



Regulations for the Implementation of the Trademark Law, No. 32/1988, of November 10, 1988

(Approved by Royal Decree No. 645 of May 18, 1990)*

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TITLE I TRADEMARKS AND SERVICE MARKS

Chapter I Applications for Registration

(Application for Trademark Registration)

1. For registration of a trademark, the application referred to in Section 16 of Law No. 32/1988, of November 10, 1988, shall be made, and shall be accompanied by proof of payment of the fee laid down for the filing of the said application.

(Place and Form of Filing)

2.—

(1) The application and other written matter addressed to the Registry of Industrial Property may be filed at the public offices mentioned in Section 15 of the Law, for which the standard printed forms specified by the Registry of Industrial Property shall be used.

(2) The filing of applications, documents and other written matter on magnetic media or by telecommunication shall be effected in the manner specified by the Ministry of Industry and Energy at the appropriate time, on a proposal by the Registry of Industrial Property.

(Requirements for the Application Document)

3.—

(1) The document in which registration of the trademark is applied for shall be addressed in triplicate to the Director General of the Registry of Industrial Property, and shall be signed by the applicant or by his representative. The document shall contain the following:

(a) a declaration stating that registration of a trademark is applied for;

(b) surname and given names or business style, nationality and domicile of the applicant; where there are two or more applicants, the domicile of one of them shall be specified for the purposes of notification;

(c) reproduction of the sign or device to be registered as a trademark, with a mention where appropriate that the mark is three-dimensional;

(d) the goods or services for which the registration is sought, with an indication of the class of the International Classification to which they belong;

(e) an inventory of the documents accompanying the application.

(2) The document shall where appropriate be completed with the following particulars:

(a) where the application benefits from foreign priority, the priority date claimed and the country in which the right was acquired shall be stated; the claim of priority shall entail payment of the corresponding fee;

(b) where the mark has been used at official or officially recognized exhibitions, that fact shall be stated as qualification for the priority provided for in Section 23 of the Law;

- (c) where the registration of a derived trademark is applied for, the number of the principal trademark shall be given;
- (d) where the extension of the goods or services covered by a trademark is applied for under Section 19(2) of the Law, the number of the said trademark shall be given;
- (e) the name and business address of the industrial property agent, where applicable, in which case a power of attorney, to be signed by the person concerned, shall be filed.

(Description of the Trademark)

4.—

- (1) The description of the trademark shall be filed in typewritten form and in duplicate, and shall contain the following:
 - (a) data identifying the applicant as appearing in the application document;
 - (b) date on which the registration of the trademark is applied for, with an indication of any priority claimed;
 - (c) reproduction of the sign or device to be registered as a mark; should the trademark be figurative or contain figurative elements, 30 copies of the reproduction shall be provided in addition to those affixed to the application and registration forms; where colors are claimed, they shall be shown by means of arrows specifying the colors desired;
 - (d) a clear and detailed description of the sign or device to be registered as a trademark, pursuant to the provisions of Section 18(d) of the Law, with a mention where appropriate that a three-dimensional sign or device is involved; if the description is too long to be accommodated in the space provided, as many additional printed forms shall be used as are necessary; in no event shall ordinary sheets of paper be used;
 - (e) a clear enumeration of the goods or services to which the trademark is to be applied, with an indication of the class of the International Classification to which they belong; as far as possible the terms appearing in the said Classification shall be used to designate the goods or services in question.
- (2) The application file shall be accompanied by the pages for publication in the *Boletín Oficial de la Propiedad Industrial* and the corresponding forms.

(Application by Users of a Well-known Mark)

5.—

- (1) Where the registration of a trademark is applied for in the manner contemplated in Section 3(2) of the Law, that fact shall be stated, and, in addition to the documents mentioned in Sections 3 and 4, a declaration shall be filed stating that the corresponding application has been made, with the data necessary for its identification.
- (2) The Registry of Industrial Property shall ascertain whether the application meets the requirements laid down in the foregoing paragraph, and shall suspend its further prosecution until such time as the corresponding court decision has become *res judicata*.

(Foreign Priority)

6.—

- (1) The claim of priority by virtue of an earlier application filed in a foreign country, in addition to meeting the requirements and time limits laid down in Section 22(1) and (2) of the Law, shall where appropriate be accompanied by the translation referred to in Article 4D(3) of the Act of the Paris Convention of March 20, 1883, that is applicable to Spain.
- (2) The Registry of Industrial Property shall ascertain that the data on the certified copy attesting priority and those appearing in the application for trademark registration correspond, and where they do not shall refuse the claim of priority.

(3) Where the applicants do not agree, the document attesting the transfer of priority rights for Spain shall be required. Likewise, in the event of partial agreement on the goods or services claimed, priority may be granted in respect of those goods or services.

(Exhibition Priority)

7.—

(1) For the purposes of ensuring the right of priority provided for in Section 23 of the Law, the person who wishes to avail himself of that priority shall submit to the Registry of Industrial Property a copy of the document signed by the person designated by the exhibition management as the authority competent to ensure industrial property protection at the exhibition. The same management may apply to the Registry of Industrial Property for the designation of an official of the Registry to perform the role in question.

(2) The document shall record at least the name of the person who has used the trademark, the date of admission of the goods or services to the exhibition and also the identification of the trademark and of the goods and services for which it has been used.

(3) Once the official application for registration of the trademark has been received, the Registry of Industrial Property shall, for the recognition of priority, proceed according to Section 6(2), above.

Chapter II Grant Procedure

(Filing Date)

8.—

(1) For the purposes of assigning a filing date to applications for trademark registration, the provisions of Section 20 of the Law shall be observed and proof of filing shall be issued to the applicant.

(2) Applications that are not accompanied by all the documents provided for in Section 20 of the Law shall not be accepted.

(Corrections and Substantive Errors)

9.—

(1) Corrections to the design of the mark referred to in Section 20(3) of the Law, and also the rectification of substantive errors in the application, shall be requested before publication of the application in the *Boletín Oficial de la Propiedad Industrial* takes place under Section 25 of the Law.

(2) Such a request shall be filed in writing with sufficient details given for identification of the file, and with proof of payment of the corresponding fee.

(Examination of the Application)

10.—

(1) The Registry of Industrial Property shall examine whether the application as filed meets the form requirements laid down in the Law and these Regulations.

(2) Any irregularities observed in the documentation filed shall be communicated to the applicant or to his agent, and a period of one month shall be allowed for them to be remedied. If the irregularities observed are not remedied within the said period, the application shall be treated as if it had not been filed. The decision shall be published in the *Boletín Oficial de la Propiedad Industrial*.

(3) The remedying of irregularities that entails the provision of a document of any kind shall be subject to payment of the corresponding fee.

(Examination of Lawfulness)

11.—

(1) The Registry of Industrial Property shall examine whether the application for registration of the trademark takes undue advantage of situations, facts or signs in a manner constituting a violation of the legal system.

(2) If it does, the Registry of Industrial Property may suspend publication of the application under Section 25 of the Law, and shall notify the applicant or his agent accordingly so that they may submit appropriate rebuttals within one month. If within the said period no rebuttals of any kind are submitted, or those submitted are rejected, the application shall be refused. The decision shall be published in the *Boletín Oficial de la Propiedad Industrial*.

(3) Where the remedying of an irregularity entails the provision of a document of any kind, proof of payment of the corresponding fee shall be enclosed.

(Publication of the Application)

12.—

(1) Where the application for trademark registration meets the form requirements laid down in the Law and in these Regulations, or where any irregularities observed have been remedied, publication under Section 25 of the Law shall proceed. Publication of the application for trademark registration shall contain the particulars specified in Section 25(2) of the Law.

(2) In the case of an application for registration of a derived mark, the publication shall contain, in addition to the particulars specified in Section 25(2), a mention of the number of the mark from which it is derived.

The same procedure shall apply in the case of extension of the list of goods.

(Opposition)

13.—

(1) The opposition referred to in Section 26 of the Law shall be addressed to the Director General of the Registry of Industrial Property, but may also be filed at any of the public offices mentioned in Section 15 of the Law within two months following publication of the application for trademark registration in the *Boletín Oficial de la Propiedad Industrial*.

(2) The opposition shall be filed in duplicate and shall contain the following particulars:

(a) name and given names or business style, nationality and domicile of the opponent;

(b) identification of the registration opposed, with a mention of its number and owner, an accurate reproduction of the sign, the relevant class of the International Classification and the date of publication of the application in the *Boletín Oficial de la Propiedad Industrial*;

(c) where the opposition relies on an earlier registration, the details identifying that registration shall also be concisely given; in particular the goods, services and activities covered by the earlier registration shall be specified, and, in the case of graphic or composite signs, an accurate reproduction thereof, as appearing in the registration, shall be enclosed;

(d) grounds on which the opposition is filed, with such additional arguments as may be considered appropriate; the existence of two or more earlier registrations may be claimed in the same opposition, in which case each or all of them shall be identified in the manner specified in subparagraph (c);

(e) signature of the person concerned or of his representative, with place and date;

(f) proof of payment of the corresponding fee.

(3) Where the opposition is filed through an industrial property agent, due authorization signed by the person concerned shall be enclosed.

(Suspension)

14. Where opposition has been filed, or where the Registry of Industrial Property, after having carried out the examination provided for in Section 27(1) of the Law, raises an objection of any kind to the grant of registration, suspension of processing shall be ordered, and the whole file shall be returned to the applicant in order that he may contest the suspension within one month following its publication in the *Boletín Oficial de la Propiedad Industrial*.

(Rebuttal by the Person Concerned)

15.—

(1) The document contesting the suspension referred to in the foregoing Section shall specify the particulars identifying the application for registration, the grounds on which the said suspension relied, and as many arguments as are considered relevant to the defense of the application for trademark registration.

(2) Contestation of the suspension order shall entail payment of the corresponding fee where appropriate.

(3) Where the trademark is amended as provided in Section 27(4) of the Law, a new sheet of particulars and description of the trademark shall be filed.

(Decision and Publication)

16.—

(1) If no opposition has been filed and if no official objection has been made, the Registry of Industrial Property shall proceed to grant the trademark registration applied for.

(2) Where there is opposition or any official objection, the Registry shall, on expiration of the time limit for contesting the suspension, whether or not the applicant has actually contested it, proceed with the grant or refusal of trademark registration by means of a reasoned decision, specifying, in the case of refusal, the grounds and prior registrations that motivated it.

(3) The decision granting or refusing trademark registration shall be published in the *Boletín Oficial de la Propiedad Industrial* together with such particulars as are necessary for the proper identification of the registration. The following particulars at least shall be given:

(a) date and nature of the decision;

(b) number of the trademark, owner, and class of the International Classification;

(c) where trademark registration has been granted with the amendments provided for in Section 27(4) of the Law, reference shall be made thereto, and the trademark shall be published in its amended form;

(d) information on the remedies that may be sought against the decision.

(4) Where the trademark registration has been granted, the procedure shall continue in accordance with Section 29(2), (3) and (4) of the Law.

Chapter III Renewal and Lapse

(Renewal Request Requirements)

17.—

(1) In order to secure renewal of a trademark registration it shall be necessary to file, within the period specified in Section 7 of the Law, a request in triplicate addressed to the Director General of the Registry of Industrial Property.

The request shall be signed by the applicant or by his representative, and shall contain the following:

(a) the request that registration be renewed;

(b) the name and given names or business style of the applicant, who may be the owner of the trademark or a successor in title;

(c) the registration number of the trademark, and the list of goods or services for which the renewal is sought, with an indication of the class of the International Classification to which they belong;

(d) the name and business address of the industrial property agent, where applicable, in which case a power of attorney, to be signed by the person concerned, shall be filed.

(2) The renewal request shall be accompanied by a declaration on the part of the owner attesting use of the trademark in the form and manner laid down in Section 7(2) of the Law.

Where the party requesting renewal is the successor in title of the owner of the registration, a public document attesting that status shall be filed.

(3) The filing of the renewal request shall entail payment of the corresponding fee.

(Renewal Procedure)

18.—

(1) On receipt of the renewal request, the Registry of Industrial Property shall examine whether it is in conformity with the requirements laid down by the Law and these Regulations.

It shall also examine whether the documents necessary for renewal have been filed in the manner specified by law and regulation.

(2) Any irregularities observed shall be communicated to the requesting party in order that he may remedy them within one month following their publication in the *Boletín Oficial de la Propiedad Industrial*.

(3) Where there are no irregularities in the request, or where they have been remedied, renewal of the registration shall proceed and a certificate shall be issued on payment of the corresponding charge and of the next five-yearly fee, as provided in Section 7(6) of the Law.

(Cancellation for Failure to Renew)

19.—

(1) The Registry of Industrial Property shall cancel the trademark registration when renewal has not been requested or has been requested outside the period specified in Section 7 of the Law.

(2) Renewal shall likewise be refused and the corresponding registration shall be cancelled when irregularities observed in the renewal procedure have not been duly remedied within the time limit allowed for the purpose.

(3) The renewal request shall be considered withdrawn when, after it has been granted, the fees referred to in Section 29 of the Law are not paid.

(Cancellation for Non-payment)

20.—

(1) The Registry of Industrial Property shall cancel the trademark registration when the corresponding five-yearly fee is not paid in due time as provided in Section 6 of the Law.

(2) If rights *in rem* or encumbrances have been entered in the Register of Trademarks, the persons in whose name those rights or encumbrances have been entered shall be allowed one month within which to effect payment of the sums necessary to avert cancellation.

TITLE II OTHER TYPES OF DISTINCTIVE SIGN

Chapter I Collective and Certification Marks

(Collective Mark Application)

21.—

(1) Collective marks shall be subject to the provisions laid down in these Regulations for trademarks and service marks. Those provisions in particular shall be applicable to them that are contained in Title I of these Regulations, without prejudice to any provisions governing them specifically.

(2) The application shall state expressly that the trademark applied for is a collective mark. In addition to the documents mentioned in Section 16 of the Law, two copies of the regulations for use shall be included, which shall give the following particulars at least:

- (a) identity of the applicant association;
- (b) persons authorized to use the mark;
- (c) conditions governing membership of the association;
- (d) conditions governing use of the mark;
- (e) grounds on which a member of the association may be prohibited from using the mark.

(3) A certified copy of the statutes of the association shall be filed together with the application, and proof shall be given that the association has been created according to the provisions applicable to it.

(4) Collective marks shall be processed according to the procedure laid down for individual marks.

(Amendments to the Regulations for Use)

22.—

(1) The owner of the collective mark shall submit any proposal for amendment of the regulations for use to the Registry of Industrial Property.

(2) The Registry of Industrial Property shall ascertain whether the amendments conform to the requirements laid down in Sections 59 and 66(2) of the Law. Before taking a final decision refusing the amendments, it shall communicate its objections to the applicant in order that he may, within one month, submit such rebuttals as he considers appropriate.

(3) The registration or refusal of the amendments shall be published in the *Boletín Oficial de la Propiedad Industrial*.

(Certification Mark Application)

23.—

(1) Certification marks shall be subject to the provisions laid down in these Regulations for trademarks and service marks. Those provisions in particular shall be applicable to them that are contained in Title I of these Regulations, without prejudice to any provisions governing them specifically.

(2) The application shall state expressly that the mark applied for is a certification mark. In addition to the documents mentioned in Section 16 of the Law, two copies of the regulations for use shall also be included, which shall give the following particulars at least:

- (a) the quality, components, origin or any other characteristics of the goods or services concerned;
- (b) the means of supervision that the owner of the certification mark undertakes to introduce;
- (c) the sanctions applicable.

(3) The regulations for use shall be accompanied by a favorable report from the administrative body having specific competence in relation to the nature of the goods or services to which the certification mark refers.

(4) Certification marks shall be processed according to the procedure laid down for individual marks.

(Amendments to the Regulations for Use)

24.—

(1) The owner of the certification mark shall submit any proposal for amendment of the regulations for use to the Registry of Industrial Property.

(2) The amendment proposal shall be accompanied by a report in favor of the amendment from the administrative body having specific competence in relation to the nature of the goods and services to which the certification mark refers.

(3) The Registry of Industrial Property shall ascertain whether the amendments conform to the requirements laid down in Sections 63 and 66(2) of the Law. Before taking the final decision refusing the amendments, it shall communicate its objections to the requesting party in order that he may, within one month, submit such rebuttals as he considers appropriate.

(4) The registration or refusal of the amendments shall be published in the *Boletín Oficial de la Propiedad Industrial*.

(Renewal)

25. The request for and processing of the renewal of collective and certification marks shall conform to the provisions of Chapter III of Title I of these Regulations.

Chapter II

Trade Names and Business Signs

(Application for Registration of a Trade Name)

26.—

(1) Applications for the registration of trade names and the procedure for the registration thereof shall conform to the provisions contained in Title I of these Regulations, without prejudice to any provisions governing them specifically.

(2) The application for registration shall state expressly that a trade name is applied for, and also name the business activities that are to be distinguished thereby. In addition to the documents specified in Section 16 of the Law, the following shall be filed:

(a) a document attesting the issue of a tax license in respect of each of the activities applied for;

(b) in the case of a legal entity applying for registration of its name as a trade name, it shall enclose the corresponding deed or document of incorporation, in the form of either the original or a certified copy, together with a certificate of registration in the corresponding register.

(Application for Registration of a Business Sign)

27.—

(1) Applications for the registration of business signs and the procedure for the registration thereof shall conform to the provisions contained in Title I of these Regulations, without prejudice to any provisions governing them specifically.



(2) The application for registration shall state expressly that a business sign is applied for, and shall conform to the provisions of Section 16 of the Law, with a mention of the municipality or municipalities in which the business and branches for which protection is sought are located, and also the specific activities in which they are engaged.

(Renewal)

28. The request for and processing of the renewal of trade names and business signs shall conform to the provisions of Chapter III of Title I of these Regulations.

Chapter III International Trademarks

(International Trademarks)

29.—

(1) Applications for the international registration of trademarks as referred to in Section 75(1) of the Law shall be effected by the filing of the following documents:

- (a) a request addressed to the Director General of the Registry of Industrial Property, which shall contain the particulars identifying the applicant and the mark or marks for which international registration is sought;
- (b) an application for international registration in triplicate, on printed forms supplied by the International Bureau, completed in accordance with the provisions of the Act applicable to Spain of the Madrid Agreement of April 14, 1891, Concerning the International Registration of Marks, and the Regulations under the said Agreement;
- (c) proof of payment of the corresponding fee.

(2) Where the request for renewal of the international registration is filed through the Registry of Industrial Property, it shall be subject to payment of the corresponding fee.

TITLE III REGISTER OF TRADEMARKS

(Register of Trademarks)

30.—

(1) The purpose of the Register of Trademarks shall be the recording of applications for the registration of trademarks, trade names and business signs, and of instruments and contracts pertaining to transfers, licensing and rights *in rem*, and also of any other instruments, both optional and mandatory, that concern applications for registration, either pending or already granted, with the effects provided for in the Law.

(2) The Register of Trademarks shall consist of the following sections:

- (a) trademark and service mark section;
- (b) collective mark section;
- (c) certification mark section;
- (d) international trademark section;
- (e) trade name section;
- (f) business sign section.

(Publicity)

31.—

- (1) The Register of Trademarks shall be open to the public. The public shall have access to it by direct consultation, computerized listing or the production of certificates by Registry staff.
- (2) Certification shall be the sole means of authentically attesting the contents of Register entries.
- (3) Certificates shall be produced at the request of the interested party on payment of the corresponding fee.

(Particulars Registrable in the Trademark and Service Mark Section)

32.—

- (1) The following information in particular relating to applications for and the grant of trademark and service mark registrations shall be entered in the trademark and service mark section:
 - (a) number of the application for registration, with an indication where appropriate of whether it relates to a derived mark or an extension of the list of goods and services;
 - (b) filing date of the application for registration;
 - (c) name, address, nationality and State of domicile of the applicant or owner of the mark;
 - (d) name of the industrial property agent of the applicant or owner;
 - (e) sign or device constituting the mark, with an indication where appropriate of the type of sign or device claimed;
 - (f) list of goods or services, with a mention of the class of the International Classification to which they belong;
 - (g) information concerning priority (date, country and serial number of the earlier application);
 - (h) information relating to any claim of exhibition priority;
 - (i) publication date of the application for registration;
 - (j) grounds for suspension, with a mention of any official objections raised and any opposition filed;
 - (k) date of suspension and publication thereof;
 - (l) amendment of the mark and limitation of the goods or services under Section 27(4) of the Law;
 - (m) date of adoption and publication of decisions granting or denying registration;
 - (n) date of withdrawal of the application for registration;
 - (o) particulars of the filing and settlement of administrative and judicial appeals;
 - (p) application for, and number of, registration as an international mark.
- (2) The following information shall also be recorded in the trademark and service mark section:
 - (a) any change in the name or address of the owner of the registration or that of the industrial property agent representing him;
 - (b) any amendment to a component of the mark as provided in Section 8(1) of the Law;
 - (c) transfer of the mark, with date of recording;
 - (d) constitution, amendment or transfer of a right *in rem*, with the date of recording; in the case of a mortgage, date of the entry in the Register of Mortgages and Pledges without Removal;
 - (e) grant, amendment or transfer of a license or sublicense, with date of recording;
 - (f) seizure of the mark, with date of recording;
 - (g) cancellation of the entries mentioned under (d), (e) and (f);
 - (h) date of and grounds for cancellation of the registration and publication thereof;
 - (i) date of request for and grant of renewal of the registration, and publication thereof;
 - (j) reinstatement of the registration and publication thereof;

(k) payment for the title and five-yearly fees.

(Particulars Registrable in the Collective and Certification Mark Sections)

33. In addition to the particulars provided for in the foregoing Section, a mention of the amendment of the regulations for use of the mark shall be registered in the collective and certification mark sections.

(Particulars Registrable in the International Trademark Section)

34.

(1) The relevant particulars of international trademarks that produce their effects in Spain shall be registered in the international trademark section.

(2) The following particulars especially shall be registered:

(a) date of suspension and publication thereof;

(b) grounds for suspension, with a mention of the official objections raised and any opposition filed;

(c) date of document contesting the suspension;

(d) date of adoption and publication of decisions to grant or to refuse;

(e) transfer of the mark, with date of recording;

(f) grant, amendment or transfer of a license, with date of recording;

(g) date of request for renewal and grant thereof;

(h) limitations on goods or services.

(Particulars Registrable in the Trade Name and Business Sign Sections)

35.—

(1) Those particulars referred to in Section 32 that are applicable and understood as referring to the distinctive signs concerned shall be registered in the trade name and business sign sections, except as provided in the paragraphs below.

(2) The business activities identified by the trade name shall be registered in the trade name section.

(3) The activities of the establishment identified by the sign shall be registered in the business sign section, as shall the denomination of the municipal sector or sectors recorded in the application for registration, and where appropriate for which the sign is finally allowed and registered.

(Other Registrable Particulars)

36. Judicial decisions concerning trademarks, trade names and business signs shall be registered on being communicated by the court concerned or at the request of an interested party.

(Assignment of a License Contract)

37. Registration of the licensing by contract of trademarks, trade names and business signs shall be governed by the provisions of Chapter III of Title IV of the Law.

(Registration of Rights *in rem*)

38. The registration of the creation and transfer of a right *in rem* pertaining to a trademark, trade name or business sign shall be governed by the provisions of Chapter III of Title IV of the Law, without prejudice to the provisions of Section 46(1) of the Law on Mortgages.

(Cancellation, at the Request of a Party, of the Registration of Licenses and Rights *in rem*)

39.—

- (1) The registration of licenses and rights *in rem* shall be cancelled at the request of one of the parties.
- (2) The request for cancellation shall contain the following:
 - (a) identity of the requester;
 - (b) serial and registration number of the mark;
 - (c) designation of the registered right the cancellation of which is sought.
- (3) The request for cancellation shall be accompanied by:
 - (a) a public document, with a copy, attesting the lapse of the registered right or the consent given by the owner of the right to the cancellation of the registration thereof;
 - (b) proof of payment of the corresponding fee.
- (4) If the cancellation requirements are not all met, the Registry of Industrial Property shall notify the requester of the irregularities observed, in order that he may remedy them within a maximum period of two months following the date of notification. On expiration of the period without the irregularities having been remedied, the cancellation request shall be refused.

(Form of Registration)

40. Entries in the Register of Marks shall be made on any kind of material medium capable of recording and reproducing, without any possibility of doubt and with absolute legal certainty, certainty of preservation and ease of access and comprehension, all the circumstances that by law have to be recorded.