

DRAFT OF THE TRADE MARK LAW

Part One GENERAL PROVISIONS

The Concept of a Trade Mark

Article 1

- (1) A trade or a service mark (hereinafter: a trade mark) shall protect a sign which may be represented graphically and which is capable of distinguishing the goods or services of one undertaking, from the identical or similar goods or services of other undertakings.
- (2) Trade marks may protect, in particular: words, letters, numerals, abbreviations, graphical representations, combinations of colours and the tints thereof, three-dimensional forms, shapes of the goods or of their packaging, provided that they are distinctive, as well as the combinations of all above indicated signs.
- (3) A seal, a stamp and a hallmark (official mark identifying precious metals, measures, etc.) shall not be considered marks under this Law.

Distinctiveness

Article 2

- (1) A sign shall be capable of distinguishing if it gives to certain goods or services, comparing them with the identical or similar ones, a special, distinctive character.
- (2) In judging whether a sign is capable of distinguishing goods or services in the course of trade, all circumstances, particularly the time and scope of its previous use in the Republic of Croatia, shall be taken into consideration.

Field of Application

Article 3

This Law shall apply to individual, collective and certification marks which are registered or applied for before the State Intellectual Property Office (hereinafter: the Office) or which are internationally registered with the effect for the Republic of Croatia.

National Status

Article 4

- (1) Foreign natural or legal persons shall enjoy, under this Law, the same rights as are enjoyed by the nationals of the Republic of Croatia or legal entities having their seat

in the Republic of Croatia, if it results from international treaties or conventions or from the application of the principle of reciprocity.

- (2) The existence of reciprocity shall be presumed until proved to the contrary.

Protection Requirements - Absolute Grounds for Exclusion

Article 5

- (1) A trade mark shall not protect a sign:

1. which is contrary to the public order or morality;
 2. which is not capable of being represented graphically;
 3. which is not capable, due to its overall representation, of distinguishing the goods or services in the course of trade;
 4. which consists exclusively of signs or indications serving in trade to designate the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of the goods or of rendering of services, or some other characteristics of the goods or services;
 5. which consists exclusively of signs or indications which are customary in the current or professional language or established practices of the trade;
 6. which represents exclusively the shape resulting from the kind of the goods, or the shape of goods necessary to obtain a specific technical result, or the shape giving a substantial value to the goods;
 7. which may, by its representation, deceive the public particularly as to geographical origin, nature, quality or any other characteristic of the goods or services.
 8. which contains a national coat of arms or other public arms, a flag or an emblem, the name or abbreviated name of a country or international organization and imitations thereof, unless the consent of the competent authority of such a country or organization has been given.
- (2) The signs specified in subparagraphs 3, 4 and 5 of paragraph (1) of this Article may be protected by trade marks if the applicant proves that the sign has acquired distinctive character in relation to his goods or services and that he has started to use it at least two years prior to the filing of the application.

Protection Requirements - Relative Grounds for Exclusion

Article 6

- (1) A trade mark may not protect a sign:

1. which is identical with the earlier trade mark designating the same kind of the goods or services;
2. which is identical with or similar to the earlier trade mark designating the same or similar kind of the goods or services and there is a likelihood of confusion in trade,

including the likelihood of association by the public of the sign applied for with the earlier trade mark.

(2) The expression "earlier trade marks" shall comprise:

1. trade marks enjoying priority right referred to in Articles 11, 12 and 13;
2. internationally registered trade marks with the effect in the Republic of Croatia;
3. trade marks which are, at the time of filing a trade mark application for a sign referred to in paragraph (1), well known in the Republic of Croatia within the meaning of Article 6.bis of the Paris Convention for the Protection of Industrial Property (hereinafter: the Paris Convention), applying mutatis mutandis on services;

The knowledge of a trade mark within the meaning of paragraph (2), subparagraph 3 of this Article shall also include the knowledge of a trade mark in a relevant public sector, acquired as a result of the promotion thereof.

- (3) A trade mark shall not protect a sign which infringes earlier acquired rights of the owners referred to in Article 21, paragraph (1), subparagraphs 2 - 5.
- (4) A trade mark shall not protect a sign which is identical with or similar to a trade mark the validity of which has expired according to Article 37, paragraph (1), subparagraph 1 of this Law, if a trade mark application is filed before the expiration of the period of two years, counting from the expiration date of the trade mark validity, unless the protection of such a sign is applied for by the owner in whose name the trade mark was protected, or by his successor in title.
- (5) Grounds for the exclusion from the trademark protection under this Article, may be invoked only by the applicant of the earlier application or by the owner of the earlier right.

Part Two

PROCEDURE FOR THE GRANT OF A TRADE MARK RIGHT

The Office Authority

Article 7

- (1) Administrative procedures relating to the trade mark protection shall be performed by the Office.
- (2) The administrative decisions made by the Office shall not be appealed, but an administrative lawsuit may be instituted by submitting a complaint to the Administrative Court of the Republic of Croatia.

Filing of the Application

Article 8

- (1) The procedure for the grant of a trade mark shall be initiated by filing a trade mark application.
- (2) A separate application shall be filed for each sign applying for a trade mark protection.

The Content of an Application (Minimum Requirements)

Article 9

- (1) A trade mark application shall contain:
 1. a request for the grant of a trade mark;
 2. the name and surname or the trade name of the applicant, the residence address and the place of his employment if the applicant is a natural person, or the address of the business seat if the applicant is a legal entity;
 3. a representation of the sign applied for a trade mark protection; if a three-dimensional sign is applied for, the representation of its outer surface; if a sign is written in any characters other than the Latin, its transliteration into the Latin characters;
 4. a list of the goods or services the protection is applied for, provided that such list contains appropriate classification symbols of classes in compliance with the Nice Agreement on the International Classification of Goods and Services for the Purposes of the Registration of Marks (hereinafter: the International Classification).
- (2) An application shall be considered to be filed if it complies with the minimum requirements referred to in paragraph (1) of this Article.
- (3) All other elements of the application and the attachments thereto shall be filed in the way and in the number of copies prescribed by the Regulations.

Basic Fee for a Trade Mark Application

Article 10

- (1) The filing of the trade mark application shall be subjected to the payment of the basic fee, including up to three indicated classes of the International Classification.
- (2) The Office prescribes an additional fee for each class of the International Classification exceeding three classes of goods and services.
- (3) In respect of the application for a collective and certification mark the fees referred to in paragraphs (1) and (2) of this Article shall be paid in double amount.

Filing Priority

Article 11

If the trade mark application is filed in compliance with Article 9, paragraph (1), the applicant shall acquire the right of priority on the basis of the application filing date over any other applicant filing later a trade mark application for the identical or similar sign whereby the protection for the identical or similar goods or services are applied for.

Union Priority

Article 12

- (1) If the trade mark applicant has filed the application for the first time in a State member of the Paris Union for the Protection of Industrial Property (hereinafter: the Paris Union), he may, when filing the application for the same trade mark in the Republic of Croatia, invoke the date of the first filing, provided that within six months counting from the date of the first filing he file the application in the Republic of Croatia.
- (2) The applicant invoking the union priority right shall, in the application he is filing to the Office, indicate the essentials of the application he is invoking (the State, the application date and number) and shall attach thereto the true copy of the first application certified by the competent authority of the State member of the Paris Union, under the condition of filing the translation of the first application into the Croatian language.

Exhibition Priority

Article 13

- (1) If the trade mark applicant has exhibited the goods or services designated with the specific sign at an official or officially recognized international exhibition in the Republic of Croatia or in any of the State member of the Paris Union, he may request that the date of the first day of the exhibition of the goods or of rendering of services be recognized as the date of the first application, provided that within six months counting from that date he file the application in the Republic of Croatia.
- (2) The applicant invoking the exhibition priority right shall, in addition to the application he is filing to the Office, file a certification issued by the competent authority of the State member of the Paris Union indicating the type of the exhibition, the venue thereof, its opening and closing dates and the first day of the exhibition of the goods or services specified in the application.

Examination of the Correctness of the Application

Article 14

- (1) The process of the examination of the correctness of the application includes the examination of all formal and legal requirements prescribed by this Law and the Regulations.
- (2) The trade mark application shall be correct if:
 1. a separate application has been filed within the meaning of Article 8, paragraph (2) of this Law;
 2. a prescribed application fee within the meaning of Article 10 of this Law has been paid and the evidence of a payment of a fee has been attached thereto;
 3. it has been drawn up in a way to contain all necessary elements and attachments within the meaning of Article 9, paragraphs (1) and (3) of this Law;
 4. an orderly power of attorney is attached thereto, if the application is filed through an agent.

Correction of the Trade Mark Application

Article 15

- (1) If the application complies with the minimum requirements within the meaning of Article 9, paragraph (1) of this Law, but is not filed in a way to contain all necessary elements and attachments in compliance with this Law and the Regulations, the Office shall invite the applicant to remedy the found deficiencies within 60 days from the day of the receipt of the invitation.
- (2) If the applicant corrects the application within the prescribed time limit, the application shall be considered to be correct as from the beginning (outset).
- (3) If the application doesn't comply with the minimum requirements within the meaning of Article 9, paragraph (1) of this Law, it shall not be considered to be the trade mark application, and the Office shall invite the applicant to remedy all found deficiencies within the time limit referred to in paragraph (1) of this Article.
- (4) From the day and hour of the receipt in the Office of a correct trade mark application the applicant shall acquire priority right within the meaning of Article 11 of this Law.

Extension of the Time Limit

Article 16

- (1) On the reasoned request of the applicant the time limit referred to in Article 15, paragraph (1) may be, for the justified reasons, extended for 60 days at maximum.
- (2) In respect of the request for the extension of the time limit referred to in paragraph (1) of this Article, the applicant shall pay a prescribed fee.

Rejection of the Application

Article 17

If the applicant does not, within the prescribed time limit, comply with the invitation and does not remedy all found deficiencies within the meaning of Article 15, paragraphs (1) and (3) of this Law, the application shall be rejected by a decision.

Restitutio in Integrum (Restoration to the Former State)

Article 18

- (1) If the Office, due to the non-observance of the time limit, rejects the trade mark application or any other request concerned with the trade mark, the applicant may request in writing that the procedure be continued.
- (2) The request for the restoration to the former state shall be filed to the Office within three months from the moment the applicant has learned about the failure to observe the time limit, provided that within this time limit the applicant performs completely the act he has failed to perform, pays the prescribed restoration fee and justifies the reasons causing the failure to observe the time limit.
- (3) With the acceptance of the request referred to in paragraph (2) of this Article the case shall be restored to the former state;
- (4) The request for the restoration to the former state shall not be accepted failing the observance of:
 1. the time limit for filing the request within the meaning of paragraph (2) of this Article;
 2. the time limit referred to in Article 12, paragraph (1), and Article 13, paragraph (1);
 3. the time limit for filing opposition within the meaning of Article 21, paragraph (1).

Refusal or Partial Acceptance of the Trade Mark Application

Article 19

- (1) If the sign applied for is excluded or partially excluded from protection on the grounds referred to in Article 5 of this Law, the Office shall issue a decision on the refusal or a decision on the partial acceptance of the application.
- (2) The decision on the refusal or the decision on the partial acceptance of the trade mark application shall not be issued if the applicant has not been previously notified in writing about the grounds for the exclusion, entire or partial, of the proposed sign from protection in relation to the submitted list of the goods or services, and invited to make a declaration thereon.
- (3) The trade mark applicant shall have the right to comment on the grounds for the exclusion of a sign from the protection within 30 days from the day of the receipt of a written notification and to submit evidence on the possible new facts that might influence the Office final decision.

- (4) On the reasoned request of the applicant the time limit referred to in paragraph (3) of this Article may be, for justified reasons, extended for 90 days at maximum.
- (5) The request for the extension of the time limit referred to in paragraph (4) of this Article shall be subject to the payment of a prescribed fee by the applicant.

The Publication of the Application

Article 20

- (1) If the trade mark application complies with all requirements regarding correctness of the application within the meaning of Article 14, paragraph (2), if the sign is not excluded from protection within the meaning of Article 5 of this Law, and if the prescribed publication fee is paid, the application shall be published in the Office official gazette.
- (2) Data from the application to be published in the Office official gazette shall be prescribed by the Regulations.

Opposition

Article 21

- (1) The opposition relating to the published trade mark application may be, within three months counting from the publication date, filed to the Office by:
 - 1. the owner of the earlier trade mark within the meaning of Article 6, paragraphs (1) to (4) of this Law;
 - 2. the trader entered into the trade or similar register prior to the filing date of the trade mark application, provided that his trade name or the essential part thereof is identical with or similar to the published sign and provided that he produces identical or similar goods or renders identical or similar services to those the published sign relates to, or where such goods or services are the subjects of his commercial activity.
 - 3. a natural person whose name and surname, a representation (image) or a pseudonym is identical with or similar to the published sign applied for a trade mark protection;
 - 4. the owner of the earlier industrial property right, if the subject of such right is identical with or similar to the published sign;
 - 5. any person having copyright in the work which is identical with or similar to the published sign.
- (2) The time limit for filing the opposition, prescribed in paragraph (1) of this Article, shall not be extended.
- (3) The request for the opposition procedure shall be subject to the payment of a prescribed fee.

Opposition Procedure

Article 22

- (1) The Office shall examine whether the opposition is filed by the person entitled to file the opposition within the meaning of Article 21, paragraph (1) of this Law, whether the opposition is filed in the prescribed time limit and whether it is justified and supported by an appropriate documentation.
- (2) If the requirements referred to in paragraph (1) of this Article are not complied with, the Office shall make a decision on the rejection of the opposition.
- (3) If the requirements referred to in paragraph (1) of this Article are complied with, the Office shall notify the trade mark applicant about the grounds specified in the opposition and shall invite him to make a declaration and to submit his comments within 30 days.
- (4) If the applicant doesn't make a declaration concerning the grounds specified in the opposition and doesn't submit his comments within the time limit referred to in paragraph (3) of this Article, it shall be considered that the applicant doesn't oppose the grounds specified in the opposition and the procedure shall be ended.

Examination of the Opposition

Article 23

- (1) If the applicant makes a declaration concerning the grounds specified in the opposition and submits his comments opposing the opposition, the Office shall examine the justification of the opposition within the framework of the specified grounds, taking into consideration facts and submitted evidence.
- (2) If the Office establishes that the opposition is unjustified, it shall be refused and the written decision to that effect shall be sent to the applicant and to the person who has filed the opposition.
- (3) If, in the examination procedure concerning the opposition the Office establishes that the opposition is justified, it shall refuse or shall partially accept the trade mark application and shall to that effect send a written decision to the applicant and to the person who has filed the opposition.

Entry into the Register

Article 24

- (1) If the grounds referred to in Article 5, paragraph (1) and Article 6, paragraphs (1) to (4) do not constitute a barrier to the grant of the trade mark, the trade mark shall be entered into the trade mark register on the basis of the decision concerning the grant of a trade mark, provided that a maintenance fee for the first ten-year period has been previously paid.
- (2) If the maintenance fee for the first ten-year period is not paid, the trade mark application shall be rejected by a decision.

Publication of a Trade Mark

Article 25

- (1) The data concerning a trade mark shall be published in the Office official gazette three months at the latest from the date of entry of the trade mark into the register.
- (2) The data to be published in the Office official gazette shall be prescribed by the Regulations.
- (3) The publication of a trade mark shall be subject to the payment of a prescribed fee relating to the publication of a trade mark in the Office official gazette.

Trade Mark Certificate

Article 26

- (1) After the entry of a trade mark into the register and after the payment of the prescribed fee for the issuance of the trade mark certificate, the Office shall provide the owner of the right with the trade mark certificate six months at the latest after the date of publication of the trade mark in the Office official gazette.
- (2) The data contained in the trade mark certificate shall be prescribed by the Regulations.

Part Three EFFECTS OF A TRADE MARK

Exclusive Rights

Article 27

- (1) The owner of a trade mark shall have the exclusive right of designating by a trade mark the goods or services it is granted for, and the exclusive right of using the trade mark for such goods or services.
- (2) The owner of a trade mark may prohibit to third persons not having his consent to use a sign which is identical with or similar to a sign for the goods or services of the identical or similar kind as those a trade mark is granted for, or to use it for designating those goods or services, particularly to affix them on the goods or the packing thereof, to offer services or to put to the market the goods carrying this sign, or to store the goods with this intention, import or export the goods carrying this sign or to use this sign in the trade name, in the correspondence or in advertising.
- (3) The owner of a trade mark shall have the right to request any person putting or intending to put on the market the goods or services designated by a sign which is identical with or similar to his trade mark, information about the origin of the goods and trade channels thereof or the documentation relating to those goods or services.
- (4) The owner of well-known trade mark may prohibit to third persons not having his consent to use the identical or similar sign for the goods or services which are not identical with or similar to those for which the trade mark is protected, provided that

the use of such a sign in relation to those goods or services would indicate the connection between those goods or services and the owner of the protected trade mark and provided there is a likelihood that it could be detrimental for the interests of the owner of a protected trade mark.

Limitation of Rights

Article 28

- (1) The owner of a trade mark shall allow third persons to use in trade their name, surname, pseudonym, title or trade name, address of the residence, information concerning the kind, quality, quantity, purpose, value, geographical origin, the date of production of goods or of rendering of a service or any other characteristic of the goods, irrespective of the fact that those indications are identical with or similar to the trade mark, or form parts of a trade mark, but provided that they have been used in compliance with the usual trade practice and fair market competition.
- (2) The owner of a trade mark shall allow third persons to use in trade a sign which is identical with or similar to a trade mark if it is necessary for the indication or designation the intended purpose of the goods, particularly the accessories or spare parts thereof, or the kind of services which are rendered in accordance with the established practice in trade and fair market competition.

Acquiescence in the Use of a Trade Mark

Article 29

- (1) The trade mark owner shall allow the use of the later identical or similar trade mark for identical or similar goods or services for which he has been protected if he has acquiesced in this use for five years, except where the trade mark owner with the later priority right has protected the trade mark in bad faith.
- (2) The owner of a trade mark with later priority right shall not prohibit the use to the owner of the earlier trade mark.
- (3) The acquiescence in the use of a trade mark within the meaning of paragraph (1) of this Article shall not be the reason for the cancellation thereof from the register.

Part Four CHANGES RELATING TO A TRADE MARK

Entry of Changes

Article 30

- (1) On the request of the applicant for, or the owner of a trade mark the Office shall enter into the corresponding register all changes relating to the personal name, if natural person is concerned, the trade name or the business seat or the residence of the applicant or the residence of his employment, as well as other changes occurring after the filing of the trade mark application or after the grant of a trade mark, provided that they reflect the real situation and that they do not affect the representation of the sign.
- (2) The changes shall be published in the Office official gazette.
- (3) All requests for the entry of changes relating to a trade mark shall be subject to the payment of a prescribed fee.

License

Article 31

- (1) The owner of a trade mark may license to third persons the right to use a trade mark for all goods or services for which it is granted or only for the part of those goods or services, for the whole or the part of the territory of the Republic of Croatia.
- (2) The right to use a trade mark shall be acquired on the basis of the license contract, and such right shall have effect against third persons after the entry of the license into the register. The entry of the license into the register shall be made on the request of the trade mark owner.
- (3) The license contract shall be made in a written form and shall be signed by the contracting parties.
- (4) The trade mark owner may exercise the rights arising from the trade mark against the licensee breaching any provision of the license contract, particularly with regard to the duration, the registered scope of the trade mark use, the kind of the goods or services covered by the license, the territory in which it can be used and the quality of the goods or services.
- (5) The licensee may institute the court proceedings... concerning the infringement of rights arising from a trade mark only if the trade mark owner gives his consent thereto.
- (6) The licensee shall be authorized to grant a sub-license only if it is expressly agreed upon.

Rights in Rem and Levy of Execution

Article 32

- (1) A trade mark shall be the subject of rights in rem and levy of execution.
- (2) The rights referred to in paragraph (1) of this Article shall be effective against third persons only after the entry thereof into the register.

Assignment of Rights

Article 33

- (1) The trade mark applicant or the trademark owner may assign, entirely or partially, his right to a trade mark or his right from the application to another for the goods or services for which the trademark is granted.
- (2) The assignment of rights shall be made in the form of a written contract which, after the entry thereof into the register, shall have effect against third persons.
- (3) The contract on the assignment of rights shall particularly contain the indication of the contracting parties, the trade mark registration number, or the trade mark application number.
- (4) The entry of the assignment of rights shall be made on the request of the new owner of a trade mark and shall be published in the Office official gazette.
- (5) Actions against an earlier owner of a trade mark may be instituted up to the entry of the assignment of rights into the register.

Part Five ACQUISITION, DURATION, MAINTENANCE AND TERMINATION OF A TRADEMARK

Acquisition of a Trade Mark

Article 34

- (1) A trade mark shall be acquired by a decision on the grant of a right and by the entry of a trade mark into the register.
- (2) A trade mark shall be valid as from the date of filing the trade mark application.
- (3) The date of entry of the trademark into the register shall be the same as the date of making a decision on the grant of a trade mark.

Duration and Maintenance of a Trade Mark

Article 35

- (1) A trade mark shall be valid for 10 years counting from the date of filing the trade mark application.
- (2) A trade mark shall be renewed indefinite number of times and that for the periods of ten years each, provided that the applicant file to the Office a request for the extension of the validity of a trade mark and pay the corresponding fee, in the course of the last year of the ten-year period of protection or six months at the latest after the expiration of this period.
- (3) The new period of protection shall begin with the day of expiration of the previous ten-year period of protection.

Use of a Trade Mark

Article 36

- (1) A trade mark owner shall, to maintain his rights, use a trade mark for the goods or services for which it is granted, unless serious reasons exist for its non-use, particularly the import restrictions or any other government requirements in respect of the goods or services for which a trade mark is granted.
- (2) The use of a trade mark in the slightly changed form not changing the distinctive character of a trade mark, as well as the use of a trade mark on the goods and equipment exclusively for the purpose of export also constitute the use of a trade mark.
- (3) The use of a trade mark by another person having the owner's consent shall be considered the use by the owner himself.

Termination of the Trade Mark Validity

Article 37

- (1) A trade mark shall cease to be valid:
 1. if the term of protection expires, and the trade mark owner doesn't file a request for the renewal of the trade mark on time, and doesn't pay a prescribed fee;
 2. if the owner of a trade mark doesn't use a trade mark in a continuous period of five years within the meaning of Article 36 of this Law;
 3. if a collective mark is used contrary to the general act on the collective trade mark.
 4. on the basis of the statement given by the owner concerning the renounce of a trade mark, on the day following the day of submitting to the Office the written statement thereon; that statement shall have no legal effect if a certain right is entered into the register for the benefit of third persons, and the trade mark owner didn't previously obtain the written consent from those persons.;
 5. with the termination of the legal capacity of the trade mark owner, or with his death; the right shall cease to be valid on the day of the termination of the

legal capacity of a trade mark owner or on the day of his death, unless the right has been transferred to another owner;

- (2) With regard to the case referred to in paragraph (1), subparagraph 2 of this Article, the owner of a trade mark shall be obliged to prove that he uses the trade mark.
- (3) The termination of a trade mark validity shall be entered into the trade mark register.

Declaration of the Decision on the Grant of a Trade Mark Null and Void

Article 38

- (1) The decision on the grant of a trade mark shall be declared null and void if it is established that the conditions for the grant of that right, provided by this Law didn't exist.
- (2) The decision on the grant of a trade mark may be declared null and void during the whole term of the protection, ex officio, on the proposal of an interested person or on the proposal of the state attorney.
- (3) A proposal concerning the declaration of the decision on the grant of a trade mark shall be supported by necessary evidence.
- (4) The procedure relating to the declaration of the decision on the grant of a trade mark null and void shall be regulated in detail by the Regulations.

Part Six

SPECIAL PROVISIONS ON COLLECTIVE AND CERTIFICATION MARKS

Concept

Article 39

- (1) A collective mark shall protect a sign intended for the collective designation of the goods or services put to the market by the members or the partners of a certain legal entity (hereinafter: the business association).
- (2) A certification mark shall protect a sign used by several trade companies under the control (supervision) of the owner of a trade mark, serving for the protection of the quality, origin, the mode of manufacture or other common characteristics of the goods or services of the said trade companies.

Special Requirements

Article 40

For the acquisition of a collective trade mark it shall not be necessary that the business association have its own manufacturing or service trade company in, or outside, the Republic of Croatia.

Contract on a Collective Mark

Article 41

A contract on a collective mark shall be filed with a request for the grant of a collective mark and shall contain the name and the business seat of the business association, a list of persons authorized to use a collective mark, conditions determining such use and provisions relating to the infringement of rights in the event of the misuse of a collective mark or of the breach of the provisions of a contract.

Changes

Article 42

- (1) On the request of the applicant or of the owner of a collective mark, the Office shall enter into the register any changes relating to the structure of the members or partners of the business association and any amendments of the contract regulating the use of a collective mark.
- (2) The rights arising from a collective mark shall not be transferable and shall not be the subject of the license, the compulsory execution or the lien.
- (3) All requests for the entry of changes occurred in connection with a collective mark shall be subject to the payment of prescribed fees.

Part Seven

COMMON PROVISIONS RELATING TO THE PROCEDURE BEFORE THE OFFICE

Other Provisions Applied in the Procedure before the Office

Article 43

- (1) Particular matters relating to the procedure before the Office, shall be defined by the Regulations, enacted by the Director of the Office.
- (2) The Law on the General Administrative Procedure shall apply to particular matters relating to the procedure, not regulated by this Law.

Fees in the Procedure for the Acquisition and Maintenance of a Trade Mark

Article 44

- (1) All actions in the procedure of the acquisition and maintenance of a trade mark shall be subject to the payment of fees in the amount fixed by a special tariff (hereinafter: the tariff) enacted by the Director of the Office.
- (2) The payment of a fee shall be due at the moment of filing a particular request, or when the term for the payment of a fee is due, or on the basis of the Office decision.
- (3) If the party to the procedure fails to pay fees provided by this Law and the Regulations, the procedure shall be ended on the basis of the Office decision.
- (4) If the party to the procedure fails to pay a maintenance fee, the right shall cease to be valid.

Registers

Article 45

- (1) The Office shall keep the register of applications, the register of trade marks and the register of agents.
- (2) The registers referred to in paragraph (1) of this Article shall be open to the public.
- (3) The Office shall enable to interested persons the inspection of data and documentation concerning published applications and granted trade marks.

Office Official Gazette

Article 46

The Office shall publish the official gazette containing publications of trade mark applications and granted rights, renewals of rights, transfers of rights, cancellations of a trade mark from the register and other data concerning a trade mark, provided by this Law and the Regulations.

Search

Article 47

- (1) On the request of any interested person, the Office shall carry out services concerning searches of identity and similarity of trade marks applied for and registered having effect in the Republic of Croatia.
- (2) The services relating to searches carried out by the Office shall be subject to the payment of prescribed fees.

Representation

Article 48

- (1) Foreign natural or legal persons not having residence or business seat in the territory of the Republic of Croatia shall appoint an authorized agent having residence in the Republic of Croatia.
- (2) General principles of representation and special conditions under which foreign natural or legal persons may exercise rights arising from this Law in the procedure before courts and administration bodies through authorized agents, shall be regulated by a special provision.

International Registration

Article 49

In the procedure of granting trade marks under the provisions of international treaties the Republic of Croatia being a party to, the provisions of this Law shall apply to any matters not regulated by such treaties.

Part Eight CIVIL PROTECTION

Action Concerning the Infringement of Rights

Article 50

- (1) The trade mark owner, whose rights referred to in Article 27 of this Law, have been infringed or threatened to be infringed may by instituting an action, require from the competent court:
 1. the prohibition of committed or intended infringement of a trade mark;
 2. removal of a condition caused by the committed infringement of a trade mark;
 3. information concerning the goods unlawfully designated by a trade mark or documentation for those goods or services;
 4. compensation for damage according to the general rules concerning the compensation of damage and the refund of a profit gained on the basis of an unjustified acquisition of wealth.
 5. publication of the court decision concerning the infringement of a trade mark, at the expense of the defendant
- (2) The imitation of a trade mark as well as the use of a trade mark contrary to the contract on the collective trade mark shall also be considered as the infringement of a trade mark within the meaning of paragraph 1 of this Article.
- (3) The procedure following the action within the meaning of paragraph (1) of this Article shall be urgent.

A Request For the Destruction

Article 51

- (1) On the request of the complainant the court may order the destruction of articles unlawfully designated by a trade mark, being in the possession of a defendant.
- (2) The court shall decide whether the articles unlawfully designated by a trade mark will be destroyed, made unrecognizable or will be used in any other way.

Limitation (Lapse) of an Action

Article 52

An action for the infringement of a trade mark may be instituted within three years after learning about the infringement and the infringer, and five years at the latest after the commitment of the infringement.

Provisional measures

Article 53

- (1) If the owner of a trade mark makes it likely that his right has been infringed or that there is a likelihood of infringement which might cause the irreparable harm, may require from the court:
 1. to order provisional measures concerning the prohibition of acts infringing the rights of the owner of a trade mark;
 2. provisional seizure of articles unlawfully designated by a trade mark or the exclusion thereof from circulation;
 3. measures concerning the assurance of evidence concerning articles unlawfully designated by a trade mark and measures for preserving the existing situation.
- (2) The owner of a trade mark may require the ordering of provisional measures even before the institution of an action, provided that he institutes an action within 15 days counting from the filing date of the request for ordering a provisional measure.
- (3) An appeal against the decision ordering a provisional measure shall not postpone the execution thereof.

Compensation for Damages

Article 54

- 1) The court may order to the trade mark owner the compensation for damages if it has been proven that the required measures referred to in Article 53, paragraph (1) of this Law are unjustified.
- 2) The court may order to the trade mark owner to deposit an appropriate amount of money as a security for the person the provisional measure has been ordered against.

Part Nine
PENAL AND CRIMINAL PROVISIONS

Criminal Acts

Article 55

- (1) Whoever uses, reproduces or imitates, offers, affixes to products or the packaging thereof, imports, exports a trade mark of another without authorization or uses a trade mark of another when rendering services, shall be punished for a criminal act by a fine or imprisonment up to three years.
- (2) Whoever stocks products knowing that they are unlawfully designated by a trade mark of another, aware thereof sells such products or renders services under service mark of another, or supplies himself or others with products designated by a trade mark of another shall be punished by a fine or imprisonment referred to in paragraph (1) of this Article.
- (3) If the commitment of a criminal act referred to in paragraphs (1) and (2) of this Article results with the acquisition of a substantial financial gain or a substantial damage, and the perpetrator has acted with the aim of acquiring such financial gain or causing such damage, he shall be punished by imprisonment of six months up to five years.
- (4) Articles intended or used for the commitment of a criminal act or which resulted from the commitment of a criminal act referred to in paragraphs (1) and (2) of this Article shall be seized and destroyed.

Offenses

Article 56

- (1) A legal entity which uses, reproduces or imitates, offers, affixes to products or to the packaging thereof, imports, exports a trade mark of another or uses a mark of another when rendering services (article 27 of this Law) without authorization, shall be punished with a fine of 5 000,00 up to 50 000,00 kunas.
- (2) A legal entity which stocks products knowing that they are unlawfully designated by a trade mark of another and aware thereof sells such products or renders services under a service mark of another, or supplies himself or others with products designated by a trade mark of another without authorization (Article 27 of this Law), shall be punished by a fine of 5 000,00 up to 50 000,00 kunas.
- (3) For the offense referred to in paragraphs (1) and (2), the responsible person in a legal entity shall be punished by a fine of 6 000,00 up to 60 000,00 kunas.
- (4) For the offense referred to in paragraphs (1) and (2), a natural person shall be punished by a fine of 1 000,00 up to 5 000,00 kunas.

- (5) A natural person shall be punished for offenses referred to in paragraphs (1) and (2) of this Article committed for the purpose of acquiring financial gain by a fine of 20 000,00 kunas.

Part Ten

TRANSITIONAL AND FINAL PROVISIONS

Pending Procedures

Article 57

Trade mark granting procedures pending on the day of application of this Law shall be continued under the provisions of this Law.

Termination of the Effect of Other Provisions

Article 58

With the day of application of this Law, the Industrial Property Law (Official Gazette of the Republic of Croatia, No 53/91, 19/92 and 26/93) in part concerning trade marks and the Law Governing Administrative Fees (Official Gazette of the Republic of Croatia No. 59/96) in part concerning trade marks shall cease to be in effect.

Time Limit for the Enactment of the Regulations

Article 59

The Director of the Office shall enact provisions referred to in Article 43, paragraph (1) and Article 44, paragraph (1) of this Law within the period of three months counting from the date this Law enters into force.

Entering into Force

Article 60

This Law shall enter into force the eight day after the publication thereof in "The Official Gazette of the Republic of Croatia", and shall be applied after the expiration of three months counting from the date of its entering into force.