

TRADE MARK LAW (06.02.2020)

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

(1) The following sign shall not be registered as a trade mark or, if registered, shall be liable to be declared invalid, if:

- 1) it does not comply with the provisions of the Section 4, Paragraph one, Clause 2 of this Law;
- 2) it is devoid of any distinctive character with respect to the goods or services applied for;
- 3) it consists solely of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose (functional task), value, geographical origin, or the time of production of the goods or of providing the services, or other characteristics of the goods or services;
- 4) it consists exclusively of signs or indications (general signs) which have become customary in the current language or in fair and established practices of the trade to designate the goods or services applied for;
- 5) it consists exclusively of the shape or another characteristic:
 - a) which results from the nature of the goods themselves;
 - b) is necessary to obtain a technical result;
 - c) gives substantial value to the goods;
- 6) it is contrary to public policy or to accepted principles of morality;
- 7) it is of such a nature as to deceive the public, including, as to the nature, quality or geographical origin of the goods or service;
- 8) it contains a sign, which would be refused or invalidated pursuant to Article 6-ter of the Paris Convention, including coats of arms and flags of the member countries of the Paris Union, their official hallmarks (assay marks), control and warranty marks, as well as the emblems, flags, and names of international organisations and the abbreviations thereof, without authorization;
- 9) it contains symbols, which are of public interest, national decorations, Official Service insignia, as well as signs for official hallmarks (assay marks), control, quality, warranty, and safety of using goods which are used with respect to identical or similar goods or services in Latvia or the European Union, without authorization;
- 10) it contains other sign of high symbolic value, including, religious symbol, if it has a meaning to the public in Latvia;
- 11) it is excluded from registration pursuant to European Union legislation, to the national law of Latvia, or to international agreements to which the European Union or Latvia is a party, providing for the protection of designations of origin and geographical indications;
- 12) it is excluded from registration pursuant to European Union legislation or to international agreements to which the European Union or Latvia is party, providing for the protection of traditional terms for wine;
- 13) it is excluded from registration pursuant to European Union legislation or international agreements to which the European Union or Latvia is party, providing for the protection of traditional specialities guaranteed;
- 14) it consists of, or reproduces in its essential elements, an earlier plant variety denomination registered in accordance with European Union legislation or the national law of Latvia, or international agreements to which the European Union or Latvia is party, providing protection for plant variety rights, and which are in respect of plant varieties of the same or closely related species.

(2) A trade mark shall not be registered or, if registered, may be liable to be declared invalid if the applicant (proprietor of the trade mark) does not comply with the provisions of the Section 13, Paragraph one of this Law.

(3) A trade mark shall not be registered or, if registered, may be liable to be declared invalid if the application for registration of the trade mark was made in bad faith by the applicant.

(4) A trade mark registration may not be refused on the basis of the provisions of the Paragraph one, Clauses 2, 3 or 4 of this Section, following the use which has been made of it, it has acquired a distinctive character in the perception of the relevant consumers in Latvia to the goods and

services for which registration has been applied prior to the date of application for registration of the trade mark.

(5) A trade mark shall not be declared invalid on the basis of the provisions of the Paragraph one, Clauses 2, 3 or 4 of this Section, if it has acquired a distinctive character prior to the date of submitting the respective application to the Industrial Property Board of Appeal or a statement of claim to the court.

Section 7. Earlier Trade Mark as a Relative Ground for Invalidation of Trade Mark Registration

(1) A trade mark registration may be declared invalid if:

1) it is identical with an earlier trade mark, and the goods or services for which the trade mark is registered are identical to the goods or services for which the earlier trade mark is registered;

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

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

1) trade mark registered in Latvia under national or international registration procedures, or as European Union trade marks if the date of application for registration thereof is earlier than the date of application for registration of the contested trade mark, also taking into account the priority accorded to those trade marks;

2) The European Union trade mark with a later filing date, but with a seniority date which is earlier than the date of application for registration of the contested mark, if the seniority of a trade mark registered in Latvia or registered internationally and extended to Latvia is validly claimed, even when the latter trade mark has been surrendered or allowed to lapse;

3) applications for the registration of trade marks referred to in the Paragraph 1 and 2 of this Section, provided that they are registered.

Section 8. Well-known Trade Mark as an Absolute and a Relative Ground for Refusal or Invalidation of Trade Mark Registration

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

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

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

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

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

Section 9. Trade Mark which has a Reputation as a Relative Ground for Refusal or Invalidation of Trade Mark Registration

A trade mark registration may be invalidated, if the trade mark is identical with or similar to an earlier trade mark within the meaning of the Paragraph two of the Section 7 of this Law irrespective of whether the goods or services for which it is registered are identical with, similar to or not similar to those for which the earlier trade mark is registered, where the earlier trade mark prior to the date of filing of the contested trade mark or the date of priority, if priority has been validly claimed, has a reputation in Latvia or, in the case of the European Union trade mark, has a reputation in the European Union and the use of the later trade mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark.

Section 10. Other Earlier Rights as a Relative Ground for Invalidation of Trade Mark Registration

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

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

2) copyright;

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

4) rights related to Latvian or foreign firm name, trade name, name of a mass medium or other similar sign that was well-known in Latvia before the date of filing of application of the trade mark, or the priority date even if they are used in different business sector;

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

6) rights related to an earlier registered design in Latvia or registered Community design, or unregistered Community design;

7) rights related to a designation of origin or a geographical indication, if an application for such rights had already been submitted in the competent European Union authority prior to the date of application for registration of the trade mark or the date of the priority claimed for the application, subject to its subsequent registration, or if designation of origin or a geographical indication are protected in the European Union or in Latvia pursuant to international agreements prior the mentioned date.

8) rights related to traditional terms for wine or traditional specialities guaranteed protected in Latvia or the European Union, if an application for such rights had already been submitted in the European Union prior to the date of application for registration of the trade mark or the date of the priority claimed for the application, or if a traditional terms for wine or a traditional specialities

guaranteed are protected in the European Union or in Latvia pursuant to international agreements prior the mentioned date.

9) rights related to plant variety denomination protected in the European Union or in Latvia, if an application for the plant variety denomination had already been submitted for protection in the European Union or in Latvia prior to the date of application for registration of the trade mark or the date of the priority claimed for the application, or if plant variety denomination is protected in the European Union or in Latvia pursuant to international agreements prior the mentioned date.

10) other earlier and valid intellectual property rights.

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

Section 65. Collective Mark and Subjects of Rights to It

(1) A collective mark may consist of a sign which complies with the provisions of this Law regarding the types of trademarks (Section 4 of this Law) and is capable of distinguishing the goods or services of the members of an association which is the proprietor of the mark from the goods or services of other persons.

(2) A designation or indication which may be used in economic activity to designate the geographical origin of goods or services may be registered as a collective mark without applying the restriction specified in Section 6, Paragraph one, Clause 3 of this Law. However, the registration of such a collective mark shall not entitle its proprietor to prohibit any other person from using such signs or indications in the course of trade, provided that such use is in accordance with honest practices in economic activity. The right of another person to use a geographical name cannot be challenged on the basis of such a collective mark, provided that such use does not mislead consumers.

(3) Collective trademark proprietor may be any association of manufacturers, producers, suppliers of services or traders, which, under the terms of the law governing them, have the capacity in their own name to have rights and obligations, to make contracts or accomplish other legal acts, and to sue and be sued, as well as legal person governed by public law, even if that person does not own a manufacturing or trading undertaking.

(4) Every member of association referred to in the Paragraph 3 of this Section may also have its own trade marks.

(5) The provisions of this Law regarding the principles of protection of a trademark, grounds for refusal or invalidation of registration of a trademark, exclusive rights of the trademark owner and their restrictions, the right to a trademark as an object of property, transfer of trademark rights and licensing, trademark registration procedure, civil liability for infringement of trademark rights, revocation of a trademark, international registration of a trademark and administrative liability in the field of trademark protection, shall apply to a collective mark in so far as those provisions do not contradict with the provisions of this Chapter.

Section 66. The Regulations Governing the Use of the Collective Mark

(1) When 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 for the mark) or its authorised representative must be submitted in addition to the materials and documents referred to in Section 30 of this Law. The regulations governing the use shall contain:

1) a list of persons who have the right to use the collective mark;

2) the conditions of membership of the association which is the applicant for the collective mark.

If the collective mark referred to in Section 34, Paragraph three of this Law is applied for, the regulations governing the use must provide the opportunity for any person whose goods or services

originate in the geographical area concerned and who undertake to comply with the regulations to become a member of the association;

3) conditions of use of the collective mark in relation to the goods or services, the mechanism for control of the performance thereof and possible sanctions for non-compliance with these conditions.

(2) Instead of the list of persons referred to Clause 1 of Paragraph 1 of this Section, the applicant for a collective mark may provide a link to a website where that list is permanently publicly available.

(3) The regulations governing the use of a collective mark shall not be contrary to public policy or to accepted principles of morality.

(4) After publication of the notice regarding the registration of the collective mark in the official gazette of the Patent Office, the regulations governing the use of the collective mark shall be publicly available on the website of the Patent Office.

Section 67. Refusal of the Registration of the Collective Mark

In addition to the provisions of Section 4, Paragraph one, Sections 6, 30, 32, 35 and 36 of this Law, the Patent Office may also refuse the registration of a collective mark in the following cases:

1) the sign applied for does not comply with the provisions of Section 65, Paragraph one of this Law;

2) the applicant for a collective mark does not comply with the provisions of Section 65, Paragraph three of this Law;

3) the requirements of Section 66 of this Law are not satisfied;

4) the sign applied for may mislead the public as regards the character or the significance of the collective mark, in particular if it is likely to be taken to be something other than a collective mark.

Section 72. Certification Mark and Subjects of Rights to It

(1) A certification mark is a sign used to designate goods or services which are certified by the proprietor of the mark in respect of material, mode of manufacture of goods or performance of services, quality, accuracy or other characteristics, from goods and services which are not so certified.

(2) A certification mark may consist of a sign which complies with the provisions of this Law regarding the types of trademarks (Section 4 of this Law) and is capable of distinguishing goods or services which are certified by the proprietor of the mark in respect of material, mode of manufacture of goods or performance of services, quality, accuracy or other characteristics, from goods and services which are not so certified.

(3) A sign or an indication which may be used in trade to designate the geographical origin of goods or services may be registered as a certification mark without applying the restriction specified in Section 6, Paragraph one, Clause 3 of this Law. However, the registration of such a certification mark does not entitle its holder to prohibit other persons from using such signs or indications in the course of their trade, provided that such use is in accordance with honest practices in industrial or commercial matters. The right of another person to use a geographical name cannot be challenged on the basis of such a certification mark, provided that such use does not mislead consumers.

(4) The owner of a certification mark may be any natural or legal person, including a legal person governed by public law, provided that such person does not carry out an economic activity related to goods or services which it certifies. When applying for a certification mark for registration, the applicant shall submit a declaration that it does not engage in an economic activity related to goods or services which it certifies.

(5) The provisions of this Law regarding the principles of protection of a trademark, grounds for refusal or invalidation of registration of a trademark, exclusive rights of the trademark owner and their restrictions, the right to a trademark as an object of property, transfer of trademark rights and licensing, trademark registration procedure, civil liability for infringement of trademark rights,

revocation of a trademark, international registration of a trademark and administrative liability in the field of trademark protection, shall apply to a certification mark insofar as the said provisions do not contradict the provisions of this Chapter.

Section 73. The Regulations Governing the Use of the Certification Mark

(1) When applying for a certification mark for registration, in addition to the materials and documents referred to in Section 30 and Section 72, Paragraph four of this Law, the applicant for a certification mark shall indicate the laws and regulations governing the relevant certification procedures or submit regulations governing the use of the certification mark.

(2) In the regulations governing the use of the certification mark shall be:

1) indicated the criteria to be met by persons who may be granted the right to use the certification mark and include a list of potential certified products or services and list of the relevant merchants and economic operators;

2) if the certification mark referred to in Section 72, Paragraph three of this Law is applied for, provided the possibility for persons whose origin of goods or services corresponds to the relevant geographical place and who comply with the requirements for the use of the certification mark to acquire the right to use the mentioned certification mark;

3) indicated the goods or services to be certified and the characteristics of the goods or services which are being certified;

4) included procedures for inspecting the characteristics of goods or services and granting the right to use the certification mark;

5) included the regulations for the use of the certification mark in connection with the goods or services, the mechanism for the control of their implementation and sanctions for violation of these regulations.

(3) Instead of the list of products or services and the relevant merchants and economic operators referred to in Paragraph two, Clause 1 of this Section, the applicant for the certification mark may provide a link to the website where the list is permanently publicly available.

(4) The regulations governing the use of a certification mark shall not be contrary to public policy or to accepted principles of morality.

(5) After publication of the notice regarding the registration of the certification mark in the official gazette of the Patent Office, the regulations governing the use of the collective mark shall be publicly available on the website of the Patent Office.

Section 74. Refusal of the Registration of the Certification Mark

In addition to the provisions of Section 4, Paragraph one, Sections 6, 30, 32, 35 and 36 of this Law, the Patent Office may also refuse the registration of a certification mark in the following cases:

1) the sign applied for does not comply with the provisions of Section 72, Paragraph two of this Law;

2) the applicant for the certification mark does not comply with the provisions of Section 72, Paragraph four of this Law;

3) the requirements of Section 73 of this Law are not satisfied;

4) the mark applied for may mislead the public as regards the character or the significance of the certification mark, in particular if it is likely to be taken to be something other than a certification mark.