

Albania

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1. Legal framework

In Albania, trademarks are governed by the following laws:

- the Civil Code of the Republic of Albania;
- the Criminal Code of the Republic of Albania;
- Law 9947/2008 on Industrial Property;
- Council of Ministers Decision 1706/2008 on the Approval of the Regulation on the Registration of Trademarks and Service Marks;
- Council of Ministers Decision 883/2009 on Tariffs for Industrial Property Objects;
- Council of Ministers Decision 547/2008 on amendments to Council of Ministers Decision 205/1999 on Implementing Provisions of the Customs Code;
- the Madrid Agreement Concerning the International Registration of Marks;
- the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks;
- the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks;
- the Paris Convention for the Protection of Industrial Property; and
- the World Trade Organisation Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs).

2. Unregistered marks

Albanian law grants protection to unregistered marks if they are well known to the general public as a result of extensive market use, publication/promotion or advertising (Article 156(4) of Law 9947/2008).

Albanian law and jurisprudence specify no particular thresholds or other requirements with regard to the extent of use needed for an unregistered mark to qualify for protection as a well-known mark. Instead, the provisions of the TRIPs Agreement and the Paris Convention are used for guidance in that respect.

3. Registered marks

Any natural person or legal entity may own a trademark. An application to register a trademark with the Albanian Patent and Trademark Office (ALPTO) may be submitted:

- personally or through authorised representatives, for trademarks owned by Albanian residents or entities; or
- by a duly authorised trademark agent (holding a power of attorney) for trademarks owned by non-Albanian residents or entities.

The authorisation given by power of attorney must be notarised. If it is executed outside Albania, it should also be both notarised and legalised by Apostille or legalised by the Albanian consulate, as the case may be.

Article 140 of Law 9947/2008 stipulates that a mark is a sign or a combination of signs, which may be presented graphically, that serves to distinguish the goods or services of a natural person or legal entity from those of another natural person or legal entity, provided that they are of a distinctive nature. Marks may comprise:

- words, including personal names, letters, numbers and abbreviations;
- figurative signs, including drawings;
- two or three-dimensional shapes and shapes of goods or their packaging;
- combinations of colours or shades, as well as colours themselves; and
- combinations of the above.

By virtue of Article 142 of Law 9947/2008, a sign is not registered as a mark if:

- it does not have a distinguishing nature;
- it consists exclusively of elements or indicators that may serve in the market to show the type, quality, amount, purpose, value, geographical origin or time of production of the goods or the performance of the services, or other characteristics of the goods or services;
- it consists exclusively of elements or indicators that have become customary or common in commerce or trade;
- it consists of a configuration or device imposed by the nature of the goods or services and/or a configuration or device

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- essential to achieve a technical result;
 - it consists of elements that violate public interest or that are in conflict with public morals and order;
 - it consists of elements designed to confuse the public, principally in regard to the nature, quality or geographical origin of the goods and/or services that they have the purpose of distinguishing;
 - it consists of geographical indications for wines or alcoholic beverages that do not originate from the place indicated by the geographical indication in question, even if the true origin of the products has been indicated or the geographical indications have been translated and are accompanied by expressions such as 'kind', 'type', 'style', 'imitation' or similar;
 - it consists of names, portraits or personal pseudonyms that are well known to the public in Albania if such are not authorised by the person himself or herself or his or her descendants;
 - it consists of:
 - the name of a country (in full or abbreviated);
 - a state emblem, medal or honour of distinction;
 - an official seal or sign approved by the country;
 - the emblem of a recognised international organisation or its abbreviation;
 - a religious symbol; or
 - a national flag; or
 - it consists of elements that are contrary to Article 6bis of the Paris Convention.
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4. Procedures

Preliminary examination

Upon submission of the application and within three months of the application date, the ALPTO proceeds to a formal examination of whether the application has been filed in accordance with Law 9947/2008. If the filing requirements are met, the ALPTO assigns a filing date to the application.

In cases where the ALPTO requests additional documents, the applicant has three months in which to supply the documents

requested. Upon receipt of the additional documents, the ALPTO will proceed with the assignment of a filing date.

If the three-month grace period lapses with no action, the application is deemed to be rejected, unless an additional period of one month is granted to the applicant following the latter's request and payment of the relevant late fee.

Following examination of the mark, if it is accepted by the ALPTO, the mark is published in the next *Official Bulletin*, which is published by the ALPTO on a quarterly basis.

Opposition

An opposition against the registration of a published mark may be filed with the ALPTO by any interested party based on relative grounds as set out in Article 143 of Law 9947/2008 within three months of the publication date.

Oppositions are reviewed by the ALPTO Board of Appeal and a decision is usually issued within three months from submission of the opposition.

The board's decision may be appealed to the Tirana District Court within 30 days from the date of its notification to the parties.

Substantive examination and decision

Substantive examination takes place within three months from the issuance of the filing date certificate. During this stage, the ALPTO examines whether the mark may be subject to refusal on absolute grounds under Articles 140 and 142 of Law 9947/2008.

Within this time period, the ALPTO will decide whether to register or refuse the mark and will notify the applicant accordingly. If the ALPTO decides to register the mark, the applicant is required to pay a registration fee within one month from the notification, failing which the ALPTO rejects the registration.

Registration

After examination, and provided that the trademark complies with the legal requirements, the ALPTO will:

- register the mark;
- issue the mark registration certificate within three months from the date of

- payment of the registration fee; and
- publish the mark in the next available *Official Bulletin*.

Removal from the register

Revocation: A trademark owner may request the revocation of its mark provided that the following requirements are met:

- the cancellation petition is filed in writing;
- the power of attorney is duly filed;
- the relevant official fee is paid on time;
- if a licence agreement is registered for such mark, a declaration from the licensee confirming that it is aware of the revocation request is filed;
- in case of ongoing court proceedings, a declaration from the plaintiff confirming that it agrees with such revocation is filed.

The ALPTO will cancel the mark, notify the applicant within six months from the filing date of the revocation request and publish such revocation in the *Official Bulletin*.

Invalidation: The Tirana District Court may declare a registered mark to be invalid upon the request of any interested party if the registered mark does not comply with Articles 142 and 143 of Law 9947/2008.

Once the court decision on the invalidation obtains *res judicata* effect, such decision is published in the *Official Bulletin*.

Cancellation: The cancellation of a registered mark can be declared by the Tirana District Court upon submission of a claim by any third party where:

- the owner has not used the mark for the goods or services for which it was registered for an uninterrupted period of five years, starting from the registration date. However, a third party may not claim the cancellation of a trademark if the mark owner, without being aware of the procedures initiated by the third party and after expiry of the five-year period, commences genuine use of such mark at least three months before the date when the cancellation claim is filed;
- the mark has become an ordinary name or a descriptive term on the market for the goods or services for which it was registered; or
- the mark misleads the public with regard

to the nature, quality or geographical origin of the goods or services.

Once a court decision on the cancellation of a mark obtains *res judicata* effect, such decision is published in the *Official Bulletin*.

Renewal

Registered marks enjoy protection for 10 years and are renewable every 10 years from the filing date of the relevant marks. When renewing a trademark registration, the owner may file a request for renewal within six months of the lapse of the 10-year period, starting from the application date of the registered trademark.

Furthermore, all renewals of already registered marks are recorded by the ALPTO within six months of the date they are filed.

Trademark searches are conducted via registered trademark agents at the ALPTO which is the preferred method as opposed to online searches conducted locally.

5. Enforcement

An IP right may be enforced through administrative, civil or criminal proceedings.

Administrative proceedings

Administrative proceedings may be initiated based on Law 9947/2008 and Decision 547/2008. By virtue of these two pieces of legislation, a rights holder may submit a request for action to the General Customs Directorate (GCD) whenever there are grounds to suspect a potential infringement of its IP rights.

Following the receipt of the rights holder's request and the relevant documentation, the GCD should reply within 30 days as to whether the request will be accepted and, if so, set down the timeframe for the implementation of the requested actions. This period may not be more than one year. Expenses related to the inspection and storage, and any other costs relating to the seized goods, are to be borne by the rights holder.

Should a regional GCD office identify goods as those indicated in the GCD's decision, it should seize such goods and inform the

rights holder, which may commence court proceedings within 20 days; otherwise the goods will be released.

Under Decision 547/2008 a simplified procedure for the destruction of the suspected infringing goods may be applied by the customs authorities without the need to determine whether IP rights have been infringed, provided that the owner of the suspected infringing goods has submitted a declaration agreeing to such destruction within 10 days from receiving the notification of the seizure of such goods.

Civil proceedings

Civil proceedings may be initiated based on Law 9947/2008 and the Civil Code.

By virtue of Law 9947/2008, the following establish a civil cause of action:

- the unauthorised use of a sign that is used for the same goods or services as those represented by the mark;
- the unauthorised use of a sign which is the same or similar to an existing mark, or when the use of a sign may cause confusion to the public by it being used for goods and services that are identical or similar to those for which the sign is used; and
- the unauthorised use of a sign which is the same or similar to an existing mark for any products where the mark is well known in Albania and an unfair profit is generated from the use of the sign, or the distinguishing nature and the good name of the mark are damaged.

A claim may be filed by the applicant, the owner of a mark, a licensee or any other person whose rights are infringed within three years of the rights holder becoming aware of the infringement. As yet Albania has no specialist IP courts, so the competent court for resolving IP-related disputes is the Tirana District Court.

When ruling on the case the court may order the infringing party to stop the infringement, order the destruction of the goods which constitute the infringement and/or award compensatory damages. In order to calculate damages, the court takes into account the negative aspects of the infringement, including:

- the loss of profits;
- any unfair profits made by the infringer;
- the moral damage caused to the rights holder; and
- the royalties that the infringer would have paid had authorisation for use been granted.

The court may order preliminary measures against the infringer where:

- the petitioner has a legitimate interest in initiating the proceedings, as the rights holder or licensee;
- sufficient documents exist to prove to the court that the legitimate rights holder's interests have been infringed or that such infringement is very likely to occur; and/or
- the petition for preliminary measures is initiated immediately after the rights holder becomes aware of the infringement.

The court may decide on the following preliminary measures:

- the prevention of the actual or expected infringement;
- the prevention of the entry of the suspected goods onto the market;
- the protection of key evidence, provided that confidential information is protected in accordance with the applicable law;
- the seizure or recall from circulation of the suspected infringing goods or the seizure of the facilities used to produce them; and
- the blocking of immovable and moveable property owned by the suspected infringer, including bank accounts and other assets, in order to ensure that damages can be recovered.

However, the rights holder must initiate civil proceedings within a time period set down by the court, which may not be more than 15 days from the date on which the court grants preliminary measures.

Protection is also granted on the basis of unfair competition by the Civil Code. Under Article 638, the following are considered to be acts of unfair competition:

- the use of a name or trademark that might lead to confusion in respect of a name or distinctive trademark used by another party;

- the reproduction of a competitor's product; and
- the commission of an act that might lead to confusion with regard to a competitor's products and/or activities.

Criminal proceedings

With regard to criminal proceedings, currently the Criminal Code does not expressly consider trademark infringement to be a criminal offence. The Criminal Code recognises as criminal offences only the following acts:

- the falsification of stamps, seals and documents (Article 190); and
- the illegal manufacture of products and goods (Article 288/a).

With regard to the time limit for action by the owner of prior rights against a registration filed subsequently, Article 160 of Law 9947/2008 stipulates that such time limit is five years for a registration filed in good faith and 10 years for a registration filed in bad faith.

The Albanian legislation defines no timeframes regarding the enforcement of registered and unregistered rights.

6. Ownership changes and right transfers

A trademark owner may transfer the ownership of that trademark to any third party by means of an assignment agreement, which should be filed with the ALPTO. The following documents should be submitted:

- power of attorney;
- proof of payment of the official fees for the recordal; and
- the assignment agreement for the transfer of the ownership, duly translated.

The documents should be either original or certified copies. All documents executed outside Albania should be notarised and legalised by Apostille or legalised by the Albanian consulate, as the case may be.

The ALPTO records the change of the ownership and notifies the applicant within six months from the submission of all the documents mentioned above. It then publishes the ownership change in the *Official Bulletin*.

A trademark owner may grant its IP rights to any third party through a licence agreement. Such an agreement should be in writing and signed by the parties; in order to have legal effect it should be filed and recorded with the ALPTO. The licence agreement should indicate:

- the duration of the licence;
- the goods/services and respective classes covered;
- the territory in which it is valid; and
- the quality of the goods to be produced or the services to be offered.

The licensee may initiate legal proceedings against third parties only with the consent of the licensor, unless otherwise agreed in the licence agreement. If the licence agreement is exclusive, the licensee may institute proceedings without the consent of the licensor if the latter takes no actions to protect its intellectual property within a reasonable time if it has been notified accordingly by the licensee.

The following documents should be submitted:

- power of attorney;
- proof of payment of the official fees; and
- the licence agreement, duly translated.

The documents should be either original or certified copies. All documents executed outside Albania should be notarised and legalised by Apostille or legalised by the Albanian consulate, as the case may be.

7. Related rights

By virtue of the Copyright Law (9380/2005), an overlap in protection may exist between copyright and trademark rights with regard to three-dimensional creations or any other creation which may be represented graphically. For example, a three-dimensional creation may be protected under copyright law, registered as a trademark or both.

By virtue of Law 9947/2008, an overlap in protection may exist between industrial design rights and trademark rights provided that the shape of the get-up of a product has a distinctive and original appearance.

8. Online issues

Under Law 9947/2008 both registered and unregistered trademarks are protected against unauthorised use with regard to their corresponding domain names, websites, hyperlinks, online advertisements or meta-tags. Judicial proceedings are available to enforce this protection. Currently, no alternative dispute resolution process is in place in Albania to regulate country-code top-level domains; however, discussions are ongoing regarding the implementation of such a process in the future.

Unregistered rights	
Protection for unregistered rights?	✓
Specific/increased protection for well-known marks?	✓
Examination/registration	
Representative requires a power of attorney when filing? Legalised/notarised?	✓ / ✓
Examination for relative grounds for refusal based on earlier rights?	✗
Registrable unconventional marks	Colour and combinations of colour; shape of goods – 2 or 3-D – and their packaging; any combination of the above
Opposition	
Opposition procedure available? Term from publication?	3 months ✓
Removal from register	
Can a registration be removed for non-use? Term and start date?	5 years from registration ✓
Are proceedings available to remove a mark that has become generic?	✓
Are proceedings available to remove a mark that was incorrectly registered?	✓
Enforcement	
Specialist IP/trademark court?	✗
Punitive damages available?	✗
Interim injunctions available? Time limit?	Specified time limit (urgency requirement) ✓ / ✗
Ownership changes	
Is registration mandatory for assignment/licensing documents?	✓
Online issues	
National anti-cybersquatting provisions?	✗
National alternative dispute resolution policy for local ccTLD available?	✗