

Law of the Republic of Belarus on Trademarks and Service Marks

No. 2181-XII of February, 5, 1993

[Amended as of May 7, 2007]

The present Law regulates the relations arising in connection with registration, legal protection and use of trade marks (service marks).

Section 1. The Trademark and Service Mark and Its Legal Protection

Article 1. Trademark and Service Mark

1. A Trademark and Service Mark (further - a trade mark) - a designation promoting difference of the goods or services (further - the goods) of one legal or natural persons from the uniform goods or services of other legal or natural persons.
2. As trade marks shall be registered designations which can be submitted in the graphic form: verbal, including proper name, alphabetic, digital, graphic, combinations of colors, volumetric designations, including the form of the goods or its packing, and also combinations of such designations.
3. The trade mark can be registered in any color or a color combination.

Article 2. Legal Protection of Trade Mark

1. The legal protection of a trade mark in the Republic of Belarus shall be carried out on the basis of its registration in the state institution "National Center of Intellectual Property" (further – the patent body) in the order established by the legislation on trade marks, or by virtue of international treaties of the Republic of Belarus.
2. A trade mark can be registered for the name of legal or natural person.
3. The right on a trade mark shall be protected by the state. On the registered trade mark the certificate shall be issued. The certificate on a trade mark shall certify a priority of a trade mark, the exclusive right of the owner to a trade mark concerning the goods specified in the certificate, and contains the image of a trade mark.

Article 3. Exclusive Right to a Trade Mark

1. The owner of a trade mark shall have the exclusive right to use the trade mark and to dispose of it, and also the right to forbid use of the trade mark by other persons.
2. Nobody can use the trade mark protected in the territory of the Republic of Belarus on which the certificate is issued, without the permission of its owner.

3. The non-authorized manufacturing, application, import, the offer to sale, sale and other introduction in the civil turnover or storage with this purpose of a trade mark or the goods designated by it, or a designation similar to it up to a degree of mixture, concerning the uniform goods, and also the non-uniform goods marked with a trademark recognized publically known in the Republic of Belarus shall be admit as infringement of rights of the owner of a trade mark

Article 4. The Absolute Reasons for Refusal in Registration

1. Registration of the following trade marks shall not be allowed:

1.1. not having attributes of distinction;

1.2. entered in the general use as a designation of the goods of the certain kind;

1.3. being the standard symbols and terms;

1.4. consisting exclusively from marks or indications used for a designation of a kind, quality, quantity, property, purpose, value of the goods, and also a place and time of their manufacture or selling;

1.5. representing the form of the goods or its packing, determined exclusively or mainly by essence or a nature of the goods, necessity of achievement of the technical result, essential value of the goods.

2. The designations specified in point 1 of present can be included in a trade mark as unprotected elements if they do not occupy in it a leading position.

3. The positions stipulated by point 1 of present article can not be applied concerning designations which for date of submission of application for registration of a trade mark have actually got distinctive character as a result of use.

4. Registration of the trade marks consisting only from designations, representing the state emblems, flags and emblems, official names of the states, flags, emblems and reduced or full names of the international intergovernmental organizations, official control, guarantee and hall-marks, awards and other distinctions or similar to them up to a degree of mixture shall not be allowed. Such designations can be included as unprotected elements in a trade mark if on it there is a consent of the appropriate competent body or their owner.

5. Registration of the following designations as trade marks shall not be allowed:

5.1. being false or capable to lead into error the consumer concerning the goods, places of its origin or its manufacturer;

5.2. representing or containing the indication of a place of an origin of vines or strong alcoholic drinks protected by virtue of the international treaties of the Republic of Belarus, for designation of vines or strong alcoholic drinks which are not occurring from the given place;

5.3. contradicting to the public order, principles of humanity and morals.

Article 5. Other Reasons for Refusal in Registration

1. Shall not be registered as trade marks the designations identical or similar up to their mixture with:

1.1. registered or declared on registration in the Republic of Belarus addressed to other person and trade marks having earlier priority concerning the uniform goods;

1.2. trade marks of other persons protected in the Republic of Belarus on the basis of the international treaties, concerning the uniform goods;

1.3. the trade marks of other persons recognized well-known in the Republic of Belarus in the order established by the patent body, concerning any goods.

2. Registration of the designation, similar up to a degree of mixture with a trade mark specified in point 1 of present article, shall be allowed under condition of representation of the written approval of the owner of such mark.

3. Shall not be registered as trade marks the designations reproducing:

3.1. known in the territory of the Republic of Belarus company names (or their parts), belonging to other persons and concerning the uniform goods;

3.2. industrial designs, rights on which in the Republic of Belarus belong to other persons if the industrial design has earlier priority in comparison with the trade marks declared on registration;

3.3. names of places of an origin of the goods, protected in the Republic of Belarus;

3.4. names of well-known in the Republic of Belarus works of science, literature and art, citations or characters from them, works of art or their fragments without a consent of copywriters) or his (their) successors;

3.4-1. names of registered in the Republic of Belarus mass media without a permission of their founders in relation to similar goods;

3.5. surnames, names, pseudonyms and derivatives from them, portraits and the facsimile of known in the Republic of Belarus persons i without the consent of such persons or their successors;

3.6. excluded.

4. A well-knownness of the objects mentioned in sub-points 3.1, 3.4, 3.4-1, 3.5 of the point 3 of the present article is determined by patent body on the date of priority applied for registration as the trade mark.

Article 6. Application for Registration of a Trade Mark

1. The application for registration of a trade mark (further - the application) shall be submitted by legal or natural person (further - the applicant) to the patent body.

2. The application can be sent through the patent attorney of the Republic of Belarus.

3. The applicants having the constant location or a constant residence in the foreign states, or their patent attorneys shall conduct in the Republic of Belarus the affairs connected to

registration of trade marks and prolongation of term of its validity through the patent attorneys registered in the patent body in the established order.

4. The application shall concern to one trade mark.

5. The application shall contain:

the application for registration of a designation as a trade mark with the indication of the applicant, and also his location or a residence;

declared designation;

the enumeration of goods and services for which the registration is asked, grouped by classes of the International classification of the goods and services for registration of marks.

6. To the application shall be enclosed:

the document confirming payment of the patent duty in the established size;

the document certifying powers of the patent attorney if the application moves through the patent attorney;

regulations about the collective mark if the application is submitted for the collective mark.

7. Requirements to documents of the application and terms of their representation shall be established by the patent body.

Article 7. Priority of a Trade Mark

1. The priority of a trade mark shall be established by the date of submitting application to the patent body. The date of receipt in the patent body of the documents which are meeting the requirements of point 5 of article 6 of the present Law shall be considered the date of application submission.

2. The priority of a trade mark can be established by date of submission of the first application for a trade mark in the foreign state - the participant of the Paris Convention on Protection of Industrial Property from the March, 20, 1883, reconsidered in Brussels December, 14, 1900, in Washington - June, 2, 1911, in Hague - November, 6, 1925, in London - June, 2, 1934, in Lisbon - October, 31, 1958 and in Stockholm - July, 14, 1967 and changed October, 2, 1979 (a conventional priority) if the application has arrived in the patent body within six months from the specified date.

3. The priority of the trade mark placed on exhibits of official or officially recognized international exhibitions, organized on territory of one of the states - participants of the Paris Convention on Protection of Industrial Property, can be established by the date of the beginning of open display of an exhibit at an exhibition (an exhibition priority) if the application is sent to the patent body within six months from the specified date.

4. The applicant, wishing to take advantage of the right of a conventional or exhibition priority, shall be obliged to specify it at application for registration of a trade mark or within two months from the date of receipt of the application in the patent body and to apply the necessary documents confirming legitimacy of such requirement, or to present these

documents not later than three months from the date of receipt of the application by the patent body.

5. The priority of a trade mark under the allocated application shall be established by the date of a priority of a trade mark of the initial application submitted according to point 7 of article 8 of the present Law.

6. The priority of a trade mark can be established by the date of a priority of the international application for registration of the trade mark, submitted according to the international treaty of the Republic of Belarus.

Article 8. Examination of the Application for Registration of a Trade Mark

1. Examination of the application for registration of a trade mark shall be carried out by patent body and shall include preliminary expert examination and the examination of the declared designation to be spent according to the present Law and rules, established by the patent body.

2. The applicant shall have the right under the initiative or under the invitation of the expert personally or through the representative to take part in consideration of the questions arising during preliminary expert examination and examination of a declared designation.

3. The applicant shall have the right to supplement, specify or correct under the own initiative materials of the application at any stage of its consideration before date of registration of a trade mark.

4. If additional materials change the designation declared on registration in essence or expand the list of the goods specified in the application, these materials shall not be accepted to consideration and can be made out by the applicant as the independent application.

5. During carrying out examination of the application, but not later the date of registration of a trade mark the applicant shall have the right to submit to the patent body the application for change of the applicant under the application at presence of the consent of the new applicant.

6. The application can be withdrawn at the request of the applicant at any stage of its consideration before the date of registration of a trade mark.

7. During carrying out examination of the application, but before acceptance decision on it the applicant shall have the right to submit on the same designation the allocated application containing a part of names of the goods and services, specified in the list of the initial application for the date of its submission to the patent body, with preservation in the allocated application of the date of submission and date of a priority of a trade mark under the initial application.

Article 9. Preliminary Expert Examination

1. Term of realization of preliminary expert examination shall be two months from the date of submission of the application to the patent body.

2. During realization of preliminary expert examination the structure of the necessary documents stipulated by article 6 of the present Law, correctness of registration of the

application, payment of the patent duty shall be checked. At carrying out of the given examination it can be offered to the applicant to make corrections to materials of the application, additions or changes. The corrected, added or changed materials shall be submitted in the patent body in three months term from the date of reception of inquiry. Under the petition of the applicant the given term can be prolonged, but no more than to three months provided that the petition has arrived before the expiration of the given term. If the applicant has broken the specified term or has left inquiry without the answer, the application shall not be accepted to consideration.

3. By results of preliminary expert examination shall be made a decision on acceptance of the application to consideration or about refusal in its acceptance to consideration.

4. At acceptance of the application to consideration date of application, and also a conventional or exhibition priority (in case of representation of the necessary documents confirming legitimacy of this requirement) shall be established.

Article 10. Examination of Declared Designation

1. Examination of the declared designation shall be carried out after end of preliminary expert examination.

2. During examination of the declared designation the priority of a trade mark if it was not established at realization of preliminary expert examination shall be established, and conformity of the declared designation to the requirements established by article 4 and point 1 of article 5 of the present Law shall be checked.

3. During realization of examination of the declared designation the patent body shall have the right to of the applicant request additional materials without which realization of the given examination is impossible. Materials on inquiry of patent body shall be submitted in three months term from the date of reception of inquiry. Under the petition of the applicant the given term can be prolonged provided that the petition has arrived before the expiration of this term. If the applicant has broken the specified term or has left inquiry without the answer, the application admits withdrawn on what the applicant is notified.

4. By results of examination shall be taken a decision on registration of a trade mark or about refusal in its registration.

5. The decision of the expertise on registration of a trade mark can be reconsidered by the patent body in connection with receipt of the application having earlier priority according to article 7 of the present Law on a designation identical or similar up to a degree of mixture concerning the uniform goods.

6. At disagreement of the applicant with the decision of examination he shall have the right in three months term from the date of reception of the decision to submit to the patent body the petition for carrying out repeated examination. Under the petition of the applicant the given term can be prolonged provided that the petition has arrived in the patent body before the expiration of this term.

7. The order of prolongation of terms of examination according to points 3 and 6 of present article shall be established by the patent body.

8. Repeated examination shall be carried out in two months term from the date of receipt of the petition of the applicant.

Article 11. Appeal of the Decision Under the Application

1. At disagreement with the decision of preliminary expert examination on refusal in acceptance of the application to consideration, and also with the repeated decision of examination of the declared designation the applicant shall have the right within three months from the date of reception of the decision to make a complaint in the Appeal council on patent expert examination at the patent body (further – the Appeal council).

2. The complaint shall be considered within four months from the date of its receipt in the Appeal council. The order of consideration of complaints by the Appeal council shall be established by the patent body.

3. The decision of the Appeal council can be appealed by the applicant in the Supreme Court of the Republic of Belarus within six months from the date of reception of the decision.

Article 12. Registration of a Trade Mark and Issue of the Certificate for a Trade Mark

1. On the basis of the decision on registration of a trade mark the patent body within one month from the date of reception of the document on payment of the established patent duty shall make registration of a trade mark in the State register of trade marks and service marks of the Republic of Belarus (further - the Register). The data concerning registration of a trade mark, and also the subsequent changes of these data shall be brought in the Register. The structure of data shall be determined by the patent body.

2. Under the petition of natural or legal person the patent body shall give an extract from the Register.

3. Issue of the certificate on a trade mark shall be made by the patent body within one month from the date of registration of a trade mark in the Register.

Article 13. Term of Validity of the Registration

1. Registration of a trade mark shall operate within ten years from the date of submission of application to the patent body.

2. The term of validity of registration of a trade mark can be prolonged under the application of the owner sent within last year of its validity, each time to ten years. Under the petition of the owner for prolongation of validity of registration of a trade mark he can be given a six months term after expiry of the term of action of registration under condition of payment of the patent duty.

3. Record about prolongation of the term of validity of registration of a trade mark shall be brought by the patent body in the Register. At the request of the owner of a trade mark a similar record shall be brought in the certificate for a trade mark.

Article 14. Modifications in Registration and Correction of Mistakes

1. The owner of a trade mark shall notify the patent body on change of the name (for legal persons), surname, name and patronymic name (for natural persons), addresses, about reduction of the list of goods concerning which the trade mark is registered, about change of separate elements of the trade mark which is not changing its essence, other changes concerning registration of a trade mark.
2. Changes shall be brought in the Register and, at the request of the owner, in the certificate on a trade mark.
3. The patent body can under the own initiative or at the request of the owner to introduce to registration of a trade mark corrections of grammatical, typographical and other obvious mistakes.
4. Registration of a trade mark can be divided under the application of its owner by distribution of the goods concerning which the trade mark is registered.

Article 15. Publication of Data on Registration

The data concerning registration of a trade mark and brought in the Register according to article 12 of the present Law, shall be published in the official publication of the patent body (further - the official bulletin) within three months after the date of registration of a trade mark in the Register or the date of entering into the Register of changes or corrections.

Article 16. Registration of Trade Mark in Foreign States

1. Legal and natural persons shall have the right to register a trade mark in foreign state or to make its international registration.
2. The application for the international registration of a trade mark shall be submitted according to the international treaties of the Republic of Belarus.
3. The charges connected to registration of a trade mark in the foreign state and the international registration, bear the applicant or under the agreement with him other interested legal or natural person.

Article 17. Patent duties

1. For fulfillment of legally significant actions connected to registration of a trade mark, patent duties shall be collected.
2. The list of legally meaningful actions, for which patent duties are collected, the payers, the rates, the order and terms of payment of patent duties, the benefits to the special categories of patent duty payers or the grounds of patent duty reimbursement shall be established by the President of the Republic of Belarus and (or) by laws, if another is not established by the President of the Republic of Belarus.

3. The order of use of patent duties shall be determined by acts of legislation of the Republic of Belarus.

Section 2. Collective Mark

Article 18. The Right on Collective Mark

The collective mark is the trade mark of an association of legal persons, intended for designation of goods being made and sold by it and having uniform qualitative or other general characteristics.

Article 19. Registration and Use of Collective Mark

1. The application for the collective mark shall be attached with Regulations on the collective mark which shall contain the name of the person authorized to register collective mark, the list of the persons having the right of use of this mark, the purpose of its registration, the list and uniform qualitative or other general characteristics of the goods which will be designated by the collective mark, conditions of its use, the order of the control of its use, the responsibility for infringement of Regulations on the collective mark.

2. In the Register and the certificate on the collective mark in addition to the data stipulated by point 1 of article 12 of the present Law, data on the persons having the right of use of the collective mark shall be brought. These data, and also an extract from Regulations on the collective mark, concerning uniform qualitative or other general characteristics of the goods for which this mark is registered, shall be published by the patent body in the official bulletin. The owner of the collective mark shall notify the patent body on changes in Regulations on the collective mark.

3. In case of use of the collective mark on the goods which are not having uniform qualitative or other general characteristics, action of its registration can be stopped prescheduled (in full or in part) on the basis of the decision of the Supreme Court of the Republic of Belarus accepted under the application of any person.

4. The collective mark or the application for its registration can be transformed accordingly into a trade mark of one of the persons having the right on its use according to Regulations about the collective mark, or in the application for its registration. The order of such transformation shall be established by the patent body.

Section 3. Use of Trade Mark

Article 20. Use of a Trade Mark and Consequences of Its Non-use

1. Application of a trade mark on the goods for which the trade mark is registered, or on their packing by the owner of a trade mark or the person to whom such right is given on the basis of the license agreement according to article 23 of the present Law shall be considered a use of the trade mark.

2. Also as use can be recognized an application of a trade mark in advertising, printed editions, on signboards, at demonstration of exhibits at exhibitions and the fairs organized in the

Republic of Belarus, at presence of the valid reasons of non-use of a trade mark on the goods or their packing.

3. The legal and natural persons who are carrying out intermediary activity, can use on the basis of the contract the mark on the goods sold by them alongside with the trade mark of the manufacturer of the goods and also to place it instead of a trade mark of the manufacturer.

4. The legal persons having the right to use the collective mark, can use alongside with the collective mark the trade marks on the goods produced by them.

5. Registration of a trade mark shall not give to its owner the right to forbid to other persons use of this trade mark concerning the goods which were entered into a civil turnover in the Republic of Belarus directly by the owner of a trade mark or from his consent.

6. An effect of registration of a trademark can be expired before the end of the term in relation to all or part of goods mentioned in registration in connection with non-use of the trademark without good reasons continuously within any 5 years from the date of its registration on the grounds of the decision of the Supreme Court of the Republic of Belarus. Application on expiration of the registration of the trademark before the end of the term can be submitted to the Supreme Court of the Republic of Belarus by any persons on condition that this trademark is not being used before the submission of the application.

7. At the decision of a question on consideration of prescheduled cancellation of registration of a trade mark in connection with its non-use can be taken into account proofs submitted by the owner of a trade mark that the trade mark was not used on not dependent on him circumstances.

Article 21. Precautionary Marks

The owner of a trade mark can put down near to the trade mark precautionary marks as Latin letter R or R in a circle or verbal designations "trade mark" or " the registered trade mark ", indicating that the used designation is a trade mark registered in the Republic of Belarus.

Section 4. Transfer of the Right on Trade Mark

Article 22. Cession of the Right on Trade Mark

1. The right on a trade mark can be conceded by the owner of a trade mark under the contract to the legal or natural person concerning all or a part of the goods for which it is registered.

2. The cession of the right on a trade mark shall not be allowed if it can be the reason of deception of the consumer concerning the goods or its manufacturer.

3. The right on the collective mark can not be conceded to other persons.

Article 23. Granting License for Use Trade Mark

1. The right of use of a trade mark can be given by the owner of a trade mark (licensor) to other person (licensee) under the license agreement for all or a part of the goods concerning which the trade mark is registered.
2. The license agreement shall contain a condition that quality of the goods of the licensee will be not be lower than quality of the goods of the licensor and that the licensor will carry out the control of performance of this condition.
3. The right of use of the collective mark can not be transferred to other persons.

Article 24. Registration of Contract on Cession of Trade Mark Rights and License Agreement

The contract about a cession of the right on a trade mark to other legal or natural person and the license agreement shall be registered in the patent body and shall be valid for the third parties from the date of their registration.

Section 5. Termination of Legal Protection of Trade Mark

Article 25. Recognition of Registration of Trade Mark to be Null and Void

1. Registration of a trade mark can be recognized null and void:

1.1. In full or in part during all term of its action if it was made in infringement of the requirements stipulated by points 1 and 2 of article 2, article 4, sub-points 3.1, 3.2, 3.4, 3.4-1, 3.5 of point 3 article 5 of the present Law;

1.2. In full or in part within five years from the date of the publication of data on registration of a trade mark in the official bulletin on the reasons established by point 1 and subpoint 3.3 point 3 article 5 of the present Law;

1.3. During all term of its action in case of transformation of a trade mark into the designation fallen in the general use as a designation of the goods of a certain kind;

1.4. Fully or partially within all term of its effect, if actions of the trademark owner connected with registration are recognized in the established order as unfair competition.

2. The recognition of registration of a trade mark to be null and void in connection with receipt of the application having earlier priority according to article 7 of the present Law, shall be made irrespective of, whether it has arrived up to or after the specified registration.

3. Any person can submit to the terms stipulated by point 1 of present article objection against registration of a trade mark to the Appeal council. The order of consideration of objections by the Appeal council shall be established by the patent body.

4. The decision of the Appeal council can be appealed to the Supreme Court of the Republic of Belarus within six months from the date of its reception.

Article 26. Cancellation of Registration of Trade Mark

1. Action of registration of a trade mark shall be stopped on the basis of:

- 1.1. expiry of the term of its action stipulated by article 13 of the present Law;
 - 1.2. decisions of the Supreme Court of the Republic of Belarus taken in accordance with point 6 article 20 of the present Law;
 - 1.3. uses of the collective mark on the goods which are not having uniform qualitative or other general characteristics (point 3 of article 19 of the present Law);
 - 1.4. the written application for refusal of it of the owner of a trade mark;
 - 1.5. liquidations of the legal person or death of the natural person - the owner of a trade mark at non transfer of rights to a trade mark to successors.
2. Registration of a trade mark shall be cancelled by the patent body in connection with the termination of its action or a recognition its null and void. Record about cancellation of registration of a trade mark shall be introduced in the Register and published by the patent body in the official bulletin.

Section 6. Final Provisions

Article 27. Patent Body

The patent body shall accept to consideration applications for registration of trade marks, shall carry out on them examination, shall issue the certificates being valid in all territory of the Republic of Belarus, shall carry out within the limits of the competence the control over observance of the legislation in the field of protection of trade marks, shall generalize practice and explain on its application, shall render on the specified questions the methodical help and services to the interested legal and natural persons.

Article 28. Consideration of Disputes Connected With Infringement of Legislation on Trade Marks

The disputes connected to infringement of the legislation on trade marks, shall be considered by the Appeal council and the Supreme Court of the Republic of Belarus according to their competence.

Article 29. Responsibility of Legal and Natural Persons for Infringement of Legislation on Trade Marks

1. For use of a trade mark, and also a designation similar to it up to a degree of mixture, for the uniform goods with infringement of requirements of the present Law guilty persons shall bear the responsibility according to the legislation of the Republic of Belarus.
2. Protection of civil rights against illegal use of a trade mark, except for requirements about the termination of infringement and collecting of the caused damages, shall be carried out also by way of:

- 2.1. removal from the goods or its packing of illegally used trade mark or a designation similar to it up to a degree of mixture, and (or) destruction of the made images of a trade mark or a designation similar to it up to a degree of mixture;
 - 2.2. arrest or destruction of the goods concerning which the trade mark was illegally applied;
 - 2.3. imposing the penalty for the benefit of the victim party at a rate of cost of the goods;
 - 2.4. transfers for the benefit of the victim party of the goods on which the trade mark is illegally applied.
3. application of the measures stipulated by point 2 of present article concerning persons, guilty of illegal use of a trade mark, shall be made in the order established by the legislation of the Republic of Belarus.

Article 30. Rights of Foreign Citizens, Persons Without Citizenship and Foreign Legal Persons

Foreign citizens, persons without citizenship and foreign legal persons shall have the rights stipulated by the present Law, other acts of the legislation of the Republic of Belarus in the field of protection of trade marks, and shall bear the responsibility equally with citizens and legal persons of the Republic of Belarus if other is not determined by the Constitution of the Republic of Belarus, other acts of legislation and the international treaties of the Republic of Belarus.

Article 31. International Treaties

The legal norms contained in the international treaties in the field of protection of industrial property, entered in force in the territory of the Republic of Belarus, shall be a part of legislation acting in the territory of the Republic of Belarus and shall be subject to direct application, except for cases when from the international treaties follows, that application of such norms needs the edition of the interstate act, and shall have the validity of that legal act by which the Republic of Belarus has expressed its consent on compulsion for it of the appropriate international treaty.

* unofficial translation *
