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Intelectual relacionados con el Comercio

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PRINCIPALES LEYES Y REGLAMENTOS DEDICADOS A LA PROPIEDAD INTELECTUAL NOTIFICADOS EN VIRTUD DEL PÁRRAFO 2 DEL ARTÍCULO 63 DEL ACUERDO

República Checa

En el presente documento se reproducen¹ las leyes y reglamentos siguientes, notificados por la República Checa en virtud de lo dispuesto en el párrafo 2 del artículo 63 del Acuerdo (véase el documento IP/N/1/CZE/1):

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¹En inglés solamente.

INDUSTRIAL PROPERTY OFFICE - CZECH REPUBLIC

Law on Trademarks

(No. 137 of June 21, 1995)

The Parliament has adopted this Law:

Part I

General Provisions

Article 1

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

Article 2

(1) The following shall be excluded from registration in the Register:

- a) a sign which is not capable to be represented graphically,
- b) a sign which is devoid of ability to distinguish goods or services,
- c) a sign which consists exclusively of signs or indications serving in trade to designate the kind, quality, quantity, intended purpose, value of goods or services, of indications of geographical origin or the time of production of the goods or of rendering of the service,
- d) a sign which consists exclusively of signs or indications which have become customary in the current language or in the *bona fide* and established practices of the trade,
- e) a sign which consists exclusively of the shape of good which results from the nature of the goods themselves or which is necessary to obtain a technical result or which gives substantial value to the goods,
- f) sign which is contrary to public order or morality,
- g) a sign which is capable to deceive the public, namely as to the nature, quality or geographical origin of the goods or services,
- h) a sign the use of which would be contrary to the obligations of the Czech Republic resulting from international treaties.

(2) a sign referred to in subsection (1) (b) to (d) may be registered, if the applicant that proves the sign has acquired distinctive character for his goods or services following its use in business, which had started at least two years before the filing of trademark application (hereinafter referred to as "the application").

Article 3

- (1) The Office shall not register a sign identical with a trademark, which is applied for or registered by another owner for identical or similar goods or services with earlier priority right, or including elements of a sign which is applied for or of a registered trademark which could lead to confusion.
- (2) The Office shall not register a sign identical with a trademark, which has lapsed according to article 24, subsection (1) (a), where the application was filed before the expiration of a period of two years as from the date of lapse of the trademark, unless the registration of the sign was applied for by the person in whose name the said trademark was registered on the day of its lapse or by his successor in title.

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- (3) The Office shall not register upon duly and reasonably declared objections according to article 9 a sign infringing legally protected earlier rights of third persons.

Part II

Procedure on Trademark Application

Trademark application

Article 4

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

Article 5

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

Article 6

- (1) By filing an application which complies with the requirements referred to in article 5(1) the right of priority shall originate confers to the applicant towards every person filing later the application of the identical or confusingly similar trademark in respect of identical or similar goods and services.
- (2) A right of priority under international treaty ^(2/+) shall be claimed by the applicant in the application already and a proved within a period of three months as from the date of filing of the application, otherwise the Office shall not respect it.

Article 7

- (1) On the request of the applicant the Office shall allow an amendment of the sign concerning the name of applicant or his forename and surname or of the trade name or of the headquarters or place of residence of the applicant or place of business, the amendment of which has occurred after the filing of the application, provided that such alteration makes the statements shown therein comply with the reality, without affecting the general nature of the sign. No other alterations of statements mentioned in article 5 section 1(c) are admitted after filing the application.
- (2) After filing the application, the applicant may restrict the list of goods or services, in respect of which the trademark is to be registered; the restriction may not be withdrawn.
- (3) Until the registration of the trademark, the applicant shall be entitled to divide the application listing several goods or services. The priority right shall be maintained for divided applications provided that they contain only goods or services listed in the original application.

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- (4) The applicant may transfer in writing his right to application relating to all goods or services, or to a part thereof only, to another entrepreneur who is qualified to be a proprietor of the trademark according to this law.

Article 8

Examination and publication of the application

- (1) The Office shall submit the application to examination.
- (2) Where an application for registration of a trademark does not satisfy the necessary requirements, the Office shall invite the applicant to remedy the defects within a fix term. In case the application does not satisfy the conditions within article 5, section (1) the Office shall fix a term of 2 months to remedy the defects; in this case the date of filing the documents, in which the defects were removed is considered as the filing date.
- (3) When the applied sign does not fulfil the conditions of registration provided by this Law the Office shall refuse the application.
- (4) Where the applications includes all required formalities and the denomination is not rejected within the article 3, the Office shall publish the application in the Gazette of the Industrial Property Office (hereinafter "Gazette").

Article 9

Objections to the registration in the Register

- (1) Objections to the registration in the Register of a published denomination in the period of three months from the date of publication may be given to the Office by:
- a) the owner or the applicant of a confusingly similar trademark with an earlier priority right, in case this trademark is registered or applied for the same or similar goods or services,
 - b) the owner of an earlier identical or confusingly similar trademark, which before the application within the international treaty ^(3/+) was a well-known mark in the Czech Republic and characteristic for its owner for his goods or services (hereinafter only "well-known mark")
 - c) the owner of an identical or confusingly similar denomination that has acquired distinctiveness in the Czech Republic in recent two years before filing of the application, for the equal or similar goods or services of this owner.
 - d) the entrepreneur, registered before the filing date in the Trade or similar register, in case his trade name or its substantial part is identical or confusingly similar with the published denomination and in case he produces identical or similar goods or furnishes identical or similar services, for which is the published denomination applied or such goods are subject of his commercial activity.
 - e) the natural person, whose forename and surname or representation, or pseudonym are identical or confusingly similar with the published denomination, in case the registration of this denomination may infringe the rights of a person's protection.
 - f) the owner of earlier rights from another industrial property in case his subject is identical or confusingly similar with the published denomination,
 - g) anybody, whom belongs the rights to an author's work, which is identical or confusingly similar with the published denomination, in case its using would interfere the rights to an author's work.
- (2) The term for filing objections to the registration of a published denomination in the Register cannot be extended.

Proceedings of objections

INDUSTRIAL PROPERTY OFFICE - CZECH REPUBLIC*Article 10*

- (1) The Office shall examine, whether the objections were filed by an authorized person in the term fixed by the law and whether the objections are legally justified and supported by documents enabling its proceeding.
- (2) The Office will terminate the procedure on objections in case the filing of objections was delayed, or made by an unauthorized person, not justified or not supported by documentation necessary for the procedure. The Office is obliged to inform about it the person, filing the objections.
- (3) The Office shall inform the applicant about the regular filed objections and invites the applicant to submit observations within the fixed time limit. The time limit must not be shorter than 10 days.
- (4) If the applicant does not submit observations within the fixed time limit, the Office shall terminate the procedure; the applicant must be in the invitation informed about this consequence.

Article 11

- (1) In case of proper claiming of objections, to which the applicant submitted observations, the Office shall evaluate, whether the registration of the applied denomination in the Register will not infringe the rights of third persons.
- (2) In case the Office finds, that the applied denomination does not infringe the previous rights of third persons, protected by law, it shall refuse the objections; it shall submit the written decision to the applicant and to the person, filing the objections.
- (3) In case the Office finds, that the applied denomination does not satisfy the conditions for registration in the Register, it shall refuse the application and submit a written decision to the applicant and to the person, filing the objections.

*Article 12***Registration of the trademark**

- (1) The Office shall register the trademark in the Register in case the circumstances mentioned in article 2 and 3 do not form an obstacle to the registration. The Office shall inform the applicant about it.
- (2) After the registration of the trademark in the Register the applicant shall become the trademark owner. At the request of the owner the Office shall issue the certificate on the trademark registration in the Register.
- (3) The Office shall announce the registration of the trademark in the Register in the Gazette within 6 months since the registration at the latest.

Part III**Rights of the trademark***Article 13*

- (1) The owner of a trademark shall have the exclusive right to affix his trademark on the goods or services for which it has been registered or to use it in relation to such goods or services.
- (2) The owner of a trademark is entitled to use together with the trademark the sign (R).

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Article 14

- (1) No one may use a trademark without the authorization of its owner or a denomination that is identical with such mark or that is misleadingly similar to the mark for goods or services identical with or similar to those for which the trademark is registered or use it in relation to such goods or services, especially to affix it on the goods and its packing, offer or place on the market goods with such denomination or to store it for this purpose, import or export goods with such denomination or use such denomination in the trade name, correspondence or advertisements.
- (2) The owner of the trademark is entitled to demand from anyone who places or intends to place on the market goods or services information about the origin of the goods or documentation on such goods and services, on which the identical or misleadingly similar denomination with his trademark is affixed. The owner shall prove his rights to the trademark by the certificate of the trademark registration or by an extract from the Register.
- (3) The Customs Office on request of the owner of the trademark shall not release goods, having a commercial character, to the free circulation regime procedure^(4/+), in case its denomination infringes the rights of the trademark owner. The owner will prove his rights to the trademark by the certificate of the trademark registration or by an extract from the Register.
- (4) The trademark owner is entitled to demand from the editor of a publication, in which his trademark is reproduced, to publish the indication of the trademark including number of the registration of the trademark in the Register.

Article 15

- (1) The owner of the trademark may request the competent court the decision about prohibition of using his trademark or confusingly similar denomination for identical or similar goods or services, and the objects affixed that way, infringing his right, should be withdrawn from the market.
- (2) The owner of the well-known mark may within the subsection (1) assert his right, notwithstanding the identity or similarity of goods or service, in case using of the well-known trademark on different goods or services may cause a relationship between such affixed products or services and the owner of the well-known trademark and in case the interests of the owner of the well-known trademark will be infringed by its using.
- (3) In case of infringement of the rights of trademark a damage was caused, the injured party is entitled for its compensation. In case of infringement of the rights of trademark caused the immaterial prejudice, the injured party is entitled to get an adequate satisfaction, which may be money implemented.

Article 16

Restriction of the rights to the trademark

- (1) The owner of the trademark shall be obliged to acquiesce, if the third persons use in the commercial relations their forename, surname, pseudonym, title or trade name, address of the residence, information concerning kind, quality, quantity, purpose, value, geographic origin, time of production or rendering the services or another character of the product in spite that this data are identical or confusingly similar to the trademark or they are a part of the trademark, but only in case that this data are used in accordance with established practices of the trade or good manners of the competition.
- (2) The owner of the trademark shall be obliged to acquiesce if the third persons use in the commercial relations a denomination identical to the trademark, in case it is necessary for marking the purpose of the product, especially its accessories or spare parts or kind of the services rendered in accordance with established practices of the trade or good manners of the competition.
- (3) The owner of a trademark shall be obliged to acquiesce the use of an identical or confusingly similar sign by its holder if such sign has acquired in the Czech Republic in the last two years before the filing the trademark application of that owner the distinctive character for identical or similar goods and services of the mentioned holder.

INDUSTRIAL PROPERTY OFFICE - CZECH REPUBLIC*Article 17***Exhausting of rights**

The trademark shall not entitle the owner to forbid the use of the trademark on products, which together with the trademark were introduced on the market themselves or with his authorization, unless after its presentation on the market a substantial change or deterioration of its standard or character.

*Article 18***Licences**

- (1) The right to use the trademark may be granted according to a licencing contract ^(5/+) for all products or services, for which it has been registered or for its part.
- (2) Licencee may be only a legal or natural person, whose object of rights according to the licence for entrepreneurial activity are products or services, for which the trademark has been registered.
- (3) The right to use the trademark according to the licencing contract is effective since the date of registration of the licencing contract in the Register; the owner of the trademark is obliged to submit a request for its registration to the Office.

*Article 19***Assignment and transfer of the trademark**

- (1) Owner of the trademark may transfer the trademark for all products or services, for which it is registered, or for its part, to another legal or natural person, according to a written contract in case this products or services are object of his licence for entrepreneurial activity by the date of conclusion of the contract. The contract on transfer of a trademark is effective since the registration in the Register; the assignee is obliged to submit a request for its registration to the Office.
- (2) The trademark shall be transferred on a new owner in cases set in special legislation. ^(6/+) The transfer of the trademark shall come into the force with the registration in the trademark Register; the assignee is obliged to require for the registration to the Office.
- (3) If the trademark has been transferred owing to the death of the owner, the heir of whose shall be unable in accordance to this law to become the owner of the trademark, the heir belongs the right only to grant the licence, if need be to transfer the trademark to the third person.

*Article 20***Transfer of the trademark owner**

If the trademark, which enjoys protection in some member country of the international treaty ^(2/+) has been registered in the Czech Republic for the profit of the trade representative, middleman or merchant of the original owner (hereinafter referred to as "trade representative"), this original owner may request the court to take a decision to transfer the trademark to him, unless the trade representative shall prove to act bona fide. The Office shall register the change of the trademark owner in the Register on request of the holder of the right and owner of the trademark.

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Article 21

Right of lien

- (1) The trademark may be furnished as a lien.^(7/+)
- (2) The right of lien to the trademark arises after registration in the Register; the lien creditor is obliged to request for this registration. The lien creditor is obliged to submit to the Office the treaty on setting up a lien right together with the request for the registration of the setting up the lien right to the trademark.

Part IV

Modification of the trademark, period of protection and lapse of the trademark

Article 22

Modification of the trademark

The Office shall permit the modification of the trademark on request of the owner of the trademark, as to the title of the owner or his forename and surname or the tradename or the headquarters, the residence or the place of the business activity, the changes of which were set in after the registration of the trademark in the Register, if this modification harmonized data, which are subject of it, with the reality without changing the general nature of the trademark.

Article 23

Period of protection

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

Article 24

Lapse of the trademark

- (1) The trademark shall lapse
 - a) if the period of protection expires and the request for the renewal of the period of protection has not been filed in time,
 - b) on the day, when the declaration of the owner of the trademark declared renunciation of a right has been delivered to the Office; this declaration has no legal effects, if there are rights of third persons there,
 - c) by lapse of the legal capacity of the owner of the trademark, unless the right to the trademark has been transferred or has passed to a new owner,
 - d) on cancellation of the trademark from the Register performed by the Office in accordance with the article 25 and 26.
- (2) The trademark, the rights of third persons are bounding on shall lapse in accordance with the subsection (1)(b) on the day when the owner of the trademark supports the lapse of these rights, if need be he supplies the consent with the cancellation of the authorized persons.
- (3) The Office shall register the lapse of the trademark in the Register.

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Cancellation of the trademark

Article 25

- (1) The Office shall cancel the trademark from the Register, if during the procedure, which has been opened on request of the third person or at its own instance, states that:
- a) the trademark has been registered at variance with this law; in this case the trademark shall be regarded as not to be registered at all. This shall not be in force, if the trademark has been registered at variance with the article 2 subsection (1) (b-d) and owing to the use in business relations becomes characteristic for such products or services of its owner, for which it has been registered,
 - b) the trademark has not been used in the Czech Republic during the period of 5 years before opening the procedure for cancellation at least and the owner of the trademark shall not give regular reasons for not using the trademark; the use of the trademark by the third person based on a treaty shall be considered as a regular use.
- (2) The Office shall cancel from the Register the trademark likely to cause confusion, if it states in the procedure, opened on request of the owner of the trademark enjoying an earlier right of priority, that the attached trademark has been registered for the same or similar products or services; the Office shall not perform the cancellation, if the owner of the trademark with the right of priority acquiesced the use of the attached trademark during the period of 5 years since the registration of it.
- (3) The Office shall cancel from the Register the identical trademark or the trademark likely to cause confusion, if it states in the procedure, which has been opened on request of the owner of the well-known trademark, that the use of the attacked trademark would unauthorized take advantage of the distinctiveness or of a good-will of the well-known trademark or cause prejudice to it, regardless of it, if the attacked trademark has been registered for the same or similar products or services. The Office shall not perform the cancellation, if the owner of the well-known trademark acquiesces the use of the attacked trademark in the Czech Republic during the period of 5 years since the registration of it.
- (4) The Office shall cancel the trademark from the Register, if it states in the procedure, which has been opened on request of the third person, that the trademark owing to the activity or inactivity of its owner has lost its distinctiveness, as it has become, in business relations, a standard denomination for products and services, for which the trademark has been registered.
- (5) If there is a reason for the cancellation of the trademark from the Register only in relation to the part of products or services, for which the trademark has been registered, the Office shall cancel the trademark for these products or services only.
- (6) The cancellation of the trademark from the Register within previous subsection may be performed even after the cancellation of the trademark, if the owner renders a legal interest.

Article 26

- (1) The Office shall cancel the trademark from the Register on the base of the court decision according to which the trademark containing the forename and surname or picture of a natural person, or his pseudonym, infringes the rights of person's protection or according to which the trademark, containing the title or the trade name of a legal person infringes the good-will, if need be, that the trademark infringes the rights to the author's work. The cancellation shall be performed, if the authorized person requests in the period of 6 months since the court decision shall be legally effective.
- (2) The Office shall cancel from the Register the identical trademark or the trademark likely to cause confusion on the bases of the court decision, in accordance with which the use of this trademark has been a not illicit competitive activity, as it takes duplicity advantage of the distinctiveness or good-will of the extraordinary well-known trademark or it shall be to deny of it. The cancellation shall be performed, if the owner of the extraordinary well-known trademark requests for cancellation until 6 months since the court decision shall be legally effective.
- (3) The cancellation of the trademark from the Register in accordance with the subsection (1) and (2) is to be performed even after the trademark has been cancelled, if the proposal proves the legal interest.

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Part V.

Special provisions in respect of the collective trademarks

Article 27

- (1) A collective trademark means any sign in accordance with the article 1, if it is capable to distinguish goods or services, of origin from members or partners of a legal person established with the view of the common designation of goods or services put on the market from the part of members or partners (hereinafter referred to as "business association"), from goods and services of other entrepreneurs.
- (2) The conditions of the use of the collective trademark including infringement sanctions are set in a written contract concluded between all members or partners of the business association.

Article 28

- (1) The business association (hereinafter referred to as "applicant") files with the Office an application for registration of a collective trademark.
- (2) An application for registration of a collective trademark shall contain:
 - a) the request for registration of a collective trademark in the Register,
 - b) the title, or the trade name and the headquarter of the business association,
 - c) this wording or representation of the applied designation, which is to be registered as a collective trademark, if any as its description; at the three dimensional designation its surface representation
 - d) the list of goods or services, which the collective trademark shall be registered for,
the list of member or partners of the applicant, which may use the collective trademark.
- (3) In the list of goods and services after subsection 2 the classes in accordance with international agreement^(1/+) shall be noted.
- (4) An agreement according to article 27 subsection (2) is to be set to the application for registration of a collective trademark.
- (5) By filing the application for registration of a collective trademark within subsection (2) the priority right arises for the applicant against any person, who subsequently files an application for registration of a trademark, that is identical or confusingly similar trademark for identical or similar goods or services.

Article 29

- (1) The Office subjects the application for registration for a collective trademark to examination at the extent set in article 8-12 during the fulfilling the condition set in the article 2 subsection (1) (b) the Office shall assess with regard to the article 27 subsection (1).
- (2) The applicant of a collective trademark becomes after the registration of a collective trademark in the Register owner of a collective trademark. On his request the Office remits the certificate of registration of a collective trademark in the Register. The Office shall publish the registration of a collective trademark in the Gazette. The certificate of registration of a collective trademark, appropriate the extract from the Register the Office remits on request to every member or partner of a business association, registered in the Register.
- (3) The Office registers on request of the owner of the collective trademark in the Register any change in the structure of members or partners of the business association.

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Article 30

- (1) Members or partners of the business association have the exclusive right to affix their own goods or services with a collective trademark, for which it has been registered or to use it in relation in such goods or services.
- (2) Members or partners of the business association may affix in the framework entrepreneurial activity goods or services also with a trademark, which they are owners of or to which they have right of use based on licencing contract.

Article 31

- (1) The owner of a collective trademark shall have a right in extent within part III of this law, if there is no other provision in part V.
- (2) Members or partners of the business association shall enjoy the right in accordance with subsection (1) in extent set in the contract.
- (3) The Office shall enable on request to every person to inspect the contract.

Article 32

The collective trademark cannot be an object of a licence, cannot be transferred to another owner and cannot be afforded as a deposit.

Article 33

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

Article 34

- (1) The collective trademark expires under conditions within article 24.
- (2) For the cancellation of the trademark registration in the Register the provisions of the article 25 and 26 shall be applied by the condition that the fulfilling of the article 2, subsection (1) (b) shall be considered with regard to the article 27 subsection (1).
- (3) The Office shall cancell the collective trademark from the Register also than, if members or partners of the business association in principal infringe the contract on the collective trademark use.

Part VI

Relations to foreign countries

Article 35

- (1) This law shall not affect the interantional treaty provisions, which the Czech Republic has been bounded of.
- (2) The persons not having their residence or headquarters on the territory of the Czech Republic shall enjoy, where there is reciprocity, the same rights and obligations as the national applicants or owners of the trademark .
- (3) The persons not having their residence or headquarters on the territory of the Czech Republic shall have to be represented in the trademark procedure by a legal adviser, commercial lawyer or patent agent.

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Article 36

- (1) The persons having their residence or headquarters on the territory of the Czech Republic may request for an international registration of the trademark in accordance with the international treaty 8/* , if need be for a registration of changes regarding the international registration by means of the Office.
- (2) The applicant of the trademark demanding for an international registration shall be obliged to pay fees for the acts within subsection (1) set in accordance with the international treaty; the Office shall notice the amount of the fees set in the international treaty in the Gazette.

Article 37

- (1) The international registration of the trademark demanding the protection for the territory of the Czech Republic shall have the same effects as the registration of the trademark in the Register kept by the Office.
- (2) The term for filing objections applied as an international application begins to run from the first day of the month succeeding the month, in which the trademark has been published in the Bulletin of the WIPO.
- (3) If the international registered trademark the protection to a trademark is refused for the territory of the Czech Republic, it is regarded as in the Czech Republic not being registered.

Part VII

Common provisions on procedure before the Office

Article 38

- (1) The participant of the procedure for the registration of trademarks is the applicant, it need be, the owner of the trademark, which the procedure shall be produced for, the person who has filed objections against registration of the trademark in the Register within article 9, the authorized person within article 20 or the person who has proposed the cancellation of the trademark from the Register.
- (2) Every filing regarding the Office shall be done in writing in Czech language. The nationals of the Czech Republic, which have been a part of a national or ethnic minority may do filing regarding the Office in their own language; however they have to put forward on the cost of the Office the translation into the Czech language made by an interpreter registered in a list of interpreters.
- (3) Every filing may concern one trademark only; as regards the request for registration of changes of the trademark owner identity data, the request for registration of the transfer or passing of the trademark, the request for registration of the legal advisor or the change of the legal advisor or request for the correction in writing request in the Register and in the Gazette, one filing may concern more trademarks of the same owner. This provision shall be used for the equal request regarding a number of applications of the same applicant.
- (4) In procedure for the trademark cannot be excused the failure to comply with the time limit for filing the objections, a term for laying claim to priority, a term for filing request for trademark cancellation in the Register within article 26 subsections (1) and (2) and a term for filing the request for the renewal of the period of protection; in the procedure no term for acting after one year has gone by since the act has to be done cannot be excused. Rights which were acquired bona fide in the period between the failure of the term and the excuse of it are not affected.
- (5) If the participant of the procedure who has filed the proposal for opening the procedure does not comply with the invitation of the Office for removal of defects or completion of the filing in a set term, or if for deficiency or defects in filing the procedure cannot continue, the Office shall terminate the procedure; on this fact the participant of the procedure has to be called his attention. The Office shall terminate the procedure even on request of the person, who has filed the proposal for its opening.
- (6) The Office decides in accordance with the contents of the file, especially on the basis of evidences, which the participants of the procedure set forward supporting thus their statements.

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- (7) Against the decision of the Office the appeal in the period of one month since the decision has been delivered can be filed. The legal remedies extra against the decision of the Office are not admitted.
- (8) If not otherwise provided in this law the administrative rule shall be valid for the trademarks procedure except the provision of the suspension of the procedure, the statutory declaration, terms for decision and measure against inactivity.^{9/*}

Article 39

- (1) The proposer shall be obliged to pay in a security on costs of the procedure together with the proposal for the opening of the trademark cancellation procedure within article 25 and with the appeal against the decision of the Office within article 38 subsection (6). This shall be reimbursed, if the procedure shall prove, that the proposal for the opening of the procedure has been filed rightfully.
- (2) The security within the subsection (1) amounts 2 500 Czech Crowns.

Article 40

Register and Gazette

- (1) The Office shall keep the Register where the decisive data concerning trademarks shall be registered. The trademark Register is a public Register and everybody enjoy the right to inspect it.
- (2) The Office shall issue the Gazette in which applications within article 8, subsection (4) shall be published and further on registrations and renewals of registrations of trademarks, transfers, trademarks cancellations and other important facts as regards trademarks.

Part VIII

Common, transitional and final provisions

Article 41

The full power for implementing regulations issue

- (1) The Office shall sett up the details concerning procedure on trademarks in a public notice, where the formalities required for the application, formalities of objections against registration of the denomination in the register, formalities of the request for the trademark registration renewal and formalities for the request for registration further facts in the Register, formalities concerning the proposal on trademark cancellation in the Register, details concerning trademarks file keeping and the registered trademark and the particular data regarding trademark which shall be marked in the Register and published in the Gazette are set.
- (2) If an request for international registration has been filed, the Office shall set further formalities of the trademark application in the decree.

Article 42

Transitional provisions

- (1) Procedures on trademark applications which have not been concluded before the entry into force of this law, shall be finished in accordance with this law it being understood that the applicant shall be obliged on invitation of the Office in the set term to remove the deffects of the application in accordance with the requirements set in this law.
- (2) The relations concerning trademarks registered in the Register before entry into force of this law shall follow the provisions of this law. The arising of this relations as well as the claims arising in connection

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with them before entry into force of this law shall be considered in accordance with regulations valid on the term of their origin.

- (3) The owner of the trademark, which has been declared as famous, may request for cancellation the identical trademark or the trademark likely to cause confusion as well under conditions set in article 23 subsection (3) of the law No. 174/1988 Coll. during the term of validity of this trademark, however not longer than 10 years since the effect of this law has been taken. During this period the owner of the famous trademark may claim the objections against the registration of the identical or confusingly similar indication in the Register within article 9 of this law, without taking regard to the products or services, which the attached indication has been registered for.

*Article 43***Revocation provisions**

The following shall be repealed:

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

Article 44

This law shall enter into force on the 1 October, 1995.

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

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

^{3/+} Article 6 bis of the Paris Convention for the Protection of Industrial Property

^{4/+} Article 98, subsection 2 Law No. 13/1993 Coll. Customs Law

^{5/+} Article 508 and following of the Law No. 513/1991 Coll. Commercial Law

^{6/+} e.g. Art. 69 and 259 Commercial Law, Art. 12-17 Law about the State enterprise

^{7/+} Art. 151a and following of of. the Law No. 40/1964 Coll. Civil Code Art. 297 and following of Commercial Law

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

^{9/+} Art. 29, 39, 49 and 50 Law No. 71/1967 Coll. on Administrative procedure (Administrative Code).

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DECREE**of the Industrial Property Office**

from September 7 1995

to Implement the Law on Trademarks

Pursuant to Article 41, par. 1 and 2 of the Law on Trademarks No 137/1995 of Collection of Law (hereinafter "Law"):

PART ONE**TRADEMARK APPLICATION PROCEDURE****Trademark application**

(Article 4 up 6 of the Law)

Article 1

(1) An applicant shall also state in the trademark application:

a) information whether the trademark shall be registered in the common characters used by the Industrial Property Office (hereinafter "Office") or in other characters, or the trademark in question be three-dimensional; if the filed sign contains the data written in other than Latin characters the transliteration of the data in Latin characters must be added,

b) information whether the trademark is filed in black and white or in colour,

c) information on the representative, including the name and address of the headquarters of the representative, who is legal entity, in the case of a physical person the name and surname and the address of residence and/or the mail address.

(2) If the applicant claims the priority right under Article 6, par.2 of the Law, he shall state the date, file number and the country of application filing by virtue of that he claims the priority right, in the trademark application; had the trademark be registered also the registration number. The applicant shall submit the document on application filing by virtue of which he claims his priority right or the priority right document as an evidence of his priority right.

(3) Goods and services, the trademark protection is claimed

for, are listed in sequence of international classification/1 classes accompanied by the respective number of the classification.

(4) The trademark application is signed by the applicant or his authorized representative.

(5) Office shall furnish the trademark application with the precise time date of filing and file number.

Article 2

(1) Trademark application in different characters than common must be furnished with five figures of the filed sign, reproducing clearly the filed sign in fine details.

(2) Office may request the applicant to enclose further figures in the trademark application to clearly distinguish details of the filed trademark or its description in writing and/or its sample.

(3) Collective trademark application must be furnished with the agreement on business association and the applicant points out also the persons authorized to handle the collective trademark procedures on behalf of business association.

Article 3**Divided application**

(under Article 7, par. 3 of the Law)

(9) If the opposition is filed under Section 42 par. 3 of the Law, the owner of the trademark is obliged to state the file number and the date of decision of the Office, declaring the trademark to be well known.

Article 5

Trademark Register

(under Article 40 of the Law)

(1) The Register shall state:

- a) number of trademark,
- b) precise date of the trademark application filing with the Office and/or priority right date,
- c) publication date of the filed sign in the Gazette of the Industrial Property Office (hereinafter "Gazette"),
- d) date of the registration of the trademark to the Register,
- e) file number
- f) wording and/or representation of the trademark; if the trademark contains the data in different from Latin characters, the transliteration shall be furnished into Latin characters.
- g) classification of figurative elements of the trademark,
- h) trade name and address of headquarters or the name, surname and residence address of a trademark owner,
- i) the kind of trademark.
- j) the list of goods and or services the trademark is assigned for in the sequence of international classification/1 accompanied by the respective number of the class of the classification,
- k) the date of the trademark registration renewal.
- l) international registration of trademark,
- m) license contracts in the trademark or designation of the association members entitled to use a collective trademark,
- n) the assignment of the right to the trademark.
- o) provision and lapse of the right of lien to the trademark,
- p) trade name and address of headquarters or the name, surname and residence address of the applicant representative,
- r) lapse of trademark right.

(2) The modifications can be entered on request, occurred after the trademark registration.

(3) Office shall enable access to the Register data to everybody.

Article 6

(1) The data provided for in Article 5 par. 1 shall be stated in the certificate of registration of the trademark to the Register. Office shall issue the certificate amendment on the request to the owner to reflect modifications of registration in the Register occurred after the certificate had been issued.

(2) If requested, Office shall issue original copy of the certificate of registration of a trademark in the Register. The original copy contains data stated in the certificate of the registration of a trademark in the Register.

(3) If requested, Office shall issue the extract from the Register and/or the extract of the data on the filed trademark to anybody, who files the request. The extract from the Trademark Register contains the data only, valid as of the date of application filing on Register extract.

(4) Office shall publish data stated under Section 5, par. 1 after the entry of the trademark to Register in the Gazette; any data modification occurred after the registration of the trademark to Register shall be published in the Gazette.

PART TWO
AMENDMENTS AND MODIFICATIONS IN TRADEMARK

Article 7

Amendment in trademark

(under Article 7, par. 1 and Article 22 of the Law)

(1) Request to change the filed sign and/or trademark containing the data on headquarters address or name and surname and residence address of an applicant and/or trademark owner shall contain following:

- a) number of trademark registration and/or file number,
- b) trade name and headquarters address or name and surname and residence address of an applicant and/or trademark owner,
- c) wording or representation of the trademark,
- d) trade name and headquarters address or name and surname and residence address of an attorney, if applicable,
- e) the requested amendment
- f) signature of applicant.

(2) Request to change the filed sign and/or trademark must be furnished with the official document to confirm the change in data under the par. 1.

Article 8

Restriction of the List

(to Article 7, par. 2 of the Law)

The request to restrict the list of goods or services contains as follows:

- a) number of trademark registration and/or file number,
- b) trade name and headquarters address or name and surname and residence address of an applicant and/or trademark owner,
- c) list of goods or services reflecting the restriction,
- d) trade name and headquarters address or name and surname and residence address of a representative, if applicable.
- e) signature of applicant.

Article 9

**Change in trade name and headquarters address
or name and surname and residence address data**

The request to enter the change of data in the trade name and headquarters address or name and surname and residence address of an applicant and/or trademark owner shall contain following:

- a) number of trademark registration and/or file number,
- b) the trade name and headquarters address or name and surname and residence address of an applicant and/or trademark owner
- c) the new data in trade name or headquarters address or name and surname and residence address of an applicant and/or trademark owner, the registration of which in the Register is demanded,
- d) trade name and headquarters address or name and surname and residence address of a representative, if applicable.
- e) signature of applicant.

Article 10

Assignment of the right

(under Article 19 of the Law)

(1) Request for registration of the assignment and/or transition of the trademark in the Register contains as follows:

- a) number of trademark registration and/or file number,
- b) the trade name and headquarters address or name and surname and residence address of a trademark owner and information on the trade name and headquarters address or name and surname and residence address of a trademark assignee,
- c) information whether the trademark is transferred for all the assigned products and/or services or solely for some of them, listed in the sequence of the international classification/I classes accompanied with the respective class number of the above classification,
- d) trade name and headquarters address or name and surname and residence address of a representative, if applicable,
- e) signature of applicant.

(2) When the trademark transferred, the contract on transfer or the extraction of the contract shall be enclosed to the request and/or some other official document evidencing the change in trademark assignee and in trademark transition the document on trademark transition undergoing different regulations. If the document on trademark assignment and/or transition is submitted in other than Czech language, Office can demand its translation.

(3) In case the assignment and or transition of the rights from trademark application is requested, the appropriate provisions of the paragraphs 1 and 2 shall be applied.

Article 11

Licence

(to Article 18 of the Law)

(1) The request for registration of the licence contract shall contain following:

- a) number of trademark registration and/or file number,
- b) the trade name and headquarters address or name and surname and residence address of a trademark owner and information on the trade name and headquarters address or name and surname and residence address of a trademark licensee.
- c) information whether the trademark is licensed for all the assigned products and/or services or solely for some of them,
- d) trade name and headquarters address or name and surname and residence address of an representative, if applicable,
- e) signature of applicant.

(2) The licence contract is enclosed to the request for registration of the licence contract to Register. If the licence contract is submitted in other than Czech language, Office can demand its translation.

Article 12

Lien

(under Article 21 of the Law)

(1) The request for registration of the lien shall contain following:

- a) number of trademark registration and/or file number,
 - b) the trade name and headquarters address or name and surname and residence address of a trademark owner and information on the trade name and headquarters address or name and surname and residence address of a lien creditor,
 - c) trade name and headquarters address or name and surname and residence address of a representative, if applicable,
 - d) signature of applicant.
- (2) The lien establishment contract is enclosed to the request for registration of lien right contract to the Register. If contract submitted in other than Czech language, Office can demand its translation.

Article 13

Proposal for cancellation of the trademark from the Register

(under Article 25 of the Law)

(1) The proposal for cancellation of the trademark from the Register contains following:

- a) registration number of trademark and/or file number,
- b) trade name and headquarters address or name and surname and residence address of a trademark owner,
- c) wording or representation of the trademark,
- d) trade name and headquarters address or name and surname and residence address of proposer,
- e) trade name and headquarters address or name and surname and residence address of petitioner representative, if applicable,
- f) proposal how to decide in this matter,
- g) proposal substantial reasoning and supporting evidence,
- h) signature of applicant.

(2) A proposal for cancellation shall be submitted in four copies; the copies of evidence supporting the proposal for cancellation must be enclosed to each copy of the proposal.

(3) In case the trademark owner attacked by the proposal for cancellation is a legal or physical entity having neither headquarters nor residence in the Czech Republic, the proposal for cancellation shall be furnished with certified translation into French or English language.

(4) Office shall invite the trademark owner to express his approach to the proposal for cancellation.

Article 14

Request for cancellation of the trademark from the Register

(under Article 26 of the Law)

(1) The request for cancellation of the trademark from the Register shall contain following:

- a) registration number of trademark and/or file number,
- b) trade name and headquarters address or name and surname and residence address of a trademark owner.
- c) trade name and headquarters address or name and surname and residence address of petitioner for cancellation of the trademark,
- d) trade name and headquarters address or name and surname and residence address of representative, in case the petitioner has a representative.

(2) The petitioner shall enclose the copy of authorized Court order to the request for cancellation in compliance with that the trademark encroaches upon the rights of personality protection, infringes the legal entity reputation or encroaches upon the copyright an/or the trademark application represents an unfair competition.

Article 15

Renewal of registration

(under Article 23 of the Law)

(1) Request for renewal of registration shall contain following:

- a) registration number of trademark and/or file number,
- b) trade name and headquarters address or name and surname and residence address of trademark owner,
- c) the statement the renewal of registration is requested,
- d) trade name and headquarters address or name and surname and residence address of a representative, in case the trademark owner has a representative,
- e) signature of applicant.

(2) If the request for renewal of trademark registration in the Register comprises the request to restrict the list of products and/or services the renewed trademark is assigned for, the trademark owner is obliged to state the data under Article 8.

PART THREE

OFFICE ACTS

Article 16

File keeping

Office keeps separate file on trademark application and on registered trademark, containing all items filed in the course of the trademark application procedure, in the life time of trademark registration and orders and decisions of the Office.

PART FOUR

APPLICATION FOR INTERNATIONAL REGISTRATION OF TRADEMARK

(under Article 36 of the Law)

Application for International registration

Article 17

(1) In case of a trademark registered in the Register kept by the Office, the application for international registration shall contain following:

- a) registration number of trademark to Register and its tenor or representation, when the trademark filed in other than Latin writing and/or contains other than Arabic or Roman numerals its transliteration into Latin is carried out under the rules of French pronunciation and transliteration into Arabic digits,
- b) trade name and headquarters address or name and surname and residence address of an applicant, that must be identical with the data on name and headquarters address or name and surname and residence address of trademark owner, having been registered in the Register kept by the Office,
- c) list of goods and services, the trademark protection is claimed for, identical with or shorter than the list of goods and services, the trademark is registered for in the Register kept by the Office, in precise translation into French and items listed in sequence of international classification/I classes accompanied by the respective number of the classification,
- d) the time, the protection is requested for,
- e) the list of countries, the protection is requested in,

f) the royalties payment fashion for international registration under the International Agreement on International Registration of Marks /2, trade name and headquarters address or name and surname and residence address of payer and/or certificate number of the World Intellectual Property Organization with its seat in Geneva (hereinafter "International Office") on payment having been settled,

g) if the trademark filed in colour, list of applied colours in French and information on the way of publishing,

h) trade name and headquarters address or name and surname and residence address of the representative, if applicable,

i) applicant signature.

(2) If the trademark has not been registered into Register kept by Office, application for international registration contains file number of the trademark application and its filing date with the Office and data stated under par. 1, letter b) up to i).

Article 18

(1) Application for international trademark registration filed in other than common writing must be furnished by the applicant with five copies of black and white representation of the filed sign of the size 15 x 15 mm as minimum and 80 x 80 mm as maximum.

(2) Applicant shall furnish the international trademark application in a coloured representation, besides the representation under the par. 1, with following:

a) 52 copies of representation of the sign in colour of the size smaller than 210 x 297 mm, if he likes to have the trademark published in black and white or

b) five copies of representation of the filed sign in colour of the size 15 x 15 mm as minimum and 80 x 80 mm as maximum, if he likes to have the trademark published in colour.

(3) Applicant shall furnish the international trademark application with three copies of list of products or services in precise translation into French and items listed in sequence of international classification/1 classes accompanied by the respective number of the classification.

Article 19

Request for Acts in International Register of Marks

(1) Office shall request for acts in the International Register of Marks concerning registration renewal, territory extension, assignment, data modification in name or name and surname and/or headquarters address or residence address of the internationally registered trademark owner, restriction of the goods or services list, the renunciation of the protection, request for cancellation, data correction, registration or change of a representative or any other acts, following the written request of the internationally registered trademark owner filed for each individual procedure.

(2) Request for acts under par. 1 shall contain:

a) trademark number, its wording or representation,

b) file number of international registration,

c) trade name and headquarters address or name and surname and residence address of internationally registered trademark owner,

d) the royalties payment fashion for act under the international treaty /2 and data on trade name and headquarters address or name and surname and residence address of payer and/or certificate number of International Office on payment having been settled,

e) further properties requested by international treaty,/2

f) signature of applicant.

PART FIVE
COMMON AND CONCLUSION PROVISIONS

Article 20

Should the Office have good reason to be in doubts about data reliability comprised in application, it may invite applicant to submit the evidence and prove them to be truthful.

Article 21

This decree comes into effect on October 1 1995.

President:
Ing. Jakl CSc.

Notes:

1/ Decree of the Ministry of Foreign Affairs No 118/1979 of Coll., to the Nice Agreement Concerning the International Classification of Goods and Services for the Purpose of Registration of Marks from July 15, 1957, revised in Stockholm on July 14, 1967 and in Geneva on May 13, 1977, in wording of Decree No 77/1985 of Coll.

2/ Decree of the Ministry of Foreign Affairs No 65/1975 of Coll., to the Madrid Agreement Concerning the International Registration of Marks from April 14, 1891, reviewed in Bruxelles on December 14, 1900, in Washington on June 2, 1911, In The Hague on November 6, 1925, in London on June 2, 1934, in Nice on June 15, 1957 and in Stockholm on July 14, 1967, in wording of Decree No 78/1985 of Coll.