

Entire legal regulation for the Trademark Protection Act 1970, version dated February 18, 2019

Note for the following provision

On the date of entry into force: Art VI of the announcement part: "The date of issue of the re-announcement will be November 30, 1970."

Long title

Trademark Protection Act 1970 StF: Federal Law Gazette No. 260/1970 (WV)

Modification (latest)

BGBL. I No. 149/2004 (NR: GP XXII RV 621 AB 770 p. 90. BR: AB 7197 p. 717.) BGBL. I No. 131/2005 (NR: GP XXII AB 1141 p. 125. BR: AB 7410 p. 727.) BGBL. I No. 151/2005 (NR: GP XXII RV 994 AB 1077 p. 122. BR: AB 7387 p. 725.) [CELEX- No. 32003L0006] BGBL. I No. 96/2006 (NR: GP XXII RV 1423 AB 1505 p. 150. BR: AB 7560 p. 735.) [CELEX-No. : 32004L0048] BGBL. I No. 81/2007 (NR : GP XXIII RV 216 AB 238 p. 35. BR: AB 7775 p. 749.) Federal Law Gazette I No. 126/2009 (NR: GP XXIV RV 393 AB 421 p. 45. BR: 8196 AB 8204 p. 779.) BGBL. I No. 126/2013 (NR: GP XXIV RV 2358 and Zu 2358 AB 2413 S. 206. BR: AB 9018 S. 822.) BGBL. I No. 130/2015 (NR: GP XXV RV 777 AB 811 p. 96. BR: 9454 AB 9460 p. 846.) BGBL. I No. 71/2016 (NR: GP XXV RV 1144 AB 1204 p. 138. BR: AB 9633 p. 856.) BGBL. I No. 124/2017 (NR: GP XXV RV 1656 AB 1678 p. 190. BR: AB 9851 p. 870.) BGBL. I No. 37/2018 (NR: GP XXVI RV 108 AB 139 p. 23. BR 9967 AB 9970 p. 880.) BGBL. I No. 91/2018 (NR: GP XXVI RV 294 AB 361 p. 51. BR: AB 10063 p. 886.)

Text

CHAPTER I

General provisions

Section 1. Trademarks may be signs of all kinds, in particular words, including personal names, or designs, letters, numerals, colors, the shape of goods or of the packaging of goods, or sounds, provided that such signs are capable of

- 1) distinguishing the goods or services of one undertaking from those of other undertakings and
- 2) being represented on the trademark register in a manner which enables the competent authorities and the public to determine the clear and precise subject matter of the protection afforded to its proprietor.

Section 2. (1) The acquisition of trademark rights requires the trademark to be entered in the trademark register.

(2) This federal law applies mutatis mutandis to trademark rights that are acquired for the territory of Austria on the basis of intergovernmental agreements. Such trademarks must also be checked for compliance with the law (section 20).

(3) Trademark rights acquired based on Regulation (EU) 2017/1001 on the European Union trade mark, OJ No. L 154 of 16.06.2017 p.1, are to be treated equally as trademark rights acquired on the basis of this federal law, provided that nothing to the contrary emerges from provisions of Union law relating to trademarks. Otherwise, the provisions of Section VIII apply.

(Note: Section 3 repealed by Federal Law Gazette I No. 111/1999)

Section 4. (1) Excluded from registration are signs which

1. consist exclusively

a) of national coats of arms, of national flags or other national emblems or of coats of arms of domestic regional authorities,

b) of official test or guarantee marks that are introduced domestically or in accordance with an announcement to be published in the Federal Law Gazette (section 6 (2)) in a foreign country for the same goods or services for which the mark is intended, or for similar goods or services,

c) of signs of international organizations to which a member country of the Paris Convention for the Protection of Industrial Property belongs as a member, provided that the signs have been published in the Federal Law Gazette and their registration as a trademark is suitable to evoke the impression of a connection to the organization in question in the public or to mislead the public about the existence of such a connection. § 6 (2), last sentence applies to the announcement;

2. are not registrable as a trademark according to section 1;

3. have no distinctive character;

4. exclusively consist of signs or information which may serve in the trade to designate the type, quality, quantity, destination, value, geographical origin or the time of manufacture of the goods or the provision of the service or to designate other characteristics of the good or service;

5. consist exclusively of signs or information that are customary in common linguistic usage or in honest and constant traffic conventions for the designation of the goods or services;
6. consist exclusively of the shape or another characteristic feature that is determined by the nature of the goods themselves or is necessary to achieve a technical effect or gives the goods a significant value;
7. are contrary to public order or to accepted principles of morality;
8. are capable of deceiving the public, for example, about the type, quality or geographical origin of the goods or services;
9. are excluded from trademark protection in accordance with Union regulations or Austrian legal provisions including international agreements to which the Union or the Republic of Austria is a party and which protect designations of origin and geographical indications;
10. are excluded from trademark protection in accordance with Union legislation or international agreements to which the Union is a party and which serve to protect traditional names for wines;
11. are excluded from trademark protection in accordance with Union legislation or international agreements to which the Union is a party and which serve to protect traditional specialties;
12. consist of an earlier variety denomination registered for plant variety rights in accordance with Union or Austrian legislation or international agreements to which the Union or the Republic of Austria are contracting parties, or reflect them in their essential elements and which relate to plant varieties of the same species or closely related species.

(2) However, registration is permitted in the cases of (1) no .3, 4 and 5 if the sign has acquired distinctive character within the relevant public prior to registration as a result of its use in Austria.

Section 5. Trademarks that contain an award or one of the symbols mentioned in section 4 (1) No. 1 as components may only be registered, provided that their use is subject to legal restrictions, after the right to use the award or the symbol has been proven.

Section 6. (1) It is forbidden to use the state coat of arms, the state flag, another state emblem or the coat of arms of a local authority without authorization or without the consent of the authorized person the signs cited in section 4 (1) No. 1 (c) in business

matters for the labeling of goods or services or as a component of goods or service labels. It is also forbidden to use a test or guarantee mark without the consent of the authority granting the test or guarantee mark to identify or as part of the identification of goods or services for which the mark has been introduced or for similar goods or services.

(2) (1) shall only apply to foreign state emblems and official test or guarantee marks if an intergovernmental agreement or reciprocity exists and if the foreign sign has been published in the Federal Law Gazette. If the announcement does not include a representation of the official embodiment of the sign, it must be stated where such a representation is publicly available.

(3) Anyone who violates the prohibition (1) will be punished by the district administrative authority with a fine of up to € 218 or with arrest of up to one month. In aggravating circumstances, these penalties can also be imposed side by side.

Section 7. Section 4 (1) No. 1 and sections 5 and 6 also apply to representations that are similar to the official embodiment of the award or the mark. However, even if they are similar to other such awards or symbols, they may form components of trademarks (section 5) and may be used to mark goods or services (section 6).

(Note: Section 8 repealed by Federal Law Gazette No. 350/1977)

Section 9. The Federal Minister for Economic Affairs may, if this is necessary in order to make it easier to determine the origin of goods of a certain type due to their nature, in particular dangerousness, or for economic reasons, order that such goods may only be placed on the market if they are provided with a registered trademark in a manner to be designated by the ordinance.

Section 10. (1) Subject to the preservation of elder rights, the registered trademark grants its owner the exclusive right to prohibit third parties in the course of trade without his consent

1. to use a sign that is identical to the trademark for goods or services (section 10a) that are identical to those for which the trademark is registered;

2. to use a sign that is the same or similar to the trademark for the same or similar goods or services (section 10a), if this creates the risk of confusion for the public, which includes the risk that the sign is mentally associated with the trademark.

(2) The owner of a registered trade mark shall also be entitled to prevent all third parties not having his consent from using in the course of trade a sign identical or similar to the trade mark in relation to goods and services (section 10a) irrespective of whether these goods and services are identical or similar to the goods and services the trademark is

registered for, where the latter has a reputation in Austria and where the use of the sign without due cause takes unfair advantage of, or is detrimental to the distinctive character or the reputation of the trade mark. The reputation of the elder trade mark has to be established at the day of application of the younger trade mark at the latest, if applicable at the day of priority or seniority or the day any possible younger distinctive sign comes into existence.

(2a) Without prejudice to earlier rights, the owner of a registered trademark is also entitled to prohibit third parties from bringing goods into Austria in the course of business without releasing the goods into free circulation, if the goods, including their packaging, originate from third countries and bear a trademark without consent which is the same as the trademark registered for such goods or is indistinguishable from this trademark in its essential aspects. This authorization of the trademark owner expires if, during a procedure that serves to determine whether a registered trademark has been infringed, and in accordance with Regulation (EU) No. 608/2013 on the enforcement of intellectual property rights by the customs authorities, OJ No. L 181 of 29.06.2013 p. 15, the customs declarant or the owner of the goods proves that the owner of the registered trademark is not entitled to prohibit the goods from being placed on the market in the final country of destination.

(2b) Is there a risk that the packaging, labels, tags, security or authenticity notices or proofs or other means of identification on which the brand is affixed are used for goods or services and that this use violates the rights of the brand owner in accordance with (1) or (2), the owner of the mark has the right to prohibit the following acts if they are carried out in the course of business:

1. the affixing of a sign identical to or similar to the mark on these means of identification;
2. offering, placing on the market or possessing for these purposes or importing or exporting these means of identification on which the mark or a sign similar to it is affixed.

(3) The registered trademark does not grant its owner the right to prohibit a third party from using

1. the name or address of the third party, if the third party is a natural person,
2. signs or indications without distinctive character or concerning the type, quality, quantity, destination, value, geographical origin or the time of production of the goods or the provision of the service or about other characteristics of the goods or service,

3. the mark for the purpose of identifying or referring to goods or services as those of the owner of this mark, in particular if the use of the mark is necessary as an indication of the purpose of a product or service, for example as an accessory or replacement part,

In the course of business, provided this corresponds to the decent customs in trade and commerce.

Section 10a. The use of a sign to identify a product or service covers in particular:

1. to affix the symbol to goods, to their packaging or to objects on which the service is or is to be performed;

2. to offer goods under the mark, to put them on the market or to own them for the stated purposes or to offer or provide services under the mark;

3. to import or export goods under the mark;

4. to use the symbol as a trade name or company name or as part of such;

5. to use the logo in business papers, announcements or advertising;

6. to use the symbol in comparative advertising contrary to one of the provisions of the Federal Act against Unfair Competition, Federal Law Gazette No. 448/1984, in the currently applicable version, for the implementation of Directive 2006/114 / EC on misleading and comparative advertising, ABl. No. L 376 of December 27, 2006 p. 21.

Section 10b. (1) The trademark does not grant its owner the right to prohibit a third party from using the trademark for goods which have been brought into circulation in the EEA under this trademark by the owner or with his consent.

(2) (1) does not apply if there are legitimate reasons for the owner to oppose the further sale of the goods, in particular if the condition of the goods has changed or has deteriorated after they have been placed on the market.

Section 11. (1) Regardless of a change in ownership of the company, the trademark can be transferred for all or part of the goods or services for which it is registered. If the trademark right belongs to a company, the trademark right including any license rights to it shall pass to the new owner in the event of a change in ownership of the entire company, unless otherwise agreed.

(2) If the application for recordal of the transfer or the documents submitted for this clearly show that the transfer of rights means that the trademark is suitable to mislead the public, in particular about the type, quality or geographical origin of the goods or services, so the request for re-registration must be rejected, unless the purchaser agrees to a restriction of the list of goods and services to eliminate the risk of deception.

(3) As long as the trademark register has not been rewritten, the trademark right cannot be asserted before the Patent Office and all communications relating to the trademark can be delivered to the person registered as the trademark owner with effect against the purchaser.

Section 12. Nobody may use someone else's name, company name or special designation of the company to identify goods or services without the consent of the person entitled.

Section 13. If the reproduction of a registered trademark in a dictionary, lexicon or similar reference work in printed or electronic form gives the impression that it is a generic description of the goods or services for which it is registered, the publisher of the work shall, at the request of the owner of the mark, ensure that the reproduction of the mark is immediately accompanied by a notice, that it is a registered mark, in the case of printed products at the latest when the work is reprinted.

Section 14. (1) The trademark may be the subject of exclusive or non-exclusive licenses for all or part of the goods or services for which it is registered, and for the entire federal territory or part of it.

(2) The owner of a trademark can assert the rights arising from the trademark against a licensee who in regard to

1. the duration of the license,
2. the registration form in which the trademark may be used,
3. the nature of the goods or services for which the license was granted,
4. the area in which the trademark may be used, or
5. the quality of the goods or services produced by the licensee

violates a provision of the license agreement.

(3) The licensee may only initiate proceedings for infringement of a trademark with the consent of its owner. However, the owner of an exclusive license can do this even if the owner of the trademark has not brought an infringement action himself within a reasonable period of time after expressly requesting it.

(4) Each licensee can join an infringement action brought by the owner of the trademark as an intervener. The interest in the future assertion of his own damage in a separate procedure justifies the legal interest in joining as a secondary intervener.

(5) (1) to (4) also apply to trademark applications.

(Note: Section 15 repealed by Federal Law Gazette No. 350/1977)

II. CHAPTER

Registration, rewriting and deletion of trademarks

1. Registration

Section 16. (1) The trademark register is administered by the Patent Office.

(2) A written application to register the trademark has to be filed with the Patent Office. Unless it consists only of numbers, letters or words and no specific written form is claimed for, a reproduction of the mark in the form of images or as a file and, if necessary, a description that is consistent with the reproduction and does not expand the protected subject matter, must be submitted. The number of trademark representations to be submitted, their nature and dimensions, the type of file and format corresponding to the trademark type and the data carrier permitted for submission, the necessary content and scope of the description and the type of characters in standard font, for example punctuation marks, which are treated the same way as letters or numerals, are determined by ordinance.

(3) In the application, the goods and services for which trademark protection is being applied for must be clearly and unambiguously stated (list of goods and services) so that anyone can determine the scope of protection applied for on this basis alone. General terms including generic terms of the Nice Classification (Nice Agreement on the International Classification of Goods and Services for the Registration of Trademarks, Federal Law Gazette No. 401/1973 in the currently valid version) include all goods or services that are clearly covered by the literal meaning of the respective term. More detailed requirements of the list of goods and services are determined by ordinance.

(4) In the ordinances to be issued by the President of the Patent Office in accordance with (2) and (3), the requirements of the registration process as well as the registration and publication of the trademark must be taken into account; in particular, the requirements for trademark reproduction are to be determined in such a way that the reproduction in the register may be represented clearly, precisely, closed, easily accessible, understandable, permanent and objective, so that everyone can clearly and precisely determine for which object protection is granted.

Section 17. (1) When registering, the following must be entered in the trademark register:

1. the trademark and, if applicable, a description of the trademark,

2. the registration number,
3. the day of registration and, if applicable, the priority claimed,
4. the owner of the trademark and, if applicable, his representative,
5. the goods and services for which the trademark is intended, classified according to the international class division (Nice Agreement on the International Classification of Goods and Services for the Registration of Trademarks, Federal Law Gazette No. 401/1973 in the currently applicable version),
6. the beginning of the term of protection,
7. if applicable, the information that the trademark has been registered based on a proof of having acquired distinctive character (“Verkehrsgeltungsnachweis”).

(2) If the registration takes place on the basis of a conversion application, a reference to this must be included in the register. The following also applies:

1. if the registration is based on an application for conversion in accordance with Art. 139 of Regulation (EU) 2017/1001, the date of filing for the EU trade mark within the meaning of Art. 32 of this Regulation shall be deemed to be the date of application within the meaning of (1) No (3). If necessary, the seniority according to Art. 39 or 40 of this Ordinance must also be entered in the register.
2. if the registration is based on an application for conversion in accordance with Art. 9quinquies of the Protocol to the Madrid Agreement on the International Registration of Trademarks, Federal Law Gazette III No. 32/1999, the date of registration within the meaning of (1) No. 3 shall be the date of international registration within the meaning of Art. 3 (4) or the date of registration of the territorial extent within the meaning of Art. 3ter (2) of the Protocol. If necessary, the seniority assigned to the mark in accordance with Art. 4bis of the protocol must also be entered in the register.

(2a) If the registration is based on the division of an application or registration, a reference to the division and the file number of the application the division was originally based on must be entered in the register. The day of registration within the meaning of (1) No. 3 is the day of registration from which the division was based; Likewise, a priority claimed for this application or a seniority to which it is entitled in accordance with (2) also apply to the division, provided that the goods or services of the division are covered by the priority or the seniority.

(3) Trademarks that only consist of numbers, letters or words without a graphic design and for which no specific written form has been claimed must be entered in capital and small letters or Arabic numerals as well as the other characters permitted under section

16 (2). For trademarks, the reproduction of which only exists in a file without an image, the entry is made in accordance with (1) No. 1 by indicating that the file has been made accessible in electronic form.

(4) The trademark owner receives an official confirmation of the entries in the register according to (1) and (2a). This may also include the entries in accordance with section 28a.

(5) The trademark is to be published after its registration.

(6) The trademark register and the catalogs to be created for its content are open to everyone. A certified copy of the entries must be issued on request.

(Note: Section 18 repealed by Federal Law Gazette I No. 149/2004)

Section 19. (1) The trademark right arises on the day of entry in the trademark register (registration). The term of protection is ten years from the date of registration. It may be extended again and again by ten years by paying a renewal fee in good time. The new term of protection is to be calculated from the end of the immediately preceding term of protection regardless of the date of renewal.

(2) A note about the renewal must be entered in the register.

Section 19a. (1) The Patent Office shall inform the trademark owner at least six months in advance of the end of the term of protection. This information letter does not require a signature or certification from the authorities.

(2) The information pursuant to (1) or its omission is irrelevant for the duration of protection or renewal and does not justify any claims.

Section 20. (1) Every trademark application must be checked for compliance with the law.

(2) If this examination reveals that there are doubts about the admissibility of the registration of the trademark, the applicant shall be asked to express his / her opinion within a certain period of time. If the inadmissibility of the registration is determined after a timely statement or after the deadline has expired, the trademark application must be rejected with a resolution.

(3) If there are concerns about the admissibility of the registration according to section 4 (1) No. 3, 4 or 5, at the request of the applicant and prior to rejection it must be determined by resolution that the sign applied for registration is only registrable under the conditions of section 4 (2); such a decision can be contested with an appeal (section 37 (1)).

Section 21. (1) If a similarity search is requested with the trademark application, the Patent Office must provide written information as to whether the sign applied for is the same or possibly similar to earlier trademarks that are registered for goods or services in the same class. If the necessary technical and organizational requirements are met, this similarity search also includes trademark applications, EU trademarks and EU trademark applications. Identical or possibly similar trademarks are to be communicated to the applicant with the information that the applied sign will be registered in the event of admissibility (section 20 (2)), provided that the application is not withdrawn within the period set by the Patent Office.

(2) The notification according to (1) is irrelevant for the assessment of the scope of protection of the symbols concerned. It does not require a signature or certification from the authority.

Section 22. Upon request, the Patent Office shall provide anyone with written information as to whether a particular sign is the same or possibly similar to trademarks, the goods and services of which fall into the classes specified in the request. Section 21 (2) applies to such information. If the mark is a registered trademark, it is sufficient to state the registration number. If the necessary technical and organizational requirements are met, this similarity search also includes trademark applications, EU trademarks and EU trademark applications.

Section 23. On the day of the proper registration of a trade mark, the applicant acquires the right of priority.

Section 23a. (1) By means of a declaration of division, the applicant for a trademark may divide the application or the owner of a registered trademark may divide the registration with regard to certain goods or services which must not overlap either with the remaining goods or services or with those of other divisions. Section 16 (3) is to be applied accordingly.

(2) If the payment of the division fee is not initiated within two months of the submission of the declaration of division, the declaration of division shall be deemed not to have been submitted. There is no extension of the deadline, further processing or reinstatement within the deadline for paying the division fee.

(3) In addition, if a trademark application is divided, the provisions on the application of trademarks apply accordingly.

(4) If the declaration of division concerns a registration, the division becomes effective upon entry in the register. Entries in the register of the trademark being the object of the division will be transferred to the entry in the register resulting from the division, provided that they have a reference to its goods or services.

(5) A declaration of division is not permitted for registered trademarks before the opposition period (section 29a (1)) has expired. If a declaration of division concerns goods or services that are the subject of an opposition or an application pursuant to sections 30 to 34, sections 66 or 66a, a division will only be entered in the register when the relevant procedure pursuant to section 29b (6) has been completed or the decision becomes legally binding.

Section 24. (1) The priority rights granted on the basis of intergovernmental agreements as well as priority rights according to (2) are to be expressly claimed. The date of registration, the priority of which is claimed, and the country, in which this registration was made, must be specified (declaration of priority). The file number of this application must also be given.

(2) The applicant has a period of six months after the filing date of an earlier trademark application that was filed with a registration office that is not covered by the scope of an intergovernmental agreement on the recognition of priority for a later application relating to the same trademark in Austria the right to the priority of the earlier trademark application if a corresponding reciprocity with this registration office has been established by an announcement to be published in the Federal Law Gazette by the Federal Minister for Economic Affairs. The requirements and the effects of this priority right correspond to those of Article 4 of the Paris Convention for the Protection of Industrial Property, Federal Law Gazette No. 399/1973.

(3) The declaration of priority must be submitted within two months of the receipt of the application at the Patent Office. Correction of the declaration of priority may be requested within this period.

(4) If the acquisition or maintenance of the property right depends on whether the priority was rightly claimed, the right of priority must be proven. The President of the Patent Office's ordinance must determine which documents are required in the proceedings before the Patent Office for this proof (priority documents) and when these documents are to be presented.

(5) If the declaration of priority is not submitted in time, the priority documents are not submitted in time or if the file number of the application whose priority is claimed is not disclosed in due time after an official request, the priority is determined on the day of the application in Austria.

Section 25. (1) Trademarks that are used at a domestic or a foreign exhibition to identify goods on display there enjoy priority protection in accordance with the provisions of sections 26 and 27.

(2) The provisions of sections 26 and 27 also apply in particular to displays at design and products exhibitions.

Section 26. (1) Protection only exists if the Federal Minister for Economic Affairs has granted priority protection to the exhibition for the trademarks that are used to identify the goods on display there.

(2) The exhibition management must request the granting. This request must contain the information necessary for the decision on the claimed priority privilege.

(3) The application must be granted if the granting of protection is required on the basis of international obligations or is justified in view of the economic importance of the exhibition.

(4) The granting of priority protection is to be announced at the expense of the exhibition management in the “Official Gazette of the Wiener Zeitung” and in the “Austrian Patent Gazette”.

Section 27. (1) The protection has the effect that the trademark enjoys a right of priority from the day the goods marked with the trademark are brought into the exhibition space if it is registered with the Patent Office within three months of the day the exhibition is closed. The application may only include the goods on display for which the mark was used at the exhibition.

(2) If the same or similar goods, which are marked with the same or similar trademarks, are brought into the exhibition space at the same time, the trademark whose application has been filed first has priority.

(3) The right of priority is to be claimed expressly. The exhibition and the day, on which the goods marked with the trademark were brought into the exhibition space, must be indicated (declaration of priority). The provisions of section 24 (3) apply accordingly.

(4) The right of priority must be demonstrated by a representation of the trademark and a confirmation from the exhibition management, which goods with this trademark were on display and when they were brought into the exhibition room (priority documents).

(5) If the declaration of priority is not submitted on time or if the priority documents are not submitted in due time after an official request, the priority is determined according to the day of registration.

2. Changes to the register status

Section 28. (1) The transfer of the trademark, the entry and deletion of license rights as well as liens and other rights in rem and enforcement measures are carried out upon

written application by one of the parties involved. The entry and deletion of liens, other rights in rem and enforcement measures are also carried out upon request by a court.

(2) A copy of the document on the basis of which the entry is to be made must be submitted with the application. If the original of the document is not a public document, it must be signed with the certified signature of the person disposing of his rights. In the case of a transfer of the trademark, a corresponding declaration by the parties or their representatives requesting the transfer can be submitted instead of the certificate.

(3) The form and content of the application, the certificate and the declarations are subject to examination by the Patent Office. If justified doubts arise, the Patent Office may request originals or certified copies or other documents.

(4) Legal disputes about rights to trademarks as well as the procedures for deletion (sections 30 to 34 and sections 66 to 66a), for transfer (section 30a) and for subsequent determination of the invalidity of a trademark (section 69a) may be requested to be noted in the trademark register (dispute note).

(5) In other respects, section 43 (3) and (4) and section 45 (2) of the Patent Act 1970, Federal Law Gazette No. 259, apply *mutatis mutandis*.

(6) The entries mentioned in (1) must be noted in the official confirmation of the entry in the register on request (section 17 (4)).

(7) The transfer of the trademark is to be published.

Section 28a. The transfer of applications for trademarks is entered in the register at the written request of one of the parties involved. Likewise, the entry and deletion of license rights as well as liens and other rights in rem and enforcement measures for trademark applications takes place in the register. Section 28 (1) last sentence and (2) and (3) as well as section 43 (3) and (4) of the Patent Act 1970 apply *mutatis mutandis* to entries in the register of trademark applications.

3. Cancellation

Section 29. (1) The trademark shall be cancelled

1. at the request of the holder;
2. if the registration has not been renewed in time (section 19);
3. if the trademark right has expired for reasons other than those listed under No. 1 and 2;

4. on the basis of a legally binding decision with which a registration was cancelled due to an opposition;

5. on the basis of a legally binding decision, with which an request for cancellation submitted to the Cancellation Department was granted.

(2) The cancellation must be entered in the trademark register (section 17) and published.

Section 29a. (1) An opposition to the registration may be raised within three months from the date of publication of the registration of the trademark (section 17 (5)). It has to be based on a trademark under the conditions of section 30 (1) or (2), on a well-known trademark according to Art. 6bis of the Paris Convention or on a designation of origin or geographical indication according to section 32a.

(1a) An opposition may be based on one or more earlier rights according to (1), provided that they belong to the same owner or applicant. If an opposition is based on an earlier EU trade mark, section 30 (4) applies accordingly. If an opposition is raised on the basis of a well-known trademark, the notorious reputation according to Art. 6bis of the Paris Convention must be in existence on the registration or priority date. An opposition can be based on part or all of the goods and services covered by an earlier right and directed against part or all of the goods and services of the mark.

(2) If a trademark is registered under the Madrid Agreement on the International Registration of Trademarks, Federal Law Gazette No. 400/1973, and the Protocol to the Madrid Agreement on the International Registration of Trademarks, Federal Law Gazette III No. 32/1999, the Publication in the publication gazette issued by the International Bureau of the World Intellectual Property Organization replaces the publication referred to in (1). The opposition period begins on the first day of the month following the month specified as the month of issue of the publication gazette in which the publication of the internationally registered trademark is included.

(3) The well-founded opposition must be received by the Patent Office no later than the last day of the period. It must be submitted in writing together with all enclosures in duplicate.

(4) If the opposition fee is not paid within the opposition period, the opposition is deemed not to have been filed.

(5) There shall be no reinstatement of the time limit for filing an opposition and paying the opposition fee.

(6) The possibilities of submitting a request to the Cancellation Department remain unaffected.

Section 29b. (1) After the opposition period has expired, the trademark owner is to be informed about all oppositions received in due time and is to be given a reasonable period, which can be extended for reasonable reasons, to submit a written statement. Within this period, the trademark owner may also raise the opposition of insufficient use of the trademark giving rise to the opposition (3). If the trademark owner does not submit a statement within the deadline set, the revoking the trademark in full or in part without further proceedings has to be ordered, even if the opposition is based on an application that had not yet led to registration at the time of the decision. The provisions on contestation listed in section 35 (5) are to be applied in opposition proceedings, unless otherwise specified below.

(2) After the trademark owner has made a timely statement, the member responsible pursuant to section 35 (1) shall make the appropriate dispositions in relation to any necessary correspondence, the gathering of the evidence offered by the parties and the taking of evidence. At the request of one of the parties, or ex officio if the member deems this necessary in individual cases to decide on the opposition, he/she has to organize an oral hearing. The member has to take a decision with free assessment of the available factual and evidence material.

(3) If an opposition is based on a trademark that has been registered for more than five years on the registration or priority date of the trademark against which it is directed, it can only be accepted, if it is demonstrated within a reasonable period at the request of the trademark owner that there is no reason for expiry corresponding to section 33a on the filing or priority date of the younger trademark. The documents submitted to prove the use of the trademark are to be sent to the trademark owner to enable him to comment. If the trademark owner submits a request for revocation against the opponent's trademark in accordance with section 33a within a period of two months from the delivery of the documents submitted to substantiate use to the competent authority, and proves this within a reasonable period, the opposition procedure is to be interrupted and, after a final decision, this procedure is to be started ex officio or upon application. The opponent's mark is only valid for the opposition proceedings for the part of the goods and services for which it was used.

(3a) Until the expiry of the deadline for submitting comments pursuant to (1) or, if applicable, the period for commenting pursuant to (3), a period of maximum six months from the date of the application must be granted upon joint application by the parties to enable an amicable agreement, even without further justification. Open deadlines in accordance with (1) or (3) end, subject to their other possibility of extension if there are reasonable reasons, at the same time as the deadline for enabling an amicable agreement.

(4) In addition, an opposition procedure may be interrupted in accordance with section 190 of the Austrian Code of Civil Procedure if the opposition is based on an application, if the legality check (section 20) has not yet been finalized in the case of an international registration that is caught in a dispute, if one of the trademarks in question is contested or if the trademark giving rise to opposition is itself subject to opposition, or when several oppositions have been filed against the same trademark registration. In the latter case, a preliminary check, including the written statements, must be carried out to determine whether the trademark registration is likely to be revoked due to another or several other oppositions.

(5) The total or partial cancellation of a trademark resulting from an opposition has retroactive effect on the beginning of the term of protection.

(6) As far as a trademark has been revoked with legally binding effect or as far as an international registration following ex officio legal examination (section 20) has been finally refused protection or insofar as a trademark been refused finally, or, as far as a mark has been cancelled based on a final decision concerning a request to the Cancellation Department with retroactive effect to the beginning of the period of protection, pending opposition proceedings against this trademark are deemed settled to the appropriate extent and the parties shall be informed accordingly. Opposition proceedings are ended in the same way, if during the pendency of the opposition procedure the procedure to register the application, the opposition is based on, is closed without leading to registration, or, if the mark or designation of origin or geographical indication, opposition is based on, finally loses protection in Austria.

(7) The parties have to bear the costs of the opposition proceedings themselves.

Section 29c. (1) The responsible member has to open and chair the oral hearing. It has to convince itself of the identity of those appearing as well as to check their party status and any power of representation. It must conduct the negotiation without admitting digressions or expansiveness in such a way that the parties have the right to be heard. As the negotiator, the member determines the order in which the parties are to be heard, the evidence to be taken, and the results of any previous evidence or inquiries to be presented and discussed. It decides on requests for evidence and has to reject apparently insignificant requests. He is also entitled to interrupt and postpone the hearing as required and to verbally determine the time for the continuation of the hearing.

(2) The Fee Claims Act - GebAG shall apply.

(3) The respective point in time of the start of the five-year period in accordance with section 33a (1a) is entered in the register for the goods and services of the trademark

concerned. For these purposes, a notice of suspension is deemed to be the end of the proceedings.

Section 30. (1) The owner of a trade mark previously applied for may request cancellation of a trademark provided that either

1. the two trademarks and the goods or services for which the trademarks are registered are the same, or
2. the two trademarks and the goods or services for which the trademarks are registered are identical or similar, which means that there is a risk of confusion for the public, which includes the risk that the trademark would be associated with the earlier trademark.

(2) The owner of a trade mark previously applied for and having reputation in Austria may also request the cancellation of a trademark, provided that the two trademarks are identical or similar, regardless of whether the goods or services are identical or similar or not similar and provided that the use of the younger mark without due cause would take unfair advantage of, or be detrimental to the distinctive character or the reputation of the well-known mark. The reputation of the earlier mark shall be required to have existed at the latest on the day of filing of the younger mark, if applicable on the day on which he priority or seniority is established.

(2a) If the cancellation request in accordance with (1) or (2) is based on an application, the request can only be granted subject to the trademark registration.

(3) Requests according to (1) or (2) are to be rejected if the applicant has tolerated the use of the later registered mark for a period of five consecutive years with knowledge of this use. This only applies to the goods or services for which the younger trademark was used, and only if the application for the younger trademark was not made in bad faith.

(4) If a request for cancellation pursuant to (2) is based on an elder EU trade mark, proof of reputation in the European Union must be furnished instead of proof of reputation in Austria.

(5) Requests according to (1) or (2) are to be rejected if the earlier trademark could be cancelled or declared null and void for the reasons set out in section 4 (1) No. 3, 4 or 5 at the date of the application or the priority date of the younger trademark and has not acquired distinctive character within the meaning of section 33 (2) by this point in time or if the earlier mark has not acquired sufficient distinctive character by this point in time to lead to a likelihood of confusion in accordance with (1).

(6) Requests according to (1) or (2) are to be rejected if the earlier trademark was not used for the respective goods or services before the date of the request within the

meaning of section 33a (1) without legitimate reasons and the five-year period according to section 33a (1a) or (1b) is over. If this five-year period has already passed on the filing or priority date of the later registered mark, the owner of the earlier mark must also provide evidence that the mark has been used seriously in the five years prior to the filing or priority date of the later registered mark or that there were legitimate reasons for non-use. With regard to EU trademarks, genuine use is to be assessed according to Art. 18 of Regulation (EU) 2017/1001.

Section 30a. (1) If the agent or representative of a person who has acquired a trademark right in Austria or abroad through registration or use causes the registration of this trademark in his own name without the consent of the proprietor, the latter can request the cancellation of this trademark, unless, the agent or representative justifies his action.

(2) Instead of the cancellation of the trademark according to (1), the applicant may request the transfer to him/her.

(3) If the request is based on a registered trademark, section 30 (6) applies accordingly.

Section 31. (1) Anyone who can prove that the unregistered mark used by him/her for identical or similar goods or services at the date of filing of the contested mark, which is identical or similar to his unregistered mark, is recognized within the relevant public as distinctive sign for goods or services of his/her enterprise, may request the cancellation of a trademark, unless the trademark has been used unregistered by the trademark owner for at least as long as by the applicant's enterprise.

(2) The request must be rejected if the applicant has tolerated the use of the registered mark for a period of five consecutive years with knowledge of this use. This only applies to the goods and services for which the registered trademark has been used, and only if the application for the registered trademark was not made in bad faith.

Section 32. (1) An entrepreneur can request the cancellation of a trademark if his name, his firm name or the special designation of his company or a designation similar to these designations has been registered as a trademark or as part of a trademark without his consent (Section 12) and if the use of the mark would be capable of creating the risk of confusion in trade with one of the applicant's company symbols mentioned above.

(2) The request must be rejected if the applicant has tolerated the use of the registered mark for a period of five consecutive years with knowledge of this use. This only applies to the goods and services for which the registered trademark has been used, and only if the application for the registered trademark was not made in bad faith.

Section 32a. Anyone entitled under Union legislation for the protection of designations of origin and geographical indications or under Austrian legislation, including international agreements to which the Union or the Republic of Austria is a party, to prohibit the use of a later trade mark on the basis of a designation of origin or geographical indication may apply for cancellation of the trade mark, provided that the application for registration of the designation of origin or geographical indication, subject to its subsequent registration, was filed before the filing date or priority date of the trade mark.

Section 32b. Anyone who, according to section 81 or 84 (2) of the Copyright Act, Federal Law Gazette No. 111/1936, has a right to injunction due to the lack of consent of the author to use the work as a trademark, can apply for the trademark to be cancelled. Section 31 (2) applies accordingly.

Section 32c. Anyone who has a right to injunction against the use of a trademark according to section 34 of the 1990 Design Protection Act, Federal Law Gazette No. 497, can apply for the trademark to be cancelled. Section 31 (2) applies accordingly.

Section 33. (1) Anyone can request the cancellation of a trademark for a reason to be perceived ex officio.

(2) In the cases of section 4 (1) No. 3, 4 or 5, a trademark will not be cancelled if it has acquired distinctive character within the meaning of section 4 (2) as a result of its use prior to the filing of the request in accordance with (1).

Section 33a. (1) Anyone can request the cancellation of a trade mark registered in Austria or enjoying protection in Austria under section 2(2), provided that the trade mark has not been put to genuine use in Austria as a trade mark within the meaning of section 10a by the proprietor of the trade mark or, with the proprietor's consent, by a third party in respect of the goods or services for which it is registered, within the five years preceding the date of filing of the request, unless the proprietor of the trade mark can justify the non-use.

(1a) In the case of a trademark registered in Austria, if no opposition has been filed, an application pursuant to (1) can be submitted at the earliest five years after the end of the opposition period pursuant to section 29a (1) or after a final decision of opposition proceedings or their termination pursuant to section 29b (6) or section 29c (3) 2nd sentence for the goods and services concerned.

(1b) In regard to a trademark enjoying protection in Austria pursuant to section 2 (2) and where there has been no opposition filed, a request pursuant to (1) may be deposited at the earliest five years from the date when the time limit to notify a refusal of protection according to Article 5 (2) of the Protocol to the Madrid Agreement concerning the

International Registration of Marks has elapsed without reaction. When a provisional refusal has been notified a request pursuant to (1) may be deposited for the respective goods and services at the earliest 5 years from the day a decision in regard to the granting of protection according to Rule 18ter (2) of the Common Regulations under the Madrid Agreement and Protocol, Federal Law Gazette No. 109/1997, becomes final, regardless whether the procedure has been based on absolute grounds or an opposition or whether there has been a finalization of procedure according to section 29b (6) or section 29c (3) 2nd sentence.

(2) Insofar as trademarks have not been used as a result of legal restrictions on the trade with the goods or services for which they are registered, they shall not be subject to cancellation in accordance with (1) only if, because of the serious use of the mark abroad or due to other circumstances worthy of consideration, a legitimate interest in trademark protection in Austria is to be recognized.

(3) Initial or resumed use after an uninterrupted period of non-use of five years, which occurred within three months prior to an application for cancellation pursuant to (1), shall not be taken into account if the preparations for this use have only taken place after the trademark owner became aware of the option that a request for cancellation could be made.

(4) Use of a mark also includes:

1. the use of the mark in a form that deviates from the registration only in parts without affecting the distinctive character of the mark, regardless of whether the mark in the form used is also registered in the name of the proprietor;
2. affixing the mark to goods or their packaging for export only.

(5) Use must be proven by the trademark owner.

Section 33b. Anyone can request the cancellation of a trademark if, after the date of its registration, it has become, consequence of the proprietor's conduct or inactivity, the common name in the trade for a product or service for which it is registered.

Section 33c. Anyone can request the cancellation of a trade mark if, after the date of its registration, following the use made of it by the proprietor or with his consent in relation to goods or services for which it is registered, it is liable to mislead the public, particularly as to the nature, quality or geographical origin of those goods or services.

Section 34. Anyone can request the cancellation of a trademark if the applicant was acting in bad faith when filing the application.

Section 34a. (1) A decision with which an application for cancellation submitted to the Cancellation Department is granted may affect part or all of the goods and services of a trademark. Likewise, with regard to the opposition of non-use within the meaning of section 30 (6), a trademark shall be deemed to exist in law for the purposes of these proceedings only in respect of that part of the goods and services for which it has been used.

(2) If the owner of the earlier trademark or the earlier right agrees to the registration of the younger trademark, an application for cancellation based on the provisions of sections 30 to 32c can be rejected under appropriate circumstances.

(3) With a notice of cancellation in accordance with sections 30 to 33, 34, 66 (2) or section 66a (2), the trademark is declared null and void with effect from the beginning of the period of protection (section 19 (1)). If the reason for cancellation in accordance with section 66 (2) or section 66a (2) is based on amended regulations, the trademark will be declared null and void with effect from the date of entry of the regulations in the register.

(4) With a notice of cancellation in accordance with sections 33a, 33b, 33c, 66 (1) or section 66a (1), the trademark is revoked with effect from the date of filing the request. At the request of a party, if the reason for expiry occurs earlier, an earlier effective date may be set, in the case of a declaration of cancellation according to section 33a, however, at most until the expiry of the fifth year after the date according to section 33a (1a) or (1b).

4. Authorities and procedures

Section 35. (1) In the Patent Office, the member of the legal department responsible for these matters shall be entrusted by allocation of duties to take decisions and to the handling of other matters relating to trademark protection as well as the protection of geographical indications and designations of origin according to Section VII, unless they are reserved for the President or the Cancellation Department.

(2) Section 58 to 61 of the Patent Act 1970, Federal Law Gazette No. 259, are to be applied *mutatis mutandis*.

(3) By ordinance of the President, employees who are not members of the Patent Office may be authorized to deal with matters of the legal department which are to be designated according to the nature of the matter, provided that this is expedient due to the simplicity of the transactions and the training of the authorized employees is a guarantee of proper handling. These employees cannot be authorized to pass resolutions on the protectability of trademarks and the admissibility of lists of goods and services. They are bound by the instructions of the entrusted member of the legal

department according to the allocation of duties. This member at any time may reserve matters or take charge of them himself/herself.

(4) The decisions/resolutions of the employees authorized according to (3) can be challenged like those of the responsible member.

(5) As for the rest, unless otherwise specified below, sections 52 to 56, 57b, section 62 (8), sections 64, 66 to 69, 79, 82 to 86, 112 to 115, 116 to 126, 127 (1), (2), (4) and (5), section 128 first sentence, sections 128a to 133 (2), sections 134, 135, 137 and 165 of the Patent Act 1970 apply mutatis mutandis to the procedure.

(6) The publications provided for in section 17 (5), section 28 (5) and section 29 (2) are made in the Austrian Trademark Gazette. The approval of the reinstatement is to be announced in the Austrian trademark gazette, if the trademark right is restored.

Section 36. (1) Members of the Patent Office are excluded from participation under the conditions of section 76 (1) of the Patent Act 1970.

(2) Members of the Patent Office are excluded from participating in the Cancellation Department

1. in proceedings on requests for the cancellation of a trademark in accordance with section 30 or for the subsequent determination of the invalidity of a trademark in accordance with section 69a in conjunction with section 30, if they have contributed in their examination of similarity (sections 21 and 22) or in their examination in an opposition procedure, insofar as these are the same trademarks concerned (sections 29a to 29c);

2. in the procedure on requests for the cancellation of a trademark in accordance with section 33 or for the subsequent determination of the invalidity of a trademark in accordance with section 69a in conjunction with section 33, in which they participated in the decision on the admissibility of registration.

(3) The provisions of section 76 (2) and (3) of the 1970 Patent Act apply mutatis mutandis.

Remedies against the decisions of the Legal Department of the Patent Office

Section 37. (1) The decisions of the legal department can be appealed at the Higher Regional Court of Vienna (Oberlandesgericht Wien).

(2) No legal remedy is admissible against the disposals of the responsible member preparing a decision of the legal department and interim decisions - with the exception of interruption decisions in opposition proceedings.

(3) Section 139 of the Patents Act 1970 shall apply mutatis mutandis to the procedure.

Section 38. An appeal on a revision basis is admissible in accordance with section 62 AusStrG against a decision of the appeals court issued in the course of the appeal proceedings. Section 140 (2) of the Patent Act 1970 shall apply mutatis mutandis to the procedure.

Revocation or cancellation procedure

Section 39. (1) The Cancellation Department decides on requests for the cancellation of a registered trademark (sections 30 to 34 and 66 to 66a), applications for transfer (section 30a) and applications for subsequent determination of the invalidity of a trademark (section 69a) by three members, one of whom is chair. The chairperson and one other member must be legally qualified.

(1a) With regard to the oppositions pursuant to section 30 (3), (5) and (6) as well as section 30a (3), it is sufficient to substantiate the defense as per section 29b (3). 30a (3), (5) and (6) as well as section 30a (3) are to be raised expressly and, if otherwise excluded, within the period for filing the counter statement. A separate reinstatement to raise the oppositions does not take place, but a reinstatement can only take place together with the reinstatement in the time limit for filing the counter statement. If an opposition is raised in a timely manner, it shall be served on the applicant and the opportunity to comment shall be given before the hearing is convened in accordance with section 118 of the Patent Act 1970. For the purpose of discussing an opposition as conclusively as possible between the parties in the preliminary proceedings (section 116 of the Patent Act 1970), in particular if evidence has been submitted in reply to an opposition, the defendant in the preliminary proceedings shall be given the opportunity to submit a written statement on the applicant's comments. Section 115 (2) of the Patent Act 1970 shall apply with the proviso that the deadlines for comments and statements shall be at least one month.

(2) Notwithstanding (1), decisions that terminate the proceedings are made by the Chairman without the requirement of a decision on the matter itself, decisions of the Cancellation Department according to (3) as well as resolutions on claims under the Fees Claims Act.

(3) If the trademark owner in question does not submit a counter-statement within the deadline set, the Cancellation Department shall, without further proceedings, order the complete or partial cancellation or transfer of the trademark or subsequently determine the total or partial invalidity of the trademark. In the case of an application in accordance with section 30 (2a), this applies regardless of the registration of the application mark at the time of the decision. If both the cancellation and the transfer of

a mark are requested in a procedure, the Invalidity Division has to order the transfer, unless the request indicates otherwise.

Remedies against the decisions of the Cancellation Department of the Patent Office

Section 40. The final decisions of the Cancellation Department of the Patent Office may be appealed to the Higher Regional Court of Vienna. Section 141 (2) of the Patent Act 1970 shall apply mutatis mutandis to the procedure.

Section 41. (1) No legal remedy is permitted against a preparatory order by the speaker. Subject to (2), there is no separate legal remedy against the resolutions of the Cancellation Division made in the course of the preliminary proceedings or the hearing; they can only be challenged with an appeal, provided that they had an influence on the final decision.

(2) An appeal to the Higher Regional Court of Vienna is admissible against interruption resolutions, resolutions with which an appeal is rejected, resolutions pursuant to section 130 (2) of the Patent Act 1970, as well as resolutions on claims under the Fee Claims Act. Resolutions of the appellate court can be appealed to the Supreme Court in accordance with section 519 ZPO.

(3) Section 142 (3) of the Patent Act 1970 shall apply mutatis mutandis to the appeal proceedings.

Section 42. An appeal against judgments of the court of appeal is permissible in accordance with section 502 ZPO, and an appeal against a decision by the appeals court (section 41 (2)) is permissible under section 528 ZPO. Section 143 (2) and (3) of the Patent Act 1970 shall apply mutatis mutandis to the procedures.

Section 43. (1) Section 144 (procedural aid) and 145 (1) to (3) (delivery, representation, entry into the proceedings) of the 1970 Patent Act shall apply mutatis mutandis.

(2) Section 146 (1) and (4) of the 1970 Patent Act shall apply mutatis mutandis to the composition of the Senate at the Vienna Higher Regional Court in appeal proceedings against a decision by the Legal Department or the Invalidity Department.

(Note: Sections 44 to 49 repealed by Federal Law Gazette No. 350/1977)

Section 50. (1) Those involved in a procedure are entitled to inspect the documents relating to the procedure and to make copies. Other persons are entitled to this right with the consent of the parties involved or if a legal interest can be substantiated.

(2) Anyone may inspect documents of files concerning a trademark that still lawfully exist, make copies of them or have copies made.

(3) The copies are to be certified by the Patent Office upon request.

(4) The wording or the description of the registered trademark and the list of goods and services at the time of registration are to be made known to everyone. Information and official confirmations about when, by whom, if necessary by which representative, a trademark was applied for, which file number the application bears, which priority is claimed, which file number the priority application bears, whether the application is still being processed and whether and to whom the right resulting from the application has been transferred are to be given to everyone.

(5) Consultation minutes and parts of the files relating to the internal course of business only are excluded from inspection. Upon request, if there is a business or trade secret or any other reason worthy of consideration, parts of the files may also be excluded from inspection, the disclosure of which is not necessary for the information of the public.

(6) Insofar as personal data are processed in the trademark register or in publicly accessible electronic information services of the Patent Office,

1. the right to information in accordance with Art. 15 (1) lit. c) Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ No. L 119 of 04.05.2016 p. 1, in the version of the correction OJ No. L 314 of 22.11.2016 p. 72, (hereinafter: GDPR),

2. the notification obligation according to Art. 19 second sentence GDPR and

3. the right to restriction of processing in accordance with Art. 18 and the right to object in accordance with Art. 21 GDPR, whereby the data subjects must be informed of this in a suitable manner,

do not exist.

The right to receive a copy of this data according to Art. 15 (3) GDPR is fulfilled by the fact that the person concerned may inspect the trademark register or the publicly accessible electronic information services of the patent office.

III. CHAPTER

Civil law claims in the event of trademark infringements

Section 51. (1) Anyone who is injured in one of the rights to which he is entitled from a trademark or who has to worry about such a violation may sue for an injunction.

(2) (1) applies mutatis mutandis to a beneficiary according to section 30a.

Section 52. (1) The trademark infringer is obliged to remedy the situation that conflicts with the law.

(2) In particular, the injured party may demand that the infringing items and any existing inventories of counterfeit brands (intervening items) be destroyed at the infringer's expense and that the tools, devices and other aids (intervening devices) used exclusively or preferably for the production of trademark-infringing objects for this purpose are made unusable, provided that this does not interfere with the rights in rem of third parties.

(3) If the objects or means of intervention referred to in (2) contain parts whose unchanged existence and their use by the defendant do not violate the plaintiff's right of exclusion, the court shall specify these parts in the judgment pronouncing the destruction or rendering useless. In the case of enforcement, these parts are, as far as possible, to be excluded from destruction or rendering unusable if the person obliged pays the associated costs in advance.

(4) If it turns out in the execution proceedings that rendering the means of interventions unusable would require greater costs than their destruction, and if these are not paid in advance by the obligated party, the execution court shall, after hearing the parties, order the destruction of these means of intervention.

(5) If the illegal condition can be eliminated in a way other than that described in (2), with no or less destruction of value, the injured party may only request measures of this type. The mere removal of the trademark from the goods is only sufficient, however, if a different approach would lead to disproportionate hardship for the infringer.

(6) Instead of destroying the objects of intervention or rendering the means of intervention unusable, the injured party may demand that the objects or means of intervention are provided by their owner in return for appropriate compensation not exceeding the production costs.

Section 53. (1) The person injured by the unauthorized use of a trademark is entitled to appropriate remuneration from the infringer.

(2) In the event of culpable trademark infringement, the injured party may, instead of appropriate remuneration, demand

1. compensation including loss of profit or
2. the surrender of the profit generated by the infringer by infringing the trademark.

(3) Irrespective of proof of damage, the injured party may request double the amount due to him in accordance with (1), provided that the trademark infringement is based on gross negligence or willful misconduct.

(4) The injured party is also entitled to appropriate compensation for the disadvantages that do not exist in any financial loss and that it suffered as a result of the culpable trademark infringement, insofar as this is justified in the particular circumstances of the case.

(5) Insofar as the same monetary claim exists against several people, they are jointly liable.

Section 54. (1) The owner of a company may be sued for injunctive relief (section 51) if a trademark infringement is committed or threatened by an employee or agent in the operation of his company. He is obliged to remove (section 52) if he is the owner of the infringing objects or means.

(2) If the trademark infringement giving rise to a claim to appropriate remuneration is committed by an employee or agent in the company, the obligation to pay the remuneration (section 53 (1)), to submit invoices (section 55) and to provide information (section 55a) shall only affect the owner of the company, unless he/she was neither aware of the trademark infringement nor obtained an advantage from it.

(3) If a trademark infringement is committed in the operation of a company by an employee or agent, the owner of the company shall be liable in accordance with section 53 (2) to (4), irrespective of the liability of these persons, if he was or should have been aware of the trademark infringement.

Section 55. In addition, section 119 (2) (exclusion of the public), section 149 (publication of the judgment), section 151 (accounting) and section 154 (limitation) of the Patent Act 1970, Federal Law Gazette No. 259, apply mutatis mutandis.

Section 55a. (1) Anyone who has been violated in one of the rights to which he/she is entitled arising from a trademark may request information about the origin and distribution channels of the infringing goods and services, provided that this would not be disproportionate to the severity of the infringement and would not violate statutory confidentiality obligations; The infringer and the persons who commercially

1. had infringing goods in their possession,
2. used infringing services or
3. have provided services used for violations of law,

are obliged to provide information.

(2) The obligation to provide information in accordance with (1) includes, if appropriate,

1. the names and addresses of the manufacturers, distributors, suppliers and other previous owners of the goods or services as well as the commercial customers and sales outlets for which they were intended,

2. the quantities of goods manufactured, delivered, received or ordered and the prices paid for the goods or services.

Section 56. (1) With regard to claims for injunction, removal, appropriate remuneration, compensation for damages and surrender of the profit under this Act, temporary injunctions may be issued both to secure the claim itself and to secure evidence. However, an interim injunction based on a trademark against which an application for revocation is possible in accordance with section 33a (1a) or (1b) may only be issued if it is made credible that the grounds for revocation in section 33a at the time the action is brought and the application is filed, possibly also not available at the time according to section 30 (6) 2nd and 3rd sentences.

(2) In order to secure claims for appropriate remuneration, compensation and surrender of the profit, temporary injunctions can be issued in the event of commercial violations of the law if it is probable that the fulfillment of these claims is jeopardized.

(3) In order to secure injunctive relief and removal claims, temporary injunctions can be issued, even if the conditions specified in section 381 of the Execution Act do not apply.

(4) Interim injunctions pursuant to (1) are to be issued at the request of the endangered party without hearing the opponent, if the delay would probably result in irreparable damage to the endangered party or if there is a risk that evidence will be destroyed.

Section 56a. The Vienna Commercial Court is exclusively competent for lawsuits and injunctions under this section.

Section 56b. (1) The proprietor of a trademark may only oppose the use of a sign to the extent that the trademark could not be canceled in accordance with section 33a at the time the action is brought.

(2) The use of a later trademark may not be prohibited by the proprietor of an earlier trademark, if there is no right to cancellation pursuant to section 30 (2) or (4) to (6).

(3) The use of a later EU trade mark may not be prohibited under (1) if it could not be annulled in accordance with Article 60 (1), (3) or (4) or Article 64 (2) of Regulation (EU) 2017/1001.

(4) In the case of (2) to (3), the proprietor of the later mark may not oppose the use of the earlier mark, although this can no longer be asserted against him.

Section 57. If it emerges in the course of judicial proceedings that the decision depends on the preliminary question as to whether the trademark right, the infringement of which is alleged, exists in accordance with the provisions of this Act, and the court has suspended the proceedings up to the final decision of the preliminary question by the Patent Office at which the preliminary question has already been pending before the start of or during the judicial proceedings is interrupted, this decision is to be used as the basis for the judgment.

Section 58. (1) If the proprietor of an earlier trademark has tolerated the use of a later registered trademark in Austria for a period of five consecutive years while being aware of this use, he may not, with regard to the goods or services for which this later trademark was used, oppose the use on the basis of its earlier right, unless the application for the earlier mark was made in bad faith. The earlier trademark can be a registered trademark or a trademark applied for, subject to its registration, or a well-known trademark according to Art. 6bis of the Paris Convention.

(2) In the case of (1), the proprietor of the later mark may not oppose the use of the earlier mark, although it can no longer be invoked against him.

(3) With respect to a later EU trade mark, the right to prohibit pursuant to (1) shall be deemed to have been forfeited if the EU trade mark could no longer be declared null and void pursuant to Art. 61 (1) or (2) of Regulation (EU) 2017/1001.

Section 59. (1) If a commercial announcement or notice, in respect of which an execution title for injunction within the meaning of section 51 exists, appears in a printed work not subject to the disposition of the obligated party, the court competent for granting the execution may, upon application of the debtor who is liable, issue the order (section 355 EO) to the owner of the company engaged in the publishing or distribution of the printed work (publisher or owner of the newspaper), to stop the further appearance of the announcement or notice in the numbers, issues or editions of the printed work appearing after the issuance of the order or, if the printed work contains only this announcement or notice, to stop its further distribution.

(2) This measure may also be ordered as a temporary injunction within the meaning of section 382 of the Execution Act in accordance with the provisions of the Execution Act at the request of a party at risk. Section 56 (1) first sentence and (3) and (4) apply.

(3) The claim for damages to which the applicant is entitled due to violations of the order (section 355 Execution Act) shall apply accordingly to section 53 (2) 1 and 4.

IV. CHAPTER

Trademark infringements liable to prosecution

Section 60. (1) Anyone who infringes a trademark in the course of trade shall be liable to a fine not exceeding 360 daily rates. Anyone who commits the offence commercially shall be punished with a prison sentence of up to two years.

(2) Anyone who, in a manner likely to cause confusion in the course of trade, makes unauthorized use of a name, a company name or the special designation of a company or a sign similar to these designations to identify goods or services in accordance with section 10a shall be punished likewise.

(3) The owner or head of a company is to be punished if he fails to prevent an infringement according to (1) or (2) committed on the premises of the company by an employee or agent.

(4) If the owner of the company according to (3) is a company, cooperative, association or other legal entity other than a physical person, (3) shall apply to the organs if they are guilty of such failure.

(5) The criminal provisions specified in (1) and (2) shall not apply to employees or agents who have performed the act on behalf of their employer or client, provided that they could not reasonably be expected to refuse to perform this act because of their economic dependency.

Section 60a. (1) The offenses specified in section 60 will only be prosecuted at the request of the injured party.

(2) Jurisdiction in criminal matters according to this section belongs to the Regional Court for Criminal Matters Vienna.

(3) The provisions of Main section 17 of the Code of Criminal Procedure 1975 (StPO), Federal Law Gazette No. 631/1975, apply to the assertion of claims under section 53. Both parties are entitled to appeal against the judgement about the compensation claim.

Section 60b. Section 52 of this Federal Act (removal) as well as section 119 (2) (exclusion of the public) and section 149 (publication of the judgment) of the Patent Act 1970, Federal Law Gazette No. 259, apply mutatis mutandis to criminal proceedings in the event of trademark infringements and infringements of distinctive signs. Section 57 (preliminary questions) also applies to criminal proceedings in the event of trademark infringement.

Section 60c. Anyone who violates the provisions of an ordinance issued on the basis of section 9 will be punished by the district administrative authority with a fine up to € 72 or with arrest of up to one month. In aggravating circumstances, these penalties can also be imposed side by side. In the event of a conviction, the goods in question shall always be forfeited

V. CHAPTER

Representative

Section 61. (1) Anyone acting as a representative before the Patent Office must have his domicile or place of business in the EEA or in the Swiss Confederation; however, the professional regulations apply for attorneys-at-law, patent attorneys or notaries. The representative shall prove his authorization by a written power of attorney, the original or a duly certified copy of which shall be submitted. If more than one person is authorized, each of them alone shall be entitled.

(2) If an attorney-at-law, patent attorney or notary public intervenes, the reference to the authorization granted to him shall replace the documentary evidence thereof.

(3) If a representative intervenes without a power of attorney or, in the case of (2), without invoking the authorization granted to him, the procedural act performed by him shall be effective only on the condition that, within a reasonable time limit, he submits a proper power of attorney or invokes the authorization granted to him.

(4) Anyone who has neither a domicile nor a place of business in the EEA or in the Swiss Confederation may only assert rights under this Federal Act before the Patent Office if he has a representative who meets the requirements of (1). He can only assert these rights before the Cancellation Department of the Patent Office if he is represented by a lawyer-at-law, patent attorney or notary public. The appointment of a representative is not required for the use of services and information provided by the Patent Office.

(5) The authorization granted to an attorney-at-law, patent attorney or notary public to represent before the Patent Office authorizes him by law to assert all rights under this Federal Act before the Patent Office and – to the extent he is legally entitled to do so – before the appellate authorities, in particular to file and withdraw trademark applications, to waive trademark rights, to file and withdraw applications to be dealt with by the Cancellation department, as well as legal remedies, to enter into settlements, to accept service of documents of any kind, to accept official fees and the costs of proceedings and representation to be reimbursed by the opponent, and to appoint a deputy representative.

(6) The authorization pursuant to (5) can be limited to a specific property right and to the representation in a specific proceeding. However, it shall not be revoked by the death of the principal or by a change in his capacity to act.

(7) If a representative who is not an attorney-at-law, patent attorney or notary public should also be authorized to waive a trademark in whole or in part, he must be expressly authorized to do so.

Section 61a. In addition to section 83c JN, the place where

1. the representative has his domestic domicile or place of business, or
2. the authorized recipient is domiciled in Austria, or
3. in the absence of a representative with domestic domicile or place of business or an authorized recipient with domestic domicile, the place where the Patent Office has its registered office,

shall be deemed the place for matters relating to the trademark as the residence or place of business of a trademark owner who has neither domicile nor place of business in Austria.

VI. CHAPTER

Collective marks and certification marks

Section 62. (1) Associations with legal personality can register trademarks which are intended to identify the goods or services of their members and which are suitable for distinguishing these goods or services from those of other undertakings (collective marks).

(2) The legal persons under public law shall have the same status as the associations referred to in (1).

(3) The provisions of this Federal Act apply accordingly to collective trademarks, unless otherwise stipulated in (4) and in sections 63 to 67. In particular, the legal effects provided for in section 4 (2) and Section 31 of this Federal Act and in section 9 (3) of the Federal Act against Unfair Competition 1984, Federal Law Gazette No. 448, in favour of unregistered signs, shall also apply if a sign in the relevant public is regarded as an identification sign for the goods or services of the members of an association.

(4) Notwithstanding (1) and section 4 (1) No. 4, collective marks may consist exclusively of signs or indications which may serve in trade to designate the geographical origin of the goods or services. Such a trademark shall not entitle its owner or a member of the association who is independently authorized to take legal action in accordance with the

regulations to prohibit a third party from using such signs or indications in the course of trade, provided that such use is in accordance with honest practices in industrial and commercial matters; in particular, such a mark may not be invoked against a third party who is authorized to use a geographical designation.

Section 63. (1) The application of the collective mark must be accompanied by regulations which shall contain at least the following particulars:

1. the name and registered office of the association,
2. purpose and representation of the association,
3. the group of persons entitled to use the collective mark
4. the conditions of use, including sanctions in case of misuse of the collective mark such as, in particular, withdrawal of the right of use,
5. the rights and obligations of all involved in the event of an infringement of the collective mark.

(2) In the case of collective trademarks according to section 62 (4), the regulations must also provide that any person whose goods or services originate in the relevant geographical area and comply with the conditions for the use of the collective trademark contained in the trademark regulations, may become a member of the association provided that this person also fulfills all other requirements of the regulations.

(3) Any amendment of the regulations shall be submitted to the Patent Office. For the purposes of collective trademark protection, it shall take effect only from the date on which a reference to the change has been entered in the trademark register.

(4) Anyone is free to inspect the regulations filed with the Patent Office.

(5) Without prejudice to section 62 and section 63 (1) and (2), the application for a collective mark or the application for an amendment of the regulations in the trademark register shall be rejected if

1. the regulations are contrary to public policy or morality, or
2. there is a risk that the public will be misled about the character or the meaning of the trade mark, especially if the trade mark is liable to give the impression that it is something other than a collective mark.

Section 63a. (1) A certification mark is a mark which is designated as such at the time of application and which is capable of distinguishing the goods or services for which the proprietor of the mark warrants the material, the manner of manufacture of the goods

or of rendering of the services, the quality, accuracy or other characteristics, other than geographical origin, from those for which no such warranty exists.

(2) An application for a certification mark may be filed only by a person who does not perform a commercial activity involving the supply of goods or services for which there is a warranty.

(3) The application of the certification mark must be accompanied by trademark regulations which shall contain at least the following particulars:

1. the name and registered office of the legal entity,
2. a declaration by the legal entity to comply with the requirements of (2),
3. a representation of the certification mark,
4. the range of goods or services for which the certification mark is intended,
5. the characteristics of the goods or services to be guaranteed by the trademark,
6. the conditions for using the certification mark, including sanctions,
7. the persons entitled to use the certification mark,
8. the way in which the properties covered by the guarantee are to be examined and the use of the mark is to be monitored.

(4) Any amendment to the regulations must be submitted to the Patent Office. For the purposes of certification mark protection, it shall take effect only from the date on which a reference to the change has been entered in the trademark register.

(5) Anyone is free to inspect the regulations filed with the Patent Office.

(6) In addition, the provisions of this Federal Act apply accordingly to certification mark applications and certification marks, unless otherwise specified in this section. In particular, serious use of the certification mark by a person authorized to do so in accordance with the trade mark regulations shall be deemed to be use within the meaning of section 33a.

(7) Notwithstanding (2) to (3) and (6), first sentence, the application for a certification mark or the application for an amendment of the regulations in the trademark register shall be rejected if

1. the regulations are contrary to public policy or morality, or

2. there is a risk that the public will be misled about the character or the meaning of the trade mark, especially if the trade mark is liable to give the impression that it is something other than a certification mark.

Section 64. (1) In the case of registration of collective marks, the Patent Office shall enter in the register and in the confirmation to be issued to the party the information prescribed in section 17 (1) and (2a), if applicable also the entries under section 28a, with the following addition and amendment:

1. under the registration number the word "collective mark",
2. a reference to the regulations and their date.

(2) (1) shall apply mutatis mutandis to certification marks.

Section 65. (1) Collective trademarks may only be transferred to associations within the meaning of section 62 (1) or (2). The application for transfer must be accompanied by regulations in accordance with section 63.

(2) Certification marks may only be transferred to legal entities within the meaning of section 63a (2). The application for transfer must be accompanied by regulations in accordance with section 63a (3) and section 63a (7) applies accordingly to the application for transfer.

Section 66. (1) Without prejudice to the provisions otherwise applicable to the cancellation of trademarks (section 62 (3)), a collective trademark shall be cancelled,

1. if an association within the meaning of section 62 (1) or (2) ceases to exist as proprietor of the collective trademark,
2. if the association does not take appropriate measures to prevent use of the mark contrary to the conditions of use in accordance with the regulations,
3. if the collection mark has been used by authorized persons in such a way that there is a risk of misleading the public within the meaning of section 63 (5)(2).

(2) In all other respects, section 33 shall also apply mutatis mutandis to any regulations recorded in the register. However, the collective mark shall not be cancelled if the request for cancellation is based on the regulations and the association amends the regulations in such a way that the reason for cancellation no longer exists. In such proceedings, section 117 of the Patent Act 1970 shall apply mutatis mutandis.

(3) Serious use of the collective mark by a person entitled to do so in accordance with the regulations shall be deemed to be use within the meaning of section 33a.

Section 66a. (1) Without prejudice to the provisions otherwise applicable to the cancellation of trademarks (section 63a, (6)), a certification shall be cancelled upon request,

1. if the proprietor of the certification mark no longer fulfils the requirements of section 63a (2),
2. if the proprietor of the certification mark does not take appropriate measures to prevent use of the mark not in accordance with the regulations,
3. if the certification mark has been used by authorized persons in such a way that there is a risk of misleading the public within the meaning of section 63a, (7)(2).

(2) In all other respects, section 33 shall also apply mutatis mutandis to any regulations recorded in the register. However, the certification mark will not be cancelled if the cancellation request is based on the trademark regulations and the proprietor of the certification mark changes the regulations in such a way that the reason for cancellation no longer exists. In these proceedings, section 117 of the Patent Act 1970 shall apply mutatis mutandis.

Section 67. (1) Unless otherwise provided for in the regulations under section 63, a member authorized to use the collective mark may bring an action for infringement of the collective mark only with the consent of the association.

(2) The association may, on behalf of the members entitled to use the mark, claim compensation for unauthorized use of the collective mark for damage suffered by the members.

(3) (1) and (2) apply mutatis mutandis to certification marks.

VII. CHAPTER

Geographical indications and designations of origin according to Regulation (EU) No. 1151/2012 on quality regulations for agricultural products and food, OJ. No. L 343 of December 14, 2012, p. 1

Section 68. (1) Applications for the registration of a designation as a geographical indication or designation of origin in accordance with Regulation (EU) No. 1151/2012, for amendment of the specification or for cancellation of a registered designation shall be submitted to by the Patent Office.

(2) By ordinance of the President of the Patent Office the form and content of such requests may be specified in more detail and the place and manner of publications to be

made in the course of the implementation of Regulation (EU) No. 1151/2012 may be determined. In doing so, the greatest possible expediency and simplicity and, in the case of electronic publications, particular attention shall be paid to the recognizability of the date of publication and the procedural status, the necessary data security and the simple but permanent accessibility of the data during the existence of the Community protection.

(3) If the application does not comply with the prescribed requirements, the applicant shall be requested to remedy the deficiencies within a certain period that may be extended upon request. Applications that have not been improved shall be rejected by order.

(4) Unless otherwise provided in this section, the other provisions of this Federal Act shall apply *mutatis mutandis* to the procedures under this chapter.

Section 68a. (1) The Patent Office shall publish the proper request in electronic form as well as a reference to this publication in the Patent Gazette. A written opposition to this request may be lodged with the Patent Office within three months from the date of the electronic publication. The reasoned opposition together with all enclosures must be received by the Patent Office no later than the last day of the time-limit. Restitutio in integrum due to failure to observe the time limit for opposition or the time limit for appeal (7) shall not be granted.

(2) The admissible opposition shall be served on the applicant for filing a written statement within a reasonable period, which may be extended for reasonable reasons. If no timely written statement is made, this shall be deemed to be a withdrawal of the request.

(3) After a statement has been made in due time, the competent officer shall make the appropriate arrangements for any necessary correspondence, for obtaining the evidence offered by the parties as well as for taking evidence. At the request of one of the parties, or if he considers it necessary in an individual case to decide on the opposition, he shall *ex officio* schedule a hearing, which he shall open and conduct. He shall ascertain the identity of the persons appearing, check their status as parties and any power of representation and to conduct the hearing without allowing digressions or prolixities in such a way that the parties' right to be heard is safeguarded. As chairman of the hearing, he shall determine the order in which the parties are to be heard, the evidence is to be taken and the results of evidence or investigations taken earlier are to be presented and discussed. He decides on motions for evidence and has to reject obviously irrelevant motions. Furthermore, he shall have the power to interrupt and adjourn the hearing as required and to verbally determine the time for the continuation

of the hearing. Minutes shall be taken of the hearing. The examiner shall decide on the basis of a free assessment of the available facts and evidence.

(4) The parties shall bear the costs of the opposition proceedings themselves. The Fee Claims Act - GebAG, shall apply.

(5) If the request complies with the requirements of Regulation (EU) No. 1151/2012 and the national and Community provisions adopted for its application, the Patent Office shall establish this by decision, if necessary with simultaneous rejection of any opposition raised, and shall publish this positive decision in electronic form. Otherwise, unless (8) applies, the request shall be rejected by decision.

(6) In the positive decision, a transitional period appropriate to the circumstances of the individual case may be set under the conditions of Art. 15 (4) of Regulation (EU) No. 1151/2012.

(7) Any natural or legal person with a legitimate interest and domicile or place of business in Austria may appeal against the decision pursuant to (5) within two months of the electronic publication of the decision.

(8) If, in the course of the examination of the grounds for opposition raised, it is found that the information published in the Single Document pursuant to (1) needs to be amended not only slightly, the procedure specified above shall be repeated.

Section 68b. (1) Oppositions under Art. 51 of Regulation (EU) No. 1151/2012 shall be filed with the Patent Office within two months from the date of the relevant publication in the Official Journal of the European Union in accordance with Art. 51 (1), Subparagraph 2 of this Regulation, and shall be substantiated within a subsequent period of two months at the latest. There shall be no restitutio in integrum for failure to observe the time limit for opposition or the time limit for filing the statement of grounds.

(2) Late Oppositions or oppositions not filed in accordance with the prescribed form shall be deemed not to have been filed.

(3) The competent authority for proceedings in accordance with Article 51 (3) of Regulation (EU) No. 1151/2012 shall be the Patent Office.

Section 68c. (1) To requests to amend the specification pursuant to Art. 53 (2) first sentence of Regulation (EU) No. 1151/2012, the procedure according to section 68 (3) and (4) as well as section 68a shall apply mutatis mutandis.

(2) Applications for amendments to the product specification may only be submitted by the applicant association named in the specification or its legal successor, provided it

fulfils the requirements pursuant to section 15 of the EU Quality Schemes Implementation Act - EU-QuaDG, Federal Law Gazette I No. 130/2015. Otherwise, applications may also be filed by other associations within the meaning of Article 3 (2) of Regulation (EU) No. 1151/2012.

(3) To requests for cancellation of a registered name under Art. 54 (1) of Regulation (EU) No. 1151/2012, the procedure pursuant to section 68 (3) and (4) and section 68a (1) to (5), (7) and (8) shall apply mutatis mutandis.

Section 68d. In proceedings under this section, the Patent Office may obtain opinions in particular from federal ministries, regional and local authorities and business associations, organizations and business institutes.

Section 68e. If a legitimate interest is substantiated, the Patent Office shall grant inspection of the files in proceedings pursuant to section 68 to 68c and permit the making of copies. Section 50 (2) to (6) shall apply accordingly.

Section 68f. (1) Anyone who, in the course of trade, carries out acts that infringe Article 12 (1) or Article 13 of Regulation (EU) No. 1151/2012 may be sued by those entitled to use the protected geographical indication or designation of origin or by associations for the promotion of economic interests of entrepreneurs, insofar as these associations represent interests affected by the act, by the Federal Chamber of Labour, the Austrian Federal Chamber of Commerce, the Presidential Conference of the Austrian Chambers of Agriculture or the Austrian Trade Union Federation for injunction relief and, to the extent that it has the right to dispose of the matter, also for removal of the situation which contravenes the said provisions. Section 52 (2) to (6) shall apply mutatis mutandis.

(2) If one of the acts referred to in (1) is culpably committed, the person entitled to use the protected geographical indication or designation of origin shall be entitled to claims in money by analogous application of section 53 (2), (4) and (5).

(3) The owner of an enterprise may be sued for injunctive relief under (1) if one of the acts referred to in (1) is committed or threatened to be committed in the operation of his enterprise by an employee or agent. He shall be obliged to remedy the situation under (1) if he is the owner of the objects or means of interference.

(4) If an employee or agent has committed one of the acts referred to in (1) in the operation of an enterprise, the owner of the enterprise may, without prejudice to any liability of such persons, be held liable for damages by analogous application of section 53 (2) and (4) and for an accounting if he was aware or ought to have been aware of the infringement.

Section 68g. (1) In relation to claims for injunction, removal, damages and surrender of profits under this Act, interim injunctions may be granted both to secure the claim itself and to secure evidence. Section 56 (2) to (4) shall apply mutatis mutandis.

(2) Apart from that, section 55a and section 119 (2) (exclusion of the public), section 149 (publication of the judgment), section 151 (accounting) and section 154 (Limitation) of the Patent Act 1970 shall apply mutatis mutandis to the civil infringement proceedings under this section.

Section 68h. (1) Anyone who, in the course of trade and without being justified by the existence of an derogation recognized under Community law for the use of a protected geographical indication or designation of origin, uses such indication or designation

1. to identify products other than those mentioned in the specification to which it belongs but which are comparable to them or

2. unlawfully appropriates, imitates or alludes to the protected name, even if the true origin of the product is indicated or if the protected name is used in translation or combined with expressions such as "type", "type", "process", "style", "imitation" or the like or

3. in such a way as to take advantage of the reputation of this protected designation or

4. in any other misleading manner in connection with the distribution of goods or services or to identify his business,

shall be punished by the court with a fine not exceeding 360 daily rates. Anyone who commits the offence on a commercial basis shall be liable to a custodial sentence not exceeding two years.

(2) Anyone who sells goods, designated in accordance with (1), puts them into circulation or imports, exports or possesses them for the aforementioned purposes shall be punished in the same manner.

(3) The owner or head of an enterprise shall be punished if he fails to prevent an infringement under (1) or (2) committed in the operation of the enterprise by an employee or agent.

(4) Where the proprietor of the undertaking under (3) is a company, cooperative, association or other legal entity other than a physical person, (3) shall apply to the organs if they are guilty of such failure.

(5) The criminal provisions referred to in (1) and (2) shall not apply to employees or agents who have performed the act on behalf of their employer or client, provided that

they could not reasonably be expected to refuse to perform the act due to their economic dependence.

Section 68i. (1) The offenses referred to in section 68h shall be prosecuted only at the request of a person entitled to use the protected geographical indication or designation of origin.

(2) For the assertion of claims under section 68f (2), the provisions of the 17th main part of the Criminal Procedure Code 1975 (StPO), Federal Law Gazette No. 631/1975 shall. Both parties are entitled to appeal against the decision on the claim for compensation.

(3) The provisions on disposal pursuant to section 68f (1) of this Federal Act as well as section 119 (2) (exclusion of the public) and section 149 (publication of the judgment) of the Patent Act 1970, Federal Law Gazette No. 259, shall apply *mutatis mutandis* in criminal proceedings.

Section 68j. (1) The Commercial Court of Vienna shall have exclusive jurisdiction at first instance for actions under this section, irrespective of the amount in dispute. In such cases, the Commercial Court of Vienna shall also have exclusive jurisdiction for interim injunctions.

(2) The Regional Court for Criminal Matters Vienna shall have jurisdiction in criminal matters under this section.

VIII. CHAPTER

Union trademarks

(Note: Section 69 repealed by Art. 1 Z 12, Federal Law Gazette I No. 124/2017)

Section 69a. (1) Where the seniority of a trademark registered in the trademark register of the Patent Office or of a trademark protected in Austria due to international registration has been claimed for an Union trademark applied for or registered pursuant to Art. 39 or 40 of Regulation (EU) 2017/1001 and where the mark, which established the seniority, has been deleted due to surrender by the proprietor or due to failure to renew in due time, the invalidity of the mark may be subsequently established on the basis of the cancellation provisions of sections 30 to 34 and 66 and 66a, provided that the claim for invalidity or revocation could have been enforced at the time of the surrender or cancellation.

(2) Requests under (1) shall be directed against the registered proprietor of the Union trademark.

Section 69b. In respect of a request for conversion of an Union trademark applied for or registered into a national application transmitted by the European Union Intellectual Property Office, the applicant shall, upon request by the Patent Office and within a period of two months which may be extended on request

1. pay the fees payable for a national application,
2. submit the required representations of the trademark and, if applicable, the description,
3. submit a German translation of the request for conversion and the documents annexed thereto, if the request for conversion or the documents annexed thereto have not already been submitted in German, and
4. unless he is represented by an authorized representative in accordance with section 61, provide an address in the EEA or in the Swiss Confederation.

Otherwise, the application resulting from the request for conversion shall be rejected by decision.

Section 69c. (1) The request shall be treated as a national trademark application and shall be examined for legality (section 20), except in the case provided for in (2).

(2) If the request for conversion concerns a trademark which has already been registered as an Union trade mark, the trademark shall not be examined for legality (section 20) and there shall be no possibility of opposition after registration (section 29a).

Section 69d. (1) The EU Trademark Court of First Instance within the meaning of Article 123 (1) of Regulation (EU) 2017/1001 shall be the Commercial Court of Vienna, regardless of the amount in dispute. In cases where the Union Trademark Court has jurisdiction to hear actions, it shall also have exclusive jurisdiction to grant interim injunctions.

(2) The Regional Court for Criminal Matters Vienna shall have jurisdiction in criminal matters relating to Union trademarks.

Section 69e. The Patent Office shall be competent to grant the enforcement order under Art. 110 of Regulation (EU) 2017/1001.

IX. CHAPTER

Trademarks under the Madrid Trademark Agreement and the Protocol relating to that Agreement

Section 70. (1) A request for conversion of an international registration shall be designated as such and shall contain the number of the international registration. In addition, the following shall be submitted within a period of two months, which may be extended upon request

1. a certificate from the International Bureau of the World Intellectual Property Organization, in the original or as a certified copy, showing the trademark and the goods or services to which the protection of the international registration extended to the territory the Republic of Austria up to the time of deletion in the international register, and
2. a German translation of all documents, unless they are in German.

If the application does not comply with the stated requirements, it shall be rejected by decision.

(2) The application is to be treated like a national trademark application and, with the exception of the case regulated in (3), is to be checked for legality (Section 20).

(3) If the request concerns an international registration for which at the time of deletion a declaration of grant of protection under Rule 18th (1) or (2) of the Common Regulations under the Madrid Agreement on the International Registration of Trademarks and the Protocol relating to that Agreement, Federal Law Gazette III No. 109/1997, has been transmitted or the time limit for refusing protection under Article 5 (2) of the Protocol has already expired without being used, the trademark shall not be examined for legality (section 20) and there shall be no possibility of opposition after registration has been effected (section 29a).

Section 70a. (1) A request under Rule 27bis of the Common Regulations under the Madrid Agreement on the International Registration of Trademarks and the Protocol relating to that Agreement, Federal Law Gazette III No. 21/2017 for the forwarding of a request for the division of an international registration with protection in Austria shall be designated as such and shall contain the number of the international registration as well as a list of the goods or services to be divided according to the classes of the international registration concerned. In all other respects, section 23a shall apply mutatis mutandis, subject to (2).

(2) Before the opposition period has expired (section 29a (2)), a request for forwarding a request for division of an international registration shall not be admissible. If the

application does not comply with the requirements mentioned above, it shall be rejected by decision.

X. CHAPTER

Prohibition of angle writing

Section 71. (1) Anyone who, in the field of trademark protection, without being authorized to represent parties in such matters on a professional basis in Austria, commercially

1. prepares written submissions or documents for proceedings before domestic or foreign authorities,
2. provides information,
3. represents parties before domestic authorities or
4. offers himself for one of the activities mentioned under item 1 to 3,

shall be guilty of angle writing and shall be punished by the district administrative authority with a fine of up to € 4,360.

(2) The representation of a legal person by employees of another legal person economically connected with it shall not be deemed to be unauthorized legal representation. With the exception of natural persons, other legal entities shall be treated in the same way as legal entities.

(3) The special provisions on the treatment of unauthorized legal representation in the ordinary courts remain unaffected.

(Note: XI. CHAPTER repealed by Federal Law Gazette I No. 149/2004)

XII. CHAPTER

Transitional provisions

Section 73. The provision of section 4 (1) no 9 shall not be applied to trade marks applied for in good faith before 1 January 1996, neither in the examination as to legality (section 20) nor in the cancellation proceedings under section 33.

Section 74: The five-year period referred to in Section 32 (2) shall begin to run with respect to claims existing at the time of the entry into force of the Federal Law Gazette I

No. 111/1999 against the proprietor of a trade mark registered before the entry into force of the Federal Law Gazette I No. 111/1999 upon the entry into force of this Federal Law.

Section 75. (1) To requests for the cancellation of a trademark in accordance with section 33 in conjunction with sections 1, 3, 4, 7, 60 or 66, filed before the entry into force of the Federal Law, Federal Law Gazette I No. 111/1999, these provisions shall continue to apply in the version applicable before the entry into force of the Federal Act, Federal Law Gazette I No. 111/1999.

(2) If a request for cancellation of a previously registered trade mark is filed under section 33 after the entry into force of the federal law referred to in (1), such application may no longer be based on section 33 in conjunction with sections 1, 3, 4, 7, 60 or 66 in the version applicable before the entry into force of the federal law referred to in (1), but only on section 33 in conjunction with sections 4, 7 or 66 in the version applicable after the entry into force of the federal law referred to in (1).

Section 76. In respect of applications under section 33a, section 33a in the version applicable before the entry into force of the Federal Law Gazette I No. 111/1999 shall continue to apply for the assessment of the use of a trade mark made before 1 January 1994.

Section 77. (1) The provisions of the III. Chapter in the version valid before the entry into force of the Federal Law, Federal Law Gazette I No. 111/1999, shall continue to apply to actions brought before the entry into force of the Federal Act, Federal Law Gazette I No. 111/1999.

(2) The five-year period referred to in section 58 shall begin with regard to claims existing at the time of the entry into force of the Federal Law Gazette I No. 111/1999 against the proprietor of a trademark registered before entry into force of the Federal Law Gazette I No. 111/1999 or against the user of a sign, the use of which commenced before that date, with the entry into force of this federal law. Any statute of limitations that may have already occurred shall remain unaffected by this provision.

Section 77a. (1) Section 35 (4) in the version applicable before the entry into force of the aforementioned Federal Act shall continue to apply to decisions of the authorised employees taken before the entry into force of the Federal Law, Federal Law Gazette I No. 149/2004.

(2) For applications filed before the entry into force of the Federal Law Gazette I No. 149/2004 and for requests to be treated as applications and filed before the entry into force of the said Federal Law, section 18 (1) and section 63 (2) shall continue to apply in the version applicable before the entry into force of the said federal law. Section 18 (2)

and (3) and section 63 (2) in the version applicable before the entry into force of the said federal law shall apply to protection fees and contributions to printing costs for which payment was requested before the entry into force of the said Federal Act.

(3) For requests filed before the entry into force of the Federal Law, Federal Law Gazette I No. 149/2004, section 18 (4), section 22 (3) and (4), section 24 (3), and section 28 (4), section 40 (1) and (2) first sentence, section 68 (2) and (5) and section 69b (2) No. 1 shall continue to apply in the version applicable before the entry into force of the said federal law. To requests for reinstatement filed before the entry into force of the said federal law, section 132 (1) and (3) of the Patent Act 1970 and section 42 (1) last half-sentence shall continue to apply in the version applicable before the aforementioned federal law came into force.

(4) For trademarks whose term of protection ends before the entry into force of the Federal Law, Federal Law Gazette I No. 149/2004, sections 19 (2) and (3) and section 63 (2) shall continue to apply in the version applicable before the entry into force of the said federal law. This shall also apply to trademarks whose term of protection ends after the entry into force of the said federal law, but for which the renewal fee has already been duly paid before the entry into force of the said federal law.

Section 77b. (1) Oppositions may only be filed against trademarks whose publication (section 29a (1) or (2)) did not take place before July 1, 2010.

(2) Section 36 in the version applicable until December 31, 2009 shall continue to apply to appeals pending before the appeal department until January 1, 2010.

Section 77c. (1) Section 176b of the Patent Act 1970 shall apply.

(2) The end of an opposition period under section 68a (1) running at the time of the entry into force of the Federal Law, Federal Law Gazette I No. 126/2013 shall be determined in accordance with section 68a (1) in the version applicable before the entry into force of the said federal law.

(3) Sections 56a, 60a (2) and section 68j in the version of the Federal Act, Federal Law Gazette I No. 126/2013 shall apply to proceedings in which the action/lawsuit or private prosecution was brought after December 31, 2013.

(4) Section 69c (2) and section 70 (3) in the version of the Federal Law, Federal Law Gazette I No. 126/2013 shall apply exclusively to national trademarks published after the entry into force of this federal law - insofar as they concern the exclusion of converted Union trademarks and converted international registrations from opposition.

Section 77d. (1) For trademarks registered before the entry into force of section 19 in the version of Federal Law Gazette I No. 124/2017, section 19 in the version applicable

before that date shall continue to apply for the calculation of the next due date of the renewal fee, subject to (2).

(2) The amount of the renewal fee to be paid in accordance with (1) shall be reduced by the percentage specified below if the subsequent period until the next due date under section 19 in the version of Federal Law Gazette I No. 124/2017 is less than the following:

1. if less than 9 years, the renewal fee is reduced by 10%,
2. if less than 8 years, the renewal fee is reduced by 20%,
3. if less than 7 years, the renewal fee is reduced by 30%,
4. if less than 6 years, the renewal fee is reduced by 40%,
5. if less than 5 years, the renewal fee is reduced by 50%,
6. if less than 4 years, the renewal fee is reduced by 60%,
7. if less than 3 years, the renewal fee is reduced by 70%,
8. if less than 2 years, the renewal fee is reduced by 80%,
9. if less than 1 year, the renewal fee is reduced by 90%.

Section 77e. (1) Section 23 (2) in the version valid before the entry into force of Federal Law, Federal Law Gazette I No. 124/2017, shall continue to apply to applications according to section 23 (2) submitted before the entry into force of Federal Law, Federal Law Gazette I No. 124/2017.

(2) Section 66 in the version valid before the entry into force of Federal Law, Federal Law Gazette I No. 124/2017, shall continue to apply to requests for cancellation of trademarks in accordance with section 66 submitted before the entry into force of Federal Law, Federal Law Gazette I No. 124/2017.

(3) If a request for cancellation of a previously registered trademark according to section 66 is submitted after the entry into force of Federal Law Gazette I No. 124/2017, this application may no longer be based on section 66 in the version applicable before the entry into force of the said federal law, but only based on section 66 in the version applicable after the entry into force of this federal law.

Section 77f. (1) Requests for cancellation of a trade mark filed before the entry into force of Federal Law Gazette I No. 91/2018 under sections 30 to 32 and 33 in conjunction with sections 1 or 4 and under sections 33a to 34 shall continue to be governed by these provisions in the version applicable before the entry into force of Federal Law Gazette I No. 91/2018. Sections 34a and 39 as amended by Federal Law Gazette I No. 91/2018 shall not apply to requests for cancellation of a trademark filed before the entry into

force of Federal Law Gazette I No. 91/2018, instead, section 39 shall continue to apply in the version applicable before the entry into force of Federal Law Gazette I No. 91/2018.

(2) If a request for the cancellation of a previously registered trademark according to section 33 is submitted after the entry into force of the federal law referred to in (1), such request may only be based on section 33 in conjunction with sections 1 or 4 in the version applicable after the entry into force of the federal law referred to in (1).

(3) In the case of trademark registrations published before July 1, 2010 within the meaning of Section 77b (1), the beginning of the period under section 33a (1a) and (1b) shall be three months after the publication of the trademark registration, notwithstanding the fact that no opposition was possible.

(4) The provisions of Chapter III. in the version applicable before the entry into force of Federal Law, Federal Law Gazette I No. 91/2018 shall continue to apply to actions and requests filed before the entry into force of Federal Law, Federal Law Gazette I No. 91/2018.

XIII. CHAPTER

Final provisions

Section 78. The personal terms used in this Federal Act refer to women and men in the same way.

Section 79. Where reference is made in this Act to provisions of other federal laws, these shall be applied in their currently applicable version, unless otherwise specified.

Section 79a. The terms “Community trademark” and “Community trademark court” contained in this Federal Act shall be replaced by the terms “Union Trademark” and “Union Trademark Court”, the term “Office for Harmonization in the Internal Market (trademarks, designs and models)” by the term “Office of the European Union for Intellectual Property” in the respective grammatically correct form.

Section 80. The following are entrusted with the enforcement of this Federal Act:

1. with regard to sections 10, 10a, 10b, 12, 14, 23, 37, 38, 40 to 43 and 57, the Federal Minister for Transport, Innovation and Technology and the Federal Minister for Justice,
2. with regard to section 6 (2), the Federal Minister for Transport, Innovation and Technology in agreement with the Federal Minister for Foreign Affairs,
3. with regard to Sections 13, 51 to 56a, 58 to 60b, 67, 68f to 68j and 69d, the Federal Minister for Constitution, Reforms, Deregulation and Justice,

4. with regard to all other provisions of the Federal Minister for Transport, Innovation and Technology.

Section 81. (1) Section 18 (1), (2) and (4), section 40 (1), sections 42, 61, 69 (1), section 70 and the heading of Chapter IX. in the version of the Federal Law Gazette No. 418/1992 enter into force at the beginning of the fourth month following the announcement of the Federal Law Gazette No. 418/1992.

(2) Section 4 (1) (2), sections 9, 10a, 16 (2), section 17 (4), sections 18 (*Note: correct: section 18 (1)*), 22 (3), sections 26 (*Note: correct: section 26 (1)*), 28 (2), sections 30, 30a, 31 (3), sections 32, 33, 33a (3) and (6), sections 33b, 33c, 37, 42 (*note: correct: section 42 (1)*), 60 (1), section 62 (3), sections 70 (*note: correct: section 70 (1)*), 71 and 72 (1) in the version of the Federal Law, Federal Law Gazette No. 773/1992 shall enter into force simultaneously with the Agreement on the European Economic Area.

(3) Section 2 (3), section 4 (1) item 9, Section 17 (2) item 1, section 24 (1) and Chapter VIII, with the exception of section 69d in the version of the Federal Law, Federal Law Gazette I No. 111/1999 shall come into effect retrospectively on January 1, 1996.

(4) Section 17 (2), item 2, Section 18 (4) and Chapter IX. in the version of the Federal Law Gazette I No. 111/1999 shall enter into force with the entry into force of the Protocol relating to the Madrid Agreement concerning the International Registration of Marks for the Republic of Austria, Federal Law Gazette III No. 32/1999.

(5) Section 6 (3), section 18 (1), (2) and (4), section 19 (2), section 28 (4), section 40 (1), sections 60c, 68 (2), section 71 (1) and section 72 (1) in the version of the Federal Law, Federal Law Gazette I No. 143/2001, shall enter into force on January 1, 2002.

(6) Section 19, section 20 (2), section 24 (3), section 27 (3), section 28 (4) and (5), section 35 (4), section 38 (2), section 39 (1), section 41 (4), section 42 (1) and (2), section 54 (2) and (3), sections 55a, 63, 65, the heading of Chapter VII, sections 68, 68c, 68f (4), and section 68g (2), section 69b (2) item 1, sections 77a and 80 Item 4 in the version of the Federal Law, Federal Law Gazette I No. 149/2004, shall enter into force at the beginning of the seventh month following the announcement of the aforementioned federal law. At the same time, sections 18, 22 (3) and (4), section 28 (4), sections 40, Chapter XI. and section 80 item 4 in the previously applicable version shall no longer apply.

(7) Section 39 (2) in the version of the Federal Law, Federal Law Gazette I No. 149/2004, shall enter into force at the beginning of the day following the publication of the aforementioned federal law.

(8) Section 60 (4) and Section 68h (4) in the version of the Federal Law, Federal Law Gazette No. 151/2005, shall enter into force on January 1, 2006.

Section 81a. (1) Section 24 (4) in the version of the Federal Law, Federal Law Gazette I No. 131/2005 shall enter into force on January 1, 2006.

(2) Sections 55a, 56, 59 (2), section 68g (1), sections 69b and 83 in the version of the Federal Law, Federal Law Gazette I No. 96/2006, shall enter into effect at the beginning of the day following the announcement of the aforementioned federal law.

(3) Section 61 (4), the heading of Chapter VII, section 68 (1) and (2), sections 68a to 68d, section 68f (1) and section 80 in the version of the Federal Law, Federal Law Gazette I No. 81/2007 shall enter into force at the beginning of the day following the announcement of the aforementioned federal law.

(4) Sections 22, 36 and 77b (2) in the version of the Federal Law, Federal Law Gazette I No. 126/2009, shall enter into force on January 1, 2010. At the same time, section 20 (2) last sentence shall cease to apply.

(5) Section 29 (1), sections 29a to 29c, 41 (2) and (3), section 42 (1) and section 77b (1) in the version of the Federal Law, Federal Law Gazette I No. 126/2009 shall enter into force on July 1, 2010.

(6) Section 2 (3), section 17 (2) item 1, section 20 (3), section 24 (4), section 29a (4), section 29b (1), section 35 (1), (5) and (6), sections 36 to 43 including headings, sections 56a, 60a (2) and (3), section 61 (1), (4) and (5), the heading of Chapter VII, sections 68 to 68c, section 68f (1), section 68i (2), section 68j, sections 69, 69a (1), section 69b item 4, section 69c (2), section 69d (1), section 70 (3), sections 77c and 80 item 1 and 3 in the version of the Patent and Trademark Law Amendment 2014, Federal Law Gazette I No. 126/2013, shall enter into force on January 1, 2014.

(7) Sections 68d and 68c in the version of the Federal Law, Federal Law Gazette I No. 130/2015 shall enter into force on January 1, 2016.

Section 81b. (1) Section 21 (1) and section 22 in the version of the Federal Law, Federal Law Gazette I No. 71/2016 shall enter into force at the beginning of the tenth month following the announcement of the aforementioned federal law.

(2) Section 28 in the version of the Federal Law, Federal Law Gazette I No. 124/2017, shall enter into force at the beginning of the day following the announcement of the aforementioned Federal Law.

(3) Section 17 (2a) and (4), sections 21, 23, 23a, the heading of Chapter VI., sections 63 to 67, 77e, 79a and 83 in the version of the Federal Law, Federal Law Gazette I No. 124/2017, shall enter into force at the beginning of the month following the publication of the aforementioned federal law. At the same time, sections 21a and 69 in the previous version shall cease to apply.

(4) Sections 19 and 77d in the version of the Federal Law, Federal Law Gazette I No. 124/2017, shall enter into force at the beginning of the thirteenth month following the publication of the aforementioned federal law.

(5) Section 19a in the version of the Federal Law, Federal Law Gazette I No. 124/2017, shall enter into force at the beginning of the seventh month following the announcement of the aforementioned federal law.

(6) The heading of the Chapter IX. and section 70a in the version of the Federal Law, Federal Law Gazette I No. 124/2017, shall enter into force on February 1, 2019.

(7) Section 50 (6) and section 68e in the version of the 2nd Data Protection Adjustment Act, Federal Law Gazette I No. 37/2018, shall enter into force on May 25, 2018.

Section 81c. Sections 1, 2 (3), section 4 (1), item 1, lit. c, section 4 (1) items 6, 9 to 12, section 10 (2) to (3), sections 10a, 13,14 (3) to (5), section 16 (2) to (4), section 17 (1) item 1, section 17 (2) item 1, section 17 (3) and (4), section 28 (1), sections 28a, 29a (1) and (1a), section 29b (3) to (3a) and (6), section 29c (3), sections 30, 30a, 32a to 32c, 33 (2), sections 33a, 33b, 33c, 34, 34a, 39 including the heading, section 51 (2), section 56 (1), sections 56b, 58, 61 (1) first sentence, section 61 (4), section 64 (1), sections 69a, 69b, 69d (1) 1 first sentence, sections 69e, 77f, 80 item 3 and 4, as well as section 83 (3) in the version of the Federal Law Gazette I No. 91/2018 shall enter into force on January 14, 2019. At the same time, section 31 (3), section 32 (3), section 33a (6), section 33b (2), section 33c (2), section 34 (2) and section 80 item 4 in the previously applicable version shall cease to apply.

Section 82. Ordinances on the basis of this federal law in its current version may already be issued from the day following the announcement of the federal law to be implemented; however, they may not enter into force before the statutory provisions to be implemented.

Section 83. (1) This Federal Act adapts the Trademark Protection Act to Directive 2004/48/EC of the European Parliament and of the Council on the enforcement of intellectual property rights, OJ No. L 157 of 30.4.2004, page 45.

(2) The Federal Act, Federal Law Gazette I No. 124/2017 adapts the Trademark Protection Act in section 17 (2a), sections 19, 19a, 23a, 63 to 67, 77d and 81b (3) to (6) to Directive 2015/2436/EU of the European Parliament and of the Council to approximate the laws of the Member States relating to trademarks, OJ No. L 336, 23.12. 2015, page 1.

(3) The Federal Act referred to in (2) and the Federal Law, Federal Law Gazette I No. 91/2018 adapt the Trademark Protection Act to Directive 2015/2436/EU to approximate

the laws of the Member States relating to trademarks, OJ No. L 336 of 23.12.2015 page 1.

Article II

(Note: from Federal Law Gazette No. 350/1977, on sections 11, 33a, 34, 55, Federal Law Gazette No. 260/1970)

(1) This Federal Act comes into force at the beginning of the month following its publication, unless otherwise stated in (2).

(2) Trademarks that are registered at the time this federal law comes into force can be contested for non-use at the earliest five years after the entry into force.

(3) From the entry into force, the fact that a trademark has not been transferred, although it has been rewritten in the trademark register, can no longer be asserted with reference to section 11 (1) of the Trademark Protection Act 1970, Federal Law Gazette No. 260.

Article III

(Note: from Federal Law Gazette No. 350/1977, on sections 18 (3), (22), (28) and (63), Federal Law Gazette No. 260/1970)

The fee provisions of this federal law apply to all payments that are made after the entry into force or are intended for applications that are submitted after the entry into force.

Article IV

(Note: from Federal Law Gazette No. 653/1987, on sections 18 (1),(2) and (4) and sections 40 (1) and section 70 (1), Federal Law Gazette No. 260/1970)

(1) The provisions made in this Federal Act on the extent of the fees apply in accordance with (2) and (3) to all payments that are made after the entry into force of this Federal Act or before the entry into force of this Federal Act, but are intended for applications which will be handed over after this federal law has come into force.

(2) The first annual fee and the annual fee for additional patents are to be paid in the amount specified in the respective resolutions pursuant to section 101 (1) of the Patent Act 1970.

(3) Deferred fees are to be paid to the extent that was in effect at the time the deferral was granted.