

INDUSTRIAL PROPERTY OFFICE - CZECH REPUBLIC

Law on Trademarks

(No. 137 of June 21, 1995)

as amended by the Law Amending some Laws on the Protection of the Industrial Property
(No. 116 of April 6, 2000)

Part I

General Provisions

§ 1

A trademark is a sign consisting of any words, letters, numerals, drawings or the shape of goods or their packaging, or a combination thereof, intended to distinguish the goods or services of various undertakings and registered in the Trademark Register (hereinafter referred to as "the Register") kept by the Industrial Property Office (hereinafter referred to as "the Office").

§ 2

(1) The following shall be excluded from registration:

- a) a sign which is not capable of being represented graphically,
- b) a sign which is devoid of the ability to distinguish goods or services,
- c) a sign that consists exclusively of signs or indications, serving in trade to designate the kind, quality, quantity, intended purpose, value or other characteristics of the goods or services, of indications of the geographical origin or the time of production of the goods or rendering of the service,**
- d) a sign which consists exclusively of signs or indications that have become customary in the current language or in the *bona fide* and established practices of the trade,
- e) a sign which consists exclusively of:
 - the shape which results from the nature of the goods themselves or
 - the shape of goods which is necessary to obtain a technical result or
 - the shape which gives substantial value to the goods,
- f) a sign which is contrary to public order or morality,
- g) a sign which is of such a nature as to deceive the public, for instance as to the nature, quality or geographical origin of the goods or services,
- h) a sign the use of which would be contrary to the obligations of the Czech Republic resulting from the international treaties,
- i) a denomination containing the sign of a high symbolic value, namely religious symbols,**
- j) a denomination applied for wines or spirits, containing the geographical indication, with respect to the wines and spirits not having that geographical origin.**

(2) A sign as referred to in section (1) (b) to (d) may be registered, if the applicant proves that the sign has become distinctive in relation to his goods or services in consequence of the use which has been made of it in business, the use having started before the filing of the trademark application (hereinafter referred to as "the application").

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§ 3

- (1) The Office shall not register a sign identical with a trademark, which is applied for or registered by another owner for identical or similar goods or services with earlier priority right, or including elements of a sign which is applied for or registered which could lead to a confusion. **The sign can be registered, if the trademark owner or applicant with the earlier right of priority grant a written consent to the registration of the sign in the Trademark Register.**
- (2) The Office shall not register a sign identical with a trademark, which has lapsed according to § 24, section (1) (a), where the application was filed before the expiry of a period of two years as from the date of lapse of the trademark, unless the registration of the sign was applied for by the person in whose name the trademark was registered on the day of its lapse or by his successor in title.
- (3) The Office shall not register upon opposition, duly and reasonably filed according to §9 a sign infringing legally protected earlier rights of the third persons.

Part II

Registration Procedure

Trademark application

§ 4

- (1) Registration of a sign in the Register (hereinafter referred to as "registration of a trademark") shall be requested by filing an application with the Office.
- (2) The application may be filed by any legal or natural person (hereinafter referred to as "applicant") in relation to goods and services, covered by his economic activity on the date of filing the application.

§ 5

- (1) The application shall contain:
 - a) the request for the registration of a trademark,
 - b) forename and surname or the tradename of the applicant, address of the residence and place of business, when the applicant is natural person, or headquarters, when the applicant is a legal person.
 - c) a wording or a representation of the trademark and, in case of a three-dimensional mark, its surface representation,
 - d) a list of the goods or services in respect of which the mark is to be registered.
- (2) The list of goods and services referred to in section 1(d) shall mention the classification in conformity with the international treaty. ¹

§ 6

- (1) Filing of an application that complies with the requirements referred to in § 5(1) shall confer on the applicant the right of priority vis-à-vis every person filing later the application for the identical or confusingly similar trademark in respect of the identical or similar goods and services.
- (2) A right of priority under **the Paris Convention on the Protection of Industrial Property (thereinafter "Paris Convention)** shall be claimed by the applicant in the application already and a proof of the right shall be submitted within a period of three months as from the date of filing of the application, otherwise the Office shall not take it into account. **The right of priority can be claimed from the trademark application, in which the protection is demanded in the member state of the Paris Convention²⁾ or in member state of the World Trade Organisation. ^{2a)} If the state, where the first filing of the trademark application is made, is neither**

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party to the Paris Convention²), nor member of the World Trade Organisation,^{2a}) the right of priority can be only granted on condition of the reciprocity.

§ 7

- (1) On the request of the applicant the Office shall allow an alteration of the sign applied for concerning the name of the applicant or his forename and surname or the trade name or the headquarters or residence or place of business, the amendment of which has occurred after filing of the application, provided that such alteration puts the particulars included therein in conformity with the reality, without affecting the general nature of the sign. No other alterations of the particulars referred to in § 5 subsection 1(c) shall be admitted after filing the application.
- (2) After filing the application, the applicant may restrict the list of the goods or services, in respect of which the trademark is to be registered; the restriction may not be withdrawn.
- (3) Until the registration of the trademark, the applicant shall be entitled to divide the application filed in respect of several goods or services. The priority right shall be preserved for divided applications provided they only contain the goods or services listed in the application as filed.
- (4) The applicant may assign in writing his right to the application relating to all the goods or services, or to a part thereof only, to another entrepreneur who is qualified to be an owner of the trademark according to the Law.

§ 8

Examination and publication of the application

- (1) The Office shall examine the application.
- (2) Where an application for registration of a trademark does not comply with the necessary requirements, the Office shall invite the applicant to remedy the deficiencies within the set time limit. Where the application does not meet the conditions of § 5, subsection (1) the Office shall set a time limit of two months to remedy the deficiencies; in that case the date of filing the documents, in which the deficiencies were removed is considered as the filing date.
- (3) When the sign applied for does not meet the conditions for registration provided by the Law, the Office shall refuse the application.
- (4) Where the application meets all the required formalities and the sign is not refused under section 3, the Office shall publish the application in the Bulletin of **the Industrial Property Office** (hereinafter "Bulletin").

§ 9

Opposition to the registration of a Trademark

- (1) Within three months from the date of publication, opposition to the registration of a published trademark may be filed with the Office by:
 - a) the owner of or the applicant for the registration of a confusingly similar trademark having an earlier priority right, where the trademark is registered or applied for in respect of the same or similar goods or services,
 - b) the owner of the earlier identical or confusingly similar trademark, which in terms of the Paris Convention³) or as a consequence of the promotion of the trademark in the relevant circles of the public in the Czech Republic has become well-known in relation to the owner and his goods or services (thereinafter "well-known trademark"),**
 - c) the owner of an identical or confusingly similar unregistered sign that in the two years preceding the filing of the application has become characteristic in the Czech Republic for identical or similar goods or services of that owner.
 - d) an entrepreneur registered before the filing date in the Commercial or similar register, whose trade name or a substantial part thereof is identical with or confusingly similar to the published mark and who

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produces or deals in goods or renders services identical with or similar to those for which the published mark is applied for, or if such goods are subject of his commercial activity.

- e) a natural person, whose forename, surname, pseudonym or representation are identical with or confusingly similar to the published mark if the registration thereof may interfere with his personal rights.
- f) the owner of another earlier industrial property right whose subject-matter is identical with or confusingly similar to the published mark,
- g) any person to whom the copyright belongs in an author's work identical with or confusingly similar to the published mark, if the use of the mark could infringe upon the copyright.

(2) The Office shall not take into consideration the opposition filed after the expiry of the time limit laid down in the Section 1; this shall also apply to the documents supporting the opposition.

(3) The term for filing opposition to the registration of a published mark cannot be extended.

Opposition procedure

§ 10

- (1) The Office shall examine, whether the opposition has been filed by an authorized person within the period laid down by the law and whether the opposition is duly justified and supported by the documents as will enable it to proceed.
- (2) The Office shall terminate the opposition procedure where the filing of opposition is late, has been effected by an unauthorized person, is not justified or is not supported by documentation necessary for the procedure. The Office shall be obliged to inform the opponent accordingly.
- (3) The Office shall inform the applicant of any the duly filed opposition and invite the applicant to file his observations within the fixed time limit. The time limit shall not be shorter than 10 days.
- (4) If the applicant fails to submit his observations within the fixed time limit, the Office shall terminate the procedure; the applicant shall be informed of this consequence.

§ 11

- (1) Where the oppositin has been duly filed and the appliccant has submitted his observations, the Office shall examine whether the registration of the mark applied for would infringe upon the rights of third persons.
- (2) Where the Office finds that the sign applied for does not infringe upon the earlier rights of third persons protected by law, it shall refuse the opposition; the Office shall issue a written decision both to the applicant and to the opponent.
- (3) When the Office finds that the sign applied for does not meet the conditions for registration, it shall refuse the application and issue a written decision both to the applicant and to the opponent.

§ 12

Registration of the trademark

- (1) The Office shall register the trademark where the circumstances referred to in § 2 and 3 do not constitute an obstacle to the registration. The Office shall inform the applicant accordingly.
- (2) Upon the registration of the trademark the applicant shall become the trademark owner. At the request of the owner the Office shall issue a certificate on the trademark registration.
- (3) The Office shall announce the registration of the trademark in the Gazette within 6 months from the registration at the latest.

Part III

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Rights conferred by a trademark registration

§ 13

- (1) The owner of a trademark shall have the exclusive right to affix the trademark on the goods or services in respect of which it has been registered or to use it in connection with such goods or services.
- (2) The owner of a trademark shall be entitled to use together with the trademark the symbol (R).

§ 14

- (1) No one is allowed to use a trademark without the consent of its owner or to use a sign being identical with or confusingly similar to the mark, for goods or services which are identical with or similar to those for which the trademark is registered or in connection with such goods or services, especially to affix the sign on the goods and their packing, offering or placing the goods on the market under the sign or to store them for this purpose, importing or exporting goods under the sign, or using the sign in a trade name, in correspondence or in advertisements.
- (2) The owner of the trademark shall have the right to request from any person who places or intends to place goods or services on the market bearing a sign being identical with or confusingly similar to his mark to furnish information concerning the origin of the goods or documentation on the goods and services concerned; **the court shall not adjudicate the right of information, if it were in disproportion with the seriousness of the threat or infringement.** The owner shall prove his rights to the trademark by the certificate of the trademark registration or by an extract from the Register.
- (3) The Customs Office at the request of the owner of the trademark shall refrain from releasing for free circulation goods of commercial nature bearing mark infringing the rights of the trademark owner. The owner shall prove his rights to the trademark by the certificate of the trademark registration or by an extract from the Register.
- (4) The trademark owner shall be entitled to demand of the publisher of a publication containing a reproduction of his mark that he will publish the particulars of the trademark, including the registration number of the trademark.

§ 15

- (1) The owner of the trademark may request the competent Court to order an injunction on the use of his trademark or confusingly similar sign for identical or similar goods or services, and an order to withdraw from the market objects to which the infringing sign has been affixed. **The trademark owner can request that the Court order to the person threatening or infringing the trademark rights to destroy the goods, the production or placing on the market of which threatened or infringed the right protected by the Law, or to destroy the material and implements intended to or used exclusively or predominantly in activities, threatening or infringing rights protected by the law. The court shall not order the destruction, if the goods in question are not the property of the person, against which the request is directed or if the threat or infringement of the right could be removed otherwise and the destruction wouldn't be reasonable in comparison with the threat or infringement. The removal of the sign or counterfeited trademark from the goods before placing the goods on the market is only admissible in exceptional cases.**
- (2) The owner of a well-known mark may exercise his right under section (1) irrespective of the identity or similarity of the goods or services where the use of the well-known trademark even on different goods or services could suggest a connection between the goods or services marked with the sign and the owner of the well-known trademark and where the interests of the owner of the well-known trademark might be prejudiced by such use.
- (3) Where a damage was caused by the infringement of trademark rights of , the injured party shall be entitled to compensation thereof. If immaterial damage has been caused by the infringement, the aggrieved party shall be entitled to get an adequate compensation, which may be pecuniary.

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§ 16

Limitation of the effects of a trademark

- (1) The owner of the trademark shall allow the third party to use in the course of trade his forename, surname, pseudonym, title or trade name, address of the residence, or particulars concerning the kind, quality, quantity, purpose, value, geographical origin, time of production of goods or rendering of services or other characteristics of the goods or services, even if those data are identical with or confusingly similar to the trademark or form a part thereof, provided that those data are used in accordance with established practices in trade and the rules of fair competition.
- (2) The owner of the trademark shall allow the third party to use in the course of trade a sign identical to the trademark, if this use is necessary to indicate the purpose of the goods, especially its accessories or spare parts, or kind of services rendered, provided that the use is in accordance with established practices in trade and in accordance with the rules of fair competition.
- (3) The owner of a trademark shall allow the use of an identical or confusingly similar unregistered sign by its owner, if that sign through the use thereof made by its owner has acquired in the Czech Republic in the period of two years prior to filing of the trademark application the distinctive character for identical or similar goods or services of the owner of that sign.
- (4) **The owner of a trademark shall acquiesce the further use of the identical or confusingly similar trademark with the later right of priority, if he has acquiesced this use for a period of 5 successive years since the day, when he got knowledge about this use, unless the application of the later trademark was not filed in good faith.**
- (5) **The owner of a trademark with the later right of priority shall no longer be entitled to oppose the use of the identical or confusingly similar trademark with the earlier right of priority, even if the owner of a trademark with the earlier right of priority was not allowed to claim his rights conferred by the trademark according to the Section 4.**

§ 17

Exhaustion of rights

The trademark shall not entitle the owner to prohibit its use in relation to goods which have been put on the market under that trademark by the owner or with his consent unless, after the goods have been put on the market, there has been a substantial change or deterioration in the quality or properties of the goods.

§ 18

Licences

- (1) The right to use the trademark may be granted in a licence agreement⁵ in respect of all or part of the goods or services for which it is registered.
- (2) Licensee may only be a legal or natural person whose business activity involves goods and services for which the mark is registered.
- (3) **The licence agreement shall be effective in respect to the third persons by the entry to the Trademark Register; it shall be the obligation of the owner of the trademark to request the registration with the Office.**

§ 19

Assignment and transfer of the trademark

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- (1) The owner of a trademark may assign the mark by a written contract in respect of all or only a part of the goods or services for which it is registered, to another legal or natural person, provided that the goods or services concerned are subject-matter of the business activity of the assignee on the date of conclusion of the contract. The contract on assignment of a trademark shall be effective **vis-à-vis the third persons** since the registration; it shall be the obligation of the assignee to request registration of the assignment by the Office.
- (2) The trademark shall be assigned to a new owner in cases laid down in the special regulations⁶. The assignment of the trademark shall be effective since the registration; it shall be the obligation of the assignee to request registration of the assignment by the Office.
- (3) (3) If the trademark has passed due to the death of the owner thereof and the heir does not qualify for trademark ownership in accordance to this law, he may only grant a licence or assign the trademark to a third party.

§ 20

Assignment of the trademark registered in the name of an agent

Where the trademark that enjoys protection in a country party to the international treaty² is registered in the Czech Republic in the name of the trade or business representative or sales agent of the original owner (hereinafter referred to as "trade representative"), the original owner may request the court to order the assignment of the trademark to him, unless the trade representative proves that he was acting in good faith. The Office shall register the transfer of the trademark owner in the Register at the request of the owner of the trademark.

§ 21

Pledge

- (1) The trademark may be pledged⁷.
- (2) The pledge on the trademark shall be effective since the registration; it shall be obligation of the creditor to request the registration. The creditor shall be obliged to submit to the Office the pledge agreement signed by the parties, notarized, together with the request for the registration of the pledge.

Part IV

Alteration of the trademark, term of protection and lapse of the trademark

§ 22

Alteration of the trademark

The Office shall permit the alteration of the trademark at request of the owner of the trademark, concerning the name of the owner or his forename and surname or the tradename or the headquarters, the residence or place of business, occurred after the registration of the trademark, and provided that the alteration is in conformity with the reality and the general nature of the trademark is not affected thereby.

§ 23

Term of protection

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- (1) The period of protection shall be 10 years from the date of filing the application with the Office.
- (2) The term of protection of the trademark shall be renewed for further period of 10 years on request of the owner of the trademark, which request shall be filed with the Office in the last year of the term of protection, but not later than 6 months after the term of protection expires (hereinafter referred to as "the request for renewal of the registration").

§ 24

Lapse of the trademark

- (1) The trademark shall lapse
 - a) on expiry of the term of protection, without the registration having been renewed in time,
 - b) on the day of notification to the Office of a declaration by the owner of the trademark that he renounces his rights; the declaration shall have no legal effects, if there are rights of third persons,
 - c) if the owner of the trademark loses the legal capacity, unless the right to the trademark has been assigned or has passed to a new owner,
 - d) on cancellation of the trademark from the Register performed by the Office in accordance with the § 25 and 26.
- (2) The trademark in respect of which the rights of third parties exist shall lapse under the subsection (1)(b) on the day on which the owner of the trademark proves the lapse of those rights, where necessary supplies the consent of the authorized persons to the cancellation.
- (3) The Office shall record the lapse of the trademark in the Register.

Cancellation of the trademark

§ 25

- (1) The Office shall cancel the trademark from the Register, if during the proceedings started at the request of the third party or ex officio, it finds that:
 - a) the trademark has been registered contrary to the provisions of the Law; in which case the trademark shall be deemed never to have been registered. This shall not apply if the trademark has been registered contrary to the § 2 subsection (1) (b-d) and through the use in the course of trade it has obtained distinctive character for goods or services of its owner, for which it has been registered,
 - b) the trademark has not been used in the Czech Republic during at least five consecutive years before the commencement of the cancellation proceedings at least and the owner of the trademark does not show legitimate reasons for the non-use; the use of the trademark by the third party based on a licence agreement shall be considered as a proper use; **the use of the trademark, which began or continued after the expiry of 5 years of its non-use, but in the period of 3 months before the commencement of the cancellation procedure, shall not be taken into consideration. As the use of the trademark, it shall be also considered its use in the form, which differs from the mark as registered in details not amending its distinctive character, or the placing of the mark on goods or their packaging exclusively for exportation purposes.**
- (2) The Office shall cancel a confusingly similar trademark if it finds in the procedure, started on request of the owner of the trademark enjoying an earlier right of priority, that the contested trademark has been registered for the identical or similar goods or services; the Office shall not cancel the mark if the owner of the trademark with the earlier right of priority, while being aware thereof, has acquiesced the use of the contested trademark for a period of 5 years after its registration.
- (3) The Office shall cancel the identical or or confusingly similar trademark if it finds in the procedure started on request of the owner of a well-known trademark, that the use of the contested trademark without due cause would take unfair advantage of or be detrimental to the distinctive character or the good-will of the well-known trademark, irrespective of whether or not the contested trademark has been registered for identical or

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similar goods or services. The Office shall not perform the cancellation, if the owner of the well-known trademark, while being aware thereof, has tolerated the use of the contested trademark for a period of 5 years after its registration.

- (4) The Office shall cancel the trademark from the Register, if it finds in the procedure, started on request of the third person, that the trademark has lost its distinctive character due to the activity or inactivity of its owner as it has become in trade a standard denomination for goods and services, for which it has been registered.
- (5) If the reasons for cancellation of the trademark concern only some of the goods or services for which the trademark has been registered, the Office shall cancel the trademark in respect thereof only.
- (6) The Office shall cancel the trademark under subsection (1) and (2) even after lapse of the trademark, provided that the person requesting cancellation proves a legal interest therein.

§ 26

- (1) The Office shall cancel the trademark on the basis of a Court decision according to which the trademark containing the forename and surname, representation or pseudonym of a natural person infringes upon the right for protection of individuality, or according to which the trademark containing the title or the trade name of a legal person infringes its good-will or according to which the trademark infringes the rights to an author's work. The cancellation shall be performed, if the authorized person requests so within six months from the date on which the Court decision became effective.
- (2) The Office shall cancel the identical or confusingly similar trademark on the basis of a Court decision according to which the use of the trademark is not in conformity with fair competition rules. The cancellation shall be performed, if the owner of the well-known trademark requests so within six months from the date on which the Court decision became effective.
- (3) The Office shall cancel the trademark under subsection (1) and (2) even after lapse of the trademark, provided that the person requesting cancellation proves a legal interest therein.

Part V.

Special provisions in respect of the collective trademarks

§ 27

- (1) A collective trademark shall mean any sign referred to in § 1 being capable to distinguish goods or services, of the members or partners of a legal person established with a view of the common designation of goods or services put on the market by those members or partners (hereinafter referred to as "business association"), from the goods and services of other traders.
- (2) The conditions for the use of a collective trademark, including sanctions for infraction thereon, shall be laid down in a written agreement concluded by all the members or partners of the business association.

§ 28

- (1) The business association (hereinafter referred to as "applicant") shall file with the Office the application for registration of a collective trademark.
- (2) The application for registration of a collective trademark shall contain:
 - a) the request for registration of a collective trademark in the Register,
 - b) the title or the trade name and the headquarters of the business association,
 - c) the wording or representation of the sign applied for as a collective trademark and, if necessary, a description thereof; in the case of a the three-dimensional mark, its surface representation,
 - d) a list of goods or services, in respect of which the collective trademark is to be registered,
 - e) a list of members or partners of the applicant being entitled to use the collective trademark.

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- (3) The list of goods and services referred to in subsection 2(d) shall specify the classes in accordance with the international agreement ¹.
- (4) The agreement referred to in § 27 subsection (2) shall be filed with the application for registration of a collective trademark.
- (5) The filing of the application for registration of a collective trademark under subsection (2) shall confer a right of priority for the applicant vis-à-vis any person, who later files an application for registration of an identical or confusingly similar trademark for identical or similar goods or services.

§ 29

- (1) The Office shall examine the application for registration for a collective trademark at the extent laid down in §§ 8-12; when assessing if the conditions laid down in § 2 Subsection 1 (b) are met the Office shall take into account the provision of § 27 Subsection 1.
- (2) Upon the registration of a collective trademark in the Register, the applicant of a collective trademark shall become the owner of a collective trademark. At his request, the Office shall issue a certificate of registration of a collective trademark in the Register. The Office shall publish the registration of a collective trademark in the Bulletin. The certificate of registration of a collective trademark or where appropriate the extract from the Register shall be issued by the Office at the request to every member or partner of a business association, registered in the Register.
- (3) At the request of the owner of the collective trademark, the Office shall enter in the Register any change in the structure of members or partners of the business association.

§ 30

- (1) Members or partners of the business association recorded in the Register shall have the exclusive right to affix the collective trademark on those of their own goods or services for which it has been registered or to use the mark in connection with those goods or services.
- (2) Members or partners of the business association may also in the course of their business affix to their goods or services the trademark which they own themselves or which they are entitled to use under a licence agreement.

§ 31

- (1) The owner of a collective trademark shall have the rights provided for in Part III of the Law, if there is no other provision in part V.
- (2) Members or partners of the business association shall enjoy the rights provided for in subsection (1) to the extent specified in the contract.
- (3) The Office shall allow every person to inspect the contract at the request.

§ 32

The collective trademark may not be licenced, assigned, nor be pledged.

§ 33

The term of protection of a registered collective trademark shall be 10 years from the filing date of the application for registration. For renewal of the registration § 23 subsection (2) and (3) shall apply.

§ 34

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- (1) The collective trademark shall lapse under the conditions provided for in § 24.
- (2) For the cancellation of the trademark registration the provisions of § 25 and 26 shall apply; when assessing if the conditions laid down in § 2 Subsection 1 (b) are met the Office shall take into account the provision of § 27 Subsection 1.
- (3) The Office shall likewise cancel the collective trademark from the Register on the ground that members or partners of the business association significantly infringe the agreement on the use of the collective trademark.

Part VI

Relations with foreign countries

§ 35

- (1) The law shall be without prejudice to the provisions of interantional treaties, to which the Czech Republic is party.
- (2) **Persons having their residence or headquarters on the territory of the member state of the Paris Convention ²⁾ or in the state member of the World Trade Organisation ^{2a)} shall enjoy the equal rights as persons having their residence or headquarters on the territory of the Czech Republic; if the state, in which the person has its residence or headquarters, is neither party to the Paris Convention, ²⁾ nor a member of the World Trade Organisation, ^{2a)} the rights according to the Law can be awarded only on condition of the reciprocity.**
- (3) Persons not having their residence or headquarters on the territory of the Czech Republic shall be represented in the trademark proceedings by a legal adviser, commercial lawyer or trademark agent.

§ 36

- (1) Persons having their residence or headquarters on the territory of the Czech Republic may apply through the Office for the international registration of the trademark in accordance with the international treaty ⁸ or where appropriate for recording of changes concerning the international registration.
- (2) The applicant seeking the international registration shall pay fees for the acts referred to in subsection (1) prescribed in accordance with the international treaty;⁸ the Office shall publish in the Bulletin the amount of the fees payable under the international treaty.

§ 37

- (1) The international registration of a trademark seeking protection on the territory of the Czech Republic shall have the same effects as the registration of the trademark in the Register kept by the Office.
- (2) The period for filing opposition against an international application shall run from the first day of the month following that in which the trademark has been published in the the WIPO Gazette of International Marks..
- (3) If the international registered trademark is refused the protection on the territory of the Czech Republic, the mark shall be deemed not registered in the Czech Republic.

Part VII

Common provisions on the proceedings before the Office

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§ 38

- (1) The applicant for, or as the case may be, the owner of a trademark in respect of which the proceedings has been started, the person who has filed opposition to the registration of a trademark under § 9, the authorized person referred to in § 20 or the person who has requested for the cancellation of the trademark shall be party to the proceedings.
- (2) All the filings with the Office shall be done in writing in the Czech language. The nationals of the Czech Republic forming part of a national or ethnic minority may do filings with the Office in their own language; however they shall submit at the expense of the Office the translation into the Czech language made by an interpreter registered in the list of interpreters.
- (3) Every filing may concern one trademark only; as to the request for recording of changes of the trademark owner identity data, the request for registration of the transfer or assignment of the trademark, the request for registration of the legal representative or the change thereof or the request for the correction of entries in the Register and in the Bulletin, one filing may concern two or more trademarks of the same owner. This provision shall apply for the same request regarding a number of applications filed by the same applicant.
- (4) In the trademark procedure there shall be no excuse of the failure to observe the time limit for filing the opposition, for claiming priority, for requesting the cancellation of the trademark under § 26 subsections (1) and (2) and requesting the renewal of the term of protection; in the proceedings no time limit shall be excused after expiry of one year as from the date on which the omitted act should have been done. Rights acquired *bona fide* in the period between the expiry of the time limit and the excuse of failure to observe it shall not be affected.
- (5) If the party to the proceedings who has filed the request for starting thereof fails to meet the invitation by the Office to remove the deficiencies of or complete the filing in a specified time limit and if the deficiencies in filing are of such a nature that the proceedings cannot continue, the Office shall terminate it; the party to the proceedings shall be informed by the Office on that consequence. The Office shall terminate the proceedings even on request of the person, who has filed the request for starting thereof.
- (6) The Office shall decide on the basis of the contents of the file, especially on the basis of evidence, that parties to the proceedings have put forward in support of their statements.
- (7) Against the decision of the Office an appeal can be filed. within one month from the notification of the decision.
- (8) Unless otherwise provided in the Law, the Code on Administrative Procedure shall apply for the trademarks proceedings except for provisions on termination of the procedure, the declaration of honour, time limits for decision and measure to remedy inactivity.⁹

§ 39

- (1) The party filing a request for cancellation of a trademark under § 25 and the appeal against the decision of the Office under § 38 subsection (6) shall pay a security to cover the costs of the proceedings. The security shall be reimbursed where it is proved in the course of the proceedings that the request for starting the proceedings was well-founded.
- (2) The security referred to in subsection (1) shall amount to 2 500 Czech Crowns.

§ 40

Register and Bulletin

- (1) The Office shall keep the Register where the important particulars concerning trademarks shall be registered. The trademark Register shall be a public Register and everybody shall enjoy the right to inspect it.
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- (2) The Office shall issue the Bulletin in which applications according to § 8 subsection (4), registrations and renewals of registrations of trademarks, assignments, trademark cancellations and other important facts as regards trademarks shall be published.

Part VIII

Common, transitional and final provisions

§ 41

The authorisation for adopting the implementing regulations

- (1) The Office shall lay down details concerning the trademark procedure in a Decree, where it shall specify the formalities required for filing the application, the opposition to the registration of the mark, a request for a renewal of the trademark registration and recording of additional particulars in the Register, a request for the trademark cancellation, details concerning trademark files keeping and the particular data regarding trademarks that have been entered in the Register and published in the Bulletin.
- (2) The Office shall lay down in the Decree further requirements for filing an application for the international registration.

§ 42

Transitional provisions

- (1) Procedures concerning trademark applications which have not been completed prior to the entry into force of the Law shall be completed under the Law, the applicant being obliged on invitation by the Office in the time limit set by the Office to remedy the deficiencies of the application in accordance with the requirements laid down in the Law.
- (2) The relations concerning trademarks registered prior to the entry into force of the Law shall be dealt with the provisions of the Law. The arising of those relations as well as the rights arising in connection with them prior to the entry into force of the Law shall be considered in accordance with the rules applicable at the time of their occurrence.
- (3) The owner of the trademark that has been declared as famous under the preceding Law may request for the cancellation of the identical or confusingly similar trademark under the provisions of § 23 subsection (3) of the law No. 174/1988 Coll. during the term of validity of this trademark, however not later than 10 years following the entry into force of the Law. During that period the owner of the famous trademark may file the opposition against the registration of the identical or confusingly similar mark under § 9 of the Law irrespective of the goods or services for which the contested sign has been registered..

§ 43

Revocation provisions

The following shall be revoked:

1. The Trademark Law No. 174/1988 Coll.L.
2. The Decree of the Office for Inventions and Discoveries on the Procedure Relating to Trademarks No. 187/1988 Coll.L.

§ 44

The Law shall enter into force on October 1, 1995.

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(The Law Amending some Laws on the Protection of the Industrial Property entered into force on May 10, 2000).

Transitional provisions

1. The fact that the trade mark is well-known in terms of the Law can be claimed in the opposition procedure, only if the period for filing the opposition is opened, and within the cancellation procedure started after the date of the entry into force of the Law..

2. The request for the cancellation of the trademark, which is registered contrary to § 2, Section 1 letter i) and j) of the Law № 137/1995 of Coll., can be filed only in relation to the trademarks applied for after the date of the entry into force of this Act, unless the applicant was not in good faith.

¹⁾ *Decree of the Minister of Foreign Affairs No.118/1979 Collection of Laws on Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of Registration of Marks, dated June 15, 1957 , revised in Stockholm on July, 14 1967 and in Geneva on May 13, 1977 , wording of the Decree No. 77/1985 Collection of Laws.*

^{2a)} *Notification № 191/1995 of Coll., on the conclusion of the Convention on the creation of World Trade Organisation (WTO).*

² *Decree of the Minister of Foreign Affairs No. 64/1975 Collection of Laws on Paris Convention for the Protection of Industrial Property dated 20 March 1883, revised in Brussels on 14 December 1900, in Washington on 2 June 1911, in The Hague on 6 November 1925, in London on 2 June 1934, in Lisbon on 31 October 1958 and in Stockholm on 14 July 1967, wording of the Decree No. 81/1975 Collection of Laws.*

³ *Article 6 bis of the Paris Convention for the Protection of Industrial Property*

⁴ *§ 98,subsection 2 Law No. 13/1993 Coll., Customs Law*

⁵ *§ 508 and following of the Law No. 513/1991 Coll., Commercial Law*

⁶ *e.g. Art. 69 and 259 Commercial Law, Art. 12-17 Law about the State enterprise*

⁷ *Art. 151a and following of of. the Law No. 40/1964 Coll. Civil Code Art. 297 and following of Commercial Law*

⁸ *Decree of the Minister of Foreign Affairs No. 65/1975 Collection of Law on Madrid Agreement Concerning the International Registration of Marks of April 14, 1891, as revised at Brusels on December 14,1900, at Washington on June 2,1911, at The Hague on November 6,1925, at London on June 2, 1934, at Nice on June 15,1957, and at Stockholm on July 14,1964 wording of the Decree No. 78/1985 Collection of Laws.*

⁹ *Art. 29,39, 49 and 50 Law No. 71/1967 Coll. on Administrative procedure (Administrative Procedure Code).*