



# **Business Names: Registering Trademarks and Company Names in Selected Jurisdictions**

Colombia • Ecuador • Kenya • Nigeria  
Pakistan • Peru • Romania • Armenia • Azerbaijan  
Bulgaria • Croatia • Republic of Georgia  
Serbia and Montenegro • Zimbabwe

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**BUSINESS NAMES: REGISTERING TRADEMARKS AND COMPANY  
NAMES IN SELECTED JURISDICTIONS**

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**COLOMBIA**

**BUSINESS NAMES: REGISTERING TRADEMARKS AND COMPANY NAMES**

Under Colombian Law, a company needs to register its name in order to conduct business in the country. Registration of its trademark is not required, but is, of course, a right that allows for the protection of its business name. The registration of a company's name is done in the Public Commercial Registry. No registration will be allowed for companies already registered under same name.<sup>1</sup>

Notorious, or well-known, trademarks are protected against unauthorized use and registration.<sup>2</sup> Registration of this type of trademark is not allowed unless by its legitimate owner.

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<sup>1</sup> CODIGO DE COMERCIO, Legis, Bogota, 2003, art.35.

<sup>2</sup> Regulatory Decree no. 2591/2000, Art. 225, and Decision 486/1993, in E. BUITRAGO-LOPEZ, DERECHO INTELECTUAL, Editoines del Professional, Bogota, 2003, at 207.

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**ECUADOR**  
**BUSINESS NAMES: REGISTERING TRADEMARKS AND COMPANY NAMES**

Under Ecuadoran law, a company needs to register its name in order to conduct business in the country. Registration of its trademark is not required, but is of course a right that allows for the protection of its business name. The registration of a company's name is done in the Public Registry of the *Superintendencia de Companias*<sup>1</sup>. No registration will be allowed for companies for which there is already another registered under same name.<sup>2</sup> Notorious, or well-known, trademarks may not be registered by anyone other than their legitimate owners.<sup>3</sup>

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<sup>1</sup> LEY DE COMPANIAS, art. 18, Editorial Juridica del Ecuador, Quito, 2003.

<sup>2</sup> *Id.* art. 16.

<sup>3</sup> Intellectual Property, Law No. 83/98 art. 196.e, Registro Oficial, May 19, 1998.

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**KENYA**

**BUSINESS NAMES: REGISTERING TRADEMARKS AND COMPANY NAMES**

The Law on Registration of Business Names in Kenya requires the registration of any firm, individual, or a corporation but it does not allow use of a business name that, in the opinion of the Registrar, is likely to mislead the public as to the nationality, race or religion of the owners or controllers of the business. A business name that is identical or similar to that of an existing, or an already registered name under the above law or the Companies law may also be refused registration. The Law also prohibits use of words “Presidential”, “Government”, “Municipal”, or such other words indicative of any patronage or connection. The name must also not include the word “cooperative.”

The Registrar will register the company’s distinctive trademark under the Trademarks Act (sections 5, 12 and 14). No person is allowed to register a trademark that would deceive or cause confusion. A person or company claiming to be the proprietor of the trademark must file an application for registration on a prescribed form to the Registrar. Upon registration, the Registrar will advertise the acceptance of the application for registration and then receive from any party opposition to the registration, which the Registrar may cancel on any of the grounds that the name was already in use, or is deceptive or resembles another trademark.

The Trademarks Act also provides protection for a well-known trademark (section 15A). The requirements under the Act are that the well-known mark in Kenya is the mark of a person who is a national of a Paris Convention signatory country; or is domiciled in, or has a real and effective industrial or commercial establishment in a signatory country, whether or not the person carries on business or has any goodwill in Kenya. No trademark will be registered if it is likely to interfere with the distinctive character of a well-known trademark.

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**NIGERIA**

**BUSINESS NAMES: REGISTERING TRADEMARKS AND COMPANY NAMES**

Nigeria's Companies and Allied Matters Act<sup>1</sup> states, in the provisions on establishing a company, that the company's name may not be registered if that name is identical to or nearly identical to a name registered by a company already in existence, or if that name would violate any existing trade mark or business name registered in Nigeria, unless the consent of the owner of the existing mark or name has been obtained (art. 30). Companies must register with the Corporate Affairs Commission in order to do business (arts. 35-37), and the Act states again in connection with the registration process that the proposed name may not conflict with an existing trademark or business name registered in Nigeria.

Foreign companies intending to do business in Nigeria are required in many cases to incorporate as a separate entity in Nigeria (art. 54). Incorporation would require registration with the Corporate Affairs Commission. There are some exemptions to this incorporation requirement, including foreign companies invited to Nigeria by the government or with government approval for a particular project, companies executing specific projects on behalf of a donor company or international organization, companies owned by foreign governments that are engaged solely in export promotion, and engineering and technical consultants working on projects for the Nigerian government (art. 56).

Trademarks are registered under 1965 Trademarks Act, modeled under 1938 UK Trademarks Act and amended in 1990, to include service marks. The Act provides for the application of the International Classification of Goods and Services for the purposes of registration of marks (Nice classification). All information on trademarks registration shall be published in the national Trademarks Journal, which due to logistic problems and finance appears extremely irregularly. Because of inadequacies in the registration process, errors such as double registration or registration of a trademark that is identical to an already registered or accepted trademark have been reported. The entitlement of the true owner of a trademark is routinely established by courts, as registration in Nigeria is based on a first-to-file system.

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<sup>1</sup> Act No. 1, 1990. Text available in 3 LAWS OF THE FEDERATION OF NIGERIA Cap. C20 (2004).

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**PAKISTAN**

**BUSINESS NAMES: REGISTERING TRADEMARKS AND COMPANY NAMES**

Before the incorporation of a company in Pakistan, an application must be filed with the Registrar of Companies to confirm the availability of the proposed name of the company. Upon receipt of the application and payment of the prescribed fee, the Registrar must certify the availability of that name. The certificate is issued after the Registrar is satisfied that the name chosen is not deceptive and is not offensive to the religious susceptibilities of the people, and is neither identical to, nor closely resembles, the name of an existing company.

The Registrar of Trademarks maintains a register of trademarks at the Trade Marks Registry where an entry in respect to each trademark is kept (Trademarks Ordinance, section 9). For protection of its trademark, the company is required to register it. A trademark shall not be registered if it is devoid of any distinctive character, or consists exclusively of marks or indications which may serve in trade to designate the kind, quality, quantity, geographical origin, or such trademarks that consist exclusively of marks or where there is an indication that the proposed marks are customary in the current language or in the established practice of the trade (Trademarks Ordinance, section 14). In accordance with the Paris Convention, internationally well-known trademarks are protected (Trademarks Ordinance, sections 85-86).

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**PERU**

**BUSINESS NAMES: REGISTERING TRADEMARKS AND COMPANY NAMES**

Under Peruvian law, a company needs to register its name in order to conduct business in the country.<sup>1</sup> Registration of its trademark is not required, but is, of course, a right that allows for the protection of its business name. The registration of a company's name is done in the Public Commercial Registry. No registration will be allowed for companies already registered under same name.<sup>2</sup>

Notorious, or well-known, trademarks are protected against unauthorized use.<sup>3</sup>

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<sup>1</sup> LEY DE SOCIEDADES COMERCIALES, LAW 26887, ART. 6, in *Legislacion Comercial*, Ediciones Legales, Lima, 2003, at 114.

<sup>2</sup> *Id.* ART. 9.

<sup>3</sup> LAW ON INDUSTRIAL PROPERTY, Legislative Decree no. 823/1996, art. 186, EL PERUANO, Apr. 24, 1996.

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## ROMANIA\*

## BUSINESS NAMES: REGISTERING TRADEMARKS AND COMPANY NAMES

To start a business in Romania, a standard company must first obtain a certificate from the Trade Registry proving the availability of a proposed company name and must make a reservation of that name.<sup>1</sup> Romania's Law on Trading Companies provides that the incorporation of companies (including general partnerships, limited partnerships, limited liability companies, joint stock companies, and partnerships limited by shares) is to state the name and, if applicable, the logo of the company (articles 7(b) and 8b).<sup>2</sup> Under the Law on the Trade Registry, tradesmen—defined as “individuals who ordinarily exercise trading activities, companies, *régies autonomes* and cooperative organizations”—are obligated, prior to commencing trade activities, to apply for incorporation in the trade register maintained by the trade registry office (article 1(1) and (2)).<sup>3</sup>

A “firm” is defined by the Law on the Trade Registry as the name or denomination under which a tradesman carries out his or her trading activity and under which he or she signs related documents; the “emblem” is the ensign or denomination that makes a tradesman different from another of the same type. The right of exclusive use over them is obtained by recording them in the trade register (article 30). The Law further provides that the firm of a joint stock company or partnership limited by shares “is formed of a proper denomination, likely to distinguish it” from other firms, that the firm of a limited liability company “is formed of a proper denomination,” and that “any new firm must be different from existing ones (articles 35, 36, and 38(1)). If a new firm is similar to another, it is necessary to add a note distinguishing the former from the latter, either by means of a more precise designation of the person, or by indicating the type of trade carried out, or by another means (article 38(2)). The Trade Registry will refuse the registration of a firm if it lacks any distinguishing elements and thereby “may lead to confusion with other registered firms” (article 39(1)). Checking the availability of the firm and the emblem is the responsibility of the Trade Registry (article 39(2)). Emblems must also be different from other emblems recorded in the same trade register, for the same type of trade, and must also differ from those of other

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\* The Law Library of Congress does not at present have a staff specialist in Romanian law. Therefore this report is necessarily based only on Romanian legal materials available in English translation online and in the Law Library's collection.

<sup>1</sup> World Bank, *Starting a Business in Romania* (2005), DOING BUSINESS, available at <http://www.doingbusiness.org/ExploreTopics/StartingBusiness/Details.aspx?economyid=158>.

<sup>2</sup> Law on Trading Companies (Law No. 31/1990), 126-127 OFFICIAL GAZETTE (Nov. 17, 1990), as modified through Government Emergency Ordinance NO. 76/2001, 283 OFFICIAL GAZETTE (May 31, 2001), translated in The Parliament of Romania, 60 ROMANIAN LEGISLATION 251-335 (Bucharest, 2002). This appears to be the most recent translation available. The Law was last amended by Law No. 164 of May 15, 2006 (amending article 17). See 430 MONITORUL OFICIAL [Official Gazette] 3 (May 18, 2006, Global Legal Information Network, GLIN ID 180200, <http://www.glin.gov/view.do?documentID=180200&summaryLang=en&fromSearch=true>).

<sup>3</sup> Law No. 26/November 5, 1990 R\* Regarding the Trade Registry, OFFICIAL GAZETTE (Feb. 4, 1998), English translation updated to October 2002, <http://driga.kfacts.com/attorney/uploads/romanian-laws/romanian-trade-registry-law.html>. The Law has been amended several times subsequently, apparently most recently on Nov. 23, 2004, by Law No. 519 approving Government Ordinance No. 72/2004 altering article 39 of Law No. 26/1990. See 1109 MONITORUL OFICIAL [Official Gazette] 3 (Nov. 26, 2004), Global Legal Information Network, GLIN ID 124039, <http://www.glin.gov/view.do?documentID=124039&summaryLang=en&fromSearch=true>.

tradesmen existing on the market where the tradesmen carries out its activity (article 43(1)). The Law stipulates punishments for those who fail to apply for incorporation or the registration of a note.

Chapter 3, “Making of a Registration,” of the Law on the Trade Registry, prescribes that the incorporation of a company in the trade register is to include all of the data provided for by the incorporation conclusion of the delegated judge (article 14). Notes are to be recorded in the Trade Register regarding patents, trademarks, brands and service marks, indications of origin, indications of provenience, the firm, the emblem and other distinctive ensigns over which the company holds a right (article 21, item 3). The tradesman is obligated to demand the registration in the trade register of such notes within a maximum of fifteen days after the date of deeds and fact, subject to the registration obligation (article 22(1)).

Romania’s trademark law provides some rights in regard to “notorious trademarks,” such as those that have acquired sufficient distinctiveness and reputation on an international level without being registered in Romania.<sup>4</sup> Thus, the Romanian Law on Marks and Geographical Indications (Law No. 84/1998)<sup>5</sup> includes a definition of a “well-known mark” as

a mark that is well known in Romania on the date on which an application for trademark registration is filed or on the priority date claimed in such application; in order to determine whether a mark is well known, account shall be taken of the repute of such mark in that section of the public concerned by the goods or services to which the mark applies, without it being necessary for the mark to have been registered or used in Romania...(article 3(c)).

The Law provides various protections for well-known Romanian trademarks. For example, registration of a mark will be refused if it is identical with or similar to a mark that is well known in Romania or goods or services that are identical or similar on the date of the filing of the application for registration of the mark (article 6(d); *see also* 6(e)). The Law also prescribes that within three months of the date of publication of the mark, the owner of a well-known mark or any other concerned person may file opposition to a published mark with the State Office for Inventions and Trademarks (article 23). The provisions of the Law apply as well to international registrations made under the Madrid Agreement or the Protocol to the Agreement, which have effect in Romania unless otherwise provided in those instruments (article 65).

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<sup>4</sup> Marius Petroiu, *Review of the Romanian Intellectual Property Law Regime*, 9:3 MURDOCH UNIVERSITY ELECTRONIC JOURNAL OF LAW (Sept. 2002), [http://www.murdoch.edu.au/elaw/issues/v9n3/petroiu93\\_text.html](http://www.murdoch.edu.au/elaw/issues/v9n3/petroiu93_text.html)

<sup>5</sup> *Romanian Law on Marks and Geographical Indications No. 84/1998*, LEGILE INTERNETULUI, <http://www.legi-internet.ro/index.php?id=234&L=2> (last visited July 18, 2006).

**LAW LIBRARY OF CONGRESS****SELECTED STATES OF CENTRAL AND EASTERN EUROPE****BUSINESS NAMES: REGISTERING TRADEMARKS AND COMPANY NAMES**

All the countries of Central and Eastern Europe have adopted new company and trademark laws during the last ten years. All of them require registration of businesses, company names, their symbols, trade, commercial, and other marks. Trademark legislation, as a rule, follows the 1883 Paris Convention on the Protection of Industrial Property and establishes the registration of trademarks by a competent national authority as a form of trademark protection. Laws of these countries differ in recognition and protection of well-known foreign trademarks.

**Armenia**

In Armenia, state registration of all businesses is mandatory. The company has to register its name, logo, service and trademarks (art. 3(7)). The Company Law states that the registration of a business name conducted according to the existing legal procedure gives the firm exclusive right to the application of a name. The Law on Trademarks, Service Marks, and Appellation of Origin, passed on March 20, 2000, grants legal protection for a trademark or service mark on the basis of state registration or pursuant to applicable international agreements. The owner of a registered trademark has the exclusive right to own, use, and dispose of the mark, and also to prohibit its use by other persons. In Armenia, as well as in all other countries reviewed for the purpose of this research, the registration of a trademark shall be valid for ten years from the filing date of the application with a national authority, which in Armenia is the Patent Office. The registration of a business name is valid for the duration of the business registration. Change of a company name is allowed in all countries included in this report. Registration of a trademark may be refused if the Patent Office decides that the trademark is identical or of the same type to a trademark recognized as being generally known in Armenia in relations to goods that are identical or of the same type. A similar rule applies to the registration of business names.

**Azerbaijan**

In Azerbaijan, the registration of businesses is regulated mainly by the Law on State Registration of Legal Entities of February 6, 1996. The Ministry of Justice of the republic of Azerbaijan is the government agency vested with the power of state registration of companies. The Ministry reviews the conformity of the submitted founding documents to the requirements of law and issues the certificate of registration. The Ministry administers the national registry of business names. Business names used by third parties prior to the filing of the registration application can be registered unless this name is registered for identical or similar goods and services (art. 18.2). The Trademark Law of June 12, 1998, also grants protection without registration to famous marks known in Azerbaijan and used abroad in association with the claimed goods or services. The determination of whether a foreign trademark is well-known in Azerbaijan shall be made by the Patent Office responsible for trademark registration. There is no particular registry for famous marks, however, article 25 of the Trademark Law provides for the right of the owner of a famous mark to take legal actions if a “wrong impression of his mark is caused thereby, even if the goods or services are not similar.”

### **Bulgaria**

In 2005, Bulgarian legislation related to issues of trademark and business registration was brought in accordance with the Requirements of the European Union. Registration of legal entities and varied forms of businesses is mandatory prior to the start-up of business activities. National company legislation emphasizes the necessity of having a unique name for businesses to be registered in Bulgaria. Information on registered company names is regularly published in a supplement to the official gazette. All business and commercial marks are protected under the 1999 Law on Marks and Geographic Names through the established registration procedure. A well-known trademark is protected not only in connection with goods that made this trademark well known but also with regard to any goods and services.

### **Croatia**

In Croatia, the State Intellectual Property Office is in charge of registering trademarks. Businesses and firm names are registered by local branches of the Ministry of Justice, which compiles the national list of registered legal entities and their names. Trademarks are registered by the State Intellectual Property Office. Business names and trademarks are registered on the basis of examination carried out by the relevant competent authority. One of the legal requirements is that the business name or a trademark would be distinctive, not deceptive, and that it is not similar to an earlier or already existing trademark or business name. Applications that meet registration requirements are published in the official gazette, NARODNE NOVINE for business names, and CROATIAN INTELLECTUAL PROPERTY GAZETTE for trademarks and service marks. Any opposition to the name/trademark registration may be filed within three months from the publication of the application by holders of an earlier name/trademark and other earlier rights if they consider that the registration would infringe their rights. All trademarks registered in the former Yugoslavia were required to be revalidated in Croatia before December 31, 1995.

### **Republic of Georgia**

The principal provisions of Georgian legislation related to the registration procedure for businesses is similar to those of the corresponding legislation of neighboring post-Soviet states. Provisions of the 1997 Trademark Law follow European practice. Its principal distinction is that it places more importance on the registration of trademarks, and less on their actual usage, as a criterion for the protection of rights. The Law contains no provisions for supplemental registration of descriptive marks that may become distinctive by reason of exclusive and continuous use; which is not required by TRIPS. Georgian legislation does not provide for a well-known mark to be protected against infringements with respect to other goods and services. The well-known status of a trademark shall be established by the Board of Appeals at the State Patent Office upon a request on behalf of the mark's owner evidencing the intense use of the trademark in the Republic of Georgia.

### **Serbia and Montenegro**

The Federation of Serbia and Montenegro ceased to exist on May 21, 2006, after the Republic of Montenegro declared its independence. Currently, Montenegro does not have its own Patent and Trademark Office or its own intellectual property laws. New legislation of Montenegro, when adopted, is likely to closely resemble the relevant Serbian laws. Based on the experience of the breakup of the former Yugoslavia, a six to twelve month period may be established for owners of intellectual property rights to revalidate rights registered under the old union in Montenegro. In the meantime, joint government agencies, such as the Patent and Trademark Office in Serbia, will operate under the same rules and regulations as before the independence declaration. Since 2005, the registration is conducted by the Serbian Patent and Trademark Bureau, and registration of businesses by the Serbian Business

Registers Agency. Both allow an electronic registration with an interchangeable on-line data repository for patents, business marks and business names registration. The registration of trademarks is not required but is allowed to protect rights of the owner. A prospective applicant can reserve the name for its future entity by submitting the relevant application. The reservation is valid for sixty days, and can be renewed and transferred to another person.

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**ZIMBABWE**

**BUSINESS NAMES: REGISTERING TRADEMARKS AND COMPANY NAMES**

Zimbabwe has a Companies Act<sup>1</sup> that establishes a Registrar and two Companies Registration Offices, one in Harare and one in Bulawayo, to register companies (art. 5). The Act also states that no company may be registered with a name identical to or very similar to that for another registered Zimbabwean company or a registered foreign company (art. 24 (2)). The Registrar may refuse to register a company by a name which is likely to mislead the public, which may cause offense, which is blasphemous or indecent, or which the Registrar considers to be undesirable (art. 24 (3)). Foreign companies that establish a place of business within Zimbabwe must also register (art. 330).

The Trademark Law makes the registration of marks subject to proof of distinctiveness. The registration, which is effective initially for a period of 10 years and is renewable for an unlimited number of additional ten-year periods is conducted by the Trademarks Office in Harare. Registration of a trademark grants the owner of the trademark the exclusive right to use the trademark in connection with the specified goods or services and the right to sue for infringement. Although registration is not a precondition for use of a mark, the registration process ensures that prior registrations of trademarks or companies are not overlooked and gives significant protection for trademarks.

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<sup>1</sup> No. 47, 1951, as amended through 1993. Text available in 4 STATUTE LAW OF ZIMBABWE Chapter 24:03 (1995).