

Issue 01/09

To keep you up-to-date with the latest economic and financial developments, this bulletin provides information that may affect the operation of your business in Albania.

Law no. 9947 dated 07.07.2008 “On Industrial Property”

On November the 1st 2008, entered into force the new Law no. 9947, dated 07.07.2008 “On Industrial Property” (the Law) which abrogates the previous Law no. 7819, dated 1994 “On Industrial Property” as amended.

According to the provisions of the Law, constitute elements of a trademark, any sign or any combination of signs graphically represented, capable of distinguishing the goods or services of a natural/legal person from those of another natural/legal person. Another element of the trademark is its distinctive character that permits the customer to recognize certain set of goods or services from another set of the same. For the purpose of the Law, a collective trademark is a mark registered by an industrial or commercial organization, association or other similar entities and which is used to designate the goods and services of such subjects. The provisions of the Law regarding trademarks are also applicable to the collective trademarks.

I Registration Procedures

Pursuant to the provisions of the Law, the applicant (natural/legal person) should file separate requests for each sign for which protection is requested. The request along with the document attesting the payment of the relevant fee must contain the following: (i) name and address of the applicant; (ii) sample of the trademark; (iii) list of goods and/or services for which the registration is required pursuant to the international classification of goods and services; and (iv) declaration requiring priority (if applicable).

The Albanian General Directorate for Patents and Trademarks (the Directorate) is the authority entitled to examine and register the trademarks. The Board of Appeal is the structure created within the Directorate which is entitled to examine any claims regarding trademarks. Decisions of the Board of Appeal are subject to appeal in front of the court.

The Directorate, within 6 months from the filing date, provided that the request is duly filed and filled, resolves on the approval or rejection of the registration. In case of approval the Directorate registers the trademark with the Register of Trademarks and provides the applicant, with the certificate of registration.

Afterwards, the registered trademark is published on the Directorate's Bulletin.

The trademark is registered for period of 10 years (i.e. from the filing date) perpetually renewable for same periods.

II Effects of Registration

The owner of a registered trademark has the exclusive right of use of the same. In this view the owner of the registered trademark, upon agreement, may grant exclusive or non-exclusive license to third parties to use the same (license agreement) or transfer the property title over the trademark to third parties. The abovementioned agreements should be signed by the parties and filed with the Register of the Trademark.

The rights related to the registered trademark should be considered lost and the trademark revoked in case of:

- non-use of the trademark for 5 consecutive years;
- silent acceptance of usage by third parties of the trademark;

Furthermore, the court upon a third party claim, invalidates the registration of the trademark on the ground that the registration does not comply with the requirements set forth by the Law such as the missing of the distinctive character, is identical to a previous registered trademark, conflicts with a public interest etc. Any invalidated registration shall be considered inexistent as from the filing date.

III Exercise of the rights related to the registered trademark

The new Law provides for a different range of actions in order to protect owner of the registered trademark.

- Action before the court

The owner of the registered trademark, the licensee, the authorized user of a collective trademark (the right holder) can address the court for the infringement of the intellectual property rights and claim the following:

- The prohibition of further actions of infringement. The recall from the circulation of the goods constituting infringement, or their destruction in case the recall is not possible.
- The seizure of the facilities used for the manufacture of the goods constituting infringement.
- The publication of the court decision in the public media at the expenses of the infringer.

The lawsuit for the infringement of the rights should be filed within 3 years from the date the right holder becomes aware of the infringement and the infringer. In addition, the Law provides for preliminary measures as further actions in favor of the right holder.

The right holder has the right to ask the court ordering the cessation of an actual or imminent infringement of the intellectual property rights. The right holder must initiate the civil proceedings for the infringement within 15 days from the date the preliminary measures are pronounced by the court.

- Action before the custom authorities and the supervisory market authority

The owner of a registered trademark may file a request/claim with the custom authorities or the relevant supervisory market authority (the Authorities), for any imported goods or for those already in circulation in the market. Such authorities are obliged to verify and eventually impede the customs clearance or remove the said goods from the market, except in case the importer or the entrepreneur are provided with original documentation.

To be noted that the “simplified procedure” for the actions before custom authorities is provided in the Decision of Council of Minister no 547 dated 01.05.2008 “On some changes in the Decision of Council of Minister no.205 dated 13.04.1999 “On implementing the provisions of Custom Code”.

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