

# ICLG

The International Comparative Legal Guide to:

## Trade Marks 2014

**3rd Edition**

A practical cross-border insight into trade mark work

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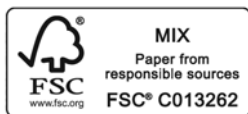
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## EDITORIAL

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Welcome to the third edition of *The International Comparative Legal Guide to: Trade Marks*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of trade mark laws and regulations.

It is divided into two main sections:

One general chapter entitled *Trade Mark Law Shapes Up for the Thrust into the 21st Century*.

Country question and answer chapters. These provide a broad overview of common issues in trade mark laws and regulations in 42 jurisdictions.

All chapters are written by leading trade mark lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the consulting editor Paul Walsh of Bristows for his invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at [www.iclg.co.uk](http://www.iclg.co.uk).

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# Liechtenstein

Dr. Alexander Ospelt



Vladimir Good



## Ospelt & Partner Attorneys at Law Ltd.

### 1 Relevant Authorities and Legislation

#### 1.1 What is the relevant Liechtenstein trade mark authority?

The relevant Liechtenstein trade mark authority is the Office of National Economy (*Amt für Volkswirtschaft*) in 9490 Vaduz.

#### 1.2 What is the relevant Liechtenstein trade mark legislation?

The relevant legislations are the:

- Law on the Protection of Trade Marks and Indications of Source of 12 December 1996 (Trade Mark Law; Liechtenstein Law Gazette 1997 No. 60);
- Ordinance on Protection of Trade Marks and Indications of Source of 1 April 1997 (Trade Mark Ordinance; Liechtenstein Law Gazette 1997 No. 77); and
- Ordinance on levying of fees under the Trade Mark Law of 1 April 1997 (Liechtenstein Law Gazette 1997 No. 78).

### 2 Application for a Trade Mark

#### 2.1 What can be registered as a trade mark?

In principle, a trade mark is a sign capable of distinguishing the goods or services of one enterprise from those of other enterprises.

In particular, trade marks may consist of words, letters, numbers, graphic representations, three-dimensional shapes, or combinations of such elements with each other or with colours.

#### 2.2 What cannot be registered as a trade mark?

- Signs that belong to the public domain, except where they have become accepted as a trade mark for the goods or services for which they are claimed;
- shapes that constitute the nature of the goods themselves or shapes of the goods or of their packaging that are technically necessary;
- misleading signs; and
- signs contrary to public policy, morality or applicable law.

#### 2.3 What information is needed to register a trade mark?

The following is needed:

- the surname and first name or name of the company and the address of the party filing the trade mark;

- a graphical reproduction of the trade mark;
- a precise designation of the goods and services for which protection is claimed;
- confirmation that the fees (registration and class fees) have been paid, stating the mode of payment; and
- the signature of the party registering the trade mark, or of the representative.

If necessary:

- a priority declaration (pursuant to the Paris Convention);
- a statement that the trade mark is a guarantee mark or a collective mark (inclusively the regulations on the use of the mark);
- proof of the cancellation of the international registration and the protection extension to Liechtenstein. If the priority of the cancelled international registration is claimed, then no further proof of priority is necessary; and
- a representative's name and address.

#### 2.4 What is the general procedure for trade mark registration?

After the lodging of the registration documents, the Office of National Economy examines them to determine whether they comply with the requirements set out under question 2.3 or other formal details required by the Trade Mark Law or Ordinance. The Office of National Economy sets a time for completing the documents and/or rectifying the deficiencies. If the deficiencies are not rectified within the set time, the application for registration will be wholly or partly rejected by the Office of National Economy.

The Office of National Economy proceeds the same if there is an absolute ground for exclusion (see question 3.1) or the guarantee or the collective mark does not satisfy the requirements of the Trade Mark Law.

If no reasons for rejection exist, the Office of National Economy enters the trade mark in the trade mark register and publishes its registration in official publications. After publication, the Office of National Economy issues a certification of registration containing the details entered in the trade mark register to the owner of the trade mark.

#### 2.5 How can a trade mark be adequately graphically represented?

If a text mark should be registered it is sufficient to write the printed characters (upper and lower case) in the application. In the case of picture marks, picture/text marks, or text trade marks with a special graphic form, three reproducible black and white

illustrations with the maximum size of 80 x 80 millimetres must be submitted to the Office of National Economy.

If protection is claimed for a coloured version of a trade mark, the appropriate colour or colour combination must be stated and three additional coloured illustrations of that mark must be submitted to the Office of National Economy.

A three-dimensional trade mark has to be apparent from the illustration. Sound trade marks must be described using musical notes.

## 2.6 How are goods and services described?

Goods and services are described pursuant to the international classes according to the Nice Agreement of 15 June 1957 on the international classification of goods and services.

It is possible to choose a whole class, thus all goods and/or services of this class will be registered, or to choose specific goods and/or services from a class or several classes.

## 2.7 What territories (including dependents, colonies, etc.) are or can be covered by a Liechtenstein trade mark?

Only the territory of Liechtenstein is covered by a trade mark registered in Liechtenstein.

## 2.8 Who can own a Liechtenstein trade mark?

Anyone of legal capacity may own a Liechtenstein trade mark. This applies for natural persons as well as legal entities of private and public law. Furthermore, a company of legal entity likeness, e.g. collective and limited partnership companies, may own a Liechtenstein trade mark.

## 2.9 Can a trade mark acquire distinctive character through use?

A sign in the public domain may become distinctive if it is already accepted by an eminent part of the addressees of the relevant goods or services as an individualised indication of a certain enterprise (secondary meaning).

## 2.10 How long on average does registration take?

On average it takes about two to three months from the application filing to the issuing of the certification of registration.

## 2.11 What is the average cost of obtaining a Liechtenstein trade mark?

The basic fee for the registration of a trade mark in Liechtenstein is CHF 400.00 (including three classes of goods and services). Registration of each additional class is charged CHF 50.00.

In the case an application is submitted by an attorney-at-law domiciled in Liechtenstein, he will charge on an hourly basis of CHF 350.00 to 1,000.00 per hour or a fixed amount arranged beforehand.

## 2.12 Is there more than one route to obtaining a registration in Liechtenstein?

Yes, an international registration with protection effect in Liechtenstein enjoys the same protection and has the same legal effects as a national trade mark which was filed with the Office of National Economy and resulted in a registration in the Liechtenstein trade mark register.

## 2.13 Is a Power of Attorney needed?

A Power of Attorney does not have to be included to the application; however the Office of National Economy may demand it.

## 2.14 How is priority claimed?

Where a trade mark has been duly filed for the first time in another member state of the Paris Convention (or with effect for such state) or in a state that has reciprocity with Liechtenstein, the applicant or his legal successor may claim the priority right of the first filing for the application for the same trade mark in Liechtenstein, on the condition that the filing takes place in Liechtenstein within six months of the first filing.

The priority declaration is to be given either upon the filing application itself or on a separate sheet. It can still be handed in within 30 days of the filing. The proof of priority must be submitted within six months after registration. Priority documents may be submitted in the English and French languages.

## 2.15 Does Liechtenstein recognise Collective or Certification marks?

Yes, Liechtenstein recognises collective and certification marks.

## 3 Absolute Grounds for Refusal

### 3.1 What are the absolute grounds for refusal of registration?

Excluded from trade mark protection are:

- signs that belong to the public domain, except where they have become accepted as a trade mark for the goods or services for which they are claimed;
- shapes that constitute the nature of the goods themselves or shapes of the goods or of their packaging that are technically necessary;
- misleading signs; and
- signs contrary to public policy, morality or applicable law.

### 3.2 What are the ways to overcome an absolute grounds objection?

The applicant has to substantiate that there are no absolute grounds for objection by convincing proof or representative surveys.

### 3.3 What is the right of appeal from a decision of refusal of registration from the Intellectual Property Office?

The decision of the Office of National Economy refusing

registration may be appealed to the Liechtenstein Government within 30 days of its service.

### 3.4 What is the route of appeal?

The decision of the Liechtenstein Government can be appealed within 30 days of its service by presentation (reconsideration request) to the Liechtenstein Government and/or the Administrative Court. The Liechtenstein Government has the possibility to treat a presentation as an appeal, and to directly present it to the Administrative Court, as long as the applying party has not waived such from the start. On the other hand, the Government may also treat an appeal as a presentation, and place the applicant without suit, after it checks the case anew and decides, based on public interest, in the sense of the petitioning party.

The decision of the Administrative Court is final. However, it may be appealed to the Constitutional Court within four weeks of its service, but only if a right guaranteed by the Liechtenstein Constitution has been violated by the latter court.

## 4 Relative Grounds for Refusal

### 4.1 What are the relative grounds for refusal of registration?

Trade mark protection is unavailable to signs that are:

- identical to an earlier trade mark and intended for the same goods or services as such trade mark;
- identical to an earlier trade mark and intended for similar goods or services and a risk of confusion results therefrom; and
- similar to an earlier trade mark and intended for the same or similar goods or services and a risk of confusion results therefrom.

### 4.2 Are there ways to overcome a relative grounds objection?

The Office of National Economy does not examine trade mark applications on relative grounds.

The grounds for exclusion may only be invoked by the owner of the earlier trade mark (see section 5 regarding opposition).

### 4.3 What is the right of appeal from a decision of refusal of registration from the Intellectual Property Office?

Similar to that stated above, the Office of National Economy does not render decisions in which it refuses to register a trade mark on relative grounds. However, should this be the case, the decision may be appealed in the way stated above in questions 3.3 and 3.4.

### 4.4 What is the route of appeal?

See question 3.4.

## 5 Opposition

### 5.1 On what grounds can a trade mark be opposed?

The Liechtenstein Trade Mark Law does not contain the opposition right.

### 5.2 Who can oppose the registration of a Liechtenstein trade mark?

See question 5.1.

### 5.3 What is the procedure for opposition?

See question 5.1.

## 6 Registration

### 6.1 What happens when a trade mark is granted registration?

The trade mark will be entered into the Liechtenstein trade mark register and will be published in the electronic Office Journal ([www.amtsblatt.llv.li](http://www.amtsblatt.llv.li)). The mark owner receives a registration certificate which contains the statements entered into the trade mark register.

### 6.2 From which date following application do an applicant's trade mark rights commence?

From the time the request for registration (including the name or business name of the applicant, a reproduction of the trade mark and a schedule of the goods and services for which the trade mark is intended) has been received by the Office of National Economy. If these documents do not arrive simultaneously, the filing date will be that upon which the complete documents are submitted to the Office of National Economy.

### 6.3 What is the term of a trade mark?

The registration is valid for 10 years from the date of filing.

### 6.4 How is a trade mark renewed?

To renew a trade mark for a further 10-year period, an application has to be submitted in writing to the Office of National Economy and the extension fee, as well as a classification fee where applicable, has to be paid in advance. The extension will be effective upon the expiry of the prior term of validity.

The application for extending a trade mark registration can be submitted at the earliest 12 months before the expiration of the period of validity and no later than six months after its expiration. If the extension application is not made in time, the trade mark will be cancelled.

Usually, six months before the registration expires the Office of National Economy will send a written reminder to the owner of the trade mark (or his national representative) to remind him of the expiration date.

## 7 Registrable Transactions

### 7.1 Can an individual register the assignment of a trade mark?

The assignee(s) as well as the assignor(s) can register the assignment of a trade mark. A trade mark transfer application has to be filed with the Office of National Economy, to which a written

transfer declaration (any document about a comprehensive contract) has to be enclosed.

The transfer is effective only once it is entered into the trade mark register. The transfer fee for one trade mark amounts to CHF 100.00; with CHF 20.00 for each additional trade mark of the same owner.

## 7.2 Are there different types of assignment?

Trade marks can be assigned in whole or in part for goods or services for which they have been registered.

## 7.3 Can an individual register the licensing of a trade mark?

One of the parties to a licence agreement may file an application to the Office of National Economy in order to enter the licence into the trade mark register. The application must contain the express declaration by the owner of the trade mark or another satisfactory document stating that the owner allows the licensee to use the trade mark (e.g. licence agreement). The application must also contain for which trade mark and claimed goods and services the licence should be entered, as well as the area for which the licence is granted. If the licensee wants to issue sublicences, then he must obtain the declaration from the licensor that he is authorised to do so.

The fee for entering the licence for one trade mark into the register amounts to CHF 100.00, with CHF 20.00 for each additional trade mark of the same owner.

## 7.4 Are there different types of licence?

The use right can be granted to the licensee with the exclusion of third parties, including the licensor (exclusive licence), or to one or more licensees on condition that new licences will be granted (simple licence).

Moreover, the licensing can be effected in whole or part, i.e. the licence can be given for only a part of the protected goods or services or can refer to a particular area (partial licence).

## 7.5 Can a trade mark licensee sue for infringement?

Only the licensee of an exclusive licence may – independently of the licence registration – sue for infringement; however only if this right is not excluded in the licence agreement.

## 7.6 Are quality control clauses necessary in a licence?

Quality control clauses are not mandatory.

## 7.7 Can an individual register a security interest under a trade mark?

A trade mark may be subject to pledge. Pledges only have effect against third parties acting in good faith if they are entered in the trade mark register.

## 7.8 Are there different types of security interest?

Trade marks may only be pledged; thus only the pledge of a trade mark may be a security interest.

## 8 Revocation

### 8.1 What are the grounds for revocation of a trade mark?

The grounds for revocation of a trade mark in whole or in part are:

- cancellation by request of the trade mark owner;
- non-extension of the registration; and
- an invalidity declaration of the registration by a final judicial decision or award of an arbitration court.

### 8.2 What is the procedure for revocation of a trade mark?

- The request for cancellation or a partial cancellation must be made in writing by the trade mark owner or his representative.
- The registration is valid for 10 years from the date of filing (see question 6.3). If the extension application is not made at the latest six months (see question 6.4) after expiration, the trade mark will be cancelled by the Office of National Economy.
- See question 9.2.

### 8.3 Who can commence revocation proceedings?

- The trade mark owner or his representative may initiate the mark cancellation at any time.
- The Office of National Economy.
- See question 9.3.

### 8.4 What grounds of defence can be raised to a revocation action?

Grounds of defence can only be raised regarding invalidity declaration of the registration, therefore see question 9.4.

### 8.5 What is the route of appeal from a decision of revocation?

Only a decision of invalidity may be appealed (see question 9.5).

## 9 Invalidity

### 9.1 What are the grounds for invalidity of a trade mark?

The grounds for invalidity of a trade mark are:

- absolute grounds for refusal (see section 3);
- relative grounds for refusal (see section 4);
- the registration of a trade mark without the consent of the owner in the name of agents, representatives or other authorised for use or which remained registered after discontinuation of consent; and
- the non-use of the trade mark in connection with the goods or services for which it has been claimed for an uninterrupted period of five years following registration, without important reasons for non-use.

### 9.2 What is the procedure for invalidation of a trade mark?

A negative declaratory suit (cancellation suit) has to be filed. Its goal is to declare the invalidity of the contested mark, and to delete it from the trade mark register based upon this declaration.

The legal consequence of an invalidity verdict is enforced by the Office of National Economy.

The Princely Court in Vaduz (the only court of first instance in Liechtenstein) is competent for judging all foreseen suits in trade mark law, as long as the residence or registered office of the defendant, or place where the transaction took place, or place where the result was entered, is Liechtenstein. A procedural requirement is that an intermediary proceeding occurred before suit filing.

As long as the requirements for an invalidity suit are present, the plaintiff can also choose to request the transfer of the mark instead of its cancellation. This is not possible if the trade mark is invalid for absolute grounds for refusal since there is a lack of protectability of the mark.

A mark owner who has neither a domestic residence nor branch can only participate in such court proceedings if he has ordered a domestic lawyer or patent lawyer as his representative.

### 9.3 Who can commence invalidation proceedings?

Everyone who proves a legal interest is entitled to sue. The verdict must be of legal practical significance for the plaintiff, though only the owner of an old trade mark can file a claim in case of relative grounds for refusal.

Declaratory suits concerning the protection of indications of source may also be instituted by professional and trade associations whose bylaws authorise them to defend the economic interests of their members, and organisations of national or regional scope devoted by statute to the protection of consumers.

### 9.4 What grounds of defence can be raised to an invalidation action?

It can be argued that:

- The signs in the public domain have become accepted as a trade mark for goods and services (see question 2.9).
- No risk of confusion with an older trade mark exists.
- The owner of a trade mark gave his consent for registration.
- In the case of non-use of the trade mark, the trade mark owner would have to prove that he has used the trade mark within the last five years preceding the invalidity action or he had important reasons for non-use.

### 9.5 What is the route of appeal from a decision of invalidity?

The decision of the Princely Court may be appealed to the Court of Appeal within four weeks of its service. The decision of the Court of Appeal may be appealed to the Supreme Court within four weeks of its service, which renders a final decision.

If a right guaranteed by the Liechtenstein Constitution has been violated by the Supreme Court, its decision may be appealed to the Constitutional Court within four weeks of service.

## 10 Trade Mark Enforcement

### 10.1 How and before what tribunals can a trade mark be enforced against an infringer?

A performance suit may be filed to the Princely Court in Vaduz – sole court of first instance in Liechtenstein – in order to prohibit a threatened infringement or to remove an existing infringement.

Moreover, the infringement of a trade mark grants the right to the injured party to initiate a so-called private prosecution, in which the private person acts like a public prosecutor and bears the financial risk of the criminal proceedings. In such cases the private prosecutor must submit the application for prosecution within six weeks of knowledge of the prosecutable act and of the perpetrator to the Princely Court (as criminal court) in Vaduz.

### 10.2 What are the pre-trial procedural stages and how long does it generally take for proceedings to reach trial from commencement?

An intermediary proceeding has to occur before the bringing of a suit to the Princely Court. The corresponding request is to be presented directly to the intermediary. The defendant is not obliged to attend the intermediary hearing. In this case a certificate is issued that no settlement was reached. This certificate is to be attached to the suit. The suit has to be filed no later than two months after the certificate was issued.

The defendant may raise a counterclaim as long as the certificate was not issued to the court. After receiving the suit, the competent Princely Judge may arrange a so-called first hearing. The first hearing is meant to enable the judge to terminate the case and not to take evidence; only certain procedural actions can be taken. The judge may also decide to have the first hearing in conjunction with an ordinary hearing. Prior to the ordinary hearing, the defendant is allowed to file an answer to the suit. The competent judge may convene as many hearings as necessary to actually consider the evidence. Depending on the case, it may take six to 18 months from the filing of the suit to the decision of the Princely Court.

### 10.3 Are (i) preliminary and (ii) final injunctions available and if so on what basis in each case?

- Preliminary injunctions may be requested by a person who can make a *prima facie* case that his rights in a trade mark or an indication of source are infringed or he is likely to suffer an infringement and the infringement is likely to result in a prejudice for him which may not be readily made good. Not easily redressed is a disadvantage if it is subsequently no longer or more difficult to determine, if the infringer is not, or it is difficult to be, in the position to cover the accrued financial damage, or if such a claim is not enforceable, e.g. because the infringer is abroad and the enforcement is not possible there due to a deficiency in enforcement treaties.

Measures are:

- the preservation of evidence;
- origin disclosure of objects unlawfully bearing the trade mark or indication of source;
- the maintenance of existing condition; and
- preliminary enforcement of injunction and removal claims.

The Princely Court in Vaduz is competent to issue preliminary injunctions. The motion for an injunction can be made separately or in connection with a claim. The court is free to impose a security to cover possible damages and for the costs of the proceedings, even if the certification of the claim was provided in a sufficient way. Such security is determined by the court at its absolute discretion. If a preliminary injunction is granted before a claim was filed, the court sets, as a rule, a two-week period for the institution of the justification proceedings.



In urgent cases, an applicant may preliminarily request a provisional order, which, in practice, may even be orally expressed to the infringer. However, the applicant has to file a written motion to the court within two days.

- (ii) Depending on the claim, the decision of the Princely Court is either that:
- the infringer has to prohibit future infringement of the trade mark;
  - the infringer has to remove already existing rights infringement; or
  - the infringer has to state the source of the objects in his possession that unlawfully bear the trade mark or indication of source.

#### 10.4 Can a party be compelled to provide disclosure of relevant documents or materials to its adversary and if so how?

In the course of civil procedures it is possible to obtain an order that forces one party to produce certain types of documents. The order is limited to the following cases:

- if the documents are in the possession of a party who referred to them previously before the court;
- if the party possessing the burden of proof is entitled by law to inspect the documents; and
- if the documents have been prepared for the benefit of one party or where the documents sought will serve as evidence of the legal relationship between the parties or serve to demonstrate factors underlying that relationship.

However, the opposite party may not be forced to produce the relevant documents. If the opposite party refuses to cooperate, this may only be weighed and considered accordingly by the court within its free evaluation of the evidence when rendering the final judgment.

However opponents of Liechtenstein corporations which are required by law to maintain accounts may, either upon application or *ex officio*, be ordered by the court to produce business records, books of account, business papers and accounting records if the lawsuit is subject to such business.

#### 10.5 Are submissions or evidence presented in writing or orally and is there any potential for cross-examination of witnesses?

Submissions may be presented by brief or mentioned to the protocol of the court. Submissions at court hearings are made orally.

There are five different means of evidence: evidence by documents; hearing of witnesses; evidence by experts; evidence by inspection of the court; or evidence by party interrogation.

Cross-examination, like in other jurisdictions, is not allowed, since fact-finding in a Liechtenstein court is guided by the judge. The judge has the right to question the witness first before allowing questioning by the parties.

#### 10.6 Can infringement proceedings be stayed pending resolution of validity in another court or the Intellectual Property Office?

Proceedings may be interrupted if a decision in a lawsuit depends wholly or in part in the existence (or not) of a legal relationship which is subject of another pending lawsuit. Thus, it is possible that infringement proceedings will be interrupted until a final decision in a validity suit is rendered.

Moreover, the Princely Court (as criminal court) may suspend criminal proceedings (see question 10.8) if the accused party asserts the invalidity of the mark registration in civil proceedings.

#### 10.7 After what period is a claim for trade mark infringement time-barred?

Declaratory as well as injunction and removal suites are not time-barred.

#### 10.8 Are there criminal liabilities for trade mark infringement?

The following criminal offences are penalised under Liechtenstein law:

- the infringement of trade mark rights;
- the fraudulent use of trade marks;
- the use of a guarantee or collective mark contrary to the regulations;
- the use of incorrect indications of source; and
- offences concerning producer marks.

#### 10.9 If so, who can pursue a criminal prosecution?

See question 10.1.

#### 10.10 What, if any, are the provisions for unauthorised threats of trade mark infringement?

Unauthorised threats of trade mark infringement may qualify as unfair competition and therefore be sanctioned.

## 11 Defences to Infringement

#### 11.1 What grounds of defence can be raised by way of non-infringement to a claim of trade mark infringement?

The defence depends on the facts of the case and the arguments of the opposing party. In general, the defendant will argue that the sign in question is not identical with an earlier trade mark or is designated for goods or services other than those registered.

Besides that, the defendant may argue that he had already used a sign in its existing scope prior to the filing of the trade mark application of the plaintiff.

#### 11.2 What grounds of defence can be raised in addition to non-infringement?

Depending on the facts of the case, it might be argued that the trade mark is invalid. Also acquiescence due to non-use or exhaustion can be raised as grounds of defence.

## 12 Relief

#### 12.1 What remedies are available for trade mark infringement?

The following remedies are available:

- cease of use of the trade mark;
- confiscation (seizure) and destruction of all objects which are illegally provided with an identical or confusingly

- similar mark or source indication, as well as all by-products and the manufacturing machinery and tools used;
- disclosure of the source of the objects in the custody of the infringer which are illegal regarding the mark or mistaken source indication;
- restitution of damages suffered (by civil lawsuits for damages, compensation and forfeit of profit); and
- publication of the decision at the cost of the non-prevailing party.

### 12.2 Are costs recoverable from the losing party and if so what proportion of the actual expense can be recovered?

The costs are recoverable from the losing party in proportion to the extent to which the winning party prevails. If the plaintiff prevails with 50 per cent of the claim, the costs are compensated and each party is responsible for paying his or her own lawyer.

## 13 Appeal

### 13.1 What is the right of appeal from a first instance judgment and is it only on a point of law?

The decision of the Princely Court may be appealed to the Court of Appeal within four weeks of its service. The parties may present new facts and evidence or contest procedural errors or the Princely Court's factual and legal findings.

### 13.2 In what circumstances can new evidence be added at the appeal stage?

New facts and evidence may be presented to the Court of Appeal, but a party is prohibited from basing the appeal on a different cause.

After the filing of the written appeal or the respondent's reply, any new pleading in the oral appellate proceedings – if not expressly waived by both parties, and the Court of Appeal does not insist on such proceedings – may be declared inadmissible by the Court of Appeal if it is made to protract the lawsuit.

## 14 Border Control Measures

### 14.1 What is the mechanism for seizing or preventing the importation of infringing goods or services and if so how quickly are such measures resolved?

The trade mark owner (licence holder), a person entitled to use an indication of source, or a professional or trade association may request the Office of National Commerce – in urgent cases the customs office – in writing to refuse to release the suspicious goods. A request for assistance may only be submitted in cases where the authorised party has concrete indications that goods unlawfully bearing a trade mark or indication of source are to be imported or exported. The person making the request must provide all of the particulars available to him that are required for the Office of National Commerce (customs office) to take a decision. The Office of National Commerce (customs office) may levy a fee for its decision to cover the administrative costs.

The appropriate office notifies the applicant and withholds the relevant goods for up to 10 days from the date of notification. During this period, the applicant may view the goods and can obtain a preliminary injunction. Under certain circumstances, the appropriate office may retain the suspicious goods for an additional 10 working days.

Retention of goods may be subject to the provision of security on the part of the applicant in cases in which the retention of the goods may give rise to any form of economic damage.

The goods must be released prior to the expiry of the 10-day retention period if it becomes clear that the applicant will not be able to obtain a preliminary injunction. In cases in which the applied-for preliminary injunction is not ordered or subsequently proves to be unwarranted, the goods must be immediately released.

## 15 Other Related Rights

### 15.1 To what extent are unregistered trade mark rights enforceable in Liechtenstein?

In general, unregistered trade mark rights are not enforceable in Liechtenstein. However, a trade mark registered in a member state of the Paris Convention may be enforced in Liechtenstein if the trade mark is well known in Liechtenstein as being already the mark of a person entitled to the benefits of this Convention and used for identical or similar goods (Article 6*bis* of the Paris Convention).

However, signs which are not registered as trade marks may enjoy protection under the Unfair Competition Law, Copyright and Design Law, company name protection or the right to the use of a name.

### 15.2 To what extent does a company name offer protection from use by a third party?

A company name registered to the Commercial Register of Liechtenstein may not be used by someone else as a company name. If there is a danger of being mistaken with a pre-existing company name, an affix has to be added to the name even if both company owners have the same names. The two company names have to be distinctive under the usual duty of care for business transactions.

### 15.3 Are there any other rights that confer IP protection, for instance book title and film title rights?

The following legislation aims the protection of IP rights:

- Copyright Law;
- Design Law;
- Topographies Law;
- Unfair Competition Law; and
- Right to the use of a name (regulated in the Persons and Companies Act).

## 16 Domain Names

### 16.1 Who can own a domain name?

Any natural or legal person may own a domain name.

### 16.2 How is a domain name registered?

By requesting a domain name registration company which offers “.li” domain names.

### 16.3 What protection does a domain name afford *per se*?

The registration of a domain name does not afford protection *per se*.

Mistakable domain names, however, may be challenged under the Unfair Competition Law, Trade Mark Law and/or right to the use of a name.

A domain name dispute may be also brought before a World Intellectual Property Organization (WIPO) Dispute Resolution Panel since its Uniform Domain-Name Dispute-Resolution Policy (UDRP) is applicable on “.li” domains.

## 17 Current Developments

### 17.1 What have been the significant developments in relation to trade marks in the last year?

There have been no significant developments in the last year.

### 17.2 Are there any significant developments expected in the next year?

No significant developments are expected at the moment.

The Liechtenstein Trade Mark Law was merely received from the Swiss Trade Mark Law. Due to the membership of Liechtenstein in the EEA, Liechtenstein Trade Mark Law is also aligned with the trade mark system of the European Community. Therefore, future developments in Switzerland and the European Union may have an impact on Liechtenstein Trade Mark Law.

### 17.3 Are there any general practice or enforcement trends that have become apparent in Liechtenstein over the last year or so?

No such trends have become apparent recently.

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Dr. Alexander Ospelt has been in independent practice as a lawyer since 1997. In 1993 he worked as a staff member for Liechtenstein's Permanent Representation at the United Nations (UN) in New York. From 1994 until establishing his chambers in 1997, he practised at the Princely Court of Justice in Vaduz and in a renowned law firm in Liechtenstein. From 2004 to 2008 Dr. Alexander Ospelt was President of the Board of Directors of Liechtensteinische Kraftwerke (LKW), and from 2011 until the present, the President of the Board of Directors of Liechtenstein Life Assurance AG.

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In 2005 Vladimir Good completed an apprenticeship in a well-known Liechtenstein Trust Company. He obtained his Bachelor of Science in Business Law degree at the University of Applied Sciences in Winterthur, Switzerland, in 2008 and his Master of Law (MLaw) degree at the University of Lucerne, Switzerland, in 2011. Vladimir Good has been a doctoral student in Law at the Private University Liechtenstein (UFL) since 2013.

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