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BELARUS

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This guide provides a basic profile of this jurisdiction's trademark law and practice and is not intended to take the place of professional advice given with full knowledge of the specific circumstances of each case and proficiency in the law of this jurisdiction such as might be provided by a local trademark attorney.

For more information about particular areas of practice, please see INTA's companion online publications: [Global Portal](#).

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I. GENERAL

A. Rights Afforded by Registration

- Registration is mandatory to establish rights to a trademark; this is a "first to file" jurisdiction.
- Use of an unregistered mark for any goods or services is legal.

B. Time Frame for Obtaining Registration

- The approximate time from application to registration (for a regular prosecution, without opposition) is: two to two-and-a half years for an ordinary procedure; and approximately one year for an accelerated procedure.

C. Advantages of Registration

- The benefits of registering a trademark include the following:
 - it is the sole means of obtaining right or title to the trademark;
 - it provides prima facie evidence of ownership and validity;
 - it provides regional/national/local protection;
 - it allows use of "Registered Trademark" or other suitable abbreviations to demonstrate ownership of the trademark;
 - it allows access to bring actions in particular courts (All intellectual property related disputes are resolved by the Judicial Board for Intellectual Property Issues of the Supreme Court of the Republic of Belarus.);
 - it helps to deter others from unlawfully using the trademark;
 - it provides a defense to infringement;
 - it confers the ability to recover maximum monetary damages for infringement;
 - it encourages licensees and provides the opportunity to generate royalties through licensing.

II. PRE-FILING

A. Registrable Trademarks

- The following signs that can be reproduced graphically and are capable of distinguishing the goods or services of one person or entity from another are registrable as a trademark:
 - words;
 - names;
 - certain three-dimensional shapes;
 - colors;
 - trade dress/get-up;
 - combinations of the above signs also can be registered as a trademark.

For general information about non-traditional marks, see:

Topic Portal: <http://www.inta.org/Advocacy/Pages/NontraditionalMarks.aspx>

Fact Sheet:

<http://www.inta.org/TrademarkBasics/FactSheets/Pages/NontraditionalTrademarksFactSheet.aspx>

For information about protecting trade dress, see:

<http://www.inta.org/TradeDress/Pages/TradeDress.aspx>

- There are no special requirements for the registration of three dimensional shapes.
- The special requirements for the registration of colors are: Only combinations of colors are registrable. A single color cannot be a trademark under the Belarusian trademark law.
- There are no special requirements for the registration of trade dress.
- Marks registered in black and white or grayscale are construed broadly to protect the mark both as registered and in other color combinations.
- In addition to regular trademark registrations, the following types of trademarks are registrable:
 - collective marks;
 - well-known marks;
 - service marks.
- Retail services are registrable provided that the nature of the retail services is clearly identified.
- The following are not registrable as trademarks:
 - marks contrary to moral standards or public order;
 - generic terms;
 - names, flags or symbols of states, nations, regions, or of international organizations;
 - non-distinctive trademarks absent a showing of acquired distinctiveness (secondary meaning);
 - marks that function principally as surnames;
 - marks that function principally as geographic location names (but not Geographic Indications or Appellations of Origin);
 - universally accepted symbols and terms (These are not the same as generic terms. According to the position of the Belarusian legislature, generic terms are words that describe the nature of goods (for example, "bread," "wine," etc.). Universally accepted symbols and terms can be connected to different spheres, but they are always used for specific universally recognized purposes (for example, the symbol ©.);
 - marks that represent either the shape of goods or its trade dress and are conditioned only by the nature of the goods, special safety or transportation condition;
 - false trademarks or trademarks that can mislead consumers as to the nature of goods, their place of origin or producer;
 - marks that represent or include as an element geographic indications or appellations of origin that apply to wines or liquors and are protected by

international treaties to which the Republic of Belarus is a party, if such beverages are not produced in the place stated;

- marks that are identical or confusingly similar to:

(a) trademarks that are registered in Belarus or trademarks that seek registration (i.e., an application has already been filed) in respect of homogeneous goods – if there is no letter of consent issued by the owner of these trademarks;

(b) trademarks that belong to another person and enjoy legal protection on the basis of international treaties to which the Republic of Belarus is a party in respect of homogeneous goods – if there is no letter of consent issued by the owner of these trademarks;

(c) trademarks that belong to another person and are recognized as well known in respect of all kinds of goods – if there is no letter of consent issued by the owner of these trademarks;

(d) company names (or parts of company names) that are protected in the Republic of Belarus – if the rights to such company name have been obtained before a trademark priority date;

e) Geographic indications or appellations of origin that are protected in the Republic of Belarus in respect of all kinds of goods (except when a trademark is registered for the goods to which these geographic indications or appellations of origin are applied and a geographic name is included in the trademark as a non-protected element);

- marks that are identical to:

(a) an industrial design – if the right to an industrial design in the Republic of Belarus belongs to another person and has a senior priority;

(b) the name of a work of science, literature or art that is well known in Belarus, or a character from or quotation of such a work, or of a piece of art (or part of it) – if there is no consent of the right holder and the copyright came into existence before the trademark priority date;

(c) the name of one of the media registered in the Republic of Belarus in respect of homogeneous goods – if there is no permission of the media founder;

(d) a surname, name, pseudonym or derivatives, portrait or facsimile of a well-known person in the Republic of Belarus – if there is no consent of this person or his/her descendants.

- Geographical indications (GIs) are protected in this jurisdiction.
- GIs are protected by way of:
 - specific laws or decrees that recognize individual geographical indications (The protection of geographical indications and appellations of origin is recognized by the Civil Code of Belarus.).
- The following products or categories are subject to GI protection in this jurisdiction: All kinds of goods are subject to GI protection.

B. Searching

- While conducting a private pre-filing search is not mandatory, it is recommended in that it can:
 - save the applicant the time, effort and cost entailed in developing, adopting and applying to register a trademark in which someone else has prior rights;
 - disclose additional potentially conflicting trademarks, e.g., prior unregistered rights such as those gained at common law.
- The national office is accessible online at the following URL: <http://www.belgospatent.org.by/>.
- The official register can be searched online. Please note that the information contained in the register may only be updated every one or two months; it is therefore better to make an inquiry to the patent office to conduct a trademark search. Pending trademark applications are not shown in the official register.

C. Use

- An applicant benefits from pre-filing use of a trademark.

- The benefits of pre-filing use are:
 - Use may demonstrate acquired distinctiveness (secondary meaning) and help to overcome an objection to an application to register the trademark on the grounds of non-distinctiveness.
 - minimal. Trademark rights are largely established through registration.
 - If a trademark is used on goods exhibited at official or officially recognized international exhibitions held in the territory of a state that is a party to the Paris Convention, the date of a first open display of the goods can be taken as a priority date.
- When a mark is not registered, use of that mark may provide the following benefits:
 - Special protection against infringement may be available for a well-known trademark that is not registered.

D. International Treaties

- Belarus is a member of the following international treaties relating to intellectual property:
 - Paris Convention;
 - Trademark Law Treaty;
 - Singapore Treaty;
 - Nairobi Treaty;
 - Madrid Agreement;
 - Madrid Protocol;
 - Nice Agreement.

III. FILING

A. Requirements

- If the applicant is not domiciled in this jurisdiction, a local address for service must be provided.
- Joint applicants are not permitted in this jurisdiction. At the same time, registration of true collective marks is available.
- Neither actual use nor intent to use is required for application.
- The following information is required to complete an application:
 - name and address of the applicant;
 - state or country of incorporation;
 - representation of trademark (a depiction of the mark an applicant seeks to register);
 - list of goods/services (It is advisable to state classes of goods/services under the Nice Agreement. If the applicant does not specify classes of goods/services, the expert at the patent authority will classify the goods/services under the Nice Agreement.);
 - power of attorney (When the application is filed by the patent attorney. For foreign applicants use of a patent attorney is mandatory.);
 - official filing fee;
 - regulations on collective marks, in case the collective mark is filed;
 - copy of the first application, if conventional priority is claimed.
- While ALL of the items noted in the list immediately above are required to COMPLETE an application, ONLY THE FOLLOWING ITEMS from that list are required in order to SECURE A FILING DATE:
 - name and address of the applicant;
 - state or country of incorporation;
 - representation of trademark (a depiction of the mark an applicant seeks to register);

- list of goods/services (It is advisable to state classes of goods/services under the Nice Agreement. If the applicant does not specify classes of goods/services, the expert at the patent authority will classify the goods/services under the Nice Agreement itself.).
- The list of goods and services in this jurisdiction may specify:
 - the relevant entire (long) alphabetic class listing.
- The following number of copies of the trademark must be submitted: if the image is in black and white, five copies of the trademark; if the image is in color, eight copies of the trademark in color and two black-and-white copies.
- In this jurisdiction, the following type of registration is available:
 - national;
 - international.
- This jurisdiction is a member of both the Madrid Protocol and the Madrid Agreement and may be designated in international applications.
- This country is not a member of the European Union; a Community Trademark is not effective in this jurisdiction.
- No multinational regional registrations are available in this jurisdiction.
- An international application is subject to the same registrability requirements and examination procedure as a locally filed application. (See the entry for the Madrid Agreement and Protocol.)
- Applications cannot be filed online.
- The official file cannot be accessed online.
- Applications are officially searched as to prior trademarks.

B. Priority

- If an applicant's home country is a member of the Paris Convention, the filing date of its home application can be claimed as the filing date in this jurisdiction, provided that its home application was filed within the fixed period of six months preceding the application in this jurisdiction.
- An International registration can be based on a national application or registration in this jurisdiction.

C. Classification

- This jurisdiction uses the Nice Classification System.
- If a trademark covers more than one class of goods and/or services, one application can cover multiple classes of goods or services.
- For a multi-class application, the applicant must pay additional class fees if the goods/services fall into more than the following number of classes: one.

D. Representation

- An application to register a trademark may be filed directly in this jurisdiction by:
 - the applicant, but only if a citizen of or domiciled in the jurisdiction;
 - a trademark representative/attorney/agent, but only if a citizen of or domiciled in the jurisdiction.

IV. APPLICATION

A. Publication

- The filing particulars of an application are not made available to the public. Publication of the application is not envisaged. An interested person may request that the national office provide copies of a certain application and the documents attached thereto as of the date of filing.

B. Examination

- Applications are examined in respect of:
 - formalities: i.e., for compliance with the filing requirements;
 - classification: i.e., to ensure that the goods or services fall within the class(es) listed in the application;
 - clarity: i.e., that descriptions are clear, and are understandable;
 - descriptiveness: i.e., to check whether a trademark functions solely to provide information about the goods and services affiliated with the trademark;
 - distinctiveness: i.e., to ensure that trademarks are capable of being represented graphically and of distinguishing goods or services of one individual or organization from those of other individuals or organizations;
 - deceptiveness: i.e., to check whether a trademark is of such a nature as to deceive the public (for instance as to the nature, quality or geographic origins of the goods or services);
 - conflict with prior registration, prior filed application or earlier unregistered rights resulting from an official search.
 - absolute grounds.
- If the local trademark authority issues a preliminary refusal to register a mark based on an earlier registration owned by another:
 - The existence of a valid coexistence agreement between the applicant and cited registrant may be accepted as evidence permitting registration of the application; its acceptance is at the discretion of the trademark authority. The law provides that in case there is a valid coexistence agreement, the registration is merely permitted. In practice, the national office in most cases accepts the coexistence agreement as evidence permitting registration.
- This jurisdiction does not have disclaimer practice (i.e., a practice whereby the applicant must disclaim any exclusive right to an element of a trademark that is not distinctive). The non-distinctive elements of the trademark are included into the trademark unless they dominate in the mark.
- The order of the application process is as follows:
 - Other: Formality examination, examination, registration, publication.

C. Prosecution

- Accelerated examination may be requested.
- A reason for acceleration is not required.
- A fee for acceleration is required.
- The following rights are established by a pending application:
 - the filing date of the application establishes a home filing date for purposes of priority;
 - the pending application can be cited in official examination against a subsequent (later filed) conflicting application.

D. Opposition

- An application cannot be opposed.

E. Proof of Use

- Proof of use is not required prior to the issuance of a registration or the issuance of a notice of allowance/acceptance.

V. ASSIGNMENT AND LICENSING OF AN APPLICATION

A. Assignment

- An application can be assigned.

- An assignment of an application must be for the entire territory covered by the application.
- An assignment of an application must be for all the goods or services listed in the application.
- Goodwill need not be included in an assignment of an application.
- A written assignment for an application requires:
 - name of the assignor;
 - address of the assignor;
 - name of the assignee;
 - address of the assignee;
 - signature by the assignor;
 - signature by the assignee;
 - application number;
 - date of filing of the application.
- Legal verification of a written assignment document is not required.
- An assignment of an application must be recorded to be effective. It must be recorded with the national office.

B. Licensing

- An application cannot be licensed.

VI. REGISTRATION

A. Requirements

- A fee is required for issuance of the registration.
- The following documentation is required for issuance of the registration:
 - document certifying payment of a state fee for registration.

B. Rights

- The following rights are established by registration:
 - the exclusive right to use the registered trademark;
 - the right to bring a cancellation action against a subsequent conflicting registration;
 - the right to sue for infringement against confusingly similar third party trademark use;
 - the right to license other third parties to use the trademark;
 - the right to apply for seizure by customs authorities for importation of counterfeit goods;
 - the right to obtain damages for infringement;
 - the right to request arrest or destruction of counterfeit goods;
 - the right to request removal of a trademark or an image that is confusingly similar thereto from counterfeit goods and/or trade dress;
 - the right to request destruction of all produced images of a trademark or an image that is confusingly similar thereto;
 - the right to request imposition of a fine in the amount of the full price of all goods to which a trademark was illegally applied.
- A trademark becomes incontestable, that is, the validity of the registration cannot be challenged, after the following time period:
 - As a general rule, trademarks do not become incontestable, except in the following circumstances: A trademark becomes incontestable after five years from the date of official publication of information about the registered trademark, if the mark is identical or confusingly similar to:

- a) a trademark that is registered in Belarus or a trademark that seeks registration (application has already been filed) in respect of homogeneous goods – if there is no letter of consent issued by the owner of this trademark;
 - b) a trademark that belongs to another person and enjoys legal protection on the basis of international treaties to which the Republic of Belarus is a party in respect of homogeneous goods – if there is no letter of consent issued by the owner of this trademark;
 - c) a trademark that belongs to another person and is recognized as well-known in respect of all kinds of goods – if there is no letter of consent issued by the owner of this trademark;
 - d) a Geographic Indication or Appellation of Origin that is protected in the Republic of Belarus in respect of all kinds of goods (except when a trademark is registered for the goods to which this Geographic Indication or Appellation of Origin is applied and a geographic name is included in the trademark as a non-protected element).
- The territorial limit of registration is: the territory of the Republic of Belarus.

C. Term

- The initial term of a registration is:
 - ten years.
- The beginning of the term of a registration is calculated from the:
 - application date (the date of first application in case conventional priority is claimed).

D. Marking Requirements

- Marking is not compulsory for registered trademarks, but is advisable because: it aims at informing others that this mark is a trademark registered in the Republic of Belarus.

Please also note that Belarusian law provides for administrative and criminal liability for the marking of non-registered trademarks.

- Any marking should be in the form(s) mentioned below. Please consult with your local attorney in case of doubt.
 - ®;
 - “R”;
 - “товарный знак” (“trademark”);
 - “зарегистрированный товарный знак” (“registered trademark”).
- The use of ® is legally recognized.

VII. ASSIGNMENT AND LICENSING OF A REGISTRATION

A. Assignment

- A registration can be assigned.
- An assignment of a registration must be for the entire territory covered by the registration.
- An assignment of a registration can be for some or all of the goods or services listed in the registration.
- Goodwill need not be included in an assignment of a registration.
- An assignment document for a registration requires:
 - the name of the assignor;
 - the address of the assignor;
 - the name of the assignee;
 - the address of the assignee;

- details of the trademark being assigned;
 - the goods and services being assigned;
 - signature by the assignor;
 - signature by the assignee;
 - the amount of remuneration, or procedure for calculation of remuneration, or explicit statement that the assignment is effected on an unpaid basis.
- Legal verification of a written assignment document is not required.
 - An assignment of a registration must be recorded to be effective. An assignment of a registration must be recorded with the national office.

B. Licensing

- A registration can be licensed.
- In this jurisdiction registered trademark users (as opposed to licensees) cannot be recorded. except for cases of registration of a collective mark.
- A license of a registration can be made for a portion of the territory covered by the registration.
- A license of a registration can be for all or some of the goods or services listed in the registration.
- A license of a registration can be exclusive (only one licensee, with the owner excluded).
- A license of a registration can be non-exclusive (multiple licensees and the owner).
- Use, by a related company, of a registered mark must be licensed.
- A license of a registration must be made with a time limitation (i.e., it cannot be perpetual).
- A license document for a registration requires:
 - the name of the licensor;
 - the address of the licensor;
 - the name of the licensee;
 - the address of the licensee;
 - details of the trademark to be licensed;
 - the goods and services being licensed;
 - the term of the license;
 - the territory of the license;
 - quality control provisions;
 - simple signature by the licensor (see below for execution requirements);
 - simple signature by the licensee (see below for execution requirements).
- Legal verification of a written license agreement is not required.
- A license of a registration must be recorded to maintain the validity of the registration if it is used under license.
- The license for a renewed registration must be re-recorded. The term of the license agreement may exceed the term of registration of a trademark, in such case the license agreement should provide for the obligation of licensor to maintain the trademark in force through the term of validity of such license.

VIII. POST-REGISTRATION

A. Use Requirements

- Attack on the ground of non-use is available.
- To avoid being attacked on the ground on non-use, a trademark must be used in commerce; however, such use is not linked to any specific time linked to the application filing date or the registration date. Consult a local trademark attorney.
- To satisfy the use requirement, the amount of use:

- must be on a commercial scale. In certain instances, if the trademark is not used for the goods/services it was registered for, use in advertisements, media, outdoor signs or at fairs may be considered use, if there were valid grounds for non-use on the registered goods/services by the trademark owner.
- Use of the trademark must occur in:
 - this jurisdiction.
- The consequences of a trademark's not being used are as follows: If a trademark has not been used for more than any three consecutive years after registration, the court may cease legal protection of a trademark in case an action for cancellation on the ground of non-use has been brought by any third party. Cancellation may take place for all or only particular classes of goods/services that were not used by the trademark owner.
- Periodic statements of use or other mandatory filings by the trademark owner setting forth use of the trademark are not required.
- An action for non-use of a trademark can be brought by:
 - any interested third party.
- Non-use can be excused under the following circumstances:
 - if circumstances beyond the reasonable control of the owner (licensee) hindering a due use of a trademark were in place.
- Resumption of use after non-use for the prescribed period (see above) may cure non-use provided that, in the interim, no third party has:
 - filed an action for cancellation of the trademark on the ground of non-use.
- Use of a registered trademark in a modified form would not affect the enforceability of a registration and is allowed if the difference is slight and provided that the modification does not materially alter the distinctive character of the trademark. A local trademark attorney should be consulted.
- Amendment of a registration to conform to a modified form of the trademark is possible, provided that the difference is slight and the modification does not materially alter the distinctive character of the trademark. Consult a local trademark attorney.

B. Cancellation

- Cancellation is available against registrations.
- The following can be grounds for cancellation:
 - proprietary rights, such as an earlier conflicting registration;
 - the mark is descriptive, i.e., it consists of a sign or indication that may serve in trade to designate the kind, quality, quantity, intended purpose or value of goods or of rendering of services or other characteristics of goods or services;
 - the mark is not distinctive;
 - the mark is misleading, deceptive or disparaging;
 - the mark is functional;
 - breach of copyright;
 - rights under Article 6 bis of the Paris Convention (notorious or well-known mark);
 - rights under Article 6 ter of the Paris Convention (protection of armorial bearings, flags and other State emblems);
 - rights under Article 6 septies of the Paris Convention (registration in the name of the agent or other representative of the proprietor of the mark);
 - rights under Article 8 of the Paris Convention (trade names);
 - registered design rights;
 - rights in a personal name;
 - the mark is generic, i.e., the mark consists exclusively of signs or indications that have become customary in the current language or in the bona fide and established practices of the trade;
 - the mark consists of a geographical indication;
 - the mark is against public policy or principles of morality;

- rights in a company name;
- rights in a media name.
- There is no deadline for bringing a cancellation action; a cancellation action can be brought at any time. The exception is when the mark has become uncontestable, as discussed in V. Registration :: B. Rights, when a third party can no longer dispute the registration.
- Anyone may bring a cancellation action.
- Cancellation actions cannot be filed online.

C. Renewal

- The following documentation is required for renewal:
 - power of attorney;
 - application for renewal of registration;
 - copy of the document certifying payment of state fee for renewal.
- The first renewal date of a registration is:
 - 10 years from the application filing date.
- Subsequent renewals last for the following period of time:
 - 10 years from the renewal date of the registration.
- The renewal pre-payment period is:
 - no more than the following number of years before the renewal date: one year.
- There is a grace period for renewing registrations once the renewal date has expired.
- The grace period after the renewal date has expired is:
 - 6 months.
- The penalty for late renewal is:
 - the registration lapses.
 - The registration lapses if the grace period expires. An additional fee must be paid within the grace period for the renewal of registration.
- Renewal cannot be effected online.

IX. DOMAIN NAMES

- A domain name may not be protected as a trademark.
- The following approved registrars can register a domain name in this jurisdiction: Business Network, Ltd. JV., <http://tld.bn.by/>; Open Contact, Ltd., <http://domain.by/>; Extmedia, Ltd., <http://extmedia.com/domains.html>; Reliable Software, Inc., <http://hoster.by/service/domains/>; Active Technologies, Ltd., <http://www.active.by/>; Trilnkom Ltd., <http://hb.by/domain-checker.aspx/>.
- Availability of domain names in this jurisdiction can be searched through the following website(s): National Information System WHOIS, <http://cctld.by/whois.html?lang=eng>.
- The Country Code Top-Level Domain (ccTLD) for this jurisdiction is: .by. The IDN ccTLD for this jurisdiction is : .бел.
- To obtain a domain name under the ccTLD in this jurisdiction, the following is required:
 - none.
- Domain name registrations can be assigned.
- Domain name registrations cannot be licensed. A domain name does not constitute intellectual property and cannot be the object of a license.
- A domain name registration may be contested in this jurisdiction through the following mechanisms:
 - the following other mechanisms, whether local dispute resolution mechanism or otherwise: an action before the Intellectual Property Board of the Supreme Court.
- If a registration lapses due to failure to renew, it can be revived or restored in the following way: only on the basis of a public sale procedure held by the national domain name administrator.

- The application to register a domain name as a trademark will not be examined for conflicts with prior trademarks. Please note that domain names are not considered to be intellectual property in the Republic of Belarus.
- An earlier-filed domain name registration cannot create rights effective against a later-filed trademark application filed by another.
- In general, the courts do not apply the same principles for domain name disputes as are applied for trademark disputes. The following unique considerations are of particular note: Use of a registered trademark in a domain name, without permission of the owner of the trademark, for homogeneous goods/services is considered to be a trademark infringement.

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