

# Ordinance on the Protection of Trademarks (OPM)

(of December 23, 1992)\*

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## Chapter 1 General

### (Responsibility)

#### 1.—

(1) The execution of the administrative tasks arising out of the Trademark Law<sup>1</sup> and out of the execution of this Ordinance shall be the responsibility of the Federal Intellectual Property Office (Federal Office).

(2) Notwithstanding paragraph (1), the execution of Sections 70 to 72 of the Trademark Law and Sections 54 to 57 of this Ordinance shall be the responsibility of the Federal Customs Authorities.

### (Calculation of Time Limits)

2. Where a time limit laid down in the Trademark Law or in this Ordinance is calculated in months or years and where the day of the event that starts such time limit running is the last day of a month, the time limit shall end on the last day of the month in which it expires.

<sup>1</sup> For the text of the Trademark Law, see *Industrial Property Laws and Treaties*, SWITZERLAND - Text 3-001 (Editor's note).



(Languages)

**3.—**

(1) Submissions to the Federal Office must be drafted in an official language of Switzerland, subject to Section 47(3).

(2) Where supporting documents are not drafted in an official language, the Federal Office may require a translation together with certification, subject to Section 14(3). Where no translation or certification is filed, despite a request to do so, the document shall not be taken into account.

(More Than One Trademark Applicant or Owner)

**4.—**

(1) Where more than one person is the trademark applicant or owner, the Federal Office may require them to designate one such person or a third party to represent all of them.

(2) If no representative is designated, despite a request to do so, the person mentioned first in the application for registration or in the Trademark Register shall be deemed the representative.

(Representation)

**5.—**

(1) Anyone who appoints a representative before the Federal Office under the Trademark Law or under this Ordinance or who is required to appoint a representative under Section 42(1) of the Trademark Law or Section 4(1) of this Ordinance, shall submit a relevant power of attorney.

(2) The trademark applicant or owner for whom a representative is appointed under Section 42(1) of the Trademark Law may address submissions concerning withdrawal of the application for registration or a request for complete cancellation of the trademark registration directly to the Federal Office.

(Signature)

**6.—**

(1) Where the signature is lacking on a submission, the original date of filing shall be recognized if the signature is provided within 14 days of a request by the Federal Office.

(2) The signature of a submission communicated by fax (teletype) shall be recognized as legally valid if the original is submitted within 14 days of a request by the Federal Office.

(Fees)

**7.** The Ordinance of October 19, 1977, on the Fees of the Federal Intellectual Property Office (Fees Ordinance) shall be applicable for the fees to be paid under the Trademark Law or under this Ordinance.

## Chapter 2 Registration of Trademarks

### *Part 1* *Registration Procedure*

(Filing)

**8.—**

- (1) The official form or a private form approved by the Federal Office must be used for filing applications.
- (2) The Federal Office shall issue the applicant with a certificate of filing.

(Application for Registration)

**9.—**

- (1) The application for registration shall comprise:
  - (a) the request for registration of the trademark;
  - (b) the name and forename or the trade name, together with the address, of the applicant;
  - (c) a list of the submitted files and the fees paid, stating the mode of payment;
  - (d) the signature of the applicant or his representative.
- (2) It shall also comprise, where appropriate:
  - (a) the name and address of the representative;
  - (b) the priority statement (Sections 12 to 14);
  - (c) a statement that the trademark is a guarantee or collective mark.

(Reproduction of Trademark)

**10.—**

- (1) The trademark must be capable of graphic representation.
- (2) In the case of figurative marks, word/figurative marks or word marks with a special form of writing, 10 reproduceable reproductions in black and white are to be submitted.
- (3) Where color is claimed for a mark, the corresponding color or combination of colors is to be stated; in addition, five colored representations of the mark are to be submitted.
- (4) Where the mark is three-dimensional or contains such a form, the fact must be noted in the application.

(List of Goods and Services)

- 11.** The goods and services for which the mark is claimed shall be precisely designated.

(Priority Under the Paris Convention)

**12.—**

- (1) The declaration for priority under the Paris Convention for the Protection of Industrial Property of March 20, 1883, shall contain the following particulars:
  - (a) the date of initial filing;
  - (b) the country in which or for which that filing was made.

(2) The priority document shall be constituted by certification from the authority responsible for the initial filing, stating the filing or registration number of the mark.

(3) The Federal Office shall keep a list of those States that afford reciprocity to Switzerland in accordance with Section 7(2) of the Trademark Law.

(Exhibition Priority)

**13.—**

(1) The declaration for exhibition priority shall comprise:

- (a) the exact designation of the exhibition;
- (b) a statement of the goods or services shown under the trademark.

(2) The priority document shall be constituted by certification from the competent authority that the goods or services designated by the mark have been shown and shall state the opening day of the exhibition.

(Common Provisions on Priority Declaration and Priority Document)

**14.—**

(1) The priority declaration must be made within 30 days of filing of the mark at the latest and the priority document must have been submitted within six months of filing, failing which, the claim to priority shall lapse.

- (2) The priority declaration may refer to more than one initial filing.
- (3) Priority documents may also be filed in the English language.

(Initial Examination)

**15.** Where the filing does not satisfy the requirements of Section 28(2) of the Trademark Law, the Federal Office may give the applicant a time limit for completing the documents.

(Formal Examination)

**16.—**

(1) Where the filing does not satisfy the formal requirements laid down in the Trademark Law or in this Ordinance, the Federal Office shall give the applicant a time limit for correcting the defects.

(2) If the defects are not corrected within the time limit, the request for registration shall be refused in whole or in part. The Federal Office may exceptionally give further time limits.

(Substantive Examination)

**17.—**

(1) Where there are grounds for refusal under Section 30(2)(c) or (d) of the Trademark Law, the Federal Office shall give the applicant a time limit for correcting the defect.

(2) Where the defect is not corrected within the time limit given by the Federal Office, the request for registration shall be refused in whole or in part. The Federal Office may exceptionally give further time limits.

(Filing Fee and Additional Fee)

**18.—**

(1) The applicant shall pay the filing fee within one month of being requested to do so by the Federal Office.

(2) Where the list of goods or services of the trademark that has been filed comprises more than two classes, the applicant shall pay an additional fee (class fee) for each further class. The Federal Office shall determine the number of classes for which fees are due in accordance with the classes under the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of June 15, 1957 (Nice Classification).

(3) The class fee shall be paid within one month of the request to do so by the Federal Office. It shall be refunded if there is no subsequent registration.

(Registration and Publication)

**19.—**

(1) If there are no grounds for refusal, the Federal Office shall enter the trademark in the Trademark Register and shall publish the registration.

(2) It shall issue to the trademark owner a certificate of registration containing the particulars entered in the Register.

*Part 2*  
*Opposition Procedure*

(Form and Content of Opposition)

**20.** Opposition shall be lodged in two copies and shall contain:

- (a) the name and forename or the trade name, together with the address, of the opponent;
- (b) the registration number of the trademark or the application number of the filing on which opposition is based;
- (c) the registration number of the trademark that is opposed together with the name or trade name of the trademark owner;
- (d) a statement of the scope of the opposition lodged against the registration;
- (e) a brief statement of the grounds for opposition.

(Representation of the Parties)

**21.—**

(1) Where the opponent is required to appoint a representative under Section 42(1) of the Trademark Law, he must file the name and address of his representative and submit powers of attorney within the opposition time limit; the Federal Office may give an additional time limit of 30 days. If he does not comply with this obligation, the opposition shall not be entertained.

(2) If the defendant is required to appoint a representative, he must communicate the name and address of his representative and submit powers of attorney within a time limit given by the Federal Office. If he does not comply with this obligation, he shall be excluded from the procedure.

(Correspondence)

**22.—**

- (1) The Federal Office shall advise the defendant of any opposition that is not obviously unallowable and shall give him a time limit for making comments.
- (2) The comments of the defendant shall be submitted in two copies.
- (3) Where the defendant wishes to claim non-use of the opponent's trademark under Section 12(1) of the Trademark Law, he must do so in his initial comments.
- (4) The Federal Office may pursue further correspondence.

(More Than One Opposition; Suspension of Decision)

**23.—**

- (1) Where more than one opposition has been lodged against the same registration, the Federal Office shall inform all opponents of the oppositions. It may process all the oppositions together in a single procedure.
- (2) Where the Federal Office deems appropriate, it may first examine one of a number of oppositions and take its decision on that opposition and suspend the procedure for the other oppositions.
- (3) Where the opposition is based on a trademark filing, the Federal Office may suspend its decision on the opposition until such time as the trademark has been registered.

(Compensation of Parties)

**24.** Compensation awarded to the parties by the Federal Office shall be determined in accordance with Section 8 of the Ordinance of September 10, 1969, on Costs and Compensation in Administrative Procedures.

*Part 3*  
*Extension of Trademark Registration*

(Notice of Expiry of Term of Validity)

**25.** The Federal Office shall remind the trademark owner and his representative by a written notice of the date of expiry of the term of validity of the registration six months prior to such date. No such notices will be sent abroad.

(Extension)

**26.—**

- (1) A request for extension of a trademark registration may be filed at the earliest 12 months prior to expiry of the term of validity; it shall be filed in writing.
- (2) Extension shall take effect on expiry of the preceding term of validity.
- (3) The Federal Office shall provide the trademark owner with a certificate of extension of the registration.

(Refund of Class Fee)

**27.** Where a request for extension is filed and does not result in extension of the registration, the class fee shall be refunded.

*Part 4*  
*Amendment of Trademark Registration*

(Assignment)

**28.—**

(1) The request for entry of an assignment shall be filed by the previous trademark owner or by the acquirer and shall comprise:

- (a) an explicit statement by the previous owner or other satisfactory document showing that the trademark has been assigned to the acquirer;
- (b) the name and forename or the trade name, together with the address, of the acquirer and of his representative, where appropriate;
- (c) statement of the goods and services for which the trademark has been assigned, where assignment is partial.

(2) Where a trademark has been assigned in part, the term of validity of the registration of the assigned part shall expire at the same time as the registration of that part of the trademark still belonging to the previous owner.

(Licenses)

**29.—**

(1) A request for entry of a license shall be filed by the owner of the trademark or by the licensee and shall comprise:

- (a) an explicit statement by the owner of the trademark or other satisfactory document showing that the owner has granted use of the trademark to the licensee;
- (b) name and forename or trade name, together with the address, of the licensee; where appropriate, that of his representative;
- (c) where appropriate, a request that the license be entered as an exclusive license;
- (d) statement of the goods and services or of the field for which the license has been granted in the event of a partial license.

(2) Subsection (1) shall apply to the entry of a sublicense. Additionally, proof must be provided that the licensee is entitled to grant sublicenses.

Other Amendment to Trademark Registration)

**30.** On the basis of a corresponding statement by the trademark owner or other satisfactory document, entry shall be made of:

- (a) usufruct and pledges affecting the trademark;
- (b) limitations on use imposed by the courts and by enforcement authorities;
- (c) changes concerning the registered particulars.

(Cancellation of Rights of Others)

**31.** The Federal Office shall cancel, on a request by the owner of the trademark, a right entered on behalf of another person if an explicit statement of renunciation by the owner of such right or other satisfactory document is filed.

(Corrections)

**32.—**

(1) Incorrect entries shall be corrected without delay at the request of the trademark owner.



(2) Where the error results from a mistake on the part of the Federal Office, correction shall be effected *ex officio*.

(Filing of Request and Payment of Fees)

**33.** The request for amendment or correction of a trademark registration shall be submitted in writing and shall not be deemed to have been filed until the prescribed fee has been paid. Where the entry of more than one amendment is requested with respect to the same trademark at the same time, only one fee shall be paid.

(Amendments Free of Charge)

**34.** The following amendments shall be free of charge:

- (a) entry of first appointment of a representative and cancellation of representation;
- (b) amendments resulting from an enforceable court decision or an enforcement measure, as also limitations on use imposed by courts and enforcement authorities;
- (c) preliminary noting of amendments in the file;
- (d) corrections resulting from errors made by the Federal Office.

### *Part 5*

## *Cancellation of Trademark Registration*

**35.—**

(1) Requests for cancellation of the trademark registration shall be filed in writing. A request for partial cancellation (restriction of the list of goods and services) shall not be deemed to have been filed until the prescribed fee has been paid; complete cancellation is free of charge.

(2) Where the request results from a court decision, a copy of the decision with certification of its entry into force shall be attached; no fee shall be levied.

## **Chapter 3**

### **File and Trademark Register**

#### *Part 1*

#### *The File*

(Content)

**36.—**

(1) The Federal Office shall keep for each filed and registered trademark a file in which is shown the sequence of the registration procedure and of any opposition procedure, extension and cancellation of the registration, amendments to the trademark right as also any other amendments to the registration.

(2) The regulations governing a guarantee or collective mark shall also be comprised in the file.

(3) Supporting documents that disclose manufacturing or business secrets may be held separately, on request or *ex officio*. Such fact shall be noted in the file.

(Inspection of Files)

**37.—**

- (1) Prior to registration of the mark, the following persons may inspect the file:
  - (a) the applicant and his representative;
  - (b) persons who can prove that the applicant has claimed that they infringe the right in the mark applied for or has warned them of such infringement;
  - (c) other persons, with the explicit consent of the applicant or his representative.
- (2) The persons referred to in subsection (1) may also inspect the files of withdrawn or refused applications for registration.
- (3) Following registration of a trademark, any person may inspect the file.
- (4) Inspection of separately held supporting documents (Section 36(3)) shall be decided by the Federal Office after hearing the applicant or owner of the trademark.
- (5) Inspection in the form of provision of copies may be granted on request and subject to payment of costs.

(Information on Applications for Registration)

**38.—**

- (1) The Federal Office shall provide information concerning pending applications for registration to other persons on payment of a fee.
- (2) Such information shall be limited to those particulars that will be published in the event of subsequent registration of the trademark.

(Storage of Files)

**39.—**

- (1) The Federal Office shall store the files of completely cancelled trademark registrations in the original or as a copy for a period of five years following cancellation.
- (2) It shall store the files of withdrawn or refused applications for registration and of completely cancelled registrations (Section 33 of the Trademark Law) in the original or as a copy for a period of five years following withdrawal, refusal or cancellation, but for a minimum of 10 years after filing.

*Part 2*  
*The Trademark Register*

(Content of Register)

**40.—**

- (1) The entry of a trademark in the Register shall contain:
  - (a) the registration number;
  - (b) the filing date;
  - (c) the name and forename or trade name, together with the address, of the trademark owner;
  - (d) name and address of the representative, where appropriate;
  - (e) a reproduction of the trademark;
  - (f) the goods and services for which the trademark is claimed in the order and with the classes of the Nice Classification;
  - (g) the date of publication of the registration.

- (2) The entry shall additionally contain, where appropriate:
  - (a) a statement of the claimed color or combination of colors;
  - (b) the note “three-dimensional trademark”;
  - (c) the note “accepted trademark”;
  - (d) a statement that the trademark is a guarantee or collective mark;
  - (e) statements on claiming of priority under Sections 7 and 8 of the Trademark Law;
  - (f) the date and number of the international registration of the trademark.
- (3) The following further particulars shall also be entered in the Register, together with the date of publication:
  - (a) extension of the registration, together with the date on which the extension becomes effective;
  - (b) the complete or partial revocation of the registration;
  - (c) the complete or partial cancellation of the registration, stating the grounds for cancellation;
  - (d) the complete or partial assignment of the trademark;
  - (e) the grant of a license, with a statement, where appropriate, that it is an exclusive license, and, in the event of a partial license, with a statement of the goods and services or the field for which the license has been granted;
  - (f) usufruct or pledges in the trademark;
  - (g) limitations of use imposed by courts and enforcement authorities;
  - (h) amendments concerning registered particulars;
  - (i) notice of amendment to the trademark regulations.
- (4) The Federal Office may make further entries in the public interest.

(Inspection and Extracts from the Register)

**41.—**

- (1) The Trademark Register shall be open to inspection by any person on payment of a fee.
- (2) On payment of a fee, the Federal Office shall provide information on the content of the Trademark Register and shall provide extracts from the Register.

## Chapter 4 Publications by the Federal Office

(Subject Matter of Publication)

**42.** The Federal Office shall publish:

- (a) the registration of trademarks, containing the particulars in accordance with Section 40(1)(a) to (f) and (2)(a) to (e);
- (b) the entries under Section 40(3);
- (c) the particulars under Section 40(4), where their publication appears appropriate.

(Organ of Publication)

**43.—**

- (1) The particulars under Section 42 shall be published in the Swiss Trade Gazette.
- (2) They shall additionally be published in the Swiss Patent, Designs and Trademarks Gazette. Such publication shall have no legal effect.

(Further Publications)

44. The Federal Office may publish each year a compilation of the registrations published in the Swiss Trade Gazette together with further compilations of general interest, particularly concerning statistics.

## Chapter 5 Searching

(Searches for Identical or Similar Trademarks)

45. Requests for carrying out a search for identical or similar trademarks shall be filed in writing; they must contain:

- (a) a reproduction of the sign that is to be searched;
- (b) a statement of the goods and services or the corresponding classes to which the search is to extend.

(Identification of Trademarks of Specific Persons)

46.—

(1) On request and against payment of a fee, the Federal Office shall search the trademarks applied for in the name of a specific person or entered in the Swiss Trademark Register in the name of such person.

(2) The request shall be filed in writing; it must contain the name and forename or trade name, as also the address, of the person whose trademarks are to be searched.

## Chapter 6 International Registration of Trademarks

### *Part 1*

### *Application for International Registration*

(Filing of Application)

47.—

(1) Applications for international registration of a trademark shall be filed with the Federal Office if Switzerland is the country of origin within the meaning of Article 1(3) of the Madrid Agreement Concerning the International Registration of Marks of April 14, 1891 (Madrid Agreement).

(2) The application must be filed using the official form or a form approved by the Federal Office.

(3) The goods and services for which the mark is claimed shall be given in the French language.

(4) The national fee (Section 45(2) of the Trademark Law) shall be paid at the time of filing the application. If the trademark is not yet entered in the Swiss Trademark Register, the fee shall become due on registration.

(Examination by the Federal Office)

48.—

(1) If an application to be filed with the Federal Office does not comply with the formal requirements that it has to satisfy under the Trademark Law or under this Ordinance or if the prescribed fees have not been paid, the Federal Office shall give the applicant a time limit for removing the defect.

(2) If the defect is not removed within the time limit given by the Federal Office, the application shall be refused. Exceptionally, the Federal Office may give further time limits.

(File)

49. The Federal Office shall keep a file for each internationally registered trademark for which Switzerland is the country of origin.

## *Part 2*

### *Effect of International Registration in Switzerland*

(Opposition Procedure)

50.—

(1) In the event of opposition to an international registration, the period for opposition under Section 31(2) of the Trademark Law shall begin on the first day of the month following the month of publication in the organ of publication issued by the International Bureau.

(2) The Federal Office shall keep a file showing the sequence of the opposition procedure.

(Suspension of Decision)

51. Where opposition is based on an international registration that is the subject of a provisional refusal of protection by the Federal Office, the Federal Office may suspend its decision on the opposition until the matter of refusal of protection has been finally decided.

(Refusal of Protection and Withdrawal of Protection)

52.—

(1) The following rules apply to internationally registered trademarks:

(a) rejection of the request for registration under Section 30(2)(c) and (d) of the Trademark Law and cancellation of the registration under Section 33 of the Trademark Law shall be replaced by refusal of protection;

(b) cancellation of the registration as a result of nullity under a final court decision (Section 35(c) of the Trademark Law) shall be replaced by withdrawal of protection.

(2) The Federal Office shall not publish refusals of protection or withdrawals of protection.

## **Chapter 7**

### **Producer Identification on Clocks, Watches and Movements**

53.—

(1) Swiss clocks, watches and movements within the meaning of the Ordinance of December 23, 1971, on the Use of the Name “Switzerland” for clocks and watches must bear the identification of their manufacturer. In the case of clocks and watches, the identification is to be affixed on the case or on the dial.

(2) The producer identification must be visibly and durably affixed. The manufacturer’s trade name or trademark may be affixed in place of the producer identification.

(3) It may only be used for Swiss products.

(4) The Federation of the Swiss Clock and Watch Industry shall allocate the producer identification and shall keep a corresponding register.

(5) The grounds for exclusion under Section 3(1) of the Trademark Law shall also apply to producer identifications.

## Chapter 8 Assistance from the Customs Authorities

(Customs Storage)

**54.** Assistance by the customs authorities shall extend to the import and export of goods unlawfully bearing a trademark or an indication of origin as also to the storage of such goods in a customs warehouse.

(Request for Assistance)

**55.—**

(1) The entitled person must make a request for assistance to the Directorate of Customs. In urgent cases, the request may be made directly to the customs office at which unlawfully designated goods are to be imported or exported.

(2) The request shall be valid for a period of two years if not lodged for a shorter period of validity. It may be renewed.

(Withholding of Goods)

**56.—**

(1) Where the customs office withholds goods, it shall store them itself on payment of a fee or shall pass them on to another person for storage at the cost of the requester.

(2) The requester shall be entitled to inspect the withheld goods. The person entitled to dispose of the goods may be present at the inspection.

(3) Where it is already clear prior to expiry of the time limit under Section 72(2) of the Trademark Law that the requester will be unable to obtain precautionary measures, the goods shall be immediately released.

(Fees)

**57.** The fees for processing the request for assistance and for the storage of withheld goods shall be determined in accordance with the Ordinance of August 22, 1984, on Customs Administrative Fees.

## Chapter 9 Final Provisions

### *Part 1 Repeal of Existing Law*

**58.** There shall be repealed:

(a) the Ordinance of April 24, 1929, on the Protection of Trademarks;

(b) the decision of the Federal Council of November 4, 1966, concerning the implementation of the Madrid Agreement Concerning the International Registration of Marks.



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*Part 2*  
*Transitional Provisions*

(Time Limits)

**59.** Time limits that have been set by the Federal Office and which have not expired on the day of entry into force of this Ordinance shall remain unaffected.

(Priority of Use)

**60.—**

(1) In the event of an application for a trademark under Section 78(1) of the Trademark Law, the time at which use of the trademark began shall be entered in the Trademark Register and shall be published.

(2) In the case of an internationally registered mark, the corresponding particulars are to be given to the Federal Office by the end of the month of publication of the international registration; the time at which use of the mark began shall be entered in a special register and shall be published.

*Part 3*  
*Entry Into Force*

**61.** This Ordinance shall enter into force on April 1, 1993.