

## **Act IX of 1969 on the Protection of Trade Marks and Geographical Indications**

### **PART I**

#### **Legal Protection of Trade Marks**

##### **CHAPTER I**

#### **Conditions of Trade Mark Protection**

##### **Article 1**

#### **Subject Matter of Trade Mark Protection**

Under the present Law, all marks shall be granted trade mark protection which

- (a) are appropriate to distinguish goods and services (hereinafter "goods") from other goods, and
- (b) the protection of which is not excluded by law.

##### **Article 2**

#### **Distinctive Character**

(1) A mark is appropriate for distinguishing if it gives to the goods compared with identical or similar goods a special, different character.

(2) A mark can consist of a word, a combination of words, a figure, a picture, a combination of colors, a two or three-dimensional device, an audio or visual signal or a combination of these elements.

(3) A mark lacks distinctive character particularly where

- (a) it is used generally to indicate the product;
- (b) it indicates exclusively the kind, quality, quantity, characteristics, purpose, value, place of origin or time of production of the goods.

##### **Article 3**

#### **Marks Excluded from Trade Mark Protection**

(1) A mark shall not be granted trade mark protection if:

- (a) it is liable to create confusion;
- (b) its use would be contrary to law or socially accepted moral rules;

(c) it infringes individual rights of third parties;

(d) it is identical or confusingly similar to a trade mark held by a third party and well-known in the country, even if that trade mark is not registered in the country.

(2) Trade mark protection shall not be granted to a mark which consists exclusively of the name, abbreviation, flag, armorial bearing or emblem of a state, an authority or an international or intergovernmental organization, or the imitation thereof; such marks may be used, however, with the authorization of the competent authority, as elements of trade marks.

(3) With respect to identical or similar goods, a mark shall not be granted trade mark protection if:

(a) it consists of official signs or hall-marks indicating control and warranty, or imitations thereof;

(b) it has been under trade mark protection for the benefit of a third party and, the protection having expired because of surrender or failure to renew, less than two years have elapsed since such expiration;

(c) it is identical or similar, to a degree liable to create confusion, to a third party's trade mark registered on an earlier priority date or to a trade mark effectively used but not registered.

(d) it is the name of a protected plant variety or animal breed.

## **CHAPTER II**

### **Rights and Duties Deriving from Trade Mark Protection**

#### **Article 4**

##### **Right to Trade Mark Protection**

(1) The right to a trade mark and to legal protection thereof shall be enjoyed only by a party who has registered the mark in accordance with the procedure laid down in this Law. If more than one applicant seeks registration of the same mark or of similar marks, the trade mark shall be registered in the name of the party with the earlier priority date, unless an interested party shows use prior to the priority date.

(2) Trade mark protection shall be granted to an enterprise a cooperative, or to any other organ or party entitled to pursue economic activities (hereinafter collectively designated an "enterprise").

(3) Associations of enterprises having legal personality (trade unions, professional associations, etc.) shall obtain collective trade mark protection for trade marks intended to be used by associate enterprises, even where such associations are not entitled to engage in economic activities, provided

(a) the goods of the enterprises have some common characteristics (e.g. regional character), and

(b) the collective trade mark is used by the enterprises under the control of the association.

## **Article 5**

### **Obtaining Trade Mark Protection**

Trade mark protection is obtained by registration, with retroactive effect to the date of filing.

## **Article 6**

### **Duration of Trade Mark Protection**

(1) Trade mark protection shall have a duration's of ten years, beginning on the date of filing the application.

(2) Trade mark protection shall be renewable for further periods of ten years. in case of renewal, the new period of protection begins on the day after the date of expiration of the previous period.

## **Article 7**

### **Effect of Trade Mark Protection**

The proprietor of a trade mark shall, on the basis of trade mark protection and within the limits fixed by legislation, enjoy the exclusive right to use the trade mark for goods enumerated onto the list of goods or to grant licenses to others for its use.

## **CHAPTER III**

### **Contracts of Exploitation**

## **Article 8**

### **Conclusion of Contracts of Exploitation**

On the basis of contract of exploitation (agreement granting a trade mark license), the proprietor of the trade mark grants a license for the use of the trade mark; in exchange, the user is under obligation to pay royalties.

## **Article 9**

### **Rights and Obligations of the Parties**

(1) A license agreement grants, for the duration of trade mark protection, the right to use the trade mark, without territorial limitation, for all goods enumerated on the list of goods. However, unless expressly stipulated, the user shall have no exclusive right of exploitation,

and unless expressly authorized by the proprietor of the trade mark, he shall not grant a further license to a third party.

(2) The proprietor of the trade mark may stipulate in the contract that the trade mark shall be used only for goods having a specific quality. In such case, he shall have the right to control the quality of the goods, even if this is not mentioned in the contract.

(3) The contract of exploitation is void if its existence or application is liable to create confusion.

## **Article 10**

### **Expiration of the Contract of Exploitation**

The contract of exploitation expires, with prospective effect, when the duration fixed in it comes to an end, or if certain specified circumstances occur.

## **Article 11**

### **Effect of the Rules Relating to the Contract of Exploitation**

(1) The parties, by mutual consent, may lay down terms that differ from the provisions relating to contracts as exploitation, where this is not prohibited by legislation.

(2) Matters relating to contracts of exploitation and not covered by this Law shall be governed by the provisions of the Civil Code.

## **CHAPTER IV**

### **Transfer of Rights**

## **Article 12**

(1) The successor in title to an enterprise obtains trade mark protection along with the enterprise.

(2) Trade mark protection shall be assignable by contract. The contract of assignment is void where the successor in title has no capacity to acquire trade mark protection, or where the assignment would cause the trade mark to be excluded from protection, and especially where the assignment may lead to fraud.

(3) Matters of transfer of rights, not covered by this Law, are governed by the provisions of the Civil Code.

## **CHAPTER V**

### **Infringement**

## **Article 13**

## **Infringement of Trade Mark**

(1) Any party who uses another party's trade mark or any confusingly similar mark, for goods on the list of goods, or for similar goods, commits trade mark infringement.

(2) The proprietor of the trade mark shall have the following civil remedies against the infringer, depending on the circumstances of the case:

(a) the right to petition the courts for a declaration of infringement;

(b) the right to seek an injunction against present future infringement;

(c) the right to demand satisfaction from the infringer by way of a declaration or by other appropriate means; if necessary, the declaration shall be made public by the infringer or at his expense;

(d) the right to demand restitution of the enrichment obtained by the trade mark infringement;

(e) the right to seek a court order for seizure of the instruments used for the infringement and of the infringing products.

(3) The court may rule, depending on the circumstances of the case, that the seized instruments and products be divested of their infringing character or be auctioned pursuant to judicial procedure; in the latter case the court shall fix the sum to be collected.

(4) If the trade mark infringement has caused material damage, damages shall be payable under the relevant provisions of the Civil Code. In assessing damages the impact of the trade mark infringement on the entire economic activity of the enterprise shall be taken into consideration.

## **Article 14**

### **Rights the User in the Event of Trade Mark Infringement**

In the event of trade mark infringement, the registered user may institute proceedings in his own name, provided he has previously called upon the proprietor of the trade mark to take appropriate action in order to put a stop to the infringement and the latter has failed to take action within thirty days.

## **Article 15**

### **Decision of Non-Infringement**

(1) Any party who fears that proceedings for trade mark infringement will be instituted against him may, before the institution of such proceedings, request a decision ruling that the mark used or desired to be used by him does not infringe a particular trade mark specified by him.

(2) A final decision of non-infringement bars the institution of infringement proceedings on the basis of the trade mark concerned.

## **CHAPTER VI**

### **Expiration of Trade Mark Protection**

#### **Article 16**

##### **Causes of Expiration**

Trade mark protection shall expire:

(a) when the period of protection expires without renewal, on the day following the date of expiration;

(b) if the proprietor surrenders his trade mark, on the day following receipt of the surrender, or on an earlier date specified by the party surrendering the trade mark;

(c) if the trade mark has not been used in the country for five years, on the date specified in the decision declaring expiration;

(d) if an enterprise entitled to a trade mark or an organization entitled to a collective trade mark has ceased to exist without leaving a successor in title, on the day it ceases to exist;

(e) if the trade mark is declared null and void, with retroactive effect to the date of filing of the application (Article 19/1).

#### **Article 17**

##### **Surrender of Trade Mark Protection**

The proprietor of a trade mark may surrender trade mark protection by written declaration addressed to the Hungarian Patent Office. If surrender affects the rights of third parties based on legislation, on decisions of an authority, or on a license agreement, surrender shall take only with the consent of the parties concerned.

#### **Article 18**

##### **Expiration for Lack of Use**

(1) A trade mark is used on goods and wrappers and in business correspondence and advertising.

(2) Expiration of protection shall not be declared for lack of use if the proprietor shows adequate justification.

#### **Article 19**

## **Nullity of and Limitations on Trade Mark Protection**

(1) Trade mark protection shall be declared null and void with retroactive effect to its origin, if the mark does not satisfy the requirements laid down in Articles 1 to 3.

(2) If five years have elapsed since registration and the trade mark has become known through effective use, nullity shall be declared only if such use is contrary to law or socially accepted moral rules (Article 3/1/b).

(3) If conditions of nullity exist only in relation to a part of the list of goods of the trade mark, the list shall be limited accordingly.

## **PART II**

### **Procedure in Trade Mark Matters**

#### **CHAPTER VII**

#### **General Regulations for Procedure before the Hungarian Patent Office**

##### **Article 20**

##### **Powers of the Hungarian Patent Office**

The Hungarian Patent Office is empowered to

- (a) register trade marks;
- (b) renew protection of trade marks;
- (c) declare expiration of trade mark protection;
- (d) declare nullity of trade mark protection;
- (e) declare non-infringement;
- (f) deal with matters concerning the registration of trade marks

##### **Article 21**

##### **Application of the General Provisions on Administrative Procedure**

(1) The Hungarian Patent Office shall proceed in trade marks matters, subject to the exceptions prescribed in this Law, by applying Law No. IV of 1957 on the General Provisions on Administrative Procedure. In the cases specified in special legislation, the Hungarian Patent Office takes decisions in camera.

(2) The Hungarian Patent Office shall not set aside or modify its decisions on trade mark matters taken on the merits. Its decisions shall not be invalidated or changed by a supervisory authority; they shall be without appeal.

(3) Decisions in trade mark matters taken by the Hungarian Patent Office may be modified by the court under the provisions of Article 37.

## **Article 22**

### **Power of Attorney**

(1) The Hungarian Patent Office may order the party, where warranted, to authorize a patent attorney or an attorney at law in order to represent him jointly or alone.

(2) An alien shall be obliged to give power of attorney to an attorney at law, a patent attorney or other qualified person, in order to represent him in proceedings before the Hungarian Patent Office.

## **Article 23**

### **Registration of Trade Mark Matters**

(1) The Hungarian Patent Office shall keep a Register of the registered trade marks and the rights and facts relative thereto. All relevant circumstances shall be recorded therein.

(2) Any right relative to trade mark protection may be invoked against a third party who has acquired his right in good faith only if it is recorded in the Register.

(3) Information shall be recorded in the Register only on the basis of final decisions of the Hungarian Patent Office or of a court.

(4) The trade mark Register shall be accessible to anyone; copies of the information it contains shall be available on request.

(5) All decisions and all facts the publications of which is prescribed by legislation shall be published in the Official Gazette of the Hungarian Patent Office.

## **Article 24**

### **Restoration of Rights**

In trade mark proceedings - unless prohibited by legislation - a request for the restoration of rights can be submitted within fifteen days from the unobserved time limit, or the last day of the unobserved period.

## **Article 25**

### **Use of Languages**



In trade mark proceedings, documents in foreign languages may also be submitted; the Hungarian Patent Office may, however, require a translation into Hungarian language.

## **CHAPTER VIII**

### **Trade Mark Registration Procedure**

#### **Article 26**

##### **Application for the Registration of a Trade Mark**

(1) The procedure for trade mark registration shall begin with to filing of an application with the Hungarian Patent Office.

(2) The application shall consist of the claim, information concerning the required data and other enclosures. Detailed regulations concerning the formalities to be complied with in trade mark applications shall be published by the President of the Hungarian Patent Office in the Official Gazette in the form of a notice.

(3) Rights can be based only on an application which contains at least the name and address of the applicant as well as the mark to be registered and the list of goods.

#### **Article 27**

##### **Priority**

(1) The date of priority giving rise to a right of priority shall be:

(a) generally, the day on which the application for registration of a trade mark arrived at the Hungarian Patent Office (application priority);

(b) in the cases defined by special legislation, the filing date of the foreign application (Convention priority);

(c) in the cases determined by an announcement of the President of the Hungarian Patent Office published in the Official Gazette, the day of the exhibition of the trade mark (exhibition priority).

(2) The order of priority of applications which arrived on the same day shall be determined by their serial number in the list of applications.

(3) The priority defined in paragraph (1/b) and (c) can be claimed only by a party who has submitted his declaration of priority simultaneously with the trade mark application. The document establishing priority shall be submitted - on pain of loss of the priority right - within three months of the filing of the application.

#### **Article 28**

##### **Formal Examination of the Trade Mark Application**

(1) The Hungarian Patent Office shall examine the trade mark application in order to ascertain whether it complies with the requirements prescribed in Article 26/2 and 3.

(2) If the trade mark application is so incomplete that no right can be based on it (Article 26/3), the application shall be rejected without further procedure.

(3) If the trade mark application does not comply with the requirements set forth in Article 26/2, the applicant shall be invited to remedy the defects. If the invitation is not complied with, the application for a trade mark shall be rejected.

## **Article 29**

### **Substantive Examination of the Trade Mark Application**

(1) The Hungarian Patent Office shall examine the substance of the trade mark application in regard to the following points:

- (a) whether the mark complies with the requirements prescribed in Articles 1 to 3; and
- (b) whether the application benefits from the claimed right of priority.

(2) If the examination as to substance reveals defects, the applicant shall be invited to remedy the same according to their character or to give an explanation.

(3) If the Hungarian Patent Office finds at the expiration of the delay set that the defects were not remedied, or in spite of this, that the sign is not fit for registration, it shall reject the application.

## **Article 30**

### **Modification**

(1) The applicant may not modify the trade mark shown in the application.

(2) The list of goods of the trade mark may not be enlarged.

## **Article 31**

### **Registration of the Trade Mark**

Depending on the results of the examination as to substance, the Hungarian Patent Office shall register the trade mark or reject the application.

## **Article 32**

### **Publication of the Trade Mark**

The Hungarian Patent Office issues a trade mark certificate. The trade mark shall be entered in the Register of Trade Marks and published in the Official Gazette of the Hungarian Patent Office.

## **CHAPTER IX**

### **Procedure in the Hungarian Patent Office in Matters of Registered Trade Marks**

#### **Article 33**

##### **Renewal Procedure**

(1) The proprietor of the trade mark shall apply to the Hungarian Patent Office for renewal of trade mark protection, giving the registration serial number.

(2) Renewal shall not contain modifications of the final version of the trade mark registered.

(3) Renewal of trade mark protection shall be recorded in the Register of Trade Marks and published in the Official Gazette of the Hungarian Patent Office.

#### **Article 34**

##### **Declaration of the Expiration of Trade Mark Protection**

Expiration of trade mark protection, as prescribed in Article 16/b to d, shall be declared by a decision of the Hungarian Patent Office, which shall be recorded in the Register of Trade Marks and published in the Official Gazette of the Office.

#### **Article 35**

##### **Procedure for Declaration of Nullity and of Expiration for Lack of Use**

(1) Any party may request that protection of a trade mark be declared null and void, or expired for lack of use. The request with its appendices shall be submitted in two copies to the Hungarian Patent Office. The request shall state the grounds upon which it is based. The originals of the documents in proof or certified copies thereof shall be appended to the request.

(2) The Hungarian Patent Office shall forward the request with its appendices to the proprietor of the trade mark and shall invite him to make a statement. Following the written preparatory work, the Hungarian Patent Office shall give its decision on nullity or expiration in a hearing.

(3) If the request is withdrawn, proceeding may continued ex officio. In the proceeding no settlement is permitted.

(4) The losing party shall be required to pay the cost of the procedure.

(5) Expiration shall be recorded in the Register of Trade Marks and published in the Official Gazette of the Hungarian Patent Office.

## **Article 36**

### **Proceeding for a decision on Non-Infringement**

(1) The petitioner shall submit his request for a decision on non-infringement to the Hungarian Patent Office, showing the mark used or to be used as well as the list of goods and specifying the trade mark in question. The Hungarian Patent Office shall give its decision on non-infringement in a hearing.

(2) The costs of the procedure for a decision on non-infringement shall be born by the petitioner.

## **CHAPTER X**

### **Court Procedure in Trade Mark Cases**

## **Article 37**

### **Review of Decisions Taken by the National Office**

(1) On request, the court may review the decisions of the Hungarian Patent Office taken with regard to:

- (a) registering the trade mark or nay entry in the Register;
- (b) declaration of expiration of trade mark protection;
- (c) declaration of nullity of trade mark protection;
- (d) non-infringement.

(2) Any person who took part, as a arty, in the proceedings at the Hungarian Patent Office or who has a legal interest in review of the decision, or the procurator, may request that the decision be reviewed.

(3) The period within which such a request shall be submitted shall be thirty days from the day on which the party was notified of the decision.

(4) The request shall be submitted either to the Hungarian Patent Office or to the court. The Hungarian Patent Office shall forward the request, together with the relevant documents, within eight days.

## **Article 38**

### **Jurisdiction**

(1) Court proceedings for a review of decisions taken by the Hungarian Patent Office shall be under the exclusive jurisdiction of the Metropolitan Court of Budapest.

(2) The Supreme Court shall have jurisdiction to deal with appeals lodged against decisions of the Metropolitan Court of Budapest.

### **Article 39**

#### **Composition of the Court**

In such proceedings, the bench of the Metropolitan Court of Budapest shall consist of three professional judges.

### **Article 40**

#### **Application of the Provisions of the Code of Civil Procedure**

(1) In cases involving requests for the review of a decision on a trade mark, the Court shall proceed in accordance with the rules of "non-contentious" civil procedure, with the departures mentioned in this Chapter. The procurator shall enjoy all rights which he otherwise has under such procedure.

(2) The court of first instance shall take evidence in accordance with the provisions of the Code of Civil Procedure and shall conduct a trial. If the case can be settled on the basis of documentary evidence, the court may take a decision without a trial, but the party, on request, shall be heard.

(3) The decision taken by the court of first instance shall be dealt with by the court of appeal in accordance with the provisions of the Code of Civil Procedure; the court may also take evidence within certain limits.

### **Article 41**

#### **Incompatibility**

(1) In addition to the persons listed in Articles 13 to 15 and 21 of the Code of Civil Procedure, no one shall consider the case and act as judge if he

(a) participated in taking the decision at the Hungarian Patent Office;

(b) is a relative, former husband or wife - as stated in Article 13/2 of the Code of Civil Procedure - of a person mentioned under (a) above.

(2) The provisions of paragraph (1) shall also apply to court reporters and experts.

### **Article 42**

#### **Restoration of Rights**

The provisions of Articles 24 shall apply to claims for restoration of rights in proceedings of the Court.

### **Article 43**

#### **Representation**

In addition to the persons listed in Article 67/1 of the Code of Civil Procedure, patent attorneys may also act as representatives.

### **Article 44**

#### **Decisions**

(1) If the court changes a decision taken in a trade mark case, the court judgement shall replace the decision of the Hungarian Patent Office.

(2) The court shall vacate the decision and order the Hungarian Patent Office to start new proceedings if a person against whom incompatibility may be invoked, participated in the taking of the decision or if important rules of procedure were infringed during the proceedings which cannot be remedied by the court.

### **Article 45**

#### **Review to Safeguard Legality**

As to the review to safeguard legality, final decisions dismissing an application for trade mark registration, declaring expiration of protection, or declaring nullity of trade mark protection, cannot be set aside on the merits, and the Supreme Court shall be restricted to a ruling of error of law.

## **CHAPTER XI**

### **Trade Mark Litigation**

#### **Article 46**

#### **Jurisdiction**

(1) Court proceedings for trade mark infringement shall be under the exclusive territorial and subject matter jurisdiction of the Metropolitan Court of Budapest.

(2) In such proceedings, the bench of the Metropolitan Court of Budapest shall be composed as prescribed in Article 39.

(3) In the court proceedings referred to in paragraph (1), the provisions of the Code of Civil Procedure shall apply as well as the provisions of Articles 41 and 43 of this Law.

(4) In any other trade mark litigation not mentioned in paragraph (1), the courts of committats (or the Metropolitan Court) or economic commission of arbitration shall proceed in accordance with the general rules.

### **PART III**

#### **Final Provisions**

##### **Article 47**

(1) This Law shall enter into force on July 1, 1970

(2) Simultaneously with the entering into force of this Law, the following shall be repealed:

the provisions of Law No. II of 1890 and of Law No. XLI of 1895 on the protection of trade marks still in force, legislation completing and amending those Laws (provisions concerning trade marks of Law No. XI of 1913, Laws No. XII of 1913, No. XXII of 1921, and No. XVII of 1932, Decree No. 20700/1948/XI.24/ of the Minister of Industry), as well as the provisions implementing that legislation;

Article 6/1 and 4, Articles 7 to 18 of Decree 121/1950/IV.25/ MT of the Council of Ministers concerning compulsory classification of goods produced in the country and the marking of certain goods.

(3) The President of the National Committee of Technical Development and the Minister of Justice shall be authorized to issue, by decree and in cooperation with the President of the National Office of Inventions, the transitional provisions concerning the entry into of this Law and other rules of implementation.

(4) The minister of Justices shall be authorized to issue, in corporation with this President of the National Committee of Technical Development and with the President of the Hungarian Patent Office, detailed rules on court procedure in trade mark cases.