



Authors

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Legal framework

IP rights are protected in legal instruments including international agreements, EU directives and regulations and Latvian national law. Rights holders are entitled to protect their rights in both civil and criminal proceedings (in copyright and patent/trademark/design matters).

Focusing specifically on trademark protection, the main international agreements related to anti-counterfeiting on which rights holders can rely and which are applied by governmental and court bodies are:

- the Paris Convention for the Protection of Industrial Property; and
- the Agreement on Trade-Related Aspects of Intellectual Property Rights.

Since Latvia is a member of the European Union, EU legislation is applicable, including:

- the EU Community Trademark Regulation (207/2009);

- the EU Customs Regulation (1383/2003); and
- the EU Enforcement of IP Rights Directive (2004/48/EC).

National legislative acts comprise a wide range of different laws (both substantive and procedural), including:

- the Law on Trademarks and Geographical Indications;
- the Civil Procedure Law;
- the Criminal Law;
- the Criminal Procedure Law;
- the Code of Administrative Violations; and
- Cabinet of Ministers Rule 112/2011 governing customs control measures for the protection of IP rights.

Border measures

Although the main customs procedure in Latvia is governed by the EU Customs Regulation, at the national level, there is a slightly different practice.

A rights holder may submit to Customs (both locally and at the EU level) an application for customs action, which allows Customs to seize suspicious goods for 10 working days, with

“ Customs has started to monitor post parcels with suspicious goods and deliver the information to rights holders, thus helping to track down parties which are potentially involved in the trade of counterfeit products ”

the possibility to extend this timeframe for a further 10 working days.

However, Customs also often acts *ex officio*. In that case, the rights holder must file a national application for action within three working days; Customs will subsequently hold the goods for 10 working days (with an extension again possible).

Customs will accept a filed customs application even if it is not supplemented with information on genuine and/or fake goods; in such cases, it is preferable to include the contact details of a local representative.

After the application for action has been filed and approved, and Customs has detained the suspicious goods, the rights holder, having established that the goods are counterfeit, should choose a course of action from the following three options:

- Try to negotiate with the importer in order to apply the simplified procedure under Article 11 of the EU Customs Regulation;
- Submit to Customs an official statement confirming the counterfeit nature of the goods and requesting their destruction; or
- Turn to the civil courts with a claim against the infringer, seeking a preliminary injunction.

Failure to decide on a course of action will result in Customs releasing the goods.

If an agreement is concluded with the importer and the importer does not object to destruction of the goods, they will be destroyed at the importer's expense under the supervision of Customs and the rights holder.

If the rights holder submits a statement confirming the counterfeit nature of the goods to Customs, Customs must decide on the administrative punishment to be handed down

to the importer and the destruction of the counterfeit products. Customs' decision can be appealed to the administrative courts.

If the rights holder turns to the civil courts and obtains a preliminary injunction order, Customs should be notified in order to prevent the release of the goods and ensure that they are held until the court proceedings conclude.

The costs of storage, transportation and destruction of the goods should be covered by the rights holder, unless otherwise agreed with the importer or stated in the court order.

Criminal prosecution

Criminal penalties for violations of IP property rights, and specifically trademark rights, are provided under Article 206 of the Criminal Law. Criminal prosecution is carried out by the Economic Crime Bureau of the State Police and Prosecutor's Office on the basis of the Criminal Procedure Law.

Under the law, the authorities deal with a criminal prosecution *ex officio* and the rights holder is involved in the proceedings as a victim. In practice, most investigations are initiated after a complaint from a rights holder.

If the accused party admits its guilt, a prosecutor may apply for a lighter penalty without a court examination. Otherwise, the case goes to court. In practice, such agreements are common and many cases are settled without a court examination.

Criminalised actions include the unlawful use of a registered trademark, including:

- using (affixing, attaching) the trademark on goods or packaging;
- offering the goods for sale, or putting them on the market or stocking them for this purpose;
- providing or offering services;

- importing or exporting counterfeit goods;
- using the trademark on business documents and in advertising or counterfeiting of the trademark; and
- knowingly using or circulating a counterfeit mark.

Penalties for the infringement of a trademark include:

- a fine not exceeding 200 times the minimum monthly wage (€285/\$360 in 2012);
- community service;
- custodial arrest;
- imprisonment for a term not exceeding six years; and
- confiscation of property or deprivation of the right (licence) to conduct certain activities (may be applied additionally).

Criminal liability can be applied only if it is proved that the crime was committed intentionally and caused substantial harm to rights and interests protected by law. 'Substantial harm' means that considerable material losses must be recognised and proved (not less than five times the minimum monthly wage (approximately €1,500/\$1,800 in 2012)).

If the above-mentioned requirements are not met or cannot be proved, the police may apply for an administrative liability under the Code of Administrative Violations. The code provides for liability for unlawful use of a trademark and trading in counterfeit goods. The liability is a fine not exceeding Lats500 (approximately €700/\$900) for natural persons and not exceeding Lats10,000 (€14,000/\$18,000) for legal persons. Administrative liability is applied by the police in *ex officio* cases, commonly as a result of police raids.

Civil enforcement

As an EU member state, Latvia has implemented EU Directive 2004/48/EC through the Law on Trademarks and Geographical Indications and the Civil Procedure Law. Most industrial property matters are examined by a specially designated court – the Riga Regional Court, which is a court of first instance for any trademark issues, including infringement

and enforcement, for both nationally/internationally registered and Community trademarks.

In general, the remedies available for rights holders to enforce their rights include:

- prohibiting the use of protected articles;
- stopping and prohibiting activities which are recognised as preparation for the unlawful use of protected articles;
- stopping and prohibiting the provision of services which are used for unlawful activities involving protected articles;
- compensating for damages caused due to unlawful use of a protected article;
- cancelling or withdrawing unlawful goods from trade;
- destroying the infringing goods;
- cancelling or withdrawing from trade facilities and materials used or intended to be used to make infringing goods; and
- publishing the court judgment in newspapers and other mass media in full or in part.

Due to the improper implementation of EU Directive 2004/48/EC into national legislation, the law does not recognise the alternative nature of reimbursement of direct and indirect losses (including lost profits) and the payment of a lump sum on the basis of an ordinary licence fee or unfair profits made by the infringer. In practice, the rights holder should prove its losses under the Civil Law, which contains a 'natural' meaning of losses (ie, loss of tangible property); this is almost impossible, due to the intangible nature of IP rights. Otherwise, it should be proved that losses, as meant under the Civil Law, were not suffered and therefore there is a basis to apply for other compensatory remedies. However, due to this inconsistency in the law, the courts rarely grant any damages, except for legal fees; therefore, the Ministry of Justice is planning to propose amendments to the law to remedy this deficiency.

A rights holder may also seek provisional protection (preliminary injunction). Such a request can be submitted at any stage of the proceedings, even before bringing a general claim to court. The means of provisional protection are:

- the attachment of provisionally infringing goods;

- a duty to recall the goods which are alleged to have infringed IP rights; and
- a prohibition to perform specific activities by both the defendant and parties whose services are used in order to infringe IP rights, or parties which make it possible to commit such infringements.

When an application for a preliminary injunction is brought, the plaintiff should provide evidence of the existence of certain IP rights, and evidence that those rights are being infringed or may be infringed and that such activity may cause damages to it. According to the law, the court should decide the question within 10 days; in practice, this takes between one and two weeks. The court's decision should be executed within 30 days of issue; an ancillary complaint in respect of such decision cannot suspend its execution. The court may also request a security payment to be made by the plaintiff in order to secure any losses which may be caused to the defendant in relation to the preliminary injunction.

Means of evidence in trademark infringement matters are traditional and include:

- oral and written explanations of the parties and third parties;
- witness testimony;
- documentary and real evidence; and
- opinions of experts and competent authorities.

It is possible to request, through the court, that information regarding the origin of the goods or services and the distribution thereof be provided by the defendant or another party involved in the infringement. This information includes:

- the identity of the relevant manufacturer, distributor, supplier, wholesaler and retailer of the goods, or the relevant service provider or data distributor;
- the quantity manufactured, distributed, received, ordered or provided; and
- the price paid for the goods, even if this is classified as a commercial secret.

However, the court may restrict the plaintiff's access to this information. Besides

seeking information and preliminary protection, it is also possible to ask for evidence to be secured.

Anti-counterfeiting online

There are no separate or specific regulations combating the circulation of counterfeits in e-commerce and trade in counterfeit goods through the Internet and online auction platforms. Rights holders should use the same available legal instruments and remedies against online infringements as in case of 'ordinary' infringement. Proceedings (both civil and criminal) should be initiated against the party which is trading in the counterfeit goods. Internet service providers (ISPs) cannot be held liable unless knowledge of infringement and intent are proved. However, the law provides a duty for ISPs to provide relevant information to rights holder where proceedings are initiated.

Given that the majority of parties trading in counterfeit goods through the Internet are natural persons who assume different identities and use postal services to deliver the goods, it is difficult to obtain their real contact information and names so that they can be sued in court. Theoretically, it is possible to turn to the ISP with a request, or to a court if the ISP refuses to provide the information; however, the problem is complicated by the fact that most domains and servers on which counterfeit goods are traded are registered or held abroad – outside Latvian law and court jurisdiction.

Due to these difficulties, the most effective way to combat online infringement is by cooperating with the police (ie, initiating police raids on the basis of monitoring local auction sites and making test purchases). The police may take action on the basis of a complaint made by a rights holder; however, it is necessary to secure all evidence before turning to the police in order to secure a positive result in proceedings. Recently, Customs has started to monitor post parcels with suspicious goods and deliver the information to rights holders, thus helping to track down parties which are potentially involved in the trade of counterfeit products.

Preventive measures/strategies

The most effective preventive measures are:

- maintaining valid customs applications in

order to allow Customs to detain and seize goods; and

- launching regular market and monitoring searches and investigations.

Local counsel can help the police and customs authorities to enforce rights effectively. Close cooperation is significant to ensure rapid and effective enforcement activities in case of infringement. As the responsible state authorities have limited capacity and often are not educated in IP rights, the support provided by experienced local counsel is helpful for successful enforcement and achieving positive results in a timely and cost-effective manner.

Market monitoring provided by local investigators helps to track developments in the market and can help parties to act swiftly in case of infringement. Local counsel usually have partnerships with local investigators that can conduct regular market searches, as well as searching for and obtaining information regarding potential infringers, their storage places and sources.

It is also useful to support educational seminars for competent authorities regularly organised by local IP professionals, in order to raise awareness about IP rights. State authorities are willing to participate in such events, as they are a great forum to discuss any problems. [WTR](#)

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