

# Trade mark protection in Latvia – law and practice

Anohin Vladimir, of Agency Tria Robit in association with Agris Bitans, Attorney at Law, reveals the latest developments in one of the Baltic states – Latvia

Intellectual property law and practice in Latvia have made significant progress since the Soviet Union disintegrated and Latvia became independent. The Trade Mark Law currently in force was passed in 1993. During 1999, a new trade mark law is expected to be passed by the Latvian parliament (Saeima). Judging from the draft, in this new law all the useful experience accumulated under the old law will be taken into account, as well as the responsibilities resulting from membership of international organizations, particularly the WTO.

Below are set forth some aspects of trade mark protection in Latvia, as we see them.

## Unregistered trade marks

The problem of unregistered trade marks also exists in Latvia which, like the other Baltic states, has adopted a first-to-file system. In order to get an exclusive right, the trade mark should be registered with the Latvian Patent Office. However, it does not mean that an unregistered trade mark lacks legislative support in Latvia, even though it makes it harder to protect it.

The Latvian trade mark law emphasizes and relies not on the concept of trade marks that are well-known worldwide, but on how well they are known in Latvia. This raises problems with the protection of unregistered trade marks, especially if the given producer did not distribute its products in Latvia, or was doing so through a licensed manufacturer on a local market. Today's litigation practice shows, from the example of the *Stolichnaya* and *Moskovskaya* cases, that the court gives preference to the fact of how well the trade mark is known among Latvian consumers, regardless if it is a worldwide well-known mark. The protection may be complicated if a trade mark is registered in the name of another party, which is not the genuine owner of a trade mark. In this case you will need to contest the registration with the Latvian Patent Office or file a complaint with the court to recognize the genuine ownership of trade mark rights.

## How to protect trade mark rights

Latvian legislation provides various methods of protection against unauthorized use of a trade mark. Those are supported not only by the Law on Trade Marks, but also by the Civil Law, Criminal Code, Administrative Code, Customs Law, Competition Law and other Acts, as well.

The legislation provides different possibilities for fighting trade mark infringement. We would like to emphasize the following:

- Injunction to use the trade mark or a similar trade mark.
- Court order to change the similar mark.
- Compensation of damages.
- Cease and desist actions.
- Administrative and criminal punishment.
- Administrative actions.

Depending on the specific circumstances of infringement,



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Agency TRIA ROBIT was founded in 1991 as one of the first privately owned intellectual property full-service firms in LATVIA, other BALTIC STATES and CIS. At this time, Agency is one of the leading IP firms in the region and offers full range of services.

different approaches are used in practice. The trade mark owner or its representatives prefer to use the courts for protection of trade mark rights. An action for prohibition of the use of a trade mark or a similar trade mark is more common now.

Compensation of damages is an important method of defending one's trade mark rights. It is the claimant's responsibility to calculate and prove the damages. The law provides not only the direct damages, but the lost profits, as well. However, this method is still very rare in practice. One of the reasons is the insufficiency of information needed and the difficulties of acquiring it, because either the required information does not exist or is not publicized. At the same time, it is impossible to

use data from other countries, because of the huge differences in population and its purchasing power.

Trade mark infringement has become a very common form of unfair competition in Latvia. The Latvian Competition Board has rights to demand different kinds of documents and information from an infringer, and power to investigate illegal actions. The Latvian Competition Board has rights to stop illegal use of trade marks and punish guilty persons by administrative penalty and take a decision to stop unfair activity.

In cases of slave copying of products and/or trade marks, criminal remedies would be recommended, since such products are manufactured, imported and distributed illegally. As recent practice has shown in several cases, for example the *Lipton* case, the *Dilmah* case and the *Jacobs* case, the police and other state authorities must be mobilized to prevent these activities. The police found illegal manufacturers or distributors of fake goods.

According to the new Criminal Law, the unauthorized use of a trade mark is a crime. It is also possible to convict a person for the unauthorized use of copyright. Administrative liability for the unauthorized use of trade marks is preserved in the Administrative Code.

### **Towards European harmonization**

Even though legislation on trade mark protection is relatively new and is not ideal, there is enough ground to successfully protect trade mark rights in Latvia. Those changes that are being made to improve the legislation are targeted towards harmonization with the requirements of the European Union, of which Latvia is planning to become a member.

The new provisions in the Latvian law will also allow the Customs to fight against counterfeiting and piracy more effectively.

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