

SLOVAKIA

Trademark Act

Act No. 506/2009 Coll. on Trademarks

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SECTION I BASIC PROVISIONS

Section 1 Subject-matter of the Regulation

This Act governs rights and obligations relating to legal protection of trademarks and proceedings on trade marks before the Industrial Property Office of the Slovak Republic (hereinafter referred to as "the Office").

Section 2 Sign, which can be considered a trademark

Sign, which can be considered a trade mark, shall be any sign capable of being represented graphically and consisting particularly of words, including personal names, letters, numbers, drawings, shape of goods or their packaging or their mutual combinations, if such sign is capable of distinguishing goods or services of one person from goods or services of other person.

Section 3 For the purposes of this Act

- a) an international trade mark shall be a trade mark entered in the Trade Mark Register of the International Bureau of the World Intellectual Property Office (hereinafter referred to as "the International Register");
- b) Community trade mark shall be a trade mark entered in the Community Trade Marks Register (hereinafter referred to as "Community Register");
- c) well-known trade mark shall be a trade mark pursuant to an international convention;
- d) foreign trade mark shall be a trade mark entered in the trade mark register of a state or in relation to a state, which is a contractual party to an international convention or a member of the World Trade Organisation.

Section 4 Earlier trade mark

For purposes of this Act, earlier trade mark shall be

- a) a trade mark entered in the Trade Mark Register of the Industrial Property Office of the Slovak Republic (hereinafter referred to as "Register") with an earlier priority right;
- b) an international trade mark with designation for the Slovak Republic with an earlier priority right;
- c) a Community trademark with an earlier priority right or earlier seniority rights;
- d) a sign, which is a subject-matter of a trademark application (hereinafter referred to as an "application"), if it shall be entered as a trade mark referred to in a) or c).

Section 5 Grounds for refusal to entry a sign into the Register

(1) The following shall not be registered

- a) signs which do not conform with requirements of Section 2;
- b) signs which are devoid of any distinctive character;
- c) signs 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 goods or of rendering of service, or other characteristics of goods or service;
- d) signs which consist exclusively of signs or indications which have become customary in current language or in the bona fide and established practices of trade;
- e) sign, which consists exclusively of a shape of goods, which results from the nature of the goods or is necessary to obtain a technical result, or gives substantial value to goods;
- f) signs which are contrary to public policy or to accepted principles of morality;
- g) signs which are of such nature as to deceive the public as to the nature, quality, geographical origin of goods or services;
- h) signs which contain signs registered in accordance with an international convention without the consent of a competent authority;
- i) sign which contains signs using of which is contrary to provisions of other legal enactment or with obligations of the Slovak Republic resulting from international treaties;
- j) signs which include signs of high symbolic value, particularly religious symbol;
- k) signs which include badges, emblems or escutcheons or other than those covered by an international convention without the consent of the competent authority;
- l) signs which are subject of application not filed in a good faith;
- m) signs which contain geographical indication and are filed with respect to wines or for spirits not having that origin.

(2) Paragraph (1)b), c) and d) shall not apply if an applicant proves that a sign has become distinctive in relation to goods or services for which registration is requested in consequence of the use which has been made of it within the Slovak Republic or in relation to the Slovak Republic before filing an application.

Section 6

A sign shall not be registered if it is identical with an earlier trade mark for identical goods or services of a different applicant or proprietor;

this shall not apply if an applicant or a proprietor of identical earlier trade mark gives a written consent to a sign registration.

Section 7

The sign shall not be registered upon oppositions against registration of a sign (hereinafter referred to as "oppositions") filed pursuant to Section 30

a) by the proprietor, if because of its identity with, or similarity to, the earlier trade mark and the identity or similarity of goods or services covered by the sign and the trade mark there exists a likelihood of confusion on the part of the public; the likelihood of confusion includes the likelihood of association with the earlier trade mark;

b) by the proprietor of an earlier trade mark, if because of identity of the sign with, or similarity to, the earlier trade mark, which has a reputation in the territory of the Slovak Republic or in the case of the Community trade mark has a reputation in the European Community, where the use of such sign for goods or services, which are not similar to those for which the earlier trade mark is registered, where the use without due cause would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark;

c) by the user of well known trade mark, if because of identity of the sign with the well known trade mark which became well known in the territory of the Slovak Republic or in relation to the territory of the Slovak Republic before filing date of an application for such trade mark for such user, and goods or services, for which such sign and trademark are registered, are identical;

d) by the user of well known trade mark, if because of identity of the sign with, or similarity to, the well known trade mark, which, before filing date, became well known in the territory of the Slovak Republic or in relation to the territory of the Slovak Republic for such user, and identities or similarities of goods and services for which the sign and well known trademark are registered, there exists a likelihood of confusion on the part of the public; the likelihood of confusion includes the likelihood of association with the well known trade mark;

e) by the proprietor of a foreign trade mark, if an applicant, who is or was a representative of the proprietor of a foreign trade mark or is his representative on the base of other legal relationship (hereinafter referred to as "commercial representative") in the territory of the Slovak Republic, requested the registration of a sign in his own name without the consent of the proprietor; this shall not apply if a commercial representative had a proper reason for such action;

f) by the user of a non-registered sign or of other sign used in the course of trade, if because of its identity with, or similarity to, a non-registered sign used in the course of trade in the territory of the Slovak Republic, which acquired prior to the date of application for registration by its using in the territory of the Slovak Republic or in relation to the territory of the Slovak Republic distinctive capability for identical or similar goods or services of the user and such sign is of more than mere local significance;

g) by the natural person, if using of such sign would infringe his/her rights of privacy or by the natural person entitled to set up a claim to right of privacy;

h) by the proprietor of an earlier industrial property right if use of such sign would infringe these rights;

i) by the person whose rights to the author work would be infringed by the use of the sign , if such work was made prior to filing date of the application.

SECTION II RIGHTS CONFERRED BY A TRADE MARKS

Section 8

(1) The proprietor of a trade mark shall have an exclusive right to use a trade mark in relation to the goods or services, for which the trade mark is registered. The proprietor of a trade mark shall be entitled to use sign ® with the trade mark.

(2) Unless otherwise stated, the proprietor shall be entitled to prevent third parties not having his consent from using in the course of trade a sign

a) identical with a trade mark for goods or services identical with those, for which a trade mark is registered;

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

c) identical with, or similar to, the trade mark with the reputation in the territory of the Slovak Republic, not registered for identical or similar goods or services, if the use of that sign without due cause takes unfair advantage of, or is detrimental to, the distinctive character or the repute of the trade mark.

(3) Section 9(2) shall apply to the use of a sign pursuant to paragraph (2) *mutatis mutandis*.

(4) If an rights conferred by the trade mark were infringed, the proprietor of the trade mark shall have the right to apply for prohibition of an infringement or jeopardising of his rights and to remedy the consequences of such action; the proprietor of the trade mark may also claim appropriate satisfaction, including pecuniary satisfaction. The right to claim the surrender of unjustified enrichment and to claim the damages shall not be affected.

(5) The proprietor of the trade mark may also claim the damages caused by actions committed after the date of publication of the application and which could be considered infringing the rights conferred by the trade mark after registration of the trade mark.

(6) If the reproduction of the trade mark in a dictionary, encyclopaedia or similar reference work in which the trade mark is being reproduced

so that it gives an impression that it constitutes generic name of the goods or services, the publisher of the work shall, at the request of the proprietor of the trade mark ensure that the reproduction of the trade mark at the latest in the next edition of the publication is accompanied by an indication that it is a registered trade mark.

(7) If the trade mark is registered in the name of the proprietor of the foreign trade mark without his consent, the proprietor of the foreign trade mark shall have the right to prohibit the agent from using the trade mark, unless the agent justifies his action.

(8) Disputes on trade marks shall be heard and decided by courts.

Section 9 Use of a trade mark

(1) The use of the trade mark is its use by its proprietor in relation to the goods or services for which it is registered.

(2) The use of the trade mark under paragraph (1) includes particularly

- a) affixing the trade mark to the goods or to the packaging of the goods;
- b) offering or placing on the market of such marked goods or storing for these purposes, or offering or providing of such marked services;
- c) import or export of such marked goods;
- d) use of the trade mark in a trade correspondence or entertainment.

(3) The use of the trade mark pursuant to paragraph (1) also includes

- a) use of the trade mark in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered;
- b) affixing of the trade mark to goods or to the packaging thereof within the territory of the Slovak Republic solely for export purposes.

(4) Use of the trade mark with the consent of the proprietor and use of the collective trade mark (Section 43) by the entitled person shall be deemed to constitute use by the proprietor.

Section 10

(1) A trade mark cannot be declared invalid because of the earlier trade mark, if the earlier trade mark has not been used during an uninterrupted period of at least five years immediately preceding the filing of a request for revocation of the trade mark, unless the proprietor justifies his action.

(2) If the earlier trade mark is used only for certain goods or services, for which it is registered, the earlier trade mark may constitute the ground for declaration of invalidity of a later trade mark only in respect to those goods and services, for which the earlier trade mark is used.

Section 11 Right of information

(1) In case of infringement or jeopardising the rights protected by this Act, the proprietor of the trade mark has the right to apply to the court for a decision to order the party infringing or jeopardising his rights to provide information on the origin and distribution networks of the goods or services or circumstances of placing the goods or services on the market.

(2) Information under paragraph (1) shall be:

- a) name and surname or the corporate name, or the name and place of the seat or place of the business, or the seat of the producer, manufacturer, processor, storekeeper, distributor, provider, seller, intended seller and other previous holders of the goods or providers of the services;
- b) indications on produced, processed, provided or ordered amount and on the price of the related goods or services.

(3) Any person who

- a) holds the goods infringing or jeopardising rights pursuant to this Act;
 - b) uses the services infringing or jeopardising rights pursuant to this Act;
 - c) provides services used in activities related to infringement or jeopardising rights pursuant to this Act; or
 - d) was a person referred to in point a) to c) as being involved in the production, processing or distribution of the goods or providing the services infringing or jeopardising the rights pursuant to this Act;
- shall be obliged to provide information under paragraphs (1) and (2).

(4) The right of information shall not be conferred if the possible consequences were inadequate to the seriousness of the consequences resulting from performing of such duty.

Section 12

(1) In case of infringement or jeopardising trademark rights the proprietor of the trade mark shall have the right to apply to the court for an order that the goods, materials or tools infringing or jeopardising trade mark

rights were

- a) recalled from the channels of commerce;
- b) definitively removed from the channels of commerce;
- c) prevented from further infringement or jeopardising the rights; simple removing of unlawful using of sign on faked goods are not considered as a provision preventing further infringement;
- d) destroyed in a suitable manner.

(2) Provisions pursuant to the paragraph (1) shall be performed at the expense of the person infringing or jeopardising trade mark rights, unless special circumstances give reason for different procedure.

(3) The proposal pursuant to paragraph (1) d) part relating to destruction of the subjects is not binding for the court.

Section 13

(1) In protection of rights pursuant to this Act the court may impose by a provisional measure same obligations as in a decision on the merits of the case if any delay could cause to entitled person a hardly reclaimable pecuniary or non-pecuniary injury.

(2) Within a decision on provisional measure the court may, also without request, impose a duty to a plaintiff to pay a deposit of an adequate amount or to implicate that decision comes into force by execution of an imposed duty. The court shall take into account, within its deciding on the amount of a warranty deposit, the seriousness of a pecuniary or nonpecuniary injury which can occur to the defendant as well as assets of a plaintiff therewith that imposing a duty to pay a deposit shall not be the substantial impediment of efficient application of right.

(3) The court may on request of defendant decide on giving warranty deposit over to the defendant as a compensation of pecuniary or non-pecuniary injury in finance caused directly by execution of preliminary measures and the plaintiff failed to submit the proposal to start proceedings within the time limit set by the court or the plaintiff was not successful on the merit of the case. The court may decide on refunding warranty deposit or proportionate part thereof to the plaintiff, if the plaintiff was successful or partly successful on the merit of the case.

(4) If within the period of six months from detection of injury occurrence pursuant to paragraph (3), no compensation or satisfaction is claimed

at court pursuant to paragraph (3) or an agreement on using the warranty deposit between parties is not concluded, the court shall refund the warranty deposit.

Section 14 Limitation of trade mark rights

(1) The proprietor of the trade mark is not entitled to prohibit third persons from using in the course of the trade their name and surname, corporate name or name or address, indications concerning the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of services, or other characteristics of goods or services and a sign necessary to indicate the intended purpose of products or services, in particular as accessories or spare parts, provided they use them in accordance with honest commercial practices, good morals and competition rules.

(2) The proprietor of the trade mark has to tolerate in the course of trade the use of a sign with the local significance identical with or similar to the trade mark, if it was used prior to the date of filing the application for registration and the scope of the use did not change.

Section 15 Exhaustion of trade mark rights

(1) The proprietor of the trade mark is not entitled to prohibit its use in relation to goods which have been put on the market in the European Economic Area under that trade mark by the proprietor or with his consent.

(2) The provisions of paragraph (1) shall not apply where the proprietor of the trade mark has legitimate reasons to oppose further commercialisation of the goods, in particular where the condition of the goods has been changed or impaired after they have been put on the market.

Section 16 Limitation of trade mark rights in consequence of acquiescence

(1) Where the proprietor of an earlier trade mark or the holder of other rights as referred to in Section 7(c), (d), (f) has acquiesced, for a period of five successive years, in the use of a later trade mark while being aware of such use, he shall no longer be entitled on the basis of the earlier trade mark either to apply for a declaration that the later trade mark is invalid or to oppose the use of the later trade mark in respect of the goods or services for which the later trade mark has been used, unless registration of the later trade mark was applied for in bad faith.

(2) The proprietor of the later trade mark shall not be entitled to oppose

the use of the earlier trade mark or of other rights pursuant to paragraph (1), even if the proprietor of the earlier trade mark or the holder of other rights pursuant to paragraph (1) has acquiesced, for a period of five successive years, in the use of a later trade mark.

Section 17 Transfer of the trade mark

(1) The trade mark may be transferred to any person in respect of all or some of the goods or services for which the trade mark is registered. The transfer of the trade mark shall be made in writing by means of a contract.

(2) The transfer of the trademark becomes effective vis-à-vis third parties upon its entry in the Register. The rights of third parties acquired before the date of effectiveness of the transfer of the trademark shall be preserved. On request of any of the parties to the contract the Office shall enter the transfer of the trade mark in the Register.

(3) The transferee of the trade mark may take any actions vis-à-vis the Office once the request for entry of the transfer has been delivered to the Office; the provisions of paragraph (2) shall not be affected.

(4) The Office shall refuse the request for entry of the transfer of the trade mark, if the transfer of the trade mark could be deceptive to the public on the nature, quality or geographical origin of the goods or services for which the trade mark is registered.

(5) If the transfer of the trade mark could be deceptive to the public pursuant to paragraph (4) only for some goods or services for which the trade mark is registered, the Office shall refuse the request for entry of the transfer of the trade mark only in respect for these goods and services.

(6) The provisions of paragraphs (1) to (5) shall apply mutatis mutandis also for transfer of the trade mark application rights.

Section 18 Assignment of the trade mark

(1) The trade mark shall be assigned to a new proprietor also in cases pursuant to special laws.

(2) The assignment of the trade mark becomes effective vis-à-vis third parties upon its entry in the Register. The rights of third parties acquired

before the date of effectiveness of the assignment of the trade mark shall be preserved. The Office shall enter the assignment of the trade mark in the Register on request of the original proprietor or the new proprietor.

(3) The new proprietor of the trade mark may take any actions vis-à-vis the Office once the request for entry of the assignment has been delivered to the Office; the provisions of paragraph (2) shall not be affected.

(4) The provisions of paragraphs (1) to (3) shall apply mutatis mutandis also for assignment of the trade mark application rights.

Section 19

The proprietor of the foreign trade mark may propose a motion to the court for a determination of his right to register the change of the proprietor of the trade mark, if the trade mark has been registered in the name of his agent. The court shall refuse the proposal for motion if the agent justifies his action. On the basis of the final court decision the Office shall register the change of the proprietor of the trade mark.

Section 20 Licence agreement

(1) The proprietor of the trade mark shall grant any person the right to use a trademark for all goods or services for which a trademark has been registered or for only a part of them by the licence agreement.

(2) Unless this Act provides otherwise, provisions of a special regulation shall apply to the establishment, expiration and exercise of license agreement rights.

(3) The licence agreement becomes effective vis-à-vis third parties upon its entry in the register. The Office shall register the licence agreement on the request of any of the parties to the agreement. Unless otherwise provided by the licence agreement, the proprietor of the trade mark shall be entitled to grant a licence to other parties and he also may use the trade mark.

(4) In case of infringement or jeopardising of rights protected by this Act, a licence holder shall have same rights as a trade mark proprietor.

(5) The proprietor of the trade mark may invoke his rights conferred by his trade mark against a licensee who breaches any provision of the licence agreement with regard to its duration, the form in which the trade mark

may be used, the scope of goods and services for which the licence is granted, the territory in which the trade mark may be used, or the quality of goods manufactured or services produced or provided by the licensee.

Section 21 Right of lien

(1) Right of lien on the trade mark may be established.

(2) Unless otherwise provided by this Act, provisions of a special regulation shall apply to the establishment, expiration and exercise of the right of lien.

(3) An agreement on establishment of the right of lien shall be made in written otherwise it shall be void.

(4) The Office shall register the establishment or expiration of the right of lien on the trade mark on request of pledge creditor or pledge debtor.

(5) The right of lien on the trade mark shall be established upon its entry into the Register.

Section 22 Term of protection and renewal of registration of the trade mark

(1) Term of protection of the registered trade mark shall be ten years from filing date of the application.

(2) The registration of the trade mark shall be renewed upon request of the proprietor of the trade mark or of the pledge creditor for further periods of ten years. The renewal of the registration shall take effect as of the date of expiry of the registration of the trade mark.

(3) The request for renewal may be filed at the earliest within twelve months before the expiry of the registration. Without prejudice to paragraph (4), if the request for renewal is not filed at the latest on the day of expiry of the validity, the request for renewal of the registration is deemed not be filed.

(4) If the request for renewal of the trade mark is not filed in the period pursuant to paragraph (3), it may be filed within the additional period of six months following the expiry of the period for filing the request for renewal of the trade mark pursuant to paragraph (3).

(5) If the request for renewal is filed in respect of only some of the goods or services for which the trade mark is registered, the registration shall be renewed only for those goods or services.

Section 23 Termination of the trade mark

(1) A trade mark shall terminate

- a) on the expiry of term of protection, unless request for renewal of registration was filed in due time;
- b) on day when the proprietor surrendered his trade mark; surrender the trade mark shall be effective on the day stated in the declaration on surrender the trade mark as a day when the trade mark proprietor surrendered his right; if this day is not stated in the declaration, surrender the trade mark shall be effective on the day of its delivery to the Office;
- c) from day of effectiveness of a trade mark revocation.

(2) Surrender the trade mark, to which the rights of third persons entered in the Register are bound, shall be effective on the day of filing a written consent of the person whose rights or interests protected by rights may be affected by the termination of the trade mark, or on the day when the trade mark proprietor proved the expiry of these rights.

SECTION III PROCEEDINGS BEFORE THE OFFICE

Section 24 Application

(1) Registration of the trade mark shall be made at the request by the application filed with the Office.

(2) The application shall contain

- a) request for entry of the sign as the trade mark into the Register;
- b) information identifying the applicant;
- c) information identifying the representative, if the applicant is represented by a representative;
- d) wording or representation of the sign applied; in case of three-dimensional sign its surface representation;
- e) list of goods or services in respect of which the sign shall be entered as the trade mark into the Register;
- f) signature of the applicant or his representative.

(3) The list of goods and services under paragraph (2)(e) shall be classified pursuant to international treaty with the respective number of the class.

(4) Application shall be filed for one sign only.

Section 25 Date of filing the application

(1) The date of filing the application shall be the date of delivery of the application to the Office which contains

- a) data indicating an apparent intention of the applicant to file an application;
- b) data allowing identification of the applicant and contact with the applicant or his representative; and
- c) requirements in accordance with Section 24(2)(d) and (e) except classification referred to in Section 24(3).

(2) If the application does not meet the requirements and does not contain data as laid down in paragraph (1), the Office shall call upon the applicant to remedy the deficiencies within the prescribed time limit, which cannot be shorter than two months. In this case the day of filing the application shall be date of delivery the application with amended data and requirements; otherwise the application shall be considered not to be filed.

Section 26 Right of priority

(1) The applicant shall enjoy a right of priority vis-à-vis any person who files an application containing identical or similar sign for identical or similar goods or services after

- a) filing date of the application according to Section 25; or
- b) date of priority of previous trade mark application pursuant to an international convention.

(2) The applicant shall claim priority right pursuant to paragraph (1)(b) in the application and within the period of three months from the filing date he shall prove this right otherwise it shall not be taken into consideration. Priority right may be claimed from one application only provided that this application has been first and filed in a state which is contracting party to an international convention or which is a member of the World Trade Organization; otherwise this right may be claimed only under the condition of reciprocity.

(3) If the applicant claims the right of priority in accordance with the paragraph (1)(b), he shall state in the application the trade mark application number and filing date of the trade mark application, of which the priority is being claimed, and the state where the application was filed. If the applicant claims the priority of more than one application, the applicant has to state for each of the goods and services from which application the priority is claimed.

(4) The right of priority pursuant to paragraph (1)(b) shall apply also in respect of services.

(5) The Office shall upon request issue a priority document to the applicant.

Section 27 Amendment and division of the application

(1) The application may be amended upon request of the applicant only for the purpose of correcting the name, surname or the name, corporate name and address of permanent residence provided that such amendment came up after the application was filed and this amendment updates data contained in the applied sign without any changes to the overall character of the sign. Other amendments of the applied sign shall not be admissible after filing the application. If the sign that is subject of the application is amended after publication of the application, the application shall be re-published with amended sign.

(2) After filing the application the applicant shall be entitled to restrict the list of goods or services for which the sign is to be registered; such restriction shall not be withdrawn. No extension of list of goods or services, for which the sign is to be registered, shall be admissible after filing the application.

(3) An applicant shall be entitled up to entry of a sign into the Register to divide the application containing in the list more than one kind of goods or services into separate applications. The right of priority and the filing date from the application as filed shall be remain unchanged also for divisional applications, if they are related to goods and services from the application as filed.

(4) The provisions of paragraphs (1) and (2) shall be applied accordingly to the trade mark.

Section 28 Examination and publication of the application

(1) The Office shall examine whether the application meets conditions pursuant to this Act in the registration proceedings.

(2) If the application fails to meet conditions pursuant to Section 24(2) to (4), the Office shall request the applicant to remedy the deficiencies within the prescribed time limit. If the applicant fails to remedy the deficiencies within the prescribed time limit, the Office shall terminate the proceedings on the application. An applicant shall be notified of this consequence in the invitation to remedy the deficiencies.

(3) If the sign fails to meet conditions pursuant to Section 5 or 6, the Office shall refuse the application. Before the application is refused, the Office shall enable the applicant to respond to ascertained reasons for refusal of an application.

(4) If reasons for refusing the application pursuant to paragraph (3) relate to only a part of goods or services, the Office shall refuse the application only for this part of goods or services.

(5) If proceedings on the application were not terminated pursuant to paragraph (2) or if the application was not refused pursuant to paragraph (3), the Office shall publish the application in the Official Journal of the Industrial Property Office of the Slovak Republic (hereinafter referred to as "Official Journal").

Section 29 Observations against entry into the Register

(1) Any person shall be entitled till the registration of the sign to submit written observations against entry of the sign into the Register based on the grounds under Section 5 or 6; the Office shall take into account observations in deciding on entry of the sign into the Register. Person who submitted observations shall not be a party to proceedings on the trade mark application.

(2) The Office shall inform the applicant about the observations and shall request him to respond within the prescribed time limit. The Office shall inform the applicant and the person who submitted observations about results of observations assessment.

Section 30 Oppositions

After publication of the application in the Official Journal, a person referred to in Section 7 (hereinafter referred to as "opponent") shall be entitled to file oppositions to registration within the period of three months from the publication date. The oppositions must specify the grounds on which they are made and they have to be supported by evidence. The Office shall not consider any amendments to the oppositions or any evidence made after the prescribed time limit.

Section 31

(1) If the oppositions have not been filed duly and in due time referred to in Section 30, the Office shall terminate the opposition proceedings. The decision on the proceedings termination shall be delivered by the Office to the opponent.

(2) The Office shall inform the applicant about oppositions, proceedings on which have not been terminated pursuant to paragraph (1), and shall request him to respond within the prescribed time limit.

(3) If the applicant fails to respond to the oppositions within the prescribed time limit referred to in paragraph (2), the Office shall terminate the proceedings on the application within the scope of oppositions submitted. The applicant shall be notified by the Office of this consequence in the request to respond. The decision on termination of the proceedings on application shall be delivered by the Office to the applicant and to the opponent.

(4) The Office shall terminate the opposition proceedings, if the reason,

for which the opposition was filed, has ceased. Decision on termination of the opposition proceedings shall be delivered by the Office to the applicant and to the opponent.

Section 32

(1) On the basis of oppositions, to which the applicant has responded, the Office shall examine whether an applied sign meets prescribed conditions for registration referred to in Section 7.

(2) If the Office finds out in the opposition proceedings that the sign fails to meet conditions for registration referred to in Section 7, the Office shall refuse the application. If the reasons for refusal of the application concern only certain goods or services, the Office shall refuse the application in respect of those goods or services.

(3) If the Office finds out that no reasons referred to in Section 7 exist, the oppositions shall be refused.

Section 33 Registration of the trade mark

(1) Where the application meets the requirements for entry of the sign into the Register and the proceedings on the application have not been terminated and no opposition was filed within the time limit referred to in Section 30 or where the opposition was refused by a final decision or the opposition proceedings was terminated by a final decision, the Office shall register the sign.

(2) The registration of the trade mark takes effect with the day of entry of the trade mark into the Register. By this day, the applicant becomes the trade mark proprietor; the Office shall issue to the proprietor a certificate on entry of the trade mark into the Register.

(3) The Office shall publish registration of the trade mark in the Official Journal.

Section 34 Revocation of the trade mark

(1) The Office shall revoke the trade mark on the request of a third party

a) if the trade mark has not been properly used for goods or services in respect of which the trade mark is registered within the continuous period of five years in the territory of the Slovak Republic; unless proved otherwise by the proprietor of the trade mark or there are no legitimate reasons for non-use, the trade mark shall be considered not used in the

territory of the Slovak Republic within the continuous period of five years. The Office shall not revoke the trade mark, if the use of the trade mark commenced or was resumed following five years of non use and filing the request for revocation of the trade mark; the use which commenced or which was resumed following five years of non-use of the trade mark within three months preceding the filing of the request for revocation shall be disregarded where the preparations for the commencement or the resumption of the use occurred only after the proprietor becomes aware that a request for revocation of the trade mark might be filed;

b) if by the consequence of acts or inactivity of the proprietor the trade mark has become the common name in the trade for products or services for which it is registered;

c) if the trade mark, in consequence of the use made of it by the proprietor or with his consent in respect of the goods or services for which it is registered, is liable to mislead the public, particularly as to the nature, quality or geographical origin of those goods or services.

(2) The Office shall upon request of a third party revoke the trade mark on the basis of the court decision declaring that:

a) the trade mark containing the name and surname or the image of the natural person, or its pseudonym, infringes the rights to protection of personality;

b) the trade mark containing the name or the trade name of the natural or the legal person interferes with its reputation;

c) the trade mark infringes earlier copyright;

d) the using of the trade mark is an act of unfair competition.

(3) The request for revocation of the trade mark referred to in paragraph (2) shall be filed within six months from date of validity of the court decision.

(4) Where the ground for revocation of the trade mark exists in respect of only some of the goods or services for which the trade mark is registered, the Office shall revoke the trade mark in respect of those goods or services only.

(5) Revocation of the trade mark shall be effective from the filing day of the request for its revocation.

Section 35 Declaration of invalidity of the trade mark

(1) The Office shall upon request of a third party or on its own motion

declare a trade mark invalid, if the trade mark has been registered contrary to provisions valid in the time of its registration.

(2) Where the trade mark has been registered in breach of Section 5(1)(b) to (d), it shall not be declared invalid pursuant to paragraph (1) by the Office, if the proprietor proves that the trade mark has acquired a distinctive character in consequence of its use in the territory of the Slovak Republic or in relation to the territory of the Slovak Republic for goods or services for which it is registered after its registration, before the proceedings on the request for declaration of invalidity of the trade mark started.

(3) The Office shall also declare a trade mark invalid upon request of the person referred to in Section 7 and for reasons stated in Section 7 if the proceedings on declaration of invalidity of the trade mark proves that this reason exists.

(4) The Office may declare the trade mark invalid even after its termination pursuant to Section 23(1), if the person filing the request for declaration of invalidity of the trade mark declares the legal interest.

(5) Where the trade mark is declared invalid, the trade mark shall be deemed never to have been registered.

(6) Where the ground for invalidity exists only in respect of some of the goods or services for which the trade mark is registered, the trade mark shall be declared invalid in respect of those goods or services only.

Section 36 Special provisions on effects of revocation of the trade mark or declaration of invalidity of the trade mark

(1) Effects of the revocation or invalidity of a trade mark do not affect
a) decisions concerning the infringement of trade mark rights which became effective and which were enforced before the effective date of the decision on revocation or invalidity of the trade mark;

b) agreements concluded before the effective date of the decision on revocation or invalidity of a trade mark in the extent of the fulfilment provided on their basis before the effective date of such a decision; it is however possible to claim the surrender of the fulfillment already provided on the basis of the agreement.

(2) The provision of paragraph (1) shall be without prejudice to the

liability of the proprietor of the trade mark for damage or unjustified enrichment.

Section 37 Request for revocation of the trade mark and request for declaration of invalidity of the trade mark

(1) The request for revocation or declaration of invalidity of the trade mark shall contain grounds and it shall be supported by evidence; additional grounds of the request for revocation or declaration of invalidity of the trade mark shall not be taken into consideration.

(2) If the request for revocation or declaration of invalidity of the trade mark fails to meet the requirements referred to in paragraph (1), the Office shall terminate the proceedings on this request. The decision on termination of the proceedings shall be delivered to the person who filed the request for revocation or declaration of invalidity of the trade mark (hereinafter referred to as "plaintiff").

(3) If the Office does not terminate the proceedings on request for revocation or declaration of invalidity of the trade mark pursuant to paragraph (2) or (6), it shall invite the proprietor of the trade mark to present his statement to the request for revocation or declaration of invalidity of the trade mark.

(4) If the proprietor of the trade mark does not present his statement to the request for revocation or declaration of invalidity of the trade mark within prescribed time limit under paragraph (3), the Office shall decide on the basis of the content of the file.

(5) The Office shall refuse the request for revocation or declaration of invalidity of the trade mark if it ascertains that the request fails to meet the requirements referred to in Section 34(1) to (3) (revocation of the trade mark) or Section 35(1) or (3) (declaration of invalidity of the trade mark). The request for declaration of invalidity of the trade mark shall be refused also if the Office ascertains that the conditions referred to in Section 10(1) are being met on the basis of the statement of the proprietor of the later trade mark.

(6) If the ground of the request for declaration of the invalidity of the trade mark ceased to exist, the Office shall terminate the proceedings on the request referred to in Section 35. The decision on the termination of the proceedings shall be delivered by the Office to the plaintiff and

to the proprietor of the trade mark.

(7) The request for revocation of the trade mark under Section 34(1) or for declaration of invalidity of the trade mark under Section 35 (1) or (3) shall be filed only with the payment of the caution of 100 EUR. The caution shall be refunded by the Office if the request for revocation or for declaration of invalidity of the trade mark is being granted.

Section 38 Extension of the time limit and continuation of proceedings

(1) On the basis of request of a party to proceedings on extension of time limit set by the Office for performing an act filed before the expiry of such time limit, the Office is entitled to extend the time limit.

(2) If a party to proceedings before the Office omitted to observe a time limit for performing the act set by the Office, he is entitled to request the Office for continuation of proceedings and at the same time to carry out the omitted act. The request for continuation of proceedings shall be admissible only if it is presented within two months following the expiry of the unobserved time limit.

(3) Request, referred to in paragraph (2), shall be refused in case of failure to comply with time limit under Sections 31(2) and 37(3).

(4) The Office shall refuse request for extension of time limit or continuation of proceedings which fails to comply with conditions referred to in paragraphs (1) or (2) or is not allowable under paragraph (3); before the request is refused, the Office shall enable the requester to present the statement to ascertained reasons on basis of which the request is to be refused.

(5) If the Office grants the request for further proceedings, legal consequences of having failed to observe the time limit shall be deemed not to have occurred.

(6) If the Office does not decide on refusing the request referred to in paragraph (1) within two months from its delivery, the request shall be deemed to be granted.

Section 39 Restitutio in integrum

(1) If a party to proceedings before the Office, in spite of all due care required by the circumstances having been taken, was unable to comply

with the time limit where the consequence of failure to perform this act is proceedings termination or forfeiture of other right, it is entitled to request the Office for restitutio in integrum and at the same time to carry out the omitted act. The application must be filed within two months from removal of the obstacle to compliance with the time limit and not later than within twelve months immediately following the expiry of the unobserved time limit and in the case of nonsubmission of the request for renewal of registration, within the further period of six months following the expiry of the additional time limit provided in Section 22(4).

(2) Party to proceedings shall be obliged to state the facts preventing to carry out the act and the date of the removal the obstacles causing the failure to carry out the act in the request for restitutio in integrum within the time limits lay down in paragraph (1).

(3) In case of doubts about veracity of a statement pursuant to paragraph (2), the Office is entitled to request the party to proceedings to prove its statements.

(4) Request for restitutio in integrum shall not be satisfied in case of failure to comply with the time limits for

- a) filing the request for continuation of proceedings pursuant to Section 38(2) and the request for restitutio in integrum pursuant to paragraph (1);
- b) claiming and proving the right of priority pursuant to Section 26(2);
- c) filing the oppositions pursuant to Section 30;
- d) filing the appeal pursuant to Section 40(1);
- e) performing the acts pursuant to Section 22(3), Section 31(2), Section 34(3), Section 37(3) and Section 40(3).

(5) The Office shall refuse the request for restitutio in integrum which fails to comply with conditions under paragraphs (1) and (2), or it is not possible to be granted pursuant to paragraph (4), or the party to proceedings fails to prove its statements pursuant to paragraph (3); before the request is refused the Office shall allow the party to proceedings to respond to ascertained reasons on basis of which the request is to be refused.

(6) If the Office grants the request for restitutio in integrum, legal consequences of having failed to observe the time limit shall be deemed

not to have occurred.

Section 40 Appeal

(1) An appeal may be filed against any decision of the Office within the time limit of thirty days from the delivery of the decision unless this Act provides otherwise; the appeal lodged in due time shall have suspensive effect.

(2) The Office shall be bound by scope of an appeal in deciding on it; this shall not apply

- a) for matters in which proceedings can be started ex officio,
- b) for matters of joint rights or obligations concerning several parties to proceedings on one side.

(3) The substantive statement of the appeal shall be filed with the Office within one month after filing the appeal. If the time limit for filing the substantive statement of the appeal expired, the Office shall terminate the proceedings on appeal. The Office shall terminate the proceedings if the appeal has not been filed in time or has been inadmissible.

(4) The appeal shall be inadmissible against the decision which

- a) granted the request for further proceedings or request for restitutio in integrum;
- b) terminated the proceedings pursuant to Section 51(8) or which terminated the proceedings on appeal pursuant to paragraph (3).

Section 41 Register

(1) The Office maintains the Register in the electronic form which contains decisive data of applications and trade marks. The Register shall be public and it shall be open for public inspection by any person.

(2) Data entered in the Register shall be considered valid unless the relevant authority decides otherwise.

(3) Changes in data entered into the Register ensuing from valid and enforceable decision of a competent authority shall be entered without delay into the Register by the Office after delivery of the decision with a validity clause.

Section 42 Official Journal

The Office shall issue the Official Journal in which the Office shall

publish facts relating to the applications and trade marks, as well as public notices and important decisions.

SECTION IV COLLECTIVE TRADE MARK

Section 43

(1) Collective trade mark is a trade mark capable of distinguishing goods or services of the members of the association of natural or legal persons with legal identity (hereinafter referred to as "association") from goods or services of other persons.

(2) Unless otherwise provided, the provisions of this Act apply accordingly to the application for the collective trade mark, the rights from the collective trade mark, the revocation proceedings and the invalidation of the collective trade mark.

(3) Provisions of Sections 28 to 32 shall apply to the proceedings on the collective trade mark.

(4) The conditions of using the collective trade mark including the sanctions for their violation shall be laid down in a written agreement on using the collective trade mark concluded among all members of the association (hereinafter referred to as "the agreement on using").

Section 44 Special provisions on the collective trade mark application

(1) An association as the applicant can file an application for registration of the sign as the collective trade mark.

(2) The application shall contain, except requirements pursuant to Section 24(2) and (3), following:

- a) written agreement on using;
- b) list of the members of the association, including their identification data, who are entitled to use the collective trade mark.

(3) Upon request the Office shall enter into the Register any change in the list pursuant to paragraph (2)(b).

Section 45 Special provision on the rights from the collective trade mark

(1) The members of the association entered in the list pursuant to Section 44(2)(b) shall have the exclusive right to use the collective trade mark in relation to goods or services for which the collective trade mark has been registered.

(2) The collective trade mark shall not be assigned to another proprietor,

shall not be licensed or given as lien.

(3) The Office shall revoke the collective trade mark with exception of cases referred to in the Section 34, also when the members of the association seriously break the agreement on using or when the association ceased to exist.

SECTION V INTERNATIONAL TRADE MARK AND COMMUNITY TRADE MARK

Section 46 Registration of the international trade mark

Person who has permanent residency, seat or an enterprise in the territory of the Slovak Republic or is a national of the Slovak Republic may file an application for international registration of the trade mark under international treaty¹ or request the Office for registration of changes in respect of the international registration.

Section 47

(1) The international registration of the trade mark in the international Register which enjoys protection in the Slovak Republic or with designation of the Slovak Republic shall have the same effects as the registration of the national trade mark in the Register.

(2) International trade mark with designation of the Slovak Republic shall be a subject to the examination whether it meets requirements referred to in Sections 5 and 6 and shall be a subject to oppositions as the national application.

(3) The time limit for filing the oppositions against a registration of an international trade mark in the Slovak republic starts on the first day of the month following the month in which the trade mark was published in the Gazette of World Intellectual Property Organization.

(4) If the Office fails to publish the refusal of the protection for the international trade mark under the international treaty¹ or if such refusal has been withdrawn, the registration of the international trade mark with designation for the Slovak Republic shall have same effects as the trade mark entered in the Register from the day under paragraph (1).

(5) For the purposes of using the international trade mark the date of registration shall be the date of granting protection for the international trade mark with designation for the Slovak Republic.

(6) Refusing the protection of the international trade mark with designation for the Slovak Republic shall have the same effect as refusing the national application.

(7) The sign subject to the application filed under the international treaty, shall be registered without further requirements.

Section 48 Community trade mark

(1) The application for the Community trade mark may be filed with the Office, which indicates a date of filing to the applicant and forwards the application to the Office for Harmonisation in the Internal Market, within two weeks.

(2) The Community trade mark registration shall have within the territory of the Slovak Republic the same effects as registration of a trade mark entered into the Register by the Office. The rights from the Community trade mark shall be claimed at earliest from the day when the Slovak Republic acceded to the European Union.

(3) The Office shall supply the enforceable decision of the Office for Harmonisation in the Internal Market pursuant to a special regulation with the confirmation on enforceability.

Section 49 Conversion of the Community trade mark application and Community trade mark to the national application

(1) The Office shall examine whether the request for starting the proceedings on the conversion of the Community trade mark application or the Community trade mark to the national application pursuant to the special regulation contains:

- a) the translation of the request to the Slovak language;
- b) delivery address in the territory of the Slovak Republic;
- c) distinct reproduction of the sign.

(2) If the request for starting the proceedings on the conversion of the Community trade mark application or the Community trade mark to the national application fails to meet the requirements referred to in paragraph (1), the Office shall invite the applicant to remedy the deficiencies within the time limit of at least two months. If the applicant fails to remedy the deficiencies within prescribed time limit, the Office shall terminate the proceedings. The applicant shall be notified about this consequence in the formal notice by the Office.

(3) The application resulting from the conversion of the Community trade mark application or the Community trade mark shall enjoy the date of filing and the date of priority of that application or trade mark and, where appropriate, the seniority. The rights of this national application and the trade mark registered subsequently shall be claimed at earliest from the date of accession of the Slovak Republic to the European Union.

(4) The application pursuant to paragraph (3) shall be subject to the proceedings as the national application.

Section 50

(1) The proprietor of the national trade mark the application of which was filed in good faith and which has the right of priority dated before the accession to the European Union, shall have the right to prohibit the use of the Community trade mark in the territory of the Slovak Republic, the effects of which have been extended to the territory of the Slovak Republic based on the accession of the Slovak Republic to the European Union, if

- a) the Community trade mark is identical with the national trade mark and the goods and services covered by both trade marks are identical;
- b) there is a likelihood of confusion on the part of the public because of the identity or similarity of the national trade mark and the Community trade mark and because of the identity or similarity of goods or services covered by the trade marks; the likelihood of confusion includes the likelihood of association with the Community trade mark;
- c) the Community trade mark is identical with the national trade mark or it is similar to the national trade mark, where the goods or services covered those trade marks are not identical or similar, if the national trade mark has a good reputation in the Slovak Republic and if use of the Community trade mark would take unfair advantage of or be detrimental to the distinctive character or the good reputation of the national trade mark.

(2) The proprietor of the national trade mark mentioned in paragraph (1) may claim damages for the damage he suffered as a result of the use of the Community trade mark in the territory of the Slovak Republic within the scope as mentioned in the Section 8(4).

SECTION VI COMMON, EMPOWERING, TRANSITIONAL AND REPEALING PROVISIONS

Section 51 Common provisions

(1) Persons with the permanent residence, seat or the enterprise in the state which is a party to the international treaty or the state which is a member of the World Trade Organisation or persons who are nationals of that state shall have the same rights as persons who are nationals of the Slovak Republic; or if the person is a national of the state which is not a party to the international treaty or a member of the World Trade Organisation the rights referred to in this Act may be granted only on the condition of reciprocity.

(2) Persons who do not have the permanent residence or seat in the territory of the Slovak Republic have to be represented in proceedings before the Office by the authorised representative.

(3) The provision of paragraph (2) does not apply to natural persons who are nationals of the state party to the Agreement on the European Economic Area and legal persons with headquarters or the seat of their enterprises in the state party to the Agreement on the European Economic Area. Such party to the proceedings has to notify the Office about the delivery address in the territory of the Slovak Republic.

(4) An authorised representative has to notify the Office about the delivery address in the territory of the Slovak Republic.

(5) General provisions of the Act on Administrative Proceedings shall apply to the proceedings before the Office pursuant to this Act, except the provisions of the Sections 19, 28, 29, 32 to 34, 39, 49, 50, Section 59(1) and 60.

(6) If an application contains an enclosure with a copy of a document, authenticity of which is doubt by the Office, it may request the applicant to submit the document original or its verified copy.

(7) If the party to the proceedings fails to comply with prescribed time limit, the Office may terminate the proceedings. The party to the proceedings shall be notified about this consequence in the invitation of the Office.

(8) The Office shall also terminate the proceedings on the request of

the person that submitted a proposal to start proceedings, if it is not the proceedings started ex officio. The request for termination of the proceedings shall not be withdrawn.

(9) Unless provided otherwise by this Act, any submission with the Office shall be made in written form in the official language.

(10) Submission with the Office may be made by telefax or via electronic means. Telefax or electronic means submission without electronic signature or signature guaranteed shall be supplemented with submission in a written form within one month, otherwise this submission shall be deemed never to have been filed.

(11) Submission shall be assessed in accordance with its contents. Submission must provide information who files the submission, what matter it concerns and what it proposes. Every submission must be subscribed by the filing person.

(12) Fees for the actions pursuant to this Act shall be paid pursuant to the special regulation.

Section 52

(1) Party to the proceedings before the Office shall be obliged to submit or propose evidence to support his statements.

(2) The Office shall exercise evidence and evaluate evidence at its discretion, namely each evidence separately and all evidences in their mutual relations.

(3) The Office shall decide on basis of the facts ascertained from exercised evidences submitted or proposed by parties to proceedings.

Section 53 Empowering provisions

By the generally binding regulation the Office shall set details

- a) about requirements of the application;
- b) about requirements of the request for amendment of the sign;
- c) about requirements of the observations against entry of the sign into the Register;
- d) about requirement of the oppositions against entry of the sign into the Register;
- e) about data entered into the Register and published in the Official

Journal;

- f) about requirements of the certificate, a duplicate of the certificate, an abstract from the Register and the document on the right of priority;
- g) about requirements of the request for amendment of the business name or the name and seat, or the name, surname and permanent address;
- h) about requirements of request for entry of the representative or for amendment of the representative into the Register;
- i) about requirements of the request for entry of the assignment or transfer of the trade mark into the Register,
- j) about requirements of the request for entry of the licence agreement into the Register and about requirements of the declaration on the existence of the licence agreement;
- k) about requirements of the request for entry of the right of lien on the trade mark;
- l) about requirements of the request for the renewal of the trade mark;
- m) about requirements of the request for revocation of the trade mark;
- n) about requirements of the request for declaration of invalidity of the trade mark;
- o) about requirements of the appeal;
- p) about document administration.

Section 54 Transitional provisions

(1) Proceedings on trade marks applications, that have not been concluded before this Act enters into force, shall be concluded in accordance with this Act, therewith that the applicant shall be obliged to harmonise his application with the requirements pursuant to this Act within prescribed time limit.

(2) Rights and relations from trade marks, entered into the Register before this Act enters into force, shall be governed by the provisions of this Act. Arising of these rights and relations as well as claims arising from them before this Act enters into force shall be assessed in accordance with provisions in force in time of their arising. Trade mark registered pursuant to the current act shall not be declared invalid if it is in accordance with this Act.

(3) Where a request for cancellation of the trade mark under current Act was filed prior to the date of entry into force of this Act, it shall be deemed as the request for revocation of the trade mark or the request for declaration of invalidity of the trade mark under this Act. Provisions of this Act shall apply in respect of the assessment of the compliance

of the request for revocation of the trademark or the request for declaration of invalidity of the trade mark with defined conditions, in respect of the proceedings on this request and its effects.

(4) If oppositions filed pursuant to the Section 9 of the current Act fail to meet conditions of this Act, the opponent shall be obliged to harmonise his oppositions with the conditions pursuant to this Act within three months from the entry of this Act into force, otherwise they shall not be taken into consideration.

Section 55

Legal acts of the European Communities and the European Union stated in Annex shall be adopted by this Act.

Section 56 Repealing provision

The following shall be repealed:

1. Act No. 55/1997 Coll. on Trademarks in the wording of the Act No. 577/2001 Coll., Act No. 14/2004 Coll., Act No. 344/2004 Coll., Act No. 84/2007 Coll. and Act No. 495/2008 Coll.;

2. Decree of the Industrial Property Office of the Slovak Republic No. 117/1997 Coll. implementing the Act No. 55/1997 Coll. on Trademarks in the wording of the Act No. 709/2002 Coll.

Section 57 Entry into force

This Act shall enter into the force on January 1, 2010.