

## **The Consolidate Trade Marks Act<sup>1)</sup>**

Publication of the Trade Marks Act, cf. Consolidate Act No. 192 of 1 March 2016 including the amendments which follow from section 1 of Act No. 1548 of 13 December 2016.<sup>2)</sup>

The amendments which follow from section 1 of Act No. 309 of 28 March 2015 to Amend the Trade Marks Act, the Designs Act, the Patents Act and the Utility Models Act (Increased efforts against counterfeiting and piracy by establishing an enforcement unit, etc.) are not included in this Consolidate Act since the amendments have subsequently been cancelled, cf. section 6(i) of Act No. 1548 of 13 December 2016.

### **Part 1**

#### **General provisions**

**1.-** Pursuant to the provisions of this Act persons and enterprises may obtain an exclusive right to trade marks (trade mark right). Trade marks mean distinctive signs for goods or services being used or intended to be used by a commercial enterprise.

#### **Signs of which a trade mark may consist**

**2.-(1)** A trade mark may consist of any sign capable of distinguishing the goods or services of one enterprise from those of other enterprises and capable of being represented graphically, in particular

- (i) words and word combinations, including slogans, personal names, company names or names of real property,
- (ii) letters and numerals,
- (iii) pictures and designs or
- (iv) the shape, equipment or packaging of the goods.

(2) A trade mark right shall not be obtained for signs which consist exclusively of either a shape which results from the nature of the goods themselves, a shape of the goods which is necessary to obtain a technical result or a shape which gives substantial value to the goods.

#### **Establishing a trade mark right**

**3.-(1)** A trade mark right may be established either

- (i) by registration of a trade mark in accordance with the rules of this Act for the goods or services comprised by the registration or
- (ii) by commencement of use of a trade mark in this country for the goods or services for which the trade mark has commenced to be used and for which it is continuously used.

(2) Use of a trade mark which according to its nature is excluded from registration shall not establish any trade mark right.

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<sup>1)</sup> This Act contains provisions implementing parts of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (EU Official Journal 2004 No. L 195, p. 15).

(3) If the trade mark is devoid of the required distinctive character at the commencement of use, the right shall only be established when and if a distinctive character is created by the use of the mark.

### **Contents of the trade mark right**

4.-(1) The proprietor of a trade mark right shall be entitled to prohibit any person not having his consent from using any sign in the course of trade if

- (i) the sign is identical with the trade mark, and the goods or services for which the sign has been put to use are identical with the goods or services for which the trade mark is protected, or
- (ii) the sign is identical with or similar to the trade mark, and the goods or services are identical or similar, if there exists a likelihood of confusion including a likelihood of association with the trade mark.

(2) Irrespective of the limitation in subsection 1 to goods or services being identical or similar, the proprietor of the trade mark shall be entitled to prohibit the use of the trade mark also in relation to goods or services which are not identical or similar if the trade mark has a reputation in this country and the use would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the trade mark.

(3) Use in the course of trade means in particular

- (i) affixing the sign to the goods or to the packaging thereof,
- (ii) offering the goods for sale, putting them on the market or stocking them for these purposes under that sign or offering or rendering services thereunder,
- (iii) importing or exporting the goods under that sign or
- (iv) using the sign on business papers and in advertising.

### **Limitation of the rights of the proprietor**

5.- The proprietor of a trade mark right shall not be entitled to prohibit others from using, in the course of trade and in accordance with honest practices in industrial or commercial matters,

- (i) his own name and his own address,
- (ii) indications concerning the kind, quality, quantity, intended purpose, value or geographical origin of the goods or services, the time of production of the goods or of rendering the services or other characteristics of the goods or services or
- (iii) the trade mark where it is necessary for the indication of the intended purpose of the goods or services, in particular as accessories or spare parts.

### **Exhaustion**

6.-(1) The proprietor of a trade mark right shall not be entitled to prohibit the use of the trade mark in relation to goods which have been put on the market within the European Communities under that trade mark by the proprietor himself or with his consent.

(2) Subsection 1 shall not apply if there are legitimate reasons for the proprietor to oppose further commercialisation of the goods, especially where the condition of the goods has been changed or impaired after they have been put on the market.

### **Conflicting rights**

7.- If two or more parties individually claim a trade mark right to the same or similar signs, the right which has arisen first shall have priority, unless otherwise provided for in the following sections. A registered right shall be deemed to have arisen on the date of filing of the application for registration, cf. section 12, or on the date from which priority is claimed pursuant to the rules of section 18 or 19.

**8.-** A later right to a registered trade mark may co-exist with an earlier right to a confusingly similar trade mark, provided that the application for registration was filed in good faith and that the proprietor of the earlier right has been aware of and tolerated the use in this country of the later right for a period of five successive years.

**9.-** A later right to a trade mark may also co-exist with an earlier right to a confusingly similar trade mark if the proprietor of the earlier right has not, within a reasonable time, taken the necessary steps to prevent the use of the later trade mark.

**10.-(1)** In the cases referred to in sections 8 and 9 the proprietor of a later trade mark shall not be entitled to prohibit the use of an earlier trade mark even if the proprietor of the earlier trade mark may no longer invoke his right against the later trade mark.

(2) In the cases referred to in section 9 it may, if found reasonable, be decided that one or both of the trade marks may only be used in a special manner, for example in a particular shape or with the addition of an indication of locality.

#### **Reproduction of a trade mark in dictionaries, etc.**

**11.-(1)** In encyclopaedias, handbooks, textbooks or similar publications of professional nature the author, editor and publisher shall, at the request of the proprietor of a registered trade mark, ensure that the trade mark is not reproduced without an indication to the effect that it is a registered trade mark.

(2) If any party fails to comply with the provisions of subsection 1, he shall be liable to pay the costs of publishing a correcting notice in the manner found reasonable.

## **Part 2**

### **Registration of trade marks**

**12.-(1)** An application for the registration of a trade mark shall be filed with the Patent and Trademark Office. The application shall contain a reproduction of the trade mark and state the applicant's name or company. Furthermore, the goods or services in respect of which registration of the trade mark is applied for shall be stated.

(2) The application shall be drawn up in accordance with the provisions laid down pursuant to section 48. The prescribed fee shall accompany the application.

(3) The Patent and Trademark Office shall keep a Register of Trade Marks. The Office shall publish registrations, etc.

#### **Grounds for refusal**

**13.-(1)** For a trade mark to be registered it shall be of the nature referred to in section 2, including having a distinctive character.

(2) The following trade marks shall not be registered:

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

(ii) Trade marks which consist exclusively of signs or indications which are customary in the current language or in the established practices of the trade to designate the goods or services.

(3) Irrespective of the provisions of subsections 1 and 2 a trade mark may be registered if it has acquired a distinctive

character prior to the filing of the application in consequence of the use which has been made thereof.

**14.-** Furthermore, the following shall not be registered:

- (i) Trade marks which are contrary to law, public order or morality.
- (ii) Trade marks which are liable to deceive the public, for instance as to the nature, quality or geographical origin of the goods or services.
- (iii) Trade marks which have not been authorised by the competent authorities and which are to be refused pursuant to Article 6ter of the Paris Convention for the Protection of Industrial Property, and trade marks which include badges, emblems and escutcheons of public interest, unless the appropriate authority has given its consent to their registration.
- (iv) Trade marks which without permission consist of or contain an element which may be construed as a personal name or company name to which another party has a legal title, or as a portrait, provided allusion is not made to persons long dead, or which without permission contain a distinctive name of or a picture of the real property of another party.
- (v) Trade marks which without permission consist of or contain an element which may be construed as a distinctive title of the protected literary or artistic work of another party or which infringe the copyright in such a work or the right to a photograph of another party or the industrial property rights of another party.

**15.-(1)** A trade mark shall not be registered if

- (i) it is identical with an earlier trade mark, and the goods or services in respect of which registration of the trade mark is applied for are identical with the goods

or services in respect of which the earlier trade mark is protected or

- (ii) there exists a likelihood of confusion, including a likelihood of association, with the earlier trade mark, because the later trade mark is identical with or similar to the earlier trade mark and the goods or services are identical or similar.

(2) For the purpose of subsection 1 earlier trade marks mean

- (i) trade marks of the following categories with a date of application for registration which is earlier than the date of application for registration of the trade mark, taking account, where appropriate, of the priority claimed in respect of those trade marks:
  - (a) Community trade marks,
  - (b) trade marks registered in this country or
  - (c) trade marks registered under international arrangements which have effect in this country,
- (ii) Community trade marks for which, in accordance with the Regulation on the Community trade mark, the seniority of a trade mark referred to in paragraph (i)(b) or (c) is claimed, even if the latter trade mark has been surrendered or has lapsed,
- (iii) applications for the trade marks referred to in paragraphs (i) and (ii), subject to their registration or
- (iv) trade marks which, on the date of filing of the application or, where appropriate, the date of the priority claimed in respect of the application, are well known in this country, in the sense in which the words "well known" are used in Article 6bis of the Paris Convention.

(3) A trade mark shall, furthermore, not be registered if

- (i) it is identical with or similar to an earlier Community trade mark, cf. subsection 2, and its registration is applied for in

respect of goods or services which are not similar to those for which the earlier Community trade mark is registered, where the earlier Community trade mark has a reputation in the European Union and the use of the later trade mark would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier Community trade mark,

- (ii) it is identical with or similar to a "well known" trade mark, cf. subsection 2(iv), and its registration is applied for in respect of goods or services which are not similar to those for which the earlier trade mark is well known, where the use of the later trade mark might lead to a likelihood of association between the marks and the use would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark or
  - (iii) it is identical with or only insignificantly distinct from a trade mark which, on the date of filing of the application or, where appropriate, the date of the priority claimed in respect of the application, has commenced to be used abroad and is still in use there for goods or services which are identical with or similar to those in respect of which registration of the later trade mark is applied for, and the applicant on the date of the filing of the application had, or should have had, a knowledge of the foreign trade mark.
- (4) A trade mark shall, moreover, not be registered if
- (i) the trade mark is identical with or similar to an earlier Danish trade mark within the meaning of subsection 2 and its registration is applied for in respect of goods or services which are not similar to those in respect of which the earlier trade mark is registered, where the earlier trade mark has a reputation in this country and the use of the later trade

mark would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark or

- (ii) in consequence of use in this country a right has been obtained to an identical or confusingly similar trade mark or to another identical or confusingly similar sign used in the course of trade prior to the date of filing of the application for registration of the later trade mark or, where appropriate, the date of the priority claimed in respect of the application for registration of the later trade mark, if the proprietor of the earlier right may prohibit the use of the later trade mark.

(5) A trade mark shall not be excluded from registration pursuant to the provisions of subsections 1 to 4 where the proprietor of the earlier trade mark or other earlier rights consents to the registration of the later trade mark.

### **Disclaimers**

**16.-(1)** A trade mark right obtained by registration shall not comprise such elements of the trade mark as cannot be registered separately.

(2) If a trade mark contains such elements, and there is special reason to assume that the registration of the trade mark may cause doubt as to the scope of the trade mark right, such elements may on registration be explicitly excepted from the protection.

(3) If elements of the trade mark which have been excepted from the protection later on appear to have become registrable, a new registration may be made of those elements or of the trade mark itself without the limitation referred to in subsection 2.

### **Classes of goods**

**17.-** Trade marks shall be registered in one or more classes of goods or services. The Minister of Industry, Business and Financial Affairs shall lay down provisions concerning the division into classes.

#### **Convention priority**

**18.-**(1) If an application for the registration of a trade mark is filed in this country not later than six months after the filing of the first application for the registration of the trade mark in a country party to the Paris Convention for the Protection of Industrial Property or member of the World Trade Organisation (WTO), the application shall on request receive priority from the first date of filing. The priority shall imply that in relation to later occurring circumstances, such as other persons' applications for or other persons' use of the trade mark, the application shall be considered filed at the same time as the filing of the application in the foreign state.

(2) Subject to reciprocity subsection 1 shall apply *mutatis mutandis* to trade marks applied for the first time in a country which is not party to the Paris Convention or member of the World Trade Organisation.

#### **Exhibition priority**

**19.-** If an application for the registration of a trade mark is filed in this country not later than six months after the trade mark has been used for the first time for goods displayed at an official, or officially recognised, international exhibition, the application shall on request receive priority from that date. The priority shall imply that in relation to later occurring circumstances, such as other persons' applications for or other persons' use of the trade mark, the application shall be considered filed at the same time as the use of the trade mark at the exhibition. The exhibitions referred to are such exhibitions as are defined in the Convention on International

Exhibitions signed on 22 November 1928, as subsequently revised.

#### **Examination and other processing of applications**

**20.-**(1) If the application does not comply with this Act or with provisions laid down pursuant to this Act, or if the Patent and Trademark Office has other objections to the acceptance of the application, the Patent and Trademark Office shall notify the applicant accordingly and prescribe a time limit for the applicant to file his observations.

(2) On the expiry of the time limit the Patent and Trademark Office shall take a decision on the application, unless the applicant is invited once more to file his observations.

#### **Claiming a right to a trade mark**

**21.-**(1) If anybody claims to be entitled to a trade mark applied for or registered, the Patent and Trademark Office may, if it finds the question doubtful, invite him to bring it before the courts within a time limit to be specified. If the invitation is not complied with, the claim may be disregarded. Information to that effect shall be given in the invitation.

(2) If legal proceedings have been instituted concerning the right to a trade mark, the examination and other processing of the case by the Patent and Trademark Office may be suspended until a final decision has been given in the legal proceedings.

#### **Registration**

**22.-** When the application has been accepted, the trade mark shall be registered, and the registration shall be published.

#### **Opposition**

**23.**-(1) When the registration has been published, oppositions may be filed against the validity of the registration. The opposition, which shall state the grounds on which it is based, shall be filed with the Patent and Trademark Office within two months from the date of publication. The opposition shall be accompanied by a fee.

(2) If an opposition has been filed, the Patent and Trademark Office shall re-examine the registration in accordance with section 20. The provisions of section 28(5) shall also apply during the examination. The proprietor of the registered right shall be notified of the opposition and be given an opportunity to file his observations.

(3) If the registration is maintained, the person having filed the opposition and the proprietor of the right shall be notified thereof.

(4) If the registration is revoked entirely or partially, the decision to that effect shall be published when it has become final.

#### **Amendment of trade marks**

**24.**-(1) At the request of the proprietor insignificant amendments of a registered trade mark may be made, provided that the general impression of the trade mark is not affected by the amendment.

(2) Amendments of registered trade marks shall be entered in the Register and published.

(3) At the request of the proprietor insignificant amendments may also be made of a trade mark applied for.

#### **Requirement of use**

**25.**-(1) If, within a period of five years from the termination of the registration procedure, the proprietor of a registered trade mark has not put the trade mark to genuine use in this

country in connection with the goods or services in respect of which it is registered, or if such use has been suspended during an uninterrupted period of five years, the registration may be revoked, cf. section 28, unless there are proper reasons for non-use.

(2) The following shall also constitute use within the meaning of subsection 1:

- (i) Use of the trade mark in a form which does not differ significantly from the form in which it was registered.
- (ii) Affixing the trade mark to goods or to the packaging thereof in this country solely for export purposes.

(3) Use of a trade mark with the consent of the proprietor shall be deemed to constitute use of the trade mark by the proprietor.

#### **Duration of the registration**

**26.**-(1) The trade mark right obtained by the registration shall be effective from the date of filing of the application pursuant to section 12 and shall continue to be effective for ten years from the date of registration.

(2) The registration may be renewed for further periods of ten years from the expiry of the registration period in question.

#### **Renewal**

**27.**-(1) The request for renewal shall be effected by payment of the prescribed fee to the Patent and Trademark Office not earlier than six months before and not later than six months after the expiry of the registration period.

(2) If the request can be accepted, the renewal shall be entered in the Register.

(3) The Patent and Trademark Office shall collect renewal fees from the proprietor of the trade mark or his agent, but shall not be held

responsible for any loss of rights as a consequence of failure to collect.

(4) If the request does not comply with the provisions laid down, the Patent and Trademark Office shall notify the requester accordingly and prescribe a time limit for him to file his observations.

(5) On the expiry of the time limit the Patent and Trademark Office shall take a decision on the request, unless the requester is invited once more to file his observations.

### **Part 3**

#### **Termination of the registration**

**28.**-(1) If a trade mark has been registered in contravention of the provisions of this Act, the registration may be revoked, cf., however, sections 8 and 9. If the ground for revocation is lack of distinctive character or the like, cf. section 13, the use which has taken place after the registration, cf. section 13(3), shall also be taken into consideration.

- (2) A registration may also be revoked if
- (i) the trade mark has not been used in accordance with section 25,
  - (ii) in consequence of the activity or inactivity of the proprietor, the trade mark has become the common name in the trade for the product or service in respect of which the trade mark is registered or
  - (iii) in consequence of the use made of the trade mark by the proprietor or with his consent in respect of the goods or services for which it is registered, the trade mark is liable to mislead the public, particularly as to the nature, quality or geographical origin of the goods or services.

(3) A claim for revocation of a trade mark under subsection 2(i) may not be advanced if

genuine use of the trade mark is commenced or resumed in the interval between the expiry of the five-year period and the date of filing of the request for revocation. The commencement or resumption of the use within a period of three months preceding the filing of the request for revocation shall, however, be disregarded if the preparations for the commencement or resumption of the use are initiated only after the proprietor has become aware that a request for revocation may be filed.

(4) If the ground for revocation relates only to some of the goods or services for which the trade mark is registered, the registration shall only be revoked for those goods or services.

(5) If the ground for revocation is an earlier conflicting trade mark, a claim for revocation may only be advanced if the person having claimed the revocation of the registration at the request of the other party is able to prove that the earlier trade mark has been used in accordance with section 25. If an earlier registered trade mark has been used only for some of the goods or services in respect of which it is registered, it shall only be considered registered for those goods or services. Any of the parties may at any time institute proceedings against the other party with respect to matters which are brought up in the case, irrespective of the Patent and Trademark Office having made a decision on the case or not.

#### **Revocation by a court decision**

**29.**- Revocation of a registration under section 28 shall be effected by a court decision, cf., however, section 30. Proceedings shall be instituted against the proprietor and may be instituted by anybody with a legal interest therein. Proceedings pursuant to the provisions of section 13 and section 14(i) to (iii) may also be instituted by the Patent and Trademark Office.



### **Administrative revocation**

**30.**-(1) After the termination of the registration procedure any person may file a request with the Patent and Trademark Office for the revocation of a trade mark registration if the conditions of revocation in section 28 are complied with. The request shall be accompanied by a fee.

(2) If a case before the courts concerning a trade mark registration remains to be finally decided upon, a request pursuant to subsection 1 may not be filed concerning the registration in question.

(3) If proceedings concerning a trade mark registration are instituted before the courts prior to a final decision having been made on a request pursuant to subsection 1 relating to the registration, the Patent and Trademark Office shall suspend the examination of the request until the case has been finally decided upon, unless the request has been filed by the proprietor of the trade mark registration.

(4) The proprietor of the registered right shall be notified of the request and shall be given an opportunity to file his observations.

(5) If the registration is revoked entirely or partially, the decision to that effect shall be published when it has become final.

(6) The decision of the Patent and Trademark Office may be brought before the Patent Board of Appeal and the courts in accordance with section 46. However, any of the parties may at any time institute proceedings against the other party with respect to matters which are brought up in the case, irrespective of the Patent and Trademark Office having made a decision on the case or not.

**31.**-(1) If there is reason to doubt the existence of a proprietor of a trade mark, or if his address is unknown, any person with a

legal interest therein may request that the trade mark be deleted from the Register.

(2) Prior to any deletion the Patent and Trademark Office shall request the proprietor to come forward within a time limit fixed by the Patent and Trademark Office. Notification of the time limit shall be given by registered letter or by a similar satisfactory method. If the address of the proprietor is unknown, the time limit shall be communicated by public announcement. If the proprietor thereafter has not come forward, the trade mark shall be deleted from the Register.

### **Cancellation**

**32.**- If a registration of a trade mark, a renewal of a trade mark registration or an entry of an amendment in the Register has been made by an obvious mistake, the Patent and Trademark Office may within three months from the date of registration or the date of the entry cancel the registration, the renewal or the entry.

### **Deletion**

**33.**- Deletion from the Register shall be made if

- (i) the registration is not renewed,
- (ii) the proprietor of the trade mark requests deletion of the trade mark,
- (iii) the registration is revoked pursuant to section 23 or
- (iv) a decision is made or a court decision is given of revocation pursuant to section 29, 30 or 31.

**34.**- Of any court decision concerning a trade mark registration or a trade mark application an office copy shall be communicated to the Patent and Trademark Office by the court in question.

## Part 4

### Special provisions relating to the registration of foreign trade marks

#### Domestic registration

**35.**-(1) An applicant who does not carry on business in this country and who is not a resident of a state party to the Paris Convention for the Protection of Industrial Property or member of the World Trade Organisation (WTO) shall prove that a similar trade mark is registered for him in his home country in respect of the goods or services comprised by the application.

(2) Subject to reciprocity the Minister of Industry, Business and Financial Affairs may direct that subsection 1 shall not apply.

**36.** Subject to reciprocity the Minister of Industry, Business and Financial Affairs may direct that trade marks which would not otherwise be registrable in this country, but which are registered in a foreign state, may be registered in this country such as they are registered in the foreign state. Such a registration shall not extend further than in the foreign state.

#### Agents

**37.** The Patent and Trademark Office may invite the proprietor of a trade mark to appoint an agent residing in the European Economic Area (EEA) to receive notifications of proceedings and all other notifications concerning the trade mark on his behalf with a binding effect on the proprietor. The name and address of the agent shall be entered in the Register of Trade Marks.

## Part 5

### Transfer and licensing, etc.

**38.**-(1) The right to a trade mark may be transferred in connection with or separately from the enterprise in which it is used.

(2) If anybody transfers his enterprise, the right to the trade marks of the enterprise shall pass to the transferee, unless otherwise agreed or deemed to be agreed.

**39.**-(1) The transfer of the right to a registered trade mark shall on request be entered in the Register of Trade Marks.

(2) Until the transfer has been communicated to the Patent and Trademark Office, the proprietor of the trade mark shall be deemed to be the latest person entered in the Register.

#### Licensing

**40.**-(1) A trade mark may be licensed for all or some of the goods or services for which it is registered and for the whole or part of the country. The licence may be exclusive or non-exclusive.

(2) At the request of the proprietor or the licensee the licence shall be entered in the Register of Trade Marks. An entry shall also be made in the Register when it is later established that the licence has terminated.

(3) The proprietor of a trade mark may invoke the rights conferred by the trade mark against a licensee who contravenes any of the stipulations in the licensing contract with regard to the duration of the licence, the form in which the trade mark may be used according to the registration, the kind of goods or services for which the licence is granted, the territory within which the trade mark may be affixed to the goods or the

quality of the goods manufactured or the services rendered by the licensee.

### **Pledging and execution**

**41.-** If the right to a registered trade mark has been pledged, or if execution has been levied thereon, the Patent and Trademark Office shall at the request of the proprietor, the pledgee or the execution creditor enter a note to that effect in the Register of Trade Marks.

## **Part 6**

### **Provisions concerning the legal protection**

**42.-**(1) Any person who intentionally or grossly negligently infringes a trade mark right established by registration, use or pursuant to the Council Regulation on the Community trade mark shall be punished with a fine.

(2) If the infringement has been committed intentionally and under aggravating circumstances, the penalty may increase to imprisonment of up to 18 months, unless a heavier penalty is provided for by section 299b of the Penal Code. Aggravating circumstances shall in particular be considered to exist if a significant and obviously unlawful profit is intended by the infringement.

(3) Companies etc. (legal entities) may be held liable to punishment under the rules of Part 5 of the Penal Code.

(4) In the case of infringements comprised by subsection 1 proceedings shall be instituted by the injured party. In the case of infringements comprised by subsection 2 proceedings shall be instituted only at the request of the injured party, unless the institution of proceedings is required in the interests of the public.

**43.-**(1) Any person who intentionally or negligently infringes another person's trade mark right shall pay

- (i) a reasonable compensation to the injured party for the exploitation and
- (ii) damages to the injured party for the further injury which the infringement has caused.

(2) In fixing the damages according to subsection 1(ii) *inter alia* the loss of profit suffered by the injured party and the illicit profit obtained by the infringer shall be taken into consideration.

(3) In cases comprised by subsection 1 an additional compensation may be fixed to the injured party for non-financial injury.

(4) If the trade mark right has been established by registration, the rules of subsection 1 shall also apply to the period between the filing of the application and the registration of the trade mark if the infringer knew or ought to know that the application had been filed.

**43a.<sup>3)</sup>** The Maritime and Commercial Court shall be the Community trade mark court of first instance, and the Supreme Court shall be the Community trade mark court of second instance in accordance with Article 91 of the Regulation on the Community trade mark.

**43b.<sup>4)</sup>**(1) Provisional decisions on injunctions under Article 99(1) of the Regulation on the Community trade mark shall be given by the City Court or the Maritime and Commercial Court.

(2) The provisions of Parts 40 and 57 of the Administration of Justice Act shall apply *mutatis mutandis*.

**43c.<sup>5)</sup>**(1) Provisional decisions on injunctions which are to have effect within the territory of any Member State, cf. Article 99(2) of the Regulation on the Community trade mark,

shall be given by the Maritime and Commercial Court.

(2) The decisions of the Maritime and Commercial Court pursuant to subsection 1 may be appealed against to the Eastern High Court.

(3) Moreover, the provisions of Parts 40 and 57 of the Administration of Justice Act shall apply *mutatis mutandis*. The Enforcement Court shall upon request assist the Maritime and Commercial Court with respect to the performance of the functions referred to in section 641 of the Administration of Justice Act.

**43d.**<sup>6)</sup> Provisional decisions on injunctions pertaining to a national trade mark as well as a Community trade mark shall be given by the Maritime and Commercial Court if the provisional decision pertaining to the Community trade mark is to have effect within the territory of any Member State, cf. Article 99(2) of the Regulation on the Community trade mark. Section 43c(2) and (3) shall apply *mutatis mutandis*.

**44.**(1) For the purpose of preventing further infringements of the trade mark right the court may, when so claimed, *inter alia* decide that goods infringing a trade mark right shall

- (i) be withdrawn from the market,
- (ii) be removed definitively from the market,
- (iii) be destroyed,
- (iv) be surrendered to the injured party or
- (v) have the illegally affixed trade marks removed.

(2) Subsection 1 shall apply *mutatis mutandis* to materials, tools or the like which have primarily been used for illegal production of the infringing goods.

(3) The measures under subsection 1 shall be implemented without compensation to the infringer and shall not affect any damages to

the injured party. The measures shall be implemented at the expense of the infringer, unless special circumstances tell against it.

(4) In giving a court decision on measures under subsection 1 the court shall take into consideration the proportion between the extent of the infringement, the prescribed measures and the interests of any third party.

**44a.**(1) In a court decision by which a person is held liable under section 43 or 44 the court may, if so requested, decide that the court decision in full or extracts thereof shall be published.

(2) The obligation to publish shall rest with the infringer. The publication shall be made at the expense of the infringer and in such a prominent manner as may reasonably be required.

**45.**(1) If a licence has been granted for the use of a trade mark, the licensor as well as the licensee shall be considered entitled to institute proceedings in cases concerning the infringement of the trade mark right, unless otherwise agreed.

(2) A licensee who wishes to institute proceedings shall inform the licensor thereof.

**45a.** If the customs and taxation authorities become suspicious of infringements comprised by section 42, information to that effect may be passed on to the proprietor of the right.

## Part 6A

### Special unit on enforcement and counterfeiting and piracy

**45b.**<sup>7)</sup>(1) The tasks of the Patent and Trademark Office concerning the enforcement of trade mark rights and the combating of counterfeiting and piracy shall be performed by a special unit, which consumers,

businesses and authorities may approach and obtain information and guidance.

(2) In specific cases concerning counterfeiting and piracy the unit shall give advice to consumers and small and medium-sized enterprises. On request and against payment of a fee the unit may give a written advisory opinion.

(3) The unit shall assist the police and the prosecution in their efforts against counterfeiting and piracy.

(4) The Minister of Industry, Business and Financial Affairs may lay down specific rules concerning the tasks and organisation, etc. of the unit.

## **Part 7**

### **Miscellaneous provisions**

**46.**-(1) The decisions of the Patent and Trademark Office under this Act may be brought before the Patent Board of Appeal (Board of Appeal for Patents and Trademarks) not later than two months after the date on which the party concerned was notified of the decision. The fee for examination of the appeal shall be paid within the same time limit. Failure to do so shall cause the appeal to be rejected. Filing of appeals with the Patent Board of Appeal shall have suspensive effect.

(2) The decisions of the Board of Appeal may not be brought before any higher administrative authority.

(3) Proceedings for the trial of decisions made by the Patent and Trademark Office which may be appealed against to the Board of Appeal may not be brought before the courts until the decision of the Board of Appeal has been given. Proceedings for the trial of the decisions of the Board of Appeal shall be instituted within two months after the date on which the party concerned was notified of the

decision. The proceedings shall have suspensive effect.

**47.**-(1) The Patent and Trademark Office may on request undertake the performance of special tasks concerning trade marks and trade mark rights.

(2) The Minister of Industry, Business and Financial Affairs shall lay down rules governing the payment therefor and the payment of fees for reminders in the case of late payment.

(3) The Access to Public Administration Files Act shall, except for section 8, not apply to the tasks referred to in subsection 1.

**48.**-(1) The Minister of Industry, Business and Financial Affairs shall lay down specific provisions concerning trade mark applications and their examination and other processing. It may thus be prescribed to what extent the Patent and Trademark Office on its own initiative shall ensure whether the conditions of registration of the trade mark are fulfilled. The Minister of Industry, Business and Financial Affairs shall, furthermore, lay down provisions concerning the division of applications and registrations, concerning the examination of oppositions and administrative revocation, concerning claims of priority, cf. sections 18 and 19, concerning the registration and deletion of trade marks, and concerning the handling of cases, notifications, extracts from the Register, etc.

(2) The Minister of Industry, Business and Financial Affairs shall lay down specific provisions concerning the arrangement and keeping of the Register, concerning the information which may be entered in the Register and concerning the publication of registrations, etc.

(3) The Minister of Industry, Business and Financial Affairs may lay down rules concerning the payment for special

transactions, publications, transcripts, courses, etc.

(4) The Minister of Industry, Business and Financial Affairs shall lay down the provisions necessary for the application of the Regulation on the Community trade mark, including provisions concerning the conversion of Community trade mark applications and registrations to national applications and concerning the handling of cases, notifications, etc.

(5) For the division of applications and registrations and for notifications a fee shall be paid. For the examination and other processing of cases concerning Community trade marks a fee shall be paid.

(6) The Minister of Industry, Business and Financial Affairs may lay down specific rules concerning the days on which the Patent and Trademark Office shall be closed.

**49.-** If the Minister of Industry, Business and Financial Affairs refers his or her rights under this Act to the Patent and Trademark Office, the Minister may lay down rules concerning the right of appeal including rules to the effect that appeals may not be brought before any higher administrative authority.

## **Part 8**

### **International trade mark registration**

**50.-** An international trade mark registration means a registration under the Agreement adopted at Madrid on 14 April 1891 concerning the International Registration of Marks, as subsequently revised (the Madrid Agreement) or under the Protocol relating to the Madrid Agreement (the Protocol) adopted at Madrid on 27 June 1989.

### **Effects of an international registration**

**51.-** From the date of registration or from the date of a subsequent designation an international trade mark registration designating Denmark shall have the same legal effect as if the trade mark had been registered in Denmark.

### **Refusal**

**52.-** If the trade mark does not comply with the conditions of registration under this Act, or if an opposition is filed, the Patent and Trademark Office may, within the time limit laid down in the Madrid Agreement or the Protocol, notify the International Bureau of the entire or partial refusal of the protection of the trade mark in Denmark.

### **Lapse and proceeding under Danish law**

**53.-**(1) If the international trade mark registration is invalidated, its validity shall also lapse in Denmark from the date of the lapse of the international registration.

(2) If the international registration is cancelled pursuant to the Protocol at the request of the Office of origin or in consequence of a Contracting Party denouncing the Protocol, the proprietor may file a Danish trade mark application with the same effect as if the application had been filed on the date of filing of the application for the international registration or the date of a subsequent designation, provided that

- (i) the application is filed within three months from the date of the cancellation,
- (ii) the application does not comprise other goods or services than the international trade mark registration and
- (iii) the application, moreover, complies with the requirements of a Danish trade mark application, and the applicant pays the prescribed fees.

### **Prohibition against simultaneous protection**

**54.**-(1) In the cases where a trade mark registered in Denmark is also, at the request of the proprietor of the trade mark, the subject of an international trade mark registration, the international trade mark registration shall replace the Danish registration, provided that

- (i) Denmark is designated either originally or subsequently,
- (ii) the goods or services comprised by the Danish registration are also comprised by the international registration and
- (iii) Denmark is designated at a later date than the date of the application for the Danish registration.

(2) The Patent and Trademark Office shall on request enter the existence of an international trade mark registration in its Register.

### **Application for an international trade mark registration on the basis of an application or registration in Denmark**

**55.**- An international trade mark application may be filed by Danish nationals and natural persons or legal entities having their residence in Denmark or being owners of a real and effective industrial or commercial enterprise in Denmark.

**56.**- International trade mark applications based on an application or a registration in Denmark shall be filed with the Patent and Trademark Office in accordance with the provisions laid down by the Minister of Industry, Business and Financial Affairs, cf. section 60.

**57.**- An international application may only comprise the goods or services comprised by the Danish application or registration.

**58.**- At the filing an international trade mark application priority may be claimed pursuant to the Paris Convention.

### **Renewal, etc.**

**59.**- The rules laid down in the Madrid Agreement and the Protocol shall apply to renewal.

**60.**-(1) The Minister of Industry, Business and Financial Affairs shall lay down specific rules for the implementation of the provisions of this Part of the Act. Special rules may thus be laid down concerning the publication of the internationally registered trade marks, cf. section 51, and concerning the filing of oppositions thereagainst, cf. section 52.

(2) For the examination and other processing of cases concerning international trade mark registration a fee shall be paid.

## **Part 8 A**

### **Fees**

**60a.**-(1) For an application for the registration of a trade mark a fee of 2,350 DKK shall be paid, cf. section 12(2). Furthermore, an additional fee of 600 DKK shall be paid for each class under the Nice Agreement of 1957 Concerning the International Classification of Goods and Services (the Nice Classification) in excess of the first three classes.

(2) For the conversion of a Community trade mark application or registration to a national application, cf. section 48(5), the fees referred to in subsection 1 shall be paid.

(3) For an application for a Danish trade mark registration on the basis of a cancelled international trade mark registration a fee of 1,500 DKK shall be paid, cf. section 53(2)(iii).

(4) The fee for the designation of Denmark in an international trade mark registration under Article 7(1) of the Protocol of 27 June 1989 relating to the Madrid Agreement Concerning the International Registration of Marks (the Madrid Protocol (1989)) shall be calculated as referred to in subsection 1.

**60b.**-(1) For the renewal of a trade mark registration a fee of 2,350 DKK shall be paid, cf. section 27(1). Furthermore, an additional fee of 600 DKK shall be paid for each class under the Nice Classification in excess of three classes.

(2) Fees pursuant to subsection 1 paid after the expiry of the registration period and up to six months thereafter shall be increased by 20 per cent.

(3) The fee under Article 8(7) of the Madrid Protocol for the renewal of the designation of Denmark in an international trade mark registration shall be calculated as referred to in subsection 1.

**60c.**-(1) For the filing of an opposition against the validity of a Danish or international trade mark registration a fee of 2,500 DKK shall be paid, cf. section 23(1) and section 60.

(2) For a request for administrative revocation of a Danish or international trade mark registration a fee of 2,500 DKK shall be paid, cf. section 30(1) and section 60.

(3) For an opposition, cf. subsection 1, or a request for administrative revocation, cf. subsection 2, filed exclusively on the ground that the registration has been effected in contravention of section 14(i) or (iii) no fee shall be paid.

**60d.**-(1) For a request for the division of a trade mark application or registration a fee of 2,000 DKK shall be paid for each application

or registration which is to be divided out, cf. section 48(5).

(2) For the notification of the proprietor of a Danish trade mark right or an international trade mark right with effect in Denmark an fee of 1,000 DKK shall be paid per year, cf. section 48(5).

(3)<sup>8)</sup> For a written advisory opinion pursuant to section 45b(2) a fee of 1,500 DKK shall be paid.

**60e.**-(1) For the handling by the Patent and Trademark Office of cases concerning applications for Community trade marks a fee of 200 DKK shall be paid, f. section 48(5).

(2) For the handling by the Patent and Trademark Office of cases concerning applications for international trade mark registration a fee of 500 DKK shall be paid, cf. section 60(2).

(3) For the handling by the Patent and Trademark Office of cases concerning subsequent designation in international trade mark registrations a fee of 300 DKK shall be paid, cf. section 60(2).

**60f.**-(1) Fees paid pursuant to sections 60a to 60e shall not be refunded when the payment has been effected in due time.

(2) Fees not paid in due time or paid in insufficient amounts at the expiry of the time limit resulting in non-acceptance of the payment shall be refunded.

(3) If the Patent and Trademark Office rejects the examination and other processing paid for, fees paid in connection with the examination and other processing shall be refunded.

(4) Fees paid in connection with the filing of an opposition against or a request for the revocation of a trade mark registration shall



be refunded with half of the amount paid in the cases where the examination of the opposition or the request for revocation is suspended and the trade mark registration is revoked.

**60g.**-(1) The fees referred to in sections 60a to 60e are stated at the 2011-level.

(2) The Patent and Trademark Office may adjust the amounts stated in sections 60a to 60e in accordance with the general price and wage development used for the purposes of the Government Budget. The Patent and Trademark Office shall publish the current fees in a price list.

**60h.**<sup>9)</sup> The Patent and Trademark Office may transfer income from fees charged under this Act to the payment of costs involved in the administration by the Patent and Trademark Office of other fields under the jurisdiction of the Office where fees are charged.

## Part 9

### Provisions as to entry into force and transitional provisions

**61.**-(1) This Act shall enter into force on 1 January 1992, and at the same time the Trade Marks Act, cf. Consolidate Act No. 249 of 17 April 1989, shall be repealed.

(2) (Transitional provision, not reproduced).

(3) With respect to trade marks which are registered prior to 31 December 1991, the five-year period under section 25 shall not commence until 1 January 1992.

(4)<sup>10)</sup> The provisions of Part 8 shall be put into force in full or in part by an Order to be issued by the Minister of Industry, Business and Financial Affairs.

**62.**- Applications which at the entry into force of this Act have not been published in accordance with the previous provisions shall be examined and processed pursuant to the provisions of this Act.

**63.**<sup>11)</sup> This Act shall not apply to the Faeroe Islands and Greenland, but may by Royal Ordinance be put into force for the Faeroe Islands and Greenland with such deviations as the special Faeroese and Greenland circumstances may require.

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Act No. 1548 of 13 December 2016 (Increased efforts against counterfeiting and piracy by establishing a special unit on enforcement and counterfeiting and piracy and transfer of income from fees)<sup>12)</sup> contains the following provision as to entry into force:

### Section 7

This Act shall enter into force on 1 January 2017.

The Ministry of Industry, Business and Financial Affairs, 26 February 2017

BRIAN MIKKELSEN

/Jesper Kongstad

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- <sup>2)</sup> This Consolidate Act contains information about provisions as to entry into force and transitional provisions adopted during the sessional year 2016/2017 of the Danish Parliament (the Folketing). Provisions as to entry into force and transitional provisions for previously adopted amendments of the Trade Marks Act are laid down in Consolidate Act No. 192 of 1 March 2016. The amendments indicated below in consequence of Act No. 1548 of 13 December 2016 to Amend the Trade Marks Act and various other Acts shall not apply to the Faeroe Islands and Greenland, but may by Royal Ordinance be put into force in whole or in part for the Faeroe Islands and Greenland with such deviations as the circumstances of the Faeroe Islands and Greenland may require.
- <sup>3)</sup> The Regulation on the Community trade mark was amended by EU Regulation No. 2015/2424 of the European Parliament and of the Council of 16 December 2015. In that connection the term Community trade mark was changed to the term EU trade mark. In this Consolidate Act the terminology and specific references to Articles have not been updated in relation to the amended Regulation.
- <sup>4)</sup> The Regulation on the Community trade mark was amended by EU Regulation No. 2015/2424 of the European Parliament and of the Council of 16 December 2015. In that connection the term Community trade mark was changed to the term EU trade mark. In this Consolidate Act the terminology and specific references to Articles have not been updated in relation to the amended Regulation.
- <sup>5)</sup> The Regulation on the Community trade mark was amended by EU Regulation No. 2015/2424 of the European Parliament and of the Council of 16 December 2015. In that connection the term Community trade mark was changed to the term EU trade mark. In this Consolidate Act the terminology and specific references to Articles have not been updated in relation to the amended Regulation.
- <sup>6)</sup> The Regulation on the Community trade mark was amended by EU Regulation No. 2015/2424 of the European Parliament and of the Council of 16 December 2015. In that connection the term Community trade mark was changed to the term EU trade mark. In this Consolidate Act the terminology and specific references to Articles have not been updated in relation to the amended Regulation.
- <sup>7)</sup> Section 45b was inserted by Act No. 1548 of 13 December 2016, which entered into force on 1 January 2017.
- <sup>8)</sup> Section 60d(3) was inserted by Act No. 1548 of 13 December 2016, which entered into force on 1 January 2017.
- <sup>9)</sup> Section 60h was inserted by Act No. 1548 of 13 December 2016, which entered into force on 1 January 2017.
- <sup>10)</sup> Part 8 entered into force on 1 April 1996 by Order No. 131 of 15 March 1996.
- <sup>11)</sup> The Trade Marks Act No. 341 of 6 June 1991 was put into force for Greenland on 1 January 1992 by Royal Ordinance No. 856 of 16 December 1991 and for the Faeroe Islands on 1 June 1994 by Royal Ordinance No. 331 of 4 May 1994. A number of subsequent amendments of the Trade Marks Act were put into force for Greenland on 1 July 2010 by Royal Ordinance No. 655 of 11 June 2010 and on 1 February 2013 by Royal Ordinance No. 48 of 18 January 2013. Part 8 of this Act was put into force for Greenland on 11 January 2011 by Order No. 1327 of 3 December 2010. A number of subsequent amendments of the Trade Marks Act were put into force for the Faeroe Islands on 2 May 2015 by Royal Ordinance No. 483 of 20 April 2015. Part 8 of this Act was put into force for the Faeroe Islands on 13 April 2016 by Order No. 143 of 25 February 2016.
- <sup>12)</sup> The amendment of this Act relates to section 45b, section 60d(3) and section 60h.