

Trademark Amendment Act (Act No. 7290 of December 31, 2004)

Article 2 Definitions

(1) The definitions of terms used in this Act are as follows:

- (i) "trademark" is defined as either of the following (referred to as "a mark") that is used on goods related to the business of a person who conducts business activities, such as producing, processing, certifying or selling such goods, to distinguish them from the goods of others;
 - (a) a sign, a character, a figure, a three-dimensional shape or any combination of these; or
 - (b) any combination of color with any of the items of subparagraph (a) of this paragraph;
- (ii) "service mark" means a mark used by a person who conducts a service business to distinguish the service business from the service businesses of others;
- (iii) "collective mark" means a mark intended to be used by a legal entity founded in association with a person who conducts business activities such as producing, manufacturing, processing, certifying or selling goods and with a person who conducts a service business; members of the legal entity can use the mark for their goods and services;
- (iii**bis**) "geographical indication" means an indication that identifies a good as originating in a certain region where a given quality, reputation or other characteristic of the good is essentially attributable to that region;
- (iii**iter**) "homonymous geographical indication" means a geographical indication that has the same pronunciation as another geographical indication on the same type of goods, but which refers to a different geographical region;
- (iii**quater**) "collective mark for a geographical indication" means a collective mark intended to be used by a legal entity composed solely of persons who conduct business activities such as producing, manufacturing, processing, or selling goods; members of the legal entity can use the collective mark for their goods;
- (iv) "business emblem" means a mark used by a person conducting a nonprofit business to indicate the person's business;
- (v) "registered trademark" means a trademark for which trademark registration has been granted; and
- (vi) "use of a trademark" means any of the following acts:
 - (a) using trademarks on goods or their packaging;
 - (b) selling or delivering goods or their packaging on which trademarks have been used, or displaying, exporting or importing such goods or their packaging for the purposes of selling or delivering; or
 - (c) using a trademark on advertisements, price lists, business papers, signboards or labels, or displaying or distributing them.

- (2) Acts of using a trademark on goods or their packaging, advertisements, signboards or labels under paragraph (1)(vi)(a) to (c) of this Article include the use of goods or their packaging, advertisements, signboards or labels as shapes of marks.
- (3) Except as otherwise stipulated in this Act, the provisions in this Act that are related to trademarks apply to service marks, collective marks and business emblems.

Article 3bis Persons Entitled to Register a Collective Mark

A legal entity founded in association with a person who conducts business activities such as producing, manufacturing, processing, certifying or selling goods and with a person who conducts a service business is entitled to register a collective mark. Whenever a collective mark is used as a geographical indication, use of the mark is limited to legal entities composed solely of persons who conduct business activities such as producing, manufacturing, processing or certifying goods.

Article 6 Requirements for Trademark Registration

- (1) Trademark registration may be obtained except in any of the following cases:
 - (i) where the mark consists solely of a sign indicating, in a common way, the usual name of the goods;
 - (ii) where the mark is customarily used on the goods;
 - (iii) where the mark consists solely of a sign indicating, in a common way, the origin, quality, raw materials, efficacy, use, quantity, shape (including the shape of the packaging) or price of the goods, or the method or time of manufacturing, processing or using them;
 - (iv) where the mark consists solely of a sign indicating a conspicuous geographical name, an abbreviation of a conspicuous geographical name or a map;
 - (v) where the mark consists solely of a sign indicating, in a common way, a common surname or name of a legal entity;
 - (vi) where the mark consists solely of a very simple and commonplace sign; or
 - (vii) in addition to the cases mentioned in subparagraphs (i) to (vi) of this Article, where the mark does not enable consumers to recognize the person whose goods are indicated by the mark.
- (2) Even if a trademark that falls under paragraphs (1)(iii) to (vi) of this Article, where, as a result of using the trademark before the application for registration under Article 9 of this Act, consumers are easily able to recognize the person whose goods are indicated by the trademark, the trademark may be registered with the designated goods for which the trademark has been used; the same applies to designated goods and supplementary designated goods as defined in Articles 10(1) and 47(2)(iii) of this Act.
- (3) Notwithstanding marks that are subject to paragraph (1)(iii) of this Article (which is limited to the producing area) or paragraph (1)(iv) of this Article, whenever a mark is used as a geographical indication on specific goods, a collective mark for a geographical indication may be registered for designated goods that use the geographical indication.

Article 7 Unregistrable Trademarks

- (1) Notwithstanding Article 6, trademark registration may not be obtained in any of the following cases:
- (i) trademarks that are identical or similar to the following: the national flag, the national emblem, as well as colors, medals, decorations or badges of the Republic of Korea; the national flags or emblems of foreign nations; the medals, decorations or badges of the countries party to the Paris Convention for the Protection of Intellectual Property (referred to as "the Paris Convention") or of the members of the World Trade Organization or of the contracting parties to the Trademark Law Treaty; the titles or marks of the Red Cross, Olympic organizations or well-known international organizations; titles or marks that are identical or similar to seals or signs of the Republic of Korea, or of the countries party to the Paris Convention, the members of the World Trade Organization, the contracting parties to the Trademark Law Treaty or the public organizations of these that are used for indicating supervision or certification;
 - (ii) trademarks that falsely indicate a connection with, or that criticize, insult or are liable to defame, any nation, race, ethnic group, public organization, religion or well-known deceased person;
 - (iii) trademarks that are identical or similar to well-known marks that indicate a nonprofit business of a State, a public organization or its agencies or public corporations, or a nonprofit public service; however, this provision does not apply where a nonprofit business of a State, a public organization or its agencies or public corporations, or a nonprofit public service apply to register such marks as their business emblems;
 - (iv) trademarks that are contrary to public order or morality;
 - (v) trademarks comprising a mark that is identical or similar to a medal, certificate of merit or decoration awarded at an exhibition held by or with the authorization of the Government of the Republic of Korea or at an exhibition held by or with the authorization of the government of a foreign country, unless a person who has been awarded a medal, certificate of merit or decoration has used it as part of the trademark on the same goods for which the medal, certificate of merit or decoration was awarded at the exhibition;
 - (vi) trademarks containing the name, title or trade name, portrait, signature or seal, famous pseudonym, professional name or pen name of well-known persons, or an abbreviation of these, unless the consent of the person concerned has been obtained;
 - (vii) trademarks that are identical or similar to another person's registered trademark (excluding a registered collective mark for a geographical indication) when the registration was applied for before the filing date of the trademark applications concerned and when the trademarks are to be used on goods identical or similar to the designated goods;
 - (vii**bis**) trademarks that are identical or similar to another person's registered collective mark for a geographical indication when the registration was applied for before the filing date of the trademark applications concerned and when the trademarks are to be used on goods identical or similar to the designated goods;
 - (viii) trademarks that are identical or similar to another person's registered trademark (excluding a registered collective mark for a geographical indication) when not more than a year has elapsed since the date on which the trademark right expired (that is,

the date on which a trial decision became final for a trial decision invalidating a trademark registration) and when the trademarks are to be used on goods that are identical or similar to the designated goods;

- (viii*bis*) trademarks that are identical or similar to another person's registered collective mark for a geographical indication when not more than a year has elapsed since the date on which the registered collective mark for a geographical indication right expired (or the date on which a trial decision became final for a trial decision invalidating a collective mark for a geographical indication) and when the trademarks are to be used on goods identical to the designated goods;
 - (ix) trademarks that are identical or similar to another person's trademark when that other person's trademark (excluding a geographical indication) is well known among consumers to indicate or resemble the other person's goods, and when the trademarks are to be used on goods that are identical or similar to such goods;
 - (ix*bis*) trademarks that are identical or similar to another person's geographical indication when that other person's geographical indication is well known among consumers to indicate or resemble a certain region's goods and when the trademarks are to be used on goods that are identical or similar to such goods;
 - (x) trademarks that are liable to cause confusion with the goods or services of another person because consumers easily recognize the trademark as designating the goods or services of the other person;
 - (xi) trademarks that are liable to mislead or deceive consumers on the quality of the goods;
 - (xii) trademarks that are identical or similar to a trademark (excluding a geographical indication) that consumers inside or outside the Republic of Korea easily recognize as indicating the goods of a particular person, and which are used to obtain unjust profits or to inflict harm on a particular person and so on;
 - (xii*bis*) trademarks that are identical or similar to a geographical indication that consumers inside or outside the Republic of Korea easily recognize as indicating the goods of a certain region, and which are used to obtain unjust profits or to inflict harm on a legitimate users of the geographical indication and so on;
 - (xiii) trademarks that consist solely of three-dimensional shapes that are essential for securing the functions of goods, or their packagings, that require trademark registration; or
 - (xiv) trademarks that consist of a geographical indication or include a geographical indication of the origin of wines or spirits in a member state of the World Trade Organization, and which are used for wines, spirits or other similar goods. However, this provision does not apply if a legitimate user of a geographical indication applies to register a collective mark for a geographical indication under Article 9(3) of this Act and the relevant goods are the designated goods.
- (2) Where a trademark falls under paragraphs (1)(vi), (ix), (ix*bis*) and (x) of this Article, the respective provisions do not apply if the trademark does not fall under the respective subparagraphs when the applicant applies for trademark registration.
- (3) Where a trademark falls under paragraph (1)(vii), (vii*bis*), (viii) and (viii*bis*) of this Article, the respective provisions apply if the trademark falls under the respective subparagraphs when the applicant applies for trademark registration (or if the registered trademark of another

person is invalidated under Article 71(3) of this Act), unless the owner of the trademark and the applicant for registration of the trademark (referred to as “the applicant”) are the same person after filing the application.

- (4) Paragraphs (1)(viii) and (viii*bis*) of this Article do not apply to the following cases:
- (i) where the registered trademark has not been used for more than one year retroactively from the date on which the trademark right was extinguished;
 - (ii) where a rightful applicant applies to register the trademark, after a decision on invalidation or revocation becomes final because the registered trademark violates paragraphs (1)(vi), (ix), (ix*bis*), (x), (xii) and (xii*bis*) of this Article or Articles 8 or 73(1)(vii) of this Act; or
 - (iii) where an applicant applies to register the trademark after the period of six months as prescribed in Article 43(2) of this Act has elapsed without applying to renew the term of the registered trademark.
- (5) Where a trial for the cancellation of a trademark registration is requested under Article 73(1)(ii), (iii), and (v) to (xii) of this Act, and where any of the following subparagraphs occurs after the date of requesting the cancellation trial, the owner of the trademark right and any person using the trademark may not obtain trademark registration for a trademark that is identical or similar to a registered trademark extinguished with respect to goods (the collective mark for geographical indication is limited to an identical goods) that are identical or similar to the designated goods of the extinguished registered trademark, unless three years have elapsed since the day on which each of the following subparagraphs occurs:
- (i) where the trademark right has been extinguished because the term has expired;
 - (ii) where a person with the trademark right abandons the trademark right or some of the designated goods; or
 - (iii) where the trial decision on the cancellation of a trademark registration has become final.
- (6) Paragraph (1)(vii*bis*) (viii*bis*) and (ix*bis*) may not be applicable between the collective marks for homonymous geographical indication.

Article 8 First-to-File Rule

- (1) Where two or more applications for trademark registration related to identical or similar trademarks that are to be used on identical or similar goods are filed on different dates, only the applicant filing the application with the earlier filing date may obtain trademark registration for the trademark.
- (2) Where two or more applications for trademark registration related to identical or similar trademarks that are to be used on identical or similar goods are filed on the same date, a consultation will be held among all the applicants and the person agreed upon by all the applicants may obtain trademark registration for the trademark. If no agreement is reached or no consultation is possible, the trademark registration may be obtained only by the applicant chosen by a lottery conducted by the Commissioner of the Korean Intellectual Property Office.
- (3) Where an application for trademark registration has been abandoned, withdrawn or invalidated, or where an examiner's decision or trial decision to refuse trademark registration

has become final, the application, for the purposes of paragraphs (1) and (2) of this Article, is deemed never to have been filed.

- (4) In cases under paragraph (2) of this Article, the Commissioner of the Korean Intellectual Property Office shall instruct the applicants to give notice of any agreement they reach and to report the terms of their agreement. If they do not submit a report within the designated period, the applicants are deemed not to have reached an agreement within the meaning of paragraph (2) of this Article.
- (5) Where a trial for the cancellation of a registered trademark is requested under Article 73(1)(iii) of this Act and where each of the following subparagraphs occurs after the day on which the cancellation trial is requested, only the person requesting the cancellation trial may obtain trademark registration for the trademark that is identical or similar to the registered trademark that has been extinguished because of goods that are identical or similar to the designated goods of the registered trademark that has been extinguished for a period of three months after the day on which each of the following subparagraphs occurs:
 - (i) when the period under Article 43(2) of this Act expires;
 - (ii) when a person with the trademark right abandons the trademark right or some of the designated goods; or
 - (iii) when the trial decision on the cancellation of a trademark registration has become final.
- (6) Paragraphs (1) and (2) of this Article do not apply in either of the following cases:
 - (i) where the mark in two or more applications to register a collective mark for a geographical indication is identical or similar to a mark on non-identical goods; or where the mark in an application to register a collective mark for a geographical indication and a similar or identical mark in an application to register a trademark are both identical or similar to a mark on non-identical goods; or
 - (ii) where the mark in two or more applications to register a collective mark for a geographical indication is a homonymous collective mark for a geographical indication.
- (7) Paragraph (5) of this Article does not apply in either of the following cases:
 - (i) where the goods referred to in an application to register a trademark are not identical to the designated goods and the mark in the application is similar or identical to the expired collective mark for a geographical indication; or
 - (ii) where the mark in an application to register a collective mark for a geographical indication is applicable to a collective mark for a geographical indication with a lapsed registration and a homonymous collective mark for a geographical indication.

Article 9 Application for Trademark Registration

- (1) A person seeking to register a trademark shall file an application with the Commissioner of the Korean Intellectual Property Office, stating the following:
 - (i) the name and address of the applicant (and, if a legal entity, the name and address of the business);

- (ii) the name and residential or business address of the agent, if any (and, if the agent is a patent legal entity, the name and address of the business and the name of the designated patent attorney);
 - (iii) the trademark;
 - (iv) the list of designated goods and the class of goods;
 - (v) the matters prescribed under Article 20(3) (only when claiming a priority right);
 - (vi) deleted;
 - (vii) the matters prescribed by ordinance of the Ministry of Commerce, Industry and Energy.
- (2) A person seeking to register a mark made up of a three-dimensional shape comprising any combination of signs, characters, figures or colors (referred to as "a three-dimensional trademark") shall indicate on the application that the mark is a three-dimensional trademark.
- (3) A person seeking to register a collective mark shall file an application to register a collective mark stating the matters mentioned in the subparagraphs of paragraph (1) of this Article accompanied by the articles of association that govern the use of the collective mark, as prescribed by Presidential Decree. If the person is seeking to register the collective mark for a geographical indication under Article 2(1)(iii~~quater~~) of this Act, the person shall describe the purpose of the collective mark in the application and submit the application along with documentary evidence that the mark complies with the definition of a geographical indication under Article 2(1)(iii~~bis~~) of this Act.
- (4) A person seeking to register a business emblem shall file an application to register a business emblem stating the matters mentioned in the subparagraphs of paragraph (1) of this Article accompanied by documents proving the existence of a business management.

Article 17bis Submission of Amended Articles of Association

Where the articles of association need to be amended, an applicant for a collective mark can submit the amended articles of association to the Commissioner of the Korean Intellectual Property Office within the period determined under Articles 14(2) or 15 of this Act.

Article 22bis Request etc. for Inspection of a Trademark by a Specialized Searching Agency

- (1) Where a specialized searching agency is considered necessary for the examination of an application for trademark registration, the Commissioner of the Korean Intellectual Property Office may request such an agency to inspect trademarks.
- (2) When considered necessary for the examination of an application for trademark registration, the Commissioner of the Korean Intellectual Property Office may request assistance or advice from a competent administrative agency, a person with vast knowledge and experience in trademarks, or interested persons.
- (3) Where the items of an application for a collective mark for a geographical indication are subject to the Agricultural Products Quality Control Act or the Fisheries Products Quality Control Act, the Commissioner of the Korean Intellectual Property Office shall obtain an opinion on as to the mark can be considered a geographical indication from the relevant minister of either the Ministry of Agriculture and Forestry or the Ministry of Maritime Affairs and Fisheries.
- (4) Criteria for the specialized searching agency and requests for the search of trademarks under paragraph (1) of this Article are prescribed by Presidential Decree.

Article 23 Decision to Refuse Trademark Registration and Notification of Reasons for Refusal

- (1) An examiner shall refuse trademark registration for an application for trademark registration under any of the following circumstances:
 - (i) where the trademark is unregistrable under Articles 3, 6 to 8, 10(1), 12(2) (second sentence), (5) and (7) to (9) of this Act or Article 25 of the Patent Act as applied under Article 5 of this Act;
 - (ii) where the trademark violates a treaty;
 - (iii) where the trademark is identical or similar to a trademark registered in the territory of a country that is a party to a treaty and has been filed by a person who is or was an agent or a representative of the owner of the trademark, within the one-year period before the filing date, without the owner's authorization, for designated goods that are identical or similar to the designated goods covered by the owner's trademark, if an opposition has been filed or information has been submitted under Article 22(3) of this Act by the owner; or
 - (iv) where the trademark does not conform to the definition of a mark under Article 2(1)(i) to (iii) or (iv) of this Act; or where, in the case of a collective mark for a geographical indication, the geographical indication and the mark do not conform to the definitions of a geographical indication or mark under paragraphs (iibis) and (iiiater) of the Article 2(1) of this Act; or
 - (v) where the applicant's articles of association prohibit a person who conducts business activities such as producing, processing or selling goods that display a geographical indication from joining or subscribing to the association, or where the articles of

association prescribe conditions for subscription that are too difficult for the person to fulfill and so on; or

- (vi) where the applicant's articles of association, referred to in Article 9(3) of this Act, fail to mention all of the matters that govern the use of the collective mark as prescribed by Presidential Decree.
- (2) When refusing trademark registration under paragraph (1) of this Article, an examiner shall notify the applicant of the reasons for refusal and give the applicant an opportunity to submit a written statement of arguments within a designated period.

Article 33 *Mutatis Mutandis* Application of the Patent Act

Articles 142, 148(1) to (5) and (7), and 157 of the Patent Act and Articles 143, 299 and 367 of the Civil Procedure Act apply *mutatis mutandis* to the examination of applications for the registration of trademarks.

Article 49 *Mutatis Mutandis* Application of the Patent Act

- (1) Articles 10(1), 13, 14, 16, 17, 22 and 30 to 32 of this Act and Article 148(i) to (v) and (vii) of the Patent Act apply *mutatis mutandis* to an application to renew the term of a registered trademark.
- (2) Articles 10(1), 13, 14, 16, 17, 22 and 30 to 32 of this Act and Article 148(i) to (v) and (vii) of the Patent Act apply *mutatis mutandis* to an application to register the reclassification of goods.
- (3) Articles 9bis, 10(1), 13 to 17bis, 20 to 22 and 24 to 32 of this Act, Articles 142, 148(i) to (v) and (vii) and 157 of the Patent Act and Articles 143, 299 and 367 of the Civil Procedure Act apply *mutatis mutandis* to applications for supplementary registration of designated goods.

Article 51 Limitations of a Trademark Right

- (1) The effects of a trademark right(excluding a collective mark right for a geographical indication) do not extend to the following:
 - (i) trademarks that indicate in a common way a person's own name, title or trade name, portrait, signature, seal, famous pseudonym, professional name or pen name, or a famous abbreviation of these; however, this provision does not apply where, after registration of the trademark right, the mark has been used with the intention of violating the rules of fair competition;
 - (ii) trademarks that indicate in a common way the common name, origin, place of sale, quality, raw materials, efficacy, use, quantity, shape or price of the designated goods concerned or similar goods, or the method or time of manufacturing, processing or using such goods; and
 - (iii) trademarks customarily used on the designated goods or goods similar to the designated goods, and marks consisting of a famous geographical name or its abbreviations or a map.
 - (iv) trademarks that consist solely of three-dimensional shapes that are essential to secure the functions of the designated goods of a registered trademark or their packaging.

- (2) The effects of a collective mark right for a geographical indication do not extend to any of the following:
- (i) trademarks that fall under paragraphs (1)(i), (ii) (excluding origin) and (iv) of this Article;
 - (ii) trademarks customarily used for goods that are identical to the designated goods of a registered collective mark for a geographical indication;
 - (iii) geographical indications or homonymous geographical indications used on goods which are identical to the designated goods of a registered collective mark for a geographical indication, and which are used by a person who conducts business activities such as producing, manufacturing, processing or certifying such goods; or
 - (iv) registered trademarks used by the owner, exclusive licensee or nonexclusive licensee on the designated goods of a trademark which has been registered with an earlier filing date than any other trademark application and which includes a geographical indication that is identical or similar to a registered collective mark for a geographical indication.

Article 66 Acts Considered to be an Infringement

- (1) The following acts are considered to infringe an exclusive license or a trademark right (excluding a collective mark for a geographical indication): A trademark similar to the registered trademark
- (i) acts of using a trademark that is identical to another person's registered trademark on goods that are similar to the designated goods, or using a trademark similar to the registered trademark of another person on goods that are identical or similar to the designated goods;
 - (ii) acts of delivering, selling, counterfeiting, imitating or possessing a trademark that is identical or similar to the registered trademark of another person in order to use or cause a third party to use the trademark on goods that are identical or similar to the designated goods;
 - (iii) acts of manufacturing, delivering, selling or possessing instruments in order to counterfeit or imitate another person's registered trademark or to cause a third party to counterfeit or imitate the trademark; and
 - (iv) acts of possessing goods for the purpose of assignment or delivery when those goods are identical to the designated goods and display a trademark that is identical or similar to another person's registered trademark
- (2) The following acts are considered to infringe a collective mark for a geographical indication:
- (i) acts of using a trademark (excluding a homonymous collective mark for a geographical indication) that is similar to another person's registered collective mark for a geographical indication on goods that are identical to the designated goods;
 - (ii) acts of delivering, selling, counterfeiting, imitating or possessing a trademark that is identical or similar to another person's registered collective mark for a geographical indication in order to use or cause a third party to use the trademark on goods that are identical or similar to the designated goods;

- (iii) acts of manufacturing, delivering, selling or possessing instruments to counterfeit or imitate another person's registered collective mark for a geographical indication or to cause a third party to counterfeit or imitate the trademark;
- (iv) acts of possessing goods for the purpose of assignment or delivery when those goods are identical or similar to the designated goods and display a trademark that is identical or similar to another person's registered collective mark for a geographical indication.

Article 71 Invalidation Trial of a Trademark Registration

- (1) In the following cases, an interested person or an examiner may demand a trial to invalidate a registered trademark or the supplementary registration of designated goods. In such a case, if two or more designated goods are covered by the trademark registration, a request for an invalidation trial may be made for each of the designated goods:
 - (i) the registration is in breach of Articles 3 (the proviso), 6 to 8, or 12(2) (second sentence), (5) and (7) to (9) or 23(1)(iv) to (vi) of this Act; or Article 25 of the Patent Act, which applies under Article 5 of this Act;
 - (ii) the registration violates a treaty;
 - (iii) the registration has been effected on the basis of an application filed by a person who is not a successor in title to the right deriving from the trademark application;
 - (iv) following registration, the owner of the trademark right is no longer capable of enjoying the right under Article 25 of the Patent Act, which applies under Article 5 of this Act, or the registration no longer complies with a treaty;
 - (v) following registration, the registered trademark falls under any of subparagraphs of Article 6(1) of this Act (unless Article 6(2) of this Act applies); and
 - (vi) following the registration of a collective mark for a geographical indication under Article 41, the geographical indication of the registered collective mark for a geographical indication ceases to be protected or is no longer used in the country of origin.
- (2) A trial for invalidation under paragraph (1) of this Article may be requested even after the extinguishment of a trademark right.
- (3) Where a trial decision invalidating a trademark registration has become final, the trademark right is deemed never to have existed. However, where a trial decision invalidating a trademark right has become final under paragraphs (1)(iv) or (vi) of this Article, the trademark right is deemed not to have existed from the time the trademark registration applies under paragraphs (1)(iv) or (v) of this Article.
- (4) When applying the proviso of Article 3 of this Act, where the exact date on which a registered trademark falls under paragraph (1)(iv) or (vi) of this Article cannot be specified, the present trademark right is deemed not to have existed from the date on which a request for an invalidation trial under paragraph (1) of this Article is made known to the public.
- (5) Where a trial under paragraph (1) of this Article has been requested, the presiding trial examiner shall notify the exclusive licensee of the trademark right and other persons who have any registered rights related to the trademark of the subject of the request.

Article 73 Trial for the Cancellation of a Registered Trademark

- (1) A trial may be requested to cancel a registered trademark that falls under any of the following circumstances:
 - (i) deleted;
 - (ii) the owner of the trademark right intentionally uses a trademark similar to the registered mark on the designated goods or uses the registered trademark or a trademark similar to the registered trademark on goods similar to the designated goods in a manner that is liable to mislead consumers on the quality of the goods or cause confusion regarding the goods of another person;
 - (iii) the owner of the trademark right or the exclusive or nonexclusive licensee has not been continuously using the registered trademark for a period in excess of three years before the date of the cancellation trial for the designated goods in the Republic of Korea and no justifiable reasons exist for such nonuse;
 - (iv) the trademark is contrary to Article 54(1) (second sentence), (5) and (7) to (9) of this Act;
 - (v) a member of an association allows a third party to use its collective mark in violation of the statutes of the association or a member of an association uses the collective mark in violation of the statutes of the association, in a manner that is liable to mislead consumers on the quality or the geographical origin of goods or cause confusion regarding the goods of another person's business; however, an exception is made when the owner of the collective mark right has exercised reasonable supervision of the member of the association.
 - (vi) when a concern exists that a collective mark could mislead consumers on the quality of goods or cause confusion regarding the goods of another person's business due to a change of the statutes of the association under Article 9(3) of this Act;
 - (vii) a trademark falling under Article 23(1)(iii) of this Act has been registered and the owner of the original trademark requests a cancellation trial within five years of the trademark's registration date;
 - (viii) the exclusive or nonexclusive licensee uses the registered trademark or a similar trademark on the designated goods or similar goods, in a manner that is liable to mislead consumers on the quality of the goods or cause confusion regarding the goods of another person's business, except when the owner of the trademark right has taken reasonable care; or
 - (ix) when similar trademarks belong to different persons who have a trademark right due to the assignment of a trademark right, and one of the persons misleads consumers on the quality of goods or causes confusion regarding the goods of another person by using the registered trademark on goods identical or similar to the designated goods of their own registered trademark in acts of unfair competition;
 - (x) where, notwithstanding a third party's use of a collective mark, the owner of the collective mark right intentionally misleads consumers on the quality or the geographical origin of goods or causes confusion regarding the goods of another person's business by failing to take reasonable measures;
 - (xi) where the owner of a registered collective mark for a geographical indication prevents a person who conducts the business activities of producing, manufacturing

or processing designated goods that display a geographical indication from joining or subscribing to the owner's association, or where the association's articles of association prescribe conditions for subscription that are too difficult for the person to fulfill, or where the owner admits to the association a person who is not entitled to use the geographical indication;

- (xii) where the owner of a collective mark for a geographical indication or the member of the owner's association use the collective mark in violation of Article 90bis of this Act, in a manner that is liable to mislead consumers on the quality of the goods.
- (2) Deleted.
 - (3) Where a cancellation trial is requested for the reasons referred to in paragraph (1)(iii) of this Article, a cancellation trial may be requested for a part of the designated goods if two or more of the designated goods are covered by the registered trademark
 - (4) Where a cancellation trial is requested for the reasons referred to in paragraph (1)(iii) of this Article, the owner of the trademark right does not avoid the cancellation of the registration of the trademark for the designated goods if the defendant cannot prove that the registered trademark has been used in the Republic of Korea within a three-year period before the date of the request for a trial on one or more of the designated goods in the request, unless the defendant can provide a justifiable reason for failing to use the registered trademark.
 - (5) The reasons for cancellation referred to in paragraphs (1)(ii), (iii), (v), (vi), and (viii) to (xii) of this Article are not affected even when the facts that give rise to the request for a cancellation trial no longer exist after the request for a trial is made.
 - (6) A cancellation trial under paragraph (1) of this Article may be requested only by an interested person, except that a trial requested for the reasons referred to in paragraphs (1)(ii), (v), (vi), and (viii) to (xii) of this Article may be requested by any person.
 - (7) Where a trial decision ordering the cancellation of a trademark registration has become final, the trademark right is extinguished on that date.
 - (8) Article 71(4) of this Act applies *mutatis mutandis* to the request for a trial under paragraph (1) of this Article.

Article 76 Term of Exclusion

- (1) A trial to invalidate a registered trademark, the renewal of the term of a registered trademark and the registration of a reclassification of goods under Articles 7(1)(vi) to (ixbis) and (xiv), 8, 72(1)(ii) and 72bis(1)(iii) of this Act may not be requested more than five years after the registration date of the trademark, after the registration date for renewal of the term of the registered trademark or after the registration date of the reclassification of goods.
- (2) A trial for the cancellation of a trademark registration and of the registration of an exclusive or nonexclusive license under Articles 73(1)(ii), (v), (vi), (viii) to (xii) and 74(1) of this Act may not be requested more than after years after the date on which the alleged facts have ceased to exist or after the registration date of the reclassification of goods.

Article 85 Restriction on the Effects of a Trademark Right Restored by a Retrial

In any of the following cases, the effects of a trademark right do not extend to the good-faith use of a trademark that is identical to the registered trademark on goods identical to the designated goods and acts referred to in Article 66(1)(i), (2)(i), after the decision concerned became final but before the request for a retrial has been registered:

- (i) where the trademark registration or the registration for renewal of the term of the invalidated trademark right has been restored by a retrial;
- (ii) where the trademark registration that had been cancelled has been restored by a retrial; or
- (iii) where a trial decision that a product was outside the scope of the trademark right became final, and a decision to the contrary was subsequently made at a retrial.

Article 86 *sedecies* Special Provisions on an International Application for Trademark Registration

- (1) In applying this Act to an international application for trademark registration, the purport of the priority claim, the name of the country in which the earlier application was filed and the filing date of the earlier application recorded in the International Register are deemed to be the purport of the priority claim, the name of the country in which the earlier application was filed and the filing date of the earlier application that are indicated in the application for trademark registration.
- (2) In applying this Act to an international application for trademark registration, the purport of a three-dimensional trademark that is recorded in the International Register is deemed to be the purport of a three-dimensional trademark indicated in the application for trademark registration.
- (3) A person seeking to register a collective mark shall submit the articles of association prescribed in Article 9(3) of this Act within the period prescribed by ordinance of the Ministry of Commerce, Industry and Energy. A person seeking to register a collective mark for a geographical indication under Article 2(1)(iii^{quater}) of this Act shall submit a document in which the purport to register a collective mark for a geographical indication is stated; as prescribed by Presidential Decree, the document should prove that the collective mark complies with the definition of a geographical indication under Article 2(1)(ii^{bis}) of this Act as well as with the statutes of association.

Article 86*septiesdecies* Effect of an International Application for Trademark Registration of a Domestically Registered Trademark

- (1) Except for trademark registrations resulting from an international application for trademark registration, when the holder of a trademark right registered in the Republic of Korea (referred to in this Article as "a domestically registered trademark") files an international application for trademark registration, the international application is deemed to be filed on the filing date of the domestically registered trademark with respect to the overlapping scope of designated goods if all the following conditions are fulfilled:
 - (i) the trademark registered in the International Register as a result of an international application for trademark registration (referred to as an "internationally registered trademark") is identical to a domestically registered trademark;
 - (ii) the holder of the internationally registered trademark is identical to the holder of the domestically registered trademark;
 - (iii) all the designated goods listed in the domestically registered trademark are included as the designated goods of the internationally registered trademark; and
 - (iv) territorial extension under Article 3(3) of the Protocol takes effect after the registration date of the domestically registered trademark.
- (2) Where recognition is given to a priority under the Treaty for an application for trademark registration that is related to a domestically registered trademark under paragraph (1) of this Article, the priority is also recognized for an international application for trademark registration under the same paragraph.
- (3) Where the right of a domestically registered trademark is cancelled or extinguished under either of the following subparagraphs, the effect of the concerned international application for trademark registration under paragraphs (1) and (2) of this Article is not recognized within the same scope of the designated goods of the cancelled or extinguished trademark right:
 - (i) if a trial decision canceling the trademark registration under Article 73(1)(ii), (iii) and (v) to (xii) of this Act has become final; or
 - (ii) if a trial for the cancellation of a trademark registration is requested under Article 73(1)(ii), (iii) and (v) to (xii) of this Act, and the trademark right has become extinguished due to the expiry of the trademark term or to the abandonment of some of the trademark rights or designated goods after the request date of the cancellation trial.

Article 88 Prohibition of Opening or Carrying Out the Trademark Register and Documents Related to an Application for Trademark Registration, Examination, Trial or Retrial

- (1) Carrying out of the Trademark Register or documents related to an application for trademark registration, examination, trial or retrial is prohibited, unless the documents are related to the registration of either a trademark or a collective mark for a geographical indication or an examination and are removed in accordance with Article 22*bis*(1) to (3) of this Act.
- (2) An answer may not be given to a request for an expert opinion, testimony or inquiry regarding the contents of an ongoing case involving an application for trademark registration, examination, trial or retrial, or regarding the contents of a decision to grant or refuse trademark registration.

Article 90bis Indication of a Registered Homonymous Collective Mark for a Geographical Indication

When two or more registered collective marks for a geographical indication are homonymous, the owner of each collective mark and the members of each association may use the registered mark if the mark is accompanied by an indication that does not confuse consumers about the geographical origin.

Article 91bis Special Provision on a Trademark etc. that is Similar to a Registered Trademark

- (1) "The registered trademark" referred to in Articles 50, 53, 55(3), 57(2), 62, 67(2), 73(1)(iii) and (iv), 85, 90 and 91 of this Act includes trademarks that are similar to a registered trademark; if the colors of a similar trademark are the same as the colors of the registered trademark, the similar trademark is deemed identical to the registered trademark.
 - (2) "A trademark similar to the registered trademark" referred to in Articles 66(1)(i) and 73(1)(ii) of this Act does not include trademarks that are similar to a registered trademark if those trademarks are deemed identical to the registered trademark because the colors of the similar trademark are the same as the colors of the registered trademark.
 - (3) "A trademark that is similar to another person's registered collective mark for a geographical" referred to in Article 66(2)(i) of this Act does not include trademarks that are similar to a registered collective mark; if the colors of a similar trademark are the same as the colors of the registered collective mark for a geographical indication, the similar trademark is deemed identical to the registered collective mark for a geographical indication.
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