

## LAW ON MARKS AND GEOGRAPHICAL INDICATIONS

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### Chapter I - GENERAL PROVISIONS

#### Subject Matter

**Art. 1.** This Law governs the conditions and procedures for the registration of marks and geographical indications, the rights arising therefrom and the protection of those rights.

#### Field of Application

**Art. 2. (1)** The provisions of this Law shall apply to Bulgarian natural persons and legal entities and to foreign natural persons and legal entities from States party to international treaties to which the Republic of Bulgaria is also party.

**(2)** With regard to foreign natural persons and legal entities from other countries, this Law shall apply on the basis of reciprocity at the discretion of the Patent Office.

#### Representation

**Art. 3. (1)** Any person having the right under this Law to conduct business with the Patent Office may do so either in person or through a local industrial property agent.

**(2) (amended - State Gazette No. 43/2005, in force since 21.08.2005)** Those persons provided for in paragraph (1) who have no residence or headquarters in the Republic of Bulgaria shall conduct business with the Patent Office through a local industrial property agent.

#### Fees

**Art. 4. (suppl. - State Gazette No. 43/2005, in force since 21.08.2005, amended – State Gazette No. 73/2006, in force since 06.10.2006)** The Patent Office shall collect fees for: filing of applications; priority; registration; issue of certificates; acceleration of examination as to substance; renewal of registration; entries; correction of errors; appeals against rejections, revocation and invalidation; extension of time limits; publications of the application, registration and entries; filing of applications for international registration; forwarding of Community trademark applications; requests to determine whether a mark is well-known or with a reputation; publication of a mention about a mark being determined as well-known or having a reputation; information on marks or geographical indications filed for registration; enquiries and extracts from the State registers, under a tariff approved by the Council of Ministers.

#### State Register of Marks

**Art. 5.** The State Register of marks shall be kept by the Patent Office and shall contain data on all mark registrations and all subsequent entries relating thereto.

#### State Register of Well-Known Marks and Marks With a Reputation

**Art. 5a. (new - State Gazette No. 73/2006, in force since 06.10.2006)** The Patent Office shall keep a Register where entries shall be made of all marks determined as well-known or having a reputation in the territory of the Republic of Bulgaria.

#### State Register of Geographical Indications

**Art. 6.** The State Register of Geographical Indications shall be kept by the Patent Office and shall contain data on all registrations of geographical indications, entries pertaining to users and all subsequent changes relating thereto.

#### Access to the State Registers

**Art. 7. (suppl. - State Gazette No. 73/2006, in force since 06.10.2006)** The State Registers provided for in Articles 5, 5a and 6 shall be public. Any person may

request information or an extract therefrom.

## **File**

**Art. 8. (1)** The Patent Office shall keep a file on every mark or geographical indication, which shall consist of all the registration documents and subsequent entries.

**(2)** The Patent Office shall provide other parties with information on a mark or geographical indication filed for registration on instructions from the President of the Office.

**(3)** The information provided under paragraph (2) shall include only such data as is published on registration of the mark or geographical indication.

## **Chapter II - MARKS**

### **SECTION I - REGISTRATION**

#### **Definition**

**Art. 9. (1)** Marks are signs that are capable of distinguishing the goods or services of one person from those of other persons and can be represented graphically. Such signs may be words, including the names of persons, or letters, numerals, drawings, figures, the shape of goods or of their packaging, a combination of colours, sound signals or any combination of such elements.

**(2)** A mark may be a trademark, a service mark, a collective mark or a certification mark.

#### **Acquisition of the Rights in a Mark**

**Art. 10. (1)** The rights in a mark shall be acquired by registration as of the filing date of the application.

**(2)** The first to file shall have the right to register.

**(3)** The right to a mark shall be an exclusive right.

#### **Absolute Grounds for Refusal of Registration (title amended – State Gazette No. 73/2006, in force since 06.10.2006)**

**Art. 11. (1)** The following shall not be registered:

(i) signs which are not marks within the meaning of Article 9(1);

(ii) **(amended - State Gazette No. 43/2005, in force since 21.08.2005)** marks which are devoid of any distinctive character;

(iii) **(suppl. - State Gazette No. 43/2005, in force since 21.08.2005)** marks which consist exclusively of signs or indications that have become customary in the current language or in the established practices of the trade in the Republic of Bulgaria with respect to the goods or services filed for registration;

(iv) **(amended - State Gazette No. 43/2005, in force since 21.08.2005)** marks which consist exclusively of signs designating the kind, quality, quantity, intended purpose, value, geographical origin, time or process of production of the goods or the manner of rendering of the services, or other characteristics of the goods or services;

(v) signs which consist exclusively of:

(a) the shape which results from the nature of the goods themselves;

(b) the shape of goods which is necessary to obtain a technical result;

(c) the shape which gives substantial value to the goods;

(vi) marks which are contrary to public policy or to accepted principles of morality;

(vii) marks which may deceive the consumers as to the nature, quality or

geographical origin of the goods or services;  
(viii) **(amended - State Gazette No. 43/2005, in force since 21.08.2005)** marks which consist of or include escutcheons, flags or other emblems of States party to the Paris Convention, or imitations thereof, as well as escutcheons, flags or other emblems or the full or abbreviated official names of international intergovernmental organizations;  
(ix) **(suppl. - State Gazette No. 43/2005, in force since 21.08.2005)** marks which consist of or include official control and warranty signs and stamps where such signs and stamps are used to mark identical or similar goods;  
(x) **(deleted - State Gazette No. 43/2005, in force since 21.08.2005)**  
(xi) **(amended - State Gazette No. 28/2005, amended – State Gazette No. 94/2005, in force since 25.11.2005)** marks which consist of or include the name or a representation of historical and cultural monuments of the Republic of Bulgaria, as specified by the Ministry of Culture;  
(xii) **(deleted - State Gazette No. 43/2005, in force since 21.08.2005)**

**(2)** The provisions of items (ii), (iii) and (iv) of paragraph (1) shall not apply where the mark, through use, has become distinctive in relation to the goods or services for which registration is sought.

**(3) (amended - State Gazette No. 43/2005, in force since 21.08.2005)** The provisions of items (viii), (ix) and (xi) of paragraph (1) shall not apply where the consent of the relevant competent authority has been obtained.

#### **Relative Grounds for Refusal (title amended – State Gazette No. 73/2006, in force since 06.10.2006)**

**Art. 12. (1)** A mark shall not be registered:

- (i) if it is identical with an earlier mark, and the goods or services of the mark applied for registration and those of the earlier mark are identical;
- (ii) if because of its identity with or similarity to an earlier mark and the identity or similarity of the goods or services covered by the two marks there exists a likelihood of confusion on the part of the consumers; the likelihood of confusion includes the likelihood of association with the earlier mark;
- (iii) if it consists of a geographical designation or derivatives thereof.

**(2)** For the purposes of paragraph (1), "earlier mark" means:

- (i) a registered mark with an earlier filing date or an earlier priority date, as appropriate;
- (ii) a mark applied for registration with an earlier filing date or an earlier priority date, as appropriate, if it is registered;
- ((iii) a mark which is well known in the territory of the Republic of Bulgaria on the filing date or priority date, as appropriate, of the mark.

**(3) (amended - State Gazette No. 43/2005, in force since 21.08.2005)** A mark shall not be registered if it is identical with or similar to an earlier mark and is intended for goods or services that are not identical with or similar to those for which the earlier mark is registered, where that earlier mark is well known in the territory of the Republic of Bulgaria and where use without due cause of the mark applied for registration would take unfair advantage of, or be detrimental to, the distinctive character or repute of the earlier mark.

**(4)** The provisions of paragraph (1)(ii) and paragraph (3) shall not apply where the consent of the holder of the earlier mark has been obtained.

#### **SECTION II – CONTENTS OF THE EXCLUSIVE RIGHT IN A MARK (title amended – State Gazette No. 73/2006, in force since 06.10.2006)**

##### **Rights Conferred by a Mark**

**Art. 13. (1)** The right in a mark shall comprise the right of its holder to use it and dispose of it, and to prevent third parties not having his consent from using in the course of trade:

- (i) any sign which is identical with the mark in relation to goods or services

which are identical with those for which the mark is registered;

(ii) **(suppl. - State Gazette No. 43/2005, in force since 21.08.2005)** any sign where, because of its identity with or similarity to the mark and the identity or similarity of the goods or services covered by the mark and the sign, there exists a likelihood of confusion on the part of the consumers; the likelihood of confusion includes the likelihood of association between the sign and the mark;

(iii) **(amended - State Gazette No. 43/2005, in force since 21.08.2005)** any sign which is identical with or similar to the mark in relation to goods or services which are not identical with or similar to those for which the mark is registered, where the earlier mark has a reputation in the territory of the Republic of Bulgaria and where use of that sign without due cause would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier mark.

**(2) (amended - State Gazette No. 43/2005, in force since 21.08.2005; amended – State Gazette No. 73/2006, in force since 06.10.2006)** For the purposes of paragraph (1), “using in the course of trade” means:

- (i) affixing the sign to the goods or to the packaging thereof;
- (ii) offering the goods, placing them on the market or stocking them for these purposes under that sign, or offering or supplying services thereunder;
- (iii) importing or exporting the goods under that sign;
- (iv) using the sign on business papers and in advertising.

**(3) (amended – State Gazette No. 73/2006, in force since 06.10.2006)** The exclusive right shall have effect with regard to third bona fide parties as from the date of publication of the registration.

#### **Limitation of the Effects of a Mark**

**Art. 14.** A mark shall not entitle the proprietor to prohibit a third party from using the following in the course of trade, provided that such use is not contrary to the honest practices of the trade:

- (i) his own name or address;
- (ii) indications concerning the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of the goods or of rendering of the services, or other characteristics of the goods or services;
- (iii) the mark where it is necessary to indicate the intended purpose of the goods or services, in particular as accessories or spare parts.

#### **Exhaustion of the Rights Conferred by a Mark**

**Art. 15. (1) (amended – State Gazette No. 73/2006, in force since the date of Accession of the Republic of Bulgaria to the European Union)** A mark shall not entitle the proprietor to prohibit its use in relation to goods or services which have been put on the market in the territory of the European Union member states, respectively of the European Economic Area, under that mark by the proprietor or with his consent.

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

#### **Jointly Held Marks**

**Art. 16. (1)** A mark may be held by two or more person.

**(2)** Each holder may use the mark without the consent of the other holders and without accounting to them for that use, unless otherwise agreed in writing.

#### **Notice of Registration**

**Art. 17.** When using the mark, the proprietor may indicate that it is registered by putting a circled letter R alongside it.

## Reproduction of Marks in Works of Reference

**Art. 18.** If the reproduction of a mark in dictionaries, encyclopaedia or other reference works gives the impression that the mark constitutes the generic name of the goods or services for which it is registered, its proprietor may oblige the publisher of the reference work in question to indicate, at the latest in the next edition of the publication, that the mark is a registered mark.

## Obligation to Use the Mark

**Art. 19. (1)** If, within a period of five years following registration, the proprietor has not put the mark to genuine use on the territory of the Republic of Bulgaria in connection with the goods or services in respect of which it is registered, or if such use has been suspended for an uninterrupted period of five years, the registration may be revoked, unless there are legitimate reasons for non-use.

**(2)** In addition to the use referred to in Article 13(2), the following shall also constitute genuine use within the meaning of paragraph (1):

- (i) use of the mark by the proprietor in a form which does not differ materially from the form in which the mark was registered;
- (ii) affixing of the mark to goods or to the packaging thereof in the Republic of Bulgaria, regardless of the fact that they are intended solely for export purposes.

**(3)** Use of the mark with the consent of the proprietor shall be deemed to constitute use by the proprietor.

## Term of Validity of Registration

**Art. 20. (1)** Marks shall be registered for a period of ten years following the filing date of the application.

**(2)** Registration may be renewed, in accordance with Article 39, for an unlimited number of further ten-year periods.

## SECTION III – DISPOSITION OF THE RIGHTS IN MARKS

### Transfer of the Right in a Mark

**Art. 21. (1)** A mark may be transferred, independently of any corporate transfer, in respect of all or some of the goods or services for which it is registered.

**(2)** Jointly held marks shall be transferred only with the written consent of all of the proprietors, unless otherwise agreed.

**(3)** The transfer shall be recorded in the State Register at the request of one of the parties, the request being accompanied by a transfer document. The new holder shall be given a certificate.

**(4) (amended - State Gazette No. 43/2005, in force since 21.08.2005)** Where it emerges from the transfer document that, owing to the transfer of the mark, users are liable to be confused as to the nature, quality or geographical origin of the goods or services, the transfer shall not be recorded, unless it is restricted to those goods or services that are not likely to cause confusion.

**(5)** The transfer shall have effect vis-à-vis third parties as from the date on which it is entered in the State Register.

**(6)** All documents of which the proprietor is to be informed shall be addressed to the person most recently recorded as the proprietor in the State Register.

**(7)** The provisions of paragraphs (1), (2) and (4) shall apply also to the transfer of applications for registration.

## License Agreement

**Art. 22. (1)** The proprietor of a mark may permit the use of his mark in respect of all or some of the goods or services for which it is registered in all or part of the territory of the Republic of Bulgaria by means of a written license agreement.

**(2)** The use of a jointly held mark shall be permitted with the written consent of all the proprietors, unless otherwise agreed.

**(3)** A license may be exclusive or non-exclusive. Where the agreement does not specify one form or the other, the license shall be considered non-exclusive.

**(4)** The holder of an exclusive license shall not be entitled to grant licenses with the same subject matter to other persons. He shall be entitled to use the mark only to the extent explicitly agreed upon.

**(5) (amended - State Gazette No. 43/2005, in force since 21.08.2005)** A license agreement shall be recorded in the State Register at the request of one of the parties, the request being accompanied by an extract from the license agreement with data identifying the licensee and the licensor, the mark and its registration number and the term of the license agreement, with the signatures and seals of both parties affixed thereto. The Patent Office shall issue a certificate of recording.

**(6)** The license agreement shall have effects vis-à-vis third parties as from the date on which it is entered in the State Register.

#### **The Rights in a Mark as an Object of Security**

**Art. 22a. (New - State Gazette No. 43/2005, in force since 21.08.2005) (1)** The rights in a mark may be an object of security in a lodged or future claim. At the request of the claimant and without notifying the defendant, the court may allow some of the following security measures as well:

1. enjoin the proprietor or the licensee from using the rights in the mark;
2. enjoin the proprietor from disposing of the rights in the mark.

**(2)** Security shall be recorded in the State Register of Marks at the request of one of the parties to the claim.

**(3)** The request shall contain data identifying the mark proprietor and the person the security is intended for, as well as data concerning the mark and the kind of the security measure. The request shall be accompanied by the security establishment document.

**(4)** Security shall have effect vis-à-vis third parties as from the date on which it is entered in the State Register of Marks kept by the Patent Office.

#### **The Rights in a Mark as an Object of Registered Pledge**

**Art. 22b. (New - State Gazette No. 43/2005, in force since 21.08.2005) (1)** The rights in a mark may be an object of registered pledge.

**(2)** The provisions of Articles 26 to 31 of the Registered Pledges Law shall apply to the entry of the registered pledge into the State Register of Marks. The pledger shall be given a certificate.

**(3)** The pledge shall have effect vis-à-vis third parties as from the date on which it is entered in the State Register of Marks kept by the Patent Office.

#### **Incorporation of the Rights in a Mark into the Bankrupts Estate**

**Art. 22c. (New - State Gazette No. 43/2005, in force since 21.08.2005) (1)** The rights in a mark shall be incorporated into the bankrupts estate in bankruptcy proceedings against the proprietor.

**(2)** The fact of the mark being incorporated in the bankrupts estate shall be recorded in the State Register of Marks at the request of one of the parties to the proceedings

and shall be published in the Official Bulletin of the Patent Office.

## **SECTION IV - LAPSE OF REGISTRATION, REVOCATION AND INVALIDATION OF REGISTRATION**

### **Lapse of registration**

**Art. 23. (1)** The validity of a registration shall lapse on:

- (i) expiry of the term referred to in Article 20;
- (ii) surrender by the holder;
- (iii) final liquidation of the legal entity holding the registration where there is no transfer.

**(2) (amended - State Gazette No. 43/2005, in force since 21.08.2005)** Lapse under paragraph (1)(iii) shall take place at the request of a legally interested party.

**(3)** Expiry of the term of validity of a registration shall cause the rights in the mark to lapse.

### **Surrender of Rights in Marks Incorporating Registered Geographical Indications**

**Art. 23a. (New - State Gazette No. 43/2005, in force since 21.08.2005) (1)** The registration of a mark incorporating a registered geographical indication shall lapse on:

1. lapse of the legal protection of the geographical indication;
2. invalidation of the registration of the geographical indication; or
3. cancellation of the entry of the mark proprietor as a user of the geographical indication.

### **Surrender of Rights**

**Art. 24. (1)** The proprietor of a mark may surrender the mark in respect of all or some of the goods or services for which it is registered by means of a written declaration filed with the Patent Office.

**(2)** The surrender of rights shall have effect as from the date on which it is entered in the State Register.

**(3)** If there is a license agreement on record, surrender shall only be entered if the proprietor of the mark furnishes proof that he has notified the licensee of his intention to surrender it. Entry of the surrender shall be effected on expiry of two months from the date of furnishing the proof.

**(4)** Surrender of rights by one or more of the joint proprietors of a mark shall not terminate the validity of the registration for the remainder of the joint proprietors.

### **Revocation of Registration**

**Art. 25. (1) (amended - State Gazette No. 43/2005, in force since 21.08.2005)** Any party may request revocation of a registration if:

- (i) the mark has not been used as provided in Article 19;
- (ii) as a result of the action or inaction of the proprietor the mark has become a common name for the product or service in respect of which it is registered;
- (iii) the use of the mark by the proprietor or by another person authorized by him in respect of the goods or services for which it is registered is made so that users are misled as to the nature, quality or geographical origin of the goods or services.

**(2)** Paragraph (1)(i) shall not apply if the proprietor of the mark has initiated or resumed genuine use of his mark within the period between the expiry of the five-year term and the filing date of the revocation request. The start or resumption of the use within three months before the filing date of the revocation request shall not be taken into account, if the preparations for such use or the resumption thereof were made after the proprietor learned of the likelihood of such a request being filed.

**(3)** Where the revocation request concerns only some of the goods or services, the

registration shall be revoked in respect of those goods or services only.

### Invalidation of Registration

**Art. 26. (1) (amended - State Gazette No. 43/2005, in force since 21.08.2005)** Any person may request invalidation of the registration of a mark where it has been registered in violation of the provisions of Articles 2 and 11.

**(2)** Where the mark has been registered in violation of Article 11(1)(ii), (iii) or (iv), the registration may nevertheless not be declared invalid if the proprietor offers proof that, as a result of the use made of it, the mark has acquired distinctive character in relation to the goods or services for which it is registered.

**(3) (amended - State Gazette No. 43/2005, in force since 21.08.2005)** The registration of a mark shall be declared invalid at the request of any legally interested party if:

- (i) the mark is registered in violation of Article 12;
- (ii) **(deleted- State Gazette No. 43/2005, in force since 21.08.2005);**
- (iii) the mark is registered in the name of an industrial property agent or representative of the proprietor without the latter's consent;
- (iv) the applicant has acted in bad faith when filing the application, that fact having been established by a valid court ruling;
- (v) the use of a mark is liable to be prohibited by virtue of an earlier right of another person, that earlier right enjoying protection under another law, namely:

- a) the right to one's name and likeness;
- b) copyright;
- c) a plant variety or animal breeder's right;
- d) an industrial property right

(vi) **(new - State Gazette No. 43/2005, in force since 21.08.2005)** the mark consists of or contains the name of another person's firm which was registered or used in the Republic of Bulgaria prior to the filing date of the application for registration in connection with identical or similar goods or services.

**(4)** A mark may also be declared invalid *ex officio* by the Patent Office where it has been registered in violation of Articles 11 and 12.

**(5)** Invalidation of a registration under paragraph (3)(i) shall not take place if the earlier mark has not been used within the meaning of Article 19.

**(6) (amended - State Gazette No. 43/2005, in force since 21.08.2005)** Invalidation of a registration under paragraph (3)(iii) shall not take place, and the mark shall be transferred to the person legally concerned, at the request of that person.

**(7) (amended - State Gazette No. 43/2005, in force since 21.08.2005)** Invalidation of a registration under paragraph (3)(i) and (v) shall not take place provided that the proprietor of the earlier mark, respectively the holder of the earlier right, gives his consent during the invalidation procedure.

**(8)** Where the grounds for invalidation concern only some of the goods or services, the registration shall be declared invalid in respect of those goods or services only.

### Restriction Due to Acquiescence

**Art. 27. (1)** Where the proprietor of an earlier mark within the meaning of Article 12(2) has acquiesced for a period of five successive years in the use of a later mark despite being aware of that use, he shall not be entitled to invoke his earlier mark to request invalidation of the later mark or oppose its use in respect of the goods or services for which it has been used unless registration of the later mark was applied for in bad faith.

**(2)** Paragraph (1) shall apply also to proprietors of earlier marks within the meaning of Article 12(3) or earlier holders of rights within the meaning of Article 26(3)(v).

**(3)** In the cases referred to in paragraphs (1) and (2), the proprietor of the later mark



shall not be entitled to oppose the use of the earlier mark, while the proprietor of the earlier mark may not invoke his right to request invalidation of the later mark.

#### **Legal Effects of Revocation and Invalidation**

**Art. 28. (1)** Revocation of a registration under Article 25(1)(i) shall be effective as of the beginning of the five-year period of non-use.

**(2)** Revocation of a registration under Article 25(1)(ii) or (iii) shall be effective as of the filing date of the revocation request.

**(3)** Invalidation of a registration shall be effective as of the filing date of the application.

**(4)** Revocation and invalidation of a registration shall not affect:

- (i) enforced court decisions concerning infringement in so far as they have been executed prior to the revocation or invalidation;
- (ii) license agreements executed prior to the revocation or invalidation, unless otherwise agreed.

#### **SECTION V - COLLECTIVE AND CERTIFICATION MARKS**

##### **Collective Marks**

**Art. 29. (1) (supplemented - State Gazette No. 43/2005, in force since 21.08.2005)** Collective marks are marks held by an association of producers, traders or service providers, the association being a legal entity. They serve to distinguish the goods or services of the association members from the goods or services of other persons.

**(2)** The association must adopt rules for the use of collective marks that specify: the persons entitled to use the mark; the criteria for membership of the association; the conditions governing use of the mark and the grounds on which an association member may be prohibited from using the mark.

**(3)** The rights in a collective mark shall be non-transferable. Persons who are not members of the association may not obtain permission to use the collective mark.

##### **Certification Marks**

**Art. 30. (1) (amended - State Gazette No. 43/2005, in force since 21.08.2005)** Certification marks attest the material, manner of manufacture, quality or other characteristics of the goods or services produced or offered with the consent and under the supervision of the proprietor of the mark.

**(2) (amended - State Gazette No. 43/2005, in force since 21.08.2005)** The proprietor of a certification mark shall adopt rules for the use thereof that specify: the quality, material or other characteristics of the goods or services; the control measures taken by the proprietor and the sanctions imposed by him.

**(3)** The proprietor of a certification mark shall not be entitled to use it to mark the goods that he produces or the services that he renders.

**(4)** The registration of a certification mark may be revoked, where the proprietor thereof has used it to mark goods produced or services rendered by him.

##### **Specific Provisions (title amended – State Gazette No. 43/2005, in force since 21.08.2005)**

**Art. 31. (1)** The proprietor of a collective or certification mark shall provide the Patent Office with the rules for its use and with information on any changes made to those rules. Such changes shall be effective as of the date on which they are communicated to the Patent Office.

**(2)** In addition to the circumstances provided for in Article 25, the registration of a collective or certification mark may be revoked also where the proprietor has permitted or acquiesced to a use in violation of the rules for use of the mark.

**(3)** A collective or certification mark the registration of which is revoked or terminated

shall be an obstacle to the registration of an identical or similar mark for identical or similar goods or services in the name of another person for three years following the publication of the revocation or termination.

**(4) (new - State Gazette No. 43/2005, in force since 21.08.2005)** The Patent Office shall provide access to the rules for use of collective or certification marks.

## **SECTION VI - PROCEEDINGS BEFORE THE PATENT OFFICE**

### **Application**

**Art. 32. (1)** Applications for the registration of marks shall be filed with the Patent Office.

**(2)** An application shall relate to one mark intended for goods and/or services in one or more classes of the International Classification.

**(3)** An application shall contain;

- (i) a request for registration;
- (ii) name and address of the applicant;
- (iii) a representation of the mark;
- (iv) a list of the goods and/or services in respect of which the registration is requested.

**(4)** Where the application relates to a collective or certification mark, the rules for use shall be filed together with the other documents provided for in paragraph (3).

**(5)** The application shall meet any other requirements that may be laid down in an ordinance of the Council of Ministers.

**(6)** The application shall be accompanied by a document certifying payment of the prescribed fees.

**(7)** The application documents and data shall be filed in Bulgarian.

### **Filing date**

**Art. 33. (1)** The filing date of an application shall be the date on which documents containing the information specified in Article 32(3) and (4) are received at the Patent Office.

**(2)** Where the documents are filed in a language other than Bulgarian, the filing date shall not change in so far as a Bulgarian translation thereof is filed within a period of three months following that date.

### **Right of Priority**

**Art. 34. (1)** An application shall enjoy a right of priority over subsequent applications for identical or similar marks in respect of identical or similar goods or services as of the date of filing of the application with the Patent Office within the meaning of Article 33(1).

**(2)** The applicant shall enjoy a right of priority as of the date of a preceding application, provided that:

- (i) the preceding application is regularly filed in a State party to the Paris Convention or a Member of the World Trade Organization;
- (ii) the preceding application is a first application within the meaning of Article 4 of the Paris Convention and relates to the same mark and the same goods or services;
- (iii) the application is filed with the Patent Office within six months following the filing date of the preceding application;
- (iv) priority is claimed within two months from the filing date of the application with a mention of the date and country of the preceding application;
- (v) within three months from the filing date of the application, the applicant pays the prescribed priority fee and submits a priority document issued by the competent authority of the country of filing of the preceding application.

**(3)** A regularly filed application in terms of paragraph (2)(i) is any application bearing a filing date, whatever may be the outcome thereof.

**(4)** The right of exhibition priority shall be deemed to exist as from the date of display of the goods or services bearing the mark applied for at an official or officially recognized exhibition, provided that:

- (i) the application is filed within six months following the date of the first display of the goods or services;
- (ii) the application relates to the same mark and the same displayed goods or services;
- (iii) priority is claimed within two months from the filing date of the application with a mention of the date of display and the country in which the exhibition was held;
- (iv) within three months following the filing date of the application, the applicant pays the prescribed priority fee and submits a document issued by the exhibition officials certifying the date of display of the goods or services bearing the mark applied for.

#### **Claim of Colour**

**Art. 35.** The claim of a colour or a combination of colours shall be granted if filed together with the application.

#### **Examination as to Form**

**Art. 36. (1)** Every application shall be subjected to examination for compliance with the provisions of Article 33 concerning the assignment of a filing date. In the event of non-compliance with the said provision, the documents received shall be returned to the applicant.

**(2) (amended - State Gazette No. 43/2005, in force since 21.08.2005)** An application bearing a filing date shall be examined as to whether it is accompanied by the document certifying payment of the prescribed fees in terms of Article 32(6). In case there is no such document attached, the applicant shall be allowed three months within which to remedy the deficiency. If no fees are paid within that period, the application shall be deemed to be withdrawn.

**(3) (new - State Gazette No. 43/2005, in force since 21.08.2005)** Within two months following the filing date of the document certifying payment of the fees, the application shall be examined as to its compliance with the provisions of Article 32(2), (5) and (7). Where the application relates to a collective or certification mark, examination shall be conducted for compliance of the rules of use with the provisions of Article 29(2), respectively Article 30(2). In case of deficiencies, the applicant shall be allowed three months within which to remedy them.

**(4) (former paragraph (3), amended - State Gazette No. 43/2005, in force since 21.08.2005)** Where the application does not meet the requirements of Article 32(2) and the applicant divides the application within the period provided for in the third sentence of paragraph (3), the resulting divisional applications shall keep the filing date or the priority date, as appropriate, of the original application.

**(5) (former paragraph (4), amended - State Gazette No. 43/2005, in force since 21.08.2005)** If the applicant fails to remedy the deficiencies within the period provided for in the third sentence of paragraph (3), the proceedings shall be discontinued.

#### **Publication of the Application**

**Art. 36a. (1) (new - State Gazette No. 43/2005, in force since 21.08.2005, former text of Article 36a – State Gazette No. 73/2006, in force since 06.10.2006)** Applications that meet the formal requirements shall be published in the Official Bulletin of the Patent Office. The publication shall be effected within one month following the end of the examination referred to in Article 36, and shall comprise the incoming number, the filing date or the priority date, as appropriate, data identifying the applicant, the kind and a representation of the mark, the claim of a colour or colours, the classes and the list of the goods and services it is applied for.

**(2) (new – State Gazette No. 73/2006, in force since 06.10.2006)** An application shall not be published, if:

- (i) it is withdrawn according to Article 38(1);
- (ii) it is deemed to be withdrawn according to Article 36(2);
- (iii) the proceedings are discontinued according to Article 36(5);
- (iv) before the preparations for the publication are over, but no later than four months following the filing date, an application for international registration of the same mark is filed for the purpose of enjoying a Convention priority.

#### **Objection against Registration of Marks**

**Art. 36b. (new - State Gazette No. 43/2005, in force since 21.08.2005) (1)** Within a period of two months following the publication date of the application, any person may file an objection against the registration of the mark on the ground of Articles 11 and 12.

**(2)** The objection shall be in writing and shall contain a statement of grounds and arguments.

**(3)** The person filing the objection shall not be a party to the application proceedings; however, he shall be entitled to get, on request, information concerning the outcome of the objection.

#### **Examination as to Substance**

**Art. 37. (1) (amended - State Gazette No. 43/2005, in force since 21.08.2005)** Any application shall be subjected to examination as to substance within one year following expiry of the term referred to in Article 36b(1), regardless of whether there is an objection lodged.

**(2)** Where a mark is ineligible for registration in respect of all or some of the goods or services, the applicant shall be notified accordingly; he shall be informed of the grounds for the refusal and allowed three months within which to respond.

**(3) (amended - State Gazette No. 43/2005, in force since 21.08.2005)** Where the mark contains an element which, in itself, is ineligible for registration as a mark under Article 11(1)(ii), (iii), (iv), (v), (viii), (ix), or (xi), the applicant may be requested, as a condition for registration of the mark, to renounce the exclusive right in that element.

**(4)** Where, within the period provided for in paragraph (2), the applicant fails to present a reasoned objection and/or restrict the list of goods or services, or fails to comply with the requirements specified in paragraph (3), the decision shall be taken to refuse the registration.

**(5)** Where the mark is found to comply with the provisions of the Law, the decision shall be taken to register it. The registration shall be entered in the State Register of Marks and, within one month, the applicant shall be issued a registration certificate.

#### **Termination of Proceedings**

**Art. 37a. (new - State Gazette No. 43/2005, in force since 21.08.2005) (1)** The proceedings in the application shall be terminated at the request of the applicant, where a request was filed for the revocation, invalidation or lapse under Article 23(1)(iii) of the registration of the opposed earlier mark.

**(2)** The proceedings in the application shall be terminated ex officio, where the refusal is based on a mark with an earlier filing date or priority date, as appropriate, or on a mark in respect of which the term for filing a registration renewal request under Article 39(3) has not expired, where an objection was lodged based on the well-known character of a mark, or where the decision on the application depends on the preliminary settlement of an issue within the competence of another authority.

**(3)** The proceedings referred to in paragraph (1) shall be renewed at the request of the applicant upon entry into effect of the decision on the respective request or upon

recording of the termination in the State Register of Marks.

**(4)** The proceedings referred to in paragraph (2) shall be renewed *ex officio* upon entry into effect of the decision on the opposed earlier application, upon expiry of the term referred to in Article 39(3), upon deciding on the well-known character, or upon delivering a judgment by the respective competent authority.

#### **Withdrawal, Restriction and Amendment of the Application**

**Art. 38. (1)** Until a decision is taken on the application, the applicant may withdraw it or restrict the list of goods or services in respect of which the mark is applied for.

**(2)** No changes are allowed in the application, except where the name or address of the applicant has changed or there are mistakes in the name or address of the applicant or obvious errors that have to be corrected, on condition that the corrections do not affect the representation of the mark or extend the list of goods or services.

**(3)** Corrections under paragraph (2) shall be made at the request of the applicant.

#### **Renewal of the Registration**

**Art. 39. (1)** A registration shall be renewed at the request of the proprietor of the mark, the request being accompanied by a document certifying payment of the prescribed fee.

**(2)** The request shall contain the registration number of the mark and data identifying the proprietor.

**(3)** The request may be submitted during the last year of the term referred to in Article 20(1), or within six months following the expiry of that term against payment of a surcharge.

**(4)** Where the proprietor of the mark requests renewal of the registration for only some of the goods or services for which the mark is registered, he shall specify the goods or services for which renewal is requested.

**(5) (amended - State Gazette No. 43/2005, in force since 21.08.2005)** In the event of failure to meet the requirements of paragraphs (1), (2) and (3), the registration of the mark shall not be renewed.

**(6)** Renewal shall take effect as of the day following the expiry date of the preceding registration.

#### **Changes in the Name and Address of the Proprietor**

**Art. 40. (1)** The proprietor of a mark shall notify the Patent Office of any change in his name or address within three months after the change occurs.

**(2)** The change shall be recorded in the State Register at the request of the proprietor.

**(3)** All documents of which the proprietor is to be informed shall be sent to the most recent address recorded in the State Register.

#### **Changes in the Mark**

**Art. 41. (1)** No changes shall be made in the mark during the term of validity of the registration or on the renewal thereof.

**(2)** Where the mark includes the name or address of the proprietor, any change therein may be made at the request of the proprietor, provided that such changes do not materially affect the mark as registered.

#### **Consideration of Disputes**

**Art. 42. (1)** The Disputes Department shall consider:

- (i) appeals against decisions to refuse registration under Article 37(4);
- (ii) **(amended - State Gazette No. 43/2005, in force since 21.08.2005)** appeals against decisions to terminate the proceedings under Article 36(5);
- (iii) requests for revocation of the registration under Article 25;
- (iv) requests for invalidation of the registration under Article 26.

**(2) (supplemented - State Gazette No. 43/2005, in force since 21.08.2005; amended – State Gazette No. 73/2006, in force since 06.10.2006)** The boards for consideration of appeals shall be composed of two State examiners and one legal expert, while the boards for consideration of requests shall be composed of three State examiners and two legal experts. The boards shall be appointed by the President of the Patent Office.

**(3) (amended - State Gazette No. 43/2005, in force since 21.08.2005)** The boards referred to in paragraph (2) shall deliver opinions for taking of the decisions under Articles 45 and 46.

### Terms

**Art. 43. (1)** Appeals shall be filed within three months following the date of notification of the decision.

**(2)** Requests may be filed throughout the term of validity of the registration.

**(3) (deleted - State Gazette No. 43/2005, in force since 21.08.2005) .**

### Contents of Appeals and Petitions

**Art. 44. (1)** An appeal shall be accompanied by a statement of grounds, and it shall contain data identifying the appellant and the application.

**(2) (amended - State Gazette No. 43/2005, in force since 21.08.2005)** A petition shall be filed in two copies, and it shall contain data identifying the petitioner, data concerning the legal interest of the petitioner, if required, invalidation grounds, as well as evidence, if necessary.

**(3) (amended - State Gazette No. 43/2005, in force since 21.08.2005)** The appeals and petitions shall be accompanied by a document certifying payment of the prescribed fee.

### Examination of Admissibility and Formal Regularity of Appeals and Petitions

**Art. 44a. (new - State Gazette No. 43/2005)** Appeals shall be examined as to whether the term under Art. 43(1) is observed and whether the document certifying payment of fees under Art. 44(3) is furnished.

**(2)** Petitions shall be examined as to whether the document certifying payment of fees under Article 44(3) is furnished and whether there is a legal interest, if required.

**(3)** Where no document certifying payment of the prescribed fees is attached to the appeal or petition, or the petition lacks grounding of the legal interest, the applicant, respectively the petitioner, shall be allowed one month to correct the deficiencies.

**(4)** Appeals that fail to be filed within the term provided for in Article 43(1) and/or for which no fee is paid, as well as petitions for which no fee is paid and/or no legal interest is proven, shall be considered inadmissible and no proceedings shall be instituted in connection with them.

**(5)** Every admissible appeal or petition shall be examined for compliance with the rest of the requirements under Article 44. In the case of deficiencies, the applicant or the petitioner, as appropriate, shall be notified thereof and shall be allowed one month to correct them. If the deficiencies fail to be remedied within that term, the proceedings in such appeals and petitions shall be terminated.

### Ruling on Appeals

**Art. 45. (1) (amended - State Gazette No. 43/2005, in force since 21.08.2005)** Where an appeal is found to be groundless, the President of the Patent Office shall

render a decision confirming the decision to refuse registration or the decision to terminate the proceedings.

**(2) (amended - State Gazette No. 43/2005, in force since 21.08.2005)** Where an appeal is well-founded, the President of the Patent Office shall cancel the decision and shall take a decision to refer the application back for re-examination, to register the mark or to renew the proceedings.

**(3)** Where a decision to refuse registration is cancelled on reconsideration, a substantive decision shall be taken by the President of the Patent Office.

**(4) (new - State Gazette No. 43/2005, in force since 21.08.2005)** The decisions under paragraphs (1) and (2) shall be rendered within three months following the filing date of the appeal or the remedy of the deficiencies therein.

### **Request Proceedings**

**Art. 46. (1) (amended - State Gazette No. 43/2005, in force since 21.08.2005)** A copy of the request shall be sent to the proprietor of the mark, who shall be allowed three months within which to respond and, where the request is made under Article 25(1)(i), to furnish evidence of using the mark in the territory of the Republic of Bulgaria.

**(2) (new - State Gazette No. 43/2005, in force since 21.08.2005)** The objection or the evidence of using the mark shall be sent to the petitioner, who shall be allowed one month to respond.

**(3) (new - State Gazette No. 43/2005, in force since 21.08.2005)** The board referred to in Article 42(2) may demand from the parties to produce further evidence and materials, if needed. Such further evidence and materials shall be sent to the other party, allowing them one month to respond in writing.

**(4) (former paragraph 2 - State Gazette No. 43/2005, in force since 21.08.2005)** Where the request is unfounded, the President of the Patent Office shall take the decision to reject it.

**(5) (former paragraph 3 - State Gazette No. 43/2005, in force since 21.08.2005)** Where the request is well-founded, the President of the Patent Office shall take the decision to revoke or invalidate the registration of the mark either wholly or in part.

**(6) (former paragraph 4 - State Gazette No. 43/2005, in force since 21.08.2005)** In cases of partial revocation or invalidation of the registration, the registration certificate issued shall be replaced by a new one.

**(7) (new - State Gazette No. 43/2005, in force since 21.08.2005)** The decisions on revocation or invalidation requests shall be taken within three months after the process of collecting evidence and materials under paragraph (3) is over.

### **Suspension of proceedings**

**Art. 46a. (1) (new - State Gazette No. 43/2005, in force since 21.08.2005)** The proceedings in an appeal shall be suspended if, in connection therewith, a request is lodged for invalidation or revocation of the earlier registration.

**(2)** The proceedings in an invalidation request shall be suspended, where a counter claim is lodged to revoke the earlier registration.

**(3)** The proceedings under paragraphs (1) and (2) shall be resumed on entry into effect of the decision on the respective request.

### **Extension of Periods**

**Art. 47. (1) (amended - State Gazette No. 43/2005, in force since 21.08.2005)** The periods referred to in Articles 36(3), 37(2) and 46(1) may be extended, at the request of the applicant or the proprietor filed prior to the expiry thereof, by three months, but no more than once. An extension request shall not be granted if not accompanied by a document certifying payment of the prescribed fee.

## Renewal of Periods

**Art. 48.** The applicant or the proprietor may request renewal of periods exceeded owing to exceptional, unforeseen circumstances. The request shall be filed within three months on elimination of the circumstances that caused the period to be exceeded, but no later than one year following the expiry of the period exceeded. Decisions to renew periods shall be taken by the President of the Patent Office.

## Publication in the Official Bulletin of the Patent Office

**Art. 49. (suppl. – State Gazette No. 73/2006, in force since 06.10.2006)** The Patent Office shall effect publication in its Official Bulletin of all registrations of marks, well-known marks and marks enjoying a reputation, as well as all subsequent entries pertaining thereto within three months at the latest following their recording in the State Register of Marks.

## Review by Court

**Art. 50. (1) (amended – State Gazette No. 30/2006, in force since 01.03.2007)** Decisions under Article 45(1) and Article 46 may be appealed against before the Sofia Administrative Court within three months following notification thereof.

**(2) (amended – State Gazette No. 30/2006, in force since 12.07.2006)** Cases of refusal to effect entry in the State registers or renew registration may be appealed against as provided in the Law on Administrative Procedures.

## **SECTION VII – Well-Known Marks and Marks With a Reputation (new – State Gazette No. 73/2006, in force since 06.10.2006)**

### **Determining of a Mark as a Well-Known Mark or a Mark With a Reputation**

**Art. 50a (new – State Gazette No. 73/2006, in force since 06.10.2006) (1)** The following shall be taken into account when determining whether the mark is a well-known mark or a mark with a reputation:

- (i) the extent to which the mark is known or recognized among the part of the community which covers the real or would-be users of the goods or services or the persons engaged in the respective distribution network or the business circles dealing with the goods or services in question;
- (ii) duration, extent and geographical area of use of the mark;
- (iii) duration, extent and geographical area of public representation of the mark, including advertising, making public and displaying at fairs and/or exhibitions of the goods and/or services in relation to which the mark is used;
- (iv) information about the successful enforcement of the rights in the mark, if registered;
- (v) value of the mark;
- (vi) other circumstances.

**(2)** A mark shall be determined as a well-known mark or mark with a reputation by:

- (i) the Sofia City Court under the ordinary claim procedure;
- (ii) the Patent Office in accordance with Article 50b.

### **Procedure at the Patent Office of Determining a Mark as a Well-Known Mark or a Mark With a Reputation in the Territory of the Republic of Bulgaria**

**Art. 50b (new – State Gazette No. 73/2006, in force since 06.10.2006) (1)** A mark shall be determined as a well-known mark or a mark with a reputation at the request of the proprietor against payment of the prescribed fee and furnishing of written evidence.

**(2)** The President of the Patent Office shall take a decision on the request based on the opinion of a committee appointed by him.

**(3)** A mark, which is determined as a well-known mark or mark with a reputation according to paragraph (2), shall be published in the Official Bulletin of the Patent



Office and shall be recorded in the Register referred to in Article 5a.

(4) A mark, which is determined as a well-known mark or mark with a reputation according to Article 50a(2)(i) shall not be published in the Official Bulletin of the Patent Office and shall not be recorded in the Register referred to in Article 5a, and it may not be opposed to third parties.

(5) Any third party may appeal against the decision on determining a mark as a well-known mark or mark with a reputation before the Sofia City Court in accordance with the Code of Administrative Procedure within one month following the publication.

(6) The refusal to determine a mark as a well-known mark or mark with a reputation may be appealed before the Sofia City Court in accordance with the Code of Administrative Procedure.

(7) The procedure of determining at the Patent Office of a mark as a well-known mark or mark with a reputation in the territory of the Republic of Bulgaria shall be specified in a regulation issued by the Council of Ministers.

### Chapter III - GEOGRAPHICAL INDICATIONS

#### SECTION I - REGISTRATION

##### Definition

**Art. 51. (1)** Geographical indications mean appellations of origin or indications of source.

(2) An appellation of origin is the name of a country, or of a region or locality in that country, that serves to designate goods originating therein whose quality or characteristics are due essentially or exclusively to the geographical environment, including natural and human factors.

(3) An indication of source is the name of a country, or of a region or locality in that country, that serves to designate goods originating therein whose quality, reputation or other characteristics can be attributed to that geographical origin.

(4) **(new - State Gazette No. 43/2005, in force since 21.08.2005)** Traditional names, which meet the requirements of paragraphs (2) and (3), shall be regarded as geographical indications.

##### Grounds for Refusal of Registration

**Art. 52.** A name shall not be registered as a geographical indication if:

- (i) it has become a generic name in the territory of the Republic of Bulgaria to denote goods of a certain kind without any association with the place of production thereof;
- (ii) it is identical with the name of a plant variety or animal breed registered earlier, where users are likely to be misled as to the true origin of the goods;
- (iii) it is identical with a geographical indication or mark registered earlier for identical goods;
- (iv) It is identical or similar to a geographical indication or mark registered earlier for identical or similar goods, where users are liable to be misled.

##### Legal Protection

**Art. 53. (1)** Geographical indications shall be granted legal protection through registration with the Patent Office.

(2) The legal protection shall consist in the prohibition of:

- (i) any commercial use of the geographical indication for goods that are similar to those for which it is registered in so far as the renown of the registered geographical indication is exploited;
- (ii) improper use or counterfeiting of the geographical indication, even where the genuine origin of the goods is specified, use of a translation thereof or use in combination with terms such as "sort", "kind", "type", and

the like;

(iii) use of any other incorrect or deceptive indication of the source, origin, nature or essential properties of the goods designated on the packaging thereof in advertising material or papers concerning the goods, such indication being likely to mislead as to the genuine origin of the goods;

(iv) any other action that may mislead users as to the true origin of the goods.

(3) Registered geographical indications may not become generic names as long as they enjoy protection under this Law.

### **Right to File an Application**

**Art. 54. (1)** The right to file an application shall belong to any person who carries on his production activity in the geographical locality indicated, provided that the goods he produces conform to the properties or peculiarities concerned.

(2) The borders of the geographical locality and the properties or peculiarities of the goods, and also the relationship between those properties or peculiarities and the geographical environment or geographical origin, shall be defined or established by the central authority concerned by order of the head thereof.

### **Right of the User**

**Art. 55. (1)** A registered geographical indication may be used only by the person registered as the user thereof.

(2) The registered user may use the geographical indication only in respect of the goods for which it is registered. He may affix it to the goods or their packaging or use it in advertising material, business papers concerning the goods and other material.

### **Termination of Legal Protection**

**Art. 56.** The legal protection of a registered geographical indication shall be terminated where the relationship between the properties or peculiarities of the goods and the geographical environment no longer exists.

### **Invalidation of Registration**

**Art. 57. (1) (amended - State Gazette No. 43/2005, in force since 21.08.2005)** Any legally interested person may request invalidation of a registered geographical indication where:

(i). it is established by an enforceable court order, that the registration has been carried out in violation of Article 51(2) and (3) or Article 52(i).

(ii) the registration has been carried out in violation of Article 52(ii), (iii) and (iv).

(2) The registration of a foreign geographical indication shall be declared invalid following invalidation thereof in the country of origin.

### **Cancellation of User Entry**

**Art. 58.** The entry concerning a user may be cancelled at the request of any registered user where it is established in appeal procedures that the user is using the geographical indication for other goods, or that the goods produced by him do not possess the properties or peculiarities concerned.

### **Legal Effects of Invalidation and Cancellation**

**Art. 59. (1)** The invalidation of a registration shall take effect on the filing date of the application.

(2) The cancellation of a user entry shall take effect on the date of the cancellation request.

(3) Invalidation and cancellation shall not affect enforceable court orders for infringement in so far as they are executed prior to the invalidation or cancellation.

## **SECTION II - PROCEEDINGS BEFORE THE PATENT OFFICE**

### **Filing of Applications**

**Art. 60. (1)** Applications for the registration of geographical indications shall be filed with the Patent Office.

**(2)** An application shall relate to one geographical indication only.

**(3)** The application shall contain:

- (i) the registration request form;
- (ii) the name and address of the applicant;
- (iii) the appellation of origin or the indication of source;
- (iv) the designation of the goods;
- (v) the designation of the borders of the geographical locality;
- (vi) an account of the recognized properties or peculiarities of the goods and their relationship with the geographical environment or geographical origin.

**(4)** The application shall be accompanied by a copy of the order provided for in Article 54(2) and a document issued by the municipality concerned certifying that the applicant carries on his production activity in the geographical locality concerned.

**(5)** Where the applicant is a foreigner, the application shall be accompanied by a document certifying the registration of the geographical indication in the country of origin.

**(6)** The application shall further meet any other requirements that may be laid down in an ordinance adopted by the Council of Ministers.

**(7)** The application shall be accompanied by a document certifying payment of the prescribed fees.

### **Examination as to the Form**

**Art. 61. (1)** Every application shall be subjected to examination for compliance with the provisions of Article 60. In case of deficiencies, the applicant shall be allowed three months within which to remedy them.

**(2)** If the applicant fails to remedy the deficiencies within the period provided for in paragraph (1), the proceedings shall be discontinued.

### **Examination as to Substance**

**Art. 62. (1)** An application meeting the requirements as to proper form shall be subjected to examination as to substance within 18 months.

**(2)** Where there are grounds for refusing registration of a geographical indication, the applicant shall be notified accordingly; he shall be informed of the grounds for the refusal and allowed three months within which to respond.

**(3)** Where, within the period provided for in paragraph (2), the applicant fails to present a reasoned objection, the decision shall be taken to refuse the registration.

**(4)** Where the geographical indication is found to comply with the provisions of the Law, the decision shall be taken to register it. The registration shall be entered in the State Register of Geographical Indications. The applicant shall be recorded as a user and, within one month, he shall be issued a certificate for the use of the geographical indication.

### **Entry of a User of a Geographical Indication**

**Art. 63. (1)** Any person entitled to file applications may file an application for entry as a user of a registered geographical indication.

**(2)** The application shall contain:

- (i) the request for entry;
- (ii) the name and address of the applicant;
- (iii) the geographical indication and the registration number thereof.

(3) The application shall be accompanied by a document issued by the municipality concerned certifying that the applicant carries on his production activity in the geographical locality concerned, and also by a document issued by the central authority concerned certifying that the goods produced by the applicant possess the necessary properties and peculiarities characteristic of the geographical indication.

(4) The application shall be accompanied by a document certifying payment of the prescribed fees.

(5) Each application shall be examined for compliance with the provisions of paragraphs (1), (2), (3) and (4). In the case of deficiencies, the applicant shall be allowed three months within which to remedy them.

(6) If the applicant fails to remedy the deficiencies within the period provided for in paragraph (5), the proceedings shall be discontinued.

(7) Where the application for user entry meets the requirements of paragraphs (1), (2), (3) and (4), the applicant shall be entered as a user in the State Register of Geographical Indications, and shall be issued a certificate for the use of the geographical indication.

#### **Proceedings Before the Disputes Department**

**Art. 64. (1)** The Disputes Department shall consider:

- (i) appeals against decisions to refuse registration under Article 62(3);
- (ii) appeals against decisions to terminate the proceedings under Article 61(1) and Article 63(6).
- (iii) **(new - State Gazette No. 43/2005, in force since 21.08.2005)** requests for invalidation under Article 52(ii), (iii) and (iv).

**(2) (amended - State Gazette No. 43/2005, in force since 21.08.2005)** Appeals shall be filed and considered as provided in Articles 42, 43, 44 and 44a.

**(3) (new - State Gazette No. 43/2005, in force since 21.08.2005)** Requests shall be filed and considered as provided in Articles 42, 43, 44 44a and 46.

#### **Ruling on Appeals and Requests**

**(amended title - State Gazette No. 43/2005, in force since 21.08.2005)**

**Art. 65. (1) (amended - State Gazette No. 43/2005, in force since 21.08.2005)** Where an appeal is found to be groundless, the President of the Patent Office shall take a decision to confirm the decision for refusal of registration.

**(2) (amended - State Gazette No. 43/2005, in force since 21.08.2005)** Where an appeal is well-founded, the President of the Patent Office shall cancel the decision and shall take a decision to refer the application back for reconsideration or to register the geographical indication.

**(3)** Where a decision to refuse registration is cancelled, a substantive decision on reconsideration shall be taken by the President of the Patent Office.

**(4) (new - State Gazette No. 43/2005, in force since 21.08.2005)** Where a request is groundless, the President of the Patent Office shall take the decision to repulse it.

**(5) (new - State Gazette No. 43/2005, in force since 21.08.2005)** Where a request is well-founded, the President of the Patent Office shall take the decision to invalidate the registration.

#### **Extension and Renewal of Periods**

**Art. 66. (1) (amended - State Gazette No. 43/2005, in force since 21.08.2005)** The periods referred to in Articles 61(2), 62(2) and 63(5) may be extended by three months at the request of the applicant filed prior to the expiry thereof, but no more than once. An extension request shall not be granted if not accompanied by a

document certifying payment of the prescribed fee.

**(2)** The applicant or the user may request renewal of periods exceeded owing to exceptional, unforeseen circumstances. The request shall be filed within three months on elimination of the circumstances that caused the period to be exceeded, but no later than one year following the expiry of the period exceeded. Decisions to renew periods shall be taken by the President of the Patent Office.

#### **Publication in the Official Bulletin**

**Art. 67.** The Patent Office shall effect publication in its Official Bulletin of all geographical indication registrations and subsequent changes thereto.

#### **Review by Court**

**Art. 68. (supplemented - State Gazette No. 43/2005, in force since 21.08.2005; amended – State Gazette No. 30/2006, in force since 01.03.2007)** Decision referred to in Article 65(1), (4) and (5) may be appealed before the Sofia Administrative Court within three months following notification thereof.

### **Chapter IV - INTERNATIONAL REGISTRATION**

#### **International Registration of Marks**

**Art. 69. (1) (amended - State Gazette No. 43/2005, in force since 21.08.2005)** International registration of marks is a registration carried out by the International Bureau of the World Intellectual Property Organization, hereinafter referred to as "the International Bureau", under the provisions of the Madrid Agreement and the Protocol.

**(2)** The international registration of a mark designating the Republic of Bulgaria shall have the same effect as if directly applied for and registered in the Republic of Bulgaria. It shall take effect on the date of the international registration or on the date of the request for territorial extension of the registration.

**(3) (amended - State Gazette No. 43/2005, in force since 21.08.2005)** An international registration may be refused protection in the Republic of Bulgaria within the periods specified in the Madrid Agreement and the Protocol.

**(4)** The holder of an international registration having effect in the territory of the Republic of Bulgaria who has an earlier, national registration of the same mark may file a request with the Patent Office, that request being accompanied by proof of payment of the prescribed fee, for the international registration to be considered substituted for the national registration, all rights acquired thereunder being preserved.

#### **International Registration of National Marks**

**Art. 70. (1) (amended - State Gazette No. 43/2005, in force since 21.08.2005)** Any Bulgarian natural person or legal entity with a permanent address or actual commercial activity in the Republic of Bulgaria, who is the proprietor of a mark registered under this Law, may apply for the international registration of that mark.

**(2)** The application shall be filed with the International Bureau through the Patent Office.

**(3)** International registration fees shall be paid by the applicant to the International Bureau.

#### **International Registration of Appellations of Origin**

**Art. 71. (1)** International registration of appellations of origin is a registration carried out by the International Bureau under the Lisbon Agreement.

**(2)** The international registration of an appellation of origin designating the Republic of Bulgaria shall have the same effect as if directly applied for and granted in the Republic of Bulgaria. Such an appellation of origin shall not become a generic name

as long as it is protected in the country of origin.

(3) An international appellation of origin may be refused protection in the Republic of Bulgaria within the period specified in the Lisbon Agreement.

#### **International Registration of Bulgarian Appellations of Origin**

**Art. 72. (1)** The recorded user of a registered appellation of origin may file an application for international registration.

(2) The application shall be filed with the International Bureau through the Patent Office.

(3) International registration fees shall be paid by the applicant to the International Bureau.

#### **CHAPTER IVa – COMMUNITY MARK (new, State Gazette No. 73/2006, in force as of the date of accession of the Republic of Bulgaria to the European Union)**

##### **Registration and Effects of Community Marks**

**Art. 72a (new, State Gazette No. 73/2006, in force as of the date of accession of the Republic of Bulgaria to the European Union) (1)** Community marks are marks registered with the Office for Harmonization in the Internal Market (Trade Marks and Designs) in accordance with the procedure and conditions laid down in Council Regulation 40/94/EC on the Community trade mark, hereinafter referred to as "the Regulation".

(2) Community marks shall have effect in the territory of the Republic of Bulgaria and their proprietors shall enjoy the rights under this Law.

(3) For the purposes of Article 12(2), a Community mark shall be regarded as an earlier mark.

(4) The Patent Office of the Republic of Bulgaria is a central industrial property office within the meaning of the Regulation.

(5) The President of the Patent Office shall issue certificates for the entry of industrial property representatives before the Office for Harmonization in the Internal Market (Trade Marks and Designs), and shall also take the necessary steps to that end in compliance with the provisions of the Regulation.

##### **Community Mark Application**

**Art. 72b (new, State Gazette No. 73/2006, in force as of the date of accession of the Republic of Bulgaria to the European Union) (1)** A Community mark application shall satisfy the requirements of Article 26 of the Regulation.

(2) Community mark applications shall be filed directly with the Office for Harmonization in the Internal Market (Trade Marks and Designs) or through the Patent Office.

(3) An application filed through the Patent Office shall be accompanied by a document certifying payment of the forwarding fee.

(4) The Patent Office shall put a date of receipt and, within two weeks following receipt of the application, shall forward it to the Office for Harmonization in the Internal Market (Trade Marks and Designs).

##### **Conversion of a Community Mark Into a National Application**

**Art. 72c (new, State Gazette No. 73/2006, in force as of the date of accession of the Republic of Bulgaria to the European Union) (1)** The applicant for or proprietor of a Community mark may request the conversion of his Community mark application or Community mark into a national mark application for registration in the Republic of Bulgaria, subject to the provisions of Articles 108 to 110 of the Regulation.

(2) Where the Office for Harmonization in the Internal Market (Trade Marks and Designs) allows the request referred to in paragraph (1) and forwards it to the Patent Office, the latter shall consider the request in accordance with this Law, provided that, within two months following the date of receipt of the conversion notification, the applicant furnishes:

- (i) a Bulgarian translation of the documents;
- (ii) a representation of the mark;
- (iii) a document certifying payment of the filing and examination fees.

(3) The filing date of the application referred to in paragraph (1) shall be the filing date or priority date, as appropriate, of the Community mark application.

### **Protection of Community Marks**

**Art. 72d (new - State Gazette No. 73/2006, in force as of the date of accession of the Republic of Bulgaria to the European Union) (1)** Civil law protection in cases of infringement of rights in Community marks shall be effected in accordance with the procedure laid down in the Regulation.

(2) Where, according to the Regulation, claims are lodged and measures are requested in the Republic of Bulgaria in connection with the protection of a Community mark, the Bulgarian legislation shall apply, unless otherwise provided for in the Regulation.

(3) Claims referred to in paragraph (2) shall be cognizable by the Sofia City Court as a court of first instance and the Sofia Court of Appeals as a court of second instance, both courts being Community mark courts within the meaning of the Regulation.

### **Subsidiary Implementation of Decisions**

**Art. 72e (new – State Gazette No. 73/2006, in force as of the date of accession of the Republic of Bulgaria to the European Union)** The provisions of the Regulation shall apply to issues that are not governed by this Chapter.

## **CHAPTER V - PROTECTION OF RIGHTS IN MARKS AND GEOGRAPHICAL INDICATIONS**

### **Section I - Infringements**

#### **Infringement of Registered Marks**

**Art. 73. (1)** Any person who, in his business activity, uses a sign as provided in Article 13 without the consent of the proprietor thereof shall be regarded as an infringer.

(2) The following shall likewise constitute an infringement:

- (i) the affixing of the mark to a material to be used for labeling or packaging, for business papers or for the advertising of goods or services if the person who performs those activities knows or has good reason to know that the mark has been affixed without the consent of its proprietor.
- (ii) the manufacture of means specially intended or adapted for reproduction of the mark, or the possession or stocking of such means, if the person who carries on those activities knows or has good reason to know that the means serve or will serve for the manufacture of goods or of a material provided for in item (i) without the consent of the proprietor of the mark.

#### **Infringement of Registered Geographical Indications**

**Art. 74. (1)** Any use of a registered geographical indication provided for in Article 53(2) shall constitute an infringement.

(2) Any use of a registered geographical indication by a person who is not recorded as a user thereof shall likewise constitute an infringement.

### **Section II - Protection Under Civil Law**

#### **Right to Bring Action**

**Art. 75. (1) (amended – State Gazette No. 73/2006, in force since 06.10.2006)**

The proprietor of a mark and the licensee of an exclusive license shall have the autonomous right to bring an infringement action.

**(2) (deleted – State Gazette No. 73/2006, in force since 06.10.2006)**

**(3)** A non-exclusive licensee may bring an action with the consent of the proprietor only, unless otherwise agreed in the contract.

**(4)** Any recorded user of a registered geographical indication shall likewise be entitled to bring actions.

### **Infringement Actions**

**Art. 76. (1)** Infringement actions under this Law may relate to:

- (i) establishment of the fact of infringement;
- (ii) suspension of the act of infringement;
- (iii) compensation for damages suffered;
- (iv) **(new – State Gazette No. 73/2006, in force since 06.10.2006)** seizure and destruction of the infringing products, as well as of the means with which the infringement was carried out.

**(2) (amended – State Gazette No. 73/2006, in force since 06.10.2006)** Along with the action under paragraph (1), the claimant may likewise request through the court that:

- (i) **(amended – State Gazette No. 73/2006, in force since 06.10.2006)** the infringing articles be given to him;
- (ii) **(new – State Gazette No. 73/2006, in force since 06.10.2006)** the expenses be refunded to him for keeping and destroying the infringing articles;
- (iii) **(former item (ii), amended – State Gazette No. 73/2006, in force since 06.10.2006)** the operative part of the court decision be announced, at the expense of the infringer, in two daily publications and during emission time of a national range TV organization as determined by the court.

### **Determination of Compensation (title amended – State Gazette No. 73/2006, in force since 06.10.2006)**

**Art. 76a (new-State Gazette No. 43/2005, in force since 21.08.2005; amended – State Gazette No. 73/2006, in force since 06.10.2006) (1)** Compensation is due for all material and non-material damages suffered and profits lost, which are a direct and proximate consequence of the infringement.

**(2)** When determining the compensation amount, the court shall take into account also all circumstances of the infringement, as well as all profits the infringement has brought to the infringer.

**(3)** The court shall rule a just compensation that is to have a deterrent and warning effect on the infringer and the rest of the community.

### **Special Cases of Compensation**

**Art. 76b (new– State Gazette No. 73/2006, in force since 06.10.2006) (1)** Where an action is well founded, but there is no sufficient information as to its amount, the claimant may request the following compensation:

- (i) 500 to 100 000 levs, the concrete amount being fixed at the discretion of the court, subject to the provisions of Article 76a(2) and (3), or
- (ii) the equivalence in money of the infringing products at retail prices of legally produced articles which are identical with or similar to the infringing goods.

**(2)** When determining the compensation referred to in paragraph (1), the profits shall also be taken into account that the infringement has brought.



## **Seizure of Infringing Products**

**Art. 76c (new – State Gazette No. 73/2006, in force since 06.10.2006)** Seizure of infringing products under Article 76(1)(iv) may be requested both with regard to articles at concrete premises or articles in the commercial network.

## **Responsibility**

**Art. 76d (new – State Gazette No. 73/2006, in force since 06.10.2006)** Legal persons and one-man businesses shall bear civil responsibility for any infringement of rights under this Law culpably committed by persons representing them or their employees or persons hired by them. In such case, guilt shall be assumed until the contrary is proved.

## **Procurement of Evidence in Claim and Security Proceedings**

**Art. 76e (new – State Gazette No. 73/2006, in force since 06.10.2006) (1)** Where the claimant has furnished evidence to sustain his claims, and has indicated still other evidence, which is of importance for solving the case but is under the defendant's control, the claimant may request from the court to oblige the defendant to present such evidence.

**(2)** The court may oblige the defendant, at the request of the claimant and subject to the provisions of paragraph (1), to provide access to any bank, financial and commercial documents that are under his control.

**(3)** The claimant may not disclose the information contained in the documents referred to in paragraph (2).

**(4)** The representation of evidence of an individual or single use of a mark or geographical indication enjoying protection under this Law shall be regarded as sufficient ground to apply the provisions of paragraphs (1) and (2).

**(5)** The availability of the circumstances related to the alleged infringement may be established also by producing evidence of an individual or single illegal use of a mark or geographical indication enjoying protection under this Law.

## **Request of Information as to the Origin and Distribution Networks in Cases of Infringement**

**Art. 76f (new – State Gazette No. 73/2006, in force since 06.10.2006) (1)** The claimant may request that the court obliges the defendant or a third party to furnish information on circumstances that are of importance for solving the case.

**(2)** A "third party" within the meaning of paragraph (1) is any person, who:

- (i) keeps infringing products, or
- (ii) offers services that lead to infringement; or
- (iii) uses infringing services; or
- (iv) is mentioned by the person referred to in items (i) to (iii) as a participant in the making, production or distribution of such products or services.

**(3)** The information referred to in paragraph (1) may comprise:

- (i) the names and addresses of the producers, distributors, suppliers and any other persons who have previously been in possession of the products or services, as well as the supposed wholesale or retail distributors;
- (ii) information about the quantities that have been produced, delivered, received or ordered, as well as the proceeds from such products or services.

**(4)** The provision under paragraph (1) shall not apply to cases where it may lead to breaking a provision under another law.

**(5)** The provisions under paragraphs (1) and (3) shall apply only to acts performed with the purpose of gaining direct or indirect economic or commercial advantage.

## **Provisional Remedies** (*title amended - State Gazette No. 59/2007, in force since 01.03.2008*)

**Art. 76g (new - State Gazette No. 73/2006, in force since 06.10.2006) (1)**

*(amended - State Gazette No. 59/2007, in force since 01.03.2008)* Where the right in a mark or registered geographical indication is infringed or there is good reason to believe that such an infringement will be made or some evidence will be lost, destroyed or suppressed, the holder of the right or the licensee of an exclusive license may request that the court allows some of the following provisional remedies as well, without notifying the other party thereof:

- (i) prohibition of the performance of activities that constitute or will constitute, as contended, illegal use of a mark or geographical indication;
- (ii) seizure of the goods that are contended to illegally bear a registered mark or geographical indication, as well as of any other evidence of importance for proving the infringement;
- (iii) seizure of the material or means referred to in Article 73(2);
- (iv) sealing of the premises where the infringement is or will be made, as contended.

**(2)** *(amended - State Gazette No. 59/2007, in force since 01.03.2008)* Provisional remedies shall be allowed, imposed or reversed in accordance with Articles 389 to 403 of the Code of Civil Procedure, except for the first sentence of Article 398, unless otherwise provided for in this Law.

**(3)** *(amended - State Gazette No. 59/2007, in force since 01.03.2008)* The provisional remedy "prohibition to perform actions" shall be imposed by a court notice thereof.

**(4)** *(amended - State Gazette No. 59/2007, in force since 01.03.2008)* The provisional remedies referred to in paragraph 1(ii), (iii) and (iv) shall be imposed by a public or private bailiff, who shall perform the action along with the delivery of the security allowance notice within three days following the date of receipt by the bailiff of the plaintiff's request. A provisional remedy intended to prevent a future infringement shall be imposed within a term complied with the purpose thereof. The confiscated property shall be docketed and deposited for safe-keeping by the plaintiff, who may use it as an instrument of evidence only.

**(5)** *(amended - State Gazette No. 59/2007, in force since 01.03.2008)* The plaintiff or his representative shall be entitled to witness or render assistance in the process of imposing of the provisional remedies.

**(6)** *(amended - State Gazette No. 59/2007, in force since 01.03.2008)* The provisional remedy referred to in paragraph (1)(i) may be imposed also with respect to third parties for whom there is good reason to believe that they assist the performance of the activity, which constitutes or will constitute, as contended, illegal use.

**(7)** The holder of the respective right or the licensee of an exclusive license may not disclose the information that has become known to him in the process of imposing the remedies referred to in paragraph (1) or in connection therewith.

## **Jurisdiction**

**Art. 77. (Amended – State Gazette No. 30/2006, in force since 01.03.2007; amended – State Gazette No. 73/2006, in force since 13.07.2006)** All actions under this Law shall fall within the jurisdiction of the Sofia City Court.

## **Section III - Border Controls**

### **Grounds and Field of Application**

**Art. 78. (1) (amended - State Gazette No. 43/2005, in force since 21.08.2005; amended – State Gazette No. 73/2006, in force since 06.10.2006)** The holder of the right in a mark or the licensee of an exclusive license may request that the customs officials detain goods carried through the border of the Republic of Bulgaria, for which there is good reason to believe that they are infringing a right protected under this Law.

**(2) (amended - State Gazette No. 43/2005, in force since 21.08.2005)** The measures referred to in paragraph (1) shall not apply to:

- (i) **(deleted, State Gazette No. 73/2006, in force since 06.10.2006);**
- (ii) **(deleted, State Gazette No. 73/2006, in force since 06.10.2006);**

- (iii) **(amended, State Gazette No. 73/2006, in force since 06.10.2006)** goods not intended for commercial purposes, which are carried as a part of the passenger's luggage, provided that they are in a quantity allowed for duty-free import or export;
- (iv) perishable goods.

**(3) (amended - State Gazette No. 43/2005, in force since 21.08.2005)** The customs officials shall not detain goods, which do not bear a trade mark that is identical or similar to that of the petitioner.

**(4) (deleted - State Gazette No. 43/2005, in force since 21.08.2005)**

**(5) (amended - State Gazette No. 43/2005, in force since 21.08.2005)** The provisions of paragraphs (1) and (2) shall apply also to the detention of goods that unlawfully bear a registered geographical indication or an imitation thereof. Any registered user may file a detention request.

**(6) (new - State Gazette No. 73/2006, in force since 06.10.2006)** The provisions of this Section shall apply also to any products declared before the customs authorities, regardless of whether a customs regime has been operated with respect to them.

#### **Border Control Application Terms**

**(title amended - State Gazette No. 43/2005, in force since 21.08.2005)**

**Art. 79. (amended - State Gazette No. 43/2005 in force since 21.08.2005) (1)** Border controls shall be applied on the basis of a written request from the proprietor of the trade mark or the registered user of the geographical indication, as well as on the initiative of the customs officials. Where the residence or headquarters of the proprietor of the mark or the geographical indication user is abroad, he shall give an address for service on the territory of the Republic of Bulgaria.

**(2)** The detention request referred to in paragraph (1) shall contain a detailed description of the articles. It shall be accompanied by a copy of the certificate of registration of the mark or geographical indication, as well as a document certifying that the registration is valid, both documents having been issued by the Patent Office.

**(3)** The customs officials shall collect fees as determined by the Council of Ministers for the consideration of requests and border controls application.

**(4) (amended - State Gazette No. 73/2006, in force since 06.10.2006)** Where the circumstances under Article 78(1) are ascertained, the customs officials shall detain the goods. Detention shall be carried out by a customs document issued by the competent customs authorities. The latter shall promptly notify the petitioner, the consignee and the consignor about the detention. Those persons shall be entitled to inspect the detained articles and get information about them.

**(5) (amended - State Gazette No. 73/2006, in force since 06.10.2006)** If, within 10 working days following the date on which the petitioner was notified of the detention referred to in paragraph (4), he fails to furnish evidence that proceeding has been instituted before the respective court for adjudication of the dispute on its merits, or that security has been allowed, the customs officials shall release the detained goods, provided that all clearance requirements are satisfied. The petitioner may file a reasoned request for the term to be extended by further 10 working days.

**(6) (new – State Gazette No. 73/2006, in force since 06.10.2006)** The competent authorities before which the proceeding has been instituted under paragraph (5) shall pass a judgment, in response to an appeal from the interested party, as to whether the detention measures are to be affirmed, modified or reversed.

**(7) (new – State Gazette No. 73/2006, in force since 06.10.2006)** A refusal on the part of the customs officials to grant a detention request shall be appealable before the Sofia City Court in accordance with the provisions of the Code of Administrative Procedure.

**(8) (new – State Gazette No. 73/2006, in force since 06.10.2006)** The customs officials shall bear no responsibility for being unable to identify, when exercising

control, the articles for which detention is requested, as well as for their detention acts performed in good faith.

#### **Actions on the Initiative of the Customs Authorities**

**Art. 79a (new – State Gazette No. 73/2006, in force since 06.10.2006) (1)** The customs officials may, on their own initiative or at the request of another state agency, detain goods for which there is good reason to believe that they are infringing a right protected under this Law.

**(2)** In the cases under paragraph (1), the customs officials shall promptly notify the persons referred to in Article 79(1), as well as the consignee and the consignor of the products, giving them the possibility to inspect the detained articles. The customs officials may require from the holders of the rights any information for the performance of examination.

**(3)** The decision referred to in paragraph (1) may be appealed before the Sofia City Court in accordance with the provisions of the Code of Administrative Procedure.

**(4)** If, within 10 working days following the detention date, no proceeding is instituted before the court for adjudication of the dispute on its merits or no security is allowed by the court, the customs officials shall release the detained goods, provided that all clearance requirements are satisfied.

**(5)** The customs officials shall bear no responsibility for their detention acts performed in good faith.

#### **Additional Regulation**

**Art. 80.** The procedures and manner of application of this Section shall be specified in an ordinance of the Council of Ministers.

#### **Application of Council Regulation 1383/2003/EC**

**Art. 80a (new – State Gazette No. 73/2006, in force since the date of accession of the Republic of Bulgaria to the European Union)** The provisions of this Section shall apply only to the extent that they do not contradict the provisions of Council Regulation 1383/2003/EC concerning the actions of the customs officials against goods that are found to infringe rights protected under this Law.

#### **Section IV**

##### **Administrative Violations and Penalties**

**(title amended - State Gazette No. 43/2005, in force since 21.08.2005)**

**Art. 81. (amended - State Gazette No. 43/2005 in force since 21.08.2005) (1) (amended – State Gazette No. 73/2006, in force since 06.10.2006)** A fine of 500 to 1,500 leva shall be imposed on any person who uses in the course of trade, within the meaning of Article 13, goods or services bearing a sign that is identical with or similar to a registered mark without the consent of the proprietor thereof, and a property sanction of 1,000 to 3,000 leva shall be imposed on one-man businesses or legal entities.

**(2)** Where the infringement referred to in paragraph (1) is repeated, the fine imposed shall be 1,500 to 3,000 leva, and the property sanction imposed on one-man businesses or legal entities shall be from 3,000 to 5,000 leva.

**(3)** An infringement is repeated if performed within one year following the entry into effect of a penal provision against the infringer for the same kind of infringement.

**(4) (deleted – State Gazette No. 73/2006, in force since 06.10.2006)**

**(5)** The goods referred to in paragraph (1) shall be seized, regardless of the ownership thereof, and they shall then be destroyed, the proprietor of the mark or an authorized person being allowed to witness the process of destruction.

**(6) (deleted – State Gazette No. 73/2006, in force since 06.10.2006)**

### **Establishment of Infringements**

**Art. 82. (new - State Gazette No. 43/2005, in force since 21.08.2005) (1)** Infringements shall be established by a statement of infringement drawn up by an official as appointed by the President of the Patent Office, following an inspection conducted together with the Ministry of the Interior.

**(2)** No inspection shall be conducted and no administrative penal proceedings shall be instituted in the case of proceedings under Articles 25 or 26 that have already started.

### **Powers of the Official**

**Art. 83. (new - State Gazette No. 43/2005, in force since 21.08.2005) (1)** The official referred to in Article 82(1) shall be entitled to:

- (i) demand access to the sites subject to inspection;
- (ii) demand all necessary documents related to the inspection and take samples for expert opinion.

**(2)** The official shall be obliged to:

- (i) give in the statement of infringement a precise and comprehensive report of the inspection results;
- (ii) keep the official, production and trade secrets he learns of in connection with the inspection;
- (iii) keep all inspection information in secret;
- (iv) use the inspection information for the purposes of the infringement proceedings only.

### **Obligation to Assist**

**Art. 84. (new - State Gazette No. 43/2005, in force since 21.08.2005)** The persons where the inspection under Article 82 is conducted shall be obliged to:

- (i) provide unimpeded access to the trade facilities, warehouses, production bases and premises being inspected;
- (ii) furnish the documents and evidence demanded by the official;
- (iii) keep the articles deposited for safe keeping;
- (iv) provide assistance to the officials in connection with the inspection.

### **Infliction of Administrative Sanctions**

**Art. 85. (new - State Gazette No. 43/2005, in force since 21.08.2005)** Penal injunctions shall be issued by the President of the Patent Office or by an official authorized by him.

### **Execution of Administrative Sanctions**

**Art. 86. (new - State Gazette No. 43/2005, in force since 21.08.2005) (1)** The voluntary execution of fines or property sanctions shall be carried out within seven days following entry into effect of the penal injunction they were imposed by, and the respective amount of money shall be paid in the pay room of the Patent Office or shall be remitted to its account.

**(2) (amended – State Gazette No. 105/2005, in force since 01.01.2006)** On expiry of the term referred to in paragraph (1), a copy of the penal injunction shall be sent to the Government Collections Agency for forced execution of the fine or property sanction in accordance with the Tax Procedure Code.

**(3)** On entry into effect of the penal injunction or court decision, the goods seized shall be passed over to the Ministry of the Interior for destruction.

### **Administrative Penal Liability for Geographical Indication Infringements**

**Art. 87. (new - State Gazette No. 43/2005, in force since 21.08.2005)** The provisions of this Section shall apply also to cases of unlawful use of a registered geographical indication or an imitation thereof.

### **Application of the Law on Administrative Violations and Penalties**

**Art. 88. (new - State Gazette No. 43/2005, in force since 21.08.2005)** Infringements shall be established and penal injunctions shall be issued, appealed and executed in accordance with the provisions of the Law on Administrative Violations and Penalties, unless otherwise provided for in this Section.

## **ADDITIONAL PROVISIONS**

**§ 1.** For the purposes of this Law:

- (1) "Person" means a natural or legal person;
  - (2) "Local industrial property representative" means any person who is a representative within the meaning of Article 3 of the Patent Law;
  - (3) **(amended - State Gazette No. 43/2005, in force since 21.08.2005; amended – State Gazette No. 73/2006, in force since 06.10.2006)** "Well-known mark" means a mark within the meaning of Article 6 bis of the Paris Convention;
  - (4) "Paris Convention" means the Paris Convention for the Protection of Industrial Property, concluded on March 20, 1883, as revised and amended;
  - (5) "Official or officially recognized exhibition" means an official or officially recognized exhibition within the meaning of the Convention of November 22, 1928, relating to international exhibitions organized in States party to the Paris Convention;
  - (6) "International Classification" means the International Classification of Goods and Services for the Purposes of the Registration of Marks, established by the Nice Agreement of June 15, 1957, as revised and amended;
  - (7) **(amended - State Gazette No. 43/2005, in force since 21.08.2005)** "Madrid Agreement" means the Madrid Agreement Concerning the International Registration of Marks, concluded on April 14, 1891, as revised and amended, ratified by Decree No. 4312 on December 3, 1984;
  - (7a) **(new - State Gazette No. 43/2005, in force since 21.08.2005)** "Protocol" means the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, concluded on June 27, 1989 in Madrid, ratified by a law of the Thirty Eight National Assembly on 28 March 2001.
  - (8) "Lisbon Agreement" means the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration of October 31, 1958, as revised and amended, ratified by Decree No. 523 on March 11, 1975;
  - (9) "Imitation of a mark" means a sign that does not differ substantially from a registered mark;
  - (10) "Imitation of a geographical indication" means an indication that does not differ substantially from a registered indication;
  - (11) "Incorrect use of a geographical indication" means unlawful use thereof.
  - (12) **(new - State Gazette No. 73/2006, in force since 06.10.2006)** "Import or export of goods" means the actual carrying across the border of the Republic of Bulgaria of goods bearing a sign which is identical with or similar to a registered mark or a registered geographical indication, or an imitation thereof, regardless of whether the customs regime has been operated with respect to such goods.
- § 1a. (new - State Gazette No. 73/2006, in force since 06.10.2006)** The provisions of this Law that apply to the European Union member States shall apply also to the other States in the European Economic Area.

## **TRANSITIONAL AND FINAL PROVISIONS**

**§ 2.** (1) This Law shall apply also to applications for the registration of marks and

appellations of origin that are still awaiting decisions on the registration, rejection or invalidation thereof on the entry into force of this Law.

(2) Applications under Article 17 of the Law on Trademarks and Industrial Designs filed prior to the date of entry into force of this Law shall be dealt with in accordance with the provisions prevailing hitherto.

(3) Rights under Article 9 of the Law on Trademarks and Industrial Designs may be invoked within one year of the enforcement of the present Law at the request of any person concerned.

**§ 3.** Appellations of origin registered under the Law on Trademarks and Industrial Designs shall be re-registered under this Law within two years of its entry into force.

**§ 4.** This Law shall prevail over Sections I, III, IV and V of the Law on Trademarks and Industrial Designs (publ. in State Gazette No. 95/1967; amendments in Nos. 55/1975, 56/1986 and 27/1993).

**§ 5.** The following changes are made in the Commercial Law (publ. in State Gazette No. 48/1991; amend. in No. 25/1992, Nos. 61,103/1993, No. 63/1994, No. 63/1995, Nos. 42, 59, 83, 86, 104/1996, Nos. 58, 100, 124/1997, Nos. 52, 70/1998, Nos. 33, 42, 64/1999):

(1) In Article 587(1), the word "trade" is deleted, and "layout designs of integrated circuits" is added after "mark";

(2) Article 588 is repealed;

(3) In the title and in Article 594(1) and (2), the term "trademark" is replaced by "mark".

**§ 6.** In the Criminal Code (publ. in State Gazette No. 26/1968, rev. in No. 29/1968; amend. in No. 92/1969, Nos. 26, 27/1973, No. 89/1974, No. 95/1975, No. 3/1977, No. 54/1978, No. 89/1979, No. 28/1982; rev. in No. 31/1982; amend. in No. 44/1984, Nos. 41, 79/1985; rev. in No. 80/1985; amend. in No. 89/1986; rev. in No. 90/1986; amend. in Nos. 37, 91, 99/1989, Nos. 10, 31, 81/1990, Nos. 1, 86/1991; rev. in No. 90/1991; amend. in No. 105/1991, No. 54/1992, No. 10/1993, No. 50/1995, No. 97/1995 - Decision No. 19/1995 of the Constitutional Court; amend. in No. 102/1995, No. 107/1996, Nos. 62, 85/1997; No. 120/1997 - Decision No. 19/1997 of the Constitutional court; amend. in Nos. 83, 85, 132, 133, 153/1998, Nos. 7, 51/1999), Art. 227 shall read as follows:

"Art. 227. Any person using in trade a mark, industrial design or layout design of integrated circuits without the consent of the proprietor thereof shall be sentenced to three years of imprisonment, or a fine of up to five thousand leva shall be imposed on him."

**§ 7.** In Article 12(3) of the Law on the Protection of New Plant Varieties and Animal Breeds (publ. in State Gazette No. 84/1996; rev. in No. 27/1998), the terms "trademark, appellation of origin" are replaced by "mark, geographical indication."

**§ 8.** In Article 33(2) of the Law on the Protection of Competition (publ. in State Gazette No. 52/1998; No. 112/1998 - Decision No. 22/1998 of the Constitutional Court), "trademark" is replaced by "marks."

**§ 9.** In § 1, item 12(1) of the Radio and Television Law (publ. in State Gazette No. 138/1998; No. 60/1999 - Decision No. 10/1999 of the Constitutional Court), "the trademark" is replaced by "marks."

**§ 10.** In Article 19(2)(ii) of the Accountancy Law (publ. in State gazette No. 4/1991; amend. in No. 26/1992, No. 55/1993, Nos. 21, 33, 59/1996, No. 52/1997, No. 21/1998, No. 57/1999), "company and trade marks" is replaced by "marks."

**§ 11.** In § 1, item 18 of the Law on Physical Education and Sports (publ. in State Gazette No. 58/1996; No. 53/1997 - Decision No. 8/1997 of the Constitutional Court; rev. in No. 124/1998, No. 51/1999), "trademark" is replaced by "mark."

**§ 12.** Article 4(l) of the State Taxes Law (publ. in Izvestia No. 104/1951; amend. in No. 89/1959, No. 21/1960; State Gazette No. 53/1973, No. 87/1974, No. 21/1975, No. 21/1990, No. 55/1991, No. 100/1992, Nos. 69, 87/1995, Nos. 37, 100, 104/1996,

Nos. 82, 86/1997, No. 133/1998) shall be amended as follows:

"(l) For the grant of patents for inventions and utility models, for the issue of certificates for new plant varieties and animal breeds, for the registration, renewal, assignment, among other things, of marks and industrial designs, for the registration, among other things, of geographical indications and layout designs of integrated circuits."

**§ 13.** In § 1, item 8 of the Corporate Income Tax Law (publ. in State Gazette No. 115/1997; rev. in No. 19/1998; amend. in Nos. 21, 153/1998, Nos. 12, 50 51/1999), "trademark" is replaced by "mark."

**§ 14.** In Article 31(1) of the Cooperatives Law (publ. in State Gazette No. 63/1991; amend. in Nos. 34, 55/1992, No. 63/1994, Nos. 59, 103/1996, No. 52/1997, No. 52/1998), "trademarks" is replaced by "marks."

**§ 15.** The Council of Ministers shall adopt Instructions for the filing, drafting and examination of applications for the registration of marks and geographical indications, as well as for the procedures and manner of enforcement of border controls and the tariff of fees referred to in Article 4.

**§ 16.** This Law shall enter into force three months after its publication in the State Gazette.

**§ 17.** The implementation of this Law is assigned to the President of the Patent Office.

The Law was passed by the XXXVIII National Assembly on 1 September 1999, and the official seal of the National Assembly was put to it.

**Transitional and Final Provisions of the  
LAW ON THE AMENDMENT OF THE LAW ON MARKS AND GEOGRAPHICAL  
INDICATIONS**

**(publ. in State Gazette No. 43/2005, in force since 21.08.2005)**

**§ 43.** Applications for the registration of marks for which no formal examination has been carried out until entry into effect of this Law shall be published in correspondence with Article 36a.

**§ 44.** Requests for revocation of registrations filed prior to the date of entry into force of this Law shall be treated in accordance with this Law.

**§ 45.** The Minister of Agriculture and Forestry shall issue a regulation specifying the conditions and manner of filing with the Ministry of Agriculture and Forestry of records from a group of producers for entering thereof in the European Register of Protected Geographical Indications for agricultural and food products and exercising control for correspondence between the agricultural and food products and the protected geographical indications.

**§ 46.** This Law shall enter into force three months after its publication in the State Gazette.

**Transitional and Final Provisions of the  
TOURISM LAW**

**(publ. in State Gazette No. 94/2005, in force since 25.11.2005)**

**§ 88.** This Law shall enter into force on the day of its publication in the State Gazette.

**Transitional and Final Provisions of the  
TAX PROCEDURE CODE**

**(publ. in State Gazette No. 105/2005, in force since 01.01.2006)**

**§ 88** The Code shall enter into force on 1 January 2006, except for Article 179(3); Article 183(9); § 10, item 1(e) and item 4(c); § 11, item 1(b); and § 14, item 12 of the Transitional and Final Provisions, which shall come into effect as of the day on which the Code is published in the State Gazette.



**Transitional and Final Provisions of the  
CODE OF ADMINISTRATIVE PROCEDURE  
(publ. in State Gazette No. 30/2006, in force since 12.07.2006)**

**§ 76** The following amendments shall be made in the Law on Marks and Geographical Indications (publ. In State Gazette No. 81/1999; amended No. 82/1999; amended Nos. 28, 43, 94 and 105/2005):

4. The words “Law of Administrative Procedure” shall be replaced by “Code of Administrative Procedure”.

**§ 142** The Code shall enter into force three months after its publication in the State Gazette, except for:

1. Title Three, § 2, item 1, and § 2, item 2 – concerning the deletion of Chapter Three, Section II “Court Appeal”, § 9, items 1 and 2, § 11, items 1 and 2, § 15, §44, items 1 and 2, § 51, item 1, § 53, item 1, § 61, item 1, § 66, item 3, § 76, items 1-3, § 78, § 79, § 83, item 1, § 84, items 1 and 1, § 89, items 1-4, § 101, item 1, § 102, item 1, § 107, § 117, items 1 and 2, § 125, § 128, items 1 and 2, § 132, item 2, and § 136, item 1, as well as § 34, § 35, item 2, § 43, item 2, § 62, item 1, § 66, items 2 and 4, § 97, item 2, and § 125, item 1 – concerning the replacement of the word “district” by “administrative” and the replacement of “the Sofia City Court” by “the Sofia Administrative Court”, which shall come into effect on 1 March 2007;

2. Paragraph 120, which shall come into force on 1 January 2007;

3. Paragraph 3, which shall come into force on the day of publication of the Code in the State Gazette.

**Transitional and Final Provisions of the  
LAW ON THE AMENDMENT OF THE LAW ON MARKS AND GEOGRAPHICAL  
INDICATIONS**

**(publ. in State Gazette No. 73/2006, in force since 06.10.2006)**

**§ 26. (in force since the date of accession of the Republic of Bulgaria to the European Union)** (1) Community marks having effect on the date of accession of the Republic of Bulgaria to the European Union, as well as Community mark applications filed prior to that date, shall take effect in the territory of the Republic of Bulgaria on that date.

(2) The registration of a Community mark filed prior to the accession date may not be refused on the basis of any absolute grounds for refusal within the meaning of Article 7(1) of the Regulation, provided that such grounds are applied solely because of the fact of the accession.

(3) Notice of opposition may be given under Article 42 of the Regulation to the registration of a Community mark application filed within 6 months prior to the accession date, in case the earlier mark or the earlier right within the meaning of Article 8 of the Regulation has existed in the Republic of Bulgaria prior to the accession date and provided that they have been acquired in good faith.

(4) A Community mark may not be invalidated, if:

1. the grounds for that, within the meaning of Article 51 of the Regulation, result solely from the fact of the accession of the Republic of Bulgaria, or

2. the earlier national right within the meaning of Article 52(1) of the Regulation had been registered, applied or acquired in the Republic of Bulgaria prior to the accession date.

(5) The use of a Community mark under the conditions of Articles 106 and 107 of the Regulation may be prohibited by way of filing an appeal before the court under Article 72d(3), provided that the earlier mark had been registered or applied for registration

prior to the accession date, or the earlier right had been acquired in it prior to that date.

§ 28. This Law shall enter into force one month after its publication in the State Gazette, except for § 7, § 12, § 21 and § 26, which shall come into effect on the date of accession of the Republic of Bulgaria to the European Union, and § 17, which shall come into effect on 13 July 2006.

#### **Transitional and Final Provisions of the**

#### **LAW ON THE APPLICATION OF THE COMMON ORGANIZATIONS OF MARKETS FOR AGRICULTURAL PRODUCTS OF THE EUROPEAN UNION**

**(publ. in State Gazette No. 96/2006, in force since 01.01.2007)**

§ 12. The Law shall enter into force on 1 January 2007, except for § 7, which shall come into effect as of the day on which it is published in the State Gazette.

#### **Transitional and Final Provisions of the**

#### **CODE OF CIVIL PROCEDURE**

**(publ. in State Gazette No. 96/2006, in force since 01.01.2007)**

§ 61. The Code shall take effect on 1 March 2008, except for:

1. Part Seven "Special rules concerning the civil proceedings under the operation of the European Union Law";
  2. Paragraph 2(4);
  3. Paragraph 3 concerning the replacement of Chapter Thirty Two "A" "Special Rules for Recognition and Admission of Fulfillment of Decisions of Foreign Courts and of Foreign Bodies" by Arts. 307a to 307e, and replacement of Part Seven "Proceedings for Returning a Child or Exercising the Rights of Personal Relations" by Arts. 502 to 507;
  4. Paragraph 4(2);
  5. Paragraph 24;
  6. Paragraph 60,
- which will take effect three days after promulgation of the Code in the State Gazette.

#### **Relevant Acts of the European Law**

DIRECTIVE 2004/48/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 April 2004 on the Enforcement of Intellectual Property Rights

FIRST DIRECTIVE OF THE COUNCIL of 21 December 1988, to Approximate the Laws of the Member States Relating to Trade Marks

COUNCIL REGULATION (EC) No 3295/94 of 22 December 1994 laying down measures to prohibit the release for free circulation, export, re-export or entry for a suspensive procedure of counterfeit and pirated goods

REGULATION (EEC) No. 2380 /74 OF THE COUNCIL of 17 September 1974 adopting provisions for the dissemination of information relating to research programmes for the European Economic Community

COUNCIL REGULATION (EC) No 40/94 of 20 December 1993 on the Community trade mark

REGULATION (EC) No. 1383/2003 OF THE COUNCIL of 22 July 2003 concerning customs actions against action suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights.