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on
Specific Measures for the Enforcement
of
Intellectual Property Rights
in
Customs Clearance Operations

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Law
on Specific Measures for the Enforcement of Intellectual
Property Rights in Customs Clearance Operations

The Parliament of Romania adopts this law.

Chapter I
GENERAL PROVISIONS

Article 1 — (1) For the purpose of this law the terms are defined as follows:

1. intellectual property right — copyright, neighbouring rights, right in registered trade marks or service marks, right in industrial designs, right in geographical indications, right in patents for invention;

2. copyright — intellectual property right recognised for the natural person(s) who created an original work of intellectual creation in the literary, artistic or scientific domain regardless of the mode of creation, of the mode or concrete form of expression, independent of their value and destination, or for other legal holders, legal or natural persons;

3. neighbouring rights — intellectual property rights, other than copyright, benefiting performers for their own performances, producers of phonograms for their own sound recordings, radio and television broadcasting organisations for their own broadcasts;

4. trade or service mark — a sign which is capable of graphic representation and which serves to distinguish the goods or services of a natural or legal person from those belonging to other persons. Distinctive signs such as words, personal names included, drawings, letters, numbers, figurative elements, three-dimensional forms, namely the form of the product or its package, combinations of colours as well as any combination of those signs may be marks;

5. industrial design — the new appearance of a product having a utilitarian function;

6. geographical indication — the name identifying a product originating in a country, region or locality of a state whenever a feature, its reputation or other determining features may be essentially attributed to that geographical origin;

7. patent for invention — title of protection that may be granted for any invention having a product, process or method as subject-matter in any technical field if the claimed invention is new, involves an inventive step and is capable of industrial application;

8. additional certificate of protection — title of protection which may be granted for any product patented as medicine or phytogenous pharmaceutical product in Romania, according to the law;

9. right holder — holder of an intellectual property right as well as any other person authorised to make use of this right or his legal representative;

10. registered mark — any mark registered in the National Trademark Register;

11. authorised person — the person whom the right holder allowed to use the intellectual property right;

12. legal representative — the person mandated by the holder of the intellectual property right to act on his behalf in the territory of Romania;

13. counterfeit goods:

a) any goods, the package included, bearing without authorisation a trade or service mark identical to a trade or service mark legally registered for the said goods or which cannot be distinguished by its features from a legally registered trade or service mark and which consequently infringe the rights of the trademark owner;

b) any trade or service mark entrusted without authorisation to be affixed onto goods even if it is displayed separately and is in the same situation as the goods mentioned under item a);

c) any goods bearing a mark which is identical to a protected trade or service mark or which is not substantially distinguishable from it and which is susceptible of infringement by use for goods or services different from those for which there is a registered trade or service mark thereby creating confusion as to source or origin;

d) any package bearing marks of counterfeit goods, displayed separately, under the same conditions as the goods defined under paragraph a).

14. pirate goods — all the copies manufactured without the consent of the right holder or of the person who was legally authorised by him in the manufacturing country and which are made directly or indirectly by copying an article protected by copyright or neighbouring rights or by industrial design if

the manufacturing of such copies would infringe the specific intellectual property right according to the law of the importing country;

15. goods infringing an intellectual property right :

a) counterfeit goods;

b) pirate goods;

c) goods infringing a patent for invention or an additional certificate of protection;

d) goods infringing the right in a geographical indication;

16. detention of goods — making goods unavailable by means of required storage ordered by customs authorities, under custom-house supervision, with customs commission agents or with the holder of suspensive customs regime under the conditions provided by the customs law for a period decided by the customs authorities;

17. customs declarant — the persons who draws up and files the declaration of duty in his own name or the person in whose name the declaration of duty is drawn up by the representative or the commission agent.

(2) Where appropriate, any design or die made for or adapted to the manufacturing of a counterfeit mark, of goods attached such a mark or to the manufacturing of goods infringing a patent for invention, an additional certificate of protection or a geographical indication if the use of such designs or dies causes damage to the right holder shall be assimilated to the goods mentioned in item 15.

Article 2 — The provisions of this Law shall be applied over the whole customs area to:

a) goods meant to be subject to final import or export customs regimes;

b) goods meant to be subject to suspensive customs regime or in free trade areas except for the goods in external customs transit.

Article 3 — (1) The exceptions from the provisions of this Law shall refer to goods bearing a trade or service mark with the consent of the owner of this mark or geographical indication which are protected by a patent for invention or additional certificate of protection, by copyright or neighbouring right, by a right related to industrial design, and which have been manufactured with the consent of the legal owner but have been sold without his consent.

(2) Exceptions from the provisions of this Law shall also include the following cases:

a) goods which were manufactured or which bear a mark or geographical indication under conditions that differ from those agreed upon with the right holder;

b) goods in the travellers' luggage or in parcels subject to the conditions applicable to travellers and other natural persons.

Chapter II

CONDITIONS FOR FILING A REQUEST FOR CUSTOMS AUTHORITIES INTERVENTION FOR THE ENFORCEMENT OF AN INTELLECTUAL PROPERTY RIGHT

Article 4 — (1) The intervention of the customs authorities shall be requested by the right holder by filing a request with the General Customs Directorate mentioning his capacity in relation to the intellectual property right, thereby requesting the suspension of the customs clearance and the detention of the goods liable to infringe the protected right.

(2) The right holder shall be obliged to inform the General Customs Directorate of the lapse of protection of the said intellectual property right in the territory of Romania.

Article 5 — Requests shall be filed for each kind of contested product infringing an intellectual property right.

Article 6 — The request for the intervention of the customs authorities for the enforcement of an intellectual property right shall be written and shall comprise the following elements identifying the genuine goods subject to the intellectual property right and the elements identifying the contested goods:

1. Information concerning the requestor:

a) the name and place of business of the legal person;

b) the full name and address of the natural persons;

c) mention of the power of attorney, whenever the request is filed by a representative;

d) registration number and date of the document issued by the State Office for Inventions and Trademarks or by any other authorised institution whereby the capacity of a holder of a right protected in the territory of Romania is confirmed;

e) designation of the authorised persons to be contacted in case of goods detention, also mentioning a telephone or fax number;

f) signature and where appropriate, stamp of the requestor.

2. Information concerning the identification of genuine goods vesting an intellectual property right:

a) detailed description of the genuine goods;

b) photos of the product and/or any other graphic representation of the specific emblem, where appropriate;

c) a sample of the product, where appropriate;

d) indication of the places where the goods were manufactured, specifying the name of the producers and the headquarters;

e) name and place of business of the legal persons authorised to import or export those goods, where appropriate;

f) any other elements identifying genuine goods.

3. Information concerning the identification of contested goods:

a) a sufficiently clear description of the contested goods enabling the customs authorities to recognise them;

b) submission of photos or any other graphic representations, if possible;

c) submission of samples of the product, if possible;

d) indication of the countries of origin and/or source, if possible;

e) mention of the name and main place of business of the company and/or persons involved in the importation or exportation of the contested goods, if possible;

f) mode of transport and mention of the involved transportation company, specifying the name and the address, if possible;

g) custom-houses where the contested goods might arrive;

h) the time period when the contested goods might arrive.

4. The length of the period for which the intervention of the customs authorities is requested for the defence of an intellectual property right shall be at most one year from the date on which the request has become effective.

Chapter III

MEASURES WITHIN THE COMPETENCE OF THE CUSTOMS AUTHORITIES

Article 7 — (1) Within 10 days from registering the request, the General Customs Directorate shall notify the requestor in writing, the approval or, where appropriate, the necessity of submitting additional documents and information.

(2) The refusal of a request for the intervention of the customs authorities for the defence of an intellectual property right shall be communicated to the requestor in writing also mentioning its reasons.

(3) The refusal of the request may be appealed by the requestor by complaint lodged with the competent law court.

Article 8 — Where the request is accepted, it shall become effective as from the date on which the requestor has filed with the General Customs Directorate the receipt of payment to the account of the said directorate of the equivalent in local currency of the tariff of 500 Euro at the exchange rate set according to the provisions of the Customs Code of Romania.

Article 9 — The sums of money collected as a result of the application of Article 8 shall be deemed as revenues of the customs authority which are administered and used outside the budget, according to the legislation establishing fees for customs operations.

Article 10 — On account of the effective request the customs authorities shall suspend the customs clearance operation and shall detain the goods liable to infringe an intellectual property right, and shall communicate this measure to both the requestor and the declarant, in writing.

Article 11 — (1) Where, within 10 days from the date on which the requestor was communicated the measure of suspending the customs clearance operation and of detaining the goods, the requestor does not prove having lodged a complaint with the law court and having deposited a guaranty in favour of the General Customs Directorate equivalent to the customs value of the detained goods, the customs authorities shall not comply with the request and shall proceed to customs clearance.

(2) The guaranty deposited according to paragraph (1) is an assuring measure meant to recover possible damage assessed by final decree and caused to the importer or, where appropriate, to the owner or addressee of the goods, and to ensure the payment of the costs incurred by keeping the goods under customs control.

(3) This guaranty may be deposited in local currency (lei) by means of a bank deposit or letter of guaranty accepted by the customs authority.

(4) In well-grounded cases, the General Customs Directorate may extend the period with 10 days at most, upon the request of the applicant.

Article 12 — Where the conditions provided by Article 11 are satisfied, the customs authorities shall have the power to prolong the detention of the goods until the case is settled by the law court.

Article 13 — Without a breach of confidentiality of the data and information, the customs authorities may allow the disputing parties to check the detained goods and to take samples in order to find out, by means of analysis or tests, whether the goods infringe an intellectual property right.

Article 14 — Where the expert authorised by the law court has found that the goods infringe an intellectual property right, the customs authorities may supply the right holder copies of the documents accompanying the goods.

Article 15 — Where the customs authorities have taken all the steps provided by the customs regulations but have not been able to identify the contested goods, the General Customs Directorate shall not be held responsible for the requests that have been approved and have become effective.

Chapter IV EX OFFICIO ACTIONS OF THE CUSTOMS AUTHORITIES

Article 16 — On the basis of the current documents of the State Office for Inventions and Trademarks and of the bodies of joint administration of copyright and neighbouring rights sent to the customs authorities, the General Customs Directorate may undertake ex officio actions suspending the customs clearance operation and the detention of goods if said goods are liable to infringe an intellectual property right.

Article 17 — (1) The General Customs Directorate shall inform the right holder and the declarant, in writing, immediately, on the suspension of the customs clearance operation and detention, on the date and the custom-house detaining said goods.

(2) The right holder may check with his own means the goods liable to infringe an intellectual property right.

Article 18 — Where the right holder fails to file with the General Customs Directorate a request for the intervention of the customs authorities for the defence of the intellectual property rights and the receipt of payment for the sum provided in Article 8, within 3 workdays from receiving the notification of

the detention of goods, the customs authorities shall cancel the measure of the suspension of the customs clearance operation and detention of the goods.

Chapter V PLACE OF DESTINATION OF COUNTERFEIT OR PIRATE GOODS

Article 19 — (1) Where the action of the right holder is refused by a final decree of the law court, the customs authorities shall proceed to customs clearance of the goods.

(2) The importer, the owner or the addressee of the goods may lodge a complaint with the law court against the right holder requesting the recovery of the damage from the guaranty deposited according to the provisions of Article 11(1). On the basis of the final decree, the General Customs Directorate shall execute this guaranty according to the sentence.

Article 20 — (1) Where the action of the holder of the right exercised by the requestor is admitted by a final decree of the law court, the customs authorities shall proceed according to Article 25(a).

(2) In the case provided in paragraph (1) the customs authorities shall refund the whole guaranty deposited by the requestor; the customs authorities shall owe no interest.

Article 21 — The goods seized according to Article 25(a) may have the following destination:

- a) destruction, according to the legal standards in force;
- b) where there is the written consent of the requestor, according to the provisions of Article 4 or 8, and where the goods are fit for the consumption or use of the natural persons, the seized goods may be handed over, free of charge, depending on the nature of the goods, to institutions involved in social protection, non-profit charitable organisations or associations, sports clubs or associations or educational institutions. Then, the institution which is handed over goods for consumption or use shall bind itself not to sell or transfer said goods.

Article 22 — The customs authorities shall not allow the re-exportation of goods capable of infringing an intellectual property right and shall not subject them to another customs regime until the law court pronounces its final verdict.

Chapter VI INTERNATIONAL COOPERATION

Article 23 — The customs authorities shall enforce this Law taking into consideration the specific international conventions where Romania is a party.

Article 24 — The General Customs Directorate shall be authorised to exchange information and to cooperate with other customs authorities as far as the infringement of intellectual property rights is concerned.

Chapter VII SANCTIONS

Article 25 — The following actions shall be deemed contravention provided they are not deemed offences according to the penal law and shall be punished by a) fine of 30,000,000 to 50,000,000 lei for the action of the importer, owner or where appropriate, addressee of the goods of bringing into the country or of taking out of the country goods that were found to be goods infringing an intellectual property right according to the final decree of the law court. Where the goods have been sold, the sums collected as a result of the sale shall be confiscated;

b) fine of 30,000,000 to 50,000,000 lei for failure of the right holder to fulfil the obligation provided in Article 4(2) within 15 days from the date the protection of the intellectual property right claimed in the request has ceased;

c) fine of 10,000,000 to 20,000,000 for failure to fulfil the obligation of not selling or transferring the goods taken over under Article 21(b).

Article 26 — (1) The contraventions specified in this Chapter shall be applied the standards and general provisions on attesting and sanctioning contraventions except for those on reducing fines paid on the spot or within a certain period of time.

(2) Customs contraventions shall be attested in contravention reports drawn up according to the provisions of Article 185 in the Customs Code of Romania.

The sanctions shall be applied by the customs staff that draws up contravention reports in virtue of their professional duties.

Chapter VIII FINAL PROVISIONS

Article 27 — The provisions of this Law shall be completed by the provisions of the Customs Code of Romania and of the Rules Implementing the Customs Code.

Article 28 — The request and any correspondence or documents concerning the intervention of the customs authorities shall be filed with the General Customs Directorate.

Article 29 — (1) All the measures meant to avoid any damages during the period of suspension of the customs clearance operation and detention of goods shall concern the holder of the import, export operation or suspensive customs regime and cannot be imputed to the customs authorities if there are no proofs of damages imputable to those authorities.

(2) All the costs incurred by the detention of the goods liable to infringe an intellectual property right shall be paid by the requestor.

Article 30 — (1) The State Office for Inventions and Trademarks and the bodies of joint administration of copyright and neighbouring rights shall make the list of the registered intellectual property right holders and the information required for the identification of the protected items as well as their updates available to the General Customs Directorate.

(2) The State Office for Inventions and Trademarks, the Romanian Copyright Office and other institutions in charge of intellectual property protection shall exchange information with the General Customs Directorate for the enforcement of this law.

Article 31 — The government shall update the amount of the fines depending on the inflation rate.

Article 32 — (1) This Law shall enter into force within 30 days from its publication in the Official Gazette of Romania, Part I.

(2) During the same period, the General Customs Directorate shall work out the regulations implementing this Law to be approved by government decision.
