

# LAW FOR THE MARKS AND THE GEOGRAPHIC NAMES

*Prom. SG. 81/14 Sep 1999, corr. SG. 82/17 Sep 1999, amend. SG. 28/1 Apr 2005, amend. SG. 43/20 May 2005, amend. SG. 94/25 Nov 2005, amend. SG. 105/29 Dec 2005, amend. SG. 30/11 Apr 2006, amend. SG. 73/5 Sep 2006, amend. SG. 96/28 Nov 2006, amend. SG. 59/20 Jul 2007, amend. SG. 36/4 Apr 2008, amend. SG. 12/13 Feb 2009, amend. SG. 32/28 Apr 2009, amend. SG. 19/9 Mar 2010, amend. SG. 80/12 Oct 2010*

## Chapter one. GENERAL PROVISIONS

### Subject

Art. 1. This law shall provide the conditions and the order for registration of the marks and the geographic names, the rights ensuing from it and the protection of these rights.

### Application field

Art. 2. (1) The provisions of this law shall be applied with regard to Bulgarian individuals and corporate bodies as well as with regard to foreign individuals and corporate bodies from states participating in international agreements party to which is the Republic of Bulgaria.

(2) With respect to foreign individuals and corporate bodies from other states this law shall be applied under the conditions of mutuality which shall be assessed by the Patent Office.

### Representation

Art. 3. (1) Any person who in compliance with this law has the right to implement activities before the Patent Office shall be able to do so personally or by a local representative of industrial property.

(2) (amend. SG 43/05) The persons of para 1 who do not have permanent address or headquarters in the Republic of Bulgaria shall implement activities before the Patent Office by a local representative of industrial property.

### Fees

Art. 4. (suppl. SG 43/05; amend. - SG 73/06, in force from 06.10.2006; amend. – SG 19/10, in force from 10.03.2011) The Patent Office shall collect fees for application, priority, examination, opposition fees, registration, issuing certificates, renovation of registration, entries, rectification of mistakes, appeals against decisions for refusal of registration, for termination of the registration proceedings and against opposition decision, registration cancellation and revocation fees, extension of terms, publications of the application, the registration and the entries, submission of application for international registration, forwarding of applications for Community mark, information about declared mark or geographic name and information and extracts from the state registers in extent determined with a tariff approved by the Council of Ministers.

### State register of the marks

Art. 5. (amend. – SG 19/10, in force from 10.06.2010) The State register of the marks shall be kept and maintained by the Patent Office and shall contain:

1. number and filing date of the application for registration of a mark;
2. an image of the mark;
3. type of the mark;
4. information for claimed priority – date and country of the priority application, as well as information about exhibition priority, if claimed;

5. list of the goods and/or services, for which there is application filed or a mark registered, and the class number according to the International Classification;
6. number of the official bulletin of the Patent Office and the date of publication of the application;
7. registry number and date of registration;
8. number of the official bulletin of the Patent Office and the date of publication of the registration;
9. term of validity of the registration;
10. unprotected components;
11. protected colours;
12. name and address of the applicant, respectively of the holder of the trademark;
13. name and address of the industrial property representative, if authorized;
14. renewal of the registration;
15. legal status of the mark;
16. information of filed opposition – filing date, filing person and opposition decisions that have entered into force;
17. information of pending procedures for revocation or cancellation of the registration of the mark – the date of filing, applicant, decision in force;
18. other information – change of name/address of the holder of the trademark, transfer of the right in a mark, contractual licenses, securities, registered pledges, bankruptcy.

#### **State Register of Well-Known Marks or Marks with Reputation**

Art. 5a. (new - SG 73/06, in force from 06.10.2006; revoked – SG 19/10, in force from 10.03.2011)

#### **State register of the geographic names**

Art. 6. (amend. – SG 19/10, in force from 10.06.2010) The state register of the geographical indications shall be kept and maintained by the Patent Office and shall contain:

1. the geographical indication and designation of its type – appellation of origin or geographical designation;
2. application number and filing date;
3. registry number and date of registration;
4. number of the class and a list of goods and classes according to the International Classification;
5. name and address of the user/users;
6. name and address of the industrial property representative, if authorized;
7. description of the boundaries of the geographical area, of the established qualities or specifics of the goods and their relation to the geographical environment or to the geographical origin;
8. number of the official bulletin of the Patent Office and the date of publication of the registration;
9. legal status of the registration;
10. change of name and/or address of the registered users.

#### **Access to the state registers**

Art. 7. (suppl. - SG 73/06, in force from 06.10.2006; amend. – SG 19/10, in force from 10.03.2011) The State Registers under Art. 5 and 6 shall be public and shall be published on the Internet site of the Patent Office. They shall be kept on a paper carrier and as an electronic database, operated by an information system. Anybody shall be able to request information or excerpt from their content.

#### **File**

Art. 8. (1) (suppl. – SG 19/10, in force from 10.03.2011) The Patent Office shall maintain a file on paper or electronic carrier for each mark and geographical indication including all the documentation of the registration and the subsequent enterings.

(2) (suppl. – SG 19/10, in force from 10.03.2011) The Patent Office shall concede to third parties

information about declared mark or geographic name in a way as specified in the instruction by the chairman.

(3) The information under para 2 shall contain only these data that are published if the mark or the name are registered.

## **Chapter two. MARKS**

### **Section I. Registration**

#### **Definition**

Art. 9. (1) The mark shall be a sign capable to distinct the commodities or the services of one person from these of other persons and could be graphically presented. Such signs could be words, including names of persons, letters, numbers, drawings, forms, the form of the commodity or its packing, combination of colours, sound or any combinations of such signs.

(2) A mark shall be a trade mark, mark for services and certificate mark.

#### **Acquisition of right over a mark**

Art. 10. (1) The right over a mark shall be acquired through registration assumed from the date of submitting the application.

(2) The right to registration shall belong to the first applicant.

(3) The right over a mark shall be an exclusive one.

#### **Absolute Grounds for Refusal of Registration (title amend. - SG 73/06, in force from 06.10.2006)**

Art. 11. (1) Not registered shall be:

1. a sign that is not a mark in the sense of art. 9, para 1;
2. (amend. SG 43/05) a mark with no distinctive character;
3. (suppl. SG 43/05) a mark consisting exclusively of signs and indications that have become usual in the spoken language or in the established commercial practice in the Republic of Bulgaria with regard to the declared goods or services;
4. (amend. SG 43/05) a mark consisting exclusively of signs or marks indicating the kind, the quality, the quantity, the designation, the geographic origin, the time or the method of production of the commodities, the way of rendering the services or other characteristics of the commodities or the services;
5. a sign consisting exclusively of:
  - a) the form ensuing from the nature of the commodity itself;
  - b) the form of the commodity which is necessary for achieving technical result;
  - c) the form rendering significant value of the commodity;
6. a mark contradicting with the public order or the good ethics;
7. a mark that could mislead the users about the nature, the quality or the geographic origin of the commodities or the services;
8. (amend. SG 43/05; suppl. – SG 19/10, in force from 10.06.2010) a mark consisting of or including emblems, banners or other symbols, as well as their imitations of member-countries of the Paris convention, as well as emblems, banners or other symbols, abbreviations or names of international intergovernmental organisations announced under Art. 6ter of the Paris Convention;
9. (new – 19/10, in force from 10.06.2010) a mark containing signs, emblems or coat of arms other

than those announced under Art. 6ter of the Paris Convention and representing significant public interest;

10. (revoked – SG 43/05; prev. text of Item 09 – SG 19/10) a mark consisting of or including official signs and stamps for control and guarantee when they are designated for indicating identical or similar commodities;

11. (amend. SG 28/05, amend. SG 94/05) a mark consisting of or including the name or the image of historic or cultural monuments of the Republic of Bulgaria determined by the Ministry of Culture;

12. (revoked – SG 43/05; new – SG 19/10, in force from 10.03.2011) mark exclusively consisting of applied or registered geographical indication, effective on the territory of the Republic of Bulgaria, or derivatives thereof;

13. (new – SG 19/10, in force from 10.03.2011) mark containing applied or registered geographical indication, effective on the territory of the Republic of Bulgaria, or derivatives thereof, when the applicant is not a registered user of the geographical indication.

(2) The provisions of para 1, items 2, 3 and 4 shall not be applied when the mark as a result of use has acquired distinguishing character with respect to the commodities or the services about which it has been declared.

(3) (amend. SG 43/05; amend. – SG 19/10, in force from 10.06.2010) The provisions of para 1, item 8, 9, 10 and 11 shall not be applied at consent by the corresponding competent body.

#### **Relative Grounds for Refusal of Registration (title amend. - SG 73/06, in force from 06.10.2006)**

Art. 12. (1) (amend. – SG 19/10, in force from 10.03.2011) In case of opposition filed under Art. 38b shall not be registered a mark:

1. (suppl. – 19/10, in force from 10.03.2011) which is identical with an earlier mark when the commodities or the services of the declared one and of the earlier mark are identical.

2. (suppl. – SG 19/10, in force from 10.03.2011) when, due to its identity or similarity with an earlier mark and the identity or the similarity of the commodities or the services of the two marks there is a probability for confusion of the users including the opportunity for connection with the earlier mark;

3. (revoked – SG 19/10, in force from 10.03.2011)

(2) (amend. – SG 19/10, in force from 10.03.2011) An earlier mark in the sense of para 1 shall be:

1. a mark with earlier filing date of the application or earlier priority, registered under this Law;

2. an applied mark with earlier filing date or earlier priority, in case being registered under this Law;

3. a mark registered under the Madrid Agreement or the Protocol with earlier date of registration or earlier priority and acknowledged effect on the territory of the Republic of Bulgaria;

4. a mark registered under the Madrid Agreement or the Protocol with earlier date of registration or earlier priority in case its effect being acknowledged on the territory of the Republic of Bulgaria;

5. a Community mark with earlier filing date of the application or earlier priority, or earlier seniority for the territory of the Republic of Bulgaria, acknowledged under the order of Regulation (EC) No 207/2009 of the Council of 26 February 2009 regarding the Community trademark (OJ, L 78/1 of 24 March 2009), hereinafter referred to as "Regulation (EC) No 207/2009";

6. an applied Community mark with earlier filing date of the application or earlier priority, or earlier seniority for the territory of the Republic of Bulgaria, acknowledged under Regulation (EC) No 207/2009, in case it being registered under this Regulation;

7. a mark which is widely known on the territory of the Republic of Bulgaria by the date of submitting an application for a mark, respectively by the date of priority.

(3) (amend. SG 43/05) A mark identical with or similar to an earlier mark and designated for commodities or services which are not identical with or similar to these for which the earlier mark has been registered when the earlier mark is well-known on the territory of the Republic of Bulgaria and the use of the declared mark would lead to unfair benefits from the distinctive character or the popularity of

the earlier mark or will degrade them, shall not be registered.

(4) The provisions of para 1, item 2 and para 3 shall not be applied upon consent by the owner of the earlier mark.

(5) (new – SG 19/10, in force from 10.03.2011) In case of opposition filed by the actual holder of a mark, no mark shall be registered, if filed by the agent or the representative of the actual holder without the consent of the latter.

(6) (new – 19/10, in force from 10.03.2011) In case of opposition filed by the actual holder of a non-registered mark used in the commercial activity on the territory of the Republic of Bulgaria, no mark shall be registered which filing date is later than the date of the actual commercial use of the non-registered mark.

## **Section II.**

### **Contents of the exclusive right in a mark (title amend. - SG 73/06, in force from 06.10.2006)**

#### **Content of the right over a mark**

Art. 13. (1) The right over a mark shall include the right of its owner to use it, to dispose with it and to prohibit to third parties to use without his consent in the commercial activity a sign that:

1. is identical with the mark for commodities or services identical with these for which the mark has been registered;

2. (suppl. SG 43/05) because of its identity or similarity with the mark and the identity or similarity of the commodities or the services of the mark and the sign there is probability for confusion of the users including a possibility for connecting the sign with the mark;

3. (amend. SG 43/05) is identical with or similar to the mark for commodities or services which are not identical or similar to these for which the mark has been registered when the earlier mark is well-known on the territory of the Republic of Bulgaria and the use of the sign will derive without grounds benefits from the distinguishing character or the popularity of the mark or damages them.

(2) (amend. SG 43/05; amend. - SG 73/06, in force from 06.10.2006) Use in the commercial activity in the sense of Para 1 shall be:

1. putting the sign over the commodities or their packing;

2. offering of the commodities with this sign for sale or releasing them on the market or preservation with this purpose as well as offering or presenting services with this sign.;

3. import or export of the commodities with this sign;

4. the use of the sign in commercial papers and advertisements.

(3) (amend. - SG 73/06, in force from 06.10.2006) The exclusive right shall have effect with respect to third parties in good faith after the date of publication of the registration.

#### **Restriction of the right over a mark**

Art. 14. The owner of the right over a mark cannot prohibit a third person to use in the commercial activity, under the condition that the use does not contradict with the good commercial practice:

1. his name or address;

2. instructions concerning the kind, the quality, the quantity, the designation, the value, the geographic origin, the time of production of the commodities or of rendering the services or other characteristics of the commodities or services;

3. the mark when it is necessary to be pointed out the designation of the commodities or the services and in particular in their quality of accessories or spare parts.

#### **Depletion of the right over a mark**

Art. 15. (1) (amend. - SG 73/06, in force from the date of accession of the Republic of Bulgaria to the

European Union) The owner of a right in a mark cannot prohibit its use for commodities placed on the market in the Member States of the European Union, respectively of the European Economic Area, with this mark by him or with his consent.

(2) The provision of para 1 shall not be applied when there are grounded reasons the owner to obstruct to following sales especially when the status of the commodities has been changed or degraded after they have been released on the market.

#### **Joint ownership of right over mark**

Art. 16. (1) The right over a mark can be ownership of two or more persons.

(2) Each co-owner can use it without the consent of the other and without reporting about this except other has been agreed between them in writing.

#### **Pointing out of the registration**

Art. 17. The owner of the mark shall be able to point out its registration putting close to it the Latin letter R in a circle.

#### **Including a mark in reference materials**

Art. 18. When the including of a mark in dictionaries, encyclopaedias or other reference materials creates the impression that the mark represents the generic name of the commodities or the services for which it has been registered, the owner has the right to oblige the publisher at latest in the following edition of the corresponding material to clarify that this is a registered mark.

#### **Obligation to use the mark**

Art. 19. (1) When in five years term after the date of registration the owner has not started really to use the mark on the territory of the Republic of Bulgaria in connection with the commodities and the services for which it has been registered or the use has been terminated for continuous period of five years the registration can be repealed if there is no grounded reason for not using it.

(2) As real use in the sense of para 1 apart from the use under art. 13, para 2, shall also be considered:

1. the use of the mark by its owner in a form not differing significantly from the form in which the mark has been registered;
2. putting the mark over the commodities or over the packing in the Republic of Bulgaria regardless of the fact that they are designated only for export.

(3) The use of the mark with the consent of the owner shall be considered as use by him.

#### **Term of effect of the registration**

Art. 20. (1) The term of effect of the registration shall be ten years after the date of submitting the application.

(2) The registration can be renewed unlimited for following periods of ten years by the order of art. 39.

### **Section III.**

#### **Disposition with the right over a mark**

##### **Transfer of the right over a mark**

Art. 21. (1) The right over a mark can be transferred regardless of the transfer of the commercial enterprise for all or for part of the commodities or services for which it has been registered.

(2) In case of joint ownership the right over a mark shall be transferred with written consent of all co-owners except other has been agreed between them.

(3) (amend. – 19/10, in force from 10.06.2010) The transfer shall be entered by one of the parties in

the State register with application to which a document for transfer shall be attached. A certificate shall be issued to the new owner.

(4) (amend. SG 43/05) When from the transfer document it is obvious that due to the transfer of the mark there is probability the users to be misled about the nature, the quality or the geographic origin of the goods or the services the transfer shall not be entered except the commodities or the services are restricted to these for which there is no such probability.

(5) (amend. – SG 19/10, in force from 10.06.2010) The transfer shall have effect with regard to third parties from the date of entry into the State register.

(6) All the documents about which the owner has to be informed shall be sent to the person entered last as owner in the State register.

(7) The provisions of para 1, 2 and 4 shall also be applied for transfer of applications for registration.

### **License contract**

Art. 22. (1) The owner of a right over a mark shall be able to permit its use for all or for part of the commodities or services for which it has been registered, and for part or for the whole territory of the Republic of Bulgaria with a license contract in writing.

(2) A permission for use of a mark which is joint ownership shall be given with written consent of all co-owners except other has been agreed between them.

(3) The license could be exclusive or non exclusive. When other has not been agreed the license shall be considered non exclusive.

(4) The grantor of an exclusive license shall not have the right to concede licenses with the same subject to other persons. He shall have the right to use the mark if this has been explicitly agreed.

(5) (amend. SG 43/05; amend. – SG 19/10, in force from 10.06.2010) The license contract shall be entered in the State register at application by one of the parties to which an excerpt of it shall be attached containing the identification data of the license grantor and of the licensed, data about the mark and its register number, the term of the contract and has been affixed with the signatures and the seals of the parties. The Patent Office shall issue certificate for the entering.

(6) (suppl. – SG 19/10, in force from 10.06.2010) The license contract shall have effect with regard to third persons from the date of its entry into the State register.

### **The right over the mark as subject of security**

Art. 22a. (new – SG 43/05; amend. – 19/10, in force from 10.06.2010) (1) The right in a mark can be subject of security in presented or future claim. The court of claim of the interested person without notifying the other party shall admit also any of the following securing measures:

1. prohibition for use of the rights over the mark by the owner or the licensed party;
2. prohibition for disposing with the rights over the mark by the owner or by the licensee of an exclusive license.

(2) The imposition of a security measure under Para 1 shall be carried out immediately by the bailiff by virtue of the security order of the court.

(3) The bailiff shall impose the security measure under Para 1 by sending a notification regarding its imposition to the holder of the mark.

(4) The security admitted by the court shall be entered in the State register of the marks upon application by one of the parties in the claim. The application must contain data about the owner of the mark and the person in whose favour the security has been admitted, data about the mark and of the securing measure. To the application shall be attached document with which the securing is admitted.

(5) The security under Para 1 - 4 shall have effect with regard to the holder of the mark or the licensee of an exclusive license from the date of receiving the imposition notification and in respect of third persons - from the date of entry of the security into the State register of the marks.

### **The right over the mark as subject to special pledge**

Art. 22b. (new – SG 43/05) (1) The right over the mark can be subject to special pledge.

(2) For entering the special pledge in the State register of the marks shall be applied the provisions of art. 26 – 31 of the Law of special pledges. To the pledger a certificate shall be issued certificate.

(3) (amend. – SG 19/10, in force from 10.06.2010) The pledge shall have effect with regard to third persons from the date of entering in the State register of the marks in the Patent Office.

### **Including of the right over the mark in the bankruptcy estate**

Art. 22c. (new – SG 43/05) (1) The right over the mark shall be included in the bankruptcy estate at formation of insolvency procedure of its owner.

(2) (amend. – SG 19/10, in force from 10.06.2010) When the mark is included in the bankruptcy estate this fact shall be entered in the state register of the marks upon application by one of the parties in the case and this shall be published in the official bulletin of the Patent Office.

## **Section IV.**

### **Termination of the effect of the registration, repealing and deleting of the registration**

#### **Termination of the effect of the registration**

Art. 23. (1) The effect of the registration shall be terminated:

1. with the elapse of the term of art. 20;
2. with refusal by the owner;
3. with termination of the corporate body - owner without legal succession.

(2) (amend. SG 43/05; amend. – 19/10, in force from 10.06.2010) The termination of para 1, item 3 shall be implemented at request by any person.

(3) With the termination of the effect of the registration the right over the mark shall be extinguished.

#### **Termination of the registration of marks in which is included geographic denote**

Art. 23a. (new – SG 43/05) The registration of marks in which geographic denote is included shall be terminated when:

1. is terminated the legal protection of the geographic denote;
2. is deleted the registration of the geographic denote; or
3. is revoked the entering as user of the geographic denote of the owner of the mark.

#### **Refusal of right**

Art. 24. (1) The owner shall be able to refuse his right over a mark for all or for part of the commodities or the services for which it has been registered, with a written declaration to the Patent Office.

(2) The refusal shall have effect from its entering into the State register.

(3) When there is entered license contract the refusal of right shall be entered after the owner presents a proof that he has informed the licensed person about his intention to refuse the right over the mark. The entering shall be implemented after the elapse of a two months term after presenting of the proof.

(4) The refusal of one or more co-owners of the right over a mark shall not lead to termination of the effect of the registration with regard to the rest of the co-owners.

#### **Repealing of the registration**

Art. 25. (1) (amend. SG 43/05) The registration of a mark shall be repealed at request by any person when:

1. the measure has not been used according to art. 19;
2. as a result of an action or lack of action of the owner the mark has become usual indication of the

commodity or the service for which it has been registered;

3. the use of the mark by the owner or by another person with his consent for the commodities or the services for which it has been registered is in a way misleading the users about the nature, the quality or the geographic origin of the commodities or the services.

(2) The provision of para 1, item 1 shall not be applied if the owner has started or renewed its real use in the period between the elapse of the five year term and the submission of the requirement for repealing. The start or the renewal of the use in three months term before submitting the requirement for repealing shall not be taken in mind if the preparation for use or renewal has been implemented after the owner has learned that such requirement can be submitted.

(3) When the requirement for repealing refers to part of the commodities or services the registration shall be repealed for only these commodities or services.

### **Deletion of the registration**

Art. 26. (1) (amend. SG 43/05; amend. – SG 19/10, in force from 10.03.2011) The registration of a mark shall be deleted when it has been implemented in violation of art. 2 and 11.

(2) When the mark has been registered in contradiction with art. 11, para 1, item 2, 3 and 4 the registration shall not be deleted if the owner proves that as a result of the use the mark has acquired distinction for the commodities or the services for which it has been registered.

(3) (amend. SG 43/05; amend. and suppl. – SG 19/10, in force from 10.03.2011) The registration of a mark shall be deleted also when:

1. the mark has been registered in contradiction with art. 12;

2. (revoked – SG 43/05)

3. the mark has been registered on behalf of an agent or representative of the owner without his consent;

4. the applicant has acted not in good faith at submitting the application which has been established with a court decision entered into force;

5. the use of the mark shall be possible to be prohibited on the basis of earlier right of third person which right benefits protection under other law and in particular:

a) right to name and portrait;

b) copyright;

c) right of selectionist over the name of a variety or breed;

d) right to industrial property.

6. (new – SG 43/05) the mark consists of or contains the firm of other person, which firm has been registered and used in the Republic of Bulgaria before the date of submitting the application for registration in connection with identical or similar goods or services.

(4) (new – SG 19/10, in force from 10.03.2011) The request under Para 1 may be filed by any person.

(5) (new – SG 19/10, in force from 10.03.2011) The request under Para 3 may be filed by the following persons:

1. under Item 1 – by the persons referred to in Art. 38b, Para 1 that have not exercised their right to file an opposition under Art. 38b or their opposition was rejected as inadmissible;

2. under Items 3 and 4 – by the actual holder of the mark;

3. under Item 5 – by the holder of the earlier right;

4. under Item 6 – by the merchant claiming that his firm consists of or is contained in the mark.

(6) (prev. text of Para 04, amend. – SG 19/10, in force from 10.03.2011) The registration of a mark shall be possible to be officially deleted by the Patent Office when it is registered in contradiction with art. 11.

(7) (prev. text of Para 05 – SG 19/10, in force from 10.03.2011) In the cases of para 3, item 1 the registration shall not be deleted if the earlier mark has not been used according to art. 19.

(8) (amend. SG 43/05; prev. text of Para 06, amend. – 19/10, in force from 10.03.2011) In the cases of para 3, item 3 the registration shall not be deleted and the mark shall be transferred to the person with

legal interest at his request.

(9) (amend. SG 43/05; prev. text of Para 07 – SG 19/10, in force from 10.03.2011) In the cases of para 3, items 1 and 5 the registration shall not be deleted if in the court procedures for deleting is presented the consent of the person with the earlier right, respectively with earlier right.

(10) (prev. text of Para 08 – 19/10, in force from 10.03.2011) When the basis for deleting refer to part of the commodities of services the registration shall be deleted only for these commodities or services.

#### **Restriction as a result of inaction**

Art. 27. (1) When the owner of a right over an earlier mark in the sense of art. 12, para 2 has endured for five subsequent years the use of later mark knowing about this use, he shall not have the right to require deleting of the registration or to obstruct the use of the later mark on the basis of his earlier mark with regard to the commodities or services for which the later mark has been used except when the application for registration of the later mark has unconscionably been submitted.

(2) The provision of para 1 shall also be applied with regard to an owner of right over an earlier mark according to art. 12, para 3 or earlier right according to art. 26, para 3, item 5.

(3) In the cases of para 1 and 2 the owner of the right over the later mark shall not have right to obstruct the use of the earlier mark despite its owner cannot benefit his rights and require deleting of the later mark.

#### **Legal consequences of the repealing or deleting of the registration**

Art. 28. (1) The repealing of the registration of a mark under art. 25, para 1, item 1 shall have effect from the beginning of the five years period of non use.

(2) The repealing of the registration of a mark under art. 25, para 1, items 2 and 3 shall have effect from the date of submitting the request for repealing.

(3) The deleting of the registration of a mark shall have effect from the date of submitting the application.

(4) The repealing and the deleting of the registration shall not affect:

1. decisions about claims for breaches as far as they have been implemented before the repealing or the deleting;
2. license contracts as far as they have been fulfilled before the repealing or the deleting except other has been agreed;

### **Section V.**

#### **Collective and certificate marks**

##### **Collective marks**

Art. 29. (1) (suppl. SG 43/05) The collective mark shall be a mark - ownership of an association of producers, traders or persons rendering services which is a corporate body. It shall distinct the commodities or the services of the members of the association from the commodities or the services of other persons.

(2) The association shall obligatory approve Rules for the use of the collective mark containing: data about the persons who can use the mark; conditions for membership in the association; conditions for use of the mark and grounds due to which a member of the association can prohibit its use.

(3) The right over a collective mark shall not be possible to be transferred. Persons who are not members of the association shall not be able to receive a permission for using it.

##### **Certificate marks**

Art. 30. (1) (amend. SG 43/05) A certificate mark shall certify the material, the way of producing, the quality or other characteristics of the commodities or the services produced or offered by persons with the permission and under the control of the owner of the mark.

(2) (amend. SG 43/05) The owner of the mark shall obligatory approve Rules for use of the certificate mark containing: instructions about the quality, the quantity, the material or other characteristics of the commodities or services; the measures for control that the owner of the certificate mark exercises and the sanctions imposed by him.

(3) The owner of a certificate mark shall not be able to use it for indication of the commodities or services produced by him.

(4) The registration of a certificate mark shall be possible to be repealed when its owner has used the mark for indication of commodities produced or services or rendered by him.

### **Special provisions (title amend. SG 43/05)**

Art. 31. (1) The owner of a collective or certificate mark shall present at the Patent Office the rules for using and all the changes thereof. These changes shall have effect after the presentation at the Patent Office.

(2) The registration of a collective or certificate mark shall be possible to be repealed apart from under art. 25 also when the owner of the mark has permitted or endured use in contradiction with the rights to use.

(3) A collective or certificate mark which registration has been repealed or terminated shall be an impediment for the registration of an identical or similar mark for identical or similar commodities or services on behalf of another person within three years term after the publication of the repealing or the deleting.

(4) (new – SG 43/05) The Patent Office shall concede access to the rules for using the collective and the certificate marks.

## **Section VI. Procedures at the Patent Office**

### **Application**

Art. 32. (1) (amend. – 19/10, in force from 10.03.2011) The application for registration of a mark shall be submitted to the Patent Office directly, by post, by fax or electronically. When the application was filed electronically no identification through a unique identification of the applicant or of the industrial property representative, or electronic signature in the sense of the Law on the Electronic Document and the Electronic signature shall be necessary.

(2) The application must refer to one mark designated for commodities and/or services of one or more classes of the International classification.

(3) The application shall contain:

1. the requirement for registration;
2. the name and the address of the applicant;
3. the image of the mark, and
4. the name of the commodities and/or the services for which the registration is required.

(4) When the application refers to a collective or certificate mark apart from the documents of para 3 shall be applied also the rights for use.

(5) The application shall meet also other requirements established with an ordinance approved by the Council of Ministers.

(6) A document for paid fees shall be attached to the application.

(7) The documents and the data in the application shall be presented in Bulgarian language.

### **Date of submission**

Art. 33. (1) As date of submission of the application shall be considered the date on which at the Patent Office have been received the documents containing the data according to art. 32, para 3 and 4.

(2) (amend. – 19/10, in force from 10.03.2011) When the documents are presented in other language the date of submission shall be preserved if in two months term after this date they are presented in Bulgarian.

### **Right to priority**

Art. 34. (1) Right to priority of the applicant before applications for identical or similar marks designated for identical or similar commodities or services submitted later shall be recognised from the date of submitting the application at the Patent Office according to art. 33, para 1.

(2) Right to priority of the applicant shall be recognised from the date of previous application under the condition that:

1. the previous application has been submitted in a member country of the Paris convention or of the World Trade Organisation;
2. the previous application is first application in the sense of art. 4 of the Paris convention and it is for the same mark and for the same commodities or services;
3. the application shall be submitted at the Patent Office in six months term after the date of submitting the previous application;
4. the claim for priority has been made in two months term after the date of submitting the application pointing out the date and the county of the previous application, and
5. in three months term after the date of submitting the application the applicant pays fee for priority and presents priority document issued by the competent bodies of the country where the previous application has been submitted.

(3) A regularly submitted application of para 2, item 1 shall be an application which has an established date of submission regardless of the subsequent development.

(4) Right to exhibition priority of the applicant shall be recognised from the date of exhibiting the commodities or the services indicated with the claimed mark at an official or officially recognised exhibition under the condition that:

1. the application has been submitted in six months term after the date of the first exhibiting of the commodities or services;
2. the application is for the same mark and for the same exhibited commodities or services;
3. the claim for priority has been made in two months term after the date of submitting the application pointing out the date of exhibiting and the country where the exhibition has been organised, and
4. in three months term after the date of submitting the application the applicant pays fee for priority and presents document issued by the administration of the exhibition proving the date of exhibiting of the commodities or the services indicated with the claimed mark.

### **Claim for colour**

Art. 35. (revoked – SG 19/10, in force from 10.06.2010)

### **Formal expertise**

Art. 36. (1) (amend. – SG 19/10, in force from 10.03.2011) A check shall be made for each application whether the requirements of art. 33 for establishing the date of submission have been met. When these requirements have not been met the application shall be deemed as if it has not been filed.

(2) (amend. SG 43/05; amend. and suppl. – SG 19/10, in force from 10.03.2011) For each application with established date of submitting shall be checked whether document for paid fees under art. 32, para 6 has been attached. When the document has not been attached to the applicant shall be given

one-month term to remove the defect. Within one month from the expiry of this term the fees may be paid double the amount. If in this term the fees are not paid the application shall be considered withdrawn.

(3) (new – SG 43/05; amend. – SG 19/10, in force from 10.03.2011) In two months term after presenting the document for paid fees expertise shall be implemented at which is checked whether the requirements of art. 32, para 2, 5 and 7 are fulfilled. When the application refers to collective or certificate mark shall be checked the compliance of the rules for use with the requirements of art. 29, para 2, respectively art. 30, para 2. When defects are established to the applicant shall be given two months term to remove them.

(4) (prev. (3), amend. SG 43/05) When the application does not meet the requirements of art. 32, para 2 and in the term of para 3, third sentence the applicant divides the application the separated applications shall preserve the date of submission, respectively the priority of the initial application.

(5) (prev. (4), amend. SG 43/05) When in the term of para 3, third sentence the applicant does not remove the shortcomings the procedure shall be terminated.

### **Publication of the application**

Art. 36a. (revoked – SG 19/10, in force from 10.03.2011)

### **Objections against the registration of the mark**

Art. 36b. (revoked – SG 19/10, in force from 10.03.2011)

### **Expertise in essence**

Art. 37. (1) (amend. SG 43/05, in force from 21.08.2005; amend. – SG 19/10, in force from 10.03.2011) An examination under Art. 11 shall be carried out within three months from the end of the formal examination or from the publication of the international registration in the Official Bulletin of the Patent Office.

(2) When there is ground for refusal of the registration of all or part of the commodities or services the applicant shall be informed pointing out all the motives for the refusal and a 3-months term shall be given for objections.

(3) (amend. SG 43/05, in force from 21.08.2005; amend. – SG 19/10, in force from 10.03.2011) When the mark contains a component lacking distinctive features, and when the inclusion of that component in the mark may cause doubts regarding the scope of protection of the mark, the applicant may be asked, as a condition for registration, to declare that he will not claim exclusive rights regarding the said component.

(4) (amend. – SG 19/10, in force from 10.03.2011) When in the term of para 2 the applicant fails to reply, to make grounded objections and/or fails to restrict the list of the commodities or services, a decision for full or partial refusal shall be taken. In case of partial refusal the applicant may file a request for dividing the application within two months from receiving the decision or during the appellation procedure against the decision.

(5) (revoked – SG 19/10, in force from 10.03.2011)

### **Stopping of the procedure**

Art. 37a. (new – SG 43/05, in force from 21.08.2005; revoked – SG 19/10, in force from 10.03.2011)

### **Withdrawal, restricting and changes of the application**

Art. 38. (1) (suppl. – 19/10, in force from 10.06.2010) Till the decision about the application is made the applicant shall be able to withdraw it or to restrict the list of commodities or services for which the mark has been applied. When the applicant withdraws his application, a decision for termination of the procedure shall be delivered.

(2) In the application shall not be possible to be entered changes except when there are changes of the name or the address of the applicant or corrections of admitted mistakes are to be made of the name or the address of the applicant and obvious mistakes under the condition that these changes do not affect the sign or do not extend the list of the commodities or services.

(3) (amend. – SG 19/10, in force from 10.06.2010) The changes under para 2 shall be implemented at request by the applicant.

### **Objections by third parties**

Art. 38a. (new – SG 19/10, in force from 10.03.2011) (1) Within three months from the date of publication of the application any natural or legal person, as well as associations representing manufacturers, producers, providers of services, merchants or consumers, may file an objection against the registration of a mark on the grounds of Art. 11.

(2) The objection shall be filed in writing and shall be grounded and reasoned.

(3) The person that has filed the objection shall not be deemed participant in the registration procedure.

(4) The objection shall be sent to the applicant who may state his opinion thereto.

(5) The objection shall be decided upon by the opposition department.

### **Opposition against the registration**

Art. 38b. (new – SG 19/10, in force from 10.03.2011) (1) The holder of an earlier mark in the sense of Art. 12, Para 2 and 3, the exclusive licensee of an earlier mark, the actual owner of a non-registered mark, used in commercial activity on the territory of the Republic of Bulgaria and applied for registration, as well as a holder of a mark, applied for by an agent or representative of the holder without the consent of the latter, may file an opposition on the grounds of Art. 12, Para 1 against:

1. the registration of a mark, applied for under this Law;

2. the recognition of the effect of an international registration on the territory of the Republic of Bulgaria.

(2) The opposition under Para 1, Item 1 shall be filed within three months from the publication of the applied mark in the official bulletin of the Patent Office.

(3) The opposition under Para 1, Item 2 shall be filed between the 6th and the 9th month after the publication of the international registration in the official bulletin of the Patent Office.

(4) The opposition shall be filed in two copies, it shall be reasoned, shall contain information of the filing person, of the opposed mark, the legal grounds it is based on, and shall be accompanied by evidence, if necessary. When the opposition is based on a well-known mark or on a mark with reputation, it shall be accompanied by evidence of its well known status or reputation.

(5) The opposition shall be accompanied by a document for paid fees.

(6) The applicant of the opposed mark shall be notified in case of opposition under Para 1, Item 1.

(7) The International Bureau shall be notified in case of opposition under Para 1, Item 2.

### **Check of the admissibility and the formal validity of the opposition**

Art. 38c. (new – 19/10, in force from 10.03.2011) (1) Each opposition shall be checked for compliance with the requirements of Art. 38b, Para 1, 2 and 3.

(2) Any opposition not filed within the time limit, and/or lacking paid fees within the time limit under Art. 38b, Para 2, or not filed by a person under Para 1 shall be inadmissible and shall not give rise to a procedure, of which the filing person shall be notified.

(3) Each admissible opposition shall be checked for compliance with the requirements of Art. 38b, Para 4 and where deficiencies have been found the filing person shall be notified and given a two-month time limit for correcting them. Where the deficiencies are not corrected within the time limit, a decision for terminating the procedure shall be taken.

### **Opposition proceedings**

Art. 38d. (new – SG 19/10, in force from 10.03.2011) (1) The opposition shall be considered by panels of the opposition department consisting of three experts, one being the chairman of the panel.

(2) One of the copies of the opposition, together with the evidence, shall be sent to the applicant of the mark being opposed. Simultaneously, a notification shall be sent to the both parties that they are provided a three-month time limit to reach an agreement commencing from the date of sending the notification. This time limit may be extended twice by three months at request in writing signed by the parties.

(3) When the parties submit an agreement on the dispute according to Para 2, the proceedings shall be terminated.

(4) When no agreement has been submitted within the time limit under Para 2, the applicant of the opposed mark shall be provided a two-month time limit to respond to the opposition. If the applicant of the opposed mark fails to respond within that time limit, a decision based on the opposition and the supplied evidence shall be delivered.

(5) The response of the applicant of the opposed mark shall be sent to the person that has filed the opposition and the latter shall be provided one month to state his opinion.

(6) At the request of the applicant of the opposed mark, the person that has filed the opposition shall present evidence for genuine use of the earlier mark during the 5 years preceding the publication of the application of the opposed mark, or evidence for the reasons justifying the lack of use, provided that the earlier has been registered at least 5 years before the date of filing the opposition. The person that has filed the opposition shall be provided a two-month term to furnish such evidence. If no such evidence has been furnished, a decision for rejecting the opposition as groundless shall be taken.

(7) The request under Para 6 shall be made at the first opportunity given to the applicant to respond to the opposition.

(8) Within 6 months from the exchange of correspondence between the parties the panel from the opposition department shall consider the opposition, the opinion of the applicant of the opposed mark and of the person that has filed the opposition, as well as the supplied evidence, if available, and shall deliver a decision.

(9) When the opposition is unfounded, a decision for its rejection shall be taken.

(10) When the opposition is founded, a decision shall be taken for partial or full refusal to register the opposed mark.

(11) The order for drawing up, filing and considering oppositions shall be determined in an ordinance of the Council of Ministers.

### **Suspension of the proceedings**

Art. 38e. (new – 19/10, in force from 10.03.2011) (1) The opposition proceedings shall be suspended at the request of the applicant of the opposed mark, when a request for cancellation, revocation or termination under Art. 23, Para 1, Item 3 of the registration of the earlier mark.

(2) The opposition proceedings shall be suspended ex officio, when the opposition is based on an earlier mark in the sense of Art. 12, Para 2, Items 2, 4 or 6, or on a mark, for which the term for filing a request for renewal of the registration under Art. 39, Para 3 has not expired, or when the decision on the opposition depends of the preliminary ruling on a question within the competence of another authority.

(3) The proceedings under Para 1 shall be resumed at the request of the applicant of the mark after entry into force of the decision on the aforementioned request or upon entry of the termination in the State Register of the Marks.

(4) The proceedings shall resume ex officio upon entry into force of the decision on the earlier application that serves as basis of the opposition, upon expiration of the term under Art. 39, Para 3, or upon decision of the competent authority.

### **Registration**

Art. 38f. (amend. – SG 19/10, in force from 10.03.2011) (1) Within one month from the expiration of the term under Art. 38b, Para 2 or 3, if no opposition has been filed or the opposition has been fully or partially rejected as unfounded in a decision that has entered into force, the applicant shall be notified to pay fees for registration, publication and issue of certificate and shall be granted one month to make the payment. The fees shall be due double the amount if paid within one month after the expiration of the initial time limit.

(2) When the fees have been paid, a decision for registration of the mark shall be taken within one month. The mark shall be entered into the State Register of the Marks, published in the Official Bulletin of the Patent Office and a certificate of registration shall be issued to the applicant.

### **Delivery of decisions**

Art. 38g. (new – SG 19/10, in force from 10.03.2011) (1) The decisions on applications for registration of marks shall be taken by a state expert, who shall also carry out the correspondence regarding the application.

(2) The decisions on filed oppositions shall be taken by a panel under Art. 38d, Para 1 chaired by a state expert.

### **Renewal of the registration**

Art. 39. (1) (amend. – SG 19/10, in force from 10.06.2010) The registration of a mark shall be renewed at the request of the owner accompanied with a document for paid fee.

(2) (amend. – SG 19/10, in force from 10.06.2010) The request shall contain the registration number of the mark and the identification data of the owner.

(3) (amend. – SG 19/10, in force from 10.06.2010) The request shall be possible to be submitted in the last year of the term of art. 20, para 1 or till six months after the expiration of this term against payment of additional fee.

(4) (amend. – SG 19/10, in force from 10.06.2010) When the owner requires renewal of the registration for only part of the commodities or services for which it has been registered in the request shall also be pointed out for which commodities or services the renewal is required.

(5) (Amend. – SG 43/05) When the requirements of para 1, 2 and 3 are not observed, the registration of the mark shall not be renewed.

(6) The renewal shall have effect from the day following the date when the previous registration expires.

### **Changes of the name and the address of the owner**

Art. 40. (1) (amend. – SG 19/10, in force from 10.06.2010) The owner or the applicant of a mark shall be obliged to notify the Patent Office about each change of the name and the address in three months term.

(2) The change shall be entered in the State register at request by the owner.

(3) All documents about which the owner is to be notified shall be sent to the address entered last in the State register.

### **Changes of the mark**

Art. 41. (1) Changes shall not be possible to be made in the mark shall during the effect of the registration or its renewal.

(2) (amend. – 19/10, in force from 10.06.2010) When the mark includes the name and the address of the owner any change thereof shall be possible to be made at request by the owner under the condition that it does not significantly affect the mark as it has been registered.

### **Considering disputes**

Art. 42. (1) The division for disputes shall consider:

1. (amend. SG 43/05) appeals against decisions for refusal of registration under art. 37, para 5;
2. appeals against decisions for termination of the procedure under art. 36, para 4;
3. (new – SG 19/10, in force from 10.03.2011) appeals against decisions of the oppositions department under Art. 38c, Para 3 and Art. 38d, Para 6, 9 and 10;
4. (prev. text of Item 03 – SG 19/10, in force from 10.03.2011) applications for repealing the registration under art. 25;
5. (prev. text of Item 04 – SG 19/10, in force from 10.03.2011) requirements for deleting the registration under art. 26.

(2) (suppl. SG 43/05; amend. - SG 73/06, in force from 06.10.2006) The boards considering the appeals shall include two state experts and a lawyer, and the boards considering the requests - three state experts and two lawyers. The boards shall be appointed by the chairman of the Patent Office

(3) (amend. SG 43/05) The boards of para 2 shall prepare statements for taking the decisions of art. 45 and 46.

(4) (new – SG 19/10, in force from 10.03.2011) The order for considering disputes shall be determined in an ordinance of the Council of Ministers.

### **Terms**

Art. 43. (1) The appeal shall be submitted in three months term after notifying the decision.

(2) The requirement shall be possible to submitted during the whole period of effect of the registration

(3) (revoked – SG 43/05)

### **Contents of the appeals and the requirements**

Art. 44. (1) The appeal shall be grounded and shall contain data about the claimant and the application.

(2) (amend. SG 43/05) The requirement shall be submitted in two copies and shall contain data about the applicant, data about the legal interest of the applicant when this is required, motives for the deletion as well as proofs when necessary.

(3) (amend. SG 43/05) To the appeals and the applications shall be attached document for paid fee.

### **Check for admissibility and formal regularity of the appeal and the requests**

Art. 44a. (new – SG 43/05) (1) For each appeal shall be checked whether the term of art. 43, para 1 has been observed and whether document for paid fee under art. 44, para 3 has been presented.

(2) For each request shall be checked whether document for paid fee under art. 44, para 3 has been presented and whether there is legal interest when such is required.

(3) When to the appeal or the request document for paid fee has not been presented or in the request the legal interest is not grounded, to the applicant shall be given one month term to remove the defects.

(4) Appeals that are not submitted in the term of art. 43, para 1 and/or fee has not been paid as well as request for which fee has not been paid and/or legal interest has not been proven, shall be inadmissible and procedure for them shall not be formed.

(5) For each admissible appeal and request shall be checked whether it meets the remaining requirements of art. 44. When defects are established the applicant, respectively the requestor shall be notified and he shall be given one month term for removing them. For appeals and requests the defects in have not been removed in this term the procedure shall be terminated.

### **Decisions about the claims**

Art. 45. (1) (amend. SG 43/05; amend. and suppl. – SG 19/10, in force from 10.06.2010) When the appeal is unfounded shall be delivered a decision for confirmation of the decision for refusal of the registration or the decision for termination of the procedure.

(2) (amend. SG 43/05; amend. and suppl. – 19/10, in force from 10.06.2010) When the appeal is

eligible the decision shall be revoked and a decision for return of the application for repeated considering, for registration of the mark or for renewal of the procedure shall be delivered.

(3) (amend. – SG 19/10, in force from 10.06.2010) When a decision for refusal is repealed at second consideration of the application shall be taken a decision on the merits.

(4) (new – SG 19/10, in force from 10.06.2010) The decisions under Para 1 – 3 shall be taken by the chairman of the Patent Office or a deputy chairman authorized by him.

(5) (new – SG 43/05; prev. text of Para 04 – SG 19/10, in force from 10.06.2010) The decisions of para 1 and 2 shall be decreed in three months term after the submitting of the appeal or from the removal of the established in it defects.

### **Procedures for the requirements**

Art. 46. (1) (amend. SG 43/05; suppl. – SG 19/10, in force from 10.06.2010) One copy of the request shall be sent to the owner of the right over the mark and three months term shall be given for objection and when the request is under art. 25, para 1, item 1 – also for presenting of proofs for use of the mark on the territory of the Republic of Bulgaria. When the request is filed under Art. 26, Para 3, Item 4 and is accompanied by a decision in force establishing that the applicant has acted in bad faith when filing the application, a decision for cancellation of the mark shall be taken without sending a copy of the request to the holder of the mark.

(2) (new – SG 43/05) The objections or the proofs for use of the mark shall be sent to the applicant and he shall be given one month term for statement.

(3) (new – SG 43/05) The board of art. 42, para 2 may require from the parties additional proofs and materials if necessary. They shall be presented to the other party for written statement in one month term.

(4) (prev. (2) – SG 43/05; amend. and suppl. – SG 19/10, in force from 10.06.2010) When the request is unfounded a decision for its rejection shall be taken.

(5) (prev. (3) – SG 43/05; amend. and suppl. – SG 19/10, in force from 10.06.2010) When the request is found eligible a decision for full or partial repealing or deleting of the registration shall be taken.

(6) (new – SG 19/10, in force from 10.06.2010) The decisions under Para 1, 4 and 5 shall be taken by the president of the Patent Office or a deputy president authorized by him.

(7) (prev. (4) – SG 43/05; prev. text of Para 06 – SG 19/10, in force from 10.06.2010) In the cases of partial repealing or partial deleting of the registration the issued certificate for registration shall be substituted by a new one.

(7) (new – SG 43/05; prev. text of Para 07, amend. – SG 19/10, in force from 10.06.2010) The decisions on the requests for revoking of deletion shall be decreed in six months term and after the collecting of proofs and the materials of para 3 has finished.

### **Stopping of the procedure**

Art. 46a. (new – SG 43/05) (1) The procedure for appeal shall be stopped in connection with it request has been submitted for deletion or revoking of the registration of the earlier mark.

(2) The procedure for request for deletion shall be stopped when adverse request has been submitted for revoking of the registration of the earlier mark.

(3) The procedure of para 1 and 2 shall be renewed after the entering into force of the decision on the respective request.

### **Extension of terms**

Art. 47. (amend. SG 43/05; amend. – 19/10, in force from 10.03.2011) The terms of art. 36, para 3, art. 37, para 2, Art. 38c, Para 3 and Art. 38d, Para 4 and 6 may be extended once by the same period of time at the request of the applicant or the holder, filed before their expiration. The request shall not be granted when a document for paid fee has not been attached to it.

### **Restoration of terms**

Art. 48. (amend. – SG 19/10, in force from 10.06.2010) Terms missed due to special unpredicted circumstances shall be possible to be restored at request by the applicant or the owner. The request shall be submitted in three months after the reason for missing the term is not valid but not later than one year after the elapse of the missed term. The decision for restoration shall be taken by the chairman of the Patent Office.

### **Publication in the official bulletin of the Patent Office**

Art. 49. (suppl. - SG 73/06, in force from 06.10.2006; amend. – SG 19/10, in force from 10.03.2011) The Patent Office shall publish in its official bulletin each registered mark and the subsequent entries regarding it not later than three months after the entering in the State register of marks.

### **Judicial control**

Art. 50. (1) (amend. - SG 30/06, in force from 01.03.2007) The decisions of art. 45, para 1 and of art. 46 shall be possible to be appealed before the Administrative court – city of Sofia in three months term after the notification.

(2) (amend. - SG 30/06, in force from 12.07.2006) The refusals for entering in the state registers and the refusal for renewal of registration shall be possible to be appealed against by the order of the Administrative procedure code.

## **Section VII.**

### **Well-Known Mark and Mark with Reputation (new - SG 73/06, in force from 06.10.2006)**

#### **Determination of a Mark as Well-Known or with Reputation**

Art. 50a. (new - SG 73/06, in force from 06.10.2006) (1) In determining whether a mark is well-known or with reputation the following circumstances shall be taken into account:

1. degree of knowledge or recognition of the mark in the relevant sector of the public which includes the actual or potential consumers of the goods or the service, the persons involved in the distribution network and the business circles dealing with the given type of goods or services;
2. duration, extent and geographical area of use of the mark;
3. duration, extent and geographical area of public promotion of the mark, including advertising, publicity or presentation, at fairs or exhibitions, of the goods and/or services to which the mark applies;
4. data of successful enforcement of rights in the mark if it is registered;
5. value of the mark;
6. other circumstances.

(2) Determination whether a mark is well-known or with reputation shall be carried out by:

1. the Sofia City Court according to the general order for the claims;
2. (amend. – 19/10, in force from 10.03.2011) the Patent Office in case of filed opposition or request for cancellation of a registration.

#### **Procedure of Determination of a Well-Known Mark or a Mark with Reputation**

Art. 50b. (new - SG 73/06, in force from 06.10.2006; revoked – SG 19/10, in force from 10.03.2011)

## **Chapter three. GEOGRAPHIC NAMES**

### **Section I.**

## **Registration**

### **Definition**

Art. 51. (1) Geographic name shall be understood as name for origin and geographic indication.

(2) The name for origin is the name of a country, region or certain locality in this country serving to indicate a commodity originating there and which qualities or characteristics are due primarily or exclusively to the geographic environment including natural and human factors.

(3) Geographic indication is the name of a country, region or certain locality in this country serving for indication of a commodity originating there and with quality, popularity or other characteristic that could be attributed to this geographic origin.

(4) (new – 43/05) As geographic indication shall be considered also traditional names meeting the requirements of para 2 and 3.

### **Grounds for refusal of registration**

Art. 52. As geographic name shall not be registered an indication which:

1. has turned on the territory of the Republic of Bulgaria into a generic name of commodities of certain kind without being connected with the place of production;
2. is identical with the name of an earlier protected variety of plants or breeds of animals when there is a probability the users to be misled about the true origin of the commodity;
3. is identical with a geographic name or mark registered earlier for identical goods;
4. is identical or similar with a geographic name or mark registered earlier for identical or similar commodities when there is a probability the users to be misled.

### **Legal protection**

Art. 53. (1) The legal protection of the geographic name shall be rendered with the registration at the Patent Office.

(2) The legal protection shall comprise prohibition for:

1. any use in the commercial activity of the geographic name for commodities that are similar to the commodity for which it has been registered as far as it exploits the popularity of the protected name;
2. incorrect use or imitation of geographic name even if the true origin of the commodity has been noted or its use in translation or together with expressions as "origin", "kind", "type", "imitation" etc.;
3. use of any other incorrect or misleading indication with regard to the source, the origin, the nature or the essential qualities of the commodity pointed out on the packing, in advertising materials or documents connected with the commodity which indication could create incorrect impression about its origin;
4. other activities that could mislead the users about the true origin of the commodity.

(3) The registered geographic names cannot be turned into generic names until they benefit the protection of this law.

### **Right to declaration**

Art. 54. (1) The right to declaring shall belong to each person implementing production activity at the defined geographic place and the commodity produced complies with the established qualities and peculiarities.

(2) The boundaries of the geographic place and the qualities and peculiarities of the commodities as well as the connection of these qualities and peculiarities with the geographic environment or with the geographic origin shall be determined and established by the corresponding central department with an order by its chief.

### **Right to use**

Art. 55. (1) A registered geographic name shall be possible to be used only by a person entered as its user.

(2) The entered user shall be able to use the geographic name only for the commodity for which it has been registered. He shall be able to put it only on the commodities or their packing, in advertising materials, on commercial papers connected with the commodity or on other documents.

#### **Termination of the legal protection**

Art. 56. The legal protection of the registered geographic name shall be terminated when the link between the qualities or the peculiarities of the commodity with the geographic environment stops to exist.

#### **Deleting of the registration**

Art. 57. (1) (amend. SG 43/05) The registration of the geographic indication shall be deleted at request of person with legal interest when:

1. it has been implemented in breach of art. 51, para 2 and 3, which has been established with entered into force court decision;

2. it has been implemented in breach of art. 52, items 2, 3 and 4.

(2) The registration of a foreign geographic name shall be deleted when it is deleted in the country of origin.

#### **Ex officio registration (Title amend. – SG 80/10)**

Art. 57a. (amend. – 80/10) (1) The registration of the geographic indication or foodstuff shall be carried out by the Patent Office ex officio, when the geographic indication of the agricultural product or foodstuff is entered in the European Register of Agricultural Products and Foodstuffs with Protected Geographic Indications.

(2) The registration under Para 1 shall be carried out in respect of persons entered in the group referred to in Art. 5, paragraphs 1 of Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs. Where national protection has been already granted, only the new holders shall be entered.

(3) The Ministry of Agriculture and Food shall notify the Patent Office about the entering into records of the agricultural product or foodstuff is entered in the European register of agricultural products and foodstuffs with protected geographic indications. The registration shall take place within one month after the notification.

(4) The notification under Para 3 shall contain the names and addresses of the persons under Para 2, the geographical indication of agricultural product or foodstuff, the description of the boundaries of the geographical location and description of the qualities or characteristics of the agricultural product or foodstuff and their connection with the geographical environment or with the geographical origin.

#### **Repealing of the entering of a user**

Art. 58. The entering of a user shall be repealed at request of any entered user when by claim order is established that the user uses the geographic name for indication of other commodities or the commodities produced by him do not have the established qualities or peculiarities.

#### **Legal consequences of the deleting or repealing**

Art. 59. (1) The deleting of the registration shall have effect from the date of submission of the application.

(2) The repealing of the entering of a user shall have effect from the date of submission of the requirement for repealing.

(3) The deleting or the repealing shall not affect decisions about claims for breaches entered into force

as far as they have been fulfilled before the deleting or repealing.

## **Section II. Procedures at the Patent Office**

### **Submitting of application**

Art. 60. (1) (amend. – 19/10, in force from 10.03.2011) The application for registration of a geographic name shall be submitted at the Patent Office directly, by post, by fax or electronically. When the application was filed electronically, no identification by unique identifier of the applicant or his industrial property representative, neither electronic signature in the sense of the Law on the Electronic Document and the Electronic Signature, shall be obligatory.

(2) The application must refer to only one geographic name.

(3) The application shall contain:

1. the requirement for registration;
2. the name and the address of the applicant;
3. the name for origin or the geographic indication;
4. pointing out of the commodity;
5. description of the boundaries of the geographic place, and
6. description of the established qualities or peculiarities of the commodity and their connection with the geographic environment or the geographic origin.

(4) To the application shall be attached a copy of the order of art. 54, para 2 and a certificate of the corresponding municipality that the applicant implements production activity at the defined geographic place.

(5) When the applicant is a foreign person to the application shall be attached a document for registration of the geographic name in the country of origin.

(6) The application shall meet also other requirements established with an ordinance approved by the Council of Ministers.

(7) To the application shall be attached a document for paid fees.

### **Formal expertise**

Art. 61. (1) For each application shall be checked whether the requirements of art. 60 have been implemented. When defects are found to the applicant shall be given three months term to remove them.

(2) When in the term of para 1 the applicant does not remove the defects the procedure shall be terminated.

### **Expertise in essence**

Art. 62. (1) For each application complying with the requirements for formal regularity an expertise in essence shall be implemented in 18 months term.

(2) When there are grounds for refusal of the registration of geographic name the applicant shall be notified pointing out all the motives for the refusal and 3 months term for objections shall be conceded.

(3) When in the term of para 2 the applicant does not present grounded objections a decision for refusal of the registration shall be taken.

(4) When it is established that the geographic name meets the requirement of the law a decision for registration shall be taken. The geographic name shall be entered into the State register of the geographic names. The applicant shall be entered as user and a certificate for use of the geographic name shall be issued to him in one month term.

### **Entering of a user of registered geographic name**

Art. 63. (1) (suppl. – SG 19/10, in force from 10.03.2011) Any person who has the right to apply shall be able to submit an application for entering as user of a registered geographic name. The application shall be filed with the Patent Office directly, by post, by fax or electronically. When the application was filed electronically, no identification by unique identifier of the applicant or his industrial property representative, neither electronic signature in the sense of the Law on the Electronic Document and the Electronic Signature, shall be obligatory.

(2) The application shall contain:

1. the requirement for entering as user;
2. the name and the address, and
3. the geographic name and the registration number.

(3) To the application shall be attached a certificate from the corresponding municipality that the applicant is implementing his production activity at the determined geographic place and a certificate issued by the corresponding central department that the commodities produced by the applicant comply with the characteristics or peculiarities established for the geographic name.

(4) To the application shall be attached a document for paid fees.

(5) For each application shall be checked whether the requirements of para 1, 2, 3 and 4 have been fulfilled. When shortcomings are established to the applicant shall be given three months term for removing them

(6) When in the term of para 5 the applicant does not remove the shortcomings a decision for terminating the procedure shall be taken.

(7) When the application for entering meets the requirements of para 1, 2, 3 and 4 the applicant shall be entered in the State register of the geographic names as user and a certificate for using geographic name shall be issued to him.

#### **Procedure at the disputes division**

Art. 64. (1) The disputes division shall consider:

1. appeals against decisions for refusal of the registration of art. 62, para 3;
2. appeals against decisions for termination of the procedure of art. 61, para 1 and of art. 63, para 6.
3. (new – SG 43/05) the requests for deleting under art. 52, items 2, 3 and 4.

(2) (amend. SG 43/05) The appeals shall be submitted and considered by the order of art. 42, 43, 44 and 44a.

(3) (new – SG 43/05) The requests shall be submitted and considered by the order of art. 42, 43, 44, 44a and 46.

#### **Pronouncing on the appeals and the requests (title amend. SG 43/05)**

Art. 65. (1) (amend. SG 43/05) When the appeal is ungrounded the chairman of the Patent Office shall decree decision for confirmation of the decision for refusal of registration.

(2) (amend. SG 43/05) When the appeal is grounded the chairman of the Patent Office shall revoke the decision for returning the application for repeated considering or for registration.

(3) When a decision for refusal is repealed at the second considering of the application a decision in essence shall be taken by the chairman of the Patent Office..

(4) (new – SG 43/05) When the request is ungrounded the chairman of the Patent Office shall decree decision for rejecting it.

(5) (new – SG 43/05) When the request is grounded the chairman of the Patent Office shall decree decision for deletion of the registration.

#### **Extension and restoration of terms**

Art. 66. (1) (amend. SG 43/05; amend. – 19/10, in force from 10.06.2010) At request of the applicant submitted before the elapse of the terms of art. 61, para 2, art. 62, para 2 and art. 63, para 5

these terms shall be possible to be extended with three months one time. The request shall not be respected when a document for paid fee is not attached to it.

(2) (amend. – 19/10, in force from 10.06.2010) Terms missed due to special unpredicted circumstances shall be possible to be restored at request by the applicant or the user. The request shall be submitted in three months term after the reason for missing the term is not valid any more but not later than one year after the elapse of the missed term. The decision for restoration shall be taken by the chairman of the Patent Office.

#### **Publication in the official bulletin**

Art. 67 The Patent Office shall publish in its official bulletin all registered geographic names and the subsequent changes connected with them.

#### **Judicial control**

Art. 68. (suppl. SG 43/05; amend. - SG 30/06, in force from 01.03.2007) The decisions of art. 65, para 1, 4 and 5 shall be possible to be appealed against before the Administrative court – city of Sofia.

### **Chapter four. INTERNATIONAL REGISTRATION**

#### **International registration of the marks**

Art. 69. (1) (amend. SG 43/05) International registration of a mark shall be registration implemented by the International Bureau of the World organization for industrial property called hereinafter "the International bureau" by the order of Madrid agreement and the Protocol.

(2) The international registration of a mark in which the Republic of Bulgaria is pointed out shall have the same effect as if this mark has been directly declared and registered in the Republic of Bulgaria. It shall have effect from the date of the international registration or from the date of registration of the territorial extension.

(3) (amend. SG 43/05) The protection of the international mark in the Republic of Bulgaria shall be possible to be refused in the terms provided by the Madrid agreement and the Protocol.

(4) (amend. – SG 19/10, in force from 10.06.2010) The owner of international registration of mark in effect on the territory of the Republic of Bulgaria who has earlier national registration of the same mark shall be able with a request to the Patent Office, accompanied with a document for paid fee to require the international registration to be considered as substituting the national one preserving all the rules acquired from the national registration.

#### **International registration of national marks**

Art. 70. (1) (amend. SG 43/05) Any individual or corporate body of the Republic of Bulgaria or permanent address or with actual commercial activity in the country who is an owner of a mark registered under this law shall be able to submit application for international registration.

(2) The application shall be submitted through the Patent Office to the International bureau.

(4) The fees for international registration shall be paid by the applicant at the International bureau.

#### **International registration of names for origin**

Art. 71. (1) International registration of a name for origin shall be registration implemented by the International bureau by the order of the Lisbon agreement.

(2) International registration of a name for origin where the Republic of Bulgaria is pointed out shall have the same effect as if this name has been directly declared and registered in the Republic of Bulgaria. This name cannot turn into a generic one until it benefits protection in the country of origin.

(3) Protection of an international name for origin in the Republic of Bulgaria shall be possible to be refused within the term provided in the Lisbon agreement.

#### **International registration of Bulgarian names for origin**

Art. 72. (1) Entered user of a registered name for origin shall be able to submit an application for international registration.

(2) The application shall be submitted through the Patent Office to the International bureau.

(3) The fees for international registration shall be paid by the applicant at the International bureau.

### **Chapter four.**

## **"A" COMMUNITY MARK (NEW - SG 73/06, IN FORCE FROM THE DATE OF ACCESSION OF THE REPUBLIC OF BULGARIA TO THE EUROPEAN UNION)**

#### **Registration and Effect of the Community Mark**

Art. 72a. (new - SG 73/06, in force from the date of accession of the Republic of Bulgaria to the European Union) (1) (amend. – SG 19/10, in force from 10.06.2010) Community mark shall be a mark which is registered in the Office for Harmonization in the Internal Market (trade marks and designs) in accordance with the conditions and the order of Regulation (EC) No 207/2009.

(2) The Community mark shall have effect on the territory of the Republic of Bulgaria and its owner shall have the rights under this Law.

(3) The Community mark shall be considered earlier in the sense of Art. 12, Para 2.

(4) (amend. – SG 19/10, in force from 10.06.2010) The Patent Office of the Republic of Bulgaria shall be a central industrial property office of a Member State in the sense of Regulation (EC) No 207/2009.

(5) (amend. – SG 19/10, in force from 10.06.2010) The President of the Patent Office shall issue certificates on the entry of industrial property representatives before the Office for Harmonization in the Internal Market (trade marks and designs) and undertake the necessary actions thereof according the requirements of the Regulation (EC) No 207/2009.

#### **Applications for Community Mark**

Art. 72b. (new - SG 73/06, in force from the date of accession of the Republic of Bulgaria to the European Union) (1) (amend. – SG 19/10, in force from 10.06.2010) An application for a Community mark shall comply with the requirements of Art. 26 of the Regulation (EC) No 207/2009.

(2) An application for a Community trade mark shall be filed at the Office for Harmonization in the Internal Market (trade marks and designs) or through the Patent Office.

(3) Where the application was filed through the Patent Office, it shall be accompanied by a document of paid fees for its forwarding.

(4) The Patent Office shall place a date of receipt and shall forward the application to the Office for Harmonization in the Internal Market (trade marks and designs) within a term of two weeks after receiving it.

#### **Conversion of a Community Mark into a National Application**

Art. 72c. (new - SG 73/06, in force from the date of accession of the Republic of Bulgaria to the European Union) (1) (amend. – SG 19/10, in force from 10.06.2010) The applicant for or proprietor of a Community mark may request the conversion of his application or registration into application for national registration of a mark in the Republic of Bulgaria under the conditions of Art. 112 – 114 of the Regulation (EC) No 207/2009.

(2) (amend. – 19/10, in force from 10.06.2010) Where the request referred to in Para 1 was admitted by the Office for Harmonization in the Internal Market (trade marks and designs) and was transmitted to

the Patent Office, the Patent Office shall notify the applicant or the holder of the Community mark that it will consider the request, if within two months the applicant files:

1. a translation of the documents in Bulgarian language;
2. representations of the mark;
3. documents of paid fees for application and expertise;
4. a local industrial property representative.

(3) As date of filing of the application under Para 1 shall be considered the date of filing or the priority date of the application for the Community mark.

### **Enforcement of the Community Mark**

Art. 72d. (new - SG 73/06, in force from the date of accession of the Republic of Bulgaria to the European Union) (1) (amend. – SG 19/10, in force from 10.06.2010) The civil legal protection at infringement of the rights in a Community mark shall be carried out according to the order established by the Regulation (EC) No 207/2009.

(2) (amend. – SG 19/10, in force from 10.06.2010) In case that, according to the Regulation, claims and measures related to the protection of the Community mark shall be filed and requested in the Republic of Bulgaria, the Bulgarian legislation shall be applied as long as otherwise provided by the Regulation (EC) No 207/2009.

(3) (amend. – SG 19/10, in force from 10.06.2010) The claims referred to in Para 2 shall be under the jurisdiction of the Sofia City Court as first instance and of the Sofia Appellative Court as second instance which shall be deemed Community mark courts in the sense of the Regulation (EC) No 207/2009.

### **Subsidiary Application of the Decisions**

Art. 72e. (new - SG 73/06, in force from the date of accession of the Republic of Bulgaria to the European Union; amend. – 19/10, in force from 10.06.2010) In respect of cases not regulated by this Law the provisions of the Regulation (EC) No 207/2009 shall be applied.

## **Chapter five.**

### **PROTECTION OF THE RIGHTS OVER MARKS AND GEOGRAPHIC NAMES**

#### **Section I. Breaches**

##### **Breach of the right of a registered mark**

Art. 73. (1) The use of a sign in the commercial activity in the sense of art. 13 without the consent of the owner shall constitute a breach.

(2) A breach shall constitute also:

1. putting the mark on material designated to be used for labelling or packing, for commercial papers or for advertising of commodities or services if the persons implementing these activities knows or has grounds to consider that the putting the mark is without the consent of the owner;
2. the working out of a means especially designated or adapted for multiplication of the mark or for preservation of such means if the person implementing these activities knows or has grounds to consider that these means serves or will serve for production of goods or materials of para 1 without the consent of the owner.

##### **Breach of registered geographic name**

Art. 74. (1) The use of registered geographic name under art. 53, para 2 shall constitute a breach.

(2) A breach shall constitute also the use registered geographic name by a person who has not been entered as its user.

## **Section II.** **Civil legal protection**

### **Right to claim**

Art. 75. (1) (amend. - SG 73/06, in force from 06.10.2006) The owner of right in a mark or the licensee of exclusive license shall have independent right to claim against a breach.

(2) (revoked – SG 73/06, in force from 06.10.2006)

(3) The one received not exclusive license shall be able to present claim only with the consent of the owner unless in the contract other has been provided.

(4) Right to claim shall have each entered user of a registered geographic name.

### **Claims for breach**

Art. 76. (1) The claims for breach of the rights under this law shall be possible to be:

1. for establishing the fact of the breach;

2. for termination of the breach;

3. for indemnification for damages;

4. (new - SG 73/06, in force from 06.10.2006) for seizure and destruction of the goods subject of the breach as well as of the means of its commitment.

(2) (amend. - SG 73/06, in force from 06.10.2006) Simultaneously with the claim of para 1 the claimant may request from the court also:

1. (amend. - SG 73/06, in force from 06.10.2006) the goods subject of the breach to be conceded to him;

2. (new - SG 73/06, in force from 06.10.2006) to be paid the costs related to the preservation and destruction of the goods subject of the breach;

3. (prev. text of item 02, amend. - SG 73/06, in force from 06.10.2006) publishing of the disposition of the court decision to the account of the infringer in two daily newspapers and in a time zone of a television organization of national coverage determined by the court.

### **Determination of the Compensation (title amend. - SG 73/06, in force from 06.10.2006)**

Art. 76a. (new – 43/05; amend. - SG 73/06, in force from 06.10.2006) (1) Compensation shall be due for suffered economic and moral damages and lost profits which are immediate and direct result of the infringement.

(2) When setting the amount of the compensation the court shall take into account all aspects related to the infringement as well as any income made by the infringer as a result of the infringement.

(3) The court shall set a fair compensation which shall have preventing and warning influence on the infringer and the other members of the society.

### **Special Cases of Compensation**

Art. 76b. (new - SG 73/06, in force from 06.10.2006) (1) Where the claim was found to be grounded but not enough data regarding its amount is available, the claimant may claim compensation:

1. from 500 to 100 000 BGN where the exact amount shall be determined by the court under the conditions of Art. 76a, Para 2 and 3, or

2. equal to the retail prices of lawfully produced goods identical with the goods subject of the infringement.

(2) At determination of the compensation referred to in Para 1 the profits received as a result from the infringement shall be taken into consideration.

### **Seizure of Goods, Subject of Infringement**

Art. 76c. (new - SG 73/06, in force from 06.10.2006) Seizure of the goods referred to in Art. 76, Para 1, Item 4 subject of infringement may be requested either for goods located in a certain place, either for goods in the commercial network.

### **Liability**

Art. 76d. (new - SG 73/06, in force from 06.10.2006) Legal persons and sole entrepreneurs shall be subject to civil legal liability for the infringement of rights under this Law committed guiltily by the persons representing them, by their employees or by persons hired by them. In this case the guilt shall be presumed until proven otherwise.

### **Provision of Evidence in Claim or Security Procedures**

Art. 76e. (new - SG 73/06, in force from 06.10.2006) (1) Where the claimant has presented evidence supporting his claims but has also specified evidence of importance of the trial which lies in the control of the opposing party, the court may order that such evidence be presented by the opposing party at the request of the claimant.

(2) The court under the conditions referred to in Para 1, on application by the claimant, may order that the opposing party provides the opportunity for communication of banking, financial or commercial documents under its control.

(3) The claimant shall be obliged not to make available to the public the information contained in the documents referred to in Para 2.

(4) Presenting of evidence of a single or separate use of a mark or geographic name protected by this Law object shall be considered to constitute reasonable grounds for application of the procedures referred to in Para 1 and 2.

(5) The presence of the circumstances related to the claimed infringement may be found also by presenting of evidence of a single or separate unlawful use of a mark or geographic name protected by this Law.

### **Request of Information of the Origin and the Distribution Networks at Infringement**

Art. 76f. (new - SG 73/06, in force from 06.10.2006) (1) The court may order on request by the claimant that information on circumstances of importance for the trial be provided by the opposing party or any third person.

(2) Third person in the sense of Para 1 shall be any person who:

1. possesses infringing goods, or
2. provides services leading to infringement, or
3. uses infringing services, or
4. was indicated by the person referred to in Items 1 - 3 as being involved in the production, manufacture or distribution of these goods or services.

(3) The data referred to in Para 1 may include:

1. he names and addresses of the producers, distributors, suppliers and other previous holders of the goods or services, as well as the intended wholesalers and retailers;
2. data on the quantities produced, delivered, received or ordered, as well as the income obtained for the goods or services in question.

(4) The provision of Para 1 shall apply without prejudice to other statutory provisions.

(5) The provisions of Para 1 and 3 shall apply only to activities performed for direct or indirect economical or commercial benefit.

### **Security Measures**

Art. 76g. (new - SG 73/06, in force from 06.10.2006) (1) (amend. – SG 59/07, in force from 01.03.2008) In case of infringement of a right in a mark or geographic name or where reasonable data to consider that such infringement is about to be committed or some evidence to be lost, destroyed or hidden, the court, on the request by the owner of the right or the licensee of exclusive license, may order some of the following measures without notification of the respondent party:

1. prohibition for implementing actions about which is claimed that constitute or will constitute unlawful use of mark or geographic indication;
2. seizure of the goods about which is claimed that unlawfully bear a mark or geographic name, as well as of other evidence of importance for proving the infringement;
3. seizure from use the material or the means of art. 73, para 2;
4. sealing of the premises about which is claimed that violation is being done or is about to be done.

(2) (amend. – SG 59/07, in force from 01.03.2008) The admitting, imposing and revoking of provisional measures shall be implemented by the order of Art. 389 – 403 of the Civil Procedure Code except Art. 398, first sentence, and without prejudice to the provisions of this Law.

(3) (amend. – SG 59/07, in force from 01.03.2008) The provisional measure prohibition to implement actions shall be imposed with its announcing by the court.

(4) (amend. – SG 59/07, in force from 01.03.2008) The provisional measure of para 1, items 2, 3 and 4 shall be imposed by the court bailiff who performs the action simultaneously with handing over to the defendant of the message for the imposition of the measure within a term of three days from submission of the application of the claimant to the bailiff. The provisional measure admitted for prevention of an infringement about to be committed shall be imposed within a term compliant with its purpose. The seized property shall be handed over after inventory for preservation to the claimant who may use it only as evidence.

(5) (amend. – SG 59/07, in force from 01.03.2008) The claimant or his representative shall have the right to be present and to cooperate at the imposing of the provisional measures.

(6) (amend. – SG 59/07, in force from 01.03.2008) The provisional measure of para 1, items 1 may be imposed also to third persons of whom reasonable data is available that they facilitate the activity that is claimed to be or is about to be unlawful use.

(7) The owner of the right in question or the licensee of exclusive license shall be obliged not to make available to the public the information they have learned at or on the occasion of the measures referred to in Para 1.

### **Jurisdiction**

Art. 77. (amend. - SG 30/06, in force from 01.03.2007; amend. - SG 73/06, in force from 06.10.2006) The claims under this law shall be within the competence of the Sofia City Court.

## **Section III. Measures for border control**

### **Grounds and application sphere**

Art. 78. (1) (amend. SG 43/05) The owner of a right in a mark as well as the licensee of exclusive license may request from the customs bodies to detain goods transferred through the state border of the Republic of Bulgaria about which there is ground to be considered that they infringe a right protected by this Law.

(2) (amend. SG 43/05) The measures of para 1 shall not be applied for commodities:

1. (revoked – SG 73/06, in force from 06.10.2006)
2. (revoked – SG 73/06, in force from 06.10.2006)
3. (amend. - SG 73/06, in force from 06.10.2006) with non-commercial purpose transferred as part of

the luggage of passengers on the condition that they are in quantity determined for duty free import or export;

4. subject to quick perish.

(3) (amend. SG 43/05) The customs bodies shall not detain goods which do not have trade mark identical or similar with this of the applicant.

(4) (revoked – SG 43/05)

(5) (amend. SG 43/05) The provisions of para 1 and 2 shall be applied also for detaining commodities with registered geographic name or its imitation without legal grounds. An application for detaining shall be able to submit any entered user.

(6) (new - SG 73/06, in force from 06.10.2006) The provisions of this Section shall apply to all goods presented before the customs bodies regardless of whether they were placed under customs regime.

### **Conditions for applying border control (title amend. SG 43/05)**

Art. 79. (amend. SG 43/05) (1) The measures for border control shall be applied on the basis of written application by the bearer of the right over the trade mark or the entered in the application use of the geographic indication as well as on initiative of the customs bodies. When the owner of the right over the trade mark or the user of the geographic indication is with permanent address or headquarters out of the country he must point out judicial address on the territory of the Republic of Bulgaria.

(2) The application of para 1 must contain detailed description of the commodities. To it shall be attached copy of the certificate for registration of the mark or the geographic indication and certificate that it is acting, issued by the Patent Office.

(3) For considering the application and for the application of the measures for border control the customs bodies shall collect fees in extent determined by the Council of Ministers.

(4) (amend. - SG 73/06, in force from 06.10.2006) Where they find that the circumstances under Art. 78, Para 1 are present, the customs bodies shall detain the goods. The detention shall be performed with the respective customs document issued by the competent customs bodies. They shall immediately notify the applicant, the sender and the recipient of the goods about the detention. The persons in question shall have the right to examine the detained goods and to receive information thereof.

(5) (amend. - SG 73/06, in force from 06.10.2006) If, within 10 working days of being notified of the detention referred to in Para 4, the applicant does not present evidence that proceedings have been initiated before the respective court to decide on the merits of the case or securing has been admitted, the customs bodies shall release the goods, on the condition that all requirements for issuing customs destination have been met. The period may be extended by 10 working days upon motivated request by the applicant.

(6) (new - SG 73/06, in force from 06.10.2006) The competent bodies before which the procedure under Para 5 has been initiated shall decide upon appeal of the interested persons whether the measures of detention shall be confirmed, amended or revoked.

(7) (new - SG 73/06, in force from 06.10.2006) The refusal of the customs bodies to satisfy the application for detention of the goods shall be subject to appeal before the Sofia City Court according to the order of the Administrative Procedure Code.

(8) (new - SG 73/06, in force from 06.10.2006) The customs bodies shall not bear responsibility when at the control exercised by them they were not able to identify the goods which detention is required as well as for the undertaken by them actions in good faith for the detention of the goods.

### **Actions on Initiative of the Customs Bodies**

Art. 79a. (new - SG 73/06, in force from 06.10.2006) (1) The customs bodies may detain goods suspected to infringe a right protected by this Law on their own initiative or on request by another state body.

(2) In the cases of Para 1 the customs bodies shall immediately notify the persons referred to in Art. 79,

Para 1, the sender and the recipient of the goods and shall provide them the opportunity to examine the detained goods. The customs bodies may request from the right-holders any information for performing an expertise.

(3) The decision referred to in Para 1 may be appealed before the Sofia City Court according to the order of the Administrative Procedure Code.

(4) If, within 10 working days of the detention of the goods, proceedings have not been initiated before the court to decide on the merits of the case or there is no ruling of the court on admitting security, the customs bodies shall release the goods, on the condition that all requirements for issuing customs destination have been met.

(5) The customs bodies shall not be liable of the actions for detention of the goods undertaken by them in good faith.

### **Additional regulating**

Art. 80. The order and the way for implementation of this section shall be determined with an ordinance by the Council of Ministers.

### **Application of Regulation 1383/2003/EC of the Council**

Art. 80a. (new - SG 73/06, in force from the date of accession of the Republic of Bulgaria to the European Union) The provisions of this Section shall apply without prejudice to the provisions of Regulation 1383/2003/EC of the Council concerning customs action against goods found to infringe certain rights protected by this Law.

## **Section IV.**

### **Administrative punitive provisions**

#### **Administrative breaches and penalties**

Art. 81. (amend. SG 43/05) (1) (amend. - SG 73/06, in force from 06.10.2006) Any person using in his commercial activity in the sense of Art. 13 goods or services indicated with a sign identical or similar with a registered mark without the consent of its owner, shall be punished with a fine in extent from 500 to 1500 levs and the sole proprietors and the corporate bodies – proprietary sanction in extent from 1000 to 3000 levs.

(2) At repeated implementing of the breach of para 1 shall be imposed fine in extent from 1500 to 3000 levs and to the sole proprietors and the corporate bodies – proprietary sanction in extent from 3000 to 5000 levs.

(3) Repeated is the breach which has been made in one year term after the entering into force of the punitive decree with which the perpetrator has been punished for the same as kind breach.

(4) (revoked – SG 73/06, in force from 06.10.2006)

(5) The goods of para 1, regardless which ownership they are, shall be taken in favour of the state and shall be delivered for destroying, the owner of the mark or a person authorised by him may be present at the destroying.

(6) (revoked – SG 73/06, in force from 06.10.2006; new – SG 19/10, in force from 10.06.2010) Para 1 and 5 shall not apply to goods that are transited through the territory of the Republic of Bulgaria.

#### **Establishing of the breaches**

Art. 82. (new – SG 43/05) (1) (amend. and suppl. – SG 19/10, in force from 10.06.2010) The breaches shall be established with an act which shall be compiled by official, determined with an order by the chairman of the Patent Office, after implementing a check. The cooperation of the bodies of the Ministry of Interior may be requested at the check.

(2) (revoked – SG 19/10, in force from 10.06.2010)

#### **Authorities of the official**

Art. 83. (new – SG 43/05) (1) The official of art. 82, para 1 shall have right to:

1. require access to the sites subject to control;
2. require the necessary documents in connection with the implemented checks and take samples for expert assessment.

(2) The official shall be obliged to:

1. reflect precisely and fully the facts at the implemented check in the act for breach;
2. preserve the official, the production and the trade secret that has become known to him in connection with the implemented checks;
3. do not make public data from the checks;
4. use the information from the checks only for the purposes of the procedure for the breach.

#### **Obligation for cooperation**

Art. 84. (new – SG 43/05) The persons with whom the check of art. 82 is being implemented shall be obliged to:

1. ensure unimpaired access to the checked trade sites, storehouses and production bases and premises;
2. concede the required by the official documents and proofs;
3. preserve the goods left for safe keeping;

render cooperation to the officials on occasion of the implemented check.

#### **Imposing of the administrative penalties**

Art. 85. (new – SG 43/05) The punitive decrees shall be issued by the chairman of the Patent Office or by official, authorized by him.

#### **Fulfillment of the administrative penalties**

Art. 86. (new – SG 43/05) (1) The penalties fine or proprietary sanction shall be fulfilled voluntary in 7 days term after the punitive decree, with which they are imposed enters into force the sum being paid in the cash office or transferred to account of the Patent Office.

(2) (amend. - SG 105/05, in force from 01.01.2006; amend. – SG 12/09, in force from 01.05.2009) After the elapse of the term of para 1 a copy of the punitive decree shall be sent to the National Revenue Agency for compulsory fulfilment of the imposed fine or proprietary sanction by the order of the Tax-insurance Procedure Code.

(3) After entering into force of the punitive decree or the decision of the court the goods, taken in favour of the state shall be delivered for destroying to the bodies of the Ministry of Interior.

#### **Administrative punitive responsibility for breaches of the geographic indication**

Art. 87. (new – SG 43/05) The provisions of this section shall also be applied in the cases of use of registered geographic indication or its imitation without legal ground.

#### **Implementation of the Law of administrative offences and penalties**

Art. 88. (new – 43/05) As far as in this section other is not provided the establishing of the breaches, the issuing, appealing and fulfilment of the punitive decrees shall be implemented by the order of the Law of the administrative offences and penalties.

#### **Additional provisions**

§ 1. In the sense of this law:

1. "Person" is an individual or corporate body.
2. "Local representative of industrial property" is a person who is representative in the sense of art. 3 of the Law for the patents.
3. (amend. SG 43/05) "Well-known mark" is a mark in the sense of art. 6 bis of the Paris convention.
4. "Paris convention" shall be the Paris convention for protection of the industrial property signed in Paris on March 20, 1883 with its amendments and supplements.
5. "Official or officially recognised exhibition" is official or officially recognised exhibition in the sense of the Convention of November 22, 1928 for the international exhibitions organised in the member countries of the Paris convention.
6. "International classification" is the International classification of commodities and services for the objectives of the registration of marks established with the Agreement from Nice of June 15, 1957 with its amendments and supplements.
7. (amend. SG 43/05) "Madrid agreement" is the Madrid agreement for international registration of marks signed in Madrid on April 14, 1891 with its amendments and supplements, ratified with Edict No 4312 of December 3, 1984.
- 7a. (new – 43/05) "Protocol" is the protocol about the Madrid agreement for international registration of the marks, signed on June 27, 1989 in Madrid and ratified with a law by the 38th National Assembly on March 28, 2001
8. "Lisbon agreement" is the Lisbon agreement for protection of the names for origin and their international registration of October 31, 1958 with its amendments and supplements, ratified with Edict No 523 of March 11, 1975.
9. (revoked – SG 19/10, in force from 10.06.2010)
10. "Imitation of geographic name" is a name not differing significantly from a registered one.
11. "Incorrect use of geographic name" is use without legal grounds.
12. (new - SG 73/06, in force from 06.10.2006) "Import and export of goods" means the actual transfer through the border of the Republic of Bulgaria of goods bearing a mark identical or similar to a registered mark or registered geographic name, or its imitation, regardless of whether these goods were placed under customs regime.
13. (new – SG 19/10, in force from 10.06.2010) "Opposition" means the possibility for the persons under Art. 38b, Para 1 to oppose the registration of a mark filed under the order of this Law or to the recognition of the effect of an international registration on the territory of the Republic of Bulgaria.
14. (new – SG 19/10, in force from 10.06.2010) "Agent or representative" for the purpose of Art. 26, Para 3, Item 3 shall be any person acting or obliged to act in the interest of the actual representative of the mark by virtue of legal or factual link with the latter regarding the goods or services, designated with the mark.
15. (new – SG 19/10, in force from 10.06.2010) "Firm" for the purpose of Art. 26, Para 3, Item 6 shall not include the type of the merchant.

§ 1a. (new - SG 73/06, in force from 06.10.2006) The provisions of this Law applicable to the Member States of the European Union shall apply also to the rest of the states of the European Economic Area.

### **Transitional and concluding provisions**

§ 2. (1) This law shall be implemented also for claims for registration of marks and names for origin for

which till the entering into force there is no decision about registration, refusal or deleting.

(2) The claims under art. 17 of the Law for the trade marks and industrial samples found existing shall be considered under the previous order.

(3) The rights under art. 3 of the Law for the trade marks and industrial samples shall be possible to be presented in one year term after this law enters into force at application by the interested persons.

§ 3. The names for origin registered under the Law for the trade marks and industrial samples shall be re-registered under this law in two years term after this law enters into force.

§ 4. This law shall repeal sections I, III, IV and V of the Law for the trade marks and industrial samples (prom. SG 95/67; amend. and suppl. SG 55/75, SG 56/86, SG 27/93).

§ 5. In the Commercial law (prom. SG 48/91; amend. and suppl. SG 25/92, SG 61, 103/93, SG 63/94, SG 63/95, SG 42, 59, 83, 86, 104/96, SG 58, 100, 124/97, SG 52, 70/98, SG 33, 42, 64/99) shall be made the following amendments:

1. In art. 587, para 1 the word "trade" shall be deleted and after the word "mark" shall be added "topology of an integrated circuit".

2. Art. 558 shall be repealed.

3. In the title and in art. 594, para 1 and 2 the words "trade mark" shall be substituted by "mark".

§ 6. In the Penalty Code (prom. ...; amend. ...) art. 227 shall be changed to:

"Art. 227. Who without the consent of the owner uses in the commercial activity a mark, industrial design or topology of integrated circuits shall be punished with imprisonment up to three years or with a fine up to 5 thousand levs."

§ 7. In art. 12, para 3 of the Law for protection of the new varieties and breeds of animals (prom. SG 84/96; amend. SG 27/98) the words "trade mark, name for origin" shall be substituted by "mark, geographic name".

§ 8. In art. 33, para 2 of the Law for protection of the competition (prom. SG 52/98; SG 112/98 - Decision No 22 of the Constitutional Court of 1998) the words "trade mark" shall be substituted by "marks".

§ 9. In §1, item 12, item a) of the Law for the radio and television (prom. SG 138/98; SG 60/99 - Decision No 10 of the Constitutional Court of 1999) the words "trade mark" shall be substituted by "marks".

§ 10. In art. 19, para 2, item 2 of the Law for accounting (prom. SG 4/91; amend. and suppl. SH 26/92, SG 55/93, SG 21, 33, 59/96, SG 52/97, SG 21/98, SG 57/99) the words "company and trade marks" shall be substituted by "marks".

§ 11. In §1, item 18 of the Law for the physical training and sport (prom. SG 58/96; SG 53/97 - Decision No 8 of the Constitutional Court of 1997, amend. SG 124/98, SG 51/99) the words "trade mark" shall be substituted by "mark".

§ 12. In art. 4, item k) of the law for the state fees (prom. ...; amend. ...) shall be changed to:

"k) for issuing patents for discoveries and useful models, for issuing certificates for new varieties of plants and breeds of animals, for registration, renewal, transfer etc. of marks and industrial design, for registration and other geographic names and topology of integrated circuits;"

§ 13. In §1, item 8 of the Law for the corporate income tax levying (prom. ...; amend. ...) the words "trade mark" shall be substituted by "mark".

§ 14. In art. 31, para 1 of the Law for the co-operations (prom. ...; amend. ...) the words "trade marks" shall be substituted by "marks".

§ 15. The Council of Ministers shall approve ordinances for submitting, design and expertise of the applications for registration of marks and geographic names and about the order and the way for application of the measures for border control and tariff for the fees of art. 4.

§ 16. The law shall enter into force 3 months after the promulgation in State Gazette.

§ 17. The implementation of the law shall be assigned to the chairman of the Patent Office.  
The law was passed by the 38th National Assembly on September 1, 1999 and was affixed with the official seal of the National Assembly.

**Transitional and concluding provisions**  
**(SG 43/05, in force from 21.08.2005; amend. - SG 96/06, in force from 01.01.2007)**

§ 43. Applications for registration of marks, for which till this law enters into force has not finished the formal expertise shall be published in compliance with art. 36a.

§ 44. The found requests for revoking of registration shall be considered in compliance with this law.

§ 45. (revoked – SG 96/06, in force from 01.01.2007)

§ 46. The law shall enter into force three months after its promulgation in State Gazette.  
The law was passed by the 39th National Assembly on May 11, 2005 and was affixed with the official seal of the National Assembly.

**Transitional and concluding provisions**  
**TO THE TAX-INSURANCE PROCEDURE CODE**

(PROM. – SG 105/05, IN FORCE FROM 01.01.2006)

§ 88. The code shall enter in force from the 1st of January 2006, except Art. 179, Para 3, Art. 183, Para 9, § 10, item 1, letter "e" and item 4, letter "c", § 11, item 1, letter "b" and § 14, item 12 of the transitional and concluding provisions which shall enter in force from the day of promulgation of the code in the State Gazette.

**Transitional and concluding provisions**  
**TO THE ADMINISTRATIVE PROCEDURE CODE**

(PROM. – SG 30/06, IN FORCE FROM 12.07.2006)

§ 76. The following amendments shall be done to the Law for the marks and the geographic names

(prom. - SG 81/99; corr. – SG 82/99; amend. - SG 28, 43, 94 and 105/05):

.....  
4. The words "Law of the administrative procedure" shall be replaced by "Administrative procedure code".  
.....

§ 142. The code shall enter into force three months after its promulgation in State Gazette, with the exception of:

1. division three, § 2, item 1 and § 2, item 2 – with regards to the repeal of chapter third, section II "Appeal by court order", § 9, item 1 and 2, § 15 and § 44, item 1 and 2, § 51, item 1, § 53, item 1, § 61, item 1, § 66, item 3, § 76, items 1 – 3, § 78, § 79, § 83, item 1, § 84, item 1 and 2, § 89, items 1 - 4§ 101, item 1, § 102, item 1, § 107, § 117, items 1 and 2, § 125, § 128, items 1 and 2, § 132, item 2 and § 136, item 1, as well as § 34, § 35, item 2, § 43, item 2, § 62, item 1, § 66, items 2 and 4, § 97, item 2 and § 125, item 1 – with regard to the replacement of the word "the regional" with the "administrative" and the replacement of the word "the Sofia City Court" with "the Administrative court - Sofia", which shall enter into force from the 1st of May 2007;
2. paragraph 120, which shall enter into force from the 1st of January 2007;
3. paragraph 3, which shall enter into force from the day of the promulgation of the code in State Gazette.

**Transitional and concluding provisions**  
**TO THE LAW ON AMENDMENT AND SUPPLEMENTATION OF THE LAW FOR THE**  
**MARKS AND THE GEOGRAPHIC NAMES**

(PROM. – SG 73/06, IN FORCE FROM 06.10.2006; AMEND. – SG 19/10, IN FORCE FROM 10.06.2010)

§ 26. (in force from the date of accession of the Republic of Bulgaria to the European Union) (1) Community marks in effect to the date of accession of the Republic of Bulgaria to the European Union, as well as the applications for Community marks filed to that date shall have effect on the territory of the Republic of Bulgaria from that date.

(2) (amend. – SG 19/10, in force from 10.06.2010) Registration of a Community mark applied for before the date of accession may not be refused on the basis of any of the absolute grounds for refusal in the sense of Art. 7, Para 1 of the Regulation (EC) No 207/2009 on the condition that the application of these grounds is due only to the fact of accession.

(3) (amend. – SG 19/10, in force from 10.06.2010) Against a Community mark application filed within 6 months before the date of accession, notice of opposition to registration of the mark may be given as referred to in Art. 41 of the Regulation (EC) No 207/2009 in case that the earlier mark or the earlier right in the sense of Art. 8 of the Regulation (EC) No 207/2009 have existed in the Republic of Bulgaria before the date of accession and on the condition that they have been acquired in good faith.

(4) The Community mark may not be deleted if:

1. (amend. – SG 19/10, in force from 10.06.2010) the grounds thereof in the sense of Art. 52 of the Regulation (EC) No 207/2009 are due only to the fact of the accession of the Republic of Bulgaria;

2. (amend. – SG 19/10, in force from 10.06.2010) the earlier national right in the sense of Art. 53, Para 1 and 2 of the Regulation (EC) No 207/2009 was registered, applied for or acquired in the Republic of Bulgaria before the date of its accession.

(5) (amend. – 19/10, in force from 10.06.2010) The use of Community mark under the conditions of

Art. 110 and 111 of the Regulation (EC) No 207/2009 may be prohibited upon claim submitted to the court referred to in Art. 72d, Para 3 if the earlier mark was registered or applied for before the date of accession or the earlier right was acquired in it before that date.

.....

§ 28. This Law shall enter into force one month after its promulgation in the State Gazette except § 7, § 12, § 21 and § 26 which shall enter into force from the date of accession of the Republic of Bulgaria to the European Union, and § 17 which shall enter into force from 13 July 2006.

**Transitional and concluding provisions**  
**TO THE LAW ON IMPLEMENTATION OF THE COMMON ORGANISATIONS OF THE**  
**EUROPAN UNION MARKETS OF AGRICULTURAL PRODUCTS**

(PROM. – SG 96/06, IN FORCE FROM 01.01.2007)

§ 12. This Law shall enter in force from 1 January 2007, except for § 7, which shall enter in force from the day of its promulgation in the State Gazette.

**Transitional and concluding provisions**  
**TO THE CIVIL PROCEDURE CODE**

(PROM. – SG 59/07, IN FORCE FROM 01.03.2008)

§ 61. This code shall enter into force from 1 March 2008, except for:

1. Part Seven "Special rules related to proceedings on civil cases subject to application of European Union legislation";
2. paragraph 2, par. 4;
3. paragraph 3 related to revoking of Chapter Thirty Two "a" "Special rules for recognition and admission of fulfillment of decisions of foreign courts and of other foreign bodies" with Art. 307a – 307e and Part Seven "Proceedings for returning a child or exercising the right of personal relations" with Art. 502 – 507;
4. paragraph 4, par. 2;
5. paragraph 24;
6. paragraph 60,

which shall enter into force three days after the promulgation of the Code in the State Gazette.

**Transitional and concluding provisions**  
**TO THE LAW ON AMENDMENT AND SUPPLEMENTATION OF THE TAX-INSURANCE**  
**PROCEDURE CODE**

(PROM. – SG 12/09, IN FORCE FROM 01.05.2009; SUPPL. - SG 32/09)

§ 68. (suppl. - SG 32/09) This Law shall enter into force from 1 May 2009 except § 65, 66 and 67, which shall enter into force from the date of promulgation of the Law in the State Gazette and § 2 - 10, § 12, Items 1 and 2 - regarding Para 10 and 11, Item 8, Letter "a", Items 9 and 12 and § 53 - 64, which shall enter into force from 1 January 2010.

**Transitional and concluding provisions**  
**TO THE LAW ON AMENDMENT AND SUPPLEMENTATION OF THE LAW ON THE**  
**MARKS AND GEOGRAPHICAL INDICATION**

(PROM. – SG 19/10, IN FORCE FROM 10.06.2010)

§ 52. (1) This Law shall apply to applications for registration of marks and to applications for registration of geographical indications filed after its entry into force, as well as to applications for registration of marks and for registration of geographical indications, for which there is no decision in force.

(2) The applications for registration of marks, published before entry into force of this Law, shall be considered under the previous order.

§ 53. This Law shall apply to requests for revocation and cancellation of registrations, for which there is no decision in force before its entry into force.

§ 54. The requests for declaring a mark as well known or with reputation, for which by entry into force of this Law there is no decision in force, shall be considered under the previous order.

§ 55. The Council of Ministers shall adopt the ordinance under Art. 38d, Para 11 and the ordinance under Art. 42, Para 4 within 6 months from entry into force of this Law.

.....

§ 57. This Law shall enter into force three months after its promulgation in the State Gazette except § 1, 3, 5, 6, § 7, Item 1, Letter “d” “e”, 8, 15, 16, 17, 19, 20 – 26, 30, 33, 35, 36, 37, 39 and 40, which shall enter into force after 12 months from the promulgation of the Law.