

BELARUS
Trademarks Law

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Title I The Trademark and Service Mark and the Legal Protection Thereof

1. Trademark and Service Mark

(1) The trademark and the service mark (hereinafter referred to as "trademark") are signs that serve to distinguish the goods or services of one natural person or legal entity from the goods or services (hereinafter referred to as "goods") of the same type of another natural person or legal entity.

(2) Signs which may be registered as trademarks are any signs capable of being represented graphically, words including personal names, letters, numerals, figurative elements, combinations of colors, three-dimensional signs including the shape of the goods or their packaging as well as any combination of such signs.

(3) A trademark may be registered in any color or in any combination of colors.

2. Legal Protection of Trademarks

(1) The legal protection of a trademark in the Republic of Belarus shall be based on its official registration with the state institution "National Center of Intellectual Property" of the Republic of Belarus (hereinafter referred to as "the Patent Authority") effected in accordance with the provisions of this Law or under international treaties to which the Republic of Belarus is party.

(2) The trademark may be registered in the name of a legal entity or in the name of a natural person.

(3) The right to the trademark is protected by the State. The registration of a trademark shall give rise to the issue of a trademark certificate. The certificate shall attest the priority date of the trademark and the owner's exclusive right to the trademark for the goods specified in the certificate; it shall contain a representation of the trademark.

3. Exclusive Right to the Trademark

(1) The owner of the trademark shall have the exclusive right of use and disposal thereof, and also the right to prohibit other parties from making use of the trademark.

(2) No one may make use of a trademark that is protected on the territory

of the Republic of Belarus and for which a certificate has been issued without having obtained the authorization of the owner of the trademark.

(3) The manufacture, use, importation, offering for sale, sale and any other form of marketing, or the holding for that purpose, of a trademark or of a product designated by a trademark or of a sign misleadingly similar to a trademark shall constitute infringements of the rights of the owner of the trademark if they occur without authorization and if they relate to goods of the same type or to goods not of the same type designated by a trademark recognized as a well-known trademark in the Republic of Belarus.

4. Absolute Grounds for Refusal of Registration

(1) Those trademarks may not be registered:

1.1 that lack any distinctive features;

1.2 that have become the general use as designation for goods of a particular type;

1.3 that constitute generally accepted symbols or terms;

1.4 that consist exclusively of signs or indications which are used to designate the kind, quality, quantity, properties, intended purpose or value of the goods, or the place and time of their production or sale;

1.5 that represent the shape of the goods or their packaging which results exclusively or mainly from the nature of the goods themselves or which is necessary to obtain a technical result or which gives substantial value to the goods.

(2) The signs or indications referred to in paragraph (1) of this Article may be incorporated in the trademark as unprotected elements, insofar as they do not predominate.

(3) The provisions of paragraph (1) of this Article may not apply in relation to the signs which on the filing date of the application for registration of a trademark have acquired a distinctive character in consequence of the use that has been made of them.

(4) Those trademarks may not be registered that consist exclusively of signs which constitute armorial bearings, flags or emblems of States, official names of States, flags, emblems or abbreviated or full names of international intergovernmental organizations, official control, warranty or assay marks or decorations or other honorary distinctions, or are confusingly similar to such signs. Such signs may, with the

authorization of the competent authorities or the owner, be incorporated in trademarks as unprotected elements.

(5) Those signs may not be registered as trademarks:

5.1 that are false or liable to mislead the consumer as to the product, its place of manufacture or its manufacturer;

5.2 that constitute or consist of an indication of origin for wines or spirits which is protected under international treaties to which the Republic of Belarus is party, identifying wines or spirits not originating in the place indicated by the indication of origin in question;

5.3 that are contrary to the public interest, humanitarian principles or morality.

5. Other Grounds for Refusal of Registration

(1) Those signs may not be registered as trademarks that are identical or misleadingly similar:

1.1 to trademarks registered or filed for registration earlier in the Republic of Belarus in the name of a third party for goods of the same type, and the priority date of which is earlier;

1.2 to trademarks of third parties that are protected in the Republic of Belarus by virtue of international treaties for goods of the same type;

1.3 to trademarks of third parties recognized as well-known in the Republic of Belarus in the manner prescribed by the Patent Authority for goods of any type.

(2) The signs which are misleadingly similar to the trademark referred to in paragraph (1) of this Article may be registered as trademarks on condition that the owner of the trademark agrees to such registration.

(3) Those signs or indications shall not be registered as trademarks that constitute reproductions of:

3.1 trade names (or parts thereof) that are known in the territory of the Republic of Belarus and belong to third parties for goods of the same type;

3.2 industrial designs in which the rights are owned by third parties in the Republic of Belarus, if the priority date of the industrial design is earlier than that of the trademark in respect of which an application for registration has been filed;

3.3 appellations of origin that are protected in the Republic of Belarus;

3.4 titles of scientific, literary or artistic works known in the Republic of Belarus or names of persons or quotations from such works without the

authorization of the owner of the copyright or his successors in title;
3.4-1 titles of registered in the Republic of Belarus mass media without authorization of their founders in respect of similar goods;
3.5 family names, forenames, pseudonyms and derivatives thereof, portraits and facsimiles of persons known in the Republic of Belarus in infringement of their personal moral rights, except with the authorization of those persons or their successors in title;
3.6 certification marks protected according to the procedure established by the law in force.

(4) The conditions for determining whether a trademark is well known as specified in subparagraphs 3.1, 3.4 and 3.5 of paragraph (3) of this Article shall be specified by the Patent Authority and shall be considered on the priority date of the sign applied for registration as a trademark.

6. Application for Registration of a Trademark

(1) The application for registration of a trademark (hereinafter referred to as "the application") shall be filed with the Patent Authority by a natural person or legal entity (hereinafter referred to as "the applicant").

(2) The application may be filed through a Belarusian patent agent.

(3) Foreign legal entities with headquarters abroad or natural persons resident outside the Republic of Belarus, and also their patent agents, shall, in order to secure the registration of trademarks or the prolongation of the term of validity thereof in the Republic of Belarus, act through patent agents registered with the Patent Authority in the established manner.

(4) The application shall relate to one trademark only.

(5) The application shall contain:

- a request for registration of a sign as a trademark, in which the applicant's name and also his headquarters or residence shall be stated;
- the sign in respect of which the application is filed;
- the list of goods for which registration of the trademark is sought, grouped according to the classes of the International Classification of Goods and Services for the Purposes of the Registration of Marks.

(6) The application shall be accompanied by:

- a document attesting payment of the prescribed fee;
- a document attesting the powers of the patent agent if the application is filed through such an agent;
- the rules of the collective mark if the application is filed for the registration of a collective mark.

(7) The requirements to be met by the documents constituting the application and the time limits for the filing of those documents shall be laid down by the Patent Authority.

7. Priority of the Trademark

(1) The priority of a trademark shall be determined by the date of filing of an application with the Patent Authority. The filing date shall be the date of receipt by the Patent Authority of the documents meeting the requirements specified in paragraph (5) of Article 6 of this Law.

(2) The priority of a trademark may be determined by the filing date of the first application made in respect of the said trademark in a foreign country party to the Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised at Brussels on December 14, 1900, at Washington on June 2, 1911, at the Hague on November 6, 1925, at London on June 2, 1934, at Lisbon on October 31, 1958, and at Stockholm on July 14, 1967, and as amended on October 2, 1979, (hereinafter referred to as "Convention priority"), provided that the Patent Authority receives the application within six months following the said date.

(3) The priority of a trademark affixed to a product displayed at an official or officially recognized international exhibition organized on the territory of one of the States party to the Paris Convention for the Protection of Industrial Property may be determined by the date as from which the product in question was on public display at that exhibition (hereinafter referred to as "exhibition priority"), provided that the Patent Authority receives the application within six months following the said date.

(4) The applicant who wishes to avail himself of the right of Convention priority or the right of exhibition priority shall state that fact on filing the application or within two months following the date of receipt of the application by the Patent Authority, and shall file at the same time the documents supporting the validity of his claim, or submit those documents within three months following the date of receipt of the

application by the Patent Authority.

(5) The priority of a trademark under the divisional application shall be determined by the date of priority of a trademark under the initial application filed in accordance with Article 8(7) of this Law.

(6) The priority of a trademark may be determined by the date of priority of the international application for registration of a trademark filed under international treaties to which the Republic of Belarus is party.

8. Examination of the Application for Registration of a Trademark

(1) The examination of the application, which shall include the preliminary examination and the substantive examination, shall be conducted by the Patent Authority in accordance with this Law and with the implementing regulations thereof drawn up by the Patent Authority.

(2) The applicant shall have the right, on his own initiative or at the request of the official examiner, to intervene in person or through his agent in order to settle questions arising in the course of the preliminary examination and the substantive examination.

(3) During any stage in the examination of the application and before the date of registration of the trademark, the applicant shall have the right to supplement, detail or correct the elements of the application on his own initiative.

(4) Where additional elements alter the substance of the sign in respect of which the application is filed or add goods to the list figuring in the application, they shall not be taken into consideration, and the applicant may file them as a separate application.

(5) During the examination of the application, but before the date of registration of the trademark, the applicant shall have the right to file a request with the Patent Authority to change the name of the applicant thereon, on condition that the new applicant gives his consent.

(6) The applicant may request the withdrawal of his application at any stage in the examination thereof, but not after the date of registration of the trademark.

(7) During the examination of the application and before a decision is

taken thereon, the applicant shall have the right to file a divisional application in respect of the same sign for some goods listed in the initial application on the date of filing thereof with the Patent Authority. Divisional applications shall continue to enjoy the filing date of the initial application and the priority date of the trademark concerned by that application.

9. Preliminary Examination

(1) The application shall undergo preliminary examination within two months following the date of its receipt by the Patent Authority.

(2) The preliminary examination shall serve to ensure that the required documents specified in Article 6 of this Law are all present and that they meet the prescribed requirements, and also that the fees have been paid. During the preliminary examination, the applicant may be invited to supplement, detail or correct the elements of the application. Supplemented, detailed or corrected elements shall be submitted to the Patent Authority within three months following the date of receipt of the invitation to do so. That period may be extended at the applicant's request by no more than three months, on condition that the said request is received before the current period expires. If the applicant has not kept to the prescribed period or has not replied to the invitation, the application shall not be taken into consideration.

(3) Depending on the results of the preliminary examination, the Patent Authority decides whether to take or not to take the application into consideration.

(4) If the application is taken into consideration, the Patent Authority shall determine the filing date of the application, and also the date of Convention priority or exhibition priority, provided that the applicant has submitted the necessary elements substantiating the validity of his Convention or exhibition priority claim.

10. Substantive Examination of the Application

(1) The substantive examination shall take place on completion of the preliminary examination.

(2) It shall serve to determine the priority date of the trademark if it has not been determined in the course of the preliminary examination, and to ensure that the claimed sign meets the conditions set forth in

Articles 4 and 5(1) of this Law.

(3) During the examination the Patent Authority shall have the right to invite the applicant to provide more information without which the examination is not possible. The additional information shall be furnished to the Patent Authority within three months following the date of receipt of the invitation. That period may be extended at the applicant's request, on condition that the request is received before the said period expires. If the applicant has not kept to the prescribed period, or has not replied to the invitation, the application shall be deemed to have been withdrawn and the applicant shall be informed accordingly.

(4) The decision to register the trademark or to refuse registration shall be based on the results of the examination.

(5) The decision to register the trademark may be reconsidered by the Patent Authority in the event of receipt of an application with an earlier priority date under Article 7 of this Law for an identical or misleadingly similar sign in respect of goods of the same type.

(6) In the event of disagreement with the decision taken on the substantive examination, the applicant shall have the right, within three months following the date on which he has received the decision, to file a request for reconsideration with the Patent Authority. That period may be extended at the applicant's request, on condition that the request is received by the Patent Authority before the said period expires.

(7) The procedure for extension of the time limits under paragraphs (3) and (6) of this Article shall be set forth by the Patent Authority.

(8) The reconsideration shall take place within two months following the date of receipt of the applicant's request.

11. Appeal against the Decision on the Application

(1) In the event of disagreement with the decision taken on the preliminary examination not to take the application into consideration or with that taken on the reconsideration of the claimed sign, the applicant shall have the right, within three months following the date on which he received the decision, to appeal against it to the Examination Appeal Board of the Patent Authority (hereinafter referred to as "the Appeal Board").

(2) The appeal shall be considered within four months of the date on which it was received. The procedure for consideration of appeals by the Appeal Board shall be laid down by the Patent Authority.

(3) The applicant may appeal to the Supreme Court of the Republic of Belarus against the ruling of the Appeal Board within six months following the date on which he received the ruling.

12. Registration of the Trademark and Issue of the Trademark Certificate

(1) On the basis of the decision to register the trademark, the Patent Authority shall effect registration in the Official Register of Trademarks and Service Marks (hereinafter referred to as "the Register of Trademarks") within one month following the date of receipt of a document attesting payment of the prescribed fee. The particulars concerning the registration of the trademark and any amendment subsequently made to those particulars shall be entered in the Register of Trademarks. The contents of the particulars shall be determined by the Patent Authority.

(2) The Patent Authority shall issue an extract from the Register of Trademarks at the request of any natural person or legal entity.

(3) The trademark certificate shall be issued by the Patent Authority within one month following the date of registration of the trademark in the Register of Trademarks.

13. Term of the Registration

(1) The term of the registration of the trademark shall be 10 years from the date on which the Patent Authority received the application.

(2) The term of the registration of the trademark may be renewed for further periods of 10 years at the request of the owner, filed in the course of the last year of validity of the current term of the registration. For the purposes of the renewal of the term of the registration of the trademark, the owner may, on request and subject to payment of an additional fee, be granted an additional period of six months after the term of the registration expires.

(3) The Patent Authority shall record any renewal of the term of the registration of the trademark in the Register of Trademarks and, at the request of the owner, enter it on the trademark certificate.

14. Amendment of the Registration and Rectification of Errors

(1) The owner of the trademark shall inform the Patent Authority of any amendment to his business name (for legal entity), surname, forename or patronymic (for natural persons) or address, any reduction in the list of goods for which the trademark is registered, any amendment to elements of the trademark that have no effect on its nature and any other amendment concerning the registration of the trademark.

(2) Any amendment shall be recorded in the Register of Trademarks and, at the request of the owner, entered on the trademark certificate.

(3) The Patent Authority may, on its own initiative or at the request of the owner, rectify any grammatical, typographic or other obvious error in the elements of the registration of the trademark.

(4) The registration of the trademark may be divided on the owner's declaration by dividing the goods for which the trademark is registered.

15. Publication of the Particulars of the Registration

The Patent Authority shall publish the particulars concerning the registration of the trademark that have been recorded in the Register of Trademarks in accordance with Article 12 of this Law in the Official Bulletin of the Patent Authority (hereinafter referred to as "the Official Bulletin") within three months following the date of registration of the trademark or the date of recording in the Register of Trademarks of amendments or rectifications concerning the registration.

16. Registration of the Trademark Abroad

(1) Any natural person or legal entity of the Republic of Belarus shall be entitled to have a trademark registered abroad or to effect the international registration thereof.

(2) The application for international registration of the trademark shall be filed in accordance with the international treaties to which the Republic of Belarus is party.

(3) The costs arising from registration of the trademark abroad or from the international registration thereof shall be borne by the applicant or, with his agreement, by any other natural person or legal entity concerned.

17. Fees

(1) Fees shall be payable for the performance of legal acts in relation to the registration of trademarks. Fees may be paid by the applicant, the trademark owner or, with their agreement, by any other natural person or legal entity.

(2) The list of acts for the performance of which fees are payable, the procedure, amount and time limits for the payment of fees shall be determined by the Council of Ministers of the Republic of Belarus.

(3) The conditions governing the application of fees shall be specified by the legislative texts of the Republic of Belarus.

Title II Collective Marks

18. Right to the Collective Mark

The trademark of an association of legal entities, the purpose of which is to designate goods manufactured and/or placed on sale by the association and having common qualitative or other characteristics, shall be considered a collective mark.

19. Registration and Use of the Collective Mark

(1) The application for registration of the collective mark shall be accompanied by the rules thereof which shall specify the business style of the association authorized to register the collective mark in its name, the list of legal entities authorized to use the said mark, the purpose of the registration thereof, the list and the common qualitative or other characteristics of the goods that will be designated by the collective mark, the conditions and the supervisory procedures to which its use is subject, and also the sanctions applicable in the event of violation of the rules of the collective mark.

(2) In addition to the particulars specified in Article 12 of this Law, information on the legal entities authorized to use the collective mark shall be recorded in the Register of Trademarks and entered on the collective mark certificate. That information, together with an extract from the rules of the collective mark that specifies the common qualitative or other characteristics of the goods for which the mark is registered, shall be published in the Official Bulletin by the Patent Authority. The owner of the collective mark shall notify the Patent Authority of any amendment to the rules of the collective mark.

(3) If a collective mark is used on goods that do not have any common qualitative or other characteristics, the validity of the registration may be terminated, either totally or in part, on a ruling of the Supreme Court of the Republic of Belarus made at the request of any third party.

(4) The collective mark or the application for registration thereof may be converted into the trademark belonging to one of the legal entities authorized to use the collective mark in accordance with the rules of the said mark, or into the trademark application. The conditions governing the said conversion shall be laid down by the Patent Authority.

Title III Use of the Trademark

20. Use of the Trademark and Consequences of Failure to Use the Trademark

(1) The affixing of the trademark on goods for which it is registered or on the packaging thereof, by the owner of the trademark or by any person to whom the right to use the trademark has been granted pursuant to a license contract under Article 23 of this Law shall be deemed to constitute use of the trademark.

(2) The mention of the trademark in advertising, in printed publications, on signs or in connection with the display of goods at fairs or exhibitions held in the Republic of Belarus may likewise be deemed to constitute use of the trademark, provided that the failure to use the trademark on goods or the packaging thereof is justified by legitimate reasons.

(3) Persons, whether natural persons or legal entities, who exercise an intermediary activity shall have the right to use their own trademark in conjunction with the trademark of the manufacturer of the goods, or in place of the latter's trademark, if they have so agreed with him by contract.

(4) Legal entities authorized to use the collective mark shall have the right to use at the same time their own trademarks on the goods they manufacture.

(5) Registration of the trademark shall not confer on the owner thereof the right to prohibit third parties from using the said trademark for goods that have been placed on the market in the Republic of Belarus directly by the owner or with his consent.

(6) The validity of the trademark registration may be terminated prematurely in relation to all or some of the goods mentioned in the registration due to non-use of the trademark without justifiable reason continuously during period of any five years from the date of registration on the ground of the decision of the Supreme Court of the Republic of Belarus. The request on previous effect of registration of the trademark may be addressed to the Supreme Court of the Republic of Belarus by a third party on condition that this trademark is not used before forwarding of such a request.

(7) The decision on whether or not to terminate the validity of the trademark

registration prematurely for non-use may be subject to the consideration of evidence submitted by the owner of the trademark to show that the non-use was due to factors beyond his control.

21. Warning Notice

The owner of a trademark may add a warning notice alongside the trademark in the form of the Latin letter "R" or "R" within a circle or of the wording "Trademark" or "Registered Trademark" to the effect that the trademark used is a trademark registered in the Republic of Belarus.

Title IV Transfer of the Trademark

22. Assignment of the Right to the Trademark

(1) The right to the trademark may be contractually assigned by the owner thereof to a natural person or legal entity for either all or some of the goods in respect of which it is registered.

(2) Any assignment of the right to the trademark that might have the effect of misleading the consumer as to the goods or the manufacturer thereof shall not be allowed.

(3) The right to the collective mark shall not be assigned to third parties.

23. Licensing of the Use of the Trademark

(1) The owner of a trademark (licensor) may grant the right to use the trademark to a third party (licensee) under a license contract in relation to all or some of the goods for which the trademark is registered.

(2) The license contract shall contain a clause to the effect that the quality of the licensee's goods shall not be inferior to that of the licensor's goods, and the observance of the said clause shall be ensured by the licensor.

(3) The right to use the collective mark shall not be granted to third parties.

24. Registration of the Trademark Assignment Contract and of the License Contract

The contract for the assignment of a trademark and the license contract shall be registered with the Patent Authority and shall be valid for third parties as from the date of their registration.

Title V End of Legal Protection of the Trademark

25. Invalidation of the Registration of the Trademark

(1) The registration of the trademark may be invalidated:

1.1 entirely or in part at any time during its term if, when it was effected, the conditions specified in Articles 2(1,2), 4, and 5 (3.1, 3.2, 3.4, 3.4-1, 3.5, 3.6) of this Law were not met;

1.2 entirely or in part at any time during the five years following the date of publication of the particulars of the said registration in the Official Bulletin on the grounds specified in Article 5 (1, 3.3) of this Law;

1.3 at any time during its term in the event the trademark has become the generic designation for goods of a particular type;

1.4 entirely or in part at any time during its term if related to registration actions of the owner of the trademark were recognized in the established order as unfair competition.

(2) In the event the Patent Authority receives the application which in accordance with Article 7 of this Law has an earlier date of priority, the registration of the trademark shall be invalidated irrespective of whether the application was received before or after the date of the said registration.

(3) Any person may, within the time limits provided for in paragraph (1) of this Article, file opposition with the Appeal Board against the registration of the trademark. The Patent Authority shall specify the conditions governing the consideration of appeals by the Appeal Board.

(4) The decision of the Appeal Board may be the subject of a further appeal to the Supreme Court of the Republic of Belarus within six months following the date of receipt thereof.

26. Cancellation of the Trademark

(1) The registration of the trademark shall be cancelled:

1.1 on the expiration of the term provided for in Article 13 of this Law;

1.2 on the ground of the decision of the Supreme Court of the Republic of Belarus taken in accordance with Article 20 (6) of this Law;

1.3 in the case of use of the collective mark with respect to goods that do not have common qualitative or other characteristics (Article 19(3) of this Law);

1.4 on filing a written request by the owner of the trademark to renounce

the registration;

1.5 in the case of liquidation of the legal entity or death of the natural person that owns the trademark if a successor in title has not been designated.

(2) The trademark shall be cancelled by the Patent Authority in the event of expiration of the term of the registration or in the event of invalidation thereof. The record concerning cancellation of the registration of the trademark shall be entered in the Register of Trademarks and published by the Patent Authority in the Official Bulletin.

Title VI Final Provisions

27. The Patent Authority

The Patent Authority shall receive applications for the registration of trademarks, undertake the examination thereof, issue certificates valid throughout the territory of the Republic of Belarus, ensure, within the limits of its competence, respect for legislation on trademarks, devise general rules, interpret and clarify the provisions thereof, provide methodical assistance and its services to interested natural persons or legal entities.

28. Consideration of Disputes Arising from Infringements of the Legislation on Trademarks

Disputes arising from infringements of the legislation on trademarks shall be considered within their jurisdiction by the Appeal Board or the Supreme Court of the Republic of Belarus.

29. Liability of Legal Entities or Natural Persons for Infringements of the Legislation on Trademarks

(1) Any person who, in a manner contrary to this Law, uses the trademark or the sign misleadingly similar to the trademark for goods of the same type shall incur liability in accordance with the legislation of the Republic of Belarus.

(2) The unlawful use of a trademark may give rise, independently of the filing of a restraining injunction or a petition seeking compensation for damages sustained, to the following additional civil sanctions:

2.1 removal from the goods or the packaging thereof of the unlawfully used trademark or of the sign misleadingly similar to the trademark, or destruction of existing reproductions of the trademark or of the sign misleadingly similar to the trademark;

2.2 seizure or destruction of the goods for which the trademark was unlawfully used;

2.3 imposition of a fine for the benefit of the injured party amounting to the value of the goods for which the trademark was unlawfully used;

2.4 transfer of the goods that unlawfully bear the trademark for the benefit of the injured party.

(3) The remedies under paragraph (2) of this Article concerning persons guilty of the unlawful use of the trademark shall be applied as prescribed by the laws of the Republic of Belarus.

30. Rights of Foreign Natural Persons and Legal Entities and Stateless Persons

Foreign natural persons and legal entities and stateless persons shall enjoy the rights provided for in this Law and in other legislative acts on trademarks of the Republic of Belarus, and have liability, on the same footing as natural persons or legal entities of the Republic of Belarus, except as otherwise provided in the Constitution of the Republic of Belarus, in other laws and in international treaties.

31. International Treaties

The rules of law contained in the international treaty on the protection of industrial property in force in the territory of the Republic of Belarus shall be part of the applicable domestic legislation and have a direct effect in the territory of the Republic of Belarus, except to the extent where it follows from the international treaty that the adoption of an internal national act is required to implement the said rules of law, and shall have the statutory force of the legal act by which the Republic of Belarus agrees that the provisions of the relevant international treaty are binding on it.