

# HUNGARIAN TRADEMARK ACT

Law No. IX of 1969 on Trademarks completed with the rules according to Joint Decree

No. 2/1970 (July 1) OMFB-IM of the President of the National Committee for Technical Development and of the Minister of Justice on the Execution of the Law

## PART I

### Legal Protection of Trademarks

#### CHAPTER I

#### Conditions of Trademark Protection

##### *Article 1 Subject Matter of Trademark Protection*

Under the present Law, all marks shall be granted trademark protection which

- (a) are appropriate to distinguish goods and services (hereinafter “goods”) from other goods, and
- (b) the protection of which is not excluded by Law.

##### *Article 2 Distinctive Character*

(1) A mark is appropriate for distinguishing if it gives to the goods compared with identical or similar goods a special, different character.

(2) A mark can consist of a word, a combination of words, a figure, a picture, a combination of colours, a two or three-dimensional device, an audio or visual signal or a combination of these elements.

(3) A mark lacks distinctive character particularly where

- (a) it is used generally to indicate the product;
- (b) it indicates exclusively the kind, quality, quantity, characteristics, purpose, value, place of origin or time of production of the goods.

##### **Rule 1 (re Article 2 of the Law)**

(1) A mark lacks distinctive character if it consists exclusively of the name of goods or of a simple representation.

(2) In judging the protectability of a designation consisting exclusively of figures, of letters not forming a pronounceable word or of a simple geometrical drawing, the former notoriety of the designation in the country shall be taken into consideration.

##### *Article 3 Marks Excluded from Trademark Protection*

(1) A mark shall not be granted trademark protection if:

- (a) it is liable to create confusion;
- (b) its use would be contrary to law or socially accepted moral rules;
- (c) it infringes individual rights of third parties;

- (d) it is identical or confusingly similar to a trademark held by a third party and well-known in the country, even if that trademark is not registered in the country.

(2) Trademark protection shall not be granted to a mark which consists exclusively of the name, abbreviation, flag, armorial bearing or emblem of a state, an authority or an international or intergovernmental organization, or the imitation thereof.; such marks may be used, however, with the authorization of the competent authority, as elements of trademarks.

(3) With respect to identical or similar goods, a mark shall not be granted trademark protection if:

- (a) it consists of official signs or hall-marks indicating control and warranty, or imitations thereof;
- (b) it has been under trademark protection for the benefit of a third party and, the protection having expired because of surrender or failure to renew, less than two years have elapsed since such expiration;
- (c) it is identical or similar, to a degree liable to create confusion, to a third party's trademark registered on an earlier priority date or to a trademark effectively used but not registered;
- (d) it is the name of a protected plant variety or animal breed.

#### **Rule 2 (re Article 4 of the Law)**

(1) A designation is liable to create confusion especially if it may mislead consumers in respect to the property, quality, destination, origin of the goods or it is identical with or similar to the notorious trade name of a third party to a degree liable to create confusion.

(2) In the application of [Article 3 \(3\) \(c\)](#) of the Law, goods are similar if in pursuance of their common destination or other technical, economic or marketing characteristics the consumer may come to the conclusion that their producer or seller is the same enterprise.

## **CHAPTER II**

### **Rights and Duties Deriving from Trademark Protection**

#### *Article 4 Right to Trademark Protection*

(1) The right to a trademark and to legal protection thereof shall be enjoyed only by a party who has registered the mark in accordance with the procedure laid down in this Law. If more than one applicant seeks registration of the same mark or similar marks, the trademark shall be registered in the name of the party with the earlier priority date, unless an interested party shows use prior to the priority date.

(2) Trademark protection shall be granted to an enterprise, a cooperative or to any other organ or party entitled to pursue economic activities (hereinafter collectively designated as "enterprise").

(3) Associations of enterprises having legal personality (trade unions, professional associations, etc.) shall obtain collective trademark protection for trademarks intended to be used by associate enterprises, even where such associations are not entitled to engage in economic activities, provided

- (a) the goods of the enterprises have some common characteristics (e.g. regional character), and
- (b) the collective trademark is used by the enterprises under the control of the association.

### *Article 5 Obtaining Trademark Protection*

Trademark protection is obtained by registration, with retroactive effect to the date of filing.

### *Article 6 Duration of Trademark Protection*

(1) Trademark protection shall have a duration of ten years, beginning on the date of filing the application.

(2) Trademark protection shall be renewable for further periods of ten years. In case of renewal, the new period of protection begins on the day after the date of expiration of the previous period.

### *Article 7 Effect of Trademark Protection*

The proprietor of a trademark shall, on the basis of trademark protection and within the limits fixed by legislation, enjoy the exclusive right to use the trademark for goods enumerated on the list of goods or to grant licenses to others for its use.

## **CHAPTER III Contracts of Exploitation**

### *Article 8 Conclusion of Contracts of Exploitation*

On the basis of a contract of exploitation (agreement granting a trademark license), the proprietor of the trademark grants a licence for the use of the trademark; in exchange, the user is under obligation to pay royalties.

### *Article 9 Rights and Obligations of the Parties*

(1) A license agreement grants, for the duration of trademark protection, the right to use the trademark, without territorial limitation, for all goods enumerated on the list of goods. However, unless expressly stipulated, the user shall have no exclusive right to exploitation, and, unless expressly authorized by the proprietor of the trademark, he shall not grant a further licence to a third party.

(2) The proprietor of the trademark may stipulate in the contract that the trademark shall be used only for goods having a specific quality. In such case, he shall have the right to control the quality of the goods, even if this is not mentioned in the contract.

(3) The contract of exploitation is void if its existence or application is liable to create confusion.

### *Article 10 Expiration of the Contract of Exploitation*

The contract of exploitation expires, with prospective effect, when the duration fixed in comes to an end, or if certain specified circumstances occur.

### *Article 11 Effect of the Rules Relating to the Contract of Exploitation*

(1) The parties, by mutual consent, may lay down terms that differ from the provisions relating to contracts of exploitation, where this is not prohibited by legislation.

(2) Matters relating to contracts of exploitation and not covered by this Law shall be governed by the provisions of the Civil Code.

## **CHAPTER IV Transfer of Rights**

### *Article 12*

(1) The successor in title to an enterprise obtains trademark protection along with enterprise.

(2) Trademark protection shall be assignable by contract. The contract of assignment is void where the successor in title has no capacity to acquire trademark protection, or where the assignment would cause the trademark to be excluded from protection, and especially where the assignment may involve the risk of misleading.

(3) Matters of transfer of rights, not covered by this Law, are governed by the provisions of the Civil Code.

## **CHAPTER V Infringement**

### *Article 13 Infringement of Trademark*

(1) Any party who uses another party's trademark or any confusingly similar mark, for goods on the list of goods, or for similar goods, commits trademark infringement.

(2) The proprietor of the trademark may enforce the following claims against the infringer, depending on the circumstances of the case:

- (a) the right to request the courts to declare the fact of infringement;
- (b) the right to seek an injunction against present and future infringement;
- (c) the right to demand satisfaction from the infringer by way of a declaration or by other appropriate means; if necessary, the declaration shall be made public by the infringer or at his expense;
- (d) the right to demand restitution of the enrichment obtained by the trademark infringement;
- (e) the right to seek a court order for seizure of the instruments used for the infringement and of the infringing products.

(3) The court may rule, depending on the circumstances of the case, that the seized instruments and products be divested of their infringing character or be auctioned pursuant to judicial procedure; in the latter case the court shall fix the sum to be collected.

(4) If the trademark infringement has caused material damage, damages shall be payable under the relevant provisions of the Civil Code. In assessing damages the impact of the trademark infringement on the entire economic activity of the enterprise shall be taken into consideration.

### *Article 14 Rights of the User in the Event of Trademark Infringement*

In the event of trademark infringement, the registered user may institute proceedings in his own name, provided he has previously called upon the proprietor of the trademark to take appropriate action in order to put a stop to the infringement and the latter has failed to take action within thirty days.

### *Article 15 Decision of Non-Infringement*

(1) Any party who fears that proceedings for trademark infringement will be instituted against him may, before the institution of such proceedings, request a decision ruling that the mark used or desired to be used by him does not infringe a particular trademark specified by him.

(2) A final decision of non-infringement bars the institution of infringement proceedings on the basis of the trademark concerned.

## **CHAPTER VI Expiration of Trademark Protection**

### *Article 16 Causes of Expiration*

Trademark protection shall expire:

- (a) when the period of protection expires without renewal, on the day following the date of expiration;
- (b) if the proprietor surrenders his trademark, on the day following receipt of the surrender, or an earlier date specified by the party surrendering the trademark;
- (c) if the trademark has not been used in the country for five years, on the date specified in the decision declaring expiration;
- (d) if an enterprise entitled to a trademark or an organization entitled to a collective trademark has ceased to exist without leaving a successor in title, on the day it ceases to exist;
- (e) if the trademark is declared null and void, with retroactive effect to the date of filling of the application ([Article 19/1](#)).

### *Article 17 Surrender of Trademark Protection*

The proprietor of a trademark may surrender trademark protection by written declaration addressed to the National Office of Inventions. If surrender affects the rights of the parties based on legislation, on decisions of an authority, or on a licence agreement, surrender shall take effect only with the consent of the parties concerned.

#### **Rule 3 (re Article 17 of the Law)**

The withdrawal of the surrender of trademark protection shall have no legal effect.

### *Article 18 Expiration for Lack of Use*

(1) The application of a trademark on goods, wrappers and in addition in business correspondence and advertising are deemed as adequate use of trademarks.

(2) Expiration of protection shall not be declared for lack of use if the proprietor shows adequate justification.

### *Article 19 Nullity of and Limitations on Trademark Protection*

(1) Trademark protection shall be declared null and void with retroactive effect to its origin, if the mark does not satisfy the requirements laid down in [Articles 1 to 3](#).

(2) If five years have elapsed since registration and the trademark has become known through effective use, nullity shall be declared only if such use is contrary to law or socially accepted moral rules ([Article 3\(1\)b](#)).

(3) If conditions of nullity exist only in relation to a part of the list of goods of the trademark, the list shall be limited accordingly.

## **PART II**

### **Procedure in Trademark Matters**

#### **CHAPTER VII**

#### **General Regulations for Procedure before the National Office of Inventions**

##### *Article 20 Powers of the National Office of Inventions*

The National Office of Inventions is empowered to

- (a) register trademarks;
- (b) renew protection of trademarks;
- (c) declare expiration of trademark protection;
- (d) declare nullity of trademark protection;
- (e) declare non-infringement;
- (f) deal with matters concerning the registration of trademarks.

##### *Article 21 Application of the General Provisions on Administrative Procedure*

(1) The National Office of Inventions shall proceed in trademark matters, subject to the exceptions prescribed in this Law, by applying Law No. IV of 1957 on the General Provisions on Administrative Procedure. In the cases specified in special legislation, the National Office of Inventions takes decisions in camera.

(2) The National Office of Inventions shall not set aside or modify its decisions on trademark matters taken on the merits. Its decisions shall not be invalidated or changed by a supervisory authority; they shall be without appeal.

(3) Decisions in trademark matters taken by the National Office of Inventions may be modified by the court under the provisions of [Article 37](#).

#### **Rule 4 (re Article 21 of the Law)**

(1) The National Office of Inventions shall deliberate in sitting in chamber:

- (a) in cancellation proceedings,
- (b) in procedure for declaration of expiration for lack of use,
- (c) in proceedings for a decision on non-infringement.

(2) The chamber shall consist of a president and two members designated from the employees of the National Office of Inventions by its President. The decisions of the chamber shall be taken by majority vote.

(3) Decisions of the National Office for Inventions shall enter into legal effect on the service thereof.

(4) Decisions of the kind listed in [Article 37 \(1\)](#) of the Law shall be considered as decisions on merits.

(5) In trademark matters the fees of witnesses and experts shall be decided in accordance with the provisions on witnesses and experts in court proceedings.

(6) Documents issued abroad have a conclusive evidence - in absence of an international agreement or of reciprocity - only if they have been legalized by the Hungarian diplomatic representation competent for the country of issue.

### *Article 22 Power of Attorney*

(1) The National Office of Inventions may order the party, where warranted, to authorize a patent attorney or an attorney at law to represent him jointly or alone.

(2) An alien shall be obliged to give power of attorney to an attorney at law, a patent attorney or other qualified person, in order to represent him in proceedings before the National Office of Inventions.

#### **Rule 5 (re Article 22 of the Law)**

The power of attorney shall be incorporated into an official document or a private deed constituting a conclusive evidence. For the validity of a power of attorney granted to a patent agent or attorney at law it is sufficient to have the signature of the principal.

### *Article 23 Registration of Trademark Matters*

(1) The National Office of Inventions shall keep a Register of the registered trademarks and rights and facts relative thereto, All relevant circumstances shall be recorded therein.

(2) Any right relative to trademark protection may be invoked against a third party who has acquired his right in good faith only if it is recorded in the Register.

(3) Information shall be recorded in the Register only on the basis of final decisions of the National Office of Inventions or of a court.

(4) The Trademark Register shall be accessible to anyone; copies of the information it contains shall be available on request.

(5) All decisions and all facts the publication of which is prescribed by legislation shall be published in the Official Gazette of the National Office of Inventions.

#### **Rule 6 (re Article 23 of the Law)**

(1) Any records in the Register concerning the rights and facts relating to trademarks shall be requested in writing from the National Office of Inventions. The request shall be accompanied by the underlying official document or private deed constituting a conclusive evidence.

(2) No records may be inscribed on the basis of an instrument which is invalid due to formal defects or which lacks any official approval required by law. Nor may records be inscribed if it becomes clear from the contents of the instrument that the legal declaration contained in the instrument is invalid.

(3) If the trademark has been assigned only in respect of a part of the list of goods (partial assignment), the National Office of Inventions shall record the assignment in the Register for the trademark in question, it shall cancel the goods assigned from the list of goods thereof, and shall record in the Register the trademark in favour of the successor in title in respect of the goods assigned. The period of protection of the registration in favour of the successor in title expires

simultaneously with the period of protection of the assignor and the protection of both trademarks can be renewed independently of each other.

(4) Records for the benefit of a third person concerning the trademark assigned shall be inscribed into the Register of the trademark assigned, too.

**Rule 7 (re Article 23 (1) of the Law)**

(1) The Trademark Register shall contain

- (a) the registration number and file number of the trademark,
- (b) the trademark; in case of coloured, solid (three-dimensional) trademark, an audio or visual signal this circumstance shall be indicated,
- (c) trade name (name), seat and sphere of activity of the owner of trademark,
- (d) the list of goods, indicating the international groups and grouped accordingly,
- (e) the representative's name and address,
- (f) the filing date,
- (g) priority of the trademark,
- (h) the date of decision ordering the registration (renewal) of the trademark,
- (i) the amount of the fee paid,
- (j) the expiration of trademark protection, the title and date of expiration,
- (k) on written request of the owner supported by an official document or a private deed constituting conclusive evidence, any fact or circumstance related to the trademark (e.g. assignment of the trademark, grant of right for use) being of significance in respect of trademark protection.

(2) Any person may inspect the Trademark Register and may request, on payment of a fee, a copy of the indications it contains.

**Rule 8 (re Article 23 (5) of the Law)**

The following shall be published in the Official Gazette of the National Office of Inventions:

- (a) registration number and file number of the registered trademark, the trademark, trade name (name), seat and sphere of activity of the trademark owner, the list of goods, indicating the international classes and grouped accordingly, the representative's name and address, the filing date, the priority of trademark and the date of decision ordering registration of the trademark,
- (b) the expiration of trademark protection, the title and date of expiration and the registration number of the trademark,
- (c) any other record in the Register and the registration number of the trademark.

*Article 24 Restoration of Rights*

In trademark proceedings - unless prohibited by legislation - a request for the restoration of rights can be submitted within fifteen days from the unobserved time limit, or the last day of the unobserved period.

**Rule 9 (re Article 24 of the Law)**



(1) In trademark matters the party shall be accorded a time limit of at least thirty days which may be extended on request before the expiration of the period; a time limit longer than three months and more than three extensions of the time limit may be accorded only in special cases.

(2) In trademark matters the absence of the duly summoned parties shall not prevent the hearing from being held and the decision from being taken. If it is necessary to hear the party in absence in order to clarify the facts of the case, the hearing shall be postponed.

(3) The restoration of rights is excluded in the event of non-compliance with the time limit prescribed for submitting the declaration of priority, and for filing subsequently the priority document ([Article 26 \(3\)](#) of the Law), as well as for filing the request for the renewal of trademark protection ([Article 15](#)).

(4) If the National Office of Inventions grants the request for restoration of rights, the acts of the party in default having remedied the omissions shall be considered as if they had been performed within the time limit unobserved and the hearing held on the date unobserved shall be repeated to the extent required. In accordance with the outcome of the new hearing, a decision shall be made also as to whether the decision taken at the hearing unobserved should hold valid or should be revoked in whole or in part.

### *Article 25 Use of Languages*

In trademark proceedings, documents in foreign languages may also be submitted; the National Office of Inventions may, however, require a translation into the Hungarian language.

#### **Rule 10 (re Article 25 of the Law)**

The National Office of Inventions may request, if required, the legalization of the translation into Hungarian.

## **CHAPTER VIII Trademark Registration Procedure**

### *Article 26 Application for the Registration of a Trademark*

(1) The procedure for trademark registration shall begin with the filing of an application with the National Office of Inventions.

(2) The application shall consist of the claim, information concerning the required data and other enclosures. Detailed regulations concerning the formalities to be complied with in trademark applications shall be published by the President of the National Office of Inventions in the Official Gazette in the form of a notice.

(3) Rights can be based only on an application which contains at least the name and address of the applicant as well as the mark to be registered and the list of goods.

### *Article 27 Priority*

(1) The date of priority giving rise to a right of priority shall be

- (a) generally, the day on which the application for registration of a trademark arrived at the National Office on Inventions (application priority);
- (b) in cases defined by special legislation, the filing date of the foreign application (Convention priority);

(c) in cases determined by an announcement of the President of the National Office of Inventions published in the Official Gazette, the day of the exhibition of the trademark (exhibition priority);

(2) The order of priority of applications which arrived on the same day shall be determined by their serial number in the list of applications.

(3) The priority defined in [paragraph \(1\) \(b\)](#) and [\(c\)](#) can be claimed only by the party who has submitted his declaration of priority simultaneously with the trademark application. The document establishing priority shall be submitted - on pain of loss of priority right - within three months of the filing of the application.

#### **Rule 11 (re Article 27 (1) (c) of the Law)**

(1) Priority by exhibition may be claimed only by those who submit their priority declaration therefor within six months from the first day of the exhibition of the trademark simultaneously with filing the trademark application.

(2) A certificate from the management of the exhibition shall be attached to the request for application, certifying the existence of the exhibition and its date, as well as the exhibited trademark. The certificate of exhibition and the testimony of identity may be issued only during the period of the exhibition and only as long as the trademark is to be found in the exhibition area.

#### *Article 28 Formal Examination of the Trademark Application*

(1) The National Office of Inventions shall examine the trademark application in order to ascertain whether it complies with the requirements prescribed in [Article 26 \(2\)](#) and [\(3\)](#).

(2) if the trademark application is so incomplete that no right can be based on it ([Article 26 \(3\)](#)), the application shall be rejected without further procedure.

(3) If the trademark application does not comply with the requirements set forth in [Article 26 \(2\)](#), the applicant shall be invited to remedy the defects. If the invitation is not complied with, the application for a trademark shall be rejected.

#### *Article 29 Substantive Examination of the Trademark Application*

(1) The National Office of Inventions shall examine the substance of the trademark application in regard to the following points:

- (a) whether the mark complies with the requirements prescribed in [Articles 1 to 3](#); and
- (b) whether the application benefits from the claimed right of priority.

(2) If the examination as to substance reveals defects, the applicant shall be invited to remedy the same according to their character or to give an explanation.

(3) If the National Office of Inventions finds at the expiration of the delay set that the defects were not remedied, or in spite of this, that the sign is not fit for registration, it shall reject the application.

#### **Rule 12 (re Article 29 of the Law)**

A trademark application may be refused under the circumstance if the applicant has been invited to remedy the insufficiencies or to make a declaration in respect thereof.

#### *Article 30 Modification*

(1) The applicant may not modify the trademark shown in the application.

(2) The list of goods of the trademark may not be enlarged.

### *Article 31 Registration of the Trademark*

Depending on the results of the examination as to substance, the National Office of Inventions shall register the trademark or reject the application.

#### **Rule 13 (re Article 31 of the Law)**

(1) The decision ordering the registration of trademark shall contain

- (a) the file number and the registration number,
- (b) the trade name (name), seat of the owner of trademark,
- (c) the filing date,
- (d) the priority data,
- (e) the date of the decision ordering the registration,
- (f) the signature and seal of the National Office of Inventions.

(2) An abstract containing all the data of the trademark in the Trademark Register shall be attached to the decision.

### *Article 32 Publication of the Trademark*

The National Office of Inventions issues a trademark certificate. The trademark shall be entered in the Register of Trademarks and published in the Official Gazette of the National Office of Inventions.

#### **Rule 14 (re Article 32 of the Law)**

The trademark document shall be issued to the trademark owner together with the decision ordering the registration. The document shall contain:

- (a) the registration number of the trademark and the file number,
- (b) the trade name (name) and seat of the trademark owner,
- (c) the filing date,
- (d) the priority data,
- (e) the signature by the President of the National Office of Inventions or by his Deputy,
- (f) the seal of the National Office of Invention.

## **CHAPTER IX**

### **Procedure in the National Office of Inventions in Matters of Registered Trade Marks**

#### *Article 33 Renewal Procedure*

(1) The proprietor of the trademark shall apply to the National Office of Inventions for renewal of trademark protection, giving the registration serial number.

(2) Renewal shall not contain modifications of the final version of the trademark registered.

(3) Renewal of trademark protection shall be recorded in the Register of Trademarks and published in the Official Gazette of the National Office of Inventions.

### **Rule 15 (re Article 33 of the Law)**

The renewal of trademark protection may be requested at the earliest in twelve months before the expiration of the period of protection and at the latest within six months from the date of expiration.

#### *Article 34 Declaration of the Expiration of Trademark Protection*

Expiration of trademark protection, as prescribed in [Article 16 \(b\) to \(d\)](#), shall be declared by a decision of the National Office of Inventions, which shall be recorded in the Register of Trademarks and published in the Official Gazette of the Office.

#### *Article 35 Procedure for Declaration of Nullity and of Expiration for Lack of Use*

(1) Any party may request that protection of a trademark be declared null and void, or expired for lack of use. The request with its appendices shall be submitted in two copies to the National Office of Inventions. The request shall state the grounds upon which it is based. The originals of the documents in proof or certified copies thereof shall be appended to the request.

(2) The National Office of Inventions shall forward the request with its appendices to the proprietor of the trademark and shall invite him to make a statement. Following the written preparatory work, the National Office of Inventions shall give its decision on nullity or expiration in a hearing.

(3) If the request is withdrawn, proceeding may be continued ex officio. In the proceeding no settlement is permitted.

(4) The losing party shall be required to pay the costs of the procedure.

(5) Expiration shall be recorded in the Register of Trademarks and published in the Official Gazette of the National Office of Inventions.

### **Rule 16 (re Article 35 of the Law)**

(1) Where the request for cancellation, resp. for the declaration of expiration for lack of use does not comply with the requirements provided for by law, the party submitting the request shall be invited to remedy the insufficiencies. If he fails to do so, the request shall be rejected, but the procedure may be continued ex officio.

(2) Requests more than one for cancellation, resp. for the declaration of expiration for lack of use shall be dealt with together.

(3) The legal binding decision on the merits rejecting the request excludes the institution of a further action for cancellation or for the declaration of expiration for lack of use against the same trademark on the same factual grounds.

#### *Article 36 Proceeding for a Decision on Non-Infringement*

(1) The petitioner shall submit his request for a decision on non-infringement to the National Office of Inventions, showing the mark used or to be used as well as the list of goods and specifying the trademark in question.

The National Office of Inventions shall give its decision on non-infringement in a hearing.

(2) The costs of the procedure for a decision on non-infringement shall be borne by the petitioner.

### **Rule 17 (re Article 36 of the Law)**

(1) A request for a decision on non-infringement and its annexes - including the copy of the register its items of the trademark indicated - shall be submitted to the National Office of Inventions in Duplicate.

(2) A request for a decision on non-infringement may be submitted with respect to one trademark only.

(3) The National Office of Inventions shall issue the request and its annexes to the trademark owner to enable him to make a declaration and shall take a decision on the question of non-infringement at a hearing after making the written preparations.

## **CHAPTER X**

### **Court Procedure in Trademark Cases**

#### *Article 37 Review of Decisions Taken by the National Office of Inventions*

(1) On request, the court may review the decisions of the National Office of Inventions taken with regard to :

- (a) registering the trademark or any entry in the Register;
- (b) declaration of expiration of trademark protection;
- (c) declaration of nullity of trademark protection;
- (d) non-infringement.

(2) Any person who took part, as a party, in the proceedings at the National Office of Inventions or who has a legal interest in review of the decision, or the procurator, may request that the decision be reviewed.

(3) The period within which such a request shall be submitted shall be thirty days from the day on which the party was notified of the decision.

(4) The request shall be submitted either to the National Office of Inventions or to the court. The National Office of Inventions shall forward the request, together with the relevant documents, within eight days.

#### **Rule 18 (re Article 37 of the Law)**

This decree shall enter into force on July 1, 1970. In matters already in progress an in respect of trademarks already registered the provisions of the Trademark Law and this Decree shall be applied as of July 1, 1970. In case of the first request on renewal after entry into force of the Trademark Law the rules on the formalities of trademark application shall be applied mutatis mutandis.

#### *Article 38 Jurisdiction*

(1) Court proceedings for a review of decisions taken by the National Office of Inventions shall be under the exclusive jurisdiction of the Metropolitan Court of Budapest.

(2) The Supreme Court shall have jurisdiction to deal with appeals lodged against decisions of the Metropolitan Court of Budapest.

#### *Article 39 Composition of the Court*

In such proceedings, the bench of the Metropolitan Court of Budapest shall consist of three professional judges.

### *Article 40 Application of the Provisions of the Code of Civil Procedure*

(1) In cases involving request for the review of a decision on a trademark, the Court shall proceed in accordance with the rules of “non-contentious” civil procedure, with the departures mentioned in this Chapter. The procurator shall enjoy all rights which he otherwise has under such procedure.

(2) The court of first instance shall take evidence in accordance with the provisions of the Code of Civil Procedure and shall conduct a trial. If the case can be settled on the basis of documentary evidence, the court may take a decision without a trial, but the party, on request, shall be heard.

(3) The decision taken by the court of first instance shall be dealt with by the court of appeal in accordance with the provisions of the Code of Civil Procedure: the court may also take evidence within certain limits.

### *Article 41 Incompatibility*

(1) In addition to the persons listed in [Articles 13 to 15](#) and [21](#) of the Code of Civil Procedure, no one shall consider the case and act as judge if he

- (a) participated in taking the decision at the National Office of Inventions;
- (b) is a relative, former husband or wife — as stated in [Article 13 \(2\)](#) of the Code of Civil Procedure — of a person mentioned under [\(a\)](#) above.

(2) The provisions of [paragraph \(1\)](#) shall also apply to court reporters and experts.

### *Article 42 Restoration of Rights*

The provisions of [Article 24](#) shall apply to claims for restoration of rights in proceedings of the Court.

### *Article 43 Representation*

In addition to the persons listed in [Article 67 \(1\)](#) of the Code of Civil Procedure, patent attorneys may also act as representatives.

### *Article 44 Decisions*

(1) If the court changes a decision taken in a trademark case, the court judgment shall replace the decision of the National Office of Inventions.

(2) The court shall vacate the decision and order the National Office of Inventions to start new proceedings if a person against whom incompatibility may be invoked, participated in the taking of the decision or if important rules of procedure were infringed during the proceedings which cannot be remedied by the court.

### *Article 45 Review to Safeguard Legality*

As to the review to safeguard legality, final decisions dismissing an application for trademark registration, declaring expiration of protection, or declaring nullity of trademark protection, cannot be set aside on the merits, and the Supreme Court shall be restricted to a ruling of error of Law.

## **CHAPTER XI Trademark Litigation**

## *Article 46 Jurisdiction*

(1) Court proceedings for trademark infringement shall be under the exclusive jurisdiction of the Metropolitan Court of Budapest.

(2) In such proceedings, the bench of the Metropolitan Court of Budapest shall be composed as prescribed in [Article 39](#).

(3) In the court proceedings referred to in [paragraph \(1\)](#), the provisions of the Code of Civil Procedure shall apply as well as the provisions of [Articles 41](#) and [43](#) of this Law.

(4) In any other trademark litigation not mentioned in [paragraph \(1\)](#) the courts of comitats (or the Metropolitan Court) or the economic commission of arbitration shall proceed in accordance with the general rules.

## **PART III Final Provision**

## *Article 47*

(1) This Law shall enter into force on July 1, 1970.

(2) Simultaneously with the entering into force of this Law, the following shall be repealed:

- the provisions of Law No. II of 1890 and Law No. XLI of 1895 on the protection of trademarks still in force, legislation completing and amending those Laws (provisions concerning trademarks of Law No. XI of 1913, Laws No. XII of 1913, No. XXII of 1921, and No. XVII of 1932, Decree No. 20700/1948 (XI. 24) of the Minister of Industry), as well as the provisions implementing that legislation;
- [Article 6 \(1\)](#) and [\(4\)](#), [Articles 7 to 18](#) of Decree 121/1950 (IV. 25) MT of the Council of Ministers concerning compulsory classification of goods produced in the country and the marking of certain goods.

(3) The President of the National Committee of Technical Development and the Minister of Justice shall be authorized to issue, by decree and in cooperation with the President of the National Office of Inventions, the transitional provisions concerning the entry into force of this Law and other rules of implementation.

(4) The Minister of Justice shall be authorized to issue, in cooperation with the President of the National Committee of Technical Development and with the President of the National Office of Inventions, detailed rules on court procedure in trademark cases.