

WORLD TRADE ORGANIZATION

RESTRICTED

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**Council for Trade-Related Aspects
of Intellectual Property Rights**

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REVIEW OF LEGISLATION

LATVIA

Addendum

The present document reproduces the follow-up questions posed to Latvia by the United States of America in a communication dated 21 March 2000¹, and the answers supplied by the Permanent Mission of the Republic of Latvia by means of a communication dated 23 May 2000.

1. The Government of Latvia, in response to U.S. question no. 4 regarding well-known marks, answered:

Article 4 - "Rights to a Trademark and the Holders of these Rights" - of Latvia's Trademark Law and in particular Article 4(7) includes the following provisions concerning the protection of well-known marks:

"(6) The person in whose name the trademark has been registered is entitled to prohibit other persons from using in the course of trade the following signs:

(1) any sign which is identical to the trademark in relation to goods or services which are identical to those for which the trademark is registered;

(2) any sign where, because of its identity to, or similarity to, the trademark and the identity or similarity of the goods or services for which the trademark is registered and the sign is used, there exists a likelihood of confusion on behalf of the relevant consumers, which includes the likelihood of association between the sign and the trademark.

(7) Notwithstanding the provisions of paragraph 6 of this Article, the owner of a trademark, that is well-known (within the meaning of Article 8) in Latvia, is entitled to prevent the use, in the course of trade, of any sign which constitutes a reproduction, an imitation, a translation or a transliteration, likely to create confusion, of the well-known trademark, in relation to goods or services, that are identical or similar to those covered by the well-known trademark. The owner of a trademark, that is well-known in Latvia, is entitled to prevent the use, in the course of trade, of a sign which constitutes a reproduction, an imitation, a translation or a transliteration of the well-known trademark, also in relation to goods or services, that are not similar to those covered by the well-known trademark, provided that consumers may perceive the use of such a sign as indicating a connection between these goods or services and the owner of the well-

¹ Document IP/C/W/151/Add.1.

known trademark, and that such use may be detrimental to the interests of the owner of the well-known trademark.

(8) In accordance with the provisions of paragraphs 6 and 7 of this Article the following actions may also be prohibited:

- (1) use (affixing, attachment) of the said signs on the goods or on the packaging thereof,
- (2) offering the goods for sale, or putting them on the market or stocking them for these purposes under the said signs;
- (3) providing services or offering them under the said signs;
- (4) importing or exporting the goods under the said signs;
- (5) using the said signs on business documents and in advertising.

(9) In the application, mutatis mutandis, of the provisions of paragraphs 6, 7 and 8 of this Article, the owner of the trademark is also entitled to prohibit other persons from using signs that are intended for purposes other than distinguishing goods or services (marking of goods, indication of the origin of goods or services), if it is proven that the use of such a sign in the absence of appropriate justification gives the impression of connection with this trademark, or takes unfair advantage of, or is detrimental to, the distinctive character or the reputation of the trademark."

The procedure under which the owner of a well-known trademark may protect his rights is set forth by the general rules of Article 27 - "Unlawful Use of a Trademark (Trademark Infringement)" - and Article 28 - "Liability for Unlawful Use of a Trademark" - of the Law, that refer to the protection of well-known trademarks as well.

Article 27 provides, inter alia, that:

"(1) Unlawful use of a trademark shall be construed as an infringement of the exclusive rights of the trademark owner, namely, the use, in the course of trade, of the signs referred to in Article 4, paragraph 6, sub-paragraph 1 or 2 of this Law, or in Article 4, paragraph 7, without the consent of the owner of the trademark, including use of such signs in the ways specified in Article 4, Paragraph 8."

Article 28 provides, inter alia, that:

"(1) Liability for unlawful use of a trademark pursuant to the provisions of Article 27 of this Law shall arise, where the fact of trademark infringement is proved. The burden of proof of the fact of infringement lies with the aggrieved party (the owner of the trademark or the licensee).

"(2) The owner of a trademark (or their successor in title) may bring an action in the Regional Court of Riga for unlawful use of the trademark. The licensee is entitled to bring a separate action for unlawful use of the trademark only with the consent of the owner of the trademark. The consent of the owner of the trademark is not necessary if the licensing agreement provides for the right of the licensee to bring a separate action, or in cases, where the owner of the trademark does not bring such an action even though the licensee has invited the owner to do so in writing. Any of the licensees of the respective trademark are entitled to

intervene in the action and seek damages that have resulted from unlawful use of the licensed trademark.

"(4) If the fact of infringement is proven, and depending upon the degree of fault, the aggrieved party may request the court to make a judgement including one or more of the following measures (sanctions):

- (1) cessation of the unlawful use of the trademark;
- (2) payment of damages arising from the unlawful use of the trademark, including lost profits;
- (3) recovery of court costs, including also the litigation expenses as prescribed by law, and the fees paid to the representative.

"(5) The court may, in its judgement, provide for measures to prevent further infringement of the trademark, including imposing the obligation to destroy the goods with the unlawful marking, or to convey those goods at cost price to the owner of the trademark (successor in title) or the licensee if they so agree, or to donate those goods for use for charitable purposes. The court may, upon the request of the owner of the trademark (their successor in title) or the licensee, apply the measures prescribed by law for enforcement of the claim also in those cases when the claim is not of a material character (damages are not claimed).

"(6) When determining liability for unlawful use of a trademark, for the purposes of determining the degree of the infringer's fault, the fact of receipt of the warning notice referred to in Article 24, paragraph 3 of this Law may be used as evidence.

"(7) In cases where trademark infringement has been done deliberately or with intent to defraud, the persons responsible shall also be called to administrative or criminal liability.

"(8) Notwithstanding the provisions of Article 27 and this Article, claims for infringement of registered and unregistered trademarks, including the cases provided for in Article 4, paragraph 9 of this Law, may be based upon the provisions of the laws or other statutory enactments of Latvia pertaining to unfair competition.

"(9) A claim for the infringement of a trademark may be brought within three years from the date when the aggrieved party became aware, or should have become aware, of the occurrence of infringement of the mark."

In a recent decision the Regional Court of Riga decided that a trademark consisting primarily of a translation into another language of a world-famous trademark for particular spirits, registered in Latvia, was not confusingly similar to the world-famous trademark. This decision followed an earlier court decision in which registration of the transliterated mark was allowed, in spite of the existence of earlier registrations for the world-famous mark. Please describe in detail the manner in which this decision complies with the provisions of Latvia's law cited above.

There are five cases being reviewed at this stage that relate to world-famous trademarks for particular spirits. Two cases started already in 1998, but are still under review at the Senate of the Supreme Court and are now integrated in one case as both have the same claimant.

This year, there are three cases initiated at the Regional Court of Riga. Two of them are appealed at the House of the High Court. One case regarding the appeal of Patent Board decision will be reviewed at the Regional Court of Riga in the coming days.

More detailed information can be provided concerning each particular case.

2. In responding to the U.S. question no. 6, the Government of Latvia noted that, under Article 39 of Latvia's patent law, a patent compulsory licence may be granted by a court only in exceptional cases mentioned in the Law, namely, if a patented product, or an invention, is of vital importance - to the welfare of the residents of Latvia or for the interests of the economy or national security of Latvia. The response also notes that Latvia's courts had no practice in regarding claims under Article 39 of the Patent Law. Please describe in detail any factors provided for the courts that must be considered in determining whether a patented product or an invention is of vital importance to the welfare of the residents of Latvia or for the interests of the economy or national security of Latvia.

Latvia considers that the description of the factors provided for the courts that must be considered in determining whether a patented product or an invention is of vital importance to the welfare of the residents of Latvia or for the interests of the economy or national security of Latvia can be determined only on the basis of particular cases.

There has been no practice so far in Latvia regarding claims under Article 39 of the Patent Law, therefore, currently, it is not possible to describe in detail these factors.

3. In response to U.S. question no. 7, the Government of Latvia describes the manner in which data submitted to Latvian government agencies is protected against disclosure. Please indicate whether data submitted by an original applicant for approval of a pharmaceutical or agricultural chemical can be relied upon to approve subsequent applicants for approval of the same chemical, without the approval of the first applicant. If so, please explain how long a period of time must pass before such reliance is permissible.

Data submitted to Latvian government agencies is protected against disclosure, as in accordance with the General Rules for the Registration of Drugs and Pharmaceutical Products, adopted by the Cabinet of Ministers No. 24, 20 January 1998, point 17, the results of pharmacological and toxicological test and clinical studies should not be submitted if the medicinal product (pharmaceutical) is essentially like the original medicinal product (contains the same active substances as the original medicinal product in the same amount, pharmaceutical form and dosage, intended for the same therapeutic use and the bio-availability is proven to be identical to the original medicine), registered and distributed in Latvia, and if the registration applicant for approval the subsequent application for the same pharmaceutical has received the permission of the original medicinal product registration licence holder to use the test results – of pharmacological and toxicological test and clinical studies.

More precisely, these cases are stipulated in the new draft Regulation on Registration of Medicinal Products (issuing of marketing authorizations) which includes the requirements in which the results of pharmacological and toxicological tests or clinical trials do not have to be provided from the side of a subsequent applicant if he can demonstrate:

- (1) with a view to obtain authorization of a medicinal product which is essentially similar to an authorized product in Latvia, including a requirement that the person responsible for the marketing of the original medicinal product has consented in the file on the original medicinal product being used for the purpose of examining the

application in question. An application can only be submitted after the first marketing authorization (original) has been granted; or

- (2) by detailed references to published scientific literature presented that the constituent(s) of medicinal product have a well-established medicinal use, with recognized efficacy and an acceptable level of safety (detailed reference to the requirements of Directive 75/318/EEC and its amendments); or
- (3) that the medicinal product is essentially similar to a product which has been authorized within the Community or Latvia for not less than six years and is authorized and distributed in Latvia. This period is extended to 10 years in the case of high-technology medicinal products (within the meaning of the Annex of Regulation 2309/93/EC). However, where the medicinal product is intended for a different therapeutic use from that of the other medicinal product marketed or is to be administered by different routes or in different doses, the results of appropriate pharmacological and toxicological tests and/or of appropriate clinical trials must be provided.

These requirements conform with EU Council Directive requirements 65/65/EEC on the approximation of provisions laid down by law, regulation or administrative action relating to proprietary medicinal products and its amendments, and are without prejudice to the law relating to the protection of industrial and commercial property, ensures that innovative firms are not placed at a disadvantage.

The change in Latvian legislation is not considered as a change in Latvian intellectual property protection law, as well as free movement of goods, and requires protection of the first applicant's data against "unfair" commercial use.

The proposed date of adoption is June 2000.

Regarding plant protection products, data submitted by an original applicant for approval of a plant protection product cannot be relied upon to approve subsequent applicants, without the approval of the first applicant. Data protection is constant. The approval of the first applicant stands for Letter of access, issued by the first applicant, submitted to the State Plant Protection Service, and indicating any conditions for the access to the data.
