

Draft

Republic of Lithuania
Law on the Protection of Intellectual Property in the Field of Import and Export of
Goods

Vilnius

.. .. .

No

Chapter I

General provisions

Article 2. Concepts and Definitions

As used in this Law:

1. Subject of intellectual property rights means the owner of a registered trademark and (or) service mark, subject of copyright or related rights, owner of a registered industrial design, their successor in title, any other person having the right to use a trademark or service mark, copyright work or object or related rights and industrial design, as well as any other natural or legal person, or a legal entity possessing no right of a legal person, which represent the aforementioned persons, including collective administration organisations representing subjects of copyright and related rights, which act in the Republic of Lithuania in accordance with the procedure prescribed by the Law on Copyright and Related Rights of the Republic of Lithuania.

2. Goods bearing without authorization a trademark or service mark (counterfeit goods) means:

- 1) any goods, including the packaging thereof, bearing without authorization a trademark and (or) service mark, which is identical to the trademark and (or) service mark validly registered in respect of such goods in the procedure prescribed by the Law on Trademarks and Service Marks, or which is confusingly similar to such a trademark and (or) service mark, and which thereby infringe the rights of the owner of the registered trademark and (or) service mark in question under the Law on Trademarks and Service Marks;
- 2) any symbol (logo, label, sticker, brochure, user's manual, guarantee certificate, etc.) of a trademark and (or) service mark, which accompanies goods or is submitted separately and bears the features laid down in point 1 above;

Chapter II

Prohibition of free circulation, non-returnable export and re-export, as well as of the application of other import and export procedures in relation to goods bearing without authorization a trademark and (or) service mark (counterfeit goods) and infringing copies (pirated goods)

Article 5. Prohibition of free circulation, non-returnable export and re-export, as well as application of other import and export procedures in relation to goods bearing without authorization a trademark and (or) service mark (counterfeit goods) and infringing copies (pirated goods)

If, following the procedure established by Article 9 of this Law, goods are acknowledged as bearing without authorization a trademark and (or) service mark (counterfeit goods) or as infringing copies (pirated goods), they shall be prohibited from free circulation, non-

b) the subject of copyright or the subject of related rights must submit accordingly any proof of the exclusive economic authors' rights or the exclusive related rights enjoyed by the said subjects,

c) in addition to the documents referred to in points a and b above, a person having the right to use a trademark and (or) service mark, ~~know~~ object of related rights and industrial design shall submit a document (license) evidencing the right of the person to exercise the rights of the subject of intellectual property rights,

d) in addition to the documents referred to in

intellectual property rights. In case of a negative decision, the applicant shall be informed of the reasons for such a decision and of his right to appeal against the decision in the procedure prescribed by the Customs Code of the Republic of Lithuania.

7. In case of a positive decision adopted by the Customs Department under the Ministry of Finance, the application of the customs procedures listed in Article 9 of this Law shall start

4. Having regard to its customs supervision conditions, the customs office suspending the

2) the court has not decided within the period defined for the suspension of goods on the application of provisional measures;

3) all the requirements laid down by legislation for the execution of a customs procedure or any other action authorized by the customs have been fulfilled;

4) a guarantee referred to in paragraph 4 of this Article has been submitted.

4. The amount of the guarantee referred to in point 4, paragraph 3 of this Article, calculated in accordance with the procedure established by the Customs Department under the Ministry of Finance, shall be sufficient to satisfy possible claims filed by the owner of an industrial design, the successor in title or the representative thereof. The submission of the guarantee shall not preclude the right of the subject of intellectual property rights to take other legislative measures related to the protection of rights of the said subject. If the subject of intellectual property rights does not appeal to court during the period of 20 working days since his notification of the suspension of goods, the customs shall refuse the submitted guarantee. If the term of the suspension of goods is extended in the case provided for in paragraph 2 of this Article, the term prescribed for the appeal by the subject of intellectual property rights to court shall be extended over the same period of time, however shall not exceed 30 working days.

5. The procedure for the storage of the suspended goods shall be established by the Customs Department under the Ministry of Finance.

The expenses arising from the storage of the suspended goods shall be reimbursed by:

1) the subject of intellectual property rights if the court dismisses the action entered by the said subject,

2) the defendant if the court satisfies the action entered by the subject of intellectual property rights.

Chapter V

Actions with regard to goods recognized by the court as goods bearing without authorization a trademark and (or) service mark (counterfeit goods) or as infringing copies (pirated goods)

Article 12. Actions with regard to goods recognized by the court as goods bearing without authorization a trademark and (or) service mark (counterfeit goods) or as infringing copies (pirated goods)

1. In recognizing by the final decision the goods as goods bearing without authorization a trademark and (or) service mark (counterfeit goods) or as infringing copies (pirated goods), the court shall also adopt a decision on the confiscation of such goods specifically stating any of the following actions to which such goods should be subjected:

1) destruction of goods at the supervision by the customs;

2) use of goods without putting into circulation by ensuring the protection of the rights of the subject of intellectual property rights and without reimbursing by the State any of the expenses arising from such use;

3) other measures the application of which would prevent the persons interested in the illegal transportation of the suspended goods from gaining any economic advantage from the transactions concluded.

2. The following shall not be considered as measures in accordance with point 3, paragraph 1 of this Article:

1) re-export of goods bearing without authorization a trademark and(or) service mark (counterfeit goods) or of infringing copies (pirated goods) in an unchanged shape;

2) except for exceptional cases, simple elimination of trademarks and (or) service marks, with which goods have been marked;

3) execution of any other action authorized by the customs with regard to goods bearing without authorization a trademark and(or) service mark (counterfeit goods) or infringing copies (pirated goods) in an unchanged shape.

