

REPUBLIC OF COASTLAND

Intellectual Property Rights Enforcement Law of 12 July 2011

[...]

Section 3. Provisional Measures

Article 3.01. Measures of Description and Seizure

- 1) Persons who, under a law relating to patents for inventions, supplementary protection certificates, plant breeders' rights, semiconductor product topographies, designs and models, trademarks, geographical indications, designations of origin, copyright, related rights or database producer rights are authorized to take action for infringement, may, with the authorization, obtained upon request, of the President of the Commercial Court, to have carried out in all places, by one or more experts designated by the President, the description of all objects, elements, documents or processes of a nature to establish the alleged infringement as well as its origin, destination and extent.
- 2) The President, ruling on a request for descriptive measures, examines:
 1. if the intellectual property right whose protection is invoked is, in all likelihood, valid;
 2. if there are indications that the intellectual property right in question has been infringed or that there is a threat of such infringement.
- 3) The President may authorize the expert to take all measures necessary for the accomplishment of the President's mission and within the limits thereof. This includes, in particular, the authority to take extracts, copies, photocopies, photographs and audiovisual recordings, as well as to obtain samples of the goods suspected of infringing the intellectual property right whose protection is invoked and of the materials and instruments used to produce and/or distribute these goods as well as the documents relating thereto.
- 4) The order specifies the conditions to which the description is subject, particularly with a view to ensuring the protection of confidential information. The order also specifies the time limit within which the appointed expert must file and send their report. Unless special circumstances expressly mentioned in the order justify a longer period, this period shall not exceed one month from the date of service of the order. The order may also, where applicable and by way of derogation from Article 3.08, specify the persons authorized to access the report.
- 5) The President, ruling on a request to obtain, in addition to the description, seizure measures, examines:
 1. if the intellectual property right whose protection is invoked is, in all likelihood, valid;

2. if the infringement of intellectual property rights in question cannot be reasonably contested;
 3. if, after weighing the competing interests, including the general interest, the facts and, where applicable, the documents on which the applicant relies are such as to reasonably justify the seizure aimed at protecting the right invoked. The order expressly justifies the necessity of the authorized seizure measures in light of the conditions set forth in this paragraph.
- 6) Before granting seizure measures, the President may, in chambers, hear the person targeted by these measures, in the presence of the applicant. In this case, before summoning this person, the presiding judge informs the applicant, who may then withdraw their request for seizure measures and limit their application to descriptive measures. The person targeted by these measures is summoned by a formal judicial notice to which a copy of the application is attached. The applicant's counsel is summoned by ordinary mail.
 - 7) If the President deems it necessary for the protection of the intellectual property right invoked by the applicant and reasonable in light of the specific circumstances of the case, the President may, where appropriate by the same order or by a separate order, prohibit the holders of infringing articles, or of the materials and instruments used to produce and/or distribute these goods, as well as related documents, from disposing of them, moving them, or making any modifications to them that would affect their operation. The President may authorize the appointment of a custodian, the sealing of the articles, and, if the acts in question generate income, authorize their precautionary seizure insofar as they appear to derive directly from the alleged infringement.
 - 8) The order is served before the commencement of the description and, where applicable, seizure operations.
 - 9) The order granting or refusing the measures of description or seizure and the order granting or refusing the withdrawal of these measures are subject to the appeals provided for in Articles 6.03 to 6.15. The order of withdrawal constitutes a release.
 - 10) The party seized may, in the event of a change in circumstances, request the modification or retraction of the order by summoning all parties to appear before the judge who issued the order.
 - 11) In cases where the description or seizure measures are repealed or cease to be applicable due to any action or omission by the applicant, or in cases where it is subsequently established that there has been no infringement or threat of infringement of the intellectual property right in question, the court may order the applicant, at the request of the defendant, to pay the latter appropriate compensation for any damage caused by these measures.

Article 3.02. Election of Domicile

The request contains an election of domicile in Coastland if the applicant has neither domicile nor residence there.

Article 3.03. Security Bond

The President may impose on the applicant the obligation to deposit a suitable bond or an adequate equivalent guarantee intended to ensure the possible compensation of any damage suffered by the defendant, in accordance with the provisions of Article 3.01, § 11.

In this case, the copy of the order shall only be issued upon proof of the deposit made.

Article 3.04. Applicant Presence and Required Documents

- 1) The requesting party may only be present or represented at the hearing if expressly authorized by the presiding judge. In his order, the President shall provide reasons for this authorization specifically in relation to each person thus authorized, taking into account the circumstances of the case, particularly the protection of confidential information.
- 2) The applicant shall produce, as appropriate, the supporting documents as well as a copy of the patent of invention, the supplementary certificate of protection, the breeder's right or the registered application for breeder's rights, the geographical indication or the designation of origin, the acknowledgment of receipt of the filing of the design or model or of the trademark or of the publication of their registration.

Article 3.05. Procedure in Case of Refusal of Entry

If the doors are closed or if opening is refused, the bailiff shall carry out the procedure in accordance with Article 154 of the Code of Civil Procedure¹.

Article 3.06. Expert's Safeguarding Duties

Without prejudice to the applicant's right to description, the expert shall ensure, throughout the description operations and in the drafting of his report, that the legitimate interests of the alleged counterfeiter and the holder of the described objects are safeguarded, in particular with regard to the protection of confidential information.

Article 3.07. Filing and Confidentiality of the Expert Report

- 1) The report is filed with the registry of the Court within the time limit set by the order or, failing that, by Article 3.01, § 4. A copy is sent immediately by the expert, by registered mail, to the applicant and the holder of the described objects, as well as, where applicable, to the person whose property was seized.
- 2) This report and all documents, samples or information collected during the description operations are confidential and may only be disclosed or used by the applicant or his successor in title in the context of national or foreign proceedings, on the merits or in summary proceedings, without prejudice to the application of the provisions of international treaties applicable in the Republic of Coastland.

¹ Code of Civil Procedure of the Republic of Coastland, Art. 154: *"If the bailiff encounters any resistance in the performance of his duties as a ministerial officer, he may request the assistance of law enforcement, which is required to provide it in order to enable him to effectively carry out said duties."*

Article 3.08. Incidents Relating to Execution

The President who issued the order is aware of all incidents relating to the execution of the description and seizure measures.

Article 3.09. Time Limit for Action on the Merits

- 1) If, within the time limit set by the President ruling on an application based on Article 1.01, or, if no such time limit is mentioned, within a period not exceeding twenty working days or thirty-one days if this period is longer, following receipt of the report sent in accordance with Article 3.07, § 1, the description is not followed by a summons on the merits before a competent court, the order ceases by operation of law to have effect. In this case, the applicant may not use the content of the report or make it public, all without prejudice to damages.
- 2) In case where only a measure of precautionary seizure is ordered as per Article 3.01, §5, and is not accompanied by a measure of description, the applicable time-limit of twenty working days or thirty-one days indicated under §1, to lodge an action on the merits is calculated as from the date of the execution of the precautionary seizure.

[...]

Section 6 – Right of Review and Appeal

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Article 6.03 – Review of Provisional Measures

- 1) Provisional and interlocutory measures taken pursuant to Articles 3.01 *et seq.* [...], adopted unilaterally, may be reviewed, confirmed, modified, or annulled, following a request to that effect to the President of the Court who ordered those measures, submitted by the party affected by those measures within 15 working days of the implementation of the measures.
- 2) In the case of an expert description, the fifteen-day period referred to in §1 shall be calculated from the date of filing of the expert report with the registry of the Court.
- 3) Where an action on the merits has been brought by the applicant for provisional measures before the expiry of the period specified in §1, the court competent to rule on the merits shall also have jurisdiction to rule on the application for review of the provisional measures rather than the President, by way of exception to §1.

[...]

Section 12 – Remedies

Article 12.01 - Injunctions

- 1) The Court may, on the application of the right holder after the final determination of the question of infringement in civil proceedings, issue an injunction against the respondent by ordering the respondent to desist from infringing the particular right.

2) The injunction, where appropriate, may be directed against a third party over whom the Court may exercise jurisdiction, to prevent imported infringing goods from entering the channels of commerce immediately after customs clearance.

3) No injunction shall be issued against –

- (a) a person who acquired or ordered an infringing article prior to knowing or having reasonable grounds to know that such dealing would entail the infringement of an intellectual property right;
- (b) the State or any person authorized by the State for the use of the intellectual property right.

Article 12.02 – Damages

1) The Court may, on the application of the right holder after the final determination of the question of infringement in civil proceedings, order the respondent, who, knowingly or with reasonable grounds to know, committed the infringement to pay the rights holder –

- (i) damages adequate to compensate for the injury the right holder has suffered as a result of the infringement; and
- (ii) expenses, legal (including reasonable attorneys' fees) or otherwise, incurred.]

2) The Court may, at the election of the right holder, determine the amount of damages as being equal to –

- (a) the right holder's lost profits;
- (b) the respondent's profits attributable to the infringement; or
- (c) an amount calculated on the basis of a reasonable royalty which would have been payable by a licensee or sub-licensee in respect of the right concerned.

3) In any civil action for infringement of a registered trade mark where the infringement involves the use of a counterfeit mark in relation to goods or services, the right holder shall be entitled, at his election and as alternative to damages as calculated in §2, to statutory damages not exceeding Coastland francs (CF) 10,000 - for each type of goods or service in relation to which the counterfeit trade mark has been used; and not exceeding in the aggregate CF 250,000-, unless the rights holder proves that his actual loss from such infringement exceeds CF 250,000-.

4) [...].

- 5) In awarding statutory damages under §§ 3 or 4, the Court shall have regard to —
- (a) the flagrancy of the infringement;
 - (b) any loss that the right holder has suffered or is likely to suffer by reason of the infringement;
 - (c) any benefit shown to have accrued to the respondent by reason of the infringement; and
 - (d) the need to deter other similar instances of infringement; and
 - (e) all other relevant matters.

Article 12.03 – Disposal of Infringing Goods

- 1) The Court may, on the application of the rights holder after the final determination of the question of infringement in civil proceedings, order that —
- (a) the goods found to be infringing be destroyed, or be disposed of outside the channels of commerce in such a manner as to avoid any harm caused to the right holder; and
 - (b) materials or implements the predominant use of which has been the creation of the infringing goods be disposed of outside the channels of commerce in such a manner as to minimize the risks of further infringement, without compensation of any kind.
- 2) In exercising its discretion in terms of §1, the Court shall take into account —
- (a) the deterrent effect of the order;
 - (b) that destruction must be proportional to the seriousness of the infringement;
 - (c) the effect on the environment of the manner of destruction;
 - (d) the legitimate interests of third parties, and
 - (e) that, in respect of counterfeit trademark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit release of the goods into the channels of commerce.