

TRADEMARK LAW

Part One BASIC PROVISIONS

The Concept of a Trademark

Article 1

(1) A trademark shall protect a sign which may be represented graphically and which is capable of distinguishing the goods or services of one undertaking from those of other undertakings.

(2) Trademarks may protect signs, in particular: words, letters, numerals, abbreviations, graphical representations, combinations of colours and the tints thereof, three-dimensional forms, shapes of the goods or the packaging thereof, provided that they are distinctive, as well as the combinations of all the above indicated signs.

(3) A seal, a stamp and a hallmark (official mark identifying precious metals, measures, etc.) shall not, under this Law, be considered to be trademarks.

Distinctiveness

Article 2

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.

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.

Equal Status of Foreign Natural and Legal Persons

Article 4

Foreign natural and legal persons shall, under this Law, enjoy the same rights as are enjoyed by the nationals of the Republic of Croatia and legal entities having their business seat in the Republic of Croatia, if it results from the international treaties binding the Republic of Croatia or from the application of the principle of reciprocity.

Protection Requirements - Absolute Grounds for Exclusion

Article 5

(1) A trademark 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 representation, of distinguishing the goods or services in 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 defined by the kind of the goods, or the shape of the 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 the geographical origin, nature, quality or any other characteristic of the goods or service.
8. which contains or consists of a geographical indication identifying wines or spirits, but refers to the wines or spirits which are not of such geographical indication.
9. which contains a national coat of arms or other public arms, a flag or an emblem, the name, or the abbreviated name of a country or of an international organization, and the imitations thereof, except with the authorization of the competent authority of the country or the organization.

(2) The signs specified in subparagraphs 3, 4 and 5 of paragraph (1) of this Article may be protected by trademarks if the applicant proves that by using it, the sign has become characteristic for his goods or services.

Protection Requirements - Relative Grounds for Exclusion

Article 6

(1) A trademark may not protect a sign:

1. which is identical with the earlier trademark designating the same kind of the goods or services;
2. which is identical with, or similar to, the earlier trademark designating the same or similar kind of the goods or services which would result in a likelihood of confusion in trade, including the likelihood of association by the public of the sign applied for with the earlier trademark.

(2) The expression "earlier trademarks" shall comprise:

1. trademarks enjoying priority right referred to in Articles 11, 12 and 13 of this Law;
2. earlier internationally registered trademarks with the effect in the Republic of Croatia;
3. trademarks which are, at the time of filing a trademark application for the 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.

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

(4) A trademark shall not protect a sign which infringes earlier acquired rights of the owners referred to in Article 20, paragraph (1), subparagraphs 2 - 5 of this Law.

(5) A trademark shall not protect a sign which is identical with or similar to a trademark the validity of which has expired in compliance with Article 37, paragraph (1), subparagraph 1 of this Law, if a trademark application is filed before the expiration of the period of two years, counting from the expiration date of the trademark validity, unless the protection of such a sign is applied for by the owner in whose name the trademark has been protected, or by his successor in title.

(6) 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 TRADEMARK

The Office Authority

Article 7

(1) The administrative procedures relating to the trademark protection shall be carried out by the Office.

(2) The administrative decisions made by the Office shall not be subject to any appeal, but an administrative lawsuit may be instituted.

Filing of the Application

Article 8

(1) The procedure for the grant of a trademark shall be instituted by filing a submission containing a request for the grant of a trademark and other relevant elements provided by this Law (hereinafter: a trademark application).

(2) Each sign applying for a trademark protection shall be filed as a separate application.

The Content of the Application (Minimum Requirements)

Article 9

(1) A trademark application shall contain:

1. a request for the grant of a trademark;
2. indications allowing the identity of the applicant to be established;
3. indications sufficient to contact the applicant or his agent, if any, by mail.

4. a representation of the sign applied for a trademark protection;

5. the list of the goods or services the protection is applied for.

(2) A trademark application shall be considered to be filed if it complies with the minimum requirements referred to in paragraph (1) of this Article.

(3) Other elements of the application and the attachments thereto shall be filed in the manner and in the number of copies as prescribed by the Regulations, defining the implementation of this Law (hereinafter: the Regulations).

Division of the Application

Article 10

(1) Any trademark application may be, during the trademark granting procedure divided, on the request of the applicant, into two or several applications in respect to the proposed list of the goods and services.

(2) The divided applications shall maintain the priority right on the basis of the filing date of the first application.

Application Filing Priority

Article 11

If the trademark 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 trademark 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 trademark 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 trademark in the Republic of Croatia, invoke the date of the first filing, provided that he files the application in the Republic of Croatia within six months counting from the date of the first filing.

(2) The applicant invoking the union priority right shall indicate, in the application he is filing with the Office, the relevant data on the application he is invoking (State, application date and number) and shall attach thereto the true copy of the first application certified by the competent authority of the member State of the Paris Union, not later than within three months as from the date of filing a priority claim, as well as the translation of the first application into the Croatian language.

Exhibition Priority

Article 13

(1) If the trademark applicant has displayed the goods or services designated by a specific sign at an official or officially recognized international exhibition in the Republic of Croatia or in any of the member States 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 accorded as the date of the first application,

provided that he files the application in the Republic of Croatia within six months as from that date.

(2) The applicant invoking the exhibition priority right shall, in addition to the application he is filing with the Office, submit a certificate issued by the competent authority of the member State 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 a Trademark Application

Article 14

(1) The examination of the correctness of the application shall include the examination of all the requirements prescribed by this Law.

(2) The trademark 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 fee for a trademark application and procedural charges have been paid, and the evidence of effected payment has been attached thereto;
3. it has been drafted in a manner to contain all the 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 Trademark 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 the necessary elements and attachments in compliance with this Law and the Regulations, the Office shall invite the applicant to remedy the established deficiencies within 60 days as from the day of 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.

(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 trademark application, and the Office shall invite the applicant to remedy all the found deficiencies within the time limit referred to in paragraph (1) of this Article.

(4) The date of receipt of the correct application within the meaning of Article 9, paragraph (1) of this Law shall be considered to be the day for establishing priority referred to in Article 11 of this Law.

Extension of the Time Limit

Article 16

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 not more than 60 days.

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 the found deficiencies within the meaning of Article 15, paragraphs (1) and (3) of this Law, the application shall be rejected by a decision.

Refusal or Partial Acceptance of the Trademark Application

Article 18

(1) If the sign for which a trademark application is filed, is excluded from the protection in respect to all, or partially excluded from protection in respect to some of the specified goods or services 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 trademark 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 the protection in respect to the submitted list of the goods or services, and invited to make a declaration thereon.

(3) The trademark applicant shall have the right to make a declaration concerning the grounds for the exclusion of the sign from the protection within 30 days as from the day of the receipt of the 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 not more than 60 days.

Publication of the Application

Article 19

(1) If the trademark application complies with all the requirements regarding correctness of the application within the meaning of Article 14, paragraph (2), if the sign is not excluded from the 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) The application data to be published in the Office official gazette shall be prescribed by the Regulations.

Opposition

Article 20

(1) The opposition to the published trademark application may be, within three months counting from the publication date, filed with the Office by:

1. the owner of the earlier trademark within the meaning of Article 6, paragraphs (1) to (5) of this Law;

2. a person who has, at the time of filing the trademark application, a firm provided that such firm or the essential part thereof is identical with or similar to the published sign and provided that she/he manufactures identical or similar goods or renders identical or similar

services to those the published sign refers to, or where such goods or services are the subject matter of the firm's activity.

3. a natural person whose name and surname, or appearance (image) are identical with or similar to the published sign applied for the trademark protection;

4. the owner of the earlier industrial property right, if the subject matter 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 opposition shall be filed in the manner as prescribed by the Regulations.

Opposition Procedure

Article 21

(1) The Office shall examine whether the opposition is filed by the person entitled to file the opposition within the meaning of Article 20, paragraph (1) of this Law, whether the opposition is filed in the prescribed time limit and whether it is justified and accompanied by the appropriate documentation.

(2) If the requirements referred to in paragraph (1) of this Article are not complied with, the Office shall issue 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 trademark 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 application shall be refused within the limits of the grounds referred to in the opposition.

Examination of the Opposition

Article 22

(1) If the applicant makes a declaration concerning the grounds specified in the opposition, the Office shall examine the justification of the opposition within the limits 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 trademark application and shall communicate a written decision to that effect to the applicant and to the person who has filed the opposition.

Grant of the Trademark and Entry into the Register

Article 23

(1) If the grounds referred to in Article 5, paragraph (1) and Article 6, paragraphs (1) to (5) do not constitute a barrier to the grant of the trademark, the trademark shall be entered into the trademark register on the basis of the decision on the grant of a trademark, subject to the prior payment of the fee and procedural charges for the maintenance of the trademark for the first ten-year period.

(2) If the maintenance fee and procedural charges for the first ten-year period are not paid, the trademark application shall be rejected by a decision.

Publication of a Trademark

Article 24

(1) The data concerning a trademark shall be published in the Office official gazette not later than within three months as from the date of entry of the trademark 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 trademark shall be subject to the payment of a prescribed fee for the publication of a trademark in the Office official gazette.

Trademark Certificate

Article 25

(1) After the entry of a trademark into the register and after the payment of the prescribed fee for the issuance of the trademark certificate, the Office shall provide the owner of the right with the trademark certificate not later than within six months as from the date of publication of the trademark in the Office official gazette.

(2) The data to be contained in the trademark certificate shall be prescribed by the Regulations.

Part Three EFFECTS OF A TRADEMARK

Exclusive Rights

Article 26

(1) The trademark owner shall have the exclusive right of designating by the trade mark the goods or services it is granted for, and the exclusive right of using the trademark for such goods or services.

(2) The trademark owner may prohibit to third persons not having his consent to use the sign which is identical with or similar to a sign for the goods or services of the identical or similar kind as those a trademark is granted for, or to use it for designating such goods or services, particularly to affix it on the goods or the packing thereof, to offer services or to put on the market the goods carrying such sign, or to store the goods with such intention, import or export the goods carrying such sign or to use such sign in the trade name, in the correspondence or in advertising.

(3) The owner of a trademark shall have the right to require from 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 trademark, information about the origin of the goods, and trade channels thereof or the documentation relating to those goods or services.

(4) The owner of the well-known trademark 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 trademark is protected, if the use of such sign in relation to those goods or services would refer to the connection between those goods or services and the owner of the protected trademark, and if at the same time there is a likelihood that such use would be prejudicial for the interests of the owner of a protected trademark .

Limitation of Rights

Article 27

(1) The trademark shall not entitle its owner to prohibit third persons from using in the course of the trade their name, surname, sign or trade name, address of the residence, indications concerning the kind, quality, quantity, intended purpose, value, geographical origin, the date of production of the 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 trademark, or form parts of a trademark, but provided that they are used in compliance with the established trade practice and fair market competition.

(2) The trademark shall not entitle its owner to prohibit third persons from using in the course of the trade a sign which is identical with or similar to a trademark if it is necessary for the indication or designation of the intended purpose of the goods, particularly the accessories or spare parts thereof, or the kind of services which are rendered in compliance with the established trade practice and fair market competition.

Acquiescence in the Use of a Trademark

Article 28

(1) The owner of their earlier trademark shall not have the right to require the annulment of the later trademark on the basis of his earlier priority right nor to prohibit the use of the later trademark in relation to the goods or services for which the later trademark has been used if he has acquiesced in this use for five consecutive years, except where the later trademark has been protected in bad faith.

(2) The owner of a trademark with later priority right shall not have the right to prohibit the use to the owner of the earlier trademark.

(3) The acquiescence in the use of a trademark within the meaning of paragraph (1) of this Article shall not be the reason for the cancellation thereof from the register.

Exhaustion of Rights

Article 29

The owner of the trademark shall not have the right to prohibit the use of the trademark for the goods or services put on the domestic market by himself, or with his consent, except

where essential changes on the goods, or the deterioration of their characteristics, or the change of the nature of the goods or services have occurred after they have been put on the market.

Part Four

CHANGES RELATING TO A TRADEMARK

Entry of Changes

Article 30

(1) On the request of the applicant or the owner of a trademark the Office shall enter into the corresponding register all the 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 of his employment, as well as other changes occurring after the filing of the trademark application or after the grant of a trademark, provided that they correspond to the real situation and that they do not affect the representation of the sign.

(2) The changes entered into the trademark register shall be published in the Office official gazette.

(3) The data to be contained in the request for the entry of any change relating to a trademark shall be prescribed by the Regulations.

License

Article 31

(1) The owner of a trademark may license to third persons the right to use a trademark in respect to all of the goods or services for which it is granted or only in respect to the part of those goods or services, in the whole territory of the Republic of Croatia or in the part thereof.

(2) The right to use a trademark 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 trademark owner.

(3) The license contract shall be made in a written form and shall be signed by the contracting parties.

(4) The trademark owner may exercise the rights arising from the trademark against the licensee breaching any provision of the license contract, particularly relating to the duration, the scope of the trademark use entered into the register, the kind of the goods or services for which the license is granted, and the territory in which the trademark may be used with regard to the quality of the manufactured goods or rendered services.

(5) The licensee may institute the lawsuit concerning the infringement of the rights arising from a trademark, only if the trademark 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 trademark may be subject to the 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 trademark applicant or the trademark owner may assign, entirely or partially, his trademark or his right arising from the application to another in respect to the goods or services for which the trademark is applied for or granted.

(2) The request for the assignment of rights shall be accompanied by a certified copy of the contract, or the part of the contract indicating the assignment of rights, or the certificate of the assignment of rights signed by the old and the new owner of rights.

(3) The contract on the assignment of rights shall particularly contain the indication of the contracting parties, the trademark registration number, or the trademark application number.

(4) The entry of the assignment of rights shall be made on the request of the old or the new trademark owner and shall be published in the Office official gazette.

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

Acquisition of a Trademark

Article 34

(1) A trademark shall be acquired by a decision on the grant of the right and the entry of a trademark into the register.

(2) The date of entry of a trademark into the register shall be the same as the date on which a decision on the grant of a trademark has been made.

Duration and Maintenance of a Trademark

Article 35

(1) A trademark shall be valid for 10 years counting from the date of filing the trademark application.

(2) A trademark shall be renewed indefinite number of times, and that, for the periods of ten years each, provided that the trademark applicant file with the Office a request for the extension of the trademark validity and pays the corresponding fee and procedural charges, in the course of the last year of the ten-year period of protection, or not later than within six months 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.

(4) The data to be contained in the request for the extension of the trademark validity shall be prescribed by the Regulations.

Use of a Trademark

Article 36

(1) A trademark owner shall, to maintain the trademark validity, use a trademark in respect to the goods or services for which it has been granted, unless serious reasons exist for its non-use, not depending of the trademark owner's will.

(2) The use of a trademark in a slightly modified form not changing the distinctive character of a trademark, and the use of a trademark on the goods and equipment exclusively for the purpose of export shall also constitute the use of a trademark.

(3) The use of a trademark by another person having the owner's consent shall be considered to be the use by the owner himself.

Ceasing of Effect of the Trademark

Article 37

(1) A trademark shall lapse in respect to all, or to some, of the goods and services:

1. if the term of protection expires, and the trademark owner doesn't file, within a prescribed time limit, a request for the extension of the trademark validity and doesn't pay a prescribed fee;

2. if the a trademark owner hasn't used a trademark in the continuous period of five years within the meaning of Article 36 of this Law;

3. if a collective mark is used contrary to the collective trademark agreement within the meaning of Article 41 of this Law;

4. on the basis of the owner's declaration on the waiver of a trademark, on the day following the day of the submission to the Office of the written declaration to that effect; such declaration shall not have the legal effect, if the right is entered into the register for the benefit of third persons, and the trademark owner didn't previously obtain the written consent from those persons.;

5. with the lapse of the legal person who is the trademark owner, or with the death of a natural person who is the trademark owner; on the day of the lapse, or on the day of death, unless the right has been transferred to the successors in title of the legal person, or to heirs of the natural person;

(2) In the case referred to in paragraph (1), subparagraph 2 of this Article, the trademark owner shall be obliged to prove that he uses the trademark.

(3) The lapse of a trademark shall be entered into the trademark register.

Declaration of the Decision on the Grant of a Trademark Null and Void

Article 38

(1) The Office shall issue a decision on the declaration of the decision on the grant of a trademark 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 trademark 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 trademark null and void, shall be accompanied by necessary evidence.

(4) The data to be contained in the proposal for the cancellation of a trademark due to the nullity shall be prescribed by the Regulations.

Part Six

SPECIAL PROVISIONS ON A COLLECTIVE AND CERTIFICATION MARK

Concept

Article 39

(1) A collective mark shall protect a sign intended for the collective designation of the goods or services put on the market by the members or the partners of a certain legal person.

(2) A certification mark shall protect a sign used by several trade companies, under the supervision of the trademark owner, serving for the protection of the quality, origin, manner of production, or other common characteristics of the goods or services of the those trade companies.

Special Requirements

Article 40

For the acquisition of a collective trademark it shall not be required that the legal person referred to in Article 39 of this Article has 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, the business seat of the owner of a collective trademark, the list of persons authorized to use a collective mark, conditions determining such use, and provisions relating to the infringements, in the case of the misuse of a collective mark, or the breach of the provisions of a contract.

Changes

Article 42

(1) On the request of the applicant or the owner of a collective mark, the Office shall enter into the register any change or amendment 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 matter of the license, the levy of execution or the rights in rem.

Part Seven
COMMON PROVISIONS RELATING TO THE PROCEDURE
BEFORE THE OFFICE

Other Provisions Applied in the Procedure before the Office

Article 43

(1) The Law on the General Administrative Procedure shall apply to particular matters relating to the procedure, not regulated by this Law.

Fees and Procedural Charges

Article 44

(1) The acquisition and maintenance of a trademark shall be subject to the payment of fees and procedural charges in compliance with the special provisions.

(2) If, in the trademark granting procedure the fees and procedural charges have not been paid, the application shall be rejected, and in the case of non-payment of the fees and procedural charges for the maintenance of a trademark, such right shall lapse.

Registers

Article 45

(1) The Office shall keep the register of applications, the register of trademarks 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 allow the inspection of data concerning the published applications and granted trademarks by interested persons.

(4) The Office shall issue, on the request of any interested person, the excerpt from the trademark register.

(5) The data to be entered into the registers referred to in paragraph (1) of this Article shall be prescribed by the Regulations.

Office Official Gazette

Article 46

(1) The Office shall publish the official gazette containing the publications of trademark applications, granted rights, extensions of the trademark validity, transfers of rights, cancellations of a trademark from the register, and other data concerning a trademark, provided for by this Law.

(2) The content of the data to be published in the Office official gazette shall be prescribed by the Regulations.

Search

Article 47

On the request of any interested person, the Office shall carry out identity and similarity searches of applied for and registered trademarks valid in the Republic of Croatia.

Representation

Article 48

General principles of representation, and special conditions under which, foreign natural or legal persons, not having residence or real and effective business seat in the territory of the Republic of Croatia, may exercise rights arising from this Law in the procedure before courts and administration bodies through authorized agents, shall be regulated by special provisions.

International Registration

Article 49

(1) In the trademark granting procedure carried out under the provisions of international treaties the Republic of Croatia is party to, the provisions of this Law shall apply to any matters not regulated by such treaties.

(2) For the purposes of the international registration of trademarks in compliance with the Madrid Agreement Concerning the International Registration of Marks (hereinafter: the Madrid Agreement), the publication of the application prescribed in Article 19, paragraph (1) of this Law, shall be replaced with the publication of the international registration in the official gazette of international registrations of trademarks of the World Intellectual Property Organization (hereinafter: the International Official Gazette).

(3) The time limit for filing the opposition to the grant of the internationally registered trademark for the Republic of Croatia, shall run as from the first day of the month following the month indicated on the edition of the International Official Gazette in which such trademark has been published.

Part Eight CIVIL PROTECTION

Action Concerning the Infringement of Rights

Article 50

(1) The trademark owner, if his rights referred to in Article 26 of this Law, have been infringed or threatened to be infringed, may by instituting an action, require from the competent court:

1. the establishment of the existence of the trademark infringement;
2. the prohibition of the committed or intended infringement of a trademark;
3. elimination of a condition caused by the committed infringement of a trademark;
4. compensation for damage;
5. publication of the court decision at the expense of the defendant.

(2) The imitation of a trademark, as well as the use of a collective and certification mark contrary to the contract on the collective and certification mark, shall also be considered to be the infringement of a trademark within the meaning of paragraph (1) of this Article.

(3) The procedure concerning the action within the meaning of paragraph (1) of this Article shall be urgent.

Request For the Destruction

Article 51

(1) On the request of the plaintiff, the court may order the destruction of objects unlawfully designated by a trademark, which are in the possession of a defendant.

(2) The court shall decide whether the objects unlawfully designated by a trademark is to be destroyed, made unrecognizable or used in any other way.

Limitation of Actions

Article 52

The action concerning the infringement of a trademark may be brought within three years as from learning about the infringement and the infringer, and not later than within five years as from the commitment of the infringement.

Provisional measures

Article 53

(1) If the trademark owner 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. the ordering of the provisional measure comprising the prohibition of acts infringing the trademark owner's right;
2. provisional seizure of the articles unlawfully designated by a trademark or the exclusion thereof from the circulation;
3. measures comprising the assurance of evidence concerning articles unlawfully designated by a trademark and measures comprising the preservation of the existing situation.

(2) The trademark owner may require the ordering of provisional measures even before the action is brought, provided that he brings an action within 20 working days or 31 calendar days, whichever expires later.

(3) If the trademark owner doesn't bring an action within the time limit referred to in paragraph (2) of this Article, the court may, on the request of the defendant, suspend the procedure and lift the required measures.

Compensation for Damage

Article 54

(1) The court may impose on the trademark owner the compensation for damage if it is proved that the required measures referred to in Article 53, paragraph (1) of this Law have been unjustified.

2) The court may impose on the trademark owner the deposit of an adequate amount as a security for the person the provisional measure has been ordered against.

Part Nine

PROVISIONS CONCERNING MISDEMEANORS

Misdemeanors

Article 55

(1) Any legal person which uses, reproduces or imitates, offers, affixes to the goods or the packaging thereof, imports, exports or uses when rendering services, somebody else's trademark, without the authorization, shall be punished for the misdemeanor by a fine amounting from 5.000,00 up to 50.000,00 kunas (Article 26).

(2) Any legal entity which stocks, without the authorization, the products knowing that they are unlawfully designated by somebody else's trademark, and, aware thereof sells such goods, or renders services under somebody else's service mark, or supplies himself or others with the goods designated by somebody else's trademark (Article 26), shall be punished for the misdemeanor by a fine amounting from 5.000,00 up to 50.000,00 kunas.

(3) The responsible person in the legal person shall be punished for the misdemeanor referred to in paragraphs (1) and (2) of this Article, by a fine amounting from 6.000,00 up to 60.000,00 kunas.

(4) The natural person shall be punished for the misdemeanors referred to in paragraphs (1) and (2) of this Article by a fine amounting from 1.000,00 up to 5.000,00 kunas.

(5) The natural person shall be punished for the misdemeanors referred to in paragraphs (1) and (2) of this Article committed for the purpose of acquiring financial gain, by a fine amounting to 20.000,00 kunas.

(6) Articles intended or used for the commitment the misdemeanors referred to in paragraphs (1), (2), (3), (4), and (5) of this Article shall be seized and destroyed.

Part Ten

TRANSITIONAL AND FINAL PROVISIONS

Pending Trademark Procedures

Article 56

Trademark granting procedures pending on the day the application of this Law shall start, shall be carried out in compliance with the provisions of this Law.

Other pending provisions

Article 57

(1) The pending procedures concerning the infringement of a trademark or the rights arising from a trademark application, shall be carried out in compliance with the provisions which were in force up to the day the application of this Law shall start.

(2) The pending procedures concerning the declaration of the decision on the grant of a trademark null and void, shall be carried out in compliance with the provisions which were in force up to the day the application of this Law shall start.

Implementing Provision Enacted by the Director of the Office

Article 58

The Director of the Office shall define, by the Regulations, matters referred to in: Article 9, paragraph (3), Article 19, paragraph (2), Article 20, paragraph (3), Article 24, paragraph (2), Article 25, paragraph (2), Article 30, paragraph (3), Article 35, paragraph (4), Article 38, paragraph (4), Article 45, paragraph (5), and Article 46, paragraph (2) of this Law.

Cessation of the Validity of Other Provisions

Article 59

The Industrial Property Law ("Narodne novine" – the Official Gazette of the Republic of Croatia, No 53/91, 19/92, 61/92 and 26/93), in the part relating to the trademarks, shall cease to be valid, on the application of this Law shall start, except for the provisions concerning the representation (Article 172a), which shall be applied up to the enactment of a special regulation.

Entry into Force

Article 60

This Law shall enter into force on the eighth day as from the date of its publication in the "Narodne novine" – the Official Gazette of the Republic of Croatia, and shall be applied as from January 1, 2000.