

REPUBLIC OF LITHUANIA
LAW ON TRADE MARKS

10 October 2000 No.VIII-1981

Vilnius

(As last amended on 8 June 2006 – No. X-651)

CHAPTER ONE
GENERAL PROVISIONS

Article 1. Purpose of the Law

1. This Law establishes legal protection of trade marks, their registration and use in the Republic of Lithuania, also the administration of the Register of Trade Marks of the Republic of Lithuania.

2. The provisions of this Law have been harmonised with the legal acts of the European Union indicated in the Annex to this Law.

Article 2. Main Definitions Used in the Law

1. “**Trade mark**” (hereinafter - mark) means any sign capable of distinguishing the goods or services of one person from those of other persons and capable of being represented graphically. For the purposes of this Law, a service mark shall also be treated as a trade mark.

2. “**Person**” means a natural or a legal person.

3. “**Collective mark**” means a mark registered by a union of persons (association, union, consortium, etc.).

4. “**Geographical indication**” means a place name or other word or sign which directly or indirectly identify a good as originating in a certain territory, region or locality, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.

5. “**Geographical origin**” means a country, territory, region or locality according to which the true place of origin of a good or service may be identified.

6. “**Application**” means a package of documents to be presented to the State Patent Bureau of the Republic of Lithuania (hereinafter - State Patent Bureau) according to the procedure prescribed by this law by the applicant in order to have his mark registered.

7. “**Applicant**” means a person or a group of persons in whose name the application for the registration of a mark is filed.

8. “**Patent attorney**” means a natural person whose name appears on the Register of Patent Attorneys of the Republic of Lithuania according to the procedure established in the Patent Attorney Statute approved by the Government of the Republic of Lithuania.

9. “**Proprietor of a mark**” means the rights holder of a mark protected in the Republic of Lithuania in the manner laid down by this Law.

10. “**License**” means permission of the proprietor of the mark (licenser) granted to another person (licensee) to use a mark under the terms of a licensing contract.

11. “**Sublicense**” means the licensee’s permission granted to another person to use a mark under the terms of a sublicensing contract.

12. “**International exhibition**” means an international exhibition which is official or officially recognised according to the Convention relating to International Exhibitions, adopted in Paris on 22 November 1928, as last revised on 30 November 1972.

13. “**International registration of marks**” means registration of a mark in the International Register of the International Bureau of the World Intellectual Property Organisation (hereinafter - the International Bureau) under the Protocol relating to the Madrid Agreement concerning the International Registration of Marks (hereinafter - the Madrid Protocol), adopted at Madrid on 27 June 1989.

14. “**International application**” means an application for the international registration of the mark, filed under the Madrid Protocol with the International Bureau through intermediary of the State Patent Bureau or any other office of the Contracting State of the Madrid Protocol.

15. “**Paris Convention**” means the Paris Convention for the Protection of Industrial Property of 20 March 1883, as revised at Stockholm on 14 July 1967 and supplemented on 28 September 1979.

16. “**Nice Classification**” means the international classification of goods and services, approved by the Nice Agreement concerning International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, as revised at Stockholm on 14 July 1967, at Geneva on 13 May 1977 and amended in Geneva on 2 October 1979.

17. “**Official Bulletin of the State Patent Bureau**” means a periodical publication in which the State Patent Bureau makes official announcement of data relating to marks, based on this Law and Statute of the Register of Trade Marks of the Republic of Lithuania.

18. “**Gazette of International Marks of the International Bureau**” means the periodic publication “*WIPO Gazette of International Marks*” of the International Bureau of the World Intellectual Property Organisation, in which the International Bureau publishes data concerning international registration of marks.

19. “**Regulations**” means Regulations for the Registration of Trade Marks approved by the Director of the State Patent Bureau.

20. “**Commercialisation**” means use of goods seeking to obtain gain.

21. “**Business name of a legal person**” means the business name of a legal person, its branch office or representative office.

22. “**Community trade mark**” means a mark in respect of which registration is applied for or which is registered in accordance with the conditions contained in the Regulation on the Community trade mark.

23. “**Regulation on the Community trade mark**” means Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark.

Article 3. Scope of the Law

1. This Law shall apply to every mark intended to identify goods and/or services, for which registration is sought in the application filed at the State Patent Bureau or which is registered in the manner prescribed by this Law, or which is subject to international registration of the mark, in effect in the Republic of Lithuania.

2. This Law shall also apply to the marks recognised as well-known in the Republic of Lithuania.

3. Where the international agreements to which the Republic of Lithuania is a party prescribe requirements other than those established by this Law, the requirements of international agreements shall apply.

4. Foreign nationals shall exercise all rights specified in this Law and in legal acts regulating the implementation thereof.

Article 4. The Sign Protecting the Rights of the Proprietor of a Mark

The proprietor of a mark may inform the public of his rights to the mark by means of the sign protecting the proprietor's rights, which consists of the letter R in a circle and is put to the right of the mark (above or below).

CHAPTER TWO

PROTECTION OF THE MARK

Article 5. Signs of which a Mark May Consist

Marks, with respect to which legal protection under this Law is applicable, may consist of signs, in particular:

- 1) words, personal surnames, names, artistic pseudonyms, business names of legal persons, slogans;
- 2) letters, numerals;
- 3) drawings, emblems;
- 4) three-dimensional form (the shape of products, their packaging or containers);
- 5) colours or combinations of colours, their compositions;
- 6) any combination of signs specified in subparagraphs 1-5 of this Article.

Article 6. Absolute Grounds for Refusal of Registration or Invalidation of a Mark

1. A sign shall not be recognised as a mark and shall be refused registration or the registration of a registered mark shall be declared invalid if:

- 1) the sign cannot constitute a mark under the requirements of Article 5;
- 2) the sign is devoid of any distinctive character;
- 3) it has become customary in the current language or in the *bona fide* and established practices of the trade;
- 4) it consists exclusively 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 rendering of the service, the mode of production or other characteristics of the goods and/or services;
- 5) the sign is of such a nature as to mislead the public, for instance as to the nature, quality or geographical origin of the goods and/or services;
- 6) the sign is contrary to accepted principles of morality or public policy, including ethics of society and humanitarian principles;
- 7) the sign consists exclusively of the shape which results from the nature of the goods

themselves or the shape of goods which is necessary to obtain a technical result or the shape which gives substantial value to the goods;

8) the sign consists of the official or traditional (abbreviated) state name of the Republic of Lithuania, of armorial bearings, flag or other state heraldic objects or any imitation from a heraldic point of view, also official signs and hallmarks indicating control and warranty, stamps, medals or marks of distinction, unless the permission for their use in a mark has been issued according to the established procedure by the institution authorised by the Government of the Republic of Lithuania;

9) it consists of signs the registration of which has not been authorised by the competent authorities of other states or international organisations and the registration of which is to be refused or invalidated pursuant to Article 6ter of the Paris Convention;

10) it is a sign of high symbolic value, in particular a religious symbol;

11) it contains or consists of a geographical indication with respect to goods not originating in the territory indicated, if use of the indication in the mark for such goods in the Republic of Lithuania is of such a nature as to mislead the public as to the true place of origin of the goods. The above provision shall also be applicable against a geographical indication which, although literally true as to the place of origin of the goods, falsely represent to the public that the goods originate in another territory;

12) it contains or consists of a geographical indication identifying wines for wines or spirits for spirits not originating in the place indicated by the geographical indication in question, even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like.

2. In the cases provided for in subparagraphs 2, 3 or 4 of paragraph 1 of this Article, a sign may be recognised as a mark and its registration may not be invalidated if, before the date of application for registration, after the date of filing of the application or registration of the mark and following the use which has been made of it, it has acquired distinctive character.

Article 7. Other Grounds for the Invalidation of Registration

1. Registration of a mark shall be declared invalid if the mark is:

1) identical with an earlier mark, and the goods and/or services for which the mark is registered are identical with the goods and/or services for which the earlier mark is applied for or is registered;

2) identical with or similar to the earlier mark and because of the identity or similarity of the goods and/or services covered by the marks there exists a likelihood of confusion on the part of the public; the likelihood of confusion includes the likelihood of association with the earlier mark;

3) identical with the mark recognised as well-known in the Republic of Lithuania in the manner prescribed by Article 9 of this Law, the proprietor of which is another person, or because of its similarity to the mark it is liable to mislead the public;

4) identical with the business name of a legal person or possessing a misleading likelihood to the business name of a legal person, whose proprietor is another person who acquired the right to that name in the Republic of Lithuania prior to the date application for registration of the mark or the date of the priority, if on the day specified in the date the legal person had a right to engage in identical or similar trade to which the goods and/or services covered by the registered mark may be attributed;

5) identical with the geographical indication protected in the Republic of Lithuania or possessing a misleading likelihood thereto, except for the indication incorporated in the mark as the disclaimer, for which registration is applied for by a person entitled to use the geographical indication;

6) identical with the protected industrial design or any other object of industrial property, literary, scientific or artistic work protected under the copyright, the name or surname or artistic pseudonym of a famous person, or the portrait of another person or its likelihood to the above is misleading, except in cases where consent has been granted by the owner of the rights or the successor to them;

7) identical with, or similar to, an earlier Community trade mark and is to be, or has been, registered for goods and (or) services which are not similar to those for which the earlier Community trade mark is registered, where the earlier Community trade mark has a reputation in the European Community and where 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 Community trade mark.

2. For the purposes of subparagraphs 1, 2 and 7 of paragraph 1 of this Article, “earlier mark” means:

1) a mark the date of filing of application for registration in the Republic of Lithuania of which is earlier than the date of filing of application for registration of the mark specified in paragraph 1 of this Article, taking account, where appropriate, of the priorities granted or claimed in respect of that mark;

2) a mark the date of registration whereof for the Republic of Lithuania under the Madrid Protocol is earlier than the date of filing of application for registration of the mark specified in paragraph 1 of this Article, taking account, where appropriate, of the priorities granted or claimed in respect of that mark;

3) a mark which, on the date of filing of application for registration of the mark specified in paragraph 1 of this Article, taking account, where appropriate, of the priorities granted or claimed in respect of that mark, has been recognised as well-known in the Republic of Lithuania in the manner laid down in Article 9 of this Law;

4) a Community trade mark with a date of application for registration pursuant to the Regulation on the Community trade mark, which is earlier than the date of application for registration of the trade mark referred to paragraph 1 of this Article, taking account, where appropriate, of the priority claimed or granted;

5) a Community trade mark which claims seniority, in accordance with the Regulation on the community trade mark, from a trade mark referred to in subparagraph 1 or 2 of paragraph 2 of this Article, even when the latter trade mark has been surrendered or allowed to lapse.

3. Registration of the mark may be declared invalid where it becomes evident that the application for the registration of a mark was made in bad faith by the applicant.

Article 8. Disclaimers

1. A mark may not be constituted of elements which are ineligible for registration as separate (independent) marks.

2. Where the mark contains elements referred to in paragraph 1 of this Article and where there is special reason to assume that the registration of the mark may cause doubts as to the scope of protection of the mark, the elements may, at the request of the applicant or proprietor of the mark, on the decision of the State Patent Bureau or court decision, be recognised as disclaimers.

3. Where the circumstances on the grounds whereof the elements of the marks were recognised as disclaimers cease to exist, a new application for the registration of a mark may be filed for the registration of the elements or of the mark containing the elements without the limitation referred to in paragraph 2 of this Article.

4. Disclaimers do not extend the proprietor of the mark exclusive rights thereto.

Article 9. Protection of a Well-Known Mark

1. A mark may be recognised as well-known in the Republic of Lithuania if the results of its use or promotion reveal that it is well-known in the relevant sector of the public.

2. A mark recognised as well-known in the Republic of Lithuania shall be protected even without registration thereof.

3. A mark shall be recognised as well-known in the Republic of Lithuania according to judicial procedure.

4. In addition to the rights specified in Article 38 of this Law, the proprietor of the mark recognised as well-known in the Republic of Lithuania shall also have the right to prohibit other persons from using, without having his consent, in industrial or commercial activities a sign which constitutes a reproduction, an imitation or a translation, liable to create confusion, of a mark considered to be well-known and used for identical and/or similar goods.

5. In addition to the rights specified in Article 38 of this Law, the proprietor of a registered mark recognised as well-known in the Republic of Lithuania shall also be entitled to prevent third parties not having his consent from using, in the course of industrial or commercial activities, a sign which may be taken for a reproduction, an imitation or a translation, liable to create confusion, of a mark recognised as well-known, in relation to goods and/or services which are not similar to those under the well-known mark, provided that use of that mark in relation to those goods or services would indicate a connection between those goods and/or services and goods and/or services under a well-known mark and provided that the interests of the proprietor of the registered well-known mark are likely to be damaged by such use.

Article 10. Priority

1. The application may contain a request claiming the priority of one or more previous applications duly filed for the registration of one and the same mark in the State party to the Paris Convention or a member of the World Trade Organisation if the applicant or his successor in title files an application to the State Patent Bureau within a period of six months from the date of filing of the first application or applications.

2. The application may contain a request to grant priority of the date on which the goods and/or services bearing the mark which is the subject of that application were first exhibited at an official or officially recognised international exhibition, if the application is filed with the State Patent Bureau within a period of six months from the date of the first display of the goods and/or services under the mark at the exhibition.

3. An applicant who intends to benefit from the provisions of paragraphs 1 and 2 of this Article shall submit before the State Patent Bureau a certified copy of the first application (applications) or a certificate issued by the administration of the international exhibition at which the goods and/or services bearing the mark had first been exhibited. The documents may be submitted at the time of filing of the application or within three months from that date.

4. If the State Patent Bureau finds that the requirements under paragraph 3 of this Article have not been fulfilled, the request referred to in paragraphs 1 or 2 of this Article shall be considered not to have been made.

CHAPTER THREE

REGISTRATION OF A MARK

Article 11. Filing of an Application

1. An applicant who wishes to register a mark must file an application to the State Patent Bureau.

2. The representative may also file an application on behalf of the applicant. Foreign natural persons who are not permanent residents of the Republic of Lithuania or any other EU Member State and legal persons of foreign states who do not have a branch office or representative office registered in the Republic of Lithuania or a registered office, a branch office or a representative office in any other EU Member State, shall file applications to the State Patent Bureau and perform all actions relating to the registration of the mark with the State Patent Bureau, including also representation at the Appeals Division, through the patent attorney of the Republic of Lithuania.

3. One application shall be filed for the registration of one mark.

4. An application for the registration of a mark shall consist of:

1) a request for the registration of a mark and issuance of the trade mark certificate signed by the applicant or his representative;

2) a document certifying payment of the fixed fee;

3) the power of attorney given to a person, where the application is filed by an authorised person;

4) a request to be granted priority (where appropriate);

5) a permit issued by competent authorities under subparagraphs 8 and 9 of paragraph 1 of Article 6 of this Law (where appropriate);

6) regulations governing the use of a collective mark (where appropriate);

7) consent of the owner of the rights according to subparagraph 6 of paragraph 1 of Article 7 of this Law (where appropriate).

5. A request for the registration of a mark and issuance of the trade mark certificate shall contain:

1) information identifying the applicant and his representative;

2) a reproduction and description of the mark in respect of which registration is applied for;

3) the names of goods and/or services for which registration is requested, classified in accordance with the Nice classification effective on the date of filing of the application;

4) a statement that the mark in respect of which registration is applied for is a three-dimensional mark (where appropriate);

5) a statement that colour or combination, composition of colours are considered a distinctive feature of the mark (where appropriate);

6) a statement as to which elements of the mark are considered a disclaimer (where appropriate);

7) a statement that the mark is registered and published in standard characters of the State Patent Bureau (where appropriate);

8) a transliteration of the mark or its verbal elements, also their translation into Lithuanian (where appropriate);

9) a statement that the mark for which an application for registration is filed is a collective mark.

6. An application may contain a request for registration of one or more classes of goods and/or services. A fixed additional fee shall be payable for more than one class of goods and/or services indicated in the application.

Article 12. Date of Filing of Application

1. The date of receipt by the State Patent Bureau of the documents listed in subparagraphs 1 and 2 of paragraph 4 of Article 11 of this Law shall be considered the date of filing of the application.

2. In case of failure to submit at least one of the documents listed in subparagraphs 1 and 2 of paragraph 4 of Article 11 of this Law, a date of filing shall not be accorded to the application and the application documents shall be returned to the applicant with the grounds for the inadmissibility of the application indicated.

3. An applicant shall acquire the right of seniority of a mark from the date of application for registration, taking account, where appropriate, of the priority claimed or granted. From the said date to the date of issuance of a trade mark certificate, temporary legal protection shall be afforded for the mark, which accords the right to invoke claims to any other person, warning him about the possible infringement of the rights provided for in Article 18 of this Law.

4. If an applicant has withdrawn his application, the mark has not been registered or it has been removed from the Register at the request of the proprietor of the mark, or its registration is opposed by any other person, the temporary legal protection provided for in paragraph 3 of this Article shall be deemed not to have been afforded for the mark.

Article 13. Examination of Application

1. The State Patent Bureau shall conduct, within one month from the receipt of the application, a formal examination of the application documents: check whether or not the documents specified in subparagraphs 1 and 2 of paragraph 4 of Article 11 of this Law have been filed and whether they comply with the formal requirements.

2. The State Patent Bureau shall recognise an application as having been filed and shall accord to it a date of filing and a number, provided that the documents specified in subparagraphs 1 and 2 of paragraph 4 of Article 11 of this Law have been filed and all the formal requirements have been complied with.

3. Having performed the actions specified in paragraph 2 of this Article, the State Patent Bureau shall supply the applicant or his representative with a notice of acceptance of the application wherein the date of filing of the application and the number accorded to it shall be indicated.

4. Having accorded the application a date of filing, the State Patent Bureau shall check whether or not all the documents specified in paragraph 4 of Article 11 of this Law have been filed, whether they comply with the requirements of this Law and the Regulations, and whether the goods and/or services for which registration is requested are in compliance with the requirements of the Nice classification.

5. Having ascertained that not all the documents specified in paragraph 4 of Article 11 of this Law have been filed or that the documents do not comply with the requirements of this Law and the Regulations, the State Patent Bureau shall notify the applicant or his representative thereof in writing, indicating the deficiencies and the required remedying. If the deficiencies in the application are not remedied within three months from the sending of the notification, the State Patent Bureau shall recognise the application as having not been filed and shall notify the applicant or his representative thereof in writing.

6. Having ascertained that the goods and/or services do not comply with the Nice classification, the State Patent Bureau shall send a notification to the applicant or his representative, pointing out the deficiencies and indicating which deficiencies must be remedied. If the deficiencies referred to above are not remedied within three months from the date of sending of the notification or if the applicant or his representative objects to the instructions of the State Patent Bureau, the State Patent Bureau shall reject the entire application or the part thereof which refers to the goods and/or services the classification whereof was objected to by the applicant or his representative and shall notify the applicant or his representative thereof in writing.

Article 14. Examination of the Mark

1. Having conducted an examination to the application the State Patent Bureau shall carry out an examination of the mark with a view to ascertaining whether or not it satisfies the requirements of Article 6 of this Law.

2. Where, under Article 6 of this Law, a mark is not registrable, the State Patent Bureau shall adopt a decision to refuse the registration of the mark in respect of all or some of the goods and/or services. The decision which must indicate grounds and reasons for the refusal of the registration of the mark shall be sent to the applicant or his representative within ten days from the adoption thereof.

3. The applicant or his representative shall have the right to submit to the State Patent Bureau within three months from the day of sending of the decision to refuse registration a written request for a re- examination.

4. Having received a request for a re-examination and upon examining the arguments submitted by the applicant, the State Patent Bureau shall conduct a re-examination and adopt one of the following decisions:

1) to declare the previous decision invalid and to register the mark in respect of all or only some of the goods and/or services;

2) to leave valid the decision to refuse registration of the mark.

5. The State Patent Bureau shall send the adopted decision to the applicant or his representative within ten days from the adoption thereof.

Article 15. Filing of Appeal

1. An applicant or his representative who objects to the decision adopted by the State Patent Bureau after the re-examination shall have the right to file with the Appeals Division of the State Patent Bureau (hereinafter - Appeals Division), within three months from the day of sending of the decision, a written appeal with a substantiated request for a review of the findings of the examination and a document certifying the payment of the fixed fee.

2. Following the examination of the appeal, the Appeals Division shall adopt one of the following decisions:

1) to grant the appeal and to adopt a decision to register the mark in respect of all or some of the goods and/or services;

2) to dismiss the appeal and to uphold the decision to refuse the registration of the mark.

3. Where the applicant or his representative objects to the decision of the Appeals Division, he shall have the right to appeal against the decision of the Appeals Division to the Vilnius County Court within six months from the date of adoption of the decision by the Appeals Division.

Article 16. Registration of a Mark

1. Upon ascertaining that the mark meets the requirements of Article 6, the State Patent Bureau shall adopt a decision to register the mark and shall within ten days from the date of adoption of the decision send the decision and instruction to pay the fixed fee to the applicant or his representative.

2. Having granted the appeal under Article 15 of this Law, the State Patent Bureau shall further act in accordance with the procedure laid down in paragraph 1 of this Article.

3. After the applicant or his representative presents a document certifying the payment of the fee, the mark shall be registered in the Register of Trade Marks of the Republic of Lithuania. Information of the registered mark shall be published in the Official Bulletin of the State Patent Bureau.

Article 17. Withdrawal of the Application

1. If the applicant or his representative fails to pay the fee within three months from the day of sending of the decision to register the mark, the application shall be deemed withdrawn on the decision of the State Patent Bureau.

2. Within ten days from the adoption of the decision that the application shall be deemed withdrawn the State Patent Bureau shall send the decision to the applicant or his representative.

3. The applicant or his representative shall have the right to withdraw his application or restrict the list of goods and/or services contained therein at any stage of examination of the application or the mark.

Article 18. Opposition

1. Within a period of three months following the publication of the registered mark in the Official Bulletin of the State Patent Bureau, the interested persons may give to the Appeals Division a justified written opposition to registration of the mark on the grounds that it may not be registered under Articles 6 and (or) 7 of this Law.

2. The filing of opposition shall be subject to the payment of the fixed fee.

3. The Appeals Division shall verify within fourteen days from the day of receipt of the opposition whether the opposition complies with the requirements of paragraphs 1 and 2 of this Article. Where the opposition is filed according to the procedure laid down in this Law and the Regulations and complies with the above requirements, the Appeals Division shall accept the

opposition as admissible and shall communicate one copy of the opposition to the proprietor of the mark against which the opposition is filed or his representative.

4. The proprietor of the mark against which opposition is filed or his representative must within three months from the date of sending of the opposition file a justified reply to the opposition. Failure to file a justified reply to the opposition shall be considered as a refusal to participate in the examination of the opposition and shall not prevent the Appeals Division from examining the opposition in the absence of the proprietor of the mark against which the opposition has been filed or his representative.

5. Following the examination of the opposition, the Appeals Division shall adopt one of the following decisions:

1) to decide that the opposition is allowable and declare registration of the mark invalid in respect of all or some of the goods and/or services;

2) to reject the opposition and leave the registration of the mark valid.

6. The proprietor of the mark against which opposition is filed or his representative, or the person who filed the opposition or his representative, who did not attend the opposition examination proceedings, shall be within one month from the day of making of the decision communicated the decision in writing with a copy of decision attached to the communication.

7. The decision made by the Appeals Division may be appealed against to the Vilnius County Court within six months from the day of adoption thereof.

8. Decisions made by the Appeals Division shall be published in the Official Bulletin of the State Patent Bureau.

Article 19. Appeal and Opposition Examination at the State Patent Bureau

1. Appeal or opposition proceedings conducted by the Appeals Division shall be public.

2. The applicant, the interested person, the proprietor of the mark against which opposition has been filed or the representatives of the above persons shall have the right to take part in the appeal or opposition proceedings at the Appeals Division.

3. Appeal and opposition examination procedure shall be set forth in the Regulations for Appeal and Opposition Examination approved by the Director of the State Patent Bureau.

Article 20. Certificate of Registration of a Mark

1. The State Patent Bureau shall issue a registration certificate to the proprietor of a registered mark or his representative, unless opposition has been filed in accordance with the procedure laid down in Article 18 of this Law or if opposition has been rejected or satisfied in

respect of some of the goods and/or services pursuant to paragraph 5 of Article 18 of this Law. Where the proprietor of the mark or his representative fails to collect the certificate within one month from the day of issue of the certificate of registration of the mark, he shall be sent the certificate by post.

2. The form of the certificate of registration of a mark and the data recorded therein shall be established by the State Patent Bureau.

3. Certificate of the registration of a mark is a legal document certifying the entry of the mark in the Register of Trade Marks of the Republic of Lithuania and the exclusive rights of the proprietor of the mark to the registered mark.

4. If the proprietor of the mark loses the certificate of registration of the mark, he shall be issued a duplicate of the certificate.

Article 21. Register of Trade Marks of the Republic of Lithuania

1. The Register of Trade Marks of the Republic of Lithuania is a state register. The Register shall be administered by the State Patent Bureau.

2. The procedure for accumulating, keeping, storing and using the documents and data relating to trade marks shall be established by the Statute of the Register of Trade Marks of the Republic of Lithuania approved by the Government.

Article 22. Data of the Register of Trade Marks of the Republic of Lithuania

1. The following data shall be recorded and stored in the Register of Trade Marks of the Republic of Lithuania:

- 1) reproduction of the mark;
- 2) names of goods and/or services for which registration of the mark is applied for, classified according to the Nice classification effective on the day of filing of the application;
- 3) date of filing of the application and its file number;
- 4) date of registration of the mark and its file number;
- 5) the applicant's name or personal name, surname and address (headquarters);
- 6) name or personal name, surname and address (headquarters) of the proprietor of the mark;
- 7) date of expiry of registration;
- 8) priority date, first application file number, code of the state, provided that priority has been given under paragraph 1 of Article 10 of this Law;
- 9) name of the exhibition, date of display of goods and/or services, provided that priority has been given under paragraph 2 of Article 10 of this Law;

10) personal name, surname, address (headquarters) of the representative, where he has been appointed;

11) a statement that the mark is collective, three-dimensional or that colour constitutes distinctive character of the mark;

12) other data relating to the registration, use and protection of the mark;

13) grounds for and date of amendment of the data.

2. All natural and legal persons shall have the right to use the data of the Register of Trade Marks of the Republic of Lithuania according to the procedure laid down by the Regulations of the Register of Trade Marks of the Republic of Lithuania.

3. The State Patent Bureau shall issue extracts from the Register of Trade Marks of the Republic of Lithuania at the request of any person who has paid the fixed fee.

Article 23. Recording of Changes in the Application and in the Register of Trade Marks of the Republic of Lithuania

1. The applicant, the proprietor of the mark or his representative must notify the State Patent Bureau of:

1) changes in the name or personal name, surname or address (headquarters) of the applicant or the proprietor of the mark;

2) changes of the representative of the applicant or proprietor of the mark or his address (headquarters);

3) changes in the representation of the mark applied for registration or of the registered mark where, in the opinion of the State Patent Bureau, the change is not related to the distinctive character of the mark;

4) limitation of the list of goods and/or services;

5) the full or partial change of the applicant or the proprietor of the mark;

6) the need to correct technical errors.

2. Requesting for change to be recorded in the application or in the Register of Trade Marks of the Republic of Lithuania, the applicant, the proprietor of the mark or their representative shall submit the following documents:

1) request for recording changes in the application or in the Register of Trade Marks of the Republic of Lithuania;

2) documents substantiating the request where the recording of amendments specified in subparagraphs 5 and 6 of paragraph 1 of this Article is requested;

3) a document certifying the payment of the fixed fee.

3. Following the receipt of the documents specified in paragraph 2 of this Article, the State Patent Bureau shall verify them within one month from the date of receipt and record the change in the application or in the Register of Trade Marks of the Republic of Lithuania, provided that they meet the requirements laid down by this Law and the Regulations.

4. The change shall become valid from the day of its recording. A notice of the change in the Register of Trade Marks of the Republic of Lithuania shall be published in the Official Bulletin of the State Patent Bureau.

5. Technical error made by the State Patent Bureau shall be corrected free of charge.

Article 24. Removal of a Mark from the Register

1. A mark shall be removed from the Register of Trade Marks of the Republic of Lithuania if:

1) the Appeals Division declares the registration of the mark invalid according to the procedure laid down in Article 18 of this Law;

2) the registration of the mark is declared invalid or revoked by a court decision;

3) the registration of the mark has not be renewed according to the procedure laid down in Article 36 of this Law;

4) the proprietor of the mark requests for the mark to be removed from the Register.

2. The State Patent Bureau shall remove the mark from the Register of Trade Marks of the Republic of Lithuania following the receipt of one of the following documents:

1) effective court decision to declare the registration of the mark invalid or to revoke the registration of the mark;

2) a written request of the proprietor of the mark.

3. After the Appeals Division takes a decision to declare the registration of a mark invalid, or in case of failure to renew the registration of the mark according to the procedure laid down in Article 36 of this Law, the mark shall be removed from the Register on the initiative of the State Patent Bureau.

4. A notice of removal of the mark from the Register shall be published in the Official Bulletin of the State Patent Bureau.

Article 25. Requirements for the Documents Filed to the State Patent Bureau

1. Documents shall be filed to the State Patent Bureau in the state language. If the documents, except for the application for the registration of a mark and for the issuance of a trade mark certificate, are filed in a language which is not the state language, the applicant, the proprietor

of the mark or his representative must within three months from the day of filing of the documents submit the documents translated into the state language.

2. The power of attorney to represent the applicant or the proprietor of the mark shall be issued in writing and shall not be subject to notarial verification. Where the application for registration of a mark and for issuance of the trade mark certificate is filed by a representative who, however, fails to submit the power of attorney together with the documents listed in subparagraphs 1 and 2 of paragraph 4 of Article 11 of this Law, the power of attorney must be submitted within three months from the date of filing of the application.

3. Documents filed to the State Patent Bureau shall be exempt from all legalisation.

4. Specific requirements of the application and other documents shall be established by the Regulations.

5. A document shall be deemed not to have been filed and the act shall be deemed not to have been performed if the applicant, the proprietor of the mark or his representative fails to submit the documents within the time limit set in this Law or the documents have been executed not in accordance with the requirements.

Article 26. Time Limit

1. Following the filing of a written request and payment of the fixed fee by the applicant, the proprietor of a mark or the holder of an international registration, or his representative, the time limits provided for in paragraphs 5 and 6 of Article 13, paragraph 3 of Article 14, paragraph 1 of Article 15, paragraph 1 of Article 17, paragraph 4 of Article 18, paragraph 1 of Article 25, and paragraphs 1, 2 and 4 of Article 34 of this Law may be extended once but for not longer than two months from the day of expiry of the initial time limit.

2. The applicant, the proprietor of a mark or the holder of an international registration, or his representative may, not later than within 2 months from the day of expiry of the initial time limit, file an application for the extension of the time limit. The time limit shall be extended on the decision of the State Patent Bureau.

3. The applicant who was unable to observe the time limit set in paragraph 1 of Article 17 may be reinstated upon filing the following documents:

- 1) a substantiated request to reinstate the unobserved time limit;
- 2) a document stating the grounds of non-observance of the time limit;
- 3) a document certifying the payment of the fixed fee.

4. Reinstatement specified in paragraph 3 of this Article shall be granted on the decision of the Director of the State Patent Bureau.

5. Refusal to extend the time limit or to grant reinstatement may be appealed to court in the manner prescribed by law.

Article 27. Fees

1. The filing of an application and other acts provided for in this Law shall be subject to the payment of the fixed fee.

2. The amount of fees, specific actions for which fees are payable, the procedure for paying the fees shall be established by this Law and other tax laws of the Republic of Lithuania.

CHAPTER FOUR COLLECTIVE MARKS

Article 28. Right to a Collective Mark

1. A union (association, union, consortium, etc.) of persons shall have the right to file an application for the registration of a collective mark.

2. All provisions of this Law, except for the provisions of Articles 43 and 44, shall apply to a collective mark.

Article 29. Registration and Use of a Collective Mark

1. A collective mark shall be registered in the name of the union of persons and only when the regulations for the use thereof, approved by the union, are filed together with the application. The regulations shall contain the following data:

- 1) the name and the headquarters of the union of persons in the name whereof an application for the registration of a collective mark has been filed;
- 2) the purpose of the union of persons and representation procedure;
- 3) membership conditions;
- 4) information relating to the union members who have authority to use a collective mark;
- 5) terms and conditions of the use of a collective mark;
- 6) rights and obligations of the union members in case of non-fulfillment of the conditions of use of a collective mark and infringement of rights to it.

2. A collective mark may be transferred only with the consent of all persons who are members of a union which has registered the collective mark.

3. A collective mark may be constituted of signs or indications which may serve, in trade, to designate the geographical origin of the goods and/or services, the mark, however, shall not entitle

the proprietor to prohibit a third party from using the signs or indications, provided such use is in accordance with the accepted principles of morality in industrial and commercial matters: in particular, such a mark may not be invoked against a third party who is entitled to use a geographical name in trade.

4. A collective mark shall be deemed used when used by at least one member of the union.

5. Unless otherwise provided in the regulations governing the use of a collective mark, a person who has authority to use the collective mark may bring an action in infringement of a collective mark only with the consent of the proprietor of the mark.

6. The proprietor of a collective mark must submit to the State Patent Bureau any changes or supplement of the regulations governing the use of the collective mark.

7. The State Patent Bureau shall refuse the application for a collective mark if the regulations governing use of the mark do not satisfy the requirements of paragraph 1 of this Article or if they are contrary to public policy or to accepted principles of morality. After the applicant amends the regulations in such a way that the ground for refusal ceases to exist, the collective mark may be registered according to the procedure established by this Law.

8. Upon submitting a request and subject to the payment of a fixed fee, the interested parties may inspect the regulations governing the use of the collective mark at the State Patent Bureau.

CHAPTER FIVE

INTERNATIONAL REGISTRATION OF A MARK

Article 30. Validity of the International Registration of a Mark

1. From the date of the international registration of the mark extended to the Republic of Lithuania under paragraph 4 of Article 3 of the Madrid Protocol, or the date of territorial extension made subsequently to the international registration (hereinafter referred to as “subsequent territorial extension”) under paragraph 2 of Article 3ter of the Madrid Protocol, the legal protection of the mark resulting from international registration shall be the same as the legal protection of the mark applied for registration in accordance with the procedure laid down by this Law.

2. From the date of the international registration referred to in paragraph 1 of this Article, the legal protection of the mark shall be the same as if the mark had been registered in pursuance of the provisions of this Law, provided that the mark which is the subject of international registration has not been refused protection in the Republic of Lithuania in accordance with the provisions of paragraphs 1 and 2 of Article 5 of the Madrid Protocol or if such refusal has been withdrawn subsequently.

3. Data relating to the international registration of the mark is published in the Gazette of International Marks of the International Bureau.

4. The State Patent Bureau shall record the data relating to the international registration of the mark, extended to Lithuania, in the Register of Trade Marks of the Republic of Lithuania.

Article 31. Invalidity of International Registration

1. Where a mark which has been the subject of an international registration does not meet the requirements of Article 6 of this Law or if an opposition is filed in the manner prescribed by this Law in respect of the registration of the mark, the State Patent Bureau shall notify the International Bureau within the time limit set by the Madrid Protocol that the protection of the mark is fully or partially refused in the Republic of Lithuania.

2. International registration of a mark shall be invalid in the Republic of Lithuania from the day of the effect of invalidation in the Republic of Lithuania.

3. Where international registration of a mark is cancelled at the request of the office of the country of origin or following the denunciation of the Madrid Protocol by a party to the Madrid Protocol, the proprietor of the mark may file an application according to the procedure laid down in this Law requesting registration of the mark in the Republic of Lithuania.

4. An application under paragraph 3 of this Article shall be deemed to have been filed on the day of international registration of the mark or of the subsequent territorial extension, with due regard being had, where appropriate, to the date of granting of priority, provided the following conditions are observed:

1) the application is filed within a three month period following the cancellation of international registration of the mark on the grounds provided for in paragraph 3 of this Article;

2) the application comprises no other goods and/or services than those comprised by the international registration.

3) the application complies with all the requirements of this Law and the applicant has paid the fixed fee.

Article 32. Filing of an International Application or of a Request for Subsequent Territorial Extension on the Basis of an Application or Registration in the Republic of Lithuania

1. An applicant or a proprietor of the mark who meets the requirements of subparagraph (i) of paragraph 1 of Article 2 of the Madrid Protocol must file an international application through the

State Patent Bureau. A request for subsequent territorial extension may be filed through the State Patent Bureau or presented direct to the International Bureau.

2. The granting of priority under the provisions of the Paris Convention may be requested while filing an international application or request for subsequent territorial extension.

3. An international application and request for subsequent territorial extension must be presented in the form and in accordance with the requirements prescribed by the Madrid Protocol and Common Regulations under the Madrid Agreement Concerning the International Registration of Marks and the Protocol Relating to that Agreement (hereinafter - Common Regulations of the Madrid Protocol).

4. The procedure for filing and examining the international application and a request for subsequent territorial extension at the State Patent Bureau shall be established in the Procedure for Implementing the Madrid Protocol, approved by the Director of the State Patent Bureau.

5. The applicant shall pay a fixed fee for the examination of an international application at the State Patent Bureau. In case of failure by the applicant to present a document certifying payment of the fixed fee, the State Patent Bureau shall return the international application.

6. The applicant must pay the fees provided for in the Common Regulations of the Madrid Protocol directly to the International Bureau.

Article 33. Replacement of a National Registration by an International Registration

1. Where a mark that is the subject of a national registration in the Republic of Lithuania is also the subject of an international registration, on the initiative of the proprietor the international registration is deemed to replace the national registration valid in the Republic of Lithuania, if:

- 1) the international registration is extended to the Republic of Lithuania ;
- 2) all goods and/or services listed in the national registration are also listed in the international registration;
- 3) the international registration has been extended to the Republic of Lithuania after the filing of an application, based on Article 11 of this Law, to the State Patent Bureau.

2. Upon request of the proprietor of the mark who has paid the fixed fee, the State Patent Bureau shall record the data on the replacement of national registration by international registration into the Register of Trade Marks of the Republic of Lithuania and shall publish the data in the Official Bulletin of the State Patent Bureau.

Article 34. Special Provisions Applicable to International Registration of a Mark

1. If the holder of the international registration opposes the decision of the State Patent Bureau to refuse to grant protection on the grounds that the mark does not satisfy the requirements of Article 6 of this Law, he shall be entitled to request re-examination within five months from the day of making of the decision. If he fails to file the request within the set time limit, the decision of the State Patent Bureau shall be deemed final.

2. If the holder of the international registration objects to the decision made by the State Patent Bureau in the course of re-examination, he shall be entitled to file, within three months from the day of making of the decision, an appeal to the Appeals Division according to the procedure set forth in Article 15 of this Law.

3. The interested persons or their representatives must file an opposition to international registration of a mark within three months from the day of publishing of information on the international registration of the mark in the Gazette of International Marks of the International Bureau. The opposition must meet the requirements of paragraphs 1 and 2 of Article 18 of this Law.

4. The holder of the international registration to which an opposition has been filed must, within the five-month period from the date indicated in a notification to the International Bureau of refusal to grant protection, appoint his representative in the manner laid down in paragraph 2 of Article 11 of this Law and present a justified reply to opposition. Failure to present a justified reply to the opposition shall be considered as a refusal to take part in the examination of the opposition and shall not prevent the Appeals Division from examining the opposition in the absence of the holder of the international registration or his representative. If the holder of the international registration to which the opposition is filed fails to appoint his representative, the decision made by the Appeals Division shall not be communicated to the holder of the international registration.

5. A license issued by the proprietor of the mark of international registration shall not be valid in the Republic of Lithuania for third parties if the data of the licensing contract have not been recorded according to the procedure established by Article 44 of this Law.

6. The requirements of Article 29 of this Law shall not apply to international registrations of collective marks.

7. Renewal of the international registration of a mark and other issues related to international registration, which have not been discussed in this Law, shall be regulated by the Madrid Protocol, Common Regulations of the Madrid Protocol and the Procedure for Implementing the Madrid Protocol.

CHAPTER SIX

DURATION OF REGISTRATION OF A MARK

Article 35. Duration of Registration of a Mark

A mark shall be registered for a period of ten years from the date of filing of the application.

Article 36. Renewal

1. Following the expiry of the period specified in Article 35 of this Law, registration of a mark may be renewed in respect of all or only a part of goods and/or services each time for not longer than ten years.

2. Registration of a mark shall be renewed on the decision of the State Patent Bureau provided that the following documents have been submitted to the State Patent Bureau:

1) the request for renewal of registration of a mark in respect of all or part of the goods and/or services;

2) document certifying the payment of the fixed fee.

3. Documents specified in paragraph 2 of this Article must be filed by the proprietor of the mark or his representative not later than in the last year before the expiry of registration of the mark.

4. Having paid a 50% additional fee for the renewal of registration of a mark, the proprietor of a mark or his representative may submit a request for renewal within a period of six months following the day of expiry of registration of the mark.

5. Information relating to the renewal of registration of a mark shall be recorded in the Register of Trade Marks of the Republic of Lithuania and published in the Official Bulletin of the State Patent Bureau.

6. If the proprietor of the mark or his representative fails to pay the fixed fee within the period specified in paragraphs 3 and 4 of this Article, the registration of the mark shall not be renewed and the mark shall be removed from the Register of Trade Marks of the Republic of Lithuania according to the procedure laid down in Article 24 of this Law.

CHAPTER SEVEN**RIGHTS CONFERRED BY THE REGISTRATION OF A MARK****Article 37. Scope of Protection of a Mark**

1. A registered mark shall be valid in the Republic of Lithuania only in respect of the goods and/or services specified in the certificate of registration of the mark.

2. A proprietor of the mark may extend the list of goods and/or services for which the mark has been registered only upon filing a new application in accordance with the procedure established by this Law.

Article 38. Rights of the Proprietor of the Mark

1. The proprietor of a registered mark shall have an exclusive right to prevent all third persons not having his consent from using in the course of trade any sign:

1) which is identical with the registered mark in relation to goods and/or services which are identical with those for which the mark is registered;

2) where, because of its identity with, or similarity to, the registered trade mark for the identical or similar goods and/or services, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the registered trade mark;

3) which is identical with or similar to the registered mark in relation to goods and/or services which are not similar to those for which the mark is registered, where the latter has a reputation in the Republic of Lithuania and where use of that sign without due cause takes unfair advantage of or is detrimental to, the distinctive character or the repute of the mark.

2. The proprietor of the mark may prohibit the following under paragraph 1 of this Article:

1) affixing the sign to goods or to the packaging thereof;

2) offering the goods or putting them on the market or stocking, renting, lending or in any other form disposing of them for these purposes under that sign, or offering or supplying services thereunder;

3) importing or exporting goods under that sign;

4) using the sign on business papers and in advertising;

5) manufacturing the sign or keeping specimens thereof with the intention of performing any of the actions specified in subparagraphs 1-4 of paragraph 2 of this Article.

3. The following, *inter alia*, shall be deemed to constitute an infringement of the distinctive character of a sign, indicated in subparagraph 3 of paragraph 1 of this Article:

1) the sign is used as the business name of a legal person and this use is misleading the public due to the similarity of the sign to a registered mark and of the goods and/or services for which the mark is registered;

2) the reproduction or presentation of the sign in advertisements or in the media gives the impression that it constitutes the generic name of certain goods and /or services.

Article 39. Limitation of the Effects of a Mark

1. The provisions of Article 38 of this Law shall not entitle the proprietor of the mark to prohibit a third party from using in the course of trade:

- 1) his own personal name, surname and/or address;
- 2) indications concerning the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of the goods or of rendering of the service, or other characteristic of the goods and/or services;
- 3) the mark where it is necessary to indicate the intended purpose of a product and/or service, in particular as accessories or spare parts;
- 4) the mark in comparative advertising where such advertising is permitted.

2. The provisions of paragraph 1 of this Article may be applied only provided they are used in accordance with honest practices in industrial or commercial matters.

Article 40. Exhaustion of the Rights Conferred by a Mark

1. Registration of a mark shall not entitle its proprietor to prohibit any other person from marking with it the goods which have been marked and put by the proprietor of the mark or with his consent on the European Community market.

2. Paragraph 1 of this Article shall not apply where there exist legitimate reasons for the proprietor to oppose further commercialisation of the goods, especially where the condition of the goods is changed or impaired after they have been put on the market.

Article 41. Registration of a Mark without the Authorisation of the Proprietor of the Mark

1. If a representative of the proprietor of the mark or another person applies, without such proprietor's authorisation, for the registration of the mark in his own name, the proprietor shall be entitled to oppose the registration applied or demand its cancellation or the assignment in his favor of the said registration, unless such representative or person justifies his action.

2. In the case specified in paragraph 1 of this Article the proprietor of the mark shall be entitled to bring an action before the court to oppose the use of the mark, without the latter's authorisation, by his representative or any other person.

3. The proprietor of the mark shall be entitled to exercise the rights set forth in paragraphs 1 and 2 of this Article not later than within three years from the date of coming to his knowledge of the fact of registration of the mark.

Article 42. Reproduction of a Mark in Dictionaries or in Other Similar Works

1. If the reproduction of a registered and valid mark in a dictionary, encyclopedia, book or similar publication of professional nature gives the impression that it constitutes the generic name or term of the goods or services for which the trade mark is registered, the author, publisher or editor must, at the request of the proprietor of the mark, ensure that the reproduction of the mark in the next edition of the publication is accompanied by an indication that it is a registered mark.

2. Paragraph 1 of this Article shall also apply to publications in electronic form. .

CHAPTER EIGHT**TRANSFER OF THE MARK, LICENSING AND RIGHTS IN REM****Article 43. Transfer of the Right to a Mark Applied for or a Registered Mark**

1. The right to a mark applied for or a registered mark may be transferred, under the agreement, in whole or partly, together with other rights related to the activities of a legal person. Unless the agreement provides otherwise, the right to a mark is transferred together with a legal person.

2. The right to a mark applied for or to a registered mark may be transferred in respect of all or part of the goods and (or) services.

3. The transfer of a right to a mark applied for or a registered mark shall be recorded in the Register of Trade Marks of the Republic of Lithuania upon the request of one of the parties to the transfer, provided the following documents have been submitted to the State Patent Bureau:

- 1) a request to record the transfer;
- 2) a document certifying the transfer;
- 3) a document certifying the payment of a fixed fee;
- 4) the power of attorney issued to the representative (where appropriate).

4. The State Patent Bureau shall examine the submitted documents within a month's period from the day of receipt of the documents specified in paragraph 2 of this Article and, provided that the documents meet the requirements of this Article, shall record the data relating to the transfer of the applied for or registered mark in the Register of Trade Marks of the Republic of Lithuania.

5. A transfer of the right to an applied for or registered mark shall be invalid if the data relating to the transfer has not been entered in the Register of Trade Marks of the Republic of Lithuania.

6. A transfer of the right to an applied for or registered mark shall become effective from the date of recording of the data relating to the transfer of the right to the applied for or registered mark

in the Register of Trade Marks of the Republic of Lithuania. The data relating to the transfer of the right to a registered mark shall be published in the Official Bulletin of the State Patent Bureau.

Article 44. Licensing

1. The proprietor of a mark may issue to a third party a voluntary exclusive or non-exclusive license for marking some or all goods and/or services for which it is registered and for the whole or part of the Republic of Lithuania.

2. The licensing contract data shall be recorded in the Register of Trade Marks of the Republic of Lithuania upon the request of the parties to the contract. The following documents shall be submitted to the State Patent Bureau alongside with the request:

1) a document certifying the conclusion of the licensing contract signed by both parties or a notarised extract from the licensing contract;

2) a document certifying the payment of a fixed fee;

3) the power of attorney issued to a representative (where appropriate);

3. The following must be indicated in the document certifying the conclusion of a licensing contract or in an extract from the licensing contract:

1) the name or the personal name, surname and address (headquarters) of the proprietor of the mark;

2) the name or the personal name, surname and address (headquarters) of the licensee;

3) registration number of the mark for which the license is granted;

4) kind of license;

5) an indication as to the scope of the goods and/or services for which the license is granted;

6) the time period of license;

7) the territory in which the license is valid.

4. The State Patent Bureau shall examine the received documents within one month from the date of receipt of the documents specified in paragraph 2 of this Article and, upon ascertaining that the documents meet the requirements of this Article, shall record the data relating to the conclusion of the licensing contract in the Register of Trade Marks of the Republic of Lithuania.

5. A licensing contract shall have effect vis-a-vis third parties after entry in the Register of Trade Marks of the Republic of Lithuania. The entered data relating to the license agreement shall be published in the Official Bulletin of the State Patent Bureau.

6. The proprietor of the mark may invoke the rights provided for by Article 38 of this Law against a licensee who contravenes any provision in his licensing contract with regard to its duration, the form of use of a registered mark, the scope of the goods and (or) services for which the license is

granted, the territory in which the mark may be affixed, or the quality of the goods manufactured or of the services provided by the licensee.

7. The provisions of paragraphs 1-6 of this Article shall also apply to the sublicensing contract.

Article 45. Rights in Rem

1. The right to a mark may be given as security or seized (temporary restriction of the right to use, administer or dispose of the mark) according to the procedure laid down by the laws of the Republic of Lithuania.

2. Having been notified by the keeper of the Register of Mortgages or the Register of Property Seizure Acts about the right to the mark given as security or seized, the State Patent Bureau shall enter the relating data in the Register of Trade Marks of the Republic of Lithuania and publish a notice to the effect in the Official Bulletin of the State Patent Bureau.

CHAPTER NINE

INVALIDATION AND REVOCATION OF THE REGISTRATION

Article 46. Invalidation of a Registration

1. Upon request by any interested person, the registration of a mark may be invalidated by the court on the ground that the said mark does not comply with Articles 6 and (or) 7 of this Law.

2. Having passed a decision of invalidation, the court shall send a copy of the effective decision to the State Patent Bureau which shall remove the mark from the Register according to the procedure laid down in Article 24 of this Law.

3. The registration of a mark may not be invalidated on the ground that it conflicts with an earlier mark which does not meet the requirements of paragraph 2 of Article 47 of this Law.

4. Invalidation or revocation of a mark shall not be allowed if the proprietor of an earlier registered mark has knowingly tolerated the use during five years of a later mark which has been the subject of a *bona fide* application, except where the coexistence would be liable to mislead the public or be contrary to public order.

5. After the invalidation or revocation of a mark the issued registration certificate shall also be declared invalid.

6. Where the seniority of an earlier trade mark, protected under this Law, which has been surrendered or allowed to lapse, is claimed for a community trade mark, the invalidity or revocation of the earlier trade mark may be established *a posteriori*.

Article 47. Revocation of Registration

1. Upon the request of any interested party, the court may revoke the registration of a mark if, following the date of registration:

1) the mark has become, in that part of business in which the good and/or service concerned is traded or supplied, the common name for goods and/or services for which it is registered, as a result of the treatment of the mark as a common name by the proprietor or of his inactivity or due to such treatment of the mark by the others;

2) in consequence of the use made of it by the proprietor of the mark or with his consent in respect of the goods or services for which it is registered, the trade mark is liable to mislead the public, particularly as to the nature, quality or geographical origin of those goods and/or services.

2. The registration of a mark may be revoked if, within a period of five years after the issue of the registration certificate, a genuine use of the mark has not been started by the proprietor of the mark in the Republic of Lithuania or the proprietor has not expressed serious intention to use the mark in respect of the goods and/or services for which it is registered, or if the mark has not been put to genuine use for a period of five continuous years, except in cases where the use of the mark was prevented by serious reasons, such as, e.g., restrictions on imports or other circumstances beyond the proprietor's control.

3. The following shall constitute use within the meaning of paragraph 2 of this Article:

1) use of the mark in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered in the Register of Trade Marks of the Republic of Lithuania;

2) affixing of the mark to goods or to the packaging thereof in the Republic of Lithuania solely for export purposes.

4. The mark shall be deemed to be used by its proprietor if it is used by another person with the proprietor's consent.

5. No one may claim that the registration of a mark should be revoked on the grounds referred to in paragraph 2 of this Article, where, during the interval between expiry of the five-year period and the filing of the application with court for revocation, genuine use of the mark has been started or resumed, except in the case provided for in paragraph 6 of this Article.

6. When adopting a decision on the revocation of the registration, the following circumstances shall be disregarded:

1) the commencement or resumption of use within a period of three months preceding the filing of the application for revocation with court;

2) the commencement of the use of the mark on the expiry of the continuous period of five years of non-use;

3) preparations for the commencement or resumption occur only after the proprietor becomes aware that the application for revocation may be or has been filed with court.

7. Upon revocation of the mark on the grounds referred to in this Article, revocation of registration shall become effective from the date of coming into effect of the court decision.

Article 48. Decision regarding Refusal of Registration, Invalidation or Revocation of Registration only in respect of some Goods and/or Services

Where a decision is taken to refuse registration, to invalidate or revoke registration in respect of only some of the goods and/or services for which the mark has been applied for or registered, the decision regarding the refusal of registration or invalidity or revocation shall cover those goods and/or services only.

CHAPTER TEN

DISPUTE SETTLEMENT. ENFORCEMENT OF RIGHTS

Article 49. Institutions having Jurisdiction in Disputes relating to Marks

1. The Appeals Division of the State Patent Bureau shall deal with disputes referred in Article 18 of this Law.

2. Vilnius County Court shall deal with disputes relating to:

1) decisions of the Appeals Division of the State Patent Bureau;

2) invalidation of registration of a mark;

3) revocation of registration of a mark;

4) enforcement of the rights of the proprietor of a mark;

5) recognition of the mark as well-known in the Republic of Lithuania;

6) Community trade marks under the provisions of Articles 90-101 of the Regulation on the Community trade mark.

Article 50. Enforcement of Rights

1. The applicant, the proprietor of a trade mark or their successors in title, when enforcing their rights, and the licensees of exclusive licences, when protecting the rights granted to them, shall be entitled to apply to the court in accordance with the procedure laid down by the law and to seek:

1) recognition of the rights;

- 2) an injunction intended to terminate the continuation of infringing activities;
- 3) prohibition to carry out activities by reason of which the rights may be actually infringed or the prejudice suffered;
- 4) compensation for the material damage, including lost income and other incurred expenses;
- 5) application of other remedies set out by this Law and other laws.

2. In order to ensure enforcement of an injunction intended to forbid the continuation of infringing activities, as well as an injunction intended to prevent activities by reason of which the rights may be actually infringed or the prejudice suffered, the court may, upon request of the persons referred to in paragraph 1 of this Article, order an infringer to lodge adequate assurance intended to ensure compensation for any possible prejudice.

3. Where there is no fault in the activities, in connection with the infringement of the rights established by this Law, of a person in respect of whom an injunction to terminate the continuation of infringing activities or the corrective measures specified in Article 50⁴ are applied, the court may, at the request of this person, order him to pay pecuniary compensation to the injured party, if execution of the measures referred to in this paragraph of the Article would cause him disproportionate harm and if pecuniary compensation to the injured party appears reasonable and satisfactory.

4. The persons referred to in paragraph 1 of this Article, when enforcing their rights, shall be entitled to apply to the court for an injunction against intermediaries whose services are used by a third party to infringe the rights established by this Law. Such an injunction shall include the suspension of communication of information related to the infringement of the rights established by this Law or, if an intermediary is capable of performing this technically, the elimination of information infringing the said rights, or prohibition to obtain information infringing these rights. Such compliance with the judicial decision shall not exempt an intermediary from the responsibility for any act or omission related to keeping or communication of such information, which was the case before coming into effect of this decision.

5. When hearing a case of infringement of the rights of the proprietor of a mark, the defendant shall be entitled to file a counterclaim for invalidation of the registration of the mark.

6. The proprietor of a mark shall be entitled to apply to the court for an injunction against the use of a Community trade mark within the territory of the Republic of Lithuania pursuant to the provisions regarding the Community trade mark of Annex II: *List referred to in Article 20 of the Act of Accession. 4. Company law. C. Industrial property rights* of the 16 April 2003 Treaty between the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic,

the Republic of Finland, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland (Member States of the European Union) and the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia, the Slovak Republic, concerning the accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic to the European Union Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded.

Article 50¹. Right of information

1. When hearing a case concerning an infringement of the rights established by this Law, the court, in response to a justified request of the claimant, may, in the context of proceedings, order the persons to immediately provide information on the origin and distribution networks of the goods or services which infringe the rights established by this Law, particularly:

1) the names and addresses of the production, manufacturers, distributors, suppliers and other previous holders of the goods (services) infringing the rights established by this Law, as well as the wholesalers and retailers for whom the indicated goods (services) have been intended;

2) information on the quantities of the produced, manufactured, delivered, received or ordered goods which infringe the rights established by this Law, as well as the price which has been obtained or ought to have been obtained for those goods or services.

2. The infringers of the rights established by this Law, other persons who were in possession on a commercial scale of the goods infringing the rights established by this Law, who were using on a commercial scale the services infringing the rights established by this Law or who were providing on a commercial scale the services which a third party used to infringe the rights established by this Law, as well as those who were indicated by the said persons as being involved in the production, manufacture or distribution of the goods infringing the rights established by this Law or the provision of the services infringing the rights established by this Law may be ordered to provide information referred to in paragraph 1 of this Article.

Article 50². Evidence

1. On application by a party which has presented reasonably available evidence sufficient to support its claims, and has, in substantiating those claims, specified evidence which lies in the control of the opposing party, the court may, in accordance with the procedure laid down by the Code of Civil Procedure, order that such evidence be presented by the opposing party, subject to the protection of confidential information. A reasonable sample of a substantial number of products shall be considered by the court to constitute reasonable evidence of the infringement of the rights established by this Law.

2. In the case of an infringement of the rights established by this Law, which has been committed on a commercial scale and under the conditions specified in paragraph 1 of this Article, the court may, in accordance with the procedure laid down by the Code of Civil Procedure, order that banking, financial or commercial documents be communicated by the opposing party, subject to the protection of confidential information. In the event of failure to present such evidence without strong reasons within the time limit set by the court or where the use of the evidence is denied, the court shall have the right to take a decision on the grounds of the evidence presented to it.

Article 50³. Provisional measures and measures for preserving evidence

1. Application of provisional measures and measures for preserving evidence shall be regulated by the Code of Civil Procedure and this Law.

2. If there are sufficient grounds to suspect that the rights established by this Law have been infringed, the court may, in accordance with the procedure laid down by the Code of Civil Procedure, apply provisional measures necessary to prevent imminent infringing activities, to promptly terminate infringing activities and to enforce a final decision of the court, that is:

- 1) to forbid persons to commit an imminent infringement of the rights established by this Law;
- 2) to order persons to temporarily terminate an infringement of the rights established by this Law;
- 3) to forbid an intermediary to provide services to a third party who uses such services by infringing the rights established by this Law;
- 4) to seize copies of the subject matters of the rights established by this Law as well as goods, prevent their entry into or remove them from the channels of commerce, if it is suspected that they are infringing the rights established by this Law;
- 5) to seize the property of the persons suspected of infringing the rights established by this Law, which is possessed by the said persons or a third party, including the accounts of banks and other credit institutions; also to order the communication of bank, financial or commercial documents, or appropriate access to these documents in the case of an infringement committed on a commercial scale;
- 6) to apply other measures laid down by the Code of Civil Procedure.

3. If the provisional measures which are referred to in subparagraphs 1 and 2 of paragraph 2 of

this Article and which have been applied are being infringed and the infringement continues, the court may order the persons suspected of committing an infringement to lodge adequate assurance intended to ensure that a person who has applied for provisional measures will be compensated for a possible prejudice.

4. The court shall have the right to require the person who applies for provisional measures to provide any reasonably available evidence in order to satisfy the court with a sufficient degree of certainty that the said person or the person in whose interest provisional measures are applied for is the holder or user of the rights established by this Law and that the applicant's right is being infringed, or that such infringement is imminent.

5. The court may, on application by a person who has presented reasonably available evidence to support his claims that the rights established by this Law have been infringed or are about to be infringed, may apply provisional measures or measures for preserving evidence, subject to the protection of confidential information, thus preserve relevant evidence in respect of the alleged infringement, that is:

1) to describe in detail the goods infringing the rights established by this Law and to seize them, or only to describe them;

2) to seize the products infringing the rights established by this Law and, in appropriate cases, the materials and implements used in the production and/or distribution of these products as well as the documents relating thereto;

3) to apply other prompt and effective provisional measures provided for in the Code of Civil Procedure.

6. Provisional measures and measures for preserving evidence may be applied without the defendant having been notified or heard, in particular where any delay would cause irreparable harm to the applicant or where there is a demonstrable risk of evidence being destroyed. Where provisional measures are applied without the defendant having been notified and heard, the defendant must be given notice without delay, i.e. after the execution of such measures at the latest. At the request of the parties, including a right to be heard, the provisional measures may be reviewed with a view to deciding, within a reasonable period after the notification of application of the measures, whether such measures must be modified, revoked or confirmed.

7. Where the applied provisional measures or measures for preserving evidence are revoked by the court or where they lapse due to any act or omission by the person who applied for them, or where a decision of the court establishing that there has been no infringement or threat of infringement of the rights established by this Law comes into effect, or where the person, who has applied for provisional measures or measures preserving evidence, does not institute proceedings within a period determined by the court, the defendant shall be entitled to request compensation for any injury caused by application of those

measures.

Article 50⁴. Corrective measures

1. The persons specified in paragraph 1 of Article 50 of this Law shall be entitled to apply to the court and request that goods be recalled, removed from the channels of commerce in such a manner as to avoid any harm being caused to the said persons and to ensure the protection of their rights (e.g. to remake the infringing goods into other goods or to apply similar measures), or to request that the goods, which the court has found to be infringing the rights established by this Law and, in appropriate cases, the materials and implements principally used in the creation or manufacture of the specified objects be destroyed.

2. The measures referred to in paragraph 1 of this Article shall be applied regardless of other requirements of a person, applying for these measures, for compensation of the prejudice suffered as a result of the infringement of his rights. Such measures shall be carried out at the expense of the infringer, without compensating and taking into account proportionality between the seriousness of the infringement and the measure applied as well as the legitimate interests of third parties.

Article 51. Recovery of material damage

1. The procedure for recovery of material damage shall be regulated by the Civil Code and this Law.

2. When assessing the amount of the actual damage (losses) suffered as a result of the infringement of the rights established by this Law, the court shall take into account the substance of the infringement, the amount of the inflicted damage, lost income, incurred expenses, and other important circumstances. Profit made by the infringer may, at the request of the persons specified in paragraph 1 of Article 50 of this Law, be recognized as losses. Goods infringing the rights established by this Law may be transferred to the holders of those rights upon their request.

3. The amount of income lost by the persons specified in paragraph 1 of Article 50 of this Law shall be set by taking into account the amount of income which would have been made if the trade mark protected under this Law had been used legally (i.e. taking account of the royalties which are usually paid for the legal use of the trade mark), as well as the concrete circumstances which might have created conditions for making income (works performed by the right holders, implements used, negotiations for conclusion of contracts concerning the use of the trade mark, etc.).

4. Instead of the recovery of the damage (losses) actually suffered by reason of the infringement of the rights established by this Law, the persons specified in paragraph 1 of Article 50 of this Law may claim the payment which would have been due if the infringer had used the trade mark

legally (i.e. had acquired permission), and where the infringement has been committed intentionally or through gross negligence – the said persons may claim up to twice the amount of such payment.

5. Where the infringer did not knowingly, or with reasonable grounds to know, engage in infringing the rights established by this Law (i.e. there is no fault in his actions), the court may, upon request of the persons specified in paragraph 1 of Article 50 of this Law, order the recovery of profit made by the infringer. A total that the infringer has saved and/or made by infringing the rights established by this Law shall be regarded as the profit made by the infringer. The profit made by the infringer shall be ascertained and recovered regardless of whether or not the right holder would have made the same profit as the infringer. When ascertaining the profit made by the infringer, the right holder must provide only the evidence that would confirm the gross income received by the infringer; the amount of net profit of the infringer (after deducting the expenses) must be proved by the infringer.

Article 51¹. Publication of judicial decision

The court which takes a decision on the infringement of the rights established by this Law may, at the request of the persons specified in paragraph 1 of Article 50 of this Law, order the infringer to disseminate at his own expense the information concerning the adopted decision, including disseminating the decision in full or in part in the mass media or by any other means. A judicial decision or information concerning an adopted decision may be announced after the coming into effect of the decision, unless otherwise established by the court. The manner and extent of dissemination of a judicial decision shall be laid down in this judicial decision. The persons specified in paragraph 1 of Article 50 of this Law may request that the infringer pay in advance into the bank account, indicated by the court, a sum of money necessary to disseminate the information concerning an adopted judicial decision or an adopted judicial decision itself.

Article 52. Application of customs supervision measures

Customs supervision measures determined by legal acts of the European Union and the Republic of Lithuania must be applied to the goods illegally bearing a trade mark (i.e. to the goods infringing the rights established by this Law), which are imported from third countries to the Republic of Lithuania or are exported from it to third countries.

Article 53. Criminal Liability for Infringement of the Rights of the Proprietor of the Mark

Criminal liability for the infringement of the rights of the proprietor of the mark shall be laid down by the Criminal Code.

CHAPTER ELEVEN

FINAL PROVISIONS

Article 54. Transitional Provisions

1. The marks applied for registration prior to the entry into force of this Law shall be registered under the Law of the Republic of Lithuania on Trade Marks and Service Marks of 3 June 1993 No. I-173.

2. The rights of the proprietor of the marks registered prior to the coming into effect of this Law shall be protected under this Law.

Article 55. Recommendation to the Government

The Government shall by 1 January 2001 harmonise legal acts relating to the provisions of this Law.

Article 55¹. Application of the Regulation on the Community Trade Mark

1. The State Patent Bureau shall be the central industrial property office under the Regulation on the Community trade mark.

2. The State Patent Bureau shall approve necessary legal acts related to the application of the Regulation on the Community trade mark.

3. Fees for the actions carried out by the State Patent Bureau after the filing through the State Patent Bureau of an application for the registration of a Community trade mark shall be paid in accordance with the procedure laid down by the Law of the Republic of Lithuania on Law on Fees for the Registration of Industrial Property Objects and the Regulation on the Community trade mark.

Article 56. Entry into Force of this Law

1. This Law, except for Article 55, shall enter into force as of 1 January 2001.

2. Upon entry into force of this Law, the following shall become invalid:

1) the Law of the Republic of Lithuania on Trade Marks and Service Marks (*“Valstybės žinios”* - *“Official Gazette”* 1993, No. 21-507);

2) the Law of the Republic of Lithuania on the Amendment to the Law of the Republic of Lithuania on Trade Marks and Service Marks (*“Valstybės žinios”* - *“Official Gazette”* 1994, No. 89-1722);

3) the Law on the Amendment and Supplement to Article 4 of the Law on Trade Marks and Service Marks (“*Valstybės žinios*” - “*Official Gazette*” 1997, No. 108-2733).

3. Subparagraph 4 of paragraph 2 of Article 49, paragraphs 1-4 of Article 50, Articles 50¹, 50², 50³, 50⁴, 51, 51¹ shall also apply *mutatis mutandis* to the protection of geographical indications.

I promulgate this Law enacted by the Seimas of the Republic of Lithuania

PRESIDENT OF THE REPUBLIC

VALDAS ADAMKUS

Annex to
Republic of Lithuania Law No VIII-1981
of 10 October 2000

EU LEGAL ACTS IMPLEMENTED BY THE LAW ON TRADE MARKS

1. First Council Directive of 21 December 1988 to approximate the laws of the member states relating to trade marks (89/104/EEC).
2. Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark.
3. Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights.