

LAW OF THE KYRGYZ REPUBLIC "ON FIRM NAMES"

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LAW OF THE KYRGYZ REPUBLIC

ON FIRM NAMES

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The present Law shall regulate state registration of Firm Names of legal persons, registered according to the procedure, established by the legislation of the Kyrgyz Republic.

Title I. General Provisions

Article 1. Subject of the Law

The present Law governs the relations arising in connection with the state registration, legal protection and use of Firm Names in the Kyrgyz Republic.

Article 2. The State Agency on Intellectual Property under the Government of the Kyrgyz Republic

The State Agency on Intellectual Property under the Government of the Kyrgyz Republic (hereinafter referred to as - Kyrgyzpatent) shall in compliance with the present Law, be the body, carrying out state regulation in the sphere of protection of Firm Names in the Kyrgyz Republic. Kyrgyzpatent shall accept for examination applications for registration of Firm Names, conduct examination procedure, provide their state registration, issue certificates, publish official data, draft and approve normative legal acts to implement the given Law, perform other functions, related to Firm Names pursuant to Regulation on Kyrgyzpatent approved by the Government of the Kyrgyz Republic.

To improve the activity of Kyrgyzpatent in providing legal protection of Firm Names, an Appeal Council is being established under Kyrgyzpatent upon appointment by the Director of Kyrgyzpatent. The Appeal Council is the primary body mandated to review disputes arising on Firm Names. Kyrgyzpatent shall set procedure of examining objections by the Appeal Council.

Article 3. Legal Regulation of Firm Names

Relations arising from the state registration, legal protection and use of Firm Names of legal persons registered according to the procedure established in the Kyrgyz Republic, shall be regulated by the present Law and other normative and legal acts of the Kyrgyz Republic.

The state registration of Firm Names shall be voluntary.

Title II. Firm Names, their legal protection

Article 4. Firm Names

A Firm Name is a fixed full or abbreviated name of a legal entity (entrepreneur) making him different from another legal entity (entrepreneur).

Firm Name of a legal entity (entrepreneur) shall in compliance with requirements of the provisions of the Civil Code of the Kyrgyz Republic contain organizational and legal form of a legal entity and one proper or common name of a distinctive meaning. Firm Names of banks and financial and crediting institutions, which operate on the basis of the license issued by the National Bank of the Kyrgyz Republic, must meet the requirements of the given Law and banking legislation of the Kyrgyz Republic along with the requirements of the given Law

Along with the data stipulated by Part two of this Article, a Firm Name of a legal entity may contain other elements.

Surname of entrepreneur or combination of surname and name may be used as a Firm Name. If identical surname or similar surnames to the extent likely to cause confusion is already used by a person bearing the same surname as a Firm Name, the applicant shall enter addition to the surname in the form of a word element of a distinctive feature upon the offer of Kyrgyzpatent.

The use of such words as "Kyrgyz", "State" and "National" in any combinations, and the use of indications to the full official or abbreviated name of the Kyrgyz Republic in Firm Names shall be permitted according to the procedures, established by the President of the Kyrgyz Republic and the Government of the Kyrgyz Republic

Kyrgyzpatent shall issue a certificate for Firm Names registered according to the established procedure, which certifies its protectability according to the results of examination.

Article 5. Grounds for Refusal in Registration of Firm Names

The following designations shall not be subject to registration as Firm Names:

- the ones coinciding with Firm Names of foreign legal entities well-known on the territory of the Kyrgyz Republic;
- the ones coinciding with the names or their fragments of well-known works of science, literature and art in the Kyrgyz Republic with no consent of the owner of copyright or his successors;
- the ones named by the surname of any well-known person without his consent;
- the ones coinciding with names of the non-commercial organizations or similar with them to the extent likely to cause confusion;
- the ones coinciding with the Firm Names registered or submitted for registration in the Kyrgyz Republic or similar to them to the extent likely to cause confusion;
- the ones coinciding with names of selective achievements, which belong to other persons;
- the ones coinciding with verbal and combined trade marks (service marks) of other owners, appellations of

places of origin of goods protected on the territory of the Kyrgyz Republic or similar to them to the extent likely to cause confusion;

- the ones coinciding with the names of states, international organizations or similar to them to the extent likely to cause confusion;
- the ones which are misleading for the consumer with respect to the owner of the intellectual property object, its location (address), nature and type of activity, identity or similarity with Firm Names, trade marks and service marks of the foreign legal entities (entrepreneurs), used and well-known on the territory of the Kyrgyz Republic;
- the ones pointing to the quality, properties, quantity, price of goods and services, method and time of their manufacture;
- the ones consisting of separate figures or letters and (or) figures of non-verbal nature, consisting of combination of less than three separate language units of generally accepted names (companies, associations and etc.), as well as typical words in the language (international, universal, and etc.);
- come into general use, acquired gender features in a common practice - lost their distinctive features (cigarettes, perfumes, and etc.);
- directly pointing to manufacturing industry and type of activity (aircraft, car, trade equipment, textile material, and etc.);
- the ones which are names pointing to the origin or type of goods and services (honey, syrup, and etc.);
- the ones contradicting moral standards, principles of humanity, and interests of the society;
- in other cases stipulated by the normative and legal acts of the Kyrgyz Republic.

Article 6. Legal Protection of a Firm Name

Legal protection of a Firm Name in the Kyrgyz Republic shall be granted on the basis of State registration thereof in the order established by this Law or upon the decision of the Appellate Council on the basis of its popularity due to its earlier long and intensive use on the territory of the Kyrgyz Republic, provided it was not appealed in the court, or by the decision of the Court.

The Firm Name of foreign legal entities (entrepreneurs) shall be protected without registration on the obligatory condition of its being known and used on the territory of the Kyrgyz Republic.

Criteria of use and popularity of the Firm Names on the territory of the Kyrgyz Republic shall be established by the Government of the Kyrgyz Republic.

A foreign legal entity (entrepreneur) may register his Firm Name on the territory of the Kyrgyz Republic.

In case a dispute arises with regard to the Firm Name between the foreign legal entity (entrepreneur) and legal entity (entrepreneur) of the Kyrgyz Republic, the priority of the Firm Name of the foreign legal entity (entrepreneur) being known and used within the territory of the Kyrgyz Republic as well as the requirements stipulated by point one of this Article shall be taken into account.

Disputes stipulated by point 5 of the present Article shall be examined by the Appellate Council. In case of

disagreement with the decision of the Appellate Council, the parties shall have the right to file the appeal to the court.

Title III. Registration of a Firm Name

Article 7. Application for Registration of a Firm Name

A Firm Name shall be registered in Kyrgyzpatent upon an application of a person, interested in receiving exclusive rights to it.

The application may be submitted through a patent attorney, who was registered in Kyrgyzpatent or other representative, whose powers are certified by power of attorney.

The application shall include:

- application for registration of a Firm Name, indicating the applicant and his/her location;
- the Firm Name included into the application and its description;
- list of activities, for which registration is requested;

The following should be attached to the application:

- document certifying payment of the fee in the established amount for filing the application and examination of the Firm Name;
- duly certified copy of the certificate on state registration as a legal entity.

Application for registration of a Firm Name shall be filed in accordance with the requirements, approved by Kyrgyzpatent and provided that a patent fee (hereinafter referred to as the fee) is paid pursuant to the procedure established.

Application for registration of a Firm Name may be withdrawn upon solicitation of the applicant at any stage of its examination.

Article 8. Priority of a Firm Name

Date of priority of a Firm Name shall be established on the date of filing the application for registration of a Firm Name with Kyrgyzpatent.

In case of a Firm Name being known due to its earlier and long use on the territory of the Kyrgyz Republic, the priority may be established upon the decision of the Appellate Council in case it was not appealed in the court, or by decision of the court on the basis of the starting date of its use.

Article 9. Examination of a Firm Name

To determine conformity of a Firm Name in the application with the requirements of the present Law, Kyrgyzpatent shall conduct examination of the Firm Name within 15 days as of the date of filing of the application provided that the fee is paid.

If the application is submitted in violation of the requirements established by the present Law, the applicant shall be sent a request with the offer to eliminate the existing deficiencies within 10-days as of the date of receiving the request.

This term may be extended upon solicitation of the applicant, provided that the solicitation is received prior

to expiration date of the term and payment of the fee.

In this case determination of the term, stipulated by point 1 of the present Article, shall start from the date of receiving the amended documents.

If the applicant does not eliminate the indicated deficiencies within the established period of time, the application is considered not submitted and subject to return to the applicant.

During the examination of a Firm Name Kyrgyzpatent uses data from the State Register of legal entities of the Ministry of Justice of the Kyrgyz Republic, from the State Unified Register of Statistical Units of the National Statistics Committee of the Kyrgyz Republic, from the State Register of Firm Names, from the State Register of Trademarks of the Kyrgyz Republic and other sources.

To ensure the implementation of point 6 of the given article procedure of interaction between Kyrgyzpatent, Ministry of Justice of the Kyrgyz Republic and National Statistics Committee of the Kyrgyz Republic related to the issue of duly exchange of information shall be determined by normative and legal acts, developed and approved by joint efforts of the agencies above.

Article 10. Introduction of Changes and Additions to Application

Prior to the decision on accepting the application the applicant shall be entitled to solicit on entering changes, corrections and clarifications into materials of the application for registration of a Firm Name.

If additions, corrections and clarifications entered into material of application for registration of a Firm Name, change its essence, the priority stipulated by point 1 of Article 8 of the present Law and definition of the term stipulated by point 1 of Article 9 of this Law shall be determined as of the date of receiving such solicitation.

A fee must be paid upon the submission of the solicitation on introducing additions, corrections and clarifications. In the case, stipulated by point 2 of the present Article, a fee for conducting new examination of a Firm Name is additionally paid.

Article 11. Decision on Registration of a Firm Name. Registration of a Firm Name

In case a Firm Name conforms to the requirements of the present Law, Kyrgyzpatent shall make a decision on its registration and send its decision to the applicant.

If the application for the trade mark, identical or similar to the extend likely to cause confusion with the Firm Name, upon which the positive decision has been issued, is received with conventional or exhibition priority, the decision made on the Firm Name shall be annulled.

On the basis of the decision on registration of a Firm Name Kyrgyzpatent shall include the Firm Name into the Unified State Register of Firm Names of the Kyrgyz Republic (hereinafter referred to as the Register) within 10 days period.

Article 12. List of Data to Be Included in the Register

The Firm Name of the legal entity, its legal address (location), date of priority, number and date of the application submission, number and date of its registration shall be included in the Register on a mandatory basis.

The complete list of data to be included in the Register shall be defined by Kyrgyzpatent.

Article 13. Refusal in Registration of a Firm Name

If a Firm Name does not conform to the requirements of points 5-15, Article 5 of the present Law, Kyrgyzpatent shall take a decision to refuse its registration and send the decision to the applicant.

If the applicant does not agree with the decision of the examination he/she shall have the right, to file an appeal with the Appellate Council within one month from the date of receiving the decision, provided the fee is paid.

The applicant shall have the right to participate in consideration of his/her appeal personally, or through his/her representative.

Examination of the registered Firm Name for consistency with the requirements of points 1-4, 16, Article 5 of the present Law shall relate to the competency of the Appellate Council of Kyrgyzpatent, which decision may be appealed in the court in case objections arise.

Article 14. Introduction of Changes and Additions to the State Register

Changes and additions to the State Register shall be introduced upon solicitation of the applicant in cases and according to the procedure, stipulated by the present Law and other normative and legal acts.

Along with such solicitation a document certifying the fee payment shall be submitted.

Notification on solicitation acceptance or its refusal shall be sent to the applicant within 7-days period.

If the solicitation on introducing changes and additions is not accepted, the applicant shall be entitled to file a complaint with the Appellate Council within one-month period as of the date of receiving the notification, provided the fee is paid.

Article 15. Publication of Information on Registration

The information that relates to registration of a Firm Name and is entered in the Register in compliance with Articles 12 and 14 of the present Law shall be published by Kyrgyzpatent in the Official Bulletin within one month as of the date of the registration of the Firm Name in the Register or after the date of entering the changes and additions in the registration of the Firm Name in the Register.

Article 16. Restoration of the Elapsed Term

Kyrgyzpatent may restore the terms, set forth in point 2, Article 9, point 2, Article 13, and point 4, Article 13 of the given Law at the applicant's request, filed no later than three months after the terms expire, provided the valid reasons and payment of the fee are confirmed.

Title IV. Certificate on Registration of a Firm Name

Article 17. Certificate on Registration of a Firm Name

The certificate on registration of a Firm Name (hereinafter referred to as the certificate) is a protecting document, which certifies the priority and exclusive right of the owner to the registered Firm Name and state registration of the Firm Name.

The certificate shall be issued by Kyrgyzpatent within 7 days from the date of entering the data into the Register.

The form of the certificate shall be approved by Kyrgyzpatent.

In case the certificate-original is lost and at request of the legal entity on the grounds of the registration documents available in Kyrgyzpatent, a copy of the certificate-original shall be issued, provided the fee is paid.

Article 18. Termination of the Certificate Validity

Validity of the certificate shall be terminated:

- at the request of the owner of the certificate on refusal from exclusive right for Firm Name;
- in case of liquidation of the legal entity or change of its Firm Name;
- upon the decision of the Appellate Council, provided it was not appealed in the court;
- upon the decision of the court.
- upon expiration of the certificate validity term;

If the legal entity terminates its operation the corresponding registering bodies of the legal entities shall inform Kyrgyzpatent about this within 10-days period after the relevant information is received.

After termination of the validity of the certificate the exclusive right to this Firm Name may be provided to other legal entity not earlier than in one year.

Title V. Exclusive Right for a Firm Name

Article 19. Exclusive Right for a Firm Name

Exclusive right to a Firm Name - is a proprietary right not alienated from the legal entity.

Exclusive right to a Firm Name shall arise from the date of submission of the application for registration of a Firm Name by the legal entity in Kyrgyzpatent and is valid within the term of validity of the certificate.

In case Firm Name is legally protected on the grounds of its being known due to its earlier and long use in the territory of the Kyrgyz Republic the exclusive right arises from the date of decision by the Appellate Council, provided it was not appealed in the court, upon the decision of the court.

A Firm Name can not be a subject of the contract of sale, of gift, of tenancy. If a legal entity is under sale the Firm Name may be evaluated separately and sold with the legal entity unconditionally or with reserve on its termination in a certain period of time.

The exclusive right of the legal entity to the Firm Name may be assigned to other legal entity as a legal successor only if measures, which exclude confusing the consumer, are observed.

The right holder of the Firm Name may allow other person to use the Firm Name, but measures excluding confusion of the consumer, should be stipulated in the licensing agreement.

Article 20. Breach of the Exclusive Right for Firm Name

Breach of the exclusive right of the legal entity for Firm Name is the use of identical or similar Firm Name with the protected one in the activity of other legal entity with no consent of the right holder.

In case the exclusive right for Firm Name is violated, civil, administrative and criminal responsibility occurs in accordance with the legislation of the Kyrgyz Republic.

Article 22. Use of a Firm Name

A Firm Name shall be considered used in the following cases:

Conduction of transactions, putting the products into the economic circulation/turnover, conduction of financial transactions, filing the complaint with the court under this Firm Name;

Reproduction of the Firm Name on the official documents, stamps and other documentation related to the activity of the legal entity;

Reflection of the Firm Name on signboards, indicating location of the legal entity;

Application of the Firm Name as an element of the Firm Name on the products, facilitating the consumer its finding and identification;

Application of the Firm Name in the advertisement, at the fairs and exhibitions when demonstrating displays, produced by the right holder.

The Firm Name may be used as the composite part of designation of the trademark, service mark, appellations of places of origin. It may completely coincide with the indicated designations, be part of one or several registered designations, belonging to one and the same owner.

Title VI. Termination of Legal Protection of a Firm Name

Article 23. The Appeal against Registration of a Firm Name

Any concerned legal entity may file an objection with the Appellate Council within the whole term of the validity of the Firm Name registration against its registration. Decision of the Appellate Council may be appealed in the court by the applicant within six month as of the date the decision was made.

The fee is charged for filing of the appeal.

Disputes related to violation of the legislation of the Kyrgyz Republic on Firm Names shall be considered in the court.

Article 24. Objections Considered in the Appellate Council

The Appellate Council shall consider objections against:

- decision of examination on application for registration of a Firm Name;
- registration of a Firm Name;
- refusal in accepting solicitation on introducing changes and additions into the Register.

Kyrgyzpatent shall establish the order and terms for consideration of the objections by the Appellate Council.

Should any of the parties not agree with the decision of the Appellate Council it may appeal to the court within six-months from the date of a decision was made.

Title VII. Final provisions

Article 25. Fee

In order to conduct legally essential action related to the registration of a Firm Name, the fees shall be levied. The fees are paid to Kyrgyzpatent.

The list of actions, for which fees are collected, the order, amounts and terms of payment shall be established by the Government of the Kyrgyz Republic.

All the means received on the account of Kyrgyzpatent in the form of fees, including funds in foreign currency, payment for services and materials shall be used by Kyrgyzpatent for maintaining its office and other subordinate agencies, technical equipping, creation and application of computerized system, setting the information fund, training and motivating (provision of incentives) of personnel.

Article 26. Transitional Provisions

Firm Names of legal entities registered, as legal entities prior to the given Law is entered into force, shall be legally protected. The exclusive right to such Firm Names (right to own, use and dispose the Firm Names, as well as to prohibit its use by other persons) shall arise only upon the conditions of inclusion of distinctive indication.

Non-commercial organizations shall be entitled to obtain the exclusive right to its Firm Name according to the procedure established by the Law. The application may be filed with Kyrgyzpatent after the registration in the bodies of justice. In case the Firm Name of a non-commercial organization is recognized non-protected, Kyrgyzpatent shall make a decision to refuse the registration, and no exclusive right to the give Firm Name arises.

Article 27. Enforcement of the Present Law

Enforce the Law of the Kyrgyz Republic On Firm Names from the moment of its publication.

- The President and the Government of the Kyrgyz Republic shall bring into consistency normative and legal acts in accordance with the present Law.

The state agency, implementing state registration of the legal entities conjointly with Kyrgyzpatent shall develop and approve the procedure for interaction within one-month period and shall pass the existing data on registered economic entities, having the Firm Name to Kyrgyzpatent.

The President of the Kyrgyz Republic