

WORLD TRADE ORGANIZATION

RESTRICTED

IP/C/W/39

14 October 1996

(96-4243)

**Council for Trade-Related Aspects
of Intellectual Property Rights**

Original: English

REVIEW OF LEGISLATION ON TRADEMARKS, GEOGRAPHICAL INDICATIONS AND INDUSTRIAL DESIGNS

Questions posed by the United States

By means of communications from the Permanent Mission of the United States to the WTO, dated 3 and 9 October 1996, the Secretariat has received questions that the United States had communicated to the following WTO Members concerning the review of national implementing legislation in the areas of trademarks, geographical indications and industrial designs:

	<u>Page</u>
Australia	2
Canada	3
Czech Republic	3
European Communities and their Member States	6
Iceland	25
Japan	26
Liechtenstein	28
New Zealand	29
Norway	30
Poland	32
Slovak Republic	33
South Africa	35
Switzerland	36

AUSTRALIA

1. Please explain whether the nature of goods or services to which a trademark is to be applied can serve as an obstacle to the registration of the mark under Australian law. If so, please identify and explain the subject matter excluded under this authority, the relative provisions of the Australian law that serve as a basis for these exclusions, and how this practice complies with TRIPS Article 15.4.
2. Please explain whether Australian trademark law establishes a presumption of likelihood of confusion in the determination of confusing similarity in cases where identical marks are used on identical goods, as required by TRIPS Article 16.1. If so, please identify and explain the legal basis for this presumption.
3. Please explain how unregistered well-known trademarks are protected in Australia, as required by TRIPS Articles 16.2 and 16.3.
4. Section 100(3)(c) of the Australian trademark law provides that the owner of a registered mark that is involved as an opponent in a cancellation proceeding can avoid cancellation on the basis of failure to use the mark or use of the mark in good faith where "circumstances....were an obstacle to the use of the trademark during" the period in question. Please explain the types of circumstances that would be sufficient to satisfy this provision, including, where relevant, results of administrative or judicial decisions addressing this issue.
5. Please describe the methods by which industrial designs are protected in Australia, in particular:
 - the form or forms of intellectual property used to protect the design (*e.g.*, patent, copyright, *sui generis*);
 - the conditions that must be satisfied to obtain the grant of such protection (*e.g.*, whether designs must be new or original and the parameters of these concepts), and a brief description of the registration or granting procedure;
 - the nature of the rights granted and the term of protection provided;
 - the nature of remedies available to the owner of each type of protection, including a description of the conditions that may be imposed (*e.g.*, whether commercial use is required); and
 - whether any exceptions to protection or rights exist for each type of intellectual property involved.
6. Please explain how textile designs are protected under your law.
7. Please explain how, in the absence of an unfair competition statute, Australian law is consistent with TRIPS Article 22.2, which requires that, with respect to geographical indications, legal means be made available to prevent any use which constitutes an act of unfair competition within the meaning of Article 10*bis* of the Paris Convention.
8. Section 92 of the Trade Marks Act of 1995 permits removal of a mark from the register for non-use at any time if the owner of the mark did not have an intent to use the mark in Australia. Please explain how this provision is consistent with TRIPS Article 19.1, which provides for cancellation on the basis of such non-use only where the non-use has persisted uninterrupted for at least three years.

CANADA

1. Please explain whether, in the determination of whether a mark is “well-known” under Canadian law, account is taken of knowledge of the mark in the relevant sector of the public and of the mark in the public at large. If not, please explain how Canadian law is consistent with TRIPS Article 16.2.
2. Pursuant to the Charter of the French Language (1977, Province of Quebec), marks registered by businesses in Quebec must be in the French language unless there is no French language equivalent for the mark. Please explain how this provision is consistent with TRIPS Article 20, which states that use of a trademark shall not be unjustifiably encumbered by special requirements, such as use of the mark in a special form.
3. Please explain how geographical indications are protected under Canadian law, as required by TRIPS Articles 22 and 23.
4. Please describe the methods by which industrial designs are protected in Canada, in particular:
 - the form or forms of intellectual property used to protect the design (*e.g.*, patent, copyright, *sui generis*);
 - the conditions that must be satisfied to obtain the grant of such protection (*e.g.*, whether designs must be new or original and the parameters of these concepts), and a brief description of the registration or granting procedure;
 - the nature of the rights granted and the term of protection provided;
 - the nature of remedies available to the owner of each type of protection, including a description of the conditions that may be imposed (*e.g.*, whether commercial use is required); and
 - whether any exceptions to protection or rights exist for each type of intellectual property involved.
5. Please explain how textile designs are protected under your law.

CZECH REPUBLIC

1. Section 2 of the General Provisions lists the signs that can constitute a trademark. This list does not include personal names, numerals, letters or colours. Please explain how Section 2 of the General Provisions complies with TRIPS Article 15.1.
2. TRIPS Article 15.3 requires WTO Members to permit the filing of an application to register a trademark prior to actual use of the mark, and further specifies that such applications cannot be refused solely on the ground that the intended use has not occurred prior to three years from the date of application. Please explain how Czech law complies with this provision of the TRIPS Agreement.
3. Please explain whether the nature of goods or services to which a trademark is to be applied can serve as an obstacle to the registration of the mark under the law of the Czech Republic. If so,

please identify and explain the subject matter excluded under this authority, the relative provisions of the Czech law that serve as a basis for these exclusions, and how this practice complies with TRIPS Article 15.4.

4. Section 13(1) of the Czech law provides for a ten year term for trademarks beginning on the filing date of the application, not from the date the registration is granted. Please explain how this provision complies with the obligation of TRIPS Article 18 that WTO Members provide a minimum seven year term of protection for *registered* trademarks.

5. Please explain whether the owner of a registered trademark has the exclusive right to prevent third parties from using identical or similar signs on similar goods or services as required by TRIPS Article 16.1.

6. Please explain whether the trademark law of the Czech Republic establishes a presumption of likelihood of confusion in the determination of confusing similarity in cases where identical marks are used on identical goods, as required by TRIPS Article 16.1. If so, please identify and explain the legal basis for this presumption.

7. Please explain:

- the standard used in the Czech Republic for determining whether a mark is “well-known”;
- how registered and unregistered well-known marks are protected under the trademark law of the Czech Republic; and
- whether knowledge within the relevant sector of the public as a result of promotion of the mark is considered in the analysis leading to a determination that a mark is well-known.

With respect to each aspect of this question, please explain how the standards or practices comply with TRIPS Articles 16.2 and 16.3.

8. Section 15(4) of the Czech law permits a trademark owner to ask the customs authorities to withhold the entry of goods bearing infringing marks. Please explain how the law of the Czech Republic implements and applies the provisions regarding border measures found in TRIPS Articles 51 to 60 with regard to such goods bearing infringing trademarks.

9. Article 18(1) of the Czech trademark law specifies that one factor in the determination of whether a mark is “well known” is the “extent or long duration of its utilization for high-quality goods or services”. Please explain how this factor is applied in practice and, in particular, whether the “high quality” evaluation can preclude recognition of a mark as well known mark.

10. Section 19(1) of the Czech law requires strict compliance of the use of the trademark in the form in which it is registered. Please explain how this provision complies with TRIPS Article 2.1, to the extent it incorporates Article 5C(2) of the Paris Convention, which states that protection shall be afforded to marks that may differ from the registered mark as long as the differences do not alter the distinctive character of the registered mark.

11. Section 23(1)(b) of the Czech law allows marks to be cancelled if the owner does not provide a “good reason” for non-use. Please explain how this provision complies with TRIPS Article 19.1 which requires that WTO Members recognize certain circumstances that arise independently of the

will of the trademark owner as being valid reasons for non-use to prevent cancellation of a registration for non-use. Also, please explain the types of circumstances that would be sufficient to satisfy this provision (i.e., “good reasons” for non-use), including, where relevant, results of administrative or judicial decisions addressing this issue.

12. Please describe the methods by which industrial designs are protected in the Czech Republic, in particular:

- the form or forms of intellectual property used to protect the design (e.g., patent, copyright, *sui generis*);
- the conditions that must be satisfied to obtain the grant of such protection (e.g., whether designs must be new or original and the parameters of these concepts), and a brief description of the registration or granting procedure;
- the nature of the rights granted and the term of protection provided;
- the nature of remedies available to the owner of each type of protection, including a description of the conditions that may be imposed (e.g., whether commercial use is required); and
- whether any exceptions to protection or rights exist for each type of intellectual property involved.

13. Please explain how textile designs are protected under your law.

14. Please indicate whether geographical indications for wines and spirits are given additional protection compared to geographical indications for other goods. If not, please explain how Czech law is consistent with TRIPS Article 23.

15. Section 16(3) of the Czech Trademark Act requires the owner of a trademark to acquiesce to the use of an identical or confusingly similar sign which, in the period of two years before the filing of the application, has become characteristic for the identical or similar goods or services of its holder, such use being made by that holder in the Czech Republic. Please explain how this provision of Czech law is consistent with TRIPS Article 16.1, which grants the trademark owner the exclusive right to prevent use by third parties of identical or similar signs on goods or services identical to or similar to those in respect of which the trademark is registered.

16. Section 15(2) of the Czech Trademark Act grants the owner of a registered mark the authority to prevent third parties not having his consent from using identical or similar marks in relation to goods or services that are *identical* to those for which the registration has been granted. It is not clear whether the owner of a registered mark is also given these rights with respect to goods or services that are *similar* to those for which registration has been granted. Please explain whether such authority is granted under Czech law, and if not, how this practice is consistent with TRIPS Article 16.1.

17. Section 7(4) of the Czech Trademark Act provides that collective marks may only be used in conjunction with an individual mark or with the name of a legal person in such a way that the origin of the goods thus marked shall be clear. Please explain how this provision is consistent with TRIPS Article 20, which provides that the use of a trademark shall not be unjustifiably encumbered by special requirements, such as use with another trademark or use in a special form.

EUROPEAN COMMUNITIES AND THEIR MEMBER STATES

EUROPEAN COMMUNITIES

1. Please explain the relationship between the First Council Directive of the Council of the European Communities relating to trademarks (89/104/EEC), Council Regulations No. 40/94 and 3288/94 and the European Commission Regulations, on the one hand, and the laws of the Member States of the European Communities, on the other hand, with regard to:

- subject matter that can be registered as a trademark;
- procedures for registration and cancellation of registered marks, either in the form of a Community trademark or as a nationally registered mark; and
- enforcement procedures and remedies for Community trademarks and nationally registered marks.

2. Please explain how variances between provisions in European Council Directives and Regulations and national legislation in the Member States are resolved.

3. Article 4 of the First Council Directive and Article 4 of the Council Regulation 40/94 set forth the types of signs that are capable of being registered as a trademark. The list of signs does not include colour marks. Please explain whether colour marks are capable of constituting a trademark under this provision of the Council Directive, and if not, please explain how such protection is made available under European Community jurisprudence.

4. Please indicate whether any provisions of Directives or Regulations of the Council of the European Communities or European Commission Regulations address the issue of obstacles to the registration of a mark deriving from the nature of the goods or services sought to be protected. If so, please identify and explain the subject matter that is excluded from registration under such authority, and the relevant provisions of these Directives and Regulations that serve as a basis for the exclusions.

5. Please indicate whether any provisions of Directives or Regulations of the Council of the European Communities or European Commission Regulations address the issue of likelihood of confusion. If so, please explain whether under such authority Community law provides a presumption of likelihood of confusion where an identical sign is used on identical goods, as is required by TRIPS Article 16.1. Please identify and explain the legal basis and rationale for the noted presumption under the relevant laws or regulations.

6. Please indicate whether any provisions of Directives or Regulations of the Council of the European Communities or European Commission Regulations address the issue of determination of whether a mark is “well known.” If so, please explain the standard that is to be used under such authority for determining whether a mark is well-known, pursuant to TRIPS Article 16.2.

7. Please indicate whether any provisions of Directives or Regulations of the Council of the European Communities or European Commission Regulations address the issue of well known marks in the context of TRIPS Article 16.3. In particular, please indicate whether such authority ensures that the owner of a well-known mark is protected against the use of its mark on dissimilar goods or services if the use indicates a connection between the goods or services and the owner of the well-known mark is likely to be damaged by the unauthorized use of the mark.

8. Article 15(1) of the Council Regulations establishing the Community trademark allows the proprietor of a trademark to present “proper reasons for non-use” of a trademark to prevent cancellation of the registration of the mark on the basis of “non-use.” Please explain the circumstances or situations that would constitute “proper reasons” sufficient to satisfy this provision, including, where relevant, information regarding administrative or judicial decisions addressing this issue.

9. Please indicate whether design protection is subject to any Community-wide legislation, and if so, please describe the methods by which industrial designs are protected in the European Communities, in particular:

- the form or forms of intellectual property used to protect the design (*e.g.*, patent, copyright, *sui generis*);
- the conditions that must be satisfied to obtain the grant of such protection (*e.g.*, whether designs must be new or original and the parameters of these concepts), and a brief description of the registration or granting procedure;
- the nature of the rights granted and the term of protection provided;
- the nature of remedies available to the owner of each type of protection, including a description of the conditions that may be imposed (*e.g.*, whether commercial use is required); and
- whether any exceptions to protection or rights exist for each type of intellectual property involved.

10. Please explain how textile designs are protected under European Community law.

11. In Section 8.2 of its Notice to Applicants, the European Medicines Evaluation Agency, which is responsible for the centralized medicinal product registrations covering all of the European Union, indicates that only a single trademark will be approved for each product that is granted a marketing authorization. Please explain how this practice complies with TRIPS Article 20, which provides that the use of a trademark in the course of trade shall not be unjustifiably encumbered by special requirements.

12. Please explain whether and how, under relevant European Community directives, laws or regulations, trademarks existing prior to the entry into force of the WTO Agreement are protected against appropriation from actions incident to recognition of a geographical indication. If not, please explain how this practice is consistent with TRIPS Article 24.5.

13. Please explain whether, under Article 8(5) of the Council Regulation No. 40/94, in the determination of whether a trademark has a “reputation” in the Community, account is taken of knowledge of the trademark in the relevant sector of the public, including knowledge obtained as a result of promotion of the trademark, and how this practice is consistent with TRIPS Article 16.2.

AUSTRIA

1. Articles 1(1) and 16(2) of the Austrian Trademark Protection Law indicate that “special signs” and figures, letters, words, pictorial forms and characters are capable of being registered as trademarks.

The list does not include certain types of signs, such as colours, combinations of colours, or alpha-numeric marks. Please explain whether these types of signs are capable of constituting a trademark under Austrian law and, if not, please explain how this practice is consistent with Article 15.1 of the TRIPS Agreement.

2. Article 3 of the Austrian Trademark Protection Law appears to condition the registration of a mark for goods and services on the mark being produced in the applicant's enterprise or in the enterprise of the acquirer. This provision does not appear to take into account the practice of many modern businesses of having goods produced by others under contract, such goods then being sold bearing the trademark. Please explain whether this provision applies to such situations, and how it is compatible with Section 2 of Part II of the TRIPS Agreement, Articles 15.4 and 20 in particular.

3. Article 4(1)4 of the Austrian Trademark Protection Law makes unregistrable signs "which contain matter liable to cause annoyance or otherwise infringe public order..." Please provide examples of signs that fall within this prohibition and explain how this practice is consistent with TRIPS Article 15.1.

4. Article 10 of the Austrian Trademark Protection Law states that the right to a mark does not preclude another enterprise from using the same sign to distinguish "other" kinds of goods and services. Please explain whether use by a third party of the same or a similar sign for other kinds of goods or services can be prevented by the owner of a mark where such use would suggest that a connection exists between those goods or services and the owner of the mark and would cause injury to that owner. If this is not possible, please explain how this provision of Austrian law complies with TRIPS Article 16.1.

5. Article 14 of the Austrian Trademark Protection Law specifies that "signs" will be treated as similar if there is a "likelihood of confusion in trade". Please explain how the determination of "likelihood of confusion in trade" is made, and in particular with regard to goods or services. Please explain how this standard differs from the likelihood of confusion standard embodied in TRIPS Article 16.1.

6. Article 31 of the Austrian Trademark Protection Law authorizes a person to apply for cancellation of a mark for identical or similar goods or services on his own on the basis of an unregistered mark that is recognized in the trade as distinctive of his enterprise's goods or services at the time the contested mark was filed. The section does not appear to authorize such a challenge where the goods or services are not similar to those of the party that is challenging the registered mark. Please explain how a party would challenge the registration of a mark for dissimilar goods or services where that mark "would indicate a connection between those goods or services and the owner of the registered trademark" and would likely cause damage to the challenging party, as required by Article 16.3 of the TRIPS Agreement.

7. Article 33a permits cancellation of a mark for non-use after it has been registered for a minimum of five years. Subparagraph (2) then precludes such cancellation in cases in which the owner can justify such non-use because of "statutory restrictions on trade in the goods or services ... if it is recognized that a worthwhile interest exists in giving protection in Austria in view of serious use of the sign abroad or for other reasons worthy of consideration". Please explain the types of actions that fall within this definition, providing examples, if possible, of situations where this authority has been applied, including results of relevant administrative or judicial proceedings.

8. Article 55 of the Austrian Trademark Protection Law permits an injunction to be issued against use of a mark that has been registered for more than five years but only if it is proven that no grounds for cancellation on the grounds of non-use exist. Please explain how this provision is consistent with Article 16.1 of the TRIPS Agreement.

9. Please explain how well-known marks pertaining to services are protected under Austrian law consistent with the requirements of Article 16.2.
10. Please explain how Austria provides protection for well-known marks relating to services, as is required by TRIPS Article 16.2. In addition, please explain whether knowledge of the trademark in the relevant sector of the public is taken into consideration, including knowledge obtained as a result of promotion of the mark, and how the Austrian practice conforms to TRIPS Article 16.2.
11. Please explain whether registrations of trademarks for wines or spirits which contain or consist of a geographical indication are refused or invalidated with respect to such wines or spirits not having this origin, and how this practice is considered consistent with TRIPS Article 23.2.
12. Please explain whether trademarks existing prior to the entry into force of the WTO Agreement are protected against appropriation from actions incident to recognition of a geographical indication. If not, please explain how this practice is consistent with TRIPS Article 24.5.
13. Please describe the methods by which industrial designs are protected in Austria, in particular:
- the form or forms of intellectual property used to protect the design (*e.g.*, patent, copyright, *sui generis*);
 - the conditions that must be satisfied to obtain the grant of such protection (*e.g.*, whether designs must be new or original and the parameters of these concepts), and a brief description of the registration or granting procedure;
 - the nature of the rights granted and the term of protection provided;
 - the nature of remedies available to the owner of each type of protection, including a description of the conditions that may be imposed (*e.g.*, whether commercial use is required); and
 - whether any exceptions to protection or rights exist for each type of intellectual property involved.
14. Please explain how textile designs are protected under your law.

BELGIUM

1. Article 1 of the uniform law governing marks in the Benelux countries sets forth the types of signs that are capable of being protected as a trademark. This list of signs does not include colour marks. Please indicate whether colour marks are capable of constituting a trademark under the uniform law governing marks in the Benelux countries, and if so, under what authority.
2. Please explain whether the nature of goods or services to which a trademark is to be applied can serve as an obstacle to the registration of the mark under Belgian or Benelux trademark law. If so, please identify and explain the subject matter excluded under the authority, and the relative provisions of such law that serve as a basis for these exclusions.

3. Please explain whether the uniform law governing marks in the Benelux countries provides for the acceptance of applications to register a trademark based on an intent to use the mark pursuant to TRIPS Article 15.3. Please explain the requirements and conditions that are placed on parties wishing to register and maintain applications of a mark based on an intent to use the mark.
4. Article 5(2)(a) of the uniform law governing marks in the Benelux countries allows the proprietor of a trademark to present “valid reasons” to justify continued registration despite non-use of a trademark. Please explain the types of circumstances that would be sufficient to satisfy this provision, including, where relevant, results of administrative or judicial decisions addressing the issue.
5. Please explain how unregistered well-known marks are protected in the Benelux countries, as required by TRIPS Articles 16.2 and 16.3.
6. Please explain whether a presumption of likelihood of confusion is provided under either the uniform law governing marks in the Benelux countries or Belgian laws or regulations in the determination of confusing similarity involving identical marks that are used on identical goods, as required by TRIPS Article 16.1. If so, please provide an indication of the basis for this presumption.
7. Please explain whether the uniform law governing marks in the Benelux countries imposes time limits on actions to cancel trademark registrations that have been obtained by means of fraud or bad faith.
8. Please explain how geographical indications are protected under Belgian law, as required by TRIPS Articles 22 and 23.
9. Please describe the methods by which industrial designs are protected in Belgium, in particular:
 - the form or forms of intellectual property used to protect the design (*e.g.*, patent, copyright, *sui generis*);
 - the conditions that must be satisfied to obtain the grant of such protection (*e.g.*, whether designs must be new or original and the parameters of these concepts), and a brief description of the registration or granting procedure;
 - the nature of the rights granted and the term of protection provided;
 - the nature of remedies available to the owner of each type of protection, including a description of the conditions that may be imposed (*e.g.*, whether commercial use is required); and
 - whether any exceptions to protection or rights exist for each type of intellectual property involved.
10. Please explain how textile designs are protected under your law.

DENMARK

1. Article 1 of the Danish Trademarks Act specifies that “persons and enterprises” are eligible to obtain a trademark, but that trademarks are limited to “distinctive signs ... being used or intended

to be used by a commercial enterprise”. This provision implies that non-profit or other non-commercial enterprises that provide goods or services cannot obtain trademark rights. Please explain whether this is a correct interpretation of the Danish law, and if so, how this complies with the obligation in TRIPS Article 15.4 which specifies that the nature of the goods or services to which a trademark is to be applied cannot serve as an obstacle to the registration of the mark.

2. The Danish trademark law sets forth the types of signs that are capable of being protected as a trademark. This list of signs does not include colour marks. Please indicate whether colour marks are capable of constituting a trademark under Denmark’s trademark law, and if so, under what authority.

3. The Danish Trademarks Act requires that a mark be used in the form in which it was registered, or a form that does not significantly differ from the form in which it was registered. Please explain how this practice is consistent with TRIPS Article 20, which provides that the use of a trademark shall not be unjustifiably encumbered by special requirements, such as use in a special form.

4. Please explain how unregistered well-known marks are protected in Denmark, as required by TRIPS Articles 16.2 and 16.3.

5. Please explain whether a presumption of likelihood of confusion is provided through Danish law in the determination of confusing similarity involving identical marks that are used on identical goods, as required by TRIPS Article 16.1. If so, please identify and explain the legal basis for this presumption.

6. Article 25(1) of the Danish law permits the proprietor of a trademark to present “proper reasons” for continued registration despite non-use of a trademark. Please explain the types of circumstances that would be sufficient to satisfy this provision, including, where relevant, results of administrative or judicial decisions addressing this issue.

7. Please explain whether the Danish trademark law imposes time limits on actions to cancel trademark registrations that have been obtained by means of fraud or bad faith.

8. Please explain how geographical indications are protected under the Danish law, as required by TRIPS Articles 22 and 23.

9. Please describe the methods by which industrial designs are protected in Denmark, in particular:

- the form or forms of intellectual property used to protect the design (*e.g.*, patent, copyright, *sui generis*);
- the conditions that must be satisfied to obtain the grant of such protection (*e.g.*, whether designs must be new or original and the parameters of these concepts), and a brief description of the registration or granting procedure;
- the nature of the rights granted and the term of protection provided;
- the nature of remedies available to the owner of each type of protection, including a description of the conditions that may be imposed (*e.g.*, whether commercial use is required); and
- whether any exceptions to protection or rights exist for each type of intellectual property involved.

10. Please explain how textile designs are protected under your law.

FINLAND

1. Article 1 of the Finnish trademark law sets forth the types of signs that are capable of being protected as a trademark. This list of signs does not include colour marks. Please indicate whether colour marks are capable of constituting a trademark under Finland's trademark law, and if so, under what authority.
2. Please explain whether the nature of goods or services to which a trademark is to be applied can serve as an obstacle to the registration of the mark under Finnish law. If so, please identify and explain the subject matter excluded under this authority, the relative provisions of the Finnish law that serve as a basis for these exclusions, and how this practice complies with TRIPS Article 15.4.
3. Article 26 of the Finnish trademark law allows the proprietor of a trademark to present "proper reasons" to justify continued registration despite non-use of a trademark. Please explain the types of circumstances that would be sufficient to satisfy this provision, including, where relevant, results of administrative or judicial decisions addressing this issue.
4. Please explain how unregistered well-known marks are protected in Finland, as required by TRIPS Articles 16.2 and 16.3.
5. TRIPS Article 20 provides that the use of a trademark shall not be encumbered by special requirements. However, Article 10 of the Finnish trademark law states that "it may be decided where reasonable, that . . . the trade symbols may only be used in a specific manner" in certain situations where a registered trademark has co-existed with an unregistered trademark for a period of time. Please explain how this provision of Finnish law complies with TRIPS Article 20.
6. Please explain whether Finnish trademark law establishes a presumption of likelihood of confusion in the determination of confusing similarity in cases where identical marks are used on identical goods, as required by TRIPS Article 16.1. If so, please identify and explain the legal basis for this presumption, and explain the role of Article 14.6 of the Finnish law in this regard.
7. Please explain how geographical indications are protected under Finland's law, as required by TRIPS Articles 22 and 23.
8. The European Council Regulation on the protection of geographical indications and designations of origin specifically excludes protection for wines and spirits. In view of this, please explain how Finland protects geographical indications for use on wines and spirits in accordance with TRIPS Article 23. Please explain whether Finland has implemented any laws or regulations to comply with the requirements of any relevant Council Regulations.
9. Please describe the methods by which industrial designs are protected in Finland, in particular:
 - the form or forms of intellectual property used to protect the design
(*e.g.*, patent, copyright, *sui generis*);
 - the conditions that must be satisfied to obtain the grant of such protection
(*e.g.*, whether designs must be new or original and the parameters of these concepts),
and a brief description of the registration or granting procedure;
 - the nature of the rights granted and the term of protection provided;

- the nature of remedies available to the owner of each type of protection, including a description of the conditions that may be imposed (*e.g.*, whether commercial use is required); and
- whether any exceptions to protection or rights exist for each type of intellectual property involved.

10. Please explain how textile designs are protected under your law.

FRANCE

1. Please explain whether France provides for the acceptance of applications to register a trademark based on an intent to use the mark consistent with TRIPS Article 15.3. Please explain the requirements and conditions that are placed on parties wishing to register and maintain applications of a mark based on an intent to use the mark.

2. Article 712-1 of the French Industrial Property law provides a 10 year term for trademarks beginning on the *filing date* of the application, rather than from the date the registration is *granted*. Please explain how this provision complies with the obligation of TRIPS Article 18 that WTO Members provide a term of protection of not less than seven years for *registered* trademarks.

3. Please explain whether a presumption of likelihood of confusion is provided in the French law in the determination of confusing similarity involving identical marks that are used on identical goods, as required by TRIPS Article 16.1. If so, please provide an indication of the basis for this presumption.

4. Please explain how unregistered well-known marks are protected in France, as required by TRIPS Article 16.2 and 16.3.

5. Article 716-8 of the French Industrial Property Law provides trademark owners an opportunity to apply to the customs authorities for enforcement and allows for customs detentions of suspect goods for 10 working days. Please explain whether the trademark owner is afforded an opportunity to seek customs detention of suspected counterfeit goods for an additional 10 working days in accordance with TRIPS Article 55.

6. Article 714-5 of the French Industrial Property Law permits the proprietor of a trademark to present “good reasons” for continued registration despite non-use of a trademark. Please explain the types of circumstances that would be sufficient to satisfy this provision, including, where relevant, results of administrative or judicial decisions addressing this issue.

7. Please explain whether Article 2 of Law No. 94665 restricts the use of marks that do not utilize the French language. If restrictions on the use of non-French language marks are imposed, please explain how these restrictions are consistent with TRIPS Article 20, which provides that the use of a trademark shall not be unjustifiably encumbered by special requirements, such as use in a special form.

8. Please explain whether registrations of trademarks for wines or spirits which contain or consist of a geographical indication are refused or invalidated with respect to such wines or spirits not having this origin, and how this practice is considered consistent with TRIPS Article 23.2.

9. Please explain whether trademarks existing prior to the entry into force of the WTO Agreement are protected against appropriation from actions incident to recognition of a geographical indication. If not, please explain how this practice is consistent with TRIPS Article 24.5.
10. Please describe the methods by which industrial designs are protected in France, in particular:
- the form or forms of intellectual property used to protect the design (*e.g.*, patent, copyright, *sui generis*);
 - the conditions that must be satisfied to obtain the grant of such protection (*e.g.*, whether designs must be new or original and the parameters of these concepts), and a brief description of the registration or granting procedure;
 - the nature of the rights granted and the term of protection provided;
 - the nature of remedies available to the owner of each type of protection, including a description of the conditions that may be imposed (*e.g.*, whether commercial use is required); and
 - whether any exceptions to protection or rights exist for each type of intellectual property involved.
11. Please explain how textile designs are protected under your law.

GERMANY

1. Please explain whether the nature of the goods or services to which a trademark is to be applied can serve as an obstacle to the registration of the mark under German law. If so, please identify and explain the subject matter excluded under this authority, and the relative provisions of the German law that serve as a basis for these exclusions.
2. Please explain whether a presumption of likelihood of confusion is provided through German law in the determination of confusing similarity involving identical marks that are used on identical goods, as required by TRIPS Article 16.1. If so, please identify and explain the legal basis for this presumption.
3. Please explain the standard under the German trademark laws that is used to determine whether a mark is well-known and how this standard is consistent with TRIPS Article 16.2. Please indicate whether knowledge of the mark in the relevant sector of the public and knowledge in Germany which is obtained as a result of the promotion of the mark are factors that are considered in application of this standard.
4. Article 26(1) of the German Trademark Act allows the proprietor of a trademark to present “proper reasons” to justify continued registration despite non-use of a trademark. Please explain the types of circumstances that would be sufficient to satisfy this provision, including, where relevant, results of administrative or judicial decisions addressing this issue.
5. Please explain whether Article 14(2) of the German Trademark Act provides protection for well-known marks applied to goods or services that are *not* similar to trademarks that are registered

provided the use of the well-known mark would indicate a connection between those goods and services. If not, please explain how this provision of German law is consistent with TRIPS Article 16.3.

6. Please explain whether Article 8(2) of the German Trademark Act guarantees additional protection for geographical indications for wines and spirits compared to geographical indications for other goods or services. If not, please explain how this Article is consistent with TRIPS Article 23.2.

7. The European Council Regulation on the protection of geographical indications and designations of origin specifically excludes protection for wines and spirits. In view of this, please explain how Germany protects geographical indications for use on wines and spirits in accordance with TRIPS Article 23.

8. Please explain whether the opposition procedures under Article 132 of the German Trademark Act provide adequate protection for trademarks existing prior to the entry into force of the WTO Agreement against appropriation from actions incident to recognition of a geographical indication. If not, please explain how this practice is consistent with TRIPS Article 24.5.

9. Please describe the methods by which industrial designs are protected in France, in particular:

- the form or forms of intellectual property used to protect the design (*e.g.*, patent, copyright, *sui generis*);
- the conditions that must be satisfied to obtain the grant of such protection (*e.g.*, whether designs must be new or original and the parameters of these concepts), and a brief description of the registration or granting procedure;
- the nature of the rights granted and the term of protection provided;
- the nature of remedies available to the owner of each type of protection, including a description of the conditions that may be imposed (*e.g.*, whether commercial use is required); and
- whether any exceptions to protection or rights exist for each type of intellectual property involved.

10. Please explain how textile designs are protected under your law.

IRELAND

1. Section 6 of the Irish Trademarks Act sets forth the types of signs that are capable of being protected as a trademark, noting that a “trade mark means any sign capable of being represented *graphically*...” The list of signs noted in section 6(2) does not include colour marks. Please explain whether colour marks are capable of constituting a trademark under Irish law and, if so, under what authority.

2. Section 7(2) of the Irish trademark law states that the owner of an unregistered trademark cannot recover damages for infringement. Please explain how this provision complies with the requirements set forth in TRIPS Article 16.

3. Please explain whether Irish trademark law establishes a presumption of likelihood of confusion in the determination of confusing similarity in cases where identical marks are used on identical goods, as required by TRIPS Article 16.1. If so, please identify and explain the legal basis for this presumption.
4. Please explain whether the nature of goods or services to which a trademark is to be applied can serve as an obstacle to the registration of the mark under Irish law. If so, please identify and explain the subject matter excluded under this authority; the relative provisions of the Irish law that serve as a basis for these exclusions; and how this practice complies with TRIPS Article 15.4.
5. Please explain the standard under Irish law that is used to determine whether a mark is well-known, consistent with TRIPS Article 16.2.
6. Please explain how unregistered well-known trademarks are protected in Ireland, as required by TRIPS Articles 16.2 and 16.3.
7. Section 51(1) of the Irish Trademarks Act permits the proprietor of a trademark to present “proper reasons” for continued registration despite non-use of a trademark. Please explain the types of circumstances that would be sufficient to satisfy this provision, including, where relevant, results of administrative or judicial decisions addressing this issue.
8. Please explain how geographical indications are protected under Ireland’s law, as required by TRIPS Articles 22 and 23.
9. Please describe the methods by which industrial designs are protected in Ireland, in particular:
 - the form or forms of intellectual property used to protect the design (*e.g.*, patent, copyright, *sui generis*);
 - the conditions that must be satisfied to obtain the grant of such protection (*e.g.*, whether designs must be new or original and the parameters of these concepts), and a brief description of the registration or granting procedure;
 - the nature of the rights granted and the term of protection provided;
 - the nature of remedies available to the owner of each type of protection, including a description of the conditions that may be imposed (*e.g.*, whether commercial use is required); and
 - whether any exceptions to protection or rights exist for each type of intellectual property involved.
10. Please explain how textile designs are protected under your law.
11. Sections 8(3) and 8(4) of the Trade Marks Act state that where goods are prohibited by public policy or law other than the trademark law, registration of a trademark with respect to such goods shall be refused. Please explain how these provisions of Irish law comply with TRIPS Article 15.4, which specifies that the nature of the goods or services to which a trademark applies cannot serve as an obstacle to registration of a trademark.
12. Please explain how, in the absence of an unfair competition statute, Irish law is consistent with TRIPS Article 22.2, which requires that with respect to geographical indications, legal means be provided

to prevent any use which constitutes an act of unfair competition within the meaning of Article 10bis of the Paris Convention.

ITALY

1. Please explain whether a presumption of likelihood of confusion is provided through Italian law in the determination of confusing similarity involving identical marks that are used on identical goods, as required by TRIPS Article 16.1. If so, please identify and explain the legal basis for this presumption.
2. TRIPS Article 20 states that use of a trademark shall not be encumbered by special requirements such as use with another trademark. However, Article 12 of the Italian law states that “a merchant may affix his own mark to the goods he puts on sale, but may not remove the mark of the producer or merchant from whom he has received the products or goods”. Please explain how this provision of Italian law complies with TRIPS Article 20.
3. Article 16 of Italy’s trademark law sets forth the type of sign that is capable of being protected as a trademark. Please explain whether a colour, as distinguished from “colour combinations or tonalities” are registrable as trademarks under Italian trademark law, as required by TRIPS Article 15.1.
4. Please explain whether the nature of the goods or services to which a trademark is to be applied can serve as an obstacle to the registration of the mark under Italian law. If so, please identify and explain the subject matter excluded under this authority, and the relative provisions of the Italian law that serve as a basis for these exclusions.
5. Please explain how unregistered well-known marks are protected in Italy, as required by TRIPS Articles 16.2 and 16.3.
6. Article 42(1) of the Italian trademark law allows the proprietor of a trademark to present “legitimate reasons” to justify continued registration despite non-use of a trademark. Please explain the types of circumstances that would be sufficient to satisfy this provision, including, where relevant, results of administrative or judicial decisions addressing this issue.
7. Please explain how geographical indications are protected under Italy’s law, as required by TRIPS Articles 22 and 23.
8. Please describe the methods by which industrial designs are protected in Italy, in particular:
 - the form or forms of intellectual property used to protect the design (*e.g.*, patent, copyright, *sui generis*);
 - the conditions that must be satisfied to obtain the grant of such protection (*e.g.*, whether designs must be new or original and the parameters of these concepts), and a brief description of the registration or granting procedure;
 - the nature of the rights granted and the term of protection provided;

- the nature of remedies available to the owner of each type of protection, including a description of the conditions that may be imposed (*e.g.*, whether commercial use is required); and
 - whether any exceptions to protection or rights exist for each type of intellectual property involved.
9. Please explain how textile designs are protected under your law.

LUXEMBOURG

1. Article 1 of the uniform law governing marks in the Benelux countries sets forth the types of signs that are capable of being protected as a trademark. This list of signs does not include colour marks. Please indicate whether colour marks are capable of constituting a trademark under the uniform law governing marks in the Benelux countries, and if so, under what authority.
2. Please explain whether the nature of goods or services to which a trademark is to be applied can serve as an obstacle to the registration of the mark under either Benelux trademark law or Luxembourg trademark laws. If so, please identify and explain the subject matter excluded under the authority, and the relative provisions of such law that serve as a basis for these exclusions.
3. Please explain whether the uniform law governing marks in the Benelux countries provides for the acceptance of applications to register a trademark based on an intent to use the mark pursuant to TRIPS Article 15.3. Please explain the requirements and conditions that are placed on parties wishing to register and maintain applications of a mark based on an intent to use the mark.
4. Article 5(2)(a) of the uniform law governing marks in the Benelux countries allows the proprietor of a trademark to present “valid reasons” to justify continued registration despite non-use of a trademark. Please explain the types of circumstances that would be sufficient to satisfy this provision, including, where relevant, results of administrative or judicial decisions addressing the issue.
5. Please explain how unregistered well-known marks are protected in the Benelux countries, as required by TRIPS Articles 16.2 and 16.3.
6. Please explain whether a presumption of likelihood of confusion is provided under either the uniform law governing marks in the Benelux countries or Luxembourg laws or regulations in the determination of confusing similarity involving identical marks that are used on identical goods, as required by TRIPS Article 16.1. If so, please provide an indication of the basis for this presumption.
7. Please explain whether the uniform law governing marks in the Benelux countries imposes time limits on actions to cancel trademark registrations that have been obtained by means of fraud or bad faith.
8. Please explain how geographical indications are protected under Luxembourg law, as required by TRIPS Articles 22 and 23.

9. Please describe the methods by which industrial designs are protected in the Luxembourg, in particular:

- the form or forms of intellectual property used to protect the design (*e.g.*, patent, copyright, *sui generis*);
- the conditions that must be satisfied to obtain the grant of such protection (*e.g.*, whether designs must be new or original and the parameters of these concepts), and a brief description of the registration or granting procedure;
- the nature of the rights granted and the term of protection provided;
- the nature of remedies available to the owner of each type of protection, including a description of the conditions that may be imposed (*e.g.*, whether commercial use is required); and
- whether any exceptions to protection or rights exist for each type of intellectual property involved.

10. Please explain how textile designs are protected under your law.

NETHERLANDS

1. Article 1 of the uniform law governing marks in the Benelux countries sets forth the types of signs that are capable of being protected as a trademark. This list of signs does not include colour marks. Please indicate whether colour marks are capable of constituting a trademark under the uniform law governing marks in the Benelux countries, and if so, under what authority.

2. Please explain whether the nature of goods or services to which a trademark is to be applied can serve as an obstacle to the registration of the mark under Dutch or Benelux trademark law. If so, please identify and explain the subject matter excluded under the authority, and the relative provisions of such law that serve as a basis for these exclusions.

3. Please explain whether the uniform law governing marks in the Benelux countries provides for the acceptance of applications to register a trademark based on an intent to use the mark pursuant to TRIPS Article 15.3. Please explain the requirements and conditions that are placed on parties wishing to register and maintain applications of a mark based on an intent to use the mark.

4. Article 5(2)(a) of the uniform law governing marks in the Benelux countries allows the proprietor of a trademark to present “valid reasons” to justify continued registration despite non-use of a trademark. Please explain the types of circumstances that would be sufficient to satisfy this provision, including, where relevant, results of administrative or judicial decisions addressing the issue.

5. Please explain how unregistered well-known marks are protected in the Benelux countries, as required by TRIPS Articles 16.2 and 16.3.

6. Please explain whether a presumption of likelihood of confusion is provided under either the uniform law governing marks in the Benelux countries or Dutch laws or regulations in the determination

of confusing similarity involving identical marks that are used on identical goods, as required by TRIPS Article 16.1. If so, please provide an indication of the basis for this presumption.

7. Please explain whether the uniform law governing marks in the Benelux countries imposes time limits on actions to cancel trademark registrations that have been obtained by means of fraud or bad faith.

8. Please explain how geographical indications are protected under Dutch law, as required by TRIPS Articles 22 and 23.

9. Please describe the methods by which industrial designs are protected in the Netherlands, in particular:

- the form or forms of intellectual property used to protect the design (*e.g.*, patent, copyright, *sui generis*);
- the conditions that must be satisfied to obtain the grant of such protection (*e.g.*, whether designs must be new or original and the parameters of these concepts), and a brief description of the registration or granting procedure;
- the nature of the rights granted and the term of protection provided;
- the nature of remedies available to the owner of each type of protection, including a description of the conditions that may be imposed (*e.g.*, whether commercial use is required); and
- whether any exceptions to protection or rights exist for each type of intellectual property involved.

10. Please explain how textile designs are protected under your law.

PORTUGAL

1. Please explain whether the nature of goods or services to which a trademark is to be applied can serve as an obstacle to the registration of the mark under Portuguese trademark law. If so, please identify and explain the subject matter excluded under the authority, and the relative provisions of such law that serve as a basis for these exclusions.

2. Please explain whether circumstances arising independently of the will of the owner of a trademark and which constitute an obstacle to the use of the trademark (*e.g.*, import restrictions or other governmental regulations) can serve as a valid reason for preventing cancellation of registration of a mark. If such reasons are not recognized, please explain how Portuguese law is consistent with TRIPS Article 19.1.

3. Please explain how unregistered well-known marks are protected in Portugal, as required by TRIPS Articles 16.2 and 16.3.

4. Please explain whether a presumption of likelihood of confusion is provided under Portuguese law in the determination of confusing similarity involving identical marks that are used on identical goods, as required by TRIPS Article 16.1. If so, please identify the basis for this legal presumption.
5. Please explain the standard under the Portuguese trademark law that is used to determine whether a mark is well-known and how this standard is consistent with TRIPS Article 16.2. Please indicate whether knowledge of the mark in the relevant sector of the public and knowledge in Portugal which is obtained as a result of the promotion of the mark are factors that are considered in application of this standard.
6. Portuguese law appears to provide protection for well-known marks in the form of preclusion against registration by another of an identical or similar mark for goods or services not similar to those for which registration of the mark is sought. It is not clear that Portuguese law protects against *use* by a third party of such a mark. Please explain whether third parties are permitted to use a well-known mark without the consent of the owner of the mark, and how Portuguese practice is consistent with TRIPS Article 16.3.
7. Under Portuguese law, if a trademark license is not recorded, use by the licensee may not be recognized as use of the trademark for purposes of maintaining registration of the mark. Please explain how this aspect of Portuguese law is consistent with TRIPS Article 19.2.
8. Please explain how geographical indications are protected under Portuguese law, as required by TRIPS Articles 22 and 23.
9. Please describe the methods by which industrial designs are protected in Portugal, in particular:
 - the form or forms of intellectual property used to protect the design (*e.g.*, patent, copyright, *sui generis*);
 - the conditions that must be satisfied to obtain the grant of such protection (*e.g.*, whether designs must be new or original and the parameters of these concepts), and a brief description of the registration or granting procedure;
 - the nature of the rights granted and the term of protection provided;
 - the nature of remedies available to the owner of each type of protection, including a description of the conditions that may be imposed (*e.g.*, whether commercial use is required); and
 - whether any exceptions to protection or rights exist for each type of intellectual property involved.
10. Please explain how textile designs are protected under your law.

SPAIN

1. Section 2 of Spain's Trademark Law sets forth the types of signs that are capable of being registered as a trademark. The list of signs does not include colour marks. Additionally, Section 11(g) specifically prohibits the registration of colour "in itself" unless the colour is defined by a given form.

Given these two Sections, please explain how Spanish law implements TRIPS Article 15.1 which provides that registrable signs may consist of combinations of colours.

2. Section 4(1) of the Spanish Trademark Law permits the proprietor of a trademark to present “reasons justifying the non-use of a mark” in support of continued registration despite non-use of a trademark. Please explain the circumstances or situations that are considered sufficient to satisfy this provision, including, where relevant, any information regarding administrative or judicial decisions addressing this issue.
3. Please explain whether Section 31 of the Spanish Trademark Law provides a presumption of likelihood of confusion in the determination of confusing similarity involving identical marks that are used on identical goods, as is required by TRIPS Article 16.1. If not, please explain what other basis of the Spanish trademark law provides this presumption.
4. Please explain how Spanish law permits the owner of a well-known mark to prevent the use of a registered mark on dissimilar goods or services if it can be established that the use indicates a connection between the dissimilar goods or services and the owner of the well-known mark and where the owner is likely to be damaged by the use, as specified in TRIPS Article 16.3.
5. Please explain whether the nature of goods or services to which a trademark is to be applied can serve as an obstacle to the registration of the mark under Spanish law. If so, please identify and explain the subject matter excluded under this authority, the relative provisions of the Spanish Trademark Law that serve as a basis for these exclusions, and how this practice complies with TRIPS Article 15.4.
6. Please explain whether the nature of goods or services to which a trademark is to be applied can serve as an obstacle to the registration of the mark under Spanish law. If so, please identify and explain the subject matter excluded under this authority, and the relative provisions of the Spanish law that serve as a basis for these exclusions.
7. Please describe the methods by which industrial designs are protected in Spain, in particular:
 - the form or forms of intellectual property used to protect the design (*e.g.*, patent, copyright, *sui generis*);
 - the conditions that must be satisfied to obtain the grant of such protection (*e.g.*, whether designs must be new or original and the parameters of these concepts), and a brief description of the registration or granting procedure;
 - the nature of the rights granted and the term of protection provided;
 - the nature of remedies available to the owner of each type of protection, including a description of the conditions that may be imposed (*e.g.*, whether commercial use is required); and
 - whether any exceptions to protection or rights exist for each type of intellectual property involved.
8. Please explain how textile designs are protected under your law.

SWEDEN

1. Article 1 of the Swedish Trademark Law sets forth the type of sign that is capable of being protected as a trademark. The list of signs does not include colour marks. Please explain whether colour marks are capable of constituting a trademark under Sweden's trademark law and if so under what authority.
2. Please explain whether the Swedish trademark law establishes a presumption of likelihood of confusion in the determination of confusing similarity in cases where identical marks are used on identical goods, as required by TRIPS Article 16.1. If so, please identify and explain the legal basis for this presumption.
3. TRIPS Article 20 states that use of a trademark shall not be encumbered by special requirements such as use in a special form. However, Article 10 of the Swedish Trademark Law states that "it may according to what is considered reasonable, be ordered that . . . the symbols may be used only in a special manner" in certain situations where a registered trademark has co-existed with an unregistered trademark for a period of time. Please explain how Swedish law complies with TRIPS Article 20.
4. Article 25a of the Swedish Trademark Law permits the proprietor of a trademark to present "proper reasons" for continued registration despite non-use of a trademark. Please explain the circumstances or situations that would constitute "proper reasons" sufficient to satisfy this provision, including, where relevant, information regarding administrative or judicial decisions addressing this issue.
5. Please explain whether Swedish law permits or precludes the assignment of a registered trademark without the transfer of the underlying business. If it precludes the assignment of a registered trademark where the underlying business is not transferred with the mark, please explain how this complies with the provisions of TRIPS Article 21.
6. Please explain how Sweden protects well-known marks as required by TRIPS Articles 16.2 and 16.3, particularly where such marks are not registered in Sweden.
7. Please explain how geographical indications are protected under Sweden's law, as required by TRIPS Articles 22 and 23.
8. Please explain whether the nature of goods or services to which a trademark is to be applied can serve as an obstacle to the registration of the mark under Swedish law. If so, please identify and explain the subject matter excluded under this authority, the relative provisions of the Swedish law that serve as a basis for these exclusions, and how this practice complies with TRIPS Article 15.4.
9. Please describe the methods by which industrial designs are protected in Sweden, in particular:
 - the form or forms of intellectual property used to protect the design
(*e.g.*, patent, copyright, *sui generis*);
 - the conditions that must be satisfied to obtain the grant of such protection
(*e.g.*, whether designs must be new or original and the parameters of these concepts), and a brief description of the registration or granting procedure;
 - the nature of the rights granted and the term of protection provided;

- the nature of remedies available to the owner of each type of protection, including a description of the conditions that may be imposed (*e.g.*, whether commercial use is required); and
 - whether any exceptions to protection or rights exist for each type of intellectual property involved.
10. Please explain how textile designs are protected under your law.
11. Section 3 of the Swedish Trademarks Act, it appears, requires a person to have the right to bear a surname in order to register that name as a trademark. Please explain how this provision is consistent with TRIPS Article 15.1.
12. Section 25 of the Swedish Trademarks Act requires that a mark must be used in the registered form or in a form “where the difference concerns only insignificant elements and does not alter the distinctive character of the mark”. Please explain how this provision is consistent with TRIPS Article 20, which provides that the use of a trademark shall not be unjustifiably encumbered by special requirements, such as use of the mark in a special form.

UNITED KINGDOM

1. Part 2, Article 56(3) of the United Kingdom Trade Marks Act appears to permit the use of a well-known mark, by other than the proprietor of the mark, if the use began prior to the passage of the current law. Please explain whether this is an accurate understanding of this provision, and, if so, how this is consistent with TRIPS Article 2, to the extent it incorporates Article 6*bis* of the Paris Convention, and TRIPS Articles 16.2 and 16.3.
2. Please explain how well-known marks used by third parties prior to the Trade Marks Act of 1993 are protected in the United Kingdom, and how United Kingdom law in this regard complies with the requirements of Article 16 of the TRIPS agreement.
3. The provision for well-known marks in Part 1, Article 6(c) of the United Kingdom Trade Marks Act does not specify that the renown of the mark be determined by taking into account the relevant sector of the public and knowledge obtained through the promotion of the mark, as is required by the TRIPS Agreement. Please explain whether this standard is established by regulation or through case law, and if neither, how the law of the United Kingdom can be considered consistent with TRIPS Article 16.2.
4. Please describe the methods by which industrial designs are protected in the United Kingdom, in particular:
- the form or forms of intellectual property used to protect the design (*e.g.*, patent, copyright, *sui generis*);
 - the conditions that must be satisfied to obtain the grant of such protection (*e.g.*, whether designs must be new or original and the parameters of these concepts), and a brief description of the registration or granting procedure;
 - the nature of the rights granted and the term of protection provided;

- the nature of remedies available to the owner of each type of protection, including a description of the conditions that may be imposed (*e.g.*, whether commercial use is required); and
 - whether any exceptions to protection or rights exist for each type of intellectual property involved.
5. Please explain how textile designs are protected under your law.

ICELAND

1. Please explain whether the nature of the goods or services to which a trademark is to be applied can serve as an obstacle to the registration of the mark under Iceland's law. If so, please identify and explain the subject matter excluded under this authority, and the relative provisions of Iceland's law that serve as a basis for these exclusions.
2. Please explain whether Iceland's trademark law permits the filing of an application to register a trademark based on an intention to use the mark, rather than upon a basis of actual use. If not, please explain how this practice is consistent with TRIPS Article 15.3.
3. It is unclear whether Iceland's trademark law permits registration of colour marks. Please indicate whether colour marks are capable of constituting a trademark under Iceland's trademark law and, if so, under what authority.
4. Article 1 of Iceland's Trademark Act states that trademarks may consist of symbols that can be printed. Please explain whether trademarks that are *visually perceptible* but which are not printed can be registered.
5. Please explain whether a presumption of likelihood of confusion is provided through Iceland's law in the determination of confusing similarity involving identical marks that are used on identical goods, as required by TRIPS Article 16.1. If so, please identify and explain the legal basis for this presumption.
6. Please explain if Iceland's law protects trademarks in accordance with TRIPS Article 16.3 and, if so, identify the provision that provides this protection.
7. Article 25a of Iceland's Trademark Act permits the proprietor of a trademark to present "valid reasons" for continued registration despite non-use of a trademark. Please explain the types of circumstances that would be sufficient to satisfy this provision, including, where relevant, results of administrative or judicial decisions addressing this issue.
8. Please explain whether Iceland's trademark law imposes time limits on actions to cancel trademark registrations that have been obtained by means of fraud or bad faith.
9. TRIPS Article 20 provides that the use of a trademark shall not be encumbered by special requirements. However, Article 10 of Iceland's Trademark Act states that under certain circumstances "marks may be used only in a special manner, for example in a particular design or with the addition of a place name" Please explain how this provision complies with TRIPS Article 20.

10. Please explain how geographical indications are protected under the Icelandic law, as required by TRIPS Articles 22 and 23.
11. Please describe the methods by which industrial designs are protected in France, in particular:
 - the form or forms of intellectual property used to protect the design (*e.g.*, patent, copyright, *sui generis*);
 - the conditions that must be satisfied to obtain the grant of such protection (*e.g.*, whether designs must be new or original and the parameters of these concepts), and a brief description of the registration or granting procedure;
 - the nature of the rights granted and the term of protection provided;
 - the nature of remedies available to the owner of each type of protection, including a description of the conditions that may be imposed (*e.g.*, whether commercial use is required); and
 - whether any exceptions to protection or rights exist for each type of intellectual property involved.
12. Please explain how textile designs are protected under your law.

JAPAN

1. Please explain whether Section 2(1) of the Japanese Trademark Law permits registration of personal names as a “sign” and how this practice complies with TRIPS Article 15.1.
2. Please explain whether, under Japanese law, colours can be registered without accompanying figurative elements, as required by TRIPS Article 15.1.
3. Please explain whether Section 5 of the Japanese Trademark Law provides for the acceptance of applications to register a trademark based on an intent to use the mark pursuant to TRIPS Article 15.3. Please explain the requirements and conditions that are placed on parties wishing to register and maintain registration of a mark based on an intent to use the mark.
4. Please explain whether the nature of goods or services to which a trademark is to be applied can serve as an obstacle to the registration of the mark under Japanese law. If so, please identify and explain the subject matter excluded under this authority; the relative provisions of the Japanese law that serve as a basis for these exclusions; and how this practice complies with TRIPS Article 15.4.
5. Please explain whether marks that are not eligible for registration because they are “similar to” registered marks are evaluated using a “likelihood of confusion” standard or using an analysis based solely on whether the marks are similar without regard to the goods or services involved. Please provide information regarding any relevant decisions of administrative or judicial bodies that address this issue.
6. Please explain whether and upon what authority under Japanese law a trademark examiner can refuse an application to register a trademark because the proposed mark is identical or similar to an unregistered well-known mark.

7. Please explain whether Japanese trademark law establishes a presumption of likelihood of confusion in the determination of confusing similarity in cases where identical marks are used on identical goods, as required by TRIPS Article 16.1. If so, please identify and explain the legal basis for this presumption.
8. Please explain how Section 24(6) of the Japanese Trademark Law, which requires trademarks owned by non-profit entities to be transferred only with the transfer of the enterprise, is compatible with TRIPS Article 21.
9. Please explain whether Section 47 of the Japanese Trademark Law precludes a person from obtaining cancellation of a fraudulently obtained registration in relation to the criteria specified in Section 47 more than five years after registration. If it does, please explain how this provision complies with the requirements of Article 2.1 of the TRIPS Agreement, to the extent it incorporates Article 6*bis*(3) of the Paris Convention, which precludes WTO Members from placing time limits on requests for cancellation of marks that were registered or used in bad faith.
10. Please explain whether the authority specified in Section 53*bis* of the Japanese Trademark Law to demand a trial for cancellation of a mark obtained in bad faith is subject to the five-year limitation specified in Section 53*ter*. If so, please explain how Sections 53*bis* and 53*ter* comply with Article 2.1 of the TRIPS Agreement to the extent that it incorporates Article 6*bis*(3) of the Paris Convention, which precludes WTO Members from placing time limits on requests for cancellation of marks that were registered or used in bad faith.
11. Please explain how the standards of Section 50(2) of the Japanese Trademark Law regarding the acceptance of “legitimate reasons” for non-use complies with the provisions of TRIPS Article 19.1 which requires that WTO Members recognize certain circumstances that arise independently of the will of the trademark owner as being valid reasons for non-use to prevent cancellation of a registration for non-use.
12. Please describe the methods by which industrial designs are protected in Japan, in particular:
 - the form or forms of intellectual property used to protect the design (*e.g.*, patent, copyright, *sui generis*);
 - the conditions that must be satisfied to obtain the grant of such protection (*e.g.*, whether designs must be new or original and the parameters of these concepts), and a brief description of the registration or granting procedure;
 - the nature of the rights granted and the term of protection provided;
 - the nature of remedies available to the owner of each type of protection, including a description of the conditions that may be imposed (*e.g.*, whether commercial use is required); and
 - whether any exceptions to protection or rights exist for each type of intellectual property involved.
13. Please explain how textile designs are protected under your law.

LIECHTENSTEIN

1. Please indicate whether signs that consist of words, personal names, letters, numerals, figurative elements, colours or combinations thereof can constitute a trademark, and, if so, the legal authority for this conclusion.
2. Please explain how the trademark law of Liechtenstein permits the registration of trademarks for services, as required by TRIPS Article 16.2. Please identify the relevant legal authority in support of this explanation.
3. Please explain whether the trademark law of Liechtenstein permits the filing of an application to register a trademark based on an intention to use the mark, rather than upon a basis of actual use. If not, please explain how this practice is consistent with TRIPS Article 15.3.
4. Please explain whether the nature of goods or services to which a trademark is to be applied can serve as an obstacle to the registration of the mark under the trademark law of Liechtenstein. If so, please identify and explain the subject matter excluded under this authority; the relative provisions of the law that serve as a basis for these exclusions; and how this practice complies with TRIPS Article 15.4.
5. Please explain the standard that is used under the trademark law of Liechtenstein for determining a likelihood of confusion, and the legal basis for this standard.
6. Please explain the standard used in Liechtenstein for determining whether a mark is “well-known” and how registered and unregistered well-known marks are protected under the trademark law of Liechtenstein. Please explain how this standard and practices comply with TRIPS Articles 16.2 and 16.3.
7. Please explain whether the trademark law of Liechtenstein establishes a presumption of likelihood of confusion in the determination of confusing similarity in cases where identical marks are used on identical goods, as required by TRIPS Article 16.1. If so, please identify and explain the legal basis for this presumption.
8. Please explain whether the initial term and each renewal term for a trademark registration in Liechtenstein lasts at least seven years as required by TRIPS Article 18.
9. Please explain the standards and procedures that govern cancellation of registration of a mark for “non-use” under the trademark law of Liechtenstein, and how this standard complies with TRIPS Article 19.
10. Please explain the procedures governing cancellation of registration for a trademark due to non-use, and in particular, identify the minimum period of time of non-use that must be established to cancel such a registration.
11. Please explain whether the law of Liechtenstein permits a foreign trademark owner who applies for registration in Liechtenstein to claim priority based on a filing in another Paris Convention member.
12. Please describe the methods by which industrial designs are protected in Liechtenstein, in particular:
 - the form or forms of intellectual property used to protect the design (e.g., patent, copyright, *sui generis*);

- the conditions that must be satisfied to obtain the grant of such protection (*e.g.*, whether designs must be new or original and the parameters of these concepts), and a brief description of the registration or granting procedure;
- the nature of the rights granted and the term of protection provided;
- the nature of remedies available to the owner of each type of protection, including a description of the conditions that may be imposed (*e.g.*, whether commercial use is required); and
- whether any exceptions to protection or rights exist for each type of intellectual property involved.

13. Please explain how textile designs are protected under your law.

14. Please explain whether registrations of trademarks related to wines or spirits which contain or consist of a geographical indication are refused or invalidated with respect to wines or spirits not having the specified origin. If so, please explain how this practice is consistent with TRIPS Article 23.2.

15. Please explain whether well-known trademarks for services are given the same protection as well known trademarks for goods, consistent with Article 6*bis* of the Paris Convention. If not, please explain how the law of Liechtenstein is consistent with TRIPS Article 16.2.

NEW ZEALAND

1. Please explain whether the nature of goods or services to which a trademark is to be applied can serve as an obstacle to the registration of the mark under New Zealand law. If so, please identify and explain the subject matter excluded under this authority; the relative provisions of New Zealand law that serve as a basis for these exclusions; and how this practice complies with TRIPS Article 15.4.

2. Please explain whether the trademark law of New Zealand establishes a presumption of likelihood of confusion in the determination of confusing similarity in cases where identical marks are used on identical goods, as required by TRIPS Article 16.1. If so, please identify and explain the legal basis for this presumption.

3. Please explain whether and in what regard the provisions concerning acts constituting infringement of a registered trademark specified in Section 10 of the New Zealand Trademark Law apply to holders of trademarks registered for services. Please provide relevant information regarding administrative or judicial decisions addressing this issue.

4. Section 17 of the New Zealand Trademark Law does not address or define “well-known” trademarks. Please explain how well-known marks are defined under New Zealand law, and how New Zealand has implemented TRIPS Articles 16.2 and 16.3.

5. Please indicate whether, under New Zealand trademark law, a party is prohibited from registering a mark that is identical or confusingly similar to a well-known mark that is unregistered. If so, please provide an explanation of the legal basis for this conclusion.

6. Please describe the methods by which industrial designs are protected in New Zealand, in particular:

- the form or forms of intellectual property used to protect the design (*e.g.*, patent, copyright, *sui generis*);
- the conditions that must be satisfied to obtain the grant of such protection (*e.g.*, whether designs must be new or original and the parameters of these concepts), and a brief description of the registration or granting procedure;
- the nature of the rights granted and the term of protection provided;
- the nature of remedies available to the owner of each type of protection, including a description of the conditions that may be imposed (*e.g.*, whether commercial use is required); and
- whether any exceptions to protection or rights exist for each type of intellectual property involved.

7. Please explain how textile designs are protected under your law.

8. Please explain whether legal means are provided under New Zealand law to refuse or invalidate the registration of misleading geographical indications and, if not, how New Zealand law is consistent with TRIPS Article 22.3.

9. Please explain how, in the absence of an unfair competition statute, New Zealand law complies with TRIPS Article 22.2, which requires that with respect to geographical indications legal means be provided to prevent any use which constitutes an act of unfair competition within the meaning of Article 10*bis* of the Paris Convention.

10. Under New Zealand law, the *registration* of a mark that is identical or similar to a well-known mark that is used in relation to the identical or similar goods or services can be prevented. Please explain whether the owner of a well-known mark in relation to goods or services can also prevent the *use* of the well-known mark by third parties, consistent with TRIPS Article 16.3.

NORWAY

1. Chapter 1, Section 1 of Norway's Trademark Law sets forth the type of sign that is capable of being protected as a trademark. The list of signs does not include colour marks. Please explain whether colour marks are capable of constituting a trademark under Norway's Trademark Law, and if so, under what authority.

2. Please explain whether Norwegian trademark law establishes a presumption of likelihood of confusion in the determination of confusing similarity in cases where identical marks are used on identical goods, as required by TRIPS Article 16.1. If so, please identify and explain the legal basis for this presumption.

3. TRIPS Article 20 provides that use of a trademark shall not be encumbered by special requirements such as use in a special form. However, Chapter 1, Section 10 states that "where this

is found reasonable, a court of law may decide that one or both signs in future may be used only for particular goods in a certain area or in a particular manner, such as in a certain shape or form or with reference to a geographical location or with the addition of the name of the proprietor or any other elucidating addition” in situations where a registered mark has co-existed with an unregistered trademark for a period of time. Please explain how these provisions comply with TRIPS Article 20.

4. Chapter 3, Section 25a of the Norwegian Trademark Law permits the proprietor of a trademark to present “proper reasons” for continued registration despite non-use of a trademark. Please explain the circumstances or situations that would constitute “proper reasons” sufficient to satisfy this provision, including, where relevant, information regarding administrative or judicial decisions addressing this issue.

5. Please explain whether the nature of goods or services to which a trademark is to be applied can serve as an obstacle to the registration of the mark under Norwegian law. If so, please identify and explain the subject matter excluded under this authority; the relative provisions of the Norwegian law that serve as a basis for these exclusions; and how this practice complies with TRIPS Article 15.4.

6. Please explain how unregistered well-known trademarks are protected in Norway, as required by TRIPS Articles 16.2 and 16.3.

7. Please explain whether Norwegian law permits or precludes the assignment of a registered trademark without the transfer of the underlying business. If it precludes the assignment of a registered trademark where the underlying business is not transferred with the mark, please explain how this complies with the provisions of TRIPS Article 21.

8. Please explain how geographical indications are protected under Norway’s law, as required by TRIPS Articles 22 and 23.

9. Please describe the methods by which industrial designs are protected in Norway, in particular:

- the form or forms of intellectual property used to protect the design (*e.g.*, patent, copyright, *sui generis*);
- the conditions that must be satisfied to obtain the grant of such protection (*e.g.*, whether designs must be new or original and the parameters of these concepts), and a brief description of the registration or granting procedure;
- the nature of the rights granted and the term of protection provided;
- the nature of remedies available to the owner of each type of protection, including a description of the conditions that may be imposed (*e.g.*, whether commercial use is required); and
- whether any exceptions to protection or rights exist for each type of intellectual property involved.

10. Please explain how textile designs are protected under your law.

POLAND

1. Article 9(1) of the Polish Trademark Law precludes registration of a mark where the mark “could mislead purchasers”. Please explain whether and how this standard differs from the standard of “likelihood of confusion” that is specified in the TRIPS Agreement in relation to the rights of the owner of a registered trademark. Additionally, please explain how this standard is applied in practice, providing examples if possible.
2. Please explain how unregistered well-known trademarks are protected in Poland, as required by TRIPS Articles 16.2 and 16.3. In particular, please indicate:
 - whether the owner of a well-known mark must establish that use of a well-known mark would “mislead purchasers”;
 - whether the standard of “mislead purchasers” requires more than would be required to establish a likelihood of confusion; and
 - whether knowledge of the relevant public is taken into account in determining if a mark is well known.
3. Article 28(3) of the Polish Trademark Law specifies that the right deriving from a trademark shall not expire if the owner of the right can prove that he was unable to use the trademark for “justified” reasons. Please explain how the phrase “justified” has been or is to be interpreted, and how this standard complies with the requirements of TRIPS Article 19, which states that “circumstances arising independently of the will of the trademark owner which constitute an obstacle to the use of the trademark shall be recognized as valid reasons for non-use” of a mark sufficient to prevent cancellation of the mark.
4. Please explain whether the Polish trademark law establishes a presumption of likelihood of confusion in the determination of confusing similarity in cases where identical marks are used on identical goods, as required by TRIPS Article 16.1. If so, please identify and explain the legal basis for this presumption.
5. Please describe the methods by which industrial designs are protected in Poland, in particular:
 - the form or forms of intellectual property used to protect the design (*e.g.*, patent, copyright, *sui generis*);
 - the conditions that must be satisfied to obtain the grant of such protection (*e.g.*, whether designs must be new or original and the parameters of these concepts), and a brief description of the registration or granting procedure;
 - the nature of the rights granted and the term of protection provided;
 - the nature of remedies available to the owner of each type of protection, including a description of the conditions that may be imposed (*e.g.*, whether commercial use is required); and
 - whether any exceptions to protection or rights exist for each type of intellectual property involved.

6. Please explain how textile designs are protected under your law.
7. Please explain whether alpha-numeric marks are treated by the Polish Patent Office as being non-distinctive and thus incapable of registration. If not, please explain how this practice is consistent with TRIPS Article 15.1.
8. Please explain whether Polish law provides specific provisions relating to well-known marks used in relation to goods or services that are not similar to those for which a trademark has been registered, but where use of the trademark would indicate or suggest that a connection exists between the owner of the well-known mark and the particular goods or services in question. If not, please explain how Polish law is consistent with TRIPS Article 16.3.

SLOVAK REPUBLIC

1. Section 2 of the General Provisions lists the signs that can constitute a trademark. This list does not include personal names, numerals, letters or colours. Please explain how Section 2 of the General Provisions complies with TRIPS Article 15.1.
2. TRIPS Article 15.3 requires WTO Members to permit the filing of an application to register a trademark prior to actual use of the mark, and further specifies that such applications cannot be refused solely on the ground that the intended use has not occurred prior to three years from the date of application. Please explain how Slovak law complies with this provision of the TRIPS Agreement.
3. Please explain whether the nature of goods or services to which a trademark is to be applied can serve as an obstacle to the registration of the mark under Slovak law. If so, please identify and explain the subject matter excluded under this authority; the relative provisions of the Slovak law that serve as a basis for these exclusions; and how this practice complies with TRIPS Article 15.4.
4. Section 13(1) of the Slovak Trademark Law provides for a 10 year term for trademarks beginning on the filing date of the application, not from the date the registration is granted. Please explain how this provision complies with the obligation of TRIPS Article 18 that WTO Members provide a minimum seven year term of protection for *registered* trademarks.
5. Please explain whether the owner of a registered trademark has the exclusive right to prevent third parties from using identical or similar signs on similar goods or services as required by TRIPS Article 16.1.
6. Please explain whether the Slovak Trademark Law establishes a presumption of likelihood of confusion in the determination of confusing similarity in cases where identical marks are used on identical goods, as required by TRIPS Article 16.1. If so, please identify and explain the legal basis for this presumption.
7. Please explain:
 - the standard used in the Slovak Republic for determining whether a mark is “well-known”;
 - how registered and unregistered well-known marks are protected under the trademark law of the Slovak Republic; and

- whether knowledge within the relevant sector of the public as a result of promotion of the mark is considered in the analysis leading to a determination that a mark is well-known.

With respect to each aspect of this question, please explain how the standards or practices comply with TRIPS Articles 16.2 and 16.3.

8. Section 15(4) of the Slovak Trademark Law permits a trademark owner to ask the customs authorities to withhold the entry of goods bearing infringing marks. Please explain how the law of the Slovak Republic implements and applies the provisions regarding border measures found in TRIPS Articles 51 to 60 with regard to such goods bearing infringing trademarks.

9. Article 18(1) of the Slovak Trademark Law specifies that one factor in the determination of whether a mark is “well known” is the “extent or long duration of its utilization for high-quality goods or services”. Please explain how this factor is applied in practice and, in particular, whether the “high quality” evaluation can preclude recognition of a mark as well known mark.

10. Section 19(1) of the Slovak Trademark Law requires strict compliance of the use of the trademark in the form in which it is registered. Please explain how this provision complies with TRIPS Article 2.1, to the extent it incorporates Article 5C(2) of the Paris Convention, which states that protection shall be afforded to marks that may differ from the registered mark as long as the differences do not alter the distinctive character of the registered mark.

11. Section 23(1)(b) of the Slovak Trademark Law allows marks to be cancelled if the owner does not provide a “good reason” for the non-use. Please explain how this provision complies with TRIPS Article 19.1 which requires that WTO Members recognize certain circumstances that arise independently of the will of the trademark owner as being valid reasons for non-use to prevent cancellation of a registration for non-use. Also, please explain the types of circumstances that would be sufficient to satisfy this provision (i.e., “good reasons” for non-use), including, where relevant, results of administrative or judicial decisions addressing this issue.

12. Please describe the methods by which industrial designs are protected in the Slovak Republic, in particular:

- the form or forms of intellectual property used to protect the design (*e.g.*, patent, copyright, *sui generis*);
- the conditions that must be satisfied to obtain the grant of such protection (*e.g.*, whether designs must be new or original and the parameters of these concepts), and a brief description of the registration or granting procedure;
- the nature of the rights granted and the term of protection provided;
- the nature of remedies available to the owner of each type of protection, including a description of the conditions that may be imposed (*e.g.*, whether commercial use is required); and
- whether any exceptions to protection or rights exist for each type of intellectual property involved.

13. Please explain how textile designs are protected under your law.

14. Please indicate whether geographical indications for wines and spirits are given additional protection compared to geographical indications for other goods. If not, please explain how Slovak law is consistent with TRIPS Article 23.

15. Section 16(3) of the Slovak Trademark Act requires the owner of a trademark to acquiesce to the use of an identical or confusingly similar sign which, in the period of two years before the filing of the application, has become characteristic for the identical or similar goods or services of its holder, such use being made by that holder in the Slovak Republic. Please explain how this provision of Slovak law is consistent with TRIPS Article 16.1, which grants the trademark owner the exclusive right to prevent use by third parties of identical or similar signs on goods or services identical to or similar to those in respect of which the trademark is registered.

16. Section 15(2) of the Slovak Trademark Act grants the owner of a registered mark the authority to prevent third parties not having his consent from using identical or similar marks in relation to goods or services that are *identical* to those for which the registration has been granted. It is not clear whether the owner of a registered mark is also given these rights with respect to goods or services that are *similar* to those for which registration has been granted. Please explain whether such authority is granted under Slovak law and, if not, how this practice is consistent with TRIPS Article 16.1.

17. Section 7(4) of the Slovak Trademark Act provides that collective marks may only be used in conjunction with an individual mark or with the name of a legal person in such a way that the origin of the goods thus marked shall be clear. Please explain how this provision is consistent with TRIPS Article 20, which provides that the use of a trademark shall not be unjustifiably encumbered by special requirements, such as use with another trademark or use in a special form.

SOUTH AFRICA

1. Article 14 of the South African Trademarks Act appears to provide a significant degree of discretion to the Registrar to register a mark that would otherwise fail to meet the requirements for registration. In particular, the provision notes that the Registrar has this authority in “special circumstances” and can impose “such conditions and limitations, if any, he may think fit to impose” on the terms of the registration. Please explain how this authority is exercised, providing examples if possible. Also, please explain how this provision can be viewed as being consistent with TRIPS Article 16.1, which specifies that the trademark owner shall have the exclusive right to use the mark vis-à-vis third parties.

2. Article 36(2) of the South African Trademarks Act appears to preclude the owner of a well-known mark to enforce his rights against third parties who can establish use of the same mark prior to 31 August 1991. Please explain how this provision is consistent with the obligations of TRIPS Article 2, to the extent it incorporates Article *6bis* of the Paris Convention, and of TRIPS Articles 16.2 and 16.3.

3. Article 27 of the South African Trademarks Act permits cancellation of a trademark registration if the mark is not used. Pursuant to section 4 of that Article, the owner of a registered trademark may prevent cancellation of the registration where the non-use is “due to special circumstances in the trade and not to any intention not to use or to abandon the mark”. Please explain:

- how this provision complies with TRIPS Article 19.1; and

- the types of circumstances that would be sufficient to satisfy this provision, including, where relevant, results of administrative or judicial decisions addressing this issue.
4. Please explain whether the South African trademark law establishes a presumption of likelihood of confusion in the determination of confusing similarity in cases where identical marks are used on identical goods, as required by TRIPS Article 16.1. If so, please identify and explain the legal basis for this presumption.
5. Please explain how the obligations in TRIPS Articles 22 and 23 with respect to protection of geographical indications are implemented in the South African law.
6. Please describe the methods by which industrial designs are protected in South Africa, in particular:
- the form or forms of intellectual property used to protect the design (*e.g.*, patent, copyright, *sui generis*);
 - the conditions that must be satisfied to obtain the grant of such protection (*e.g.*, whether designs must be new or original and the parameters of these concepts), and a brief description of the registration or granting procedure;
 - the nature of the rights granted and the term of protection provided;
 - the nature of remedies available to the owner of each type of protection, including a description of the conditions that may be imposed (*e.g.*, whether commercial use is required); and
 - whether any exceptions to protection or rights exist for each type of intellectual property involved.
7. Please explain how textile designs are protected under your law.
8. Section 12 of the Liquor Products Act prohibits false or misleading descriptions for wines and spirits, including false descriptions of origin. This provision, however, does not extend to use of such expressions as “kind” or “type”. Please explain how this provision is consistent with TRIPS Article 23.1.
9. Section 27(1)(a) of the Trade Marks Act of 1993 allows the removal of a mark from the register at any time in the case of absence of an intent to use the mark. There is no time limit imposed with respect to this provision. Please explain how this provision is consistent with TRIPS Article 19.1, which provides that if use is required to maintain registration of a trademark, the registration may only be cancelled after an uninterrupted period of non-use of at least three years.

SWITZERLAND

1. Please explain whether colours are registrable as trademarks under Swiss trademark law, absent combination with accompanying figurative elements, as required by TRIPS Article 15.1.

2. Please explain whether the nature of goods or services to which a trademark is to be applied can serve as an obstacle to the registration of the mark under Swiss law. If so, please identify and explain the subject matter excluded under this authority, the relative provisions of the Swiss law that serve as a basis for these exclusions, and how this practice complies with TRIPS Article 15.4.
3. Please explain how unregistered well-known trademarks are protected in Switzerland, as required by TRIPS Articles 16.2 and 16.3.
4. Section 12(1) of the Swiss Trademark Law appears to accept “important reasons” as a basis for preventing the cancellation of a mark due to “non-use” by the owner of the registration of the mark. Please explain the types of circumstances that would be sufficient to satisfy this standard, including, where relevant, results of administrative or judicial decisions addressing this issue. Also, please explain how this standard complies with the requirements of TRIPS Article 19.1, which specifies that non-use must be due to circumstances arising independently of the will of the trademark owner.
5. Please explain how Sections 14(2) and 17(4), which require the transfer of the enterprise when assigning a mark, comply with TRIPS Article 21.
6. Section 19(1) of the Swiss Trademark Law provides for compulsory execution incident to licensing of a trademark. Please explain how this provision is consistent with the proscription against compulsory licensing specified in TRIPS Article 21.
7. Please explain whether Swiss trademark law establishes a presumption of likelihood of confusion in the determination of confusing similarity in cases where identical marks are used on identical goods, as required by TRIPS Article 16.1. If so, please identify and explain the legal basis for this presumption.
8. Please explain whether Swiss trademark law imposes time limitations on actions to cancel trademark registrations that have been obtained by fraudulent means, and how Swiss law is consistent with TRIPS Article 2 to the extent that it incorporates Article 6bis(3) of the Paris Convention.
9. Please describe the methods by which industrial designs are protected in Switzerland, in particular:
 - the form or forms of intellectual property used to protect the design (*e.g.*, patent, copyright, *sui generis*);
 - the conditions that must be satisfied to obtain the grant of such protection (*e.g.*, whether designs must be new or original and the parameters of these concepts), and a brief description of the registration or granting procedure;
 - the nature of the rights granted and the term of protection provided;
 - the nature of remedies available to the owner of each type of protection, including a description of the conditions that may be imposed (*e.g.*, whether commercial use is required); and
 - whether any exceptions to protection or rights exist for each type of intellectual property involved.
10. Please explain how textile designs are protected under your law.

11. Please explain how Articles 15(1) and 15(2) of the Swiss Trademark Act, which address additional criteria that must be established in relation to protection of well-known marks in relation to dilution of the mark, are consistent with TRIPS Article 16.3.

12. Please explain whether Article 47(3) of the Swiss Trademark Act, which appears to prohibit the use of incorrect indications of geographical origin, permits coexistence of trademarks existing prior to the entry into force of the WTO Agreement with such indications. If not, please explain how trademarks existing prior to the entry into force of the WTO Agreement are protected against appropriation from actions incident to recognition of a geographical indication, consistent with TRIPS Article 24.5.