

The certificate of registration of the trademark or the geographical indication shall be granted by the respective body of executive power and shall be valid in the territory of the Azerbaijan Republic.

The certificate shall certify that the claimed sign has been registered as the trademark, the priority date thereof, the exclusive right of the owner to use the registered trademark for the goods or services referred to in the certificate and shall contain the reproduction of the registered signs. The certificate of registration of the collective mark, in addition, shall contain particulars of the users (all constituting members of the association) that are authorized to use the collective mark.

The certificate affording the right to use the geographical indication shall certify that the claimed sign has been registered as the geographical indication and the right of the owner to use it for products or services referred to in the certificate.

The certificate of registration of geographical indication shall not certify the exclusive right to use the registered geographical indication. The owner of certificate of the geographical indication shall have the right to prohibit the unauthorized use.

The certificate of the trademark and geographical indication shall be grant by the respective body of executive power within 1 month following the date of registration thereof in the Register.

The respective body of executive power determines the form of the certificate of trademark and geographical indication.

Article 20. Opposition to the registration

By paying the state fee any person shall have the right, within 3 months following the date of publication of the particulars of the registered trademark and geographical indication to file a substantiated notice of opposition against to the registration thereof with the commission of Appeal.

The respective body of executive power shall notify the owner of trademark or the person

obtained the right to use the geographical indication about the opposition within 10 days since the date of receipt of the opposition. They can provide a grounded respond to the respective body of executive power within 1 month after the notification.

The commission of Appeal within 2 months shall consider the notice of opposition filed in accordance with part of 1 of this article. Where the opposition arguments are found justified, the registration of the trademark or geographical indication shall be cancelled and the notice of cancellation shall be published in the Official bulletin.

The notification about the decision of commission of Appeal is to be sent within 10 days to all interested parties.

The decision of the commission of Appeal may be appealed to the Courts within 3 months of the given date.

Article 21. Term of the registration of the trademarks and geographical indications

The term of the registration of the trademark and geographical indication shall consist of 10 years from the date on which the respective body of executive power received the application for registration. The term of the registration may be renewed for further periods of 10 years at the request of the owner of the sign, on condition of paying the prescribed state fee.

After the expiration of the registration term the owner of the trademark or the owner of the certificate of geographical indication may be granted 6 months extension in order to prolong , on condition of the payment of additional state fee.

The information about extension of registration period is to be entering in the Register and certificate and published in the official bulletin.

Article 22. Amendments to the Register and Certificate

The owner of the certificate of registration of trademark, collective mark and geographical indication shall be obligated to inform the respective body of executive power of any amendment to the particulars of registration thereof.

Any amendment shall be entered in the Register and the certificate at the payment of the state fee.

Article 23. Conditions of the repeated registration

Collective trademark cannot be registered in the name of another person apart from its previous owner or right successor within 3 years after the expiration of validity period of its registration. This rule is also applied in the case where the owner of the registration refuses the collective mark before the expiration of the term of registration.

Article 24. Registration of the trademark and geographical indication in foreign states

Any legal entity or natural person of the Azerbaijan Republic shall have the right to register the trademark or the geographical indication in foreign states or carry out their international registration in a prescribed order.

The application for international registration of trademark shall be filed through the respective

body of executive power.

The filing in foreign states of an application for the registration of the geographical indication shall be effected after its registration and obtaining the right to use in the territory of the Azerbaijan Republic.

Chapter III

Exploitation of the trademarks and geographical indications

Article 25. The exclusive right to the trademark

The owner of the trademark shall have an exclusive right to use and otherwise dispose thereof in the territory of the Azerbaijan Republic during its term.

The use of the identical or similar trademark for the identical or similar goods or services without the consent of this trademark owner is prohibited. This provision is also applied to use of identical or similar trademarks liable to mislead the consumer.

The use of identical or similar trademarks in relation to those goods or services liable to create confusion with goods and services of well-known trademarks are deemed as to offend the interest of owner of well-known trademark.

The owner of trademark which is well-known shall have the right to demand the prohibition the use of a trademark which constitutes a reproduction, an imitation and a translation, liable to create confusion, of the well-known trademark and that trademark used for goods and services which are identical and similar with goods and services of the well-known trademark, but the owner of a registered trademark which is well-known shall have the right to prohibit the use the such trademark, liable to create confusion, and used for goods and services which are not similar to those for which the well-known trademark is registered.

The exclusive right shall not extend to such elements of the trademark that may not be registered independently as trademarks.

Article 26. Exploitation of the trademarks and geographical indication

The use of trademark and geographical indication on goods, on the packaging thereof and in connection with services rendered shall be deemed to constitute exploitation. Their use in adverting, in printed publications, on signs or in connection with the display of goods at fairs and exhibitions that are held in the Azerbaijan Republic, in accompanying or other documents related to marketing of the goods, deemed to constitute exploitation thereof.

Manufacturing, storage, marketing, exporting, importing for any of the foregoing purposes of using of goods shall also be deemed to constitute exploitation of signs.

The offering for sale, selling a product or rendering a service confirms the exploitation of registered trademarks.

Other persons may use the trademark on the basis of the contract with the owner of trademark.

Legal entities or natural persons engaged an intermediary activity should have the right to use

their own together with the trademark of the manufacturer of goods or persons, who render services on the basis of a contract concluded between them.

The owners of the collective mark, in addition to collective mark, may use their own trademark for goods or services.

Article 27. Warning notice

The owner of certificate on a trademark or a geographical indication may add a warning notice giving notification of the fact that a trademark or a geographical indication have registered in the Azerbaijan Republic.

Article 28. Transfer of rights to the trademark

The owner of a trademark may transfer the right to exploit the trademark to a third party under a license contract and on the basis of contract may assign the right on trademark to another person for either all or some goods and services bearing a relation to this trademark. These contracts shall be registered by respective bodies of the executive power, providing the payment of the prescribed state fee and shall be used against the illegal acts of other persons after the publication of particulars about it in the official bulletin.

The assignment may also be referred to the application for registration of trademark. The right of the new owner shall in that case have effect from the filing date of the application. The assignment of the trademark shall not be allowed if its effect is liable to mislead the consumer as regards the product, service and manufacturer thereof.

A collective mark may be registered under the name of union, association, and any other union and the assignment or transfer of rights in a collective mark may only be affected with the consent of its each member.

License contract is a document under which the owner of trademark (the licensor) may grant the right to exploit the trademark to another person (the licensee). A license contract can apply only apply to the registered trademark and shall only have effect for those goods or services in respect of which the trademark is registered.

The license contract shall contain a clause to the effect that the quality of the licensee's goods or services shall not be inferior to that of the licensor's goods or services, and the observance of the said clause shall be ensured by the licensor.

The document about quality of goods and services is to be enclosed to the license contract.

The registered license contract may be amended by mutual agreement between the parties and provided that he pays the prescribed state fee.

The registered license contract can be cancelled in the order, established by the legislation.

It is prohibited to conclude the license contract on trademark by compulsory methods.

The owner of the right to use the geographical indication may not assign the right and to transfer the right to use the geographical indication under the license contract.

Chapter IV

Termination of legal protection of the trademark and geographical indication

Article 29. Invalidation of the registration of the trademark and geographical indication

The registration of the trademark and geographical indication may be invalid either entirely or in part at any time during its term of validity if it fails to conform with the term of trademark and geographical indication specified in the article 1 or if it has been registered with the infringement of the grounds determined in article 5 of this Law but under conditions specified in the part 1 and 2 article 6 of this Law at any time during the 5 years following the date of publication of the particulars of the said registration in the Official bulletin.

Any interested person may, within the said periods, file opposition to the registration thereof with commission of Appeal. The opposition shall be considered within 2 months following the date of its receipt. The person who has filed the opposition as well as the owner of the registered shall have the right to participate in the consideration thereof.

The decision of the commission of Appeal may be appealed from to the courts within 3 months from its date.

Article 30. Cancellation of registration in case of non-use of the registered trademark and geographical indication

The registration of the trademark and geographical indication may be cancelled by the commission of Appeal of the respective body of executive power at the request of any interested person if they have not been used within Azerbaijan Republic an uninterrupted period of 5 years following the date of registration thereof or an uninterrupted period of 5 years preceding the filing of the request.

The request shall be considered within 2 months following the date of its receipt and on condition that the state fee is paid. The owner of the sign shall be notified of the request within 2 weeks following the date of its receipt.

The interested person, owners of the trademark or his licensee, the owner of the certificate of geographical indication shall have the right to participate in the consideration of the request.

When the premature cancellation of the registered trademark and geographical indication for failure to use is decided, due regard may be taken of proof provided by the owner to the effect that non-use was due to circumstances beyond his control.

The decision of the commission of Appeal may be appealed to the courts order within 3 months from its date.

Where the collective mark is used for goods or services that lack qualitative and other common characteristics, the registration thereof may be cancelled either entirely or in part before fixed time on the basis of the court decision taken at the request of any interested legal entity or natural person.

The information about cancellation of the registration is to be published in an Official bulletin.

Article 31. Cancellation of the registration of the trademarks and geographical indications

The registration of the trademarks and geographical indication shall be cancelled by the respective body of executive power in the following cases:

- in connection with expiration of term, specified by the article 21 of this Law
- when the owner of the certificate renounces the registration;
- on invalidation of the registration under article 29 of this Law;
- on the basis of the decision, adopted according to the article 30 of this Law;
- when the product and rendered service losses its particular properties in connection with the geographical indication;
- on termination of legal protection of the geographical indication in the country of origin.

The registration shall be refused or cancelled if the sign is constituted a geographical indication used for goods that do not originate in a given territory, where the use of the indication for such goods is of a nature liable to mislead the customers as to the true origin of the goods.

The information about cancellation of registration is to be published in an official bulletin.

Chapter V

Legal protection of registered signs

Article 32. Infringement of rights for registered trademark and geographical indication

Under the articles 25 and 26 of this Law the use of trademark without consent of its owner is deemed to be the infringement of right to the registered trademark.

The use of trademark, containing geographical indication on wines and spirits without consent of its owner is considered the infringement of right for the registered trademark.

The registration of the trademark for wines and spirits that are constituted by or include a geographical indication designating the wines or the spirits shall be refused or cancelled at the request of an interested party if such wines or spirits are of no relevance to the appellation of origin.

The use of the registered geographical indication by persons without certificate if the indication of the source is used in translated form or accompanied by terms such as "kind", "type", "imitation", or the like, as well as the use of similar indication for products (including wines and spirits) of the same type liable to mislead the consumer as to the geographical origin and particular properties of the product shall be deemed to constitute an infringement of the rights conferred upon the registered owner of the certificate.

Concerning the use of the registered trademark and geographical indication the followings shall be prohibited:

- all acts of such a nature as to create confusion with the goods, rendered service or activities of undertaker;

- false allegations in the course of trade of such a nature as to discredit the goods, rendered service or commercial activities of undertaker;
- indications, which in the course of trade is liable to mislead the public as to the nature, the characteristics, the suitability for their purpose, or the quality of the goods.

Article 33. Consideration of disputes

The following disputes arising from the implementation of this Law shall be settled in the courts in accordance with the procedure laid down in the legislation of the Azerbaijan Republic:

- grant of the certificate of registration of the trademark and geographical indication;
- the infringement of exclusive rights in the trademark;
- premature termination of the effects of registration trademark and geographical indication or invalidation of registration;
- the conclusion and execution of license contracts and contracts of assignment of trademarks;
- the unlawful use of geographical indication.

Concerning the manufacturing of goods or rendered services the undisclosed information of the trademark owner is kept during the consideration of disputes in court.

Article 34. Sanctions for infringement of rights

Any person, who unlawfully uses a trademark and geographical indication, either fully or in part, shall be to discontinue the unlawful use and recompense the damage caused to the owner of the trademark.

When the unlawful use of the registered sign is considered in the court proceeding, the court may decide to discontinue the said use and to compensate for inflicted damages, also to destroy unlawfully used signs, means and equipment destined for the manufacture thereof as well as counterfeited goods (in the case where the unlawfully used signs cannot be removed from the goods).

Any person who displays a notice of reserved rights alongside a trademark and geographical indication that is not registered in the Azerbaijan Republic shall be liable to the sanctions provided for in the legislation of the Azerbaijan Republic.

All goods that unlawfully bearing a trademark and geographical indication shall be seized on importation into the Azerbaijan Republic, excluding transit goods, and seizure shall take place on the demand of the public prosecutor, the court, the respective body of executive power or any interested party in conformity with the Azerbaijan Republic legislation.

Seizure shall be ordered in the case of direct or indirect use of false indications as to the origin of goods or the identity of the undertaker in conformity with legislation of the Azerbaijan Republic.

The owner of the trademark or his licensee shall have the right to file with customs a substantiated request to detain goods unlawfully bearing his sign while in transit across the

border of the Azerbaijan Republic and to disclose the name of the consignor and the quantity of infringing goods.

Where the person requesting the detention of the goods has not furnished a court order for an infringement seizure or proof of initiated court procedure and a monetary guarantee to cover storage expenses, the goods may only be detailed for a period not exceeding 15 days.

Where as a result of unjustified seizure the owner of the goods in transit has sustained damages, the guilty party shall pay him a commensurate compensation.

When the quality of goods is unlike than original goods the person who illegally used trademark or geographical indication shall bear responsibility under the legislation of the Azerbaijan Republic.

Chapter VI Final provisions

Article 35. Payment of State fee

For registration of a trademark and geographical indication, grants of appropriate certificates and the carrying out of other legal acts shall be paid state fee in the order, specified by the legislation of the Azerbaijan Republic.

Article 36. Rights of foreign legal entities and natural persons

Foreign legal entities and natural persons shall enjoy the rights concerning trademarks and geographical indications in the same way as legal entities and natural persons of the Azerbaijan Republic, unless otherwise specified in the international treaties to which the Azerbaijan Republic is party.

Article 37. Responsibility for the infringement of Law

Legal entity and natural persons infringing this Law bear responsibility under the legislation of the Azerbaijan Republic.

The President of Azerbaijan Republic
Heydar ALIYEV

Baku, June 12, 1998.
No.: 504-1Q