Albania

IP protection: keeping up with developments and raising awareness

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Over the past five years in Albania, significant legal amendments, government decisions, orders and regulations, and court cases have raised the awareness of Albanian businesses and consumers regarding the importance of IP protection.

The Albanian General Directorate of Patents and Trademarks (ALPTO) is responsible for IP protection in Albania. Its activities include:

• examining and registering industrial designs, trademarks and geographical indications;
• issuing patents and utility models;
• preparing draft laws and regulations regarding intellectual property; and
• representing the Albanian state before the courts, other institutions and international organisations in respect of IP matters.

New national strategies
National Strategy on Intellectual and Industrial Property
The implementation of legislation protecting IP rights has been a key element in the development of fair competition in Albania. Based on the National Strategy for Development and Integration 2007-2013, the Council of Ministers implemented the National Strategy on Intellectual and Industrial Property 2010-2015, which was approved on September 1, 2010. This strategy is based on a long-term study of intellectual property within Europe.

Albania adheres to the international conventions and agreements related to intellectual property, including the European Partnership Document and the Association Stabilisation Agreement. The main institutions responsible for the implementation and protection of IP rights are ALPTO and the Inspectorate of Market Monitoring.

The vision of the Albanian government regarding the protection of IP rights focuses on guaranteeing and developing a contemporary system, which offers equal rights and opportunities and which is in line with EU law.

The strategy is focused on four objectives:

• completing and improving the regulatory and legislative framework;
• developing and strengthening the public institutions responsible for the implementation and protection of IP rights;
• strengthening cooperation and coordination between national and local institutions in order to improve the protection of IP rights; and
• enhancing public awareness of IP rights in Albania.

A government group overseen by the minister of economy, trade and enterprise is responsible for monitoring the implementation of the strategy.

Strategy for the Protection of Intellectual Property by the Albanian Customs Authorities
The Strategy for the Protection of Intellectual Property by the Albanian Customs Authorities 2013 was drafted in cooperation with ALPTO and embodies the government's commitment to protect rights holders and consumers in general.

The objective of the strategy is to minimise piracy, counterfeiting and IP rights infringement in general by:

• improving the mechanisms that ensure the protection of IP rights;
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- reforming the inspection and control of products that enter or exit the Albanian territory;
- improving the management and processing of information on IP rights;
- consolidating national inter-institutional collaboration; and
- increasing awareness, transparency, information and training related to intellectual property.

Under this strategy, the competence of the customs authorities extends to protecting businesses and consumers against counterfeit products and minimising possible losses in government income deriving from infringing products.

In the context of the strategy, the customs authorities can propose amendments and additions to the legal framework in accordance with EU regulations. Furthermore, the customs authorities shall secure an electronic module for the processing of customs service applications and other customs service procedures related to IP protection.

Other responsibilities of the customs authorities include:
- developing an effective risk management system for the protection of IP rights;
- setting down guidelines and instructions for customs personnel in accordance with EU regulations;
- undertaking awareness campaigns; and
- increasing national and international institutional collaboration.

Legislative developments in 2013

London Agreement
Albania is a signatory to the European Patent Convention of October 5 1973 and is keen to strengthen its collaboration with other EU countries in order to protect patents. In light of this, and considering Article 65 of the European Patent Convention and the importance of keeping costs to a minimum, Albania also joined the London Agreement on the application of Article 65 of the European Patent Convention, by virtue of Law 118/2013. Albania submitted its instrument of accession on May 31 2013 and the agreement entered into force on September 1 2013.

The London Agreement exempts member states from the obligation to translate patents. Such exemption applies to states that have one of the official languages of the European Patent Office (EPO) as their official language.

A member state that does not have an EPO official language as its own official language shall not require the translation of the patent if that patent is issued in one of the EPO official languages.

Law on Industrial Property
The Law on Industrial Property (9947/2008) was amended by Law 10/2013, which specifies that the State Inspectorate of Market Monitoring is responsible for monitoring the market.

The inspectorate is also responsible for punishing parties which infringe the applicable industrial property legislation.

Council of Ministers Decision on State Inspectorate of Market Monitoring
The Council of Ministers issued Decision 475/2013 on the State Inspectorate of Market Monitoring, under which the inspectorate began operations on June 1 2013. The inspectorate protects industrial property in accordance with Albanian legislation. The inspectorate is organised as a ministry directorate and has three local branches. The head of the inspectorate reports directly to the minister of economy, trade and enterprise on any IP-related activity.

Order on the Internal Regulation of ALPTO
On August 21 2013 the minister of economy, trade and enterprise issued Order 691/2013 on the Internal Regulation of ALPTO. By virtue of this order, ALPTO shall guarantee the protection of industrial property within Albania.

ALPTO performs the following tasks:
- undertaking initiatives to improve the legislation on industrial property;
- undertaking initiatives to bring Albanian legislation into line with international conventions and agreements on industrial property;
- undertaking initiatives to improve collaboration between institutions involved in the protection of industrial property;
creating an effective system for the search and registration of industrial property;
• promoting industrial property rights; and
• ensuring that the necessary administrative infrastructure for implementing IP laws is in place.

The structure of ALPTO comprises:
• the General Directorate;
• the Examination, Coordination and Training Directorate;
• the Administration; and
• the Legal Department.

All appeals and claims against decisions of the Examination, Coordination and Training Directorate are reviewed by the ALPTO Board of Appeal. The appeal board is competent to issue administrative explanatory notices and to decide on appeals filed by interested parties. ALPTO also issues licences to authorised representatives of rights holders that wish to register their rights in Albania.

Case law in 2013
Arseni Shpk v Bavaria NV
Albanian company Arseni Shpk, holder of the Albanian trademark B-52, filed suit against Dutch company Bavaria NV, holder of the trademark B-52, which was registered originally in Benelux and later internationally, including in Albania. Arseni requested the removal of Bavaria’s B-52 mark from the Albanian Trademark Register.

Bavaria filed a counterclaim against Arseni, requesting the recognition of B-52 as a well-known trademark held by Bavaria and the removal of Arseni’s B-52 mark from the Albanian Trademark Register.

The court assessed the criteria for qualification of the B-52 trademark as a well-known trademark in Albania. The mark was registered in Albania by Arseni on April 18 2008, and by Bavaria in Benelux on February 19 2008 and in Albania on February 12 2009. In determining whether the trademark was well known in Albania before its local registration by Arseni, the court used the criteria stipulated in the Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks, adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of the World Intellectual Property Organisation.

Although Bavaria marketed its B-52 beverage in Albania between 2006 and 2010, through Arseni and two other companies with the same owner, and even though it fulfilled the condition that the mark was known to the persons involved in the distribution channels for such products, the court found that in order to be well known, the mark should be recognised in a larger circle of consumers, which was not proven during the proceedings.

Given that Bavaria provided no evidence that it had fulfilled any of the criteria of the joint recommendation, which the court examined one by one, the court found in favour of the first registration of the B-52 mark in Albania by Arseni.

The Tirana District Court decision was confirmed by the Court of Appeal on September 5 2013. Bavaria has appealed to the Supreme Court.

Red Bull GmbH v Arseni Shpk
In another decision based on the same mark, Red Bull GmbH v Arseni Shpk, the court concluded that Arseni’s B-52 mark infringed the RED BULL energy drink mark due to the use of the colours blue and silver in the background.

The court ordered Arseni to cease importing, distributing, advertising and trading energy drinks using the blue and silver colour combination and not to repeat such use in future, since this infringed the plaintiff’s trademark and constituted unfair competition.

Arseni has appealed the Tirana District Court decision.

Torrefazione Portioli SpA v Brave Media Shpk
Italian company Torrefazione Portioli SpA produces coffee and owns the CAFFE PORTIOLI trademark. It filed suit in the Tirana District Court against Albanian company Brave Media Shpk for using CAFFE PORTIOLI tags on its products, as well as for selling CAFFE PORTIOLI products without authorisation.

The court held that the use by Brave Media of the CAFFE PORTIOLI mark on the packaging of its Turkish coffee products infringed Torrefazione Portioli’s trademark, as the name was identical.
Brave Media was also found to be in breach of consumer protection law and the Civil Code in relation to fair competition, as it had used the CAFFE PORTIOLI mark without being licensed by its owner, thus exploiting the goodwill in the mark and misleading consumers as to the origin of the products bearing that mark. Torrefazione Portioli does not produce or trade Turkish coffee.

**SPAR International BV v Iliria DC Shpk**

Dutch company SPAR International BV, which owns the SPAR trademark, sued Albanian company ILIRIA DC Shpk for unauthorised use of the SPAR trademark.

In *SPAR International BV v Iliria DC Shpk* the court found that the labelling of DESPAR shops and use of the marks DESPAR, INTERSPAR and EUROSPAR in the packaging of Iliria DC’s products infringed SPAR International’s trademark, as the names of the shops operated by the defendant and the packaging were significantly similar to the SPAR trademark owned by the plaintiff in Albania since September 26 2002.

Moreover, in addition to the mark, Iliria DC was using a logo identical to that owned by SPAR International BV, without having the relevant licence.

Therefore, the court concluded that the mark used by Iliria DC also infringed SPAR International’s copyright. *iam*
Jonida Beqiri graduated from Luarasi University of Law, Tirana and is an authorised representative for patents and trademarks in Albania and an EPO agent. In addition to her extensive involvement in IP-related work, in recent years she has participated in national and international conferences related to intellectual property. Ms Beqiri joined Drakopoulos Law Firm in 2008 and is now a senior associate.

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Ms Leskaj is involved in various IP-related matters, including trademarks (registered and unregistered rights), copyright and advertising/promotional campaigns, and successfully represents local and international clients as both a consultant and a litigator.