

SWITZERLAND
Trademark Regulations
(232.111 MSchV)
as of January 1, 2017

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Chapter 1 General

1. Responsibility

(1) The Federal IGE of Intellectual Property (IGE) shall carry out the administrative tasks arising out of the Trademark Law and out of this Ordinance.

(2) Notwithstanding paragraph (1), the execution of Articles 70 to 72 of the Trademark Law and Articles 54 to 57 of this Ordinance shall be the responsibility of the Federal Customs Authorities.

2. Calculation of Time Limits

If a deadline is calculated by months or years, it ends in the last month on the day which bears the same number as the day it began to run. If a corresponding day is missing, the deadline ends on the last day of the last month.

3. Language

(1) Submissions to the IGE must be redacted in an official language of the Switzerland. Subject to Article 47(3).

(2) The IGE may demand a translation or a certificate of accuracy of documentary evidence that is not redacted in an official language; subject to Article 14(3) If the translation or certificate is not submitted in spite of being requested, then the document is not taken into consideration.

4. Multiple depositors or holders of a trademark

(1) If multiple persons are depositors of a trademark or holders of rights to a trademark, then they must either designate one of themselves to receive all notifications from the IGE with effects for all of them, or they can appoint a common representative.

(2) If they do neither the former nor the latter, IGE selects a person as recipient of notifications in the sense of subsection (1) If one of the other persons objects, then the IGE demands that all involved parties negotiate pursuant to subsection (1).

5. Power of attorney

(1) If one depositor or holder makes use of representation before the IGE, then the IGE may require a written power of attorney.

(2) The person who has been empowered by the depositor or holder is entered in the Register as representative, pursuant to Article 40, and all declarations provided for in the Trademark Law or in this Ordinance must be submitted to and notifications must be received from the IGE in the name of this person. If the IGE is not notified expressly of a limitation of the power of attorney, then this is considered as comprehensive.

6. Signature

(1) the signature must be on a submission.

(2) Where the signature is lacking on a submission, the original date of filing shall be recognized if the signature is provided within one month of a request by the IGE.

(3) The application for registration need not be signed. The IGE can specify further documents for which the signature is not necessary.

6a. Evidence

(1) The IGE can demand the presentation of evidence on a submission, if there is a justified doubt about its veracity.

(2) It communicates the reasons for its doubt, provides opportunity for making a statement and sets a deadline for submission of evidence.

7. Fees

For the fees that must be paid pursuant to the Trademark Law or to this Ordinance, the Ordinance of the IGE of 14 June 2016 on fees applies.

7a. Electronic communications

(1) The IGE can allow electronic communication.

(2) It determines the technical details and publishes them in a suitable manner.

Chapter 2 Registration of Trademarks

SECTION 1 REGISTRATION PROCEDURE

8. Deposit

(1) For the deposit, an approved private form or a form following the Common Regulations on Trademark Law Agreement of Singapore of 27 March 2006 must be used.

(2) If a deposit that is in valid form in other respects includes all required information, then the IGE can waive submission of the form.

9. Registration application

(1) The registration application includes:

(a) The application for registration of the trademark;

(b) The last name and first name or the company name, as well as the address of the depositor;

(2) When relevant it must be supplemented with:

(a) The depositor's domicile for notifications in Switzerland;

(a2) If there are multiple depositors: the designation of the recipient of notifications pursuant to Article 4(1), as well as, when relevant their domicile for notifications;

(a3) The last name and address of the representative, as well as, when relevant, their domicile for notifications in Switzerland;

(b) The declaration of priority (Article 12-14);

(c) The information that it is a case of a guarantee or collective mark;

(c2) The information that it is a case of a geographic mark;

(d) Proof of the cancellation of the international registration and extension of protection to Switzerland. If the priority of the deleted international registration is claimed, then no further priority document is required.

10. Reproduction of Trademark

(1) The trademark must be capable of graphic representation. IGE may allow other types of display for specific mark types.

(2) Where color is claimed for a mark, the corresponding color or combination of colors is to be stated; in addition, five colored representations of the mark are to be submitted.

(3) Where the mark is three-dimensional or contains such a form, the fact must be noted in the application.

11. List of goods and service

The goods and services for which the trademark is claimed must be designated precisely and provided with the number of the class pursuant to the Nice Agreement of 15 June 1957 on the international classification of goods and services (Nice Classification Agreement).

12. Priority Under the Paris Convention

(1) The declaration for priority under the Paris Convention for the Protection of Industrial Property of March 20, 1883, shall contain the following particulars:

- (a) the date of initial filing;
- (b) the country in which or for which that filing was made.

(2) The priority document shall be constituted by certification from the authority responsible for the initial filing, stating the filing or registration number of the mark.

13. Exhibition Priority

(1) The declaration for exhibition priority shall comprise:

- (a) the exact designation of the exhibition;
- (b) a statement of the goods or services shown under the trademark.

(2) The priority document shall be constituted by certification from the competent authority that the goods or services designated by the mark have been shown and shall state the opening day of the exhibition.

14. Common provisions on declaration of priority and priority document

(1) The declaration of priority must be submitted at the latest 30 days after deposit of the trademark. If the IGE requires a priority document, then the depositor must submit one within six months after deposit. If the depositor does not submit the required documents, then the claim to priority lapses.

(2) The declaration of priority can refer to multiple first deposits.

(3) The priority documents can be submitted in English.

14a. Submission date of postal mailings

For postal mailings, the submission date is considered the moment when a mailing sent by Swiss Post is delivered to IGE.

15. Initial Examination

Where the filing does not satisfy the requirements of Article 28(2) of the Trademark Law, the IGE may give the applicant a time limit for completing the documents.

16. Formal Examination

(1) Where the filing does not satisfy the formal requirements laid down in the Trademark Law or in this Ordinance, the IGE shall give the applicant a time limit for correcting the defects.

(2) If the defects are not corrected within the time limit, the request for registration shall be refused in whole or in part. The IGE may exceptionally give further time limits.

17. Examination of substance

(1) If there is a reason for rejection pursuant to Article 30(2) letters c-e of Trademark Law, then the IGE sets a deadline for the depositor to remedy the defect.

(2) If an application for registration of a foreign wine designation as geographical mark is submitted, then the IGE consults the Federal Agriculture Office.

This Office checks whether the special conditions for foreign wines established in wine legislation have been met.

(3) If a defect is not remedied by the deadline, then the application for registration is rejected either entirely or in part. In exceptional cases, the IGE may set further deadlines.

17a. Continuation of Procedure

If continuation of procedure is requested for an application rejected due to failure to comply with a time limit (Article 41 of the Trademark Law), a continuation fee shall become due.

18. Deposit fee and class surcharge

(1) The depositor must pay the deposit fee within a deadline set by IGE.

(2) If the list of goods and services of the deposited trademark includes more than three classes, then the depositor must pay a surcharge for each additional class. The IGE determines the number of classes that require surcharge pursuant to the classification of the Nice Classification Agreement.

(3) The class surcharge must be paid by a deadline set by the IGE.

18a Acceleration of the Examination

(1) The depositor may request the accelerated performance of the examination.

(2) The application is deemed to have been filed only if, in addition to the filing fee, the Fee for accelerated performance of the examination is paid.

19. Registration and publication

(1) If there are no reasons for rejection, then the IGE enters the trademark into the Trademark Register and publishes the entry.

(2) It confirms the entry to the holder of the trademark. The confirmation includes the information entered into the Register.

SECTION 2 OPPOSITION PROCEDURE

20. Form and Content of Opposition

Opposition shall be lodged in two copies and shall contain:

- (a) the name and forename or the trade name, together with the address, of the opponent and if applicable, his domicile in Switzerland;
- (b) the registration number of the trademark or the application number of the filing on which opposition is based;
- (c) the registration number of the trademark that is opposed together with the name or trade name of the trademark owner;
- (d) a statement of the scope of the opposition lodged against the registration;
- (e) a brief statement of the grounds for opposition.

21. Domicile for notifications in Switzerland

(1) If the opponent, who pursuant to Article 42 of Trademark Law must designate a domicile for notifications in Switzerland, does not state

one when submitting the opposition, then the IGE sets a grace period for them to do so. The IGE combines the grace period with a warning that if the grace period expires without having been used then the opposition will be dismissed.

(2) the defendant, who must designate a domicile for notifications in Switzerland, must do so in by the deadline set by the IGE. The IGE combines the deadline with a warning that the defendant will be excluded from the proceedings if he does not perform this obligation.

22. Correspondence

(1) The IGE shall advise the defendant of any opposition that is not obviously unallowable and shall give him a time limit for making comments.

(2) The comments of the defendant shall be submitted in two copies.

(3) Where the defendant wishes to claim non-use of the opponent's trademark under Article 12(1) of the Trademark Law, he must do so in his initial comments.

(4) The IGE may pursue further correspondence.

23. Multiple oppositions, suspension of proceedings

(1) If multiple oppositions are submitted against the same trademark registration, then the IGE informs all opponents of the oppositions. It may handle the oppositions by combining them into one proceeding.

(2) If the IGE considers it expedient, then it can first handle one of the multiple oppositions and decide on that one, and then suspend the remaining opposition proceedings.

(3) If the opposition is based on deposit of a trademark, then the IGE can suspend the opposition proceedings until the trademark is registered.

(4) The IGE can suspend the opposition proceeding if the decision on the opposition depends on the outcome of a proceeding for cancellation due to non-use, on a civil proceeding or on another proceeding.

24. Refund of the opposition fee

(1) If an opposition is not submitted within the deadline or the opposition fee is not paid in a timely manner, then the opposition is considered as not submitted. No costs will be charged; if the opposition fee has already been paid, then it will be refunded.

(2) If a proceeding is invalid or if it is handled by settlement or offset, then half of the opposition fee is refunded.

Section 2A Proceeding for cancelling trademark registration due to non-use of the trademark

24a. Form and content of the application

The application for cancellation of a trademark registration due to non-use of the trademark must be submitted in two copies and must include:

(a) The last name and first name or the company name, the address of the applicant and when relevant their domicile for notifications in Switzerland;

(b) The Register number of the trademark registration, the cancellation of which is requested, together with the name or the company of the trademark holder;

(c) The declaration of to what extent the cancellation is requested;

(d) A justification of the application for cancellation, which especially makes non-use credible;

(e) Evidence.

24b. Domicile for notifications in Switzerland

(1) If the applicant, who must designate, pursuant to Article 42 of Trademark Law, a domicile for notifications in Switzerland, does not state one when submitting the application, then the IGE gives them a grace period for this. The IGE combines the grace period with a warning that the application will be dismissed if the grace period expires without being used.

(2) The defendant, who must designate a domicile for notifications in Switzerland, must state one by the deadline set by the IGE. The IGE combines the deadline with the warning that they will be excluded from the proceedings if they do not perform this obligation.

24c. Exchange of letters

(1) The IGE informs the defendant of a not obviously inadmissible application for cancellation and sets a deadline for making a statement.

(2) The defendant's statement must be submitted in two copies.

(3) In their statement, the defendant must especially make credible the use of the trademark or important reasons for non-use.

(4) The IGE carries out further exchange of letters, if the circumstances justify this.

24d. Multiple applications, suspension of the proceedings

(1) Article 23(1) and (2) apply accordingly for the proceeding for cancellation of trademark registration due to non-use of the trademark.

(2) The IGE can suspend the proceedings, if the decision on the cancellation depends on the outcome of a civil proceeding or another proceeding.

24e. Refund of the fee for cancellation

(1) If the application for cancellation is submitted before expiry of the deadlines pursuant to Article 35a(2) of Trademark Law and Article 50a of this Ordinance or if the fee for the cancellation is not paid on time, then the application is considered not to have been submitted. No costs will be charged; if the fee for the cancellation has already been paid, it will be refunded.

(2) If a proceeding becomes invalid or is resolved by settlement or offset, then half the fee for cancellation will be refunded. If the requirements pursuant to Article 33b of Administrative Proceeding Act of 20 December 1968 are met, then the fee is refunded in full.

SECTION 3 EXTENSION OF TRADEMARK REGISTRATION

25. Notice of Expiry of Term of Validity

The IGE may remind the registrant or his representative, before the expiry of the period of validity of the registration, of the expiry date and the possibility of renewal. The IGE can also send messages abroad.

26. Proceedings

(1) The application for extension of trademark registration can be made at the earliest twelve months before the expiry of the validity period.

(2) The extension enters into force with the expiry of the previous validity period.

(3) The IGE confirms the extension of the registration to the trademark holder.

(4) The extension fee must be paid by the deadline pursuant to Article 10(3) of Trademark Law.

(5) If the extension fee is paid after expiry of the validity period, then a surcharge must be charged.

27. Refund of the extension fee

If an extension application has been made and this does not lead to the extension of the registration, then the extension fee is refunded.

SECTION 4 AMENDMENT OF TRADEMARK REGISTRATION

28. Assignment

(1) The request for entry of an assignment shall be filed by the previous trademark owner or by the acquirer and shall comprise:

- (a) an explicit statement by the previous owner or other satisfactory document showing that the trademark has been assigned to the acquirer;
- (b) the name and forename or the trade name, together with the address, of the acquirer and, if applicable, his domicile in Switzerland;
- (c) statement of the goods and services for which the trademark has been assigned, where assignment is partial.

29. Licenses

(1) A request for entry of a license shall be filed by the owner of the trademark or by the licensee and shall comprise:

- (a) an explicit statement by the owner of the trademark or other satisfactory document showing that the owner has granted use of the trademark to the licensee;
- (b) name and forename or trade name, together with the address, of the licensee; where appropriate, that of his representative;

(c) where appropriate, a request that the license be entered as an exclusive license;

(d) statement of the goods and services or of the field for which the license has been granted in the event of a partial license.

(2) Subsection (1) shall apply to the entry of a sublicense. Additionally, proof must be provided that the licensee is entitled to grant sublicenses.

(3) As long as an exclusive license is registered in the register, no further licenses are registered for the same trademark which are incompatible with the exclusive license.

30. Other Amendments to Trademark Registration

On the basis of a corresponding statement by the trademark owner or other satisfactory document, entry shall be made of:

(a) usufruct and pledges affecting the trademark;

(b) limitations on use imposed by the courts and by enforcement authorities;

(c) changes concerning the registered particulars.

31. Cancellation of Rights of Others

The IGE shall cancel, on a request by the owner of the trademark, a right entered on behalf of another person if an explicit statement of renunciation by the owner of such right or other satisfactory document is filed.

32. Corrections

(1) Incorrect entries shall be corrected without delay at the request of the trademark owner.

(2) Where the error results from a mistake on the part of the IGE, correction shall be effected ex officio.

SECTION 5 CANCELLATION OF TRADEMARK REGISTRATION

35.

The complete or partial cancellation of the trademark registration is not subject to a fee. The cancellation due to non-use of a trademark is subject to a fee.

Chapter 3 File and Trademark Register

SECTION 1 THE FILE

36. Content

(1) The IGE keeps a file for each registration application and each trademark registration, in which the following is evident:

- (a) The course of the registration proceeding, of a possible opposition proceeding and of a possible cancellation proceeding due to non-use;
- (b) The extension and the cancellation of the registration, the face of any international registration, and modifications in trademark law;
- (c) Other modifications of trademark registration.

(2) The rules for a guarantee or collective trademark, or the rules for a geographic mark are also part of the file.

(3) Documentary evidence that discloses manufacturing or business secrets is separated on application. The separation is recorded in the file.

37. Inspection of Files

(1) Prior to registration of the mark, the following persons may inspect the file:

- (a) the applicant and his representative;
- (b) persons who can prove that the applicant has claimed that they infringe the right in the mark applied for or has warned them of such infringement;
- (c) other persons, with the explicit consent of the applicant or his representative.

(2) The persons referred to in Subsection (1) may also inspect the files of withdrawn or refused applications for registration.

(3) Following registration of a trademark, any person may inspect the file.

(4) Inspection of separately held supporting documents (Article 36(3)) shall be decided by the IGE after hearing the applicant or owner of the trademark.

(5) Inspection in the form of provision of copies may be granted on

request and subject to payment of costs.

38. Information on registration applications

(1) The IGE informs third parties on registration applications, including applications that are withdrawn or rejected.

(2) The information is limited to:

(a) Information that is published in the event of registration of the trademark;

(b) Information on the reasons that lead to rejection of an application.

39. Retention of files

(1) The IGE retains the files in full for deleted trademark registration in the original or in a copy for five years after cancellation.

(2) It retains the files of withdrawn and rejected registration applications, as well as completely revoked registrations (Article 33 of Trademark Law) in the original or in copy for five years after withdrawal, rejection or revocation.

SECTION 2 THE TRADEMARK REGISTER

40. Content of Register

(1) The entry of a trademark in the Register shall contain:

(a) the registration number;

(b) the filing date;

(c) the name and forename or trade name, together with the address, of the trademark owner;

(d) name and address of the representative, where appropriate;

(e) a reproduction of the trademark;

(f) the goods and services for which the mark is claimed, indicating the classes according to the classification of the Nice Classification Agreement;

(g) the date of publication of the registration.

(2) The entry shall additionally contain, where appropriate:

(a) a statement of the claimed color or combination of colors;

(b) the note "three-dimensional trademark";

(c) the note "accepted trademark";

(d) a statement that the trademark is a guarantee or collective mark;

(d-2) indicating that it is a geographical mark;
(e) statements on claiming of priority under Articles 7 and 8 of the Trademark Law;

(3) The following further particulars shall also be entered in the Register, together with the date of publication:

- (a) extension of the registration, together with the date on which the extension becomes effective;
- (b) the complete or partial revocation of the registration;
- (c) the complete or partial cancellation of the registration, stating the grounds for cancellation;
- (d) the complete or partial assignment of the trademark;
- (e) the granting of a license, indicating, where appropriate, that it is an exclusive license or a partial license;
- (f) usufruct or pledges in the trademark;
- (g) limitations of use imposed by courts and enforcement authorities;
- (h) amendments concerning registered particulars;
- (i) notice of amendment to the trademark regulations.

(4) The IGE may make further entries in the public interest.

41. Inspection; Register extracts

(1) The Trademark Register is open to inspection by anyone.

(2) The IGE issues extracts from the Trademark Register.

41a. Priority document for first deposits in Switzerland

The IGE issues on request a priority document for a first deposit in Switzerland.

Chapter 4 Publications by the IGE

42. Subject Matter of Publication

The IGE shall publish:

- (a) the registration of trademarks, containing the particulars in accordance with Article 40(1)(a) to (f) and (2)(a) to (e);
- (b) the entries under Article 40(3);
- (c) the particulars under Article 40(4), where their publication appears appropriate.

43. Publication medium

- (1) The IGE determines the publication medium

- (2) On request and with payment of costs, the IGE issues paper copies of data published exclusively by electronic means.

Chapter 6 International Registration of Trademarks

SECTION 1 APPLICATION FOR INTERNATIONAL REGISTRATION

47. Filing of Application

(1) The application for international registration of a trade mark or application for registration must be submitted to the IGE if Switzerland is the country of origin within the meaning of Article 1(3) of the Madrid Agreement of 14 July 1967 on the international registration of trademarks (Madrid Trade Mark Agreement) or Article 2(1) of the Protocol of 27 June 1989 to the Madrid Agreement on the International Registration of Marks (Madrid Protocol) is.

(2) The application must be filed using the official form or a form approved by the IGE.

(2-2) If a further formal application contains all the information required, the IGE may waive the submission of the form.

(3) The IGE shall specify the language in which the goods and services for which the trade mark or application is claimed shall be given.

(4) The national fee (Article 45(2) Trademark Law) must be paid upon request by the IGE.

48. Examination by the IGE

(1) If an application to be filed with the IGE does not comply with the formal requirements that it has to satisfy under the Trademark Law or this Ordinance or the Implementing Regulations of 18 January 1996, or not comply with the Madrid Trademark Agreement and the Madrid Protocol, or, if the prescribed fees have not been paid, the IGE shall give the applicant a time limit for removing the defect.

(2) If the defect is not removed within the time limit given by the IGE, the application shall be rejected. Exceptionally, the IGE may give further time limits.

49. File

The IGE shall keep a file for each internationally registered trademark for which Switzerland is the country of origin.

SECTION 2 EFFECT OF INTERNATIONAL REGISTRATION IN SWITZERLAND

50. Opposition Procedure

(1) In the event of opposition to an international registration, the period for opposition under Article 31(2) of the Trademark Law shall begin on the first day of the month following the month of publication in the organ of publication issued by the International Bureau.

(2) The IGE shall keep a file showing the sequence of the opposition procedure.

50a. Proceeding for cancellation of an international registration due to non-use

The application for cancellation of an international registration due to non-use can be made at the earliest:

(a) If notice has been given of a temporary refusal of protection: five years after conclusion of the proceedings for the granting of protection in Switzerland;

(b) If no refusal of protection has been issued: five years after expiry of the deadline for notification of refusal of protection or five years after notification of declaration on granting of protection.

51. Suspension of Decision

(1) Where opposition is based on an international registration that is the subject of a provisional refusal of protection by the IGE, the IGE may suspend its decision on the opposition until the matter of refusal of protection has been finally decided.

(2) If the international registration is canceled and if, according to Article 46a Trademark Law, a conversion into a registration application is possible, the IGE may suspend the decision on the opposition until the conversion

52. Refusal of protection and declaration of invalidity

(1) For internationally registered trademarks, the place:

(a) Of rejection of application for registration pursuant to Article 30(2) letters a and c-e of Trademark Law and of the revocation of registration pursuant to Article 33 of Trademark Law is taken by the refusal of protection;

(b) Of the cancellation of the registration pursuant to Article 35 letters c-e of Trademark Law is taken by the declaration of invalidity.

(2) The IGE does not publish the refusals of protection nor the declarations of invalidity.

Chapter 6A Indication of origin

Section 1 Common provisions

52a. Subject and scope of application

(1) This chapter governs the use of indications of origin for:

- (a) Products pursuant to Article 48c of Trademark Law;
- (b) Services pursuant to Article 49 of Trademark Law.

(2) For foodstuffs, Ordinance of 2 September 2015 on use of Swiss indication of origin for foodstuffs, as well as Article 52c and 52d of the Ordinance at hand apply.

52b. Concepts

In this Ordinance these definitions apply:

- (a) Products pursuant to Article 48c of Trademark Law: Products that do not come under the category of natural products nor under the category of foodstuffs, especially industrial products;
- (b) Natural products: Products pursuant to Article 48a of Trademark Law that come directly from nature and that are not processed for placement on the market;
- (c) Materials: raw materials pursuant to Article 48c of Trademark Law; they include, in addition to actual raw materials, also auxiliary materials and semi-finished products.

52c. Use of references to a region or a place

If goods and services meet the legal origin criteria for Switzerland as a whole, then they can be labeled with reference to a region or a place in Switzerland. They must meet additional requirements, if:

- (a) A certain quality or another characteristic of the goods or the service is essentially attributed to the stated geographical origin;
- or
- (b) The region or the place for the goods or service has a special reputation.

52d. Prohibition of misuse

(1) When determining the place of origin of a product or service the leeway in application of decisive criteria may not be used in an improper manner.

(2) It is improper especially, if:

(a) For determination of a place of origin of individual materials of a product, different types of calculation are used for accounting for material costs without objective reason; or

(b) The internal labor involved in Switzerland is so slight that it is in obvious disproportion to the labor involved abroad, especially if the costs accruing in Switzerland, in particular due to insufficient availability of the materials used in Switzerland, are negligible in comparison to the costs of materials procured abroad.

Section 2 Indications of origin for products pursuant to Article 48c of Trademark Law, especially industrial products

52e. Significant production costs

(1) As production costs pursuant to Article 48c(1) and (2) of Trademark Law, the following costs apply:

(a) Research and development costs;

(b) Material costs;

(c) Manufacturing costs, including the costs for quality assurance and certification that is legally required or uniformly regulated in the industrial sector.

(2) Costs that accrue after the end of the production process are not considered production costs.

52f. Research and development costs

(1) Research costs include the costs for product-related and non-product-related research.

(2) Development costs are considered the costs that accrue starting from the product concept up until the market-readiness of the product.

52g. Accounting for research and development costs

(1) The product-related research costs and development costs are directly assigned to the manufacturing costs of the product.

(2) The non-product-related research costs are assigned according to a suitable key to the manufacturing costs of the individual products.

(3) The research and development costs can also be assigned, after the end of the amortization period typical in the sector, to manufacturing costs. The total assigned corresponds to the total of average annual

amortization of research and development costs during the amortization period typical in the sector.

52h. Material costs

(1) Material costs include direct material costs and indirect material costs.

(2) The material costs directly attributable to a product are considered direct material costs.

(3) Material costs other than those pursuant to (2), especially the costs accruing during the production process for any interim storage or transport, are considered indirect material costs.

52i. Consideration of material costs

(1) The direct material costs are assigned to the manufacturing costs of the product according to a uniform calculation method, especially according to one of the following calculation methods:

(a) The material costs are assigned to the manufacturing costs at the percentage rate corresponding to the part of the costs of the relevant materials accruing in Switzerland.

(b) The material costs are assigned to the manufacturing costs at the following percentage rates:

i. 100 percent for materials that meet the requirements of Article 48-48c of Trademark Law;

ii. 0 percent for materials that do not meet the requirements of Article 48-48c of Trademark Law.

(2) The indirect material costs are allocated according to a suitable key to the manufacturing costs of the individual products.

52j. Accounting for costs for auxiliary materials

The costs for auxiliary material must not be assigned to the product's manufacturing costs, if:

(a) The auxiliary materials are of completely secondary significance for the characteristics of the product; and

(b) The costs for the auxiliary materials are negligible in relationship to the product's manufacturing costs.

52k. Materials insufficiently available in Switzerland

If a material is insufficiently available to an industrial sector in

Switzerland according to publicly accessible information, then the manufacturer may suppose that he may exclude the costs of the materials procured abroad from the calculation of manufacturing costs to the extent of the stated insufficient availability.

52l. Manufacturing costs

(1) The manufacturing costs include the direct manufacturing costs and the indirect manufacturing costs.

(2) Manufacturing costs include especially:

(a) Salaries;

(b) Salary-dependent manufacturing costs;

(c) Machine-dependent manufacturing costs;

(d) The costs for quality assurance and certification that is legally required or demonstrably uniformly regulated in the entire sector.

52m. Consideration of manufacturing costs

(1) Direct manufacturing costs are directly assigned to the product's production costs.

(2) Indirect manufacturing costs are transferred according to a suitable key to the production costs of the individual products.

52n. Calculation of the production costs accruing abroad

The production costs accruing abroad can be converted into Swiss francs as follows:

(a) At the exchange rate actually applied; or

(b) At the average rate used by the company in daily business.

Section 3 Indications of origin for services

52o.

As a place of actual administration pursuant to Article 49 of Trademark Law, the place is supposed at which:

(a) Significant activities are carried out to reach a business goal; and

(b) Significant decisions are taken for provision of service.

Chapter 7 Producer Identification on Clocks, Watches and Movements

53. Producer Identification on Clocks, Watches and Movements

(1) Swiss clocks, watches and movements within the meaning of the Ordinance of December 23, 1971, on the Use of the Name "Switzerland" for Clocks and Watches must bear the identification of their manufacturer. In the case of clocks and watches, the identification is to be affixed on the case or on the dial.

(2) The producer identification must be visibly and durably affixed. The manufacturer's trade name or trademark may be affixed in place of the producer identification.

(3) It may only be used for Swiss products.

(4) The Federation of the Swiss Clock and Watch Industry shall allocate the producer identification and shall keep a corresponding register.

(5) The grounds for exclusion under Article 3(1) of the Trademark Law shall also apply to producer identifications.

Chapter 8 Assistance from the Customs Authorities

54. Scope

The assistance of the customs administration extends to the import or export of goods that illegally bear a trademark or an indication of origin.

55. Application for assistance

(1) The trademark holder, the licensee entitled to lodge a claim, the person entitled to an indication of origin or a party entitled to lodge a claim pursuant to Article 56 of Trademark Law (requester) must make the application for assistance at the Swiss Customer Directorate.

(1-2) The Swiss Customs Directorate decides on the application at the latest 40 days after receipt of the complete documents.

(2) The application applies for two years if it is not lodged for a shorter term of validity. It can be renewed.

56. Withholding of goods

(1) If the customs office withhold the goods, then it preserves them itself for a fee or entrusts them to a third party for preservation at the applicant's cost.

(2) It communicates to the requester the name and address of the applicant, holder, or owner, an exact description, the quantity and the sender of the withheld goods in Switzerland or abroad.

(3) If it is already determined before expiry of the deadline pursuant to Article 72(2) and (3) of Trademark Law that the requester cannot take precautionary measures, then the goods are released at once.

56a. Samples or specimens

(1) The requester can request the handover or shipment of samples or specimens for inspection or request to view the goods. Instead of samples or specimens, the customs administration can also handover photographs of the retained goods, if these enable the requester to inspect them.

(2) The application can be made together with the application for assistance from the Swiss Customs Directorate or while the goods are

retained directly at the customs office that is retaining the goods.

56b. Preservation of manufacturing or business secrets

(1) The customs administration indicates to the applicant, holder or owner of the goods that they can place a justified application to refuse removal of samples or specimens. It sets an appropriate period for them to place the application.

(2) If the customs administration allows the requester to view the retained goods, then it will take into appropriate consideration the interests of the requester and of the applicant, holder or owner when establishing the appointment.

56c. Preservation of evidence when destroying goods

(1) The customs administration preserves the samples or specimens removed for one year starting from notification of the applicant, holder or owner pursuant to Article 72(1) of Trademark Law. After this deadline expires, it requests that the applicant, holder or owner take possession of the samples or specimens or pay the costs of further preservation. If the applicant, holder or owner is not willing or does not respond within 30 days, then the customs administration destroys the samples or specimens.

(2) The customs administration can take photographs of the goods destroyed instead of extracting samples or specimens, as long as the purpose of securing evidence is ensured.

57. Fees

The fees for the assistance of the customs administration are governed by the Ordinance of 4 April 2007 on the fees of the customs administration.

Chapter 9 Final Provisions

SECTION 1 REPEAL OF EXISTING LAW

58. Repeal of Existing Law

There shall be repealed:

- (a) the Ordinance of April 24, 1929, on the Protection of Trademarks;
- (b) the decision of the Federal Council of November 4, 1966, concerning the implementation of the Madrid Agreement Concerning the International Registration of Marks.

SECTION 2 TRANSITIONAL PROVISIONS

59. Time Limits

Time limits that have been set by the IGE and which have not expired on the day of entry into force of this Ordinance shall remain unaffected.

60. Priority of Use

(1) In the event of an application for a trademark under Article 78(1) of the Trademark Law, the time at which use of the trademark began shall be entered in the Trademark Register and shall be published.

(2) In the case of an internationally registered mark, the corresponding particulars are to be given to the IGE by the end of the month of publication of the international registration; the time at which use of the mark began shall be entered in a special register and shall be published.

60a. Transitional provisions on modification of 2 September 2015

Products that were manufactured before the entry into force of the modification of 2 September 2015 may be placed on the market for the first time only until 31 December 2018 with an indication of origin that corresponds to the previous law.

SECTION 3 ENTRY INTO FORCE

61. Entry Into Force

This Ordinance shall enter into force on April 1, 1993.