

DRAFT

LAW OF GEORGIA ON TRADEMARKS

CHAPTER I. GENERAL PROVISIONS

ARTICLE I. AIM OF THE LAW

The Law regulates the relations applying to registration and protection of trademarks, service marks and collective marks, also to usage of these marks.

ARTICLE 2. MAIN DEFINITIONS USED IN THE LAW

1. “Sakpatenti” - National Intellectual Property Center of Georgia - a legal entity, which conducts the legal enforcement of the rights of natural persons and legal entities in the field of intellectual property.

2. Paris Convention - the Paris Convention for the Protection of Industrial Property, signed at Paris on March 20, 1883, as revised and amended at Stockholm on July 14, 1967 and on September 28, 1979.

3. Protocol Relating to the Madrid Agreement - Protocol Relating to the Madrid Agreement Concerning the International registration of marks signed on June 27, 1989.

4. International Classification - the classification established by the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, signed at Nice on June 15, 1957, as revised at Stockholm on July 14, 1967 and Geneva May 13, 1977.

5. Certificate - the document granted in the name of the trademark holder in respect to this Law, confirming the exclusive rights of the trademark holder.

6. Application - collection of documents necessary for granting of a patent, made in respect to the approved requirements.

7. Applicant - a natural person or legal entity requesting for receiving of the certificate.

8. Priority - privilege enjoyed by the application filed earlier, than the application filed later.

9. Convention priority - priority established in regard to the Article 4 of the Paris convention.

10. Exhibition priority - priority established in regard to the Article 11 of the Paris Convention.

11. Patent Attorney - the authorized person registered at Sakpatenti entitled to represent third parties in the sphere of industrial property.

12. Chamber of Appeals - the body existing at Sakpatenti for consideration of the litigations arising in regard to the acquisition of the rights to industrial property objects.

13. Association - any association of the producers, the same as the legal entity of the civil code, established in respect to the legislation of Georgia or in respect to the country of origin.

14. Inter alia - among others. In this Law: among other restrictions.

ARTICLE 3. TRADEMARK

1. A trademark is a sign or a combination of signs, which can be represented graphically and distinguishes the goods and/or services of one enterprise from the goods and/or services (hereinafter goods) of the other

2. The sign can be a word or words, including personal names, letters, figures, sounds, reproduction, three-dimensional figure, among them shape of the goods or packaging as well as other designs of the goods applying colors or combination of colors.

3. The trademark is protected by its registration with Sakpatenti or on basis of international agreement

4. The well-known trademarks in Georgia are protected without registration under Article 6bis of the Paris Convention for the Protection of Industrial Property.

ARTICLE 2. THE ABSOLUTE GROUNDS FOR REFUSAL ON REGISTRATION

1. As a trademark shall not be registered a sign, or combination of signs:
- a) which does not conform with the provisions of Article 3 paragraph 2 of this Law;
 - b) which is not capable of distinguishing of the respective of goods;
 - b.a.) which consists of kind, quality, quantity, characteristics, value, intended purpose, geographical origin, place of sale, time or other characteristics of the goods or which can be regarded as such;
 - b.b.) which is widely used as a generic term of the particular type of goods;
 - b.c.) which represents a widely established term in trade, or sign for which the registration is sought;
 - c) which infringes, irritates or is contract to the national dignity, religious feelings and traditions, norms of morality;
 - d) which is likely to deceive the public (as to the feature, quality, the geographical origin of the goods or other characteristics of the goods);
 - e) which completely or with the constitutive elements coincides with the National Emblems and State flags, the official names or abbreviations of States, the emblems of International, or inter-governmental organizations, their abbreviations or full names, the official control, guarantee and testable hall-marks, seals, rewards; the official or historical names, the emblems and State flags of the constitutive parts of Georgia; the banknotes of Georgia; or their imitation. Such a sign may be introduced in a trademark as a part not having the protective ability, if there is a permission of Ministry for Culture, or the holder;
2. As A trademark shall not be registered such a three-dimensional sign, the shape of which:
- a) is determined only by the features of the good;
 - b) is necessary for achieving the technical result.
3. The provisions considered under subparagraphs "b", "c", "d" and "e" are not applied if a trademark, before taking a decision on its registration, in result of civil

circulation has been established as a distinctive sign for the goods indicated in the application.

ARTICLE 5. RELATIVE GROUNDS FOR REFUSAL ON REGISTRATION

A trademark is not registered if:

1. It is identical to the trademark registered in regard to the same goods;
2. It is identical to the trademark of third party and the goods are identical or similar to such an extent that, creates the possibility of confusion of the marks, among them confusion based on association;
3. It is similar to the trademark of third party and the goods are identical or similar to such an extent that, creates the possibility of confusion the marks, among them to such confusion based on association;
4. It is identical or similar to the notorious in Georgia trademark, that creates the possibility of confusion with it, among them confusion based on association. This rule is applied even in the case when the lists of the goods are different.
5. It is identical or similar to the appellation of origin or geographical indication protected in Georgia that causes the likelihood of confusion with it;
6. It is identical to the industrial design protected in Georgia except the cases when the registration of the trademark is sought by the holder of the exclusive right on the industrial design;
7. It is identical, or similar to the third party's trademark enjoying good reputation in Georgia, and the use of this identical, or similar trademark creates the advantageous conditions for its applicant, or damages the reputation of the protected trademark. This rule is applied in the case when there are different lists of goods;
8. It includes names, pseudonyms, facsimiles, portraits of famous in Georgia persons without the consent of these persons or their legatees, and if they are the property of the history and culture of Georgia without the permission of the Ministry for Culture of Georgia;
9. It includes the names of the historical monuments of Georgia or their reproduction without the permission of the Ministry for Culture;
10. It includes the firm name, which can cause the confusion.

ARTICLE 6. THE EXCLUSIVE RIGHT

1. The exclusive right of the holder of a trademark arises from the date of the mark registration;
2. The trademark holder shall be entitled to prevent third parties from the use of such a trademark in the civil circulation which:
 - a) is identical to the protected trademark, and the goods are identical as well;
 - b) is identical, and the goods are similar to such an extent that, there exists a likelihood of confusion or in result of association of one trademark with another;
 - c) is identical, and the goods are similar, to the earlier trademark having good reputation in Georgia and the use of this identical or similar trademark without due cause

creates the advantageous conditions for his holder, or damage the reputation of the earlier trademark. This rule is applied in the case when there are different lists of goods and/or services;

d) is identical or similar and due to the good reputation of the protected trademarks, the use of the mark created advantageous conditions for the third parties or damages the good reputation of the trademark or its distinctive ability.

3. In the cases inter alia provided for by the paragraph 2 of this Article is prohibited:

- a) to imprint a protected trademark on goods or their packaging;
- b) to store, put into circulation, offer or sell such goods which are marked with this trademark, to offer and provide services by using this trademark;
- c) to offer or render services using this mark;
- d) to use this mark for advertisement or business papers.

4. Without the consent of the trademark holder, for the third party it is prohibited:

- a) to imprint a sign identical, or similar to this trademark on the packaging materials, labels, tags, etc.
- b) to offer, put in circulation, sell, prepare for sale to import or export the packaging material, or the packaging marked with this mark;

ARTICLE 7. SCOPE OF THE EXCLUSIVE RIGHTS

1. The person enjoying the exclusive right to the trademark cannot prohibit the third party to use in civil circulation:

- a) the personal name or address, if they coincide with the trademark of the person having the exclusive right;
- b) the sign or combination of signs indicating the kind quality, quantity, characteristics, value, intended purpose, geographical origin, place of sale, time or the other features of the goods;
- c) the protected trademark, if it is necessary for the use of the goods with the intended purpose, among them, if the goods bearing the trademark are used as a component or spear part, provided the use is effected in accordance with fair practices in industrial or commercial matters;

2. The person enjoying the exclusive right to the trademark cannot prohibit the third party to use the protected trademark on such goods, which have been put in the civil circulation directly by the holder of the trademark or on the basis of his consent.

This rule is not applied, if the features of the goods have changed, the quality has become worse or there exists other important basis for the prohibition.

ARTICLE 8. USE OF A TRADEMARK IN THE REFERENCE BOOKS.

If the reproduction of a trademark in a dictionary, encyclopedia or other information literature creates impression that it represents a generic term of goods for which it has been registered, or its registration is required, the editor, at the request of the holder of the indicated mark, is obliged to outline in the next edition of the reference book that the published sign represents the registered trademark.

CHAPTER II

ACQUISITION AND PRESERVATION OF THE TRADEMARK RIGHTS

ARTICLE 9. APPLICATION FOR A TRADEMARK REGISTRATION

1. An application for registration shall be filed with Sakpatenti
2. The application is filled in Georgian language in respect to the established rule.
3. The application is filed with Sakpatenti by the legal entity or natural person (hereinafter referred to as applicant). The right to file an application in the name of the applicant has also his representative.
4. The foreigner, who does not have a permanent place of residence within the territory of Georgia conduct their relations with Sakpatenti through a patent attorney registered in Georgia.
5. The application shall apply to only one trademark.
6. The application at filing with Sakpatenti must contain:
 - a) a request for a trademark registration;
 - b) the name, address and signature of an applicant;
 - c) the representation of a trademark;
 - d) the list of the goods and/or services for which the registration is sought. It is permitted to present a list of goods in a foreign language, the Georgian translation of which shall be presented to Sakpatenti within one month from the date of filing the application, with the exception of the cases provided for by the paragraph 4 Article 11;
 - e) the name, address and signature of the representative, if the application is filed by him;
 - f) the application must be signed by the applicant or his representative.
7. All the necessary data and the list of the documents for examination, the terms of their presenting and conditions are determined by the rule established by the legislation.

ARTICLE 10. THE DATE OF FILING AN APPLICATION WITH SAKPATENTI

The date of filing of an application with Sakpatenti is considered the day on which the applicant presents it to Sakpatenti, if the presented application complies with the requirements considered under Article 9 paragraphs 2 and 6.

ARTICLE 11. PRIORITY

1. A trademark priority is established by the date of filing an application, if the established application fee shall be paid after filing the application within the period no longer than one month.

If several identical trademarks have one and the same filing date, then the priority is established as of the date starting the actual use of the trademark.

2. The trademark priority can be established as of the filing date of the first application with the Member State of the Paris Convention (hereinafter referred to as "Convention priority"), if no longer than six months have passed from this date until the date of filing the application with Sakpatenti.

3. If an applicant for the trademark has displayed a trademark on the exhibit presented at an official or officially recognized international exhibition held in the Member State of Paris Convention, he may, if he files the application within a period of six months from the date of display of the trademark at the exhibition, claim a right of priority (hereinafter referred to as exhibition priority) from that date. The exhibition and Convention priorities do not extend each others term.

4. The applicant who wants to enjoy the right to the Convention, or the exhibition priorities, is obligated to indicate about it within one month from the date of filing the application with Sakpatenti, and, within three months from the filing date, present the document confirming the right to such a request.

5. The fee determined by the established rule for Convention and exhibition priorities shall be paid to Sakpatenti within one month from the filing date of the application.

ARTICLE 12. EXAMINATION OF A TRADEMARK APPLICATION

1. Sakpatenti conducts the examination as to form and complete examination of a trademark application.

2. Sakpatenti is authorized to require from an applicant the additional materials needed for the examination.

The additional materials are handed to Sakpatenti within the two months from the date the relevant notification is handed to the applicant. If the applicant fails to comply the established term, or leaves the requirement of the examiner without any response, the application shall be considered rejected.

3. The application, where the list of goods contains several names, before taking the examination decision, and at the request of the applicant, can be divided into two, or several applications, by means of redistribution of the goods services in the first application, after payment of the prescribed fee on this application. The divisional applications preserve the date of filing of the first application.

4. After establishing the priority, Sakpatenti is authorized to give away the information about the application under the prescribed rules.

5. The applicant has the right to:

a) at any stage of examination require suspension of consideration of his own application after paying of the prescribed fee, but for no longer than three months.

b) familiarize himself with the materials applied at examination and require the copies;

c) before establishing the application priority, to fill, or specify the application information by his own initiative. After establishing of the application priorities, the mentioned changes are possible only after paying the prescribed fee, but no later than the registration of the trademark. If the additional materials expand the list of goods or essentially changes the presented sign, then such information is not taken into account.

d) at any stage of consideration of an application, but no later than its registration, to withdraw the application.

6. The rules of compiling of the application and filing, of examination, of opposing the examination decision, retention of the procedural terms, of extension and renewal. also other rules respecting the trademark registration are established by the approved on the basis of the rule defined by the legislation “Instruction on Filing the Application for Trademark and Procedures Respecting the Registration”.

ARTICLE 13. THE EXAMINATION AS TO FORM

1. The examination as to form shall be conducted within two months after filing the application and if the applicant claims for Convention or exhibition priority - within the term provided for by the Article 11 paragraph 4 of this Law. If the applicant was send a notification requiring the additional materials, the examination is retained till the receipt of the response on notification, but no later than the term defined by the Article 12 paragraph 2 of this Law.

2. The examination as to form checks whether the application is compiled in respect to this Law.

3. If the application satisfies the requirements of Article 9 paragraphs 2 and 6 of this Law, a document shall be issued on the name of the applicant, or his representative, about the establishment of the date of filing the application, with the indication of the office number and a list of documents. Otherwise, the applicant shall receive notification of well-grounded refusal on accepting the application;

4. If the application fee is not paid within one month from the date of filing the application , or is paid the amount which is less than the amount established for one class, the application shall not be considered filed.

If, within the established one month, the amount less than the amount established for presentation of the classes considered by the application, and enough for presentation of one class is paid, a notification shall be sent to the applicant and he shall be proposed, within two months from the date of the receipt of the notification, to pay the total amount of the fee. If, within two months, the total amount of the fee is not paid, the examination shall cover the classes selected by the applicant, and, in the case of lack of such selection, it shall cover as many of the first classes as for which the paid amount shall be enough.

5. On basis of examination as to form Sakpatenti takes decision on accepting the application for examination and establishing of the priority or on rejecting the application and notifies the applicant.

ARTICLE 14. THE COMPLETE EXAMINATION

1. The complete examination is carried out within six months period from the end of the formal requirements examination;
2. On the stage of the complete examination, it is ascertained whether the sign satisfies the requirements considered under Articles 4 and 5 of this Law.
3. On the basis of the complete examination, the examiner takes a decision about the registration, or refusal on a trademark registration and sends a relevant notification to the applicant.

ARTICLE 16. PUBLICATION

1. After taking a decision of examination on a trademark registration within one month Sakpatenti publishes the trademark data in the Official Bulletin of the Industrial Property (hereinafter referred to as "Bulletin").
2. If the applicant makes use of the right defined in the Article 16 paragraph 2, the publication of the data of the application in the Bulletin shall be conducted within one month after the Chamber of Appeals takes the decision.
3. The following shall be published in the Bulletin: reproduction of the trademark, the name and address of the holder, the list of goods respecting the International Classification for which the trademark registration is sought, and the priority date of the trademark.

ARTICLE 16. OPPOSITION TO THE EXAMINATION DECISION

1. The decision of the examination as to form on examining of the application can be opposed by the applicant at the Chamber of Appeals within 3 months after taking the decision.
2. The decision of the complete examination on refusing the trademark registration respecting the full list of the goods or its part can be opposed by the applicant at the Chamber of Appeals within 3 months after taking the decision.
3. The decision of the complete examination on registration of the trademark can be revised in respect to the Article 11 of this Law concerning the filing with Sakpatenti of the application having earlier priority.
4. Within three months period from the date of publication of the trademark data in the bulletin, any person in question has right to bring an action to the Chamber of Appeals against the decision of the examination about the registration.
5. The Chamber of Appeals shall consider the appeal within four months from the date of its filing.
6. The decision of the Chamber of Appeals can be appealed in the court within a year after taking the decision.

ARTICLE 17. TRADEMARK REGISTRATION

1. If, after publication of the trademark data an objection is not filed, or if, after consideration of the appeal the Chamber of Appeals takes decision on a trademark registration, Sakpatenti conducts a trademark registration in the State Register of trademarks (hereinafter referred to as the "Register").

2. The register shall contain: a reproduction of trademark, the information about its holder, the date of the trademark priority, the date of the trademark registration, a list of those goods and/or services for which the trademark is registered, and other information regarding the registration.

3. Any person in question is authorized, after filing a proper application with Sakpatenti, to familiarize himself with the register data and, in the case of payment of the prescribed fee, to demand issuance of the endorsed excerpt from this register.

ARTICLE 18. TRADEMARK CERTIFICATE

1. After recording the data in the register Sakpatenti grants a trademark certificate.

2. The certificate confirms the registration of a sign as a trademark, the date of the trademark priority, the exclusive right of the holder to the indicated trademark and the term of validity of a trademark.

ARTICLE 19. RECORDING OF THE AMENDMENTS IN THE REGISTER

1. On the basis of the application of a trademark holder, the further change of the existed register data is conducted after the payment of the prescribed fee. Besides at amending of the list of goods and/or services, it is conducted only in case of its narrowing.

2. The indicated amendments are entered both, in the register and the certificate, and are published in the bulletin.

ARTICLE 20. THE VALIDITY TERM OF THE TRADEMARK REGISTRATION

1. Under the validity term of a trademark registration is considered ten years, and it is counted from the date of a trademark registration with Sakpatenti.

2. The validity term of a trademark registration can be extended by each following ten years, without any time-limit. Extension of the validity term of a trademark registration shall be conducted on the basis of an application filed by an holder with Sakpatenti, after payment of the prescribed fee. Submission of the indicated application to Sakpatenti shall be conducted during the tenth year of the certificate validity.

3. The excerpt about extension of the validity term of a trademark registration shall be recorded, by Sakpatenti, in the certificate and the register, and the relevant information shall be published in the bulletin.

ARTICLE 21. RE-REGISTRATION OF THE TRADEMARK

1. The trademark, the validity term of which has been expired, can not be re-registered before expiration of one year from the date of termination of the validity term of the previous registration, with the exception of the cases, when its registration is required by the former holder of this trademark.

2. If, after expiration of the above mentioned one year term, different persons, out of which one is a former holder of this trademark, file applications with Sakpatenti about one and the same trademark, and at one and the same date, the exclusive right to the registration of the indicated trademark shall be given to the former holder.

ARTICLE 22. FEES

For the examination as to form of trademark application, for complete examination, for opposition of the examination decision, for the mark registration, for the registration of the amendments, for publication, for granting of the certificate, for the excerpt from the Register, for retaining of the procedure terms respecting registration, for renewal and extension, also for the other acts, respecting the legal protection of the trademark shall be paid the fees defined by the established rule under the legislation. The amount of the fees, conditions for payment are defined by the rule established under the legislation. Periodically the amount of the fee shall be revised considering the respective international standards and inflation of the national currency.

ARTICLE 23. TRADEMARK REGISTRATION ABROAD

The holder of the trademark registered in Georgia has the right under the observation of the established rule, to present a trademark for registration to another country, or carry out its International registration.

CHAPTER III. THE USE OF THE TRADEMARK AND ASSIGNMENT OF THE RIGHTS PROCEEDING FROM THE REGISTRATION

ARTICLE 24. USE OF THE TRADEMARK

1. Under the use of a trademark is considered: its imprint on the good for which it has been registered, on its packaging, signs, official forms, labels; its use in published works, while demonstration of exhibits on exhibitions and fairs; use of a trademark by the holder of a trademark and a licensee.

Under the use of a trademark is also considered a use of a slightly different sign instead of the registered trademark.

ARTICLE 25. TRANSFER OF RIGHTS

1. Pursuant to the trademark registration, the rights can be transferred to other legal entity and natural person on the basis of the rule established under the legislation.

2. The trademark can be transferred to another person with, or without an enterprise.

3. Transfer may be applied to the full list of goods or to its portion.

4. Transfer of the enterprise considers the trademark transfer as well, with the exception of the case when the contrary is provided by the transfer agreement.

5. The contract on the trademark transfer shall be concluded in a written form. Unobservance of a written form shall result in annulment of the contract.

6. If it becomes apparent from the transfer documents that a trademark transfer can mislead a consumer as to the properties, quality, or geographical origin of those goods for which it is registered, Sakpatenti does not record a note about the transfer in the register until it gets consent from a legatee, that the registration would be limited by the goods and/or services not resulting in confusion.

7. The trademark transfer documents, after payment of the prescribed fee, shall be recorded in the register and published.

8. If the trademark transfer contract is not recorded in the register, a legatee of a trademark holder is not authorized to use the rights, originated from the registration, against the third parties.

ARTICLE 26. THE LICENSE AGREEMENT

1. The right to the use of a trademark can be given by its holder (licenser) to another person (licensee) on the basis of a license agreement.

The license agreement can be concluded with respect to a full list of goods and/or services, or its portion.

2. The license can be either exclusive, or simple.

3. The trademark holder can use his rights against a licensee infringing a license agreement, if the infringement concerns the license term, a form of a trademark use, a list of those goods and/or services, for which the license has been issued, a territory where the trademark can be used, quality of the produced goods and rendered services.

4. The licensee is authorized to bring an action on infringement of the rights to a trademark only with the consent of a trademark holder. A licensee, for the purposes of compensation of his damages, has right to participate in a court hearing of the case of infringement of a trademark rights.

5. The person holding an exclusive license is authorized to bring such an action if a sign holder does not bring the action by himself, within the established term from the date of receipt of the notification about infringement of the trademark rights.

6. The data about granting a license on a trademark shall be recorded in the register and published in the bulletin after payment of the prescribed fee.

CHAPTER IV. TERMINATION OF THE RIGHTS TO THE TRADEMARK

ARTICLE 27. GROUNDS FOR CANCELLATION OF A TRADEMARK REGISTRATION

1. A trademark registration shall be canceled by Sakpatenti if:
 - a) a trademark holder files the relevant request with Sakpatenti;
 - b) a trademark holder does not pay the fee within the established period, if the term has not been extended;
 - c) a legatee is not created while liquidation of a trademark holder as a legal entity.
 - d) there exists an application having the earlier priority provided for by the Article 11;
2. The trademark registration shall be canceled by the Court at the request of the third party if:
 - a) it has not been used for five continuous years, although nobody is authorized to demand a trademark registration, if the use of a trademark has started, or has been renewed during the interval between expiration of the established five years term and filing the requirement for abolishment of the trademark registration.
 - b) the trademark has become a generic term of the goods for which it has been registered;
 - c) in case of existence of the grounds considered under Article 5 of this Law.
 - d) use of a trademark, by its holder, or in agreement with him, is conducted in such a way, that it can mislead a consumer as to the kind, quality, properties, value, or a place of geographical origin.
3. If there are the grounds for cancellation of a trademark regarding only the part of the registered list of goods, the registration shall be canceled only for this part.

ARTICLE 28. RECOGNITION OF REGISTRATION NULLITY

1. A trademark registration can be recognized annulled at the request of third party, if it has been registered in breach of Article 4 of this Law.
2. If there are the grounds for recognition of a trademark registration annulled only for the part of the registered list of goods, the registration shall be recognized annulled only for the indicated part.

ARTICLE 29. RESULTS OF RECOGNITION OF THE TRADEMARK REGISTRATION CANCELED OR ANNULLED

1. If the trademark registration is canceled in accordance with Article 27 of this Law, the rights awarded under the registration shall be considered terminated from the date of filing the request on cancellation of the registration.

2. If the trademark registration is considered annulled in accordance with Article 28 of this Law, the rights awarded under the registration shall be considered annulled from the date of arising of the rights to the trademark.

3. The recover of the damages is regulated by the civil code in force.

CHAPTER V. COLLECTIVE MARK

ARTICLE 30. RIGHTS TO COLLECTIVE MARK

1. A collective mark is a sign or combination of signs, which under the Article 3 of this Law can be protected as a trademark and distinguishes the goods of the association members holders of the collective mark from the goods of the other parties regarding the origin, geographical origin, nature, similar qualitative features or other features.

2. The holder and the applicant of collective mark can be only an association.

3. It is not permitted to transfer the collective mark, and grant a license for this mark to the party, which is not the member of the association.

4. All rules of this Law are applicable to the collective mark, if not provided otherwise by the Chapter V of this Law.

ARTICLE 31. USE OF THE GEOGRAPHICAL NAME AS THE COLLECTIVE MARK

1. From the restrictions considered under the Article 4 subparagraph “b” of the paragraph 1 of this Law it is admissible, as an exception, to register as a collective sign, such a sign which indicates the place of geographical origin of the goods and/or services.

ARTICLE 32. THE COLLECTIVE MARK REGULATIONS

1. An application for a collective mark shall comply with the requirements of the Article 9 and must be completed by the collective mark regulations.

2. The collective mark regulations shall contain:

- a) the name and address of the association;
- b) the name of the members of the association and the legal address;
- c) the aim of the association;
- d) conditions for the use of a collective mark and taking control over its usage;
- e) the rights and obligations of the member parties of the association which are related to infringement of the rights to the collective mark;
- f) list of those goods and common characteristics for which the collective mark is intended.

3. If the collective mark contains a geographical name, the charter must provide any person, whose goods originate within the indicated geographical region, and who meets the conditions for use of the mark established under the indicated charter, with a right to become a member of the association and use the mark.

4. Any interested person is entitled to familiarize himself with the collective mark charter.

ARTICLE 33. THE APPLICATION EXAMINATION

Besides the grounds for refusal on the registration given in Article 4 and 5, an application filed for registration of a collective mark can be refused if it does not comply the requirements provided under Articles 30 paragraph 1 and 2 of this Law, or if the collective mark charter contradicts the public order, or the accepted norms of morality, with the exception of the cases when an applicant amends the indicated charter in such a way, that there shall not be any grounds for refusal of the registration.

ARTICLE 34. LIMITATIONS OF THE COLLECTIVE MARK PROTECTION

The registration of a geographical name as the collective mark does not entitle its holder to prevent the third party from using of this name in civil circulation, if the use is conducted by preservation of the norms of fair competition and the third party has reasonable ground to the use of the name.

ARTICLE 35. APPEAL, DAMAGE.

1. A person, who is entitled to use a collective mark, has the right to bring an action on infringement of the right to the use of a collective mark only with the permission of the collective sign holder amalgamation, unless the contrary is provided by a collective mark charter.

ARTICLE 36. ENTERING OF THE AMENDMENTS IN A COLLECTIVE SIGN REGULATIONS

1. A collective mark holder is obliged to notify Sakpatenti about any changes made in a collective sign regulations.

2. In case of making amendments in a collective mark regulations, the requirements of Articles 31 and 32 shall be taken into account.

ARTICLE 37. ANNULMENT OF THE COLLECTIVE MARK REGISTRATION

The collective mark registration can be annulled:

- a) in respect to the Article 27 of this Law;
- b) if the holder of the collective mark uses the mark in breach to the collective mark regulations.

ARTICLE 36. NULLITY BECAUSE OF THE ABSOLUTE GROUNDS FOR REGISTRATION REFUSAL

Besides the grounds given in Article 28 of this Law, a collective mark registration can be considered annulled if it has been registered in breach of the requirements of Article 33 of this Law. If the grounds for the annulment are related with a collective mark regulations, the registration shall not be considered annulled if a collective mark holder amends the regulations in such a way that there shall be no grounds for its annulment.

CHAPTER VI. PROTECTION OF TRADEMARK IN RESPECT TO THE PROTOCOL RELATING TO THE MADRID AGREEMENT CONCERNING THE INTERNATIONAL REGISTRATION OF MARKS

ARTICLE 39. APPLICATION FOR INTERNATIONAL REGISTRATION OF THE TRADEMARK

1. This Law applies completely to the trademarks, which are to be secured in respect to the Protocol Relating to the Madrid Agreement if there is not provided for otherwise by Chapter VI of this law or the Protocol Relating to the Madrid Agreement.

2. The application for the international registration of trademark shall be filed with Sakpatenti in respect to the Article 3 of the Protocol Relating to the Madrid Agreement.

3. The application shall be completed by the list of the goods grouped in respect to the International Classification.

ARTICLE 40. RECORDAL OF THE INTERNATIONAL REGISTRATION

1. If the international registration is conducted on basis of the application filed with Sakpatenti, the date of the international registration and number shall be recorded in the application data.

2. If the international registration is conducted on basis of the registration of application at Sakpatenti, the date of the international registration and number shall be recorded in the Register.

3. If the international registration is conducted proceeding from the case defined in the paragraph 1 of this Article, the date of the international registration and number shall be recorded in the Register after the registration of the trademark at Sakpatenti.

ARTICLE 41. EXAMINATION OF THE APPLICATION FOR THE INTERNATIONAL REGISTRATION OF TRADEMARK

1. On the application for the international registration of trademark only the complete examination shall be conducted in respect to the Article 14 of this Law.

2. The terms “refusal on registration”, “cancellation of the registration” and “annulment of the registration” used in the Articles 14, 27, 28, 37 and 38 for the

application for the international registration of trademarks shall be replaced by the terms “refusal on protection” and “annulment of protection”.

ARTICLE 42. PUBLICATION AND APPEAL

1. The data of the international registration of trademark shall be considered published at their publication in the Gazette of the International Bureau of the World Intellectual Property Organization (WIPO).

2. At taking the decision by the complete examination on the international registration of the trademark the date of the international registration and number are additionally published in the Bulletin within one month from taking of the decision.

3. The opposition term provided for by the Article 16 paragraph 4 of this Law shall be calculated from the day of publishing the date and number of the international registration of trademark.

ARTICLE 43. ANNULMENT OF THE PROTECTION DUE TO THE NON-USE

If due to the non-use of trademark there exists basis for annulment of the protection provided for by the Article 27 paragraph 2 subparagraph a), the date of the international registration shall be changed by the date, when the term defined by the Article 5 paragraph 2 of the Protocol Relating to the Madrid Agreement is expiring.

ARTICLE 44. TRANSFER OF INTERNATIONAL REGISTRATION INTO NATIONAL APPLICATION

1. If the applicant in respect to the Article 9^{quinquies} of the Protocol Relating to the Madrid Agreement claims for the transfer of the international registration into the national application, together with the application he must present the document certified by the International Bureau of WIPO confirming that the international registration covered Georgia before the annulment of the international registration.

2. If for the day of filing of the application with Sakpatenti the terms defined by the Article 5 paragraph 2 of the Protocol Relating to the Madrid Agreement have not expired and the decision on refusal for the protection has not been taken, the trademark is registered in respect to this Law without the examination and publication.

CHAPTER VII. PROVIDING FOR THE PROTECTION OF THE EXCLUSIVE RIGHTS TO THE TRADEMARK

ARTICLE 45. RESPONSIBILITY FOR THE INFRINGEMENT OF THE EXCLUSIVE RIGHTS TO THE TRADEMARK

1. The infringement of the exclusive rights to the trademark results in the responsibility under the legislation in force.

2. In the case of the exclusive rights infringement the holder of the trademark can appeal to the court and demand:

- a) the prevention of acts infringing his rights;
- b) the compensation of damages;
- c) destruction of all those labels, pictures, imprints, packaging, packaging materials and advertisements containing the registered trademark or its copy, resemblance or imitation;
- d) destruction of the plates, matrices and clichés prepared for making the trademark and if separation of the trademark from the goods is impossible - the destruction of the goods.

CHAPTER VIII. TRANSITIONAL PROVISIONS

ARTICLE 46. APPLICATIONS FILED AND CERTIFICATES GRANTED BEFORE THIS LAW ENTERS INTO FORCE

1. The applications for registration of the trademarks which were filed before this Law enters into force are considered in respect to the Statute on Trademarks approved by the resolution N304 of the Cabinet of Ministers on March 16, 1992.

2. For the applications filed before this Law enters into force the amount of the fee for examination and registration for the first 10 years and the rule of payment is defined by the regulation "About the Trademark Registration Fee" approved by the resolution N664 of the Cabinet of Ministers on June 23, 1992.

3. The certificates granted for the registered trademarks before this Law enters into force will be in force after the enactment of the Law.

CHAPTER IX. CONCLUSIVE PROVISIONS

ARTICLE 47. ENACTMENT THE LAW AND NORMATIVE ACTS REPEALED

1. This Law shall enter into force within 3 months after publication.

2. From the day of the enactment of this Law shall be considered as repealed:

a) Statute on Trademarks approved by the resolution N304 of the Cabinet of Ministers of Georgia on March 16, 1992;

b) the regulation "About the Trademark Registration Fee" approved by the resolution N664 of the Cabinet of Ministers on June 23, 1992.

c) resolution N 483 "About Additional Measures for Regulation of the Trademarks Use in Georgia" approved by the Cabinet of Ministers of Georgia on June 25, 1993

d) all the other normative acts or the separate parts of the act being in breach with this Law.