

I. THE PRACTICE OF THE STATE PATENT BUREAU OF THE REPUBLIC OF LITHUANIA

**TRADEMARKS CORRESPONDENCE TO RELATIVE REQUIREMENTS
 MISLEADINGLY SIMILAR TRADEMARKS:**

Earlier trademarks

Opposed trademarks

PANELĖ

vs.



Trademarks registered for similar goods in class 16

BRAVO

vs.

BRAVO COOL

Trademarks registered for similar goods in class



vs.



Trademarks registered for similar goods in classes 41, 42 and 43 (the opposed mark is registered in 41 and 43)

PROVIVO

vs.

Pro-vo

Trademarks registered for similar goods in class 29



vs.



Trademarks registered for similar goods in class 18

RED & WHITE



vs.



Trademarks registered for similar goods in class 34

DISSIMILAR TRADEMARKS:

Earlier trademarks

Opposed trademarks

NOKIA

vs.

NOKINAL

Trademarks registered for similar goods in class 5

BALTIJOS

vs.

SEŅUJU BALTU
ALUS

Trademarks registered for similar goods in class 32

GRAN
CORONAS

vs.



Trademarks registered for similar goods in class 33

BAD FAITH APPLICATION



vs.



“Fanta Wild Berry”, fig. (Reg. No 47353)

“FANTA” (Reg. No 20174, Reg. No 002091817) and others

“FANTASTIKA” (Reg. No 51648)

Having analyzed opposition No 1794, the Appeals Division of the State Patent Bureau decided that the opposed trademark “FANTASTIKA”, which belongs to the Cido Partikas Grupa, SIA (LV), is misleadingly similar to the trademark “FANTA” of the interested party — The Coca-Cola Company (USA) — as the verbal trademark “FANTA” is repeated in the opposed trademark “FANTASTIKA”. It has been stated that the applicant submitted the application in bad faith. The Appeals Division has decided to satisfy opposition No 1794 and to recognize the trademark “FANTASTIKA” registration No 1648 as invalid.

I. TRADEMARKS CORRESPONDENCE TO ABSOLUTE REQUIREMENTS

Having completed analysis of the slogan “WHY PAY MORE?” (application No 2006 2158) it has been decided not to register this slogan for the services in class 38, as it does not include any extra fantasy elements, thus is devoid of distinctive character from the point of view of telecommunication services. One more motivating point was the fact that this is only an advertising slogan, and the semantic meaning of the word combination points at the lower price of services provided by the applicant. Following the argument-supported application for repeated analysis, it was positively accepted that “WHY PAY MORE?” is an original non-advertising slogan.

After analysis of the trade name “GRAND LOTO” (application No 2007 0018) it was decided not to register this as a trademark as it does not have any distinctive character — it is of a descriptive-complimentary type from the angle of declared goods and services, indicating the type of goods and services only: in this case a game (“lotto”) and the exceptional manner of this game (“grand”). As the expert analysis received a motivated argument, it was decided to register the trademark “GRAND LOTO” to mark goods in class 16 (“printings”).

The decision concerning **Application No 2007 0373** on the trademark “**SPĖK IR LAIMĖK**” (guess and win) states that the registered trademark does not have any distinctive character: it describes goods and services verbally and is made up of words of a descriptive type only and knowledge of goods and services. An expert also argued that the semantic meaning of “**SPĖK IR LAIMĖK**” (guess and win) only provides information about the characteristics of the registered services, and the nature of services and goods (“*the player needs to guess and choose the right numbers or other symbols on the game or lottery ticket, and the prize depends on the amount of guessed or dropped numbers*”). Thus, this mark cannot be recognized as a trademark and registered. After receipt of an application for repeated analysis, the decision was made to register “**SPĖK IR LAIMĖK**” as a trademark representing goods and services in classes 16, 28 and 41.

II. DECISIONS OF COURTS OF THE REPUBLIC OF LITHUANIA

By decision of 12-03-2008 in civil case No 2A–199/2008 the Court of Appeals of Lithuania rejected the defendant E.S. appeal against the Vilnius District Court decision of 15–10–2007 in the plaintiff’s Nintendo Co. Ltd. claim due to breach of trademark owner’s rights. The Court of Appeals decided that Vilnius District Court reasonably applied preventive prohibitions as foreseen in article 38 (part 2, points 2,3,4) of the Law on Trademarks of the Republic of Lithuania, as the defendant did not argue against the fact of having taken counterfeit goods (goods identical to the mark registered by the plaintiff) into the country. It has also been stated that „preventive prohibitions used in order to fulfill illegal actions as foreseen in the court’s decision are based on the Constitution and basic legal principles, thus it cannot be alleged that the preventive means set by the court violate the appellant’s constitutional rights and basic legal principles.“

On 12–03–2008 the Court of Appeals of Lithuania upheld the Vilnius District Court decision of 22–10–2007 in the civil case of UAB „Baltijos muzika“, T.M. BV, E.J.P vs. UAB „Baltijos reklamos projektai“ by putting forward arguments that „*similarly to other rights, the implementation of the right of freedom of creation safeguarded in the Constitution of the Republic of Lithuania cannot breach other persons rights and legal interests*“. The court ruled that the case data proves the plaintiff’s UAB „Baltijos muzika“ intension to produce the staging of the E. J. P. play „Urvinė moteris“ (the cave woman) after having directed the comedy „Urvinis žmogus“ (the cave man). Bearing this in mind the defendant directed a performance which, due to its genre, persons involved and Internet page name the user – viewer inevitably related to the performance „Urvinis žmogus“ produced by UAB „Baltijos muzika“ and its already earned reputation. In relation to the indicated circumstances, in the first instance the court stated that the defendant acted by unfair means in respect of the plaintiff UAB „Baltijos muzika“ and breached fair commercial practice and honest business practices; misled users and violated the plaintiff UAB „Baltijos muzika“ right of competition in general by naming its performance the „Urvinė moteris“; used this name in its advertizing and Internet pages www.urvinemoteris.lt, www.urvine.lt as well as a picture of the cave woman — an image (logo) identical to the picture used by the plaintiff UAB „Baltijos muzika“; and registered the indicated symbolic names of the Internet sphere. In carrying out the above mentioned actions the defendant in respect of the plaintiff has committed prohibited actions of unfair competition, defined in *article 16 (part 1 point 1) of the Law on Competition*, which breached or could breach the plaintiff’s right to competition“.

On 17–03–2008 the Supreme Court of Lithuania upheld the lower courts decisions in civil case No 3k–3–165/2008 regarding the accepted plaintiffs UAB „Verslo žinios“, R.B. and V.N. claim against the defendant UAB „Naujasis aitvaras“ and the third party UAB „Respublika“. The court ruled that the design of the material layout of a newspaper was not registered in accordance with the Law on Design; nevertheless it corresponded to the concept of design as set by the law. Due to the aforementioned circumstances the layout of the newspaper’s information and graphic material is safeguarded according to the Law on Copyright and Neighboring Rights, which among other objects comprises works unregistered as industrial design. The court also agreed with the appeal court decision, stating that usage of the plaintiff’s newspaper trademark in the illegal comparative advertisement, contradicts the fair practice of economic activity and usage of trade. The legal rule to be applied in this case would not be Civil Code article No 2.25 but the provisions of the Law on Advertising.

III. LEGISLATION NEWS

INTELLECTUAL PROPERTY LAW

On 05–02–2008 the Law of the Republic of Lithuania on Ratification of the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs came into force. Lithuania’s accession to the Geneva Act of the Hague Agreement brought about the possibility to register design in a cheaper and easier way in different states. According to the Geneva Act Lithuanian applicants for design protection in several countries will be able to submit one application to the State

Patent Bureau or directly to the WIPO International Bureau in one language and make fee-payments in one currency. This means one international registration submitted to the International Bureau alongside the Geneva Act substitutes several applications which previously would have been issued by different national or regional services. International registration ensures the same results as applications performed in each individual state. Thus, international registration with regard to the scope of protection and administration offers the same protection as national law. The Hague system will help the design owner to cut expenses in cases of extension of period of validity for design protection and rights transfer, i.e. individual fees paid to each of the states for the above mentioned actions will be substituted by one payment to the International Bureau for the extension of the validity period of international registration.

Order No IV-96 of the Minister of Culture of the Republic of Lithuania dated 21 February 2008 approved Rules on mediation in negotiations between associations of copyright and neighboring rights corporate administration, and users of objects of works and neighboring rights. The rules regulate mediation of the Ministry of Culture of the Republic of Lithuania in negotiations between associations of copyright and neighboring rights corporate administration, and users of articles of works and objects of neighboring rights on the copyright license contracts, or contracts on payment to the performers' and phonograms' producers.

On 27-03-2008 the Law on Amendment of Article 33 of the Law on Copyright and Neighboring Rights came into force stating that *"it is allowed to demonstrate openly the original of an art work or its copy without the author or his/her rights successor's consent in cases when the art work has been sold or the ownership rights to it have been transmitted to another natural or legal person in a different mode, and when the author or his/her rights successor is aware or has a reason to know that this open demonstration of art works (exposition) is a part of the natural or legal person's, which has acquired the work, regular activities"*. In the earlier version of this article permission was limited by the provision that an art work may be demonstrated only in cases when *"there is no intension to gain direct or indirect commercial profit"*.

ENTERPRISE LAW

On 25-02-2008 the Constitutional Court of the Republic of Lithuania announced its ruling on members of the Parliament group's appeal concerning the Law on the Amendment of **the Law on Securities Market** (as of 22-06-2006). The appeal was based on a provision that was allegedly contradictive to the Constitution of the aforesaid law amendment which foresees the issuer-shareholder's right to request all other issuer-shareholders to sell their shares granting them the right to vote after the issuer-shareholder acquires shares, ensuring at least 95 percent votes in the general shareholders' meeting, and the shareholders' obligation to sell the shares in accordance with the laws. By this ruling the Constitutional Court terminated the proceedings as the law in question was substituted by a new Law on Securities during the time of the hearing. Although the new law has retained a similar provision to the previous law, the court admitted that 51 out of 75 members of the Parliamentary group, which had appealed to the Constitutional Court, voted for adoption of the new law. Referring to the fact that MPs voted for establishment of an analogous provision in the new law, the court drew the conclusion that Parliament members have no more doubts on the aforementioned incongruous provision to the Constitution.

On 06-02-2008 the Government of the Republic of Lithuania issued resolution No 106 on the **Bill of Law on the Amendment on the Enterprise Bankruptcy Law** and submitted it to the Parliament of the Republic of Lithuania. The Bill of Law aims at speeding up procedures for enterprise bankruptcy and safeguarding creditors' interest to transfer the assets management of the bankrupt enterprise to an administrator. The Bill foresees increased administrator responsibility, bigger fines for persons protracting or interfering with bankruptcy proceedings; and it limits the persons' choice to be elected creditor meeting chairman of the enterprise under bankruptcy.

On 14-02-2008 the Securities Commission of the Republic of Lithuania approved the **amendments to the Rules on the Submission of Notification on the Acquisition and Disposal of a Block of Shares**. The rules were supplemented by two new chapters introducing control mechanisms applicable to market makers, definitions of types of securities that—according to a formal agreement and upon the initiative of the holders thereof—grant the holder a right to acquire previously issued shares, an elaborated procedure for the notification of acquisition of a block of voting rights, and other amendments.

On 14-02-2008 and 28-03-2008 the Securities Commission of the Republic of Lithuania approved several resolutions on a new regulation of management and financial broker enterprise licensing; issues on initial capital and capital sufficiency, content of subjects' prospectus on collective investment and suchlike. These resolutions contribute to the new edition of the Law

on Collective Investment Undertakings that foresees a possibility for management enterprises to establish specialized collective investment undertakings and closed-end investment companies alongside the presently harmonized collective investment undertakings.

CONSTRUCTION LAW AND REAL ESTATE

The 26-03-2008 resolution No 290 of the Government of the Republic of Lithuania has amended Regulations of the Centre of Registers. The amendments grant natural and legal persons the possibility to perform more operations related to real estate from a distance, i.e. the data is forwarded by Internet after the notary submits it to the administrator of the Real Property Register. These amendments came into force on May 1, 2008.

COMPETITION LAW

On 01-02-2008 the **Law on Amendment of the Law on Advertizing** of the Republic of Lithuania came into effect (approved on 11 January, 2008). This law has been modified in accordance with the newly approved Law on the Prohibition of Users' Misleading Commercial Activities (21-12-2007, No IX-1409). The new edition of the law introduces updated criteria for misleading advertizing and now any advertizing that bears features of misleading commercial activities, will be regarded as misleading advertizing. The regulation on the legality of comparative advertizing has also been updated.

INSURANCE LAW

The 13-02-2008 resolution No 122 of the Government of the Republic of Lithuania has amended the **Rules Determining the Damage Caused by Traffic Accidents and Payment of Insurance Premiums**. Correspondingly Traffic Rules have been modified (20-03-2008 resolution No 275 of the Government of the Republic of Lithuania) and as of 11 April 2008 a rule has been in force stating that in case of a traffic accident without any casualties it is unnecessary to call police officers and the participants may fill in the traffic accident declaration (a special form or a plain sheet of paper) themselves.

IV. ACTIONS AGAINST COUNTERFEITING

Counterfeit mobile telephone equipment (747 items) with the **SAMSUNG** trademark has been destroyed under the representation of MEIDA Law firm of Reda Žaboliienė.



V. MISCELLANEOUS STATISTICS

Prepared according to data announced by the State Patent Bureau of the Republic of Lithuania in 2008 (SPB statistics of 2007).

In 2007 the State Patent Bureau received 82 patent applications: 73 national and nine international ones that were later moved to the national level; 62 applicants were from Lithuania and 20 — from foreign countries.

Compared to 2006 (99 applications) the number of patent applications has decreased. The share of Lithuanian applicants slightly increased — in 2006, 65 Lithuanian applications were received.

In 2007, 2649 trademarks applications were submitted; 2218 were from Lithuanian applicants, and 431 — from abroad. Compared to 2006 (2457 applications) the number of applications has increased. Lithuanian applicants have become more active.

In 2007, 27 design applications were submitted (50 designs), 21 of which were from Lithuania. Compared to 2006 (32 design applications), the number of applications in 2007 has decreased.

According to WIPO data, 39,945 international applications have been submitted. Compared to 2006 the number of applications has increased by 9.5%. The highest number of applications was submitted by the pharmacy company RICHTER GEDEON from Hungary. Germany is the most active country in this field.

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:

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