

LIECHTENSTEIN
Trade Marks Ordinance
Ordinance No. 77 of 1 April 1997

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I. General provisions

Article 1 Competence

1) The direct execution of the Trademark Act under administrative law is the responsibility of the Office of National Economy.

2) The competence for measures to be taken concerning import and export remains unaffected.

3) If under Article 3 Paragraph 3 of the Trademark Act the owner of an earlier trademark invokes a relative ground for exclusion, the competence of the Office of National Economy shall extend to the judgement of the identity or similarity with community trademarks.

4) If a trademark is identical with an earlier trademark in terms of Article 3 Paragraph 2 of the Trademark Act or is similar to it, it shall be excluded from registration or, in the event of having been registered, it shall be declared to be invalid.

5) The same applies if a trademark for goods or services which is to be or has been registered is not similar to those for which the earlier community trademark is well-known and if the use of the more recent trademark would exploit or adversely affect the distinctiveness or the value of the earlier community trademark without justification in an unfair manner.

Article 2 Determination of time period

If a time period determined in the Trademark Act or in this Ordinance is expressed in terms of months or years and if the receipt of the communication or the triggering event occurs on the last day of a month then the time period shall end on the last day of the month in which it expires.

Article 3 Language

1) Submissions to the Office of National Economy must be composed in German. Article 40, Paragraph 3 and 4 shall remain unaffected (international registrations).

2) The Office of National Economy may require a translation, together with a certificate of its accuracy, of any documents which are not presented in German. Article 14 paragraph 3 (Language of the proof of priority) shall remain unaffected. If despite requests the translation or the

certificate is not submitted, the documents shall not receive consideration.

Article 4 Several trademark filers or trademark owners

1) If several persons are filing a trademark or are the owners of a trademark, the Office of National Economy may require that one of them or a third party be designated as their common representative.

2) If despite the requirement of the Office of National Economy no party is designated as the representative, then the party which is first named in the request for registration or in the Trademark Register shall be regarded as the representative.

Article 5 Representation

1) Any person designating a representative to the Office of National Economy in procedures regarding the Trademark Act or this Ordinance or having to designate a representative according to Article 39 of the Trademark Act or Article 4, Paragraph 1 of this Ordinance shall produce an adequate Power of Attorney.

2) The applicants for or owners of a trademark on whose behalf a representative has been designated under Article 39 of the Trademark Act shall, however, send a submission concerning the withdrawal of the request for registration and the application for complete cancellation of the trademark registration directly to the Office of National Economy.

Article 6 Signature

1) If, on a submission, the signature is missing, the original registration date shall be recognised, provided that the signature is presented within 14 days from receipt of such request made by the Office of National Economy.

2) The signature on a submission delivered by Telefax shall be regarded as valid if the original is presented within 14 days from receipt of such request made by the Office of National Economy.

Article 7 Fees

In respect of the fees which are payable under the Trademark Act or under this Ordinance, the Ordinance regarding the Collection of Fees under the Trademark Act shall prevail.

II. Registration of trademarks

A. Registration procedure

Article 8 Filing

- 1) The official form must be used to file the application.

- 2) Upon request, the Office of National Economy certifies the filing of the application to the filer.

Article 9 Request for registration

- 1) The request for registration shall comprise:
 - a) The application for registration of the trademark;
 - b) The names and forenames or the company together with the address of the filer;
 - c) A list of the documents submitted and of the fees paid, accompanied by an indication of the method of payment;
 - d) The signature of the filer or of his representative.

- 2) The request for registration shall be supplemented, if appropriate by:
 - a) The name and address of the representative;
 - b) The priority declaration (Article 12 to 14);
 - c) An indication that the request concerns a guarantee mark or a collective mark;
 - d) All other further documentation that the Office of National Economy may consider necessary according to the nature of the submitted mark.

- 3) All of the documents specified in this article shall be no older than one year.

Article 10 Reproduction of the mark

- 1) The trademark must allow graphical illustration.

- 2) In the case of graphic marks, combined graphic-and-words marks as well as word marks with a special graphical content, three black and white images that may be reproduced must be submitted.

- 3) If it is requested that a mark be of a coloured nature, the corresponding colour or colour combination together with three coloured images of the mark must be submitted.

4) If the request is for a three-dimensional mark, this shall be mentioned in the request for registration.

5) If the request is for an acoustical mark, this must be set down in musical notation.

Article 11 Schedule of goods and services

The goods and services for which the trademark is being claimed must be described precisely.

Article 12 Priority under the Paris Convention

1) The declaration for priority under the Paris Convention dated 20 March 1883 for the protection of trade property contains the following indications:

- a) The date of the first filing;
- b) The country in which or for which this filing took place.

2) The proof of priority consists of a certificate issued by the responsible authority as to the first filing together with the indication of the filing number or the register number of the trademark.

3) The Office of National Economy keeps a schedule of those countries which grant reciprocal rights to the Principality of Liechtenstein under Article 7 Paragraph 2 of the Trademark Act.

Article 13 Priority by exhibition

1) The declaration for priority by exhibition shall contain:

- a) The precise description of the exhibition;
- b) Indications of the goods or services presented under the trademark.

2) The evidence of priority consists of a certificate by the competent authority that the goods or services identified by the trademark have been presented together with indications of the opening date of the exhibition.

Article 14 Common regulations concerning the priority declaration and the evidence of priority

1) The priority declaration shall be handed in no later than 30 days after the filing of the trademark and the evidence of priority within 6 months from the filing; otherwise the priority claim shall expire.

2) The priority declaration may refer to several first filings.

3) The evidences of priority may be submitted in either English or French.

Article 15 Examination of submission

If the filing fails to meet the requirements set out in Article 29, Paragraph 2 of the Trademark Act, the Office of National Economy may establish a time limit by which the filer must complete the documentation.

Article 16 Formal examination

1) If the filing fails to meet the formal requirements set out in the Trademark Act (article 29) or in this Ordinance (Article 8 ff) the Office of National Economy shall establish a time limit within which any defect is to be remedied.

2) If the defect is not remedied within the given time limit, the request for registration shall be wholly or partially rejected. Exceptionally, the Office of National Economy may set further time limits.

Article 17 Material examination

1) If a ground for rejection as set out in Article 31, Paragraph 2, Subparagraph c or d of the Trademark Act exists, the Office of National Economy shall establish a time limit within which the defect is to be remedied.

2) If the defect is not remedied within the given time limit, the request for registration shall be wholly or partially rejected. Exceptionally, the Office of National Economy may set further time limits.

3) A continuance fee must be paid for further handling made necessary by a registration request rejected for non-compliance with the time limit (Article 38 of the Trademark Act).

Article 18 Filing-and supplementary fee

1) The fee for the filing shall be paid in advance.

2) If the schedule of goods or services relating to the filed trademark covers more than three classes, the filer shall have to pay a supplementary fee (class fee) in advance for each further class. The Office of National Economy shall determine the number of classes subject to the imposition of a fee under the Class Schedule of the Nice Agreement made on 15 June

1957 concerning the International Classification of Goods and Services for the Purposes of Registration of Marks (Nice Agreement).

Article 19 Registration and publication

1) If no grounds for rejection subsist, the Office of National Economy shall register the trademark in the Trademark Register and publish the registration of the trademark in the official organs of publication.

2) After publication has taken place, the Office of National Economy shall provide the trademark owner with a registration certificate containing the indications entered into the Register.

B. Extension of the trademark registration

Article 20 Communication about the expiration of the period of validity

The Office of National Economy shall remind the trademark owner and his representative six months before the expiration of the period of validity of the registration by a written communication advising the date of expiration. No such communication shall be sent to addresses abroad. The despatch of such a communication is not binding on the Office of National Economy.

Article 21 Extension

1) the application for extension must be submitted to the Office of National Economy within the last twelve months prior to expiry of the period of validity, but in no case later than six months after expiry; the application shall be submitted to the Office of National Economy in writing.

2) The extension shall become effective upon the expiration of the previous period of validity.

3) The Office of National Economy shall certify the extension of the registration to the trademark owner.

4) The extension fee for the extension, together, if appropriate, with a class fee shall be paid in advance.

5) If the application for extension is submitted after the date of expiration of the period of validity, an additional fee shall be payable.

C. Modifications of the trademark registration

Article 22 Transfer

1) The application to register a transfer shall be submitted by the previous trademark owner or by his successor and shall comprise:

- a) a specific declaration by the present owner or some other adequate document by which the trademark has been transferred to the successor;
- b) the name and forename or the company together with the address of the successor and, if appropriate, of his representative;
- c) in the case of partial transfer, indications of the goods and services of which the trademark has been transferred.

2) If a trademark has been partially transferred, the period of validity of the registration of the transferred part expires simultaneously with the registration of the part remaining with the previous owner.

Article 23 Licence

1) The application for registration of the licence shall be submitted by the trademark owner or by the licence holder and shall comprise:

- a) a specific declaration by the trademark owner or some other adequate document by which the trademark owner authorises the licence holder to use the trademark;
- b) the name and forename or the company together with the address of the licence holder;
- c) if appropriate, the request that the licence shall be registered as an exclusive licence;
- d) in the case of a partial licence, indications of the goods and services or of the area for which the licence is granted.

2) For the registration of a sub-licence Paragraph 1 shall apply. In addition, evidence must be provided that the licence holder is authorised to grant sub-licences.

Article 24 Other modifications of the trademark registration

Based upon an appropriate declaration by the trademark owner or upon some other adequate document the following shall be registered:

- a) the usufruct and the pledge of the trademark;
- b) restraints of disposal by order of courts and enforcement authorities;
- c) modifications relating to the registered indications.

Article 25 Cancellation of the rights of others

On application from the trademark owner the Office of National Economy shall cancel the right registered in favour of a third party if a specific declaration of renunciation made by the owner of this right or another adequate document is presented.

Article 26 Rectifications

1) Incorrect registrations shall be rectified immediately upon application by the trademark owner.

2) If the error results from a mistake by the Office of National Economy, the rectification shall be undertaken ex officio.

Article 27 Submission of the application, payment of fees

The application for modifications or rectifications of the registration of the trademark shall be submitted in writing. The prescribed fee shall be payable at the time of submission. If application is made for the registration of several modifications relating to the same trademark at the same time, only the single fee shall be charged.

Article 28 Modifications made free of charge

No fee shall be charged for the following modifications:

- a) the registration of the first appointment of a representative and the cancellation of representatives;
- b) modifications originating from an enforced court judgement or from enforcement measures such as restraints of disposal by courts and by enforcement authorities;
- c) note of modifications in the files;
- d) the rectifications if the error originated from a mistake by the Office of National Economy.

D. Cancellation of the trademark registration

Article 29

1) The application for cancellation of the trademark registration shall be submitted in writing. The application for partial cancellation (limitation of the list of goods and services) shall also be submitted in writing. The prescribed fee for this service shall be payable together with the submission of the application; no fee shall be charged for full cancellation.

2) If the application is based upon a court decision, a copy of the judgement together with a certification of its legal force shall be attached; no fee shall be charged.

III. Files and Trademark Register

A. The Files

Article 30 Contents

1) The Office of National Economy keeps a file for each trademark which has been filed and registered, in which the course of the registration procedure, the extension and cancellation of the registration, modifications of the trademark law as well as modifications of the registration of the trademark can be seen.

2) The regulation of a Guarantee-or Collective mark shall also be a constituent part of the file.

3) Documentary evidence which disclose manufacturing or business secrets shall be segregated on application or ex officio. The fact of the separation shall be noted in the file.

Article 31 Inspection of files

1) Before registration of the trademark inspection of the file shall be available to:

- a) The filer and his representative;
- b) Persons who can provide evidence that the filer accuses them of damaging his right to the filed trademark or that he has warned them of such damage;
- c) Other persons having the express agreement of the filer or his representative.

2) The persons identified in Paragraph 1 may also have access to the files of applications for registration which have been withdrawn or rejected.

3) Once the trademark has been registered, any person may have access to the document file.

4) The Office of National Economy shall decide about access to segregated documentary evidence (Article 30 Paragraph 3) after consulting the filer, the trademark owner or any party authorised to represent him.

5) Upon request and the payment of a fee, inspection shall be granted by making copies available.

Article 32 Information about applications for registration

1) The Office of National Economy shall provide third parties with information about pending applications for registration against the payment of a fee.

2) This information shall be limited to facts which shall be made public in the event of a later registration.

Article 33 Keeping of files

1) The Office of National Economy shall keep the files of wholly cancelled trademark registrations in the original form or as copies for five years after the date of the cancellation.

2) It shall still keep the files of registration applications which have been withdrawn or rejected in the original form or as copies for five years after the date of the withdrawal or rejection but for at least ten years after the original filing date.

B. The Trademark Register

Article 34 Content of the Register

1) The entries in the Trademark Register contain:

- a) The registration Number;
- b) The date of filing;
- c) The name and forename or the company together with the address of the trademark owner;
- d) Name and address of any representative;
- e) A reproduction of the trademark;
- f) The goods and services for which the trademark is being requested in the sequence of and accompanied by the indication of the classes under the class differentiation of the Nice Agreement;
- g) The date of the publication of the registration.

2) If appropriate, the registration shall be supplemented by:

- a) Indications of the requested colour or colour combination;
- b) The note "Three-dimensional Trademark";
- c) The note "Recognised Trademark";
- d) The note "Acoustic Trademark";
- e) The indication that the trademark concerned is a guarantee or a collective mark;

f) The indication that priority is claimed under Article 7 and 8 of the Trademark Act;

g) The date and number of the international registration of the trademark.

3) In addition, the following shall be entered in the Trademark Register, on each occasion with the date of publication:

a) The extension of the registration of the trademark with the indication of the date on which the extension becomes effective;

b) The whole or partial cancellation of the trademark registration with the indication of the reason of the cancellation;

c) The whole or partial transfer of the trademark;

d) The grant of a licence, if appropriate with the indication that an exclusive licence is concerned and, in the case of a partial licence, with indications of the goods and services or the area for which the licence has been granted;

e) The usufruct and the pledge of the trademark;

f) Restraints of disposal by order of courts and enforcement authorities;

g) Modifications affecting the registered trademarks;

h) Reference to the modification of trademark regulations.

4) The Office of National Economy may register further indications which are of public interest.

Article 35 Inspection, extracts from the Register, evidences of priority

1) The Trademark Register shall be open to inspection by any person against payment of a fee.

2) Against payment of a fee, the Office of National Economy shall provide indications of the contents of the Register and shall supply extracts from the Register.

3) The Office of National Economy shall provide proof of priority for first filing in Liechtenstein provided that a corresponding request has been made and that the appropriate fee has been paid.

IV. Publications of the Office of National Economy

Article 36 Subject matter of publications

The Office of National Economy shall publish:

- a) The registration of the trademarks with the indications under Article 34 Paragraph 1 Subparagraph a to f and Paragraph 2 Subparagraph a to e;
- b) The registration under Article 34 Paragraph 3;
- c) The indications under Article 34 Paragraph 4 to the extent that such publication is appropriate.

Article 37 Publication organs

The indications under Article 36 shall be published in the official publication organs.

V. Searches

Article 38 Searches in respect of identical or similar trademarks

Against the receipt of a written request and the payment of a fee, the Office of National Economy shall carry out a search for identical or similar trademarks. The application must include:

- a) the reproduction of the trademark which is the subject of the search;
- b) indications of the goods and services or the appropriate classes to be covered by the search;
- c) evidence that the fee has been paid.

Article 39 Findings of trademarks associated with particular individuals

1) Upon request and against payment of a fee, the Office of National Economy shall provide the trademarks which have been filed under the name of a particular person or those which have been registered in the name of this person in the Liechtenstein Trademark Register.

2) The request shall be submitted in writing. It must contain the name and forename or the company and the address of the person whose trademarks are to be supplied together with evidence of payment of the fees involved.

VI. International Trademark Registration

Article 40 Submission of the request

1) The request for international registration of a trademark or the request for a modification of an international registration shall be submitted to the Office of National Economy if Liechtenstein is the country of origin in terms of Article 1 Paragraph 3 of the Madrid Agreement of 14 April 1891 regarding the International Registration of Trademarks or of Article 2 Paragraph 1 of the Protocol of 28 June 1989 relating to the Madrid Agreement regarding international registration of trademarks.

2) The official form must be used for submitting the request.

3) If Liechtenstein is the country of origin in terms of the Madrid Agreement then the goods and services for which the trademark is claimed shall be indicated in French.

4) If Liechtenstein is the country of origin in terms of the Madrid Protocol then the goods and services for which the trademark is claimed shall be indicated in either French or English.

5) The fees specified in the Madrid Trademark Agreement, in the Madrid Protocol and in the Ordinance regarding the collection of fees under the Trademark Act shall be paid together with the submission of the request.

Article 41 Checks to be made by the Office of National Economy

1) If a request submitted to the Office of National Economy does not correspond to the formal requirements which it must satisfy under the Trademark Act (Article 29) or under this Ordinance (Article 8 ff) or if the prescribed fees (Article 42 Paragraph 2 of the Trademark Act) have not been paid then the Office of National Economy shall establish a time limit for the defect to be remedied.

2) If the defect is not remedied within the appointed time, the request shall be rejected. Exceptionally, the Office of National Economy may establish further time limits.

Article 42 Files

The Office of National Economy shall keep a file for each internationally registered trademark, for which the country of origin is Liechtenstein.

VII. Producer Identification

Article 43 Producer identification

- 1) The producer identification must be clearly visible and affixed in a durable manner. Instead of the producer identification, the company name or the trademark of the manufacturer may be affixed.

- 2) The producer identification may only be used for products made in Liechtenstein.

- 3) The exclusion grounds under article 3 paragraph 1 of the Trademark Act shall apply also to producer identifications.

VIII. Measures relating to Import and Export

Article 44 Customs bonded warehouse

Assistance provided by the Customs Authorities shall extend to the import and export of goods illegally provided with a trademark or a geographical indication as well as to the storage of such goods in a customs warehouse.

Article 45 Application for assistance

1) The rightful owner must place the request for assistance with the Office of National Economy. In urgent cases the request may be placed directly with the Customs Office through which the illegally marked goods are to be imported or exported.

2) The application shall remain valid for two years if a shorter period was not requested. It may be renewed.

Article 46 Retaining of goods

1) If the Customs Office retains goods, it shall store them itself against a fee or shall send them on to a third party for storage at the cost of the applicant.

2) The applicant is entitled to inspect the retained goods. The party who holds the rightful power to dispose of the goods may participate in the inspection.

3) If in advance of the expiration of the time limit set under Article 70 Paragraph 2 or Paragraph 3 of the Trademark Act it is established that the applicant cannot obtain precautionary measures, the goods shall be released immediately.

Article 47 Fees

1) The fees for the processing of the application for assistance as well as for the storage of retained goods are governed by the Ordinance of 22 August 1984 regarding fees chargeable by the Customs Authority.

2) The Office of National Economy is entitled to demand compensation for any costs incurred in the acknowledgement and handling of the application made under Article 45.

IX. Transitional and Final Provisions

Article 48 Time periods

Any time periods set by the Office of National Economy remain unaffected by the entry into force of this Ordinance.

Article 49 Priority of use

1) In the case of the filing of a trademark under Article 76 of the Trademark Act, the point of time at which the trademark was first used shall be entered in the Trademark Register and shall be published.

2) If an internationally registered trademark is concerned, the appropriate indications are to be given to the Office of National Economy by the end of the month of the publication of the international registration; the time at which the trademark was taken into use shall be entered into a special Register and shall be published.

Article 50 Repeal of previous legislation

The Implementing Ordinance of 15 June 1964 regarding the protection of manufacturing and trading marks, geographical indications of goods and commercial distinguishing signs, Liechtenstein Law Gazette 1964 No. 39, shall be repealed.

Article 51 Implementation

This Ordinance enters into force simultaneously with the Trademark Act.