

**Act XI of 1997**  
**on the Protection of Trade Marks and Geographical Indications**

In order to promote the development of Hungarian market economy, to improve competition conditions based on the use of signs capable of distinguishing goods and services, to assist consumers in gathering information, and in conformity with Hungary's obligations of international and European Union law concerning the protection of intellectual property, the National Assembly adopts the following Act on the protection of trade marks and geographical indications:

**PART ONE**

***PROTECTION OF TRADE MARKS***

**Chapter I**

***SUBJECT MATTER OF TRADE MARK PROTECTION***

**Signs capable of distinction**

**Section 1**

(1) Trade mark protection may be granted for any signs, provided that these  
(a) are capable of distinguishing goods or services from the goods or services of others; and  
(b) can be represented in the trade mark register in a manner which enables the authorities and the public to clearly and precisely determine the subject matter of the protection applied for or granted to its holder.

(2) Trade mark protection may be granted, in particular, for the following signs:

- (a) words, word combinations, including personal names and slogans;
- (b) letters, numerals;
- (c) figures, pictures;
- (d) two- or three-dimensional forms, including the shape of goods or of their packaging;
- (e) colours, colour combinations, light signals, holograms;
- (f) sound signals;
- (g) motion signs;
- (h) position signs;
- (i) multimedia signs;
- (j) patterns; or
- (k) combinations of different signs.

***Absolute grounds for refusal***

**Section 2**

(1) A sign not meeting the requirements specified in Section 1 shall not be granted trade mark protection.

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

- (a) it consists exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, purpose, value, geographical origin, the time of production of the goods or of rendering of the service, or other characteristics of the goods or services;
  - (b) it consists exclusively of signs or indications which have become established and customary in the current language or in the bona fide practices of the trade;
  - (c) it is, for any other reason, devoid of any distinctive character;
  - (d) it consists exclusively of
    - (da) a shape, or another characteristic, which results from the nature of the goods,
    - (db) the shape, or another characteristic, of goods which is necessary to obtain the intended technical result, or
    - (dc) a shape, or another characteristic, which gives substantial value to the goods.
- (3) Pursuant to paragraph (2)(a) to (c) the sign shall not be excluded from trade mark protection if – by virtue of its use – it has become distinctive either before the date of application or thereafter, but before the date of registration.

### Section 3

- (1) A sign shall not be granted trade mark protection if:
- (a) it is contrary to public policy or accepted principles of morality;
  - (b) it is of such a nature as to deceive the consumers, in particular regarding the nature, quality, geographical origin or other characteristics of the goods or services;
  - (c) its registration was applied for in bad faith.
- (2) A sign shall not be granted trade mark protection if:
- (a) it consists of, or contains any of the signs listed in Article 6<sup>ter</sup>(1) of the Paris Convention for the Protection of Industrial Property, provided that
    - (aa) such a sign – if it is not a State flag – has been communicated according to Article 6<sup>ter</sup>(3), and
    - (ab) the registration of the sign – consisting of or containing an official sign or hallmark indicating control and warranty – was applied for in respect of identical or similar goods as officially identified by the signs referred to;
  - (b) it consists of a badge, emblem or escutcheon, not covered by point (a), the use of which is of public interest, or if it contains such badge, emblem or escutcheon;
  - (c) it includes – in a manner determining the general impression of the sign – a symbol which strongly expresses a religious or other conviction.
- (3) Trade mark protection may be granted with the consent of the competent authority for signs which consist of or contain the signs specified under paragraph 2(a) and (b).
- (4) A sign shall not be granted trade mark protection if:
- (a) trade mark protection is applied for after the date of application of a geographical indication protected pursuant to Part VII of this Act, in relation to goods which are of the same type as the goods designated by the geographical indication, and its use would be contrary to Section 109(2),
  - (b) it is excluded from protection pursuant to European Union legislation providing for protection of designations of origin and geographical indications, or
  - (c) it is excluded from protection pursuant to an international agreement, to which the European Union or Hungary is party, providing for protection of appellations of origin and geographical indications.
- (5) A sign shall not be granted trade mark protection if it is excluded from protection pursuant to European Union legislation, or an equivalent international agreement to which the European Union is party, providing for the protection of traditional terms for wine.

(6) A sign shall not be granted trade mark protection if it is excluded from protection pursuant to European Union legislation regulating the registration of traditional specialities guaranteed, or an equivalent international agreement to which the European Union is party.

(7) A sign shall not be granted trade mark protection if – in respect of plant varieties of the same or closely related species – it consists of, or reproduces in its essential elements, an earlier plant variety denomination, which has been registered in the plant variety register pursuant to

- (a) European Union legislation providing for plant variety protection,
- (b) the Patent Act, or

(c) an international agreement to which the European Union or Hungary is party, providing for plant variety protection.

### ***Relative grounds for refusal***

#### **Section 4**

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

(a) with respect to identical goods or services, if the sign with the later date of priority is identical with an earlier trade mark;

(b) if because of its identity with, or similarity to, the earlier trade mark and the identity or similarity of the goods or services covered by the trade mark, there exists a likelihood of confusion on the part of the consumers; including the case where the likelihood of confusion is present because consumers may link the sign to the earlier trade mark by way of association;

(c) if its date of priority is of a later date than that of an earlier, identical or similar trade mark which has a reputation in Hungary, or, in the case of an EU trade mark, in the European Union, irrespective of whether the goods or services for which it is applied are identical with, or similar to, those for which the earlier trade mark is registered, where use of that sign without due cause would be detrimental to, or take unfair advantage of, the distinctive character or the repute of the trade mark with a reputation.

(2) For the purposes of this Section ‘earlier trade mark’ means:

(a) all

(aa) trade marks registered under this Act, including trade marks registered under international agreements which have effect in Hungary,

(ab) EU trade marks registered under Regulation 2017/1001/EU of the European Parliament and the Council (hereinafter “EU Trade Mark Regulation”),  
the date of application or, where applicable, the date of claimed priority of which is earlier than the application for registration of the trade mark;

(b) for the purposes of paragraph (1)(a) and (b), signs which, irrespective of their registration, on the date of application for registration of the trade mark, or, where appropriate, of the priority claimed in respect of the application for registration of the trade mark, are considered to be well known in Hungary pursuant to Article 6bis of the Paris Convention;

(c) EU trade marks which validly claim seniority, in accordance with the EU Trade Mark Regulation, of a trade mark referred to in point (a)(aa), even when the protection of the latter trade mark has been surrendered or allowed to lapse;

(d) applications for the registration of trade marks referred to in points (a) and (c), subject to their registration,

with the understanding that where this Act refers to an earlier or later trade mark, the provisions laid down in this paragraph shall apply accordingly with respect to their chronological order .

(3) A sign shall not be excluded from trade mark protection if it is in conflict with an earlier trade mark which has not been put to use by its holder in accordance with the provisions of

Section 18, or the protection of which no longer exists at the filing date of the trade mark application.

(4) *[repealed]*

## **Section 5**

(1) No sign shall be granted trade mark protection which

(a) would infringe a right relating to the personality of others, in particular the right to a name or the right of personal portrayal;

(b) would conflict with someone else's copyright or related right, or industrial property right.

(2) Trade mark protection shall not be granted for

(a) a sign, if its use could be prohibited, by virtue of a sign which has been genuinely used earlier, in the course of trade, without registration in Hungary, by the earlier user pursuant to another law;

(b) a sign the use of which could be prohibited by the person entitled to exercise the rights arising from geographical indications based on European Union legislation or national law providing for protection of designations of origin or appellations of origin and geographical indications, provided that the application for registration of the designation of origin or appellation of origin or geographical indication had been filed prior to its date of application for registration, and subject to the subsequent registration of the designation of origin or of the appellation of origin or of the geographical indication.

(3) The priority of the trade mark application shall be taken into account when deciding whether the application for the registration of the right, use, designation of origin or appellation of origin or geographical indication is to be considered as filed earlier for the purposes of paragraphs (1) and (2).

## **Section 6**

A sign shall not be granted trade mark protection if a representative or agent of the holder of a trade mark applies for registration thereof in his own name without the holder's authorization, unless the representative or agent justifies his action.

### ***Declaration of consent***

## **Section 7**

(1) A sign shall not be excluded from trade mark protection pursuant to Section 4, Section 5(1) or Section 5(2)(a), or the trade mark shall not be declared invalid pursuant to the grounds for refusal laid down in these provisions, if the holder of the earlier conflicting right consents to the registration of the sign.

(2) A declaration of consent shall be valid if drawn up in a public deed or private deed of full probative value.

(3) The declaration of consent may not be withdrawn nor may it be replaced by a court decision.

### ***Eligibility for trade mark protection***

## **Section 8**

(1) Trade mark protection shall be granted for a sign if

- (a) it satisfies the requirements of Section 1 and is not excluded from trade mark protection under the terms of Sections 2 to 7, and
- (b) the relevant application meets the requirements laid down in this Act.

## **Chapter II**

### ***RIGHTS AND OBLIGATIONS CONFERRED BY TRADE MARK PROTECTION***

#### ***Right to trade mark protection***

##### **Section 9**

(1) The right to legal protection of a trade mark (hereinafter “trade mark protection”) shall belong to the person who has the trade mark registered according to the procedure provided for by this Act.

(2) Any natural or legal person, irrespective of whether they pursue business activities, may obtain trade mark protection.

(3) If two or more persons apply for the registration of the sign jointly, they shall jointly acquire trade mark protection. If two or more persons are entitled to the right, it shall be deemed to belong to them in equal proportions unless otherwise specified.

#### ***Commencement of trade mark protection***

##### **Section 10**

Trade mark protection shall commence with registration and be effective retroactively from the date of filing of the application.

#### ***Term of trade mark protection***

##### **Section 11**

(1) Trade mark protection shall have a term of 10 years beginning on the date of filing of the application.

(2) Trade mark protection shall be renewed for further 10-year terms. In case of renewal, the new term of protection shall commence on the day following the date of expiry of the previous term.

#### ***Rights conferred by trade mark protection***

##### **Section 12**

(1) Trade mark protection shall confer on its holder an exclusive right to use the trade mark.

(2) Without prejudice to the rights acquired by others before the filing date or the priority date of the trade mark, on the basis of the exclusive right of use, the holder of the trade mark shall be entitled to prevent any person not having his consent from using in the course of trade, for goods or services:

(a) any sign identical with the trade mark for goods or services which are identical with those for which the trade mark is registered;

(b) any sign where, because of its identity with or similarity to the trade mark and the identity or similarity of the goods or services, there exists a likelihood of confusion on the part of the public; the likelihood of confusion includes the likelihood of association between the sign and the trade mark; or

(c) any sign which is identical with or similar to the trade mark, irrespective of whether it is used in relation to goods or services which are identical with, or similar to, those for which the trade mark is registered, provided that the trade mark has a reputation in the country and the use of that sign without due cause would be detrimental to, or would take unfair advantage of, the distinctive character or the repute of the trade mark.

(3) The following, in particular, may be prohibited under paragraph (2):

(a) affixing the sign to the goods or to the packaging thereof;

(b) putting the goods on the market or offering them for sale, or stocking them for those purposes, under that sign;

(c) supplying or offering services under that sign

(d) importing or exporting the goods under the sign;

(e) using the sign on business papers and in advertising

(f) using the sign as a trade or company name or part of a trade or company name;

(g) using the sign in comparative advertising in a manner that is contrary to the provisions of the Act on the prohibition of unfair market practices and of the restriction of competition.

(4) Without prejudice to the rights of others acquired before the filing date or the priority date of the registered trade mark, the holder shall also be entitled to prevent third parties from bringing goods, in the course of trade, into the country, without being released for free circulation there, where such goods, including the packaging thereof, come from third countries and bear without authorisation a trade mark which is identical with the trade mark registered in respect of such goods, or which cannot be distinguished in its essential aspects from that trade mark.

(5) The entitlement of the trade mark holder pursuant to paragraph (4) shall lapse if, during the proceedings aimed at determining whether the registered trade mark has been infringed and initiated in accordance with Regulation (EU) No 608/2013 of the European Parliament and of the Council of 12 June 2013 concerning customs enforcement of intellectual property rights and repealing Council Regulation (EC) 1383/2003, evidence is provided by the declarant or the holder of the goods that the holder of the trade mark is not entitled to prohibit the placing of the goods on the market in the country of destination.

(6) Where the risk exists that the packaging, labels, tags, security or authenticity features or devices, or any other means to which the trade mark is affixed, could be used in relation to goods or services and that use would constitute an infringement of the rights of the holder of a trade mark under paragraphs (2) and (3), the holder of that trade mark shall have the right to prohibit the following acts if carried out in the course of trade:

(a) affixing a sign identical with, or similar to, the trade mark on packaging, labels, tags, security or authenticity features or devices, or any other means to which the mark may be affixed;

(b) offering or placing on the market, or stocking for such purpose, or importing or exporting any packaging, labels, tags, security or authenticity features or devices, or any other means to which the mark is affixed.

(7) The holder of a trade mark protection may invoke the rights conferred by that trade mark against a licensee referred to in Section 23(1) who contravenes any provision in his licensing contract with regard to:

(a) the duration of the licence,

(b) the form covered by the registration in which the trade mark may be used pursuant to the license,

- (c) the scope of the goods or services for which the licence is granted,
- (d) the territory in which the trade mark may be used, or
- (e) the quality of the goods manufactured or of the services provided by the licensee.

### ***Reproduction of trade marks in reference works***

#### **Section 13**

If the representation of a trade mark in a dictionary, encyclopaedia or other reference work, in print or electronic form, gives the impression that it constitutes the generic name of the goods or services for which the trade mark is registered, the publisher shall, at the request of the holder of the trade mark, indicate without delay – in the case of works in printed form at the latest in the next edition of the publication – that it is a registered trade mark.

### ***Opposing the use of a trade mark registered in the name of a representative or agent without the holder's authorisation***

#### **Section 14**

(1) Where a trade mark application is filed or a trade mark is registered in the name of a representative or agent without the holder's authorization, the holder shall be entitled to oppose the use of the trade mark by the agent or representative, and instead of or in addition to that, he shall be entitled to demand the assignment of the claim to trade mark protection or of the trade mark protection in his favour.

(2) Paragraph (1) shall not apply where the representative or agent justifies his action.

### ***Limitations of trade mark protection***

#### **Section 15**

(1) Trade mark protection shall not entitle the holder to prohibit any other person from using, where such use by the other person is in accordance with honest practices in industrial or commercial matters, in the course of trade:

- (a) his own name or address;
- (b) signs or indications which are not distinctive from the outset or which concern the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of the service, or other characteristics of goods or services;
- (c) the trade mark for the purpose of identifying or referring to goods or services as those of the holder of that trade mark, including where the use of the trade mark is necessary to indicate the intended purpose of a product or service, in particular as accessories or spare parts.

(2) Pursuant to paragraph (1)(a) only natural persons may invoke their own name or address against the holder of the trade mark.

### ***Exhaustion of the rights conferred by trade mark protection***

#### **Section 16**

(1) Trade mark protection shall not entitle the holder to prohibit the use of the trade mark in relation to goods which have been placed on the market in the European Economic Area by him or with his expressed consent.

(2) The provision under paragraph 1 shall not apply where there exist legitimate reasons for the holder to oppose further commercialisation of the goods, in particular where the consistency or condition of the goods is changed or impaired after they have been put on the market for the first time.

### *Acquiescence*

#### **Section 17**

(1) Where the holder of an earlier trade mark as referred to in Section 4(2) has acquiesced, for a period of five successive years, in the use of a later trade mark in the country while being aware of such use, he shall no longer be entitled either to oppose the use of the later trade mark [Section 27/B(1)] or to apply, on the basis of his earlier trade mark, for a declaration that the later trade mark is invalid [Section 33(2)(b)].

(2) Paragraph (1) shall only apply to goods or services in relation to which the later trade mark was put in genuine use.

(3) Paragraph (1) shall not apply if the registration of the later trade mark was applied for in bad faith.

(4) The holder of a later trade mark shall not be entitled to oppose the use of the earlier trade mark, even if that right may no longer be invoked against the later trade mark pursuant to paragraph (1).

(5) The provisions of paragraphs (1) to (4) shall apply accordingly to earlier rights referred to in Section 5(1)(a) to (b) and Section 5(2)(a).

### *Failure to use trade marks*

#### **Section 18**

(1) If, within a period of five years following the date of registration, the holder has not put the trade mark to genuine use in the country in connection with the goods or services for which it is registered, or if such use has been suspended during an uninterrupted period of five years, trade mark protection shall be subject to the legal consequences provided for in this Act [Section 4(3); Section 27/A; Section 30(d); Section 33(2)(a); Section 34; Section 61/E; Section 73(2)], unless non-use is duly justified by the holder of the trade mark.

(2) For the purposes of paragraph (1), in respect of trade marks registered in the course of a special accelerated procedure [Section 64/A(7)], the date of registration shall be deemed to be

(a) the day which follows the expiry of the period pursuant to Section 61/B(1), or

(b) the day on which the final and binding decision on the opposition was taken, provided an opposition has been filed.

(3) For the purposes of paragraph (1), in respect of international trade marks registered with effect in Hungary, the date of registration shall be deemed to be, as appropriate, the date of registration specified in Section 76/P(5), (5c), (5d) or (5e).

(4) For the purposes of paragraph (1), the following shall constitute domestic genuine use of the trade mark:

(a) use of the trade mark in a form differing from the registered form only in elements which do not affect its distinctive character, regardless of whether or not the trade mark in the form as used has also been registered in the name of the holder;

(b) affixing of the trade mark to goods or to the packaging thereof in the territory of Hungary solely for export purposes.



(5) For the purposes of this Section, use of the trade mark with the authorization of the holder shall be deemed to constitute use by the holder.

(6) In the case of an EU trade mark, use in accordance with this Section means use in conformity with the provisions under Article 18 of the European Union Trade Mark Regulation.

### **Chapter III**

#### ***TRADE MARKS AND THEIR PROTECTION AS NEGOTIABLE PROPERTY RIGHTS***

##### ***Legal succession***

##### **Section 19**

(1) Rights related to the trade mark and deriving from a trade mark application or from trade mark protection shall constitute negotiable property rights.

(2) The legal successor of a legal person shall acquire the trade mark as well, unless otherwise provided by the parties or implied clearly differently by circumstances.

(3) Trade mark protection may be transferred by contract. Trade mark protection may also be transferred in respect of a part of the goods or services for which the trade mark is registered.

(4) The contract for the transfer of trade mark protection shall be null and void if the transfer may result in misleading the consumers.

(5) *[repealed]*

##### ***Encumbrance and levy of execution***

##### **Section 20**

Rights related to the trade mark and deriving from a trade mark application or from trade mark protection may be encumbered or levied in execution. For hypothecation, it shall be necessary to put the security contract in writing and enter the lien in the trade mark register.

##### ***Joint trade mark application and joint trade mark protection***

##### **Section 21**

(1) If there are two or more holders of the same trade mark, each of the joint holders may exercise the rights conferred by trade mark protection over his own share. Joint trade mark holders enjoy a right of pre-emption against third parties on each other's share.

(2) The trade mark may be used by any one of the joint holders alone; however, he shall be obliged to pay appropriate remuneration to the other joint holders, in proportion to their shares. For the purposes of Section 18, such use of the trade mark shall be deemed use by all of the trade mark holders.

(3) Third parties may only be granted licence for the use of a trade mark jointly by all holders. Consent may be substituted by a court judgement under the general provisions of civil law.

(4) In the event of doubt, the shares of all joint trade mark holders shall be deemed equal. The rights of the other joint trade mark holders shall extend, in proportion to their own shares, to the share of any joint holder surrendering his trade mark protection.

(5) Any one of the joint trade mark holders shall be entitled to act individually to renew, enforce and protect trade mark rights. Their procedural acts, except for settlement, admission

of claims and waiver of rights, shall have effect on all the other trade mark holders as well who failed to observe a time limit, deadline or to perform an act, provided that such other joint trade mark holders have not subsequently remedied their omission.

(6) If the procedural acts of the joint trade mark holders are in conflict, these acts shall be assessed having regard to all other relevant facts of the proceedings.

(7) Costs relating to joint trade mark protection shall be borne by the joint trade mark holders in proportion to their shares. If, despite being invited to do so, a joint holder fails to pay his share of the costs, the joint holder paying those costs shall be entitled to claim that the share belonging to the joint holder not having met his obligation be transferred to him.

(8) The provisions concerning joint trade mark protection shall apply accordingly to joint trade mark applications.

## **Section 22 [repealed]**

### **Chapter IV**

#### **TRADE MARK LICENSING CONTRACTS**

##### ***Trade mark licensing contracts***

### **Section 23**

(1) Under a trade mark licensing contract, the holder of trade mark protection shall license the right to use a trade mark and the licensee shall pay a licence fee.

(2) The parties shall be free to determine the contents of the licensing contract. However, any licensing contract the performance of which could result in misleading consumers shall be null and void.

##### ***Rights and obligations of the parties***

### **Section 24**

(1) The trade mark holder shall be liable, for the whole duration of the licensing contract, that no third parties hold rights in the trade mark that prevent or limit the exercise of the right of use. The provisions of the Civil Code governing warranty for legal defects shall apply accordingly to this liability, except that the licensee shall be entitled, instead of withdrawal, to unilaterally terminate the contract with immediate effect.

(2) The trade mark holder shall inform the licensee of all rights and important circumstances in relation to the trade mark, however, he shall be obliged to transfer economic, technical and organisational know-how thereof upon expressed agreement only.

(3) The trade mark holder shall have the right to control, at the licensee, the quality of the goods bearing the trade mark or of the services supplied under the trade mark.

(4) The licensing contract shall cover all goods and services for which the trade mark is registered, to every mode and extent of use, without limitation in time or as to territory.

(5) The licensing contract shall grant exclusive right of use only if this is expressly stipulated therein. In the case of an exclusive licence, besides the licensee who has acquired the right of use, the trade mark holder may also use the trade mark, unless this is expressly excluded by the contract. The trade mark holder may terminate the exclusivity of a licence, subject to a proportional reduction in the licence fee, if the licensee fails to begin the use of the trade mark within a reasonable time under the given circumstances.

(6) The licensee may transfer the licence or grant sub-licences to third parties subject to the express consent of the holder only.

### ***Termination of licensing contracts***

#### **Section 25**

The licensing contract shall terminate *ex nunc* when the contractual period expires or when certain circumstances specified in the contract occur or when the trade mark protection terminates.

### ***Effect of the provisions relating to licensing contracts***

#### **Section 26**

(1) By mutual consent the parties may derogate from the provisions relating to licensing contracts unless it is prohibited by law.

(2) [*repealed*]

### **Chapter V**

## ***INFRINGEMENT***

### ***Trade mark infringement***

#### **Section 27**

(1) Any unlawful use of a trade mark that violates the provisions of Section 12 shall qualify as trade mark infringement.

(2) The trade mark holder may, according to the circumstances of the case, have recourse to the following civil remedies:

(a) he may demand that the fact of infringement be declared by the court;

(b) he may demand that the infringer cease the infringement or any acts directly threatening therewith and that he be prohibited from further infringements;

(c) he may demand that the infringer give information on the identity of persons involved in the production and distribution of the infringing goods or the provision of infringing services and of the business contacts established for their distribution;

(d) he may demand satisfaction from the infringer by way of a declaration or other appropriate means and, if necessary, that the declaration be made public by or at the expense of the infringer;

(e) he may demand the surrender of the enrichment obtained through the infringement of the trade mark;

(f) he may demand the seizure, transfer to a specific person, recall or definitive removal from the channels of commerce, or destruction, of the infringing products and packaging, as well as of the means and materials exclusively or primarily used for infringement.

(3) Where a trade mark is infringed, the trade mark holder shall also be entitled to claim damages under the rules of civil liability.

(4) The trade mark holder shall be entitled to submit the demand referred to in paragraph (2)(b) also against any person whose services were used for the infringing activities.

(5) The trade mark holder shall be entitled to submit the demand referred to in paragraph (2) c) also against any person who

- a) was found in possession of the infringing goods on a commercial scale;
- b) was found to be using the infringing services on a commercial scale;
- c) was found to be providing on a commercial scale services used for the infringing activities;
- d) was indicated by the person referred to in points a) to c) as being involved in the production or distribution of the infringing goods or the provision of the infringing services.

(6) For the purposes of paragraph (5) a) to c), the acts shall be deemed to have been carried out on a commercial scale if it is obvious from the nature and quantity of the infringing goods or services that these acts were carried out for direct or indirect commercial or other economic advantage. Unless proven to the contrary, acts carried out by consumers in good faith shall not be regarded as acts carried out on a commercial scale.

(7) On the basis of paragraph (2)(c) or paragraph (5), the infringer or the person referred to in paragraph (5) may be ordered to provide, in particular, the following information:

- a) the names and addresses of the producers, distributors or providers of the infringing goods or services, and the holders as well as the intended or involved wholesalers and retailers of the infringing goods or services;
- b) the quantities produced, delivered, received or ordered of the infringing goods or services, as well as the price obtained or paid for the goods or services in question.

(8) At the request of the trade mark holder, the court may order that the means, materials, goods and packaging seized, recalled from the channels of commerce or definitively removed from the channels of commerce be divested of their infringing nature or, if this is not possible, that they be destroyed. In justified cases, the court may order, instead of destruction, that the means and materials seized be auctioned according to the procedure of judicial enforcement; in such cases, the court shall decide in a judgement on how the sum obtained is to be used.

(9) Seizure of the means and materials used in infringing activities and of the infringing goods and packaging shall also be ordered if they are not owned by the infringer, but the owner knew or, with the diligence normally to be expected, should have known about the infringement.

(10) The court shall order the measures referred to in paragraph (2)(f) and paragraph (8) to be taken at the expense of the infringer, except when derogation therefrom is justified by the circumstances of the case. In ordering the recall from the channels of commerce, the definitive removal therefrom, or destruction, the court shall decide by taking into account the interests of third parties and by ensuring the proportionality of the measures to the seriousness of the infringement.

(11) At the request of the trade mark holder, the court may order that its decision be made public at the expense of the infringer. The court shall decide on how to ensure publicity. Publicity shall mean, in particular, publication in a national daily newspaper or on the Internet.

### *Non-use as defence in infringement proceedings*

#### **Section 27/A**

(1) The holder of the trade mark may oppose the use of the sign only if the holder's rights are not liable to be revoked pursuant to Section 34 at the time the infringement action is brought.

- (2) If the defendant so requests, the holder of the trade mark shall furnish proof that
  - (a) during the five-year period preceding the date of bringing the action, he put the trade mark to genuine use as provided in Section 18 in connection with the goods or services in respect of which it is registered, or

(b) he had proper reasons for non-use,  
provided that, at the date of bringing the action, the five-year period specified in Section 18(1) to (3) has already expired.

***Intervening right of the holder of a later trade mark as defence in infringement proceedings***

**Section 27/B**

(1) The holder of a trade mark shall not be entitled to oppose the use of a later mark where that later trade mark would not be declared invalid pursuant to Section 33(2) or (2a), or Section 73(3).

(2) The holder of a trade mark shall not be entitled to oppose the use of a later EU trade mark where that later trade mark would not be declared invalid pursuant to Articles 60(1), (3) or (4), 61(1) or (2) or 64(2) or (3) of the European Union Trade Mark Regulation.

(3) Where the holder of a trade mark is not entitled to oppose the use of a later trade mark pursuant to paragraph (1) or (2), the holder of that later registered trade mark shall not be entitled to demand the prohibition of the use of the earlier trade mark, even if that earlier right may no longer be invoked against the later trade mark.

***Customs law consequences of trade mark infringement***

**Section 28**

Upon trade mark infringement, the trade mark holder may, according to the provisions of the laws on customs action against goods infringing intellectual property rights, request the customs authorities to take measures to prevent the infringing goods be placed on the market.

***Rights of the applicant and of the licensee in the case of trade mark infringement***

**Section 29**

(1) An applicant may also initiate proceedings for trade mark infringement; however, the proceedings shall be suspended until a final and binding decision is adopted on the registration of the trade mark.

(2) The licensee may bring proceedings for trade mark infringement in his own name only if the trade mark holder consents thereto or if the licensing contract authorised him to do so. However, the holder of an exclusive licence may bring such proceedings in his own name and without the consent of the holder against the infringer, if the holder of the trade mark, after formal notice, does not himself bring infringement proceedings within 30 days.

(3) A licensee shall, for the purpose of obtaining compensation for damage suffered by him, be entitled to join the infringement action brought by the holder of the trade mark as a co-litigant. Section 52(2)(a) of Act CXXX of 2016 on the Code of Civil Procedure (hereinafter "the Code of Civil Procedure") shall apply accordingly to the time limit of joining the action as co-litigant, and Section 38(3) and Section 39 of the the Code of Civil Procedure shall apply accordingly to the relationship of the co-litigants.

**Chapter VI**

***TERMINATION OF TRADE MARK PROTECTION***

## ***Modes of termination***

### **Section 30**

(1) Trade mark protection shall terminate if

(a) the period of protection expires without renewal (Sections 11 and 31), on the day following the date of expiry;

(b) the holder of the trade mark surrenders the protection (Section 32), on the day following receipt of the surrender, or at an earlier date specified by the person surrendering the protection;

(c) if the trade mark has been declared invalid (Section 33), with retroactive effect to the date of the application;

(d) if the holder of the trade mark has not put the trade mark to genuine use (Sections 18 and 34), with retroactive effect to the filing date of the request for revocation;

(e) if the trade mark has lost its distinctive character or has become misleading (Section 35), with retroactive effect to the filing date of the request for revocation.

(f) *[repealed]*

(2) Under paragraphs (1)(d) and (1)(e), at the request of either of the parties, trade mark protection may also be revoked with retroactive effect to an earlier date on which the ground for filing the request for revocation occurred, provided that the conditions for revocation existed both at the earlier date specified and at the time of filing the request for revocation.

(3) For the purposes of paragraph (2), the date of priority of the later, conflicting trade mark application of the requesting party shall be considered, until proof of the contrary, to be the date on which the ground for revocation occurred, provided that that requesting party filed such trade mark application.

## ***Partial termination due to expiry of the period of protection***

### **Section 31**

If trade mark protection is renewed only in respect of some of the goods or services for which the trade mark has been registered, trade mark protection shall terminate due to expiry of the period of protection in respect of the parts not covered by the renewal.

## ***Surrender of trade mark protection***

### **Section 32**

(1) The trade mark holder entered in the trade mark register may surrender the trade mark protection in a written declaration addressed to the Hungarian Intellectual Property Office.

(2) If the surrender affects the rights of third parties deriving from a law, from a substantive decision by an authority, from a licensing contract or any other contract recorded in the trade mark register, or if a court action is recorded in the trade mark register, the surrender shall take effect only with the consent of the parties concerned.

(3) Trade mark protection may also be surrendered in respect of only some of the goods or services for which the trade mark is registered.

(4) Surrender of trade mark protection may not be withdrawn.

## ***Declaration of invalidity of trade marks***

### Section 33

- (1) The trade mark shall be declared invalid
- (a) if the subject matter of the trade mark protection does not meet the requirements laid down in Section 8(a);
  - (b) if the subject matter of the trade mark protection differs from, or the list of goods or services extends beyond, the content of the application as filed at the acknowledged filing date or, in the case of division, the content of the divisional application;
  - (c) if the international trade mark application has been filed by a person not entitled to it under the Madrid Agreement or the Protocol Relating to the Madrid Agreement [Section 76/I(1)(a)].
- (2) The trade mark shall not be declared invalid if
- (a) it conflicts with an earlier trade mark [Section 4(2)] the use of which does not meet, at the date of filing of the request for a declaration of invalidity, the requirements laid down in Section 18, or the protection of which no longer exists at the date of filing of the request for a declaration of invalidity; or
  - (b) it conflicts with an earlier trade mark, non-registered sign or any other rights whose holder was aware of the registration of the later trade mark and has acquiesced, for a period of five successive years, in the use of that trade mark, unless the holder of the later trade mark acted in bad faith.
- (2a) A request for a declaration of invalidity on the basis of an earlier trade mark shall not succeed if it would not have been successful at the filing date or the priority date of the later trade mark for any of the following reasons:
- (a) the earlier trade mark, liable to be declared invalid pursuant to Section 2(2)(a) to (c), has not yet acquired a distinctive character as referred to in Section 2(3);
  - (b) the request for a declaration of invalidity is based on Section 4(1)(b) and the earlier trade mark has not yet become sufficiently distinctive to support a finding of likelihood of confusion within the meaning of Section 4(1)(b);
  - (c) the request for a declaration of invalidity is based on Section 4(1)(c) and the earlier trade mark has not yet acquired a reputation within the meaning of Article 4(1)(c).
- (2b) A trade mark shall not be declared invalid based on Section 2(2)(a) to (c) if, before the date of request for a declaration of invalidity, following the use which has been made of it, it has acquired a distinctive character.
- (3) If the grounds for invalidity exist in respect of only some of the goods or services for which the trade mark is registered, trade mark protection shall be limited accordingly.
- (4) If a request for a declaration of invalidity has been rejected by a final and binding decision, no new proceedings for a declaration of invalidity may be instituted by any person based on the same facts in respect of the same trade mark.

### *Revocation by reason of non-use*

### Section 34

- (1) Trade mark protection shall be revoked by reason of non-use in respect of all or some of the goods or services for which the trade mark is registered, depending on whether non-use involves all or only some of the goods or services for which the trade mark is registered.
- (2) Revocation of trade mark protection by reason of non-use shall not be declared if, following the period laid down in Section 18(1) to (3) but before the filing of the request for revocation by reason of non-use, genuine use of the trade mark has been started or continued. This provision shall not apply if the trade mark holder commences or continues genuine use of

the trade mark within a period of three months, which may have begun at the earliest on expiry of the continuous five-year period of non-use, preceding the filing of the request, only after the holder becomes aware that a request for revocation by reason of non-use may be filed.

(3) If a request for revocation by reason of non-use has been rejected by a final and binding decision, no new proceedings for revocation by reason of non-use shall be instituted by any person based on the same facts in respect of the same trade mark.

### ***Revocation due to loss of distinctive character or becoming misleading***

#### **Section 35**

(1) Trade mark protection shall be revoked if

(a) as a result of acts or inactivity of the holder, the sign has become the common name in the trade for a product or service in respect of which it is registered; or

(b) as a result of the use made of it by the holder of the trade mark or with the holder's authorization, the trade mark has become misleading, particularly as to the nature, quality or geographical origin of those goods or services.

(2) Trade mark protection shall be revoked due to loss of distinctive character or becoming misleading in respect of all or some of the goods or services for which the trade mark was registered, depending on whether the grounds for revocation exist in respect of all or only some of the goods or services for which the trade mark is registered.

(3) If a request for revocation due to loss of distinctive character or becoming misleading has been rejected by a final and binding decision, no new proceedings for revocation shall be instituted by any person based on the same facts in respect of the same trade mark.

#### **Section 35/A [repealed]**

### ***Reclaiming of licence fees***

#### **Section 36**

If the trade mark protection terminates with retroactive effect, only the portion of the licence fee collected by the trade mark holder may be reclaimed that was not covered by the economic benefits derived from the use of the trade mark.

### **Chapter VI/A**

## ***APPLICATION OF THE PROVISIONS OF THE CIVIL CODE***

#### **Section 36/A**

(1) The provisions of the Civil Code shall apply to matters not regulated in this Act regarding

(a) the passing, transfer or encumbrance of rights relating to a trade mark or deriving from trade mark protection, as well as the joint right to trade mark protection and joint trade mark protection;

b) trade mark licensing contracts; and

c) other personal and property relations concerning trade marks.

(2) [repealed]



## PART TWO

### **PROCEEDINGS BEFORE THE HUNGARIAN INTELLECTUAL PROPERTY OFFICE IN TRADE MARK MATTERS**

#### Chapter VII

#### **GENERAL PROVISIONS GOVERNING TRADE MARK PROCEEDINGS**

##### *Material competence of the Hungarian Intellectual Property Office*

#### **Section 37**

(1) The Hungarian Intellectual Property Office shall have material competence in the following trade mark matters:

- (a) registration of trade marks,
- (b) renewal of trade mark protection,
- (c) revocation of trade mark protection,
- (d) declaration of invalidity of trade marks,
- (e) division of trade mark protection,
- (f) keeping the records of trade mark applications and trade marks,
- (g) providing official information.

(2) The Hungarian Intellectual Property Office shall also have competence in matters deriving from the application of provisions relating to the European Union trade mark system (Chapter X/A) and to the international registration of trade marks (Chapters X/B to X/C).

##### *Application of the general rules of administrative authority procedures and of electronic administration*

#### **Section 38**

(1) With the derogations and additional provisions laid down in this Act, the Hungarian Intellectual Property Office shall proceed in trade mark matters within its material competence in accordance with the provisions of Act CL of 2016 on the Code of General Administrative Procedure (hereinafter “the Code of General Administrative Procedure”) and the Act on the general rules on electronic administration and trust services.

(2) The Hungarian Intellectual Property Office shall, unless otherwise provided by an Act, proceed in trade mark matters within its competence upon application.

(2a) Communications with the Hungarian Intellectual Property Office in trade mark matters within its material competence, with the exception of requesting information and granting such requests, access to files and oral hearings, shall be made in writing only, and by electronic means requiring electronic identification; information, however, shall not be requested and such requests shall not be provided by way of short text messages.

(2b) In the absence of a provision of this Act to the contrary, in trade mark matters within the competence of the Hungarian Intellectual Property Office the request shall contain

(a) the name and address of the natural person requesting party and, in the case of representation, the name and address of the representative, furthermore, in the case of communication by electronic means, the place and date of birth and the mother’s name of the natural person communicating in this manner;

(b) the name and address of the non-natural person requesting party and, in the case of representation, the name and seat of the representative, furthermore, in the case of communication by electronic means, their tax number; and

in the case of communication by non-electronic means, the signature of the requesting party or of his representative.

(3) Section 3, Section 5(1), Section 13(8), Section 21, Section 26, Section 37(2), Section 46(2), Section 48(1) to (4), Section 62(1), Section 74(1), Section 75, Section 76, Section 87, Section 94(2), Section 97, Section 127(2) and Section 130 of the Code of General Administrative Procedure shall not apply in trade mark matters.

(4) In trade mark matters, the provisions of the Code of General Administrative Procedure on legal succession shall not apply, summary proceedings shall not be admissible and applications may not be submitted through government windows<sup>1</sup>.

(5) *[repealed]*

### ***Decisions of the Hungarian Intellectual Property Office***

#### **Section 39**

(1) *[repealed]*

(2) In invalidity and revocation proceedings, the Hungarian Intellectual Property Office shall proceed at hearings and take its decisions by a panel consisting of three members. If a hearing is to be held relating to an opposition filed against the registration of a trade mark in trade mark registration proceedings, a three-member panel set up by the Hungarian Intellectual Property Office shall hold the hearing and adopt a decision. The panel shall take its decisions by majority vote.

(3) Unless their review is requested, decisions of the Hungarian Intellectual Property Office shall take effect upon service.

(4) Decisions of the Hungarian Intellectual Property Office shall be served by a public notice if

(a) the domicile address or seat (establishment, branch) of the party is unknown, or

(b) the mail is returned with the remark that the whereabouts or the address of the party is unknown.

(5) The public notice shall be published in the official gazette and on the website of the Hungarian Intellectual Property Office on the same day. Decisions served by a public notice shall be considered delivered on the fifteenth day following the publication of the notice. In any other matters pertaining to the service of decisions by a public notice, the provisions of the Code of General Administrative Procedure shall apply with the proviso that posting shall mean the publication of the public notice.

(6) If the provisions of Section 44(1) apply, all decisions shall be delivered to the representative.

(7) The provisions of the Code of General Administrative Procedure related to public announcement of decisions shall not apply in trade mark matters.

### ***Establishing the facts of the case***

#### **Section 40**

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<sup>1</sup> Translator's note: Integrated customer service offices of the Hungarian Government.

(1) In the course of trade mark proceedings pending before it, the Hungarian Intellectual Property Office shall examine the facts of the case, with the exception set out in paragraph (2), *ex officio*; its examination shall not be confined to the allegations of the parties.

(2) In the course of trade mark registration proceedings where an opposition is filed against the registration of a sign as a trade mark, as well as in invalidity and revocation proceedings, the Hungarian Intellectual Property Office shall examine the facts within the bounds of the request and on the basis of the allegations and statements of the parties and the data proven by them.

(3) The decisions of the Hungarian Intellectual Property Office shall be based only on facts or evidence on which the parties concerned have had an opportunity to present their comments; however, facts or evidence not submitted by the party in due time may be left out of consideration.

(3a) In proceedings listed in paragraph (2), parties shall file their submissions and attachments thereto in one copy with the Hungarian Intellectual Property Office if they use electronic means of communication, otherwise they shall file a copy for each party with opposing interests in the proceedings plus one additional copy; if several parties have a common representative, for this person one copy shall suffice. If the party files his submission or its attachments in a lesser number of copies than prescribed, and this irregularity is not rectified in accordance with paragraph (4), the opposition, the request for a declaration of invalidity or the request for revocation shall be considered withdrawn, and the statement of the applicant or of the holder of the trade mark shall be considered not to have been submitted.

(4) If the irregularities of a request or of its attachments submitted in trade mark matters can be rectified, the party shall be invited to rectify the irregularities of the submission or to submit comments, and at the same time be warned of the legal consequences of non-compliance. If, in spite of the rectification or comments, the request does not meet the relevant requirements, and this Act does not make provision for other legal consequences, the request shall be rejected. If the party does not respond to the invitation within the prescribed time limit, the request – if this Act does not make provision for other legal consequences – shall be considered withdrawn.

(5) *[repealed]*

### ***Time limits***

#### **Section 41**

(1) The time limits prescribed by this Act shall not be extended. Legal consequences of failure to meet such time limits shall occur without any special notice.

(2) If this Act does not prescribe any time limit to rectify the irregularities or to submit comments, a time limit of at least thirty days shall be granted to the party, which may be extended on request submitted before the expiry of the time limit. A time limit of more than three months and more than three extensions of a time limit may only be granted in particularly justified cases.

(3) The administrative time limits for the conclusion of proceedings and the provisions on other time limits prescribed in the Code of General Administrative Procedure for other measures of the proceeding authority shall not apply to trade mark matters.

(4) In trade mark matters, the filing date of documents submitted by post is the date on which the document was delivered to the Hungarian Intellectual Property Office. Documents delivered after the time limit set by the Hungarian Intellectual Property Office shall be deemed submitted in due time if the documents were sent by registered mail before the expiry of the time limit, unless the document was delivered later than two months after the expiry of the time limit.

## ***Request for re-establishment of rights***

### **Section 42**

(1) In trade mark matters, unless excluded under paragraph (5), a request for re-establishment of rights may be submitted within fifteen days of the unobserved due date or of the last day of the missed time limit. The application must state the cause for failing to comply and the circumstances substantiating that the failure did not occur through the fault of the party.

(2) If the failure to comply became known to the party subsequently or the cause thereof ceased subsequently, the time limit shall be calculated from the date on which the failure to comply became known or the cause thereof ceased. The request for re-establishment of rights shall be admissible only within six months from the due date or the last day of the time limit not met.

(3) If a time limit is not complied with, the omitted act must be carried out simultaneously with the submission of the request for re-establishment of rights or, if it is admissible, an extension of the time limit may be requested.

(4) If the Hungarian Intellectual Property Office grants the re-establishment of rights, the acts carried out by the defaulting party shall be considered to have been performed within the time limit not met; a hearing held on the date unobserved shall be, as necessary, repeated. Depending on the outcome of the new hearing, a decision shall be made on whether the decision taken at the original hearing should be upheld or should be revoked in whole or in part.

(5) No request for re-establishment of rights shall be admissible:

(a) in the event of failing to comply with the time limit prescribed for filing the declaration of priority [Section 53(2)];

(b) in the event of failing to comply with the time limit of six months fixed for claiming Convention or exhibition priority;

(c) in the event of failing to comply with the time limit prescribed for filing an opposition [Section 61/B(1) and Section 76/P(3)];

(d) in the event of failing to comply with the time limit fixed for filing the request for accelerated procedure [Section 64/A(1)].

## ***Suspension of the proceedings***

### **Section 43**

(1) If a court action is instituted with respect to the entitlement to file a trade mark application or to the right to trade mark protection, trade mark proceedings shall be suspended until the court decision becomes final and binding. If a decision on the merits of a trade mark case is subject to a prior consideration of a matter falling within the competence of another authority, the Hungarian Intellectual Property Office shall suspend the trade mark proceedings.

(2) Upon the death or termination of a party, the proceedings shall be suspended until the person of the legal successor is communicated and attested. If the person of the legal successor is not communicated within a reasonable time according to the circumstances of the case, the Hungarian Intellectual Property Office shall terminate the proceedings or shall decide on the basis of the material at its disposal.

(3) The Hungarian Intellectual Property Office shall suspend the trade mark proceedings at the request of the party or *ex officio*, if a well-founded decision cannot be made in the case without a decision taken in other, closely connected proceedings within its own competence.

(4) The trade mark registration proceedings cannot be suspended at the request of the party, except if the provisions of paragraph (1) or (3) would apply.

(5) The suspension of the proceedings shall interrupt all time limits, and the time limits shall recommence from the termination of the suspension.

(6) The Hungarian Intellectual Property Office may decide that the suspension of the proceedings shall not affect the ongoing procedural acts and the time limits determined for their performance.

## **Representation**

### **Section 44**

(1) Foreign applicants shall be obliged, unless otherwise provided for in an international treaty, to be represented by an authorised patent attorney or an attorney-at-law in all trade mark matters within the competence of the Hungarian Intellectual Property Office.

(2) Authorisations shall be made in writing. For the validity of the authorisation of a patent attorney, an attorney-at-law, a patent attorneys' office, a patent attorneys' partnership or a law office, given either in the country or abroad, the signature by the principal shall be sufficient. The power-of-attorney may also be a general authorisation, on the basis of which the representative can proceed in all trade mark cases within the competence of the Hungarian Intellectual Property Office, to which the principal is a party. A power-of-attorney given to a law office, a patent attorneys' office or a patent attorneys' partnership shall be deemed to be an authorisation given to any person who certifies his operating within the framework of the office or partnership.

(3) The Hungarian Intellectual Property Office shall appoint a guardian *ad litem* from among the patent attorneys and attorneys-at-law in the trade mark proceedings

*a)* for unknown heirs or for a party whose whereabouts are unknown, at the request of the opposing party, or

*b)* for a foreign party not having an authorised representative, at the request of the opposing party.

(4) Paragraph (1) and paragraph (3)(b) shall not apply for foreigners who are natural persons or legal persons with domicile or seat in the territory of a Member State of the European Economic Area.

(5) In the event that paragraph (3)(b) and paragraph (4) do not apply and the foreigner has not complied with the requirements laid down in paragraph (1), the Hungarian Intellectual Property Office shall apply in the trade mark proceedings the provisions of Section 59(2) to (4) accordingly, with the derogation that the request shall be assessed on the basis of the information available, if the foreign participant of the proceedings, being the opposing party, did not comply with the requirements laid down in paragraph (1).

(6) The party who requested the appointment of the guardian *ad litem* shall advance the costs and the remuneration of the guardian *ad litem*.

(7) For the purposes of the Act on the general rules on electronic administration and trust services and of the provisions of this Act relating to electronic administration, patent attorneys, patent attorney offices and patent attorney companies shall qualify as legal representatives in trade mark matters.

## **Language use**

### **Section 45**

(1) The language of trade mark proceedings shall be Hungarian, the trade mark application shall be drawn up in Hungarian.

(2) In trade mark matters, foreign language documents may also be filed; however, the Hungarian Intellectual Property Office may require that a translation into Hungarian be filed. Submission of certified translations or legalised documents shall only be required if the accuracy of the translation or the authenticity of the facts included in the foreign document is questionable with good reason.

### *Access to files*

#### **Section 46**

(1) Any person shall have the right to inspect the files of trade mark applications, except for draft decisions and all other documents used for the preparation of decisions and expert opinions that were not communicated to the parties as well as the documents under paragraph (2).

(1a) Access to files to be inspected at request shall be ensured by the Hungarian Intellectual Property Office subject to the personal appearance of the person requesting it.

(2) Beyond the cases covered by the Code of General Administrative Procedure, personal data not indicated in the trade mark register and not communicated in official information shall be excluded from inspection, unless the person concerned explicitly approved the inspection thereof or a third party is allowed access to documents containing personal data pursuant to the provisions of the Code of General Administrative Procedure.

(3) Subject to the payment of a fee, the Hungarian Intellectual Property Office shall issue copies of documents that may be inspected.

(4) Trade mark proceedings shall be public only in cases where there is an opposing party participating.

### *Legal remedies*

#### **Section 46/A**

(1) Appeals, administrative court actions and supervisory procedures, and intervention or action by the prosecutor under the Act on prosecution service shall not be admissible with regard to the decisions of the Hungarian Intellectual Property Office.

(2) Decisions of the Hungarian Intellectual Property Office in trade mark matters shall be reviewed by the court in non-contentious proceedings laid down in Chapter XI.

(3) Unless otherwise provided by this Act, the Hungarian Intellectual Property Office may amend or withdraw its decisions concluding the following proceedings only upon a request for review and before such request is forwarded to the court:

- a) registration of trade marks;
- b) renewal of trade mark protection;
- c) division of trade mark protection;
- d) termination of trade mark protection by reason of surrender;
- e) declaration of invalidity of trade marks;
- f) declaration of revocation of trade mark protection;
- g) forwarding a request for an international trade mark application as well as a request for subsequent extension of the protection resulting from an international trade mark registration;
- h) final refusal of the protection of a sign extending to Hungary;
- i) refusal of the effect of a transfer or of a licence recorded in the international register with respect to the protection resulting from an international registration extending to Hungary;
- j) conversion of an international registration into a national trade mark application.

(4) Unless otherwise provided by this Act, the Hungarian Intellectual Property Office may amend or withdraw its decision concluding the proceedings under paragraph (3)(e) and (f) upon a request for review only if it establishes that its decision is in breach of a law or if the parties unanimously request the amendment or withdrawal of the decision.

(4a) In cases with no opposing parties involved, upon a request for review, the Hungarian Intellectual Property Office may also withdraw or, according to the request for review, amend a decision defined in Section 77(1)(b) to (e) if the decision does not infringe the law, but the Hungarian Intellectual Property Office agrees with the content of the request for review.

(4b) Decisions based on a requests for review shall be communicated to the requesting party and to whom the decision subject to review was communicated.

(4c) The same legal remedy shall apply against the amending decision as against the amended decision.

(5) Paragraph (4) shall also apply to decisions taken in the matter referred to in paragraph (3)(a), provided that a notice of opposition was filed against the trade mark application and the Hungarian Intellectual Property Office did not refuse the trade mark application for any ground laid down in Sections 2 to 3.

### ***Enforcement***

#### **Section 46/B**

(1) The provisions of the Code of General Administrative Procedure relating to enforcement shall apply to orders of the Hungarian Intellectual Property Office imposing a procedural fine.

(2) Decisions of the Hungarian Intellectual Property Office on the bearing of costs shall be enforced by applying the provisions of Act LIII of 1994 on Judicial Enforcement.

### ***Costs and fees***

#### **Section 46/C**

(1) In trade mark matters no cost exemption shall be available.

(2) Beyond the obligations to pay fees laid down by this Act, fees for administrative services shall be paid in trade mark matters, the amount of which is defined in the law on fees for administrative services in industrial property procedures and which shall be paid according to the detailed rules laid down by the law on fees for administrative services in industrial property procedures for the following requests as well:

(a) requests for review, extension of time limits and requests for re-establishment of rights;

(b) requests for the recordal of legal succession and licences, requests for establishing a lien.

(3) In justified cases, the Hungarian Intellectual Property Office may reduce the amount of the fee of the professional representative if it is not commensurate with the actual representation performed. In this case, the Hungarian Intellectual Property Office shall proceed by applying the provisions on the fees and expenses of attorneys-at-law and patent attorneys applicable in court proceedings accordingly.

### ***Electronic administration and official services***

#### **Section 46/D**

(1) In trade mark matters, the Hungarian Intellectual Property Office shall provide electronic administration services in accordance with the provisions of the Act on the general rules on electronic administration and trust services and of this Act.

(2) In trade mark matters the economic operator and the legal representative of the party shall not be required to have their affairs administered electronically.

## **Chapter VIII**

### ***TRADE MARK REGISTER, PROVIDING OFFICIAL INFORMATION***

#### ***Trade mark register***

#### **Section 47**

(1) The Hungarian Intellectual Property Office shall keep a register of trade mark applications and trade marks in which all facts and circumstances concerning trade mark rights shall be recorded in accordance with Section 48.

(2) The trade mark register shall contain, in particular, the following entries:

- (a) registration number of the trade mark;
- (b) reference number of the application;
- (c) representation of the trade mark;
- (d) list of goods or services;
- (e) name (official designation) and address (seat) of the holder of the trade mark;
- (f) name and seat of the representative;
- (g) filing date of the application;
- (h) priority data;
- (i) date of the decision on the registration of the trade mark;
- (j) renewal of trade mark protection;
- (k) the termination of trade mark protection, the date and the grounds for termination of trade mark protection and the limitation of trade mark protection;
- (l) licences;
- (m) the fact that the right to trade mark protection or the rights conferred by trade mark protection belong to assets under fiduciary asset management;
- (n) hypothecation of the trade mark, as well as levy of execution or seizure, and
- (o) the starting date specified pursuant to Section 18(1) to (3) of the five-year period referred to in Section 18(1).

(3) The trade mark register shall authentically attest the existence of the rights and facts recorded therein. Until the contrary is proven, the rights and facts recorded in the trade mark register shall be presumed to be existent. The burden of proof against the data recorded in the trade mark register shall be on the person who contests their correctness or authenticity.

(4) Any right relating to trade mark protection may only be invoked against a third party who acquired his right in good faith and for consideration if it is recorded in the trade mark register.

(5) The trade mark register shall be open to public inspection, the Hungarian Intellectual Property Office shall provide electronic access thereto on its website. Certified copies of the data recorded in the trade mark register shall be issued against a fee.

#### ***Making entries in the trade mark register***

#### **Section 48**



(1) The Hungarian Intellectual Property Office shall make entries and record facts occurred in trade mark proceedings in the trade mark register on the basis of its own decisions or by decisions of other authorities or the court. With respect to the entries made on the basis of the decisions listed in Section 77 (1), the trade mark register shall also contain the date when such decisions have become final and binding. For requests for review filed against any decision listed in Section 77 (1), this fact and that the decision is not final and binding, shall also be recorded.

(2) The Hungarian Intellectual Property Office shall decide on the acknowledgement and recording of rights and facts relating to trade mark protection, except for facts occurred in trade mark proceedings, on the basis of a request submitted in writing; notifications of changes in the data of the party received from other authorities shall not qualify as requests submitted in writing. An official document or a private document providing sufficient evidence shall be attached to such request. If requests are submitted to the same case and their fulfilment would exclude each other, the requests shall be dealt with in the order of their date of receipt.

(3) A request shall be inadmissible if it is based on a document which is invalid due to formal irregularities or which lacks an authority approval required by law, or if it is clear from the contents of the document that the juridical act included therein is invalid.

(3a) Requests for recording legal succession shall be inadmissible if the right to trade mark protection or the rights conferred by trade mark protection have been transferred under a fiduciary asset management contract, which has not been concluded with a fiduciary asset management company, and the certificate of registration provided for by the Act on trustees and their activities has not been attached to the request.

(4) *[repealed]*

### ***Providing official information***

#### **Section 49**

The official gazette of the Hungarian Intellectual Property Office shall contain, in particular, the following data and facts relating to trade mark applications and trade marks:

(a) on publication of the trade mark application, the name and address (seat) of the applicant and the representative, the reference number of the application, the filing date and the date of priority if the latter is different, the sign and the list of goods or services;

(b) after registration of the trade mark, the registration number, the name and address (seat) of the holder, name and address (seat) of the representative, the reference number, the filing date and the date of priority if the latter is different, the trade mark, the list of goods or services and the date of the decision on registration;

(c) in the case of renewal or division of trade mark protection, the relevant data thereof;

(d) termination of trade mark protection, the legal grounds and the date thereof;

(e) changes in rights relating to the trade mark protection recorded in the trade mark register.

#### **Section 49/A**

The official gazette of the Hungarian Intellectual Property Office shall also publish the official information on international trade mark applications provided for in Chapters in Chapters X/B to X/C.

## Chapter IX

### TRADE MARK REGISTRATION PROCEDURE

#### *Filing of a trade mark application and its requirements*

#### Section 50

(1) Proceedings for the registration of a trade mark shall commence upon the filing of a trade mark application with the Hungarian Intellectual Property Office.

(2) A trade mark application shall contain a request for trade mark registration, the sign, the list of goods or services and, where necessary, other relevant documents.

(3) By way of derogation from Section 38(2b), trade mark applications shall contain the name and address or seat of the applicant, in the case of representation the name and address or seat of the representative, furthermore, in the case of communication by non-electronic means, the signature of the applicant or of his representative.

(3a) If the applicant or his representative has an obligation to communicate by electronic means with the Hungarian Intellectual Property Office in trade mark matters within the competence of the Hungarian Intellectual Property Office or if he wishes to do so, the trade mark application shall contain, in addition to the data specified in paragraph (3)

(a) the place, date of birth and mother's name of the natural person applicant or representative,

(b) the tax number of the non-natural person requesting party or representative.

(3b) In all other respects, trade mark applications shall be filed in compliance with the detailed requirements laid down in laws on the detailed formal requirements of trade mark applications and on the electronic filing of industrial property applications.

(4) A trade mark application shall be subject to the payment of a filing fee determined by the law on fees for administrative services in industrial property procedures; the fee shall be paid within one month after the date of filing.

(5) If the list of goods or services in the trade mark application have been drafted in a foreign language, the list of goods or services drafted in Hungarian shall be filed within two months after the date of filing.

(6) The applicant may withdraw the trade mark application until its registration in compliance with the provisions of Section 32.

#### Section 50/A [repealed]

#### *Date of filing*

#### Section 51

(1) The filing date of an application shall be the date on which the application received by the Hungarian Intellectual Property Office contains at least the following:

(a) an indication that trade mark protection is sought,

(b) the name of the applicant, his address or seat or secure delivery service address, in the case of representation the name of the representative, his address or seat or secure delivery service address or any other data making it possible to contact the applicant,

(c) a reproduction of the sign that meets the requirements laid down in Section 1(1)(b), and

(d) the list of goods or services referred to in Section 52(2), irrespective of whether the list meets the other requirements.

(2) In place of filing a representation of the sign and a list of goods or services, reference to a priority document shall also suffice for according the date of filing.

### ***Unity of the sign, list of goods or services***

#### **Section 52**

(1) A single trade mark application may seek trade mark protection for one sign only.

(2) The list of goods or services is the enumeration of goods and services with respect to which trade mark protection for the sign is sought.

(3) In trade mark applications the goods and services shall be classified in conformity with the system of classification established by the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (hereinafter “the Nice Classification”).

(4) In trade mark applications the goods and services shall be identified with sufficient clarity and precision in order to enable the authorities and the economic operators, on that sole basis, to determine the extent of the protection sought.

(5) The general indications included in the class headings of the Nice Classification or other general terms may only be used if they comply with the requisite standards of clarity and precision set out in paragraph (4).

(6) The general terms, including the general indications of the class headings of the Nice Classification, shall be interpreted as including the goods or services that are clearly covered by the literal meaning of the indication or term.

(7) Goods and services shall not be regarded as being similar to each other or dissimilar from each other merely on the ground that they appear in the same class or in different classes, respectively, under the Nice Classification.

### ***Priority***

#### **Section 53**

(1) The date establishing priority shall be

(a) in general, the date of filing of the trade mark application (application priority),

(b) in the cases defined by the Paris Convention for the Protection of Industrial Property, the date of filing of the foreign application (Convention priority) ,

(c) in the cases defined in the communication of the President of the Hungarian Intellectual Property Office published in the official gazette Magyar Közlöny, the first day of displaying the sign at an exhibition, which is not earlier than six months prior to the date of filing of the application (exhibition priority),

(d) the date of filing of a previously filed and pending design application of the applicant for the same sign, which is not earlier than six months prior to the current application, provided that there has been no other priority claimed in relation thereto (internal priority).

(2) Convention priority, exhibition priority and internal priority shall be claimed within two months after the filing of the application. The document establishing Convention priority and the certification of exhibition shall be filed within four months after the date of filing of the application.

(3) Convention priority may also be claimed, under the conditions defined by the Paris Convention, if the foreign application has been filed in a Member of the World Trade Organization which is not party to the Paris Convention or, subject to reciprocity, in any other

State. In the matter of reciprocity, the opinion of the President of the Hungarian Intellectual Property Office shall be decisive.

### ***Certification of exhibition***

#### **Section 54**

(1) The authority responsible for the exhibition shall attest the display and date of exhibition by means of a certificate of exhibition.

(2) The certificate must be accompanied by the sign whose identity with the sign displayed at the exhibition is to be attested.

(3) The certificate may only be issued during the term of the exhibition and only while the sign can be seen at the exhibition.

### ***Examination on filing***

#### **Section 55**

Following the filing of a trade mark application, the Hungarian Intellectual Property Office shall examine whether

(a) the application satisfies the requirements for according a date of filing (Section 51),

(b) the filing fee has been paid [Section 50(4)],

(c) the list of goods or services has been submitted in Hungarian language [Section 50(5)].

#### **Section 56**

(1) If a date of filing cannot be accorded, the applicant shall be invited to rectify the irregularities within thirty days.

(2) If the applicant complies with that notice within the specified time limit, the date of receipt of the rectification shall be accorded as the date of filing. Failing to comply with the said notice, the trade mark application shall be considered withdrawn.

(3) The applicant shall be notified of the accorded date of filing.

(4) If the filing fee has not been paid or the list of goods or services has not been filed in Hungarian language, the Hungarian Intellectual Property Office shall call upon the applicant to rectify the irregularities within the time limit specified by this Act [Section 50(4) and (5)]. Failing to comply with the said notice, the application shall be considered withdrawn.

### ***Communication of data***

#### **Section 57 [repealed]**

### ***Observations***

#### **Section 58**

(1) During the proceedings for the registration of a trade mark any person may file an observation with the Hungarian Intellectual Property Office to the effect that the sign may not be granted trade mark protection for any of the grounds referred to in Sections 2 to 3.

(2) Such observation shall be taken into consideration when the condition objected to in the observation is examined, except when the observation is filed at a time when its examination

would unduly delay the decision-making. Following the publication of the trade mark application (Section 61/A) the Hungarian Intellectual Property Office shall, on the basis of an observation only, extend the examination on the merits of the case, to ascertain whether the sign is not excluded from trade mark protection for any conditions referred to in Sections 2 to 3 as indicated in the observation. The examination of facts shall be carried out within the confines of the observation and on the basis of the statements of the person making the observation and data justified by him.

(3) The applicant shall be notified of the observation, unless the Hungarian Intellectual Property Office ignores the observation in accordance with the first sentence of paragraph (2).

(4) The person filing the observation shall not be party to the proceedings for the registration of a trade mark. This person shall be notified of the outcome of his observation.

### ***Examination as to formal requirements***

#### **Section 59**

(1) If a trade mark application satisfies the requirements examined pursuant to Section 55, the Hungarian Intellectual Property Office shall examine whether it meets the formal requirements of Section 50(2) to (3b), and whether the requirements for unity of the sign and for specification of the list of goods or services pursuant to Section 52 are complied with.

(2) If the application does not meet the requirements examined pursuant to paragraph (1), the applicant shall be called upon to rectify the irregularities or to divide the application.

(3) The trade mark application shall be refused if, in spite of rectification or comments, it still does not comply with the requirements under examination. An application may be refused only for grounds precisely and expressly stated in the notice.

(4) If the applicant does not reply to the notice within the fixed time limit or does not divide the application, the trade mark application shall be considered withdrawn.

(5) In the course of the examination of the trade mark application as to formal requirements, the provisions of Section 61(6) to (7) shall apply accordingly.

### ***Search for earlier rights***

#### **Section 60**

(1) If a trade mark application meets the requirements examined under Section 59, the Hungarian Intellectual Property Office shall carry out a search for earlier rights referred to in Section 4 and shall draw up a search report on the basis of the sign, with due regard to the list of goods or services.

(2) The search report shall indicate the data to be taken into consideration for deciding whether the sign to which the trade mark application relates is registrable.

(3) The Hungarian Intellectual Property Office shall send the search report to the applicant.

### ***Notification of the holder of an earlier right indicated in the search report***

#### **Section 60/A**

(1) The applicant, the holder and the licensee recorded in the trade mark register may request the Hungarian Intellectual Property Office to notify him, by sending him a copy of the search report, of the later trade mark application in the search report of which his earlier right was indicated.

(2) The request may be filed for a period defined in calendar months, for a maximum of one year and starting either on the first day of the calendar year or of the half-year; the request shall be subject to the payment of a fee determined by the law on fees for administrative services in industrial property procedures. The Hungarian Intellectual Property Office shall only fulfil the request after the payment of the fee is completed.

(3) In case of failure to send the notification, the Hungarian Intellectual Property Office shall, on request, refund the whole or, proportional to the failure, the part of the fee paid under paragraph (2). The failure to send the notification shall not incur any other legal consequences, it shall not affect the application of the provisions concerning, in particular, opposition and acquiescence.

### ***Substantive examination ex officio***

#### **Section 61**

(1) If a trade mark application meets the requirements laid down in Section 59, the Hungarian Intellectual Property Office shall carry out a substantive examination of the trade mark application.

(2) The substantive examination shall extend to

(a) whether the sign meets the requirements of Section 1 and whether it is not excluded from trade mark protection under Sections 2 to 3;

(b) whether the application complies with the requirements laid down by this Act.

(3) If a trade mark application does not meet the requirements examined under paragraph (2), the applicant shall be called upon, according to the nature of the objection, to rectify the irregularities or to submit comments.

(4) A trade mark application shall be refused in whole or in part if it does not meet the examined requirements even after the rectification of the irregularities or the submitting of comments. An application may be refused only on grounds that have been precisely and expressly stated and duly reasoned in the notice; if necessary, a further notice shall be issued.

(5) If the applicant fails to reply to the notice within the fixed time limit, the trade mark application shall be considered withdrawn.

(6) Simultaneously with the forwarding to the court of the request for reviewing the decision on the partial refusal of the trade mark application [Section 77(9) and (10)], the registration proceedings shall be suspended with respect to the remaining part of the list of goods or services until the final and binding termination of the court proceedings.

(7) On the basis of substantive examination carried out *ex officio*, the registration proceedings shall be continued with respect to the remaining part of the list of goods or services after the decision on the partial refusal of the trade mark application has become final and binding.

### ***Publication of the trade mark application***

#### **Section 61/A**

(1) If a trade mark application satisfies the requirements laid down in Section 59, the Hungarian Intellectual Property Office shall publish at least fifteen days after the search report has been sent to the applicant [Section 60(3)].

(2) Publication shall be made by publishing official information to the public in the official gazette of the Hungarian Intellectual Property Office as laid down in Section 49(a).

(3) The applicant shall be notified of the publication.

(4) After publication, if the application is withdrawn or considered withdrawn, refused, amended or divided, official information shall be published in the official gazette of the Hungarian Intellectual Property Office.

### ***Substantive examination upon a notice of opposition***

#### **Section 61/B**

(1) Within a period of three months following the date of publication of a trade mark application, a notice of opposition to registration of the trade mark may be filed on the grounds of Sections 4 to 6,

(a) by the holder of the earlier trade mark and the licensee recorded in the trade mark register thereof;

(b) by the holder of the right referred to in Section 5(1)(a) to (b), furthermore, in the case of an industrial property right by the licensee authorised by a licensing contract, or in the case of copyright by the person acquiring the right of use on the basis of a licensing contract;

c) by the prior user on the basis of Section 5(2)(a), furthermore, by the person authorised to exercise the rights arising from the protection of designation of origin or appellation of origin or geographical indication on the basis of Section 5(2)(b);

(d) on the basis of Section 6, by the trade mark holder without whose authorisation the representative or the agent has applied, in his own name, for the registration of a sign.

(2) *[repealed]*

(3) The notice of opposition shall indicate the grounds on which it is based (grounds for opposition) and documentary evidence shall be attached.

(4) An opposition fee determined by the law on fees for administrative services in industrial property procedures shall be paid within one month from the date of filing of the notice of opposition.

(5) If the notice of opposition does not comply with the requirements laid down in paragraphs (1) to (3), the opponent shall be called upon to rectify the irregularities; if the opposition fee has not been paid, he shall be called upon to make payment within the time limit prescribed by this Act. Failing to comply with these requirements, the notice of opposition shall be considered withdrawn.

#### **Section 61/C**

The opponent shall be a party to the proceedings for the registration of a trade mark in the subject matter of the notice of opposition.

#### **Section 61/D**

(1) In opposition proceedings, the parties shall be granted, at their joint request, a minimum of two but a maximum of four months in order to allow for the possibility of a friendly settlement. Proceedings shall be suspended during that period.

(1a) The Hungarian Intellectual Property Office shall invite the applicant to submit comments on the opposition; then, except for the case referred to in paragraph (2), it shall decide on the registration of the trade mark following the written preparatory work. The order concluding the proceedings and the decision approving the friendly settlement may be taken without a hearing.

(2) Following the written preparatory work, the Hungarian Intellectual Property Office shall hold a hearing if the applicant and the opponent must be heard together in order to clarify the facts or if the parties unanimously and in due time so request.

(3) If the applicant fails to submit comments within the fixed time limit or to appear at the hearing, the Hungarian Intellectual Property Office shall decide on the notice of opposition on the basis of the evidence at its disposal.

(4) The orders made in the course of a hearing and the decision shall be announced on the day of the hearing; however, the announcement may be deferred only in respect of the decision, for eight days at most, and only in the event that this is strictly necessary because of the complexity of the case. In such event the time limit for announcement shall be fixed immediately and the decision shall also be drawn up in writing by the day of announcement.

(5) The announcement of the decision shall mean the presentation of the operative part and the statement of reasons.

(6) Except if the Hungarian Intellectual Property Office deferred its announcement, the decision shall be drawn up in writing within fifteen days at most from the day it was made, and it shall be delivered within fifteen days from being drawn up in writing.

(7) The opposition shall be considered withdrawn if the opponent

a) fails to reply to the invitation within the fixed time limit, or

b) fails to appear at the hearing and has not requested in advance that the hearing be held in his absence either.

(8) Following the expiry of the time limit prescribed for filing a notice of opposition [Section 61/B(1)] no grounds may be indicated as grounds for opposition which have not been indicated as such within the time limit referred to. When taking its substantive decision concluding the proceedings, the Hungarian Intellectual Property Office shall not take into consideration the grounds thus specified.

### **Section 61/E**

(1) If the opposition is based on conflict with an earlier trade mark, at the request of the applicant filed in due time, the Hungarian Intellectual Property Office, provided that at the filing date or date of priority of the later trade mark the five-year period within which the earlier trade mark must have been put to genuine use as provided for in Section 18(1) to (3) had expired, shall invite the opponent to furnish proof that

(a) he put his own trade mark to genuine use, as provided for in Section 18, during the five-year period preceding the filing date or date of priority of the later trade mark application, or

(b) non-use can be properly justified.

(2) A trade mark application shall not be rejected on the basis of an opposition in respect of which the furnishing of proof regulated under paragraph (1) was unsuccessful. If the holder of the earlier trade mark used the trade mark pursuant to paragraph (1) in relation to only part of the goods or services for which it is registered, it shall, for the purpose of the consideration of the opposition, be deemed to be registered only in respect of that part of the goods or services.

(2a) A trade mark application shall not be rejected on the basis of an opposition based on such earlier trade mark the protection of which no longer exists at the date of filing the trade mark application.

(3) If the opponent does not reply to the invitation referred to in paragraph (1), the notice of opposition shall be considered withdrawn.

### **Section 61/F**

Settlement is admissible in the subject matter of the opposition.



### **Section 61/G**

(1) If more than one notice of opposition was submitted in respect of the same trade mark application, these shall be dealt with in the same proceedings.

(2) If there is more than one notice of opposition in respect of the same trade mark application, the proceedings may be suspended with respect to certain oppositions. Review of the order suspending the proceedings in such case [Section 77(1)] cannot be requested from the court separately, it may only be challenged in the request for the review of a decision on the registration of the trade mark. The order suspending the proceedings in such case shall, if necessary, specify the costs of the opponent arising until the suspension of the proceedings.

(3) If, in the course of trade mark registration proceedings, a decision refusing the application becomes final and binding, the opposition in respect of which the proceedings has been suspended shall be considered withdrawn. Otherwise the proceedings shall be continued on the basis of the opposition in respect of which the proceedings has previously been suspended.

### **Section 61/H**

(1) In the case of opposition, the trade mark application shall also be examined to ascertain, with due regard to the grounds of the opposition, whether the sign is not excluded from trade mark protection under Sections 4 to 7.

(2) A trade mark application shall be refused in whole or in part if it does not meet the requirements examined under paragraph (1).

(3) The losing party shall be required to bear the costs arising in connection with the opposition; the opponent shall not qualify as a losing party if under Section 61/G(3) the opposition shall be considered withdrawn.

(4) Upon request, the Hungarian Intellectual Property Office shall refund the opposition fee [Section 61/B(4)] to the extent and on conditions laid down by the law on fees for administrative services in industrial property procedures

- (a) if the trade mark application is refused under Section 61(4);
- (b) if the trade mark application is considered withdrawn under Section 61(5);
- (c) if the applicant withdraws the trade mark application [Section 50(6)];
- (d) if the opposition is considered withdrawn under Section 61/G(3).

### ***Amendment and division of the application***

### **Section 62**

(1) A trade mark application may not be amended in respect of

- (a) the sign,
- (b) the list of goods or services in a way extending beyond that contained in the application on the date of filing.

(2) Before the day on which the decision on the registration of the trade mark is adopted, the applicant shall be entitled to amend the list of goods or services as laid down in paragraph (1) *b*).

### **Section 63**

(1) The applicant may divide the application before the day on which the decision on the registration of the trade mark is adopted,

(a) prior to the official invitation to this effect [Section 59 (2)], if he claimed protection for more than one sign in one application; or

(b) if, by dividing the list of goods or services, he claims protection for specified goods or services separately.

(2) Division shall be subject to the payment of a fee determined by the law on fees for administrative services in industrial property procedures and be paid within two months from the filing of the relevant request.

(3) If the fee for division is not paid upon filing the request, the Hungarian Intellectual Property Office shall call upon the applicant to rectify the irregularities within the time limit in paragraph (2). Failing to comply with the said notice, the request for division shall be considered withdrawn.

(4) The request for division shall be rejected if a notice of opposition to the registration of a trade mark is filed and the division of the application separates the part of the list of goods or services against which the notice of opposition has been directed.

### ***Registration of the trade mark***

#### **Section 64**

(1) The Hungarian Intellectual Property Office shall register the sign as a trade mark if the sign and the trade mark application relating to it meet all the requirements of the examination [Section 61(2) and Section 61/H(1)]. The date of the substantive decision on registration shall be the date of registration of the trade mark.

(2) The registration of the trade mark shall be recorded in the trade mark register (Section 47), and official information thereof shall be published in the official gazette of the Hungarian Intellectual Property Office [Section 49(b)].

(3) After registration, the Hungarian Intellectual Property Office shall issue a trade mark certificate. The extract from the register shall be annexed to the certificate.

### ***Accelerated procedure***

#### **Section 64/A**

(1) At the request of the applicant, the Hungarian Intellectual Property Office shall apply the accelerated trade mark registration proceedings. The request may be filed within one month from the date of filing of the application.

(2) A fee determined by the law on fees for administrative services in industrial property procedures shall be paid for the request for accelerated procedure within one month from the filing of the request.

(3) *[repealed]*

(4) If the fee for the request has not been paid, the applicant shall be invited to make payment within the time limit specified in the Act. Failing that, the request shall be considered withdrawn.

(5) If the request complies with the requirements laid down in paragraphs (1) and (2), the Hungarian Intellectual Property Office shall order the accelerated procedure.

(6) By way of derogation from the provisions of Chapters VII and IX, in the case of accelerated procedure

(a) a time limit of fifteen days may also be set for rectification the irregularities or submitting comments;

(b) the trade mark application may also be published prior to the expiry of fifteen days [Section 61/A(1)] from sending the search report to the applicant [Section 60(3)];

(c) the Hungarian Intellectual Property Office shall only hold an oral hearing with respect to the notice of opposition if the clarification of the facts requires that the parties be heard together or if the parties so request unanimously in due time;

(d) the filing fee shall be paid within the time limit laid down in paragraph (2).

(7) At the specific request of the applicant in the request for accelerated procedure, the Hungarian Intellectual Property Office shall register the sign as a trade mark simultaneously with the publication of the trade mark application (particularly accelerated procedure), with the proviso that the provisions of Section 64(3) shall only apply after the expiry of the time limit prescribed for filing a notice of opposition [Section 61/B(1)]. A request for particularly accelerated procedure may only be filed within the time limit laid down in paragraph (1) for the filing of a request for accelerated procedure; the fee for the particularly accelerated procedure requested for is one and a half times higher than that for the accelerated procedure.

(8) In the event a notice of opposition to the registration of the sign as a trade mark is filed, the substantive decision ordering the registration of the trade mark under paragraph (7) shall be withdrawn and the registration proceedings shall be continued. Withdrawal of the substantive decision ordering the registration of the trade mark under paragraph (7) shall be recorded in the trade mark register, and official information shall be published in the official gazette of the Hungarian Intellectual Property Office.

## Chapter X

### ***OTHER PROCEDURES IN TRADE MARK MATTERS***

#### ***Renewal procedure***

#### **Section 65**

(1) A request for renewal of trade mark protection [Section 11(2)] may be filed with the Hungarian Intellectual Property Office by the trade mark holder, as well as by persons authorised thereto by law or contract.

(2) For the renewal of trade mark protection, a fee shall be paid as specified in the law on fees for administrative services in industrial property procedures. Payment of the renewal fee in itself shall not be considered as a request for renewal.

(3) The Hungarian Intellectual Property Office shall notify the holder of the trade mark of the possibility of renewal at least six months before the expiry of the protection. The Hungarian Intellectual Property Office shall not be liable for the omission of such notification and the omission shall not affect the expiry of trade mark protection.

(4) The request for renewal shall be filed within a period of six months before the date of expiry of the protection with the simultaneous payment of the renewal fee. In case of failure to do so, the request may be filed – with the simultaneous payment of the renewal fee increased by an additional fee – within six months from the expiry of the protection.

(5) If the date of registration of the trade mark is subsequent to the expiry of trade mark protection, the request for renewal – with the simultaneous payment of the renewal fee – may also be filed within six months following registration.

(6) The request for renewal shall indicate the registration number of the trade mark in question; otherwise the provisions concerning the requirements of trade mark applications [Section 50(2) to (3b)] shall apply accordingly to the request and its attachments.

(7) On renewal of trade mark protection, the sign may not be altered, nor may the list of goods or services be extended.

### **Section 65/A [repealed]**

### **Section 66**

(1) If the request for renewal does not comply with the requirements laid down in Section 65, including payment of the renewal fee, the requesting party shall be invited to rectify the irregularities or to submit comments. If the renewal fee has been paid in part only, the Hungarian Intellectual Property Office shall invite the requesting party to indicate in a statement which part of the list of goods or services are to be covered by the renewal.

(2) The request for renewal shall be rejected if, despite the rectification of the irregularities or the comments, it does not comply with the requirements stated in the invitation. If the requesting party fails to reply to the invitation within the specified time limit, the request for renewal shall be considered withdrawn.

(3) *[repealed]*

### **Section 67**

(1) If the request meets the requirements laid down in Section 65, the Hungarian Intellectual Property Office shall renew the trade mark protection. If in the request for renewal the renewal of trade mark protection is requested only for part of its list of goods or services, the Hungarian Intellectual Property Office shall renew the trade mark protection only in respect of that part of the list of goods or services. The renewal of trade mark protection shall be effective from the day following the date of expiry of trade mark protection; in the case of renewal after the date of expiry, it shall be retroactively effective from that date.

(2) The renewal of the trade mark protection shall be recorded in the trade mark register, and official information shall be published in the official gazette of the Hungarian Intellectual Property Office.

(3) *[repealed]*

### ***Procedure for division***

### **Section 68**

(1) The trade mark holder may divide the trade mark protection in respect of specified goods or services by separating the list of goods or services.

(2) A request for division of trade mark protection and the necessary documents shall be filed in as many copies, prepared in conformity with each other, as the number of the parts into which the original list of goods or services is to be divided.

(3) The request for division shall indicate the registration number of the original trade mark; in other respects, the provisions concerning the requisites of trade mark applications [Section 50(2) to (3b)] shall apply accordingly to the request and to its documents.

(4) A fee determined by the law on fees for administrative services in industrial property procedures shall be paid for the request for division within two months from the filing of the request.

## Section 69

(1) If the request for division does not comply with the requirements laid down in Section 68 (1) to (3), the holder shall be invited to rectify the irregularities.

(2) The request for division shall be rejected if, despite the rectification of the irregularities or the comments, it still does not comply with the requirements stated in the invitation. If the holder fails to reply to the invitation, the request for division shall be considered withdrawn.

(3) If the fee for the request for division has not been paid, the Hungarian Intellectual Property Office shall invite the holder to rectify the irregularity within the time limit specified in the Act. Failing that, the request for division shall be considered withdrawn.

## Section 70

(1) If the request complies with the requirements laid down in Section 68, the Hungarian Intellectual Property Office shall divide the trade mark protection.

(2) The division of the trade mark protection shall be recorded in the trade mark register, and official information shall be published in the official gazette of the Hungarian Intellectual Property Office.

(3) After division, the Hungarian Intellectual Property Office shall issue a trade mark certificate for each trade mark. An extract from the register shall be annexed to the certificate.

### *Termination due to expiry and surrender*

## Section 71

(1) *[repealed]*

(2) If the holder surrenders trade mark protection (Section 32), the Hungarian Intellectual Property Office shall declare the termination of protection by an order.

(3) The termination due to expiry of trade mark protection without renewal [Section 30(1)(a)] and due to surrender shall be recorded in the trade mark register and official information shall be published in the official gazette of the Hungarian Intellectual Property Office.

### *Invalidity proceedings*

## Section 72

(1) Any person may institute proceedings for a declaration of invalidity of a trade mark against the holder pursuant to Section 33, with the exception laid down in paragraph (2).

(2) Based on Sections 4 to 6, declaration of invalidity of a trade mark may only be requested by the holder of an earlier conflicting right or rights.

(3) The request shall indicate the data specified in Section 38(2b), the grounds on which it is based, and documentary evidence shall be attached. The request for a declaration of invalidity – if it is not aimed at a declaration of invalidity of the trade mark as a whole – may also be directed at part of the list of goods or services of the trade mark.

(4) A fee determined by the law on fees for administrative services in industrial property procedures shall be paid for the request for a declaration of invalidity within one month from the filing thereof.

(5) If the request for a declaration of invalidity does not comply with the requirements laid down in the Act, the requesting party shall be invited to rectify the irregularities; if the fee for

the request has not been paid, the requesting party shall be invited to make payment within the time limit specified in the Act. Failing that, the request for a declaration of invalidity shall be considered withdrawn.

### Section 73

(1) The Hungarian Intellectual Property Office shall invite the holder to submit comments on the request for a declaration of invalidity; following the written preparatory work, it shall decide at a hearing on the declaration of invalidity of the trade mark, the limitation of trade mark protection or the rejection of the request. If the holder of the trade mark does not respond to the invitation of the Hungarian Intellectual Property Office within the fixed time limit, the Hungarian Intellectual Property Office shall decide on the request based on the information available to it, and without a hearing. The order concluding the proceedings or the decision approving the friendly settlement may also be taken without a hearing. Following the expiry of the time limit fixed by the Hungarian Intellectual Property Office for the requesting party, no grounds may be indicated as grounds for invalidity, which have not been stated as such within the time limit referred to. When the decision concluding the proceedings is taken, grounds so indicated shall not be taken into consideration.

(2) If the request for a declaration of invalidity is based on conflict with an earlier trade mark of the requesting party, at the request of the holder of the later trade mark filed in due time, the Hungarian Intellectual Property Office, provided that at the filing date of the request for a declaration of invalidity the five-year period following the registration of the earlier trade mark has expired, shall invite the requesting party to furnish proof that

(a) during the five-year period preceding the filing of the request for a declaration of invalidity he put his own trade mark to genuine use as provided in Section 18 in connection with the goods or services in respect of which it is registered, or

(b) non-use can be properly justified.

(2a) If the five-year period for commencing genuine use of the earlier trade mark prescribed in Section 18(1) to (3) has already expired on the date of filing of the later trade mark, or in the case of claiming priority on the date of priority of the later trade mark, the requesting party shall, in addition to those under paragraph (2), furnish proof that

(a) during the five-year period preceding the filing date of the later trade mark application or its date of priority he put his own trade mark to genuine use as provided in Section 18, or

(b) non-use can be properly justified.

(3) A trade mark application shall not be declared invalid on the basis of an request for a declaration of invalidity in respect of which the furnishing of proof regulated under paragraph (2) to (2a) was unsuccessful. If the holder of the earlier trade mark used the trade mark as provided in paragraph (2) to (2a) in relation to only part of the goods or services for which it is registered, it shall, for the purpose of the consideration of the request for a declaration of invalidity, be deemed to be registered only in respect of that part of the goods or services.

(4) If the requesting party does not reply to the invitation referred to in paragraph (2), the request for a declaration of invalidity shall be considered withdrawn.

(5) The decisions taken in the course of the hearing shall be announced on the day of the hearing; in respect of the substantive decision, the announcement may be deferred for not more than eight days if it is indispensable due to the complexity of the case. In such a case, the date for announcement shall be set immediately, and the substantive decision shall be put into writing until the day of announcement.

(6) The announcement of the decision shall consist of the brief presentation of the operative part and of the grounds.

(7) The decision shall be put in writing within not more than fifteen days from the day it was taken, except where the Hungarian Intellectual Property Office deferred its announcement, and it shall be delivered within fifteen days from putting it in writing.

### Section 73/A

(1) At the request of any party, invalidity proceedings shall be accelerated if court action for trade mark infringement was brought, or a request for provisional measures was filed before submitting a statement of claim and this fact is substantiated.

(2) For the request for accelerated procedure, a fee determined by the law on fees for administrative services in industrial property procedures shall be paid within one month from the filing of the request.

(3) If the request does not comply with the requirements referred to in paragraph (1), the party requesting accelerated procedure shall be invited to rectify the irregularities or to submit comments. The request for accelerated procedure shall be rejected if, despite the rectification of the irregularities or the comments, it does not comply with the requirements laid down in the Act. If the party filing the request for accelerated procedure does not reply to the invitation within the specified time limit, the request shall be considered withdrawn.

(4) If the fee for the request has not been paid, the requesting party shall be invited to make payment within the time limit specified in the Act. Failing that, the request for accelerated procedure shall be considered withdrawn.

(5) The Hungarian Intellectual Property Office shall order the accelerated procedure by means of an order.

(6) By way of derogation from the provisions of Sections 41 and 73, in the case of accelerated procedures

(a) a time limit of fifteen days may be set for rectifying the irregularities or submitting comments;

(b) an extension of time limits may be granted only in particularly justified cases;

(c) the Hungarian Intellectual Property Office shall only hold an oral hearing if the clarification of the facts requires that the parties be heard together or if any of the parties so requests in due time.

### Section 74

(1) If there is more than one request for a declaration of invalidity of the same trade mark, they shall be dealt with in the same proceedings if possible.

(2) If the request for a declaration of invalidity is withdrawn, the proceedings may be continued *ex officio*, except for the case under Section 72(2). In such a case, the Hungarian Intellectual Property Office shall also proceed within the bounds of the request, taking into consideration the statements and allegations made by the parties earlier. In the case referred to in Section 72(2), settlement may be reached in the invalidity proceedings.

(3) The losing party shall be required to bear the costs of the invalidity proceedings. If the holder of the trade mark has not given any reason for the invalidity proceedings, and he surrenders the trade mark protection, at least in respect of the concerned part of the list of the goods or services, with retroactive effect to the date of filing prior to the expiry of the time limit for submitting comments [Section 73(1)], the costs of the proceedings shall be borne by the requesting party.

(4) The declaration of invalidity of the trade mark or the limitation of trade mark protection shall be recorded in the trade mark register, and official information shall be published in the official gazette of the Hungarian Intellectual Property Office.

## ***Revocation for non-use, loss of distinctive character or having become misleading***

### **Section 75**

(1) Any person may institute proceedings for revocation of trade mark protection due to non-use under Sections 18 and 34, due to loss of distinctive character or becoming misleading under Section 35 against the trade mark holder.

(2) The application shall indicate the data specified in Section 38(2b), the grounds for revocation, and documentary evidence shall be attached. Where revocation is requested pursuant to Section 30(2) with retroactive effect to a date which is earlier than the dates specified in Section 30(1)(d) or (e), it shall be indicated in the request. If revocation is requested for non-use, the burden of proof shall be on the holder of the trade mark that his use of the trade mark satisfied the requirements of Section 18. The application – if it is not aimed at the revocation of the trade mark as a whole – may also be directed at part of the list of goods or services of the trade mark.

(3) A fee determined by the law on fees for administrative services in industrial property procedures shall be paid for the request for revocation within two months from the filing of the application.

(4) If the request for revocation does not meet the requirements laid down in this Act, the requesting party shall be called upon to rectify the irregularities; if the fee for the request has not been paid, the requesting party shall be invited to make payment within the time limit prescribed by this Act. Failing to comply with these requirements, the request for revocation shall be considered withdrawn.

### **Section 76**

(1) The Hungarian Intellectual Property Office shall invite the holder of the trade mark to submit comments on the request for revocation, and then – if the holder of the trade mark responds to the invitation within the fixed time limit – following the written preparatory work, it shall decide at a hearing on the revocation of trade mark protection, in whole or in part, for non-use, loss of distinctive character or having become misleading, or on the rejection of the request. If the holder of the trade mark does not respond to the invitation of the Hungarian Intellectual Property Office within the fixed time limit, the Hungarian Intellectual Property Office shall decide on the request based on the information available to it, and without a hearing. The order concluding the proceedings may also be taken without a hearing. Section 73(5) to (7) shall apply to the delivery, putting in writing and service of the decisions taken in the course of hearings.

(2) If there is more than one request for revocation of the same trade mark, or there are requests for both the declaration of invalidity and the revocation of the same trade mark, they shall be dealt with in the same proceedings, wherever possible.

(3) If the request for revocation is withdrawn, the proceedings may be continued *ex officio*. In such case as well the Hungarian Intellectual Property Office shall also proceed within the framework of the request, taking into consideration the statements and allegations made by the parties earlier.

(4) The unsuccessful party shall be required to bear the costs of the proceedings for revocation. If the holder of the trade mark has not given any reason for the proceedings for revocation and he surrenders the trade mark protection, at least in respect of the concerned part of the list of the goods or services, with retroactive effect to the date of filing prior to the expiry



of the time limit for submitting comments under paragraph (1), the costs of the proceedings shall be borne by the requesting party.

(5) The revocation of trade mark protection, in whole or in part, due to non-use, loss of distinctive character or becoming misleading shall be recorded in the trade mark register and official information thereof shall be published in the official gazette of the Hungarian Intellectual Property Office.

## **PART THREE**

### **PROVISIONS CONCERNING THE EUROPEAN UNION TRADE MARK SYSTEM**

#### **Chapter X/A**

#### ***EUROPEAN UNION TRADE MARK AND EUROPEAN UNION TRADE MARK APPLICATION***

##### ***General provisions***

##### **Section 76/A**

For the purposes of this Act:

*a) [repealed]*

*b) European Union trade mark* means a trade mark as defined in Article 1(1) of the European Union Trade Mark Regulation;

*c) European Union trade mark application* means a request for the registration of a European Union trade mark, filed in accordance with the European Union Trade Mark Regulation.

##### **Section 76/B [repealed]**

##### **Section 76/C [repealed]**

##### ***Legal consequences of the infringement of a European Union trade mark***

##### **Section 76/D**

To the infringement of a European Union trade mark, the same legal consequences shall apply, in accordance with the provisions of Article 14 of the European Union Trade Mark Regulation, as to the infringement of a trade mark registered by the Hungarian Intellectual Property Office on the basis of this Act.

##### ***Conversion into a national trade mark application***

##### **Section 76/E**

(1) Upon a request filed on the basis of Article 140(5) of the European Union Trade Mark Regulation for the conversion of a European Union trade mark application or of a European Union trade mark, the Hungarian Intellectual Property Office shall initiate the proceedings for the registration of the trade mark by applying the provisions of Chapters VII to IX accordingly and on the conditions laid down in paragraphs (2) to (5).

(2) The filing fee [Section 50(4)] shall be paid within two months from the receipt of the request by the Hungarian Intellectual Property Office.

(3) The Hungarian translation of the request under paragraph (1) and of its documents shall be filed with the Hungarian Intellectual Property Office within four months from the receipt of the request by the Hungarian Intellectual Property Office. For the purposes of the provisions of Chapter IX, this translation shall be considered as a translation to be filed pursuant to Section 50(5).

(4) The Hungarian Intellectual Property Office shall notify the requesting party of the receipt of the request under paragraph (1) by sending simultaneously the notice under section 56(4).

(5) The date of filing, the date of priority and the seniority shall be determined in accordance with Article 139(3) of the European Union Trade Mark Regulation. Section 50(3b) shall be applied with regard to the provisions of Article 141(2) of the European Union Trade Mark Regulation.

(6) In the proceedings launched under paragraph (1) on the basis of a request for the conversion of a European Union trade mark, the Hungarian Intellectual Property Office, after the payment of the filing fee and the filing of the translation prescribed in paragraph (3) being completed, shall register the European Union trade mark on the basis of this Act (Section 64) without any further examination.

(7) In all other matters pertaining to the examination of the request for the conversion of a European Union trade mark application or European Union trade mark and to the proceedings started under paragraph (1), the provisions of Chapters VII to IX shall apply accordingly.

### ***Seniority claimed for a European Union trade mark***

#### **Section 76/F**

(1) A trade mark registered by the Hungarian Intellectual Property Office on the basis of this Act, the seniority of which has been claimed for a European Union trade mark under Articles 39 and 40 of the European Union Trade Mark Regulation, and the protection of which has been terminated by reason of expiry of protection without renewal or by reason of surrender,

(a) may be declared invalid, or

(b) may be revoked for non-use, for loss of distinctive character of the sign or for the sign having become misleading,

if the conditions for invalidity or for revocation existed at the date of the earlier termination of trade mark protection.

(1a) If in the cases referred to in paragraph (1) the trade mark is declared invalid or revoked, seniority shall cease to produce its effects.

(2) It shall be indicated in the trade mark register that the seniority of the trade mark has been claimed with respect to a European Union trade mark. Loss of seniority shall also be recorded in the trade mark register.

(3) All facts and circumstances concerning trade marks, in particular licences of use, hypothecation, any other encumbrance of rights relating to trade marks or deriving from trade mark protection as well as succession and transfer of such rights, shall be recorded into the trade mark register even after the termination, by reason of expiry of protection without renewal or by reason of surrender, of the protection of the trade mark the seniority of which has been claimed with respect to a European Union trade mark.

(4) *[repealed]*

#### **Section 76/G *[repealed]***

## ***European Union trade mark court***

### **Section 76/H**

(1) In Hungary, the Budapest-Capital Regional Court shall proceed on first instance, in the composition laid down in Section 78(2), as the European Union trade mark court referred to in Article 123(1) of the European Union Trade Mark Regulation.

(2) The Budapest-Capital Regional Court of Appeal, as the European Union trade mark court of second instance, shall have jurisdiction concerning appeals against the decisions of the Budapest-Capital Regional Court.

## **PART FOUR**

### **PROVISIONS CONCERNING THE INTERNATIONAL REGISTRATION OF TRADE MARKS**

#### **Chapter X/B**

#### ***GENERAL PROVISIONS CONCERNING INTERNATIONAL TRADE MARK APPLICATIONS***

##### ***General provisions***

#### **Section 76/I**

(1) For the purposes of this Act

(a) *international trade mark application* means an application filed under the Madrid Agreement of April 14, 1891 Concerning the International Registration of Marks (for the purposes of this Part, hereinafter “the Agreement”) and under the Protocol of June 27, 1989 relating to the Madrid Agreement (hereinafter “the Protocol”);

(b) *International Bureau* means the International Bureau of the World Intellectual Property Organization;

(c) *international register* means the register maintained by the International Bureau on trade marks filed under the Agreement or the Protocol;

(d) *application designating Hungary* means an international trade mark application in which the extension of protection has been requested to the territory of Hungary;

(e) *Office of origin* means the Office of the country of origin defined in Article 2(2) of the Protocol.

(2) References in this Act to the application of the Agreement or the Protocol shall be construed to mean also the application of the Common Regulations under the Agreement and the Protocol.

(3) Unless otherwise provided in the Agreement or the Protocol, the provisions of this Act shall apply accordingly to international trade mark applications with the exceptions laid down in this Part (Chapters X/B to X/C).

(4) *[repealed]*

#### **Chapter X/C**

#### ***INTERNATIONAL TRADE MARK APPLICATIONS***

## ***Applications filed through the intermediary of the Hungarian Intellectual Property Office***

### **Section 76/J**

(1) The holder of a trade mark application filed with Hungarian Intellectual Property Office and the holder of a trade mark registered by the Hungarian Intellectual Property Office may file, under the Protocol, an international trade mark application to the International Bureau through the Hungarian Intellectual Property Office as Office of origin.

(2) If the international trade mark application is filed before the registration of the trade mark referred to in paragraph (1), the applicant may declare that he wishes to make the international trade mark application on the basis of the trade mark referred to in paragraph (1). In this case the date of registration of the trade mark shall be considered as the date of filing.

(3) The Hungarian Intellectual Property Office shall forward the international trade mark application if the applicant

- (a) has a real and effective industrial or commercial establishment in the country;
- (b) has his domicile in the country; or
- (c) is of Hungarian nationality.

(4) The international trade mark application shall be filed with the Hungarian Intellectual Property Office as Office of origin in compliance with the formal requirements, in the manner and in one of the languages prescribed by the Protocol.

(5) At the invitation of the Hungarian Intellectual Property Office, the applicant shall certify that he is entitled to file an international trade mark application under paragraph (2). Failing to comply with the said invitation, the Hungarian Intellectual Property Office shall reject the request to forward the international application.

### **Section 76/K**

(1) Prior to forwarding the international trade mark application, the Hungarian Intellectual Property Office shall examine

(a) whether the application contains the registration number or case number of the trade mark referred to in Section 76/J(1);

(b) whether a request to forward the international application has been filed, and whether that request contains the data specified in Section 38(2b); and whether the application contains information identifying the applicant, the sign and the list of goods or services;

(c) whether the data of the application are in compliance with the data of the trade mark referred to in section 76/J(1) as appearing in the trade mark register;

(d) whether the application contains designation of the countries to the territory of which the extension of protection is claimed;

(e) whether the application has been filed in the language and in the manner prescribed by the Protocol;

(f) whether the application is signed by the applicant or the representative.

(2) Where the request to forward the application or the application itself does not comply with the requirements of paragraph (1)(a) to (c) and (f) – except for the case when the list of goods or services of the application is narrower than the list of goods or services of the trade mark referred to in Section 76/J(1) – the Hungarian Intellectual Property Office shall invite the applicant to rectify the irregularities. The applicant shall also be notified that if the application is not received by the International Bureau within two months following the filing of the request, the date of the filing of the request shall not be the date of the international registration but the date of the receipt of the international application by the International Bureau.

(3) If the invitation to rectify the irregularities under paragraph (1) leads to no result, the Hungarian Intellectual Property Office shall reject the request to forward the international trade mark application.

(4) If the application does not meet the requirements of paragraph (1)(d) and (e), the Hungarian Intellectual Property Office shall invite the applicant to rectify the irregularities. Failing to comply with the said invitation, the application shall be forwarded to the International Bureau as filed by the applicant.

### **Section 76/L**

(1) For forwarding the international trade mark application, a forwarding fee determined by the law on fees for administrative services in industrial property procedures shall be paid to the Hungarian Intellectual Property Office, and in connection with the international application, the international fee determined by the Protocol shall be paid to the International Bureau.

(2) The forwarding fee referred to in paragraph (1) shall be due on the date of filing of the international trade mark application. If the fee is not paid within one month following the due date, the request to forward the international trade mark application shall be considered withdrawn.

(3) The international fee referred to in paragraph (1) shall be paid directly to the International Bureau within the time limit and in the manner prescribed by the Protocol.

(4) In the case of international trade mark applications filed through the intermediary of the Hungarian Intellectual Property Office, the date and number of the international registration shall be recorded in the trade mark register.

### ***Subsequent extension of protection resulting from international registration through the intermediary of the Hungarian Intellectual Property Office***

### **Section 76/M**

(1) If pursuant to the Protocol the Hungarian Intellectual Property Office is the Office of the Contracting State of the holder of an international registration, a subsequent extension of the protection resulting from the international registration may be requested through the intermediary of the Hungarian Intellectual Property Office.

(2) The request for the subsequent extension of protection shall be filed in compliance with the formal requirements, the manner and the language prescribed by the Protocol.

(3) Prior to forwarding the request for the subsequent extension of protection, the Hungarian Intellectual Property Office shall examine

(a) whether a request to forward the international application has been filed, whether that request contains the data specified in Section 38(2b), and whether the request for subsequent extension contains the signature of the holder or of his representative;

(b) whether the request for subsequent extension has been filed in the manner prescribed by the Protocol.

(4) Where the request to forward the application or the request for the subsequent extension of protection does not satisfy the requirements of paragraph (3)(a), the Hungarian Intellectual Property Office shall invite the requesting party to rectify the irregularities. In case of failure to comply with said invitation, the Hungarian Intellectual Property Office shall reject the request to forward the international application.

(5) If the request for the subsequent extension of protection does not meet the requirements of paragraph (3)(b), the Hungarian Intellectual Property Office shall invite the requesting party to rectify the irregularities. Failing to comply with the said notice, the request for the subsequent

extension of protection shall be forwarded to the International Bureau as filed by the requesting party.

(6) With respect to requests for the subsequent extension of protection, the provisions of Section 76/L shall apply accordingly.

(7) If a request is filed through the intermediary of the Hungarian Intellectual Property Office for recording in the international register of a change relating to the international trade mark application or to the protection resulting from the international registration under the Protocol, the provisions of paragraphs (1) to (6) shall apply accordingly.

### ***Applications designating Hungary***

#### **Section 76/N**

(1) The effect of an application designating Hungary shall, from the date of the international registration under Article 3(4) of the Protocol or that of the subsequent extension of protection resulting from the international registration under Article 3<sup>ter</sup>(2) of the Protocol, be the same as that of a trade mark application duly filed with the Hungarian Intellectual Property Office.

(2) The international registration effected on the basis of an application designating Hungary shall result in protection, from the date laid down in paragraph (1), to the same effect as the registration under Section 64, provided that the Hungarian Intellectual Property Office does not refuse protection of the sign extended to Hungary or withdraws the refusal under Article 5(1) and (2) of the Protocol.

(3) The provisions relating to applications designating Hungary shall apply accordingly for subsequent applications for the extension of protection to Hungary resulting from international registration.

(4) Following the international registration of an application designating Hungary, the Hungarian Intellectual Property Office shall make the content of the application available for inspection as published and shall ensure access to the entries of the international register relating to the application.

#### **Section 76/O**

(1) Publication of an application designating Hungary shall be made by publishing the following data of the international trade mark application:

- (a) the sign;
- (b) the number of the international registration;
- (c) the date of publication in the Gazette of the International Bureau and the issue number of the Gazette containing the publication.

(2) The Hungarian Intellectual Property Office shall publish the application designating Hungary under paragraph (1) after being notified of the international registration.

#### **Section 76/P**

(1) The Hungarian Intellectual Property Office shall draw up the search report under Section 60 and shall carry out a substantive examination under Section 61 with respect to the application designating Hungary.

(2) The Hungarian Intellectual Property Office shall send the search report to the applicant through the intermediary of the International Bureau.

(3) For the purposes of Section 61/B(1), the time limit of opposition relating to an application designating Hungary shall be calculated from the date of publication under Section 76/O(1).

(4) If the international trade mark application does not meet the requirements examined under Section 61(2), or an opposition has been filed against it, the International Bureau shall be notified in the manner and within the time limit laid down by the Protocol (provisional refusal). In the notification a time limit of at least three months shall be fixed for submitting comments; the time limit may be extended at a request filed before its expiry.

(5) If the applicant does not reply to the invitation within the fixed time limit, the Hungarian Intellectual Property Office shall notify the International Bureau, except when paragraph (5a) is applicable, that the protection of the trade mark extending to Hungary is refused (final refusal), or that protection is only partially recognised by the Hungarian Intellectual Property Office. The Hungarian Intellectual Property Office shall send such notification to the International Bureau after the decision on final refusal or on partial recognition of the protection has become final and binding. If trade mark protection is recognised in part, the date of registration shall be the date of the decision.

(5a) If the applicant fails to reply, within the fixed time limit, to an invitation of the Hungarian Intellectual Property Office issued solely upon an opposition, the Hungarian Intellectual Property Office shall decide on the registration of the trade mark on the basis of the available information, and shall notify the International Bureau accordingly, sending either a notification on the final refusal or a notification made in accordance with paragraph (5e).

(5b) If the applicant replies to the invitation, the Hungarian Intellectual Property Office shall continue the substantive examination and shall decide on the registration of the trade mark on the basis thereof. If the trade mark application is to be refused on the basis of the substantive examination [Section 61(4), Section 61/H(2)], the Hungarian Intellectual Property Office shall notify, after the decision on it has become final and binding, the International Bureau that the protection of the trade mark extending to Hungary is refused (final refusal).

(5c) If the Hungarian Intellectual Property Office does not issue any notice of provisional refusal and sends no notification to the International Bureau on the basis of paragraph (5d) either, the date of registration shall be deemed to be the first day after the expiry of the time limit prescribed for provisional refusal.

(5d) If the Hungarian Intellectual Property Office finds before the expiry of the time limit prescribed for provisional refusal that there is no ground for provisional refusal, it shall notify, without delay, the International Bureau of the recognition of the protection. The date of registration shall be deemed to be the date of the notification on the recognition of the protection.

(5e) If the Hungarian Intellectual Property Office revokes the provisional refusal in whole or in part after the substantive examination, it shall notify the International Bureau of the recognition of the protection in whole or in part after the decision on withdrawal has become final and binding. The date of registration shall be deemed to be the date of the decision on withdrawal.

(6) to (7) [*repealed*]

(8) By applying the provisions of Section 48 accordingly, the Hungarian Intellectual Property Office shall record in the trade mark register that under Article 4*bis* of the Protocol, the international registration has replaced the trade mark registered by the Hungarian Intellectual Property Office.

### ***Rejection of the effect of a transfer and of a licensing contract***

#### **Section 76/R**

(1) If the Hungarian Intellectual Property Office finds a transfer or a licence recorded in the international register with respect to the protection resulting from the international registration

and extending to the territory of Hungary to conflict, in part or in whole, with the provisions of this Act, it shall notify the applicant, by way of the International Bureau, in the manner and within the time limit prescribed by the Agreement and the Protocol.

(2) The notification on rejecting the effect of the change shall indicate the reasons and extent of rejection.

### ***Invalidation of an international trade mark***

#### **Section 76/S**

For the purposes of this Act, invalidation of an international trade mark referred to in Article 5(6) of the Protocol shall mean the declaration of invalidity of the trade mark or the revocation of trade mark protection.

### ***Supplementary Register***

#### **Section 76/T**

The Hungarian Intellectual Property Office shall keep a supplementary register with respect to applications designating Hungary, which shall contain all facts and circumstances that cannot be recorded in the international register under the Agreement and the Protocol.

### ***Transformation of an international registration into a national trade mark application***

#### **Section 76/U**

(1) The request for transformation under Article 9*quinquies* of the Protocol shall be filed with the Hungarian Intellectual Property Office within three months of the cancellation of the international registration.

(2) The Hungarian translation of the list of goods or services shall be submitted within four months of the filing of the request for transformation, and the payment of the transformation fee, representing a fixed rate of the application fee as laid down in the law on fees for administrative services in industrial property procedures, shall be made within two months of the filing of the request. In case of failure to comply with the above requirements the request for transformation shall be considered withdrawn.

(3) In other respects the provisions of Chapters VII to IX shall apply accordingly to requests for transformation; if, however, the international registration is cancelled after any of the registration dates specified in Section 76/P(5), or (5c) to (5e), the Hungarian Intellectual Property Office shall register the sign as a trade mark without applying the provisions of Sections 61 to 63. In this case, the date specified pursuant to Section 76/P(5), or (5c) to (5e) shall be considered the date of registration.

### **Chapter X/D**

#### **Sections 76/V to 76/Z [repealed]**

### **PART FIVE**

### ***COURT PROCEEDINGS IN TRADE MARK MATTERS***



## Chapter XI

### **REVIEW OF THE DECISIONS OF THE HUNGARIAN INTELLECTUAL PROPERTY OFFICE**

#### ***Request for review***

#### **Section 77**

(1) Upon request, the court may review the following decisions of the Hungarian Intellectual Property Office:

- (a) decisions referred to in Section 46/A(3);
- (b) decisions suspending the proceedings or effecting entries in the trade mark register;
- (c) orders rejecting or limiting the access to files against which independent legal remedy is available under the provisions of the Code of General Administrative Procedure;
- (d) orders denying the legal status of party to the proceedings to persons other than those initiating the proceedings by filing a request;
- (e) decisions imposing procedural fines or on the amount and on the bearing of procedural costs.

(2) A request for review brought against a decision imposing a procedural fine or on the amount and on the bearing of procedural costs shall have no suspensory effect with respect to any other provisions of the decision not contested in the request for review, and shall not prevent them from becoming final and binding.

(3) Any order of the Hungarian Intellectual Property Office not referred to in paragraph (1) may only be contested in a request for review of the decisions referred to in paragraph (1).

(4) Review of a decision may be requested by the following:

- (a) any party to the proceedings before the Hungarian Intellectual Property Office;
- (b) any person denied of, or limited in, access to files;
- (c) any person whose legal status as a party to the proceedings has been denied.

(5) Review of a substantive decision on the registration or the declaration of invalidity of a trade mark may be requested by the prosecutor under Section 3(1)(a) and (b) and Section 3(2). Any other participant in the proceedings before the Hungarian Intellectual Property Office may, in his own right, file an independent request for review of the decision or a provision thereof relating to him.

(6) The time limit for filing a request for review or for posting it by registered mail shall be, with the exceptions laid down in paragraphs (7) and (8), thirty days from the date of communication of the decision to the party concerned or to any other participant in the proceedings.

(7) The time limit of thirty days for filing a request for review shall be calculated from the communication of the order rejecting the request for re-establishment of rights or considering it not to have been filed if

- (a) that date is later than the date of communication of the decision under paragraph (6), and
- (b) the request for re-establishment of rights was filed to avert the consequences of an omission which served directly as a basis for the decision under paragraph (6).

(8) *[repealed]*

(9) The request for review shall be filed with the Hungarian Intellectual Property Office, which shall forward it, together with the documents of the trade mark file, to the court within fifteen days, except for the case provided for in paragraph (10). Where a party with opposing interests has participated in the proceedings, the Hungarian Intellectual Property Office shall simultaneously notify the party with opposing interests of the forwarding of the request.

(10) If the request for review raises legal questions of principle, the Hungarian Intellectual Property Office may make a written statement on such question and shall forward it, together with the request for review and the documents of the trade mark file, to the court within thirty days.

(11) The following data shall be indicated in the introductory part of the request for review:

(a) the name of the court seized,

(b) the identification details of the requesting party specified in Section 38(2b), and, if there is a party with opposing interests, the known identification details of that party, and

(c) the identification details of the representative of the requesting party specified in Section 38(2b), and his secure delivery service address.

(11a) The following data shall be indicated in the substantive part of the request for review:

(a) the identification number of the decision contested by the request for review, the registration number, if applicable and known, and the contested provision or part of the decision,

(b) the explicit request that the court review the decision, and

(c) the grounds demonstrating the necessity of reviewing the decision, together with the supporting evidence and a reference to the legal basis.

(11b) The following shall be indicated in the closing part of the request for review:

(a) the facts and a reference to the legal provisions establishing the material and territorial jurisdiction of the court,

(b) the amount paid as a procedural fee and the method of payment, or, if a partial procedural fee was paid, the request for legal aid, or, if the law provides for an exemption from paying procedural fees, the facts and a reference to the legal provisions serving as basis for exemption,

(c) the facts and a reference to the legal provisions establishing the power of representation of the agent,

(d) the supporting evidence for the facts referred to in the closing part.

(12) If a request for review was filed late, the court shall decide on the request for re-establishment of rights.

### ***Material and territorial jurisdiction***

#### **Section 78**

(1) In proceedings for the review of decisions taken by the Hungarian Intellectual Property Office, the Budapest-Capital Regional Court shall have exclusive territorial jurisdiction.

(2) The Budapest-Capital Regional Court shall proceed in a panel of three professional judges.

(3) *[repealed]*

### ***Rules governing proceedings concerning requests for review***

#### **Section 79**

The court shall adjudicate requests for the review of decisions taken by the Hungarian Intellectual Property Office in accordance with the rules of non-contentious proceedings, subject to the derogations of this Act. For procedural matters not regulated otherwise by this Act, the provisions of the Code of Civil Procedure shall apply accordingly, together with the general provisions of the Act on the rules applicable in non-contentious civil court procedures and on certain non-contentious court procedures, and with the derogations arising from the particular features of non-contentious proceedings.

## ***Publicity***

### **Section 80**

The court may, at the request of a party, exclude the public from the hearing even in the absence of the requirements prescribed by the Code of Civil Procedure.

## ***Disqualification***

### **Section 81**

(1) Beyond the cases determined in the Code of Civil Procedure, the following persons shall be disqualified from the proceedings and shall not be allowed to participate in it as a judge:

(a) persons who participated in taking the decision of the Hungarian Intellectual Property Office;

(b) relatives, as defined in the Civil Code, of a person mentioned under point (a).

(2) The provisions of paragraph (1) shall also apply to the keepers of the minutes and to experts.

## ***Parties to the proceedings and other participants***

### **Section 82**

(1) The person who filed the request shall be a party to the court proceedings. The prosecutor instituting proceedings shall be entitled to all the rights to which a party is entitled, except that he may not conclude a settlement, waive or acknowledge rights.

(2) If there was a party with opposing interests in the proceedings before the Hungarian Intellectual Property Office, the court action shall be brought against that party.

### **Section 83**

If a holder of a joint trade mark protection acts independently to maintain and protect trade mark rights, or proceedings have been initiated against only one of the joint trade mark holders, the court shall notify the other joint trade mark holders that they may join the action.

### **Section 84**

(1) Any person having a legal interest in the outcome of the proceedings for review of decisions taken by the Hungarian Intellectual Property Office shall be entitled to intervene in the action in favour of the party whose interests he shares until the court decision becomes final and binding.

(2) Except settlement, acknowledgement or waiver of rights, the intervenor may carry out any act which the party he supports is entitled to make, except that his acts shall have effect only if not in conflict with the acts of the party concerned.

(3) Legal disputes between the intervenor and the party concerned shall not be adjudicated in the course of the proceedings.

## ***Representation***

### **Section 85**

(1) In the course of the proceedings, patent attorneys may also act as authorised representatives, including legal representation pursuant to Section 85/A.

(2) As to the validity of a power-of-attorney given to a patent attorney or an attorney-at-law, either in the country or abroad, the signature by the principal shall be sufficient.

### **Section 85/A**

Legal representation is mandatory in the court proceedings, including in appeal proceedings.

### ***Costs of proceedings***

#### **Section 86**

(1) If an opposing party also takes part in the court proceedings, the provisions on litigation costs shall apply accordingly to the advance and payment of the costs of proceedings.

(2) In the absence of an opposing party, the applicant shall advance and bear the costs.

(3) The expenses and fees of the patent attorney representing the party shall be added to the costs of proceedings.

### ***Omission***

#### **Section 87**

If neither the applicant nor any of the parties appear at the hearing or if none of the parties respond to the invitation of the court in the fixed time limit, the court shall decide on the request on the basis of the material at its disposal.

### ***Excuse***

#### **Section 88**

The provisions of Section 42 shall apply accordingly to the submission of a request for re-establishment of rights in non-contentious proceedings.

### ***Measures on the basis of the request***

#### **Section 88/A**

If the Hungarian Intellectual Property Office has made a written statement concerning the request for review [Section 77(10)], the chair of the proceeding chamber shall inform the party or parties of this statement in writing.

### ***Hearing and taking of evidence***

#### **Section 89**

(1) The court of first instance shall take evidence and shall hold its hearings in accordance with the provisions of the Code of Civil Procedure.

(1a) No staying of the procedure is admissible in the court proceedings.

(2) If no party with opposing interests takes part in the proceedings and the case can be adjudicated on the basis of documentary evidence, the court may adopt a decision outside the hearing, however, the party shall be heard at his request.

(3) In the event that the court adjudicates the case outside the hearing and finds during the proceedings that a hearing is necessary, it may order such hearing at any time. However, if the court adjudicates the case at a hearing, or has ordered a hearing, it may not revoke such order and adjudicate the case outside the hearing.

(4) Settlement may not be concluded in the court proceedings if such settlement was not admissible in the procedure before the Hungarian Intellectual Property Office.

### **Decisions**

#### **Section 90**

The court shall decide both on the merits of a case and on other matters by an order.

#### **Section 91**

(1) If the court alters a decision taken in a trade mark case, its order shall replace the decision of the Hungarian Intellectual Property Office. If the request for review was filed against a decision in a trade mark matter refusing, withdrawing or considering withdrawn a trade mark application, in the absence of which continuation of the registration proceedings at the Hungarian Intellectual Property Office would have been required, in place of altering the decision taken in a trade mark matter, the court shall set aside the decision and order the Hungarian Intellectual Property Office to continue the proceedings.

(2) The court shall set the decision aside and order the Hungarian Intellectual Property Office to conduct new proceedings if

(a) the decision was taken with the participation of a person who could be objected due to grounds of disqualification;

(b) other procedural rules were substantially breached during the proceedings before the Hungarian Intellectual Property Office and this breach cannot be remedied by the court.

(c) *[repealed]*

(3) If a party requests a court decision on a matter which was not the subject of the proceedings before the Hungarian Intellectual Property Office, the court shall refer the request to the Hungarian Intellectual Property Office, except when, in the case of opposition, the Hungarian Intellectual Property Office left the grounds for opposition out of consideration under Section 61/D(8), or in the invalidity proceedings, the Hungarian Intellectual Property Office left the grounds for invalidity out of consideration under Section 73(1) or when the new grounds for opposition or invalidity was stated in the request for review or after the filing thereof. Such grounds for opposition or invalidity shall be left out of consideration by the court. In the case of the referral of the request, the court shall, if necessary, set aside the decision of the Hungarian Intellectual Property Office.

(4) The court shall leave out of consideration any facts, allegations or evidence submitted by the party in the request for review or after the filing thereof, which the Hungarian Intellectual Property Office, in compliance with Section 40(3), duly left out of consideration in the proceedings before it.

(5) If, after the filing of a request for review, the Hungarian Intellectual Property Office withdraws any of its decisions referred to in Section 77(1)(b) to (d), the court shall terminate the proceedings. If the Hungarian Intellectual Property Office has amended its decision, the court proceedings may only continue in respect of matters still pending.

## Section 92

The court order on the merits of a case shall be communicated by service, its announcement shall not qualify as communication of the order. If the court decides on the request for review at a hearing, the order on the merits of the case shall need to be announced on the day of the hearing. The announcement may only be delayed, for not more than eight days, if it is indispensable due to the complexity of the case. In such event the time limit for announcement shall be fixed immediately and the judgment shall be put into writing by the day of announcement.

## Section 93

For adjudicating appeals filed against the decision of the Budapest-Capital Regional Court, the provisions of Sections 389 to 391 of the Code of Civil Procedure shall apply accordingly, with the proviso that the court of second instance shall, on request, hear the parties orally as well, except when the appeal was filed against an order on a request for review filed against a decision of the Hungarian Intellectual Property Office referred to in Section 77(1)(c) and (d).

## Section 94 [repealed]

## Chapter XII

### ***ACTIONS IN TRADE MARK MATTERS***

#### ***Rules governing actions in trade mark matters***

## Section 95

(1) The Budapest-Capital Regional Court shall have exclusive territorial jurisdiction in court actions brought for trade mark infringement, for the prohibition of the use of a trade mark by the representative or the agent or the transfer of the right to trade mark protection or of the trade mark protection, under Section 14, as well as for the prohibition of the use of European Union trade marks under Articles 137 and 138 and Article 209(5) of the European Union Trade Mark Regulation [Section 4(2)(ab)]. In such actions, the Budapest-Capital Regional Court shall sit in a panel composed as laid down in Section 78(2).

(2) In court actions brought for trade mark infringement, provisional measures shall be, until the contrary is rendered probable, considered necessary for a reason deserving special consideration under Section 103(1)(d) of the Code of Civil Procedure if the petitioner proves that the trade mark is protected, and he is the holder of the trade mark or a user entitled to take action against infringement in his own name.

(3) Paragraph (2) shall not apply if six months have already passed from the commencement of trade mark infringement or if a period of sixty days has already passed since the petitioner became aware of the infringement and of the identity of the infringer.

(4) In the event of trade mark infringement or a direct threat thereof, the request for provisional measures may also be filed before submitting the statement of claim, even in the absence of the additional conditions prescribed by the Code of Civil Procedure for provisional measures preceding the bringing an action. The Budapest-Capital Regional Court shall decide on the request for provisional measure filed prior to submitting the statement of claim. With the

derogations deriving from the particular features of non-contentious proceedings, the provisions of this Act and the general rules of the Code of Civil Procedure, as well as the general provisions of the Act on specific non-contentious court procedures shall apply accordingly to the non-contentious proceedings for provisional measures. If the requesting party has brought an action for trade mark infringement in accordance with paragraph (8), the amount exceeding the fee paid in the non-contentious proceedings shall be paid as the fee for the action.

(5) The holder of the trade mark or the licensee who is entitled take action against infringement, in addition to civil remedies applicable in the case of infringement, may request the court, with the same conditions that apply to provisional measures, to

(a) order a protective measure pursuant to the provisions of the Act on judicial enforcement, if he credibly demonstrates that later satisfaction of his claim for damages or for the surrender of the enrichment obtained by infringement is jeopardised;

(b) compel the infringer to communicate or present his banking, financial or commercial documents with a view to ordering the protective measure under point (a);

(c) order the lodging of a counter-security, if in return therefor, instead of demanding discontinuance of the trade mark infringement, he consents to the continuation by the infringer of the allegedly infringing activities.

(6) The court may order the lodging of a counter-security under paragraph (5)(c) even in the absence of a request to this effect, provided that the holder of the trade mark or the licensee who is entitled take action against infringement has filed a request for discontinuance of the infringement, and the court refuses to grant it.

(7) The court shall decide on the provisional measures with priority, in an order adopted within fifteen days from the filing of a request to this effect at the latest. The court of second instance shall decide on the appeal filed against the order on the provisional measures with priority, within fifteen days from the filing of the appeal at the latest.

(8) At the request of the party with opposing interests, the court shall set aside its order on provisional measures, including those under paragraphs (5) and (6), requested before the bringing of an action, if the requesting party has not brought, within fifteen days from the communication of such order, an action for trade mark infringement with respect to the claim enforced by the provisional measures. The court shall decide in an order on the request for setting aside the provisional measures with priority, within fifteen days from the filing of the request at the latest.

(9) If, in the course of the action for trade mark infringement, one of the parties has already provided evidence of reasonable extent, the court may, at the request of the party producing the evidence, require the party with opposing interests to

(a) present the documents and other physical evidence in his possession and to make inspection possible;

(b) communicate or present his banking, financial or commercial documents.

(10) Preliminary taking of evidence shall also be admissible before bringing proceedings for infringement if the holder of the trade mark or the licensee who is entitled take action against infringement has demonstrated to a reasonable extent the fact or danger of trade mark infringement. The court shall decide on the preliminary taking of evidence by an order and out of turn, at the latest within fifteen days from the filing of the request to this effect. An appeal shall lie against an order rejecting the preliminary taking of evidence; the court of second instance shall decide on the appeal filed against the order rejecting the preliminary taking of evidence by an order and out of turn, at the latest within fifteen days from the filing of the appeal. If court proceedings have not yet been brought, the request for the preliminary taking of evidence shall be filed with the Budapest-Capital Regional Court. The preliminary taking of evidence shall be conducted by the Budapest-Capital Regional Court.

(11) At the request of the party with opposing interests, the court shall set aside its order adopted on preliminary taking of evidence, if the holder has not brought an action for trade mark infringement within fifteen days from the communication of the order adopted on preliminary taking of evidence. The court shall decide on the request for setting aside the order adopted on preliminary taking of evidence with priority, within fifteen days from the filing of the request at the latest.

(12) Provisional measures, including those measures under paragraphs (5) and (6), may be taken without the party with opposing interests having been heard if any delay thereof would cause irreparable harm. Pursuant to Section 337(1)(b) of the Code of Civil Procedure, preliminary evidence may be taken without the party with opposing interests having been heard if any delay would cause irreparable harm, or the risk of the destruction of evidence is likely. Orders on provisional measures or ordering preliminary taking of evidence adopted without the party with opposing interests having been heard shall be communicated to the party immediately following their implementation. After communication of the order, the party with opposing interests may request to be heard or to have the amendment or the setting aside of the order on ordering provisional measures or the preliminary taking of evidence. If the request for provisional measures or ordering preliminary taking of evidence is rejected, the court shall communicate the order on rejection together with the request for provisional measures or ordering preliminary taking of evidence to the party with opposing interests.

(13) At the request of the party with opposing interests, the court may make the ordering of preliminary taking of evidence and, with the exception of paragraph (5)(c) and paragraph (6), of provisional measures subject to the provision of security.

(14) For the cases referred to in paragraph (5)(c), (6) and (13), the provisions of the Code of Civil Procedure on the provision of security shall apply accordingly, with the proviso that the court, beyond the judgment, may also rule on the matter of refunding or releasing the security or counter security in the order setting aside or pronouncing the cessation of the effect of the order on provisional measures or ordering preliminary taking of evidence.

(14a) In court actions on trade mark infringement the legal consequences laid down in Section 27(2) to (3) shall not apply in respect of the period when the grounds for revocation of trade mark protection existed based on this Act, provided that the defendant invoked this fact in his defence as to the merits.

(15) In all actions referred to in paragraph (1) and any other actions related to trade marks, the provisions of the Code of Civil Procedure shall apply with the derogations under Sections 80, 85 and 86(3) of this Act.

(16) *[repealed]*

## **PART SIX**

### ***COLLECTIVE MARKS AND CERTIFICATION MARKS***

#### **Chapter XIII**

#### ***COLLECTIVE MARKS***

##### ***The collective mark***

##### **Section 96**



(1) A collective mark is a trade mark which is described as such when the mark is applied for and is capable of distinguishing the goods or services of the members of an association, public body or union from those of others.

(2) *[repealed]*

(3) A sign shall also be excluded from trade mark protection as a collective mark if

a) the character or the significance of the sign is capable to mislead consumers, specifically if it is likely to be perceived as other than a collective mark;

b) the regulations governing its use contain provisions violating public policy, accepted principles of morality or law.

(4) The holder of a collective mark shall be the association, public body or union, and their members shall also be entitled to use the collective mark.

(5) An application for the registration of a collective mark shall not be refused if the applicant, as a result of an amendment of the regulations governing use of the collective mark, meets the requirements laid down in Section 97.

(6) The use of a collective mark by any member of the association, public body or union shall also qualify as use within the meaning of Section 18.

### ***Regulations governing the use of collective marks***

#### **Section 97**

(1) A sign shall be granted protection as a collective mark if its use is governed by regulations complying with the requirements laid down in paragraph (2). The regulations shall be established by the association, public body or union being the holder of the collective mark.

(2) The regulations shall include:

(a) the name and the registered seat of the association, public body or union,

(b) the list of the members authorised to use the mark, including their names, addresses and registered seats,

(c) the conditions of membership,

(d) the conditions of the use of the collective mark,

(e) the provisions relating to the control of the use of the collective mark,

(f) the rules of taking action against unauthorised use of the collective mark.

(3) *[repealed]*

(4) The regulations shall also be attached to the application for a collective mark. With respect to collective marks, the data indicated in paragraph (2)(b) shall also be recorded in the trade mark register. The regulations and the amendments pursuant to paragraph (5) thereof shall be attached to the entry in the register relating to the collective mark.

(5) In the event of any change in the data indicated in the regulations, the holder of a collective mark shall submit amended regulations to the Hungarian Intellectual Property Office. Amendments to the regulations shall take effect only from their entry in the trade mark register. The amendment shall not be entered in the register if

(a) the amended regulations do not satisfy the requirements in paragraph (2);

(b) the requirements prescribed in Section 96(1) for collective marks would not be met due to the amendment; or

(c) the amendment would involve one of the grounds for exclusion referred to in Section 96(3).

### ***Transfer of the protection of collective marks***

#### **Section 98**

(1) Transfer of the protection of collective marks shall require the relevant written contract and the recording in the trade mark register of the successor.

(2) The protection of collective marks may not be transferred if after the transfer, the requirements prescribed in Section 96 are not met or the sign becomes excluded from protection as a collective mark.

### ***Termination of protection of collective marks***

#### **Section 99**

(1) Apart from the grounds for revocation under Sections 34 and 35, the protection of a collective mark shall also be revoked, at the date specified in the decision on revocation, if the holder of the trade mark does not take the necessary measures to prevent the collective mark being used in a manner incompatible with the conditions of use.

(2) Apart from the grounds for invalidity under Section 33, if the sign may not be granted protection as a collective mark pursuant to Section 96(1), (3) and Section 97, the collective mark shall be declared invalid, unless in the course of the invalidity proceedings the holder of the trade mark, by further amending the regulations governing use, complies with the requirements. If the sign becomes excluded from trade mark protection pursuant to Section 96(3), the collective mark shall be revoked with retroactive effect to the filing date of the request for revocation.

(3) The protection of the collective mark shall also be revoked, if an amendment to the regulations governing use of the mark has been mentioned in the register in breach of Section 97(5), unless the holder of the mark, by further amending the regulations governing use, complies with the requirements of those provisions.

### ***Enforcement of rights conferred by the protection of collective marks***

#### **Section 100**

(1) The holder of a collective mark shall be entitled to claim the award of damages on behalf and for the benefit of persons who have authority to use the trade mark where they have sustained damage in consequence of unauthorised use of the trade mark by a third party, without those persons having to become parties to the legal proceedings.

(2) Persons authorised to use the collective mark by reason of their membership relation may bring proceedings for infringement of the trade mark only if its holder consents thereto. Such authorised users may only bring infringement proceedings, in their own name and without the consent of the holder of the trade mark, if the holder of the trade mark, after formal invitation to start proceedings, does not himself bring infringement proceedings within thirty days.

(3) A user shall be entitled, for the purpose of obtaining compensation for damage suffered by him owing to the unauthorised use of the trade mark, to join as co-litigant the infringement action brought by the holder of the trade mark, if the holder of the trade mark does not claim the award of damages on his behalf and for his benefit pursuant to paragraph (1). Section 52(2)(a) of the Code of Civil Procedure shall apply to the time limit of joining the action as co-litigant, and Section 38(3) and Section 39 of the Code of Civil Procedure shall apply accordingly to the relationship of co-litigants.

## Chapter XIV

### **CERTIFICATION MARKS**

#### *Certification marks*

#### **Section 101**

(1) A certification mark is a trade mark which is described as such when the trade mark is applied for and is capable of distinguishing goods or services which are certified by the holder of the trade mark in respect of material, mode of manufacture of goods or performance of services, quality, accuracy or other characteristics, from goods or services which are not so certified.

(2) Protection of certification marks may not be acquired

*a)* by the undertaking which produces, places on the market or imports the goods or supplies the services for which the trade mark is registered;

*b)* by the undertaking which, pursuant to the Act on the prohibition of unfair market practices and of the restriction of competition, is not independent of the undertaking under point *a)*;

*c)* by the undertaking with which the undertaking under point *a)* is in a permanent legal relationship in respect of the goods or services for which the mark is registered.

(3) The holder himself shall not use the certification mark for the purpose of certification; he shall, however, authorise its use for such purpose with respect to the goods or services complying with the prescribed quality requirements or with other characteristics.

(4) A certification mark shall be granted protection if it is accompanied by regulations satisfying the requirements prescribed under paragraph (5).

(5) The regulations shall include

*a)* the name and registered seat of the holder,

*b)* the quality requirements relating to the goods or services for which the mark is registered,

*c)* the rules of attesting the quality,

*d)* the conditions of the use of the mark,

*e)* the rules on the control of the use of the mark,

*f)* the order of proceedings against unauthorised use of the mark.

(6) For the regulations, application and registration, use and transfer of the certification mark, for the termination of the protection of the certification mark and for the enforcement of rights deriving from the protection of such marks, the provisions relating to collective trade marks and to their protection shall apply accordingly.

(6a) If the certification mark is used by any person authorised thereto in accordance with the provisions of Section 18, it shall be considered to be genuine use under Section 18.

(7) A certification mark shall also be declared invalid if the application was filed by a person not entitled to do so under paragraph (2). The protection of a certification mark shall also be revoked, at the date specified in the decision on revocation, if the holder of the trade mark no longer complies with the requirements set out in paragraph (2).

(8) For the use of certification marks, the provisions of a specific law on the certification of quality or of other characteristics shall also apply.

## Chapter XV

### **APPLICATION OF PROVISIONS RELATING TO TRADE MARKS TO COLLECTIVE AND CERTIFICATION MARKS**

*Application of provisions relating to trade marks*

**Section 102**

Matters relating to collective and certification marks and their protection which are not covered by this Part shall be governed by the provisions relating to trade marks and to their protection, with the proviso that observations may also be filed with respect to the grounds referred to in Sections 96 (1) and (3), 97 and 101(1) to (2) and (4).

**PART SEVEN**

***PROTECTION OF GEOGRAPHICAL INDICATIONS***

**Chapter XVI**

***SUBJECT MATTER OF PROTECTION, RIGHTS CONFERRED BY, INFRINGEMENT  
AND TERMINATION OF PROTECTION***

***Geographical indications and appellations of origin capable of protection***

**Section 103**

(1) Geographical indications and appellations of origin which are used in the course of trade to identify the geographical origin of a product shall be granted protection as geographical indications.

(2) Geographical indication means the geographical name of a region, locality or, in exceptional cases, a country which serves to designate a product originating therein, the specific quality, good reputation or other characteristics of which are due essentially to that geographical origin, and the production, processing or preparation of which takes place in that defined geographical area.

(3) Appellation of origin means the geographical name of a region, locality or, in exceptional cases, a country which serves to designate a product originating therein, the specific quality, good reputation or other characteristics of which are due exclusively or essentially to that geographical environment, to its inherent natural and human factors, and the production, processing and preparation of which take place in that defined geographical area.

**Section 104**

Geographical indications of spirit drinks shall be granted protection if the products bearing the geographical indications also comply with the conditions specified in the product specifications provided for by a specific law.

***Grounds for refusal***

**Section 105**

(1) A geographical indication shall not be granted protection if in the course of trade it had become the common name of a product, irrespective of whether the product originates in the place specified by the geographical indication.

(2) After its registration, a geographical indication may not become the common name of a product in the course of trade.

### **Section 106**

- (1) A geographical indication shall be excluded from protection:
- (a) with respect to identical products, if it is identical with an earlier geographical indication;
  - (b) with respect to identical or similar products, if it is identical with or similar to an earlier geographical indication;
  - (c) if it is identical with or similar to an earlier trade mark and its use, due to the good reputation, renown or lasting presence on the market of the trade mark, would result in a likelihood of confusion on the part of consumers.
- (2) A geographical indication may not be granted protection if it conflicts with the name of an earlier, protected or other, plant variety or animal breed and as a result is likely to mislead consumers as to the origin of the product.

### ***Eligibility for protection, right to protection***

### **Section 107**

- (1) Protection shall be granted for a geographical indication if:
- (a) it satisfies the requirements of Sections 103 and 104 and is not excluded from protection under Sections 105 and 106, and
  - (b) the application complies with the requirements laid down by this Act.
- (2) Protection of the geographical indication may be granted to any natural or legal person, who produces, processes or prepares, in the defined geographical area, a product for which the designation of that geographical indication is used.
- (3) The protection of a geographical indication shall belong jointly to the persons who produce, process or prepare products in accordance with paragraph (2) (hereinafter “holders”).
- (4) Foreigners shall be entitled to the protection of a geographical indication only on the basis of an international agreement or subject to reciprocity. As to the existence of reciprocity, the opinion of the President of the Hungarian Intellectual Property Office shall prevail.

### ***Commencement and term of protection***

### **Section 108**

- (1) Protection of the geographical indication shall commence upon registration, and it shall be effective retroactively from the date of filing of the application.
- (2) Protection of geographical indications shall be granted for an unlimited time.

### ***Rights conferred by protection***

### **Section 109**

- (1) Protection shall entitle the holders to the exclusive right to use the geographical indication. Only the holders may use the geographical indication, and they may not license the right of use to third parties.
- (2) On the basis of the exclusive right of use, any holder shall be entitled to take measures against any person who, in the course of trade

(a) uses the protected geographical indication or a denomination liable to be confused therewith with respect to products not originating in the defined geographical area;

(b) uses the protected geographical indication with respect to products not included but similar to those in the list of products, and therefore it is detrimental to, or takes unfair advantage of, the good reputation of the protected geographical indication;

(c) imitates or evokes in any manner whatsoever the protected geographical indication, even if also indicating the true origin of the product, or even if the protected name is translated or accompanied by various additions;

(d) uses any false or misleading indication as to the provenance, origin, nature or essential characteristics of the product, no matter where it is indicated (e.g. on the packaging, advertising material or documents relating to the product);

(e) performs any other act liable to mislead consumers as to the true geographical origin of the product.

### ***Infringement of protection***

#### **Section 110**

(1) Any person who unlawfully uses a protected geographical indication in contravention of the provisions of Article 109, commits an infringement.

(2) Any of the holders may take action individually against the infringement. Interest groups of the holders and consumer protection organisations may also take action against the infringement.

(3) For the civil remedies available against the infringer, the provisions of Section 27, and for the customs law consequences of infringement, the provisions of Section 28 shall apply accordingly.

### ***Termination of protection***

#### **Section 111**

(1) Protection of a geographical indication shall terminate:

(a) if the protection is declared invalid, with retroactive effect to the date of filing of the application;

(b) if the holders have violated the requirements prescribed in the product specification, with retroactive effect to the starting date of the proceedings for revocation.

(2) Protection shall be declared invalid if the geographical indication does not meet the requirements prescribed in Section 107(1)(a).

(3) The protection of a geographical indication of spirit drinks shall be revoked if the designated inspecting organ establishes serious defects, related to the product specification, in the use of the geographical indication, which cannot be remedied in any other way.

(4) If a request for a declaration of invalidity or revocation has been rejected by a final and binding decision, no new proceedings for invalidity or revocation shall be instituted by any person based on the same facts in respect of the same geographical indication.

## **Chapter XVII**

### ***PROCEDURES CONCERNING THE PROTECTION OF GEOGRAPHICAL INDICATIONS***

## **General provisions governing procedures before the Hungarian Intellectual Property Office**

### **Section 112**

(1) The Hungarian Intellectual Property Office shall have material competence in the following matters concerning geographical indications:

- (a) registration of geographical indications;
- (b) declaration of invalidity and revocation of protection;
- (c) keeping the records of applications for the protection of geographical indications and of registered geographical indications;
- (d) official information on the protection of geographical indications.

(2) The Hungarian Intellectual Property Office shall also have material competence in matters arisen from the application of provisions relating to the European Union protection of certain geographical indications and to the international registration of appellations of origins (Chapters XVII/A to XVII/B).

(3) In invalidity proceedings and in revocation proceedings, the Hungarian Intellectual Property Office shall proceed and adopt decisions in hearings held by a panel of three members.

(4) The Hungarian Intellectual Property Office may amend or withdraw its decisions concluding the following proceedings only upon a request for review and before such request is forwarded to the court:

- (a) registration of geographical indications;
- (b) declaration of invalidity of geographical indications;
- (c) revocation of protection of geographical indications;
- (d) *[repealed]*
- (e) forwarding of international applications for the registration of appellation of origins;
- (f) final refusal of the protection of an appellation of origin registered by the International Bureau extending to Hungary.

(5) The Hungarian Intellectual Property Office may amend or withdraw its decisions concluding the proceedings under paragraph (4)(b) and (c) upon a request for review only if it establishes that its decision is in breach of a law or if the parties unanimously request the amendment or withdrawal of the decision.

(6) In all other procedures before the Hungarian Intellectual Property Office, the provisions of Chapters VII and VIII shall apply accordingly.

(7) to (9) *[repealed]*

### ***Procedure for registration of geographical indications***

### **Section 113**

(1) An application for the registration of a geographical indication shall contain a request for registration, the name of the geographical indication, the list of products and the other attachments. The application shall contain the data specified in Section 38(2b). In all other respects, the application shall be filed in compliance with the detailed requirements laid down in laws on the detailed formal requirements of applications for geographical indications and on the electronic filing of industrial property applications.

(2) An application for the registration of a geographical indication shall be subject to an application fee determined by the law on fees for administrative services in industrial property procedures, which fee shall be paid within two months from the date of filing.

(3) If, upon filing or as a result of rectifying the irregularities, an application for the registration of a geographical indication meets the requirements for according a date of filing, the Hungarian Intellectual Property Office shall publish official information thereon in its official gazette (communication of data). Communication of data shall specifically contain the following data:

- (a) the name of the geographical indication;
- (b) the date of filing of the application;
- (c) the list of products.

(4) After the communication of data in proceedings for the registration of a geographical indication, observation may be filed with the Hungarian Intellectual Property Office to the effect that the indication or the application does not comply with a requirement of registrability laid down by this Act.

(5) If an application for the registration of a geographical indication meets the requirements examined under Section 55, the Hungarian Intellectual Property Office shall carry out a substantive examination of the application. The substantive examination shall assess

(a) whether the geographical indication meets the requirements of Section 103 and whether it is not excluded from protection under Sections 105 and 106; and

(b) whether the application complies with the requirements laid down by this Act.

(6) *[repealed]*

(7) In proceedings for the registration of geographical indications, in matters not regulated in paragraphs (1) to (5), the provisions of Chapter IX shall apply accordingly, with the proviso that any reference to the list of goods or services shall be construed as a reference to the list of products.

### **Section 113/A**

(1) If the registration of a geographical indication of a spirit drink is requested in an application for the registration of a geographical indication, the provisions of Section 113 shall apply subject to the following exceptions:

(a) beyond those specified in Section 113(1), the application for the registration of a geographical indication shall also contain the product specification provided for by a specific law;

(b) the Hungarian Intellectual Property Office shall carry out the examination on filing (Sections 55 to 56) and of formal requirements (Section 59) with priority;

(c) if the application meets the requirements examined under point (b), the Hungarian Intellectual Property Office shall send the copies of the documents of the matter with priority to the minister responsible for agricultural policy (hereinafter “minister”);

(d) on the basis of the proceedings carried out under a specific law for the examination of product specifications, the minister shall issue a statement to the Hungarian Intellectual Property Office within nine months from sending the documents pursuant to point (c) whether he agrees, with regard to the product specification, with the registration of the geographical indication; the Hungarian Intellectual Property Office, by sending the decision simultaneously, shall inform the minister that the decision on the registration of the geographical indication has become final and binding;

(e) the applicant may, before the decision on the registration of the geographical indication becomes final and binding, submit a statement to the Hungarian Intellectual Property Office whether he requests European Union protection for his geographical indication of spirit drinks.

(2) For the procedure on the amendment of the product specification related to the registered geographical indication of a spirit drink the provisions of paragraph (1) shall apply accordingly.



## ***Invalidity and revocation procedure***

### **Section 114**

In proceedings for declaration of invalidity of the protection of geographical indications, the provisions of Sections 72 to 74, and in proceedings for revocation, the provisions of Sections 75 and 76 shall apply accordingly.

### ***Court procedure concerning the protection of geographical indications***

### **Section 115**

In court proceedings concerning the protection of geographical indications, the provisions of Chapters XI and XII shall apply accordingly.

### ***Inspection of the geographical indications of spirit drinks***

### **Section 116**

Inspection in accordance with the requirements under Section 104 of the use of geographical indications of spirit drinks employed in the course of trade shall fall within the material competence of the authority designated by specific law.

## **PART EIGHT**

## **RULES ON EUROPEAN UNION PROTECTION OF CERTAIN GEOGRAPHICAL INDICATIONS AND THE INTERNATIONAL REGISTRATION OF APPELLATIONS OF ORIGIN**

### **Chapter XVII/A**

### ***PROVISIONS CONCERNING THE EUROPEAN UNION PROTECTION OF GEOGRAPHICAL INDICATIONS OF AGRICULTURAL PRODUCTS AND FOODSTUFFS, VINE AND WINE PRODUCTS, AROMATISED WINE PRODUCTS AS WELL AS SPIRIT DRINKS***

### **Section 116/A**

(1) European Union protection of geographical indications of agricultural products and foodstuffs shall be governed by the provisions of Regulation (EU) No 1151/2012 of the European Parliament and of the Council.

(2) European Union protection of geographical indications of vine and wine products shall be governed by the provisions of Regulation (EU) No 1308/2013 of the European Parliament and of the Council, and Union protection of geographical indications of aromatised wine products shall be governed by the provisions of Regulation (EU) No 251/2014 of the European Parliament and of the Council.

(3) In matters falling within the competence of the Member States pursuant to Regulation 1151/2012, Regulation 1308/2013, and Regulation 251/2014, the minister and the Hungarian Intellectual Property Office shall proceed.

(4) Applications under Article 49 of Regulation 1151/2012, Article 94 (1) of Regulation 1308/2013 and Article 10 (1) of Regulation 251/2014 (for the purposes of this Chapter hereinafter jointly “the application”) shall be filed with the minister. The minister shall, without delay, forward the application complying with the requirements provided for by a specific law to the Hungarian Intellectual Property Office.

(5) The Hungarian Intellectual Property Office shall, as a matter of priority, examine whether the application meets

(a) the requirements of Articles 5 to 6 of Regulation No 1151/2012 in the case of agricultural products and foodstuffs;

(b) the requirements of Articles 93, 100 and 101 of Regulation No 1308/2013 in the case of vine and wine products;

(c) the requirements of Articles 2, 17 and 18 of Regulation No 251/2014 in the case of aromatised wine products.

(6) The examination of the Hungarian Intellectual Property Office shall not ascertain whether a link exists

(a) between an agricultural product or a foodstuff and the geographical name, as laid down in Article 5 (1) and (2) of Regulation 1151/2012;

(b) between a vine or wine product and the geographical name, as laid down in Article 93 (1) (a) and (b) of Regulation 1308/2013,

(c) between an aromatised wine product and the geographical name, as laid down in Article 2 (3) of Regulation No 251/2014.

(7) The Hungarian Intellectual Property Office shall issue a statement to the minister within two months from the receipt of the application on whether it, considering the requirements examined under paragraph (5), agrees with the forwarding of the application to the European Commission, as laid down in paragraph (9).

(8) Upon the statement of the Hungarian Intellectual Property Office under paragraph (7) and the detailed examination of the application as provided for by a law, the minister shall publish the application in the official gazette of the ministry he is in charge of. Objections may be filed against the application within two months from the date of publication, as laid down in Article 49(3) of Regulation 1151/2012, Article 96(3) and (4) of Regulation 1308/2013 and Article 13(3) and (4) of Regulation 251/2014. The Minister shall adjudicate the objection in its decision under paragraph (9), in agreement with the Hungarian Intellectual Property Office if industrial property issues are involved.

(9) The minister shall decide within nine months from the filing of the application, in conformity with the statement of the Hungarian Intellectual Property Office and following its detailed examination as laid down by the law, whether the application complies with the requirements laid down by this Act and by other laws. The minister shall publish the decision together with the product specification in the official gazette of the ministry he is in charge of. In the case of a final and binding decision in favour of the applicant, the minister shall forward the details and documents referred to in Article 8(2) of Regulation 1151/2012 or in Article 13(5)(b) of Regulation 251/2014 to the European Commission.

(10) The favourable decision under paragraph (9) shall confer transitional protection in accordance with the first subparagraph of Article 9 of Regulation 1151/2012 and Article 13(7) of Regulation 251/2014 with effect from the date on which the application is filed with the European Commission. The minister shall notify the applicant of the date of the establishment of transitional protection. An applicant whose geographical indication has been granted transitional protection may also take action against infringement; however, the proceedings shall be suspended until the decision of the European Commission on the application has become final and binding.

(11) The provisions of paragraphs (1) to (10) shall apply accordingly

(a) to applications for an amendment of the product specification filed under Article 53 of Regulation 1151/2012 and to requests for cancellation filed under Article 54 in the case of agricultural products and foodstuff;

(b) to applications for an amendment of the product specification filed under Article 105 of Regulation 1308/2013 and to requests for cancellation filed under Article 106 in the case of vine and wine products;

(c) to applications for an amendment of the product specification filed under Article 24 of Regulation 251/2014 and to requests for cancellation filed under Article 25 in the case of aromatised wine products.

(12) The objections under the second subparagraph of Article 51(1) of Regulation 1151/2012, the second subparagraph of Article 98 of Regulation 1308/2013 and the second subparagraph of Article 15 of Regulation 251/2014 shall be filed with the minister within four months from the date of publication in the Official Journal of the European Union of the detail and document referred to in Article 50(2)(a) of Regulation 1151/2012, Article 97(3) of Regulation 1308/2013 and Article 14(3) of Regulation 251/2014. The tasks of a Member State relating to objections shall be performed by the minister, in agreement with the Hungarian Intellectual Property Office if industrial property issues are involved.

(13) The provisions of Sections 27 to 28 and Chapter XII shall apply accordingly

(a) if the acts referred to in Article 13(1) of Regulation 1151/2012 were committed, which infringe European Union protection of geographical indications and designations of origin for agricultural products and foodstuffs or transitional protection provided for in paragraph (9);

(b) if the acts referred to in Article 103(2) of Regulation 1308/2013 were committed, which infringe European Union protection of geographical indications and designations of origin for vine and wine products or transitional protection provided for in paragraph (9),

(c) if the acts referred to in Article 20(2) of Regulation 251/2014 were committed which infringe European Union protection of geographical indications and designations of origin or transitional protection provided for in paragraph (9), in the case of aromatised wine products.

### **Section 116/B**

(1) The provisions of Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89 (hereinafter “Regulation 110/2008”) shall apply to the European Union protection of geographical indications of spirit drinks. Pursuant to Regulation 110/2008, the minister shall proceed in matters falling within the material competence of a Member State.

(2) If the applicant has submitted a statement under Section 113/A(1)(e), the Hungarian Intellectual Property Office shall inform the minister thereon in the notification under Section 113/A(1)(d). Failing to submit a statement under Section 113/A(1)(e) the applicant may request at any time to have the proceedings for granting Union protection to the geographical indication conducted after the decision on the registration of the geographical indication of a spirit drink becomes final and binding; the request must be filed with the minister. The minister shall submit the application pursuant to Article 17(1) of Regulation 110/2008 within sixty days from the notification of the Hungarian Intellectual Property Office, or from the filing of the request of the right holder.

(3) In the case of the amendment pursuant to Section 113/A(2) of the product specification relating to a geographical indication of spirit drinks under European Union protection, the provisions of paragraph (2) shall apply accordingly.

(4) If the acts referred to in Article 16 of Regulation 110/2008 were committed, which infringe European Union protection of geographical indications of spirit drinks, the provisions of Sections 27 and 28 and Chapter XII shall apply accordingly.

### **Section 116/C**

(1) In matters not regulated in Sections 116/A and 116/B the provisions of a specific law shall apply. This specific law may provide that the verification of compliance with the product specification may also be conducted by the following bodies:

(a) in the case of agricultural products and foodstuffs, the product certification bodies under Article 37(1) of Regulation 1151/2012;

(b) in the case of spirit drinks, the product certification bodies under Article 22(1) of Regulation 110/2008;

(c) in the case of vine and wine products the authorities or bodies verifying compliance referred to in Article 94(2)(i) of Regulation 1308/2013 and in the case of aromatised wine products, the product certification bodies referred to in Article 23 of Regulation 251/2014.

(2) The specific law referred to in paragraph (1)

(a) may provide conditions for the production and placement on the market of agricultural products and foodstuffs, spirit drinks, vine and wine products and aromatised wine products which are granted protection of geographical indication, and

(b) may prohibit the use of a geographical indication.

(3) If the producer does not fulfil the condition laid down in paragraph (2)(a) or does not comply with the prohibition under paragraph (2)(b) and continues to use the geographical indication for a product which is not in compliance with the product specification, the producer shall pay a fine of an amount determined by a specific law.

(4) The minister shall keep a register of the geographical indications of domestic products under protection and publish the register on the website of that ministry.

(5) The register under paragraph (4) shall contain

(a) the geographical indication under protection,

(b) the date of the establishment of transitional protection as defined in Section 116/A(10),

(c) the date of publication of the summary sheet, uniform document or product specification of the geographical indication under protection,

(d) the date of registration of the name in the European Union register, and

(e) in the cases of points (c) and (d), reference to the Official Journal of the European Union.

(6) In respect of the data referred to in paragraph (5)(b), the register under paragraph (4) shall qualify as a public register.

## **Chapter XVII/B**

### ***RULES ON THE INTERNATIONAL REGISTRATION OF APPELLATIONS OF ORIGIN***

#### ***General provisions***

### **Section 116/D**

(1) For the purposes of this Act,

(a) *application for the international registration of an appellation of origin* (hereinafter “international application”) means an application filed under the Lisbon Agreement of October

31, 1958 for the Protection of Appellations of Origin and their International Registration (for the purposes of this Part, hereinafter “Agreement”);

(b) *International Bureau* means the International Bureau of the World Intellectual Property Organization;

(c) *international register* means the register maintained by the International Bureau of appellations of origin filed under the Agreement;

(d) *Office of the country of origin* means the Office of the country of origin having territorial competence as defined in Article 2(2) of the Agreement.

(2) If this Act refers to the application of the Agreement, it shall be construed as also meaning the application of the Regulations under the Agreement.

(3) Unless otherwise provided in the Agreement, the provisions of this Act shall apply accordingly to international applications with the exceptions laid down in this Chapter.

(4) [*repealed*]

### ***Applications filed through the intermediary of the Hungarian Intellectual Property Office***

#### **Section 116/E**

(1) The holder of an appellation of origin registered by the Hungarian Intellectual Property Office [Section 107(3)] may file an international application with the International Bureau through the Hungarian Intellectual Property Office as Office of the country of origin.

(2) The international application shall be filed with the Hungarian Intellectual Property Office as Office of the country of origin in compliance with the formal requirements, in the manner and in the language prescribed by the Agreement.

(3) If the international application is filed before the registration of the appellation of origin referred to in paragraph (1), the date of registration of the appellation of origin shall be considered the date of filing.

#### **Section 116/F**

(1) Prior to forwarding the international application, the Hungarian Intellectual Property Office shall examine

(a) whether a request to forward the application has been filed, whether it contains the data specified in Section 38(2b), and whether the application contains the indication of the country of origin, the name and address or registered seat of the applicant, the appellation of origin, the list of products and the geographical area belonging to the appellation of origin;

(b) whether the data of the application are in compliance with the data of the appellation of origin referred to in Section 116/E(1) as appearing in the register;

(c) whether the application has been filed in the language and in the manner prescribed by the Agreement;

(d) whether the application is signed by the applicant or by his representative.

(2) Where the request to forward the application or the application does not comply with the requirements of paragraph (1), the Hungarian Intellectual Property Office shall invite the applicant to rectify the irregularities. If, even after rectification, the request to forward the application still fails to comply with the said invitation, the Hungarian Intellectual Property Office shall reject the request to forward the international application. If the request to forward the application cannot be rejected but, even after rectification, it still does not satisfy the requirements specified in paragraph (1), the international application shall be forwarded to the International Bureau in the form as filed by the applicant.

### **Section 116/G**

(1) The forwarding of the international application shall be subject to a forwarding fee determined by a specific law to be paid to the Hungarian Intellectual Property Office, and the international application shall be subject to an international fee determined by the Agreement to be paid to the International Bureau.

(2) The forwarding fee referred to in paragraph (1) shall be due on the date of receipt of the international application. If the fee is not paid within one month following the due date, the request to forward the international application shall be considered withdrawn.

(3) The international fee referred to in paragraph (1) shall be paid directly to the International Bureau, within the time limit and in the manner prescribed by the Agreement.

(4) In the case of international applications filed through the intermediary of the Hungarian Intellectual Property Office, the date and number of the international registration shall be recorded in the register.

### **Section 116/H**

The international protection of an appellation of origin shall terminate if the protection of the underlying appellation of origin has terminated.

#### ***International appellations of origin registered by the International Bureau***

### **Section 116/I**

(1) An international appellation of origin registered by the International Bureau shall have the same effect from the date specified in Rule 7 (1) of the Regulations under the Agreement as an application for the registration of an appellation of origin duly filed with the Hungarian Intellectual Property Office.

(2) If the Hungarian Intellectual Property Office does not refuse, under Article 5(3) of the Agreement, protection of the appellation of origin extended to Hungary or withdraws the refusal, the international registration shall result, from the date defined in paragraph (1), in protection to the same effect as a registration by the Hungarian Intellectual Property Office.

### **Section 116/J**

(1) Following the notification of the international registration, the Hungarian Intellectual Property Office shall publish official information on the international application in its official gazette (communication of data). The communication of data shall contain the following data:

- (a) the name of the appellation of origin;
- (b) the number of the international registration;
- (c) the date of the international registration;
- (d) the date of publication in the Gazette of the International Bureau and the number of the issue of the Gazette containing the publication.

(2) If the Hungarian Intellectual Property Office does not refuse, under Article 5(3) of the Agreement, protection of the appellation of origin extended to Hungary or withdraws the refusal, it shall publish official information thereon in its official gazette indicating the data referred to in paragraph (1).

## **Section 116/K**

(1) After the communication of data, observation may be filed with the Hungarian Intellectual Property Office to the effect that the appellation of origin constituting the subject matter of the application or the application itself does not comply with any of the requirements of registrability laid down by this Act.

(2) With respect to the international application registered by the International Bureau, the Hungarian Intellectual Property Office shall draw up a search report under Section 60 and shall carry out a substantive examination under Section 113(5).

(3) If the international application does not meet the requirements examined under Section 113(5), the International Bureau shall be notified in the manner and within the time limit laid down by the Agreement (provisional refusal).

(4) If the application is to be refused [Section 61(4)] or is to be considered withdrawn [Section 61(5)], the Hungarian Intellectual Property Office shall notify the International Bureau that the protection of the appellation of origin extending to Hungary is refused (final refusal).

(5) If the Hungarian Intellectual Property Office does not issue any notice of provisional refusal under paragraph (3), the first day after the expiry of the time limit prescribed for provisional refusal shall be considered as the date of registration.

(6) If the Hungarian Intellectual Property Office finds before the expiry of the time limit prescribed for provisional refusal that there is no ground to issue a provisional refusal, it shall notify the International Bureau of the recognition of the protection. The date of the notification on the recognition of the protection shall be considered as the date of registration.

(7) If the Hungarian Intellectual Property Office withdraws the provisional refusal in whole or in part after the substantive examination, it shall, after the decision on withdrawal has become final and binding, notify the International Bureau of the recognition of the protection. The date of the decision on the withdrawal shall be considered as the date of registration.

## **PART NINE**

### ***FINAL PROVISIONS***

#### **Chapter XVIII**

#### ***ENTRY INTO FORCE; TRANSITIONAL AND AMENDED PROVISIONS***

##### ***Rules on the entry into force of the Act and laying down transitional provisions***

### **Section 117**

(1) This Act shall enter into force on 1 July 1997; its provisions shall apply, with the exceptions set out in paragraph (2), only to proceedings commenced after its entry into force.

(2) The provisions of Section 42 shall apply accordingly to pending matters as well.

(3) Matters of the scope of trade mark protection, concept of the use of a trade mark and trade mark infringement, related to a trade mark used before the entry into force of the Act, shall be governed by the previously applicable provisions.

(4) The time limits prescribed by this Act for legal consequences attached to acquiescence and failing to use the trade mark shall begin on the day of entry into force at the earliest. Pursuant to the previously applicable provisions, trade mark protection may be revoked even if the five years during which the trade mark has not been used in the country expires after the entry into force of this Act.

(5) Sections 76/P(5) to (5e) of this Act provided for by Act CXLVIII of 2010 on the Necessary Amendments Relating to Act XLII of 2010 on the Listing of the Ministries of the Republic of Hungary and on the Amendment of Certain Industrial Property Acts shall also be applicable to cases already pending on 1 January 2011.

### **Section 118**

(1) By way of derogation from Section 103(3), certain geographical names, traditionally used for foodstuffs, shall be considered as appellations of origin even if the live animals, meat and milk used as raw materials for the production of the foodstuffs concerned come from a geographical area larger than or different from the processing area, provided that

- (a) the breeding area may be determined,
- (b) special conditions for the production of the raw materials exist, and
- (c) there are inspection arrangements to ensure that those conditions are adhered to.

(2) Protection of geographical indications of traditional foodstuffs under paragraph (1) may be claimed within two years from the entry into force of this Act.

(3) By virtue of this Act, protection shall also be granted to appellations of origin which were recorded, before the entry into force of this Act, in the separate national register kept under the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration. These appellations of origin shall be recorded in the register of geographical indications and be published in the official gazette of the Hungarian Intellectual Property Office.

### **Section 119**

(1) In respect of

(a) the rights conferred by trade mark protection, the concept of the use of a trade mark and, with the exception of the issue of exhaustion of rights, trade mark infringement, in case of the use of a trade mark commenced before 1 May 2004, and to the extent of the use on 1 May 2004,

(b) the exhaustion of rights conferred by trade mark protection, in case of the use of a trade mark realized before 1 May 2004,

the provisions of this Act in force on 30 April 2004 shall apply.

(2) A European Union trade mark as an earlier trade mark shall only be regarded as a relative ground for refusal if the trade mark application was filed with the Hungarian Intellectual Property Office or the application designating Hungary has been filed with a filing date after 1 May 2004, or the trade mark has been registered with such a filing date.

(3) The trade mark protection effective on 1 May 2004 and the trade mark protection established with a filing date earlier and a registration date later than 1 May 2004, may be renewed pursuant to the provisions of this Act.

(4) The provisions laid down in Section 91(1) effective from 1 January 2008 shall apply in proceedings pending on 1 January 2008.

(5) The provisions laid down in Section 3(2) effective from 1 August 2009 shall apply in proceedings pending on 1 August 2009.

### **Section 120 [repealed]**

### **Section 120/A**

The provisions of this Act as established by Act L of 2017 amending certain Acts in respect of the entry into force of the Act on the Code of General Administrative Procedure and the Act



on the Code of Administrative Court Procedure shall apply to proceedings commenced or repeated after the entry into force of the above mentioned Amending Act.

### **Section 120/B**

(1) The provisions of this Act set forth by Act LXVII of 2018 shall apply, with the derogations and additions set out in paragraphs (2) to (5), in proceedings initiated on 1 January 2019 or thereafter.

(2) The provisions of this Act in force on 31 December 2018 shall apply to the conditions of invalidity or revocation of trade marks registered with a filing date preceding 1 January 2019, with the derogation that the provisions in force as of 1 January 2019 shall apply if a trade mark registered with a filing date preceding the entry into force of these provisions is renewed following the entry into force. Where a trade mark so renewed is declared invalid, trade mark protection shall terminate with retroactive effect to the date of expiry of the previous period of protection. The derogation shall not apply if the conditions for a declaration of invalidity of the trade mark existed pursuant to the provisions of this Act effective on 31 December 2018.

(3) Section 52(6) of this Act, as laid down by Act LXVII of 2018, shall apply to trade mark applications with a filing date of 1 January 2019 or thereafter, as well as to trade marks registered on the basis of these applications.

(4) To the use of a trade mark started prior to 1 January 2019, to the extent of that use up to 1 January 2019, the provisions of this Act in force on 31 December 2018 shall apply in respect of the rights conferred by trade mark protection and the limitations thereof, of the definition of trade mark use, and of trade mark infringement.

(5) Section 65(3) to (5) of this Act, as laid down by Act LXVII of 2018, shall apply to trade marks the protection of which expires after 30 June 2019. To the protection of trade marks that expires earlier, Section 65(3) to (4), as effective on 31 December 2018, shall apply.

## ***Authorisations***

### **Section 121**

(1) The Government shall be authorised to:

(a) *[repealed]*

(b) determine in a decree the detailed rules concerning the procedure for the protection of geographical indications of agricultural products and foodstuffs, spirit drinks, vine and wine products as well as aromatised wine products, concerning the inspection of products and the procedural costs related thereto, concerning the amounts of fines which may be imposed during inspection, and concerning the filing of the product specification in the case of spirit drinks which are granted protection under Article 20 of Regulation 110/2008, vine and wine products which are granted protection under Article 107 of Regulation 1308/2013 and aromatised wine products which are granted protection under Article 26 of Regulation 251/2014, and concerning the relevant conditions for placing the product on the market and for production, as well as concerning the area of prohibition of the use of geographical indications and to designate the inspecting authority or authorities.

(2) The minister responsible for justice shall be authorised to determine in a decree, after seeking the opinion of the President of the Hungarian Intellectual Property Office and in agreement with the minister exercising the rights of supervision over the Hungarian Intellectual Property Office, the detailed formal requirements for trade mark applications and for applications for the protection of geographical indications.

## **Compliance with the law of the European Union**

### **Section 122**

- (1) This Act serves the purpose of compliance with
- (a) Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights; and
  - (b) Directive (EU) 2015/2436 of the European Parliament and of the Council of 16 December 2015 to approximate the laws of the Member States relating to trade marks.
- (2) This Act contains provisions necessary for the implementation of the following legal acts of the European Union
- (a) Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark;
  - (b) Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs;
  - (c) Commission delegated Regulation (EU) No 664/2014 of 18 December 2013 supplementing Regulation (EU) No 1151/2012 of the European Parliament and of the Council with regard to the establishment of the Union symbols for protected designations of origin, protected geographical indications and traditional specialities guaranteed and with regard to certain rules on sourcing, certain procedural rules and certain additional transitional rules;
  - (d) Chapter III of Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89;
  - (e) Section 2 of Chapter I of Title II of Part II of Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007, for the European Union protection of geographical indications of vine and wine products;
  - (f) Chapter III of Regulation (EU) No 251/2014 of the European Parliament and of the Council of 26 February 2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products and repealing Council Regulation (EEC) No 1601/91, for the protection of geographical indications of aromatised wine products.