

## **Law on Trademarks and Indications of Geographical Origin**

### **Chapter I General Provisions**

#### **Section 1. Terms Used in This Law**

The following terms are used in this Law:

1) **trademark** - a sign used to distinguish the goods of one undertaking from those of other undertakings; unless expressly stated otherwise, the terms trademarks and marks in the text of this Law shall also comprise service marks and collective marks;

2) **service mark** - a sign used to distinguish the services of one undertaking from those of other undertakings;

3) **collective mark** - a trademark or a service mark used by associations of manufacturing, trade or service undertakings, or similar organisations to designate their goods or services;

4) **Paris Convention** - Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised at Stockholm on July 14, 1967, and as amended on September 28, 1979;

5) **Paris Union** - the Union of the countries parties to the Paris Convention;

6) **distinctive character** - the complex of characteristic features of a sign that ensures the possibility of distinguishing the goods or services of an undertaking (undertakings) that are marked with this sign from those of other undertakings; the evaluation of a sign's distinctive character depends not only on the character of the sign itself, but also on the perception of consumers and the nature of the respective goods or services;

7) **international registration of trademarks (international registration)** - registration of trademarks effected pursuant to the Madrid Agreement Concerning the International Registration of Marks of April 14, 1891, as revised at Stockholm on July 14, 1967, and amended on September 28, 1979 (Madrid Agreement), or pursuant to the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks of June 27, 1989 (Madrid Protocol), or pursuant to any other agreement concerning the international registration of trademarks which is in force in Latvia;

8) **International Classification of Goods and Services (Nice Classification)** - the classification established by the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of June 15, 1957;

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

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

## **Section 2. Scope of this Law**

(1) This Law contains provisions regulating legal relations as to trademark registration, as well as to the use of and to the protection of trademarks and indications of geographical origin.

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

(3) Use and protection of trademarks and indications of geographical origin is also governed by other statutory enactments.

(4) Natural and legal persons of Latvia are entitled to register, use and protect trademarks, indications of geographical origin, as well as other designations used in commercial activities in other countries in accordance with the laws of the respective countries and international agreements, including also the territory of the European Community pursuant to the trademark registration procedure that is established in this territory.

(5) If international agreements accepted by the Saeima (Parliament), contain provisions which differ from those in this Law, the provisions of the international agreements shall prevail.

## **Chapter II**

### **Trademarks and Rights to Trademarks**

#### **Section 3. Trademarks**

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

1) verbal - consisting of letters, words, also forenames, surnames, numerals;

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

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

(1) Rights to trademarks may be acquired by any natural or legal person (hereinafter "person"). Any person may own one or more trademarks.

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

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

(4) In the course of trading unregistered trademarks may be used. The trademark protection without registration or apart from registration is regulated by the provisions mentioned in this Section, Paragraph 7, in Section 8, Section 9, Paragraph 3, Sub-paragraph 4 and Section 28, Paragraph 8 of this Law as well as in other statutory enactments.

(5) Exclusive rights to a trademark may be ensured by registration of the trademark with the Patent Office of the Republic of Latvia (hereinafter "Patent Office") or by registration that is done pursuant to the provisions of the regulations on the international registration of trademarks and that is in force in Latvia, as well as by registration that is done pursuant to the trademark registration procedure of the European Community. The special provisions with respect to international registration of trademarks and internationally registered trademarks are contained in Chapter VIII of this Law; in all other cases the provisions prescribed for trademarks registered with the Patent Office shall apply with respect to the validity, use and protection of internationally registered trademarks.

(6) The person in whose name the trademark has been registered enjoys exclusive right to prohibit other persons from using in the course of trade the following signs:

- 1) any sign which is identical to the trademark in relation to goods or services which are identical to those for which the trademark is registered;
- 2) any sign where, because of its identity or similarity to the trademark and because of the identity or similarity of the goods or services for which the trademark is registered and for which the sign is used, there exists a likelihood of confusion or a likelihood of association between the sign and the trademark on behalf of the relevant consumers.

(7) Notwithstanding the provisions of Paragraph 6 of this Section, the owner of a trademark, that is well-known (within the meaning of Section 8) in Latvia, is entitled to prevent the use, in the course of trade, of any sign which constitutes a reproduction, an imitation, a translation or a transliteration, liable to create confusion, of the well-known trademark, in relation to goods or services, that are identical or similar to those covered by the well-known trademark. The owner of a trademark, that is well-known in Latvia, is entitled to prevent the use, in the course of trade, of a sign which constitutes a reproduction, an imitation, a translation or a transliteration of the well-known trademark, also in relation to goods or services, that are not similar to those covered by the well-known trademark, provided that consumers may perceive the use of such a sign as indicating a connection between these goods or services and the owner of the well-known trademark, and provided that such use may be detrimental to the interests of the owner of the well-known trademark.

(8) In accordance with the provisions of Paragraphs 6 and 7 of this Section the following actions may, inter alia, be prohibited:

- 1) use (affixing, attachment) of the said signs on the goods or on the packaging thereof;
- 2) offering the goods, or putting them on the market or stocking them for these purposes under the said signs;
- 3) providing services or offering them under the said signs;
- 4) importing or exporting the goods under the said signs;
- 5) using the said signs on business papers and in advertising.

(9) In the application, mutatis mutandis, of the provisions of Paragraphs 6, 7 and 8 of this Section, the owner of the trademark is also entitled to prohibit other persons from using signs that are intended for purposes other than distinguishing goods or services (marking of goods, indication of the origin of goods or services), if it is proven that the use of such a sign in the absence of appropriate justification gives the impression of connection with this trademark, or takes unfair advantage of, or is detrimental to, the distinctive character or the reputation of the trademark.

(10) If a registered and valid trademark is reproduced in a dictionary, encyclopaedia, or similar reference work, thereby giving the impression that it constitutes a generic name (general term) for the goods or services for which the trademark is registered, the publisher of the reference work shall, upon the request of the owner of the trademark, no later than in the next edition of the reference work ensure that the respective trademark is accompanied by an indication that it is a registered trademark. This provision shall also apply, mutatis mutandis, with respect to reference works in the form of electronic databases.

(11) The right to a trademark, derived from its registration or from the filing of an application thereof, shall confer the same legal status as personal property rights within the meaning of

the Civil Law, but it shall not be regarded as a property in action. This right may be transferred to other persons (successors in title) and may be inherited.

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

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

(1) The owner of a trademark shall not be entitled to prohibit a third party from using, in the course of trade:

- 1) the said person's forename, surname and address;
- 2) the name of the said person's undertaking, if its lawful use in the course of trade was commenced prior to the filing date (priority date) of the respective trademark, and its address;
- 3) genuine indications and information concerning the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of provision of services, or other characteristics of goods or services of the said person;
- 4) the trademark of the said owner when it is necessary to indicate the intended purpose of goods or services, in particular the intended purpose of goods as accessories or spare parts, provided that such use is in accordance with fair industrial and commercial practice.

(2) The owner of a trademark shall not be entitled to prevent the use of the trademark in relation to goods which have been put on the market under that trademark in the European Economical zone by the owner of the trademark or another person with his consent.

(3) The provisions of Paragraph 2 of this Section shall not apply where the owner has legitimate grounds to prohibit further commercialization of the goods, especially if the quality of the goods has changed or they have been damaged after being put on the market.

(4) Exclusive rights shall not apply to those elements of the trademark which, when taken individually, pursuant to Section 6, Paragraph 1 of this Law, may not be registered as trademarks.

## **Chapter III**

### **Prerequisites for Trademark Registration**

#### **Section 6. Absolute Grounds for Refusal and Invalidation of a Trademark Registration**

(1) The following signs shall not be registered as trademarks (if they have been registered, these registrations may be declared invalid pursuant to the provisions of this Law):

- 1) those which cannot constitute a trademark, that is, which do not comply with the provisions of Section 3 of this Law;
- 2) those which lack any distinctive character with respect to the applied goods or services;
- 3) those which consist solely of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin, or the time of production of the goods or of providing the services, or other characteristics of the goods or services;
- 4) those which consist solely of signs or indications which have become customary in the current language or in fair and established practices of the trade to designate the goods or services applied for (general designations);
- 5) those which consist solely of a shape which is directly determined by the kind of goods (which results directly from the nature of the goods themselves), or which is necessary to obtain a particular technical result, or which gives substantial value to the goods;
- 6) those which are contrary to public policy or to socially accepted principles of morality;
- 7) those which are of such a nature as to mislead the consumers, for example, as to the nature, quality or geographical origin of the goods or services;
- 8) those which contain signs, the registration of which would be refused or invalidated pursuant to Section 6-ter of the Paris Convention, including coats of arms and flags of the member countries of the Paris Union, their official marks indicating control, quality, and warranty, and hallmarks, as well as emblems, flags, names of international organisations and their abbreviations, without authorization by the competent authorities;
- 9) those which, without authorization by the competent authorities given pursuant to the procedures set out in the statutory enactments of Latvia, contain the official heraldry approved by the State, national decorations, official Service insignia, as well as official marks indicating control, quality and warranty, official hallmarks, and signs indicating the safety of utilising goods which are used with respect to identical or similar goods or services in Latvia, or any other marks of high symbolic value, as well as religious symbols;
- 10) with respect to wines - those which contain or consist of an indication of geographical origin identifying wines of particular origin, or with respect to spirits which contain or consist of an indication of geographical origin identifying spirits of particular origin, if such is not the genuine place of origin of the wines or spirits for which the trademark registration has been applied for;

11) those which are provided for designation of agricultural products and foodstuffs and include an indication of geographical origin protected in relation to the same agricultural products and foodstuffs or consists of such protected indication of geographical origin, if the products the trademark registration is applied for do not have the relevant origin, or the use of the sign applied for registration with respect to these products is at variance with the statutory enactments regulating the protection of the geographical indications and original names of agricultural products and foodstuffs.

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

(3) A trademark registration may not be refused on the basis of the provisions of Paragraph 1, Sub-paragraphs 2, 3 or 4 of this Section, and shall not be declared invalid on the basis of the same provisions if, as a result of the use of the mark, it has acquired a distinctive character in the perception of the relevant consumers in Latvia with respect to the goods and services for which registration has been applied for.

### **Section 7. An Earlier Trademark as Grounds for Invalidation of a Registration**

(1) A trademark registration may be declared invalid pursuant to the provisions of this Law in the following cases:

1) if it is identical to an earlier trademark, and the goods or services for which the trademark was registered are identical to the goods or services with respect to which the earlier trademark was registered;

2) if because of its identity or similarity to an earlier trademark belonging to another person and because of the identity or similarity of the respective goods or services, there exists a likelihood of confusion of the trademarks or a likelihood of association between the trademarks on behalf of the relevant consumers.

(2) "Earlier trademarks" within the meaning of Paragraph 1 of this Section means:

1) trademarks valid in Latvia, which have been registered under national or international registration procedures or as European Community trademarks (hereinafter "Community trademark") under the Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trademark (hereinafter "Council Regulation No 40/94"), if their date of application for the registration is earlier than the date of application for the registration of the opposed trademark, considering also the priority accorded to those marks;

2) applications for the registration of trademarks referred to in the previous paragraph, provided that they are registered.

### **Section 8. A Well-Known Trademark as Grounds for Refusal or Invalidation of a Registration**

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

(2) In addition to the provisions of Paragraph 1 of this Section, a trademark registration may also be refused or invalidated if the goods or services, in relation to which the trademark registration is applied for, are not similar to those of a trademark that is well-known in Latvia, provided that consumers may perceive the use of the applied (opposed) trademark in relation to these goods or services as indicating a connection between these goods or services and the owner of the well-known trademark, and provided that such use may be detrimental to the interests of the owner of the well-known trademark.

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

(4) In determining whether the provisions of Paragraphs 1 and 2 of this Section shall apply with respect to a sign that has been applied for registration or with respect to a registered trademark, account shall be taken of the provisions of Section 6-bis of the Paris Convention on well-known marks, including the provision on the inadmissibility of a reproduction or imitation of the well-known mark in an essential part of another trademark; the said provisions shall also apply, *mutatis mutandis*, to service marks.

(5) The provisions of Paragraphs 1 and 2 of this Section with respect to refusal of registration shall not apply during the examination procedure if the application for trademark registration has been filed with the consent of the owner of the well-known trademark.

### **Section 9. Other Earlier Rights as Grounds for Invalidation of a Trademark Registration**

(1) A trademark registration may also be declared invalid on the basis that the trademark is identical or similar to an earlier collective trademark for which the period of validity has expired within last three years preceding the application date of the opposed trademark.

(2) A trademark registration may also be declared invalid on the basis that the trademark is identical or similar to an earlier trademark which was registered for identical or similar goods or services and for which the period of validity has expired for failure to renew within last two years preceding the application date of the opposed trademark, except in cases where the



owner of the earlier trademark has consented to the registration of the opposed mark or has not used the trademark.

(3) A trademark registration may also be declared invalid on the basis that another person has, prior to the trademark application date (also taking into account its priority date), acquired in Latvia other rights which allow the prohibition of the use of the trademark, including the following rights which may be invoked against the registration:

1) rights of a person, that is, rights pertaining to the forename, surname, pseudonym, portrait or facsimile of a person well known to the general public, unless this person has been deceased for 50 or more years;

2) copyright;

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

4) other industrial property rights, including rights, that are related to an unregistered trademark or another sign used to distinguish the goods or services, also a domain name, if the unregistered trademark, the other mentioned sign or the domain name has been used in Latvia before the date of application (or, respectively, before the priority date) of the registered trademark in the course of fair trading with respect to identical or similar goods or services, insofar as and to the extent the use of the registered trademark may mislead the consumers on the origin of the relevant goods or services.

(4) A person who is the owner of a trademark in any of the countries of the Paris Union shall also be entitled to request invalidation of the trademark, if an agent or representative of the owner has registered the mark in their own name in Latvia without the owner's authorization, except in cases where such agent or representative has sufficient justification for their action.

## **Chapter IV**

### **Trademark Registration Procedure**

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

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

(2) A fee shall be paid for the filing of an application and for the registration of a trademark, as well as for other acts stated in this Law. The amounts of fees shall be determined by the Cabinet of Ministers.

(3) The date of filing of the application (filing date), subject to the provisions of Paragraph 9 of this Section, shall be deemed to be the date on which the Patent Office has received documents which include:

- 1) a request to register a trademark;
- 2) indications which permit the unmistakable identification of the applicant;
- 3) the sign the registration of which is sought (its representation); and
- 4) the list of goods and/or services in relation to which the trademark registration is requested.

(4) The registration of only one trademark may be requested per application.

(5) Each application may contain a request for trademark registration with respect to a good or a service, to several or many goods or services, as well as simultaneously to goods and services irrespective of whether they belong to one or several classes of goods or services according to the International Classification of Goods and Services (Nice Classification). The list shall include goods and/or services grouped according to the classes of this Classification.

(6) The request form of an application and other forms required for the trademark registration procedure shall be approved by the Cabinet of Ministers.

(7) The application request shall be submitted and all processing of the trademark registration procedure and correspondence shall be in Latvian. Documents in foreign languages may be submitted if there is attached a duly certified translation in Latvian.

(8) The application can include a description of the sign applied for, translation of a verbal sign made in a foreign language, the relevant indications if the sign is characterised as a three-dimensional sign, it has a characteristic shade of colour or combination of colours, or if it is a sound signal, as well as other explanations with respect to the character of the sign. In cases specified in international agreements, that are binding for Latvia, the Patent Office is entitled to require such explanations. The explanations shall be submitted within the term determined by the Patent Office that cannot be shorter than one month.

(9) The application shall include a document certifying payment of the application fee, including the additional fee if the application pertains to more than one class of Nice classification. The payment document may be submitted within a period of one month from the filing date, retaining the initial filing date (Paragraph 3 of this Section). If this time limit is exceeded but all the documents necessary to accord the filing date have been submitted, the filing date shall be deemed to be the date on which the document certifying payment of the application fee, including the additional fee, has been submitted.

(10) If the application is filed through a representative, a document certifying the authorization of the representative shall accompany the application. Specific requirements

with respect to representation and powers of attorney are prescribed by the Patent Law, general provisions of the Civil Law pertaining to an authorization agreement and the applicable provisions of international agreements that are binding for Latvia.

(11) In accordance with the provisions of the Patent Law of Latvia concerning representation before the Patent Office, a foreign applicant may only file an application, maintain correspondence, and perform all further actions before the Patent Office, and, where applicable, before the Board of Appeal of the Patent Office, through a professional patent attorney (trademark agent).

(12) The application shall be signed by the applicant or their authorised representative.

### **Section 11. Priority of a Trademark**

(1) Any person who has duly filed an application for trademark registration in any foreign country that is a country of the Paris Union, or in any other country or union of countries, with which Latvia has concluded an agreement concerning recognition of the right of priority, or their successor in title, shall enjoy, for the purpose of filing an application for registration of the same trademark in Latvia with respect to goods and/or services which are identical to or contained within those for which the previous application has been filed, a right of priority during a period of six months from the date of filing of the first application.

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

(3) An applicant who has, under the trademark, exhibited goods or services, for which the registration of this trademark has been applied, at an official or officially recognized international exhibition in Latvia or in any country which is a country of the Paris Union, is entitled to claim a right of priority, within the meaning of Paragraph 7 of this Section, from the date of the first display of these goods or services on the said exhibition, if the application for the respective trademark is filed within six months from that date.

(4) An applicant desiring to take advantage of the provisions of Paragraph 3 of this Section (exhibition priority) shall include a claim in the application request indicating the date of the first display of the goods or services and identifying the exhibition. A document certifying the applicant's right of priority, namely, a document proving the identity of the exhibited materials and the date of the first display (under this trademark), issued by a competent

authority of the exhibition, shall be submitted together with the application for trademark registration or may be added to the application within three months from the filing date of the application.

(5) The exhibition priority does not extend the period of priority specified in Paragraph 1 of this Section.

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

(7) The priority (right of priority) of a trademark shall mean that when establishing which person's rights are earlier, the priority date shall be taken into consideration, instead of the filing date of the application for trademark registration.

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

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

(2) If the application does not comply or only partially complies with the requirements of Section 10 of this Law, the Patent Office shall notify the applicant in writing, specifying the non-compliance and setting a term of three months for reply (for elimination of the deficiencies). The counting of the time limit for preliminary examination of the application shall be stayed at the moment of sending of the notification, and it shall continue with the date when within the time set by the Patent Office a reply from the applicant is received or the time limit for its submission has expired.

(3) If the application does not initially comply with the provisions of Section 10, Paragraph 3, pertaining to the documents necessary for determining the filing date, and if the deficiencies, within the time set by the Patent Office, are eliminated by the applicant, the filing date shall be deemed to be the date on which all the said documents are received by the Patent Office. If the applicant, on request of the Patent Office, does not eliminate the deficiencies found in the application, the application shall be deemed not to have been filed and the applicant shall be notified accordingly in writing.

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

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

(6) If the application complies with the provisions of Section 10 of this Law (also in case if the initially stated deficiencies are eliminated), the Patent Office shall adopt a decision on acceptance of the application for examination and send a written notice to the applicant about this fact.

(7) (Excluded by the Law of 21.10.2004).

### **Section 13. Examination of a Trademark**

(1) Within three months from the date the application has been accepted for examination, the Patent Office shall examine the compliance of the accepted application with the provisions of Sections 3, 6 and 8 of this Law. In the course of examination, the Patent Office is entitled to request from the applicant additional materials and documents necessary for conducting the examination, indicating the time limit three months for their submission. The counting of the time limit for examination shall be stayed at the moment of sending of the request, and it shall continue with the date when within the time set by the Patent Office a reply from the applicant is received or the time limit for its submission has expired.

(2) If it is determined during the examination that a trademark is not registrable or is registrable only with the restrictions specified in Paragraphs 5 or 6 of this Section, the Patent Office shall inform the applicant of this finding in writing and set a term of three months for the submission of observations (arguments against the grounds for refusal or restriction of the registration).

(3) As soon as possible after receipt of the observations of applicant or the expiration of the term specified for this purpose, the Patent Office shall take a decision on the registrability of the trademark or on the refusal of registration. The applicant shall be notified accordingly in writing.

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

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

(6) If elements referred to in Section 5, Paragraph 4 of this Law, which individually may not be registered as trademarks, have been incorporated in a trademark, and there exists a possibility that registration of such mark would cause doubt as to the extent of the rights conferred, the Patent Office, when registering the mark, may exclude the said elements from protection with a special notification (disclaimer or exclusion from protection).

(7) The Patent Office's decision to refuse a trademark registration or to register it with the restrictions referred to in Paragraphs 5 or 6 of this Section shall be substantiated by appropriate arguments and by references to the provisions of law.

(8) (Excluded by the Law of 21.10.2004).

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

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

(2) In addition to the changes referred to in Paragraph 1 of this Section, only such amendments, specifications or corrections may be made in a trademark application, that do not substantially alter the trademark itself and that do not expand the submitted list of goods and/or services. The Patent Office is entitled to request amendments, specifications and corrections at any time during the processing of the application. Except for the correction of obvious mistakes, as well as changes, if necessary, in the name or address of the applicant or representative, the applicant shall have a right, on their own initiative, to submit amendments and specifications in the application until the day upon which the Patent Office takes a decision on the acceptance of the application. The Patent Office shall only take into account permissible amendments, submitted on the initiative of the applicant, during the examination process upon payment of the prescribed fee. Mistakes committed by the Patent Office shall be corrected without a fee.

(3) Amendments received by the Patent Office after the notice of registration has been prepared for publication, shall be deemed to be amendments to the registration data, and the provisions of Section 17, Paragraph 2 shall apply to such amendments.

(4) If during the procedure of registration, with the exception of the cases referred to in Section 12, Paragraph 3 and in Section 13, Paragraph 2, the applicant has failed, within the prescribed time, to reply to the request of the Patent Office, or to pay the prescribed fee, and has not applied for an extension of the term, the application shall be deemed to have been withdrawn and the applicant shall be notified accordingly in writing.

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

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

(2) The applicant is entitled to file a request for division of the application only up to the time when the Patent Office has prepared the trademark and the data concerning it for registration and publication.

(3) When filing a request for division of an application with the Patent Office, the applicant shall indicate which goods and/or services are to remain in the initial application and prepare each of the divisional applications pursuant to all the requirements of Section 10 of this Law concerning the contents of an application, and pay the applicable fees, as for a new application. The fees already paid for the initial application shall not be refunded and shall not be applied to the divisional application. If the applicant fails to file the necessary documents and materials, or to pay the prescribed fee, with respect to the divisional application within three months from the date of receipt of the request for division of the application by the Patent Office, the divisional application shall be deemed to have been withdrawn and the applicant shall be notified accordingly in writing.

(4) Examination of any divisional application is subject to the requirements of Sections 12 and 13 of this Law. After the information has been made ready for registration and publication, a request for division of an application cannot be withdrawn.

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

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

(2) The trademark shall be entered into the State Register of Trademarks simultaneously with its publication in the official gazette of the Patent Office, with the exception of specific cases when there is due cause for a substantial delay of trademark publication.

(3) After registration and publication of the trademark the Patent Office shall issue to the owner a certificate of trademark registration of an established form.

#### **Section 17. State Register of Trademarks**

(1) The Patent Office shall maintain the State Register of Trademarks (hereinafter "the Register") in which the registered trademark (its reproduction), information on the trademark owner and representative, if any, filing date (priority date), registration date of the mark, publication date, the list of goods and/or services to which the registration of the mark applies, and other information determined by the Patent Office shall be recorded.

(2) The trademark owner shall immediately notify the Patent Office of any amendments or of mistakes discovered in the information concerning the registration of the trademark, of changes in the owner's name, of a change of representative, of a desire to eliminate goods or services from the list of goods and/or services, or of a desire to change non-essential

(secondary) elements in the trademark itself. The amendments or corrections may not alter the essence of the mark, affect its distinctive character, extend the scope of rights conferred by the trademark, change the granted priority, or create any likelihood of misleading the consumers. If the prescribed fee has been paid, the Patent Office shall record the permissible amendments in the Register, publish a notice of the amendments made in the official gazette and send it to the owner of the mark to be attached to the certificate of trademark registration. Mistakes committed by the Patent Office shall be corrected without a fee.

(3) Entries in the Register, to the extent contemplated by the requirements of Paragraph 1 of this Section, after their publication, shall be available for inspection by any person. For a prescribed fee, the Patent Office shall also provide excerpts from the entries in the Register.

### **Section 17<sup>1</sup>. Appeal on a Decision of the Patent Office and Advance of the Appeal**

(1) If the applicant or other addressee of the decision of the Patent Office (owner of the trademark, former owner, successor to the property rights, licentiate) is not satisfied with the decision of the Patent Office adopted with respect to the results of the preliminary examination of the application or the trademark examination or with the decision of the Patent Office adopted in some other stage of the trademark registration procedure, he is entitled, within three months from the day of receipt of the copy of the decision and upon the payment of a relevant fee, to submit with the Patent Office a motivated appeal in writing. The submission of the appeal shall stay the execution of the decision of the Patent Office.

(2) The Patent Office shall immediately repeal or modify the relevant decision, as far as it admits the submitted appeal substantiated.

(3) If the repeal or modification of the decision may apply to the third person's rights or legal interests, or if within two weeks after the submission of the appeal the decision is not repealed or modified pursuant the procedure prescribed in Paragraph 3 of this Section, the Patent Office shall commit the appeal to review with the Board of Appeal of the Patent Office (hereinafter – the Board of Appeal).

(4) If pursuant Paragraph 2 of this Section the decision of the Patent Office is repealed or modified and it satisfies the appellant, he shall withdraw the appeal. The fee paid for submission of the appeal shall be refunded pursuant the procedure established by the Administrative Procedure Law.

(5) If the appellant is not satisfied with the modifications of the decision, he shall within three months from the date of reception of the modified decision notify the Patent Office, which shall immediately commit the appeal to the Board of Appeal.

(6) Until the review on the Board of Appeal the appellant is entitled to specify or amend the submitted appeal.



**Section 18. Opposition to a Trademark Registration**

(1) Within three months from the date of the publication of a trademark, interested persons may, upon payment of the applicable fee, submit an opposition to the registration of a trademark. The opposition shall be filed with the Board of Appeal in writing, substantiated by appropriate arguments and references to the provisions of law. After the expiration of the said term, the opponent does not have the right to change (expand) the initial legal basis of the opposition, but may, up until the decision of the Board of Appeal is adopted, submit additional documents and materials, that confirm (specify) the facts on which the opposition is based.

(2) Any person may file an opposition, if the registered trademark does not comply with the provisions of Section 3 of this Law, or if the registration would be invalidated pursuant to the provisions of Section 6, or if the provisions of Section 9, Paragraph 3, Sub-paragraph 1 are applicable.

(3) An opposition based upon the provisions of Sections 7 or 8 of this Law, or Section 9, Paragraph 1, Paragraph 2, Paragraph 3, Sub-paragraph 2, 3 or 4, or Paragraph 4 may be filed by persons who are the owners of earlier trademarks, well-known trademarks, or have other earlier rights, specified in the applicable provisions, or their successors in title, or their representatives.

(4) An opposition based upon the provisions of Section 8 or Section 9, Paragraph 1, Paragraph 2, Paragraph 3, Sub-paragraph 2, 3 or 4, in addition to the persons referred to in the previous Paragraph of this Section, may also be filed by professional associations and - associations of manufacturers, traders and providers of services, whose Sections of association provide for the protection of the economic interests of their associates (members), as well as by organisations and authorities, whose purpose, under their Sections of association, is consumer protection.

(5) The Board of Appeal shall inform the owner of the opposed trademark of the opposition and set a term of three months for the submission of a reply.

(6) If an opposition is not submitted within the term set by the Law, the trademark registration may be contested only in a court.

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

(1) The appeals submitted pursuant to the provisions of Section 171 of this Law and the oppositions filed pursuant to Section 18 shall be examined by the Board of Appeal which is founded pursuant to the provisions of the Patent Law.

(2) Appeals shall be reviewed within three months from the date when it is received at the Patent Office. If the decision of the Patent Office is changed pursuant to the procedure provided in Section 171, Paragraph 2 of this Law, but the appeal is not withdrawn, it shall be

reviewed not later than within two months from the date of reception of the notification provided in Section 171, Paragraph 5.

(3) Oppositions shall be examined within three months from the date of receipt of the reply of the owner of the contested trademark, or within three months upon the provisions of Section 7 of this Law, and the contested trademark is opposed by an earlier trademark that has not yet been registered, the review of the opposition may be postponed, at the request of the opponent, until the opposing mark is registered and published. If an action is filed in court concerning invalidation or revocation of the opposing trademark registration in the said opposition before the review of the opposition and if the result of the review of the opposition can depend from the validity of this registration, the proceedings of the Board of Appeal in the opposition case shall be stayed until the adjudication of the claim.

(4) The appellant or their representative and, if the decision of the board of Appeal can apply to a third person – also this person or his representative, shall be invited to take part in the proceedings of the Board of Appeal, in which an appeal of a decision of the Patent Office is reviewed. If an opposition to a trademark registration is being reviewed, the opponent, or his representative, and the owner of the contested trademark, or his representative, shall be invited to participate. All interested parties shall have the right to submit the necessary documents and materials and to provide oral arguments.

(5) Pursuant to the results of the review of an appeal, the Board of Appeal shall take a decision to satisfy the appeal, fully or in part, or to dismiss it, besides the respective decision of the Board of Appeal can be repealed, changed or remained in effect with this decision. If the appeal has been filed against a decision of the Patent Office with respect to the results of examination (Section 13, Paragraph 7 of this Law), a trademark can be declared registerable, fully or with the restrictions referred to in Section 13, Paragraph 5 and/or 6 of this Law, or the decision to refuse a registration may be allowed to remain in effect. If new facts are revealed in a case in connection with the appeal, the Board of Appeal may take a decision to reconsider (re-examine) the application.

(6) Pursuant to the results of the review of an opposition, the Board of Appeal shall take a decision to satisfy the opposition, fully or in part, or to dismiss it, while the opposed trademark registration may be, as a result of the decision of the Board of Appeal, invalidated as of the registration date, declared valid with the restrictions referred to in Section 13, Paragraph 5 and/or 6 of this Law, or declared valid in accordance with its registration.

(7) Where the opposition is fully or, inter alia, based on an earlier trademark (Section 7, Paragraph 2), that has been registered no less than five years previously, the owner of the opposed mark is entitled to request that the opponent provide obvious and sufficient (prima facie) evidence that this earlier trademark has been actually used in accordance with the provisions of Section 23 of this Law. The Board of Appeal shall disregard such grounds for opposition if the applicable evidence is not provided as requested, or if there is no such

evidence pertaining to the last five years prior to the examination of the opposition. If the opposing earlier trademark has been used only with respect to part of the goods or services for which it has been registered, the Board of Appeal shall consider the previously mentioned grounds for opposition only with respect to the goods or services for which use has been substantiated by obvious and sufficient (*prima facie*) evidence.

(8) The Board of Appeal shall take its decision in the absence of other persons. The operative part of the decision shall be announced at the end of the hearing, whilst a substantiated decision in written form shall be sent to the persons mentioned in the Paragraph 4 of this Section within one month, they are entitled, within three months from the date of receipt of the copy of the decision, to appeal the relevant decision to the court. Lodging of an application with the court shall stay the execution of the decision of the Board of Appeal.

(9) Notwithstanding the lodging of the application on the decision of the Board of Appeal, the interested person may, pursuant to the established procedure, contest the registered trademark in court (in accordance with the provisions of Section 31 or 32 of this Law). If such an action is brought before the administrative case concerning the decision of the Board of Appeal has been reviewed, the administrative proceedings shall be stayed until the action is adjudicated.

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

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

(2) A request for division of a registration may be submitted only after the expiration of the term for oppositions (opposition period) set out in Section 18, Paragraph 1 of this Law.

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

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

(5) If the owner of the trademark has paid the prescribed fee, the Patent Office shall, as soon as possible, record the divisional registration and the amendments with respect to the initial registration into the Register, publish the relevant notices in its official gazette, as well as issue a certificate of registration with respect to the divisional registration and supplement the

certificate of the initial registration pursuant to the provisions of Section 16, Paragraph 3 and Section 17, Paragraph 2.

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

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

(1) The registration of a trademark is valid for a period of 10 years from the filing date, unless it is surrendered, invalidated or revoked subject to the provisions of Sections 30, 31 or 32 of this Law.

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

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

### **Section 22. Extension of Set Terms and Renewal of an Application**

(1) The terms prescribed in the requirements on the trademark registration procedure, except the terms prescribed in Section 11, Paragraphs 1 and 3, Section 18, Paragraph 1, Section 19, Paragraph 8, Section 21 and Section 39, Paragraph 5 of this Law, may be extended, by the Patent Office or the Board of Appeal respectively, for a certain period of time, but for no longer than three months, provided that the request for such extension has been received by the Patent Office before the expiration of the term in question and that the fee for extension of the term has been paid.

(2) A trademark application that has been withdrawn by the applicant or that has been deemed to be withdrawn pursuant to the provisions of Section 14, Paragraph 4 of this Law, in exceptional cases may be renewed by the Patent Office, provided that a request to that effect is received by the Patent Office no later than six months from the date the application has been withdrawn or has been deemed to be withdrawn, and provided that the prescribed fee for renewal of the application has been paid and the sufficiency of reasons has been confirmed; furthermore, an application may be renewed only once. An application that has been deemed not to have been filed pursuant to the provisions of Section 12, Paragraph 3, can only be renewed (repealing the decision of the Patent Office deeming the application to not have been filed) by a decision of the Board of Appeal.

## **Chapter V**

### **Use of a Trademark**

#### **Section 23. Use of a Trademark**

(1) The use of a trademark shall be construed as the use of a trademark on goods and their packaging, on any documentation accompanying the goods, in the advertising of the goods or services, or in relation to other business activities in connection with the relevant goods or services.

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

(3) If, within five years from the date of registration, the owner has not commenced the actual use of the trademark in Latvia in connection with the goods or services with respect to which it has been registered, or if such use has been suspended during the period of validity of the trademark for at least five successive years, and there are not sufficient reasons for non-use, the provisions of Section 19, Paragraph 6, Section 28, Paragraph 3, Section 31, Paragraph 2 and Section 32 may be applied with respect to this trademark.

(4) Actual use shall be construed as the use of a trademark in the course of trade, with the purpose of gaining or maintaining a certain market position for the respective goods or services.

(5) The use of a trademark shall also be construed as the use of a trademark on goods or their packaging in Latvia solely for export purposes.

(6) The use of a trademark with the consent of the owner shall be construed as the use of the trademark by the owner.

#### **Section 24. Warnings regarding Exclusive Rights to a Trademark**

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

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

(3) Where the owner of a trademark has reason to believe that a person is infringing the exclusive rights of the owner by using in the course of trade any of the signs referred to in Section 4, Paragraph 6, Sub-paragraph 1 or 2, or Section 4, Paragraph 7 of this Law, the owner of the trademark is entitled to warn such person of the alleged infringement.

**Section 25. Transfer of a Trademark to Other Persons**

(1) The owner of a trademark shall have the right to transfer their trademark to another person in relation to one, several or all of the goods and/or services for which the mark is registered, together with the undertaking, or a part thereof, that has been using this mark, or separately from the said undertaking.

(2) If an undertaking, or a part thereof, is transferred to another person, the right to the trademarks, which are directly related to the activity of that undertaking or its part, shall be deemed to be transferred together with the undertaking or its part, unless otherwise provided by an agreement between the parties, or if circumstances do not clearly dictate otherwise.

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

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

(5) A trademark transfer contract with respect to third parties shall take effect on the date of publication of the notice in the official gazette of the Patent Office. The successor in title (the new owner of the trademark) may not exercise the rights deriving from trademark registration prior to the date when the change in ownership is recorded in the Register.

(6) A trademark transfer contract may be declared null and void where the change in ownership, intentionally or unintentionally, misleads or may mislead consumers with respect to the origin, nature, quality or other characteristics of the goods and/or services with respect to which the mark is used or is intended to be used. Any person may bring an action before the Regional Court of Riga to declare the trademark transfer contract as null and void.

(7) If a trademark application concerning which the Patent Office has not yet taken a decision on the registration of the mark is transferred to another person, the Patent Office shall, upon receipt of a request, a document attesting to the transfer of rights and the prescribed fee, regard the change of applicant as an amendment to the application within the meaning of the relevant provisions of Section 14 of this Law, and continue examination of that application with respect to the new applicant.

(8) If the transfer of a trademark application to another person (change of applicant) does not affect all the goods and/or services included in the application, the Patent Office shall divide the application, *mutatis mutandis* applying the provisions of Section 15 of this Law, and

create a new application concerning the goods and/or services as to which the applicant has been changed.

**Section 25<sup>1</sup>. A Trademark in an Insolvency Process and a Trademark as a Subject of Pledge Right.**

(1) If a registered trademark is involved in an insolvency process as well as if it is distressed with the decision of the court, the Patent Office shall in accordance with the decision of the court make a relevant recordal in the Register. The information on the made recordal shall be notified to the applicant and published in the official gazette of the Patent Office.

(2) If a pledge right is established with respect to a registered trademark and the Patent Office has received a relevant application about recordal of the pledge, a document evidencing the pledge right, as well as a document evidencing the payment for modifications that have to be made in the Register, from the interested person, the Patent Office shall make a relevant modification in the Register. The information on the made recordal shall be notified to the applicant and the owner of the trademark and published in the official gazette of the Patent Office.

**Section 26. Licensing Contract of a Trademark**

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

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

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

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

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

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

(6) The Patent Office shall, after receipt of a respective application from the licensor or the licensee, a document evidencing the information that has to be included in the Register and upon payment of the prescribed fee, record in the Register and publish in the official gazette of the Patent Office information concerning the licensing contract of the registered trademark, as well as it shall send notifications on the recordal made in the Register to the both parties. Pursuant to the same procedure also information concerning the expiration of a licensing contract and changes in the licence provisions shall be recorded in the Register.

(7) A licensing contract may be declared null and void, if the use of the trademark by the licensee, intentionally or unintentionally, misleads consumers as to the origin, nature, quality or other characteristics of the goods and/or services with respect to which the mark is used. The licensor or any other person may bring an action in the Regional Court of Riga to declare the licensing contract as null and void.

(8) The fact that the information about a licensing contract is not recorded in the Register or is not published, does not constitute grounds for opposing the validity of a trademark pursuant to the provisions of Section 31 or 32 of this Law, or for applying the restrictions for non-use of a trademark as provided by Section 23, Paragraph 3 (in such cases Section 23, Paragraph 6 shall apply), or for opposing the right of a licensee to intervene in an action for trademark infringement initiated by the owner of the mark under the provisions of Section 28, Paragraph 2, or for opposing the right of a licensee to receive compensation for the damages caused by unlawful use of the licensed trademark.

(9) Neither can the validity of a trademark registration, the application of the provision of Section 23, Paragraph 6 of this Law, and the rights of the licensee referred to in the previous Paragraph of this Section be contested on the basis of the fact that the licensee has not indicated on the goods or their packaging, with respect to the services provided or in the advertising of the said goods and/or services that the trademark is being used under a licence, or where such indication is unclear.

(10) The transfer of a trademark within the meaning of Section 25, Paragraph 1 of this Law and the grant of a licence within the meaning of Paragraphs 1, 2 and 3 of this Section shall not affect licences previously granted to third parties.

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

(1) Unlawful use of a trademark shall be construed as an infringement of the exclusive rights of the trademark owner, namely, the use, in the course of trade, of the signs referred to in Section 4, Paragraph 6, Sub-paragraph 1 or 2 of this Law, or in Section 4, Paragraph 7, without the consent of the owner of the trademark, including use of such signs in the ways specified in Section 4, Paragraph 8.



(2) In determining whether the use of a specific sign shall qualify as unlawful use of a trademark, simultaneously and in addition to the provisions of Paragraph 1 of this Section, the provisions of Section 5 of this Law on restrictions of exclusive rights, the restrictions due to non-use of a trademark as provided for in Section 23, Paragraph 3, and the restrictions of rights (forfeiture of rights) as a result of acquiescence as provided for in Section 29, shall be also considered in the respective cases.

### **Section 28. Liability for Unlawful Use of a Trademark**

(1) Liability for unlawful use of a trademark shall arise, where the fact of trademark infringement is proved pursuant to the provisions of Section 27 of this Law. The burden of proof of the fact of infringement lies with the aggrieved party (the owner of the trademark or the licensee).

(2) The owner of a trademark (or their successor in title) may bring an action in the Regional Court of Riga for unlawful use of the trademark. The licensee is entitled to bring a separate action for unlawful use of the trademark only with the consent of the owner of the trademark. The consent of the owner of the trademark is not necessary if the licensing contract provides for the right of the licensee to bring a separate action, or in cases, where the owner of the trademark does not bring such an action even though the licensee has invited the owner to do so in writing. Any of the licensees of the respective trademark is entitled to intervene in the action and seek damages that have resulted from unlawful use of the licensed trademark.

(3) A person against whom an action is brought for unlawful use of a trademark may not oppose the action solely on the basis of the fact that the trademark is not being used or that its validity should be terminated for other reasons, however, they, pursuant to the provisions of Section 31 or 32, may bring a counterclaim for invalidation or revocation of the trademark registration. In these cases the trademark infringement may be determined only insofar as the trademark registration is not invalidated or revoked.

(4) If the fact of infringement is proven, and depending upon the degree of fault, the aggrieved party may request the court to make a judgement including one or more of the following measures (sanctions):

- 1) cessation of the unlawful use of the trademark and prohibition of the unlawful use;
- 2) payment of damages arising from the unlawful use of the trademark, including lost profits;
- 3) recovery of court costs, including also the litigation expenses as prescribed by law, and the fees paid to the representative.

(5) The court may, in its judgment, provide for measures to prevent further infringement of the trademark, including imposing the obligation to destroy the goods with the unlawful marking, or to convey those goods to the owner of the trademark, successor in title or the

licensee if they so agree, or to donate those goods for use for charitable purposes if there is possible to guarantee that the goods do not return in the economic circulation and do not cause further damage for the right holder's party. When it is justified by the circumstances of the matter, it is also possible to impose by the judgment obligation to destroy instruments and materials which have been used or are provided mainly for making of the unlawful goods, in case if their owner knew or it was obvious from the circumstances of the matter to him that these instruments and materials have been used or are provided for carrying out of unlawful activities. The court may, upon the request of the plaintiff, apply the measures prescribed by law for enforcement of the claim also in those cases when the claim is not of a material character (recompense of damages is not claimed).

(6) When determining liability for unlawful use of a trademark, for the purposes of determining the degree of the infringer's fault, the fact of receipt of the warning notice referred to in Section 24, Paragraph 3 of this Law may be used as evidence.

(7) In cases where trademark infringement has been done deliberately or with malicious intent, the persons responsible shall also be called to administrative or criminal liability.

(8) Notwithstanding the provisions of Section 27 and this Section, claims for infringement of registered and unregistered trademarks, including the cases provided for in Section 4, Paragraph 9 of this Law, may be based upon the provisions of the laws or other statutory enactments.

(9) A claim for the infringement of a trademark may be brought within three years from the date when the aggrieved party became aware, or should have become aware, of the occurrence of infringement of the mark.

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

(1) If the owner of an earlier trademark (within the meaning of Section 7, Paragraph 2) has not contested, in administrative or court proceedings, the use of a later trademark registered in Latvia for a period of five successive years, although aware of such use, they shall no longer be entitled, on the basis of their earlier trademark, either to request the invalidation of the later trademark, or to oppose the use of the later trademark with respect to the goods and services for which the later trademark has been used, unless registration of the later trademark was applied for in bad faith.

(2) In the case referred to in Paragraph 1 of this Section, the owner of the later registered trademark shall not be entitled to contest the right of the earlier trademark, even if that right, pursuant to the provision of Paragraph 1 of this Section, may no longer be invoked against the later trademark.

## **Chapter VI**

### **Termination of Trademark Duration**

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

(1) The owner of a trademark may request the cancellation of the registration of a trademark before the expiry of the validity of the mark. If a request for cancellation is received by the Patent Office and the prescribed fee has been paid, the trademark registration shall be canceled from the date specified by the owner, but no earlier than from the date of receipt of the request. The Patent Office shall make a corresponding recordal in the Register, publish a notice in the official gazette, and send it to the owner of the trademark.

(2) If the owner's request to cancel the trademark registration does not affect all the goods and/or services for which the mark is registered, it shall be considered as a change in the trademark registration information and examined pursuant to the provisions of Section 17, Paragraph 2 of this Law.

(3) The Patent Office shall not cancel a trademark registration pursuant to the provisions of this Section if, with respect to this registration, the Register contains information concerning one or more valid licensing contracts, and written consent of the respective licensees to cancel the registration has not been attached to the request of the owner of the trademark.

#### **Section 31. Invalidation of a Trademark Registration**

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

(2) If a claim is based on an earlier trademark (within the meaning of Section 7, Paragraph 2) and the defendant has brought a counterclaim for the revocation of the earlier trademark on the basis of its non-use (within the meaning of Section 23), the trademark registration may be invalidated only insofar as the counterclaim is not satisfied.

(3) An action may be brought in the Regional Court of Riga pursuant to this Section by persons who, pursuant to the provisions of Section 18, Paragraphs 2, 3 and 4 of this Law, are entitled, in applicable cases, to file oppositions to trademark registration. Such a claim, provided there exist sufficient grounds for it, may also be brought as a counterclaim, including in proceedings for unlawful use of a trademark.

(4) Pursuant to the provisions of Paragraph 1 of this Section, the trademark registration shall be invalidated from the date of registration.

(5) If grounds for invalidation of a trademark registration exist with respect to only some of the goods or services for which the trademark is registered, the registration shall be invalidated only with respect to those goods or services.

(6) The person, whose brought claim on the invalidation of a trademark registration is satisfied by the court, shall submit a copy of the judgment to the Patent Office. The Patent Office shall make a recordal in the Register on the invalidation of the trademark registration or the amendments in the registration information, publish a relevant notification in the official gazette of the Patent Office and send it to the plaintiff and the trademark owner (former owner).

### **Section 32. Revocation of a Trademark Registration**

(1) A trademark registration may be revoked by a judgment of the court if the trademark has not been actually used (within the meaning of Section 23 of this Law) for a period of five successive years in connection with the goods and services with respect to which it is registered, and if there are no proper reasons for non-use.

(2) The claim for revocation of a trademark registration referred to in Paragraph 1 of this Section may not be maintained (may not be allowed), if during the interval between the expiry of the said five-year period of non-use and the bringing of the action for revocation, actual use of the trademark has been commenced or resumed. If the trademark has been used for no longer than three months before the action is brought, and if the preparations for the commencement or resumption of use occurred only after the expiry of the period of actual non-use of the trademark referred to in Section 23 of this Law, such use shall not be construed as commencement or resumption of the use of the trademark.

(3) A trademark registration may also be revoked by a judgment of the court if, after registration of the trademark, as a result of action or inaction of the owner, it has become a common name (generic designation) in the trade for a good or service with respect to which it is registered.

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

(5) Any interested person may bring an action in the Regional Court of Riga for revocation of a trademark registration pursuant to the provisions of this Section at any time during the validity of the trademark. Such claim, provided there exist sufficient grounds for it, may be also brought as a counterclaim, including in proceedings for unlawful use of a trademark.

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

(7) The court shall specify, in the judgment, the date from which the registration of the trademark shall be revoked. If it is not established when the conditions that serve as the basis for revocation of the trademark registration have set in, the registration shall be revoked from the date when the action has been brought in the court. The person, whose brought claim on the invalidation of a trademark registration is satisfied by the court, shall submit a copy of the judgment to the Patent Office. The Patent Office shall make a recordal in the Register on the revocation of the trademark registration or the amendments in the registration information, publish a relevant notification in the official gazette of the Patent Office and send it to the plaintiff and the trademark owner (former owner).

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

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

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

## **Chapter VII Collective Marks**

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

(1) A collective mark may consist of any sign that complies with the provisions of this Law concerning types of trademark (Section 3 of this Law) and is capable of distinguishing the goods and/or services of the members of the association (corporation) - the owner of the collective mark - from those of other undertakings. Each undertaking of such an association (corporation) may at the same time also have its own trademarks.

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

(3) In derogation from the corresponding provision of Section 6, Paragraph 1, Sub-paragraph 3 of this Law, signs or indications which may be used, in trade, to designate the geographical

origin of the goods or services, may be registered as collective marks. However, the registration of such collective mark does not entitle the owner to prohibit third parties from using, in the course of trade, such signs or indications, provided that such use complies with fair industrial and commercial practices; in particular, the right of third persons to use a geographic name may not be opposed on the basis of such a collective mark.

### **Section 35. Use of a Collective Mark and Regulations Governing Such Use**

(1) The provisions for the use of trademarks, within the meaning of Section 23 of this Law, shall be deemed to be complied with as to a collective mark, if that mark is being used in any of the ways provided for in Section 23 and pursuant to the regulations governing the use of the collective mark, by at least one of the persons entitled to use it.

(2) Collective marks may not be transferred to other persons. The right to use a collective mark may not be transferred to other persons under a licensing contract, unless otherwise provided in the regulations governing the use of the collective mark.

(3) Unless otherwise provided in the regulations governing the use of the collective mark, the persons who are entitled to use the collective mark, shall have the same rights and obligations in actions for infringement of a collective mark, as are provided for in Section 28, Paragraphs 1 and 2 with respect to trademark licensees.

(4) In applying for registration of a collective mark, the regulations governing the use of the collective mark that have been approved by the administrative authority of the collective body (the applicant of the mark) or its authorised representative must be submitted in addition to the materials and documents specified in Section 10 of this Law. The regulations shall contain a list of persons entitled to use the collective mark (indications which permit unmistakable identification of such persons), conditions of use of the collective mark and information as to the monitoring of compliance with these conditions, including possible sanctions for non-compliance with these conditions. If the collective mark referred to in Section 34, Paragraph 3 is applied for, the regulations must provide the opportunity for any person whose goods or services originate in the geographical area concerned, to become an associate (member) of the association which is the owner of the collective mark.

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

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

**Section 36. Additional Grounds for Termination of the Duration of a Collective Mark**

(1) In addition to the grounds for opposition as provided for in Section 18 of this Law, any person may, pursuant to the prescribed procedures, submit an opposition to the registration of a collective mark, if the registered mark does not comply with the requirements of Section 34, Paragraph 1 of this Law, or the owner of the mark does not comply with the requirements of Section 34, Paragraph 2 as to an owner of a collective mark, or if the regulations governing the use of the collective mark do not comply with the requirements of Section 35, Paragraph 4, or the provisions of the regulations are contrary to public policy or socially accepted principles of morality.

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

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

- 1) if the owner of the collective mark no longer exists;
- 2) if the owner of the collective mark does not take reasonable measures to prevent non-compliance with the regulations governing the use of the collective mark;
- 3) if, due to amendments to the regulations governing the use of the collective mark it no longer complies with the requirements of Section 35, Paragraph 4, or the provisions of the regulations are contrary to public policy or socially accepted principles of morality.

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

**Chapter VIII****International Registration of Trademarks****Section 37. Application of this Law with Respect to International Registration of Trademarks**

(1) The provisions of this Law, especially, the provisions of Chapters II and III, Chapter IV, Sections 13, 18, 19 and Section 22, Paragraph 1, Chapters V, VI and VII, shall also apply, mutatis mutandis, to the international registration of trademarks and to internationally

registered trademarks, insofar as the regulations on the international registration of trademarks or the provisions of this Chapter do not provide otherwise.

(2) (Excluded by the Law of 21.10.2004)

(3) Fees shall be paid for the filing of applications for the international registration of trademarks, for registration and for other acts pertaining to international registration, in the amounts specified and pursuant to the prescribed procedures set out in the regulations on the international registration of trademarks and in the laws and other statutory enactments of Latvia.

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

(1) The filing of applications for the international registration of trademarks, and international registration of trademarks, the country of origin of which, within the meaning of the Regulations on international registration, is Latvia, as well as subsequent territorial extension of such international registrations, shall be effected through the intermediary of the Patent Office.

(2) Changes to international registrations, renewal of international registrations (re-registration for a new period of validity), or cancellation of registrations on the initiative of the owner (surrender of a registration), if the country of the owner of the trademark, within the meaning of the regulations on the international registration of trademarks, is Latvia, may also be effected through the intermediary of the Patent Office.

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

(1) An international registration of a trademark that has, pursuant to the prescribed procedure, entered into effect in Latvia, shall have the same effect as trademarks that have been, pursuant to the procedures specified in this Law, entered into the Register (registered with the Patent Office under national procedure).

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

(3) The priority of an internationally registered trademark in Latvia shall be determined by the date when the mark was internationally registered with respect to Latvia, but in cases where the mark, pursuant to the international procedure of registration, has been granted right of priority from its earlier filing date, by such earlier filing date. If the international registration of a trademark has been extended to Latvia subsequent to the date of its international registration, the priority shall be determined by the date on which the said mark was extended to Latvia. If an international registration, that has entered into effect in Latvia, upon request of the owner and pursuant to the regulations on the international registration of



trademarks, replaces an earlier registration of the same trademark effected at the Patent Office, the filing date and priority date of that earlier registration, effected pursuant to the national procedure, shall be attributed to the internationally registered trademark in determining its priority.

(4) The Patent Office shall examine internationally registered trademarks to ascertain their compliance with the requirements of Sections 6 and 8 of this Law. In the case of the registration of a collective mark it shall also be ascertained whether the regulations governing the use of the collective mark that comply with the provisions of Section 35, Paragraph 4 have been attached to the registration.

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

(6) If, as a result of examination, it is established that an international trademark does not comply with the requirements of Paragraph 4 of this Section, or if an opposition has been filed to such registration, the Patent Office shall, within the terms and pursuant to the procedures specified by the regulations on the international registration of trademarks, notify the International Bureau of the refusal of the particular international registration (initial refusal). Within three months from the date of receipt of such a refusal, the owner of the international registration is entitled to submit an appeal (a reply to the opposition) as provided for in Section 171, Paragraph 1 of this Law.

(7) The appeal (the reply to the oppositions) shall be reviewed in the Patent Office pursuant to the provisions of Section 171, Paragraphs 2, 3, 4, 5 and 6 of this Law. The Board of Appeal shall review appeals and oppositions submitted with respect to the internationally registered trademarks pursuant to the provisions of Sections 18 and 19 of this Law and, in relation to the collective mark, also pursuant to the provisions of Section 36, Paragraph 1, insofar as the regulations on the international registration of trademarks do not provide otherwise.

(8) The Patent Office shall, pursuant to the prescribed procedures, notify the International Bureau of all the decisions of the Board of Appeal and court judgments which have entered into effect, pursuant to which international registration of a trademark has been invalidated or revoked, in full or in part, or pursuant to which the initial refusal of international registration has been canceled (changed).

## **Chapter VIII1**

### **Community Trademark**

#### **Section 39<sup>1</sup>. Actions of the Patent Office in Connection with Registration Procedure of a Community Trademark**

(1) The duties of the central industrial property office of a Member State of the European Union that are referred to in the Council Regulation No 40/94 shall be realized in Latvia by the Patent Office. A Community trademark may be applied for registration through the intermediary of the Patent Office.

(2) The Patent Office shall carry out the verification of the authenticity of decisions of the Office for Harmonization in the Internal Market (trademark and designs) referred to in Section 82, Paragraph 2 of the Council Regulation No 40/94 for their enforcement in Latvia.

#### **Section 39<sup>2</sup>. Legal Force and Priority of a Community Trademark Registration in Latvia**

(1) Exclusive rights to a trademark shall also be ensured by registration of a Community trademark. The scope of protection of the Community trademark is referred to in the Council Regulation No 40/94.

(2) If pursuant to Section 34 or 35 of the Council Regulation No. 40/94 a Community trademark enjoys a seniority (a special priority), based upon a relevant earlier trademark, registered in Latvia or internationally and referring to Latvia, with respect to such a Community trademark, in determining its priority in Latvia, there shall be referred the filing date and the priority date of the trademark registered in Latvia or the relevant priority of the internationally registered trademark (Section 39, Paragraph 3). The seniority accorded to the Community trademark shall remain if the relevant Latvian trademark registration or the international trademark registration that refers to Latvia is cancelled on the initiative of the owner of the trademark (surrender of the registration) or due to expiration of its period of validity (exclusion from the Register).

(3) The trademark registration which served as a base for the seniority of the Community trademark can be invalidated or revoked also after the expiration of the validity term of this registration or when the registration is cancelled on the initiative of the owner of the trademark, provided that the relevant substantiations for invalidation or revocation of the trademark registration existed during the validity of this registration.

#### **Section 39<sup>3</sup>. Additional Regulations for Protection of a Community Trademark**

(1) An opposition to a trademark registration (Section 18) and a claim on the invalidation of a trademark registration (Section 31) apart from the rights referred to in Section 7, Section 8 and Section 9 of this Law can also be based upon an earlier identical or similar Community

trademark that enjoys a good reputation in the European Community and that is registered in relation to the goods or services which are not similar to the goods and services for which the later (opposed) trademark is registered, but provided that the use of the later trademark, in the absence of appropriate justification, in relation to the goods or services enables to unfairly use the distinctive character or the reputation of the Community trademark or to injure them, or the consumers can perceive the use of such later trademark as an indication to the relation between those goods or services and the owner of the aforementioned Community trademark and such use could be detrimental to the interests of the owner of the Community trademark. Such opposition and such claim may be submitted by the owner of the Community trademark (their successor in title) or his representative.

(2) Unless stated otherwise in the Council Regulation No 40/94, the provisions of Sections 27 and 28 of this Law and the relevant regulations of the Civil Procedure Law and other statutory enactments shall be applied in the case of unlawful use of a Community trademark.

(3) If basing upon rights that follow from the Community trademark registration a later trademark registration that has been made pursuant to the trademark registration procedure prescribed by this Law or in accordance with the regulations on international registration and refers to Latvia is opposed, or if the use of such a later trademark is opposed, the provisions of Section 29 of this Law on restrictions of rights as a result of acquiescence shall be applied.

#### **Section 39<sup>4</sup>. Additional Regulations for Use of a Community Trademark**

(1) If basing upon an earlier Community trademark an opposition has been submitted to a trademark registration (Section 18) and the owner of the opposed trademark enjoys his right to request evidence on the actual use of the earlier trademark (Section 19, Paragraph 7), the regulations referred to in Section 15 of the Council Regulation No 40/94 shall be applied.

(2) Pursuant to the regulations of Section 159.a, Paragraph 5 and Section 106, Paragraph 1 of the Council Regulation No 40/94, the owner of earlier rights obtained in good faith in Latvia may prevent the use of a Community trademark, which has been registered or applied for registration before May 1, 2004.

(3) If according to the regulations of Section 21 of the Council Regulation No 40/94 a Community trademark has been involved in bankruptcy or like proceedings in Latvia, the necessary records in the Community Trademark Register or, if the Community trademark has not yet been registered, in the application materials thereof may be asked to be made at the Office for Harmonization in the Internal Market (trademarks and designs) on the grounds of a decision of the court.

**Section 39<sup>5</sup>. Transformation of a Community Trademark into a Trademark Application in Latvia**

(1) If from the Office for Harmonization in the Internal Market (trademarks and designs) is received an application for the transformation of a Community trademark registration or application into a trademark application in Latvia (application for conversion), forwarded to the Patent Office pursuant to the regulations of Section 109, Paragraph 3 of the Council Regulation No 40/94, the Patent Office shall immediately invite the submitter to fulfil within three months the conditions envisaged in Section 110, Paragraph 3 of the Council Regulation No 40/94, as well as to pay the fee prescribed in Section 10, Paragraph 9 of this Law.

(2) If the submitter has not paid the prescribed fee (supplementary fee) in due time, the application for the conversion shall be deemed to have not been submitted, and the submitter shall be notified accordingly in writing.

(3) In starting the examination of the application for the conversion, the Patent Office shall verify at first if there are no obstacles for the realization of the conversion as referred to in Section 108, Paragraph 2 of the Council Regulation No 40/94. Pursuant to Section 110, Paragraph 1 of the Council Regulation No 40/94 the Patent Office can request from the Office for Harmonization in the Internal Market (trademarks and designs) submission of the necessary supplementary information on the circumstances that refer to the aforementioned obstacles for the realization of the conversion. If pursuant to the regulations of Section 108, Paragraph 2 of the Council Regulation No 40/94 the conversion shall not be allowed, the application for conversion shall be rejected and the applicant shall be notified accordingly in writing.

(4) If there are no obstacles for the realization of the conversion as referred to in Section 108, Paragraph 2 of the Council Regulation No 40/94, the application for the conversion shall be deemed to be an application for trademark registration in Latvia. For examination of such application the procedure for the preliminary examination of the application and the examination of a trademark, as well as other provisions for trademark registration procedure shall be applied, account shall be taken of the requirement of Section 110, Paragraph 2 of the Council Regulation No 40/94.

(5) The application for a trademark registration, based upon the application for the conversion, shall keep the application date and the priority date (if the priority has been accorded), as well as the seniority date, if the seniority has been accorded with respect to Latvia, of the relevant Community trademark.

## **Chapter IX**

### **Indications of Geographical Origin**

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

(1) Indications of geographical origin, pursuant to the provisions of this Chapter, shall be protected without their registration.

(2) Pursuant to the provisions of international treaties that are binding to Latvia, special protective measures pertaining to specific types of indications of geographical origin or to a fixed list of indications of geographical origin may be prescribed. The procedures for the protection and registration of indications of geographical origin pertaining to agricultural products and foodstuffs, or a list thereof, shall be determined by the Cabinet of Ministers.

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

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

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

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

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

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

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

- 1) the origin of goods shall be determined by the place of manufacture, or by the origin of the basic raw materials, or of the main components of these goods;
- 2) the origin of services shall be determined by the location, as registered in the Register of Enterprises, of the persons providing the services, or by the nationality or domicile of natural persons exercising actual control over the commercial activities, or the management of the undertaking.

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

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

(1) Use of signs, in the course of trade, contrary to of the provisions of Section 41 of this Law shall be deemed a manifestation of unfair competition, and shall be subject to sanctions provided for in statutory enactments on unfair competition, and other statutory enactments.

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

#### **Transitional Provisions**

1. From the entry into force of this Law, the Law on Trademarks (Latvijas Republikas Augstākās Padomes un Ministru Padomes Ziņotājs, 1993, No12/13), is repealed.
2. With respect to those trademarks, that have been applied for registration with the Patent Office or the international registration of which has entered into effect in Latvia before the entry into force of this Law, those trademark registration procedures and those trademark registration prerequisites shall apply, that were in effect on the date, when the application for trademark registration was filed or when the international registration of the trademark entered into effect with respect to Latvia.
3. The grounds for trademark invalidation referred to in Section 6, Paragraph 2 and Section 9, Paragraph 4 of this Law shall apply to any trademark irrespective of the date when the application for trademark registration has been filed, or when the international registration of the trademark has been extended to Latvia.

4. The Cabinet of Ministers shall, till May 1, 2002, determine the procedures for the protection and registration of the indications of geographical origin pertaining to agricultural products and foodstuffs, or a list thereof.
5. The Cabinet of Ministers shall, till December 15, 2004, approve the sample of the application form for trademark registration and the samples of other forms required for the trademark registration procedure.
6. If a Community trademark was registered or applied for registration before May 1, 2004, its priority in Latvia shall be deemed May 1, 2004.
7. If a Community trademark was registered before May 1, 2004, the period of time of five years mentioned in Section 29, Paragraph 1 of this Law shall be counted from May 1, 2004.
8. If the opposition provided in Section 394, Paragraph 1 of this Law is based on an earlier Community trademark which was registered before May 1, 2004, the period of time of five years mentioned in Section 15, Paragraph 1 of the Council Regulation No. 40/94 shall be counted from May 1, 2004.
9. If pursuant to Section 395, Paragraph 4 of this Law the application for registration of a trademark is based on the application on conversion, but the relevant Community trademark was registered or applied for registration before May 1, 2004, the date of such application shall be deemed May 1, 2004 and the priority of the Community trademark shall not be taken into consideration.

#### **Informative reference to the Directive of the European Union**

The Law comprises statutory enactments, which follow from the First Directive 89/104/EEC of the Council, of December 21, 1988, to Approximate the Laws of the Member States Relating to Trademarks.

The Law was adopted by Saeima on June 16, 1999.

President of the State G.Ulmanis

Riga, July 1, 1999