

**Federal Law on the Protection of Trademarks  
and Indications of Source\***  
(of August 28, 1992, as last amended on October 4, 1996)

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considering Articles 64 and 64bis of the Federal Constitution<sup>1</sup>;  
considering the message of the Federal Council of November 21, 1990<sup>2</sup>,  
hereby *decrees*:

TITLE 1  
TRADEMARKS

**Chapter 1**  
**General**

PART 1  
PROTECTION OF TRADEMARKS

*Definition*

**1.**—(1) A trademark is a sign capable of distinguishing the goods or services of one enterprise from those of other enterprises.

(2) Trademarks may consist, in particular, of words, letters, numerals, graphic representations, three-dimensional shapes or combinations of such elements with each other or with colors.

*Absolute Grounds for Exclusion*

**2.** Trademark protection shall not be available to:

(a) signs that belong to the public domain, except where they have become accepted as a trademark for the goods or services for which they are claimed;

(b) shapes that constitute the nature of the goods themselves or shapes of the goods or of their packaging that are technically necessary;

(c) misleading signs;

(d) signs contrary to public policy, morality or applicable law.

*Relative Grounds for Exclusion*

**3.**—(1) Trademark protection shall also not be available to signs:

(a) identical with an earlier trademark and intended for the same goods or services as such a trademark;

(b) identical with an earlier trademark and intended for similar goods or services and a risk of confusion results therefrom;

(c) similar to an earlier trademark and intended for the same or similar goods or services and a risk of confusion results therefrom.

(2) Earlier trademarks shall mean:

(a) filed or registered trademarks that enjoy priority under this Law (Articles 6 to 8);

(b) trademarks that are well known in Switzerland within the meaning of Article 6bis of the Paris Convention for the Protection of Industrial Property, of March 20, 1883 (Paris Convention)<sup>3</sup>, at the time of filing of the sign referred to in paragraph (1).

(3) The grounds for exclusion under this Article may only be invoked by the owner of the earlier trademark.

#### *Registration in the Name of Authorized Users*

4. Protection shall also not be available to trademarks registered in the name of agents, representatives or other authorized users without the consent of the owner or which remain entered in the Register after the withdrawal of such consent.

### PART 2

#### GENERATION OF TRADEMARK RIGHTS; PRIORITY

##### *Generation of Trademark Rights*

5. Trademark rights shall be generated upon entry in the Register.

##### *Priority of Filing*

6. The trademark rights shall belong to the person who first filed the trademark.

##### *Priority Under the Paris Convention*

7.—(1) Where a trademark has been duly filed for the first time in another member State of the Paris Convention<sup>4</sup>, or with effect for such a State, the applicant or his successor in title may claim the date of first filing for an application for the same mark in Switzerland, on condition that the application is filed in Switzerland within six months of the first filing.

(2) A first filing in a State that affords reciprocity to Switzerland shall have the same effect as a first filing in a member State of the Paris Convention.

##### *Exhibition Priority*

8. Any person who exhibits goods or services identified by a trademark at an official or officially recognized exhibition within the meaning of the Convention on International Exhibitions of November 22, 1928<sup>5</sup>, in a member State of the Paris Convention<sup>6</sup>, may claim for the application the date of the opening day of the exhibition, on condition that he files the trademark within six months of that date.

##### *Priority Declaration*

9.—(1) Any person claiming priority under the Paris Convention<sup>7</sup> or exhibition priority shall file with the application a priority declaration and submit evidence of priority.

(2) The claim shall lapse if the time limits and formal requirements laid down in the Ordinance are not complied with.

(3) Entry of priority shall simply constitute a presumption in favor of the owner of the trademark.

PART 3  
SUBSISTENCE OF TRADEMARK RIGHTS

*Term of Validity and Extension of Registration*

**10.**—(1) Registration shall be valid for 10 years as from the filing date.

(2) The registration shall be extended for further ten-year periods if a request is submitted and the fees laid down in the schedule have been paid.<sup>8</sup>

(3) The request for extension must be filed with the Federal Intellectual Property Institute (Federal Institute) within the last 12 months preceding expiry of the term of validity, but within six months, at the latest, after expiry.<sup>9</sup>

(4) ...<sup>10</sup>

*Use of Trademark*

**11.**—(1) A trademark shall enjoy protection if it is used in connection with the goods or services for which it is claimed.

(2) Use in a form that differs only insignificantly from the registration and use for export shall also constitute use of a trademark.

(3) Use of the trademark with the consent of the owner shall be deemed use by the owner himself.

*Consequences of Non-Use*

**12.**—(1) If the owner has failed to use the trademark in connection with the goods or services for which it has been claimed for an uninterrupted period of five years following expiry without opposition of the time limit for opposition or following termination of opposition proceedings, he may no longer assert his rights in the trademark, unless there exist important reasons for his failure to use.

(2) If use of the trademark occurs for the first time or is resumed after more than five years, the rights in the trademark shall be restored with effect from the original priority date, unless non-use of the trademark in accordance with paragraph (1) has been invoked prior to the time of first or resumed use.

(3) Any person who invokes non-use of a trademark shall be required to substantiate his claim; evidence of use shall then be required of the owner of the trademark.

PART 4  
CONTENT OF RIGHTS IN TRADEMARKS

*Exclusive Rights*

**13.**—(1) The trademark right shall afford its owner the exclusive right to use it to identify the goods or services for which it is claimed and to dispose thereof.

(2) The owner of a trademark may prohibit third parties from using signs that are excluded from protection under Article 3(1); in particular from:

(a) affixing the sign concerned to goods or their packaging;

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

(c) offering or supplying services under the sign;

(d) importing or exporting goods under the sign;

(e) using the signs on business papers, in advertising or otherwise in the course of trade.

(3) These rights may also be asserted by the owner against authorized users under Article 4.

#### *Limitation with Respect to Previously Used Signs*

**14.**—(1) The owner of a trademark may not prohibit another person from continuing to use, to the same extent as hitherto, a sign that such a person had already used prior to filing.

(2) This right of continued use may only be transferred together with the enterprise.

#### *Trademarks of Wide Repute*

**15.**—(1) The owner of a trademark of wide repute may prohibit others from using his trademark for any type of goods or services if such use would jeopardize the distinctiveness of the trademark or would exploit or damage its reputation.

(2) Rights obtained before the trademark acquires its wide repute shall remain unaffected.

#### *Reproduction of Trademarks in Dictionaries and Other Reference Works*

**16.** Where a trademark is reproduced in a dictionary, other reference work or in a similar work without mention of the fact that it is registered, the owner of the trademark may require from the publisher or distributor of the work that a corresponding note be included, at the latest in a reprint.

### PART 5 CHANGES TO TRADEMARK RIGHTS

#### *Transfer*

**17.**—(1) The owner may transfer his trademark in whole or in part for the goods or services for which it has been registered.

(2) The transfer shall only be valid if evidenced in writing. It shall be invokable against third parties acting in good faith only if it is entered in the Register.

(3) Proceedings may be instituted under this Law against the previous owner up to the time the transfer is entered in the Register.

(4) Unless otherwise agreed, transfer of an enterprise shall imply transfer of its trademark rights.

### *Division of an Application or Registration*

**17a**<sup>11</sup>.—(1) The owner of a mark may at any time make a written request for the division of a registration or of an application therefor.

(2) Goods and services shall be divided between divisional applications or registrations.

(3) Divisional applications or registrations shall retain the filing date and priority date of the original application or registration.

### *Licensing*

**18.**—(1) The owner of a trademark may permit others to use his trademark for the goods or services for which it is registered, in whole or in part, for the whole territory or a part only of Switzerland.

(2) The license shall be entered in the Register at the request of one of the parties. The license then has effect against a subsequently acquired right in the trademark.

### *Usufruct and Pledges; Compulsory Execution*

**19.**—(1) A trademark may be subject to usufruct, pledge or compulsory execution measures.

(2) Usufruct and pledges shall have effect against third parties acting in good faith only if they are entered in the Register.

## PART 6 INTERNATIONAL TREATIES

**20.**—(1) International treaties shall remain unaffected.

(2) Where international treaties binding on Switzerland afford more extensive rights than this Law, such rights shall also apply to Swiss nationals.

## **Chapter 2 Guarantee Marks and Collective Marks**

### *Guarantee Marks*

**21.**—(1) A guarantee mark is a sign that is used by several enterprises under the control of the owner of the mark and which serves to guarantee the quality, geographical origin, type of manufacture or other characteristics common to goods or services of such enterprises.

(2) A guarantee mark may not be used for goods or services of the owner of the mark or of an enterprise with which he has close economic connections.

(3) The owner of the guarantee mark must permit any person to use it, in return for suitable remuneration, for goods or services that possess the common characteristics guaranteed under the regulations for the mark.

### *Collective Marks*

**22.** A collective mark is a sign of an association of manufacturing, trading or service enterprises that serves to distinguish the goods or services of the members of the association from those of other enterprises.

### *Regulations for Trademarks*

**23.**—(1) The applicant for a guarantee or collective mark must file with the Federal Institute<sup>12</sup> in regulations on the use of the mark.

(2) The regulations for guarantee marks shall designate the common characteristics of the goods or services which the mark is intended to guarantee; they shall further provide for effective control over the use of the mark and for appropriate penalties.

(3) The regulations for collective marks shall designate those enterprises that are entitled to use the mark.

(4) The regulations may not be contrary to public policy, morality or applicable law.

### *Approval of Regulations*

**24.** The regulations must be approved by the Federal Institute. Approval shall be given if the requirements of Article 23 are satisfied.

### *Unlawful Regulations*

**25.** Where the regulations do not satisfy or no longer satisfy the requirements of Article 23 and the owner of the mark does not remedy the situation within a time limit to be laid down by a judge, the registration of the mark shall be cancelled upon expiry of that time limit.

### *Use Contrary to Regulations*

**26.** Where the owner of the mark tolerates repeated use of the guarantee or collective mark that infringes essential provisions of the regulations and he does not remedy the situation within a time limit to be laid down by a judge, the registration of the mark shall be cancelled upon expiry of that time limit.

### *Transfer and Licensing*

**27.** The transfer of a guarantee or collective mark or the grant of licenses with respect to collective marks shall be valid only if entered in the Register.

## **Chapter 3 Registration of Trademarks**

### **PART 1 REGISTRATION PROCEDURE**

#### *Filing*

**28.**—(1) Any person may file a trademark.

(2) The application filed with the Federal Institute shall comprise:

(a) a request for registration, stating the name or trade name of the applicant;

(b) a reproduction of the trademark;

(c) a list of the goods or services for which the trademark is intended.



(3) The fees prescribed in the schedule shall be payable for each filing<sup>13</sup>.

(4) ...<sup>14</sup>

### *Filing Date*

**29.**—(1) An application for a trademark shall be deemed to have been filed once the documents referred to in Article 28(2) have been submitted.

(2) If a trademark is replaced or essential parts thereof are changed or if the list of goods or services is extended subsequent to filing, the day on which those changes were submitted shall be deemed the filing date.

### *Decision and Registration*

**30.**—(1) The Federal Institute shall not accept the request for registration if the filing does not satisfy the requirements of Article 28(2).

(2) It shall reject the request for registration if:

(a) the filing does not satisfy the formal requirements laid down in this Law or in the Ordinance relating thereto;

(b) the prescribed fees have not been paid;

(c) absolute grounds for refusal exist;

(d) the guarantee or collective mark does not satisfy the requirements of Articles 21 to 23.

(3) It shall register the trademark if no grounds for rejection exist.

## PART 2

### OPPOSITION PROCEDURE

#### *Opposition*

**31.**—(1) The owner of an earlier trademark may lodge opposition to a new registration on the basis of Article 3(1).

(2) Opposition shall be lodged in writing with the Federal Institute within three months of publication of the registration. The opposition fee shall also be paid within that time limit.

#### *Justification of Use*

**32.** If the defendant claims non-use of the earlier mark under Article 12(1), the opposing party shall be required to prove the use of his mark or provide important reasons for non-use.

#### *Decision on Opposition*

**33.** If opposition is justified, the registration shall be cancelled in whole or in part; if this is not the case, the opposition shall be rejected.

### *Costs*

**34.** In its decision on the opposition the Federal Institute shall stipulate whether and to what extent the costs of the successful party are to be borne by the losing party.

### PART 3 CANCELLATION

**35.** The Federal Institute shall cancel a trademark registration, in whole or in part, if:

- (a) the owner requests cancellation;
- (b) the registration has not been extended;
- (c) the registration has been annulled by a final court decision.

### PART 4 APPEALS

**36.**—(1) Decisions of the Federal Institute in trademark matters may be contested by an appeal to the Appeal Board for Intellectual Property.

(2) The same forms of appeal shall be available with regard to decisions of the Federal Institute of the Trade Register regarding the inadmissibility of a company designation or of the name of an association or a foundation.

(3) The decision of the Appeals Board in opposition proceedings (Articles 31 *et seq.*) shall be final.

### PART 5 REGISTER, PUBLICATIONS

#### *Keeping of Register*

**37.** The Federal Institute shall keep the Trademark Register.

#### *Publications*

**38.**—(1) The Federal Institute shall publish:

- (a) the registration of trademarks (Article 30(3));
- (b) the extension of trademark registrations (Article 10(2));
- (c) the revocation of trademark registrations (Article 33);
- (d) the cancellation of trademark registrations (Article 35).

(2) The Federal Council shall determine which further entries in the Register are to be published.

(3) It shall determine the organ of publication.

#### *Access to Register; Inspection of Files*

**39.**—(1) Any person may inspect the Register, request information on its contents and obtain extracts.

(2) Any person shall also be entitled to inspect the file of registered trademarks.

(3) The Federal Council shall determine those cases in which files may be inspected prior to registration of a trademark.

**40.** [Repealed]<sup>15</sup>

#### PART 6 CONTINUED PROCEDURE

**41.**—(1) If the Federal Institute rejects a petition on trademark matters for the reason that a time limit has not been respected, the petitioner may request in writing that the procedure be continued. Article 24(1) of the Federal Law on Administrative Procedure<sup>16</sup> shall remain unaffected.

(2) The request shall be submitted within two months of the petitioner having had knowledge of the expiry of the time limit, but at the latest within six months of expiry of the time limit not complied with; in addition, the act not carried out must have been effected in its entirety and the fees prescribed in the schedule for this purpose have been paid by the applicant.<sup>17</sup>

(3) Where the request is accepted, the situation will be restored that would have existed had the act been carried out in good time.

(4) Continued procedure shall not be possible in the event of failure to comply with:

(a) the time limit for filing the request for continued procedure (paragraph (2));

(b) the time limits for claiming priority under Articles 7 and 8;

(c) the time limit for filing opposition under Article 31(2).

#### PART 7 REPRESENTATION

**42.**—(1) Any person participating in an administrative or court proceeding under this Law, and who has neither domicile nor headquarters in Switzerland, shall be required to appoint a representative established in Switzerland.

(2) The provisions on professional representation in proceedings shall remain of application.

#### PART 8 FEES

**43.**—(1) In addition to the cases referred to in this Law, fees shall be paid for services provided by the Institute in response to specific requests.

(2) ...<sup>18</sup>

### **Chapter 4 International Registration of Trademarks**

#### *Applicable Law*

**44.**<sup>19</sup>—(1) This Chapter shall apply to international registrations under the Madrid Agreement Concerning the International Registration of Marks of July 14, 1967<sup>20</sup> (Madrid

Agreement) and the Protocol to the Madrid Agreement Concerning the International Registration of Marks of June 27, 1989<sup>21</sup> (Madrid Protocol), effected through the intermediary of the Federal Institute or which have effect in Switzerland.

(2) The other provisions of this Law shall apply where not otherwise stipulated by the Madrid Agreement or by the Madrid Protocol and this chapter.

#### *Applications for Registration in the International Register*

**45.**<sup>22</sup>—(1) It is possible to request, through the Federal Institute:

(a) the international registration of a mark if Switzerland is the country of origin within the meaning of Article 1(3) of the Madrid Agreement<sup>23</sup>, or Article 2(1) of the Madrid Protocol<sup>24</sup>;

(b) modification of an international registration where Switzerland is the country of the owner of the mark within the meaning of the Madrid Agreement or the Madrid Protocol;

(c) the international registration of an application where Switzerland is the country of origin within the meaning of Article 2(1) of the Madrid Protocol.

(2) The fees prescribed in the Madrid Agreement, the Madrid Protocol and in the schedule shall be payable for the international registration of a trademark, a registration application or the modification of an international registration.

#### *Effect of International Registration in Switzerland*

**46.**—(1) An international registration for which protection is requested in Switzerland shall have the same effect as a filing with the Federal Institute and entry in the Swiss Register.<sup>25</sup>

(2) Such effect shall be deemed not to have begun if and to the extent protection of the internationally registered mark is refused for Switzerland.

#### *Conversion of an International Registration into an Application for National Registration*

**46a.**<sup>26</sup>—(1) An international registration may be converted into a national registration application where:

(a) the application is filed with the Institute within three months of the removal of the international registration;

(b) the international registration and the national registration application concern the same mark;

(c) the goods and services mentioned in the application are covered *de facto* by the international registration having effect in Switzerland;

(d) the national registration application meets all the requirements prescribed by this Law.

(2) The objections raised against the registration of marks which have been filed under paragraph (1) shall be inadmissible.

TITLE 2  
INDICATIONS OF SOURCE

*Principle*

**47.**—(1) Indications of source are direct or indirect references to the geographical origin of goods or services, including references to their nature or properties, having a relationship with their origin.

(2) Geographical names or signs not understood as a reference to the source of goods or services in the relevant trade circles shall not be deemed indications of source within the meaning of paragraph (1).

(3) It shall be prohibited to use:

(a) incorrect indications of source;

(b) designations that may be confused with an incorrect indication of source;

(c) a name, an address or a trademark in connection with goods or services of a different origin where this could be misleading.

(4) Regional or local indications of source for services shall be deemed correct if such services satisfy the criteria of origin for the country concerned as a whole.

*Origin of Goods*

**48.**—(1) The origin of goods shall be determined by the place of manufacture or by the origin of the basic materials and components used.

(2) The fulfillment of further conditions may also be required, namely, compliance with manufacturing principles or quality requirements that are customary or prescribed in the place concerned.

(3) The criteria shall be determined in the individual case on the basis of their influence on the reputation of the goods concerned; where an indication of source corresponds to usage, it shall be presumed to be correct.

*Origin of Services*

**49.**—(1) The origin of services shall be determined by one of the following criteria:

(a) the registered office of the person providing the services;

(b) the nationality of the persons exercising actual control over the commercial policy and management of the business; or

(c) the domicile of the persons exercising actual control over the commercial policy and management of the business.

(2) The fulfillment of further conditions may also be required, namely, compliance with the principles that are usual or prescribed for providing the services considered or the traditional association of the service provider with the country of origin.

(3) The criteria shall be determined in the individual case on the basis of their influence on the reputation of the services concerned; where an indication of source corresponds to usage, it shall be presumed to be correct.

## *Special Provisions*

**50.** Where the general interest of the economy or of individual sectors so requires, the Federal Council may detail the conditions under which a Swiss indication of source may be used for specific goods or services. It shall first hear the Cantons and the professional or economic associations concerned.

### *Producer Identification Sign*

**51.** Where the interests of a sector of the economy so require, the Federal Council may prescribe that a producer identification sign be affixed to goods in that sector.

## TITLE 3 LEGAL PROTECTION

### Chapter 1 Civil Law Protection

#### *Action for Declaratory Judgment*

**52.** Any person who proves a legal interest may request the court to hand down a declaratory judgment whereby a right or a legal relationship subsists or does not subsist under this Law.

#### *Action for Assignment of a Trademark Right*

**53.**—(1) The plaintiff may institute action for the transfer of a trademark, instead of a declaration of nullity of the trademark registration, where the defendant has usurped the trademark.

(2) The entitlement shall expire two years after publication of the registration or withdrawal of the owner's consent in accordance with Article 4.

#### *Notification of Decisions*

**54.** The courts shall notify the Federal Institute of the final decisions that result in a change in an entry in the Register.

#### *Action for Execution of a Service*

**55.**—(1) Whoever suffers or is likely to suffer an infringement to his rights in a trademark or in an indication of source may request the courts:

- (a) to prohibit an imminent infringement;
- (b) to remove an ongoing infringement;
- (c) to require the defendant to state the origin of the objects in his possession that unlawfully bear the trademark or indication of source.

(2) He may further, in accordance with the law of obligations<sup>27</sup>, institute proceedings for the payment of damages and redress for moral wrongs and may also require the surrender of profits in accordance with the provisions on agency without authority.

(3) Use of a guarantee or collective mark contrary to the applicable regulations shall also constitute infringement of trademark rights.

#### *Institution of Proceedings by Consumer Associations and Organizations*

**56.**—(1) Actions under Articles 52 and 55(1), concerning the protection of indications of source, may also be instituted by:

(a) professional or economic associations whose statutes authorize them to defend the economic interests of their members;

(b) organizations of national or regional scope devoted by statute to the protection of consumers.

(2) Such associations shall also be entitled to institute proceedings under Article 52 with respect to a guarantee or collective mark.

#### *Confiscation in Civil Proceedings*

**57.**—(1) The court may order the confiscation of objects that unlawfully bear a trademark or an indication of source and that are in the possession of the defendant.

(2) The court shall decide whether the trademark or indication of source is to be made unrecognizable or whether the objects are to be rendered unusable, to be destroyed or to be used in a specified way.

#### *Jurisdiction*

**58.**—(1) The court of the domicile of the defendant or of the place where the act was committed or of the place where the act had effect shall be competent to hear actions provided for by this Law.

(2) Where actions may be taken against several defendants and where claims are essentially based on the same facts and legal grounds, action may be instituted before any competent court; the court before which first action is instituted shall have exclusive jurisdiction.

(3) Each canton shall designate the court that has jurisdiction for the whole of its territory as the sole instance for civil proceedings.

#### *Precautionary Measures*

**59.**—(1) Any person who reasonably claims that his rights in a trademark or an indication of source are infringed or that he is likely to suffer such infringement and that the infringement is likely to result in a prejudice for him that may not be readily made good may request that precautionary measures be ordered.

(2) He may request, in particular, that the court order measures to secure evidence, to determine the origin of objects unlawfully bearing the trademark or indication of source, or to maintain the existing situation or measures for the provisional execution of preventive injunctions and injunctions to desist.

(3) Precautionary measures shall be ordered by:

(a) the court of the place where proceedings have been instituted and are pending;

(b) where no proceedings have been instituted, one of the courts having jurisdiction under Article 58.

(4) Articles 28c to 28f of the Swiss Civil Code<sup>28</sup> shall apply *mutatis mutandis* in all other cases.

### *Publication of Judgment*

**60.** The court may order, at the request of the successful party, that the judgment be published at the cost of the other party. The court shall determine the nature and extent of publication.

## **Chapter 2 Penal Provisions**

### *Infringement of Trademark Rights*

**61.**—(1) At the request of the injured party, any person who intentionally infringes the trademark rights of another person by:

(a) usurping, counterfeiting or imitating such a trademark;

(b) placing goods on the market or providing services under the usurped, counterfeit or imitated trademark, offering such goods or services or advertising them,

shall be liable to imprisonment of up to one year or a fine of up to 100,000 francs.

(2) Any person who refuses to state the origin of objects bearing a usurped, counterfeit or imitated trademark, which are in his possession, shall be liable, at the request of the injured party, to the same penalties.

(3) Where the person committing an offense acts by way of trade, he shall be prosecuted *ex officio*. The penalty shall be imprisonment and a fine of up to 100,000 francs.

### *Fraudulent Use*

**62.**—(1) At the request of the injured party, any person who:

(a) unlawfully designates goods or services using the trademark of another person in order to mislead and thereby give the impression that the goods or services are original;

(b) offers or places on the market as original goods or offers or supplies as original services unlawfully bearing the trademark of another person,

shall be liable to imprisonment or a fine of up to 100,000 francs.

(2) Where the person committing an offense acts by way of trade, he shall be prosecuted *ex officio*. The penalty shall be imprisonment of up to five years and a fine of up to 100,000 francs.

(3) Any person who imports, exports or stores goods in the knowledge that they are intended to deceive while being offered or placed on the market, shall be liable, at the request of the injured party, to detention or a fine of up to 20,000 francs.



### *Use of a Guarantee or Collective Mark Contrary to the Regulations*

**63.**—(1) At the request of the injured party, any person who uses with intent a guarantee or collective mark in a manner contrary to the regulations shall be liable to imprisonment of up to one year or a fine of up to 100,000 francs.

(2) Any person who refuses to state the origin of objects in his possession that bear a guarantee or collective mark contrary to the regulations shall be liable, at the request of the injured party, to the same penalties.

(3) Where unimportant provisions of the regulations only are concerned, sanctions may be waived by the courts.

(4) Where the person committing an offense acts by way of trade, he shall be prosecuted *ex officio*. The penalty shall be imprisonment and a fine of up to 100,000 francs.

### *Use of Incorrect Indications of Source*

**64.**—(1) At the request of the injured party, any person who intentionally:

(a) uses an incorrect indication of source;

(b) uses a designation that can be confused with an incorrect indication of origin;

(c) creates the risk of deception by using a name, an address or a trademark in relation to goods or services of different origin,

shall be liable to imprisonment of up to one year or a fine of up to 100,000 francs.

(2) Where the person committing an offense acts by way of trade, he shall be prosecuted *ex officio*. The penalty shall be imprisonment and a fine of up to 100,000 francs.

### *Offenses Concerning Producer Identification Signs*

**65.** Any person who intentionally infringes the provisions on producer identification signs shall be liable to a fine of up to 20,000 francs.

### *Suspension of Proceedings*

**66.**—(1) The court may suspend criminal proceedings if the accused party institutes civil proceedings for the nullity of a trademark registration.

(2) If the accused party invokes the exception of the nullity of a trademark registration in criminal proceedings, the court may allow an appropriate period of time for that party to assert such nullity in civil proceedings.

(3) The term of prescription shall rest during suspension.

### *Offenses in Business Activities*

**67.** Articles 6 and 7 of the Federal Law on Administrative Penal Law<sup>29</sup> shall apply to infringements committed within the management of an enterprise by subordinates, agents or representatives.

### *Confiscation in Criminal Proceedings*

**68.** Article 58 of the Swiss Penal Code<sup>30</sup> shall apply; however, the court may, notwithstanding paragraph (2) of that provision, order that an object unlawfully bearing a trademark or an indication of source shall be confiscated as a whole.

### *Jurisdiction of Cantonal Authorities*

**69.** Criminal action shall be the responsibility of the cantons.

## **Chapter 3 Assistance from the Customs Authorities**

### *Reporting of Suspect Consignments*

**70.** The customs authorities shall be empowered to draw the attention of trademark owners, persons entitled to use an indication of source, or professional or economic associations entitled to institute proceedings under Article 56, to specific consignments, where there exists a suspicion that goods unlawfully bearing a trademark or an indication of source are to be imported or exported.

### *Request for Assistance*

**71.—(1)** Where the owner of a trademark, a person entitled to use an indication of source, or a professional or economic association entitled to institute proceedings under Article 56 has good reason to believe that goods unlawfully bearing a trademark or an indication of source are to be imported or exported, they may request the customs authorities in writing to refuse to release the goods.

(2) The person making the request must provide all particulars available to him that are required for the customs authorities to take a decision; these shall include an exact description of the goods.

(3) The customs authorities shall give a final decision on the request. They may levy a fee to cover the administrative costs.

### *Withholding*

**72.—(1)** Where the customs authorities have good reason to suspect, following a request under Article 71, that goods unlawfully bearing a trademark or an indication of source are to be imported or exported, they shall inform the person making the request accordingly.

(2) To enable the person making the request to obtain precautionary measures, the customs authorities shall withhold the goods concerned for ten working days at most as from the time of the notification under paragraph (1).<sup>31</sup>

(2bis) If warranted by the circumstances, the customs authorities may withhold the goods concerned for an additional period of ten working days at most.<sup>32</sup>

(2ter) If the withholding of the goods is liable to cause damage, the customs authorities may require from the person making the request that he provide appropriate security.<sup>33</sup>

(3) The person making the request shall make good any damages arising from the withholding, if precautionary measures have not been ordered or have proven to be unjustified.

TITLE 4  
FINAL PROVISIONS

**Chapter 1**  
**Execution**

73. The Federal Council shall enact the implementing provisions.

**Chapter 2**  
**Repeal and Amendment of Federal Laws**

*Repeal of Previous Law*

74. The Federal Law of September 26, 1890<sup>34</sup>, Concerning the Protection of Factory and Trademarks, Indications of Source and Industrial Awards is hereby repealed. However, Article 16bis(2) shall remain applicable until the entry into force of Article 36 of this Law.

*Amendment of Previous Law*

75.—(1) The Federal Law on the Organization of the Judiciary<sup>35</sup> is amended as follows:

*Article 100, introductory phase and letter w*

...<sup>36</sup>

(2) The Federal Law of June 20, 1933<sup>37</sup>, on the Supervision of Trade in Precious Metals and Works of Precious Metal is amended as follows:

*Title*

*Addition of the short title and the abbreviation*

...<sup>38</sup>

*Article 10*

...<sup>39</sup>

*Article 12(1bis) and (2), first sentence*

...<sup>40</sup>

*Article 22(1)*

...<sup>41</sup>

*Article 22a*

...<sup>42</sup>

*Article 47*

...<sup>43</sup>

*Articles 44 to 46 and 48 to 50*

*All amounts of fines expressed in francs are to be deleted.*

(3) *The expression “factory and trademark” is replaced in all orders by “mark,” with the exception of Articles 1 and 2 of the Federal Law of June 5, 1931<sup>44</sup> on the Protection of Public Armorial Bearings and Other Public Signs. The orders concerned shall be adopted at the earliest opportunity.*

### **Chapter 3** **Transitional Provisions**

#### *Registered Trademarks*

**76.**—(1) Trademarks that are already registered upon the entry into force of this Law shall be subject to the new Law as from that date.

(2) Notwithstanding paragraph (1), the following shall apply:

(a) priority shall be subject to previous law;

(b) grounds for refusing applications for registration, with the exception of absolute grounds for refusal, shall be subject to old law;

(c) opposition to the registration of trademarks already filed upon the entry into force of this Law shall not be admissible;

(d) the validity of a registration shall terminate upon expiry of the term applicable under old law; until such time, it may be extended at any time;

(e) the first extension of the registration of a collective mark shall be subject to the same formal requirements as an application.

#### *Trademarks Not Previously Registrable*

**77.** If, upon the entry into force of this Law, applications are pending for the registration of trademarks excluded under old law, but not under new law, the day of the entry into force shall be considered the filing date.

#### *Priority of Use*

**78.**—(1) The person who first used a trademark prior to the entry into force of this Law on goods or their packaging or to identify services, shall have a better entitlement than the first filer on condition that he files the mark within two years of the entry into force of this Law and at the same time states the date on which use of the mark commenced.

(2) Opposition to registration of trademarks filed in accordance with paragraph (1) shall not be permissible.

### **Chapter 4** **Referendum and Entry into Force**

**79.**—(1) This Law shall be subject to optional referendum.

(2) The Federal Council shall determine the date of entry into force.

Date of entry into force: April 1, 1993<sup>45</sup>

Article 36: January 1, 1994<sup>46</sup>

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*Note:* Translation by the International Bureau of WIPO.

\* *French title:* Loi fédérale sur la protection des marques et des indications de provenance (Loi sur la provenance des marques, LPM).

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<sup>1</sup> **RS 101**

<sup>2</sup> **FF 1991 I1**

<sup>3</sup> **RS 0.232.01/04**

<sup>4</sup> **RS 0.945.11**

<sup>5</sup> **RS 0.945.11**

<sup>6</sup> **RS 0.232.01/04**

<sup>7</sup> **RS 0.232.01/04**

<sup>8</sup> New content according to Chapter 2 of the Annex to the Federal Law of March 24, 1995 on the Status and Tasks of the Federal Intellectual Property Institute, in force since January 1, 1996 (RS **172.010.31**).

<sup>9</sup> New content according to Chapter I of the Federal Law of October 4, 1996, in force since May 1, 1997 (RO **1997** 1028 1030; FF **1996** II 1393).

<sup>10</sup> Repealed by Chapter 2 of the Annex to the Federal Law of March 24, 1995 on the Status and Tasks of the Federal Intellectual Property Institute (RS **172.010.31**).

<sup>11</sup> Introduced by Chapter I of the Federal Law of October 4, 1996, in force since May 1, 1997 (RO **1997** 1028 1030; FF **1996** II 1393).

<sup>12</sup> New term according to Chapter I of the Federal Law of October 4, 1996, in force since May 1, 1997 (RO **1997** 1028 1030; FF **1996** II 1393). This amendment has been taken into account throughout the current text.

<sup>13</sup> New content according to Chapter 2 of the Annex to the Federal Law of March 24, 1995 on the Status and Tasks of the Federal Intellectual Property Institute, in force since January 1, 1996 (RS **172.010.31**).

<sup>14</sup> Repealed by Chapter II of the Annex to the Federal Law of March 24, 1995 on the Status and Tasks of the Federal Intellectual Property Institute (RS **172.010.31**).

<sup>15</sup> Repealed by Chapter II of the Annex to the Federal Law of March 24, 1995 on the Status and Tasks of the Federal Intellectual Property Institute (RS **172.010.31**).

<sup>16</sup> **RS 172.021**

<sup>17</sup> New content according to Chapter 2 of the Annex to the Federal Law of March 24, 1995 on the Status and Tasks of the Federal Intellectual Property Institute, in force since January 1, 1996 (RS **172.010.31**).

<sup>18</sup> Repealed by Chapter II of the Annex to the Federal Law of March 24, 1995 on the Status and Tasks of the Federal Intellectual Property Institute (RS **172.010.31**).

<sup>19</sup> New content according to Chapter I of the Federal Law of October 4, 1996, in force since May 1, 1997 (RO **1997** 1028 1030; FF **1996** II 1393).

<sup>20</sup> **RS 0.232.112.3**

<sup>21</sup> **RS 0.232.112.4**

<sup>22</sup> New content according to Chapter I of the Federal Law of October 4, 1996, in force since May 1, 1997 (RO **1997** 1028 1030; FF **1996** II 1393).

<sup>23</sup> **RS 0.232.112.3**

<sup>24</sup> **RS 0.232.112.4**

<sup>25</sup> New content according to Chapter I of the Federal Law of October 4, 1996, in force since May 1, 1997 (RO **1997** 1028 1030; FF **1996** II 1393).

<sup>26</sup> Introduced by Chapter I of the Federal Law of October 4, 1996, in force since May 1, 1997 (RO **1997** 1028 1030; FF **1996** II 1393).

<sup>27</sup> **RS 220**

<sup>28</sup> **RS 210**

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<sup>29</sup> **RS 313.0**

<sup>30</sup> **RS 311.0**

<sup>31</sup> New content according to Chapter I of the Federal Law of December 16, 1994, in force since July 1, 1995 (RO **1995** 1781 1782; FF **1994** IV 995).

<sup>32</sup> Introduced by Chapter I of the Federal Law of December 16, 1994, in force since July 1, 1995 (RO **1995** 1781 1782; FF **1994** IV 995).

<sup>33</sup> Introduced by Chapter I of the Federal Law of December 16, 1994, in force since July 1, 1995, (RO **1995** 1781 1782; FF **1994** IV 995).

<sup>34</sup> [RS **2** 837; RO **1951** 906 Article 1, **1971** 1617; RS **291** Annex Chapter I (e)].

<sup>35</sup> **RS 173.110.**

<sup>36</sup> Text inserted in said Law

<sup>37</sup> **RS 941.31**

<sup>38</sup> Text inserted in said Law.

<sup>39</sup> Text inserted in said Law.

<sup>40</sup> Text inserted in said Law.

<sup>41</sup> Text inserted in said Law.

<sup>42</sup> Text inserted in said Law.

<sup>43</sup> Text inserted in said Law.

<sup>44</sup> **RS 232.21**

<sup>45</sup> ACF of December 23, 1992 (RO **1993** 294)

<sup>46</sup> O of April 26, 1993 (RS **232.110**)