

I. PRACTICE OF THE STATE PATENT BUREAU

Review of the oppositions

CONFUSINGLY SIMILAR TRADEMARKS:

Earlier trademarks

Opposed trademarks

SOFITEL

vs.



Trademarks were registered for identical or similar services in class 35. The opposed trademark also was registered for services in class 41.



vs.



Trademarks were registered for goods in class 33.



vs.



Trademarks were registered for identical goods in class 36.

“THE OLIMPICS”  
“OLYMPIC GAMES”

vs.



Trademarks were registered for identical services in class 41.

DISSIMILAR TRADEMARKS:

Both registered for goods in class 30.

Miglè

vs.



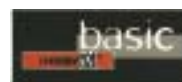
Trademarks are registered for goods in class 20.



vs.



Both trademarks registered for goods in classes 7, 8.



vs.



Trademarks registered for goods in class 32.

KUBUŠ

vs.

MIKUŠ



## Registrability of trademarks in Lithuania

### Lithuanian vodka

Having examined an appeal concerning the State Patent Bureau expert's decision not to register the trademark "Lithuanian vodka" (application No. 2004 2385) in class 33 for "vodka", the Appeal division established that the sign "Lithuanian vodka" is to be considered as a trademark since it has acquired distinctive character. In its decision the Appeal division indicated that assessing a sign's acquisition of distinctive character following the use which has been made of it, it is important that the public identifies the particular source or origin of products or services marked with the appropriate sign. Evidences provided show that Lithuanian customers not only know vodka named "Lithuanian vodka", but for the vast majority of them this trademark identifies the producer – company "Stumbras".

### RUTINOSCORBIN

The appeal regarding the expert's decision not to register the trademark "RUTINOSCORBIN" (application No. 2004 0294) in class 5 for "pharmaceutical preparations and substances" was filed with the Appeal Division of the State Patent Bureau. The expert indicated that the sign is composed of two generic names "RUTIN" and "OSCORBIN" („ASCORBIC ACID"), thus indicating generic names are included in products registered in class 5. The Appeal division noticed that the trademark did not consist of the such elements which would be completely identical to generic names and for vast majority of consumers the sign "RUTINOSCORBIN" does not mean anything in particular per se, and does not provide any information when making its overall assessment, therefore there are no grounds to conclude that this pharmaceutical preparation mislead the public as to its effect. Appeal was satisfied and the trademark in question has been registered.

### NEMIROVSKAYA

The Appeal division of the State Patent Bureau has decided not to grant protection in Lithuania for the trademark "NEMIROVSKAYA" (IR No. 804785). The Appeal division indicated, that the sign "NEMIROVSKAYA" contains geographical information as it is related to the name of the town NEMIROV, which is situated in Ukraine. The applicant who filed the application is from Liechtenstein, therefore the sign in question would mislead the public as to the geographical origin of the goods.

## II. RECENT CHANGES IN IP LAW

On July 3, 2007, Republic of Lithuania Seimas adopted an important **amendment to the Code of Administrative Offences** providing for liability for infringements of industrial property rights. Prior to that, persons who infringed the rights of owners of trademarks, designs or patents were not subject to administrative liability.

The above-mentioned amendment provides that a person who unlawfully keeps or transports goods marked with a trademark owned by another person and this way seeks some material benefits, or goods that were unlawfully produced using designs or invention patents owned by another person and this way seeks material benefits must pay a fine, whereas the above-mentioned goods and the tools or equipment used for production thereof that are exclusively or usually used for production of such goods or the purpose and direct objective of the use of which is production of the unlawful goods must be confiscated.

In May of 2007, the Republic of Lithuania Seimas introduced **amendments to Law on Patents**.

The first amendment concerns setting of a fee for publication of the translation of the invention definition of the European patent application. The Republic of Lithuania Law on Patents stipulates that the published European patent application is provided with a temporary legal protection starting from the day when the translation of the European patent application definition is published in the official bulletin of the Republic of Lithuania State Patent Bureau. No fee for publication of the European patent application definition translation had been provided for in legal acts before.

The second amendment implements the provisions of the European Parliament and Council May 17, 2006 Regulation (EC) No. 816/2006 on Compulsory Licensing of Patents Relating to the Manufacture of Pharmaceutical Products for Export to Countries with Public Health Problems. The amendment stipulates that the Republic of Lithuania Government will appoint a competent institution to issue compulsory licences in pursuance to the above-mentioned Regulation.

### III. IP CASE LAW

#### ***Copyright Law: conditions for application of liability to informational publication client***

In a 2007 copyright infringement case, the Court of Appeal of the Republic of Lithuania passed an important resolution regarding conditions for application of liability to informational publication clients.

The court of first instance acknowledged in the case that the client had violated the author's property rights, because he had distributed a contour map published by a publishing house without the author's license. Such resolution of the court of first instance was acknowledged as unreasonable by the Court of Appeal.

The Court of Appeal specified that the client was provided with a publication, in which the publishing house itself was named as the author of the publication. The copyright of the legal person in question to the maps and the entire publication were marked by the copyright protection sign, i.e. the circled letter C. In such circumstances the client who was neither the author nor the publisher of the publication in question may not be subject to the same level precaution standards as the ones applicable to the author and publisher of the publication.

Taking into consideration the above-mentioned, when accepting a publication published at his request the client does not have any grounds to suspect violations of copyright. He does not violate the basic carefulness, prudence and attention requirements; therefore, he may not be found guilty of infringing copyright and causing property damage to the author due to such infringements.

Taking into consideration the above-mentioned arguments, the Court concluded that the client may not be subject to liability for the property damage caused to the author due to the copyright infringement. However, upon establishment of the fact that a publication in violation of copyright was prepared and published, such copyright protection measures might be applied in relation to the client as the obligation to stop distribution of the publication, to publish information about the committed infringement, seizure of the unlawful copies of the publication and transfer thereof to the plaintiff, etc.

#### ***Copyright Law: contour maps as objects of copyright***

The Supreme Court of the Republic of Lithuania in a 2007 civil case stipulated that contour maps may be categorised as belonging to the copyright object group.

When evaluating objects of this kind, attention should be paid to the fact that in this case not many opportunities for the author to express his creativity and individuality exist, because publicly known data is used, and objectively existing phenomena, objects, etc. of the material world are portrayed on the basis of scientific knowledge and mathematical calculations.

The originality of the objects belonging to the above-mentioned group is evaluated considering the way and form of presentation of the data (facts and information), the original order of selection and presentation of the data, the colour selection, etc. Thus originality and particularity means that the way and form of presentation of the data is not usual or characteristic of objects of this kind or elements thereof, and that the work is different from other works of this kind thanks to the intellectual efforts put by the author, i.e. the entirety of certain characteristics must be established, which would allow distinguishing the work from other similar works.

In the case in question, when evaluating fragments used in the publication it was concluded that the author, using databases and his own creative skills, created contour maps, selected and applied information for a certain task, harmonised the contents of the contour maps with the school study programs, etc.; therefore, the author's work constitutes creative work protected by law.

#### ***Copyright Law: the publisher as subject of liability in copyright infringement cases***

In the same case regarding contour maps the Supreme Court of the Republic of Lithuania has also expressed its opinion regarding another important legal issue. The Judicial Assembly emphasised that when establishing persons liable for copyright infringements, one has to evaluate not only actions of those directly committing the infringement but also of those who were involved in the actions infringing the law. In the case in question the issue of liability of the publishing house that published the defendant's publication has arisen.

It was specified that the publishing house as a legal person that in his activities directly deals with objects subject to copyright, is subject to stricter diligence, prudence and lawfulness requirements; therefore, having accepted to publish a work, the publishing house has the duty to make sure that the person providing the work owns the copyright or publishing rights, because every person using the right granted by somebody else must be sure of the lawfulness of use of the rights in question. The publisher's diligence and carefulness when attempting to make sure that a work will be used lawfully determine the publisher's guilt in the cases of copyright infringements.

## IV. OTHER NEWS

### OHIM REPORT ABOUT LITHUANIA

In Newsletter 06-2007 the Office for Harmonization in the Internal Market (OHIM) announced statistics about filing the applications for Community Trademarks and Community Design registrations in Lithuania.

Businesses based in Lithuania have made 149 applications for Community trade marks since 1996, though the majority of these applications came after accession to the European Union in 2004. 68,46% of applications were filed for figural trademarks, 28,86% – word trademarks and 2.68% for 3-D European Community trademark registrations. Even 63 applications are registered for services in class 35, 24 applications – for services in class 42, 19 applications – in class 33, and 17 applications for goods in class 29.

In terms of RCD filings, Lithuania has filed a total of 65 designs since the inception of the registered Community design system in 2003. Design filings coming from Lithuania are dominated by goods in Class 6 of the Locarno classification, with almost half of designs filed for such goods. 14 applications were filed in 11th class under Locarno Classification. Designs were also registered for goods in classes 26, 9, 8 under Locarno Classification. In total, the biggest amount of applications was filed by “Narbutas ir Ko, UAB” (16 applications). “UAB Midenė” is in the second place having filed 14 applications for European Community design registrations. “UAB Optimata” is in the third place. (11).

### FEE REDUCTION

The fees of the Office for Harmonization in the Internal Market (OHIM) are going to be reduced. This decision was adopted by Member State ministers at the meeting of the EU Competitiveness Council in Brussels on May 21, 2007. This fee reduction strengthens Europe as an economic location. In the future, it will be possible to register trade marks and designs through OHIM at a significantly lower cost. This helps all those who wish to protect their rights.

The news provided in this newsletter are only for informational purpose and it may not be considered as legal conclusion or consultation. For more specific information please contact our firm:

METIDA Law firm of Reda Žaboliėnė

Business center VERTAS, Gynėjų str.16, LT-01109 Vilnius, Lithuania

Tel.: (+370) 5 249 0830, 249 0831, fax: (+370) 5 249 0833

e-mail: [patent@metida.lt](mailto:patent@metida.lt)

[www.metida.lt](http://www.metida.lt)