

The Law of the Republic of Azerbaijan

On trademarks and geographical indications

The present law regulates relations connected to the registration, legal protection and use of trademarks and geographical indications.

Chapter I General provisions

Article 1. Basic definitions

The definitions used in the present Law have the following meanings:

Trademark is any combination of graphically represented sign or signs, differing goods or services of one entrepreneur from the goods and services of another;

Geographical indication - a designation, establishing the relationship of the origin of a good with a state, region, territory or place in a certain territory (with a geographical object), and at the same time, reflecting the special quality, fame and other peculiarities of this good mainly in relation to the geographical origin;

Collective trademark is the sign or combination of signs, registered under the name of union, association or amalgamation;

Transliteration is the representation of letters of one alphabet with letters of another alphabet.

Article 2. Legislation of the Republic of Azerbaijan on trademarks and geographical indications

The legislation of the Republic of Azerbaijan on trademarks and geographical indications consists of the **Constitution of the Republic of Azerbaijan**, present Law, other legislative documents of the Republic of Azerbaijan and intergovernmental treaties Republic of Azerbaijan takes part in.

Should the international treaties Republic of Azerbaijan participates in, determine rules, differing from those, specified in the present Law, the rules of the international treaties are to be applied.

Relations in the field of trademarks and geographical indications in the Alyat free economic zone are governed in accordance with the requirements of the Law of the Republic of Azerbaijan "On the Alyat free economic zone".

Article 3. Legal protection of trademarks and geographical indications

Legal protection of trademarks and geographical indications, registered by *the structure, established by the relevant executive authority* of the Republic of Azerbaijan, is to be carried out under the rules, determined by the present Law and in compliance with the international agreements and treaties on international registration of signs, Republic of Azerbaijan takes part in.

Protection of trademarks and geographical indications not registered in the Republic of Azerbaijan but having force under international treaties Republic of Azerbaijan takes part in is to be fulfilled in compliance with the present Law.

Article 4. Signs, registered as trademarks

The following can be registered as trademarks:

- words, personal names, letters, figures, drawing elements, goods shapes or packing, any combination of colors or anything of the above.

Article 5. Compulsory grounds for the refuse to register trademark

It is not permitted to register the below-mentioned:

- a) trademarks, failing to correspond to the definition of trademark specified in the article 1 and article 4 of the present law;
- b) trademarks, not differing from each other, i.e. signs, not differing from each other on basic factors;
- c) trademarks, characterizing kinds of goods and services, their quality, quantity, purpose, cost, as well as place and date of their production and other peculiarities;
- d) trademarks of wines and alcoholic drinks, including geographical indications, not corresponding to their origin but equated to it;
- e) forms, reflecting purpose of goods, adding to it an important value and necessary for technical achievements;
- f) signs consisted of expressions, contradicting public order, moral and behavior and elements, increasing damage to the authority of the personality; religious and state symbols;
- g) trademarks, consisted of signs and symbols, used for long time in the trade activity of the Republic of Azerbaijan, often used in the everyday spoken language;
- j) trademarks, that can mislead consumers in the determination of peculiarities of goods or services, their quality or geographical origin;
- k) trademarks, registration of which is considered to be impossible under the article 6 of Paris convention on the protection of industrial property (hereinafter Paris convention);
- l) rewards or other decorations without permission of the structure, established by the relevant executive authority.

~~If the above mentioned decorations have been registered before the enforcement of the present Law their registration is to be cancelled.~~

Until the issue of exacting document it is prohibited to refuse in the registration of trademarks, mentioned in items b, c, e, part 1 of the present article, but capable of being differed in their use. In addition, if the trademark is registered the registration is to be considered valid.

It is prohibited to use trademarks, consisted of signs, specified in the item j, part 1 of the present article.

Article 6. Other grounds for the refusal of trademark registration

The signs identical to those mentioned below or similar in such a way that can be confused with them, are not be registered as trademarks:

- a) trademarks, registered earlier in the name of another person or requiring registration in the Republic of Azerbaijan on identical goods and services;
- b) trademarks, earlier protected in the Republic of Azerbaijan in accordance with international agreements Republic of Azerbaijan takes part in;
- c) popular trademarks, protected in the Republic of Azerbaijan under the article 7 of the present Law;
- d) *brand names (parts of brand names) that are protected in the Republic of Azerbaijan in the name of other persons by identical or similar goods or services prior to the period of priority of the trademark or identified as generally known, or may differ by consumers and producers in use;*
- *trademarks that, when used by another person for identical or similar goods or services in the Republic of Azerbaijan prior to the period of priority of the trademark, could be differentiated (known) by consumers and producers;*
 - e) geographical indications, registered in the name of the person, entitled to use them, excluding geographical indications, included into the trademark as a non-protected element;
 - f) registered certificate signs.

The signs repeating the below-mentioned are not to be registered as trademarks:

- a) industrial samples, owned by other persons in the Republic of Azerbaijan;
- b) scientific works or works of literature, art, their characters, quotations or fragments from them, well known in the Republic of Azerbaijan without consent of the owner or his heir;

c) family names, surnames, pennames or expressions of well-known persons – without theirs' or heirs' consent.

In the absence of heirs or well-known persons themselves and if the signs represent part of the historical or cultural value of the Republic of Azerbaijan, only the structure, established by the relevant executive authority can permit their registration.

The information mentioned below cannot be used as a ground for the refusal to register trademark:

a) if the applicant for the trademark does not use it until the date of submittal of the documents for its registration;

b) characteristic features of the goods or service rendered;

c) trademarks, differing from the sign, protected by the country of origin of this sign only with elements that do not change its specific character and identical character;

d) failure to submit an exacting document on the trademark in the country of origin, its failure to register or delay its registration.

Article 7. Requirements set to popular trademarks

Popular trademarks include signs corresponding to the requirements of the article 6th of Paris convention.

In case of revealing of the popularity of a trademark, the *structure, established by the relevant executive authority* is to consider the following:

- degree of popularity of good and services trademark stands for among the population on the territory of the Republic of Azerbaijan;
- channels of distribution and commercial offers of goods and services trademark relates to;
- information of consumers about quality of goods, using trademark both in the Republic of Azerbaijan and at the world market;
- characteristics features of the trademark or features acquired during the process of its use;
- territory the trademark is used on, length, scale of its use, including in particular information, obtained at fairs and exhibitions at the results of trademark usage with goods and services, announcements, advertisements, campaign, territory, furthering the popularity of this trademark.
- place of goods and services, using trademark that is occupied at the markets on the territory of the Republic of Azerbaijan and other states.

If the trademark or designation becomes known after the priority period of the sign used in homogeneous goods and identical with the trademark of another person or similar to it to a degree of confusion, this trademark or designation can not be considered generally known.

Article 8. Signs registered as geographical

Designations that meet the requirements established by this Law may be registered as a geographical indication or be protected within the framework of treaties to which the Republic of Azerbaijan is a party.

Along with the geographical name of the country, city, zone or territory, that represent nominal geographical indication, graphical or visual reproduction of the geographical indication *may* also to be protected.

Unless geographical indication reflects forged or misleading origin, it can be used as a characteristic element of goods or service.

The use of geographical indications is specified for the entrepreneurs, servicing present territory.

Official name, historical name or derivatives from them can be used as geographical indications.

~~In case of violation of rules specified by the present article, the sign is not to be registered as a geographical indication.~~

The name of the place of origin of goods, the marking of goods produced at a certain geographical object, reflecting natural features or other factors of a geographical object, or their inherent general qualities, may be registered by several persons in a collective form. Each of these persons has the right to use the name of the place of origin of the goods. The right to use the name of the place of origin of the registered goods is granted to any legal entity or individual located on a given geographical object that produces goods with identical qualities.

If the exacting document on the registration of the trade mark containing the geographical indication was faithfully filed, registered or if the right to the trademark was obtained by fair use before the period of protection of the geographical indication in the country of origin, the refusal to register the trademark, the recognition of registration as invalid or restriction of the right to use the trademark is inadmissible.

Signs, protected in the name of other persons in the Republic of Azerbaijan or declared by them for registration on homogeneous goods or services with an earlier priority, as well as well-known in the order established by this Law as a trademark of another person, are not considered a geographical indication.

The geographical indication can not be regarded as a type of sign within the protection period in the country of origin.

The *designation*, representing the name of the geographical object or reflecting this name, but not referring to the geographical object ~~in the Republic of Azerbaijan~~ is not to be registered as a geographical indication.

Geographical indication, not protected in the country of origin is not to be registered in the Republic of Azerbaijan.

If the use of a geographical indication in the content of a trademark in connection with goods not originating from the territory indicated as the territory of origin can cause consumers a false impression of the actual place of origin, then it is refused registration or registration is canceled.

Chapter II. Registration of trademarks and geographical indications

Article 9. Issue of exacting document on the registration of trademarks and geographical indications

The exacting document for the registration of trademark and geographical indication is to be submitted to the *structure, established by the relevant executive authority* by the applicant.

The applicant can submit the exacting document to the *structure, established by the relevant executive authority* in the following order:

- directly
- through patent bearing authorized person registered in *the structure, established by the relevant executive authority*.

Unless intergovernmental treaties Republic of Azerbaijan participates in, do not specify another order, excluding persons undertaking entrepreneur activity in the Republic of Azerbaijan, foreign legal entities and individuals *conduct legally significant work in relation to trademarks and geographical indications with the structure, established by the relevant executive authority only through patent attorneys*.

The exacting document, consisted of the application and necessary documents enclosed therein is to refer only to one trademark, one geographical indication.

The application for the registration of trademark is to include the following:

- name of the candidate, location or residence place, signature(at the submittal of exacting document through the patent bearing authorized person - name, surname and signature of the patent bearing authorized person);
- picture *or* 3D form of the pretended trademark;
- list of goods, services, and signs, grouped for registration at the classification of goods and services under MKTU;
- color of the trademark;
- transliteration and translation of the trademark and its definite part.

The application for the registration of a geographical indication is to include the following:

- application for registration;
- name of the applicant, residential place, signature (during the submittal of the document through patent bearing authorized person – name, second name, address and signature of the patent bearing authorized person);
- *designation* of the pretended geographical indication;
- name of the goods or service the geographical indication will cover;
- borders of the geographical object, where the manufacturing is to be carried out and service are to be rendered;
- description of goods *or service* peculiarities.

The application is to include:

- ~~document, confirming payment of the prescribed fee;~~
- in case of exacting document being submitted through patent bearing authorized person – the document, confirming his authorities;

- charter of the collective trademark, name of the subject, authorized to register collective trademark in his name, list of all members of the subject, entitled to use collective trademark, list of goods and services the trademark will cover, *their* common quality and other peculiarities.
- in case of necessity the document, confirming priority of the trademark, corresponding to the article 10 of the present law.
- document or reference of the structure, established by the relevant executive authority about location of the applicant at the specified geographical object, his history, production of goods or rendering of services, peculiarities of which are generally a consequence of its geographical location;
- document confirming the right of the *foreign* applicant for a geographical indication in the country of goods origin.

Documents specified in the part 7 of the present article are to be submitted to *the structure, established by the relevant executive authority* within 2 months after the date of application submittal.

The application for the registration of the trademark and geographical indication is to be signed as applicant wishes only by him or his authorized representative.

The application for the registration of trademark and geographical indication is to be submitted in Azeri.

Other documents, included into exacting document can be submitted in Azeri and other languages. The translation of materials of the exacting document, submitted in other languages into Azeri is to be provided within 2 months after the date of document submittal.

Should the documents, specified by the 7th and 11th parts of the present article will not be supplied to *the structure, established by the relevant executive authority* in time or the grounded application for the extension of this term will not be submitted before the expiration of the mentioned period the exacting document is not considered to be submitted. *Based on the applicant's petition* the term established can be extended up to 2 months.

The date of the application submittal, conforming with the requirements, set up in the fifth and sixth parts of the present article to *the structure, established by the relevant executive authority* is to be considered the date of exacting document.

The procedure for filing an exacting document is established by the relevant executive authority.

Article 10. Priority of the trademark

Priority of the trademark is to be determined under article 9 of the present Law since the date of exacting document entering *the structure, established by the relevant executive authority*.

Priority of the trademark can be determined in the member country of Paris convention, also since the date of submittal of the first document, containing conventional priority. In this case exacting document should enter *the structure, established by the relevant executive authority* within 6 months since the same date. *The day of filing an exacting document is not included to the term. If the last day of the term falls on weekends, voting day, holidays that are not considered as business days and the Day of National Mourning or the structure, established by the relevant executive authority can not accept the*

exacting document on that day, the deadline for submitting the exacting document is extended until the next first business day.

Priority of the trademark, submitted to the official international exhibition on the territory of one of Paris convention-member states, can be determined since the date of the object display at the exhibition (exhibition priority). In this case the exacting document for trademark should be submitted to *the structure, established by the relevant executive authority* not later than 6 months since the same date.

Exhibition priority does not extend the term of conventional priority.

The applicant desiring to use the right of conventional or exhibition priority is to inform about his requirement during the submittal of exacting document and not later than 3 months since the date when exacting document was supplied to the *structure, established by the relevant executive authority*.

The priority of the trademark can also be established by the date of international registration in the framework of international treaties to which the Republic of Azerbaijan is a party.

Article 11. Expertise of exacting document on trademark and geographical indication

Under the present law and the order specified by the structure, established by the relevant executive authority the expertise of exacting document on the trademark or geographical indication includes initial expertise and expertise and is to be carried out by *the structure, established by the relevant executive authority*.

During the expertise and until the adoption of main decision the applicant ~~is to pay the prescribed fee and~~ can add, assert or correct materials of exacting document at his initiative.

Should additional materials change the essence of the trademark, submitted for registration or non-homogeneous goods or services to be included into the list of goods and services, mentioned in the exacting document, these materials are not to be taken for consideration and can be drawn up by the applicant as a separate exacting document.

The exacting document can be divided into several exacting documents either by the applicant himself or by means of distribution of enlisted goods and services at his request. The separated exacting documents retain the submittal date of the source exacting document and priority of the pretended trademark.

During the expertise *the structure, established by the relevant executive authority* can demand additional materials necessary for the expertise from the applicant.

Following the demand of the expertise additional materials can be submitted within 2 months since the obtaining of a demand. *This period can be extended for 2 months on the basis of the petition of the applicant.* Should the applicant violate the specified term and does not answer to the expertise demand the exacting documents is considered not to be submitted and the applicant is notified of the fact.

Article 12. Recall of exacting document

The exacting document for the trademark and geographical indication can be recalled at applicant's request on any stage of its consideration.

The exacting document for collective sign can be recalled only with consent of all members of association, entitled to use this sign.

Article 13. Initial Expertise

Under the article 9 of the present Law initial expertise of exacting documents on trademark and geographical indication is to be carried out within 1 month since the date of documents submittal.

During the initial expertise of exacting document on trademarks and geographical indications the content of it, availability of necessary documents, as well as their conformity with fixed requirements are to be checked. On the basis of initial expertise results the applicant is informed either about accept of exacting document for consideration or refusal to consider the document.

Should applicant demand conventional or exhibition priority without submittal of documents confirming the legal grounds for such demand until the consideration of exacting document the priority of the trademark is to be determined since the date of exacting document submittal and the applicant is to be notified of the fact.

Article 14. Expertise of trademarks and geographical indications

The expertise of trademarks and geographical indications is to be carried out within 6 months since the completion of the initial expertise. During the expertise the sign submitted is to be checked for its conformity with the definition of the trademark set up in the article 1 of the present Law and, requirements, specified in articles 4, 5 and 6 and its priority is to be determined.

The expertise of the geographical indication is to be conducted *within 2 months* according to the definition of the geographical indication of article 1 and requirements., specified in the article 8 of the present Law.

Following the results of the expertise the grounded decision is to be made on the registration or refusal to register a trademark or geographical indication.

The applicant is to be notified of the resolution on expertise results within 10 days. The applicant can get acquainted with the documents, mentioned in the expertise resolution. The applicant can demand copies of these documents within 1 month after being notified of the decision on exacting document.

Before the decision to reject is made on the basis of the result of the examination of the claimed mark, the applicant is sent an appropriate notice of this. If the applicant does not agree with the result of the examination, within 2 months from the receipt of the notice, he can submit his arguments to the examining party.

If before the date of registration of a trademark in accordance with Article 10 of this Law, the structure, established by the relevant executive authority receives an exacting document about an identical trademark with homogenous goods or services, or similar to them to a degree of confusion and relating to another person, with an earlier priority, its registration may be revised.

In case of a decision on registration, the applicant, after payment of the fee within 4

months, registers a trademark or geographical indication, publishes information about them and receives a certificate. If the applicant does not pay the fee within the prescribed period, he is additionally granted 4 months of deferral, provided that an additional fee is paid. If these conditions are not met, the examination decision is deemed to be canceled and the exacting document is considered withdrawn.

The expertise of the exacting document, filed under the article 9 of this Law shall be carried out within 1 month on the basis of applicant's petition.

Article 15. Objection to the decision on exacting document

In case of discontent with the decision on exacting document on trademark or geographical indication the applicant can appeal against it in the *Board of Appeal* of the structure, established by the relevant executive authority within 3 months provided that the state duty is paid.

The *Board of Appeal* considers applicant's objection within 3 months since the date of its origination.

A conciliation letter or other approval document of the owner of such trademark in accordance with paragraphs "a" and "b" of the first part of Article 6 of this Law may be taken into account at the stage of examination of the trademark, and when making a decision on rejection as a result of examination - in the Board of Appeal.

The applicant or patent bearing authorized person is entitled to participate in the consideration of objection in the *Board of Appeal* and get acquainted with the materials of the resolution issued.

The applicant can appeal against the mentioned decision in court within 3 months since the adoption of the resolution of the *Board of Appeal*.

Article 16. Restoration of the expired term

Under the article 15 of the present Law should the applicant missed the term of appeal origination in the *Board of Appeal*, the term in question can be restored by the structure, established by the relevant executive authority on the basis of application *additionally* before the expiration of 6 months *and subject to payment of an additional state fee*.

Article 17. Registration of trademarks and geographical indications in the state register

Following the resolution of expertise and positive decision of the *Board of Appeal*, connected to the objection and under part 6, article 14 of the present Law the structure, established by the relevant executive authority is to register trademark and geographical indication in the State register (hereinafter referred to as register) within 1 month. The register includes representation of the sign, information about its primary character, owner, date of registration, list of goods and services classified under MKTU. The register also includes information about the registration of the trademark, extension of the registration validity period, cancellation of registration and further changes. During the registration of a collective trademark the data about persons, entitled to use it is to be added to the register.

The register includes representation of the geographical indication, data about the person entitled to use it, description of goods peculiarities, date of registration and information about extension of registration validity period and further changes.

The structure, established by the relevant executive authority issues a reference of register data after the payment of the fee.

The order of keeping of state register is to be determined by the structure, established by the relevant executive authority.

Article 18. Publication of the registration data

Under the article 17 of the present Law the data, included into the register can be published in official bulletin of the *structure, established by the relevant executive authority.*

During the publication of data about registered collective trademark the reference from the charter of the collective trademark about quality and other goods *or services* peculiarities it refers to is also to be provided.

Article 19. Certificate of trademark and geographical indication

The structure, established by the relevant executive authority is to issue the registration certificate, valid on the territory of the Republic of Azerbaijan for registered trademark or geographical indication.

The certificate confirms the fact of registration of the pretended sign as a trademark, its priority, exclusive rights of the trademark owner in relation to goods and services rendered, reflects description of the registered trademark. The certificate of collective trademark also includes data of persons entitled to use it (members of association).

The certificate of the rights to use geographical indication confirms the fact of the registration of pretended sign as a geographical one and certificate owner's right to use the goods or services in question.

The certificate of geographical indication does not ensure exclusive right for the use of registered geographical indication. The certificate empowers its owner to demand the prohibition of illegal use of the mentioned sign.

The certificate of trademark and geographical indication is to be issued by *the structure, established by the relevant executive authority* within 1 month since the date of its registration in the register.

The form of the certificate of trademark and geographical indication is to be determined by the structure, established by the relevant executive authority.

Article 20. Provision of legal protection to well-known trademarks

The application for recognition of a trademark as well-known applies to one trademark and is submitted to the Board of Appeal of the relevant executive authority together with a document certifying payment of the state fee.

The decision on recognizing a trademark as well-known, granting it legal protection is made in accordance with the "Rules of Recognition of Trademarks as Well-Known in the Republic of Azerbaijan", approved by the relevant executive authority, taking into account the requirements of Article 7 of this Law.

The decision to declare a trademark as well-known within one month is registered in the "State Register of Well-Known Trademarks", a certificate is issued to a well-known trademark and information about it is immediately published in the official bulletin and distributed in other media.

Legal protection of a well-known trademark is not limited.

The decision of the Board of Appeal may be appealed in a judicial procedure within 3 months from the date it was received.

Article 21. Validity Period of the Registration of Trademarks and geographical indications

The registration of trademark ~~or geographical indication~~ is to be valid within 10 years since the date of submittal of the exacting document to the *structure, established by the relevant executive authority*. The period in question can be extended for another 10-year *period without restrictions* on the basis of trademark owner's application and with the condition of *paying the fee*.

After the expiration of the registration validity period the owner of the trademark ~~or certificate of geographical indication~~ can be provided with 6-month extension on condition of the payment of additional state duty.

The information about extension of registration period is to be included into the register and certificate and published in the official bulletin.

Geographical indication is protected during the period of production of the goods, with the retention of the basic quality or basic characteristics corresponding to the conditions of the geographic object.

The certificate on the use of the geographical indication is valid for 10 years from the date of receipt by the structure, established by the relevant executive authority. The validity of the certificate on the basis of the application of the owner in the last year of its validity term can be extended for another 10 years with payment of the fee. Extension of the validity of the certificate is not limited.

Article 22. Amendments to the register and certificate

The owner of the certificate of registration of trademark, geographical or collective trademark is bound to inform the *structure, established by the relevant executive authority* of the amendments, effected in connection with the registration.

The amendments are to be included into the register and certificate at *the payment of the fee*.

Article 23. Conditions of repeated registration

Collective trademark cannot be registered in the name of another person apart from its previous owner or legal successor within 3 years after the expiration of validity period of its registration. This order is to be applied in case of refusal of collective trademark owner to use it before the expiration of its registration validity period.

Article 24. Registration of trademarks and geographical indications in foreign states

Legal entities and individuals of the Republic of Azerbaijan are entitled to register trademarks and geographical indications in foreign states or fulfil their international registration in the applied order.

The exacting document on international registration of trademark is issued through *the structure, established by the relevant executive authority*.

The exacting document on the registration of geographical indication in foreign states is provided after the registration of geographical indication in the Republic of Azerbaijan.

Chapter III. Use of trademarks and geographical indications

Article 25. Sole right for a trademark

The owner of the trademark is entitled to exclusively use it on the territory of the Republic of Azerbaijan for a period of its validity.

The owner of a registered trademark has the exclusive right to prevent the use by a third party without his consent of an identical or similar trademark (designation) for goods or services, identical or similar to goods and services covered by the trademark owned by him (if as a result of such use there is a likelihood of confusion of goods or services). The likelihood of confusion is considered as arisen if the identical designation is used in identical goods or services.

A person holding the right to a trademark shall not be entitled to prohibit the use of this trademark by other persons in connection with goods issued by him or with his consent to the goods turnover in the Republic of Azerbaijan with the trademark belonging to him. If the owner of a trademark in one of the countries-parties to the "Paris Convention for the Protection of Industrial Property" does not allow its representative or agent to use it on the territory of the Republic of Azerbaijan in accordance with the requirements of Article 6^{septies} of this Convention, he shall be entitled to prevent the use of the trademark.

The owner of the popular trademark can demand the prohibition of the trademark, consisted of the reproduction, imitation, *transliteration* or translation of words and creating false idea about his trademark, especially if the mentioned trademark refers to the goods and services, identical or similar to goods and services, reflected by the popular trademark. The owner of the registered trademark can demand prohibition of the trademark, capable of creating false idea even if goods and services represented by this trademark are not identical or similar.

The sole right does not extend to elements of the trademark, which cannot be registered as independent trademarks.

Article 26. Use of trademarks and geographical indications

The application of a trademark or geographical indication on goods, packages of goods it refers to and services rendered is considered as a rule to be the use of the trademark. The use of trademark or geographical indication in ads, publications, signboards, exhibits and objects of fairs, organized in the Republic of Azerbaijan as well as other documents, connected to the carrying-out of goods to market, is considered to be the use of the trademark.

In cases mentioned above the use of a trademark with the aim of production, storage, carrying out the goods to the market, import and export of goods is also considered to be the use of this trademark.

The offer of goods for sale, the sale of goods and service rendering confirms the use of registered trademarks.

The use of a trademark is the realization of the use of a trademark by its owner and a person who has the right to use it on the basis of a license contract in accordance with Article 28 of this Law.

Legal entities and individuals, engaged in mediator activity on the basis of mutual contracts can use their trademarks along with the trademark of goods manufactures and persons, rendering services.

The owners of collective trademarks can use their own trademarks related to goods and services along with the collective trademark.

If an identical geographical indication is used, signs must be accompanied by pictorial elements and symbols clearly indicating the true geographical origin in order to prevent misleading consumers.

A person who uses the identical or similar geographical indication before the first term of registration of a geographical indication retains the right to use it.

Supervision of the definition of the boundaries of the territory for the main characteristics of the goods or services provided, including for the production of goods or the provision of services, is carried out by the structure, established by the relevant executive authority that decide whether the goods or services provided have special qualities and conduct registration of the trademark (geographical indication).

Article 27. Notification sign

The owner of the certificate of trademark or geographical indication can apply a notification sign «®» near the trademark or geographical indication to inform about its registration in the Republic of Azerbaijan.

For the registration of a trademark or geographical indication in connection with the recognition of the right, placing of any designation or indication on the product is not required.

Article 28. Cession of rights for a trademark

The owner of the trademark can cede the right to use it on the basis of lease agreement and the right for a trademark on the basis of agreement referring to all goods and services

represented by this trademark or part of them to another person. These agreements are to be registered in *the structure, established by the relevant executive authority* and information about it published in the official bulletin provided that the *fee is paid* wherefore they can be used against the illegal acts of other persons.

The cession of rights for a trademark can be referred to exacting document, submitted for the registration of trademark. In this case the right of a new owner comes into force since the date of submittal of an exacting document. The cession of right for a trademark should not cause consumer gets a false idea about goods, services or manufacturer.

Collective trademark can be registered in the name of any union, association and the trademark, as well as right for it can be further ceded to another person with consent of all their members.

License agreement represents a document on the cession of trademark owner's (licensor) right to use the trademark to another person (licensee). The agreement relates only to the registered trademark and its action covers goods and services mentioned in the registration.

The application and documents on registration of the license agreement are submitted to the relevant executive authority. When considering documents, submitted for registration of a license, an additional document may be required to confirm the information specified in the application or in any material. The application must reflect the following: type of license (exclusive, non-exclusive or sole); the term of the license; territory where the license is used. Licensing agreements are certified by the relevant executive authority in accordance with the "Rules for the certification of contracts".

According to the license agreement the quality of goods and services of the licensee is not to be lower than the quality of the same of the licensor and the licensor is to control the fulfillment of this condition.

The document about quality of goods and services is to be enclosed to the license agreement.

Changes to the registered license agreement are made with the consent of the parties. The registered license agreement can be canceled in accordance with the procedure established by the relevant executive authority.

It is not allowed to forcedly conclude a license agreement about trademark.

A person, entitled to use geographical indication cannot conclude a license agreement on the cession of this right and its utilization.

Exclusive rights with respect to a registered trademark may be transferred to another person as a pledge on the basis of a contract.

The pledge agreement shall be registered with the structure, established by the relevant executive authority, provided that the fee is paid. "Rules for registration of a pledge agreement" are established by the relevant executive authority.

Chapter IV. Termination of legal protection of trademarks and geographical indications

Article 29. Acknowledgment of registration of the trademark and geographical indication to be invalid

A trademark or geographical indication can be acknowledged to be invalid either fully or partially within 5 years since the date of publishing of registration in an official bulletin, if it fails to conform with the *notion* of «trademark» mentioned in the article 1 of the present Law; has been registered with violation of article 5 provision; or under the part one and two article 6 during the period of registration validity period.

~~The interested person can submit a grounded objection to the registration within mentioned terms to the Board of Appeal. The objection is to be considered within 2 months since the date of origination. The person, raising objection, as well as the owner of the registered trademark are entitled to participate in the consideration of this objection in the Board of Appeal.~~

~~The resolution of Board of Appeal can be claimed in court within 3 months.~~

Registration of a trademark is recognised as invalid in the following cases:

- *if during the period of validity, the trademark in definite types of goods is converted into signs of general use;*
- *if during the period of validity a trademark in one of the States-Parties to the Paris Convention for the Protection of Industrial Property is wholly or partly issued in the name of a person, representative or agent directly or indirectly associated with the trademark owner, in violation of the requirements of Article 6^{septies} of the Convention.*

If the trademark or its main part is an imitation, translation or transliteration of a well-known mark, registered in the name of another person, identical or similar to the degree of confusion with goods or services relating to a well-known mark, then the requirement to annul the registration of such trademark may be filed in the period of its validity from the moment of publication of information about such trademark.

Registration of a geographical indication is recognised as invalid in the following cases:

- *if natural factors change in geographical area;*
- *if the goods for which the geographical indication is used, loses its special qualities related to it.*

If in the Republic of Azerbaijan the right to a well-known trademark is granted in violation of the requirements of Article 7 of this Law, and also if a well-known trademark has lost force on the grounds established in this article, then on the basis of a protest filed against it during its term, to be fully or partially recognized invalid as a well-known.

Based on the provisions of this article, any person, subject to the payment of a state fee, may apply to the Board of Appeal in connection with the requirement to revoke the registration of a trademark or geographical indication or evidence of the use of a geographical indication or with a protest against a well-known trademark. Application should be reviewed within 3 months. The person who applied, as well as the owner of the registered mark, has the right to participate in the consideration of the case at the Board

of Appeal. The decision of the Board of Appeal may be appealed in a judicial procedure within 3 months.

Article 30. Cancellation of registration in case of non-use of the registered trademark and geographical indication

The Board of Appeal of the structure, established by the relevant executive authority can cancel the registration in case of non-use of the registered trademark or geographical indication for 5 uninterrupted years since the date of registration or for 5 years since the date of submittal the application by any person for its non-use.

On condition that the state duty is paid, *the Board of Appeal* considers the application within 3 months. The owner of the trademark is to be notified of the application within 2 weeks.

Any person, owners of the trademark, its licensee, ~~owner of the certificate of the geographical indication~~ are entitled to participate in the consideration of application.

During consideration of the issue about cancellation of registration in connection with the non-use of the registered trademark or geographical indication the arguments of the trademark owner, showing that he did not use it for reasons beyond his control, *including import restrictions affecting its use or other government requirements for goods and services related to it. Proof of use of the trademark shall be borne by the owner of the trademark.*

The resolution of the *Board of Appeal* can be claimed in court within 3 months.

During the use of collective trademark in goods and services, not having common qualitative or other characteristics, the registration of the mentioned trademark can be cancelled in court either fully or partially on the basis of application from the interested legal or natural entity.

The information about cancellation of the registration is to be published in an official bulletin.

Article 31. Cancellation of the registration of a trademark and geographical indication

The registration of a trademarks and geographical indication is to be cancelled by the *structure, established by the relevant executive authority* in the following cases:

- in connection with expiration of term, specified by the article 21 of the present Law
- provided that the owner of the certificate refuses to do the registration
- provided the registration is considered invalid under the article 29 of the present Law
- on the basis of the resolution, adopted according to the article 30 of the present Law
- *when liquidating a legal entity or suspending an entrepreneurial activity by an individual;*
- *if the geographical indication is canceled;*
- at the stoppage of legal protection of a geographical indication in the country of origin.

~~If the use of geographical indications on goods, not produced on the specified territory misleads consumers about the actual place of manufacturing, the registration is either postponed or cancelled.~~

If during the period of the registration of a trademark the actions of its owner in connection with registration in compliance with the procedure established by the Law of the Republic of Azerbaijan "On unfair competition" are recognized as unfair competition, registration of this trademark may be fully or partially canceled.

Any person, subject to payment of a state fee, may appeal to the Board of Appeal regarding the cancellation of registration of a trademark, a well-known trademark, geographical indication and certificate of the use of a geographical sign for the reasons specified in the first part of this article. Based on the grounded application of the person, who filed the protest, as well as the owner of the trademark, the well-known trademark, the certificate on the use of the geographical indication, subject to payment of an additional state fee, the period for considering the appeal in the Appeals Board may be extended for a period not exceeding six months from the date of the completion of the fixed period of consideration of the protest.

The decision of the Board of Appeal may be appealed in a judicial procedure within 3 months.

The information about cancellation of registration is to be published in an official bulletin.

Chapter V. Legal protection of registered trademark

Article 32. Violation of rules for registered trademark and geographical indication

Under the articles 25 and 26 of the present Law the use of trademark without consent of its owner is considered to be the violation of right for the registered trademark.

The use of trademark, containing geographical indication on wines and alcoholic drinks without consent of its owner is considered the violation of right for the registered trademark.

If the geographical indication is well-known, a translation of its name exists and the name is used with such expressions as «grade», «kind», «imitation» or others and persons without certificate use identical or similar trademarks in relation to homogeneous goods (including wines and alcoholic drinks), the qualities of which can mislead consumer, such a condition is considered to be the violation of right for a registered geographical indication.

Concerning the use of the *protected* trademark and geographical indication the following is prohibited:

- actions resulting in the confusing of goods, rendered service or entrepreneur activity with others
- false ideas, undermining the authority of the goods, rendered service or entrepreneur activity at the undertaking of commercial activity

- indices, the use of which can mislead the public about characteristics, quality, and usability of goods at the undertaking of commercial activity.
- *any act of use which, in accordance with Article 10bis of the Paris Convention, is considered an unfair competition.*

The following cases on the Internet, in particular in domain names or other means of addressing, are considered as a violation of the rights of the owner of a trademark or company name:

- *if domain names are identical to trade names and trademarks for identical goods or services;*
- *domain names are used for commercial purposes.*

If the domain name or its main part has been registered with the repetition, imitation, translation or transliteration of a well-known trademark or are unjustly used on the Internet (in particular in domain names or other means of addressing), this is considered a violation of the rights of the owner of a well-known trademark. The owner of a well-known trademark may demand in court that the authority, registered the domain name that created the conflict, terminates its registration or returns the name to the owner of the well-known trademark.

If the use of a well-known trademark registered in the Republic of Azerbaijan by another person in all types of goods and services, caused damage to its owner, this circumstance is recognized as a violation of the rights of the owner of a well-known trademark.

Article 33. Consideration of disputes

Concerning the fulfillment of the present Law *in the order, prescribed by the Civil Procedure Code of the Republic of Azerbaijan and the Criminal Procedure Code of the Republic of Azerbaijan*, the following disputes are to be considered in court:

- *early termination of the legal protection of the collective mark used in goods that do not possess uniform quality indicators or other uniform characteristics;*
- *violation of the sole right for trademark;*
- ~~*cancellation of the registration of a trademark or geographical indication ahead of schedule or acknowledgment of it to be invalid;*~~
- *conclusion and implementation of a license agreement and agreement about cession of rights;*
- *illegal use of geographical indication.*

Commercial confidentiality of the trademark owner, connected to the manufacturing of goods or rendering of services is kept during consideration of disputes in court.

Article 34. Sanction against violation of rights

Persons illegally using trademark or geographical indication either fully or partially *at the request of the rightholder* are to stop its use and recompense the damage caused to the owner of the trademark.

Counterfeit products are those that are illegally supplied with trademarks, geographical indications or signs similar to them to a degree of confusion.

When considering disputes in civil proceedings, the court, subject to not harming the legitimate rights of third parties, depending on the degree of danger and the scope of the offense, may decide to withdraw the following goods from the trade turnover and/or the subsequent destruction without compensation:

- a) *goods that are the subject of an offense;*

b) with a view to preventing offenses that may occur in the future, materials and equipment used directly in the manufacture of counterfeit goods.

The rightholder may demand payment of compensation in the amount of from one thousand to fifty thousand manats in court as compensation for damage caused to him by a person who produces counterfeit goods (including labels or marks) or knows or should know about the use of such goods (including number of labels and signs), and incurred costs.

When goods are imported into the Republic of Azerbaijan (except of transit goods or goods purchased from free trade in the territory of another state by the rightholder or with his consent) illegally provided with a trademark and geographical indication, according to a court decision on the basis of a rightholder's demand, release of these goods into free circulation from the side of customs authorities can be suspended for a period of 10 working days.

Passage of counterfeit goods intended for export from the customs territory may be suspended by a decision of the customs authorities.

When goods, illegally supplied with the sign of the *rightholder* are passed through the customs border of the Republic of Azerbaijan, he has the right to apply to the customs authorities with a justified request to suspend the transfer of these goods across the border, as well as to obtain information on the quantity of goods and *on the exporter, importer, carrier* of these goods.

If after the decision on the arrest, imposed by the court in order to secure a claim for imported goods, which are allegedly counterfeit, within 10 business days from the moment of granting to the applicant (the rightholder) of the notice on the suspension of release of goods into free circulation, the customs authorities fail to receive information on a reasonable time for considering the case on the merits in accordance with the claim of a non-defendant, the suspension may be extended, provided that the suspension period does not exceed 10 working days.

In case of goods being kept at the customs border illegally, the guilty party should recompense the damage caused to its owner.

~~If the goods differ from original in quality, persons, illegally using trademarks and geographical indications bear responsibility under the legislation of the Republic of Azerbaijan.~~

Chapter VI. Final provisions

Article 35. State duty and fee

35.1. In cases stipulated by this Law, a state fee is paid in the amount established by the Law of the Republic of Azerbaijan "On State Duty".

35.2. For services provided for by this Law and provided by the structure, established by the relevant executive authority, a fee shall be paid in the amount established by the relevant executive authority.

Article 35-1. Acceptance of the exacting document in relation to the trademarks and geographical indications and the organization of their expertise

Acceptance of the exacting document in connection with the trademarks and geographical indications (including preliminary expertise and expertise of the exacting document), establishment of priority regarding the trademark, consideration of applications for addition, clarification or modification of the materials of the exacting document and extension of the time limit for submitting the exacting documents (including documents on priority) carries out a specialized legal entity, established by the relevant executive authority.

Article 36. Rights of foreign legal entities and individuals

Unless otherwise specified in the international treaties the Republic of Azerbaijan participates in, foreign legal entities and individuals have equal rights for trademarks and geographical indications as compared with legal entities and individuals of the Republic of Azerbaijan.

Article 37. Responsibility for the violation of Law

Legal entities, individuals and officials violating this Law are liable in accordance with the Code on Administrative Offenses of the Republic of Azerbaijan and the Criminal Code of the Republic of Azerbaijan.

The President of the Republic of Azerbaijan

Heydar ALIYEV

Baku, June 12, 1998

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