

IMPLEMENTING REGULATIONS TO THE LAW 84/1998 ON TRADEMARKS AND GEOGRAPHICAL INDICATIONS

CHAPTER I General Provisions

Article 1 - Definitions

(1) Within the meaning of the present regulations the terms and phrases below shall mean as follows:

- a) law - Law no. 84/1998 on trademarks and geographical indications, as republished;
- b) regulations - The regulations for Implementing the Law no. 84/1998 on trademarks and geographical indications, as republished;
- c) O.S.I.M. - the State Office for Inventions and Trademarks;
- d) BOPI - the Official Industrial Property Bulletin, either on paper or in electronic format, also published on the web page of OSIM;
- e) WIPO - the World Intellectual Property Organization;
- f) WIPO Gazette - the official publication of WIPO concerning the internationally registered trademarks;
- g) OHIM - the Office for Harmonization in the Internal Market;
- h) Nice Classification - classification instituted by the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, of 15 June 1957, as revised at Stockholm on 14 July 1967 and Geneva on 13 May 1977 and amended on 2 October 1979 and adopted by Romania through the Law no. 3/1998 for Romania's accession to the agreements instituting an international classification in the field of the industrial property;
- i) Vienna Classification - classification instituted by the Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks, done at Vienna on 12 June 1973, and amended on 1 October 1985 and adopted by Romania through the Law no. 3/1998.
- j) Common Regulations - Implementing Regulations under the Madrid Agreement, ratified by Romania through the Decree no. 1176/1968 and the Protocol relating to that Agreement concerning the international registration of trademarks, done at Madrid on 27 June 1989 and ratified by Romania through the Law no. 5/1998
- k) concerned person - any person who has a legitimate interest regarding a trademark registration application or a registered trademark and whose interests are likely to be damaged;
- l) trademark use - commercializing the goods and/or services to which the trademark refers in an important and effective volume, as well as performing any promotion activities in respect thereof, advertisements and presentation in fairs and exhibitions included:

m) extent of use - the amount of goods and/or services the trademark is affixed to, commercialized on the territory of Romania or exported;

n) geographical area - zone of knowledge of a well-known trademark on the territory of Romania;

o) degree of knowledge of a well-known trademark - measure in which the relevant public sector has knowledge of the trademark.

(2) The terms and phrases defined in Art. 3 of the Law shall have the same meaning in the present regulations.

Article 2 - Application Area of the Law

(1) The law shall be applicable to all individual, collective or certification trademarks which refer to either goods or services.

(2) The geographical indications of the goods are protected in Romania in compliance with the provisions of the Law, Community regulations and international conventions to which Romania is a party.

Article 3 - Trademark as Sign Capable of Graphic Representation

(1) Trademarks may consist of any sign capable of being represented graphically, according to Art. 2 of the Law.

(2) Under Art. 5, paragraph (1), letter m) of the Law, *signs of high symbolic value* mean religious symbols, emblems or logos belonging to legal entities or charitable foundations, symbols belonging to cultural associations with educational purposes, names of important historical personalities.

(3) In order to assess whether a trademark contains signs of high symbolic value, particularly a religious symbol, OSIM may request the opinion of the competent authorities, as far as it finds necessary.

(4) In order to assess whether a well-known trademark contains armorial bearings, emblems, coats of arms or heraldic signs, other than those considered under Art. 6 ter of the Paris Convention for the protection of industrial property of 20 March 1883, as revised and amended, ratified by Romania through the Decree no. 1177/1968, OSIM shall request the opinion of competent authorities.

Article 4 - Acquiring Protection

(1) Trademark protection shall be acquired in Romania by the registration thereof with OSIM.

(2) The international protection of trademarks shall be recognized in Romania under the Madrid Agreement and the Protocol relating to that Agreement.

(3) Protection of Community trademarks shall be recognized in Romania under the Council Regulation (EC) no.207/2009 of 26 February 2009 on the Community trademark.

Article 5 - Official Language

The applications for the registration of trademarks and geographical indications, any other applications related to trademarks and geographical indications submitted for registration, or registered, as well as the entire correspondence referring thereto shall be drawn up in Romanian and shall be filed with O.S.I.M.

Article 6 - Representation by Professional Representative

(1) The applicant, owner of a trademark or any person concerned may be represented in the proceedings before O.S.I.M. by a professional representative residing or having the registered office in Romania.

(2) Where the applicant, the owner of a trademark or the concerned person is not represented by a professional representative and does not have the domicile, or the place of business or any real and effective industrial or commercial establishment on the territory of Romania, shall establish an address for service in Romania and shall communicate the same to OSIM with a view to performing any procedures before OSIM. Change of the address for service by mentioning a new such address or renouncement the address for service may only be carried out after the payment of the prescribed fee for changes in the legal status of the trademark.

(3) The applicant, the owner of a trademark or the concerned person who does not have either the domicile, or the place of business or any real and effective industrial or commercial establishment on the territory of the European Union or the European Economic Area, shall be compelled to be represented by a professional representative, except for the procedure of filing the application for trademark registration.

(4) The professional representative shall be appointed by a written communication addressed to O.S.I.M., called *power of attorney*, which shall contain the name and signature of the trademark applicant, owner or of the concerned person, as the case may be, the appointment thereof after filing the trademark application, either nationally or internationally, being made subject to payment of the prescribed fee.

(5) The power of attorney may refer to one or more applications for registration or registered trademarks or to all present or future applications for registration or registered trademarks of the person who gave the mandate.

(6) When a general power of attorney was given according to paragraph (5), there will be enough to communicate to O.S.I.M. one copy thereof, provided that the professional representative should indicate in each subsequent application the power of attorney according to which he acts.

(7) Any document requested through the professional representative with regard to renunciation to an application for the registration of a trademark, to withdrawal of a trademark, as well as any request related to a transfer of rights in connection with a trademark shall be performed only according to a special mandate which shall expressly mention the document of renunciation, withdrawal or transfer.

(8) When the applicant for the registration of a trademark is represented by the professional representative, the representative can sign the application on the basis of the power of attorney given by the applicant.

(9) Any correspondence related to a trademark registration application or to a registered trademark transmitted on behalf of the applicant or owner of the trademark, shall be effectless in the absence of a power of attorney. The Trademark Division of OSIM can grant, upon request, a 30 day-time limit for the submission of the power of attorney for representation.

(10) The applicant, owner or concerned person can only have one professional representative. If more persons are indicated in the power of attorney for the representation, only the one indicated first is deemed to be a professional representative.

(11) When there has been ascertained that a professional representative was appointed for an application for trademark registration or for a registered trademark, O.S.I.M. shall enter in the Trademarks Register the mention that the applicant or the owner has a professional representative, as well as the name or denomination and address or registered office of the professional representative.

(12) Any entries related to the appointment of a professional representative according to paragraph (11) shall be cancelled, provided that cancellation is requested by a written communication signed by the applicant, owner or professional representative.

(13) Recordal of the professional representative shall be cancelled ex officio by O.S.I.M. when a new professional representative is appointed or when a change of owner was recorded but the new owner did not appoint a professional representative.

(14) Cancellation of the recordal of the professional representative shall take effect as from the date when O.S.I.M. received the communication requesting the cancellation according to paragraph (12), or from the date when O.S.I.M. cancelled the recordal of the professional representative ex officio, according to paragraph (13), as the case may be.

Article 7 - Plurality of Applicants or Owners

(1) When more persons are the applicants or owners of a trademark, they shall designate one of the applicants or owners for the correspondence with O.S.I.M; otherwise, O.S.I.M. shall have correspondence with the first person indicated in the application for registration of the trademark.

(2) In case of a plurality of applicants or owners of an application for trademark registration or registered trademark, representation can be made by a single appointed representative.

Article 8 - Time Limits

(1) The period expressed in days shall comprise calendar days and shall not include either the starting day or the day when the time limit expired. The period expressed in months shall expire on the day of the month corresponding to the starting day.

(2) The period which, starting to run on the 29-th, 30-th or 31-st day of the month will expire in a month which has no such day, shall be deemed to expire on the first day of the subsequent month. The period expiring on a statutory holiday or a day when the Office is not open to the public shall be extended till the end of the subsequent work day.

(3) The periods shall start to run as from the date of communication of the documents for the procedure, understanding thereby the date when the document issued by O.S.I.M. was received by the applicant, owner, concerned person or the professional representative, as the case may be. This date is confirmed by the stamp of the receiving post office.

(4) The documents of procedure sent by mail to O.S.I.M. are deemed to be fulfilled in due time if they were submitted to the post office prior to the expiration of the time limit.

(5) The time limits granted by OSIM upon request by the applicant for a trademark registration or by the person who has made an opposition shall extend the respective time limits for examination, as provided under Art. 22 of the Law.

(6) Failure to fulfil the acts of procedure within the prescribed time limits shall not entail the sanctions provided for by the law and the present regulations, if the applicant can prove that he was hindered by an event beyond his will and if he fulfils the procedure in a two-month period after cessation of the cause, without exceeding one year from the date on which the procedure had to be fulfilled.

(7) The applicant or owner who, beyond his will, was unable to comply with a time limit within the procedures carried out before the office, shall be entitled to reinstatement, provided that he proves that he has taken all due care to fulfil the procedure before OSIM in the prescribed time limits, within two months from the removal of the obstacle to fulfilling the procedure, without exceeding one year from the time limit not complied with.

(8) Provisions of paragraph (7) shall only be applicable where the non-complying with the time limit is due to a person part to the procedure before OSIM, not to the representative.

(9) Provisions of paragraph (7) shall not apply in respect of:

- a) the time limit for claiming priority, under Art. 12 of the Law,
- b) the time limit for making observations or oppositions,
- c) time limit for lodging an appeal before the Board of Appeal.

Article 9 - Signature

(1) Where a document was not signed by the applicant, owner, concerned person or professional representative, the date of submitting the document to O.S.I.M. shall be recognized, provided that the document is subsequently signed within a time limit of one month, at the most.

(2) The signature of a document sent by facsimile shall be deemed to be valid provided that the original of the document is transmitted to O.S.I.M. within maximum one month from the date of transmitting thereof by facsimile.

(3) Transmission of documents by electronic means, the filing of trademark application included, shall be made according to the instructions of the Director General of OSIM.

CHAPTER II

Application for the Registration of a Trademark

Article 10 - Presentation and Content of the Application

(1) The application for registration of a trademark shall be drawn up in only one copy using a standardized form.

(2) The application shall contain the following elements:

- a) the express request for the registration of a trademark;

- b) name and first name or denomination and address or registered office of the applicant;
- c) where the applicant is a foreign person, the indication of the state of which the applicant is a national, the indication of the state where the applicant has his residence or the indication of the state wherein the applicant has an establishment within the meaning of Art. 3 of the Paris Convention, as the case may be;
- d) where the applicant is a legal entity, the form of constituting the same, as well as the indication of the state whose legislation governs the organic statute thereof;
- e) where the applicant has a professional representative, the name or denomination and the address or the registered office thereof;
- f) where the priority of an earlier application is claimed according to Art. 10 paragraph 2 of the Law, a declaration of claiming the priority right, with the indication of the state and the date of the earlier filing;
- g) where the priority resulting from exhibiting the goods or services in an exhibition is claimed according to Art. 11 paragraph 1 of the Law and the applicant wants to enjoy a temporary protection, a declaration of claiming the exhibition priority, with the indication of the place and name of the exhibition, as well as of the date of goods or services first display in the exhibition;
- h) where the applicant claims colour as a distinctive element of the trademark, a declaration to this effect, as well as the indication of the name or code of the claimed colour or colours and for each colour, indication of the main parts of the trademark which include said colour;
- i) where the trademark has a special graphics or it is figurative, the description thereof;
- j) where the trademark is three-dimensional, a declaration to this effect;
- k) where the trademark consists in whole or in part of other than Latin characters or other than Arabic or Roman numerals, a transliteration of these characters and numerals;
- l) where the trademark consists in whole or in part of one or several words in another language than Romanian, a translation thereof;
- m) indication of the name of goods or services for which the registration of the trademark is requested, grouped according to the *Nice Classification*, preceded by the number of the class to which they belong;
- n) signature of the applicant or of his professional representative, as the case may be.

(3) The application shall be accompanied by the graphical or photographic reproduction of the trademark in a size of maximum 8/8 cm.

(4) Where the application contains a declaration indicating that the trademark is three-dimensional, the applicant shall attach the graphical or photographic reproduction of the trademark.

(5) The reproduction supplied under paragraph (4) may consist, upon the applicant's option, in one view or up to three different views of the trademark.

(6) In case of a reproduction of a three-dimensional trademark which does not sufficiently render the details of the trademark, the Trademark Division of O.S.I.M. may ask that a number of up to six different views and a description of this trademark should be supplied.

(7) Where the application contains a declaration stating that the trademark is a hologram, the applicant shall file a trademark reproduction consisting of a single view of the sign to

render visible the holographic effect as a whole (the hologram itself) or of several views of the hologram, from different angles, upon the applicant's wish.

(8) Where the reproduction consisting of a figure or a series of figures is not capable to accurately represent the hologram OSIM may ask that a description of the hologram trademark should be supplied as well by the applicant.

(9) The proof of payment of the application filing and publication fee shall be presented upon filing the application or within three months of that date and shall be checked up within the substantive examination.

(10) The documents of payment shall expressly contain the data necessary for the identification of the submitted application.

(11) The application for the registration of the trademark shall be additionally completed with the following documents, as the case may be:

a) where the applicant wants to enjoy the priority of an earlier application, under Art. 10 paragraph 2 of the Law, a document certifying the date of constituting the first filing of the trademark, issued by other national administration, accompanied by the translation into Romanian, in compliance with the original;

b) where the applicant wants to enjoy an exhibition priority, as a result of displaying the trademark in an officially recognized exhibition, a document attesting that the trademarks are applied to goods and services presented in the exhibition, and mentioning the date of their first display in said exhibition, issued by the organizer of the exhibition and attended by the translation thereof into Romanian;

c) the power of attorney under private signature for the representation of the applicant before O.S.I.M., drawn up in Romanian or attended by the translation thereof in Romanian;

d) the regulations for the use of the collective trademarks;

e) the regulations for the use of the certification trademarks;

f) the document proving the legal exercise of the certification activity or the proof of registration of the certification trademark in the country of origin, as the case may be.

(12) In the application of paragraph (11) letter b), the applicant shall file the certificate of exhibition priority which must contain at least the following data:

a) name of the exhibition taken part in;

b) place and period when the exhibition took place;

c) organizer of the exhibition, particulars for identification thereof and his signature;

d) list of goods and/or services presented to public under the trademark concerned, as well as the moment of their first display in the exhibition;

e) name and signature of the person authorized to certify the authenticity of the document on behalf of the organizer;

f) date of issuance of the certificate.

Article 11 - List of Goods and Services

(1) The list of goods and services for which the protection of the trademark is claimed shall be established in precise terms so that the denomination of goods and services should

permit the classification of goods and services in only one class under the Nice Classification.

(2) Where necessary, within the preliminary examination procedure, the Trademarks Division of OSIM shall proceed to the classification of the filed list in accordance with the Nice Classification and shall notify the applicant in respect of the so classified list of goods and/or services, as well as of the fee provided by the Law for such procedure.

(3) Where the list of goods/services filed by the applicant is already classified according to the Nice Classification, OSIM shall verify the classification of the filed list and, if errors are ascertained, shall communicate the correct version to the applicant who must pay the fee corresponding to the so carried out reclassification.

(4) The goods and services may not be regarded as being similar to each other for the reason that they are classified in the same class and nor may they be considered dissimilar for the reason they are classified in different classes under the Nice Classification.

CHAPTER III

Trademark Registration Procedure

Article 12 - Filing the Application for Trademark Registration with OSIM

(1) The registration of a trademark shall be requested with O.S.I.M. by natural persons or private or public legal entities, either directly or through a professional representative.

(2) An application for the registration of a trademark may be filed with O.S.I.M.:

- a) directly and with acknowledgement of receipt by the General Registry of O.S.I.M.;
- b) by mail, sent by registered letter with acknowledgement of receipt or by fax;
- c) on-line, by electronic means, using the web-page of OSIM.

(3) The Application Receiving Bureau shall mark the application with the year, month and day of receiving thereof and shall record the applications in the order in which they have been received. The applications received with O.S.I.M. after the legal working hours, or on the weekly repose days, or the days of statutory holidays shall be recorded on the subsequent working day.

(4) The Application Receiving Bureau shall immediately transmit the application for trademark registration to the Trademark Division in view of examination.

Article 13 - Regular Filing

(1) The Trademark Division shall examine the application for the registration of a trademark to ascertain whether the legal requirements for constituting the regular filing are fulfilled.

(2) The date of the regular filing shall be the date of submitting with O.S.I.M. the application for the registration of the trademark, drawn up in Romanian and containing:

- a) express request for the registration of a trademark;

- b) information identifying the applicant or the authorised representative, as the case may be;
- c) a list comprising the goods and/ or services for which the registration of the trademark is requested;
- d) a sufficiently clear reproduction of the trademark whose registration is applied for;
- e) proof of payment of legal fees in respect of filing and publication of the trademark registration application.

(3) Within 7 days from the date of filing the application for trademark registration with OSIM, the office shall examine if the application fulfils the conditions provided for under paragraph (2) and shall accord the filing date and publish the application, in compliance with Art. 16.

(4) The Trademark Division of OSIM shall check up the list of goods and services as from the viewpoint of its compliance with the Nice Classification and, in case the trademark also contains figurative element, shall classify the same under the Vienna Classification.

(5) Where some of the elements provided for under paragraph (2) are missing from the application for the registration of the trademark, O.S.I.M. shall notify the applicant about the ascertained shortcomings . If the applicant remedies the shortcomings within 3 months from the date of notification, the date of filing shall be the date when all these elements have been communicated to O.S.I.M.

(6) Where the applicant fails to complete the application within the time limits provided for under Art. 16 of the Law, O.S.I.M. shall decide to reject the application for the registration of the trademark and shall refund the publication and examination fees, if paid.

(7) In case that the applicant for trademark registration comes from outside the European Union or the European Economic Area and he has failed to designate a representative in the application form, OSIM shall ascertain that the requirements for constituting the regular filing are not complied with and shall grant the applicant a 3 month-time limit to complete the application.

(8) The notification concerning the regular filing date shall be communicated to the applicant within 10 days from the issuance thereof.

(9) In case of any other deficiencies of the trademark registration application, where the applicant fails to complete the application within the time limit notified by OSIM, the application shall be rejected.

Article 14 - Division of the Application for the Registration of the Trademark

(1) The applicant may request the division of the application for the registration of the trademark, declaring that, in the case of goods or services enumerated in the divisional application, the application for the registration of the trademark shall be treated as a separate application.

(2) The divisional application shall contain the elements provided for in Art. 9 paragraph 2 of the Law and shall be subject to payment of the legal fee.

(3) The divisional application shall benefit by the same filing date and/or priority date as the initial application.

(4) The declaration concerning the division of an application for the registration of a trademark shall be irrevocable.

Article 15 - Claimed Priorities

(1) If the priority of one or some earlier applications is claimed in application of Art. 10 paragraph 2 of the Law, the applicant shall have 3 months, starting with the date of the application for trademark registration, to communicate to O.S.I.M. the document issued by the national administration attesting the claimed priority, from which it shall result the file number of the earlier application or the number of the earlier registration, as well as the translation mentioned under Art. 10 paragraph (11) letter a).

(2) Where an exhibition priority within the meaning of Art. 11 of the Law is claimed, the applicant is granted a 3-month period starting with the filing date of the application, in order to communicate to O.S.I.M. the documents provided for under Art. 10 paragraph (11) letter b).

Article 16 - Publication of the Application

(1) Trademark registration applications in respect of which the compliance with the legal requirements is ascertained shall be accorded a filing date and shall be published in BOPI, in electronic format, within a time limit of 7 days, in accordance with the provisions of Art. 17 of the Law.

(2) The trademark registration application shall be published in electronic format on the web page of OSIM while indicating the following:

- a) name or denomination and address or registered office of the applicant;
- b) name or denomination and address or registered office of the professional representative;
- c) reproduction of the trademark and, where appropriate, the mention "in colour", with the indication of claimed colour or colours;
- d) list of goods and services, grouped according to the classes of Nice Classification;
- e) the class of Vienna Classification;
- f) filing date and filing number;
- g) indications concerning the claimed priority;
- h) where appropriate, the mention that the trademark is collective or of certification;
- i) date of publication of the application.

(3) Where the publication of a trademark is associated, for reasons attributable to O.S.I.M., with an error or lack of some of the elements, O.S.I.M. shall proceed to rectification ex officio or upon request by the applicant. The rectifications carried out shall not be subject to payment of fees and shall be published in BOPI.

Article 17 - Observation

- (1) Any concerned person may make, within the time limit provided for by Art. 18 of the Law, observations referring to the trademark registration application, for any of the absolute grounds for refusal provided for by Art. 5 of the Law.
- (2) The observation shall be made in writing while indicating the number of the trademark registration application it refers to and shall not be subject to payment of fees.
- (3) Within the framework of the observation procedure, the person referred to under paragraph (1) cannot have the status of party to the examination procedure and shall not receive any communication from OSIM.
- (4) The observation may be notified to the applicant which may present his comments within the examination procedure.
- (5) The observation shall be analyzed during the procedure of examination of the trademark registration application.

Article 18 - Opposition

- (1) Any concerned person may enter an opposition for the relative grounds for refusal provided for by Art. 6 of the Law. Observation and opposition may not be the subject of a common notice to be submitted to OSIM. Arguments relating to absolute grounds for refusal shall not be admitted within the opposition procedure.
- (2) The notice of opposition shall contain:
 - a) indications concerning the application for the registration of the trademark against which the opposition is entered, namely the number of the application for the registration of the trademark, name or denomination of the applicant, while mentioning the goods and services against which the opposition is directed;
 - b) indications concerning the earlier trademark or the earlier right on which the opposition is based;
 - c) a representation and, where appropriate, a description of the earlier trademark or earlier right or a copy of the certificate of registration of the opposed trademark and any other document capable to certify that the opponent is the holder of the earlier right claimed, as the case may be;
 - d) goods and services for which the earlier trademark was registered or applied for or for which the earlier trademark is well-known or has a reputation in Romania;
 - e) mentions concerning the quality and the interest of the person who enters the opposition;
 - f) a detailed presentation of the reasons invoked in sustaining the opposition, as well as the legal ground invoked therefor;
 - g) name or denomination and address or registered office of the professional representative; where the opposition is entered through a representative, the power of attorney signed by the opponent shall also be submitted together with the notice of opposition.
- (3) If the opposition is entered for the reason of the existence of an earlier trademark, the opposition document shall be attended by evidence of trademark registration, such as the registration certificate or documents proving that the trademarks are well-known, as the case may be; if the opposition is based on the existence of any earlier right, the opposition

document shall be attended by documents proving that this right was obtained and the scope of protection of this right.

(4) In order to comply with the requirements referred to under paragraph (2) letters f) and g), the opposing party may ask OSIM for a delay of two months, at the most; such a delay may be granted, provided that the opposing party has paid a fee in the amount provided by the Law for an additional time limit for submitting the viewpoint to an OSIM notification. Where the opposing party fails to comply with the said requirements, the Opposition Board shall settle the opposition based on the filed documents.

(5) In the case of applications for national registration of trademarks, the time limit for entering the opposition shall be calculated as from the date of publication thereof in BOPI, in electronic format, while in the case of applications for international trademark registration, the time limit for entering the opposition shall be calculated as from the date of publication thereof in the WIPO Gazette, in electronic format, as well.

(6) OSIM shall communicate the opposition to the applicant and shall invite him to submit his viewpoint within the time limit referred to under Art. 20 paragraph (2) of the Law. If the applicant files the detailed presentation of the reasons of the opposition, OSIM shall communicate the applicant this presentation and grant him a time limit of 30 days to formulate his viewpoint.

(7) Upon the applicant's request, filed with OSIM prior to the expiry of the time limit referred to under Art. 20 paragraph (2) of the Law, the owner of the opposed trademark shall submit with OSIM evidence proving that:

a) within a period of 5 years preceding the date of publication of the trademark to which opposition is made, the earlier trademark has been effectively used on the territory of Romania, in the case of trademarks protected by national route or by international route and valid in Romania, or on the territory of at least one EU Member State or EEA Member State, in the case of Community trademarks, in connection with the goods and services in respect of which the trademark has been registered or deemed to be well-known;

b) there are justified reasons for the non-use of the opposed trademark.

(8) In the absence of evidence proving the use of the opposed trademark, within 30 days, at the most, as from the date of the notification sent by OSIM to the opposing party, the opposition shall be rejected.

(9) The evidence proving the use of the opposed trademark may consist of: packages, labels, catalogues, invoices, photographs, advertisements in newspapers, written statements etc.

(10) Where the applicant fails to answer within the legal time limit, OSIM may decide on the opposition relying only on the filed documents. Upon applicant's request, OSIM may grant an extension of the above mentioned time limit of 30 days, at the most, to answer the opposition.

(11) The opposition entered in accordance with the provisions of Art. 19 of the Law shall be settled by a Board comprising 3 specialists appointed by the head of Trademark Division, one of them being the examiner of the trademark registration application.

(12) The Board shall issue an advice on admittance or rejection of opposition, either wholly or in part, as a compulsory requirement within the substantive examination, which shall be mentioned in the decision to admit or to refuse trademark registration.

Article 19 - Determining and Proving the Well-Known Character

(1) To estimate whether a trademark is well-known, it is sufficient for this trademark to be a matter of common knowledge:

a) in the territory of Romania; and

b) for the relevant public segment in Romania, for the goods or services in respect of which the trademark is used.

(2) Within the meaning of paragraph (1) letter b), the relevant public segment shall be determined based on the following elements:

a) the category of consumers aimed at for the goods or services to which the trademark refers: identification of the category of potential consumers shall be made on groups of consumers of certain goods or services in connection with which the trademark is used

b) the distribution circuits of the goods or services to which the trademark refers;

(3) Within the opposition there are examined the grounds for refusal in respect of well-known trademarks, while observing the criteria provided for under Art. 24 of the Law. OSIM may request public authorities, public institutions and private law legal entities to provide documents for the assessment of the well-known character of the trademark in Romania.

(4) In the application of the criterion set out under Art. 24, letter c) of the Law, the degree of knowledge of a trademark by the public can be assessed depending on the promotion thereof which includes the promotion of goods or services to which the trademark applies in fairs or exhibitions.

(5) The well-known character of a trademark may be proved by any evidence means.

(6) The well-known character of a trademark on the territory of Romania may be proved by submission of documents relating to:

a) commercializing or putting on the market goods or services under the well-known trademark;

b) importation or exportation of goods bearing the well-known trademark;

c) publicity or advertising of goods and services under the trademark well-known in Romania.

Article 20 - Procedure of Examination of the Application for Trademark Registration

(1) OSIM shall examine the application for trademark registration within no more than 6 months, provided that the examination fee has been paid.

(2) If, after constituting the regular filing and publishing the application, it is ascertained that the examination fee and, where appropriate, the reclassification fee have not been paid, OSIM may grant the applicant a period of maximum three months for paying the fees. For grounded reasons, OSIM may grant, upon request by the applicant, a new period of two months.

(3) In case that the examination fee has not been paid within the period of time referred to in paragraph (2), OSIM shall decide to refuse the application for trademark registration.

(4) The substantive examination of the trademark registration application shall be carried out in virtue of Art. 22 paragraphs (3) and (4) of the Law.

(5) Where, as a consequence of the examination of the absolute grounds for refusal, it is ascertained that a legal ground hindering the trademark registration exists, OSIM shall

send the applicant a Notice of provisional refusal and shall invite him to submit his opinion relating thereto, within a time limit of 3 months. The granted time limit may be extended by a new 3 month-period, upon applicant's request, subject to payment of the prescribed fee.

(6) Where the applicant fails to answer the notice of provisional refusal within the legal time limit or his arguments fail to overcome the grounds for refusal, OSIM shall decide either to limit the list of goods and services or to refuse the application for the registration of the trademark, as the case may be.

(7) Where solid arguments and grounds for trademark registration are contained in the applicant's answer to the notice of provisional refusal, said arguments and grounds may be admitted. In this case, the Trademark Division of OSIM may decide to accept trademark registration.

(8) Where an opposition based on the relative grounds for refusal referred to under Art. 6 of the Law has been made in relation to the trademark registration application, said opposition shall be settled by the Opposition Board which shall issue a notice as to admit or reject the opposition that the substantive examination shall be bound to take into account.

(9) OSIM shall finalize the examination of the trademark registration application based on the answer received from the applicant and, where appropriate, on the notice of the Opposition Board and shall issue a decision to accept or to refuse the application for registration.

(10) Within a time limit of maximum 7 days from making, OSIM decision to register the trademark or to refuse the application shall be communicated to the applicant and, where oppositions have been made, to the opposing party.

(11) In maximum two months of the date of the decision to accept the application for registration, the trademark shall be published in BOPI.

(12) The applicant may request the accelerated examination of his application, pursuant to the Art. 22 paragraph (2) of the Law, subject to payment of the prescribed fee.

(13) Where legal procedures, such as oppositions or notifications following the examination of absolute grounds for refusal, occur during the examination of the trademark registration application, these shall extend accordingly the time limits referred to under Art. 22 of the Law and OSIM shall not be bound to return the examination fee.

(14) During the procedure of examination of the absolute grounds for refusal, signs containing emblems or parts of the European emblem owned by the Council of Europe shall be refused registration.

(15) OSIM decisions concerning the applications for trademark registration shall be made by the examiner of the concerned file.

(16) Where an opposition has been made, the Examination Board referred to under Art. 18 paragraph (11) shall issue a notice as to admit or reject the opposition.

Article 21 - Trademark Registration

(1) Where the application for trademark registration complies with the legal conditions for registration and no opposition have been made within the time limit provided under Art. 19 paragraph (1) of the Law or where a notice of rejection of opposition has been issued, OSIM shall decide to register the trademark and to enter it in the Trademark Register.

- (2) Trademark registration publication in BOPI shall contain the following mentions:
- (a) name or denomination and address or registered office of the applicant;
 - b) name or denomination and address or registered office of the professional representative;
 - c) reproduction of the trademark and, where appropriate, the mention "colour", with the indication of claimed colour or colours and, in the case of trademarks containing figurative elements, the indication of the class in the classification of figurative elements;
 - d) list of goods and services, by classes, according to Nice Classification;
 - e) filing date and filing number, as well as the trademark number;
 - f) indications concerning the claimed and recognized priority;
 - g) mention that the trademark is a collective or a certification trademark, if the case may be, regulations governing the trademark use included;
 - h) mention that the trademark acquired a distinctive character prior to the date of the application for registration of the trademark, as a consequence of the use thereof, if the case may be;
 - i) statement that the applicant disclaims any exclusive right to a trademark element, in the case provided under Art. 23, paragraph (1) of the Law.

(3) Where a decision to refuse an application for trademark registration has been cancelled by a final decision of a law court, the concerned party shall communicate the decision to OSIM for publication thereof in BOPI.

(4) Where, after publication, a trademark is refused registration or cancelled by a final decision of a law court, this decision shall be published in BOPI.

Article 22 - Entering the Trademark Registration in the Trademark Register

(1) The trademark registered pursuant to Art. 22 paragraph (1) of the Law shall be entered in the Trademark Register.

(2) The record of the trademark registration in the Trademark Register, the publication thereof and the issuance of the trademark registration certificate shall be subject to payment of a single fee, in the amount set out under point 8 in the Annex 4 of the Government Ordinance No.41/1998 on the fees in the industrial property protection field and the conditions for using the same, as republished with the subsequent amendments.

(3) The owner may request certified copies of the registration certificate to be issued, subject to payment of the legal fee; duplicates may only be requested if proof is made that a public announcement of losing the initial certificate is published and if the legal fee for the certificate issuance is paid.

CHAPTER IV

International Trademark Registration

Article 23 - Filing the Application for International Registration of a Trademark

(1) The international trademark registration application pursuant Art. 3 of Madrid Agreement or Art. 3 of the Protocol relating thereto, as the case may be, and pursuant to the common regulations as well, shall be filed with the International Bureau of WIPO by means of OSIM. The application signed by the applicant and by OSIM as a receiving office shall be submitted to the International Bureau.

(2) On the date of filing the international trademark registration application, there shall be also filed the proof of payment of the fee for application transmittal to WIPO.

(3) The same requirements shall apply for the transmittal of a subsequent designation of an international trademark.

(4) International fees payable to the International Bureau under Art. 8.2 of the Madrid Agreement or under Art. 8.2 of the Madrid Protocol, as the case may be, shall be paid by the applicant direct to the International Bureau of WIPO.

Article 24 - Effect of International Registration in Romania

(1) Trademarks which are the subject of an international registration application and whose protection is applied for based on the designation of Romania, shall be subject to substantive examination by analyzing the grounds for refusal set out by the Law, and the communication of the decision following the examination shall be transmitted to WIPO, in compliance with the common regulation.

(2) The international registration, with WIPO, of a trademark whose protection is also extended to the territory of Romania, under Art. 3 ter of the Madrid Agreement or Art. 3 ter of the Madrid Protocol, shall have the same effects as the trademark registered by the national route.

(3) The international registration of a trademark the protection whereof has effects on the territory of Romania shall be entered in the Trademark Register.

CHAPTER V

Community Trademark

Article 25 - Filing the Application for Registration of a Community Trademark

(1) The application for registration of a Community trademark shall be filed, upon applicant's choice, either direct to OHIM, or, by means of OSIM.

(2) Where the application for registration of a Community trademark is filed with OSIM, it shall submit the application to OHIM with a time limit of maximum two weeks from filing, without examination.

(3) On the date of filing the application for registration of a Community trademark, the proof of payment of the application transmittal fee shall also be filed, said fee representing only the expedition costs.

(4) In the case referred to under paragraph (2), the filing date of the trademark registration application shall be the date of submitting to OSIM the application for registration of the

Community trademark containing the elements set out under Art. 26 paragraph (1) of the Council Regulation (EC) No. 207/2007, namely:

- a) a request for registration of a Community trademark;
- b) the information identifying the applicant;
- c) the list of goods or services in respect of which registration is requested;
- d) the representation of the trademark,

provided that the filing fee payable by the applicant direct to OHIM is paid within one month from filing the elements provided under letters a) - d).

Article 26 - Claiming the Seniority of a National Trademark

(1) The owner of an earlier trademark registered in Romania or of a trademark subject of international registration with effects in Romania may enjoy, in compliance with Art. 68 paragraph (1) of the Law, the seniority of the earlier trademark upon Community registration of an identical trademark in respect of identical goods and services or included in the list of goods and services in respect of which the earlier trademark has been registered.

(2) In case that the seniority of the national trademark is claimed, if the owner of the Community trademark surrenders the earlier trademark or the rights in the earlier trademark lapse in any way, he shall be deemed to continue to have the same rights as he would have had if the earlier trademark had continued to be registered.

(3) The seniority claimed for a Community trademark shall lapse if the rights of the owner of the earlier trademark the seniority of which is claimed are declared to lapse or the earlier trademark is cancelled or surrendered prior to registration of the Community trademark.

Article 27 - Conversion of Applications for Community Trademark

(1) An application for a Community trademark or a registered Community trademark may be converted into a national trademark application in compliance with Art. 112 of the Council Regulation (EC) No. 207/2009.

(2) OSIM shall receive the requests for conversion/transformation of the Community trademark applications into national trademark applications and shall enter the same into the national data base with the filing date of the Community application.

(3) Where the person requesting for conversion is citizen of a EU Member State or a EEA Member State, OSIM shall notify him on the requirement of paying the filing and publication fees, granting him a time limit of 3 months to be calculated as from the date of notification. The application shall be published on the date of submitting the proof of payment of the legal fee by the applicant, otherwise the application shall be refused.

(4) Where the person requesting for conversion is not citizen of a EU Member State or a EEA Member State, representation by professional representative is compulsory and, consequently, OSIM shall notify him on the requirement of appointing a representative as well as of paying the filing and publication fee in respect of the request for conversion.

(5) Requirements referred to under paragraph (3) shall be met by the applicant within 3 months from notification, otherwise the request shall be refused.

CHAPTER VI

Amendments

Article 28 - Amending the Trademark Registration Application

(1) A request for amending a trademark registration application shall contain the following:

- a) the number of the trademark registration application;
- b) the name or denomination and address or registered office of the applicant;
- c) the name or denomination and address or registered office of the professional representative, where appropriate;
- d) the indication of the element in the trademark application to be amended as well as the element in its amended version;
- e) where the amendment relates to the representation of the trademark, a reproduction of the amended representation.

(2) The request for amending a trademark registration application shall only be deemed to have been filed upon payment of the legal fee; otherwise, the request for amending the application shall produce no effects.

(3) OSIM may grant a time limit of one month for remedying the deficiencies in respect of the request for amending a trademark registration application; where said deficiencies are not remedied within the granted time limit, OSIM shall reject the request for amending the trademark registration application.

(4) Where the applicant requests for amending the same element in various applications, a single request for amendment is sufficient; the amendment shall be subject to payment of the legal fee in respect of each application to be amended.

(5) The request referring to changing the applicant's/ representative's name or address shall not be subject to payment of fees, where it occurs from causes beyond the applicant's/ representative's will.

(6) Where the application contains material errors imputable to the applicant, the correction shall be made upon his request and shall be published in BOPI provided that proof of payment of the legal fee is made.

Article 29 - Amending the Registered Trademark

(1) A request for amending a trademark registration shall contain the following:

- a) the number of the trademark registration;
- b) the name or denomination and address or registered office of the trademark owner;
- c) the name or denomination and address or registered office of the professional representative, where appropriate;
- d) the indication of the element in the trademark representation whose amendment is sought, within the meaning of Art. 34 paragraph (1) of the Law;
- e) a representation of the trademark as amended.

(2) The request for amendment shall only be deemed to have been filed upon payment of the legal fee by the trademark owner; otherwise, the request shall be deemed to be mere correspondence and shall produce no effect.

(3) OSIM may grant a time limit of one month for remedying the deficiencies in respect of the request for amending a trademark registration; if said deficiencies are not remedied in the granted time limit, OSIM shall reject the request for amendment.

(4) Where the amendment refers to the same element contained in several registered trademarks of the same owner, a single request for amendment is sufficient. The legal fee shall be paid in respect of each trademark registration to be amended.

(5) Where the trademark registration or publication contains an error imputable to OSIM, correction shall be made ex officio or upon request by the owner. The request for correction made by the owner shall not be subject to payment of fees. The so made corrections shall be published in BOPI.

(6) Where the trademark registration or publication contains an error imputable to its owner, correction shall be made upon the owner's request and shall be published in BOPI, provided that proof of payment of the legal fee is made.

Article 30 - Change of Trademark Owner's/Representative's Name/Denomination or Address/Registered Office

(1) An application for the change of a registered trademark owner's name/denomination or address/registered office shall contain the following:

a) the number of the trademark registration;

b) name or denomination and address or registered office of the trademark owner, as recorded in the Trademark register;

c) name or denomination and address or registered office of the trademark owner, as changed, upon his request;

d) where a professional representative has been appointed, the name or denomination and address or registered office thereof;

(2) Where in the application there is stipulated that a professional representative has been appointed by the owner, at the time of filing the request for change, proof of filing of a power of attorney shall also be made.

(3) A single request may be made for the change of name/denomination or address/registered office in two or more registrations belonging to the same owner.

(4) OSIM may grant a time limit of one month for remedying the deficiencies in respect of the request for the change of owner's name/denomination or address/registered office; if said deficiencies are not remedied in the granted time limit, OSIM shall reject the request for change.

(5) Provisions of paragraphs (1) - (4) shall also apply with regard to the change of the name/denomination or address/registered office of the professional representative appointed by the owner.

(6) In case that OSIM is informed of the change of denomination of address occurred from causes beyond the applicant's/ representative's will, no fees shall be due for recording such a change.

Article 31 - Renewal of Trademark Registration

(1) A request for renewal shall contain the following:

a) an express request for renewal of the trademark registration;

- b) if the application is submitted by the owner, the name and address thereof;
 - c) name or denomination and address or registered office of the owner, if the case may be;
 - d) date of the regular filing of the application for the registration of the trademark;
 - e) number of registration of the trademark;
 - f) mention that renewal is requested for all goods and services to which the registered trademark refer, or indication of the classes or goods and services that are to be renewed, as the case may be;
 - g) signature of owner or of the person authorized by owner or the signature of the professional representative, as the case may be;
 - h) proof of payment of the fee provided for by the Law for the renewal of the registration of the trademark, the fee for issuance of the renewal certificate included.
- (2) Where the request for renewal submitted within the time limits referred to under Art. 30 paragraph (3) of the Law does not contain one of the particulars referred to under paragraph (1), OSIM shall notify the applicant of the deficiencies ascertained and shall afford a 3-month time limit to remedy the same.
- (3) In case that the request meets the legal requirements, OSIM shall issue the renewal certificate and shall inform the trademark owner accordingly, provided that proof of payment of the fee for issuance of the certificate is made.
- (4) Where the notified deficiencies have not been remedied within the specified time limit, trademark renewal shall be refused.

CHAPTER VII

Transfer of Rights in Trademarks: Assignments, Licenses and other Rights

Article 32 - The Request for Recordal of the Assignment of a Trademark

- (1) The request for recordal of the assignment shall be filed with OSIM by the owner or the person becoming the new owner of the registered trademark.
- (2) The request for recordal of the assignment of a trademark shall contain the following:
- a) name or denomination and address or registered office of the owner;
 - b) name or denomination and address or registered office of the new owner;
 - c) where a representative has been appointed by the owner, name or denomination and address or registered office thereof;
 - d) where a representative has been appointed by the new owner, name or denomination and address or registered office thereof;
 - e) where the new owner is a foreign citizen, name of the State he has citizenship of, name of the State where he has the domicile or registered office or an establishment, within the meaning of Art. 3 of the Paris Convention;
 - f) where the new owner is a legal entity, the statutory form thereof as well as the name of the State the legislation of which served as a legal framework for the organization of the legal entity;
 - g) the number of the registered trademark and the change to be recorded;

h) list of goods and services to which the assignment of the trademark relates, in case that it does not relate to all registered goods and services;

i) documents proving the assignment of the trademark, pursuant to Art. 33.

(3) At the time of filing the request for recordal of the assignment, proof of payment of the legal fee shall also be filed, otherwise the request shall produce no effects.

Article 33 - Change of Ownership

(1) When the change of ownership results from an assignment contract, the request for recording the assignment shall be accompanied by one of the following documents:

a) a certified copy of the assignment contract;

b) an excerpt from the contract which sets out the change of ownership, in a certified copy.

(2) When the change of the ownership results from a merger, the request for recording the assignment shall be attended by the certified copy of the merger document.

(3) In the case referred to in paragraph (2), if the change refers only to one or a part of the co-owners and not to all co-owners, the request for recording the assignment shall be attended by a document signed by the other co-owners, which shall contain the express agreement thereof relating to the new owner.

(4) When the change of ownership results from other reasons than an assignment contract or a merger, such as changes by the effects of the law, by succession, by levy of execution following a decision of a law court, the request shall indicate and shall be attended by the certified copy of the proof document.

(5) The provisions of paragraphs (1) - (4) and Art. 34 shall apply mutatis mutandis to changes of applicant for trademark registration, when the change relates to one or more applications or relates at the same time to one or more applications and one or more registrations.

(6) However, when an application has not yet received a number or the number is not known by the applicant or representative, the request for recording the change shall contain elements to permit the trademark registration application to be identified.

(7) The trademark can be the subject of a levy of execution, of a security or other real right provided for by the law.

(8) Upon request by one party, when it is ascertained that there has been filed a certified copy of a document attesting a levy of execution, a security or other real right provided for by the law, in respect of a registered trademark, these shall be entered in the Trademark Register and published in BOPI, subject to payment of the legal fees.

Article 34 - Recordal of Assignment

(1) Where the request for recording the assignment is not accompanied by all the documents referred to under Art. 32, OSIM shall grant a 3-month time limit for filing the missing documents. If the documents are not filed within the granted time limit, OSIM shall decide to reject the request.

(2) A single request for recording the assignment of a trademark is sufficient in case of assignment of two or more trademarks, provided that there is only one owner for all these trademarks and the assignment is made to only one new owner.

(3) Where the change of ownership does not refer to all goods and services of the registered trademark, OSIM shall make a distinct registration mentioning the goods or services to which the ownership change by assignment relates.

(4) Where OSIM ascertains that all documents referred to under Art. 32 have been filed and proof of payment of the legal fee has been made, it shall enter the assignment in the Trademark Register and shall publish the same in BOPI.

(5) If the assignment has not been entered in the Trademark Register and published, the successor in title cannot take advantage of the rights arising from trademark registration.

Article 35 - Recordal of Licenses and Other Rights

(1) The request for recording a license or for constituting a real right in respect of a trademark shall contain the following:

a) name or denomination and address or registered office of the owner;

b) if the owner has a professional representative, name or denomination and address or registered office thereof;

c) name or denomination and address or registered office of the licensee or of the user of the real right;

d) if the licensee has a professional representative, name or denomination and address or registered office thereof;

e) where appropriate, indication of the state of which the licensee is a national, indication of the state wherein the licensee has his residence/ registered office or an establishment within the meaning of Art. 3 of the Paris Convention;

f) where the owner is a legal entity, the statutory form thereof as well as the name of the State the legislation of which served as a legal framework for the organization of the legal entity;

g) registration number of the trademark which is the object of recording the license or the real right;

h) list of goods and services represented by the trademark which is the object of the request for recording the license or the real right;

i) period for which the license is granted;

j) territory for which the license is granted;

i) signature of owner or of his representative.

(2) When the trademark is the object of a license for a part of goods and services in respect of which the trademark is registered or when the license has territorial limits or is a temporary license, the request for recording the license shall indicate:

a) the goods and services which the license refers to;

b) the part of the territory of Romania for which the license is granted;

c) the period for which the license is granted, as the case may be.

(3) At the time of filing the request for recording the license, proof of payment of the legal fee shall also be filed, otherwise the request shall produce no effects.

(4) The request for recording a license shall be filed with OSIM by the owner of the registered trademark or the licensee and shall be accompanied by a certified copy of an excerpt from the license contract indicating the transferred rights.

(5) When the requirements provided for in paragraphs (1) and (2) are not fulfilled, OSIM shall grant the person having filed the request for recording the license a 3-month time limit for remedying the deficiencies. Where the deficiencies are not remedied within the granted time limit, OSIM shall decide to reject the request.

(6) An exclusive license relating to a trademark shall be entered in the Trademark Register under the mention " exclusive license" if the owner and the licensee expressly requested this mention.

(7) A single request may be submitted for two or more trademarks, provided that it relates to the same owner and the same licensee and the numbers of all trademark registrations concerned are indicated in the request and the legal fee for recordal of licenses is paid for each of the said trademarks.

CHAPTER VIII

Loss of Rights in Trademarks

Article 36 - Loss of Rights

Rights in trademarks shall be lost upon:

- a) expiry of the term of protection;
- b) express surrender by the right owner;
- c) revocation of owner's rights;
- d) cancellation of trademark registration.

Article 37 - Expiry of the Term of Protection

Where registration of a trademark is not renewed upon expiry of the time limit provided for under Art. 30 paragraph (5) of the Law, OSIM shall enter in the Trademark Register the mention that registration of the trademark concerned takes no effect as from the date of expiry of the last 10-year period of protection.

Article 38 - Surrender

(1) A declaration of surrender of a trademark shall contain the following:

- a) trademark registration number;
- b) name or denomination and address or registered office of owner;
- c) where a representative has been appointed, name or denomination and address or registered office thereof;
- d) where trademark surrender relates only to certain goods and services, list of goods and services for which the surrender is declared.

(2) Where a licence is entered in the Register, surrender shall only be entered in the Trademark Register after a three-month period from the date when the trademark owner submitted to O.S.I.M. a document showing that the owner informed the licensee about his intention to surrender the trademark. If, before the expiry of this time limit, the owner submits to O.S.I.M. evidence concerning the licensee's agreement, the surrender shall be entered immediately.

(3) The owner's declaration of surrender of a trademark which is the object of a security, levy of execution or other real rights provided for by the law, which are in force, shall be not entered in the Trademark Register.

(4) Where all the conditions provided for under paragraphs (1) - (3) are not fulfilled, OSIM shall grant the person who requests the entering of a trademark surrender a time limit of three months for remedying said shortcomings. If the shortcomings are not remedied within the granted time limit, OSIM shall decide to reject the entry of the surrender of the trademark in the Trademark Register.

(5) Surrender of a trademark shall only have effects as from the date of its entering in the Trademark Register. Surrender shall be published in BOPI.

Article 39 - Revocation and Cancellation of Trademark Registration

(1) An application for revocation of owner's rights in the trademark or for cancellation of a trademark registration may be filed with the Law Court of Bucharest - Civil Section by any concerned person, for the reasons referred to under Art. 46 or 47 of the Law, as the case may be.

(2) The application for revocation or cancellation shall contain at least:

- a) identification data of the applicant for revocation or cancellation;
- b) indications concerning the registered trademark which is the object of the application for revocation or cancellation;
- c) grounds for revocation or cancellation;
- d) reasons to uphold the application as filed.

(3) Where the application for cancellation is based on the provisions of Art. 47 paragraph (1) letter b) of the Law, particulars shall be provided concerning the right on which the application is based and, where appropriate, particulars proving that the person who applies for the cancellation of a trademark is entitled to invoke the earlier right.

(4) Where the application for cancellation is based on one of the grounds referred to under Art. 47 paragraph (1) letter d) or e) of the Law, particulars shall be provided concerning the right on which the application is based and, where appropriate, particulars proving that the person who applies for the cancellation of a trademark is the owner of the invoked right.

(5) The final court decision concerning revocation of owner's rights or cancellation of trademark registration shall be communicated to OSIM by the person concerned.

CHAPTER IX

Collective Marks and Certification Marks

Article 40 - Protection of Collective Marks

(1) The application for registration of a collective mark submitted in accordance with the requirements of Art. 10 shall be accompanied by the regulations governing the use of the mark.

(2) The Regulations governing the use of the mark shall specify at least:

- a) name and registered office of the association;
- b) object and representation of the association;
- c) conditions for membership;
- d) particulars concerning the persons authorized to use the collective mark;
- e) conditions of use of the collective mark;
- f) reasons for which the owner may interdict the use of the collective mark by one member of the association, as well as other sanctions which can be applied in case of non-observance of the regulations;
- g) indications concerning the agreement of all members of the association in case the owner of the collective mark transfers the rights with regard to this mark.

(3) Where the filing of a collective mark fails to fulfil one of the requirements referred to under Art. 10 or the regulations governing the use of the collective mark fails to specify all the particulars referred to under paragraph (2), OSIM may grant the applicant a time limit of maximum three months to remedy the deficiencies. If the deficiencies are not remedied within the granted time limit, OSIM shall decide to refuse the application or to refuse recognition of the claimed priority, as the case may be.

(4) The owner of a collective mark may apply to the law court, on behalf of the persons entitled to use the mark, for damages in respect of the prejudice caused by the unauthorized use of the mark by third parties.

Article 41 - Protection of Certification Marks

(1) The application for registration of a certification mark submitted in accordance with the requirements of Art. 10 shall be accompanied by:

- a) the regulations governing the use of the certification mark;
- b) authorization for, or a document attesting the legal exercise of activities of certification and control of the quality of goods and services.

(2) Where the applicant is a foreign legal entity, this shall submit, instead of the documents provided for in paragraph (1) letter b), the proof of registration or filing for registration of the certification mark in the country of origin.

(3) The regulations governing the use of the mark shall specify the elements referred to under Art. 57, paragraph (2) of the Law.

(4) The authorization given by the owner for the use of the certification mark shall be subject to payment, by the person who received this authorization, of an adequate compensation which shall be established by the regulations governing the use of the mark.

(5) The owner of a certification mark may apply to the law court, on behalf of the persons entitled to use the mark, for damages in respect of the prejudice caused by the unauthorized use of the mark by third parties.

(6) The use of the certification mark for goods or services belonging to the mark owner or to an enterprise whose activity is closely economically related to the mark owner shall be prohibited.

CHAPTER X

Geographical Indications

Article 42 - Protection of Geographical Indications

(1) A geographical indication shall be protected pursuant to Art. 72 of the Law, only if there exists a close connection between the goods referred to by the geographical indication and the place of origin thereof with regard to quality, reputation or other characteristics of the goods. A geographical indication cannot be protected only for the mere fact that the goods to which it refers have the place of origin in a certain region.

(2) In case of homonymous geographical indications for wines, each indication shall be attended by the denomination of the association of producers of said wines. Protection shall be granted to each geographical indication, provided that said geographical indication is used traditionally and constantly, in order to describe and present a wine produced in the geographical area to which it refers.

(3) Within the meaning of Art. 76 letter b) of the Law, the name of a good which, although refers to the place or region wherein it was initially manufactured, produced or commercialized, became a common name for a certain type of products, shall be deemed to be a generic name and shall not be protected as geographical indication.

(4) A registered geographical indication shall not be deemed to have become generic and nor will it fall in the public domain.

Article 43 - Application for Registration of a Geographical Indication

- (1) The application for the registration of a geographical indication shall contain:
- a) an express request with regard to the registration of a geographical indication and to the grant of the right for the use thereof;
 - b) the denomination and registered office of the association of producers who request the registration of the geographical indication;
 - c) a list comprising the persons authorized to use the geographical indication;
 - d) the geographical indication which is the subject-matter of the application;
 - e) the type of products the geographical indication refers to, as well as the indication of the place of manufacturing and of the limits of the production geographical area;
 - f) the name or denomination and address or registered office of the professional representative, if the association of producers appointed a professional representative.
- (2) The application for the registration of a geographical indication shall be attended by:
- a) a specification containing the elements provided for in paragraph (4);
 - b) a certificate of conformity of the products with the elements provided for in the specification, issued by the specialized central public authority;
 - c) the proof of payment of the fee for the registration of the geographical indication;
 - d) the power of attorney for the representation of the applicant, where appropriate.
- (3) If the applicant for the registration of a geographical indication is a foreign association of producers, the application shall be attended by the following documents:
- a) justifying document, a copy certified for conformity of the title of protection obtained in the country of origin;
 - b) proof of payment of the fee for the registration of the geographical indication;
 - c) power of attorney for the representation of the applicant.
- (4) The specification appended to the application for the registration of the geographical indication shall contain at least the following elements:
- a) denomination of the goods to which the geographical indication refers;
 - b) description of the goods and of the main characteristics thereof;
 - c) delimiting the production geographical area;
 - d) elements proving that the goods have the origin in the production geographical area;
 - e) description of method of obtaining the goods;
 - f) elements which justify the connection of the goods with the area or geographical origin thereof;

g) reference concerning the procedures of goods quality control, as well as the competent body to carry out this control.

Article 44 - Procedure of Registration of a Geographical Indication

(1) Within three months from the date of filing with O.S.I.M., the application for the registration of a geographical indication shall be subjected to the examination of the conditions provided for in Art. 73, 75 and 76 of the Law and in Art. 43 of these Regulations.

(2) If the application fulfils the legal provisions, O.S.I.M. shall decide the registration of the geographical indication and the grant of the right to use the same to the association of producers applying for. Within a two-month period from making this decision O.S.I.M. shall publish in BOPI the geographical indication and the list containing the persons authorized to use the geographical indication.

(3) An opposition to the registration of a geographical indication may be filed within two months from application publication, for failure to observe the provisions of Art. 76 of the Law or if a person has a legitimate interest based on an earlier industrial property protected right which the geographical indication would come into conflict with.

(4) O.S.I.M. shall notify the applicant for the registration of the geographical indication a copy of the opposition, in order that this could present his observations in connection with the reasons of opposition.

(5) If the reasons of the opposition are justified, O.S.I.M. shall reject the application for the registration of the geographical indication and publish the decision of rejection in BOPI.

(6) Otherwise, O.S.I.M. shall register the geographical indication in the Register of Geographical Indications, shall publish the same in BOPI and shall issue the certificate of registration of the geographical indication and of the grant of the right of using thereof to the association of producers who applied for; O.S.I.M. shall also publish in BOPI and shall mention in the Register of Geographical Indications the body competent to carry out the control of goods, established by the specification of the geographical indications.

Article 45 - Amendment of Specification

(1) The persons authorized by O.S.I.M. to use the registered geographical indication may request to amend the specification when imposed by the development of the scientific and technical knowledge or the review of the geographical delimitation.

(2) The request for the amendment of specification shall be subjected to the procedure provided for in Art. 44, except when the requested modifications are not essential.

(3) O.S.I.M. shall enter the modifications brought to the specification in the Register of Geographical Indications and shall publish them in BOPI.

Article 46 - Request for Renewal of Rights to Use Geographical Indications

(1) (1) The persons authorized by O.S.I.M. to use the geographical indication can, prior to the expiration of each period of 10 years, request to O.S.I.M. the renewal of the said right.

(2) The request for renewal shall be attended by a confirmation from the specialized central public authority with regard to maintaining the characteristics of the goods, as well as by the proof of payment of the legal fee.

(3) In the absence of the documents provided for in paragraph (2), O.S.I.M. shall decide to refuse the renewal.

Article 47 - Defense of Rights in Geographical Indications

(1) Decisions of O.S.I.M. in respect of geographical indications shall be made by the examiner of the concerned file.

(2) Where an application for cancellation of the registration of a geographical indication was lodged in the law court, the final and irrevocable decision thereof shall be communicated to O.S.I.M. by the person concerned; where the registration of the geographical indication has been cancelled, O.S.I.M. shall publish the decision and shall remove the geographical indication from the Register of Geographical Indications.

(3) If, by a final and irrevocable decision of the law court, the rights of the persons authorized by O.S.I.M. to use a geographical indication have been revoked, O.S.I.M. shall publish the decision in BOPI and shall enter the revocation in the Register of the Geographical Indications.

(4) Any person who proves a legitimate interest may ask the law court, within the meaning of Art. 82 paragraph (1) of the Law, to prohibit the use of the geographical indication by any unauthorized person, even if on the goods there is indicated the true origin thereof or mentions such as: kind, type, imitation or the like.

(5) The geographical indications for wines or spirits shall benefit by additional protection, the persons authorized to use these indications having the right to prohibit the acts provided for in Art. 82 paragraph (2) of the Law, without being necessary to prove that the consumers were misled or that unfair competition acts were carried out.

CHAPTER XI

Board of Appeal

Article 48 - Board of Appeal

The Board of Appeal for Trademarks and Geographical Indications, hereinafter referred to as *Board* shall function within OSIM.

Article 49 - Membership and Competence of the Board

(1) The Board shall be composed of:

a) chairman - the Director General of OSIM or, by devolution of authority, the Director of Appeals-Policy-Making Directorate; in the absence thereof or in cases of incompatibility, the chairmanship shall be ensured by the Deputy Director General or the Director of the Legal Directorate;

b) 2 members of which at least one shall be a legally qualified member; one of the members shall be rapporteur of the case.

(2) The secretaryship of the Board shall be ensured by a clerk of the Appeals-Policy-Making Directorate.

(3) The Director General of OSIM shall nominally approve the components of the Board and the time limits for settling the appeals.

(4) The Board of Appeal shall have the competence of settling the appeals lodged against OSIM decisions referred to under Art. 86 paragraph (1) and (2) of the Law.

Article 50 - Appeal Settling Procedure

(1) Appeals shall be made in writing and shall be filed with OSIM General Registry, either by mail or electronically, within 30 days of communication or of publication of OSIM decisions in BOPI, as the case may be.

(2) The appeal shall be drawn up in Romanian and shall contain:

a) full name and domicile or residence of the natural person or denomination and registered office of the legal entity which lodged the appeal, as the case may be;

b) object of the appeal;

c) reasons on which the appeal is based;

d) signature of the person who lodged the appeal.

(3) The appeal shall be accompanied by evidence, as written documents, upholding the same, by the proof of payment of the legal fee for appeal settling and, where appropriate, by the power of attorney.

(4) The appeal and the evidence and proofs shall be submitted in as many copies as the number of parties. The copies shall be certified as corresponding to the original by the submitting party. Where the documents are drawn up in a foreign language, translation thereof into Romanian shall be submitted and certified by the submitting party.

(5) The procedure shall be carried out with summoning of parties.

(6) The appellee shall be invited to submit his response to the appeal within at least five days prior to the date appointed for appeal settlement.

(7) The appeal may be lodged and upheld before the Board either directly or by a representative.

(8) Before the Board of Appeal, the parties may appear in person or may be represented by an authorized industrial property attorney or a lawyer. The legal entities may appear before the Board by a legal representative or by a delegate legal advisor.

Article 51 - Preparation of the Appeal Session

- (1) The appeal session shall be prepared by the secretary of the Board who shall keep evidence of appeals entered in chronological order in a special register.
- (2) The Chairman of the Board shall establish the peremptory dates of the appeal sessions and shall dispose in respect of summoning the parties.
- (3) Where the summoned party fails to appear on the due date, the procedure before the Board may take place in the absence of the said party.
- (4) The presence of the parties on the due date for settling the appeal shall prevail over the deficiencies in the procedure of summoning the parties.
- (5) The written opinion on the lodged appeal, drawn up by an examiner in the Trademarks Division, shall be attached to the case file at least five days prior to the date established for settling the appeal.
- (6) The written opinion shall contain the answer to the grounds invoked by the appellant to uphold the appeal.
- (7) The files of applications for trademark or geographical indication registration shall be made available to the Board by the Trademarks Division, upon request thereby.

Article 52 - Sessions and Debates

- (1) The appeal session shall be public. In case that the public debate is likely to cause prejudice to one of the parties or to public order, the Board may decide that the session be secret.
- (2) The Chairman of the Board shall open, adjourn and dismiss the session.
- (3) The secretary of the Board shall check whether the procedure is complete and whether the fees for settling the appeal have been paid and shall inform the Chairman accordingly.
- (4) On the due date, provided that the parties are present or it is ascertained that the procedure is duly complied with, the Chairman shall open the debates and give the floor to the appellant.

(5) The Chairman may put questions to the parties in order to clear up the facts presented in the appeal or the answer thereto and may put in debates any circumstance for solving the cause, even if these are not contained in the appeal.

(6) The members of the Board may put questions to the parties only through the intermediary of the Chairman, who can still agree that the members address the questions directly.

(7) The grounds presented by the parties during the session shall be recorded by the secretary of the Board in the register of sessions.

(8) Upon solidly justified request by the parties or when from the debates there results the need of new evidence, the Board may set a new session date for presenting all grounds and evidence in sustaining the appeal or, as the case may be, for completing the grounds and evidence in defense, the present parties being informed on the new session date.

(9) In the cases referred to under paragraph (8), the Board shall dispose by a conclusion of the session signed by the Chairman and secretary that settlement of the appeal should be postponed.

Article 53 - Decisions of the Board

(1) After the closure of the debates, the Board shall deliberate on the matter in the absence of the parties and shall pronounce the decision during the session, on the same day or, in special cases, depending on the complexity of the cause, the Board may adjourn the pronouncement for utmost three weeks. The Chairman shall hear the opinions of the members of the Board and shall have the final word.

(2) Where the Board ascertains that further explanations or documents are necessary to the cause file, it shall put the file again on the roll, setting a new session date, the parties being invited.

(3) The debates of the session and the decisions of the Board shall be written down by the secretary of the Board in the register of sessions.

(4) The decision of the Board shall be based only on facts and evidence presented by the parties in the cause file and in the session of appeal.

(5) When a decision is made, the operative part thereof shall be entered in the register of sessions and the rapporteur shall draw up the draft decision.

(6) The Board's decision shall contain:

- a) full name/denomination and domicile/registered office of the appellant;

- b) name or denomination of the professional representative or lawyer, as the case may be;
- c) number of the appeal file;
- d) structure of the Board that made the decision;
- e) subject-matter of the appeal, reasons of the parties and evidence submitted thereby to sustain the appeal;
- f) grounds in fact and in law on which the decision is based;
- g) operative part of the decision;
- h) legal remedies, time limits therefor and court where the decision may be appealed against;
- i) mention that the decision was pronounced in a public session, as well as signatures of the Chairman and members of the Board. Where one of the members is hindered to sign the decision, the decision shall be signed by the Chairman and the reasons that hindered the signing thereof shall be mentioned.

(7) Board's decisions shall be made by a majority vote.

(8) Decisions shall be issued in a single original copy to be filed to the Board's Register of Decisions and kept by the secretary of the Board.

(9) Decisions shall be communicated to the parties by the secretary, as certified copies.

(10) The Board shall make one of the following decisions for settling the appeal:

- a) admitting the appeal and deciding to invalidate or amend the OSIM decision;
- b) rejecting the appeal and maintaining the OSIM decision.

(11) Where an appeal is lodged before a decision is made by OSIM, the Board shall take note of the untimely filed appeal and shall transmit the file to the Trademarks Division to follow the procedure pursuant to the Law and these Regulations.

(12) Where the Board ascertains that the appeal fee has not been paid or the appeal lacks reasons, it shall reject the appeal for failure to pay the legal fee or for lacking reasons, respectively.

(13) All expenses required for settling the appeal shall be covered by the party who engaged said expenses.

(14) The provisions of Art. 51 - 53 relating to the appeal procedure shall be completed with the respective provisions of the Code of Civil Procedure.

Article 54 - Keeping Evidence of Appeals

(1) The procedure of settling the appeals lodged with the Board of Appeal shall be recorded in the following documents: the Electronic Register of Appeals, the Register of Sessions and the Board's Register of Decisions.

(2) The Register of Appeals in which the appeals are recorded shall contain:

- a) date on which the appeal was lodged and its registration number;
- b) full name or denomination of appellant, professional representative or lawyer, as the case may be;
- c) subject-matter of the appeal;
- d) peremptory date set for settling the appeal;
- e) decision pronounced by the Board in respect of the appeal as lodged;
- f) number of fiscal document proving the payment of the legal appeal fees (receipt, money order etc.);
- g) number of Board's decision, number and date on which the decision was communicated;

(3) The Register of Sessions shall contain the debates of the session as written down.

(4) The Board's Register of Decisions shall contain:

- a) number of decision;
- b) number of appeal file;
- c) full name or denomination of appellant, professional representative or lawyer, as the case may be;
- d) Board's decision;
- e) date on which the decision was pronounced.

(5) Yearly evidence of appeals shall be kept, each year starting from current number 1.

CHAPTER XII

Printed Forms and Registers

Article 55 - OSIM Printed Forms

(1) (1) In the proceedings before O.S.I.M. there shall be used printed forms for:

- a) application for the registration of a trademark;
- b) opposition to the registration of a trademark;
- c) amendments of an application or of the registration of a trademark;

- d) change of the name or address of the owner or of the professional representative;
- e) request for recording the assignment of a trademark;
- f) request for recording a license or for constituting a real right;
- g) request for removal or modification of recording the licenses or of other rights;
- h) declaration of surrender of a trademark;
- i) request for renewal of the registration of a trademark;
- j) application for the registration of a geographical indication;
- k) request for renewal of the right to use a geographical indication;
- l) opposition to the registration of a geographical indication;
- m) power of attorney for representation.

(2) O.S.I.M. shall supply the printed forms provided for in paragraph (1) free of charge.

Article 56 - Trademarks Register

(1) The Trademarks Register shall contain the following elements:

- a) name or denomination and domicile or registered office of the applicant, as well as the indication of the State wherein he has the residence or an establishment within the meaning of Art. 3 of the Paris Convention;
- b) date of filing the application for the registration of the trademark with O.S.I.M. ;
- c) date and number of the application for the registration of the trademark;
- d) date of publication of the application for the registration of the trademark;
- e) name or denomination and address or registered office of the professional representative;
- f) reproduction of the trademark;
- g) list of goods and services for which the trademark was registered;
- h) indications relating to priority claiming;
- i) declaration of the applicant with regard to disclaiming an exclusive right upon an element of the trademark;
- j) express mentions, if the trademark is collective or certification trademark;
- k) date and number of registration of the trademark.

(2) In the Trademarks Register there shall also be entered:

- a) changes in respect of the name or denomination and domicile or registered office of the owner or in respect of the name of the State wherein he has the residence or an establishment within the meaning of Art. 3 of the Paris Convention;
- b) changes in respect of the name or denomination and address or registered office of the professional representative;
- c) in case that a new professional representative has been appointed, name or denomination and address or registered office thereof;

- d) any amendment or correction regarding the trademark or the list of goods and services;
- e) amendments regarding the regulations for using the collective or certification mark;
- f) any transfer of rights in a trademark or the constitution of real rights;
- g) renewal of trademark registration;
- h) mentions relating to the loss of rights in a trademark;
- i) owner's declaration of surrender of the trademark;
- j) mentions regarding the decision of cancellation of a trademark or the decision of revocation of the owner's rights, as well as the mention of striking off the trademark;
- k) striking off of the professional representative.

3) The Director General of OSIM may decide upon entry as well as upon other mentions to be made in the Trademarks Register.

Article 57 - Register of Geographical Indications

(1) The Register of Geographical Indications shall contain:

- a) the denomination and registered office of the association of producers which is the applicant for the registration of the geographical indication;
- b) date of filing of the application for registration of the geographical indication with OSIM;
- c) name or denomination and address or registered office of the professional representative;
- d) the geographical indication the registration whereof is applied for;
- e) list of persons authorized to use the geographical indication;
- f) type of products to which the geographical indication refers;
- g) mentions regarding the specification;
- h) number and data of the certificate of conformity issued by the specialized central public authority;
- i) indications concerning the protection title granted in the country of origin;
- j) date and number of registration of the geographical indication;
- k) list of geographical indications protected under international conventions.

(2) In the Register of Geographical Indications there shall also be entered:

- a) changes in respect of the denomination and registered office of the association of producers;
- b) changes in respect of the list of persons authorized by OSIM to use the geographical indication;
- c) amendments brought to the specification;

- d) renewal of the right to use the geographical indication;
- e) mentions concerning the decision of cancellation of the registration of geographical indication and removal of geographical indication;
- f) mentions concerning the decision to revoke the rights of the persons authorized to use the geographical indication;
- g) changes in respect of the name or denomination and address or registered office of the professional representative;
- h) where appropriate, mentions regarding the appointment of a new professional representative.

(3) The Director general of OSIM may decide upon entering other such mentions in the Register of Geographical Indications.

Article 58 - Final and Transitional Provisions

The Director General of OSIM may issue norms, orders and instructions as to the implementation of the Law and the current Regulations.