

THE LAW ON TRADEMARKS¹

I. GENERAL PROVISIONS

Article 1

This Law shall govern the manner of acquisition and the protection of rights with respect to marks used in trade of goods and/or services.

A trademark shall be the right that protects a mark used in the course of trade to distinguish goods and/or services of one natural or legal person from identical or similar goods and/or services of another natural or legal person.

For the purposes of this Law, a trademark shall also be a mark which has been granted international registration for the territory of the Republic of Serbia, based on the Madrid Agreement Concerning the International Registration of Trademarks (hereinafter referred to as: the Madrid Agreement), and/or the Protocol to the Madrid Agreement Concerning the International Registration of Trademarks (hereinafter referred to as: the Madrid Protocol.)

The provisions of this Law shall also apply to trademarks under paragraph 3 of this Article if certain issues are not regulated by the Madrid Arrangement and/or the Madrid Protocol.

Article 2

A trademark may be individual, collective, or warranty trademark.

A collective trademark shall mean a trademark of a legal person representing a certain type of association of manufactures and/or providers of services, which may be used by persons who are members of such association, under the conditions prescribed by this Law.

The user of a collective trademark shall be entitled to use such mark only in the manner laid down in the general act on collective trademarks.

A warranty trademark shall mean a trademark that is used by several companies under supervision of the trademark holder, as a warranty of quality, geographic origin, manner of manufacturing or other common characteristics of the goods and/or services provided by such companies.

The holder of the warranty trademark shall allow any company to use the warranty trademark for goods and/or services which have common characteristics prescribed by general act on the warranty trademark.

Article 3

Seals, stamps and hallmarks (official marks for marking precious metals, measurements and the like) shall not be deemed trademarks for the purposes of this Law.

II. SUBJECT - MATTER AND CONDITIONS FOR PROTECTION

Article 4

Any mark that is used to distinguish goods and/or services in trade and that may be graphically presented, shall be protected by the trademark.

A mark may be comprised, *inter alia*, of the following: words, slogans, letters, numbers, images, drawings, combinations of colors, three-dimensional shapes, combinations of such marks, as well as of graphically presentable musical notes.

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Article 5

A trademark shall not be used to protect a mark that:

- 1) is contrary to public policy or to accepted principles of morality;
- 2) has a general appearance that does not enable goods and/or services to be distinguished in the course of trade;
- 3) represents a shape determined exclusively by the nature of the product or a shape indispensable to obtain a given technical result;
- 4) designates exclusively the type, purpose, time or method of production, quality, price, quantity, weight or geographical origin of the goods and/or services;
- 5) is customary for designating a given type of goods and/or service;
- 6) is likely to cause confusion in trade due to its representation or content, and to mislead the relevant public with regard to the geographical origin, type, quality, or other features of the goods and/or services concerned;
- 7) contains official marks or hallmarks of quality control or warranty, or imitations thereof;
- 8) is identical with a protected mark of another person for identical goods and/or services;
- 9) is identical to an earlier protected mark of another person for a similar type of goods and/or services, or which is similar to an earlier protected mark of another person for an identical or similar type of goods and/or services, if such identicalness and/or similarity are likely to cause confusion in the relevant part of the public, including the likelihood of association of that mark with the earlier protected mark;
- 10) is identical or similar to a mark for identical or similar goods and/or services, which is well-known in Serbia and Montenegro within the meaning of Article 6bis of the Paris Convention for the Protection of Industrial Property;
- 11) regardless of the goods and/or services concerned, is a reproduction, imitation, translation or transliteration of a registered trademark, or the essential segment thereof, which is known without any doubt to those participating in the commerce in Serbia and Montenegro as a mark of widespread reputation (hereinafter; "well-known trademark") used by other persons for marking their goods and/or services, if the use of such a mark would result in an unfair benefit from the reputation acquired by the well-known trademark or in harm to its distinctive character and/or reputation;
- 12) by its appearance or content, infringes copyright or industrial property rights;
- 13) comprises of state or other public coat of arms, flag or other emblem, name or abbreviation of the name of a country or of an international organization, or imitations thereof, unless the competent authority of the country or organization concerned has given its authorization for such use;
- 14) represents or imitates a national or religious symbol.

A mark referred to in items 2, 4 and 5 of paragraph 1 of this Article may be protected as a trademark if the applicant for trademark registration proves that the serious use of such mark has rendered the mark capable of being distinguished in the trade in goods and/or services concerned.

A protected mark under paragraph 1 items 8), 9) and 11) of this Article shall be understood to mean a trademark for the territory of the Republic of Serbia, while a protected mark under paragraph 1 items 8) and 9) of this Article shall be understood to mean a mark which is the subject of a trademark application for the territory of the Republic of Serbia, provided the trademark applied for on the basis of that application is granted.

Where cases under paragraph 1 item 9) are concerned, a mark may be granted trademark protection based on an explicit written approval by the holder of the earlier registered trademark.

In establishing whether the mark under paragraph 1 item 10) of this Article is a well-known mark and/or whether the mark under paragraph 1 item 11) of this Article is a famous trademark, the familiarity of the relevant part of the public with the mark shall be taken into account, including their familiarity with the mark as a consequence of promotional activities in respect of the mark. The relevant part of the public shall be understood to mean the actual and the potential users of the goods and/or services designated by the mark, as well as the persons involved in the process of distribution of the respective goods and/or services.

The likeness or name of a person shall be protected as a trademark only with such person's consent.

The likeness or name of a deceased person shall be protected as a trademark only with consent of parents, spouse and children of the deceased person.

The likeness or name of a historical person or other deceased famous person shall be protected as a trademark only with the authorization of the competent authority and the consent of such person's relatives up to the third degree of kinship.

Article 6

Foreign natural and legal persons in Serbia and Montenegro shall enjoy the same rights with respect to the trademark protection as domestic natural and legal persons if such rights derive from international agreements or from the principle of reciprocity. The person claiming reciprocity shall have to prove its existence.

III. PROTECTION PROCEDURE

Common Provisions

Article 7

Legal protection of marks used in trade of goods and/or services shall be acquired by means of an administrative proceedings conducted by the administrative authority responsible for intellectual property matters (hereinafter referred to as "competent authority").

An appeal may be filed with the Government against the decisions rendered by the competent authority under paragraph 1 of this Article, within a term of 15 days from the receipt of the decision.

Administrative proceedings may be instituted against the decision on the appeal rendered by the Government within a term of 30 days from the date of the receipt of the Government's decision.

Article 8

The competent authority shall maintain the Register of Applications for Trademark Registration (hereinafter referred to as "the Register of Applications") and the Register of Trademarks.

The Register of Applications shall include, in particular: the application number and the application filing date; data about the applicant; a representation of the mark and a designation of the goods and services the mark refers to; data about any changes referring to the trademark application (assignment, licence, pledge, franchise, etc.)

The Register of Trademarks shall include, in particular: the trademark registration number and the date of entering of the trademark in the Register of Trademarks; data about the trademark holder; a representation of the protected mark and a designation of the goods and services the mark refers to; data about any changes referring to the registered trademark (assignment, licence, pledge, franchise, etc.)

The content of registers referred to in paragraph 1 of this Article shall be prescribed by special regulation.

Article 9.

The Registers referred to in article 8 of this Law shall be open to the public and any interested person may have access to them.

Any interested person, upon the oral request, may inspect the files of registered trademarks, in the presence of an official.

Upon the written request of an interested person and subject to payment of the prescribed fee, the competent authority shall make available the copies of the documents and the corresponding attestations and certificates with respect to facts contained in the official records kept by the authority.

Article 10

Foreign natural and legal persons shall be represented in the proceedings before the competent authority by a professional representative registered in the Register of Representatives maintained by the competent authority, or a domestic attorney.

Natural and legal persons who meet the requirements set by the Law regulating patent protection shall be entered into the Register of Representatives maintained by the competent authority.

Article 11

A representative who conducts activities in representing persons in exercising their rights under this Law shall be a Faculty of Law graduate.

Initiation of the Proceedings for Trademark Registration

Article 12

The procedure for the trademark registration shall be initiated by filing an application for trademark registration (hereinafter referred to as "the application").

The essential elements of the application shall be:

- 1) the request for the trademark registration;
- 2) the mark for which protection is requested;
- 3) the list of goods and/or services to which the mark relates.

An application may contain a request for registration of a single trademark relating to one or more types of goods and/or services.

The request for the trademark registration shall include in particular: the particulars of the applicant; a statement to the effect that the mark is an individual mark, collective mark or warranty mark; a representation of the mark; indication of classes of in which the goods and/or services are classified according to the Nice Agreement Concerning the International Classification of Goods And Services for the Purposes of the Registration of Marks (hereinafter: International Classification of goods and services); the signature and the stamp of the applicant.

If the mark referred to in paragraph 2. point 2) of this Article includes a figurative element, the depiction of such element shall be clear, made on a good quality paper and suitable for reproduction.

The goods and/or services referred to in paragraph 2, point 3) of this Article shall be marked and classified in accordance with the classes of the International Classification of goods and services.

The content of the request for the trademark registration registers referred to in paragraph 2, item 1) of this Article, as well as the content of any annexes that may be submitted with the application, shall be prescribed by the special regulation.

Application for Registration of a Collective and Warranty Trademarks

Article 13

An application for registration of a collective trademark shall, in addition to the elements referred to in Article 12 of this Law, be accompanied with the general act on collective trademark, whereas the application for the registration of a warranty trademark shall be accompanied with the general act on warranty trademark.

The general act on collective trademark shall contain: the particulars of the applicant or its representative; the provisions relating to the appearance of the mark and to the goods and/or services to which it relates; the provisions identifying the holders of the right to use the collective trademark and setting out the conditions for such use; the provisions on the rights and obligations of users of the collective trademark in the event of infringement of the trademark and the provisions setting out measures and consequences in case of violation of the provisions of the general act.

The general act on warranty trademark shall contain, besides the provisions referred to in paragraph 2 of this Article, provisions on common characteristics of goods and/or services guaranteed by the warranty trademark and provisions on the supervision of use of the warranty trademark by its holder.

The applicant, and/or the holder of the collective trademark and/or the warranty trademark shall submit to the competent authority any change of the provisions of the general act on collective trademark or warranty trademark.

Any person may examine the general act on collective trademark and/or the warranty trademark.

Article 14

In the administrative proceedings before the competent authority, fees and costs of proceedings shall be paid in accordance with special regulation on administrative fees and costs of proceedings, as well as the fees for the provision of information services.

Register of Applications

Article 15

The data on the essential elements of the application referred to in Articles 12 and 13 of this Law, and other prescribed data, shall be entered into the Register of Applications.

Filing Date of an Application

Article 16

In order for the filing date of an application to be recognized, the application submitted to the competent authority on such date shall contain:

- 1) Indication that the trademark registration is requested;
- 2) First name and the last name, or the company name and the address of the applicant;
- 3) Mark for which protection is requested;
- 4) List of goods and/or services to which the mark relates.

Upon the receipt of the application the competent authority shall examine whether the conditions referred to in paragraph 1 of this Article have been met.

The note of a filing number, date and the time of the receipt shall be made by the competent authority on an application submitted, which contains elements referred to in paragraph 1 of this Article, and the certificate to that effect shall be issued to the applicant.

Where the application does not contain elements referred to in paragraph 1 of this Article, the competent authority shall request the applicant to correct the deficiencies because of which it has not been possible to enter the application into the appropriate register within a period of 30 days.

If the applicant does not correct deficiencies within the period referred to in paragraph 4 of this Article, the competent authority shall, by an individual decision, reject the application.

The decision under paragraph 5 of this Article may be appealed.

If the applicant corrects deficiencies within the period referred to in paragraph 4 of this Article, the competent authority shall, by an individual decision, recognize the date when the motion correcting deficiencies was received as the filing date of the application.

The application for which the filing date has been recognized shall be entered in the appropriate register of applications.

Priority Right

Article 17

As of the filing date the applicant shall enjoy a priority right over all other persons who have subsequently filed an application for the same mark or for a similar mark concerning the same or similar product and/or service.

Article 18

Any legal or natural person who has filed an orderly trademark application effective in any country member of the Paris Union or the World Trade Organization shall be granted a right of priority in the Republic of Serbia as of the filing date of the original application, provided that an application for the same mark is filed in the Republic of Serbia within six months from the effective date of the application in the concerned country. The filing date of the original application, the number of the application and the country where it has been filed shall be specified arising from the application for trademark registration.

An orderly application referred to in paragraph 1 of this Article shall be deemed to be any application that meets all the necessary requirements prescribed by the law of any Paris Union or World Trade Organization member-country in which the application was filed or by an international agreement signed between these countries, regardless of the subsequent legal effect of such application.

Any legal or natural person referred to in paragraph 1 of this Article shall submit to the competent authority a copy of the application duly certified by a competent authority of the Paris Union, the World Trade Organization member-country or the international organization to which the application has been filed, within three months from the filing date of the application in the Republic of Serbia.

The request for issuing a priority certificate shall include in particular: data about the applicant, a representation of the mark; a list of the goods and/or services; proof of payment of the fee for the certificate.

The priority certificate shall include, in particular: data about the applicant; the application number; data about the application filing date; a representation of the mark and a list of the goods and/services.

The Government shall prescribe the particulars of the request under paragraph 4 of this Article and the content of the priority certificate under paragraph 5 of this Article.

Article 19

An applicant who, within three months preceding filing of the application, has used a mark, to mark a product and/or service in an exhibition or a fair of international character in the Republic of Serbia or in any other member-country of the Paris Union or the World Trade Organization, may request in his application to be granted the priority right as from the date of the first use of such mark.

The applicant referred to in paragraph 1 of this Article shall submit the application accompanied by an attestation by the competent body of the member-country of the Paris Union or the World Trade Organization, certifying that an exhibition and/or a fair was of an international character and also providing information on the nature of an exhibition or a fair, the place where it was held, opening and closing dates and the date of the first use of the mark for which protection is requested.

The attestation certifying that an exhibition or a fair held in the Republic of Serbia was of an officially recognized international character shall be issued by the Chamber of Commerce of the Republic of Serbia.

Article 20

Recognition of the priority right referred to in Article 19 shall not extend the time limits referred to in Article 18 of this Law.

Article 21

No substantial changes may subsequently be made to the application regarding the representation of the mark, nor may the list of goods and/or services be amended.

For the purposes of paragraph 1 of this Article, a substantial change of the mark shall be understood to mean any change altering the distinctive character of the mark.

The precision of the wording of the list of goods and/or services shall not be deemed amending the list.

Article 22

Applications shall be examined in the order determined by the dates of their filing.

In derogation from the provision of paragraph 1 of this Article, applications may be reviewed in a fast-track procedure:

1) in the event of judicial proceedings or if inspection surveillance or customs procedures have been initiated upon the request of the court or the competent market inspection authority and/or the customs authority:

2) if an application for the international trademark registration has been filed, and it is subject to the Madrid Agreement:

3) if a fast-track procedure has to be applied pursuant to other regulations.

In the case under paragraph 2 item 3) of this Article, a request shall be filed for examining the application in a fast-track procedure.

Formal Examination of the Application

Article 23

An application shall be deemed orderly if it contains essential elements referred to in Articles 12 and 13 of this Law, proof of payment of the filing fee and any other prescribed data.

Where the application was found not to be orderly, the competent authority shall notify the applicant in writing and request the application to be regularized within a time limit determined by the competent authority, asserting the reasons for such request.

Upon the justified request of the applicant, the competent authority may extend the time limit referred to in paragraph 2 of this Article for a period deemed appropriate, against the payment of the prescribed fee.

Where the applicant fails to regularize the application or does not pay the regularization fee within the prescribed time limit, the competent authority shall decide to reject the application.

The decision under paragraph 4 of this Article may be appealed.

In the case referred to in paragraph 4 of this Article, the applicant may file a motion and request for the restoration in the previous condition, within three months as of the date he was served the decision rejecting the application.

Withdrawal of the Application

Article 24

An applicant may withdraw the application as a whole or in respect of certain of the goods and/or services, at any time during the proceeding.

If a certain right in favour of a third party has been recorded in the Register, the applicant may not withdraw the application without a written approval by the person in whose name such right has been registered.

In the event the applicant withdraws the application as a whole, the competent authority shall render a special decision staying the proceeding.

An appeal may be filed against the decision under paragraph 3 of this Article.

In the case referred to in paragraph 3 of this Article, the validity of the application shall cease as of the date immediately following the date of filing the statement of withdrawal with the competent authority.

Division of the Application

Article 25

The application for the registration of a trademark specifying a list of products and/or services (hereinafter: initial application) may, at the request of the applicant, be separated into two or more applications, before the trademark is entered into the Register of Trademarks, by dividing the list of products and/or services. The application for division of application shall contain all prescribed data.

A separated application shall retain the filing date of the initial application and its right of priority.

A special decision shall be issued on a division of an application specifying the number or numbers of the new application(s), the mark from the initial application as well as the goods and/or services that will remain in the initial application and/or the goods and/or services that will be included in separate application(s).

Separated applications shall be entered into the Register of Applications.

Provisions of paragraphs 1 to 4 shall not apply to application for registration of a collective and/or warranty trademark.

The request under paragraph 1 of this Article shall contain, in particular: the number and the filing date of the basic application the division of which is sought; data about the applicant; a representation of the mark; a designation of the class numbers under the International Classification of Goods and Services remaining in the basic application and the class numbers under the International Classification of Goods and Services which are being divided.

The Government shall prescribe the particulars of the requests under paragraph 1 of this Article, and it shall determine the annexes to be filed with the trademark application, and shall prescribe their content.

Examination of Conditions for the Grant of Trademark

Article 26

If an application is regular within the meaning of Article 23 of this Law, the competent authority shall examine for conformity with the conditions for the grant of trademark prescribed by Articles 4 and 5 of this Law.

The conditions for the grant of trademark shall be fulfilled at the moment of the entering of the trademark in the Register of Trademarks.

Acting pursuant to paragraph 1 of this Article, the competent authority may take into account the written opinion of any party concerned in which it explains the reasons under Articles 4 and 5 of this Law due to which the trademark applied for is ineligible for registration.

The person referred to in paragraph 3 of this Article shall not be considered to be a party to the proceedings.

Article 27

If the competent authority establishes that an application is not eligible for the grant of trademark, it shall notify the applicant in writing of the reasons due to which the trademark cannot be granted, and it shall invite the applicant to submit its observations about such reasons within a time limit of up to 30 days.

If a mark contains an element not eligible for trademark protection pursuant to Article 5 paragraph 1 item 2), 4) and 5) of this Law, and if incorporation of such element in the mark is liable to cause suspicion about the scope of protection provided by the trademark, the competent authority may request the applicant to submit a written statement within a specified time limit, disclaiming any exclusive rights in respect of such element.

If the mark incorporates an element which is unclear or ambiguous, the competent authority shall request the applicant to submit a description of the mark within a set time limit, clarifying the element.

Upon a reasoned request by the applicant, and upon payment of the fee prescribed, the competent authority may extend the time limit referred to in paragraph 1 of this Article by a period of time the competent authority deems appropriate.

The competent authority shall refuse a trademark application as a whole or in respect of certain of the good and/or services, if the applicant fails to proceed in accordance with the request by the competent authority under paragraph 1, 2 and 3 of this Article, or if the applicant has proceeded but the competent authority still deems the trademark not entirely grantable or not grantable for certain of the goods and/or services.

Article 28

In examining whether the requirements for registering a collective trademark and warranty trademark have been met, the competent authority shall especially examine whether the general act on a collective trademark and/or warranty trademark is in contravention of the public policy or to accepted principles of morality.

If the general act on a collective trademark and/or guarantee trademark is found to be in contravention of the morality or public order, the provisions of Article 27 of this Law shall apply *mutatis mutandis*.

Paragraphs 1 and 2 of this Article shall apply to all alterations of the general act on a collective trademark and/or a warranty trademark.

Article 29

If the application meets requirements for the registration of a trademark, the competent authority shall request the applicant to pay a fee for the first ten years of protection and the costs of publication of the trademark and to furnish the evidence of payment.

The application shall be deemed withdrawn if the applicant does not furnish the evidence of payment referred to in paragraph 1 of this Article within the specified time limit.

In the cases referred to in paragraph 2 of this Article, the competent authority shall render a decision staying the proceedings.

An appeal may be filed against the decision under paragraph 3 of this Article.

In the case referred to in paragraph 2 of this Article, the applicant may file a request for restoration to the previous conditions against the payment of prescribed fee within three months as of the date he was served the decision on termination of the proceedings.

Entry in the Trademark Register Article 30

When the applicant submits the evidence of payment referred to in the Article 29 paragraph 1 of this Law, the competent authority shall enter the recognized right together with the prescribed data in the Trademark Register and issue a trademark registration certificate to the holder of the right.

The trademark registration certificate shall be considered to be a decision in an administrative procedure.

A trademark registration certificate shall contain, in particular: the trademark registration number and the date of entering of the trademark in the Register of Trademarks; data about the trademark holder; a representation of the protected mark; a list of the goods and/or services the mark refers to; the date of lapse of the trademark.

The Government shall prescribe the particulars of the content of the trademark registration certificate referred to in paragraph 1 of this Article.

Publication of the Recognized Right Article 31

Recognized right referred to in Article 30 of this Law shall be published in the official publication of the competent authority.

The official gazette of the competent authority shall publish the following data, and in particular: the trademark registration number, the date of registration of the trademark in the Register of Trademarks; data about the trademark holder; the date of lapse of the trademark; a representation of the trademark; a list of the goods and/or services the trademark refers to.

The Government shall prescribe the particulars of the content of the trademark certificate referred to in paragraph 2 of this Article, which shall be published in the official gazette of the competent authority.

IV. INTERNATIONAL REGISTRATION OF TRADEMARKS

Article 32

A trademark holder and/or applicant may file an application for the international trademark registration in accordance with the Madrid Agreement and/or the Madrid Protocol.

The application for the international trademark registration under paragraph 1 of this Article shall be filed with the competent authority.

The application for the international trademark registration shall be subject to the payment of a prescribed fee.

Article 33

The procedure for the international registration of a trademark shall be initiated by filing an application for the international registration of the trademark.

The application for the international registration of a trademark shall be filed with the following attached to it:

- 1) a representation of the mark;
- 2) a list of the goods and services in the French language, properly drawn up and classified;
- 3) a power of attorney if the request is filed via a representative;
- 4) proof of payment of the application fee;

The application under paragraph 1 of this Article shall contain in particular: data about the applicant; the application number and/or the registration number of the trademark which constitutes grounds for the international registration; data about the priority right claimed; a representation of the mark, a list of the goods and/or services the mark refers to in the French language; a designation of the countries in respect of which protection is applied for.

The Government shall prescribe the particulars of the application in paragraph 1 of this Article, and shall determine the annexes to be filed with the application, as well as prescribe their contents.

Article 34

The application for the international registration of a trademark shall be deemed regular if it contains the data under Article 33 of this Law and the other data specified.

If the application for the international registration of a trademark is not regular, the competent authority shall address the applicant in writing stating the reasons for the request and inviting him to remedy the deficiencies within the time limit set by the authority.

Upon a reasoned request by the applicant and upon payment of the prescribed fee, the competent authority shall extend the time limit under paragraph 2 of this Article by a period of time the authority deems fit.

If the applicant fails to proceed as requested within the specified time limit, the competent authority shall render a decision rejecting the application.

An appeal may be filed against the decision under paragraph 4.

Article 35

If the application for the international registration of a trademark is regular within the meaning of Article 34 of this Law, the competent authority shall render a decision inviting the applicant to pay the fee for the international registration of the trademark within the time limit specified by the authority, and to submit proof of payment.

Upon submission of the proof of payment by the applicant, the competent authority shall forward the application for the international registration of the trademark to the World Intellectual Property Organization.

If the applicant fails to submit the proof of payment referred to in paragraph 1 of this Article within the set time limit, the application shall be deemed withdrawn.

In the case under paragraph 3 of this Article, the competent authority shall render a decision staying the procedure, which may be appealed.

Article 36

Any changes to the application and/or registration of a trademark constituting grounds for the international registration of the trademark shall be notified to the World Intellectual Property

Organization by the competent authority, if such changes also impact the international registration of that trademark.

Territorial Extension of an International Trademark

Article 37

The holder of an international trademark may file a request with the competent authority for the territorial extension of the international trademark.

The request for the territorial extension of an international trademark may refer to all the goods and services in respect of which the mark has been registered or to a certain part thereof.

The request under paragraph 1 of this Article shall contain in particular: data about the applicant, the number of the international trademark, a designation of the countries of extension.

The Government shall prescribe the particulars of the request under paragraph 1 of this Article, and shall determine the annexes to be filed with the request, as well as prescribe their contents.

V. CONTENT, ACQUISITION AND THE SCOPE OF RIGHTS

Article 38

A trademark holder has the exclusive right to use a mark protected by a trademark for designating the goods and/or services the mark refers to.

A trademark holder is entitled to prohibit other persons from illicitly using:

1) a mark identical to an earlier protected mark of the trademark holder for goods and/or services which are identical to the goods and /or services the trademark is registered for;

2) a mark identical to an earlier protected mark of the trademark holder for a similar kind of goods and/or services, or a mark which is similar to the trademark holder's earlier protected mark for identical or similar kind of goods and /or services, if there is a likelihood of confusion among the relevant segment of the public due to such identicalness and/or similarity, including the likelihood of association of that mark with the trademark holder's earlier protected mark.

For the purposes of paragraph 2 of this Article, the trademark holder shall also be entitled to prohibit the following:

1) affixing the protected mark to the goods, the packaging for the goods or labeling instruments (labels, stickers, bottle stoppers, and the like);

2) offering of goods, their placement into circulation or storage for such purposes, or supply of services under the protected mark;

3) import, export or transit of the goods under the protected mark;

4) using the protected mark in business documentation or in advertisements.

The rights under paragraph 1, 2, and 3 of this Article shall also belong to the applicant from the date of filing the application, as well as to the proprietor of the mark who is known in the Republic of Serbia within the meaning of article 6bis of the Paris Convention for the Protection of Industrial Property.

Reproduction of the Protected Mark in a Dictionary

Article 39

If the reproduction of a protected mark in a dictionary, encyclopedia or similar publication creates an impression that the mark is a generic term for goods or services for which that mark has been protected, the holder of the trademark may request from the publisher that in

the following edition, at the latest, the reproduction of the mark is accompanied with a indication clarifying that it is the protected mark (the symbol "®").

Provision of paragraph 1 of this Article shall also apply when the work is published in an electronic form.

Exhaustion of Rights

Article 40

A trademark does not entitle its holder to bar its use in connection with goods marked with such trademark and placed in circulation anywhere in the world by the holder of the trademark or other person authorized by the holder.

Provision of paragraph 1 of this Article shall not apply if the holder of the trademark has a legitimate interest to oppose further placement in circulation of goods marked with such trademark, especially if a defect or other fundamental change of condition of the goods has occurred after their placement into circulation for the first time.

Limitations of Rights

Article 41

The holder of a trademark shall not to bar other persons from placing into circulation their goods and/or services marked with the same or similar mark if that mark represents their company name or a designation acquired in good faith before the recognized priority date of trademark.

The holder of a trademark shall not to bar others from using, in accordance with good business practices, of:

- 1) its name or address;
- 2) the indication of the type, quality, quantity, purpose, value, geographical origin, date of production or other characteristics of the goods and/or services;
- 3) the registered trademark, in cases where its use is necessary to indicate the purpose of the goods or services, in particular where the spare parts or equipment are concerned.

Article 42

If the object of protection of a collective trademark or warranty trademark is a mark that implies a specific geographical area where the goods and/or services originated from, the user of a collective trademark or warranty trademark shall not bar others from using such mark in accordance with good business practices or bar its use to users of identical or similar registered mark of origin for the same or similar types of goods and/or services.

Article 43

The holder of a trademark shall not bar other persons from using the same or similar mark for marking goods and/or services of a different type, except in the case of a well-known trademark.

The holder of a registered well-known trademark may bar other persons from using the same or similar mark for marking goods and/or service, which are not similar to those for which the trademark has been registered if such use of the mark would indicate a connection between those goods and/or service and the holder of a well-known trademark and if it is likely that the interests of the holder of the well-known trademark would suffer damages by such use.

Article 44

The right to a trademark shall be acquired by the entry into the Register of Trademarks and shall be effective as of the filing date of the application.

Article 45

The duration of a trademark shall be ten years counting from the date of filing the application, and its validity may be renewed for an indefinite number of times upon filing a request and payment of the prescribed fee.

The request for the renewal of the validity of a trademark under paragraph 1 of this Article shall include in particular: an indication specifying the trademark registration number and the date of lapse of the trademark; data about the trademark holder; data about the payment of the fee for the renewal of the validity of the trademark.

Article 46

The holder of a trademark must use the trademark.

Division of a Trademark

Article 47

A trademark registered for several goods and/or services (hereinafter referred to as "initial registration") may be divided at any time, at the request of the holder of trademark, into two or more registrations by separating the list of products and/or services. The request for trademark division shall contain all prescribed data.

A separated trademark shall retain all the rights contained in the initial registration.

A special decision shall be issued on a division of a trademark, specifying the number or numbers of the new trademark(s), the mark from the initial registration as well as the list of goods and/or services which remain in the initial registration and the goods and/or services that belong to separate trademark(s).

Separated trademark(s) shall be entered into the Register of Trademarks.

Provisions of paragraphs 1 to 4 of this Article shall not apply to collective and warranty trademarks.

The request under paragraph 1 of this Article shall contain, in particular: the trademark registration number; data about the trademark holder; a representation of the mark; a designation of the class numbers under the International Classification of Goods and Services remaining in the basic registration, and the class numbers under the International Classification of Goods and Services to which the divisional trademark and/or trademarks refer.

The Government shall prescribe the particulars of the application under paragraph 1 of this Article, and shall specify the annexes to be filed with the request, and prescribe their contents.

VI. CHANGES IN THE APPLICATION AND/OR TRADEMARK REGISTRATION

Change of Name and Address of the Right Holder

Article 48

Upon the request of a trademark holder and/or applicant, the competent authority may render a decision on recording a change of the name and address of the trademark holder and /or applicant, in the appropriate register of the competent authority.

On the basis of a single request under paragraph 1 of this Article recordal of the change of name and address of the trademark holder may be requested in respect of several trademarks and/or several applications, provided the registration numbers and/or application numbers have been designated in the request.

If the request for recording the change of name and address of the right holder does not include the prescribed data, the competent authority shall invite the applicant in writing to remedy the deficiencies within the time limit specified by the competent authority.

Upon receiving a reasoned request from the applicant for recording a change of name and address, and upon payment of the prescribed fee, the competent authority shall extend the time limit under paragraph 3 of this Article by a period of time the authority deems appropriate.

If the applicant fails to proceed as requested within the set time limit, the competent authority shall pass a decision rejecting the request.

An appeal may be filed against the decision under paragraph 5 of this Article.

The request for registering the change referred to in paragraph 1 of this Article shall include, in particular: the trademark registration number and/or the application number; data about the trademark holder and/or the applicant; a designation of the kind of change;

The Government shall prescribe the particulars of the request for recording the change under paragraph 1 of this Article, and shall determine the annexes to be filed with the request, and their contents.

Restriction of the List of Goods and/or Services

Article 49

Upon the request of a trademark holder, the competent authority may render a decision on recording a restriction of the list of goods and/or services in the appropriate register.

If the request for the restriction of the list of goods and/or services does not contain the prescribed data, the competent authority shall invite the applicant in writing to remedy the deficiencies within the time limit set by the competent authority.

Upon receiving a reasoned request by the applicant for restricting the list of goods and/or services, and upon payment of the prescribed fee, the competent authority shall extend the time limit under paragraph 2 of this Article by a period of time the competent authority deems appropriate.

If the applicant fails to proceed as requested within the set time limit, the competent authority shall pass a decision rejecting the application.

An appeal may be filed against the decision under paragraph 4 of this Article.

The request for registering the change referred to in paragraph 1 of this Article shall include in particular: the trademark registration number and/or the application number; data about the trademark holder and/or the applicant; an indication specifying the kind of change;

The Government shall prescribe the particulars of the request for recording the change under paragraph 1 of this Article, and shall determine the annexes to be filed with the request and their contents.

Assignment

Article 50

The assignment of a trademark and/or rights arising from the application may be the consequence of an assignment agreement, a change of status of the trademark holder and/or the applicant, or a court or administrative decision.

The assignment of rights under paragraph 1 of this Article shall be recorded in the appropriate register of the competent authority upon the request of the trademark holder and/or applicant or assignee.

The registration of the assignment referred to paragraph 1 of this Article in the appropriate register of the competent authority, shall produce legal effect in relation to third parties.

The registration of the assignment referred to in paragraph 1 of this Article in the appropriate register of the competent authority shall be subject to a special decision.

Collective trademarks and warranty trademarks may not be the subject of assignment.

Article 51

A trademark holder and/or applicant may assign the trademark and/or the right in the trademark application on the basis of an assignment agreement under Art. 50 paragraph 1 of this Law, in respect of all or some of the goods and services.

The assignment agreement under paragraph 1 of this Article shall be drawn up in writing and it shall contain: the date of signing the agreement, name and surname or business name, domicile or residence and/or seat of the contractual parties, the trademark registration number and/or the number of the trademark application and the amount of fee, if stipulated.

Registration of the assignment of a trademark and/or the rights arising from the application shall not be granted if such assignment is liable to cause confusion in trade in respect of the type, quality or geographical origin of the goods and/or services for which the trademark has been registered and/or in respect of which the trademark application has been filed, unless the assignee disclaims protection for the goods and/or services in respect of which there is a likelihood of confusion.

Registration of the assignment of a trademark and/or the rights arising from the application which refers only to certain goods and/or services shall not be approved where the goods and/or the services being assigned are essentially similar to the goods and/or services in respect of which the mark remains registered for the benefit of the assignor.

The License

Article 52

A trademark holder and/or applicant may, on the basis of a license agreement, license out the right to using the trademark and/or the rights arising from the application in respect of all or some of the goods and/or services.

The licence agreement under paragraph 1 of this Article shall be in writing and shall contain: the date of signing, name and surname or business name, domicile or place of dwelling, and/or seat of the contractual parties, the trademark registration number and/or the number of the trademark application, the term of validity of the license and the scope of the license.

The license agreement under paragraph 1 of this Article shall be recorded in the appropriate register with the competent authority at the request of the trademark holder and/or applicant or assignee.

The registration of the license agreement under paragraph 1 of this Article in the appropriate register of the competent authority shall produce effect in relation to third parties.

The registration of the license agreement under paragraph 1 of this Article in the appropriate register of the competent authority shall be subject to a special decision.

Collective trademarks and warranty trademarks may not be the subject of a license agreement.

Pledge

Article 53

A trademark and/or the right in an application may be the subject of a pledge on the basis of a pledge agreement, court decision or decision by other state authorities and the like in respect of all or some of the goods or services.

The pledge agreement under paragraph 1 of this Article shall be drawn up in writing and shall contain: the date of signing, name and surname or business name, domicile or residence, and/or the seat of the contractual parties, as well as the lienee, if they are not the same person, the

trademark registration number and/or the number of the trademark application and data about the claim secured by possessory lien.

The pledge under paragraph 1 of this Article shall be recorded in the appropriate register of the competent authority upon the request of the trademark holder and/or applicant or lienor.

The registration of the pledge under paragraph 1 of this Article in the appropriate register of the competent authority shall be subject to a special decision.

The pledgee shall acquire possessory lien upon registration in the appropriate register of the competent authority.

Collective trademarks and warranty trademarks may not be the subject of pledge.

Any issue not regulated by this Law shall be subject to regulations regulating non-possessory pledge, obligational relations, and ownership-legal relations.

The following data shall be entered in the register of the competent authority, and in particular: data about the pledger and lienee, when they are not the same person, as well as data about the lienor; the trademark registration number and/or the number of the trademark application; data about the claim secured by possessory lien including a designation of the basic and the maximum amounts.

All changes of the data under paragraph 8 of this Article shall be recorded in the register of the competent authority.

The Government shall prescribe the type of data under paragraph 8 of this Article to be entered in the register of the competent authority.

Procedure for the Registration of Assignment, Licence and Pledge

Article 54

The procedure for the registration of an assignment, licence and pledge shall be initiated on the basis of a written request.

The request under paragraph 1 of this Article shall be filed with the following:

- 1) proof of legal title for the registration requested;
- 2) power of attorney if the procedure for the registration of the assignment, licence or pledge is initiated via an agent;
- 3) proof of payment of the fee for the decision rendered on the basis of the request for the registration of the assignment, licence or pledge.

Registration of the assignment of several trademarks and/or applications may be requested on the basis of a single request referred to in paragraph 1 of this Article, provided that the earlier right holder and the new right holder are the same in respect of every trademark and/or application and that the registration numbers and/or application numbers are designated in the request.

Registration of a licence and/or a pledge in respect of several trademarks and/or applications may be requested on the basis of a single request referred to in paragraph 1 of this Article, provided that the right holder and the licensee and/or pledgee are the same in respect of each trademark and/or application, and that the registration numbers and/or application numbers are designated in the request.

The request under paragraph 1 of this Article shall include in particular: the trademark registration number and/or the application number; data about the trademark holder and/or applicant; a designation specifying that registration is sought of the assignment of the trademark and/or the rights arising from the application, and/or a designation of the rights the registration of which is sought.

The Government shall prescribe the particulars of the request under paragraph 1 of this Article, and shall determine the annexes to be filed with the request, and their contents.

Article 55

A request for the registration of an assignment, licence and/or pledge shall be regular if it contains the data referred to in Article 54 of this Law.

If the request for the registration of the assignment, licence and pledge is not regular, the competent authority shall invite the applicant in writing to remedy the deficiencies within the time limit set by the competent authority.

Upon a reasoned request by an applicant for the registration of the assignment, licence and/or pledge, and upon payment of the prescribed fee, the competent authority shall extend the time limit referred to in paragraph 2 of this Article by the period of time the competent authority deems appropriate.

If the applicant fails to proceed as requested within the set time limit, the competent authority shall render a decision rejecting the request.

An appeal may be filed against the decision under paragraph 4 of this Article.

Article 56

If the request for the registration of an assignment, licence and/or pledge is regular within the meaning of Article 55 of this Law, the competent authority shall examine the legal title the application is based on for conformity with the statutorily prescribed conditions for the registration of an assignment, licence or pledge.

If the legal title constituting grounds for the request for the registration of an assignment, licence and pledge does not conform to the statutorily prescribed conditions or if the data arising from the application do not match the data in the registers, the competent authority shall notify the applicant in writing about the reasons due to which the registration cannot be granted and shall invite the applicant to submit his observations regarding the reasons, within the time limit set by the competent authority.

Upon a reasoned request by an applicant for the registration of an assignment, licence and/or pledge, and upon payment of the prescribed fee, the competent authority shall extend the time limit under paragraph 2 of this Article by the period of time the competent authority deems appropriate.

The competent authority shall issue a decision refusing a request for the registration of an assignment, licence and/or pledge, if the applicant fails to submit his observations, within the set time limit, regarding the reasons for which the registration cannot be granted, or if the applicant submits his/her observations but the competent authority still considers that registration cannot be granted.

VII. TERMINATION OF RIGHTS

Article 57

The trademark shall be terminated upon expiry of the ten-year period for which the fee has been paid, unless its validity has been extended.

The trademark may be terminated prior to expiry of the period referred to in paragraph 1 of this Article:

- 1) if the holder of a trademark relinquishes his trademark right — on the day following the day on which the competent authority receives the statement of relinquishment;
- 2) as a result of a court decision or a decision by the competent authority, in cases set out in this Law — on the day specified in the concerned decision;
- 3) if the legal person that is the holder of the trademark ceased to exist or if the natural person who is the holder of the trademark has died — on the day of the cessation or the day of death respectively, except where the trademark has been transferred to the successors in rights of such persons.

Collective trademark and warranty trademark shall also be terminated if the competent authority, while inspecting changes of the general act on the collective trademark determines that the requirements prescribed by the Article 28, paragraph 1 of this Law have not been met, whereas a special decision shall be issued to that effect.

In the cases under paragraph 2 items 1) and 3) and paragraph 3 of this Article, the competent authority shall render a special decision.

Article 58

If a certain right has been entered into the Trademark Register on behalf of a third party (license, pledge or other right), the holder of the trademark may not relinquish his trademark rights without the written consent of the person on whose behalf such right has been entered.

If the holder of the trademark does not pay the prescribed fee within the prescribed time limits and if a license, pledge or other right has been entered in the Trademark Register on behalf of a third party, the competent authority shall notify such third party that the fee has not been paid and that he may maintain the validity of the trademark by payment of such fee within a period of six months as of the day he was served such notification.

VIII. DECLARATION OF INVALIDITY OF A TRADEMARK

Article 59

The trademark registration may be declared invalid in whole or for some goods and/or services comprised, if it is determined that, at the time of issuance of the decision, the requirements for trademark registration prescribed by this Law have not been met.

The collective trademark registration or a warranty trademark registration may be declared invalid if it is determined that the general act on collective trademark or warranty trademark, and/or the changes thereof, did not meet requirements prescribed by the Article 28, paragraph 1 of this Law.

Article 60

The trademark registration may be declared invalid at any time during the term of protection, either at the request of an interested party or at the request of the State Prosecutor.

The request for declaration of invalidity of a trademark registration in accordance with Article 5, paragraph 1, items 8, 9, 10, 11. and 12 of this Law, may be submitted only by the holder of the former right or person authorized by him, unless he knew, for the period of five years preceding the submission of the request for nullification, of the use of a latter trademark whose holder acted in good faith, and has not objected it.

The trademark registration may not be declared invalid in accordance with Article 5 paragraph 1, items 8 and 9 of this Law if the earlier trademark had not been used in Serbia and Montenegro for the purposes of marking goods or services comprised, for a period of five years preceding the submission of the request for annulment, unless the applicant for the registration of the later trademark had not acted in good faith. In the proceedings upon request for annulment of trademark, holder of the earlier registered trademark or his successors in rights must present evidence that the registered trademark has been used.

The request for declaration of invalidity of trademark registration shall be accompanied with the appropriate evidence.

Article 61

The procedure for declaring a trademark invalid shall be initiated on the basis of a written request for a declaration of invalidity of the trademark.

The request under paragraph 1 of this Article shall include in particular: data about the applicant; data about the trademark holder; the registration number of the trademark the invalidation of which is sought; the reasons for which invalidation is sought; an indication specifying whether invalidation is sought for the trademark as a whole or only with regard to certain of the goods and/or services.

The Government shall prescribe the particulars of the request under paragraph 1 of this Article, and shall determine the annexes to be filed with the request, and their contents.

Article 62

The request for a declaration of invalidity of a trademark shall be regular if it includes the data under Article 61 of this Law.

If the request for a declaration of invalidity of the trademark is not regular, the competent authority shall invite the applicant in writing to remedy the defects within the time limit set by the competent authority, stating the reasons therefor.

Upon a reasoned request by the applicant, and upon his/her payment of the prescribed fee, the competent authority shall extend the time limit under paragraph 2 of this Article by the period of time the competent authority deems appropriate.

If the applicant fails to proceed in accordance with the invitation within the set time limit, the competent authority shall pass a decision on rejecting the request.

An appeal may be filed against the decision under paragraph 4 of this Article.

Article 63

The competent authority shall forward the regular request to the trademark holder and invite him/her to submit his/her reply within 30 days from the date of receipt of the invitation.

After the completion of the procedure based on the request for a declaration of invalidity of the trademark, the competent authority shall pass a decision pronouncing the invalidity of the trademark as a whole or in respect of only certain goods and/or services, or a decision rejecting the request.

IX. SPECIAL CASES OF TRADEMARK TERMINATION

Article 64

At the request of an interested party, the competent authority may issue a decision on revocation of a trademark if the holder of the trademark or a person authorized by him fail, without a justified reason, to seriously use trademark on the domestic market for marking of goods and/or services comprised, for an uninterrupted period of five years as of the day on which the trademark was entered in the Trademark Register or from the day of its last use. During the proceedings for termination of a trademark due to its non-use, the trademark holder or a person authorized by him must prove that the trademark has been used.

Use of the trademark, within the meaning of paragraph 1 of this Article and Article 51, paragraph 3 of this Law shall also mean the use of the mark protected by the trademark in a form which differ in elements that do not alter the distinctive character of the mark, as well as the use of the protected mark on goods or packaging of goods intended exclusively for export.

Justified reasons for not using a registered trademark referred to in paragraph 1 of this Article shall be understood to mean circumstances occurring independently of the trademark holder's

will that are an obstacle to the use of the trademark, such as a decision of a state authority, an import prohibition or any other prohibition affecting goods and/or services protected by the trademark.

Advertising the registered trademark without possibility of supplying the goods and/or using the services comprised shall not be considered as the use of the trademark.

Payment of taxes for extending the validity of the trademark or conclusion of contracts on transfer of rights, license, pledge, franchises or similar, shall not be considered as the trademark use.

The competent authority shall not issue a decision on revocation of a trademark due to its non-use, if the use of the trademark had begun or was continued after the expiry of the five-year period of non-use of the registered trademark and before submission of a request for revocation of trademark due to its non-use except if the commencement or continuation of use of the registered trademark occurred after the holder of the right had become aware that a request for the revocation of his trademark will be submitted and if the use had begun or was continued within a period of three months before the submission of a request for the termination of a trademark.

Article 65

In the case referred to in Article 64 of this Law, trademark shall be terminated upon expiry of a 5-year period from the date of the last use of trademark, or upon expiry of a 5-year period from the date of trademark entry in the Register of Trademarks, if the trademark had not been used.

Article 66

The competent authority may, at the request of an interested party, issue a decision on revocation of a trademark also in the following cases:

1) if the mark protected by a trademark, due to actions or omissions by the holder of trademark or his successor in rights, has become a generic term for the goods and/or services for which it was registered;

2) if the mark protected by a trademark, due to the manner of use by its holder or his successor in rights, has become capable of causing confusion in commerce about the geographical origin, type, quality or other characteristics of the goods and/or services;

3) if the mark protected by a trademark has become contrary to public policy or to accepted principles of morality.

The right to use a collective trademark and a warranty trademark may also be terminated if the collective trademark or the warranty trademark are being used contrary to a general act on collective trademark or warranty trademark.

In the cases referred to in paragraphs 1 and 2 of this Article, the trademark shall be terminated on the day following the day when decision on its termination becomes final and enforceable.

Article 67

The procedure for the revocation of a trademark for reasons specified in Art. 64 and 66 of this Law shall be initiated on the basis of a written request.

The request under paragraph 1 of this Article shall include, in particular: data about the applicant; data about the holder of the trademark the revocation of which is sought; the registration number of the trademark the revocation of which is sought; the reasons for requesting the revocation of the trademark; an indication specifying whether revocation of the trademark as a whole is sought or only in respect of certain of the goods and/or services.

The Government shall prescribe the particulars of the request under paragraph 1 of this Article, and shall determine the annexes to be submitted with the request, and their contents.

Article 68

The request for the revocation of a trademark shall be regular if it includes the prescribed data.

If the request for the revocation of the trademark is not regular, the competent authority shall invite the applicant in writing to remedy the deficiencies within the time limit set by the competent authority.

Upon a reasoned request of the applicant of the request for the revocation of the trademark, and upon his/her payment of the prescribed tax, the competent authority shall extend the deadline under paragraph 2 of this Article by a period of time the competent authority deems appropriate.

If the applicant fails to proceed as requested within the set time limit, the competent authority shall pass a decision rejecting the request.

An appeal may be filed against the decision under paragraph 4 of this Article.

Article 69

The competent authority shall submit a regular request to the trademark holder and invite it to submit a reply within 30 days from the date of receipt of the invitation.

After the completion of the procedure based on the request for the revocation of the trademark, the competent authority shall render a decision on the revocation of the trademark as a whole or only in respect of certain of the goods and/or services, or a decision rejecting the request.

Article 70

A declaration of invalidity of a trade mark shall not produce any effect on court rulings relating to establishing infringement of rights, which were legally binding at the moment of the adoption of the above decision, nor on assignment and/or licencing agreements that have been entered into if, and to the extent that, such agreements have been executed, provided the plaintiff and/or the trademark holder have acted in good faith.

In the procedure for a declaration of invalidity of a trademark and in special cases of revocation of a trademark, the competent authority may schedule a hearing.

X. CIVIL LAW PROTECTION

Protection in the Event of a Trademark Infringement

Article 71

In the event of a trademark infringement or an infringement of the right from the trademark application, the action may be filed and the plaintiff may request the following:

- 1) determination of infringement;
- 2) termination of the infringement;
- 3) destruction or alteration of the infringing objects;
- 4) destruction or alteration of the tools and equipment used to manufacture the infringing objects, if necessary for the protection of rights;
- 5) reimbursement of pecuniary damages and justifiable legal costs and expenses;
- 6) publication of the court decision at the expense of the defendant;
- 7) supplying of information about third parties participating in the infringement of rights.

Any infringer shall be liable for the damages in accordance with general rules of compensation of damages.

If the infringement was intentional, the plaintiff may, instead of remuneration of the pecuniary damage, request from defendant the compensation amounting up to three times of usual license fee he would have obtained for the use of the trademark.

Proceedings on action referred to in paragraph 1 of this Article shall be urgent.

Article 72

Any unauthorized use of a protected mark by any economic operator within the meaning of Article 38 and Article 43 paragraph 2 of this Law shall constitute an infringement of a trademark or any rights arising from an application.

The imitation of a protected mark shall also constitute an infringement referred to in paragraph 1 of this Article.

Addition to the protected mark of the words 'type', 'manner', 'according to the procedure' or a like, shall also constitute an infringement referred to in paragraph 1 of this Article.

Article 73

An action for infringement of trademark may be filed by a trademark holder, by an applicant, by the holder of an exclusive license, any user of the collective trademark, with the consent of the collective trademark holder and any user of the warranty trademark, with the consent of the warranty trademark holder.

An action for infringements of trademark may be filed provided that trademark was used within the meaning of Article 64 of this Law.

The Court shall suspend proceedings on actions for infringement of rights arising from the application for trademark registration, pending a decision by the competent authority.

If procedures defined in Articles 59, 64, 66, 80 and 81 of this Law have been initiated before the competent authority or the court, the court acting on the basis of the action referred to in Article 71 of this Law must delay proceedings, pending a final decision of the competent authority or the court.

Article 74

An action for trademark infringement or infringement of rights arising from an application may be filed within a period of three years as of the day on which the plaintiff became aware of the infringement and the identity of the infringer, but not later than five years as of the day of the first infringement.

Provisional measure

Article 75

At the request of a person that makes it probable that his registered trademark or the right arising from the trademark application has been infringed or is about to be infringed, the court may order a provisional measure for seizure or removal from the circulation of infringing products, the equipment for production of those products, and/or an injunction prohibiting the continuation of activities already commenced which could result in an infringement.

The court must order a provisional measure referred to in paragraph 1 of this Article if it determines the identity or significant similarity within the meaning of Article 38, paragraph 2, item 1) of this Law.

Securing of evidence

Article 76

At the request of a person who makes it probable that its trademark or a right contained arising from the application for trademark has been infringed, and that there is reasonable doubt that evidence thereof will be destroyed or that later it will not be possible to obtain them, the court may decide to secure an evidence without prior notification or hearing of the person from whom the evidence is to be collected.

An inspection of premises, vehicles, books and documents, as well as the seizure of objects, hearing of witnesses and expert witnesses shall be deemed securing of evidence within the meaning of paragraph 1 of this Article.

The person from whom the evidence is being collected shall be served a decision to secure an evidence at the time of the collection of evidence, and to the absent person, as soon as it becomes possible.

Article 77

The provisional measures under Art. 75 of this Law and the securing of evidence under Art. 76 of this Law may be requested even before bringing charges on grounds of trademark infringement and/or infringement of the right arising from the application, provided the charges are brought within a term of 30 days from the date of rendering the decision imposing provisional measure and/or the decision ordaining the securing of evidence.

An appeal against the court decision pronouncing the provisional measure under Article 75 of this Law shall not delay the enforcement of the decision.

Collateral Security

Article 78

At the request of a person against whom a proceedings for infringement of a registered trademark or a proceedings for a provisional measure has been initiated, the court may determine an appropriate sum of money, to be borne by the applicant, as a security in the event that request is found to be groundless.

Obligation to Provide Information

Article 79

A court may order a person responsible for an infringement of a trademark or a right arising from the application for a trademark registration to provide information about any third parties who have participated in the infringement of rights and about their distribution channels.

Person referred to in paragraph 1 of this Article who does not fulfill the obligation of providing information shall be held liable for any damages arising therefrom.

Challenge of a Trademark

Article 80

If an application was filed in contravention to the principle of a good faith or if a trademark was registered on the basis of such an application or on the basis of an application being a breach of a legal or contractual obligation, any person whose legal interest has been violated therefrom may request the court to declare such person as an applicant, or the right holder.

Article 81

Any natural or legal person who, in commercial activity, uses mark for marking of goods and/or service for which other person has filed an application or has registered it on its name for marking of the same or similar goods and/or services, may request the court to declare such person as an applicant or the right holder, provided such person proves that the concerned mark was well-known for marking of its goods and/or services, within the meaning of Article 6bis of the Paris Convention for Protection of Industrial Property before the defendant has filed his application.

If the defendant proves that he has used the same or similar mark in commercial activity for marking of the same or similar goods and/or services for the same period of time as plaintiff or longer, the court shall reject the claim referred to in paragraph 1 of this Article.

The action referred to in paragraph 1 of this Article may not be filed if 5 years have expired from the day the trademark was entered into the Register of Trademarks.

Article 82

If the court grants the claim referred to in Article 80, or in Article 81. of this Law, the competent authority shall, after receipt of the court decision or at the request of the plaintiff, enter the plaintiff in the appropriate register as the applicant or as the trademark holder.

Article 83

Any rights that any third party may have acquired from the former applicant or the trademark holder referred to in Articles 80 and 81 of this Law shall be terminated as of the day of entry of the new applicant and/or holder of trademark in the appropriate register.

XI. PENAL PROVISIONS

Article 84

A company or another legal person who has infringed a trademark and/or the right arising from the application in the manner referred to in Art. 72 of this Law shall be sanctioned on grounds of corporate offence with a fine of between RSD 100,000 and 3,000,000.

The responsible person in a company or another legal person shall be sanctioned for the acts under paragraph 1 of this Article on grounds of corporate offence with a fine of between RSD 50,000 and 200,000.

The infringing objects in the corporate offence and the objects used for the perpetration of the corporate offence under Para 1 of this Article shall be forfeited, while the infringing objects in the corporate offence shall also be destroyed.

The judgment ordaining a sanction against the perpetrator on grounds of the corporate offence under Para 1 of this Article shall be published.

Article 85

An entrepreneur who has infringed a trademark or the right arising from an application in the manner referred to in Article 72 of this Law shall be sanctioned on grounds of misdemeanour with a fine of between between RSD 50,000 and 500,000.

A natural person shall be sanctioned for the acts under Para 1 of this Article with a fine of between RSD 10,000 and 50,000.

The infringing objects in the misdemeanour and the objects used for the perpetration of the misdemeanour under Para 1 of this Article shall be forfeited, while the infringing objects in the misdemeanour shall also be destroyed.

Article 86

A legal person who acts as representative in the exercising of the rights under this Law (Articles 10 and 11) without having a power of attorney shall be sanctioned on grounds of misdemeanour with a fine of between RSD 100,000 and 1,000,000.

The responsible person in a legal person shall be sanctioned for the acts under paragraph 1 of this Article on grounds of misdemeanour with a fine of between RSD 10,000 and 50,000.

A natural person who acts as representative in the exercising of the rights under this Law (Articles 10 and 11) without having a power of attorney shall be sanctioned on grounds of misdemeanour with a fine of between RSD 10,000 and 50,000.

XII. TRANSITIONAL AND FINAL PROVISIONS

Article 87

The Register of Applications and the Register of Trademarks specified by the Law on Trademarks („Official Gazette of the S&M”, No. 61/04 and 7/05-correction), shall continue to be maintained pursuant to this Law.

The Register of Representatives established by the Law on Patents („Official Gazette of S&M”, No. 32/04 and 35/04 and „Official Gazette of the RS”, No. 115/06), shall continue to be maintained pursuant to the Law based on which it has been established and pursuant to the present Law.

The trademarks valid on the date of this Law taking effect shall remain in effect and they shall be subject to the provisions of this Law.

The provision of Article 11 of this Law shall not apply to persons registered in the Register of Representatives before January 1, 2005.

The provisions of this Law shall also apply to trademark applications submitted by the date of this Law taking effect in respect of which administrative proceedings have not been finalized, as well as to other proceedings instituted in respect of trademarks that remain pending on the date of this Law taking effect.

Article 88

The pledges registered by the date of this Law taking effect in the Register of Possessory Lien in Respect of Movable Property and Rights (hereinafter referred to as: the Pledge Register) with the Agency for Business Registers shall remain in effect and shall be registered in the relevant register with the competent authority.

The Agency for Business Registers shall, within 30 days from the date of this Law taking effect, forward to the competent authority the data and documentation based on which a trademark pledge has been registered in the Pledge Register.

Article 89

Bylaws for the enforcement of this Law shall be adopted within four months from the date of this Law taking effect.

Until the adoption of the bylaws provided for by this Law, the provisions of the regulations adopted on the basis of the Law on Trademarks („Official Gazette of S&M”, No. 61/04 and 7/05-correction) shall apply except for the provisions contrary to this Law.

Article 90

On the date of this Law taking effect, the validity of the following shall cease:

- 1) The Law on Trademarks („Official Gazette of S&M” No. 61/04 and 7/05-correction);
- 2) Provisions of Articles 36 and 41 of the Law on Special Powers for Enhancing the Efficiency of Intellectual Property Rights Protection („Official Gazette of the RS”, No. 46/06).

Article 91

This Law shall enter into force on the eighth day from the date of its publication in the “Official Gazette of the Republic of Serbia”.