

## **EXPLANATION OF REASONS**

This law sets out the principles and criteria for taking and using the signs which serve to distinguish establishments, trading activities and companies in order to avoid uses which might give rise to a risk of confusion in the public mind or uses which might be harmful to a third party. This law complements the law on trade marks which deals with the signs which serve to distinguish products and services and complies with the requirements for the protection of trading names fixed by article 8 of the Paris Convention for the protection of industrial property.

The criminal code will have to fix the penalties in connection with article 23.

## **CHAPTER I**

### **DEFINITIONS**

#### **Article 1. *Trading name***

A trading name is the sign which serves to identify an individual or a legally constituted body in the exercise of his, her or its trading activity and enables him, her or it to be distinguished from other individuals or legally constituted bodies exercising the same or similar trading activities.

#### **Article 2. *Company name***

A company name is the sign under which a merchant company is incorporated which enables it to be distinguished from other merchant companies.

#### **Article 3. *Shop sign***

A shop sign is the sign which serves to identify a commercial establishment and enables it to be distinguished from other commercial establishments.

## **CHAPTER II**

### **TRADING NAMES**

#### **Article 4. *Signs which may be a trading name***

1. The following may be a trading name:

- a) words, including names, surnames or aliases of an individual but only if they are the names, surnames or aliases of the individual or are part of the company name of the legally constituted body, identified in the exercise of his, her or its trading activity by the trading name at the moment of registration with the Register of Commerce and Industry of the Principality of Andorra;
- b) numbers;
- c) acronyms;

- d) any combination of the signs mentioned in subsections a) to c) of this paragraph.
2. A sign may not be a trading name:
- a) if it is contrary to public order or good usage;
  - b) if it is such as to lead the public into error, particularly with regard to the activity carried on under this trading name.

#### **Article 5. *Prior rights connected with a trading name***

A sign may not be taken as a trading name if it is the same or similar to:

- a) a trading name already registered in the Register of Commerce and Industry of the Principality of Andorra or a company name already registered in the Register of Merchant Companies of the Principality of Andorra;
- b) a foreign trading name or company name not registered in the Principality of Andorra but sufficiently well known to the public of the Principality of Andorra to give rise to a risk of confusion;
- c) a trade mark registered in the Principality of Andorra if, in view of the products or services for which said mark is registered and in view of the trading activity to be exercised under the trading name, there might arise a risk of confusion in the public mind or harm might be caused to the holder of said registered trade mark.

#### **Article 6. *Registration in the Register of Commerce and Industry***

Without prejudice to the provisions of article 5 b), any individual or legally constituted body shall register his, her or its trading name in the Register of Commerce and Industry of the Principality of Andorra in order to be permitted to exercise a trading activity in the Principality of Andorra.

#### **Article 7. *Language of registered trading names***

A trading name may be registered in the Register of Commerce and Industry of the Principality of Andorra only if it comprises:

- a) words, including personal names, in the Catalan language;
- b) a non-Catalan name if this is that of the individual identified in the exercise of his or her trading activity by said trading name;
- c) surnames if these are those of the individual identified in the exercise of his or her trading activity by said trading name;
- d) Roman or Arabic numerals;
- e) placenames;
- f) a non-Catalan word if this is part of the company name of the legally constituted body identified in the exercise of its trading activity by said trading name;
- g) any combination of the signs mentioned in the foregoing paragraphs of this article.

#### **Article 8. *Limits on the registration of a trading name***

The Register of Commerce and Industry shall refuse, giving reasons, an application for the registration of a trading name if it comes to its notice that said trading name fails to comply with any of the conditions set out in articles 4 or 7 or fails to respect any of the prior rights set out in article 5.

### **Article 9. Nullity of the registration of a trading name**

1. No administrative appeal may be filed against any decision by the Register of Commerce and Industry on the registration of a trading name. Any person who may prove a legitimate interest shall have direct access to the judicial process and may request the nullity of said registration in pursuance of sections 2) to 5) of this article.
2. At the request of any person proving a legitimate interest, the judicial authority may declare the registration of a trading name null and void if the same fails to comply with any of the conditions laid down in articles 4 or 7.
3. At the request of the holder of a prior right noted in article 5, the judicial authority may declare the registration of a trading name null and void if this harms one of said rights.
4. Any registration of a trading name declared null and void shall be considered null and void since its date of registration.
5. When the declaration of nullity of the registration of a trading name has been finalized, the judicial authority shall notify its decision to the Register of Commerce and Industry and the latter shall enter this decision indicating that this registration of a trading name is null and void since its date of registration.

## **CHAPTER III**

### **COMPANY NAMES**

#### **Article 10 - Signs which may be a company name**

1. The following signs may be a company name:
  - a) words, including names, surnames or aliases of individuals but only said individuals are partners in the company identified by the company name at the moment of registration with the Register of Merchant Companies of the Principality of Andorra;
  - b) numbers;
  - c) acronyms;
  - d) any combination of the signs mentioned in subsections a) to c) of this paragraph.
2. A sign may not be a company name:
  - a) if it is contrary to public order or good usage;
  - b) if it is such as to lead the public into error, particularly with regard to the company aim of said company.

#### **Article 11. Indication of the juridical nature of the company**

Any company name shall be followed by an indication of the juridical nature of the company. To this end the following abbreviations shall be used:

- a) SL if it is a limited liability company;
- b) SA if it is a joint stock company;
- c) SRC if it is a company with collective liability.

#### **Article 12 - Prior rights connected with a company name**

A sign may not be taken as a company name if it is the same or similar to:

- a) a company name already registered in the Register of Merchant Companies of the Principality of Andorra or a trading name already registered in the Register of Commerce and Industry of the Principality of Andorra;
- b) a foreign trading name or company name not registered in the Principality of Andorra but sufficiently well known to the public of the Principality of Andorra to give rise to a risk of confusion;
- c) a trade mark registered in the Principality of Andorra if, in view of the products or services for which said mark is registered and in view of the company aim of the company identified by the company name, there might arise a risk of confusion in the public mind or harm might be caused to the holder of said registered trade mark.

### **Article 13. *Registration in the Register of Merchant Companies***

Any merchant company incorporated under the law of the Principality of Andorra shall register its company name in the Register of Merchant Companies in pursuance of current legislation.

### **Article 14. *Language of registered company names***

A company name may be registered in the Register of Merchant Companies of the Principality of Andorra only if it comprises:

- a) words, including personal names, in the Catalan language;
- b) a non-Catalan name if this is that of an individual partner in the company;
- c) surnames if these are those of individual partners in the company;
- d) Roman or Arabic numerals;
- e) placenames;
- f) a non-Catalan word if this is part of the company name of a legally constituted body which is a partner in the company;
- g) any combination of the signs mentioned in the foregoing paragraphs of this article

### **Article 15. *Limits on the registration of a company name***

The Register of Merchant Companies shall refuse, giving reasons, an application for the registration of a company name if it comes to its notice that said trading name fails to comply with any of the conditions set out in articles 10, 11 or 14 or fails to respect any of the prior rights set out in article 12.

### **Article 16. *Nullity of the registration of a company name***

1. No administrative appeal may be filed against any decision by the Register of Merchant Companies on the registration of a company name. Any person who may prove a legitimate interest shall have direct access to the judicial process and may request the nullity of said registration in pursuance of sections 2) to 5) of this article.

2. At the request of any person proving a legitimate interest, the judicial authority may declare the registration of a company name null and void if the same fails to comply with any of the conditions laid down in articles 10, 11 or 14.

3. At the request of the holder of a prior right noted in article 12, the judicial authority may declare the registration of a company name null and void if this harms one of said rights.

4. Any registration of a company name declared null and void shall be considered null and void since its date of registration.

5. When the declaration of nullity of the registration of a company name has been finalized, the judicial authority shall notify its decision to the Register of Merchant Companies and the latter shall enter this decision indicating that this registration of a company name is null and void since its date of registration.

**Article 17. *Surname of a partner forming the whole or part of a company name***

a) If the company name of a merchant company contains the surname of one of the partners and the latter ceases to be a partner, said merchant company shall not be obliged to change its company name in such a way that said surname is no longer part of it, unless there is a signed written agreement to the contrary between the parties.

b) The provisions of paragraph a) of this article are applicable to a trading name *mutatis mutandis*.

**CHAPTER IV**

***SHOP SIGNS***

**Article 18. *Signs which may be a shop sign***

1. A shop sign may be:

a) the company name registered in the Principality of Andorra of the company holding the establishment;

b) the trading name registered in the Principality of Andorra of the individual or legally constituted body exercising his, her or its trading activity in the establishment;

c) the brand name of a product or service if the activity of the establishment has a priority connection with said product or service, on condition that said use of the brand name complies with the provisions laid down in current legislation;

d) any combination of the signs set out in subsections a) to c) of this paragraph.

2. The signs set out in paragraph 1) of this article may be accompanied by:

a) words or expressions in the Catalan language referring to the activity carried on in the establishment;

b) 2 or 3-dimensional figurative elements;

c) indications as to the address of the establishment.

3. The signs set out in paragraph 2) of this article may not be of such a nature as to give rise to confusion with the commercial premises, products, services or trading activity of a third party.

**CHAPTER V**

***ADMINISTRATIVE CONTROL AND SANCTIONS***

**Article 19. *Administrative control***

The ministry responsible for the Department of Commerce shall, through the inspectors of said Department, see to it that the trading names, company names and shop signs used in the Principality of Andorra shall comply with the provisions of the law.

## **Article 20. Sanctions**

1. Failure to comply with any of the requirements laid down in articles 4, 5, 7, 10, 11, 12, 14 or 18 constitute an offence and the Government, on a proposal from the ministry responsible for the Department of Commerce, after opening the relevant sanction dossier, shall impose the following two sanctions on the offender:
  - a) a fine of 100,000 PTA;
  - b) the obligation to remove from public view all physical supports containing reproductions of the signs not complying with these requirements within a time limit of 15 days.
2. Failure to comply with the requirements laid down in article 6 constitute an offence and the Government, on a proposal from the ministry responsible for the Department of Commerce, after opening the relevant sanction dossier, shall impose the following two sanctions on the offender:
  - a) a fine of 200,000 PTA;
  - b) immediate suspension of the activity.
3. Any sanction imposed by the Government on a proposal from the ministry responsible for the Department of Commerce in pursuance of paragraphs 1) and 2) of this article is liable to an administrative appeal in pursuance of the provisions of the Administrative Code.

## **CHAPTER VI**

### **HOLDER OF A PRIOR RIGHT; COMPENSATION FOR DAMAGES; PENAL SANCTIONS**

#### **Article 21. *The right to bring an actio***

Any holder of one of the rights laid down above in articles 5 or 12 may bring a civil or criminal action before the judicial authorities against any person harming his or her rights.

#### **Article 22. *Compensation for damages***

1. The causer of damage to one of the rights laid down above in articles 5 or 12 is liable for the same and shall be obliged to make good the damages caused to the holder of said right.
2. The judicial authority shall fix the sum of the compensation for damages bearing in mind the losses incurred by the holder of the prior right and the profits obtained by the causer of the damage thanks to this damage.
3. The judicial authority may condemn the causer of damage to the holder of the prior right to pay the latter's legal costs, including lawyers' and procurators' fees, whether the action is civil or criminal.
4. The judicial authority may order the sentence to be published in a national paper at the expense of the causer of damage to the holder of the prior right, whether the action is civil or criminal.

#### **Article 23. *Penal sanctions***

The causer of damage to one of the rights laid down above in articles 5 or 12 and acting in bad faith shall be liable to the punishments provided for in the Criminal Code.

#### **PROVISION FOR ABROGATION**

This law abrogates all prior provisions enacted which are contrary to its contents.

#### **FINAL PROVISIÓN**

This law shall take effect on the date of its publication in the Official Gazette of the Principality of Andorra