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**Federal Act
on the Protection of Trade Marks and Indications of Source
(Trade Mark Protection Act, TmPA)**

of 28 August 1992 (Status as of 1 April 2019)

*The Federal Assembly of the Swiss Confederation,
on the basis of Article 122 of the Federal Constitution^{1,2}
and having considered the Dispatch of the Federal Council
dated 21 November 1990³,
decrees:*

Title 1 Trade Marks
Chapter 1 General Provisions
Section 1 Trade Mark Protection

Art. 1 Definition

¹ A trade mark is a sign capable of distinguishing the goods or services of one undertaking from those of other undertakings.

² Trade marks may, in particular, be words, letters, numerals, figurative representations, three-dimensional shapes or combinations of such elements with each other or with colours.

Art. 2 Absolute grounds for refusal

Excluded from trade mark protection are:

- a. signs that are in the public domain, except where they have become established as a trade mark through use for the goods or services for which they are being claimed.
- b. shapes that constitute the nature of the goods themselves or shapes of the goods or their packaging that are technically necessary.

AS 1993 274

¹ SR 101

² Amended by No I of the FA of 21 June 2013, in force since 1 Jan. 2017 (AS 2015 3631; BBl 2009 8533).

³ BBl 1991 I 1

- c. misleading signs;
- d. signs contrary to public policy, morality or applicable law.

Art. 3 Relative grounds for refusal

¹ Also excluded from trade mark protection are signs that are:

- a. identical to an earlier trade mark and are intended for the same goods or services;
- b. identical to an earlier trade mark and intended for similar goods or services such that a likelihood of confusion results.
- c. similar to an earlier trade mark and intended for the same or similar goods or services such that a likelihood of confusion results.

² An earlier trade mark is:

- a. a filed or registered trade mark that gives rise to a right of priority under this Act (Art. 6-8).
- b. a trade mark that is well known in Switzerland within the meaning of Article 6^{bis} of the Paris Convention for the Protection of Industrial Property of 20 March 1883 (Paris Convention)⁴ at the time of filing the sign referred to in paragraph 1.

³ The grounds for refusal under this Article may only be invoked by the proprietor of the earlier trade mark.

Art. 4 Registration in favour of the authorised user

Trade marks registered in the name of agents, representatives or other authorised users without the consent of the proprietor, or trade marks which remain entered in the Register after the withdrawal of such consent, are also not protected.

Section 2 Establishment of a Trade Mark Right; Priority

Art. 5 Establishment of a trade mark right

A trade mark right is established on entry in the Register.

Art. 6 Right of Priority

A trade mark right belongs to the person who first files the trade mark.

⁴ SR 0.232.01, 0.232.02, 0.232.03, 0.232.04

Art. 7 Priority under the Paris Convention

¹ Where a trade mark is first duly filed in another Member State of the Paris Convention⁵ or with effect in such a Member State, the applicant or successor in title may claim the date of the first filing for the filing of the same trade mark in Switzerland, provided the filing in Switzerland takes place within six months of the date of the first filing.

² The first filing in a state that grants reciprocity to Switzerland has the same effect as the first filing in a Member State of the Paris Convention.

Art. 8 Exhibition priority

Any person who exhibits goods or services bearing a trade mark at an official or officially recognised exhibition under the Convention of 22 November 1928⁶ Relating to International Exhibitions in a Member State of the Paris Convention⁷, may claim the opening date of the exhibition for filing the application provided that the trade mark is filed within six months of this date.

Art. 9 Declaration of priority

¹ Any person who claims priority under the Paris Convention⁸ or exhibition priority must file a declaration of priority with the Swiss Federal Institute of Intellectual Property (IPI). The IPI may require the submission of a priority document.⁹

² The claim is forfeited if the time limits and formal requirements laid down by the Ordinance are not complied with.

³ Registration of priority is merely a presumption in favour of the proprietor of the trade mark.

Section 3 Existence of a Trade Mark Right**Art. 10** Term of validity and renewal of registration

¹ A registration is valid for 10 years from the date of filing the application.

² A registration will be renewed for further periods of ten years if an application for renewal is submitted and the fees as set out in the Ordinance are paid.¹⁰

⁵ SR **0.232.01, 0.232.02, 0.232.03, 0.232.04**

⁶ SR **0.945.11**

⁷ SR **0.232.01, 0.232.02, 0.232.03, 0.232.04**

⁸ SR **0.232.01, 0.232.02, 0.232.03, 0.232.04**

⁹ Amended by No I of the FA of 21 June 2013, in force since 1 Jan. 2017

(AS **2015** 3631; BBI **2009** 8533).

¹⁰ Amended by Annex No 2 of the FA of 24 March 1995 on the Statue and Tasks of the Swiss Federal Institute of Intellectual Property, in force since 1 Jan. 1996 (AS **1995** 5050; BBI **1994** III 964).

³ The application for renewal must be submitted to the IPI within the last 12 months prior to the expiry of the term of validity, but not later than six months after its expiry.¹¹

⁴ ...¹²

Art. 11 Use of the trade mark

¹ A trade mark is protected if it is used in relation to the goods or services for which it is claimed.

² Use in a manner not significantly different from the registered trade mark and use for export purposes also constitute use of the trade mark.

³ Use of the trade mark with the consent of the proprietor is considered to be use by the proprietor himself.

Art. 12 Consequences of non-use

¹ Where the proprietor has not used the trade mark in relation to the goods or services for which it is claimed for an uninterrupted period of five years following the expiry of the opposition period with no opposition having been filed or upon conclusion of opposition proceedings, he may no longer assert his right to the trade mark, unless there are proper reasons for non-use.

² If use of the trade mark is commenced or resumed after more than five years, the right to the trade mark is restored with effect from the original priority date, unless non-use of the trade mark has been invoked under paragraph 1 prior to its commencement or resumption of use.

³ Any person who invokes non-use of a trade mark is required to substantiate his claim; evidence of use is required to be provided by the proprietor of the trade mark.

Section 4 Rights Conferred by a Registered Trade Mark

Art. 13 Exclusive right

¹ A trade mark right confers on the proprietor the exclusive right to use the trade mark to identify the goods or services for which it is claimed and to dispose of it.

² The proprietor of a trade mark may prohibit others from using a sign that is excluded from trade mark protection under Article 3 paragraph 1, in particular, from:

- a. affixing the sign to goods or their packaging;

¹¹ Amended by No I of the FA of 21 June 2013, in force since 1 Jan. 2017 (AS 2015 3631; BBl 2009 8533).

¹² Repealed by Annex No 2 of the FA of 24 March 1995 on the Statute und Tasks of the Swiss Federal Institute of Intellectual Property, with effect from 1 Jan. 1996 (AS 1995 5050; BBl 1994 III 964).

- b. offering goods, placing them on the market or stocking them for such purposes under the sign;
- c. offering or providing services under the sign;
- d. importing, exporting or carrying in transit goods under the sign;¹³
- e. using the sign on business papers, in advertising, or otherwise in the course of trade.

^{2bis} The proprietor of the trade mark may also assert the rights under paragraph 2 letter d if the import, export or transit of commercially manufactured goods is carried out for private purposes.¹⁴

³ The proprietor of the trade mark may also assert the rights under this Article against authorised users in terms of Article 4.¹⁵

Art. 14 Limitation concerning previously used signs

¹ The proprietor of a trade mark may not prohibit another person from continuing to use a sign to the same extent as already previously used prior to the filing of the application.

² This right to continued use may only be assigned together with the undertaking.

Art. 15 Famous trade marks

¹ The proprietor of a famous trade mark may prohibit others from using his trade mark for any type of goods or services if such use threatens the distinctiveness of the trade mark or exploits or damages its reputation.

² Rights acquired before the trade mark became famous remain unaffected.

Art. 16 Reproduction of trade marks in dictionaries and other reference works

Where a registered trade mark is reproduced in a dictionary, in another reference work or in a similar work without reference to its registration, the proprietor of the trade mark may require that the publisher, editor or distributor of the work include a corresponding reference, at the latest in a reprint.

¹³ Amended by Annex No 3 of the FA of 22 June 2007, in force since 1 July 2008 (AS 2008 2551; BBI 2006 1).

¹⁴ Inserted by Annex No 3 of the FA of 22 June 2007, in force since 1 July 2008 (AS 2008 2551; BBI 2006 1).

¹⁵ Amended by Annex No 3 of the FA of 22 June 2007, in force since 1 July 2008 (AS 2008 2551; BBI 2006 1).