



Baltic states

Agency TRIA ROBIT

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Anti-counterfeiting 2015 A Global Guide

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Regional focus

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The Baltic states are the countries located on the southeast shores of the Baltic Sea in the northeast part of the European Union. The region has a total population of over 6 million inhabitants and includes Latvia, Lithuania and Estonia, which have all been EU member states for 10 years. Due to their geographical location – bordering Russia and Belarus, and forming the western end point of the railway network connecting China to Europe – and well-developed infrastructure, which includes seaports, airports and trunk roads, the Baltic states are often used as a strategic entry point to Europe for counterfeits originating from the East.

Legal framework

The legal framework for intellectual property is broadly similar for each country in the Baltic states and is largely based on the international agreements in this area, such as the World Intellectual Property Organisation's Agreement on Trade-Related Aspects of Intellectual Property. Further, it includes EU directives and regulations which are either implemented into national law (directives) or directly enforceable (regulations) within Latvia, Lithuania and Estonia. Finally, there are a number of national laws for the protection of trademarks, designs and patents, as well as specific laws relating to anti-counterfeiting.

Generally, rights holders are entitled to protect their rights through both civil and criminal proceedings. Administrative proceedings are available in Latvia and Estonia, but not in Lithuania.

Estonia

The relevant national laws in Estonia are:

- the Customs Act;
- the Law of Obligations Act;
- the General Part of the Civil Code Act; and
- the Code of Civil Procedure.

Latvia

The relevant national laws in Latvia are:

- the Rules Concerning Procedures for Customs Control Measures for the Protection of IP Rights (112/2011);
- the Code of Administrative Violations;
- the Civil Procedure Law; and
- the Criminal Law and the Criminal Procedure Law.

Lithuania

The relevant national laws in Lithuania are:

- the specific chapters on the enforcement of rights in the Trademark Law, the Design Law and the Patent Law;
- the Civil Procedure Code; and
- the Criminal Code and the Criminal Procedure Code.



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Border measures

Border measures in the Baltic states are mainly governed by the EU Customs Regulation (608/2013). As a result, border measures in Latvia, Lithuania and Estonia are nearly identical and correspond to border measures in other EU member states. However, some national rules also apply.

A rights holder is entitled to submit either a national (a separate application in each jurisdiction) or EU-wide (covering several jurisdictions) application with Customs, which is valid for one year with the option of renewal. In Estonia, rights holders must also submit detailed descriptions of the authentic goods. However, in Latvia and Lithuania, Customs may grant the application without being supplied with such information. It is recommended that rights holders appoint a local representative before Customs in all relevant jurisdictions.

A valid application allows Customs to detain suspicious goods for 10 working days, with the possibility of extending this deadline by another 10 working days where the rights holder takes the necessary steps to prevent the goods from being released.

Customs is entitled to act *ex officio* to provide a rights holder with information about the seized goods and – if it has not yet done so – allow it the opportunity to protect its rights by filing an application within four working days of receiving notification.

After the allegedly infringing goods have been detained, Customs is obliged

to send official notification to the rights holder and the importer. Both must respond within the prescribed timeframe. The rights holder may submit written confirmation as to whether the detained goods in fact infringe its IP rights and permission for them to be destroyed if it so wishes. If the importer fails to respond to this within the timeframe, it is assumed that there are no objections and the goods may be destroyed by the rights holders at its expense under the supervision of Customs. Otherwise, specific national rules apply.

Latvia and Estonia

If the importer submits an objection to the goods' destruction within the timeframe, the rights holder may file a request to apply administrative liability to the importer or file a civil suit.

If the request for administrative liability is submitted in time, Customs will continue to detain the goods and should decide whether administrative penalties should apply. These include destruction of the counterfeit goods and the imposition of a fine on the infringer. Such decisions can be appealed. However, the rights holder must bear the costs of storage and destruction, even in case of successful administrative proceedings. The infringer, on the other hand, is not obliged to make any reimbursement for possible damages, which it can recover through a separate civil procedure.

If the rights holder files a civil suit, it should request a preliminary injunction

and notify Customs formally in order to ensure that the allegedly counterfeit goods are not released – usually, they are detained until the court proceedings are concluded. In case of civil proceedings the rights holder may ask the court to order the infringer to pay the storage and destruction costs, as well as damages, up to a proven amount.

Lithuania

If the importer registers an objection, the rights holder should apply to court within the stipulated timeframe to request a preliminary injunction and destruction of the goods. If civil proceedings are initiated, the rights holder may request that the court order the infringer to pay storage and destruction costs.

If the deadline for filing a civil claim is missed, Customs shall release the goods and the rights holder may be obliged to cover storage expenses for the whole period of suspension.

Small consignments

The Customs Regulation 608/2013 introduced a procedure for small consignments. However, due to the lack of implementing regulations and practical experience, this procedure has not yet been applied in the Baltic States. Instead, Customs usually applies the standard detention procedure, regardless of the quantity of goods being held.

Criminal prosecution

The criminal penalties for violation of IP rights (including copyright, patents, designs and trademark rights) are set out in the national laws of each Baltic state. Criminal investigations in all jurisdictions are carried out by specific divisions of the state police and/or prosecutor's office of each country. Proceedings can be initiated either by the responsible body *ex officio* or at the request of a rights holder, licensee or consumer.

Criminal penalties are applicable only for wilful offences, where a significant financial loss has been caused and a significant threat to the public interest can be proved. Both natural persons and legal entities may be found liable.

Penalties include fines, community service, custodial arrest and imprisonment. Additional penalties (eg, seizure and destruction of the infringing goods and the tools or equipment used to manufacture them; revocation of any applicable licences) can also be applied, including compulsory dissolution of the legal entity. It is possible to request monetary compensation (damages) by filing a civil claim for compensation, which will be heard at the same time as the criminal case.

Generally, criminal investigations are not common, although criminal prosecution can be quite effective in case of repeat and systematic infringements committed by the same entity. However, in practice, criminal investigations take a long time and it can be extremely difficult to prove that an offence is wilful, except in some specific instances.

Civil enforcement

Civil enforcement is the most common way of proceeding in cases involving IP rights infringement, except in Latvia, where most anti-counterfeiting cases are decided through administrative proceedings.

Jurisdiction

In Estonia, all IP matters are examined by the Harju County Court, which is the designated court of first instance for all claims relating to IP rights.

Since January 1 2015, all industrial property matters (involving patents, designs and trademarks) in Latvia are heard by the Riga City Vidzeme Suburb Court. This specialised court is also responsible for matters involving Community trademarks and registered Community designs and has taken over from the previous court of first instance – the Riga Regional Court – which is now the designated court of appeal. In contrast, copyright and related matters fall under the jurisdiction of any district court – the rights holder may choose where to file suit.

In Lithuania, if a claim is based on a trademark, patent or design right, the matter will be heard by the Vilnius District Court as the court of first instance.



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Vladimir Anohin is a Latvian and European patent, design and trademark attorney, as well as the founder and managing partner of Agency TRIA ROBIT. He obtained his Dipl Eng in electronics from Bonch-Bruyevitch Communications University, St Petersburg, in 1971, graduating from the Russian University of IP Protection in 1978.

Mr Anohin advises clients on all aspects of IP rights, including patents, designs, trademarks, brand protection, anti-counterfeiting and trademark enforcement. He is also a contributor to numerous local and international newsletters and magazines, an active member of various International Trademark Association and European Communities Trademark Association committees and a member of a number of international and regional associations.



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Mr Baltrumovics advises clients and deals with litigation involving trademark protection, infringements and the enforcement of rights. He is also responsible for handling anti-counterfeiting activities and cooperating with Customs and police authorities on behalf of his clients. Mr Baltrumovics is regularly invited to lecture on the protection of IP rights and is a member of several national legislative working groups.

However, if the infringement relates only to copyright or related rights, the case shall be heard by a district court, based on the place of residence or location of the defendant – except where a significant amount of damages (the limit is set by law) is claimed.

Preliminary injunctions

Rights holders in all Baltic states are entitled to seek a preliminary injunction to prevent the release and/or further circulation of allegedly infringing goods until the action is concluded. A corresponding request can be submitted to

the court before a general claim is brought or together with the general claim in all jurisdictions.

The rights holder must provide sufficient evidence as to the existence of certain IP rights, together with *prima facie* evidence that those rights are being infringed or may be infringed, and that such activity may cause or has already caused it damage.

In Estonia, the court should decide requests for preliminary injunctions the following working day after receipt. If the case is especially complicated, the court



Border measures to prevent the entry of fake products into the internal market through the postal services and test purchases followed by a complaint to the police or a civil claim are both useful ways to proceed

may request the defendant's opinion in respect of the injunction. In such case the deadline can be extended by up to a month.

In Latvia, the court must decide whether to grant an injunction within 10 days in *inter partes* proceedings. However, in practice, this may take up to 20 days. In cases of particular urgency or other extreme circumstances, the court may decide the question within three days in *ex parte* proceedings, although the plaintiff will need to prove that the case is urgent. In most cases courts tend to examine requests for preliminary injunctions in oral proceedings, which may cause a delay in the timeframes set out in the Customs Regulation.

In Lithuania, a request for a preliminary injunction is examined by the court through a written procedure, usually within three working days of being filed. The court will issue the preliminary injunction without giving prior notice to the defendant.

Either party may appeal the court's decision. However, an appeal will not prevent the injunction from being applied and the initial decision will remain valid and enforceable in all jurisdictions until the appeal court issues its final decision.

In addition, the rights holder may ask the court to obtain information and secure evidence – if necessary, even before actual litigation is commenced – especially where the matter is urgent and it may suffer irreparable harm.

Upon the defendant's request, the court may order the plaintiff to pay a deposit

in order to secure the defendant against potential losses. The defendant may also ask the plaintiff to pay a deposit to it against its legal costs, but only where it is located outside the European Union.

Litigation

Litigation generally consists of exchanges of written arguments and submission of evidence, followed by an oral hearing at which the court examines the issue. There may be several rounds of written submissions, as well as several hearings, depending on the complexity of the case. The average timeframe for obtaining a first-instance decision is between eight and 12 months. However, in complicated cases this may take up to two years. An appeal against a first-instance decision usually doubles this timeframe.

Remedies

The available remedies are nearly identical in all Baltic states and include the following:

- a declarative prohibition that the counterfeiting is unlawful;
- destruction of the infringing goods at the infringer's expense;
- withdrawal or destruction of the facilities, tools and materials used or intended to be used to manufacture the infringing goods;
- withdrawal of the infringing goods from the market or prevention of their entry into channels of commerce;
- prohibition against an intermediary from providing services to a third party where such services involve the

- infringement of an IP right; and
- compensation for damages caused by the infringement.

Damages and legal fees

The rights holder may seek compensation for damages by choosing between reimbursement for direct and indirect losses, including lost profits and unfair profits made by the infringer, or payment of a lump sum based on the average licence fee. Legal fees are also recoverable within the limits set by law, except in Estonia, where the law does not specify the maximum amount of legal costs and the amount is decided on a case-by-case basis.

Anti-counterfeiting online

No specific regulations deal with the circulation of counterfeits in e-commerce or the online trade in fakes (eg, by online auction platforms) in the Baltic states. Rights holders should use the same legal instruments and remedies against online infringements as are available in cases of ordinary infringement. In Estonia, the law sets out some specific aspects in relation to the use of trademarks on the Internet – this is considered to take place only if the use has a commercial consequence in Estonia.

Any proceedings should be initiated against the person trading in counterfeit goods. Internet service providers (ISPs) cannot be held liable, unless their knowledge of infringement and/or intent can be proved. However, the law obliges ISPs to provide relevant information to the rights holders if proceedings are initiated. If an ISP is duly informed about unlawful action and fails to prevent it (eg, by taking down an ad for infringing goods), it can be involved in civil proceedings as a co-defendant. The most effective strategy should be evaluated on a case-by-case basis – although border measures to prevent the entry of fake products into the internal market through the postal services and test purchases followed by a complaint to the police or a civil claim are both useful ways to proceed. In any case, it is crucial to ensure the necessary evidence before taking action.

Preventive measures/strategies

The most effective preventative measures are to maintain a valid customs application, to monitor the market and to launch regular market searches and investigations, as well as internet watching services. Close professional relationships with local enforcement bodies can be ensured by using a competent and experienced local counsel and are extremely valuable in improving the efficiency of available legal tools. Such cooperation can be expressed in a variety of ways, including:

- participating (directly or through local counsel) in local anti-counterfeiting educational seminars;
- educating the relevant parties on how to distinguish between counterfeits and genuine good; and
- participating in public awareness campaigns about the harm that counterfeits inflict on rights holders, relevant consumers and the general public, as well as the economy as a whole. **WTR**

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