

ROMANIA
Trademark Law

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Chapter I General Provisions

Art. 1

(1) Rights in trademarks and geographical indications are recognized and protected on the territory of Romania in accordance with the provisions of this Law.

(2) The present Law shall be applicable to trademarks in respect of goods and services, as individual trademarks, collective marks or certification marks which are the subject of registration or of an application for registration in Romania, as a consequence of Community or international protection, as well as to geographical indications.

(3) Foreign natural persons or legal entities having their residence or place of business outside the territory of Romania shall also enjoy the provisions of this Law, in accordance with the international conventions on trademarks and geographical indications to which Romania is a party.

Art. 2

Trademarks may consist of any sign capable of being represented graphically, such as: words, personal names included, designs, letters, numerals, figurative elements, three-dimensional shapes and, particularly, the shape of goods or of packaging thereof, colours, combinations of colours, holograms, acoustic signals, as well as any combination thereof, provided that such signs are capable of distinguishing the goods or services of one enterprise from those of other enterprises.

Art. 3

For the purposes of this Law, the following terms and expressions shall have the meanings set out below:

- a) trademark registration - the way of acquiring rights in a trademark under this Law or the international conventions and treaties to which Romania is a party;
- b) earlier trademark - registered trademark, as well as a trademark filed for registration in the Trademark Register, provided that it is subsequently registered;
- c) Community trademark - trademark registered under the Council Regulation (EC) No. 207/2009 on the Community trademark, published in the Official Journal of the European Union, L 78 of 24 March 2009,

hereinafter referred to as Community Trademark Regulation;

d) well-known trademark - a trademark that is widely known to the segment of the public concerned by the goods or services to which it applies, without being required either registration or use thereof in Romania for the trademark to be opposable;

e) collective mark - the mark serving to distinguish the goods or services of the members of an association from goods or services belonging to other persons;

f) certification mark - a mark indicating that the goods or services for which it is used are certified by the owner as to the quality, material, method of manufacturing goods or mode of providing services, accuracy or other characteristics;

g) geographical indication - name serving to identify a product that originates in a country, region or locality of a State, where a certain quality, reputation or other specific characteristics may be essentially attributed to that geographical origin;

h) applicant - person in whose name an application for trademark registration is filed;

i) owner - person in whose name a trademark is registered in the Trademark Register, which may be any natural person or legal entity established under public or private law;

j) professional representative, hereinafter referred to as representative - industrial property attorney who may also have the capacity of representative in proceedings before the State Office for Inventions and Trademarks, hereinafter referred to as OSIM;

k) Trademark Register - database, maintained by OSIM, including the trademarks registered in Romania, as well as all data recorded in respect of said registrations, irrespective of the carrier on which said data are stored;

l) Geographical Indications Register - database, maintained by OSIM, including the geographical indications registered in Romania, as well as all data recorded in respect of said registrations, irrespective of the carrier on which said data are stored;

m) Paris Convention - the Convention for the Protection of Industrial Property concluded in Paris on 20 March 1883, as revised and amended, ratified by Romania through the Decree No. 1177/1968, published in the Official Bulletin No. 1 of 6 January 1969;

n) Countries of the Paris Union - countries to which the Paris Convention applies and that constitute the Union for the Protection of Industrial Property;

o) Madrid Agreement - the Madrid Agreement for the International

Registration of Marks of 14 April 1891, as revised in Stockholm on 14 July 1967, ratified by Romania through the Decree 1176/1968 and published in the Official Bulletin No. 1 of 6 January 1969;

p) Madrid Protocol - the Protocol relating to the Madrid Agreement for the International Registration of Marks of 27 June 1989, ratified by Romania through the Law No. 5/1998, published in the Official Gazette of Romania, Part I, No.11 of 15 January 1998;

q) Community Trademark Regulation - Council Regulation (EC) No.207/2009 of 26 February 2009 on the Community Trademark, as published in the Official Journal of the European Union L 78/1 of 24 March 2009;

r) enterprise - any entity involved in an economic activity, irrespective of its legal nature or financing.

Chapter II Protection of Trademarks

Art. 4

(1) The right to a trademark shall be acquired and protected by registration with OSIM.

(2) Community trademarks shall benefit from protection on the territory of Romania in accordance with the provisions of the Community Trademark Regulation.

Art. 5

(1) Registration shall be refused or, if registered, shall be deemed to be cancelled, for the following absolute grounds:

(a) signs that can not constitute a trademark, within the meaning of Art. 2;

(b) trademarks which are devoid of any distinctive character;

(c) trademarks which consist exclusively of signs or indications which have become customary in the current language or in the bona fide and established practices of the trade;

(d) trademarks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin or the time of production of the goods or of rendering of the service, or other characteristics of the goods or services;

(e) trademarks which consist exclusively of the shape of the product which results from the nature of the goods themselves or which is necessary to obtain a technical result or which gives substantial value to the goods;

(f) trademarks which are liable to mislead the public as to the geographical origin, the quality or nature of the goods or services;

(g) trademarks which contain a geographical indication or which consist thereof, for goods which do not originate on the designated territory, if the use of such indication is liable to mislead the public as to the true place of origin;

(h) trademarks which consist of a geographical indication identifying wines or spirits which do not originate in the place indicated or which comprise such indication;

(i) trademarks contrary to public policy or to accepted principles of morality;

(j) trademarks which contain, without the consent of the owner, the likeness or surname of a person of repute in Romania;

(k) trademarks which contain, without the permission of the competent authorities, reproductions or imitations of armorial bearings, flags, State emblems, signs, official hallmarks of control and warranty, coats of arms belonging to countries of the Union and which are governed by Article 6ter of the Paris Convention;

(l) trademarks which contain, without the permission of the competent authorities, reproductions or imitations of armorial bearings, flags, other emblems, abbreviations, initials or denominations which are governed by Article 6ter of the Paris Convention and which belong to international intergovernmental organizations to which one or more countries of the Union are party.

(m) trademarks which contain signs of high symbolic value, in particular religious symbols;

(n) trademarks which contain, without the permission of competent authorities, badges, emblems, coats of arms or escutcheons, other than those covered by Article 6ter of the Paris Convention.

(2) The provisions of paragraph (1), letters (b) - (d) shall not apply if, prior to the date of the application for registration of a mark, by reason of its use, the mark has acquired a distinctive character.

Art. 6

(1) Besides the grounds provided in Art. 5 paragraph (1), registration of a trademark shall also be refused or shall be susceptible of being cancelled, as the case may be, for the following relative grounds:

(a) if it is identical with an earlier trademark, and the goods and services for which registration is applied or the trademark has been registered are identical with the goods and services for which the earlier trademark is protected;

(b) if, because of its identity with or similarity to the earlier trademark and because of identity or similarity of the goods or services covered by the two trademarks, there exists a likelihood of confusion in the public perception, the likelihood of association with the earlier trademark included.

(2) Within the meaning of paragraph (1), earlier trademarks mean trademarks with a date of application for registration earlier than the date of application for registration of the trademark concerned or of the priority claimed in respect thereof, as the case may be, and contained in the following categories:

(a) Community trademarks;
(b) trademarks registered in Romania;
(c) trademarks registered under international agreements and having effects in Romania;
(d) Community trademarks for which seniority is duly claimed, in accordance with the provisions of Community Trademark Regulations, in respect of a trademark covered by letters (b) or (c) , even where the latter has lapsed or surrendered;
e) application for registration of the trademarks covered by letters (a) - (d), under the condition of subsequent registration thereof;
(f) trademarks which, on the date of the application for registration of the trademark or on the date of the claimed priority, as the case may be, are well-known in Romania, within the meaning of Art. 6 bis of the Paris Convention.

(3) Registration of a trademark shall also be refused or, if registered, it shall be susceptible of being cancelled if it is identical with or similar to an earlier Community trademark, within the meaning of paragraph (2), and if it was intended for registration or it is already registered for goods and services which are not similar to those for which the earlier Community trademark is registered, where the earlier Community trademark has a reputation in the European Union and where, by the use of the subsequent trademark, unfair advantage would be taken of the distinctive character or the reputation of the earlier Community trademark.

(4) Registration of a trademark shall also be refused or, if registered, shall be susceptible of being cancelled if:

(a) the trademark is identical with or similar to an earlier trademark registered in Romania, within the meaning of the paragraph (2) and it is intended for registration or it is already registered for goods and services which are not similar to those for which the earlier trademark is registered, where the earlier trademark has a reputation in Romania and where, by the use of the subsequent trademark, unfair advantage would be taken of the distinctive character or the reputation of the earlier trademark or if such a use would be detrimental to the distinctive character or reputation of the earlier trademark;

(b) rights arising from an unregistered trademark or another sign used in the commercial activity were acquired prior to the date of the application for registration of the subsequent trademark, or prior to the priority date claimed by the application for the registration of

the subsequent trademark, and if that unregistered trademark or used sign confer to its owner the right to prohibit the use of the subsequent trademark;

(c) there is an earlier right, other than those covered by paragraph (2) letter (d), in particular, a right to name, to image, a copyright, an industrial property right;

(d) the trademark is identical with or similar to an earlier collective mark conferring a right which expired 3 years, at the most, before the date of application;

(e) the trademark is identical with or similar to an earlier certification mark the validity of which lapsed 10 years, at the most, before the date of application;

(f) the trademark is identical with or similar to an earlier trademark registered for identical or similar goods or services, conferring a right which expired for failure to renew 2 years, at the most, before the date of application, provided that the owner of the earlier trademark had given permission for the registration of the subsequent trademark or had not used the trademark;

(g) there is likelihood of confusion between the trademark and a trademark which was in use abroad and continues to be used there, where the application was made with bad faith by the applicant.

(5) Furthermore, the registration of a trademark shall be refused where the registration is applied for by the representative of the trademark owner in his own name and without the permission of the trademark owner, except when said representative can prove that he has the right to apply for such a registration.

(6) Registration of a trademark shall not be refused or cancelled, as the case may be, where the owner of the earlier trademark or of the earlier right agrees with the registration of the subsequent trademark.

(7) Registration of a trademark can be refused or susceptible to be cancelled, as the case may be, under the conditions set forth by Art. 6 septies of the Paris Convention.

Art. 7

The nature of the goods or services for which registration of a trademark is requested in no way represents an obstacle to the registration of the trademark.

Chapter III Trademark Registration Application

Art. 8

The right to the trademark shall belong to the applicant which was the first to file the trademark application registration, under the conditions laid down by the law.

Art. 9

(1) The application for trademark registration filed with OSIM, drawn up in Romanian and containing the details provided for in paragraph (2), shall constitute the regular filing of the trademark.

(2) The application for trademark registration shall contain the following:

- (a) an express request for the registration of a trademark;
- (b) information identifying the applicant and, where appropriate, the representative;
- (c) a sufficiently clear graphic representation of the trademark whose registration is applied for;
- (d) the list of goods/services in respect of which the trademark registration is applied for;
- (e) proof of payment of the trademark registration application filing and publishing fee.

(3) The application shall include express mentions where the trademark:

- (a) contains one or several colours claimed as a distinctive element of the trademark;
- (b) is a three-dimensional trademark or a trademark of other type than the word or figurative ones;
- (c) contains a transliteration or translation of the trademark or of elements thereof.

(4) The application shall relate to one trademark only and shall be presented under the conditions provided for by the implementing regulations to this Law.

(5) The applications for registration filed under the Madrid Agreement or the Protocol thereof shall meet the conditions established by said treaties.

(6) The trademark registration application may be filed with OSIM Registry, by mail or electronically, under the conditions set forth by the implementing regulations to this Law.

Art. 10

(1) The date of the regular filing shall be the date on which the application for registration of a trademark containing all elements referred to in the first paragraph of Art. 9 has been filed with OSIM.

(2) Where an application for registration of a trademark has been regularly filed for the first time in another Member State of the Paris Union or Member of the World Trade Organization, the applicant may claim the date of the first filing by means of an application for registration of the same trademark in Romania, on condition that the latter application should be filed with OSIM within six months of the date of the first filing.

Art. 11

(1) Where the applicant displayed certain goods and services under a certain trademark within an international official or officially recognized exhibition, within the meaning of the Convention on International Exhibitions signed in Paris on 22 November 1928 and ratified by Romania through the Law No. 246/1930, as revised on 30 November 1972, which was organized on the territory of Romania or another Member State of the Paris Convention, and if an application for the registration of the trademark under which such goods and services were displayed has been filed with OSIM within 6 months of the date of the first display, the applicant shall benefit from a priority right as from the date of introduction of said good in the exhibition.

(2) The six-month period referred to in paragraph (1) shall not extend the priority period referred to in paragraph (2) of Article 10.

Art. 12

(1) The priority rights referred to in Art. 10 and Art. 11 shall be claimed at the time of filing an application for trademark registration; they shall be supported by priority documents and shall be subject to payment of the prescribed fee.

(2) The priority documents shall be filed and the prescribed fee shall

be paid within 3 months, at the most, following the date of the application for registration of the trademark.

(3) Failure to comply with the time limit referred to in the paragraph (2) above, shall entail non-recognition of the claimed priority.

Art. 13

(1) The registration of a trademark may be applied for individually or collectively by any person, either directly or through a representative, under the conditions provided by the Law and by the implementing regulations thereto.

(2) Applicants not having either their domicile, or their place of business or any real and effective industrial or commercial establishment on the territory of the European Union or the European Economic Area shall be compelled to be represented by a representative, except for the procedure of filing the application for trademark registration.

Art. 14

The applicant for trademark registration shall communicate, within 3 months of the date of filing the application with OSIM, the proof of payment of the filing and examination fee, in the amount prescribed by the law.

Art. 15

(1) An applicant for registration of a trademark that relates to more than one good or service may request to OSIM to divide the initial application into two or more applications, and he may distribute the goods and services into the divisional applications, upon payment of the prescribed fee.

(2) Divisional applications shall maintain the filing date of the initial application and, where appropriate, shall enjoy any priority right obtained in accordance with paragraph (2) of Art. 10 or paragraph (1) of Art. 11.

(3) An applicant may request division of an initial application during the procedure of examination of the trademark by OSIM, up to such time as a decision is taken on registration as well as during the procedure before the Board of Appeal of OSIM or during any other procedure of

appeal against the decision to register the trademark.

(4) The applicant shall be required to file the documents requested by OSIM in order to divide the initial application and to pay the prescribed fee within 3 months as from the date of the request for division. Failing that, OSIM shall note that the applicant has renounced division of the initial application.

Chapter IV Trademark Registration Procedure

Art. 16

(1) Within one month as from the date of receipt of the application for registration of a trademark, OSIM shall examine whether the conditions set out in Art. 9 paragraph (1) have been complied with and, if so, shall grant a filing date to the application.

(2) If the application does not satisfy the conditions set out in Article 9 paragraph (1), OSIM shall notify the applicant of the irregularities in the application and shall afford him a period of 3 months to correct them. If the applicant corrects, within the prescribed time limit, the irregularities notified by OSIM, the filing date shall be the date on which the application for registration was corrected in accordance with Art. 9 paragraph (1). If such is not the case, the application shall be refused.

(3) If the filing and examination fee has not been paid within the time limit set out in Art. 14, OSIM may afford the applicant, for justified reasons, a new period of two months.

(4) If the fees have not been paid within the prescribed time limit, the applicant shall be deemed to have renounced trademark registration and the application shall be refused.

Art. 17

The application for trademark registration which has been accorded a filing date shall be published electronically within 7 days of the date of filing, under the conditions provided by the implementing regulations to this Law.

Art. 18

Within a time limit of 2 months as from the date of publication of the trademark registration application, according to Art. 17, any interested person can submit observations in respect of the registration of the trademark, concerning the absolute grounds of refusal under Art. 5.

Art. 19

(1) Within a time limit of 2 months as from the date of publication of the trademark registration application, according to Art. 17, any

interested person can oppose to registration of the trademark for the relative grounds of refusal under Art. 6.

(2) Oppositions shall be made in writing, reasoned and accompanied by payment of the legal fee.

(3) Upon request by the applicant, proof shall be made to OSIM by the trademark owner which made the opposition, that:

(a) during a period of 5 years preceding the publication date of the trademark to which opposition is made, the earlier trademark has been effectively used on the territory of Romania in connection with the goods and services in respect of which it is registered;

(b) there are justified reasons for the non-use of the opposed trademark .

(4) Where the prescribed opposition fees have not been paid, the opposition shall be deemed not to have been filed.

Art. 20

(1) OSIM shall immediately inform the applicant for the trademark registration on the opposition made, while indicating the name of the opponent as well as the reasons to oppose to the trademark registration.

(2) Within 30 days of notification of opposition, the applicant may submit his arguments.

(3) Opposition settlement may be suspended in the following cases:

(a) if it is based on an application for trademark registration, up to the registration thereof;

(b) if the opposed trademark is subject to a cancellation or revocation action, up to the final settlement of the case.

(4) During suspension, the applicant or the opponent may request, in any moment, the opposition settlement to be resumed, if the suspension reason has ceased to exist.

Art. 21

(1) The published opposition made in respect of the application for the registration of the trademark shall be settled by a Board within the Trademark and Geographical Indications Division of OSIM, under the implementing regulations to this Law.

(2) The Board shall give a notice of admission or rejection of opposition to be taken into consideration upon substantive examination.

Art. 22

(1) Within a time limit of 6 months following publication, subject to payment of the prescribed filing and examination fees, OSIM shall carry out substantive examination of the application for trademark registration and decide to accept trademark registration, wholly or in part, or to refuse registration.

(2) Repealed

(3) OSIM shall examine:

(a) the capacity of the applicant, under Art. 3, letters (h) or (j), as the case may be;

(b) the conditions set out under Art. 12 paragraphs (1) and (2), where priority is claimed in the application;

(c) the grounds for refusal set out under Art. 5 paragraph (1) and submitted observations, where appropriate.

(4) Where oppositions have been made in respect of the application for trademark registration on the grounds for refusal set out under Art. 6, the notice of the Board referred to under Art. 21 paragraph (1) is compulsory for the substantive examination.

(5) Failure to observe the time limits set out under paragraphs (1) and (2), OSIM shall refund the collected fees.

Art. 23

(1) Where a non-essential element of the trademark is devoid of distinctive character and if said element could give rise to doubts as to the scope of trademark protection, OSIM shall request that the applicant states, within two months of notification date, that he disclaims any exclusive right on said element. The statement shall be published together with the registered trademark.

(2) In the absence of the statement provided for under paragraph (1), the application for trademark registration shall be rejected.

Art. 24

(1) Examination of grounds for refusal in respect of well-known trademarks shall be based on certain criteria, such as:

(a) the degree of initial or acquired distinctiveness of the well-known trademark in Romania;

(b) the duration and scope of use of the well-known trademark in Romania with respect to the goods and services referred to in the application for registration,

(c) the duration and scope of publicity for the well-known trademark in Romania;

(d) the geographical area of use of the well-known trademark in Romania,

(e) the degree of recognition of the well-known trademark on the Romanian market by the sector of the public concerned,

(f) the existence of identical or similar trademarks for identical or similar goods or services belonging to a person other than the person who claims his mark is well known.

(2) In examining the grounds for refusal, in accordance with the criteria set out in the paragraph (1) above, OSIM may request public authorities, public institutions and private law legal entities for documents attesting to the notoriety of the trademark in Romania.

Art. 25

Where a ground for refusal, referred to under Art. 6, is applicable only to certain goods and services in respect of which trademark registration has been applied for, registration shall be refused for said goods and services only.

Art. 26

(1) If the examination of the application carried out in accordance to the provisions of Art. 22 and 24 shows that the conditions prescribed by the law are satisfied, OSIM shall decide to register the trademark. The trademark shall be published in the Official Industrial Property Bulletin, in electronic format, within 2 months as from the date of the registration decision and OSIM shall issue the trademark registration certificate only after payment of publication and issuance fee.

(2) If the application does not satisfy the conditions prescribed for registration of a trademark, OSIM shall notify the applicant thereof and shall afford him a period of 3 months for submitting his

observations or withdrawing his application. Such period may be extended for another 3-month period, upon request by the applicant accompanied by payment of the prescribed fee.

(3) On expiry of the period referred to in paragraph (2) above, OSIM shall decide, as appropriate, to register the trademark, to refuse the application or to note that the application has been withdrawn.

Art. 27

(1) The applicant may, at any time, withdraw his application for registration or restrict the list of goods or services. Where the trademark has already been published, withdrawal or restriction shall be published in the Official Industrial Property Bulletin.

(2) The application for registration of a trademark may be modified, at the request of the applicant, only in order to correct the name or address of the applicant or to make other corrections that do not substantially affect the trademark or that do not extend the list of goods or services.

(3) Any modification requested by the applicant prior to registration and which substantially affects the trademark or the list of goods or services shall be the subject of a new application for trademark registration.

Art. 28

During the registration procedure, OSIM may request the applicant to provide such explanations and documents as it deems necessary, if there is any doubt as to the exactness or the content of the elements of the application for trademark registration.

Art. 29

(1) OSIM shall enter in the Trademark Register the trademarks in respect of which a decision has been made, without delay.

(2) Trademark registration recordal in the Trademark Register shall be subject to payment of fees prescribed by the law.

(3) After entering the registration in the Trademark Register, OSIM shall issue the trademark registration certificate.

(4) The Trademark Register has public character.

Chapter V Duration, Renewal and Modification of Trademark Registration

Art. 30

(1) The registration of a trademark shall take effect on the date of the regular filing of the trademark and shall subsist for a period of 10 years.

(2) Upon request by the owner, the registration of a trademark may be renewed at the end of each 10-year period, on payment of the prescribed fee.

(3) The request for renewal of a registration may be made before expiry of the current term of protection, but not earlier than 3 months prior to expiry of that term.

(4) Renewal of a registration shall take effect as from the day immediately following the expiry of the current term of protection.

(5) The fee for the renewal of a registration shall be due on the date of the request for renewal; the fee may be paid within 6 months following the expiry date of the current term of protection, on payment of the prescribed additional fee.

(6) Failure to pay the fee in accordance with paragraph (5) shall lead to the trademark owner's loss of rights.

Art. 31

(1) The request for renewal of a trademark registration shall contain:

- (a) an explicit request for renewal of the registration;
- (b) particulars identifying the owner and, where appropriate, the name and place of residence or business of his representative;
- (c) the registration number of the trademark in the Trademark Register;
- (d) the date of the regular filing of the application for registration of the trademark.

(2) If the owner requests renewal for a part only of the goods and services entered in the Trademark Register, he shall be required to state the name of the goods or services for which he requests renewal of the trademark registration.

Art. 32

(1) If OSIM ascertains that the conditions laid down by this Law for renewal of the trademark registration have not been satisfied, it shall communicate that fact to the owner who shall have a period of 3 months as from the date of receipt of the notification for making his reply; if he does not reply within the prescribed period, the request for renewal of the trademark shall be refused.

(2) The person requesting renewal may appeal against the refusal decision within the period of time and in accordance with the procedure set out in Article 86.

Art. 33

(1) Renewal of a trademark registration shall be entered in the Trademark Register and published in the Official Industrial Property Bulletin within 3 months as from the filing date of the request for renewal with OSIM.

(2) Recordal of renewal in the Trademark Register shall be subject to payment of the prescribed fees.

(3) OSIM shall issue a trademark registration renewal certificate.

Art. 34

(1) Throughout the term of protection of a trademark, the owner may request to OSIM, on payment of the prescribed fee, to make non-essential modifications to certain elements of the trademark, on condition that the modifications do not affect the distinctive character of the trademark; the list of goods and services shall not be extended.

(2) OSIM shall enter in the Trademark Register the modifications made in accordance with paragraph (1) and shall publish the trademark as modified.

Art. 35

Throughout the entire term of protection of the trademark, its owner may request to OSIM, on payment of the prescribed fee, to enter in the Trademark Register changes occurred in the name, address or headquarters of the owner. Changes entered in the Register shall be published in the Official Industrial Property Bulletin.

Chapter VI Rights Conferred by a Trademark

Art. 36

(1) The registration of a trademark shall confer on its owner an exclusive right in that trademark.

(2) The owner of the trademark may request the competent judicial body to prohibit third parties not having his consent from using in the course of trade:

(a) any sign which is identical with the trademark, in respect of goods or services which are identical with those for which the trademark is registered;

(b) any sign where, because of its identity with or similarity to the trademark and because of the identity or similarity of the goods or services on which the sign is affixed, there is a likelihood of confusion on the part of the public, including the likelihood of association between the sign and the trademark;

(c) any sign which is identical with or similar to the trademark, in respect of goods or services which are not similar to those for which the trademark is registered, where the latter has a reputation in Romania and where use of that sign without due cause could be detrimental to the distinctive character or the reputation of the trademark.

(3) In application of paragraph (2), the owner of the trademark may request that third parties should be prohibited from performing, in particular, the following acts:

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

(b) offering the goods, putting them on the market or stocking them for such purposes under that sign, or offering or supplying services thereunder;

(c) putting the goods under that sign into free circulation, exporting, importing or placing them under suspensive or economic customs procedure or under another customs procedure, as defined in customs regulations;

(d) using the sign on business papers and in advertising.

Art. 37

(1) The applicant for trademark registration may only request the prohibition referred to in Art. 36 paragraph (2) after publication of

the trademark.

(2) The applicant may claim damages for the acts referred to under paragraph (1), committed subsequently to trademark publication, under the general provisions of law. A decision ordering payment of damages shall be enforceable only as from the date of trademark registration.

(3) If the application for registration is refused, the applicant shall not be entitled to damages.

Art. 38

(1) Right in a trademark shall be exhausted, and the owner shall not be entitled to prohibit other persons the use thereof in respect of goods put on the market in the European Union and the European Economic Area, under said trademark, by the owner himself or with his consent.

(2) The provisions of paragraph (1) shall not apply if there exist legitimate reasons for the owner to oppose further commercialization of the goods, particularly where the condition of the goods is changed or impaired after they have been put on the market.

Art. 39

(1) The owner of a trademark may not request that third parties be prohibited from using in the course of trade:

- (a) the name/designation or address/ headquarters of the owner;
- (b) indications concerning the kind, quality, intended purpose, value, geographical origin, the time of production of the goods or of rendering of the service under that trademark or other characteristics of the goods or services;
- (c) the trademark, where it is necessary to indicate the intended purpose of a product or service, in particular as accessories or spare parts.

(2) Provisions of paragraph (1) shall apply with the proviso that the elements referred to under letters (a) and (c) are used in accordance with honest practice in industrial or commercial matters.

Chapter VII Transfer of Rights in a Trademark

Art. 40

(1) Rights in a trademark may be transferred by assignment or license, or by succession.

(2) Levy of compulsory execution against the owner of the trademark carried out in accordance with the law shall also be deemed to be a transfer of rights.

(3) Recordal of the transfer of rights in respect of a trademark under dispute shall be suspended up to the date of a final court decision in respect thereof.

Art. 41

(1) Rights in a trademark may be assigned independently of the transfer of the business in which the trademark is incorporated. Assignment shall be effected in writing and signed by the parties to the contract, on pain of nullity.

(2) Assignment of rights in a trademark may be effected for all or a part of the goods or services in respect of which the trademark is registered; an assignment, even in part, shall not limit the use of the trademark for the goods or services to which it applies to a given territory.

(3) Transfer of the whole of the patrimony of the trademark owner shall include transfer of the rights in the trademark. The transfer of certain elements of the owner's patrimony shall not affect his capacity as owner of the right in the trademark.

(4) Identical or similar trademarks belonging to the same owner that are used for identical or similar goods or services may be assigned only as a whole and only to one person, on pain of nullity of the instrument of assignment.

Art. 42

(1) The request for recordal of the assignment shall be accompanied by the document attesting to the change of ownership of the trademark.

(2) OSIM shall not enter the assignment in the Register if it is

obvious that public is misled as to the nature, quality or geographic origin of the goods or services in respect of which the trademark is registered, unless the assignee accepts to restrict the trademark transfer to the goods and services in respect of which it is not likely to mislead.

(3) Upon request by person concerned and on payment of the prescribed fee, OSIM shall enter the assignment in the Trademark Register and publish it in the Official Industrial Property Bulletin. Assignment may be invoked against third parties as from the date of its publication.

Art. 43

(1) The owner of a trademark may, under a licensing contract, authorize third parties to make use of the trademark on the whole or a part of the territory of Romania for all or a part of the goods or services for which the trademark was registered. Licenses may be exclusive or non-exclusive.

(2) The owner of a trademark may invoke the rights conferred by that trademark against a licensee who contravenes the provisions of his licensing contract with regard to its duration, the form of the trademark and the nature of the goods or services for which the license is granted, the territory in which the trademark may be used, or the quality of the goods manufactured or of the services provided by the licensee under the trademark for which the license has been granted.

(3) Throughout the term of the trademark licensing contract, the licensee shall be required:

(a) to use, for the goods on which the trademark is affixed, only the trademark that is the subject of the licensing contract, whilst remaining free to affix on such products signs which show that he is the manufacturer;

(b) to add the term "under license ..." to the mark affixed on the products that are the subject matter of the license, in accordance with the contract.

(4) Licenses shall be entered in the Trademark Register on payment of the prescribed fee and shall be published in the Official Industrial Property Bulletin. A license may be invoked against third parties as from the date of its publication.

Art. 44

(1) Unless otherwise provided in the licensing contract, the licensee may not institute infringement proceedings without the consent of the trademark owner.

(2) The holder of an exclusive license may institute infringement proceedings if, after having notified the trademark owner of the infringing acts of which he has obtained knowledge, the latter has not acted within the time limits prescribed by the licensee.

(3) Where infringement proceedings are instituted by the owner, any of the licensees may intervene in the proceedings in order to obtain compensation for damage occasioned by the infringement of the trademark.

(4) Failure to register a license with OSIM shall not affect:

(a) the validity of the trademark registration which is the subject-matter of the license or with regard to the trademark license protection;

(b) the intervention in an infringement case instituted by the owner or the grant of damages within said proceedings, as a consequence of the infringement of a trademark which is the subject-matter of the license.

(5) License registration shall not be a condition for the trademark use by the licensee to be deemed to be equivalent to the trademark use by the owner, within the proceedings relating to obtaining the trademark, maintaining the same in force or defending the rights therein.

Chapter VIII Loss of Rights in a Trademark

Art. 45

(1) The owner may surrender his trademark in respect of some or all of the goods or services for which it is registered.

(2) The surrender of a trademark shall be declared to OSIM in writing by the trademark owner or by the person authorized by him and the rights in the trademark shall lapse, with respect to the goods and services to which the mark applies, as from the date on which surrender is entered in the Trademark Register.

(3) If a license has been registered, surrender of a trademark shall be entered only if the owner of the trademark proves that he has notified the licensee of his intention to surrender the trademark.

Art. 46

(1) Any concerned person may apply to the Law Court of Bucharest, at any time during the term of protection of the trademark, for revocation of the owner of the rights conferred by the trademark:

(a) if, within a continuous period of 5 years, as from the date of its entry in the Trademark Register, the trademark has not been put to genuine use on the territory of Romania in connection with the goods or services in respect of which it is registered or if such use has been suspended for a continuous period of 5 years, and there are no proper reasons for non-use;

(b) if, after the date of registration, the trademark has become, in consequence of acts or inactivity of the owner, the common name in the trade for a product or service in respect of which it is registered;

(c) if, after the date of registration and in consequence of the use made of it by the owner or with his consent, the trademark is liable to mislead the public, particularly as to the nature, quality or geographical origin of the goods or services in respect of which it is registered;

(d) if the trademark has been registered by a person not having the capacity required by Article 3 letters (h) and (i).

(2) The following shall be considered effective use of a trademark:

(a) use of the trademark in a form that differs in certain respects from that of the registered trademark, but which does not impair its distinctive character;

(b) impossibility of using the trademark due to circumstances beyond the control of the trademark owner, for example restrictions on import or other provisions by public authorities in respect of the goods or services to which the trademark applies.

(c) affixing of the trademark on goods or their packaging, exclusively for the purposes of export;

(d) use of the trademark by a third party with the consent of the owner or by any person entitled to use a collective mark or a certification mark, where it is considered by the trademark owner himself to be a use of the trademark.

(3) The rights of the owner may not be revoked if, in the time between expiry of the period referred to in paragraph (1) letter (a) and the submission of the request for revocation, the trademark has been subject to effective use. However, if the beginning or resumption of use of the trademark takes place within the 3 months preceding submission to the courts of the request for revocation, use of the trademark shall not be taken into consideration if preparation for the beginning or resumption of use has been made only after the owner obtained knowledge of the intention to submit a request for revocation.

(4) The burden of proof of use of the trademark shall rest with the trademark owner and proof may be furnished by any means.

(5) Revocation shall take effect as from the date of submission of the application for revocation to the competent court.

(6) The trademark shall be canceled from the Trademark Register and notice thereof shall be published in the Official Industrial Property Bulletin.

Art. 47

(1) Any concerned person may apply to the Law Court of Bucharest for cancellation of the registration of a trademark, on any of the following grounds:

(a) the trademark was registered contrary to the provisions of Art. 5 paragraph (1);

(b) the trademark was registered contrary to the provisions of Art. 6;

(c) the registration was applied for in bad faith;

(d) the registration infringes a right of personal portrayal or a

persons's name;

(e) the registration infringes earlier rights acquired in a protected geographical indication or a protected design, other industrial property rights or copyright.

(2) Cancellation proceedings on the grounds referred to in paragraph (1) letter (c) may be instituted at any time during the term of protection of the trademark.

(3) The time limit for requesting cancellation of a registration on one of the grounds under paragraph (1) letters (a), (b), (d) and (e) shall be 5 years as from the registration date of the trademark.

(4) Cancellation of a registration may not be applied for on the grounds that the trademark conflicts with an earlier trademark if such earlier trademark does not satisfy the conditions laid down in Art. 46 paragraphs (1) - (3).

(5) Where the earlier trademark has only been used in respect of some of the goods or services for which the trademark is registered, trademark registration may be cancelled only for those goods or services in respect of which the trademark has not been used.

Art. 48

(1) The owner of an earlier trademark who has acquiesced for a continuous period of 5 years in the use of a subsequently registered trademark may not apply for cancellation nor oppose the use of the later trademark for the goods and services in respect of which such later trademark has been used, except if the registration of the later trademark was sought in bad faith.

(2) In the case referred to under paragraph (1), the owner of the subsequently registered trademark may not oppose the use of the earlier trademark, even if the earlier trademark may no longer be invoked against the later trademark.

Art. 49

If one ground for revocation or cancellation only applies to some of the goods or services for which the trademark is registered, the revocation or cancellation shall have effect with respect to such goods or services only.

Chapter IX Collective Marks

Art. 50

(1) Associations of manufacturers, producers, suppliers of services or traders may apply to OSIM for the registration of collective marks.

(2) The applicant for registration of a collective mark shall be required to file, together with the application or, at the latest, within 3 months as from the date of the notification transmitted by OSIM, regulations governing use of the collective mark.

The application shall comply with the provisions of Article 9.

(3) In the regulations governing use of the collective mark, the applicant shall specify the persons authorized to use the collective mark, the conditions of membership of the association, the conditions of use of the mark, the grounds on which a member of the association may be prohibited from using the mark and the sanctions that may be applied by the association.

(4) The regulations governing the use of the collective mark may require that the collective mark may be transmitted by its owner only with the consent of all members of the association.

Art. 51

(1) In addition to the grounds for refusal of an application for registration of an individual trademark, an application for registration of a collective mark shall be refused:

(a) if the applicant does not have the capacity required by Art. 50 paragraph (1);

(b) if the requirements of Art. 3 letter (e) are not satisfied;

(c) if the regulations governing the use of the mark are contrary to public order or to accepted principles of morality.

(2) After publication of the collective mark and of the regulations governing the use thereof, the owner of an earlier trademark, of a well-known trademark or of an earlier right to personal portrayal or name, a protected geographical indication, a protected design or a copyright or any other concerned person may submit with OSIM a notice of opposition to the registration of the collective mark, within the time limit laid down under Article 19 paragraph (1).

Art. 52

(1) The owner of a collective mark shall be required to communicate to OSIM any amendment to the regulations governing the use of the mark.

(2) Amendments to the regulations governing the use of the mark shall take effect only as from the date of its entry in the Trademark Register. The amendment shall not be entered in the Register if the amended regulations do not satisfy the conditions set out in Art. 50 paragraph (3).

Art. 53

(1) Any person concerned may apply to the Law Court of Bucharest, at any time during the term of protection of the mark, for revocation of the rights conferred by the collective mark:

(a) if, within a continuous period of 5 years as from the date of its entry into the Trademark Register, the mark has not been put to genuine use in connection with the goods or services in respect of which it is registered, and there are no proper reasons for non-use;

(b) if the owner has used the mark in other conditions than those provided for by the regulations or has not taken steps to prevent such use;

(c) if the use of the mark has caused it to become liable to mislead the public.

Art. 54

(1) Any concerned person may apply to the Law Court of Bucharest for cancellation of the registration of a collective mark within a period of 5 years as from the date of registration, on any one of the grounds set out in Art. 47 paragraph (1) letters (a), (b), (d) and (e).

(2) If the registration of the mark has been applied for in bad faith or if the mark has been registered contrary to the provisions of Art. 50 paragraphs (1) - (3), any concerned person may apply for cancellation of the registration to the Law Court of Bucharest at any time during the term of protection of the mark.

Art. 55

Unless otherwise provided by this Law, collective marks shall be subject to the provisions on individual trademarks.

Chapter X Certification Marks

Art. 56

(1) A certification mark may be registered with OSIM by any legal entity with statutory powers to control the goods or services as to the elements provided for in Art. 3 letter (f).

(2) Legal entities who manufacture, import or sell goods or provide services, other than those responsible for quality control, may not apply for registration of a certification mark.

Art. 57

(1) The applicant for registration of a certification mark shall be required to file, at the same time as his application for registration, submitted in accordance with Art. 9, or at the latest within 3 months as from the date of notification transmitted by OSIM:

- (a) the regulations governing the use of the certification mark;
- (b) authorization for, or a document attesting the legal exercise of certification activities or, where appropriate, proof of registration of the certification mark in his country of origin.

(2) The regulations shall specify the persons authorized to use the mark, the elements and characteristics that are to be guaranteed by the mark, the manner in which the competent certification authority shall verify those characteristics and supervise the use of the mark, the fees payable for the use of the mark and the procedures for settling disputes.

(3) Any natural person or legal entity who supplies goods or provides services may be authorized to use a certification mark, subject to compliance with the provisions of the regulations governing its use.

(4) The owner of a certification mark shall authorize the persons entitled to use the mark for goods or services exhibiting common characteristics guaranteed by the regulations governing its use.

Art. 58

In addition to the grounds for refusal of an application for registration of an individual trademark, an application for registration of a certification mark shall also be refused in the event of non-compliance with the provisions of Art. 3 letter (f) and

of Art. 56 and 57.

Art. 59

(1) After publication of the mark and the regulations governing its use, the owner of an earlier trademark, a well-known trademark or an earlier right to personal portrayal or name, of a protected geographical indication, a protected design or a copyright, or any other concerned person, may, within the time limits laid down in Art. 19 paragraph (1), submit a notice of opposition against registration of the certification mark, with OSIM .

(2) If the users of a certification mark fail to comply with the regulations, the owner may withdraw their authorization to use the mark or may apply other sanctions laid down in the regulations.

Art. 60

(1) Any concerned person may apply to the Law Court of Bucharest for cancellation of the registration of a certification mark within 5 years as from the date of registration:

- (a) if any of the grounds under Art. 47 paragraph (1) letters (a), (b), (d) or (e) is applicable;
- (b) if the mark has been registered contrary to the provisions of Art. 3 letter (f).

(2) If the registration of the mark was applied for in bad faith or if the mark was registered contrary to the provisions of Art. 56 and Art. 57 paragraphs (1) - (3), any concerned person may apply to the Law Court of Bucharest for cancellation of the registration, at any time during the term of protection of the mark.

Art. 61

(1) Rights in a certification mark may not be transferred by the legal entity owning the mark.

(2) Transfer of rights in a certification mark shall be decided by Government decision.

Art. 62

If a certification mark ceases to be protected, it may not be the subject matter of an application for registration nor used prior to expiry of 10 years as from the date of the termination of protection.

Art. 63

(1) Unless otherwise provided by this Law, certification marks shall be subject to the provisions on individual trademarks.

(2) The prescribed fees applicable to collective marks shall be applicable to certification marks.

Chapter XI International Registration of Trademarks

Art. 64

The provisions of this Law shall apply to international registrations made under the Madrid Agreement or the Protocol to the Agreement which have effects extended to Romania, unless otherwise provided in those instruments.

Art. 65

An application for international registration of a trademark entered in the Trademark Register, in accordance with the Madrid Agreement, or an application for international registration of a trademark filed or entered in the Trademark Register, in accordance with the Protocol to that Agreement, shall be examined by OSIM against payment of the prescribed fee.

Chapter XIII Community Trademark

Art. 66

Where a Community trademark application is filed with OSIM in accordance with Art. 25 paragraph (1) letter (b) of the Community Trademark Regulation, OSIM shall enter the date on which the application has been received and, without performing any examination, shall forward the application to the Office for Harmonization in the Internal Market within 2 weeks, subject to payment of the fee prescribed by the Law for the filing of a national trademark application.

Art. 67

A Community trademark application or a Community trademark may be converted into a national trademark application in accordance with the provisions of Art. 112 - 114 of the Community Trademark Regulation (codified version), subject to payment of the fee prescribed by the Law for the examination of a national application.

Art. 68

(1) The owner of an earlier trademark registered in Romania or of an earlier trademark, subject to international registration with effects in Romania, who files an identical trademark meant to be registered as a Community trademark, in respect of goods and services identical with those in respect of which the earlier trademark has been registered or included in the list thereof, may claim for the Community trademark registration the seniority of the earlier trademark in respect of the trademark registration in Romania.

(2) The owner of a Community trademark who also owns an earlier identical trademark registered in Romania or subject to an international registration with effects in Romania, in respect of goods and services identical with those in respect of which the earlier trademark has been registered or included in the list thereof, may claim the seniority of the earlier trademark in Romania.

Art. 69

Provisions of Art. 91, 92 and Art. 93 - 95 are also applicable to infringements of rights of the owner of a Community trademark.

Art. 70

(1) Infringement actions based on an earlier Community trademark against a subsequently registered national trademark the use of which has been acquiesced in for a continuous period of 5 years shall not be admissible if the filing of the national trademark was made in good faith.

(2) Non-admissibility shall be limited to those goods and services the use of which has been acquiesced in.

Art. 71

Litigations on Community trademarks, in cases which are in the jurisdiction of the Community trademark courts, as provided in Art. 95 paragraph (1) of the Community Trademark Regulation, shall be brought to the Law Court of Bucharest ,as a first instance court.

Chapter XIII Geographical Indications

Art. 72

(1) Geographical indications of products shall be protected in Romania by their registration with OSIM, in accordance with this Law or with the international conventions to which Romania is party and may be used only by those persons who manufacture or market the products for which they have been registered.

(2) Geographical indications protected now or in the future under bilateral or multilateral agreements concluded by Romania shall not be subject to the registration procedure established by this Law.

(3) The list of geographical indications recognized in Romania under the agreements referred to in paragraph (2) shall be entered by OSIM in the Register of Geographical Indications and shall be published in the Official Industrial Property Bulletin.

Art. 73

(1) The associations of producers pursuing production activities in the geographical area shall be entitled to apply to OSIM for registration of a geographical indication, in respect of the products stated in the application.

(2) Registration of a geographical indication may be applied for with OSIM, either directly or through a professional representative, and shall be subject to payment of the prescribed fee.

(3) The application for registration of a geographical indication shall contain the elements provided for by the implementing regulations to this Law.

(4) Within 3 months as from the date of filing the application, OSIM shall examine the application and the compliance with the conditions set out in Art. 75 and 76.

Art. 74

(1) The application for registration of a geographical indication shall be published under the conditions laid down by the implementing regulations to this Law.

(2) Within 2 months of publication of the application, any concerned person may oppose to registration of the geographical indication.

(3) The opposition to the registration of a geographical indication shall be settled in accordance with the provisions set out for trademarks.

Art. 75

OSIM shall register geographical indications and give the applicant the right to use them, after the central specialized public authority or the competent authority of the applicant's country of origin, as the case may be, has certified:

- (a) the geographical indication for which registration is sought;
- (b) the products that may be marketed under that indication;
- (c) the geographical area of production;
- (d) the characteristics that the products must exhibit and the manufacturing conditions they must comply with in order to be marketed under that indication.

Art. 76

Geographical indications shall not be registered if:

- (a) they do not comply with the provisions of Art. 3 letter (g);
- (b) they are the generic name of goods;
- (c) they are liable to mislead the public as to the nature, origin, manufacturing methods and quality of the goods;
- (d) they are contrary to public order or to accepted principles of morality.

Art. 77

(1) If the application satisfies the requirements of the law, OSIM shall decide to register the geographical indication in the Register of Geographical Indications and to give the applicant the right of using thereof.

(2) The right to use a geographical indication, obtained by registration, shall belong to the members of the association entered on the list communicated to OSIM.

Art. 78

(1) The geographical indication shall be entered in the Register of Geographical Indications within 2 months as from the date of the

decision to register the geographical indication.

(2) The entry of a geographical indication in the Register of Geographical Indications and the issuance of the geographical indication registration certificate granting the applicant the right to use it shall be subject to payment of the prescribed fees.

Art. 79

Registration of a geographical indication on behalf of an association of producers shall not prevent registration of the same indication by any other association having the capacity required under Article 73.

Art. 80

(1) The term of protection of geographical indications shall begin on the date on which the application was filed with OSIM and shall be without limit in time.

(2) The right to use a geographical indication shall be granted to the applicant for a period of 10 years, renewable an unlimited number of times, if the conditions under which the right has been obtained remain applicable.

(3) The application for renewal shall be subject to payment of the prescribed fee.

Art. 81

Persons authorized to use a geographical indication for certain goods shall be entitled to use it in the course of trade, only for those goods, in business papers, advertising or brochures and they may affix on such products the term registered geographical indication.

Art. 82

(1) It shall be prohibited for non-authorized persons to use a geographical indication or an imitation thereof, even if the true origin of the products is shown or if terms such as kind, type, imitation, and the like are added.

(2) Persons authorized by OSIM to use a geographical indication for wines or spirits may prohibit the use of such indication by any other person, for wines and spirits that do not come from the region suggested by the geographical indication concerned, even where the

true origin of the product is expressly mentioned or the geographical indication is used in a translated form or accompanied by terms such as kind, type and the like.

Art. 83

The central specialized public authority may, ex officio or at the request of any concerned person, carry out verifications of the products marketed under a registered geographical indication.

Art. 84

The right to use a geographical indication may not be transferred.

Art. 85

(1) Throughout the term of protection of a geographical indication, any concerned person may apply to the Law Court of Bucharest for cancellation of the registration if the geographical indication has been registered contrary to the provisions of Art. 75 and 76.

(2) In the event of failure to comply with the quality criteria and the specific characteristics of the products of the region to which the geographical indication refers, the central specialized public authority or any other concerned person may apply to the Law Court of Bucharest for revocation of the rights of the persons authorized by OSIM to use the registered geographical indication.

(3) The final decision of the Law Court of Bucharest shall be communicated to OSIM by the person concerned. OSIM shall cancel the geographical indication in the Register of Geographical Indications and shall publish the cancellation in the Official Industrial Property Bulletin within 2 months of its notification.

Chapter XIV Defense of Rights in Trademarks and Geographical Indications

Art. 86

(1) OSIM decisions in respect of trademark registration applications as well as in respect of geographical indication registration applications may be appealed against with the Office by any concerned person, within 30 days of communication or of publication of trademark registration or geographical indication registration, as the case may be, on payment of the prescribed fee.

(2) OSIM decisions concerning the entry of assignment or license in the Trademark Register may be appealed against with the Office by any concerned person within 30 days of communication or, where appropriate, of publication.

(3) Appeals lodged in accordance with the provisions of paragraphs (1) and (2) shall be settled by a Board of Appeal of OSIM.

Art. 87

Where a trademark registration, renewal or entry of changes in the Trademark Register represents an obvious clerical error, within 2 months as from the date of registration or entry, as the case may be, OSIM may revoke registration, renewal or entry in a reasoned manner; revocation shall be published in the Official Industrial Property Bulletin.

Art. 88

(1) The reasoned decision of the Board of Appeal shall be communicated to the parties within 30 days of pronouncement and may be appealed against to the Law Court of Bucharest within 30 days of communication. The decisions of the Law Court of Bucharest may only be appealed against before the Court of Appeal of Bucharest.

(2) Decisions given in cases referred to in Art. 36, 46, 47, 53, 54, 60 and 85 may be further appealed.

Art. 89

(1) At the request of the judicial body, OSIM shall be required to communicate to that body all acts, documents and information required for settling the dispute submitted to it.

(2) Owners must be summoned in every dispute concerning trademarks.

Art. 90

(1) The unlawful performance of the following acts shall constitute an offence liable to imprisonment of between 3 months and 2 years or a fine:

(a) infringement of a trademark;

(b) marketing of goods under a trademark that is identical with or similar to a trademark registered for identical or similar goods;

(c) marketing of products under a geographical indication indicating or suggesting that the product concerned originates from a geographical region, other than its true region of origin.

(2) Trademark infringement shall mean the carrying out or use of a sign by third parties, in their commercial activity, without the owner's consent, if said sign:

(a) is identical with the trademark, in respect of goods or services identical with those for which the trademark is registered;

(b) given the identity with or similarity to the trademark or given the identity or similarity of the goods or services to which the sign is affixed with the goods or services for which the trademark is registered, would produce a likelihood of confusion on the part of the public, including the likelihood of association between the trademark and the sign;

(c) is identical with or similar to the trademark, in respect of goods or services differing from those for which the trademark is registered, where said trademark has a reputation in Romania and where use of that sign without due cause could take unfair advantage of the distinctive character or the reputation of the trademark and cause prejudice to the trademark owner.

(3) Marketing shall mean offering the goods, putting them on the market or stocking them for such purposes under that sign, or providing services thereunder, as well as importing, exporting or conveying them in transit thereunder.

(4) The acts referred to in paragraph (1) shall not constitute infringement if carried out prior to the date of publication of the trademark.

(5) In the case of offences referred to under paragraph (1) a), reconciliation of parties shall remove criminal liability.

Art. 91

(1) Where the owner of industrial property rights in respect of a trademark or geographical indication or any other person exercising, with the owner's consent, the industrial property right is able to credibly prove that his industrial property right in respect of a trademark or geographical indication is the subject of a current or imminent unlawful act which is likely to cause him irreparable prejudice, he may ask the judicial body to order precautionary measures.

(2) The judicial body may order, in particular:

a) the infringement to be prohibited or provisionally ceased;
b) the appropriate measures to be taken for preserving the evidence.
Provisions of the Government Emergency Ordinance no 100/2005 on the enforcement of industrial property rights, approved with amendments through the Law 280/2005, with the subsequent amendments and completions shall be applicable.

(3) Applicable procedural provisions are comprised in the provisions of the Civil Procedure Code relating to precautionary measures in the field of intellectual property rights.

(4) Precautionary measures may also be ordered against an intermediary whose services are used by a third party with the purpose of infringing a right protected under this Law.

Art. 92

Persons found guilty may be required to pay damages, in accordance with the general rules of law, for the prejudice caused by the performance of the acts referred to in Art. 90.

Art. 93

(1) The judicial body may require the plaintiff to furnish any evidence at his disposal to prove that he is the holder of the right that has been infringed or of which infringement was unavoidable.

(2) Where the evidence in support of the plaintiff's claims are under the control of the defendant, the judicial body may order the defendant to furnish the evidence, subject to a guarantee of confidentiality of

information, in accordance with the law.

(3) The judicial body may order the plaintiff to pay to the defendant any damages caused as a result of an abusive institution of proceedings in relation to a protected trademark or protected geographical indication.

Art. 94

The owner of a trademark, or where appropriate, the concerned central specialized public authority, may request the judicial body to require the infringer to provide recent information on the origin and distribution channels of merchandise to which trademarks are unlawfully affixed and information on the identity of the manufacturer or merchant and on the quantity of merchandise manufactured, delivered, received or ordered.

Art. 95

Customs competence concerning the enforcement of rights in respect of trademarks and geographical indications shall belong to the National Agency for Fiscal Administration, in accordance with the law.

Chapter XV Duties of the State Office for Inventions and Trademarks

Art. 96

OSIM is the specialized body of the central public administration, the sole authority on the territory of Romania for the provision of protection of trademarks and geographical indications in accordance with this Law.

Art. 97

In the field of trademarks and geographical indications, OSIM has the following duties:

- (a) to record, examine and publish applications for trademark registration;
- (b) to examine trademarks registered or submitted for registration with the World Intellectual Property Organization, in accordance with the Madrid Agreement or the Protocol to that Agreement, in order to recognize or refuse protection thereof on the territory of Romania;
- (c) to record and publish applications for registration of geographical indications and grant them protection on the territory of Romania;
- (d) to issue trademark registration certificates;
- (e) to issue registration certificates for geographical indications and grant the right of use for such indications;
- (f) to establish and keep the Trademark Register and the Register of Geographical Indications;
- (g) to issue priority certificates for trademarks;
- (h) to carry out anticipation searches prior to trademark registration;
- (i) to maintain, preserve and develop the national collection of trademarks and geographical indications and set up a computerized database in this field;
- (j) to maintain relations with similar public bodies and with regional industrial property organizations; to represent Romania in the specialized international organizations;
- (k) to issue the official publication concerning trademarks and geographical indications of products and exchange publications with similar foreign national offices and with the international bodies and organizations working in this field;
- (l) to inform the European Commission on the national regulations adopted to transpose the First Directive 89/104/EEC of the Council of 21 December 1988 to Approximate the Laws of the Member States relating

to Trade Marks, published in the Official Journal of European Communities (OJEC) L 40 of 11 February 1989;

(m) to carry out other functions, as provided by law.

Chapter XVI Transitional and Final Provisions

Art. 98

(1) Applications for the registration of trademarks in respect of which no decision has been taken prior to the date of entry into force of this Law shall be subject to the provisions of this Law.

(2) Prior to the entry into force of this Law, the Government shall approve the relevant Implementing Regulations.

Art. 99

(1) This Law shall enter into force within 3 months as from its publication in the Official Gazette of Romania, Part I.

(2) The following shall be repealed as of that date:

-- Law No. 28/1967 on Trademarks and Service Marks published in Official Bulletin No. 114 of December 29, 1967;

-- Decree No. 77/1968 of the Council of Ministers on the application of Law No. 28/1967, published in Official Bulletin No. 8 of January 27, 1968;

-- Decree No. 1057/1968 of the Council of Ministers approving the Regulations on the structure, organization and operation of the commission for the settlement of disputes concerning trademarks and service marks, published in Official Bulletin No. 66 of May 17, 1968;

-- Decree No. 2508/1969 of the Council of Ministers defining the nature of and sanctions for infringements of the statutory provisions concerning inventions, innovations and improvements, as also trademarks and service marks, published in Official Bulletin No. 159 of December 31, 1969;

-- all other provisions contrary to this Law.