

Short comments on the Swiss Opposition Procedure

(a) With regard to the costs

The **official fees** for filing an opposition procedure based on one older trademark (“challenging trademark”) against one younger trademark (“challenged trademark”) in Switzerland are CHF 800. If it is necessary to base the opposition on two challenging trademarks the official fees are 2 x CHF 800 (in case of three challenging trademarks 3 x CHF 800 etc.).

In case of winning the opposition the official fees will be imposed on the losing party; i.e. the opponent can collect this amount from the owner of the challenged trademark.

Please note that under Swiss law the opposition must be substantiated in the first (and typically only) submission. Our **attorneys’ fees** for filing an opposition based on one trademark can be limited to CHF 1’000 (however more time and effort might be recommended in the specific case at hand); this amount also corresponds to the compensation which has to be paid by the losing party in the opposition proceeding (based on one trademark and with only one exchange of written submissions).

Accordingly, the initial costs for filing an opposition in Switzerland are CHF 1’800 at the least.

In case of winning the opposition the amount of CHF 1’800 will have to be compensated by the losing party (in case of only one exchange of submissions).

In case of losing the opposition the opponent will have to compensate the owner of the challenged trademark with CHF 1’000 (in case of only one exchange of submissions).

Please note that it will be more costly if the opposition has to be based on a **well-known trademark** (not registered trademark) as we will have to prove the fact of being a well-known trademark in Switzerland. Accordingly the attorneys’ fees will increase depending on the amount and the quality of the proofs the client will provide, and on the necessary time that has to be put in the case. Each individual case is different, but costs are typically not less than CHF 2’500-3’500. It is important to note that the Swiss Supreme Court held that proof of knowledge in the relevant sector of the traders can be sufficient already (so there is not necessarily a need to prove the well-known status among the relevant sector of the consumers); however please note that the knowledge of the trademark must be in Switzerland, i.e. among the relevant sector of the Swiss traders.

(b) With regard to the procedure

The procedure requires that **opposition** be submitted within 3 months of publication of a national Swiss trademark. In the case of international registrations, this period does not begin until the first day of the month following publication. The opposition fee must also be paid within these time limits too.

Under certain circumstances, the owner of the challenged trademark may assert that the **challenging trademark has not been used within the past five years**. In this case a second exchange of written submissions is necessary in order to prove actual use of the challenging trademark in Switzerland (and additional attorneys’ fees incur).

An **appeal** against the Institute's opposition decision may be submitted to the Swiss Federal Administrative Court within 30 days. The Board's decision is final (on the administrative level). However civil proceedings are still possible.