

REVIEW OF LEGISLATION

KYRGYZ REPUBLIC

Addendum

The present document reproduces the answers supplied by the Permanent Mission of the Kyrgyz Republic, by means of a communication dated 24 April 2000, to the follow-up questions posed to it by the United States of America dated 21 March 2000¹.

1. The Kyrgyz Republic responded to United States question no. 5² by saying that criteria for establishing whether a trademark is well-known are established by the Cabinet of Ministers of the Kyrgyz Republic, and that a draft Regulation is being developed that will define these criteria. Has this regulation been completed and, if so, please describe the criteria established by the regulation and provide a copy of the regulation to the WTO pursuant to Article 63 of the TRIPS Agreement.

In accordance with Article 5 of the Law of the Kyrgyz Republic On Trade Marks, Services Marks and Appellation of Origin of Goods criteria for establishing whether a trademark is well-known are established by the Government of the Kyrgyz Republic. Development of a draft regulation that will define these criteria has not been completed yet. At present the given draft was sent to the relevant ministries and agencies for their comments. As soon as comments from the relevant ministries and agencies are received, the draft will be submitted to the Government for approval.

2. In describing the manner in which the Kyrgyz Republic provides protection for data submitted to government authorities to obtain marketing approval for pharmaceutical and agricultural chemical products, the Kyrgyz Republic states that when data which meet the requirements enumerated above (requirements for undisclosed information) is submitted, it shall be protected against unfair commercial use and against disclosure.³ Please describe, in detail, what is meant by "unfair commercial use" in this context, i.e. from what actions is the data protected and how.

The Law of the Kyrgyz Republic On Commercial Secrets (hereinafter referred to as "the Law") stipulates that unauthorized disclosure of a commercial secret shall be recognized as intentional actions:

¹ Document IP/C/W/151/Add.1.

² Document IP/Q2/KGZ/1, p. 14.

³ Document IP/Q3/KGZ/1, p.17.

- committed by employees of an economic entity in possession of the data constituting a commercial secret, or
- committed by other natural persons or legal entities who have access to commercial information, or
- those, who illegally acquired information, constituting a commercial secret,

that have entailed premature disclosure, uncontrolled use and distribution, which have resulted in the encroachment upon the rights of the economic entity.

Therefore, according to the Law illegal acquisition by the third party of the commercial information, unknown to him/her earlier, with regard to which the owner has undertaken the appropriate measures of protection, shall constitute infringement of the right to commercial secret. Breach of the legislation on commercial secrets shall entail civil, administrative and criminal liability.

Methods of enforcement of civil rights are general procedure of enforcement of violated rights to commercial secret. The given procedure is enforced within the framework of general, i.e. judicial (tort) procedure. Civil rights are enforced by means of recognition of the right to a commercial secret, by claim to restore the circumstances which existed before the right was violated, and by cessation of actions which violate the right or create the threat of its violation, by claim to indemnify losses, and by means of other methods stipulated by Article 11 of the Civil Code of the Kyrgyz Republic.

Administrative liability for disclosure of a commercial secret is provided in Article 314 of the Code on Administrative Liability of the Kyrgyz Republic. Sanction in the form of a fine shall be imposed for this administrative infringement.

Articles 193 and 194 of the Criminal Code of the Kyrgyz Republic stipulate for two *corpora delicti* related to illegal acquisition and unauthorized disclosure of the information, constituting a commercial secret.

The following acts are subject to criminal punishment:

- collection of data, composing a commercial secret by theft of documents, bribery and threats to the persons, owing commercial secrets or their relatives, interception of information in communication means, illegal entering the computer system or network, illegal use of special means as well as by other illegal way with the purpose of disclosure or use of these data (Article 193 Criminal Code);
- illegal disclosure or use of commercial secrets without consent of their owner by the person, who knows the secret due to the professional or service-related activity, causing significant damage (Article 194 Criminal Code).

3. The response referred to in follow-up question 2 specifies that it is only data that meets the criteria for undisclosed information that it protected against such unfair commercial use. Article 39.3 requires that "other data", the origination of which involves considerable expense, is also to be protected against unfair commercial use. Please describe the manner in which the Kyrgyz Republic provides protection for such "other data".

Data submitted for obtaining the permission/approval to sell pharmaceutical and agricultural chemical products shall be protected from unfair commercial use and unauthorized disclosure, if these

data meet the requirements set forth to the data constituting a commercial secret. Therefore, protection described in the answer to follow-up question 2 fully refers to the data submitted for permission of sale of pharmaceutical and agricultural chemical products.
