# Commission Regulation (EC) No 355/2009 of 31 March 2009 amending Regulation (EC) No 2869/95 on the fees payable to the Office for Harmonization in the Internal Market (Trade Marks and Designs) and Regulation (EC) No 2868/95 implementing Council Regulation (EC) No 40/94 on the Community trade mark

## COMMISSION REGULATION (EC) No 355/2009

## of 31 March 2009

## amending Regulation (EC) No 2869/95 on the fees payable to the Office for Harmonization in the Internal Market (Trade Marks and Designs) and Regulation (EC) No 2868/95 implementing Council Regulation (EC) No 40/94 on the Community trade mark

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark[(1)] and in particular Articles 139 and 157 thereof,

Whereas:

(1) Article 139(2) of Regulation (EC) No 40/94 lays down that the amounts of the fees payable to the Office for Harmonization in the Internal Market, hereinafter 'the Office', are to be fixed at such a level as to ensure that the revenue in respect thereof is sufficient to ensure that its budget is balanced.

(2) The Office is generating substantial cash reserves. A further increase in the revenue of the Office and, as a consequence, budgetary surplus of the Office is expected. This is in particular the result of the payment of application and registration fees for Community trade marks.

(3) A reduction in fees would therefore be one of the measures for ensuring that the budget is balanced, while fostering access to the Community trade mark system for users.

(4) In order to reduce the administrative burden on both the users and the Office the fee structure should be simplified by fixing the amount of the registration fee for a Community trade mark at zero. Hence, only the payment of the application fee will be required and the processing time for the registration can be considerably reduced if no registration fee has to be paid before registering a Community trade mark.

(5) In relation to international registrations designating the European Community the fixing of the amount of the registration fee for a Community trade mark at zero implies that the amount of the fee to be refunded pursuant to Article 149(4) or Article 151(4) of Regulation (EC) No 40/94 has to be set to zero as well.

(6) The reduction in fees should ensure a proper balance between the Community and national trade mark systems, taking into account the future development of the relations

**Changes to legislation:** *Commission Regulation (EC) No 355/2009 is up to date with all changes known to be in force on or before 08 April 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

between the Office and industrial property offices of Member States, including the remuneration for services rendered by the offices of Member States.

(7) Commission Regulation (EC) No 2869/95 of 13 December 1995 on the fees payable to the Office for Harmonization in the Internal Market (Trade Marks and Designs)[(2)] and Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark[(3)] should therefore be amended accordingly.

(8) A transitional provision is required to ensure legal certainty while providing maximum benefit to both the users and the Office.

(9) The measures provided for in this Regulation are in accordance with the opinion of the Committee on Fees, Implementation Rules and the Procedure of the Boards of Appeal of the Office for Harmonization in the Internal Market (Trade Marks and Designs),

HAS ADOPTED THIS REGULATION:

*Article 1*

Regulation (EC) No 2869/95 is hereby amended as follows:

1. The table in Article 2 is amended as follows:

(a) point 1 is replaced by the following:

| | |
|---|---|
| 1. Basic fee for the application for an individual mark (Article 26(2), Rule 4(a)) | 1 050 |

(b) point 1b is replaced by the following:

| | |
|---|---|
| 1b. Basic fee for the application for an individual mark by electronic means (Article 26(2), Rule 4(a)) | 900 |

(c) point 3 is replaced by the following:

| | |
|---|---|
| 3. Basic fee for the application for a collective mark (Article 26(2) and Article 64(3), Rule 4(a) and Rule 42) | 1 800 |

(d) points 7 to 11 are replaced by the following:

| | |
|---|---|
| 7. Basic fee for the registration of an individual mark (Article 45) | 0 |

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| | |
|---|---|
| 8. Fee for each class of goods and services exceeding three for an individual mark (Article 45) | 0 |
| 9. Basic fee for the registration of a collective mark (Article 45 and Article 64(3)) | 0 |
| 10. Fee for each class of goods and services exceeding three for a collective mark (Article 45 and Article 64(3)) | 0 |
| 11. Additional fee for the late payment of the registration fee (point 2 of Article 157(2)) | 0. |

2. In Article 11(3), points (a) and (b) are replaced by the following:

(a) for an individual mark: EUR 870 plus, where applicable, EUR 150 for each class of goods and services exceeding three;

(b) for a collective mark as referred to in Rule 121(1) of Regulation (EC) No 2868/95: EUR 1 620 plus, where applicable, EUR 300 for each class of goods or services exceeding three.

3. Article 13 is replaced by the following:

*Article 13*

**Refund of fees following refusal of protection**

1 Where the refusal is either for all or only part of the goods and services contained in the designation of the European Community, the amount of the fee to be refunded pursuant to Article 149(4) or Article 151(4) of the Council Regulation (EC) No 40/94 shall be:

a for an individual mark: an amount corresponding to the fee mentioned in point 7 of the table in Article 2 plus an amount corresponding to the fee mentioned in point 8 of that table for each class of goods and services contained in the international registration exceeding three;

b for a collective mark: an amount corresponding to the fee mentioned in point 9 of the table in Article 2 plus an amount corresponding to the fee mentioned in point 10 of that table for each class of goods and services contained in the international registration exceeding three.

2 The refund shall be made once the communication to the International Bureau pursuant to Rule 113(2)(b) and (c) or Rule 115(5)(b), (c) and (6) of Regulation (EC) No 2868/95 has been issued.

3 The refund shall be made to the holder of the international registration or his representative.