

PARLIAMENT OF THE REPUBLIC OF MOLDOVA

LAW on the Protection of Trademarks No. 38-XVI of February 29, 2008

(Unofficial translation from Romanian)

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As amended by:

Law no.101 of 26.05.2016
the Law no.162 of 30.07.2015
the Law no.173 of 25.07.2014
the Law no.20 of 23.02.2012

The Parliament hereby adopts this Basic Law.

This Law creates an essential basis for the application of Council Regulation (EC) no.207/2009 of February 26, 2009 on the Community trademark (published in the Official Journal of the European Union no. L 78 of March 24, 2009, Commission Regulation (EC) No. 2869/95 of December 13, 1995 implementing Council Regulation (EC) No. 40/94 of December 20, 1993 on the Community Trade Mark (published in the Official Journal of the European Union, No. L 303 of December 15, 1995); Directive 2004/48/EC of the European Parliament and of the Council of April 29, 2004 on the Enforcement of Intellectual Property Rights (published in the Official Journal of the European Union, No. L 157 of April 30, 2004).

Chapter I BASIC PROVISIONS

Article 1. Scope and legal basis.

(1) This Law shall regulate the legal relations arising in the process of registration, legal protection and use of trademarks.

(2) The legal relations indicated in paragraph (1) shall also be regulated by the Constitution of the Republic of Moldova, the Civil Code of the Republic of Moldova, the Code of Science and Innovations of the Republic of Moldova, the Customs Code of the Republic of Moldova, international agreements, to which one of the parties is the Republic of Moldova, and other normative acts.

(3) If the international agreements in a given field, to which the Republic of Moldova is one of the parties, establish rules other than those contained in this Law, the rules of the international agreements shall apply.

Article 2. Basic concepts

For the purposes of this Law, the following basic concepts shall apply:

trademark – any sign (visual, auditory, olfactory, tactile), used to individualize and distinguish the goods and / or services of a natural or legal person from those of other natural or legal persons;

collective trademark – a trademark used by an association of manufacturers, producers, service providers or salesmen, or by other similar organizations to designate their goods and/or services;

certification trademark (sign of correspondence) – trademark used to certify the specific characteristics of a good and/or service;

well-known trademark – a trademark well known in the Republic of Moldova at the registration application filing date or at the priority date requested in the application within a relevant circle of people in relation to the goods and/or services for which the trademark is used, without the need for registration or use of a well-known trademark in the Republic of Moldova for its opposition;

applicant – a natural person or legal entity or a group of natural persons and/or legal entities, in whose name a trademark registration application is filed;

patent attorney – a natural person certified and registered in accordance with the established procedure, representing the interests of national or foreign natural persons and legal entities and providing them with the necessary assistance in the field of protection of industrial property subject matter;

agent or representative of the trademark owner - a natural or legal person in any type of relationship with the trademark owner based on a commercial cooperation agreement in writing or orally, that would create a relationship of trust to require the applicant of the trademark, expressly or implicitly, a general obligation of trust and loyalty in relation to the interests of the owner;

international application – an application for international trademark registration, filed in accordance with the Madrid Agreement, the Protocol to that Agreement or, in appropriate cases, in accordance with both;

international registration – registration of a trademark in accordance with the Madrid Agreement or the Protocol to that Agreement;

International Register – official collection of data concerning international registrations, kept by the International Bureau, recordal of which is provided for by the Madrid Agreement, the Protocol to that Agreement or the Administrative Instructions, irrespective of the format in which they are stored;

Administrative Instructions – Administrative Instructions for the Application of the Madrid Agreement and the Protocol to that Agreement;

countries of the Union – countries to which the Paris Convention applies and which have acceded to the Union for the protection of industrial property.

Article 3 . Legal protection

The rights in a trademark shall be acquired and protected on the territory of the Republic of Moldova by means of:

- (a) registration in accordance with the provisions of this Article;
- (b) international registration in accordance with the Madrid Agreement Concerning the International Registration of Marks of April 14, 1891 (hereinafter – Madrid Agreement) or the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks of June 27, 1989 (hereinafter – Protocol to the Agreement);
- (c) recognition of a trademark as well known.

Article 4. National Office

(1) The State Agency of Intellectual Property (AGEPI) (hereinafter – Agency) shall be the National Office in the intellectual property sphere and shall be the only authority providing, in accordance with this Law, protection for trademarks on the territory of the Republic of Moldova.

(2) The Agency shall:

- (a) devise draft legislative and other normative acts in the field of trademarks, instructions and other materials required for applying this Law;
- (b) receive and examine applications for the registration of trademarks, register and issue on behalf of the State trademark registration certificates, and publish official data in the Official Bulletin of Intellectual Property(hereinafter – - BOPI);
- (c) acquire and store the National Collection of Trademarks;
- (d) serve as the Receiving Office for international trademark registration applications which have the Republic of Moldova as the country of origin and are filed by national or foreign applicants in accordance with the provisions of the Madrid Agreement and the Protocol Relating Thereto;
- (e) keep the National Register of Trademark Registration Applications and the National Register of Trademarks, under the Regulation on the Procedure of Filing, Examination and Registration of Trademarks, approved by the Government (hereinafter Regulation);
- (f) examine and register licensing, assignment and franchising agreements relating to rights in a trademark;
- (g) perform other functions, as provided for by the law.

(3) The Agency shall represent the Republic of Moldova in the World Intellectual Property Organization, and in other international and intergovernmental organizations for the protection of intellectual property, and shall maintain cooperative relations with them in this area.

[Art. 4(3), letter f) modified by the Law no.173 of 25.07.14]

[Art. 4(2), letter b) modified by the Law no.101 of 26.05.16]

Chapter II

SUBSTANTIVE TRADEMARK LAW

Section 1

Trademarks. Grounds for refusal of trademark registration

Article 5. Trademarks

A trademark may consist of any signs:

- a) capable of being represented graphically – particularly words (including personal names), letters, numerals, designs, colours, combinations of colours, figurative elements, three-dimensional shapes, particularly the shape of goods or of their packaging, holograms, positioning signals;
- b) auditory, olfactory, tactile, and any combinations of such signs, provided that they are used to distinguish the goods and/or services of a natural or legal person from those of other natural or legal persons.

Article 6. Trademark owner

A trademark owner shall be any natural person or legal entity, or group of natural persons and/or legal entities, in whose name a trademark is protected in accordance with this Law. The rights acquired by means of the entry of a trademark in the National Register of Trademarks shall be confirmed by a document providing protection – trademark registration certificate. The rights in a trademark may be acquired individually or in the form of joint indivisible property. The procedure for use of rights of co-ownership in a trademark shall be established by an agreement concluded between the co-owners. In the opposite case, a dispute shall be settled by the competent judicial authority.

Article 7. Absolute grounds for refusal

(1) Registration shall not be permitted for:

- (a) designations not satisfying the requirements of Article 5;
- (b) trademarks which do not possess distinguishing capacity;

(c) trademarks consisting only of designations or indications used in trade to indicate the form, quality, quantity, purpose, value, geographical origin, time of production of a good or provision of a service, or their other characteristics;

(c¹) trademarks consisting exclusively of signs of eulogistic nature;

(d) trademarks consisting only of signs or indications which have become generally accepted in common parlance or fair and established commercial practice;

(e) trademarks consisting only of the shape of a good, established by its nature, or necessary for obtaining a technical result or providing it with substantive value;

(f) trademarks capable of causing damage to the image and/or interest of the state or contravening ordre public or morality, particularly anti-human appeals, words, indecent reproductions and signs, as well as those that would harm the dignity of persons, minorities, ethnic groups, nations, their religious, national, professional feelings etc.;

(g) trademarks which may be confused by users in relation to their geographical origin, or the quality or nature of goods or services;

(h) trademarks reproducing or imitating State coats of arms, flags and emblems, full or abbreviated names of international and intergovernmental organizations, official control, guarantee and hallmarks, seals, awards and other signs of distinction, which in the absence of authorization from the competent authorities, shall be refused in accordance with Article 6ter of the Paris Convention for the Protection of Industrial Property of March 20, 1883 (hereinafter - Paris Convention);

(i) trademarks reproducing the official or historical name of the State or its abbreviation or names of administrative-territorial units, signs, emblems or badges which are not protectable in accordance with Article 6ter of the Paris Convention, and which are of particular public interest, excluding the cases where registration thereof is permitted by the competent authorities;

(j) trademarks with major symbolic significance, in particular religious symbols;

(k) trademarks containing or consisting of:

- a geographical indication intended to identify wines or other alcoholic products provided that the application for the registration of a trademark is made subsequently to the application for the registration of a geographical indication or an appellation of origin; or

- a designation, identical or similar to a geographical indication or appellation of origin protectable on the territory of the Republic of Moldova;

(l) trademarks to the extent that their use is contrary to other laws than those in intellectual property.

in cases where the origin of a good does not correspond to a geographical indication or an appellation of origin, even if the genuine place of origin of the good is indicated or if the geographical indication or appellation of origin is used in translation or in combination with words such as “form”, “type”, “style”, “imitation” or similar, and also where trademarks are requested for goods not covered by a protectable geographical indication or appellation of origin, insofar as these goods are comparable with goods in relation to which a geographical indication or appellation of origin is protected, or to the extent which unjustified use of a requested trademark will allow an unlawful advantage to be gained from the reputation of a protectable geographical indication or appellation of origin.

(2) The provisions of paragraph (1)(b)-(d) shall not apply, if an applicant provides sufficient proof of the fact that the trademark has acquired, as a result of use, distinguishing capacity in relation to claimed goods and/or services prior to the filing date of an application or its registration.

(3) The designations indicated in paragraphs (1)(h) and (i) may be included in a trademark as non-protectable elements, if they do not occupy therein a dominant position and if a corresponding decision has been issued by the competent authority. In the Republic of Moldova the competent authorities shall be: Government – for the use of the official or historical name of the State; ministries – for the use of official control, guarantee and hallmarks, and seals, approved by the corresponding ministries; local councils – for the use of names of administrative-territorial units.

(4) Geographical indications and appellations of origin protectable on the territory of the Republic of Moldova may be included in a trademark only where an applicant has the right to use a protectable geographical indication or appellation of origin. The geographical indications of other States shall be permitted for use in a trademark if this does not contravene the provisions of this Law and if registration exists in the country of origin. Protectable geographical indications and appellations of origin, included in a trademark, shall be non-protectable elements of the trademark.

Article 8. Relative grounds for refusal

(1) Apart from a refusal on the grounds provided for by Article 7, trademark registration shall also be refused if:

(a) the trademark is identical to an earlier trademark registered in relation to identical goods and/or services;

(b) a trademark is identical or similar to an earlier trademark and because it is identical or similar to the goods and/or services indicated by both trademarks, there is a risk of confusion, including a risk of association with the earlier trademark;

(c) a trademark is identical or similar to an earlier trademark and is submitted for registration in relation to goods and/or services not similar to those for which the earlier trademark is registered, if the earlier trademark is well known in the Republic of Moldova and if unjustified use of the

requested trademark would cause an unlawful advantage owing to the distinguishing capacity or well-known nature of the earlier trademark or would have caused harm thereto.

(2) As per paragraph (1), earlier trademarks shall be:

(a) trademarks, the application filing date or, in appropriate cases, priority date of which, pursuant to Article 34, precedes the filing date of an application for trademark registration, taking into account as appropriate the right of priority according to Article 33 or, depending on the case, Article 35, requested in relation to a trademark, and which relate to the following categories:

- trademarks registered in the Republic of Moldova;

- international registrations, the effect of which extends to the Republic of Moldova;

(b) applications for registration of the trademarks indicated in (a), provided that they have been registered;

(c) trademarks which at the filing date of the application for trademark registration or, in appropriate cases, the priority date according to Article 36, requested in the application, shall be recognized as well known in the Republic of Moldova in accordance with Article 6bis of the Paris Convention.

(3) Trademark registration shall also be refused where it infringes a previously acquired right, other than those provided in paragraphs (2) and (4), in particular the right to name, image, including the name or image of a notorious person in the Republic of Moldova, copyright, the right to a protected geographical indication or a protected appellation of origin, a protected industrial design or another intellectual property right protected under the law.

(4) In the event of opposition, trademark registration shall also be refused, insofar as it is shown that:

(a) the rights to a non-registered trademark or other sign used in the course of trade, including the name of the legal entity, were obtained by the opponent prior to the filing date of the trademark registration application or prior to the priority date claimed in support of this application, in appropriate cases, and are confirmed by a legal act or evidence showing that on the market of the Republic of Moldova either there have been placed products and/or services identical or similar to those requested, marked with that sign, or are promoted or is being negotiated the promotion/ placement of products and/or services identical or similar to those requested, marked with the corresponding sign that enjoys protection and has a reputation in a State party to the Paris Convention or the Agreement on Establishing the World Trade Organization, and the use of the requested trademark would create a likelihood of confusion with the earlier mark or without justified grounds would take advantage of the reputation of the sign;

(b) the agent or representative of the owner of that trademark in one of the countries of the Union requests the registration thereof in his own name, without the owner's authorization, unless the agent or representative of the proprietor justifies his action.

(5) Registration of a designation as a trademark may not be refused on the grounds provided for by paragraphs (1) and (3), if the owner of an earlier trademark or the holder of a prior right, or its legal successor, or in appropriate cases the competent authority for the protection of cultural values of the State has expressly given its consent to registration of a later designation, excluding identical trademarks requested in relation to identical goods and/or services.

(6) The nature of goods and/or services in relation to which trademark registration is requested shall in no case be an obstacle to the registration of such a trademark.

Section 2

Effect of trademark registration

Article 9. Right granted by trademark registration

(1) Trademark registration shall grant the owner the exclusive right in a trademark. The trademark owner shall be entitled to prohibit third parties from using, in their commercial activity, without its consent:

(a) a designation identical to a trademark for goods and/or services identical to goods and/or services for which the trademark was registered;

(b) a designation which, because it is identical or similar to a registered trademark and because it is identical or similar to goods or services for which it is used as a designation and also as a trademark, causes a risk of confusion by a user, including the risk of association of the designation and the trademark;

(c) a designation identical or similar to a trademark for goods and/or services different from those for which the trademark is registered, if the latter has become well known in the Republic of Moldova and, as a result of unjustified use of a designation, a third party gains an advantage from the distinguishing capacity or well-known nature of the trademark or causes harm thereto.

(2) In accordance with paragraph (1), a trademark owner may demand a prohibition on third parties performing the following acts:

(a) using a designation on goods or on packaging, and also using it as packaging in the case of three-dimensional trademarks;

(b) offering goods for sale or selling or storing them for this purpose, or in appropriate cases offering or providing services using such a designation;

(c) import or export of goods using such a designation;

(d) using a designation on business documents or for advertising purposes;

(e) reproduction, storage or sale of a designation for the purposes indicated in paragraphs (a)-(d);

(f) using a designation on the Internet, inclusively as a domain name.

(3) The exclusive right in a trademark shall be valid for third parties from the date of publication of a decision to register the trademark in the BOPI or from the date on which information on trademark registration is entered in the International Register. At the same time, reasonable compensation may be requested within the limits of the harm caused as a result of these acts, performed after publication of the trademark registration application, which are prohibited after the publication of trademark registration. The court with which a suit is filed on the corresponding case shall not be entitled to make a substantive decision prior to publication of the information on trademark registration.

(4) A trademark owner may place alongside a trademark preventive marking in the form of a letter **R** enclosed in a circle or a verbal designation indicating that the trademark is protected in the Republic of Moldova.

Article 10. Limitation of exclusive right

(1) An exclusive right shall not extend to the elements of a trademark, which in accordance with this Law may not be registered independently as trademarks, such as the descriptive terms, including those of laudatory nature, as well as to graphical elements, submitted by dashed or dotted lines, allowing the applicant to indicate the parts of the product or of its packaging that are not claimed as parts of the trademark, provided that these elements are used fairly and the legal interests of the trademark owner and third parties are observed.

(1¹) In the case of reproduction provided for in paragraph (1), the trademark will be examined along with all its elements, including those over which the exclusive right does not extend, in order to determine the similarity with other trademarks.

(1²) Limitation of the exclusive right may refer only to those categories of products and / or services claimed in the application in relation to which the elements of the trademark may not be registered independently as trademarks.

(2) The exclusive right in a trademark shall not allow the owner to prohibit third parties from using, in their production or commercial activity in accordance with generally accepted rules:

(a) their own name or address;

(b) indications relating to the form, quality, quantity, purpose, value, geographical origin, time of production of a good or provision of a service, or the other characteristics relating thereto;

(c) a trademark, if this is necessary for indicating the purpose of a good and/or service, in particular for accessories or extra components.

Article 11. Trademark entry in dictionaries

If the reproduction of a trademark in a dictionary, encyclopaedia or other similar source produces the impression that it is the generic or commonly used name of goods or services for which it was registered, the publisher of the corresponding publication shall, at the trademark owner's request, ensure that not later than the following edition the reproduction of the trademark is accompanied by a statement to the effect that it is a registered trademark.

Article 12. Prohibition on use of a trademark registered in the name of an agent or representative

If a trademark were registered in the name of an agent or representative of the owner of the corresponding trademark in one of the countries of the Union without the permission of the owner, the latter shall be entitled to object to use of the trademark by its agent or representative, if it has not authorized such use, apart from where the agent or representative may prove the lawful nature of its actions.

Article 13. Exhaustion of a trademark right

(1) The owner of a registered trademark shall not be entitled to demand prohibition on other persons from using the trademark on goods and/or services marketed in the Republic of Moldova directly by the owner or with its consent.

(2) The provisions of paragraph (1) shall not apply where the owner submits reasoned objections against the sale of goods or provision of services, in particular where their quality is modified or distorted after being placed on the market.

Article 14. Requirement of trademark use

(1) If during the five years after registration a trademark has not become the subject of actual use in the Republic of Moldova in relation to the goods and/or services for which it was registered, or if use of the trademark were suspended during an uninterrupted five-year period, the trademark owner may be deprived of the rights therein in accordance with this Law, apart from where justified reasons for non-use exist.

(2) Effective use shall be constituted by:

(a) use of a trademark in the form in which it is distinguished by elements which do not change the distinguishing capacity of the trademark in the form in which it was registered;

(b) use of the trademark on goods or on their packaging in the Republic of Moldova, except for export purposes.

(3) Use of a trademark by other persons with the owner's consent shall be recognized as use of the mark by the owner.

Section 3
Term of trademark protection.
Extension, amendment and division of trademark registration

Article 15. Term of protection of a registered trademark

Trademark registration shall be valid for ten years from the application filing date. Registration may be extended by ten consecutive years an unlimited number of times.

Article 16 . Renewal of trademark registration

(1) Registration of a trademark may be renewed by the trademark owner or any other person expressly authorized thereby, provided that the prescribed fee has been paid in the amount required and within the terms established.

(2) Renewal may be requested within the last 6 months of validity of trademark registration. The application for renewal of trademark registration shall not be deemed to have been filed until the required fee has been paid. Registration may also be renewed during 6 months after the expiry of the term of protection, subject to the payment of an additional fee.

(3) Registration shall be renewed only for goods and / or services for which renewal was sought.

(4) Renewal of registration shall take effect from the day following the date of expiry of the previous ten-year period. Data on renewal of the registration shall be entered in the National Register of Trademarks and published in BOPI.

(5) Non-payment of the fee for the renewal of the registration gives rise to revocation of the rights”.

Article 17 . Introduction of amendments

(1) A trademark owner shall inform the Agency of any changes to the information relating to trademark registration.

(2) During the term of trademark protection, the owner may, provided that the prescribed fee has been paid, request the introduction of non-essential changes to the information relating to a registered trademark, and also changes to individual elements of a trademark, provided that these changes do not affect the distinguishing capacity of the trademark or the trademark as a whole.

(3) The changes entered in the National Register of Trademarks shall be published in the BOPI. Any person that considers its rights to have been infringed by amendments introduced may lodge an objection against them during the three months following the date of publication.

(4) A change to a trademark or to its elements shall not be permitted during the period of trademark registration or the extension thereof, except in the cases provided for by paragraph (2).

Article 18. Division of registration

(1) A trademark owner shall be entitled to divide a registration by submitting to the Agency a request in which it indicates that some of the goods and/or services included in the original

registration are now the subject of one or more separate registrations. The goods and/or services of a separate registration shall not cover either the goods and/or services remaining in the original trademark registration, or goods and/or services of other individual registrations.

(2) A request for division shall not be allowed, if:

(a) a request is filed for the deprivation of rights or the cancellation of an original registration, while the request for division separates the goods and/or services to which the request for deprivation of rights or the request for cancellation relates – prior to a final decision being taken or to the date by which the corresponding procedure has been completed in some other way;

(b) a counterclaim for the deprivation of rights or the cancellation of a registration is appealed in the courts, while the request for division separates the goods and/or services to which the counterclaim relates – prior to information on a final court decision being entered in the National Register of Trademarks.

(3) A request for division shall be accompanied by a document providing proof of the payment of a fee.

(4) The procedure for compiling and submitting a request for division shall be defined by the Regulations.

(5) A division shall be valid from the date of its entry in the National Register of Trademarks.

(6) All the requests and claims submitted and all the fees relating to an original registration, paid prior to the date of receipt by the Agency of a request for division, shall be considered filed or paid in relation to the individual registration(s). Fees paid at the prescribed level for an original registration prior to receipt of a request for division shall not be reimbursed.

(7) A separate registration shall retain the filing date and any priority date of the original registration.

Section 4 **Termination of rights in a trademark**

Article 19 . Refusal of a trademark

(1) An owner may, provided that the prescribed fee has been paid, refuse a trademark for all or part of the goods and/or services for which the trademark was registered.

(2) The refusal of a trademark shall be effected through the submission to the Agency by the owner or its authorized representative of a written request, and the rights in the trademark shall be terminated from the date on which the refusal is entered in the National Register of Trademarks.

(3) A trademark refusal shall be registered only in the case of consent by all the trademark rights owners, entered in the National Register of Trademarks. Where a licensing agreement is

registered, a trademark refusal shall be entered in the National Register of Trademarks only if the trademark owner has provided proof that the licensee has been informed of the intended trademark refusal.

Article 20 . Deprivation of trademark rights

(1) A trademark owner may be deprived of the rights in a trademark as a result of the filing with the district court where AGEPI premises are located of an appropriate request or counterclaim in a rights protection case:

(a) if, during an uninterrupted five-year period, without substantive grounds therefore, a trademark has not been the subject of actual use in the Republic of Moldova in relation to the goods and/or services for which it was registered; however, no person shall be entitled to demand deprivation of an owner's rights, if in the interim between the expiry of the above period and the submission of a request for deprivation of rights or a counterclaim the trademark has been the subject of an assignment agreement or licensing agreement, or has been the subject of the beginning or renewal of actual use; in that regard, if use has begun or been renewed in the three months prior to the submission of the request for deprivation of rights or a counterclaim, and the corresponding period does not begin before expiry of the uninterrupted five-year period of non-use, the use shall not be taken into account, if preparation for the beginning or renewal of use takes place only after the owner has been informed of the possible submission of a request for deprivation of rights or a counterclaim the period between the filing date of the application and the date of the decision of the registration shall not be included in computation of the five-year period;

(b) if, as a result of the owner's activity or inactivity, the trademark has become the generally used name of a good and/or service for which it was registered;

(c) if, as a result of use directly by the owner or with its consent, the trademark is likely to mislead the user, in particular as regards the nature, quality, or geographic origin of the goods and/or services for which it was registered.

(d) the permission to use the official or historical name of the State in the trademark for a good and/or service has been withdrawn, in accordance with the legislation.

(1¹) the duty to present evidence on the actual use of the trademark remains to the trademark owner.

(2) If the grounds for deprivation of rights is valid only in relation to part of the goods and/or services for which the trademark has been registered, the owner shall be deprived of the right in the trademark only in relation to the corresponding goods and/or services.

(3) Deprivation of rights shall assume legal force from the date on which a final decision of the district court where AGEPI premises are located is made known.

Article 21 . Absolute grounds for invalidity

(1) A trademark shall be recognized as invalid as a result of the submission to the district court where AGEPI premises are located of an appropriate request or a counterclaim in a rights protection case:

- (a) if it was registered in violation of the provisions of Article 7;
- (b) if an applicant, at the time of the trademark registration application filing, acted unfairly.

A trademark shall be deemed to be registered in bad faith if, at the time of filing the application for registration thereof, the applicant knew or could have known of the existence on the market of the Republic of Moldova of such a trademark used in good faith by another person in relation to goods and / or services identical or similar to those for which the trademark was filed for registration or of the promotion or negotiations on the promotion/placement of goods and / or services identical or similar to those for which the trademark was filed for registration marked with such a trademark, that is prior and enjoys protection and reputation at least in one State party to the Paris Convention or to the Agreement Establishing the World Trade Organization, and the use of the registered trademark gives rise to a likelihood of confusion with the prior trademark or, without legitimate grounds, takes advantage of its reputation.

In the cancellation of an unfairly registered trademark, it is taken into account in particular whether a registered trademark is used for goods which are in contradiction with another trademark, or the owner of a registered trademark uses it only for the purposes of blocking.

(2) A trademark registered in violation of the provisions of Article 7(1)(b), (c) or (d) may not be recognized as invalid, if after its registration it has acquired as a result of use distinguishing capacity in relation to the goods and/or services for which it was registered.

(3) If the grounds for invalidity relate only to part of the goods and/or services for which a trademark has been registered, the invalidity of the trademark may be recognized only in relation to the corresponding goods and/or services.

Article 22 . Relative grounds for invalidity

(1) A trademark shall be declared invalid following a request of annulment, filed with the court to exercise jurisdiction over the premises of AGEPI, or a counterclaim in an action of rights protection, filed with the same court, and if:

- (a) there is a prior trademark referred to in Article 8 paragraph (2) and the requirements provided for in paragraph (1) of the Article concerned are met;
- (b) there is a prior right referred to in Article 8 paragraph (3) and the requirements provided for in the paragraph concerned are met;
- (c) there is a non-registered trademark or a prior right referred to in Article 8 paragraph (4) and the requirements provided for in the paragraph concerned are met.

(c) use of a trademark may be prohibited on the grounds of another prior right, in particular, a right in a name, a right in an image, copyright, rights in a protectable geographical indication or appellation of origin, a protectable industrial design or other industrial property right, protectable in accordance with the law;

(d) use of a trademark may infringe a prior right in an image or a name of a personality well known in the Republic of Moldova.

(2) A trademark name may not be recognized as invalid, if the owner of one of the rights indicated in paragraph 1, or its legal successor, or in the appropriate case the competent authority for the protection of cultural values of the State has specifically given its consent to registration of the trademark prior to submission of the request for recognition of invalidity or a counterclaim.

(3) The owner of one of the rights indicated in Section(1) that has previously submitted a request for recognition of invalidity of a trademark or a counterclaim in a rights protection case, may not submit a further request for recognition of invalidity or a counter claim on the basis of any of the rights in question, which it might have submitted in support of a first claim.

(4) If the grounds for invalidity relate only to part of the goods and/or services for which a trademark has been registered, the invalidity of the trademark may be recognized only in relation to the corresponding goods and/or services.

Article 23 . Limitation of rights resulting from owner's inactivity

(1) The owner of an earlier trademark, as defined in Article 8(2), or of any other right as defined in Article 8 (3) or (4), who during an uninterrupted five-year period knowingly allowed use of the later trademark in the Republic of Moldova may not, on the basis of its earlier trademark or earlier right submit a request for recognition of invalidity or object to the use of the later trademark for the goods and/or services for which the later trademark was used, apart from cases of unfair trademark registration.

(2) In the cases indicated in paragraph (1), the owner of the later trademark may not object to the use of a prior right, even if this right may not be cited against its trademark.

Article 24 . Consequences of deprivation of rights and recognition of trademark invalidity

(1) If an owner is deprived of rights fully or partially, the effect of trademark registration, provided for by this Law, shall be terminated accordingly from the date of submission of the request for deprivation of rights or a counterclaim. At the request of one of the parties, a court authority may specify an earlier date at which one of the grounds for deprivation of rights arose.

(2) If a trademark were recognized as invalid fully or partially, it shall be considered that registration of the trademark did not have the corresponding effect, as provided for by this Law, from the date of submission.

(3) Provided that the provisions both on measures for compensation for harm caused as a result of negligence or unfairness by the owner of the trademark, or unjustified enrichment, the retroactive effect of the deprivation of rights or recognition of invalidity of a trademark shall not affect:

(a) final decisions on the infringement of rights implemented prior to a decision on the deprivation of rights or recognition of invalidity being taken;

(b) agreements concluded prior to a decision being taken to deprive rights or the recognition of invalidity – to the extent that they were concluded before the corresponding decision was taken; at the same time, for reasons of fairness, compensation may be requested to the extent of the sums paid by agreement, as justified by circumstances.

Section 5

Transfer of rights in a trademark

Article 25. Transfer of rights

(1) The rights in a trademark may be transferred fully or partially by means of assignment, on the basis of a licensing agreement, and also by means of legal succession.

(2) A trademark may be the subject of a pledge, other proprietary rights and also compulsory measures.

(3) Pledge of trademarks shall be recorded in the Register of security interests under the Law on Pledge. Other trademarks rights are registered in the National Register of applications for registration of trademarks or the National Register of Trademarks, and become opposable to third parties from the registration date, and data on these rights shall be published in BOPI.”

[Art. 25 (3) in the wording of the Law no.173 of 25.07.14]

(4) A decision to enter an assignment or a license in the National Register of Trademark Registration Applications or the National Register of Trademarks may be challenged with the Agency within 30 days of the date of publication of the information indicated in paragraph (3).

(5) The assignment and license contracts referred to in paragraph (1), or other documents annexed to the application for registration of these contracts are open to public inspection only with the express consent of the contracting parties or under the court decision, unless otherwise provided by the legislation in force.

Article 26. Assignment agreement and transfer

(1) According to an agreement for the assignment of the rights in a trademark, the trademark owner (assignor) shall transfer its rights in the trademark to another person (assignee). The rights in the trademark may be transferred by means of assignment throughout the entire term of trademark protection.

(2) Irrespective of the transfer of an undertaking, a trademark may be assigned in relation to all or part of the goods and/or services for which it has been registered.

(3) The full transfer of an undertaking shall presuppose the assignment of a trademark. Exceptions shall occur in cases where an agreement exists, providing another solution, or where this is clear from the circumstances. The provision in question shall be applied to the circumstances of an agreement for the transfer of an undertaking.

(4) Without prejudice to the provisions of paragraph (3), a trademark shall be assigned in writing and with the signatures of the Contracting Parties, apart from in cases where an assignment is the result of a court decision. In the opposite case, an assignment shall be invalid.

(5) The Agency shall refuse to register an assignment agreement if it is obvious that as a result of the assignment a trademark may be likely to mislead users, in particular as regards the nature, quality or geographical origin of the goods and/or services for which it has been registered, apart from in cases where the assignor agrees to limit trademark registration to the goods and/or services in relation to which there will be no risk of confusion.

(6) If a trademark is registered in the name of an agent or representative of the owner of the corresponding trademark in one of the countries of the Union without the owner's permission, the owner shall be entitled to request transfer of registration to its own name, apart from where the agent or representative proves the legality of its actions.

(7) This Article shall apply also to trademark registration applications.

Article 27 . Licensing agreement

(1) A trademark may be the subject of an exclusive or non-exclusive license for all or part of the goods and/or services for which it has been registered. According to a licensing agreement, the owner of a registered trademark (licensor) shall transfer the right to its use to any other person (licensee) and shall retain the right of ownership in the trademark.

(2) A license may be issued with a request for payment by the licensee of income to the licensor or without remuneration.

(3) A licensing agreement shall contain the condition that the quality of the goods of a licensee shall not be less than the quality of goods of a licensor and that the licensor shall verify compliance with this requirement.

(4) The inclusion in a licensing agreement of procedures or conditions which may lead to misuse of the rights in a trademark, and which creates an unfair influence on competition on the corresponding market, such as the condition of compulsory transfer by a licensee of technical information to a licensor, conditions preventing the legal force of a decision being challenged or the submission of a compulsory package of licensing conditions shall not be permitted.

(5) A trademark owner shall be entitled to submit rights granted by the registration of a trademark to a licensee, that is operating not in accordance with the provisions of the licensing

agreement in relation to the terms, form of use of the trademark,, nature of goods or services for which the license is granted, territory of its application or quality of goods supplied or services provided by the licensee.

(6) Without prejudice to the provisions of a licensing agreement, a licensee may file a suit for the protection of the rights in a trademark only with the consent of its owner. The holder of an exclusive license may file such a suit where, following a warning, the trademark owner has not brought a similar case in the appropriate period.

(7) For compensation for harm caused, any licensee may become involved in a case for the protection of a trademark right, initiated by the trademark owner.

Chapter III TRADEMARK REGISTRATION

Section 1 Trademark registration application

Article 28. Filing of a trademark registration application

(1) A trademark registration application shall be filed with the Agency by any natural person or legal entity and shall relate to one trademark only.

(2) Registration of a trademark may be requested by natural persons or legal entities either individually or jointly. In the case of an application filed by two or more persons, a registered trademark shall become the joint property of those persons in accordance with civil legislation.

(3) An application shall be filed on the model form approved by the Agency in the state language. The documents attached to an application shall also be submitted in the state language. Where the attached documents are filed in another language within two months of the application filing date, a translation thereof into the state language shall be provided.

(4) An application shall be filed by any means established by the Agency in accordance with the Regulations.

Article 29. Representation

(1) Natural persons or legal entities which have their permanent place of residence or main place of business or an operational industrial or commercial enterprise in the Republic of Moldova shall conduct business with the Agency personally or through an authorized representative.

(2) Natural persons or legal entities that have neither a permanent place of residence or main place of business, or an operational industrial or commercial enterprise in the Republic of Moldova shall be represented within the Agency in any procedures established by this Law by an authorized patent attorney.

(2¹) If a legal entity referred to in paragraph (2) is affiliated with a legal entity referred to in paragraph (1), the first may act before AGEPI through its affiliated person or its representative, empowered by a power of attorney.

(3) Patent attorneys shall carry out their activities in accordance with the relevant regulations approved by the Government.

Article 30. Trademark registration application

(1) A trademark registration application containing the elements provided for by paragraph (2) shall constitute the correctly formulated filing of an application.

(2) A trademark registration application compiled in the state language shall contain:

(a) a direct or indirect indication that trademark registration is requested;

(b) information allowing the personal details of the applicant to be established (name/denomination and address);

(c) information allowing the Agency to contact the applicant or, where necessary, its authorized representative;

(d) a sufficiently clear reproduction for the marks referred to in Article (5) letter a), for which registration is sought, and/or a detailed description for the marks referred to in Article (5) letter b) that is not susceptible of graphical representation, accompanied by samples or by an audio or video recording (mechanical, magnetic, digital, optical etc.) which will enable the reproduction of the trademark;

(e) a list of goods and/or services for which trademark registration is requested;

(f) a document confirming payment of the application filing fee in the amount established.

(3) An application shall contain clear information when:

(a) the applicant is requesting one or more colors as the distinguishing feature of a trademark;

(b) a trademark is three-dimensional or has another, either non-verbal or figurative, form.

(4) Where necessary, an application shall contain:

(a) a transliteration of the trademark or of its individual parts;

(b) a translation of the trademark or its individual parts.

(5) An application shall also contain data on the applicant's status, as provided for by the Regulations.

(6) A trademark registration application filed for several classes of goods and/or services, together with the fee for examining the application for one class of goods and/or services shall entail the payment of an additional fee for the examination of each class of goods and/or services beyond the first.

(7) The procedure for formulating and filing an application for trademark registration shall be defined in the Regulations.

Article 31. Application filing date

The application filing date shall be the date of submission by the applicant to the Agency of a trademark registration application in accordance with the requirements of Article 30(2).

Article 32. Request for recognition of a trademark as well known

[Art.32 excluded by the Law no. 20 of 23.02.2012, in force from 20.04.2012]

Section 1¹
Recognition of trademark as well known

[Section 1¹ inserted by the Law no. 20 of 23.02.2012, in force from 20.04.2012]

Article 32¹. Protection of a well known trademark

(1) The trademark can be recognized as well known only if a claim for the notoriety has been filed at the district court where AGEPI premises are located, or of a counterclaim in an action to protect the rights, filed at the same court.

(2) Well known trademark is granted legal protection according to the current law.

(3) The term of protection of a well-known trademark shall not be limited.

Article 32² . Filing a claim for recognition of a trademark as well known

(1) Where a dispute arises in relation to a well known trademark in the Republic of Moldova, within a certain public segment, the interested person which uses in good faith this trademark in his commercial activity, may file a claim for recognition of the trademark as well known at the district court where AGEPI premises are located, in accordance with Art. 166 of the Civil Procedure Code.

(2) The claim must refer to one trademark. A trademark is considered a used sign set within a certain overall of elements.

(3) For the purposes of paragraph (1), a certain public segment means:

a) current consumers and/or potential consumers of the goods and/or services for which the trademark is used;

b) specialists in the respective sector;

c) persons involved in the networks distribution of the goods and/or services for which the trademark is used;

d) business network whose main object constitute the goods and/or services for which the trademark is used (importers, licensors, wholesale sellers, etc.).

Article 32³ . Content of the claim for recognition of a trademark as well known

Besides the provisions referred to the Art. 166 of the Civil Procedure Code, the claim for recognition of a trademark as well known shall contain:

a) the claim for recognition of a trademark mentioning the date on which the recognition is requested;

b) surname, name, address and signature of the applicant, in case of a natural person; name, address and signature of the administration, in case of a legal entity;

c) surname, name, address and signature of the patent attorney/representative, when filing the claim through them;

d) description of the trademark, if registered, or the description of the sign which allegedly can be recognized as well known trademark;

e) goods and/or services for which the trademark is used, grouped according to the classes of the International Classification of Goods and Services;

f) colour/colours of the trademark, if they constitute a distinctive element of the trademark;

g) number of the registration certificate, if the claim for recognition of a registered trademark as well known is requested.

Article 32⁴. Materials attached to the claim for recognition of a trademark as well known

The claim for recognition of a trademark as well known shall be accompanied by:

a) documents containing information related to the factors on the basis of which the conclusion on the recognition of a sign as well known can be set, including:

- level of acquaintance of the sign on the market by certain public segment;

- length (beginning and period), degree and geographical extent of any use of the sign;

- length, level and geographical extent of the promotional activity in relation to respective sign, including advertising and presentation within fairs or exhibitions of goods and/or services marked with this sign;

- length and geographical extent of any registrations of the sign and/or of any applications for registration of the sign, as far as reflects the use or recognition of this sign;

- valuation report determining trademark's value;
 - result of the surveys performed by the applicant;
 - any other additional information;
- b) graphic or photographic reproduction of the trademark, presented in a color or combination of colors for which the claim for recognition of a trademark as well known is requested, with a flawless, clear and distinct image quality;
- c) graphic or photographic reproduction of the trademark in a general overview and several different views, if the claim for recognition of a three-dimensional trademark as well known is requested;
- d) sample of the label (natural size), if the claim for recognition of the trademark as well known on the label is requested;
- e) attorney, if the claim is filed through a patent attorney/representative.

Article 32⁵ . Criteria for recognition of a trademark as well known

(1) The notoriety of the trademark on the territory of the Republic of Moldova shall be established on the basis of the following criteria:

- a) trademark is recognized by current and/or the potential consumers of the goods and/or services for which it is used or by the persons involved in ensuring the network distribution of goods and/or services for which the trademark is used, or by the business circles which imply the goods and/or services for which the trademark is used, as for the impression on the quality of goods and/or services, it shall associate with (refer to) the country trademark or from the world market;
- b) trademark possess a high level of distinctiveness, inherent or acquired as a result of the intensive use;
- c) trademark is widely known on the territory of the Republic of Moldova, including as a result of advertising;
- d) trademark has the commercial value as a result of long lasting and intensive use in the country or the world market.

(2) Upon the adoption of the decision for recognition of a trademark as well known, besides the criteria mentioned in paragraph (1), other criteria relevant to a well known trademark, not reflected in the current article, can be taken into account.

Article 32⁶ . Examination of the claim for recognition of a trademark as well known

(1) While examining the claim for recognition of a trademark as well known, all the data presented according to the Art.32³ -32⁵ shall be checked.

(2) While recognizing a trademark as well known, no any requirements can be requested as mandatory, as follows:

a) trademark shall be registered or filed for registration on the territory of the Republic of Moldova;

b) the requested trademark shall be recognized as well known, registered or filed for registration in any other State other than the Republic of Moldova;

c) trademark shall be recognized by the general public of the Republic of Moldova.

(3) The survey is performed on a representative sample in relation to a certain public segment. The geographical area of the survey and the sample size are determined by the character/specific of the goods and/or services for which the trademark is used.

(4) While recognizing a trademark as well known in respect to the goods with technical destination, consumers of the respective goods (both from the circle of producers, as well as from the trading network) must be surveyed. Thus, it is necessary that not less than 60 % of the respondents should know the respective trademark.

(5) While recognizing a trademark as well known in respect to the goods of current use, the 'average' consumer (taking into account the age, sex, education, social and material status, relationship with the marked good), as well the specialists from respective industry and trade branch should be questioned. Thus, it is necessary that the majority of respondents should know the respective trademark.

(6) In the survey, respondents must answer to the following:

a) if they know the respective trademark;

b) who is the trademark owner or producer of the good marked with such a trademark;

c) since when the trademark is known;

d) how do they appreciate the trademark (is the trademark very well known, known, less known, unknown);

e) how do they appreciate the good (it is excellent, very good, good, average, unsatisfactory, etc.)

f) other reasonable questions related to the field of acquaintance of the trademark.

(7) Trademark can't be recognized as well known if there is at least one of the following conditions:

a) the proofs submitted by the applicant, including values of the parameters set in the paragraphs (3) - (5) do not correspond to the requirements of this section;

b) there is an identical or similar trademark that might be confused with the applicant's trademark, registered or filed for registration on behalf of another person for the same goods or services with a priority prior to the date when the claim for recognition of a trademark as well known was requested;

c) trademark converted into a common name;

d) trademark is contrary to the public order or good morals.

Article 32⁷. Decision on for recognition of a trademark as well known

(1) Depending on the outcome of the examination of the claim for recognition of a trademark as well known, a decision on recognition of a trademark as well known or rejection of the claim for recognition of a trademark as well known, is adopted.

(2) The decision on recognition of a trademark as well known is communicated to the AGEPI for the well known trademark to be registered in the Register of well known trademarks.

(3) The data inserted in the Register of well known trademarks shall be published in the Official Bulletin of Industrial Property within 3 months from the date the decision on recognition of a trademark as well known has been adopted.

[Section 1¹ inserted by Law No. 20 of 23.02.2012, in force from 20.04.2012]

Section 2 Priority

Article 33. Right of priority

(1) A person which has filed, in accordance with established procedure, a trademark registration application in one or for one of the countries parties to the Paris Convention or the Agreement Establishing the World Trade Organization, or its legal successor, shall enjoy, when filing with the Agency an application for registration of the same trademark for the goods and/or services, identical or included therein, for which an application was filed, the right of priority within six months of the filing date of the first trademark registration application.

(2) The grounds for invoking the right of priority shall be recognized as any application filing which has the force of a correctly formulated national application filing in accordance with the national legislation of the country in which it was formulated, or with bilateral or multilateral agreements.

(3) The first application, the filing date of which serves as the cut off day of the term of priority, shall be considered to be a subsequent application, filed with the Agency, for the same trademark for identical goods and/or services as the first prior application, where this prior application, on the day of filing of the subsequent application, was withdrawn, left unaffected or refused, as it was not accessible to the public, and also provided that in relation thereto no kind of rights continued to exist and it did not serve as further grounds for claims to the right of priority. The prior application may not then serve as grounds for claims to the right of priority.

(4) If the first application is filed in a country which is not party to the Paris Convention or the Agreement Establishing the World Trade Organization, the provisions of paragraphs (1)-(3) shall apply only insofar as the legislation of the corresponding country grants, on the basis of the first application filed with the Agency, the right of priority in accordance with the requirements and consequences similar to those provided for by this Law.

Article 34. Effect of right of priority

As a result of the right of priority, the priority date shall be considered the date on which a trademark registration application to establish prior rights is filed.

Article 35 . Exhibition priority

(1) If an applicant has exhibited under a trademark goods and/or services at an international exhibition, when filing a trademark registration application it may request the right of priority in accordance with Article 34 from the date on which the goods and/or services are first displayed at the exhibition, provided that a registration application is filed within six months of the date of first display of the goods and/or services under the corresponding trademark.

(2) An exhibition shall be considered international if it is officially organized and producers and service providers from several countries participate in it, and also if information on the exhibition is made known to the public by appropriate means.

(3) The exhibition priority granted in accordance with paragraph (1) of this Article shall not extend the term of priority established in Article 33(1).

Article 36. Request for priority

(1) An applicant wishing to avail itself of the right of priority in accordance with Articles 33 or 35 shall, provided that the prescribed fee has been paid, simultaneously with the filing of the trademark registration application or within two months of the application filing date, submit a request for priority and, within three months of this date, submit documents confirming the competence of such a request.

(2) A copy of an original application and the translation thereof into the state language or, in the case of exhibition priority, a document concerning the exhibition of goods or services under a trademark for which registration is requested shall be attached to the documents confirming the competence for requesting priority.

(3) When requesting multiple priority for a single application, a fee shall be paid for each requested priority.

**Section 3
Registration procedure**

Article 37. Examination of observance of registration application filing requirements

(1) Within one month of the registration application filing date, the Agency shall verify compliance with the requirements provided for by Article 30(2) for the awarding of a filing date.

(2) According to the results of the examination conducted in accordance with paragraph (1), the Agency shall:

(a) award a filing date in accordance with Article 31, if it establishes that the trademark registration application satisfies the requirements for the award of such a date; and shall also award a filing date in accordance with Article 31, if the fee for filing an application has not been paid or has been partially paid, provided that the fee or the difference in the amount established is paid within 10 calendar days of the filing date of the application for registration;

(b) inform the applicant of infringements detected and grant it a period of two months from the application filing date to remove those infringements, if it establishes that the trademark registration application does not meet the requirements for awarding such a date.

(3) Following the notification described in paragraph (2)(b), the Agency shall:

(a) award a filing date on the date at which all the infringements have been removed, if the applicant removes the infringements detected within the prescribed period;

(b) consider an application not to have been filed, if an applicant does not remove the infringements detected within the prescribed period, and the applicant shall be informed accordingly.

(4) The Agency shall enter information on an application to which a filing date is awarded in the National Register of Trademark Registration Applications and the applicant shall be informed accordingly.

(5) Within one month of the date of entry of information on an application in the National Register of Trademark Registration Applications, the Agency shall verify whether a trademark registration application complies with the other filing requirements provided for by the law and by the Regulations.

(6) According to the results of the examination conducted in accordance with paragraph (5), the Agency shall:

(a) accept an application for publication, if it establishes that the application satisfies the requirements provided for in paragraph (5);

(b) notify the applicant of infringements detected and propose that it remove those infringements within the deadline prescribed by the Regulations, if it establishes that an application does not satisfy the requirements provided for by paragraph (5).

(7) If following notification according to paragraph (6)(b) the applicant does not remove the infringements detected within the prescribed period, an application shall be considered to have been withdrawn and the applicant informed accordingly.

(8) If following notification according to paragraph(6)(b) an applicant does not remove within the prescribed period an infringement consisting of the non-payment of an examination fee, the application shall be considered to have been withdrawn (apart from where an application falls under Article 30(6) and it is clear which classes of goods and/or services are intended to be covered by the application examination fee already paid), and the applicant shall be informed accordingly.

(9) Non-compliance with the provisions on requesting priority shall lead to the loss of the right of priority for an application.

Article 38. Publication of a registration application

Where the requirements provided for by Article 37(6)(a) are satisfied, a trademark registration application shall be published within three months of the filing date.

Article 39. Comments by third parties

(1) Within three months of the date of publication of a trademark registration application, any natural person or legal entity, and also group of manufacturers, producers, service providers, sellers or consumers shall be entitled to submit their comments in writing to the Agency, providing justification of the need for refusal of the trademark registration, in particular on the basis of Article 7. Persons that have submitted comments shall not become party to the procedures conducted in the Agency.

(2) An applicant shall be informed of the comments specified in paragraph (1) and, within two months of the date of notification, may express its point of view. If the applicant does not put forward its point of view within the period in question, comments shall be examined on the basis of existing materials.

Article 40. Objections

(1) Within three months of the publication date of a trademark registration application, any interested person may object to the registration of a trademark on the grounds that the registration thereof should be refused under the provisions of Article 8 and/or, where appropriate, Article 7.

(2) An objection against registration of a trademark may be lodged also within three months of the date of publication of amendments to the trademark registration application, if these amendments relate to the reproduction of a trademark or a list of goods and/or services.

(3) A reasoned objection shall be lodged in writing with the Agency. The objection shall be considered to have been lodged only after the prescribed fee has been paid. A person that has lodged an objection may, within one month of the date of the objection being lodged, submit additional evidence and arguments in support of its objection.

(4) An applicant shall be informed of the objections specified in this Article and, within two months of the date of receipt of notification, may express its point of view. If the applicant does not put forward its point of view within the period in question, objections shall be examined on the basis of existing materials.

Article 41. Substantive examination

(1) Within 3 months of the expiry date of the period for submitting observations and oppositions by third parties, AGEPI shall conduct the substantive examination of the application concerning compliance with the trademark protection requirements, subject to payment of the fees established.

(2) The Agency shall verify whether:

(a) absolute grounds exist for refusal, as provided for by Article 7;

(b) relative grounds exist for refusal, as provided for by Article 8:

(c) comments and objections submitted in relation to a trademark registration application.

(3) Depending on the substantive examination results, the Agency shall take a decision concerning the full or partial registration of a trademark or on the refusal of a trademark registration application and, within one month of the date on which the decision is taken, shall inform the applicant accordingly.

Article 42. Examination of objections

(1) In the process of examining an objection, the Agency shall verify whether the requirements for lodging an objection are satisfied, as provided for by Article 40(1)-(3), and whether the applicant has expressed its point of view in accordance with Article 40(4), and shall evaluate the arguments of parties.

(2) At the applicant's request, the owner of an earlier trademark, that has lodged an objection, shall provide proof of the fact that during the five years preceding the date of publication of a trademark registration application, the earlier trademark was the subject of actual use in the Republic of Moldova in relation to the goods and/or services for which it was registered and to which the objection relates, or that there exist justified reasons for non-use, provided that at the corresponding date the trademark was registered for at least five years. In the absence of such proof, the objection shall be rejected. If an earlier trademark were used only in relation to part of the goods and/or services for which it was registered, when examining an objection an earlier trademark may be compared against only the corresponding part of the goods and/or services.

(3) Examination of an objection may be suspended:

(a) when an earlier trademark registration application is used as a basis – before a final decision is taken thereon;

(b) when an opposed trademark is in the process of recognition of its invalidity or deprivation of rights – prior to a final settlement of the case;

(c) at the reasoned request of one of the parties.

(4) If it emerges from the examination of an objection that a trademark does not comply with the requirements for registration in relation to all or only part of the goods and/or services for which it is requested, the application shall be refused in relation to the corresponding goods and/or services. In the opposite case the objection shall be rejected.

Article 43. Refusal of a trademark registration application

(1) If a trademark does not comply with the requirements for registration on absolute or relative grounds for refusal, as defined by Articles 7 or 8, for all or part of the goods and/or services for which it is requested, the application for registration of the trademark shall be refused in relation to the corresponding goods and/or services.

(2) The application for registration of the trademark shall not be rejected unless the applicant was notified, by a provisional notice, of the grounds on which registration may be refused in whole or in part. Within two months of receipt of the notification, the applicant shall be entitled to file an appeal against the provisional notice of refusal by presenting arguments supporting trademark registration, withdraw the application for one or more classes of goods / services or for certain goods / services, or request entry of the amendment, subject to payment of certain fees for the said operations under the terms and in the amounts established.

(3) If the trademark contains elements which, according to Article 7, may not be registered independently as trademarks for all or certain categories of goods / services requested, and the inclusion of these elements in the trademark may give rise to doubts regarding the scope of its protection, AGEPI may require, as a condition for registration of the trademark, that the applicant, within two months of receipt of the notice referred to in paragraph (2) declare that he disclaims any exclusive right to such elements. This statement shall be published simultaneously with the information on trademark registration.

(4) If the applicant provides evidence on the initiation of judicial proceedings in order to eliminate the grounds invoked in the provisional notice of refusal, the actions related to the examination of the application shall be suspended until the final decision of the court.

Article 44. Withdrawal, limitation and amendment of a trademark registration application

(1) An applicant shall be entitled at any time to withdraw a trademark registration application or limit the list of goods and/or services which it includes. If the application has already been published, information on withdrawal or limitation shall also be published in the BOPI.

(2) At the request of an applicant, a trademark registration application may include amendments only where this is necessary to correct the applicant's name or address, inaccuracies in drafting or writing or misprints so that such amendments do not substantively change the trademark and do not expand the list of goods and/or services. If the amendments relate to the reproduction of a trademark or a list of the goods and/or services and are produced after publication of the application, it shall be republished with the corresponding amendments.

(3) The procedures indicated in paragraphs (1) and (2) shall be conducted with payment of prescribed fees, except where the procedures provided for by paragraph (2) are requested within one month of the application filing date.

(4) The application shall be deemed withdrawn where it is found that:

a) the fee for registration and issue of the certificate of trademark registration has not been paid in the amount and term established;

b) the permission to use an official or historical name of the State in the product and/or service marks has not been submitted;

c) the document confirming the consent of the competent body on the use of the official name of the territorial-administrative unit has not been submitted.

Article 45 . Division of a trademark registration application

(1) An applicant shall be entitled to divide an application for trademark registration by submitting a request to the Agency, in which it shall state that some of the goods and/or services included in the original application are becoming the subject of one or more separate applications. The goods and/or services of the separate application shall not cover either the goods and/or services remaining in the original application, or the goods and/or services of other separate applications.

(2) A request for division shall not be permitted:

(a) if an objection is lodged against an original application, and a request for a division separates the goods and/or services to which the objection relates – prior to a final decision being taken on the objection;

(b) in other cases provided for by the Regulations.

(3) A request for division shall be accompanied by a document confirming the payment of a fee.

(4) The procedure for formulating and submitting a request for division shall be determined by the Regulations.

(5) A division shall be effective from the date of its entry in the National Register of Trademark Registration Applications.

(6) All requests and claims submitted and all fees relating to an original application, paid before the date on which the Agency receives a request for division, shall be considered submitted or paid in relation to a separate application or applications. The fees paid for an original application prior to receipt of a request for division shall not be returned.

(7) A separate application shall retain the filing date and any priority date of an original application.

Article 46. Trademark registration

(1) If according to the results of examining an application in accordance with Articles 37 and 41 it is established that the requirements for registering a trademark have been complied with, and

also if no challenges have been made against registration in accordance with Article 47(1) or challenges made are rejected in a final decision, the AGEPI shall, provided that the prescribed fee has been paid, take a decision to register a trademark. Information on the registration of a trademark shall be entered in the National Register of Trademarks and the trademark owner shall be issued with a trademark registration certificate. Information on trademark registration shall be published in the BOPI.

(2) If the registration of a trademark is conditional upon the presentation of a permission from the competent authorities in accordance with article 7 paragraph (3), the period between the filing of the application for granting of such permission and the date of the decision taken by the competent authority in this regard shall not be considered in the computation of the payment term of the fee for registration and the issue of the trademark registration certificate, provided that a copy of that application is submitted to the AGEPI before the expiry of that term.

Article 47. Challenging decisions on trademark registration applications

(1) Any decision on trademark registration applications may be challenged by the parties within two months of the date on which a decision is received or by third parties within one month of the date on which the decision was made public. A challenge shall have suspensory effect.

(1¹) Notwithstanding paragraph (1), the decisions on trademark registration may be challenged by third parties within the period between the date on which the decision was made public and the date of registration of the trademark.

(2) A challenge shall be submitted to the Agency and examined by the Commission for Examination of Objections in accordance with the relevant Regulations, approved by the Government.

(2¹) The provisions of Article 42 paragraph (2) shall apply mutatis mutandis to the challenges.

(3) A challenge shall be submitted in writing and shall be supported by reasons; it shall be considered filed provided that the prescribed fee has been paid.

(4) The Commission for Examination of Objections shall issue decisions and specifications in accordance with its competence.

Article 48. Examination of challenges

(1) In the process of examining a challenge, the Commission for Examination of Objections shall give parties the opportunity to submit their comments on the remarks made by the other party. In the case of disagreements of a normative nature, the rules contained in the Code of Civil Procedure shall apply.

(2) According to the results of the examination of a challenge, the Commission for Examination of Objections shall take one of the following decisions:

(a) leaving the challenged decision in force;

(b) complete or partial cancellation of the challenged decision;

(c) any other decision in accordance with its competence.

(3) A decision of the Commission for Examination of Objections shall enter into force from the date on which it is taken.

(4) A decision of the Commission for Examination of Objections shall be communicated to parties and may be appealed in the district court where AGEPI premises are located within the deadlines prescribed by the law.

Article 49. Restoration of rights

(1) The rights of an applicant, or a trademark owner, or of any other party to an Agency procedure, which despite all the measures taken fairly required by circumstances could not observe the deadlines for the conduct of an Agency procedure, may be restored at their request, if missing a deadline entails, on the basis of the provisions of this Law, the direct loss of any right or the possibility of appeal.

(2) A request for restoration of rights shall be submitted in writing within two months of the date on which the circumstances giving rise to non-observance of a deadline ceased to exist. In the same period, the incomplete action shall also be carried out. The submission of a request shall be acceptable only within one year of the date of expiry of the missed deadline. Where a request for extension of registration or non-payment of a fee for extension of an additional six-month period, as provided for by Article 16(2), is not submitted, this shall be deducted from the annual period.

(3) A request for restoration of rights shall contain reasons and also facts and documentary evidence in support of the person submitting the request. A request shall be considered to have been submitted only after the prescribed fee has been paid.

(4) The provisions of this Article shall not apply to the deadlines provided for by paragraph (2) of this Article, and also by Article 39 paragraph (1), by Article 40 and Article 50.

(5) The restoration of rights shall not be acceptable where in the period from the date on which rights are lost in relation to an application or trademark and up to the date of submission of a request for restoration of rights, another trademark registration application was submitted, which may be opposed in accordance with the provisions of this Law, and in case of emergence of some opposable rights in this period. The procedure for examining an application for restoration of rights shall be postponed until a final decision on the application for trademark registration filed during that period.

(6) An applicant or trademark owner whose rights have been restored may not make claims to third parties which, during the period from the loss of rights in an application or trademark and up to publication in the BOPI of information on the restoration of those rights fairly released goods onto the market or provided services using a designation identical or similar to the corresponding trademark.

(7) A third party falling under paragraph (6) may, provided that the prescribed fee has been paid, challenge the decision to restore the rights of an applicant or a trademark owner within two months of the date of publication of information concerning the restoration of rights.

Article 50. Extension of deadlines and restoration of a missed deadline

(1) An applicant or trademark owner, or any other party to an Agency procedure, may, in relation to an application or trademark:

(a) request an extension of the deadline provided for the completion of any procedural action, by submitting a request to the Agency before the expiry of said deadline;

(b) in the case of non-observance of a deadline, provided for completion of any procedural action, request the restoration of a missed deadline and continuation of the procedure by submitting to the Agency a request within two months of the date of expiry of the established deadline; in the same period, the incomplete action shall also be carried out.

(2) The period of extension of a deadline in accordance with paragraph (1)(a) or restoration of a missed deadline according to paragraph (1)(b) shall not exceed six months from the date of expiry of an established deadline.

(3) A request for performance of actions in accordance with paragraph (1) shall be considered submitted only after the prescribed fee has been paid.

(4) The provisions of this Article shall not apply to the deadlines provided for by paragraph (1) of this Article, and also by Article 16(2), Article 31, Article 33(1), Article 35(1), Article 36, Article 37(2)(b) and (6)(b), Article 39(1), Article 40, Article 47(1), Article 48(4), Article 49 and Article 82(2)(a).

Chapter IV
COLLECTIVE TRADEMARKS AND CERTIFICATION TRADEMARKS

Article 51. Collective trademarks

(1) Collective trademarks shall be used to distinguish goods and/or services of the members of one association (one group of persons) in the name of which the trademark was registered from the goods and/or services of other persons. Entitlement to register a collective mark shall be given to associations of manufacturers, producers, service providers and sellers who, on the basis of the law, are competent in their own name to hold different kinds of rights or obligations, conclude agreements or produce other legal documents, bring legal cases in court, and also other legal entities under public law.

(2) As an exception to Article 7(1)(c) collective trademarks as defined in paragraph (1) of this Article may be designations or indications which may serve in trade to indicate the geographical origin of goods and/or services. A collective trademark shall not give its owner the right to prohibit third parties from using such designations or indications in trade, provided that they are used by third parties in accordance with the proper customs of production or commercial

activity. In particular, such a trademark may not be binding on a third party that has the right to use a geographical name.

(3) The provisions of this Law shall be applied equally to collective trademarks, taking into account the provisions of Articles 52-57.

Article 52. Regulations on use of a collective trademark

(1) An applicant for a collective trademark shall, simultaneously with the filing of the trademark registration application or within another deadline fixed by the Regulations, submit regulations on the use of a collective trademark.

(2) The regulations on the use of a collective trademark shall define the persons which have the right to use the trademark, the conditions for joining an association, and also the conditions of use of the trademark, including sanctions where applicable. The regulations on the use of a collective trademark, as indicated in Article 51(2), shall give any person, whose goods and/or services come from the corresponding geographical area, the right to become a member of the association which owns the trademark.

(3) Regulations on the use of a collective trademark shall be published simultaneously with a registration application.

Article 53. Refusal of a collective trademark registration application

(1) Apart from a refusal of trademark registration application on the grounds provided for by this Law, an application for the registration of a collective trademark may be refused if the requirements of Articles 51 or 52 are not observed or if regulations on the use of a collective trademark contravene ordre public or morals.

(2) An application for the registration of a collective trademark shall be refused also where a risk exists of misleading a user in relation to the character or significance of the trademark and especially if it is not perceived as a collective trademark.

(3) An application shall not be refused if the applicant removes the non-compliance with the requirements of paragraphs (1) and (2) by inserting amendments in the regulations on the use of a collective trademark.

Article 54. Amendments to regulations on use of a collective trademark

(1) The owner of a collective trademark shall inform the Agency of any amendments to regulations on the use of a collective trademark.

(2) The amendments shall not be entered in the National Register of Trademarks, if the amended regulations on the use of a collective trademark does not meet the requirements of Article 52 or contains grounds for the refusal indicated in Article 53.

(3) Amendments to the regulations on the use of a collective trademark shall enter into force from the date on which the corresponding indication is entered in the National Register of Trademarks.

Article 55. Bringing a suit for protection of rights in a collective trademark

(1) The provisions of Article 27(6) and (7) on the rights of licensees shall apply to all persons that have the right to use a collective trademark.

(2) The owner of a collective trademark may, on behalf of the persons that have the right to use the trademark, demand compensation for damage caused to them by the unlawful use of the trademark.

Article 56. Grounds for deprivation of rights in a collective trademark

Apart from the deprivation of rights on the grounds provided for by this Law, the owner of a collective trademark may be deprived of rights as a result of the submission to the district court where AGEPI premises are located of a corresponding request or counterclaim in a rights protection case, if:

(a) the owner does not take adequate measures to prevent the use of a trademark that is not compatible with the conditions for use provided for by the regulations on the use of a collective trademark;

(b) the means of use of the trademark by the owner have led to a risk of the user being misled as defined in Article 53(2);

(c) amendments to the regulations on the use of a collective trademark have been entered in the National Register of Trademarks in violation of the requirements of Article 54(2), apart from where the trademark owner removes such non-compliance with these requirements by means of a new amendment to the regulations on the use of a collective trademark.

Article 57. Grounds for invalidity of a collective trademark

Apart from invalidity on the grounds provided for by this Law, a collective trademark may be recognized as invalid as a result of the submission to the district court where AGEPI premises are located of a corresponding request or counterclaim in a rights protection case, if it were registered in violation of the requirements of Article 53, apart from where the trademark owner removes the non-compliance with these requirements by means of a new amendment to the regulations on the use of a collective trademark.

Article 58. Certification trademarks (signs of correspondence)

(1) Certification trademarks (signs of correspondence) may be registered with the Agency by the certification authorities authorized to certify the compliance of goods or services in accordance with Law No. 186-XV on the Evaluation of Compliance of Goods of April 24, 2003. Legal entities in addition to those indicated which produce, import or sell goods or provide services shall not be entitled to register collective trademarks.

(2) The provisions of this Law shall be applied equally to certification trademarks, taking into account the provisions of this Article.

(3) Together with the filing of a collective trademark registration application in accordance with Article 30 or within the deadline established by the Regulations, an applicant shall submit:

- (a) regulations on the use of a collective trademark;
- (b) an authorization or document providing competence for performing certification activity or, in appropriate cases, proof of registration of a certification trademark in the country of origin.
- (4) Regulations on the use of a certification trademark shall specify the persons entitled to use the trademark, the elements and characteristics which must be certified by the trademark, the procedure for the conduct by the certification authority of the verification of such characteristics and their observance of the use of the trademark, sanctions for infringement of regulations, the fees payable for use of the trademark and dispute settlement procedures.
- (5) The use of a certification trademark shall be permitted for any person offering goods or providing services which correspond to the characteristics defined in the regulations on the use of a certification trademark, and satisfying the requirements thereof.
- (6) The owner of a certification trademark shall permit competent persons to use the trademark for goods or services which possess the characteristics defined in the regulations on the use of this trademark.
- (7) If a person competent to use a certification trademark does not comply with the regulations on the use of the trademark, its owner shall be entitled to withdraw authorization for use of the trademark or apply other sanctions provided for by the regulations.
- (8) Apart from the refusal on the grounds provided for an individual trademark registration application, an application for the registration of a certification trademark may be refused, if the sign does not satisfy the requirements of paragraphs (1) and (3), and also the legislative rules on certification.
- (9) A certification trademark may not be the subject of an agreement for the assignment of rights, a pledge, or also compulsory measures. In the case of dissolution of a legal entity – owner of a certification trademark, this sign may be transferred to any legal entity in accordance with the conditions established by law.
- (10) A certification trademark may be cancelled by a decision handed down by a court, at the request of any interested person, if it does not satisfy the requirements of paragraphs (1)-(9).
- (11) If a certification trademark loses its protectability, it shall not be subject to registration or use for other purposes for a period of ten years from the date on which it loses its protectability.
- (12) The fees provided for by this Law for collective trademarks shall also apply to certification trademarks.

CHAPTER V PUBLIC INFORMATION

Article 59. National Register of Trademarks

(1) The Agency shall keep the National Register of Trademarks in which shall be printed information whose registration is provided for by this Law and established by the Regulations. Any entries or amendments, produced in the National Register of Trademarks, shall be published in the BOPI.

(2) The National Register of Trademarks shall be available for public consultation.

(3) On request and provided the prescribed fee has been paid, the Agency may issue extracts of the National Register of Trademarks.

Article 60. Periodicals

The Agency shall issue on paper carrier, in electronic format and on its official website the periodical Official Bulletin of Intellectual Property, containing:

(a) information on industrial property subject matter, including on trademarks entered in the National Register of Trademarks and also other information on trademarks whose publication is provided for by this Law or other normative acts in the area in question;

(b) general communications and information received from the Agency Director General;

(c) other information related to the provisions of this Law and its application.

[Art. 60, the introductory part, modified by the Law no.173 of 25.07.14]

CHAPTER VI OBSERVANCE OF RIGHTS

Article 61. Protection of rights

(1) Any natural person or legal entity and also other interested persons which have claims relating to the use of a trademark registered or for which registration is requested, shall be entitled to apply to the courts for protection of their rights and legal interests.

(2) A suit for infringement of exclusive rights or the legal interests flowing therefrom may be brought by the following persons:

(a) a trademark owner;

(b) any person which has the right to use a registered trademark, in particular licensees in accordance with Article 27(6);

(c) other natural persons or legal entities representing a rights owner.

(3) A person whose rights have been infringed may apply to the courts for protection of its rights within the period of legal limitation established by the law and constituting not less than three years.

Article 62 . Suit concerning announcement of non-infringement of rights

(1) Any person using a trademark protectable on the territory of the Republic of Moldova or having made serious and real preparations for the use thereof shall be entitled to apply to the rights owner to determine its position regarding the infringement of the document providing protection as a result of such use, and the rights owner shall respond to the person in question.

(2) If the position of a rights owner provided for by paragraph (1) does not satisfy it or if the rights owner does not determine its position within three months, the interested person shall be entitled to bring a suit with the competent court for the establishment of non-infringement of rights.

(3) A suit concerning announcement of non-infringement of rights may not be filed by one and the same person in relation to one and the same subject matter, if a court has previously handed down a decision on the presence or absence of the infringement of rights.

Article 63. Measures for provision of evidence prior to filing a suit

(1) Any competent person that has provided sufficient evidence confirming infringement of its rights may request a court or other competent authority, prior to bringing a suit against unlawful activities, to take temporary measures to provide corresponding proof, subject to the confidential nature of information being preserved and an adequate security being provided or guarantee of equal value supplied, which are necessary for compensation for harm caused to the defendant where any kind of infringements are not proven.

(2) In taking measures to provide proof, a court shall be entitled to:

(a) request a detailed description of the acts alleged to be infringements;

(b) seize disputed goods;

(c) seize materials and equipment used in the process of producing and/or distributing disputed goods;

(d) request the provision of the corresponding documents.

(3) The procedure for applying measures to provide proof shall be applied by a court or other competent authority in accordance with the corresponding provisions of the Code of Civil Procedure. Measures to provide proof shall be implemented with the participation of a court enforcer, accompanied where necessary by an Agency representative and police officer.

Article 64. Provision of evidence in urgent cases

(1) Measures to provide proof may be established without hearing the defendant, if a delay may lead to harm being done to the rights owner, which is not correctable, or the risk of destruction of

proof exists. Any court decision shall be communicated immediately to the party whose interests are affected.

(2) A decision on the provision of proof may be appealed in the courts.

Article 65. Invalidity of measures for provision of evidence

(1) Measures for the provision of proof shall have no value or be invalid:

(a) if within 20 working days a claimant does not bring a suit for the infringement of rights in a court;

(b) as a result of any guilty acts or the failure to act on the part of the claimant;

(c) where the absence of an infringement or an attempted infringement of rights is established;

(d) in the other cases provided for by the law – on a court decision.

(2) If as a result of measures to provide proof, which are recognized as without value or invalid, harm is caused, a claimant shall pay the defendant the corresponding compensation.

Article 66. Presentation and provision of evidence within the framework of a suit for the infringement of rights

(1) If a party presents arguments to justify its claims, and also information regarding the fact that particular proof is available to the opposing party, a court shall order a sufficient and reasonable quantity of the evidence to be presented, provided that the confidentiality of information is preserved. In the case of an infringement of rights in the commercial sphere, a court may also order the parties to submit bank, financial or commercial documentation.

(2) In cases where one of the parties to proceedings unjustifiably refuses access to requisite information or unfairly delays the presentation of such information, thereby hampering the settlement of a dispute, a court shall decide to accept or refuse to accept a claim based on the information presented, including a complaint or claim by the party injured by the refusal of access to the information, provided that the parties are given the possibility to be heard regarding their claims or proof.

Article 67. Right to information

(1) When establishing in the process of examining a dispute the infringement of rights in a trademark, a court may request information on the origin and distribution channels of goods infringing the right in a trademark from the infringer and/or any other person:

(a) in whose possession counterfeit goods intended for sale were discovered;

(b) who was discovered to be using for commercial purposes services with counterfeit goods;

(c) who was discovered to be providing for commercial purposes services used in activities infringing rights; or

(d) of whom an indication was given by the person mentioned in subparagraphs (a), (b) or (c), as dealing with the manufacture, production or distribution of goods or provision of services.

(2) The information indicated in paragraph (1) shall, where necessary, include:

(a) names and addresses of producers, distributors, suppliers and previous owners of goods, as well as presumed retail and wholesale sellers;

(b) information on the quantity of goods produced, supplied, obtained or ordered, as well as on the prices thereof.

(3) Paragraphs (1) and (2) shall be applied without prejudice to the legislative and regulatory standards which:

(a) allow a rights owner to receive more detailed information;

(b) regulate the use of information provided in accordance with this Article in civil or criminal cases;

(c) determine responsibility for misuse of the right to information;

(d) give the possibility to refuse to provide information, which could oblige the person mentioned in paragraph (1) to recognize its participation or the participation of its close relatives in the infringement of rights in a trademark; or

(e) regulate the preservation of confidentiality of information sources or processing of personal data.

Article 68. Measures for bringing a suit for infringement of rights

(1) Having established the fact of actual or unavoidable infringement of the rights in a trademark, a court may, at the request of the rights owner, take measures to bring a suit for infringement of the rights in relation to the infringer and/or intermediaries, such as:

(a) taking a decision to temporarily prohibit the particular activities constituting the infringement of the rights in a trademark, or to allow such activities, subject to the provision of a security which is sufficient to provide compensation for the harm done to the rights owner;

(b) seizing the property suspected of infringing the rights in a trademark in order to prevent it from being introduced into commercial channels;

(c) seize any property of the infringer, including blocking bank accounts, supplying bank, finance or commercial documentation, if the infringement occurs in the commercial sphere and a risk of non-compensation for harm exists.

(2) Measures to guarantee rights may be established in accordance with Article 64 without hearing a defendant, if a delay may lead to uncorrectable harm being caused to the rights owner

or a risk exists of destruction of evidence. The decision of the court shall be communicated immediately to the party whose interests are affected.

Article 69. Corrective measures

(1) Having established that an infringement of rights has taken place, a court may, at the applicant's request, order measures to be taken in relation to the goods infringing the rights in a trademark and, in appropriate cases, in relation to the materials and equipment which were used in creating and manufacturing these goods. Such measures shall include in particular:

(a) temporary removal of the goods from commercial circulation;

(b) final removal of the goods from commercial circulation; or

(c) destruction of the goods – where a trademark cannot be removed from an item without the item being destroyed, and also where the removal of a trademark is insufficient for the purposes of excluding the infringement of rights.

(2) The measures indicated in paragraph (1) shall be carried out at the defendant's expense, apart from in cases where there are substantial grounds preventing this.

(3) When examining a request for the application of corrective measures, a court shall be governed by the principle of fairness, proportionality to the seriousness of the infringement committed and the prescribed means of protection, and shall also take into account the interests of third parties.

Article 70. Implementation of court decisions

When taking a decision concerning infringement of the rights in a trademark, a court may, at the rights owner's request, apply to the infringer measures to guarantee implementation of the decision, in accordance with which the infringer shall be warned of the prohibition on any acts constituting an infringement of the rights of the rights owner. For this purpose, the court may oblige the infringer to provide an adequate security or a guarantee of equal value. The rights owner may request that such measures be applied also to intermediaries, whose services are used by third parties to infringe its rights in a trademark.

Article 71. Alternative measures

If an infringement of the rights in a trademark causes, unconsciously or owing to neglect, material damage, a court may, at the request of the interested person, oblige the infringer to pay monetary compensation instead of the measures to guarantee the rights provided for in this chapter. In determining the level of monetary compensation, the size of the royalty which could have been obtained by the rights owner in the case of permitted use of a trademark shall be taken into consideration as a minimum.

Article 72. Compensation for damage

(1) At the request of the injured party, a person who consciously or with reasonable grounds to be aware of the fact infringed the rights in a trademark, shall compensate the rights owner for

actual damage caused to it as a result of the infringement of its rights. When determining the level of damages:

(a) in the calculation all substantive circumstances shall be taken into consideration such as negative economic consequences, including lost profit of the injured party, income unlawfully obtained by the defendant, and in appropriate cases also other aspects such as moral harm caused to the rights owner as a result of the infringement; or

(b) as an alternative a single sum may be determined, calculated as the minimum sum of the royalty or remuneration which would accrue to the rights owner, if the claimant requested authorization to use the corresponding trademark.

(2) In this case, where an infringer has unconsciously committed an infringement or does not have reasonable grounds to be aware of that, he shall be obliged to compensate the rights owner for lost profit or damage caused, as established in accordance with this Law.

Article 73. Advertising measures

(1) Within the framework of suits for the infringement of protectable rights in a trademark, a competent court may, at the request of the claimant and at the infringer's expense, prescribe corresponding measures for dissemination of information concerning a court decision, including its presentation for public consultation and also publication of the decision in full or in part.

(2) A competent court may prescribe additional advertising measures corresponding to specific circumstances, including large-scale measures.

CHAPTER VII INTERNATIONAL REGISTRATION OF TRADEMARKS

Article 74. Basic provisions

The provisions of this Law shall apply mutatis mutandis to international registrations based on the Madrid Agreement or the Protocol Relating Thereto, the country of origin of which is the Republic of Moldova or the effect of which extends to the Republic of Moldova, excluding cases where these documents provide otherwise.

Article 75. International application

(1) An international application in accordance with Article 3 of the Madrid Agreement for a trademark entered in the National Register of Trademarks or, in appropriate cases, an international application in accordance with Article 3 of the Protocol to the Agreement for a trademark, filed for registration or entered in the National Register of Trademarks, the country of origin of which is the Republic of Moldova, shall be filed with the International Bureau of the World Intellectual Property Organization (hereinafter - International Bureau) via the Agency.

(2) An international application, as indicated in paragraph (1), may be filed by any natural person or legal entity which has an actual operational industrial or commercial enterprise in the Republic of Moldova or, in the absence thereof, a place of residence in the Republic of Moldova or, in the absence thereof, is a citizen of the Republic of Moldova or immigrant therefrom.

(3) The filing date of an international application, based on a registered trademark filed with the Agency before the date of trademark registration, shall be considered the date of entry of the trademark in the National Register of Trademarks.

(4) An international application shall be compiled in accordance with the Administrative Instructions and shall contain special information in relation to the countries for which the territorial extension of protection stemming from international registration is requested.

Article 76. International registration fees

(1) The following fees shall be paid for the filing of an international application:

(a) to the Agency – for the acceptance, verification, examination and transfer to the International Bureau of an application;

(b) to the International Bureau – for the registration of a trademark in accordance with Article 8(2) of the Madrid Agreement and/or, in appropriate cases, Article 8(2) or (7) of the Protocol Relating Thereto.

(2) The fees provided for by paragraph (1) of this Article for the filing of an international application, as indicated in Article 75(3), shall be paid at the date of entry of a trademark in the National Register of Trademarks.

(3) The fees provided for by paragraph (1)(b) may be paid to the International Bureau directly or through the Agency. In the case of non-payment of fees an international application shall be considered not to have been filed.

Article 77. Agency international application verification procedure

(1) Within one month of the date of receipt, the Agency shall examine and verify the documents contained in an international application as to whether it satisfies the provisions of Article 75(4) and the data of the application correspond to the information entered in the National Register of Trademarks or, in appropriate cases, in the National Register of Trademark Registration Applications.

(2) If an application satisfies the requirements of this Law and the conditions of the Administrative Instructions, the Agency shall visa it, indicating the application filing date with the Agency, and shall send one copy to the International Bureau and a second copy to the applicant as proof that the application has been filed.

(3) The international registration date as defined in Article 3(4) of the Madrid Agreement or, in appropriate cases, Article 3(4) of the Protocol Relating Thereto, the country of origin of which is the Republic of Moldova, shall be considered the filing date of an international application with the Agency, provided that the application is received by the International Bureau within two months; in the opposite case, the date of an international registration shall be considered the date on which the International Bureau receives an international application.

(4) If, in accordance with paragraph (1), mistakes or inaccuracies are detected, the correction of which requires the applicant's consent, in particular, changes to the list of goods and/or services, the Agency shall inform the applicant accordingly and shall propose that within a reasonable period, in view of Article (3), that the mistakes or inaccuracies be corrected.

Article 78. Request for subsequent indication

(1) The owner of an international registration, the country of origin of which is the Republic of Moldova, may subsequently request territorial extension of the protection of a given registration to one or more countries which were not indicated in the original international application in relation to all or part of the goods and/or services listed in the international registration, by submitting an appropriate request to the International Bureau via the Agency.

(2) The request indicated in paragraph (1) shall be accompanied by payment of the prescribed fees. The provisions of Article 76(1) and (3) shall apply *mutatis mutandis*.

(3) The provisions of Article 77 shall apply *mutatis mutandis* to a request for subsequent indication.

(4) The subsequent territorial extension of protection shall be valid from the date of its entry in the International Register or some other date specified by the applicant and its effect shall cease at the same time as the validity of the international registration to which it relates expires.

Article 79. Procedure for examining an international registration

communicated by the International Bureau

(1) The observation-related procedures according to Article 39, objection-related procedures according to Article 40 and substantive examination procedures according to Article 41 shall apply, on the same conditions as to an application filed directly with the Agency to any international registration containing the indication Republic of Moldova or, in appropriate cases, that has, as a subject of subsequent territorial extension, the Republic of Moldova, communicated by the International Bureau.

(2) As an exception to Article 39 paragraph (1) and Article 40 paragraph (1), an observation or an objection to an international registration may be lodged within six months of the date of official publication by the International Bureau of the information relating to the extension of the effects of that international registration to the Republic of Moldova.

(3) If in the process of a substantive examination according to paragraph (1) it emerges that an international registration does not satisfy legal requirements, or if an objection is lodged against a particular international registration, the Agency shall issue a preliminary refusal of registration in relation to all or, in appropriate cases, part of the goods and/or services, and the International Bureau shall be informed accordingly.

(4) Any procedure provided for by the Law, following a preliminary refusal as indicated in paragraph (3), shall be carried out directly between the Agency and an applicant represented by a patent attorney.

(5) After a final decision is taken in relation to an international registration, the Agency shall inform the International Bureau of:

(a) a refusal of protection for a trademark; or

(b) grant of protection for a trademark in relation to all the claimed goods and/or services; or

(c) the goods and/or services in relation to which a trademark is protected.

(6) The Agency shall, in accordance with the procedure provided for, inform the International Bureau of all final decisions taken by courts concerning refusal, withdrawal, either partial or full, exclusion or cancellation of an international registration, or of changes to decisions for a refusal of international registration.

Article 80. Effect of an international registration with the indication Republic of Moldova

(1) Any international registration in which the Republic of Moldova is indicated shall, beginning from the date of international registration or, in appropriate cases, from the date of subsequent indication of the Republic of Moldova, have the same effect as where a trademark is filed for registration directly with the Agency.

(2) If the Agency has not informed the International Bureau of a refusal of registration in accordance with Article 79(3) or if a refusal communicated is subsequently either partially or fully withdrawn, protection for the trademark in the Republic of Moldova, beginning from the date indicated in paragraph (1) of this Article shall be the same as where a trademark is registered directly with the Agency.

(3) If a trademark is refused protection in accordance with Article 79(5)(a), it shall be considered that in the Republic of Moldova the said international registration had no effect, as indicated in paragraphs (1) and (2) of this Article.

Article 81. Replacement of a national trademark with an international registration

At the request of the owner of a trademark, previously entered in the National Register of Trademarks, the Agency shall, in accordance with Article 4 bis of the Madrid Agreement and Article 4bis of the Protocol Relating Thereto, make known the replacement of this trademark with a subsequent international registration of the same trademark in the name of the same owner and in relation to the same goods and/or services, which extends to the Republic of Moldova. A replacement shall be entered in the National Register of Trademarks and shall not be prejudicial to the rights previously required by the rights owner.

Article 82. Transformation of an international registration into a national application.

(1) The owner of an international registration in which the Republic of Moldova is indicated in accordance with the Protocol to the Agreement may pursuant to Article 9quinquies of the said Protocol to the Agreement, apply to the Agency for the transformation of an international registration into an application for registration of the same trademark, if at the request of the Office of the country of origin the international registration is excluded in relation to all or part of the goods and/or services listed in the corresponding registration.

(2) The application provided for by paragraph (1) shall be examined as if it were filed directly with the Agency at the date of international registration or at the date of subsequent territorial extension to the Republic of Moldova and, if the international registration had priority, this application shall enjoy the same priority, provided that:

(a) the application is filed within three months of the date at which the international registration was excluded from the International Register;

(b) goods and/or services listed in the application are covered by a list of goods and/or services contained in the international registration in relation to the Republic of Moldova;

(c) the application satisfies all the requirements of this Law and the Regulations;

(d) a document confirming payment of the prescribed fees is attached to the application.

(3) An application for transformation shall be accompanied by a document issued by the International Bureau, which must contain details of the trademark and goods and/or services in relation to which the Republic of Moldova was indicated prior to exclusion of the international registration from the International Register.

(4) If at the date of exclusion of an international registration from the International Register the deadline for notification of preliminary refusal, in accordance with Article 5(2) of the Protocol to the Agreement, has expired, and if at the given date the Agency has not taken a decision for refusal and no legal proceedings exist for the withdrawal of protection in relation to the corresponding trademark, the objection-related procedure according to Article 40 shall not be applied and the Agency shall register the trademark in accordance with Article 46.

CHAPTER VIII GENERAL PROVISIONS

Article 83. Competence to settle disputes

(1) Disputes arising in the process of application of this Law shall be examined by the Agency Commission for Examination of Objections, the district court where AGEPI premises are located or specialized arbitration.

(2) The Agency Commission for Examination of Objections shall settle disputes linked to challenges against decisions handed down by Agency subdivisions.

(3) The district court where AGEPI premises are located shall settle disputes concerning:

(a) the right of ownership in a trademark;

(b) licensing of trademarks;

(c) suits for protection of rights in a trademark;

- (d) cancellation of trademarks;
 - (e) suits concerning the announcement of non-infringement of rights;
 - (f) measures for provision of proof prior to bringing a suit;
 - (g) measures provided for by Article 68 for the bringing of a suit for infringement of rights;
 - (h) measures flowing from the substantive examination of a case in court;
 - (i) examination of actions filed against the decisions of the Agency Commission for Examination of Objections;
 - (j) loss of rights in a trademark;
 - (k) recognition of a trademark as well known.
- (4) Specialized arbitration shall examine disputes arising in relations, be they agreement-based or otherwise, linked to industrial property, concerning in particular:
- (a) priority;
 - (b) the issue of a trademark registration certificate;
 - (c) grant of rights provided for by a trademark registration certificate and enjoyment thereof;
 - (d) infringement of the exclusive right of a trademark owner;
 - (e) relations between a licensor and licensee relating to:
 - payment procedure;
 - application filing rights;
 - cost of a license;
 - disclosures causing material harm;
 - level of remuneration;
 - (f) establishment of a trademark owner;
 - (g) other disputes not relating to the activities of State authorities.

Article 84. Fees

(1) Fees shall be levied for the filing of a trademark registration application and examination thereof, lodging of an objection and challenge, registration of a trademark and issue of a registration certificate, extension of trademark registration, and also for the performance of other legally significant acts linked to application examination procedures and the legal protection of a trademark.

(2) The acts, for the performance of which fees are levied, and the levels of such fees shall be established by the Government.

(3) Fees shall be paid by an applicant, rights owner, and also other authorized natural persons and legal entities.

(4) The fees paid, excluding those for the filing of a trademark registration application, shall be returned to the person who paid them at its request, where the procedure for which the fee has been paid has not yet been launched.

(5) A fee paid at lower than the prescribed level shall be taken into account when paying the missing sum, and a procedure shall be launched from the time of payment of the whole fee.

(6) A fee for registration and issue of a trademark registration certificate, not paid within the prescribed deadline, may be paid within six months of the date of the missed deadline with a supplement of 50 per cent.

(7) When filing a request for the conduct of urgent procedures, the amount of the fee shall be increased by 100 per cent and the deadline for carrying out such work shall be reduced by half.

(8) Objections and challenges to the central sectoral public authorities and local public government shall be examined free of charge where they operate in the interests of society.

Article 85. Right of foreign natural persons and legal entities

Foreign natural persons and legal entities shall enjoy the rights granted by this Law, on an equal basis with natural persons and legal entities of the Republic of Moldova.

CHAPTER IX FINAL AND TRANSITIONAL PROVISIONS

Article 86. Entry into force and applicability of this Law

(1) This Law shall enter into force three months after the day of publication, with the exception of Articles 63, 64, 65 and 66, which shall come into force simultaneously with the entry into force of the corresponding amendments to the Code of Civil Procedure.

(2) From the day of entry into force of this Law, Law No. 588-XIII on Trademarks and Appellations of Origin of September 22, 1995, insofar as it relates to trademarks, shall be recognized as having been repealed.

(3) It is established that:

(a) trademark registration applications, the examination procedures for which are not complete prior to the day of entry into force of this Law, shall be examined in accordance with the procedure established by this Law;

(b) trademark registration certificates issued by the Agency prior to the entry into force of this Law shall be equal in legal terms to the trademark registration certificates issued in accordance with this Law;

(c) disputes existing at the date of entry into force of this Law in the process of examination shall be settled in accordance with the rules contained in the law in force at the date on which the dispute arises.

Article 87. Organization of implementation of this Law

Within three months of the day of entry into force of this Law the Government shall:

(a) submit to Parliament proposals for bringing existing legislation into line with this Law, including proposals for introducing amendments to the Code of Civil Procedure;

(b) bring its normative acts into compliance with this Law.

CHAIRPERSON OF THE PARLIAMENT Marian LUPU

Chisinau, February 29, 2008.