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- 21 October 2004 [shall come into force on 11 November 2004];
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If a whole or part of a section has been amended, the date of the amending law appears in square brackets at the end of the section. If a whole section, paragraph or clause has been deleted, the date of the deletion appears in square brackets beside the deleted section, paragraph or clause.

The *Saeima*<sup>1</sup> has adopted and  
The President has proclaimed the following law:

## Law On Trade Marks and Indications of Geographical Origin

### Chapter I General Provisions

#### Section 1. Terms Used in this Law

The following terms are used in this Law:

- 1) **trade mark** - a sign used to distinguish the goods of one undertaking from those of other undertakings; unless expressly stated otherwise, the terms trade marks and marks in the text of this Law shall also comprise service marks and collective marks;
- 2) **service mark** - a sign used to distinguish the services of one undertaking from those of other undertakings;
- 3) **collective mark** - a trade mark or a service mark used by associations of manufacturing, trade or service undertakings, or similar organisations to designate their goods or services;
- 4) **Paris Convention** - Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised at Stockholm on July 14, 1967, and as amended on September 28, 1979;
- 5) **Paris Union** - the Union of the states parties to the Paris Convention;
- 6) **distinctive character** - the complex of characteristic features of a sign that ensures the possibility of distinguishing the goods or services of an undertaking that are marked with this sign from those of other undertakings; the evaluation of the distinctive character of a sign depends not only on the character of the sign itself, but also on the perception of consumers and the characteristics of the respective goods or services;
- 7) **international registration of trade marks (international registration)** - registration of trade marks effected pursuant to the Madrid Agreement Concerning the International Registration of Marks (as revised at Stockholm on July 14, 1967, and as amended on September 28, 1979) (Madrid Agreement), or pursuant to the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, adopted at Madrid on June 27, 1989 (Madrid Protocol), or pursuant to any other agreement concerning the international registration of trade marks which is in force in the Republic of Latvia;
- 8) **International Classification of Goods and Services (Nice Classification)** - the classification established by the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, of June 15, 1957;

<sup>1</sup> The Parliament of the Republic of Latvia

9) **International Bureau** - the International Bureau of the World Intellectual Property Organisation that performs the international registration of trade marks and maintains the International Register of Marks; and

10) **indication of geographical origin** - a geographic name or other indication or sign used to indicate, directly or indirectly, the geographical origin of goods or services, including indications of the characteristics or features thereof, which are attributable to this origin.

## **Section 2. Purpose of the Law**

(1) This Law regulates legal relations as to trade mark registration, as well as the use of and the protection of trade marks and indications of geographical origin.

(2) Special provisions concerning collective marks are referred to in Chapter VII of this Law; in all other cases, unless stated otherwise, the provisions pertaining to trade marks or service marks shall apply to collective marks.

(3) Use and protection of trade marks and indications of geographical origin are also regulated by other laws and regulations.

(4) Natural persons and legal persons of Latvia are entitled to register, use and protect trade marks, indications of geographical origin, as well as other signs used in commercial activities in other countries in accordance with the laws of the respective countries and international agreements, including the territory of the European Community, conforming to the procedures for registering trade marks prescribed thereby.

(5) If international agreements approved by the Saeima include provisions, which differ from the norms in this Law, the provisions of the international agreements shall be applied.

*[21 October 2004; 14 October 2010]*

## **Chapter II**

### **Trade Marks and Rights to Trade Marks**

#### **Section 3. Trade Marks**

A trade mark may consist of any sign capable of being represented graphically, and which is capable of distinguishing the goods or services of one undertaking from those of other undertakings. In particular, trade marks may be:

- 1) words - consisting of letters, words, also given names, surnames, numerals;
- 2) graphic - pictures, drawings, graphic symbols, shades of colours, combinations of colours;
- 3) three-dimensional - three-dimensional shapes, the shapes of goods or of their packaging;
- 4) a combination - consisting of a combination of the aforementioned elements (labels and the like);
- 5) specific types or special (sound or light signals and the like).

#### **Section 4. Rights to a Trade Mark and the Holders of these Rights**

(1) Rights to trade marks may be acquired by any natural or legal person (hereinafter - person). Each person may own one or more trade marks.

(2) A trade mark may be the joint property of two or more persons.

(3) A collective mark is the property of an association of several undertakings.

(4) Unregistered trade marks may be used in commercial activities. The protection of trade marks without the registration thereof or apart from registration shall be regulated by the provisions of Paragraph seven of this Section, Section 8 and Section 9, Paragraph three, Clause 4 of this Law, as well as other laws and regulations.

(5) Exclusive rights to a trade mark may be ensured by registration of the trade mark with the Patent Office of the Republic of Latvia (hereinafter - Patent Office) or by registration performed according to the provisions of international registration of trade marks that apply to Latvia, or by registration performed according to the European Community procedures for registering trade marks. The particular provisions with respect to international registration of trade marks and internationally registered trade marks are referred to in Chapter VIII of this Law; in all other cases the provisions regarding trade marks registered with the Patent Office shall apply with respect to the validity, use and protection of internationally registered trade marks.

(6) The person in whose name the trade mark has been registered has exclusive rights to prohibit other persons from using in commercial activities the following signs:

1) any sign which is identical to the trade mark in relation to goods or services which are identical to those for which the trade mark is registered;

2) any sign where, because of its identity to, or similarity to, the trade mark and the identity or similarity of the goods or services covered by the trade mark and the sign, there exists a likelihood of confusion or a likelihood of association between the sign and the trade mark on behalf of the relevant consumers.

(7) Notwithstanding the provisions of Paragraph six of this Section, the owner of a trade mark that is well-known in Latvia (within the meaning of Section 8) has the right to prohibit other persons from using, in commercial activities, any sign which constitutes a reproduction, an imitation, a translation or a transliteration, liable to create confusion, of the well-known mark in relation to goods or services which are identical or similar to the goods or services covered by a well-known trade mark. The owner of a trade mark that is well-known in Latvia has the right to prohibit, in commercial activities, the use of a sign which constitutes a reproduction, an imitation, a translation or a transliteration of the well-known mark also in relation to goods or services which are not similar to the goods or services covered by a well-known trade mark, but provided that the consumers may perceive the use of the referred to sign as an indication of a connection between such goods and services, and the owner of a well-known trade mark, and that such use may be detrimental to the interests of the owner of a well-known trade mark.

(8) In accordance with the provisions of Paragraphs six and seven of this Section, the following actions may also be prohibited:

1) use (affixing, attachment) of the abovementioned signs on the goods or on the packaging thereof;

2) offering the goods for sale, or putting them on the market or stocking them for these purposes under the said signs;

3) providing services or offering them under the said signs;

4) importing or exporting the goods under the abovementioned signs;

5) using the abovementioned signs on business documents and in advertising.

(9) In the application, *mutatis mutandis*, of the provisions of Paragraphs six, seven and eight of this Section, the owner of the trade mark is also entitled to prohibit other persons from using signs that are intended for purposes other than distinguishing goods or services (marking of goods, indication of the origin of goods or services), if it is proven that the use of such a sign in the absence of appropriate justification gives the impression of association with this trade mark, or takes unfair advantage of, or is detrimental to, the distinctive character or the reputation of the trade mark.

(10) If a registered and valid trade mark is reproduced in a dictionary, encyclopaedia, or similar reference work, thereby giving the impression that it constitutes a generic name (general term) for the goods or services for which the trade mark is registered, the publisher of the reference work shall, no later than in the next edition of the reference work, upon request of the owner of the trade mark, ensure that the respective trade mark is accompanied by an

annotation that it is a registered trade mark. This provision shall also apply, mutatis mutandis, to reference works in the form of electronic databases.

(11) The right to a trade mark, derived from its registration or from the filing of an application thereof, shall confer the same legal status as the rights to a moveable property within the meaning of the Civil Law, but it shall not be regarded as an object of property claims. This right may be transferred to other persons (successors in title) and may be inherited.

(12) Exclusive rights to a registered trade mark, including exclusive rights in relation to other persons, shall be effective to the full extent from the date of publication of the notice of the registration of the trade mark.

*[21 October 2004; 14 October 2010]*

## **Section 5. Restrictions on Exclusive Rights**

(1) The owner of a trade mark is not entitled to prohibit another person from using, in commercial activities, the following information or signs, if the use of such complies with fair industrial and commercial activity practice:

1) the given name, surname and address of such person;

2) the name of the undertaking of such person, if its lawful use in commercial activities was commenced prior to the date of application for registration (priority date) of the respective trade mark, and its address;

3) genuine indications and information concerning the kind, quality, quantity, intended purpose (functional task), value, geographical origin, the time of production of goods or of provision of services, or other characteristics of goods or services of such person;

4) the trade mark of the abovementioned owner, if it is necessary to indicate the intended purpose (functional task) of goods or services, in particular the intended purpose of goods as accessories or spare parts.

(2) The owner of a trade mark is not entitled to prohibit the use of the trade mark in relation to goods which have been marketed in the European Economic Area under that trade mark by the owner of the trade mark himself or herself or by another person with the consent of the owner.

(3) The provisions of Paragraph two of this Section shall not apply if the owner has legitimate grounds to prohibit the further commercialization of the goods, especially if the quality of the goods has changed or they have been damaged after being put on the market.

(4) Exclusive rights shall not apply to those elements of the trade mark which, when taken individually, in accordance with Section 6, Paragraph one of this Law, may not be registered as trade marks.

*[21 October 2004]*

## **Chapter III**

### **Prerequisites for Trade Mark Registration**

#### **Section 6. Absolute Grounds for Refusal and Invalidation of Trade Mark Registration**

(1) The following signs may not be registered as trade marks (if they have been registered, such registration may be declared invalid in accordance with the provisions of this Law):

1) those which cannot constitute a trade mark, that is, signs which do not comply with the provisions of Section 3 of this Law;

2) those which lack any distinctive character with respect to the goods or services applied for;

3) those which consist solely of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose (functional task), value, geographical

origin, or the time of production of the goods or of providing the services, or other characteristics of the goods or services;

4) those which consist solely of signs or indications (general signs) which have become customary in the current language or in fair and established practices of the trade to designate the goods or services applied for;

5) those which consist solely of a shape which is directly determined by the kind of goods (the shape results directly from the nature of the goods themselves), or which is necessary to obtain a particular technical result, or which gives substantial value to the goods;

6) those which are contrary to public order or to socially accepted principles of morality;

7) those which may deceive consumers regarding the nature, quality or geographical origin, or the like, of the goods or services;

8) those which contain signs, the registration of which, would be refused or invalidated in accordance with Article 6-ter of the Paris Convention, including coats of arms and flags of the member countries of the Paris Union, their official hallmarks (assay marks), control and warranty marks, as well as the emblems, flags, and names of international organisations and the abbreviations thereof, without authorisation by the competent authorities;

9) those which, without authorisation by the competent authorities given in accordance with the procedures laid down in the laws and regulations of the Republic of Latvia, contain the official heraldry approved at the State level, national decorations, Official Service insignia, as well as signs for official hallmarks (assay marks), control, quality, warranty, and safety of using goods which are used with respect to identical or similar goods or services in Latvia, or any other marks of high symbolic value, as well as religious symbols;

10) with respect to wines - those which contain or consist of an indication of geographical origin identifying wines of particular origin, or with respect to spirits – those which contain or consist of an indication of geographical origin identifying spirits of particular origin, if such is not the genuine place of origin of the wines or spirits for which the trade mark registration has been applied;

11) those which are intended for the marking of agricultural and food products and contain an indication of geographical origin protected in regard to the same agricultural or food products or consist of such protected indication of geographical origin, if the products for which trade mark registration has been applied, do not have the respective origin or if the use of the sign applied for in connection with these products is contradictory to the laws and regulations governing the protection of geographical indications and designations of origin.

(2) A trade mark also shall not be registered or, if registered, may be liable to be declared invalid in accordance with the provisions of this Law if the application for registration of the trade mark was clearly made in bad faith by the applicant.

(3) A trade mark registration may not be refused on the basis of the provisions of Paragraph one, Clauses 2, 3 or 4 of this Section, and shall not be declared invalid on the basis of the same provisions if, as a result of the use of the mark, it has acquired a distinctive character in the perception of the relevant consumers in Latvia with respect to the goods and services for which registration has been applied.

*[21 October 2004]*

## **Section 7. Earlier Trade Marks as Grounds for Invalidation of Trade Mark Registration**

(1) A trade mark registration may be declared invalid in accordance with the provisions of this Law in the following cases:

1) it is identical to an earlier trade mark, and the goods or services in respect of which the trade mark was registered are identical to the goods or services in respect of which the earlier trade mark was registered;

2) in connection with its identity or similarity to, an earlier trade mark belonging to another person and the identity or similarity of the respective goods or services, there exists a likelihood of confusion of the trade marks or a likelihood of association between the trade marks on behalf of the relevant consumers.

(2) Earlier trade marks within the meaning of Paragraph one of this Section are:

1) trade marks valid in Latvia, which have been registered under national or international registration procedures, or as European Community trade marks (hereinafter – Community trade mark) in accordance with Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (codified version) (Text with EEA relevance) (hereinafter – Council Regulation No 207/2009) if the date of application for registration thereof is earlier than the date of application for registration of the contested trade mark, also taking into account the priority accorded to those trade marks;

2) applications for the registration of trade marks referred to in the previous Clause, provided that they are registered.

*[21 October 2004; 14 October 2010]*

## **Section 8. Well-known Trade Marks as Grounds for Refusal or Invalidation of Trade Mark Registration**

(1) Notwithstanding the provisions of Section 7 of this Law, a trade mark registration may be refused or, if registered, the registration may be invalidated under the provisions of this Law, if the trade mark constitutes a reproduction, an imitation, a translation or a transliteration, liable to create confusion, of another trade mark, which, even though unregistered, was well-known in Latvia with respect to identical or similar goods or services, on the date of filing of application of the applied for (opposed) registration of trade mark (or the date of priority if priority has been granted).

(2) In addition to the provisions of Paragraph one of this Section, the registration of a trade mark may be refused or invalidated also if the goods or services regarding which trade mark registration has been applied for are not similar to the goods or services covered by a well-known trade mark in Latvia, provided that the use of the trade mark applied for (opposed) in relation to such goods or services may be perceived by consumers as an indication of a connection between such goods and services, and the owner of the well-known trade mark, and that such use may be detrimental to the interests of the owner of the well-known trade mark.

(3) In determining whether a trade mark is well-known, the knowledge of this trade mark in the relevant group of consumers, including such knowledge in Latvia that has been obtained as a result of the advertising of this mark or any other circumstances that have contributed to its fame shall be taken into account.

(4) In determining in which cases the provisions of Paragraphs one and two of this Section are to be applied to a sign regarding which registration has been applied for or to a registered trade mark, the provisions of Article 6-bis of the Paris Convention regarding a well-known trade mark shall be taken into account, including the provision which provides for the prohibition of the reproduction or the imitation of a well-known trade mark in an essential part of another trade mark; these provisions shall also apply, *mutatis mutandis*, to service marks.

(5) The provisions of Paragraphs one and two of this Section regarding refusal of registration during the expert-examination procedure shall not apply if the application for trade mark registration has been filed with the consent of the owner of the well-known trade mark.

## **Section 9. Other Earlier Rights as Grounds for Invalidation of Trade Mark Registration**

(1) A trade mark registration may be also declared invalid if the trade mark is identical or similar to an earlier collective trade mark for which the period of validity has expired within the last three years preceding the filing date of the contested trade mark.

(2) A trade mark registration may be also declared invalid on the basis of the trade mark being identical or similar to an earlier trade mark which was registered for identical or similar goods or services and for which the period of validity has expired, for failure to renew, within the last two years preceding the filing date of the contested trade mark, except in cases when the owner of the earlier trade mark has consented to the registration of the contested mark or has not used the trade mark.

(3) A trade mark registration may be also declared invalid on the basis that another person has, prior to the trade mark filing date (also taking into account its priority date), acquired in Latvia other rights which allow the prohibition of the use of the trade mark; registration may be contested also on the basis of the following rights:

1) personal rights, that is, rights related to the given name, surname, pseudonym, portrait or facsimile of a person well-known to the general public, except in the case when such person has been deceased for 50 or more years;

2) copyright;

3) commercial rights, that is, rights related to a trade name (commercial designation, name of a mass medium, or other similar sign) that is used in an identical or similar business sector, if its fair and lawful use in commercial activities in Latvia was commenced before the date of filing of application of the trade mark, or the priority date respectively, or a trade name (commercial designation, name of a mass medium or other similar sign) of Latvia or of a foreign state that was well known in Latvia;

4) other industrial property rights including rights related to an unregistered trade mark or other mark used for distinguishing the goods or services, and the domain name if the unregistered trade mark, other mark referred to or domain name has been used honestly prior to the date of filing of application for the registration of the trade mark (or the priority date respectively), in commercial activities in Latvia in connection with identical or similar goods or services for so long and in such amount that the use of the registered trade mark may confuse consumers about the origin of the respective goods or services.

(4) A person who is the owner of a trade mark in any of the member states of the Paris Union are also entitled to request invalidation of the trade mark, if an agent or representative of the owner has registered the mark in his or her own name in Latvia without authorisation from the owner, except in cases when such agent or representative has sufficient justification for his or her action.

*[21 October 2004]*

## **Chapter IV Procedure for Trade Mark Registration**

### **Section 10. Filing of an Application**

(1) A person who desires to register a trade mark in Latvia shall file a written application (hereinafter also – application) for trade mark registration with the Patent Office.

(2) A fee shall be paid for the filing of an application and for the registration of a trade mark, and for other acts specified in this Law. The amounts of fees to be paid shall be determined by the Cabinet.

(3) The date of filing of the application (filing date) shall be determined, in compliance with the provisions of Paragraph nine of this Section, to be the date on which the Patent Office has received documents which include:

- 1) a petition to register a trade mark;
  - 2) information which permits the unmistakable identification of the applicant;
  - 3) the sign which is submitted for registration (its representation);
  - 4) the list of goods and services for which the trade mark registration is requested.
- (4) The registration of only one trade mark may be requested per application.
- (5) Each application may contain a request for trade mark registration with respect to one good or service, several or many goods or services, as well as to goods and services simultaneously, irrespective of whether they belong to one or several classes of goods or services according to the International Classification of Goods and Services (Nice Classification). The goods and services shall be grouped according to the classes of this Classification.
- (6) The application form and other forms necessary for the procedure of trade mark registration shall be approved by the Cabinet.
- (7) The application shall be filed and all processing and correspondence related to the trade mark registration procedure shall be in the Latvian language. Documents may be submitted in foreign languages if a certified translation into the Latvian language is appended thereto in accordance with specified procedures.
- (8) A description of the sign applied for, a translation of a word mark which is in a foreign language, corresponding indications, if the characteristic feature of the sign is three-dimensional shape, the colour tone or colour combination, or if it is a sound signal, as well as other explanations relating to the nature of the sign may be included in the application. In cases provided for by international agreements binding to Latvia, such explanations may be requested by the Patent Office. Explanations shall be submitted within the time period specified by the Patent Office, which shall not be less than one month.
- (9) The application shall include a document certifying payment of the application fee, also payment of an additional fee, if the application covers more than one class of the Nice Classification. The document regarding payment of the fee may be attached within a month from the day of submission of the application, preserving the initial filing date (Paragraph three of this Section). If this term has expired, but all other documents necessary for determination of the filing date have been submitted, the filing date shall be deemed to be the day on which the document regarding payment of the fee, as well as the additional fees, was submitted.
- (10) If the application is filed through a representative, a document certifying the authorisation of the representative must be attached to the application. The requirements with respect to representation and authorisations shall be laid down in the Patent Law, the general provisions of the Civil Law pertaining to authorisation contracts, and the relevant provisions of international agreements binding on Latvia.
- (11) In accordance with the provisions of the Patent Law regarding representation before the Patent Office, a foreign applicant may only file an application, maintain correspondence, and perform all further actions before the Patent Office, and, if necessary, before the Board of Appeals of the Patent Office, through a professional patent attorney (trade mark agent).
- (12) The applicant or his or her authorised representative shall sign the application.
- (13) If an application is submitted using a special online form created for this purpose on the website of the Patent Office, the person of the submitter shall be identified using the means of authentication available on the single State and local government portal [www.latvija.lv](http://www.latvija.lv).
- [21 October 2004; 3 July 2014]*

## **Section 11. Priority of a Trade Mark**

- (1) Any person who has duly filed an application for trade mark registration in any member state of the Paris Union, or in any other state or union of states, with which Latvia has concluded an agreement that provides for recognition of the right of priority, or his or her



successor in title, shall enjoy, for the purpose of filing an application for registration of the same trade mark in Latvia with respect to goods and services which are identical to or included among those regarding which the earlier application has been filed, a right of priority during a period of six months after the date of filing such application.

(2) An applicant desiring to take advantage of the priority of an earlier application (Convention priority) shall include such claim in the request of the subsequent application, indicating the filing date of the earlier application and the state (regional trade mark registration office) where it has been filed, as well as the application number, if it is known on the filing date of the subsequent application. A document certifying the right of priority of the applicant, that is, a copy of the earlier application certified as a true copy of the original by the authority which accepted the previous application, shall be submitted together with the subsequent application or may be added to this application within three months from the date of filing of the application.

(3) An applicant who has exhibited goods or services at an official or officially recognised international exhibition in Latvia or in any member state of the Paris Union, under the trade mark, the registration of which, with respect to the same goods or services, has been applied for, is entitled to claim a right of priority, within the meaning of Paragraph seven of this Section, from the first day when such goods or services were exhibited at the referred to exhibition, if the application for the respective trade mark is filed within six months from that date.

(4) An applicant desiring to take advantage of the provisions of Paragraph three of this Section (exhibition priority) shall include a claim in the request of the application indicating the first day of the exhibition of the goods or services and identifying the exhibition. A document which certifies the applicant's right of priority, namely, a document proving the identity of the materials exhibited at the exhibition and the date they were first exhibited (in connection with this trade mark), issued by a competent authority of the exhibition, shall be submitted together with the application for trade mark registration or may be attached to the application within three months from the date of filing of the application.

(5) The exhibition priority does not extend the period of priority specified in Paragraph one of this Section.

(6) In determining whether the claimed priority shall be granted to the trade mark application, the Patent Office shall take into account the provisions of this Section, as well as the provisions of Sections 4 and 11 of the Paris Convention, applying these provisions, *mutatis mutandis*, also with respect to service marks.

(7) A trade mark priority (right of priority) shall mean that, upon determining which person has earlier rights, the date of priority shall be taken into account in lieu of the filing date of the trade mark registration.

## **Section 12. Preliminary Examination of the Application**

(1) Within three months of the day of the receipt of the application, the Patent Office shall conduct a preliminary examination of the application, verify the compliance of the application with the requirements of Section 10 of this Law and determine the filing date (examination of formal requirements). If the applicant has the right to priority in accordance with the provisions of Section 11 of this Law, the Patent Office shall also determine the date of priority.

(2) If the application does not comply or only partially complies with the requirements of Section 10 of this Law, the Patent Office shall notify the applicant thereof in writing and set a term of three months for reply (elimination of deficiencies). At the moment of sending of the notification the previous term of preliminary examination shall be suspended and shall continue from the day when the reply of the applicant has been received in accordance with the term stipulated by the Patent Office or if the deadline for the reply has expired.

(3) If the application does not initially comply with the provisions of Section 10, Paragraph three of this Law, which pertain to the documents necessary for determining the filing date, but the applicant eliminates the deficiencies within the time stipulated by the Patent Office, the filing date shall be determined from the day when the Patent Office has received all the abovementioned documents. If an applicant does not eliminate the deficiencies following the request of the Patent Office, the application shall be deemed not to have been filed and the applicant shall be notified thereof in writing.

(4) If the applicant has not fulfilled the prescribed requirements for obtaining a right of priority, the priority shall not be granted.

(5) If the application contains other serious deficiencies, and the applicant does not eliminate them after being so requested, the application shall be rejected and the applicant shall be notified thereof in writing.

(6) If the application complies with the requirements of Section 10 of this Law (even if the initially established deficiencies have been eliminated) the Patent Office shall take a decision to accept the application for examination (the acceptance of the application) and send a written notice to the applicant.

(7) [21 October 2004]

[21 October 2004]

### **Section 13. Examination of a Trade Mark**

(1) Within three months from the date when the application has been accepted for expert-examination, the Patent Office shall examine the compliance of the sign applied for registration with the requirements of Sections 3, 6 and 8 of this Law. In the course of the expert-examination, the Patent Office is entitled to request from the applicant additional materials and documents necessary for conducting the examination, indicating a period of three months for the submission thereof. At the moment of sending the request the term of examination shall be suspended and continue from the day when the reply of the applicant has been received in accordance with the term stipulated by the Patent Office or if the deadline for the reply has expired.

(2) If it is determined during expert-examination that a trade mark is not registrable or is registrable only with the restrictions laid down in Paragraph five or six of this Section, the Patent Office shall inform the applicant in writing of this finding and set a term of three months for the submission of observations (arguments against the grounds for refusal or restriction of the registration).

(3) As soon as possible after receipt of observations of the applicant or expiration of the term specified for the submission of observations, the Patent Office shall take a decision on the registrability of the trade mark or on refusal of registration. The applicant shall be informed of the decision in writing.

(4) If the result of expert-examination is favourable, the Patent Office shall take a decision to register the trade mark. An invitation to pay the fee for the registration and publication of the trade mark shall be appended to the decision.

(5) If it is determined that a trade mark is unregistrable only as to certain goods or services, the Patent Office shall take a decision to register the trade mark as to the other goods and services listed in the application (with respect to a restricted list of goods and services).

(6) If the elements referred to in Section 5, Paragraph four of this Law, which individually may not be registered as trade marks, have been incorporated in a trade mark, and there exists a possibility that registration of such mark would cause doubt as to the extent of the rights conferred, the Patent Office, when registering the mark, may exclude the abovementioned elements from protection with a special annotation (disclaimer or exclusion from protection).

(7) The Patent Office's decision to refuse a trade mark registration or to register it with the restrictions referred to in Paragraph five or six of this Section shall be substantiated by appropriate arguments and by references of the provisions of law.

(8) [21 October 2004]

[21 October 2004]

#### **Section 14. Withdrawal, Restriction and Amendment of an Application**

(1) The applicant has the right to withdraw the application as a whole, or to withdraw goods and services from the submitted list of goods and services at any time during the processing of the application; however, the fees already paid are not refundable.

(2) In addition to the amendments referred to in Paragraph one of this Section, only such amendments, clarifications or corrections may be made in a trade mark application that do not substantially alter the trade mark itself and do not expand the submitted list of goods and services. The Patent Office is entitled to request amendments, clarifications and corrections at any time during the processing of the application. Except for the correction of obvious mistakes, as well as necessary amendments to the name (designation) or address of the applicant or representative, the applicant has the right, upon his or her own initiative, to submit amendments and clarifications until the day on which the Patent Office takes a decision to accept the application. The Patent Office shall only take into account permissible amendments, submitted upon initiative of the applicant, during the examination process upon payment of the prescribed fee. Mistakes committed by the Patent Office shall be corrected without a fee.

(3) Amendments received by the Patent Office after the notice of registration has been prepared for publication, shall be deemed to be amendments to the registration information, and the provisions of Section 17, Paragraph two of this Law shall apply to such amendments.

(4) If during the procedure of registration, with the exception of the cases referred to in Section 12, Paragraph three, and in Section 13, Paragraph two of this Law the applicant has failed, within the prescribed time, to reply to the request of the Patent Office, or to pay the prescribed fee, and has not applied for an extension of the term, the application shall be deemed to have been withdrawn and the applicant shall be informed thereof in writing.

[21 October 2004]

#### **Section 15. Division of an Application**

(1) A trade mark registration application may be divided into two or more applications, subdividing the list of goods and services between the initial application and the divisional application (or applications). The divisional application shall preserve the filing date and priority of the initial application.

(2) The applicant is entitled to file a request for division of the application only up to the time when the Patent Office has prepared the trade mark, and information regarding such, for registration and publication.

(3) When filing a request for division of an application with the Patent Office, the applicant shall indicate which goods and services shall remain in the initial application, prepare each divisional application in accordance with all the requirements of Section 10 of this Law regarding the contents of an application, and pay all the fees as specified for a new application. The fee paid for the initial application shall not be refunded and shall not be applied to a divisional application. If the applicant has not submitted the necessary documents and materials with respect to a divisional application or has not paid the prescribed fee within three months from the date of receipt of the request for division by the Patent Office, the request for division of the application shall be deemed to have been withdrawn and the applicant shall be informed thereof in writing.

(4) Examination of a divisional application is subject to the requirements of Sections 12 and 13 of this Law. A request for division of an application may not be withdrawn following the preparation of the information for registration and publication.

*[21 October 2004]*

### **Section 16. Registration and Publication of a Trade Mark and Issuance of a Certificate**

(1) If the applicant has paid the prescribed fee, as soon as possible after taking of a favourable decision on the results of expert-examination, the Patent Office shall prepare the trade mark and the data concerning it for registration and publication.

(2) The registration of the trade mark in the State Register of Trade Marks shall take place simultaneously with its publication in the official gazette of the Patent Office. The legal consequences specified in this Law and other laws and regulations in connection with the registration data of a trade mark shall set in on the day of publication indicated in the official gazette of the Patent Office irrespective of whether the publication is in a hard copy or electronic form on the website of the Patent Office.

(3) After registration and publication of the trade mark the Patent Office shall issue to the owner, on an official form, a certificate of trade mark registration.

*[14 October 2010]*

### **Section 17. State Register of Trade Marks**

(1) The Patent Office shall maintain the State Register of Trade Marks (hereinafter - the Register) in which the registered trade mark (its representation), information on the trade mark owner and representative, if such has been appointed, filing date (priority date), registration date of the mark, publication date, the list of goods and services to which the registration of the mark applies, as well as other information determined by the Patent Office shall be recorded.

(2) The trade mark owner shall immediately notify the Patent Office of any amendments or of mistakes discovered in the information concerning the registration of the trade mark, of changes in the owner's name (designation), of a change of representative, of a desire to eliminate goods or services from the list of goods and services, or of a desire to change non-essential (secondary) elements in the trade mark itself. The amendments or corrections may not alter the essence of the mark, affect its distinctive character, extend the scope of rights conferred by the trade mark, change the granted priority, or create the likelihood of misleading consumers. If the prescribed fee has been paid, the Patent Office shall record the permissible amendments in the Register, publish a notice of the amendments made in the official gazette and send it to the owner of the mark to be attached to the certificate of trade mark registration. Mistakes committed by the Patent Office shall be corrected without a fee.

(3) Entries in the Register, to the extent contemplated by the requirements of Paragraph one of this Section, after their publication, shall be available for inspection by any person. For a prescribed fee, the Patent Office shall provide excerpts from the entries in the Register.

### **Section 17.<sup>1</sup> Appeal against the Decision of the Patent Office and the Progress Thereof**

(1) If an applicant or other addressee of the decision of the Patent Office (owner of the trade mark, previous owner, legal successor of ownership rights, licensee) disagrees with the decision of the Patent Office, taken in connection with the preliminary examination of an application or the results of the expert-examination of the trade mark, or a decision taken in another procedure in connection with the trade mark registration, he or she is entitled to submit a written motivated appeal to the Patent Office within three months from the day of receipt of the decision, upon payment of the respective fee. Submission of an appeal shall suspend the execution of the Patent Office decision.

- (2) The Patent Office shall revoke or amend the respective decision without delay, insofar as it recognises the submitted appeal as justified.
- (3) If the revocation or amendment of a decision can affect the rights or lawful interests of a third person or if the decision is not revoked or amended within two weeks following the submission of the appeal, in accordance with the procedures laid down in Paragraph two of this Section, the Patent Office shall hand over the appeal for examination to the Board of Appeals of the Patent Office (hereinafter – Board of Appeals).
- (4) If the decision of the Patent Office is revoked or amended in accordance with Paragraph two of this Section and it satisfies the appellant, he or she shall withdraw the appeal. The fee paid for the submission of the appeal shall be repaid in accordance with the procedures laid down in the Administrative Procedure Law.
- (5) If the amendments to the decision do not satisfy the appellant, he or she shall notify the Patent Office thereof, within three months from the day of the receipt of the amended decision, which shall forward the appeal without delay to the Board of Appeals.
- (6) Until the examination by the Board of Appeals, the appellant is entitled to update or supplement the submitted appeal.

*[21 October 2004]*

### **Section 18. Opposition to the Registration of a Trade Mark**

- (1) Within three months from the date of the publication of a trade mark, interested persons may, upon payment of the applicable fee, submit an opposition to the registration of a trade mark. The opposition shall be filed with the Board of Appeals in writing, substantiated by appropriate arguments and references to provisions of law. After expiration of the abovementioned term, the opponent does not have the right to change (expand) the initial legal basis of the opposition, but may, up until the decision of the Board of Appeals is taken, submit additional documents and materials, that confirm (detail) the facts on which the opposition is based.
- (2) Any person may file an opposition, if the registered trade mark does not comply with the provisions of Section 3 of this Law, or if the registration would be invalidated in accordance with the provisions of Section 6, or if the provisions of Section 9, Paragraph three, Clause 1 are applicable.
- (3) An opposition based on the provisions of Section 7 or 8 of this Law, or Section 9, Paragraph one, Paragraph two, Paragraph three, Clause 2, 3 or 4, or Paragraph four may be filed by persons who are the owners of earlier trade marks, well-known trade marks, or have other earlier rights (also their successors in title) or their representatives, as specified in the applicable provisions.
- (4) An opposition based on the provisions of Section 8 or Section 9, Paragraph one, Paragraph two, Paragraph three, Clause 2, 3 or 4, of this Law in addition to the persons referred to in Paragraph three of this Section, may also be filed by professional associations and associations of manufacturers, traders and providers of services, whose articles of association provide for the protection of the economic interests of their associates (members), as well as by organisations and authorities, whose purpose, under their articles of association, is the protection of the rights of consumers.
- (5) The Board of Appeals shall inform the owner of the opposed trade mark of the opposition and set a term of three months for the submission of a reply.
- (6) If an opposition has not been filed within the term laid down in law, the registration of the trade mark may be contested only in court.

### **Section 19. Examination of Appeals and Oppositions**

- (1) The appeals filed in accordance with the provisions of Section 17.<sup>1</sup> of this Law and the oppositions filed in accordance with the provisions of Section 18 shall be examined by the Board of Appeals, which has been established in accordance with the provisions of the Patent Law.
- (2) Appeals shall be reviewed within three months from the date of the receipt thereof by the Patent Office. If the decision of the Patent Office is amended in accordance with the procedures laid down in Section 17.<sup>1</sup>, Paragraph two of this Law but the appeal has not been withdrawn, it shall be examined not later than within two months from the day of receipt of the notification provided for in Section 17.<sup>1</sup>, Paragraph five of this Law.
- (3) An opposition shall be reviewed within three months from the day of the receipt of a reply from the trade mark owner or from the day when the deadline for the submission of a reply has expired. If an opposition based on the provisions of Section 7 of this Law is submitted, and the contested trademark is opposed by an earlier trademark that has not yet been registered, the examination may be suspended upon request of the opponent, until the opposing trade mark is registered and published. If prior to the examination of the opposition a claim is submitted to court for the invalidation of the registration of the opposing trade mark or for the revocation of the registration of this trade mark, and if the outcome of the examination of the opposition may be affected by the validity of the registration, the Board of Appeals shall stay the opposition proceedings until the adjudication of the claim.
- (4) The appellant or his or her representative shall be invited to take part in the hearing of the Board of Appeals, in which an appeal against a decision of the Patent Office is reviewed. The opponent or his or her representative and the owner of the contested trade mark, or his or her representative shall be invited to take part in the hearing of the Board of Appeals, in which an opposition to the registration of the trade mark is reviewed. All interested parties are entitled to submit the necessary documents and materials and to provide oral arguments.
- (5) According to the results of the review of an appeal, the Board of Appeals shall take a decision to grant the appeal, fully or in part, or to reject it, while the respective decision of the Patent Office may be revoked, amended or allowed to remain in effect, by the decision of the Board of Appeals. If the appeal has been filed against a decision of the Patent Office with respect to the results of an expert-examination (Section 13, Paragraph seven), the trade mark may be declared registrable, fully or with the restrictions referred to in Section 13, Paragraphs five and six of this Law, or the decision to refuse the registration may be allowed to remain in effect. If new facts are revealed in a case in connection with the appeal, the Board of Appeals may take a decision to reconsider (re-examine) the application.
- (6) According to the results of the examination of an opposition, the Board of Appeals shall take a decision to grant the opposition, fully or in part, or to reject it, while the opposed trade mark may be, as a result of the decision of the Board of Appeals, invalidated as of its registration date, declared valid with the restrictions referred to in Section 13, Paragraphs five and six of this Law, or declared valid in accordance with its registration.
- (7) Where the opposition is fully or partly based on an earlier trade mark (within the meaning of Section 7, Paragraph two of this Law), that has been registered no less than five years previously, the owner of the contested trade mark is entitled to request that the opponent provide obvious and sufficient (*prima facie*) evidence that this earlier trade mark has been actually used within the meaning of Section 23 of this Law. The Board of Appeals shall disregard such grounds for opposition if the applicable evidence is not provided as requested, or if there is no such evidence pertaining to the last five years prior to the examination of the opposition. If the opposing earlier trade mark has been used only with respect to part of the goods and services for which it has been registered, the Board of Appeals shall consider the previously mentioned grounds for opposition only with respect to the goods and services for which use has been substantiated by obvious and sufficient (*prima facie*) evidence.
- (8) The Board of Appeals shall take its decision *in camera*. The operative part of the decision shall be announced at the end of the hearing, whilst a substantiated decision in written form

shall be sent to the persons referred to in Paragraph four of this Section within one month, who have the right to appeal this decision in court within three months from the day of the receipt of the copy of the decision. The submission of an application to the court shall suspend the execution of the decision of the Board of Appeals.

(9) Regardless of the submission of an application in respect of the decision of the Board of Appeals, an interested person may contest the registered trade mark (in accordance with the provisions of Section 31 or 32 of this Law). If the claim was submitted before the examination of the matter with respect to the appeal regarding the decision of the Board of Appeals, administrative proceedings shall be stayed until the adjudication of the claim.

*[21 October 2004]*

## **Section 20. Division of a Registration**

(1) A trade mark registration may be divided into two or more registrations, subdividing the list of goods and services for which the mark has been registered, between the initial registration and the divisional registration (registrations). The divisional registration shall retain the filing date and the priority of the initial registration.

(2) A request for division of a registration may be submitted only after expiration of the term for oppositions (opposition period) laid down in Section 18, Paragraph one of this Law.

(3) When submitting a request for division to the Patent Office, the owner of the trade mark shall indicate which goods and services are to remain in the initial registration and which are to be included in the divisional registration (registrations), as well as pay the prescribed fee for trade mark registration and publication with respect to each of the divisional registrations.

(4) If the prescribed fee is not received by the Patent Office within three months from the date of receipt of the request for division, the request for division of the registration shall be deemed withdrawn.

(5) If the owner of the trade mark has paid the prescribed fee, the Patent Office shall, as soon as possible, enter the divisional registration and the amendments with respect to the initial registration into the Register, publish the relevant notices in its official gazette, as well as issue a certificate of registration regarding the divisional registration and supplement the certificate of the initial registration in accordance with the provisions of Section 16, Paragraph three and Section 17, Paragraph two of this Law.

(6) After the divisional registration information has been prepared for registration and publication, the applicant is not entitled to withdraw the request for division.

*[21 October 2004]*

## **Section 21. Validity and Renewal of a Registration**

(1) The registration of a trade mark is valid for a period of 10 years from the filing date, if it is not cancelled upon initiative of the owner of the trade mark, invalidated or revoked in accordance with the provisions of Section 30, 31 or 32 of this Law.

(2) The registration may, every 10 years, be renewed (the trade mark re-registered) for another 10-year period. The owner of the trade mark shall submit a request for renewal of registration within the last year of validity of the trade mark registration, paying the prescribed fee. The Patent Office shall, upon the owner's request and the payment of an additional fee, prescribe an additional six-month period after expiration of the registration for the renewal of the registration.

(3) The Patent Office shall enter the information concerning the renewal of the registration into the Register, publish a notice thereof in its official gazette and send it to the owner of the mark to be attached to the trade mark certificate of registration.

## **Section 22. Extension of Terms**

(1) The Patent Office or Board of Appeals is entitled to extend the terms relating to activities of the Patent Office or the Board of Appeals laid down in this Law or the terms stipulated by the Patent Office or the Board of Appeals for a period of time not exceeding three months, provided that the request for such extension has been received by the Patent Office before expiration of the term in question and the fee for extension of the term has been paid.

(2) Paragraph one of this Section shall not apply to the following terms:

1) the convention priority term and exhibition priority term (Section 11, Paragraphs one and three);

2) the term for the submission of an opposition (Section 18, Paragraph one, Section 39, Paragraph five);

3) the term for the appeal of a decision of the Board of Appeals (Section 19, Paragraph eight);

4) the term of validity of the registration and the terms specified for the renewal of the registration (Section 21);

5) the terms specified for the continued processing and reinstatement of rights (Section 22.<sup>1</sup>, Paragraph two, Section 22.<sup>2</sup>, Paragraph two).

[14 October 2010]

### **Section 22.<sup>1</sup> Continued Processing Following the Non-Observance of Terms**

(1) An applicant, owner of a trade mark or other interested person, who has not observed the terms laid down in this Law in connection with the activities of the Patent Office, may request the continued processing.

(2) A request for the continued processing shall be submitted to the Patent Office not later than two months following the receipt of the notification of the Patent Office regarding the non-observance of the term or regarding the loss of rights provided for by this Law due to the non-observance of the term if the activities provided for within the non-observed term have been executed and the State fee has been paid for the continued processing. If the activities provided for have not been executed or the State fee for the continued processing has not been paid, the request shall be considered to have been withdrawn.

(3) If the request for the continued processing is satisfied, the non-observance of terms shall have no legal consequences.

(4) Continued processing may not be requested if the following terms have not been observed:

1) the terms which have been specified for the continued processing (Paragraph two of this Section);

2) the convention priority term and exhibition priority term or term specified for the submission of documents certifying rights to the priority (Section 11);

3) the term specified for the submission of observations during the course of the expert-examination of a trade mark (Section 13, Paragraph two);

4) the term for the submission of an opposition (Section 18, Paragraph one, Section 39, Paragraph five); 4) the term for the submission of an opposition (Section 18, Paragraph one, Section 39, Paragraph five);

5) the term of validity of the registration and the terms specified for the renewal of the registration (Section 21);

6) the terms specified for the reinstatement of rights (Section 22.<sup>2</sup>, Paragraph two).

[14 October 2010]

### **Section 22.<sup>2</sup> Reinstatement of Rights**

(1) If an applicant, owner of a trade mark or other interested person has not observed the term laid down in this Law in connection with the activities of the Patent Office and the direct



consequences of the non-observance of the term are the rejection of an application for the registration of a trade mark, the consideration of an application for registration or other request as non-submitted or withdrawn, the cancellation of the registration or the loss of other rights provided for in this Law, this person may request the reinstatement of the respective rights.

(2) A request for the reinstatement of rights in accordance with Paragraph one of this Section shall be submitted to the Patent Office within two months following elimination of the reasons for which the term was not observed, but not later than within one year following expiry of the initially specified term, if the activities provided for within the non-observed term have been executed and the State fee for the reinstatement of rights has been paid. The reasons for the non-observance of the term shall be justified in the request and the necessary evidence shall be appended thereto. If the activities provided for have not been executed or the State fee for the continued processing has not been paid, the request shall be considered to have been withdrawn.

(3) If in the case laid down in Paragraph one of this Section, the Patent Office establishes that the term has been exceeded in spite of due care required by the circumstances having been taken and the requirements of Paragraph two of this Section have been fulfilled, it shall reinstate the rights of the applicant, owner of the trade mark or other interested person to the application for registration, registration or other rights lost.

(4) Prior to the complete or partial rejection of a request for the reinstatement of rights the Patent Office shall notify the submitter of the request in writing of the grounds for the potential rejection and invite him or her to submit his or her considerations in connection to these grounds within three months following the receipt of the notification.

(5) Reinstatement of rights may not be requested in the following cases:

1) the terms specified for the reinstatement of rights (Paragraph two of this Section) have not been observed;

2) the term specified for the submission of observations upon request to the Patent Office during the course of the examination of a trade mark (Section 13, Paragraph two) has not been observed;

3) the term for the submission of oppositions (Section 18, Paragraph one, Section 39, Paragraph five) has not been observed;

4) the terms specified for the continued processing (Section 22.<sup>1</sup>, Paragraph two) have not been observed;

5) the nature of the matter allows the application of the provisions for the continued processing in accordance with Section 22.<sup>1</sup> of this Law.

(6) If rights are reinstated and therefore it is necessary to amend the previous officially published notice, relating to the registration of a trade mark, the Patent Office shall make the appropriate entry in the Register and publish a notice regarding the reinstatement of rights in the official gazette of the Patent Office.

*[14 October 2010]*

### **Section 22.<sup>3</sup> Decisions on Extending Terms, Continued Processing and the Reinstatement of Rights**

(1) The Patent Office or the Board of Appeals, when taking a decision to extend a term in conformity with Section 22 of this Law, or the Patent Office, when taking a decision on continued processing in conformity with Section 22.<sup>1</sup> of this Law or on reinstatement of rights in conformity with Section 22.<sup>2</sup> of this Law, shall take into account the interests of a third person, if the decision may affect them.

(2) If a request for the extension of a term, the continued processing or the reinstatement of rights is satisfied, the decision thereof may be combined with a decision taken by the Patent

Office or the Board of Appeals in accordance with the provisions of this Law in the respective subsequent procedure.

(3) The decision shall be notified to the submitter of the request and, if it may affect a third person, the third person shall also be notified thereof.

*[14 October 2010]*

## **Chapter V Use of Trade Marks**

### **Section 23. Use of Trade Marks**

(1) The use of a trade mark shall be considered to be the use of a trade mark on goods and their packaging, on any documentation accompanying the goods, in the advertising of the goods or services, or in relation to other economic activities in connection with the relevant goods or services.

(2) The use of a trade mark shall also be considered to be the use of a trade mark in a form differing in individual non-essential elements, if the changes permitted to the form of the mark do not alter the distinguishing features and distinctive character of the trade mark as registered.

(3) If, within five years from the date of registration, the owner of the trade mark has not commenced the actual use of the trade mark in Latvia in connection with the goods and services for which it has been registered, or if such use has been discontinued during the period of validity of the trade mark for five successive years, and there are not sufficient reasons for non-use, the provisions of Section 19, Paragraph seven; Section 28, Paragraph three; Section 31, Paragraph two and Section 32 may be applied with respect to this trade mark.

(4) The use of a trade mark in commercial activities, with the purpose of gaining or maintaining a certain market position for the respective goods or services shall be recognised as actual use.

(5) The use of a trade mark in Latvia on such goods or their packaging as are intended solely for export shall also be considered to be the use of a trade mark.

(6) If a trade mark is used with the consent of the owner, it shall be considered that the mark is being used by its owner.

*[21 October 2004]*

### **Section 24. Warnings Regarding Exclusive Rights to a Trade Mark**

(1) The owner of a trade mark is entitled to place, next to the registered and valid trade mark, a sign consisting of an encircled letter "R" or wording which warns of the registration of the mark ("Trade mark registered in Latvia" and the like).

(2) The owner of a trade mark shall not mislead the public by affixing a warning sign of a registered mark to a trade mark which is not registered in Latvia or elsewhere.

(3) If the owner of a trade mark has reason to believe that a person is infringing the exclusive rights of the owner by using in commercial activities any of the signs referred to in Section 4, Paragraph six, Clause 1 or 2, or Section 4, Paragraph seven, the owner of the trade mark is entitled to warn such person of the alleged infringement.

### **Section 25. Transfer of a Trade Mark to Other Persons**

(1) The owner of a trade mark shall have the right to transfer his or her trade mark to another person in relation to one, several or all of the goods or services for which the mark is

registered, together with the undertaking, or a part thereof, that has been using this mark, or separately from the said undertaking.

(2) If an undertaking, or a part thereof, is transferred to another person, the right to the trade marks directly connected with the operation of the undertaking or part thereof shall be deemed to be transferred together with the undertaking or a part thereof if it is not otherwise laid down in the agreement between the parties, or if circumstances of the matter do not clearly dictate otherwise.

(3) The Patent Office, after receipt of a request, a document attesting to the transfer of rights and the prescribed fee, shall enter into the Register and publish in the official gazette information concerning the change in ownership of a registered trade mark, and the transfer of a trade mark to another person, as well as send to the owner (owners) a notice of the entry made in the Register.

(4) If the transfer of a trade mark to another person (change in ownership) does not include all the goods and services for which the mark is registered, the Patent Office shall divide the registration by applying to it, *mutatis mutandis*, the provisions of Section 20 of this Law, and create a new registration with respect to the goods and services for which the owner has changed.

(5) A trade mark transfer agreement with respect to third persons shall take effect on the date of publication of the notice in the official gazette of the Patent Office. The successor in title (the new owner of the trade mark) may not exercise the rights arising from trade mark registration prior to the date when the change in ownership is entered into the Register.

(6) A trade mark transfer agreement may be declared null and void if the change in ownership, intentionally or unintentionally, misleads or may mislead consumers with respect to the origin, nature, quality or other characteristics of the goods and services in relation to which the mark is used or is intended to be used. Any person may bring an action before the Vidzeme Suburb Court of Rīga City to declare the trade mark transfer agreement as null and void.

(7) If a trade mark registration application is transferred to another person before the Patent Office has taken a decision to register the mark, the Patent Office shall, upon receipt of a request, a document attesting to the transfer of rights and the prescribed fee, regard the change of applicant as an amendment to the application within the meaning of the relevant provisions of Section 14 of this Law, and continue examination of that application with respect to the new applicant.

(8) If the transfer of a trade mark application to another person (change of applicant) does not apply to all the goods and services included in the application, the Patent Office shall divide the application, *mutatis mutandis* applying the provisions of Section 15 of this Law, and create a new application concerning the goods and services as to which the applicant has been changed.

*[21 October 2004; 11 December 2014]*

## **Section 25.<sup>1</sup> Trade Mark During the Process of the Legal Protection of a Commercial Company, the Process of Insolvency and a Trade Mark as the Subject of Pledge Rights**

(1) If a registered trade mark is involved in the process of the legal protection of a commercial company, or a process of insolvency, or if it is distressed by court decision, the Patent Office, according to the court decision, shall make the respective note in the Register. Information regarding the note made shall be notified in writing to the applicant and published in the official gazette of the Patent Office.

(2) A trade mark registered with the Patent Office in accordance with the procedures of the national procedure shall be pledged in accordance with the provisions of the Commercial Pledge Law. The Patent Office shall record a commercial pledge note on the basis of a notification of the holder of the register of commercial pledges. Information regarding the

note made shall be notified to the owner of the trade mark, and published in the official gazette of the Patent Office.

*[21 October 2004; 14 October 2010; 3 July 2014 / The new wording of Paragraph two shall come into force on 1 January 2015. See Paragraph 11 of Transitional Provisions]*

## **Section 26. Licensing Agreement of a Trade Mark**

(1) The owner of a trade mark is entitled to transfer, pursuant to a licensing agreement, the right to use the trade mark with respect to one, several or all of the goods or services for which the mark is registered. According to the nature of the licence (an exclusive or nonexclusive licence) the person granting the right to the trade mark (the licensor) and the person receiving the right (the licensee) shall both undertake certain rights and obligations.

(2) A licence shall be of an exclusive character if the licensee receives exclusive rights to use the trade mark in accordance with the provisions provided for in the licensing agreement and the licensor retains the right to use the trade mark insofar as this right has not been transferred to the licensee.

(3) A licence shall be of a nonexclusive character if the licensor, when granting to another person the right to use the trade mark, reserves the right to use this trade mark, as well as the right to grant a licence for the same trade mark to third persons.

(4) The owner of a trade mark is entitled to invoke the exclusive rights against a licensee who contravenes any provision of the licensing agreement with regard to:

- 1) the term of the licence;
- 2) the form in which the trade mark may be used in accordance with the registration;
- 3) the list and nature of the goods and services for which the licence is granted;
- 4) the territory in which the trade mark is authorised to be used;
- 5) the quality of the goods manufactured or of the services provided by the licensee.

(5) The licence granted may not be assigned to third persons, and the licensee shall have no right to grant a sub-licence, unless otherwise provided in the licensing agreement.

(6) The Patent Office shall, after receipt of a relevant submission from the licensor or licensee, a document certifying the information to be included in the Register and payment of the prescribed fee, enter the information concerning the licensing agreement of a registered trade mark in the Register and publish it in the official gazette of the Patent Office, and send a notification to the licensor and licensee of the entry made in the Register. By these procedures information regarding the expiry of the term of validity of the agreement and amendments to the provisions of the licence shall also be included in the Register and published.

(7) A licensing agreement may be declared null and void, if the use of the trade mark by the licensee, intentionally or unintentionally, misleads consumers as to the origin, nature, quality or other characteristics of the goods and services in relation to which the mark is used. The licensor or any other person may bring an action in the Vidzeme Suburb Court of Rīga City to declare the licensing agreement as null and void.

(8) The fact that the information about a licensing agreement is not entered in the Register or is not published, does not constitute grounds for opposing the validity of a trade mark in accordance with the provisions of Section 31 or 32 of this Law, or for applying the restrictions for non-use of a trade mark as provided by Section 23, Paragraph three (in such cases Section 23, Paragraph six shall apply), or for opposing the right of a licensee to intervene in an action for trade mark infringement instituted by the owner of the trade mark under the provisions of Section 28, Paragraph two, or for opposing the right of a licensee to receive compensation for the damages caused by unlawful use of the licensed trade mark.

(9) The validity of a trade mark registration, the application of the provisions of Section 23, Paragraph six of this Law, and the rights of the licensee referred to in Paragraph eight of this Section may also not be contested on the basis of the fact that the licensee has not indicated on the goods or their packaging, with respect to the services provided or in the advertising of

the said goods and/or services that the trade mark is being used pursuant to a licence, or where such indication is unclear.

(10) The transfer of a trade mark within the meaning of Section 25, Paragraph one of this Law and the grant of a licence within the meaning of Paragraphs one, two and three of this Section shall not affect licences previously granted to third persons.

*[21 October 2004; 11 December 2014]*

### **Section 27. Unlawful Use of a Trade Mark (Trade Mark Infringement)**

(1) Unlawful use of a trade mark shall be construed as an infringement of the exclusive rights of the trade mark owner, namely, the use, in commercial activities, of the signs referred to in Section 4, Paragraph six, Clause 1 or 2 of this Law, or in Section 4, Paragraph seven, without the consent of the owner of the trade mark, including use of such signs in the ways specified in Section 4, Paragraph eight.

(2) In determining whether the use of a specific sign shall qualify as unlawful use of a trade mark, simultaneously and in addition to the provisions of Paragraph one of this Section, the provisions of Section 5 of this Law on restrictions of exclusive rights, the restrictions due to non-use of a trade mark as provided for in Section 23, Paragraph three, and the restrictions of rights (forfeiture of rights) as a result of acquiescence as provided for in Section 29, shall be also considered in the respective cases.

### **Section 28. Liability for Unlawful Use of a Trade Mark**

(1) Liability for unlawful use of a trade mark shall arise, where the fact of infringement of the trade mark is proved in accordance with the provisions of Section 27 of this Law. Liability for unlawful use of a trade mark may also be determined if it is established that the exclusive rights of the owner of the trade mark may be violated or are soon to be violated (potential infringement), because the defendant himself or herself or with the aid of another person (intermediary) has performed measures which are recognised as preparations for the unlawful use of the trade mark.

(2) The owner of a trade mark or his or her successor in title may bring an action in the Vidzeme Suburb Court of Rīga City for unlawful use of the trade mark. The licensee is entitled to bring a separate action for unlawful use of the trade mark only with the consent of the owner of the trade mark. The consent of the owner of the trade mark is not necessary if the licensee has been granted the right independently to bring an action in a licensing agreement, or if the owner of the trade mark does not bring an action even though the licensee has invited the owner to do so in writing. Any licensee of the respective trade mark is entitled to intervene in the matter and seek damages that have resulted from unlawful use of the licensed trade mark.

(3) The person against whom an action for unlawful use of a trade mark is brought may, in accordance with the provisions of Section 31 or 32 of this Law, bring a counter-claim to invalidate or revoke the trade mark registration. In such cases trade mark infringement may be determined to the extent that its registration is not declared invalid or revoked.

(4) When determining liability for unlawful use of a trade mark, for the purposes of determining the degree of fault, the fact of receipt of the warning notice referred to in Section 24, Paragraph three of this Law may be used as evidence.

(5) An action for the infringement of a trade mark may be brought within three years from the date when the aggrieved party became aware, or should have become aware, of the occurrence of infringement of the trade mark.

(6) An action for the unlawful use of a trade mark may also be based upon the provisions of laws and regulations regarding unfair competition or other laws and regulations.

*[8 February 2007; 11 December 2014]*

## **Section 28.<sup>1</sup> Procedures for Determining the Amount of Damages and Compensation for Moral Damage**

(1) If unlawful use of a trade mark has occurred due to the fault of a person, the legal subjects referred to in Section 28, Paragraph two of this Law are entitled to request damages and compensation for moral damage caused.

(2) The amount of damages and compensation for moral damage shall be determined in accordance with the Civil Law. When determining the amount of damage, the amount of profit acquired unfairly by a person who has unlawfully used the trade mark may also be taken into account.

(3) If the actual amount of damages cannot be determined in accordance with Paragraph two of this Section, the amount of damages shall be commensurate with the amount which may be received by the owner of the trade mark for handing over the rights to use the trade mark to a licensee.

*[8 February 2007]*

## **Section 29. Restrictions of Rights (Forfeiture of Rights) as a Result of Acquiescence**

(1) If the owner of an earlier trade mark (within the meaning of Section 7, Paragraph two of this Law) has not contested, in administrative or court proceedings, the use of a later trade mark registered in Latvia for a period of five successive years, although aware of such use, he or she are no longer entitled, on the basis of his or her earlier trade mark, either to request the invalidation of the later trade mark, or to oppose the use of the later trade mark with respect to the goods and services for which the later trade mark has been used, except in the case when registration of the later trade mark was applied for in bad faith.

(2) In the case referred to in Paragraph one of this Section, the owner of the later registered trade mark is not entitled to contest the right of the earlier trade mark, even if those rights, in accordance with the provision of Paragraph one of this Section, may no longer be invoked against the later trade mark.

## **Chapter VI Termination of the Validity of a Trade Mark**

### **Section 30. Cancellation of a Trade Mark Registration on the Initiative of the Owner of the Trade Mark (Surrender of Registration)**

(1) The owner of a trade mark may petition the cancellation of the registration of a trade mark before the expiration of the validity of the mark. If a submission for cancellation is received by the Patent Office and the prescribed fee has been paid, the trade mark registration shall be cancelled as of the date specified by the owner, but no earlier than as of the date of receipt of the submission. The Patent Office shall make a corresponding entry in the Register, publish a notice in the official gazette, and send it to the owner of the trade mark.

(2) If the submission of the owner of the trade mark to cancel the trade mark registration does not apply to all the goods and services for which the mark is registered, it shall be considered as an amendment in the trade mark registration information and examined in accordance with the provisions of Section 17, Paragraph two of this Law.

(3) The Patent Office shall not cancel a trade mark registration in accordance with the provisions of this Section if, with respect to this registration, the Register contains information concerning one valid licensing agreement or several valid licensing agreements, and written consent of the relevant licensees to cancel the registration is not attached to the submission of the owner of the trade mark.

### **Section 31. Invalidation of a Trade Mark Registration**

(1) A trade mark registration may be invalidated by the judgment of a court, if the registered trade mark does not comply with the provisions of Section 3 of this Law, or if the grounds for invalidation of the trade mark as specified in the provisions of Sections 6, 7, 8 or 9 of this Law exist (continue to exist at the time the matter is adjudicated).

(2) If the action is based on an earlier trade mark (within the meaning of Section 7, Paragraph two), and the defendant has brought a counterclaim on the basis of non-use of the earlier trade mark (within the meaning of Section 23), the trade mark registration shall be invalidated to the extent that the counterclaim cannot be met.

(3) An action may be brought in the Vidzeme Suburb Court of Rīga City in accordance with this Section by persons who, in accordance with the provisions of Section 18, Paragraphs two, three and four of this Law, are entitled, in relevant cases, to file oppositions to trade mark registration. Such an action, if there exist sufficient grounds for it, may be brought as a counterclaim also in proceedings for unlawful use of a trade mark.

(4) If the provisions referred to in Paragraph one of this Section are valid, the trade mark registration shall be invalidated from the date of its registration.

(5) If there are grounds for invalidation of a trade mark registration only with respect to some of the goods and services for which the trade mark is registered, the registration shall be invalidated only with respect to those goods and services.

(6) The person whose claim for the invalidation of a trade mark has been satisfied in court shall submit a copy of the judgment of the court to the Patent Office. The Patent Office shall make an entry in the Register regarding the invalidation of the trade mark or amendments to the information in the Register and publish the respective notice in the official gazette of the Patent Office and notify the claimant and owner (former owner) of the trade mark thereof.

*[21 October 2004; 11 December 2014]*

### **Section 32. Revocation of a Trade Mark Registration**

(1) A trade mark registration may be revoked by a judgment of the court if the trade mark, after its registration, has not been actually used (within the meaning of Section 23 of this Law) for a period of five successive years in connection with the goods and services for which it is registered, and if there are not valid reasons for non-use.

(2) The action for revocation of a trade mark registration referred to in Paragraph one of this Section may not be maintained (may not be allowed), if during the interval between the expiration of the said five-year period of non-use and the bringing of the action for revocation, actual use of the trade mark has been commenced or resumed. The fact that a trade mark has been used not longer than three months preceding the bringing of the action for revocation and that the preparations for the commencement or resumption of use of the trade mark were commenced only after expiration of the actual period of non-use of the trade mark as specified in Section 23, shall not be considered to be commencement or resumption of use of a trade mark.

(3) A trade mark registration may also be revoked by a judgment of the court if, after registration of the trade mark, through the action (or inaction) of the owner, it has become a generic name (established name) in the trade for a product or service with respect to which it is registered.

(4) A trade mark registration may also be revoked by a judgment of the court if, as a result of the use of a trade mark, after its registration by the owner of the trade mark or with the consent of the owner, in connection with the goods or services for which it is registered, the public may be misled, especially as to the nature, quality or geographical origin of those goods or services.

(5) Any interested party may bring an action in the Vidzeme Suburb Court of Rīga City for revocation of a trade mark in accordance with the provisions of this Section at any time during the period of validity of the trade mark. Such a claim, provided there exist sufficient grounds for it, may be brought as a counterclaim, also in proceedings for unlawful use of a trade mark.

(6) If grounds for revocation of the registration of a trade mark exist with respect to only some of the goods and services for which the mark is registered, the registration shall be revoked only with respect to those goods and services.

(7) The court shall indicate in the judgment from which day the trade mark registration shall be revoked. If it is not determined when the circumstances which are the basis for the revocation of the trade mark registration had set in, it shall be revoked from the day when the application for the action was submitted to the court. The person whose claim for the revocation of a trade mark has been satisfied in court shall submit a copy of the judgment of the court to the Patent Office. The Patent Office shall make the relevant entry in the Register regarding the revocation of the trade mark or the relevant amendments in the registration information as of the day specified in the judgment and publish a relevant notice in the official gazette of the Patent Office, and notify the claimant and owner (former owner) of the trade mark thereof.

*[21 October 2004; 11 December 2014]*

### **Section 33. Cancellation of a Trade Mark Registration due to Expiration of its Period of Validity (Exclusion from the Register)**

(1) The Patent Office shall cancel a trade mark registration if the term of trade mark validity and the additional six-month period for renewal of the registration have expired but the registration has not been renewed (the mark is not re-registered) in accordance with the prescribed procedures.

(2) Registrations which have not been renewed shall be excluded from the Register as of the date following the last 10-year period of trade mark validity. The Patent Office shall publish a corresponding notice in the official gazette and send it to the owner of the trade mark.

*[21 October 2004]*

## **Chapter VII Collective Marks**

### **Section 34. Collective Marks and Rights to Them**

(1) A collective mark may be formed by any sign that complies with the provisions of this Law concerning types of trade mark (Section 3) and allows to distinguish the goods or services of the members (associates) of the association which is the owner of the collective mark, from the goods and services of other undertakings. Each undertaking of such an association may at the same time also have its own trade marks.

(2) Any association, the existence of which is not contrary to the laws of its state of origin, and which has been registered in accordance with specified procedures, even if such an association does not own a manufacturing or commercial undertaking, may be the owner of a collective mark.

(3) Signs and indications which may be used, in trade, to designate the geographical origin of the goods or services, may be registered as collective marks without application to such marks the relevant restriction of Section 6, Paragraph one, Clause 3 of this Law. However, the registration of such collective marks does not entitle the owner the right to prohibit other persons from using, in commercial activities, such signs or indications, provided that such use



complies with fair manufacturing and commercial activity practices; in particular, the right of third persons to use a geographic name may not be opposed based on such a collective mark.

### **Section 35. Use of a Collective Mark and By-laws Governing Such Use**

(1) The provisions for the use of trade marks, within the meaning of Section 23 of this Law, shall be deemed to be complied with as to a collective mark, if that mark is being used in any of the ways provided for in Section 23 and in accordance with the by-laws on the use of the collective mark, by at least one of the persons who has the right to use it.

(2) Collective marks may not be transferred to other persons. The right to use a collective mark may not be transferred to other persons under a licensing agreement, unless otherwise provided in the by-laws on the use of the collective mark.

(3) Unless otherwise provided in the by-laws on the use of the collective mark, the persons who have the right to use the collective mark shall have the same rights and obligations in actions for infringement of a collective mark, as are provided for in Section 28, Paragraphs one and two of this Law with respect to trade mark licensees.

(4) In applying for registration of a collective mark, the by-laws on the use of the collective mark that have been approved by the administrative authority of the collective body (the applicant for the mark) or its authorised representative must be submitted in addition to the materials and documents specified in Section 10 of this Law. The by-laws shall contain a list of persons who have the right to use the collective mark (information to make possible unmistakable identification of such persons), conditions of use of the collective mark and information as to the monitoring of compliance with these conditions, including possible sanctions for non-compliance with these conditions. If the collective mark referred to in Section 34, Paragraph three of this Law is applied for, the by-laws must provide the opportunity for any person whose goods or services originate in the geographical area concerned, to become a member (an associate) of the association which is the owner of the collective mark.

(5) After publication of the notice of the registration of the collective mark, the by-laws on the use of the collective mark shall be available for inspection by any person.

(6) The owner of the mark shall inform the Patent Office, without delay, of any subsequent amendments to the by-laws on the use of the collective mark and pay the prescribed fee. The amendments to the by-laws on the use of the collective mark shall enter into effect with respect to third parties on the day of publication of the notice of the amendments in the official gazette of the Patent Office.

### **Section 36. Additional Provisions for Invalidation of a Collective Mark**

(1) In addition to the grounds for opposition as provided for in Section 18 of this Law, any person may, in accordance with the prescribed procedures, file an opposition to the registration of a collective mark, if the registered mark does not comply with the requirements of Section 34, Paragraph one, or the owner of the mark does not comply with the requirements of Section 34, Paragraph two as to an owner of a collective mark, or if the by-laws on the use of the collective mark do not comply with the requirements of Section 35, Paragraph four, or the provisions of the by-laws are contrary to public policy or socially accepted principles of morality.

(2) In addition to the provisions of Section 31 of this Law, the registration of a collective mark may also be invalidated by the judgment of a court as from the date of registration, if the claim is based on one of the grounds of the previous Paragraph of this Section.

(3) In addition to the provisions of Section 32 of this Law, the registration of a collective mark may also be revoked by the judgment of a court if:

- 1) the owner of the collective mark no longer exists;

2) the owner of the collective mark does not take reasonable measures to prevent violations of the by-laws on the use of the collective mark;

3) due to amendments to the by-laws on the use of the collective mark it no longer complies with the requirements of Section 35, Paragraph four, or the provisions of the by-laws are contrary to public policy or socially accepted principles of morality.

(4) In the cases provided for in this Section, as regards the non-compliance of the by-laws on the use of the collective mark with the prescribed requirements, public policy or principles of morality, the Board of Appeals and the court shall not invalidate, or, as the case may be, revoke the collective mark, if, within the time periods set by the Board of Appeals or the court, the owner of the collective mark makes corrections to the by-laws on the use of the collective mark that eliminate the deficiencies.

## **Chapter VIII**

### **International Registration of Trade Marks**

#### **Section 37. Application of this Law with respect to International Registration of Trade Marks**

(1) The provisions of this Law, especially, the provisions of Chapters II and III; Chapter IV, Sections 13, 18, 19, 22, 22.<sup>1</sup>, 22.<sup>2</sup> and 22.<sup>3</sup>; Chapters V, VI and VII, shall also apply, *mutatis mutandis*, to the international registration of trade marks and to internationally registered trade marks, insofar as the rules on the international registration of trade marks or the provisions of this Chapter do not provide otherwise.

(2) [21 October 2004]

(3) Fees shall be paid for applying for the international registration of a trade mark, for the registration and for other actions related to international registration, in the amounts specified and in accordance with the prescribed procedures set out in the rules on the international registration of trade marks and the laws and other laws and regulations of Latvia.

*[21 October 2004; 14 October 2010]*

#### **Section 38. Actions of the Patent Office in Connection with Applications for International Registration (Registrations)**

(1) Through the intermediary of the Patent Office, applications for the international registration shall be made and the registration shall be effected of such trade marks, as to which the state of origin, within the meaning of the rules on international registration, is Latvia, as well as subsequent territorial extension of such international registrations.

(2) Also through the intermediary of the Patent Office changes in the international registration may be made, international registration may be renewed (re-registered for a new period of validity), or registration may be cancelled (surrendered) on the initiative of the owner, if the state of the owner of the trade mark, within the meaning of the rules on the international registration of trade marks, is Latvia.

#### **Section 39. Validity of an International Registration in Latvia**

(1) An international registration of a trade mark that has, in accordance with the prescribed procedures, entered into effect in Latvia, shall have the same effect as trade marks that have been entered into the Register in accordance with the procedures laid down in this Law (registered with the Patent Office in accordance with national procedures).

(2) An international registration of a trade mark shall be deemed not to have entered into effect at all or insofar as the trade mark in question has been refused protection in accordance with the prescribed procedures in Latvia.

(3) The priority of an internationally registered trade mark in Latvia shall be determined by the date when the mark was internationally registered with respect to Latvia, but in cases where the mark, in accordance with the international procedure of registration, has been granted right of priority from its earlier filing date, by such earlier filing date. If the international registration of a trade mark has been extended to Latvia subsequent to the date of its international registration, the priority shall be determined by the date on which it was extended to Latvia. If an international registration has entered into effect in Latvia and replaces, upon request of the owner and in accordance with the rules on the international registration of trade marks, an earlier registration of the same trade mark effected at the Patent Office, the filing date and the priority date of that earlier registration, effected according to the national procedure, shall be attributed to the internationally registered trade mark in determining its priority.

(4) The Patent Office shall examine internationally registered trade marks to ascertain their compliance with the requirements of Sections 6 and 8 of this Law. In the case of registration of a collective mark it shall also be ascertained whether the by-laws on the use of the collective mark have been included in the registration, in compliance with the provisions of Section 35, Paragraph four of this Law.

(5) Opposition to the entry into effect of an international registration of a trade mark in Latvia, as provided for in Section 18 of this Law, shall be filed within four months from the date of publication of a notice of trade mark registration with respect to Latvia (territorial extension to Latvia) in the official gazette of international registration of trade marks.

(6) If, as a result of an examination, it is determined that an international trade mark does not comply with the requirements of Paragraph four of this Section, or if an opposition has been filed to such registration, the Patent Office shall, within the terms and in accordance with the procedures laid down in the rules on the international registration of trade marks, notify the International Bureau of the refusal of the particular international registration (initial refusal). Within three months from the date of receipt of such a refusal, the owner of the international registration is entitled to submit an appeal (a reply to the opposition) as provided for in Section 17.<sup>1</sup>, Paragraph one of this Law.

(7) The progress of an appeal (reply to an opposition) in the Patent Office shall be carried out in accordance with the provisions of Section 17.<sup>1</sup>, Paragraphs two, three, four, five and six of this Law. The Board of Appeals shall examine the appeals and oppositions submitted in connection with internationally registered trade marks, insofar as the rules on the international registration of trade marks do not have differing provisions, in accordance with the provisions of Sections 18 and 19 of this Law and, in the case of collective marks, also taking into account the provisions of Section 36, Paragraph one.

(8) The Patent Office shall, in accordance with the prescribed procedures, notify the International Bureau of all the decisions of the Board of Appeals and court judgments which have entered into effect, according to which international registration of a trade mark in Latvia has been invalidated or revoked, in full or in part, or according to which the initial refusal of international registration has been cancelled (changed).

*[21 October 2004]*

## **Chapter VIII.<sup>1</sup> Community Trade Mark**

*[21 October 2004]*

### **Section 39.<sup>1</sup> Activities of the Patent Office in Connection with the Registration Procedure of the Community Trade Mark**

(1) The functions of the central industrial property office of a European Union Member State, prescribed by Council Regulation No 207/2009, shall be executed in Latvia by the Patent Office. Registration of the Community trade mark may be applied for through the intermediary of the Patent Office.

(2) The Patent Office shall perform the verification of the authenticity of the decision of the Office for Harmonisation in the Internal Market (trade marks and designs) provided for in Article 86(2) of Council Regulation No 207/2009 for the enforcement thereof in Latvia.

*[14 October 2010]*

### **Section 39.<sup>2</sup> Legal Effect of the Community Trade Mark Registration in Latvia**

(1) Exclusive rights to a trade mark in Latvia shall also be ensured by the Community trade mark registration. The scope of protection of the Community trade mark shall be determined by Council Regulation No 207/2009.

(2) If seniority (special type of priority) is granted to a Community trade mark in accordance with Article 34 or 35 of Council Regulation No 207/2009, based on the respective earlier trade mark, registered in Latvia or registered internationally and extended to Latvia, then the filing date and priority date of the trade mark registered in Latvia or the priority of the respective trade mark registered internationally (Section 39, Paragraph three) shall be applied to such Community trade mark, determining the priority thereof in Latvia. The seniority granted to the Community trade mark shall be retained if the registration of the respective trade mark of Latvia or the international registration of the trade mark, which is extended to Latvia is cancelled on the initiative of the owner of the trade mark (surrender of registration) or in connection with the expiry of the term of validity thereof (exclusion from the Register).

(3) Registration of a trade mark which has been the basis for the seniority of the Community trade mark, may be invalidated or revoked even following the expiry of the term of validity of this registration or if the registration is cancelled on the initiative of the owner of the trade mark, on condition that the respective grounds for invalidation of the registration of the trade mark or the revocation were present during the validity of the registration.

*[14 October 2010]*

### **Section 39.<sup>3</sup> Additional Provisions for the Protection of the Community Trade Mark**

(1) An opposition to the registration of a trade mark (Section 18) and the claim for invalidation of the registration of a trade mark (Section 31) apart from the earlier rights provided for in Sections 7, 8 and 9 of this Law may also be justified with an earlier identical or similar Community trade mark, which has a good reputation in the European Community and which is registered for goods or services which are not similar to those goods and services, which have a trade mark registered later (contested), but on condition that the use of the later trade mark without due cause takes unfair advantage of, or is detrimental to the distinctive character or the reputation of the Community trade mark or that such use of the later trade mark may be seen by consumers as a sign of connection between these goods and services and the owner of the referred to Community trade mark and such use may be detrimental to the interests of the owner of the Community trade mark. Such opposition and such claim may be submitted by the owner of the Community trade mark (or his or her successor in title) or his or her representative.

(2) In case of the illegal use of the Community Trade mark, the provisions of Sections 27 and 28 of this Law, the Civil Procedure Law and the provisions of other laws and regulations shall be applicable, unless otherwise laid down in Council Regulation No 207/2009.

(3) If, based on the rights arising from the registration of the Community trade mark, the registration of a later trade mark is contested, which is performed observing the procedures for registering trade marks laid down in this Law, or in accordance with the rules on the

international registration and is extended to Latvia, or if the use of such later trade mark is contested, the provisions of Section 29 of this Law regarding the restrictions of rights as a result of acquiescence shall be observed.

*[14 October 2010]*

### **Section 39.<sup>4</sup> Additional Provisions for the Use of the Community Trade Mark**

(1) If, based on an earlier Community trade mark, an opposition is submitted against the registration of a trade mark (Section 18) and the owner of the contested trade mark uses the rights to request evidence of the use of the earlier trade mark (Section 19, Paragraph seven), the provisions of Article 15 of Council Regulation No 207/2009 shall be observed.

(2) According to the provisions of Article 165 5) and Article 110(1) of Council Regulation No 207/2009, the owner of the earlier rights obtained in good faith in Latvia may prohibit the use of the Community trade mark which has been registered or submitted for registration prior to 1 May 2004.

(3) If the Community trade mark is involved in a process of the legal protection of a commercial company or the process of insolvency in Latvia, in accordance with the provisions of Article 21 of Council Regulation No 207/2009, the necessary entries to be made by the Office for Harmonisation in the Internal Market (trade marks and designs) in the Community Trade Mark Register or, if the Community trade mark has not yet been registered, in the application materials, may be requested on the basis of a court decision.

*[14 October 2010]*

### **Section 39.<sup>5</sup> The Conversion of a Community Trade Mark into a Trade Mark Application in Latvia**

(1) If a request for the conversion of the Community trade mark registration, or the application thereof, into a trade mark application in Latvia (request for a conversion) is sent to the Patent Office in accordance with the provisions of Article 113(3) of Council Regulation No 207/2009 from the Office for Harmonisation in the Internal Market (trade marks and designs), the Patent Office shall without delay request that the applicant fulfils the activities specified by Article 114(3) of Council Regulation No 207/2009 within three months, and pays the fee specified in Section 10, Paragraph nine of this Law.

(2) If the applicant does not pay the fee specified within the period specified (additional fee), the request for conversion shall be considered as not being submitted and the applicant shall be notified thereof in writing.

(3) Upon commencement of the examination of the request for conversion, the Patent Office shall first inspect whether there are any obstacles to conversion, provided for in Article 112(2) of Council Regulation No 207/2009. Pursuant to Article 114(1) of Council Regulation No 207/2009, the Patent Office may request necessary additional information from the Office for Harmonisation in the Internal Market (trade marks and designs) on circumstances regarding the abovementioned obstacles for the implementation of conversion. If, in accordance with the provisions of Article 112(2) of Council Regulation No 207/2009 conversion is not permissible, the request for conversion shall be rejected and the applicant notified thereof in writing.

(4) If there are no obstacles to the implementation of conversion, referred to in Article 112(2) of Council Regulation No 207/2009, the request for conversion shall be considered as an application for the registration of the trade mark in Latvia. The procedures provided for in this Law for the preliminary examination of an application and the expert-examination of a trade mark shall be applicable to the examination of such application, as well as other provisions for the procedures for registering a trade mark, taking into account the requirement of Article 114(2) of Council Regulation No 207/2009.

(5) An application for the registration of a trade mark, at the basis of which is a request for conversion, shall retain the filing date and priority date (if a priority date has been granted) determined for the respective Community trade mark (for an application for a Community trade mark), as well as the date of seniority, if seniority has been granted in respect of Latvia.  
*[14 October 2010]*

## **Chapter IX** **Indications of Geographical Origin**

### **Section 40. General Provisions on Indications of Geographical Origin**

(1) Indications of geographical origin, in accordance with the provisions of this Chapter, shall be protected without their registration.

(2) In accordance with the provisions of international agreements binding on Latvia, special protective measures pertaining to specific types of indications of geographical origin or a list of specific indications of geographical origin may be prescribed. The Cabinet shall determine the procedures for the protection and registration with regard to the indications of geographical origin for agricultural and food products or the list thereof.

(3) Geographic names and signs or indications of a geographical nature that are not perceived by consumers and trade circles to be in connection with the specific origin of the goods or services, shall not be considered to be indications of geographical origin within the meaning of this Law, and shall not be protected; including designations, that although they comply with the definition of indications of geographical origin, have lost their original meaning in the territory of Latvia and have become generic names for types of goods or services.

*[8 November 2001]*

### **Section 41. Scope of Legal Protection of Indications of Geographical Origin**

(1) False indications of geographical origin or any other such geographical names or designations of geographical nature or similar signs may not be used in commercial activities, if their use may mislead consumers as to the geographical origin of the goods or services.

(2) If goods or services, that are usually marked by an indication of geographical origin, in the perception of consumers and trade circles possess a special quality or special characteristics, the use of such indications of geographical origin in commercial activities shall be permitted only in connection with goods or services of the said origin and which have such qualities or characteristics.

(3) If an indication of geographical origin is well-known and enjoys a special reputation among consumers or in the affected trade circles, the use of such an indication of geographical origin, or a similar sign, in commercial activities for goods or services of a different origin shall not be permitted even in the absence of risk of misleading consumers as to geographical origin of the goods or services, if such use is likely to take unfair advantage of, or be detrimental to, the reputation or the distinctive character of the indication of geographical origin.

(4) In connection with agricultural and food products it is prohibited to use indications and designations which are contradictory to the laws and regulations governing the protection of geographical indications and designations of origin for agricultural and food products.

*[8 February 2007]*

### **Section 42. Criteria for Determining the Origin of Goods and Services**

(1) For the purposes of the provisions of this Chapter:

1) the origin of goods shall be determined by the place of manufacture, or by the origin of the basic raw materials, or of the main components of these goods; and

2) the origin of services shall be determined by the location, as registered in the Enterprise Registry, of the entity providing the services, or by the nationality or permanent place of residence of natural persons exercising actual control over the commercial activities, or the management of the undertaking.

(2) The criteria for evaluation shall be specified separately for each case depending on their influence on the reputation of the respective goods or services; taking into account such reputation and the perception of consumers, indications of geographical origin of a local and regional nature may be considered genuine, if they, with respect to the origin of goods or services, are evaluated as genuine with respect to a larger region or the state as a whole.

### **Section 43. Enforcement of Legal Protection of Indications of Geographical Origin**

(1) Use of signs, in commercial activities, contrary to the provisions of Section 41 of this Law shall be deemed a manifestation of unfair competition, and shall be subject to sanctions provided for in the laws and regulations regarding unfair competition, and other laws and regulations.

(2) An action to enjoin the unlawful use of an indication of geographical origin may be brought in the Vidzeme Suburb Court of Rīga City by any interested persons, including professional associations, and associations of manufacturers, traders or providers of services, whose articles of association provide for the protection of the economic interests of their associates (members), as well as by organisations and authorities whose purpose, under their articles of association, is the protection of the rights of consumers.

(3) The court may impose the same legal defences in matters regarding the suspension of the unlawful use of indications of geographical origin, as those provided for in cases of the unlawful use of trade marks.

[8 February 2007; 11 December 2014]

### **Transitional Provisions**

1. With the coming into force of this Law, the Law On Trade Marks (*Latvijas Republikas Augstākās Padomes un Ministru Padomes Ziņotājs*, 1993, No.12/13) is repealed.

2. With respect to trade marks, the registration of which has been applied for at the Patent Office or the international registration of which has been extended to Latvia before entry into force of this Law, such trade mark registration procedures and such prerequisites for trade mark registration shall apply as were in effect on the day on which the application for registration of the trade mark was filed or from which the international trade mark registration has been extended to Latvia.

3. The grounds for invalidation of a trade mark registration referred to in Section 6, Paragraph two, and Section 9, Paragraph four, of this Law shall apply to any trade mark regardless of when the application for trade mark registration was filed or when the international trade mark registration became extended to Latvia.

4. Until 1 May 2002, the Cabinet shall prescribe the procedures for the protection and registration in connection with the geographical indications for agricultural and food products or the list thereof.

[8 November 2001]

5. Until 15 December 2004 the Cabinet shall approve the model application form for the registration of a trade mark and the other model forms necessary for the procedure of registration of a trade mark.

*[21 October 2004]*

6. If the Community trade mark has been registered or submitted for registration before 1 May 2004, the priority thereof in Latvia shall be determined as of 1 May 2004.

*[21 October 2004]*

7. If the Community trade mark has been registered before 1 May 2004, the five year period referred to in Section 29, Paragraph one of this Law shall be counted from 1 May 2004.

*[21 October 2004]*

8. If the opposition provided for in Section 39.<sup>4</sup>, Paragraph one of this Law is justified with an earlier Community trade mark which has been registered before 1 May 2004, the five year period referred to in the first subparagraph of Article 15(1) of Council Regulation No 207/2009 shall be counted from 1 May 2004.

*[21 October 2004; 14 October 2010]*

9. If a request for conversion is at the basis of the application for registration of a trade mark in accordance with Section 39.<sup>5</sup>, Paragraph four of this Law, but the respective Community trade mark has been registered or filed for registration before 1 May 2004, the date of such application in Latvia shall be deemed to be 1 May 2004 and the priority granted to the Community trade mark shall not be taken into account.

*[21 October 2004]*

10. Until 31 January 2011 the Cabinet shall issue regulations regarding the amount of the State fee for the continued processing referred to in Section 22.<sup>1</sup> of this Law and the reinstatement of rights referred to in Section 22.<sup>2</sup> of this Law.

*[14 October 2010]*

11. Amendments to Section 25.<sup>1</sup>, Paragraph two of this Law regarding pledging a trade mark registered, in accordance with the procedures of national procedure, with the Patent Office according to the provisions of the Commercial Pledge Law, regarding making a commercial pledge note in the Register on the basis of a notification of the holder of the register of commercial pledges, as well as notifying information regarding the note made to the owner of the trade mark and publishing thereof in the official gazette of the Patent Office shall come into force on 1 January 2015.

*[3 July 2014]*

### **Informative Reference to European Union Directives**

*[8 February 2007; 14 October 2010]*

This Law contains legal norms arising from:

1) Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks (Codified version) (Text with EEA relevance);

2) Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights.

*[21 October 2004; 8 February 2007; 14 October 2010]*

This Law has been adopted by the Saeima on 16 June 1999.



President

G.Ulmanis

Rīga, 1 July 1999