

**ROMANIA**

**Trademark Regulations**

Regulations for Implementing the Law no.84/1998 concerning the Trademarks  
and Geographical Indications

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## **CHAPTER I General Provisions**

### **Rule 1 Definitions**

(1) Within the meaning of the present regulations the terms mean:

(a) law - Law no. 84/1998 concerning the trademarks and geographical indications;

(b) regulations - The Regulations for Implementing the Law no. 84/1998;

(c) O.S.I.M. - the State Office for Inventions and Trademarks;

(d) BOPI - the Official Bulletin for Industrial Property;

(e) National Register of Trademarks - a collection of data administered by O.S.I.M., containing all recording related to the trademarks represented both on paper and on electronic support;

(f) OMPI - World Intellectual Property Organization;

(g) Nice Classification - classification instituted by the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, signed at Nice on June 15, 1957, as it was revised and modified and which Romania adopted through the Law no. 3/1998 for Romania acceding to the agreements instituting an international classification in the field of the industrial property;

(h) Vienna Classification - classification instituted by the Agreement from Vienna concerning the International Classification of the Figurative Elements of the Marks, signed at Vienna on June 12 1973, modified on October 1, 1985 and which Romania adopted through the Law no. 3/1998 for Romania acceding to the agreements instituting an international classification in the field of the industrial property.

(2) The terms and expressions defined in Art. 3 from the Law have the same meaning in the present regulations.

### **Rule 2 Application Area of the Law**

(1) The trademarks are protected in Romania according to the legal provisions and with the observance of the conventions, treaties and agreements to which Romania is a party.

(2) The law applies to all individual trademarks, collective trademarks or certification marks consisting of visible signs which refer to goods and/or services.

(3) The geographical indications of the goods are protected in Romania in compliance with the Law and the international conventions to which Romania is a party.

### **Rule 3 Official Language**

The applications for the registration of the trademarks, any other

applications related to the trademarks submitted for registration, or registered, as well as the entire correspondence referring thereto shall be drawn up in Romanian and shall be filed with O.S.I.M.

#### **Rule 4 Representation by the Authorized Representative**

(1) The applicant or holder of a trademark may be represented in the proceedings before O.S.I.M. by an authorized representative residing or having the registered office in Romania.

(2) The applicant or the holder of a trademark who does not reside or have the registered office within the territory of Romania, shall be represented in the proceedings before O.S.I.M. by an authorized representative.

(3) The authorized representative is appointed by a written communication addressed to O.S.I.M., called power of attorney and which contains the name and signature, as the case may be, of the trademark applicant or holder.

(4) The power of attorney may refer to one or more applications for the registration or to more registered trademarks or to all the applications for registration or to all registered trademarks, present or future, of the person who gave the mandate.

(5) When a general power of attorney was given according to para (4), there will be enough to communicate to O.S.I.M. a copy thereof, provided that the authorized representative indicates in each subsequent application the power of attorney according to which he acts.

(6) Any document requested through the authorized representative with regard to renunciation to an application for the registration of a trademark, to withdrawal of a trademark, as well as any request related to a transfer of rights in connection with a trademark will be performed only according to a special mandate which shall expressly mention the document of renunciation, withdrawal or transmission.

(7) When the applicant for the registration of a trademark is represented by the authorized representative, the representative can sign the application on the basis of the power of attorney given by the applicant. If, within three months from submitting the application, the power of attorney is not presented to O.S.I.M., the application shall take no effect and shall be rejected.

(8) When a correspondence related to the national regular filing of a trademark or to the registered trademark is sent to O.S.I.M. by a person who has introduced himself/herself as the authorized representative, and till that moment O.S.I.M. is not in the possession of a power of attorney for representation, the Office shall request that the power of attorney

be transmitted within three months. If the power of attorney is not communicated within the period granted, the correspondence will take no effect, being deemed not to have been received by O.S.I.M., and the proceeding shall be continued with the applicant or with the holder of the trademark, as the case may be.

(9) The applicant or holder can only have one authorized representative. If more persons are indicated in the power of attorney for the representation, only the one indicated first is deemed to be an authorized representative.

(10) When there has been ascertained that an authorized representative was appointed for an application for registration of a trademark or for a registered trademark, O.S.I.M. records in the National Register of the Trademarks the mention that the applicant or the holder has an authorized representative, as well as the name or denomination or registered office of the authorized representative.

(11) Any recording related to the appointment of an authorized representative according to para (10) is removed, when removal is requested by a written communication signed by the applicant, holder or authorized representative.

(12) Recordal of the authorized representative is removed ex officio by O.S.I.M. when a new authorized representative is appointed or when the change of holder was recorded but the new holder did not appoint an authorized representative.

(13) Removing the recordal of the authorized representative takes effect from the date when O.S.I.M. has received the communication requesting the removal according to para (11), or, as the case may be, from the date when O.S.I.M. removed the recordal of the authorized representative ex officio, according to para (12).

#### **Rule 5 Plurality of Applicants or Holders**

When plural persons are the applicants or holders of a trademark, they shall designate one of the applicants or holders for the correspondence with O.S.I.M.; otherwise, O.S.I.M. shall have correspondence with the first person indicated in the application for registration of the trademark.

#### **Rule 6 Time Limits**

(1) The period expressed in days shall comprise calendar days and shall not include either the starting day or the day when the time limit expired. The period expressed in months shall expire on the day of the month corresponding to the starting day.

(2) The period which, starting to run on the 29-th, 30-th or 31-st day of the month will expire in a month which has no such day, shall be deemed

to expire on the first day of the subsequent month. The period expiring on a statutory holiday or a day when the Office is not open to the public will be extended till the end of the subsequent working day.

(3) The periods start to run from the communication of the documents for the procedure, understanding thereby the date when the document issued by O.S.I.M. was received by the applicant, holder or the authorized representative, as the case may be. This date is confirmed by the stamp of the receiving post office.

(4) The documents of the procedure sent by mail to O.S.I.M. are deemed to be fulfilled in due time, if they were submitted to the post office prior to the expiration of the period.

(5) Failure to fulfil the documents of the procedure within the time limits notified by O.S.I.M. do not entail the sanctions provided for by the law and the present regulations, if the applicant can prove that he was hindered by an event beyond his will and if he fulfils the procedure in a two-month period after cessation of the cause.

#### **Rule 7 Signature**

(1) Where a document was not signed by the applicant, holder or authorized representative, the date of submitting the document with O.S.I.M. is recognized, provided that the document is subsequently signed within maximum one month.

(2) The signature of a document sent by facsimile is valid provided that the original of the document is transmitted to O.S.I.M. within maximum two months from the date of transmitting thereof by facsimile.

## **CHAPTER II Application for the Registration of a Trademark**

### **Rule 8 Filing the Application for the Registration of a Trademark with O.S.I.M.**

(1) The registration of a trademark is requested with O.S.I.M. by natural persons or legal entities, directly or through the authorized representative.

(2) Filing an application for the registration of a trademark with O.S.I.M. can be performed:

(a) directly and with acknowledgement of receipt at the General Registry of O.S.I.M.;

(b) by mail, sent by registered letter with acknowledgement of receipt.

(3) The General Registry writes down on the application the year, month and day of receiving thereof and registers the applications in the chronological order in which they have been received. The applications received with O.S.I.M. after the legal working hours, or on the weekly repose days, or the days of statutory holidays are registered on the subsequent working day.

### **Rule 9 Presentation and Content of the Application**

(1) The application for registration of a trademark is drawn up in only one copy on a standardized form.

(2) The application shall contain the following elements:

(a) the express request for the registration of a trademark;

(b) name and first name or denomination and address or registered office of the applicant;

(c) when the applicant is a foreign person, the indication of the state of which the applicant is a national, the indication of the state where the applicant has his residence or, as the case may be, the indication of the state wherein the applicant has an establishment within the meaning of Art. 3 from the Paris Convention;

(d) when the applicant is a legal entity, the form of constituting the same, as well as the denomination of the state whose legislation governs the organic statute thereof;

(e) when the applicant has an authorized representative, the name or denomination and the address or the registered office thereof;

(f) where the priority of an earlier application is claimed according to Art. 11 para 2 from the Law, a declaration of claiming the priority right, with the indication of the state and the date of the earlier filing;

(g) where the priority resulting from exhibiting the goods or services in an exhibition is claimed according to Art. 12 para 1 from the Law and

the applicant wants to benefit from a temporary protection, a declaration of claiming the exhibition priority, with the indication of the place and denomination of the exhibition, as well as of the date of introducing the goods or services in the exhibition;

(h) when the applicant claims a colour or more colours as distinctive elements of the trademark, a declaration to this effect, as well as the indication of the claimed colour or colours and for each colour, indication of the main parts of the trademark which have this colour;

(i) when the trademark has a special graphics or it is figurative, the description thereof;

(j) when the trademark is tridimensional, a declaration to this effect;

(k) when the trademark consists in whole or in part of other than Latin characters, a transliteration of these characters;

(l) when the trademark consists in whole or in part of words in other language than Romanian, a translation thereof;

(m) indicating the denomination of the goods or services for which the registration of the trademark is requested, the groups according to the Nice Classification preceded by the number of the class to which the denomination belongs;

(n) signature of the applicant or of his authorized representative, as the case may be.

(3) The application shall be attended by the graphical reproduction or the photo of the trademark in sizes of maximum 8 mm x 8 mm, as it follows:

(a) five reproductions of the trademark in black and white, when the applicant does not claim a colour as a distinctive element of the trademark;

(b) five reproductions in black and white and five reproductions of the colour trademarks, when the applicant claims at least one colour as a distinctive element of the trademark.

(4) When the application contains a declaration indicating that the trademark is tridimensional, the applicant shall append the graphical or photographic reproduction of the trademark in two dimensions.

(5) The reproduction supplied according to para (3) may consist, upon the applicant's option, in only one view or more different views of the trademark.

(6) In case of reproducing a tridimensional trademark which does not sufficiently render the details of the trademark, O.S.I.M. may ask that a number of up to six different views of the trademark be supplied and/or a verbal description of this trademark.

(7) The proof of payment of the filing and examination fee of the application for the registration of a trademark shall be presented within three months from submitting the application with O.S.I.M.. The payment can be proved

with a copy of the document of payment.

(8) The documents of payment shall contain the data necessary for the identification of the submitted application.

(9) As the case may be, the application for the registration of the trademark can be completed with the following documents:

(a) when the applicant wants to benefit, according to Art. 11 para 2 from the Law, from the priority of an earlier application, a document certifying the date of constituting the earlier filing of the trademark, issued by the national administration, attended by the translation into Romanian in compliance with the original;

(b) when the applicant wants to benefit from a temporary protection, as a result of exhibiting the trademark in an exhibition, a document attesting that the trademarks are applied to goods and services presented in the exhibition, said document mentioning the date of introducing them in an exhibition, issued by the organizer of the exhibition and attended by the translation thereof into Romanian;

(c) the power of attorney under private signature for the representation of the applicant before O.S.I.M., drawn up in Romanian or attended by the translation thereof in Romanian;

(d) the regulations for the use of the collective trademarks;

(e) the regulations for the use of the certification marks;

(f) the document proving the legal exercise of the certification activity or, as the case may be, the proof of registration of the certification mark in the country of origin.

#### **Rule 10 List of Goods and Services**

(1) The list of goods and services for which the protection of the trademark is claimed shall be established in precise terms so that the denomination of goods and services permit the classification of goods and services only in one class of the Nice Classification.

(2) The goods and services cannot be considered alike for the reason that they are classified in the same class and nor can they be considered alike for the reason they are classified in different classes of the Nice Classification.

#### **Rule 11 Division of the Application for the Registration of the Trademark**

(1) The applicant may request the division of the application for the registration of the trademark, declaring that, in the case of goods or services enumerated in the divisional application, the application for the registration of the trademark shall be treated as a separate application.

(2) The divisional application shall contain the elements provided for in Art. 10 para 1 from the Law and shall be subject to payment of the legal fee.

(3) The declaration concerning the division of an application for the registration of a trademark is irrevocable.

## **CHAPTER III Procedure for the Registration of Trademarks and Renewal of the Registration thereof**

### **Rule 12 National Regular Filing**

(1) The date of the national regular filing is the date of submitting with O.S.I.M. the application for the registration of the trademark, drawn up in Romanian and containing:

- (a) express request for the registration of a trademark;
- (b) indications concerning the applicant's identity;
- (c) a list comprising the goods and/or services for which the registration of the trademark is requested;
- (d) a sufficiently clear reproduction of the trademark whose registration is applied for.

(2) O.S.I.M. examines whether the application fulfils the conditions provided for in para (1), within one month from the date the application for the registration of the trademark has been received. If the answer is affirmative, O.S.I.M. decides to set down the filing date and to record the data contained in the application into the National Register of the Trademarks.

(3) Where some of the elements provided for in para (1) are missing from the application for the registration of the trademark, O.S.I.M. shall notify the applicant about the ascertained shortcomings. If the applicant remedies the shortcomings within three months from the date of filing the application for the registration of the trademark with O.S.I.M., the date of filing shall be the date when all these elements have been communicated to O.S.I.M..

(4) Where the applicant fails to complete the application within three months from the date, which has been notified, O.S.I.M. shall decide to reject the application for the registration of the trademark and shall reimburse the application filing and examination fees.

(5) The decision for setting down the date of the national regular filing or rejecting the application for the registration of the trademark is communicated to the applicants within five days from the issuance thereof.

### **Rule 13 Priority of an Earlier Application and the Exhibition Priority**

(1) If the priority of one or some earlier applications is claimed in applying Art. 11 para 2 from the Law, the applicant has three months, starting with the national regular filing date to submit to O.S.I.M. the document issued by the national administration, from which it shall result the file number set down to the earlier application or the number of the earlier registration, as well as the translation mentioned in Rule 9 para

(9) letter (a).

(2) When an exhibition priority within the meaning of Art. 12 from the Law is claimed, the applicant is granted a three-month period starting with the date of the application, regularly submitted, for the registration of the trademark in order to communicate to O.S.I.M. the documents provided for in Rule 9 para (9) letter (b).

#### **Rule 14 Examination of the Application**

(1) If, after constituting the national regular filing, it has been ascertained that the application does not meet the requirements of Rule 9 para (2) letters (c) to (m), O.S.I.M. may grant the applicant a period of maximum three months for remedying the shortcomings, or, as the case may be, for paying the fee for registration and examination of the application for the registration of the trademark.

(2) When the shortcomings ascertained in the application for the registration of the trademark are not remedied or the fee for registration and examination was not paid within the period provided for in para (1), O.S.I.M. shall decide, as the case may be, the rejection or the non-recognition of the claimed priority.

(3) If one of the irregularities mentioned in paras (1) and (2) refer only to goods and services, O.S.I.M. will reject the application and will refuse the recognition of the priority right only for these goods and services.

(4) O.S.I.M. examines the list of goods and services with regard to the conformity with the Nice Classification, and where the trademark also contains a figurative element, examines the conformity with the Vienna Classification, too.

(5) The application for the registration of a trademark for which the national regular filing was constituted and which fulfils the provisions of Rule 9 is subjected to the substantive examination ex officio, with regard to the absolute and relative reasons for refusal, provided for in Arts. 5 and 6 from the Law.

#### **Rule 15 Conflict with Prior Rights**

(1) A sign cannot be registered as a trademark or element of a trademark if it affects a previously protected right.

(2) Within the meaning of the Law and of the present regulations the following is considered a previously protected right:

(a) an identical or similar trademark registered in Romania for identical or similar goods and services, if the date of registration of this trademark or the priority date, within the meaning of Art. 11 para 2 and Art. 12

para 1 from the Law is prior to the date of the national regular filing of the trademark which the registration is applied for;

(b) an identical or similar trademark considered to be a matter of common knowledge in Romania according to Art. 3 letter (c) from the Law;

(c) a right of a personality with regard to his image or patronymic name;

(d) a protected geographical indication;

(e) a protected industrial design or model;

(f) copyright;

(g) any industrial property right acquired prior to the date of the national regular filing of a trademark.

(3) In applying the provisions of para (2) letters (a) and (b), the notion of similitude shall be interpreted in connection with the risk of causing confusion or association that can be created for the public.

(4) A trademark is considered in conflict with another trademark which is a matter of common knowledge, when this trademark or one of the main elements thereof represents:

(a) a reproduction, an imitation, a translation or a transliteration which can create confusion with a trademark that is a matter of common knowledge and when the trademark or one of the main elements thereof makes the object of an application for registration or of a registration for identical or similar goods or services to which the trademark that is a matter of common knowledge applies;

(b) a reproduction, an imitation, a translation or transliteration which can cause confusion with the trademark that is a matter of common knowledge and when the trademark or one of the main elements thereof makes the object of an application for the registration or of a registration for goods or services different from those to which the trademark that is a matter of common knowledge applies, in case at least one of the conditions from below are fulfilled:

- the use of the trademark indicates a connection between the holder of the trademark that is a matter of common knowledge and the goods or services for which the trademark is the subject-matter of an application for registration or is registered, use that can cause prejudices to the holder of the trademark that is a matter of common knowledge;

- the use of the trademark can affect the distinctive character of the trademark that is a matter of common knowledge;

- by the use of the trademark one may unfairly benefit from the distinctive character of the trademark that is a matter of common knowledge.

#### **Rule 16 Determining and Proving the Matter of Common Knowledge**

(1) To estimate whether a trademark is a matter of common knowledge, it

is sufficient that this trademark be well known:

- (a) in the territory of Romania; and
- (b) for the segment of the public from Romania to which there are destined the goods and services represented by the trademark.

(2) Within the meaning of the provisions of para (1) letter (b), the segment of the public will be established according to the following elements:

(a) the category of potential consumers aimed at for goods and services to which the trademark refer; identification of the category of potential consumers is made on groups of consumers of certain goods or services in connection with which the trademark is used and not on groups of consumers of a general series of goods and services;

(b) the distribution circuits of the goods or services to which the trademark refer; depending on the nature of goods and services there must be taken into account various means of distributing thereof, respectively, of marketing by means of the shops, trade agents, directly from the company or to the client's residence.

(3) In applying the provisions of Art. 20 from the Law, the terms from below shall have the following meaning:

(a) use - selling or offering for sale as well as any activities of promoting the products and/or the services to which the trademark refers, including the publication and the representation thereof to fairs or exhibitions;

(b) extent of use - the quantity of goods and/or services to which the trademark applies and which are marketed;

(c) geographical area - knowledge in the territory of Romania of the trademark whose protection is claimed as a matter of common knowledge, and, even outside this territory, when the trademark is used in neighbouring territories, in neighbouring territories wherein Romanian is spoken, in the territories covered by the same mass media or in neighbouring territories wherein there are carried out close trade relations;

(d) degree of knowledge of the trademark that is a matter of common knowledge - the extent in which a trademark covers the Romanian market, as a result of the use for certain goods and/or services.

(4) The person who claims that the trademark is a matter of common knowledge is held to prove, by any evidence, that the trademark is well known in the territory of Romania.

(5) In order to prove that a trademark is a matter of common knowledge in the territory of Romania, there can be presented documents such as those referring to:

(a) marketing or offering for sale the goods or carrying out services under a trademark that is matter of common knowledge;

(b) import or export of goods on which there is applied the trademark

that is a matter of common knowledge;

(c) promoting or advertising the goods and services under the trademark that is a matter of common knowledge in Romania, etc.

#### **Rule 17 Registration of the Trademark**

(1) O.S.I.M. examines the application for the registration of the trademark within six months from the date of payment of the filing and examination fees.

(2) If the application for the registration of the trademark fulfils the conditions for constituting the national regular filing, as well as the other conditions provided for by Rule 9 and if, after the substantive examination, the trademark is not rejected upon registration according to Arts. 5 and 6 from the Law, O.S.I.M. decides the registration of the trademark and records the trademark into the National Register of the Trademarks.

(3) Within two months from O.S.I.M. decision, the trademark is published in BOPI.

(4) When the trademark contains an element lacking a distinctive character and if this element can cause doubts referring to the extent of trademark protection, O.S.I.M. can ask the applicant to declare, within two months from the date of the notification, that he will not invoke an exclusive right upon this element. This declaration shall be published by O.S.I.M. together with the registered trademark.

(5) When the applicant fails to make the declaration from para (4), O.S.I.M. shall decide the rejection in whole or in part of the application, as the case may be.

(6) When, after the examination, it results that there exists a legal ground that hinders the registration of the trademark, O.S.I.M. transmits to the applicant a provisional notice of refusal, inviting him to present his observations concerning this refusal, within three months. The period accorded can be extended with another three-month period, upon the applicant's request, provided the legal fee is paid.

(7) If the applicant's observations are justified, O.S.I.M. shall decide the registration of the trademark, shall register the trademark into the National Register of the Trademarks, within two months from making the decision and shall publish the trademark in BOPI.

(8) When the applicant's observations are not justified, O.S.I.M. shall decide the rejection of the application for the registration of the trademark.

(9) O.S.I.M. decision for the registration of the trademark or for rejection of the application for the registration of the trademark are communicated

to the applicant within maximum five days from making the decision.

(10) When an O.S.I.M. decision of rejection of an application for the registration of a trademark was destroyed by a final and irrevocable judgement, the party concerned communicates the decision to O.S.I.M. with the purpose of publishing it in BOPI.

(11) If, after the publication of a trademark, this is rejected upon registration by a final and irrevocable judgement, this decision is published in BOPI.

### **Rule 18 Publication of the Trademark**

(1) The trademark is published in BOPI, there being mentioned the following elements:

- (a) name or denomination and address or registered office of the applicant;
- (b) name or denomination and address or registered office of the authorized representative;
- (c) reproduction of the trademark and, as the case may be, the mention of "colour", with the indication of claimed colour or colours;
- (d) list of goods and services, on classes, according to Nice Classification;
- (e) filing date and filing number, as well as the trademark number;
- (f) indications concerning the claimed and recognized priority;
- (g) mention that the trademark is collective or of certification, if the case may be;
- (h) mention that the trademark acquired a distinctive character prior to the date of the application for registration of the trademark, as a consequence of the use thereof, if the case may be;
- (i) declaration according to which the applicant renounces any exclusive right on a trademark element, in the case provided for by Rule 17 para (4).

(2) If the publication of a trademark is associated, due to reasons attributable to O.S.I.M., with an error or lack of some of the elements mentioned in para (1), O.S.I.M. proceeds to rectification ex officio or upon request by the applicant. In this case the application presented by the applicant will not be subject to payment of a fee. The rectifications carried out are published in BOPI.

### **Rule 19 Opposition to the Registration of a Trademark**

(1) An opposition can be formulated, if there exists a conflict with a trademark or with more earlier trademarks or trademarks that are a matter of common knowledge or with one or more previously acquired rights, mentioned in Art. 23 of the Law.

(2) The opposition document shall contain:

(a) indications concerning the application for the registration of the trademark, against which the opposition is formulated, respectively the number of the application for the registration of the trademark, name and denomination of the applicant of the application for the registration of the trademark, mention of the goods and services listed in the application;

(b) indications concerning the earlier trademark, the trademark that is a matter of common knowledge or the previously obtained right on which the opposition is based;

(c) a representation and, as the case may be, a description of the earlier trademark, of the trademark that is a matter of common knowledge or of another earlier right;

(d) goods and services for which the earlier trademark was registered or there was requested the registration or for which the earlier trademark is a matter of common knowledge, according to Art. 6 letters (d) and (e) from the Law;

(e) mentions concerning the quality and the interest of the person who formulates the opposition;

(f) a detailed presentation of the reasons invoked in sustaining the opposition;

(g) name or denomination and address or registered office of the authorized representative, if the case may be.

(3) If the opposition is formulated for the reason of the existence of an earlier trademark, the opposition document shall be attended by evidence of the trademark registration, such as the registration certificate or, as the case may be, documents proving that the trademarks are matters of common knowledge; if the opposition is justified on a trademark that is a matter of common knowledge, the opposition document shall be attended by evidence of common knowledge in the territory of Romania; if the opposition is based on the existence of any previously obtained right, the opposition document shall be attended by documents proving that this right was obtained and the extension of protection of this right.

(4) O.S.I.M. communicates the opposition to the applicant and invites him to submit his observations within the time limit stipulated by Art. 24 para 2 from the Law.

(5) Any element supplied by the person who formulated the opposition is communicated to the applicant, who has the possibility to answer within the period granted by O.S.I.M..

(6) If the applicant presents no observation O.S.I.M. may decide upon the opposition, based only on the existing evidence.

(7) If O.S.I.M. ascertains that the opposition document does not fulfil certain requirements provided for in para (2), invites the person who formulated the opposition to remedy all the irregularities found out, within two months, and to present all details and justifying documents for sustaining the opposition. If the irregularities are not remedied within the given time, O.S.I.M. shall make a decision on the basis of the documents existing in the file.

(8) Upon the applicant's request, the holder of the opposed trademark shall present with O.S.I.M. the evidence that:

(a) within a five-year period preceding the publication of the trademark which is opposed, the earlier trademark was the object of an effective use in the territory of Romania for goods and services for which this was registered; or

(b) there are justified grounds for the non-use of the trademark with regard to which the opposition was made.

(9) In the absence of the evidence for the use of the opposed trademark according to para (10), the opposition document shall be rejected.

(10) The evidence of use of the opposed trademark are mainly documents, such as: packages, labels, catalogues, invoices, photographs, advertisements in newspapers, written declarations, etc.

(11) When the opposition is based on an international registration of a trademark which is the object of a notice of provisional refusal issued by O.S.I.M., the examination procedure of the opposition shall be suspended until O.S.I.M. will take a final decision with reference to the issued refusal.

(12) Upon opposition by a trademark holder, an application for the registration of a trademark is rejected when the registration is requested by the authorized representative of the trademark holder in his name and without the consent of the holder, except when the authorized representative justifies the request for the registration of the trademark.

(13) The opposition formulated according to Art. 23 from the Law is solved by an examination board consisting of three specialists designated by the chief of the Trademark Division, one of which is the examiner who has drawn up the examination report of the trademark.

#### **Rule 20 Certificate of Registration of the Trademark**

(1) O.S.I.M. shall issue the registration certificate to the holder, within maximum two months from the date when the decision for the registration of a trademark became final, provided that the fee provided for by the Law be paid. The registration certificate contains mentions regarding the registered trademark which are recorded in the National Register of

the Trademarks.

(2) The holder may request the issuance of a copy of the registration certificate in compliance with the original, subject to payment of the fee provided for by the Law.

#### **Rule 21 Renewal of the Trademark Registration**

(1) A request for renewal shall contain the following elements:

- (a) express request for renewal of the trademark registration;
- (b) if the application is presented by the holder, the name and address thereof;
- (c) name or denomination and address or registered office or the holder, if the case may be;
- (d) date of the regular filing of the application for the registration of the trademark;
- (e) number of registration of the trademark;
- (f) mention that renewal is requested for all goods and services to which the registered trademark refers, or, as the case may be, indicating the classes or goods and services that are to be renewed;
- (g) signature of holder or of the person authorized by holder or the signature of the authorized representative, as the case may be;
- (h) proof of payment of the fee provided for by the Law for the renewal of the registration of the trademark.

(2) If the application for renewal presented within the time limits provided for in Art. 29 para 5 from the Law does not contain one of the elements from para (1), O.S.I.M. notifies the irregularities ascertained to the applicant for the renewal of registration, granting a three-month period for remedying the shortcomings.

(3) Where the application for the renewal of the registration fulfils the legal conditions, O.S.I.M. issues the renewal certificate and communicates it to the trademark holder.

(4) When the application for renewal of the registration is presented by a person expressly authorized by the holder, O.S.I.M. shall also send to the holder a copy of the notification concerning the ascertained shortcomings.

(5) If the notified remedies are not carried out within the period granted, O.S.I.M. removes the trademark from the National Register of the Trademarks. Removal takes effects from the day subsequent to the date of expiration of trademark protection.

## **CHAPTER IV Modifications**

### **Rule 22 Modification of the Application for Registration of the Trademark**

(1) A request for the modification of an application for registration of a trademark shall contain the following elements:

- (a) number put down on the application for the registration of the trademark;
- (b) name or denomination and address or registered office of the applicant;
- (c) name or denomination and address or registered office of the authorized representative, if necessary;
- (d) indicating the element from the application to be modified, as well as the element which shall be present as a result of modifying the application;
- (e) if the modification refers to the trademark representation, a reproduction of the modified trademark according to Rule 9 paras (2) to (5).

(2) The request for the modification of an application for the registration of a trademark shall be taken into account only subject to payment of the fee provided for by the Law.

(3) O.S.I.M. may grant a one-month period for remedying the irregularities concerning the request for modification of the application; where these irregularities are not remedied within the period granted, O.S.I.M. shall reject the request for modification of the application for registration of the trademark.

(4) When the applicant wants the modification of the same element in plural applications, it is sufficient to submit only one request for modification; the modification is subject to payment of the fee provided for by the Law for each of the requests for modification.

(5) The request concerning the change of the name or address of the authorized representative designated by the applicant is not subject to payment of any fee.

### **Rule 23 Modification of the Registration**

(1) A request for modification of the registration of a trademark shall contain the following elements:

- (a) registration number of the trademark;
- (b) name or denomination and address or registered office of the trademark holder;
- (c) name or denomination and address or registered office of the authorized representative, if necessary;
- (d) indicating the element in the representation of the trademark whose modification is requested, within the meaning of Art. 33 para 1 from the

Law;

(e) a representation of a modified trademark in compliance with Rule 9 paras (2) to (5).

(2) The request for the modification of the registration of a trademark is deemed to have been submitted only after the fee provided for by the Law was paid by the trademark holder.

(3) O.S.I.M. may grant a one-month period for remedying the irregularities concerning the request for the modification of the registration of the trademark; where these irregularities are not remedied within the granted period, O.S.I.M. shall reject the request for modification.

(4) When the modification refers to the same element contained in more registered trademarks belonging to the same holder, it is sufficient to submit only one request for modification. The fee provided for by the law shall be paid for each registration of the trademark which has to be modified.

(5) If the registration of the trademark or the published registration is associated with an error attributable to O.S.I.M., the correction shall be made ex officio or upon request by the holder. The request for correction submitted by the holder shall not be subject to the payment of any fee. The corrections are published in BOPI.

**Rule 24 Modification of the Name/Denomination or Address/Registered Office of the Trademark Holder or of the Authorized Representative**

(1) A request for the modification of the name/denomination or address/registered office of the holder of a registered trademark shall contain the following elements:

(a) registration number of the trademark;

(b) name or denomination and address or registered office of the holder, as they are recorded in the National Register of the Trademarks;

(c) name or denomination and address or registered office of the holder, modified upon his request;

(d) if the holder has designated an authorized representative, the name or denomination and address or registered office of the authorized representative.

(2) If the change of the name/denomination or address/registered office of the holder did not take place as a result of the assignment in whole or in part of the rights concerning the registered trademark or in connection with other changes in the legal status of the trademark, said modification shall be recorded in the National Register of the Trademarks, upon request by the applicant, without payment of any fee.

(3) A single request may be submitted for the change of the name/denomination

or address/registered office in two or more registrations of the same holder.

(4) O.S.I.M. may grant a one-month period for remedying the shortcomings of the request for the change of the name/denomination or address/registered office; when these irregularities are not remedied within the granted period, O.S.I.M. shall reject the request for the change.

(5) The dispositions of paras (1) to (4) are also applicable with regard to the change of the name/denomination or address/registered office of the authorized representative designated by the holder.

## **CHAPTER V Transfer of Rights on Trademarks: Assignments, Licenses and other Rights**

### **Rule 25 Application for Recording the Assignment of a Trademark**

(1) The application for recording the assignment of a trademark shall contain the following elements:

(a) name or denomination and address or registered office of the holder;  
(b) name and denomination and address or registered office of the new holder;

(c) if the holder has an authorized representative, name or denomination and address or registered office thereof;

(d) if the new holder has an authorized representative, the name or denomination and address or registered office thereof;

(e) when the new holder is a foreign person, the indication of the state of which this is a national, the indication of the state wherein the new holder has the residence/registered office or wherein the new holder has an establishment within the meaning of Art. 3 from Paris Convention;

(f) when the new holder is a legal entity, the form of organizing the legal entity and indication of the state under the law of which the said legal entity was organized;

(g) list of goods and services to which the assignment of the trademark refers, if the assignment does not refer to all goods and services registered;

(h) documents proving the assignment of the trademark according to Rule 26.

(2) The application is deemed to have been submitted only subject to payment of the legal fee.

### **Rule 26 Change of the Holder**

(1) When the change of the holder results from a contract, the application for recording the assignment of a trademark shall be attended by:

(a) a copy of the assignment contract, certified for compliance; or  
(b) an extract, certified for compliance, from the contract which establishes the change of the holder.

(2) When the change of the holder results from merging, the application for recording the assignment of a trademark shall be attended by the copy, certified for compliance, of the document attesting the merging.

(3) In the situation provided for in para (2), if the change refers only to one or a part of co-holders and not to all co-holders of an application for recording the assignment of a trademark, there shall be appended a document signed by the other co-holders, which shall contain the express

agreement thereof in connection with the new holder.

(4) When the change of holder was performed by the effect of the law or according to a judgement, the application for recording the assignment shall indicate and shall be appended by the document certified according to the original, which should prove said change.

#### **Rule 27 Recording the Assignment**

(1) When the provisions of recording the assignment of a trademark provided for in Rule 25 are not fulfilled, O.S.I.M. grants the applicant a three-month period for remedying the shortcomings. If the shortcomings are not remedied within the granted period, O.S.I.M. shall decide the rejection of the application.

(2) Only one application for recording the assignment of a trademark is sufficient in case of assignment of two or more trademarks, provided that there is only one holder for all these trademarks and the assignment is carried out to only one new holder.

(3) On the date when the application for recording the assignment fulfils the provisions of Rule 25, O.S.I.M. records the assignment in the National Register of the Trademarks and publishes it in BOPI.

#### **Rule 28 Recording the Licenses and Other Rights**

(1) The request for recording a license or for constituting a real right shall contain the following elements:

- (a) name or denomination and address or registered office of holder;
- (b) if the holder has an authorized representative, name or denomination and address or registered office thereof;
- (c) name or denomination and address or registered office of the licensee or of the user of the real right;
- (d) where necessary the indication of the state of which the licensee is a national, indication of the state wherein the licensee has his residence/registered office or an establishment within the meaning of Art. 3 from the Paris Convention;
- (e) registration number of the trademark which is the object of recording the license or the real right;
- (f) list of goods and services represented by the trademark which is the object of recording the license or the real right;
- (g) signature of holder or of his authorized representative.

(2) Where the trademark is the object of a license for a part of goods and services for which the trademark is registered or when the license has territorial limits or is a temporary license, the request for recording the license shall indicate, as the case may be:

- (a) goods and services which the license refers to;
  - (b) part of the territory of Romania for which the license is granted;
  - (c) period for which the license is granted.
- (3) The request is deemed to have been submitted only after paying the legal fee.
- (4) When the conditions provided for in paras (1) and (2) are not fulfilled, O.S.I.M. grants to the applicant of the request for recording the license a three-month period for remedying the shortcomings. Where the shortcomings are not remedied within the period granted, O.S.I.M. shall decide the rejection of the request.
- (5) The license of a trademark is recorded in the National Register of the Trademarks under the mention of "exclusive license" if the holder and the licensee expressly requested this mention.
- (6) The trademark may be the object of measures of enforcement or may be left in pawn or may be the object of another real right.
- (7) Upon request by one of the parties, the real rights, as well as the enforcement measures are written down in the National Register of the Trademarks and are published in BOPI.

**Rule 29 Removal or Modification of Recordal of the Licenses or of Other Real Rights**

- (1) The recordal provided for in Rule 28 para (1) may be removed upon a written request of one of the persons concerned.
- (2) The request for removal of the recordal of the licenses or of real rights shall contain the following elements:
- (a) name or denomination and address or registered office of the person who applied for the removal;
  - (b) registration number of the trademark;
  - (c) explanations concerning the license or other right whose recordal has to be removed.
- (3) The request shall be attended by documents proving the extinction of the registered right or by a declaration showing that the licensee and the trademark holder or, as the case may be, the holder of the real right agree with the removal.
- (4) Where the conditions provided for in paras (2) and (3) are not fulfilled, O.S.I.M. grants a three-month period to the person who requested the removal for remedying the shortcomings. Where the shortcomings are not remedied within the granted period, O.S.I.M. shall decide the rejection of the request.
- (5) The provisions of paras (1) to (4) apply mutatis mutandis to any request for the modification of a recordal provided for in Rule 28 para (1).

## **CHAPTER VI Termination of Rights on the Trademarks**

### **Rule 30 Nullity**

When the registration of a trademark is not renewed upon the expiration of the time limit provided for in Art. 29 para 5 from the Law, O.S.I.M. records in the National Register of the Trademarks the mention that the recordal of this trademark takes no effect from the date of expiration of the last protection period of 10 years.

### **Rule 31 Renunciation**

(1) The declaration of renunciation to a trademark shall contain the following elements:

- (a) registration number of the trademark;
- (b) name or denomination and address or registered office of the holder;
- (c) if an authorized representative was designated, the name or denomination and address or registered office thereof;
- (d) if renunciation to a trademark refers only to some goods and services, the list of goods and services for which renunciation is declared.

(2) If a license was recorded, renunciation shall be written down in the National Register of the Trademarks only after a three-month period from the date when the trademark holder submitted to O.S.I.M. a document showing that the holder informed the licensee about his intention of renunciation to the trademark. If, before the expiration of this time limit, the holder submits to O.S.I.M. evidence concerning the licensee's agreement, the renunciation shall be recorded immediately.

(3) The holder's declaration of renunciation to a trademark which is the object of a real right shall be attended by a document proving the agreement of the user of real right recorded in the National Register of the Trademarks with regard to the renunciation to the trademark.

(4) Where there are not fulfilled all the provisions of paras (1) - (3), O.S.I.M. grants a three-month period for remedying these shortcomings to the person who requested the recording of the renunciation to the trademark. If the shortcomings are not remedied within the granted period, O.S.I.M. decides to reject the recording of renunciation to the trademark in the National Register of the Trademarks.

(5) Renunciation to the trademark takes effects only from the date of recording in the National Register of the Trademarks. Renunciation shall be published in BOPI.

### **Rule 32 Request of Cancellation and Request of Annulment**

(1) A request of cancellation of the holder's right conferred by the trademark or a request for annulment of the registration of a trademark

may be formulated by any person concerned, for the reasons provided for in Arts. 45 and 48 from the Law, at the Law Court of Bucharest - Civil Department.

(2) The request of cancellation or the request of annulment shall contain at least the following:

- (a) particulars of the person who applied for the cancellation or annulment;
- (b) indications concerning the registered trademark which makes the object of the request of cancellation or request of annulment;
- (c) grounds for cancellation or nullity;
- (d) reasons for sustaining the request.

(3) Where the request of annulment is based on the provisions of Art. 48 para 1 letter (b) from the Law there shall be submitted clarifications concerning the right on which this request is based and, as the case may be, the documents proving that the person who requests the annulment of the registration of a trademark is entitled to invoke the earlier right.

(4) Where the request of annulment is based on one of the reasons provided for in Art. 48 para 1 letter (d) or (e) from the Law, there shall be submitted explanations concerning the right on which the request of annulment is based and, as the case may be, documents proving that the person who requests the annulment of the registration of the trademark is the holder of the right invoked.

(5) The final and irrevocable judgement, by which the holder is lapsed from the right conferred by the trademark or whereby the registration of the trademark was annulled, shall be communicated to O.S.I.M. by the person concerned. O.S.I.M. shall publish the decision in BOPI and shall mention this in the National Register of the Trademarks.

## **CHAPTER VII Collective Trademarks and Certification Marks**

### **Rule 33 Protection of Collective Trademarks**

(1) The application for the registration of a collective trademark, presented according to the provisions of Rule 9 shall be attended by the regulations for using the trademark.

(2) The regulations for using the trademark shall contain at least the following elements:

(a) denomination and registered office of the association;

(b) scope and representation of the association;

(c) affiliation conditions;

(d) indications concerning the persons authorized to use the collective trademark;

(e) conditions of use of the collective trademark;

(f) reasons for which the holder may interdict the use of the collective trademark by one member of the association, as well as other sanctions which can be applied in case of non-observance of the regulations;

(g) indications concerning the agreement of all members of the association where the holder of the collective trademark transfers the rights with regard to this trademark.

(3) If the filing of a trademark fails to fulfil one of the conditions provided for by Rule 9 or if the regulations for the use of the trademark does not contain all the elements provided for in para (2), O.S.I.M. may grant a three-month period to the applicant for remedying the shortcomings. Where the drawbacks are not remedied within the granted period, O.S.I.M. shall decide the rejection of the application or non-recognition of the claimed priority, as the case may be.

(4) The provisions of Art. 43 from the Law apply by analogy to any person entitled, by the regulations for the use of the trademark, to use the trademark.

(5) The holder of a collective trademark may resort to the law court, in the name of the persons entitled to use the trademark, for repairing the damage caused thereby as a result of unauthorized use of the trademark by third parties.

### **Rule 34 Protection of the Certification Marks**

(1) The application for the registration of a certification mark, drawn up according to the provisions of Rule 9, shall be attended by:

(a) a regulation for the use of the mark;

(b) authorization or any other document proving the legal exercise of activities of certification and quality control of goods and services.

(2) If the applicant is a foreign legal entity, this shall submit instead of the documents provided for in para (1) letter (b) the proof of registration or submission for registration of the certification mark in the country of origin.

(3) The regulations for the use of the mark shall establish the common characteristics of the goods or services guaranteed by this mark, the conditions for the grant of the right to use the mark, the conditions of using, the sanctions applied for abusive or inadequate use, as well as the conditions of cessation of the use of the mark in other cases than sanctions.

(4) The authorization given by the holder for the use of the certification mark shall be subject to payment, by the person who received this authorization, of an adequate compensation which shall be established by the regulations for the use of the mark.

(5) The holder of a certification mark may resort to the law court, in the name of the persons entitled to use the mark, for repairing the prejudice caused as a result of unauthorized use of the mark by third parties.

(6) The use of the certification mark is forbidden for the goods or services of the mark holder or which belong to a company whose activity is closely connected commercially to that of the holder.

(7) The certification mark cannot be the object of an assignment, cannot be left in pawn and cannot be the object of any other real guarantee and neither of an enforcement. Although, in case of liquidation of the legal entity who holds the certification mark, this can be transferred to another legal entity, under the conditions established by the Government decision.

## **CHAPTER VIII International Registration of Trademarks**

### **Rule 35 Filing the Application for the International Registration of a Trademark**

(1) The application for the international registration of a trademark, drawn up, as the case may be, according to Art. 3 from the Madrid Agreement or according to the Protocol referring to the Agreement, shall be filed with the International Bureau of WIPO, through O.S.I.M.. The application shall be signed by O.S.I.M. as office of origin.

(2) The international fees owed by virtue of Art. 8(2) from the Madrid Agreement or of Art. 8(2) from the Protocol referring to the Agreement, shall be paid by the applicant directly to the International Bureau of WIPO.

### **Rule 36 Effects of International Registration in Romania**

(1) The trademarks which are the object of an international registration and whose protection is requested in Romania are subjected to substantive examination with regard to the reasons for refusal provided for in Arts. 5 and 6 from the Law.

(2) The international registration with WIPO of a trademark whose protection is extended also in the territory of Romania, as the case may be, according to Art. 3 ter from the Madrid Agreement or according to Art. 3 ter from the Protocol referring to the Agreement takes the same effects as if the trademark had been submitted directly with O.S.I.M..

(3) The international registration of a trademark whose protection takes effects in the territory of Romania is recorded into the National Register of the Trademarks.

## **CHAPTER IX Geographical Indications**

### **Rule 37 Protection of Geographical Indications**

(1) A geographical indication may be protected according to Art. 67 from the Law only if there exists a close connection between the goods referred to by the geographical indication and the place of origin thereof with regard to quality, reputation or other characteristics of the goods. A geographical indication cannot be protected only for the mere fact that the goods to which this refers have the place of origin in a certain region.

(2) In case of homonymous geographical indications for wines, each indication shall be attended by the denomination of the association of producers of said wines. The protection shall be granted for each geographical indication, provided that said geographical indication is used traditionally and constantly, in order to describe and present a wine produced in the geographical zone to which it refers.

(3) Within the meaning of Art. 70 letter (b) from the Law it is generic and cannot be protected as geographical indication, if the name of a product which, although it refers to the place or region wherein the product was initially manufactured, produced or marketed, became a common name for a special type of products.

(4) A registered geographical indication shall not be deemed to have become generic and nor will it fail in the public field.

### **Rule 38 Application for the Registration of a Geographical Indication**

(1) The application for the registration of a geographical indication shall contain:

(a) express request with regard to the registration of a geographical indication and to the grant of the right for the use thereof;

(b) denomination and registered office of the association of producers who request the registration of the geographical indication;

(c) list comprising the persons authorized to use the geographical indication;

(d) geographical indication which is the subject-matter of the application;

(e) type of products which the geographical indication refers to, as well as the indication of the place of fabrication and of the limits of the production geographical area;

(f) name or denomination and address or registered office of the authorized representative, if the association of producers appointed an authorized representative.

(2) The application for the registration of a geographical indication shall be attended by:

- (a) an internal norm containing the elements provided for in para (4);
  - (b) a certificate of conformity of the products with the elements provided for in the internal norm issued by the Ministry of Agriculture and Food Industry;
  - (c) proof of payment of the fee for the registration of the geographical indication;
  - (d) power of attorney for the representation of the applicant, if necessary.
- (3) If the applicant for the registration of a geographical indication is a foreign association of producers, the application shall be attended by the following documents:
- (a) justifying document, a copy certified for conformity of the title of protection obtained in the country of origin;
  - (b) proof of payment of the fee for the registration of the geographical indication;
  - (c) power of attorney for the representation of the applicant.
- (4) The internal norm appended to the application for the registration of the geographical indication shall contain at least the following elements:
- (a) denomination of the goods to which the geographical indication refers;
  - (b) description of the goods and of the main characteristics thereof;
  - (c) delimiting the production geographical area;
  - (d) elements proving that the goods have the origin in the production geographical area;
  - (e) description of method of obtaining the goods;
  - (f) elements which justify the connection of the goods with the zone or geographical area thereof;
  - (g) reference concerning the procedures of goods quality control, as well as the competent body to carry out this control.

#### **Rule 39 Registration Procedure of a Geographical Indication**

- (1) Within three months from the date of filing with O.S.I.M., the application for the registration of a geographical indication is subjected to the examination of the conditions provided for in Arts. 68 to 70 from the Law and in Rule 38.
- (2) If the application fulfils the legal provisions, O.S.I.M. decides the registration of the geographical indication and the grant of the right to use the same by the association of producers applying for. Within a two-month period from making this decision O.S.I.M. publishes in BOPI the geographical indication and the list containing the persons authorized to use the geographical indication.
- (3) An opposition declaration to the registration of a geographical

indication may be formulated within three months from the publication, for failure to observe the provisions of Art. 70 from the Law or if a person has a legitimate interest based on a previously protected industrial property right which the geographical indication would come into conflict with.

(4) O.S.I.M. notifies a copy of the opposition declaration to the applicant for the registration of the geographical indication, in order that this could present his observations in connection with the reasons of opposition.

(5) If the reasons of the opposition are justified, O.S.I.M. rejects the application for the registration of the geographical indication and publishes the decision of rejection in BOPI.

(6) Contrary to the situation provided for in para (5), O.S.I.M. registers the geographical indication in the National Register of Geographical Indications, issues, to the association of producers who applied for, the certificate of registration of the geographical indication and of the grant of the right of using thereof, and informs, by a justified decision, the person who formulated the declaration of opposition about the rejection thereof: O.S.I.M. shall publish in BOPI and shall mention in the National Register of Geographical Indications the body competent to carry out the control of goods, established by the internal norm of the geographical indications.

#### **Rule 40 Modification of the Internal Norm**

(1) The persons authorized by O.S.I.M. to use the geographical indication may request the modification of the internal norm when imposed by the development of the scientific and technical knowledge or the review of the geographical delimitation.

(2) The request for the modification of the internal norm shall be subjected to the procedure provided for in Rule 39, except when the requested modifications are not essential.

(3) O.S.I.M. shall record in the National Register of Geographical Indications the modifications brought to the internal norm and shall publish them in BOPI.

#### **Rule 41 Request for Renewal of the Right to Use the Geographical Indications**

(1) The persons authorized by O.S.I.M. to use the geographical indication can, prior to the expiration of each period of 10 years, request to O.S.I.M. the renewal of the right to use.

(2) The request for renewal shall be attended by a confirmation from the Ministry of Agriculture and Food Industry with regard to maintaining the characteristics of the goods, as well as by the proof of payment of the

legal fee.

(3) In the absence of the documents provided for in para (2), O.S.I.M. decides the rejection of the request for renewal.

## **CHAPTER X Protection of the Rights on the Trademarks and Geographical Indications**

### **Rule 42 Protection of Rights on the Trademarks**

(1) The decision concerning the application for the registration of a trademark, the modification thereof or of the registration of the trademark, change of the name or address of the holder or of the authorized representative, renewal of the registration, transfer of rights on the trademarks, removal or modification of the registration of the licenses or other rights, recording the renunciation to a trademark and any decisions with regard to the applications for the registration or to the registered trademarks, other than the decision provided for in para (2), are taken by the examiner of the file concerned.

(2) Where an opposition was formulated, an examination board, which will function with the component provided for in Rule 19 para (13) shall decide with regard to the registration of the trademark.

(3) If according to a judgement the registration of a trademark was annulled or the holder was lapsed from the rights conferred by the trademark, the person concerned shall communicate the final and irrevocable judgement to O.S.I.M.. O.S.I.M. shall publish the decision in BOPI and shall remove the trademark from the National Register of the Trademarks.

### **Rule 43 Protection of Rights on the Geographical Indications**

(1) The decisions of O.S.I.M. are made by the director general or by his representative and may be appealed according to the procedure of the contentious business falling within the competence of the administrative courts.

(2) If a petition for annulment of the registration of a geographical indication was lodged in the law court, the final and irrevocable judgement is communicated to O.S.I.M. by the person concerned; where the registration of the geographical indication was annulled, O.S.I.M. shall publish the decision and shall remove the geographical indication from the National Register of Geographical Indications.

(3) If by a final and irrevocable judgement the persons authorized by O.S.I.M. to use a geographical indication were lapsed from this right, O.S.I.M. shall publish the decision in the National Register of the Geographical Indications.

(4) Any person who proves a legitimate interest may ask the law court, within the meaning of Art. 76 para 1 from the Law, to prevent any unauthorized person from using the geographical indication, even if there is indicated on the goods the real origin thereof or mentions such as: kind, type,

imitation or any other alike.

(5) The geographical indications for wines or for alcoholics benefit from additional protection, the persons authorized to use these indications having the right to prevent the acts provided for in Art. 76 para 2 from the Law, without being necessary to prove that the consumers were misled or that unfair competition acts were carried out.

(6) Any unauthorized use, except that provided for in Art. 83 para 1 letter (c) from the Law concerning the introducing into the circuit of goods bearing registered geographical indications is an act of unfair competition, if this use can:

(a) affect the reputation of the persons authorized to use the geographical indication; or

(b) cause confusion for the consumers with regard to the real origin of the goods.

#### **Rule 44 Dispositions concerning the Protection of the Rights on Trademarks and Geographical Indications**

(1) There are particularly considered acts of unfair competition, within the meaning of Art. 86 from the Law, and are forbidden:

(a) any deed which can cause confusion with the company, goods or with the industrial or commercial activity of the competition;

(b) false statements in exercising the trade, which can discredit the company, goods or the industrial or commercial activity of the competition;

(c) indications or statements whose use in exercising the trade can mislead the public with regard to the nature, manner of fabrication or characteristics of the goods.

(2) For all the causes on the roll of the courts of justice and which have as an object the trademarks or geographical indications O.S.I.M. will be summoned in the quality provided for in Art. 82 from the Law.

## **CHAPTER XI Board of Appeal**

### **Rule 45 Board of Appeal; Component and Competence**

(1) The appeals formulated against the O.S.I.M. decisions concerning the trademarks are solved by the board of appeal consisting of chairman and two members.

(2) The chairman of the board of appeal shall be the director general of O.S.I.M. or the representative thereof; the members shall be an examiner from the Trademark Division who took the appealed decision, and an attorney.

(3) The director general of O.S.I.M. shall approve the component of the board of appeal and shall set the terms for solving the appeals.

(4) The board of appeal shall be competent in solving the appeals formulated against O.S.I.M. decisions mentioned in Rule 42 paras (1) and (2) and may take one of the following decisions:

(a) acceptance of the appeal, disposing the abrogation or modification of O.S.I.M. decision.

(b) rejection of the appeal and maintaining the O.S.I.M. decision.

(5) Where the appeal was formulated prior to making a decision by O.S.I.M., the board of appeal will take notice, by a conclusion of the meeting, about the prematurely formulated appeal and shall transmit the file to the trademark division with a view to continuing the procedures provided for by the Law and the present regulations.

(6) When the board of appeal ascertains that the fee for the appeal has not been paid within the period granted by O.S.I.M. according to the provisions of Rule 46 para (16), it will reject the appeal for the lack of the fee for the appeal.

### **Rule 46 Procedure of Solving the Appeals**

(1) The appeal presented to the reexamination board will be made in writing and shall contain the following elements:

(a) name and residence of the person who formulated the appeal;

(b) object of the appeal;

(c) reasons in fact and in law on which the appeal is based;

(d) submitting the proofs in sustaining the appeal;

(e) signature of the person who formulated the appeal.

(2) The appeal shall be attended by the proofs sustaining the same and the proof of payment of the fee for the appeal.

(3) When the proofs consist in documents, there shall be submitted copies of these documents. If the documents are drawn up in a foreign language, there shall be submitted translations into Romanian of these documents certified by the party who submits them.

- (4) The appeal may be presented and sustained before the board of appeal directly or through an authorized representative, according to para (5).
- (5) The representation of the parties before the board of appeal shall be made through the authorized representative or attorney.
- (6) The foreign natural persons or legal entities can submit appeals and can put conclusions before the board of appeal only through the authorized representative, in the conditions provided for in para (5).
- (7) The meeting for appeal shall be prepared by the secretariat of the board of appeal, which shall keep the evidence of the appeals in a register with this destination.
- (8) With at least 14 days before the term established for settling the appeal, the secretariat of the board of appeal shall send summons to the parties or to the representatives thereof, by mail with acknowledgement of receipt.
- (9) If the party summoned according to para (8) is not present at the date established, the procedure before the board of appeal will be carried out in the absence thereof.
- (10) The meeting is public. The board of appeal may decide that a secret meeting be held, if the public debates could damage one of the parties or the public order.
- (11) The chairman of the board of appeal opens, adjourns and suspends the meeting.
- (12) The secretariat of the board of appeal checks whether the fee was paid and the summoning procedure was lawfully fulfilled, then the chairman opens the debates.
- (13) Prior to giving the floor to the parties, the chairman invites the examiner to present the object of the appeal and his viewpoint in respect of the formulated appeal.
- (14) The chairman shall put questions to the parties and shall put in debates any circumstance in fact and in law for solving the cause, even if these are not contained in the appeal. The members of the board of appeal shall put questions to the parties only through the intermediary of the chairman, who can still agree that the members address the questions directly.
- (15) The justification presented by the parties during the meeting shall be recorded by the secretary of the board in a report.
- (16) On the first time limit established for solving the appeal, the board of appeal may grant, upon request, a new time limit for the payment of the fee for the appeal, for presenting all grounds and evidence in sustaining the appeal or, as the case may be, for completing the grounds and evidence in defence.

(17) In the situations provided for in para (16), the board of appeal shall dispose by a conclusion of the meeting signed by the chairman and secretary that solving the appeal be postponed.

**Rule 47 Pronouncing the Decision of the Board of Appeal**

(1) After the closure of the debates, the board of appeal deliberates on the matter and pronounces the decision. Depending on the complexity of the cause, the board of appeal may adjourn the pronouncement for utmost three weeks.

(2) Where the board of appeal ascertains that further explanations or documents are necessary to the cause file, it shall put the file again on the roll, settling down a new meeting, the parties being invited, according to Rule 46 para (8).

(3) The decision of the board of appeal shall be based only on facts and evidence presented by the parties to the cause file and in the meeting for settling the appeal.

(4) The expenses for solving the appeal shall be covered by the party who engaged said expenses.

(5) The decision of the board of appeal is pronounced with the majority of votes and shall bear the signatures of the chairman, members and secretary.

(6) If one of the members of the board of appeal is hindered to sign the decision, the decision shall be signed by the chairman of the board of appeal and the reasons that hindered the signing thereof shall be mentioned.

(7) The decisions shall be drawn up in only one original copy and shall be kept in evidence of the secretariat of the board of appeal.

(8) The decisions are communicated to the parties, in authenticated copy by the secretary of the board of appeal.

(9) The provisions of these regulations concerning the procedure before the board of appeal, as well as the decisions thereof are completed with the provisions of the Code of Civil Procedure.

## **CHAPTER XII Printed Forms and Registers; Final and Transitional Provisions**

### **Rule 48 O.S.I.M. Printed Forms**

(1) In the proceedings before O.S.I.M. there shall be used printed forms for:

- (a) filing an application for the registration of a trademark;
- (b) opposition to the registration of a trademark;
- (c) modification of an application or of the registration of a trademark;
- (d) change of the name or address of the holder or of the authorized representative;
- (e) request for recording the assignment of a trademark;
- (f) the application for the registration of a license or for constituting a real right;
- (g) request for removal or modification of recording the licenses or of other rights;
- (h) declaration of renunciation to a trademark;
- (i) request for renewal of the registration of a trademark;
- (j) application for the registration of a geographical indication;
- (k) request for renewal of the right to use a geographical indication;
- (l) declaration of opposition to the registration of a geographical indication;
- (m) power of attorney for representation.

(2) O.S.I.M. supplies the printed forms provided for in para (1) free of charge.

### **Rule 49 National Register of the Trademarks**

(1) The National Register of the Trademarks shall contain the following elements:

- (a) name or denomination and residence or registered office of the applicant, as well as the indication of the state wherein he has the residence or an establishment within the meaning of Art. 3 from the Paris Convention;
- (b) date of filing with O.S.I.M. of the application for the registration of the trademark;
- (c) date and number of the application for the registration of the trademark;
- (d) publication of the trademark;
- (e) name or denomination and address or registered office of the authorized representative;
- (f) reproduction of the trademark;
- (g) list of goods and services for which the trademark was registered;
- (h) indications with reference to the priority claiming;
- (i) declaration of the applicant with regard to renunciation to invoke

an exclusive right upon an element of the trademark;

(j) express mentions, if the trademark is collective or certification mark;

(k) date and number of registration of the trademark.

(2) The followings are also recorded in the National Register of the Trademarks:

(a) change of the name or denomination and address or registered office or with regard to the indication of the state wherein he has the residence or an establishment within the meaning of Art. 3 from the Paris Convention;

(b) change of the name or denomination and address or registered office of the authorized representative;

(c) where a new authorized representative is appointed, the name or denomination and address or registered office thereof;

(d) any change or rectification with regard to the trademark or the list of goods and services;

(e) changes concerning the regulations for the use of the collective trademark or certification mark;

(f) recording any transfer of rights with regard to a trademark or recording of the constituting of a real right;

(g) recording the enforcement concerning the registered trademark;

(h) renewal of the trademark registration;

(i) mentions referring to termination of rights on the trademark;

(j) declaration of renunciation by the trademark holder;

(k) mentions concerning the decision of annulment of the registration of a trademark or the decision for the lapse of the holder from the rights conferred by the trademark, as well as the mention of removal of the trademark;

(l) removal of the authorized representative.

(3) The director general of O.S.I.M. may decide also that other mentions are recorded in the National Register of Trademarks.

#### **Rule 50 National Register of the Geographical Indications**

(1) The National Register of the Geographical Indications shall contain the following elements:

(a) denomination and registered office of the association of producers that applied for the registration of the geographical indication;

(b) the date of filing with O.S.I.M. of the application for the registration of the geographical indication;

(c) name or denomination and address or registered office of the authorized representative;

(d) geographical indication requested to be registered;

- (e) list of persons authorized by O.S.I.M. to use the geographical indication;
- (f) type of products to which the geographical indication refers;
- (g) mentions concerning the internal norm;
- (h) number and date of the conformity certificate issued by the Ministry of Agriculture and Food Industry;
- (i) indications concerning the concrete title of protection granted in the country of origin;
- (j) date and number of registration of the geographical indication;
- (k) list of geographical indications protected according to the international conventions.

(2) In the National Register of the Geographical Indications the followings are also recorded:

- (a) changes concerning the denomination or registered office of the association of producers;
- (b) changes concerning the list of persons authorized by O.S.I.M. to use the geographical indication;
- (c) changes of the internal norm;
- (d) renewal of the right to use the geographical indication;
- (e) mentions concerning the decision of annulment of the registration of the geographical indication and removal of the geographical indication;
- (f) mentions concerning the decision of lapse from the rights of the persons authorized to use the geographical indication;
- (g) changes of the name or denomination and address or the registered office of the authorized representative;
- (h) mentions concerning also the new authorized representative, if necessary.

(3) The General Director of O.S.I.M. may decide to record other mentions in the National Register of the Geographical Indications.

#### **Rule 51 Final and Transitional Provisions**

(1) The applications concerning the trademarks filed with O.S.I.M. prior to the date of entering into force of the Law and for which a final decision was not taken till that date, shall be subjected to the procedures provided for by Law no. 84/1998 and the present regulations.

(2) If, prior to the date of entering into force of the Law, a person acquired by transfer rights concerning a trademark, but this transfer was not recorded with O.S.I.M., any subsequent recording in the National Register of the Trademarks shall be subjected to the procedures provided for by Law no. 84/1998 and of rules from chapter V of the present regulations.

(3) In applying the Law and the present regulations the director general

of O.S.I.M. shall issue norms, orders, instructions which will be published in the Official Gazette of Romania, Part I.