

**In case of any discrepancy between the original Danish text and the English translation of this Act, the Danish text shall prevail.**

## **The Consolidated Trade Marks Act<sup>1</sup>**

The Trade Marks Act is consolidated, cf. the Consolidate Act No. 223 of 26 February 2017, including amendments following from section 4 of Act No. 670 of 8 June 2017 and section 1 of Act No. 1533 of 18 December 2018<sup>2</sup>.

### **Part 1**

#### **Scope and definitions**

**1.-**(1) This act applies to every trade mark in respect of goods or services which is the subject of registration or of an application for registration, or to which rights are acquired through use, and international registrations with validity in Denmark.

**1a.-**(1) For the purposes of this act, the following definitions apply:

(i) Trade mark: A commercial sign which meets the conditions of being a trade mark in accordance with this act as an individual trade mark, a guarantee or certification mark or a collective mark.

(ii) Individual trade mark: A commercial sign which is registered or applied for as a trade mark, or used as such, when the sign is used or intended to be used for particular goods or services and is capable of distinguishing the goods and services of one undertaking from those of other undertakings.

(iii) Guarantee or certification mark: A trade mark which is registered or applied for as a guarantee or certification mark, when the sign is capable of distinguishing the goods and services which are certified by the proprietor in respect of material, mode of manufacture of goods or performance of services, quality, accuracy or other characteristics, from goods and services which are not so certified.

(iv) Collective mark: A trade mark which is registered or applied for as a collective mark, when the sign is capable of distinguishing goods or services of the members of an association which is the proprietor of the collective mark

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<sup>1</sup> The 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 (Official Journal of the European Union L 195 of 2 June 2004, p. 16) and Directive 2015/2436/EU of the European Parliament and of the Council of 16 December 2015 to approximate the laws of the Member States relating to trade marks (Official Journal of the European Union L 336 of 23 December 2015, p.1).

<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. 223 of 26 February 2017. The amendments indicated below in consequence of section 4 of Acts No. 670 of 8 June 2017 and 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.

from the goods or services of other undertakings.

(v) The trade mark register: The register kept by the Danish Patent and Trademark Office of applied and registered trade marks and of designations of Denmark in international registrations under the Madrid Protocol.

(vi) Designations of Denmark: A trade mark which is registered under the Madrid Protocol in which Denmark is designated.

(vii) The Madrid Protocol: The Protocol of 27 June 1989 relating to the Madrid Agreement Concerning the International Registration of Marks.

(viii) The Regulation on the EU trade mark: The Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark (codification).

(ix) The Nice Classification: The classification system laid down by the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957.

(x) The Paris convention: The Convention for the Protection of Industrial Property adopted in Paris on 20 March 1883 and revised latest at Stockholm on 14 July 1967.

**1b.-**(1) According to this act, exclusive rights to a trade mark (trade mark right) may be obtained by natural or legal persons who use or intend to use the trade mark commercially.

(2) Irrespective of subsection 1, a trade mark right to a guarantee or certification mark may only be obtained by a natural or legal person who does not supply goods or services of the kind certified.

(3) Irrespective of subsection 1, a trade mark right to a collective mark may only be obtained by associations of manufacturers, producers, suppliers of services or traders, which have the capacity in their own name to have rights and obligations, to make contracts or accomplish other legal acts, and to sue and be sued, as well as legal persons governed by public law.

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

**2.-**(1) A registered trade mark may consist of any signs, in particular words, including personal names, or designs, letters, numerals, colours, the shape of goods or of the packaging of goods, or sounds, provided that such signs are capable of:

(i) distinguishing the goods or services of one undertaking from those of other undertakings; and

(ii) being represented on the register in a manner which enables the competent authorities and the public to determine the clear and precise subject matter of the protection afforded to its proprietor.

**3.-**(1) A trade mark right may be obtained by:

(i) registration of a trade mark in accordance with the provisions of this act for the goods or services for which registration is applied,

(ii) designation of Denmark under the Madrid Protocol or

(iii) use of an individual trade mark in Denmark for the goods or services for which the trade mark is continuously used, when the extent of the use has more than mere local significance.

(2) A trade mark right is also obtained when a non-registered mark has become well known in Denmark within the meaning of Article 6*bis* of the Paris convention.

(3) A trade mark right cannot be obtained to a sign which is excluded from registration due to its nature. If a trade mark is devoid of distinctive character when use is initiated, the right to the trade mark is not established until distinctive character is acquired through the use of the mark.

## **Part 1 A**

### **Rights conferred by a trade mark**

**4.**-(1) Obtaining a trade mark right confers on the proprietor exclusive rights.

(2) The proprietor of a trade mark right shall be entitled to prevent all third parties not having his consent from using in the course of trade, in relation to goods or services, any sign where:

(i) the sign is identical with the trade mark and is used in relation to goods or services which are identical with those for which the trade mark is registered;

(ii) the sign is identical with, or similar to, the trade mark and is used in relation to goods or services which are identical with, or similar to, the goods or services for which the trade mark is protected, if there exists a likelihood of confusion on the part of the public, including the likelihood of association between the sign and the trade mark; or

(iii) the sign is identical with, or similar to, the trade mark irrespective of whether it is used in relation to goods or services which are identical with, similar to, or not similar to, those for which the trade mark is protected, where the latter has a reputation in Denmark and where use of that sign without due cause takes unfair advantage of, or is detrimental to, the distinctive character or the repute of the trade mark.

(3) The rights of the proprietor under subsection 2 include:

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

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

(iii) importing or exporting the goods under the sign;

(iv) using the sign as a trade or company name or part of a trade or company name;

(v) using the sign on business papers and in advertising;

(vi) using the sign in comparative advertising in a manner that is contrary to section 21 of the Danish Marketing Practices Act concerning comparative advertising.

### **Goods in transit, preparatory acts and marks in the name of an agent**

**5.**-(1) Without prejudice to the rights of proprietors acquired before the filing date or the priority date of the registered trade mark, the proprietor of that registered trade mark shall also be entitled to prevent all third parties from bringing goods, in the course of trade, into Danish customs territory, without being released for free circulation there, where such goods, including the packaging thereof, come from third countries and bear without authorisation a trade mark which is identical with the trade mark registered in respect of such goods, or which cannot be distinguished in its essential aspects from that trade mark.

(2) The entitlement of the trade mark proprietor pursuant to subsection 1 shall lapse if, during the proceedings to determine whether the registered trade mark has been infringed, initiated in accordance with Regulation (EU) No 608/2013 concerning customs enforcement of intellectual property rights, evidence is provided by the declarant or the holder of the goods that the proprietor of the registered trade mark is not entitled to prohibit the placing of the goods on the market in the country of final destination.

(3) Where the risk exists that the packaging, labels, tags, security or authenticity features or devices, or any other means to which the trade mark is affixed, could be used in relation to goods or services and that use would constitute an infringement of the rights of the proprietor of a trade mark under section 4(2) and (3), the proprietor of that trade mark shall have the right to prohibit the following acts if carried out in the course of trade:

(i) affixing a sign identical with, or similar to, the trade mark on packaging, labels, tags, security or authenticity features or devices, or any other means to which the mark may be affixed;

(ii) offering or placing on the market, or stocking for those purposes, or importing or exporting, packaging, labels, tags, security or authenticity features or devices, or any other means to which the mark is affixed.

(4) Where a trade mark is registered in the name of the agent or representative of a person who is the proprietor of that trade mark, without the proprietor's consent, the latter shall be entitled to:

(i) oppose the use of the trade mark by his agent or representative and

(ii) demand the assignment of the trade mark in his favour.

(5) Subsection 4 shall not apply where the agent or representative justifies his action.

### **Conflicting rights**

**6.-(1)** 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 Part 1 B.

### **Reproductions of trade marks in works of reference**

**7.-(1)** If the reproduction of a trade mark in a dictionary, encyclopaedia or similar reference work, in print or electronic form, gives the impression that it constitutes the generic name of the goods or services for which the trade mark is registered, the publisher of the work shall, at the request of the proprietor of the trade mark, ensure that the reproduction of the trade mark is, without delay accompanied by an indication that it is a registered trade mark. In case of works in printed form, the reproduction of the trade mark shall be accompanied by the above mentioned indication in the next edition of the publication of the work at the latest.

### **Proceedings for infringement of a collective mark or a guarantee or certification mark**

**8.-(1)** Without prejudice to the regulations governing the use of the mark, a person who has the authority to use a collective mark or a guarantee or certification mark may bring action for the infringement of a trade mark only if its proprietor consents hereto.

(2) Any person who has the authority to use a collective mark or a guarantee or certification mark shall be entitled to intervene in infringement proceedings brought by the proprietor of the mark for the purpose of obtaining compensation for damage suffered by him.

(3) Irrespective of subsection 2, the proprietor of a collective mark or a guarantee or certification mark shall be entitled to claim compensation on behalf of persons who have authority to use the mark where those persons have sustained damage as a result of unauthorized use of the mark.

### **The right of a licensee to bring proceedings for infringement of a trade mark**

**9.-(1)** Without prejudice to the provisions of the licensing contract, the licensee may bring proceedings for infringement of a trade mark only if its proprietor consents thereto. However, the holder of an exclusive licence may bring such proceedings if the proprietor of the trade mark, after formal notice, does not himself bring infringement proceedings within an appropriate period.

## **Part 1 B**

### **Limitations of the effects of a trade mark**

#### **Limitations of the exclusive rights**

**10.-**(1) A trade mark shall not entitle the proprietor to prohibit a third party from using, in the course of trade:

(i) the name or address of the third party, where that third party is a natural person;

(ii) signs or indications which are not distinctive or which concern the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of the service, or other characteristics of goods or services;

(iii) the trade mark for the purpose of identifying or referring to goods or services as those of the proprietor of that trade mark, in particular, where the use of the trade mark is necessary to indicate the intended purpose of a product or service, in particular as accessories or spare parts.

(2) Subsection 1 shall only apply where the use made by the third party is in accordance with honest practices in industrial or commercial matters.

(3) A trade mark shall not entitle the proprietor to prohibit a third party from using, in the course of trade, an earlier right which only applies in a particular locality, if the use of that right is within the limits of the territory in which it is recognised.

#### **Exhaustion of the rights conferred by a trade mark**

**10a.-**(1) A trade mark shall not entitle the proprietor to prohibit its use in relation to goods which have been put on the market in the European Economic Area (EEA) under that trade mark by the proprietor or with the proprietor's consent.

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

#### **Preclusion of a declaration of invalidity due to acquiescence**

**10b.-**(1) Where the proprietor of an earlier right, when the right conferred by the trade mark include preventing the use or the registration of a trade mark, has acquiesced, for a period of 5 successive years, in the use of a later trade mark, while being aware of such use, the proprietor shall no longer be entitled on the basis of the earlier trade mark to apply for a declaration of invalidity in respect of the goods or services for which the later trade mark has been used, unless registration of the later trade mark was applied for in bad faith.

(2) Notwithstanding an earlier right, when the right conferred by the trade mark include preventing the use or the registration of a trade mark, a later trade mark right may also coexist with the earlier right, if the proprietor of the earlier right has not taken the necessary steps within reasonable time to prevent the use of the later trade mark. When passing judgment, it may be found reasonable that either or both signs only be used in a certain manner, for example a particular shape or with the addition of an indication of locality.

(3) In the cases referred to in subsections 1 and 2, the proprietor of a later trade mark shall not be entitled to oppose the use of an earlier right, even though that right may no longer be invoked against the later trade mark.

#### **Lack of use of the trade mark**

**10c.-**(1) If, within a period of 5 years following the date of the completion of the registration procedure, the

proprietor has not put the trade mark to genuine use in Denmark in connection with the goods or services in respect of which it is registered, or if such use has been suspended during a continuous 5-year period, the trade mark shall be subject to the limits and sanctions provided for in sections 10d, 21(1) and (2), 25(1) and 35(3) and (4), unless there are proper reasons for non-use.

(2) The registration period is considered completed, when

(i) a trade mark is registered pursuant to section 23, or

(ii) a designation of Denmark in an international registration under the Madrid Protocol is granted protection pursuant to section 56, or the designation has become valid pursuant to articles 4 and 5 of the Madrid Protocol, cf. section 55(3) of this act.

(3) If the proprietor does not use a trade mark to which right have been obtained through use pursuant to section 3(1)(iii) continuously, the right to the trade mark is revoked.

(4) The following shall constitute use within the meaning of subsections 1 and 3:

(i) use of the trade mark in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered, or when the trade mark right was acquired through use, regardless of whether or not the trade mark in the form as used is also registered in the name of the proprietor;

(ii) affixing of the trade mark to goods or to the packaging thereof in Denmark solely for export purposes.

(5) Use of the trade mark with the consent of the proprietor, or, if the mark is a collective mark or a guarantee or certification mark, use of the mark by a person who has the authority to use it, shall be deemed to constitute use by the proprietor.

### **Non-use as defence in infringement proceedings**

**10d.**-(1) The proprietor of a trade mark shall be entitled to prohibit the use of a sign only to the extent that the proprietor's rights are not liable to be revoked pursuant to section 25 at the time the infringement action is brought.

(2) If the defendant so requests, the proprietor of the trade mark shall furnish proof that, during the 5-year period preceding the date of bringing the action, the trade mark has been put to genuine use as provided in section 10c in connection with the goods or services in respect of which it is registered and which are cited as justification for the action, or that there are proper reasons for non-use, provided that the registration procedure of the trade mark has at the date of bringing the action been completed for not less than 5 years.

### **Intervening right of the proprietor of a later registered trade mark as defence in infringement proceedings**

**10e.**-(1) In infringement proceedings, the proprietor of a trade mark shall not be entitled to prohibit the use of a later registered mark where that later trade mark would not be declared invalid pursuant to section 10b(1) and (2), section 30 or section 35(3) and (4).

(2) In infringement proceedings, the proprietor of a trade mark shall not be entitled to prohibit the use of a later registered EU trade mark where that later trade mark would not be declared invalid pursuant to Article 60(1), (3) or (4), Article 61(1) or (2) or Article 64(2) of the Regulation on the EU trade mark.

(3) Where the proprietor of a trade mark is not entitled to prohibit the use of a later registered trade mark pursuant to subsections 1 or 2, the proprietor of that later registered trade mark shall not be entitled to prohibit the use of the earlier trade mark in infringement proceedings, even though that earlier right may no longer be invoked against the later trade mark.

## **Part 2**

### **Application and registration of trade marks**

#### **Filing of application for a trade mark**

**11.**-(1) Application for registration of a trade mark shall be filed at the Danish Patent and Trademark Office. The application shall be drawn up in accordance with the provisions laid down in section 48. The application is subject to a fee, cf. section 60a(1).

(2) When submitting the application, the applicant, on condition of payment of a fee, cf. section 60a(2), may request that the search report, which is compiled according to section 17, includes more detailed grounds.

(3) When submitting the application, the applicant may request that the Danish Patent and Trademark Office not compile a search report in accordance with section 17.

(4) Applications and registrations are entered into the trade mark register. The trade mark register is publicly available on the webpage of the Danish Patent and Trademark Office.

(5) An application for registration of a trade mark shall contain at least all of the following:

(i) a request for registration;

(ii) information identifying the applicant;

(iii) a list of the goods and services in respect of which the registration is requested;

(iv) a reproduction of the trade mark which satisfies the requirements set out in section 2(2).

(6) An application for a collective mark or a guarantee or certification mark shall also contain the regulations governing the use of the mark.

(7) The regulations governing the use of the collective mark shall at least specify:

(i) the persons authorised to use the collective mark;

(ii) the conditions of membership of the association;

(iii) the conditions of the use of the collective mark, including sanctions.

(8) When the collective mark consists of a geographical designation, the regulations referred to in subsection 7, shall also authorise any person, whose goods or services originate in the geographical area concerned, to become a member of the association which is the proprietor of the collective mark, on condition that said person meets the other conditions of the regulations.

(9) The date of filing of a trade mark application shall be the date when then the application containing the information specified in subsection 5 is filed with the Danish Patent and Trademark Office by the applicant.

(10) The Minister for Industry, Business and Financial Affairs may lay down provisions for the requirements to be met by an application in order for the request referred to in subsection 3 to be accepted.

#### **Designation and classification of goods and services**

**12.**-(1) The goods and services in respect of which trade mark registration is applied for shall be classified in conformity with the system of classification established by the Nice Classification. Where the applicant requests registration for more than one class, the applicant shall group the goods and services according to the classes of the Nice Classification, each group being preceded by the number of the class to which that group of goods or

services belongs, and shall present them in the order of the classes.

(2) The goods and services for which the protection of the trade mark is sought shall be identified by the applicant with sufficient clarity and precision to enable the Danish Patent and Trademark Office, on that sole basis, to determine the extent of the protection sought.

(3) The general indications included in the class headings of the Nice Classification or other general terms may be used provided that they comply with the requisite standards of clarity and precision set out in subsection 2.

(4) The Danish Patent and Trademark Office shall refuse an application in respect of indications or terms which are unclear or imprecise, where the applicant does not suggest an acceptable wording within a period set by the Office to that effect.

(5) General terms, including the general indications of the class headings of the Nice Classification shall be interpreted as including all goods and services clearly covered by the literal meaning of the indication or term. Such terms or indications shall not be understood as comprising a claim to goods or services which cannot be so understood.

(6) Goods and services shall not be regarded as being similar to each other on the ground that they appear in the same class under the Nice Classification. Goods and services shall not be regarded as being dissimilar from each other on the ground that they appear in different classes under the Nice Classification.

### **Convention priority**

**12a.**-(1) If the application for the registration of a trade mark is filed in Denmark within six months from the first application for the registration of the trade mark in a country which is a contracting party to the Paris Convention or which is a member of the World Trade Organization (WTO), the application will obtain priority from the prior date of filing if claimed. The priority entails that the application in respect of later occurrences, such as applications or use by others of the mark, shall be considered filed at the same time as the filing of the application in the foreign state.

(2) On condition of reciprocity, subsection 1 shall also apply to trade marks initially applied for in a country which is not a contracting party to the Paris Convention or not a member of the World Trade Organization (WTO).

### **Exhibition priority**

**12b.**-(1) If the application for the registration of a trade mark is filed in Denmark within six months from the first use of the mark on goods or services displayed at an official or officially recognised international exhibition, the application will obtain priority from this date if claimed. Said exhibitions are understood as those defined by the Convention relating to international exhibitions of 22 November 1928 as last revised. The priority entails that the application in respect of later occurrences, such as applications or use by others of the mark, shall be considered filed at the same time as its use at the exhibition.

### **Absolute grounds for refusal**

**13.**-(1) The following shall not be registered:

(i) signs which cannot constitute a trade mark;

(ii) trade marks which are devoid of any distinctive character;

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



(iv) trade marks which consist exclusively of signs or indications which have become customary in the current language or in the bona fide and established practices of the trade.

(2) A trade mark shall not be excluded from registration in accordance with subsection 1(2)-(4) if, before the date of application for registration, following the use which has been made of it, it has acquired a distinctive character.

(3) Irrespective of subsection 1(iii), signs or indications which may serve, in trade, to designate the geographical origin of the goods or services may serve as a collective mark or a guarantee or certification mark. The marks shall not confer on the proprietor the right to prevent any third party from using such a sign or designation in trade when they are used in accordance with honest practices in industrial or commercial matters. In particular, the mark may not be invoked against a third party who is entitled to use a given geographical designation.

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

(i) signs which consist exclusively of:

(a) the shape, or another characteristic, which results from the nature of the goods themselves;

(b) the shape, or another characteristic, of goods which is necessary to obtain a technical result; or

(c) the shape, or another characteristic, which gives substantial value to the goods;

(ii) trade marks which are contrary to law, public policy or accepted principles of morality;

(iii) trade marks which are of such a nature as to deceive the public, for instance, as to the nature, quality or geographical origin of the goods or service;

(iv) trade marks which have not been authorised by the competent authorities and are to be refused pursuant to Article 6*ter* of the Paris Convention and marks which include badges, emblems and escutcheons, which are of public interest unless the consent of the competent authority to their registration has been given;

(v) trade marks which are excluded from registration pursuant to law or international agreements to which the EU or Denmark is party, providing protection for designations of origin and geographical indications;

(vi) trade marks which are excluded from registration pursuant to law or international agreements to which the EU is party, providing for protection of traditional terms for wine;

(vii) trade marks which are excluded from registration pursuant to law or international agreements to which the EU is party, providing for protection of traditional specialities guaranteed;

(viii) trade marks which consist of, or reproduce in their essential elements, an earlier plant variety denomination providing protection for plant variety rights, and which are in respect of plant varieties of the same or closely related species;

(ix) trade marks applied for in bad faith.

(2) A collective mark or a guarantee or certification mark shall not be registered if it is liable to deceive the public as to the character or meaning of the mark, in particular if it may be assumed to be something other than a collective mark or a guarantee or certification mark.

### **Relative grounds for refusal**

**15.-(1)** Upon opposition, a trade mark shall not be registered or, if registered, shall be liable to be declared invalid upon an application or a court decision if:

(i) it is identical with an earlier trade mark, and the goods or services for which the trade mark is applied or

registered are identical with the goods or services for which the earlier trade mark is protected; or

(ii) because of its identity with, or similarity to, the earlier trade mark and the identity or similarity of the goods or services covered by the trade marks, there exists a likelihood of confusion on the part of the public.

(2) Earlier trade marks within the meaning of subsection 1 means:

(i) trade marks of the following kinds 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 priorities claimed in respect of those trade marks:

(a) EU trade marks, including EU trade marks which validly claim seniority in accordance with the Regulation on the EU trade mark of one of the trade marks referred to in litra (b) or (c), even if the latter mark has been surrendered or allowed to lapse;

(b) trade marks registered in Denmark;

(c) trade marks registered under international agreements effective in Denmark.

(ii) applications for trade marks referred to in subsection 1 subject to their registration;

(iii) trade marks which, on the date of application for registration of the trade mark, or, where appropriate, of the priority claimed in respect of the application for registration of the trade mark, are well known in Denmark, in the sense in which the words 'well-known' are used in Article 6*bis* of the Paris Convention;

(iv) unregistered trade mark obtained in accordance with section 3(1)(iii) when the right to the trade mark is the prior right pursuant to section 6.

(3) Upon opposition, a trade mark shall not be registered, or if registered be declared invalid, if:

(i) the trade mark is identical with, or similar to, an earlier trade mark, irrespective of whether the goods or services for which it is applied or registered are identical with, similar to or not similar to those for which the earlier trade mark is protected, where the earlier trade mark has a reputation in Denmark, or in the case of an EU trade mark, in the EU, and where the use without due cause of the trade mark applied for would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark;

(ii) an agent or representative of the proprietor of the trade mark applies for registration thereof in his own name without the proprietor's consent, unless the agent or representative justifies his action;

(iii) when, pursuant to EU legislation or Danish law providing protections for designations of origin and geographical indications:

(a) an application for a designation of origin or a geographical indication in accordance with EU legislation or Danish law, has already been submitted prior to the filing date of the application, or the date of priority claimed for the application; or

(b) the designation of origin or geographical indication confers the person who in accordance with the relevant law is authorised exercise those rights, the right to prevent the use of a subsequent trade mark;

(iv) the trade mark infringes upon a company name which is registered the Central Business Register (CVR). Infringement by a trade mark on a company name occurs when the company name has more than mere local significance and:

(a) the name is similar to the trade mark and the goods or services for which the company name is used as a sign in trade prior to the application for registration of the trade mark, or the date of priority claimed for the application, are identical or similar to the goods or services covered by the trade mark, and the use of the trade mark will lead to a risk of confusion, including a likelihood of association; or

(b) the use without due cause of the trade mark will take unfair advantage of, or be detrimental to, the distinctive character or the repute of the company name if the company name is used for goods or services and this use has resulted in a reputation in Denmark of the name prior to the application for the registration of the trade mark, or the date of a priority claimed for the application;

(v) rights to a sign other than the signs referred to in subsection 4 have been acquired in the course of trade when the sign is of more than mere local significance and the rights to the sign entitle to prohibition the use of the later trade mark;

(vi) the trade mark without permission consists of or contains a personal name or a personal portrayal to which another has a legal right, not including allusions to persons long dead, when then name or portrayal entitles the holder to prohibit the use of the trade mark;

(vii) the trade mark without permission consists of or contains elements which will be perceived by the relevant public as the distinctive name or depiction of an real property situated in Denmark, when the right to the name or depiction of the edifice confers on the proprietor the right to prohibit the use of the later trade mark and this right is of more than mere local significance;

(viii) the trade mark infringes upon the copyright or industrial property rights of another party when these rights confer on their proprietor the right to prohibit the use of the trade mark;

(ix) the trade mark is liable to be confused with an earlier trade mark protected abroad, provided that, at the date of the application, the applicant was acting in bad faith.

(4) Under the appropriate circumstances the provisions in subsections 1 and 3 do not apply if the proprietor of the earlier rights mentioned in these provisions has given his consent to the registration.

### **Examination of applications**

**16.**-(1) The Danish Patent and Trade mark Office ensures that the applicant meets the requirements in section 1(b) and that the application is in accordance with the provisions of section 2, section 11(1) and (5)-(8) and sections 12-14.

(2) If the trade mark is applied for as a collective mark or a guarantee or certification mark, the Danish Patents and Trademark Office ensures that the regulations governing the use the collective or guarantee or certification mark are not contrary to public policy or accepted principles of morality.

(3) If the Office has objections to approving the application pursuant to subsections 1 and 2, and the Office has set a time limit for rectification of the application, the applicant may request an extension of the time limit for up to two months after the expiry of the time limit.

### **Search reports**

**17.**-(1) The Danish Patent and Trademark Office performs a search for earlier applied and registered trade marks and compiles a search report which is sent to the applicant for information purposes, including a time limit for the applicant to respond. If the applicant has requested it according to section 11(3), a search report is not compiled.

### **Publication of applications**

**18.**-(1) If a time limit set according to section 17 has expired and the Danish Patent and Trademark Office has not found grounds for refusal of the registration of the trade mark, or when a decision of partial refusal of the application for registration has become final, the application shall be published.

## **Opposition**

**19.**-(1) Opposition may be filed against an application when the application has been published. The opposition must state the grounds on which it is based and must be filed within two months from the date of publication. The opposition shall be accompanied by a fee, cf. section 60c(1).

(2) Opposition according to subsection 1 may be filed on the grounds that the application infringes one or more of the relative grounds referred to in section 15 and may be filed against a part or all of the goods or services covered by the application.

(3) The opposition may be filed by the proprietor of the right or rights on which the opposition is based or by persons or undertakings so authorized according to sections 8(1) or 9(1) and by persons or undertaking authorized to exercise the rights referred to in section 15(3)(3). When an opposition is based on several earlier rights, all the earlier rights must be held by the same proprietor.

(4) In opposition proceedings the Danish Patent and Trademark Office may decide that:

(i) the application shall be upheld in its entirety;

(ii) the application shall be entirely or partially refused, cf. section 15; or

(iii) the application shall be transferred to the proprietor of the trade mark right according to section 5(4)(ii).

## **Stay of proceedings due to negotiations**

**20.**-(1) If the parties to the opposition are negotiating a friendly settlement and file a joint request with the Danish Patent and Trademark Office for stay of proceedings, the Office may suspend the examination of the case for a minimum of two months.

## **Non-use as defence in opposition proceedings**

**21.**-(1) In opposition proceedings where, at the filing date or date of priority of the later trade mark, the 5-year period, within which the earlier trade mark must have been put to genuine use as provided for in section 10c, had expired, at the request of the applicant, the proprietor of the earlier trade mark who has given notice of opposition shall furnish proof that the earlier trade mark has been put to genuine use during the 5-year period preceding the filing date or date of priority of the later trade mark, or that proper reasons for non-use existed. In the absence of proof to this effect, the claim for infringement of the earlier trade mark shall be rejected by the Danish Patent and Trademark Office.

(2) If the earlier trade mark has been used in relation to only part of the goods or services for which it is registered, it shall, for the purpose of the examination of the opposition as provided for in subsection 1, be deemed to be registered in respect of that part of the goods or services only.

(3) Subsections 1 and 2 of this section shall also apply where the earlier trade mark is an EU trade mark. In such a case, the genuine use of the EU trade mark shall be determined in accordance with Article 18 of the Regulation on the EU trade mark.

## **Third party observations**

**22.**-(1) Before the registration of an applied trade mark, anybody may submit observations to the Danish Patent and Trademark Office stating on which grounds the applied trade mark should not be registered under the grounds referred to in section 16(1) and (2). The person submitting observations does not become party to the case.

## **Registration and publication of the trade mark**

**23.**-(1) If the application complies with the provisions of this act, or provided for pursuant this act, and if no opposition according to section 19 has been filed, or when possible oppositions have been finally decided, and the application has been entirely or partially upheld, the Danish Patent and Trademark Office shall register and publish the trade mark.

### **Part 2 A**

#### **Duration and renewal of the registration**

#### **Duration and renewal of the registration**

**24.**-(1) Trade marks shall be registered for a period of 10 years from the date of filing of the application.

(2) Registration may be renewed for further 10-year periods.

(3) Registration of a trade mark may be renewed on application from the proprietor of the trade mark or by a person so authorized subject to payment of the renewal fee pursuant to section 60b. Payment of the renewal fee is regarded as such an application per se.

(4) The Danish Patent and Trademark Office informs the proprietor of the trade mark about the expiry of the duration of the registration at least six months before the expiry. The Office cannot be held accountable for lack of notification.

(5) Application for renewal may be submitted and the renewal fee paid 6 months before the expiry of the duration of the registration at the earliest. Otherwise, the application may be filed within 6 months from the expiry of the duration of the registration subject to an additional fee. The renewal fee and additional fee must be paid within this subsequent 6-month period.

(6) If the application or the fee only comprises part of the goods or services for which the trade mark is registered, the registration will only be renewed with respect to these goods or services.

(7) The renewal shall have effect from the day after the expiry of the existing registration period. The renewal will be entered into the trade mark register.

### **Part 3**

#### **Grounds for revocation and invalidity**

#### **Absence of genuine use as ground for revocation**

**25.**-(1) A registered trade mark, cf. section 3(1)(1) and (2), shall be liable to revocation if, within a continuous 5-year period, it has not been put to genuine use in Denmark in connection with the goods or services in respect of which it is registered, and there are no proper reasons for non-use.

(2) No person may claim that a registered trade mark should be revoked, where genuine use of the trade mark has been started or resumed during the interval between the expiry of the 5-year period and the filing of the application for revocation.

(3) The commencement or resumption of use within the last three months prior for the application for revocation shall be disregarded, where the preparations or resumption of use occur only when the proprietor becomes aware that the application for revocation may be filed. This three-month period begins at the expiry of the 5-year period at the earliest.

### **Grounds for revocation of trade marks which have become generic or misleading**

**26.**-(1) A trade mark shall be liable to revocation if, after the date on which it was registered, cf. section 23,

(i) as a result of acts or inactivity of the proprietor, it has become the common name in the trade for a product or service in respect of which it is registered; or

(ii) as a result of the use made of it by the proprietor of the trade mark or with the proprietor's consent in respect of the goods or services for which it is registered, it is liable to mislead the public, particularly as to the nature, quality or geographical origin of those goods or services.

(2) Subsection 1 shall also apply to designations after the date on which the protection of the designation has been granted pursuant to section 56, or, where the trade mark is non-registered, after the date on which a trade mark right has been obtained through use pursuant to section 3(1)(3) or has become well known pursuant to section 3(2).

### **Additional grounds for revocation of collective marks and guarantee or certification marks**

**27.**-(1) In addition to the grounds for revocation in sections 25 and 26, the rights of a proprietor of a collective mark or a guarantee or certification mark shall be liable to revocation if:

(i) the proprietor does not take reasonable steps to prevent the mark being used in a manner that is incompatible with the conditions of use laid down in the regulations governing use, including any amendments thereto mentioned in the register;

(ii) the manner in which the mark has been used by authorised persons has caused it to become liable to mislead the public in the manner referred to in section 14(2), including as regards the character or significance of the mark, in particular if it is likely to be taken to be something other than a collective mark or a guarantee or certification mark; or

(iii) an amendment to the regulations governing use of the mark has been mentioned in the register in breach of section 39(2), unless the proprietor of the mark, by further amending the regulations governing use, complies with the requirements of that section.

### **Invalid trade mark registrations**

**28.**-(1) A trade mark which has been registered in breach of the provisions of sections 1b and 2, section 11(7) and (8), sections 13-15 and section 16(2) may be declared invalid.

(2) Irrespective of subsection 1, a collective mark or a guarantee or certification mark registered in breach of section 11(7) and (8), section 14(2) or section 16(2), shall not be declared invalid, if the proprietor of the mark by amending the regulations governing use, complies with the requirements of section 39(2).

(3) Irrespective of subsection 1, instead of a declaration of invalidity, a decision to transfer the trade mark to the proprietor of the trade mark may be taken when the trade mark is registered in breach of section 15(3)(2), cf. sections 33 and 34.

### **Establishment a posteriori of invalidity or revocation of a trade mark**

**29.**-(1) Where the seniority of a registered trade mark or a designation of Denmark pursuant to section 3(1)(1) and (2), which has been surrendered or allowed to lapse, is claimed for an EU trade mark, the invalidity or revocation of the trade mark providing the basis for the seniority claim may be established a posteriori, provided that the invalidity or revocation could have been declared at the time the mark was surrendered or allowed to lapse, cf. sections 33 and 34. In such a case, the seniority shall cease to produce its effects.

### **Lack of distinctive character or of reputation of an earlier trade mark precluding a declaration of invalidity of a registered trade mark**

**30.**-(1) An application for a declaration of invalidity on the basis of an earlier trade mark shall not succeed at the date of application for invalidation if it would not have been successful at the filing date or the priority date of the later trade mark and:

(i) the earlier trade mark liable to be declared invalid pursuant to section 13(1)(2)-(4) had not yet acquired a distinctive character as referred to in section 13(2);

(ii) the application for invalidity based on section 15(1)(2) and the earlier trade mark has not yet become sufficiently distinctive to support a finding of likelihood of confusion; or

(iii) the application for invalidity is based on section 15(3)(1) and the earlier trade mark had not yet acquired a reputation.

### **Revocation or invalidity relating to only some goods or services**

**31.**-(1) Where grounds for revocation of a trade mark right or grounds for invalidation of a trade mark registration exist in respect of only some of the goods or services for which that trade mark right has been obtained, the trade mark right is revoked or declared invalid in respect of those goods or services only.

### **Consequences of revocation or invalidity**

**32.**-(1) A registered trade mark shall be deemed not to have had, as from the date of the application for revocation, the legal effects specified in this act, to the extent that the rights of the proprietor have been revoked. An earlier date, on which one of the grounds for revocation occurred, may be fixed in the decision on the application for revocation, at the request of one of the parties.

(2) A registered trade mark shall be deemed not to have had, as from the outset, the legal effects specified in this act, to the extent that the trade mark has been declared invalid.

## **Part 4**

### **Procedures for revocation or invalidation and cancellation of trade mark registrations**

**33.**-(1) Revocation of a registration pursuant to the provisions of part 3 is effected by court decision, without prejudice to section 34. Legal proceedings are brought against the proprietor and may be brought by anyone with a legal interest therein. Leading proceedings according to the provisions in sections 13 and 14 may also be brought by the Danish Patent and Trademark Office.

### **Administrative revocation of trade mark registrations**

**34.**-(1) Following the completion of the registration procedure, anyone may file an application for the revocation or invalidation of a trade mark registration, subject to the provisions of part 3. The application is subject to payment of a fee, cf. section 60c(2).

(2) An application based on the rights referred to in section 15 may solely be filed by the proprietor of the right or rights only or by the persons or undertakings so authorised according to section 8(1) or section 9(1) and by persons or undertakings authorised to exercise the rights referred to in section 15(3)(3).

(3) An application according to subsection 1 may be directed against a part or the totality of the goods or services in respect of which the contested mark is registered.

(4) An application for invalidity may be filed based on one or more earlier rights, provided they all belong to the same proprietor.

(5) If a case concerning a trade mark registration is pending before the courts, an application pursuant to subsection 1 cannot be filed concerning that registration.

(6) If a case concerning a trade mark registration is brought before the courts before a final decision about an application pursuant to subsection 1 has been made concerning this registration, the Danish Patent and Trademark Office shall suspend the proceedings until the case has been finally decided, unless the application is filed by the proprietor of the trade mark registration.

(7) The parties to an administrative revocation may at any time bring a case against the other party concerning questions that form part of the application for revocation, irrespective of any decision taken by the Danish Patent and Trademark Office.

(8) If the registration is revoked totally or partially, the decision shall be published when final.

### **Non-use as a defence in invalidity proceedings**

**35.**-(1) In proceedings for a declaration of invalidity based on a registered trade mark with an earlier filing date or priority date, if the proprietor of the later trade mark so requests, the proprietor of the earlier trade mark shall furnish proof that, during the 5-year period preceding the date of the application for a declaration of invalidity, the earlier trade mark has been put to genuine use, as provided for in section 10c, in connection with the goods or services in respect of which it is registered and which are cited as justification for the application, or that there are proper reasons for non-use, provided that the registration process of the earlier trade mark has, at the date of the application for a declaration of invalidity, been completed for not less than five years.

(2) Where, at the filing date or date of priority of the later trade mark, the 5-year period within which the earlier trade mark was to have been put to genuine use, as provided for in subsection 1, had expired, the proprietor of the earlier trade mark shall, in addition to the proof required under subsection 1, furnish proof that the trade mark was put to genuine use during the 5-year period preceding the filing date or date of priority, or that proper reasons for non-use existed.

(3) In the absence of the proof referred to in subsections 1 and 2, an application for a declaration of invalidity on the basis of an earlier trade mark shall be rejected.

(4) If the earlier trade mark has been used in accordance with section 10c in relation to only part of the goods or services for which it is registered, it shall, for the purpose of the examination of the application for a declaration of invalidity, be deemed to be registered in respect of that part of the goods or services only.

(5) Subsections 1-4 of this section shall also apply where the earlier trade mark is an EU trade mark. In such a case, genuine use of the EU trade mark shall be determined in accordance with Article 15 of the Regulation on the EU trade mark.

### **Missing information about the proprietor as ground for deletion of registrations**

**36.**-(1) If there is reason to doubt the existence of a trade mark proprietor or that his address is unknown, anyone with a legal interest therein may apply for deletion of the trade mark from the register.

(2) Before proceeding with deletion, the Danish Patent and Trademark Office shall request the proprietor to come forward within a time limit set by the Danish Patent and Trademark Office. If the proprietor's address is unknown, the time limit is communicated by public announcement. If the proprietor has then not come forward, the trade mark is deleted from the register.



## **Deletion**

**37.**-(1) Deletion from the trade mark register occurs:

- (i) when the registration is not renewed;
- (ii) when the trade mark proprietor requests the deletion of the trade mark;
- (iii) if the registration is declared invalid; or
- (iv) if an administrative or court decision revokes the registration.

## **Part 5**

### **Trade marks as an object of property and recordal of changes to the trade mark register**

#### **Transfer of trade mark**

**38.**-(1) A trade mark may be transferred, separately from any transfer of the undertaking in respect of all or some of the goods or services for which a trade mark right has been obtained.

(2) A transfer of the whole of the undertaking shall include the transfer of the trade mark except where there is agreement to the contrary or circumstances clearly dictate otherwise. This provision shall apply to the contractual obligation to transfer the undertaking.

(3) The transfer of the right to a registered trade mark shall be recorded in the trade mark register on request. Until the Danish Patent and Trademark Office has been notified of the transfer, the Office will consider the proprietor of the trade mark to be the one most recently recorded in the register.

(4) Irrespective of subsections 1-3, the Danish Patent and Trademark Office may refuse the transfer of a guarantee or certification mark or a collective mark if the mark becomes liable to mislead subsequent to the transfer.

#### **Security and levy of execution**

**38a.**-(1) A trade mark may, independently of the undertaking, be given as security or be the subject of rights in rem or levied in execution.

(2) If the right to a registered trade mark has been given as security or levied in execution, the Danish Patent and Trademark Office shall record it in the trade mark register upon request from the proprietor, pledgee or execution creditor.

#### **Licensing**

**38b.**-(1) A trade mark may be licensed for some or all of the goods or services for which it is registered and for the whole or part of the country. A licence may be exclusive or non-exclusive.

(2) The proprietor of a trade mark may invoke the rights conferred by that trade mark against a licensee who contravenes any provision in his licensing contract with regard to:

- (i) its duration;
- (ii) the form covered by the registration in which the trade mark may be used;
- (iii) the scope of the goods or services for which the licence is granted;

- (iv) the territory in which the trade mark may be affixed; or
  - (v) the quality of the goods manufactured or of the services provided by the licensee.
- (3) Upon request from the proprietor or the licensee, the licence shall be recorded in the trade mark register. It shall also be recorded in the register when it is subsequently established that the licence has expired.

### **Trade mark applications as objects of property**

**38c.**-(1) Sections 38-38b shall also apply to trade mark applications.

### **Amendments to the regulations governing the use of a collective mark or a guarantee or certification mark**

- 39.**-(1) The proprietor of a collective mark or a guarantee or certification mark shall submit any changes to the regulations governing the use of an applied or registered mark to the Danish Patent and Trademark Office.
- (2) Amendments to the regulations governing the use of the mark are recorded in the trade mark register unless the amendments do not comply with the requirements in section 11(6)-(8) or is subject to refusal according to section 14(2) or section 16(2).
- (3) Amendments to the regulations governing the use of a collective mark or a guarantee or certification mark shall take effect only from the date of entry in the register.

### **Alteration of a trade mark**

- 40.**-(1) The proprietor may request insignificant alterations of an applied or registered trade mark provided that the overall impression of the trade mark is not affected by the alteration.
- (2) Alterations pursuant subsection 1 shall be entered into the trade mark register and published.

### **Division of applications and registrations**

- 41.**-(1) The applicant or proprietor may divide a Danish trade mark application or registration into two or more separate applications or registrations by sending a request to the Danish Patent and Trademark Office and indicating for each divisional application or registration the goods or services covered by the original application or registration which are to be covered by the divisional applications or registrations.
- (2) A request for division is subject to a fee, cf. section 60d(1).

## **Part 6**

### **Provisions concerning legal protection**

- 42.**-(1) Any person who intentionally or grossly negligently infringes a trade mark right obtained by registration, use pursuant to section 3(1)(iii) or to the Regulation on the EU 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 up to 18 months unless a heavier penalty is deserved according to section 299b of the Penal Code. In particular, the intention to significantly and obviously unlawfully profit from the infringement shall be considered aggravating circumstances.
- (3) Undertakings, etc. (legal persons) may be held liable to punishment under the provisions of Part 5 of the Penal

Code.

(4) Action against infringements under subsection 1 shall be brought by the injured party. Action against infringements under subsection 2 is brought by the injured party unless public interest necessitates prosecution.

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

(i) reasonable compensation to the injured party for the exploitation and

(ii) damages to the injured party for the injury caused by the infringement.

(2) When fixing the compensation according to subsection 1, the loss suffered by the injured party and the unwarranted profit obtained by the infringer shall be taken into consideration.

(3) In cases under subsection 1, additional compensation may be awarded to the injured party for non-financial injury.

(4) For trade mark rights obtained by registration, the provisions of subsection 1 shall also apply to the period between the filing of the application and the registration of the mark provided that the infringer knew or ought to know that the application had been filed.

**43a.-**(1) The Maritime and Commercial Court shall be the EU trade mark court of the first instance and Supreme Court and High Courts shall be the EU trade mark courts of the second instance pursuant to the Regulation on the EU trade mark. Whether decisions by the Maritime and Commercial Court may be appealed to the Supreme Court or High Court is decided according to section 368(4)-(6) of the Administration of Justice Act.

**43b.-**(1) Provisional decisions on injunctions or orders pursuant to the Regulation on the EU trade mark are given by the District Court or the Maritime and Commercial Court, cf. Part 40 of the Administration of Justice Act.

(2) Provisional decisions on injunctions or orders according to the Regulation on the EU trade mark having effect in the territory of any member state are given by the Maritime and Commercial Court.

(3) Provisional decisions on injunctions or orders pertaining to a national trade mark and an EU trade mark are given by the Maritime and Commercial Court if the provisional decision regarding the EU trade mark shall have effect in the territory of any member state.

**43c.-** (Repealed)

**43d.-** (Repealed)

**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 also apply 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 this is contradicted by special circumstances.

(4) Decisions concerning measures under subsection 1 shall take into account the proportion between the scope of the infringement, the ordered measures and the interest 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 for the use of a trade mark has been granted, the licensor as well as the licensee may bring proceedings in cases of infringement of the trade marks right, unless otherwise agreed.

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

**45a.**-(1) If customs and tax authorities have reason to believe that infringement under section 42 occurs, they may convey information hereof to the rights holder.

## **Part 6 A**

### **Special unit on enforcement and counterfeiting and piracy**

**45b.**-(1) The tasks of the Danish 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 Service 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 Danish 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 Danish 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 may lay down rules for filing of trade mark applications and their examination according to the provisions of Part 2, including the language of examination and in documents and, concerning file types and their size, trade mark types, descriptions, colours and marks without colours (black/white marks).

(2) The Minister of Industry, Business and Financial Affairs may lay down rules concerning assignment of applications and registrations, concerning examination of oppositions and administrative revocations, concerning claims of priority, concerning the structure and maintenance of the trade mark register, concerning the information to be recorded in the register concerning the publication of registrations, records and announcements, concerning registration and deletion of trade marks, extracts from the register, etc.

(3) The Minister of Industry, Business and Financial Affairs may lay down rules concerning payment for special transactions, publications, extracts from the register, seminars etc.

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

(5) The Minister of Industry, Business and Financial Affairs may lay down specific rules for the implementation of the provisions of Part 8 concerning international trade mark registration.

(6) The Minister of Industry, Business and Financial Affairs may lay down rules concerning the integration of the collective mark register into the trade mark register.

(7) The Minister of Industry, Business and Financial Affairs may lay down rules concerning the transition of existing collective marks to collective marks or guarantee or certification marks or individual trade marks and concerning the revocation of collective mark registrations.

(8) The Minister of Industry, Business and Financial Affairs may decide which days the Danish Patent and Trademark Office shall be closed.

**48a.**-(1) The Minister of Industry, Business and Financial Affairs may lay down rules to determine that written communication to and from the Danish Patent and Trademark Office concerning matters which are covered by this act or be rules laid down according to this act shall be digital.

(2) The Minister of Industry, Business and Financial Affairs may lay down specific rules concerning digital communication, including the application of certain IT systems, specific digital formats, maximum size of files, and digital signature, etc.

(3) A digital message is considered received when it is available to the addressee of the message.

**48b.**-(1) If according to this act or rules laid down in accordance with this act it is required that a document issued by anyone else than the Danish Patent and Trademark Office be signed, this requirement shall be fulfilled by applying a technique which ensures unique identification of the person who has issued the document, without prejudice to subsection 2.

(2) The Minister of Industry, Business and Financial Affairs may lay down specific rules concerning derogation from the requirement of a signature. Such rules may include that the requirement of a personal signature shall not be derogated from with respect to particular types of documents.

**49.**-(1) If the Minister of Industry, Business and Financial Affairs refers their own rights under this act to the Danish Patent and Trademark Office, the minister may laid 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**

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

**50.**-(1) An international trade mark application may be filed at the Danish Patent and Trademark Office by Danish nationals and by natural or legal persons who reside or have a real and effective industrial or commercial establishment in Denmark.

(2) Applications filed in pursuant to subsection 1 shall be in accordance with article 3, *3 bis* and *3 ter* of the Madrid Protocol and must at least contain:

(i) name and address of the applicant;

(ii) a representation of the mark and possible additional information about the mark;

(iii) an indication of the goods and services for which the mark is applied, classified in classes in accordance with the Nice Classification;

(iv) an indication of the application date and application number or registration date and registration number of the basic application or basic registration; and

(v) an indication of the designated states or organisations.

(3) An international trade mark application may include all or a part of the goods or services of the Danish applications or registrations on which the international application is based.

(4) When filing an international application, priority may be claimed in accordance with the Paris Convention.

(5) The Danish Patent and Trademark Office forwards the application to the International Bureau if the application fee has been paid pursuant to section 60e(1) and the application fulfils the requirements of subsection 1 and the rules laid down by the Minister of Industry, Business and Financial Affairs pursuant to section 48(5).

(6) If something prevents the forwarding of the application, the applicant is given the opportunity to remedy the application. If the application has not been remedied within the time limit of two months pursuant to article 3(4) of the Madrid Protocol, the Danish Patent and Trademark Office will decide whether the application shall be rejected or forwarded to the International Bureau.

### **Subsequent designation**

**51.**-(1) A request for territorial extension of an international registration which is registered on the basis of a Danish application or registration may be filed at the Danish Patent and Trademark Office or at the International Bureau, cf. article 3*ter*(2) of the Madrid Protocol.

(2) If a request for territorial extension is filed at the Danish Patent and Trademark Office pursuant to subsection 1, the Office forwards the request to the International Bureau if the fee pursuant to section 60e(2) is paid and the request is in accordance with article 2(1) and article 3*ter*(2) of the Madrid Protocol and at least contains:

(i) the international registration number;

(ii) the name and address of the applicant;

(iii) an indication of the goods or services comprised by the request, classified in classes in accordance with the Nice Classification; and

(iv) an indication of the designated states or organisations.

### **Notification of changes to the original application or registration**

**52.**-(1) The Danish Patent and Trademark Office may notify the International Bureau of changes to the trade mark register if the changes affect the international registration, cf. article 6(2)-(4) of the Madrid Protocol.

### **Renewal of an international registration**

**53.**-(1) An international registration may be renewed every ten years pursuant to the international date of registration. Renewal takes place only at the International Bureau in accordance with the provisions of the Madrid Protocol.

### **Examination of designations of Denmark**

**54.**-(1) Sections 16-22 shall apply to the examination by the Danish Patent and Trademark Office of international designations of Denmark in international registrations.

(2) Irrespective of subsection 1, the Danish Patent and Trademark Office may only refuse the validity of a designation according to section 12 if the goods or services for which protection is applied are not identified with sufficient clarity and precision pursuant to the edition of the Nice Classification applicable at the time of the international registration.

(3) A fee for the examination by the Danish Patent and Trademark Office of an international designation of Denmark in an international registration shall be paid, cf. section 60a(5).

### **Time limits for issuing provisional refusals**

**55.**-(1) The Danish Patent and Trademark Office may, within 18 months from the date of notification in accordance with article 5(2)(b) of the Madrid Protocol, notify the International Bureau of a provisional refusal of the validity of the trade mark in Denmark if the mark does not fulfil the conditions for registration in accordance with this act, including notification of opposition.

(2) If the opposition period expires, cf. section 19(1), after the expiry of the 18-month time limit, the Danish Patent and Trademark Office may notify the International Bureau that provisional refusal according to article 5(2)(c) of the Madrid Protocol may be issued subsequently.

(3) If the Danish Patent and Trademark Office has not notified the International Bureau of a provisional refusal within the 18-month time limit, cf. subsection 1, and no notification of a subsequent refusal in accordance with subsection 2 has been communicated within this time limit, the International registration shall be valid in Denmark pursuant to article 4(1)(a) of the Madrid Protocol.

### **Granting of protection of the designation**

**56.**-(1) If the designation is in accordance with this act or rules laid down according hereto and opposition in accordance with section 19 has not been filed or a final decision in any oppositions has been made and the designation has been upheld in full or partially, the Danish Patent and Trademark Office shall grant the designation protection and the date of validity shall be recorded in the register. The Danish Patent and Trademark Office shall notify the International Bureau of the granting of protection of the designation, and the designation shall be published.

### **Effects of valid designations**

**57.**-(1) A designation of Denmark in an international registration which has been granted protection in accordance with section 56 shall have the same legal effect as if the mark was registered in Denmark.

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

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

(2) If the international registration has been invalidated upon request from the office of origin or due to the secession of the contracting party from the Madrid 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 the international registration or the date of the subsequent designation of Denmark provided that:

- (i) the application is filed three months after the date of invalidation of the international registration at the latest;
- (ii) the application does not include other goods or services than those covered by the designation of Denmark;
- (iii) the application also meets the requirements of a Danish trade mark application;
- (iv) the applicant pays the prescribe fees, cf. section 60a(4).

(3) An application for proceeding under Danish law according to subsection 2 shall meet the requirements for application pursuant to section 11(5)-(8) and refer to the number of the international registration and state the date of designation and priority if the international registration if any.

**59.**-(1) The conversion of a designation of the European Union through an international trade mark registration into a Danish application or a designation of Denmark pursuant to article 202 of the Regulation on the EU trade mark shall be examined according to the provisions of this act.

### **Replacement of a Danish trade mark by an international registration**

**60.**-(1) Upon request, the Danish Patent and Trademark Office shall record the replacement of a Danish registration in accordance with article 4*bis* of the Madrid Protocol if:

- (i) Denmark has been designated either initially or subsequently;
- (ii) the goods or services covered by the Danish registration are also covered by the designation of Denmark;



(iii) Denmark has been designated later than the date of applications of the Danish registration.

(2) The replacement of a Danish registration with a designation of Denmark pursuant to article 4*bis* of the Madrid Protocol has effect only in relation to the goods and services covered by both the international and the Danish registration.

(3) The Danish Patent and Trademark Office notifies the International Bureau of the recordal referred to in subsection 1.

## **Part 8 A**

### **Fees**

**60a.**-(1) For an application for the registration of a trade mark pursuant to section 11(1) a fee of 2,000 DKK shall be paid. This fee includes one class of goods or services within the Nice Classification. For additional classes within the Nice Classification, a supplementary fee shall be paid. The supplementary fee is 200 DKK for the first additional class and 600 DKK for each additional classes.

(2) For the compilation of a detailed search report, cf. section 11(2), a fee of 700 DKK shall be paid.

(3) For the conversion of an EU trade mark application or registration to a national application, the fees referred to in subsection 1 shall be paid.

(4) For an application for a Danish trade mark registration on the basis of a cancelled international trade mark registration, cf. section 58(2), a fee of 1,500 DKK shall be paid.

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

**60b.**-(1) For the renewal of a trade mark registration, cf. section 24(3), a fee of 2,000 DKK shall be paid. This fee includes one class of goods or services. Furthermore, a supplementary fee of 200 DKK shall be paid for the first additional class and 600 DKK for each additional 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(1) 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 filing an opposition against a trade mark application or the designation of Denmark in an international trade mark registration, cf. sections 19(1) and 54(1), a fee of 2,500 DKK shall be paid.

(2) For a request for administrative revocation of a Danish or international trade mark registration, cf. sections 34 and 57, a fee of 2,500 DKK shall be paid.

(3) For a request for administrative revocation, cf. subsection 2, filed exclusively on the ground that the registration has been effected in contravention of section 14(1)(ii) and (iv) 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 41(2).

(2) 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 Danish Patent and Trademark Office of cases concerning application for international trade mark registration, cf. section 50(5), a fee of 500 DKK shall be paid.

(2) For the handling by the Danish Patent and Trademark Office of cases concerning subsequent designation in international trade mark registrations, cf. section 51(2) a fee of 300 DKK shall be paid.

**60f.**-(1) Fees paid pursuant to sections 60a-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 a trade mark application 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 application is refused or the trade mark registration is revoked.

**60g.**-(1) The Danish 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 Danish Patent and Trademark Office shall publish the current fees in a price list.

**60h.**-(1) The Danish Patent and Trademark Office may transfer income from fees charged under this act to the payment of costs involved in the administration by the Danish Patent and Trademark Office of other fields under the jurisdiction of the Office where fees are charged.

(2) The Danish Patent and Trademark Office may transfer income from fees charged under this act to the Danish Appeal Boards Authority to the payment of costs involved with the Board of Appeals for Patents and Trademarks.

## **Part 9**

### **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) (Omitted)

(3) For trade marks registered before 31 December 1991, the 5-year period under section 25 shall commence on 1 January 1992.

(4) 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.<sup>3</sup>

**62.**- (Omitted)

**63.**-(1) 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

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<sup>3</sup> Part 8 entered into force on 1 April 1996 by Order No. 131 of 15 March 1996.

circumstances may require.<sup>4</sup>

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Act No. 670 of 8 June 2017 on the amendment of the Administration of Justice Act, the Act on the Brussels I Regulation etc. and various other acts (Amendment to the rules for lay judges, the implementation of the Convention on Choice of Court Agreements, etc.)<sup>5</sup> contains the following provisions for entry into force:

### **Section 12**

- (1) The act shall enter into force on 1 July 2017, subject to subsection 2.
- (2) (Omitted)

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Act No. 1533 of 18 December 2018 on the amendment of the Trade Marks Act and various other acts and the repeal of the Collective Marks Act (The examination and other processing of applications, grounds for refusal, reproduction of trade marks, goods in transit, transfer of income from fees, etc.)<sup>6</sup> contains the following provisions on entry into force:

### **Section 8**

- (1) This act shall enter into force on 1 January 2019.
- (2) Section 60a(5) and section 60b(3) as laid down in section 1(8) of this act shall have effect as from 1 July 2019.
- (3) For trade marks and collective marks which have been registered before 1 January 2019, the provisions of section 26 of the trade marks act applicable so far, shall apply for establishing the dates for the first registration period. Section 24(2) of this act shall apply to the establishment of the dates for further registration periods.
- (4) For trade marks and collective marks which have not been registered and for which the procedure of registration has not been terminated before 1 January 2019, the provisions of the trade marks act applicable so far on opposition, publication and the establishment of the date for the termination of the procedure of registration shall apply.
- (5) For request for administrative revocation filed before 1 January 2019, the provisions applicable so far shall apply.
- (6) For applications filed before 1 January 2019, the application fee shall be calculated according to the provisions applicable so far.
- (7) Renewal fees for trade mark registration which are due before 1 January 2019 shall be calculated according to sections 60b(1) and (2) of the trade marks act applicable so far.

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<sup>4</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. 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. The Trade Marks Act No. 341 of 6 June 1991 was put into force 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 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>5</sup> The amendment relates to section 43a.

<sup>6</sup> The amendment relates to Parts 1-5, section 43b-d, sections 48-48b, Parts 8, sections 60a-h.

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*The Danish Patent and Trademark Office, 29 January 2019*

*Sune Stampe Sørensen*

*/Anne Rejnhold Jørgensen*