



**Republika e Kosovës**  
**Republika Kosovo - Republic of Kosovo**  
*Kuvendi - Skupština - Assembly*

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**Law No. 05/L -040**

**AMENDING AND SUPPLEMENTING THE LAW No. 04/L-026 ON  
TRADEMARKS**

**Assembly of Republic of Kosovo,**

Based on Article 65 (1) of the Constitution of the Republic of Kosovo,

Approves

**LAW ON AMENDING AND SUPPLEMENTING THE LAW No. 04/L-026  
ON TRADEMARKS**

**Article 1**

In Article 1 of the basic Law, after paragraph 1, there shall be added a new paragraph 2 with the following text:

2. This Law is in accordance with the Directive No.2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks (Codified version), (OJ L 299, 8.11.2008 p. 25-33), Directive 2004/48/EC of the European Parliament and of the Council of April 2004 on the enforcement of intellectual property rights ( O.J. L 157, p.45, 30.4.2004; O.J. L 195, p.16, 2.6.2004).

**Article 2**

Article 2 of the basic Law shall be deleted and reworded with the following text:

## **Article 2**

This Law applies to trademarks in relation to goods and services wherein the entities are subject to the registration procedure with the Industrial Property Agency of the Republic of Kosovo established in the Ministry of Trade and Industry (hereinafter Agency ) as well as community trademarks and international trademark registrations that apply to the Republic of Kosovo.

## **Article 3**

1. In Article 3 of the basic Law, paragraph 1, sub-paragraph 1.3. shall be deleted, and in the entire text of basic Law the designation " Industrial Property Office" (IPO) – shall be replaced with the designation Industrial Property Agency, hereinafter (IPA).

2. In Article 3 of the basic Law, paragraph 1, sub-paragraph 1.19 shall be deleted and reworded with the following text:

1.19. Exclusive license – given by the trademark owner to use it on an exclusive basis, even excluding the trademark owner from its using.

## **Article 4**

In Article 6 of the basic Law, paragraph 1, sub-paragraph 1.4 shall be deleted and reworded with the following text:

1.4. trademarks which consist exclusively of signs or indications that have become customary in the current language or are bona fide used and have created common commercial practice;

## **Article 5**

1. In Article 7 of the basic Law, paragraph 2, sub-paragraph 2.1 shall be deleted and reworded with the following text:

2.1. registered trademark with an application date or an earliest priority date in the Republic of Kosovo.

2. In Article 7 of the basic Law, paragraph 2, sub-paragraph 2.3 shall be deleted and reworded with the following text:

2.3 trademark that is well known in the territory of the Republic of Kosovo, on the date of application for trademark registration, or when appropriate, the right of priority requested in relation with the application for trademark registration.

3. In Article 7 of the basic Law, paragraph 3 shall be deleted and reworded with the following text:

3. In case of an objection by the owner of the earlier trademark, under Article 7.2 of the basic Law, there should not be registered the identical trademark or similar to the earlier trade mark, which is protected for goods or services that are not similar to those for which the earlier trade mark is registered, if the earlier trademark has a reputation in the Republic of Kosovo and by the use of the trademark in question, reasonably, an unfair advantage is realized by distinguishing characteristics or reputation of the earlier trade mark or distinctive feature or reputation of the earlier trade mark are damaged.

4. In Article 7 of the basic Law, paragraph 4 shall be deleted and reworded with the following text:

4. In case of an objection by the owner of the earlier trade mark, trademarks should not be registered if the representative or agent of the owner of the trademark without the authorization of the owner applies for trademark registration in its own name, except when the representative or agent justifies his actions.

#### **Article 6**

Article 10 of the basic Law shall be deleted and reworded with the following text:

#### **Article 10**

When the trademark is registered in the name of commercial representative or agent without the authorization of the trademark owner, the owner has the right to object to the use of the mark if he has not authorized such an action, unless the agent or representative justifies his action.

#### **Article 7**

1. In Article 11 of the basic Law, paragraph 1 shall be deleted and reworded with the following text:

1. In accordance with honest practices in industrial or trade matters, the trademark owner is not entitled to prohibit a third party, in its business activities to use:

2. In Article 11 of the basic Law, paragraph 1, sub -paragraph 1.2 shall be deleted and reworded with the following text:

1.2. data regarding type, quality, quantity, intended use, value, geographical origin, the time of production of products or time of provided service, or other features of goods or services;

3. In Article 11 of the basic Law, paragraph 1, sub-paragraph 1.3 shall be deleted and reworded with the following text:

1.3. trademark, when it is necessary to indicate the intended use of goods and services, especially in the case of additional equipment or spare parts.

4. In Article 11 of the basic Law after paragraph 1 there shall be added a new paragraph 2, with the following text:

2. The owner shall not be entitled to prohibit the trademark to third parties that in trading practices, to use an earlier right which only applies in a particular locality if that right is recognized by Laws of the Republic of Kosovo within the borders of the territory in which it is known.

### **Article 8**

In Article 13 of the basic Law, paragraph 4 shall be deleted in its entirety.

### **Article 9**

1. In Article 14 of the basic Law, paragraphs 2, 3 and 4 shall be deleted and reworded with the following text:

2. If within a period of five (5) years from the date of completion of the registration, the trademark owner has not used it in the Republic of Kosovo, for goods or services for which the trademark is registered, or if the use of the trademark is suspended for an uninterrupted period of five (5) years trademark is subject to the sanctions provided by the Law, unless there are proper reasons for non-use.

3. Use of the trademark, according to paragraph 2 of this Article shall also imply:

3.1. use of a trademark in a way that distinguishes in the elements that do not damage its distinctive character in the form that it was registered;

3.2. sticking of the trademark on goods or on their packaging in Republic of Kosovo intended solely for export purposes;

3.3. placing the trademark on goods or on their packaging in the Republic of Kosovo only for export purposes.

4. Use of the trademark with the consent of the owner or any person who has authority to use a collective or certification trademark should be understood as use by the owner

### **Article 10**

In Article 15 of the basic Law, paragraph 7 shall be deleted and reworded with the following text:

7. The documents required for notifying the owner of the trademark must be sent to the registered new owner, from the date of the registration of the right.

### **Article 11**

In Article 27 of the basic Law, paragraph 3 shall be deleted and reworded with the following text:

3. The right to priority, recognized under Article 28 and 29 of the basic Law has the effect that the date of priority shall count as the date of filing the trademark application, with the aim of establishing rights which take precedence in accordance with paragraph 1 of Article 27 of the basic Law.

### **Article 12**

In Article 28 of the basic Law, in paragraph 2 at the end of the sentence after the words "first application" there shall be added the words "and translated in the official language".

### **Article 13**

In Article 33 of the basic Law, after paragraph 2, there shall be added a new paragraph with the following text:

3. Procedures regarding the remarks of third parties shall be regulated by sub-legal act."

### **Article 14**

In Article 35 of the basic Law, paragraph 3 shall be deleted and reworded with the following text:

3. If the conditions stated in Article 35.1 of the basic Law are met, the Agency sends a copy of the filed objection to the applicant and invites the applicant to submit

observations on the objection within sixty (60) days from the date of receipt of the invitation.

### **Article 15**

Title of Article 36 of the basic Law shall be deleted and reworded with the following text:

### **Article 36** **Proof of use of the earlier trade mark during opposition proceedings**

### **Article 16**

In Article 46 of the basic Law, paragraph 3, there shall be deleted the second sentence with the text: “Restriction of the list for goods and services shall be made after respective fee is paid“.

### **Article 17**

1. In Article 50 of the basic Law, paragraph 1 shall be deleted and reworded with the following text:

1. The Agency considers if the fee determined for the request for revocation is paid and if the request for revocation is presented according to the sub-legal act.

2. In Article 50 of the basic Law, paragraph 2 shall be deleted and reworded with the following text.

2. If the requirements set forth in paragraph 1 of this Article are not met, or if the request for revocation is filed after the expiration of a period of five (5) years from the registration of the trademark for which the revocation is required, the Agency must refuse the application for revocation.

### **Article 18**

1. Title of Article 55 of the basic Law shall be deleted and reworded with the following text:

### **Article 55** **Proof of use of the earlier trade mark in invalidity proceedings**

2. In Article 55 of the basic Law, paragraph 1 shall be deleted and reworded with the following text:

1. Upon the request of the trade mark holder, the holder of an earlier trade mark being a party to the invalidity proceedings shall have to furnish proof that, during the period of five (5) years preceding the date of the request for a declaration of invalidity, the earlier trademark has been put to genuine use in the Republic of Kosovo in relation to the goods or services in respect of which it is registered and which he cites as justification for invalidity declaration, or that there are proper reasons for non-use, provided that the earlier trade mark has at that date been registered for not less than five (5) years.

### **Article 19**

After Article 56 of the basic Law, there shall be added a new Article 56A with the following text:

### **Article 56A Restoration of the rights**

1. If the applicant or owner of the trademark has not acted within the time limit, determined by this Law or sub-legal act, in relation to the fulfilment of obligations within the term towards the Agency, the result of which is the loss of the right gained through the application for trademark or through trademark, may submit the request for restoration of the right for the recognition of trademark.

2. Agency shall approve the request on restoration of the right on recognition of the trademark by decision, provided that the applicant:

2.1. submits the request on restoration of the right and pays the fixed fee;

2.2. indicates the basis on which the request is based and sets the facts on which that request relies;

2.3. completes the activities let out within the fixed time limit.

3. The request on restoration of the rights may be submitted within three (3) months, calculating from the date when the existence of the reason of non-completion ceases, and if the applicant has been notified regarding this non-completion in a later term, the calculation shall be done from the day when the applicant has been notified regarding this matter.

4. The request according to paragraph 1 of this Article shall not be submitted after the expiry of one (1) year from the date of failure to fulfil the time limit.

5. Prior to the decision of full or partial refusal, the Agency should notify the submitter of the request on the restoration of the rights regarding the reasons for which it shall refuse the request fully or partially, and shall notify the submitter to declare regarding the notification within sixty (60) days from the date of the receipt of notification.

6. Request on restoration of the rights can not be submitted in case of non-completion of the following actions:

6.1. the submission of the request on the renewal of the time limit;

6.2. payment of administrative fee and payment of the fee for maintenance of the trademark.

## **Article 20**

1. Title of Article 60 of the basic Law shall be deleted and reworded with the following text:

### **Article 60**

#### **Contract and the documents that regulate the use of the collective and certification mark**

2. In Article 60 of the basic Law, paragraphs 1, 2 and 3 shall be deleted and reworded with the following text:

1. The applicant for a collective or certification mark, together with the application for registration of a collective or certification mark should submit documents that regulate the use or contract which specifies its use.

2. Documents that regulate the use or contract that specifies the use of the collective and certification mark should clearly point out the persons authorized to use the mark, the conditions of membership of the entity, and when they exist, the conditions of use of the mark including sanctions that follow in case of misuse of the collective and certification mark or in case of violation of the regulations or contract provisions.

3. Documents that regulate the use, or contract that defines the use of the certification mark specifies the authorized persons to use the mark, the characteristics to be certified by the mark, how the certifying body is to test those features and to supervise the use of the mark, the fees that should be paid with respect to the use and procedures for solutions of disputes.

## **Article 21**

Article 63 of the basic Law shall be deleted and reworded with the following text:



### **Article 63**

The right to use the collective or certification mark is possessed by any person who has been authorized to use it once fulfilling other conditions prescribed in the legislation into force concerning the use of trademarks.

### **Article 22**

In Article 64 of the basic Law, paragraph 1 shall be deleted and reworded with the following text:

1. The owner of the collective or certification mark must submit to the Agency any changes of the documents or contract that regulate the use the mark.

### **Article 23**

In Article 66 of the basic Law, paragraph 1, sub-paragraph 1.1 shall be deleted and reworded by the following text:

- 1.1. the owner fails to take reasonable steps to prevent the use of the mark in non-compliance with the conditions of use prescribed in regulations or contract regulating their use;

### **Article 24**

1. Title of Article 78 of the basic Law shall be deleted and reworded by the following text:

#### **Article 78 Procedures for revocation and declaration of invalidity of an international registration**

2. In Article 78 of the basic Law, paragraph 3 shall be deleted and reworded with the following text:

3. Time limit under Article 78.2 of the basic Law can not be extended.

### **Article 25**

In Article 83 of the basic Law, paragraph 2, reference “Within the meaning of Article 7, paragraph 2.1.3.” shall be amended " Under Article 7, paragraph 3“.

## **Article 26**

In Article 89 of the basic Law after the words "according to legal provisions into force" there shall be added the words "in the Republic of Kosovo".

## **Article 27**

1. In Article 96 of the basic Law, paragraphs 1 and 2 shall be deleted and reworded with the following text:

1. The trademark owner may file a claim against any person who has violated the trademark by performing, without authorization, any of the acts referred to in Article 8, paragraph 1 and 2 of the basic Law requiring:

1.1. finding of a violation of the rights of the mark;

1.2. prohibition of violation of rights and prohibition of the continuation of such and similar violations of the rights in the future.

2. Actions specified in paragraph 1, sub-paragraphs 1.1 and 1.2 and in paragraph 2 of Article 96 of the basic Law may also be made against persons, who in their economic activity conducted services while violating trademark or threat for violation of trademark rights.

2. In Article 96 of the basic Law, after paragraph 2 there shall be added a new paragraph 3 with the following text:

3. The trademark owner may file a claim against any person who by performing any actions without authorization has caused serious threat of violation of his trade mark, demanding distancing from the act in question and prohibition of trademark rights violation.

## **Article 28**

1. In Article 97 of the basic Law, paragraphs 1, 2 and 3 shall be deleted and reworded with the following text:

1. The trademark owner may initiate judicial proceedings against any person who has violated the rights of a trademark committing without authorization one of the acts listed in Article 8, paragraphs 1 and 2 of the basic Law requiring that the products that violate trademark rights and in appropriate cases, the materials and tools used primarily in the creation or manufacture of those products should be removed from the market, confiscated or destroyed.

2. The court shall impose the measures referred to in paragraph 1 of this Article and that on the defendant's expense, unless there are special reasons for not deciding so.

3. The imposition of measures by the Court under paragraph 1 of this Article should be in proportion with the nature and seriousness of the offense and taking into account the interests of third parties.

### **Article 29**

1. In Article 98 of the basic Law, paragraphs 2, 3 and 4 shall be deleted and reworded with the following text:

2. The trademark owner may initiate judicial proceedings against any person who has violated the rights of a trademark, committing without authorization one of the acts listed in Article 8, paragraphs 1 and 2 of the basic Law, claiming payment of compensation in the amount that he would have required, taking into consideration the circumstances in the license agreement, if it ever existed.

3. The trademark owner may initiate judicial proceedings against any person who has violated the rights of a trademark, committing without authorization one of the acts listed in Article 8, paragraphs 1 and 2 of the basic Law without having any legal basis for this action, a court decision or law, and has benefited from it, claiming restitution or compensation for such benefits under the general rules for unfounded enrichment.

4. When determining damages, the court should take into account all relevant aspects, such as the negative economic consequences, including lost profits, which the damaged party has suffered, any unfair profits made by the violator and, in appropriate cases, elements other than economic factors, such as the moral damage caused to the owner of rights as a result of violation of the right.

### **Article 30**

In Article 100 of the basic Law, paragraph 6, reference "of Articles 103 and 104" shall be amended " of Articles 102 and 103".

### **Article 31**

Title of Article 101 of the basic Law shall be deleted and reworded with the following text:

**Article 101**  
**Interim measures in cases of violation of trademark rights**

2. In Article 101 of the basic Law, paragraph 1, the phrase " court may order "shall be amended with the following phrase "the court may impose“.

3. In Article 101 of the basic Law, paragraph 4 shall be deleted and reworded by the following text:

4. Interim measures referred to in Article 101.1 of the basic Law may be imposed without informing its opposing party, if the applicant presents evidence that on the contrary the temporary measures will not be effective, or there is a risk for possible irreparable damage. This measure can be imposed without informing its opposing party, if the applicant presents evidence, that on the contrary interim measures will not be effective, or that, considering the circumstances of very serious violation of human rights, it would be necessary. If interim measures are imposed without informing the opposing party, then the court shall communicate the decision on the interim measure to the opposing party, immediately after its implementation.

4. In Article 101 of the basic Law, after paragraph 5, there shall be added a new paragraph 6 with the following text:

6. When interim measures referred to in this Article are revoked or prescribed due to any action or inaction by the applicant, or when it is later found that there was no trademark violation or threat of violating the trademark, then at the request of the opposing party, the court may order the applicant to provide adequate compensation to the opposing party for any damage caused by these temporary measures. Securing such compensation referred to in this Article may be subject to a suitable security deposit or a provision equivalent to the purposes referred by the applicant.

**Article 32**  
**Entry into force**

This Law shall enter into force fifteen (15) days after publication in the Official Gazette of the Republic of Kosovo.

**Law No.05/L-040**  
**30 July 2015**

**President of the Assembly of the Republic of Kosovo**

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**Kadri VESELI**