

Law on Trade marks

I. GENERAL PROVISIONS

Subject Matter of Protection

Article 1

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

Trade mark is a right protecting sign used in the channels of commerce for distinguishing goods and/or services of one natural or legal person from the same or similar goods and/or services of another natural or legal person.

Trade mark, in the meaning of this Law, is considered to be a trade mark internationally registered for the territory of the Republic of Serbia, based on the Madrid Agreement Concerning the International Registration of Trade marks (henceforward referred to as the Madrid Agreement), or the Protocol to the Madrid Agreement Concerning the International Registration of Trade marks (henceforward referred to as the Madrid Protocol).

The provisions of this Law shall also apply to trade marks from paragraph 3 of this Article if certain issues are not arranged by Madrid Agreement or Madrid Protocol.

Types of Trade marks

Article 2

A trade mark can be individual, collective or guarantee trade mark.

A collective trade mark is described as such in the trade mark application meaning that it is a trade mark of the legal person representing certain form of association of producers or providers of services which members of that association have the right to use under requirements prescribed by this Law.

Collective trade mark serves to distinguish goods or services of the members of the legal person holding collective trade mark for same or similar goods or services in comparison to another natural or legal person.

User of collective trade mark has the right to use that trade mark only in a manner envisaged by a general act on the collective trade mark.

Guarantee trade mark is described as such in the trade mark application and it serves to distinguish goods and/or services certified by the proprietor of the trade mark from the same or similar goods and/or services of another natural or legal person.

Guarantee trade mark used by several persons under the supervision of the proprietor of trade mark is used as the guarantee of quality, material, manner of production of goods or the

supplying of services, correctness or other common characteristics of goods or services protected by that trade mark.

Proprietor of the Guarantee trade mark must allow the use of the guarantee trade mark to every person for goods or services sharing the same characteristics prescribed by the general act on the Guarantee trade mark.

Every natural or legal person may apply for Guarantee trade mark, providing it do not carry on a business involving the supply of goods or services of the kind certified

Signs not Considered to Be Trade marks

Article 3

Trade mark, in the meaning of this Law, is not taken to be seal, stamp and hallmarks used for the marking of the precious metals.

II. SUBJECT MATTER AND CONDITIONS OF PROTECTION

Signs of Which Trade Mark May Consist

Article 4

Sign protected by trade mark may consist of any signs, in particular words, including personal names or of drawings, letters, numerals, colours, three dimensional shapes, the shape of goods or of the packaging of goods, combination of those signs or sounds, providing it is fit for:

- 1) distinguishing in the channel of commerce goods and/or services of one natural or legal person from the goods and/or services of another natural or legal person and
- 2) being represented on the Register of Trade marks in a manner that enables the competent authorities and the public to determine the clear and precise subject matter of the protection.

Absolute Reasons for Refusal of Protection

Article 5

Trade mark cannot protect the sign:

- 1) which does not meet the requirements from article 4 of this Law;
- 2) which is contrary to public order or to accepted principles of morality;
- 3) which has a general appearance not fitting for the distinguishing of goods and/or services in the channels of commerce;
- 4) which consists exclusively of the shape or another characteristic which results from the nature of the goods themselves or shape or another characteristic of goods which is

necessary to obtain a certain technical result or of the shape or another characteristic which gives substantial value to the goods;

- 5) which consists exclusively from signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin, time of production of the goods or of rendering of the services or other characteristics of the goods and/or services;
- 6) which consists exclusively of signs or data which have become customary in everyday language or in the bona fide and established practices of the trade for the marking of certain goods and/or services;
- 7) which, by its appearance or contents can bring into confusion and deceive the participants in the channels of commerce, for instance, as to the nature, quality or geographical origin of the goods or services, or other characteristics of the goods and/or services;
- 8) which contains official signs or hallmarks for the control or guarantee of quality or supports them, except with the written approval of the competent authority;
- 9) which does not meet the requirements for protection pursuant to Article 6ter of the Paris Convention for Protection of Industrial Property, except with the authorisation by the competent authorities;
- 10) which includes or imitates title, abbreviation of the title, coat of arms, flag or other state sign of the Republic of Serbia, except with the permission of the competent authority;
- 11) which represents or simulates the national or religious symbol;
- 12) which contains or consist of the indication of geographical origin which is in effect on the territory of the Republic of Serbia and which relates to the same kind of goods or services;
- 13) which consists of earlier registered plant variety denomination or reproduces it in its essential elements and which is in respect of plant varieties of the same or closely related species..

Sign from the paragraph 1, points 3), 5) and 6) of this Article can be protected by a trade mark if the applicant proves by serious use of the sign that it became capable for distinguishing in the channels of commerce of goods and/or services that it refers to.

Relative Reasons for the Refusal of Protection

Article 6

Trade mark cannot be used to protect a sign:

- 1) which is identical with the previously protected sign for the same kind of goods and/or services;
- 2) which is identical with the previously protected sign of another person for the similar kind of goods and/or services or is similar to the previously protected sign of another person for the identical or similar kind of goods and/or services if there is a likelihood that due to that identicalness or similarity confusion may be caused in the relevant part of

the public, which includes also the likelihood of bringing that sign in connection with the previously protected sign;

- 3) which is identical or similar to the same or similar kinds of goods and/or services of another person known in the Republic of Serbia in the meaning of the article 6bis of the Paris Convention for the Protection of Industrial Property (henceforward referred to as well-known trade mark);
- 4) which, regardless the goods and/or services it refers to, is identical or similar to the previously protected sign of another person which those participating in the channels of commerce in the Republic in Serbia without a doubt recognize as a sign of high reputation (henceforward referred to as famous trade mark), if the use of that sign would take unfair advantage of the acquired reputation of the famous trade mark or be detrimental to, the distinctive character or the repute of the famous trade mark;
- 5) which by its appearance or contents infringes copyright or other industrial property rights;

Sign that contains the image or personal name of a person can be protected only with the written approval of that person.

The sign which contains image or a personal name of a diseased person can be protected only with the written consent of the parents, spouses or children of the diseased.

The sign that contains the image or the personal name of the historic or some dead famous person can be protected with the permission of the competent authority and written consent of the spouse and relatives up to the third degree of kinship.

The protected sign from the paragraph 1, items 1), 2) and 4) of this Article is taken to be the sign protected by a trade mark for the territory of the Republic of Serbia, and the protected sign from the paragraph 1, item 1) and 2) of this Article is taken to be also a sign which is the subject matter of the application for the grant of the trade mark for the territory of the Republic of Serbia, under the condition that the trade mark from that application gets granted.

In the cases from paragraph 1, items 2-6), and paragraphs 2, 3 and 4 of this Article, the sign can be protected by a trade mark with the explicit written consent of the proprietor of the earlier right.

When establishing whether the sign from paragraph 1, item 3) of this Article is the generally well-known trade mark, or whether the sign from paragraph 1, item 4) of this Article is a famous trade mark, it shall be considered whether the relevant part of the public is familiar with the sign, including the knowledge which results from the promotion of that sign. The relevant part of the public is taken to be real and potential users of goods and/or services which are marked by that sign, as well as persons included in the distribution channels of those goods and/or services.

Special Reasons for the Refusal of Protection on the Basis of Opposition

Article 7

On the basis of the opposition of the business company, recorded in the register before the date of filing of the application for the grant of trade mark in relation to which the opposition is filed, or before the priority date from that application, the trade mark shall not be registered if the title of the business company or its essential part is identical or similar to the sign from the application, and the goods and services from the scope of activities of that business company are identical or similar from those in the trade mark application and are used in the channels of commerce, except if the applicant asking for the grant of trade mark at the moment of filing the application had the business company with the identical or similar title.

On the basis of the opposition of the proprietor of right, trade mark cannot be used to protect the sign for which the application has been filed by an agent or representative of the proprietor of the trade mark in his own name, without the proprietor's authorisation, unless the agent or representative justifies his action. .

Principle of Reciprocity

Article 8

Foreign natural and legal persons, with regard to the protection of a sign by a trade mark in the Republic of Serbia enjoy the same rights as the domestic natural and legal persons if that derives from international agreements or the principle of reciprocity. The existence of reciprocity is to be proven by the person invoking the reciprocity.

III. PROTECTION PROCEDURE

Common Provisions

Article 9

Legal protection of trade marks is established in the administrative procedure conducted by the authority of the government administration competent for the tasks of intellectual property (henceforward referred to as competent authority).

Decisions in the procedure from paragraph 1 of this Article are final and against them only administrative suit can be initiated.

Register of Trade marks

Article 10

The competent authority keeps the Register of Trade marks.

The Register of Trade marks keeps in particular the following data: application number and filing date of the application, registration number of trade mark and date of entry of trade mark in the Register of Trade marks; data on the proprietor of trade marks and/or the applicant, image of trade mark and the designation of goods and services that the sign refers to; data on the changes

referring to the trade mark and/or trade mark application (assignment of rights, license, pledge, franchise, etc.)

The competent authority closely prescribes the contents of Register from paragraph 1 of this Article.

The Register of Trade marks is kept in the electronic form and it is available to the public.

Inspection of Files

Article 11

The documents relating to granted trade marks can be seen by the clients and the third parties at the written or oral request, in the presence of the official persons.

At the written request of the interested parties and under the payment of the prescribed fee, the competent authority issues copies of documents and appropriate certificates and receipts on the facts kept in the official records.

Provisions of this Law do not interfere with the realization of rights established by the Law regulating access to information of public importance and Law regulating protection of data on personality.

Representation in the Procedure before the Competent Authority

Article 12

Foreign natural or legal person that has no residence and/or seat on the territory of the Republic of Serbia in the procedure before the competent authority can be represented by an attorney recorded in the Register of Representatives, kept by the competent authority, or a domestic attorney at law.

The Register of Representatives, kept by the competent authority, shall be recorded by the natural or legal persons that meet the requirements established by the Law regulating patents.

The person performing the tasks of representation of clients, in the realization of their rights secured by this Law, must have a degree at the Faculty of the first level in the scope of 240 ECTS and the expert title of the attorney-at-law, or higher education diploma of the second degree and academic title, Master of Law, and also in the framework of the field of education referring to social and humanistic sciences: legal sciences, it must be a person that acquired higher education and expert title of graduated lawyer at the basic studies lasting for at least four years.

Data on Personality

Article 13

Data on the applicant filing the application for the grant of trade mark, person filing the request and the person filing a application in the meaning of this Law consist of the personal name and address of the natural person and/or business title and seat of the legal person.

Initiating Procedure for the Grant of Trade mark

Article 14

Procedure for the grant of trade mark is initiated by the application for the grant of trade mark (henceforward referred to as application).

Essential parts of the application are:

- 1) request for the grant of trade mark;
- 2) sign that is to be protected by a trade mark;
- 3) list of goods and/or services that the sign refers to;
- 4) data on the applicant.

The application contains request for the grant of only one trade mark referring to the one or more classes of goods and/or services.

Request from the paragraph 2, item 1) of this Article contains in particular: data on the applicant, designation whether it is individual, collective or guarantee trade mark; image of the sign, designation of classes of goods and/or services.

The competent authority shall prescribe the particulars of the contents of the request referred to in the paragraph 2, item 1) of this Article and shall determine the annexes to be submitted along with the request for the grant of trade mark, as well as prescribe their content.

Designation and Classification of Goods and Services

Article 15

Goods and services that are part of the trade mark application must be denoted and classified into the classes in compliance with the system of classification valid at the moment of filing of the application, established by the Nice Agreement on the International Classification of Goods and Services for the Sake of Registration of Trade marks (henceforward referred to as Nice Classification).

The applicant must clearly and precisely nominate goods and services for which the trade mark application is filed that enables the determination of the scope of protection.

The names of goods and services included into the titles of the classes of the Nice Classification or other general titles can be used, providing they are clearly and precisely determined.

It shall be considered that the general terms of goods and/or services, including those mentioned in the titles of the classes of the Nice Classification, include only those goods and/or services that are clearly covered by their literal meaning.

Goods and services that are not clearly covered by the literal meaning of the general term or term included in the titles of the classes of the Nice Classification, are not considered included in the application for the grant of trade mark.

When the trade mark application refers to more than one class, the applicant shall group the goods and/or services according to the classes of the Nice Classification in such a manner so that each group shall be preceded by a number of the class to which that group of goods and/or services belongs, presented in the order of the classes.

Goods and services shall not be regarded as being similar to each other on the ground that they appear in the same class under the Nice Classification.

Goods and services shall not be regarded as being dissimilar from each other on the ground that they appear in different classes under the Nice Classification.

Application for the Grant of Collective Trade mark and Guarantee Trade mark

Article 16

Apart from the parts of the application from Article 14 of this Law, along with the application for the grant of collective trade mark, general act on collective trade mark is enclosed, and with the application for the grant of the guarantee trade mark, general act on the guarantee trade mark is enclosed.

General act on collective trade mark contains: data on the applicant, or the person empowered to represent him; provisions on the image of the sign and goods and/or services that the sign refers to, provisions on who has the right to use the collective trade mark and under what conditions; provisions on rights and duties of the user of the collective trade mark in the case of the trade mark infringement and provisions on the measures and consequences in the case of disobeying the provisions of the general act.

General act of the guarantee trade mark, apart from the data and provisions from paragraph 2 of this Article, contains also provisions on the common characteristics of goods and/or services guaranteed by the guarantee trade mark and provisions on the supervision of the use of the guarantee trade mark by its proprietor of right.

Anyone can inspect the general act on the collective trade mark and/or the guarantee trade mark.

Changes of the General Act on the Collective Trade mark and the Guarantee Trade mark

Article 17

The applicant and/or the proprietor of a collective trade mark and/or guarantee trade mark has the obligation to send to the competent authority every change of the general act on the collective trade mark and/or the guarantee trade mark.

Changes of the general act on the collective trade mark and/or the guarantee trade mark produce legal effect from the date of entry of data concerning those effects in the Register of Trade marks.

Fees

Article 18

In the administrative procedure before the competent authority in compliance with this Law, fees shall be paid according to the special regulations stipulating administrative fees.

Filing Date of the Application

Article 19

For the grant of the filing date of the application it is necessary for the application filed at the competent authority to contain the following on that date:

- 1) designation that the grant of trade mark is requested;
- 2) name and surname and/or business title and address of the applicant;
- 3) sign that should be protected;
- 4) list of goods and/or services that the sign refers to.

After the receipt of the application, the competent authority examines whether the application contains elements from the paragraph 1 of this Article.

On the application filed to the competent authority, containing elements from the paragraph 1 of this Article, the number of the application is written along with the date and hour of its reception at the competent authority and the certificate is issued to the applicant to that effect.

If the application does not contain elements from paragraph 1 of this Article, the competent authority shall invite the applicant to correct, in the time limit of 30 days, the deficiencies preventing the application to be recorded in the Register of Trade marks.

If the applicant does not correct the deficiencies in the time limit from paragraph 4 of this Article, the competent authority shall pass the decision rejecting the application.

In the case from paragraph 5 of this Article, under the payment of the prescribed fee, the applicant may submit the application for the restitution in integrum in the time limit of three months from the date of receipt of the decision on the rejection.

If the applicant, in the time limit from paragraph 4 of this Article, corrects the deficiencies, the competent authority shall pass a decision granting the filing date of the application as the date when the applicant filed the submission correcting the mentioned deficiencies.

Application with the granted filing date is recorded in the Register of Trade marks.

Priority Right

Article 20

The applicant has the priority right from the date of filing of the application, in relation to all other persons who, for the same or similar sign marking the same or similar goods and/or services, filed the application at a later date.

Convention Priority Right

Article 21

Legal or natural person who filed a formally correct trade mark application producing legal effect in some country member of the Paris Union or the World Trade Organization, shall be granted in the Republic of Serbia the convention priority right from the filing date of that application if in the Republic of Serbia for the same sign and for the same goods and/or services an application is filed in the time limit of six months from the filing date in the mentioned country. In the request for the grant of trade mark, the date of filing, the number of the application and the country for which the application has been filed shall be designated.

Application meeting the formal requirements, from paragraph 1 of this Article, is taken to be every application which meets the formal requirements according to the national legislation of the country member of the Paris Union or the World Trade Organization for which the application has been filed, or in accordance with the legislation of the international organization established on the basis of the international agreement concluded among these countries, regardless the later legal outcome of that application.

Legal or natural person from paragraph 1 of this Article has the obligation, in the time limit of three months from the filing date of the application in the Republic of Serbia, to send to the competent authority the transcription of the application from paragraph 1 of this Article certified by the competent authority of the country member of the Paris Union, World Trade Organization, or the international organization, in which that application has already been filed.

Priority Right Certificate

Article 22

At the request of any domestic or foreign natural or legal person that filed with the competent authority a formally correct application for the grant of trade mark, the competent authority shall issue a certificate on the priority right.

Request for the issue of a certificate on the priority right contains in particular: data about the person filing the application, image of the sign, list of goods and/or services; proof on the payment of the fee for certificate.

Certificate on the priority right contains in particular: data on the applicant, number of the application, data on the filing date, image of the sign and list of goods and/or services.

The competent authority closely prescribes the contents of the request from paragraph 2 of this Article and the contents of the certificate on the priority right from paragraph 3 of this Article.

Exhibition Priority Right

Article 23

The applicant who, in the time limit of three months before the filing of the application, used certain sign for the marking on goods and/or services at the exhibition or fair of the international character in the Republic of Serbia or in some other country member of the Paris Union or the World Trade Organization can ask in the application to be granted priority right from the date of the first use of that sign.

The applicant from paragraph 1 of this article furnishes, along with the application, the certificate of the competent authority of the member state of the Paris Union or the World Trade Organization, that the exhibition or the fair have the international character, with the designation of data on the kind of exhibition or fair, venue, opening and closing date of the exhibition or fair and the date of the first use of the sign for which protection is sought.

Certificate that the exhibition or fair held in Serbia has officially recognized international character is issued by the Chamber of Industry and Commerce.

Article 24

Grant of priority right from Article 23 of this Law does not extend the time limits from Article 21 of this Law.

Change of the Sign or List of Goods and Services

Article 25

In the application, it is not possible to subsequently significantly change the appearance of the sign or to add to the list of goods and/or services.

Significant change of the sign, in the meaning of paragraph 1 of this Article, is taken to be every alteration that changes the distinctive character of the sign.

Making the list of goods and/or services more precise is not considered to be an addition to it.

Order of the Examination of Applications

Article 26

Applications are examined in a strict order according to the filing date.

With the exception of the provisions of paragraph 1 of this Article, the application can be decided upon in an urgent procedure:.

- 1) in the case of the legal suit or initiated inspection supervision or the Customs procedure, at the request of the court or the competent authority of the market inspection or the Customs authority;
- 2) if it is necessary, in accordance with the other legislation, to perform urgent registration.

In the case of paragraph 2, item 2) of this article, a request is filed for the urgent examination of the application out of turn.

Formal Examination of the Application

Article 27

The application complies with the formal requirements if it contains elements from Articles 14 and 15 of this Law and data from Article 16 of this Law as well as other prescribed data and proof of payment of the prescribed fee for application.

If it is established that the application does not comply with the formal requirements, the competent authority shall invite the applicant in writing, providing the statement of reasons, to bring the application in order, within a time limit determined by the competent authority, that can not be shorter than eight days.

At the explained request of the applicant and the payment of the prescribed fee, the competent authority shall extend the time limit from paragraph 2 of this Article for the time period considered appropriate.

If the applicant does not bring the application into order, in the given time limit, or does not pay the fee for its complying with the formal requirements, the competent authority shall pass decision to reject the application.

In the case from paragraph 4 of this Article and with the payment of the appropriate fee, the applicant can submit a application for the restitution in integrum in the time limit of three months from the date of the receipt of the decision on the rejection.

Withdrawal of the Application

Article 28

The applicant may, in the course of the entire procedure withdraw the application in total or only for some goods and/or services.

If certain right has been recorded in the Register of Trade marks for the benefit of the third party, the applicant cannot withdraw the application without the written consent of the person in whose name the right has been recorded.

In the case when the applicant abandons the application in total, the competent authority shall pass a decision on the suspending of the procedure.

In the case from paragraph 3 of this Article, the application stops being valid the following day from the date when the statement on withdrawal has been submitted to the competent authority.

If the applicant, in the course of the opposition procedure, gave up upon the protection for goods or services that are the subject matter of the opposition, the competent authority informs about it the person filing the opposition and invites him to make a statement, in the course of 15 days from the date of the receipt of the information, whether he is upholding the opposition.

Division of the Application

Article 29

Application for the grant of trade mark specifying more kinds of goods and/or services (henceforward referred to as initial application) may, be divided into two or more applications, by separating the list of goods and/or services, at the request of the applicant, before being recorded into the Register of Trade marks.

The divided application keeps the filing date of the initial application and its priority right.

About the division of the application, a separate decision is passed designating the number of the initial application, number or numbers of the new applications, sign from the initial application, as well as the goods and/or services remaining in the initial application and goods and/or services which are in the divisional application or applications.

Divisional application or applications are recorded in the Register of Trade marks.

Application for the grant of collective trade mark or guarantee trade mark is not subject to provisions of paragraphs 1 to 4 of this Article.

Request from paragraph 1 of this Article contains in particular: number and filing date of the initial application whose division is asked for, data on the applicant; image of the sign; designation of the number of classes of the International Classification of Goods and Services which remain in the initial application, and the number of classes in the International Classification of Goods and Services that are to be divided.

The competent authority closely prescribes the contents of the claims from paragraph 1 of this article and determines attachments filed with the request for the grant of trade mark and prescribes their contents.

The application cannot be divided:

- 1.) if in the case of filed opposition, the division of the application implies separation of goods and services for which the opposition has been filed, in such a manner that opposition would encompass two or more divided applications, till the final decision in the opposition procedure;
- 2.) in the time limit left for the opposition.

Substantial Examination of Conditions for the Grant of Trade mark

Article 30

If the application complies with the formal requirements, in the meaning of Article 27 of this Law, the competent authority examines if the requirements for the grant of trade mark, prescribed by Articles 4, 5, 6 and 16, have been met.

The requirements for the grant of trade mark must be met at the moment of entry of the trade mark into the Register of Trade marks.

Acting in the meaning of paragraph 1 of this Article, the competent authority may take into consideration the written opinion of every interested party explaining the reasons from Articles 4, 5 and 6 of this Law, why the filed sign does not meet the requirements for the trade mark protection.

The person, from paragraph 3 of this Article, shall not be taken to be a party in the procedure.

Procedure Following Trade mark Applications

Article 31

If it is established that the application does not meet the requirements for the grant of trade mark, the competent authority shall inform the applicant in writing about the reasons why the trade mark cannot be granted and it shall invite him to make a statement on those reasons in the time limit of 30 days.

If the sign contains the element which does not meet the requirements for trade mark protection in the meaning of Article 5, paragraph 1, items 3), 5) and 6) of this Law and if the inclusion of that element in the sign may provoke doubt concerning the scope of trade mark protection, the competent authority may demand from the applicant to file a written statement in the set time limit that he does not require any exclusive rights on that very element.

If the sign contains element which is unclear or ambiguous, the competent authority shall ask from the applicant to furnish in the set time limit the description of the sign clearing that element.

At the explained request of the applicant, with the payment of the prescribed fee, the competent authority may extend the time limit from the paragraph 1 of this Article for the time considered appropriate.

The competent authority shall refuse the application for the trade mark in total or only for the some of the goods and/or services, , if the applicant does not comply with the request of the competent authority from paragraphs 1, 2, and 3 of this Article or if he complies with the request, but the competent authority still considers that the trade mark can not be granted in total or for some goods and/or services.

Special Provisions on the Procedure Following the Application for the Grant of the Collective Trade mark or Guarantee Trade mark

Article 32

In the course of the examination of conditions for the grant of collective trade mark or guarantee trade mark, the competent authority shall separately examine whether the General Act on collective trade mark or the guarantee trade mark is in compliance with the public order or accepted moral principles.

During the examination of conditions for the grant of collective trade marks, the competent authority shall separately examine if there is likelihood of causing confusion with the consumers in the channels of commerce regarding character or meaning of trade mark, especially if there is likelihood for the trade mark to be understood as the individual trade mark or the guarantee trade mark, and not as a collective trade mark.

Application for the grant of collective trade mark and guarantee trade mark shall not be refused if the applicant, as the result of the changes of the general act on the collective trade mark or the guarantee trade mark, removes the hindering elements from paragraphs 1 and 2 of this Article.

If the general acts on the collective trade mark or the guarantee trade mark are contrary to the public order or the accepted moral principles, the provision of the Article 31 of this Law shall be aptly implemented.

The provisions of this Article are applied also on all the changes of the general act on the collective trade mark or the guarantee trade mark.

Publication of the Application

Article 33

If the application complies with the formal requirements, in the meaning of Article 27 of this Law, and if the competent authority considers there are no reasons for the refusal of the application for the grant of trade mark as prescribed by Articles 4, 5 and 6 of this Law, the data from the application are published in the Official Gazette of the competent authority.

When the application for the grant of trade mark is refused for certain goods and/or services, data from the application, referring to goods and/or services for which protection can be granted, are published after the decision becomes final.

In the Official Gazette of the competent authority the following data are published in particular: number of the application, filing date of the application, data about the applicant, image of the sign, list of goods and/or services that the sign refers to.

Opposition

Article 34

Opposition can be grounded only on the reasons for the refusal of the application for the grant of trade marks from Articles 6 and 7 of this Law, referring to one part or to the whole list of goods and services from the application and it can be submitted by a proprietor of an earlier right to the competent authority in the time limit of three months from the publishing date of the application.

If, at the moment of the publishing of the application against the earlier trade mark, on which the opposition is based, the procedure is pending for the revocation of trade mark, because of non-use or the cancellation procedure, the competent authority shall suspend the opposition procedure until the final decision from the earlier procedures for the suspension or the cancellation of trade mark.

Time limit for the submission of the opposition, prescribed by paragraph 1 of this Article, cannot be extended and the supplements to the opposition filed after the expiry of the term referring to additional proof and evidence, justifying the reasons mentioned in the opposition, shall be accepted if the competent authority evaluates that they are important for the decision on the opposition, being well grounded and if the opponent proves that there are justified reasons for delay.

The opposition can be filed on the basis of one or more earlier rights providing that all belong to the same proprietor of rights.

The opposition needs the following data in particular: name and address and/or business name and seat of the person submitting the opposition; number of the application of a trade mark for which opposition is submitted, reasons for submitting the opposition, designation whether the opposition refers to the trade mark application in total or only for some goods and/or services.

The competent authority shall closely prescribe the contents of the opposition and establishes the attachments to be filed with the opposition.

Opposition Procedure

Article 35

The competent authority examines if the opposition has been submitted by the competent party, if it has been submitted in the prescribed time limit and if it has the contents as prescribed by the competent authority.

In the case that requirements from paragraph 1 of this Article have not been fulfilled, the competent authority passes a decision rejecting the opposition.

If requirements from paragraph 1 of this Article are met, the competent authority informs the applicant about the opposition being submitted, forwards to him a copy of the opposition and invites him to comment on the opposition in the time limit of 60 days from the date of receipt of the information.

Time limit from paragraph 3 of this Article cannot be extended, and the amendments to the answer filed after the expiry of the time limit relating to additional proof and facts contesting the

grounding of reasons stated in the opposition shall be accepted if the competent authority establishes that they are essential for the decision on the opposition being well grounded and if the applicant proves that there are justified reasons for delay.

If the applicant does not answer to the opposition in the prescribed time limit, the trade mark application is refused by a decision in the limits of the request mentioned in the opposition.

If, by a decision from paragraph 5 of this Article, the opposition has been approved for the parts of goods or services from the application, the procedure following the trade mark application is continued after that decision becomes final for the part of goods or services for which it has been established that the application may be granted or that the opposition does not refer to it.

In the case if it is considered necessary, the competent authority may in the course of the opposition procedure demand an oral hearing to be organized.

Examining the Opposition

Article 36

If the applicant responds to the opposition in the prescribed time limit, the competent authority examines the grounding of reasons stated in the opposition.

If the applicant of the trade mark requests, the proprietor of the earlier trade mark that has submitted the opposition has to prove that, within the five-year period preceding the filing date of the application or to its conventional priority, he has used the earlier trade mark in the Republic of Serbia, as provided for in Article 82 of this Law, for marking the goods and/or services for which the trade mark has been granted and which are listed as grounds for the opposition, or that proper reasons for non-use existed, provided that the earlier trade mark has been registered for at least five years on the date of the application or on the date of its priority.

Competent authority shall, by means of a conclusion, invite the proprietor of the earlier trade mark to comment on the request, referred to in paragraph 2 of this Article, within the time limit of 60 days, from the date of the receipt of the invitation.

If the proprietor of the earlier trade mark does not comment on the request for the proving of the use, or does not prove the use, or does not prove the existence of proper reasons for non-use, then the opposition shall be refused and the procedure for granting the trade mark shall be continued upon final decision.

If the proprietor of the earlier trade mark comments on the request for proving use of the trade mark within the prescribed time limit, the competent authority shall furnish a copy of the comment to the applicant and invite him to comment within the time limit of 60 days from the date of the receipt.

After the expiration of the time limit, referred to in paragraph 5 of this Article, the competent authority shall decide upon the grounds of the opposition, based on the available facts and evidence.

If the earlier trade mark has been used in relation to only part of the goods and/or services for which it is registered, for the purposes of examination of the opposition, it shall be deemed to be registered in respect of that part of the goods and/or services.

If the competent authority, during the course of examination, concludes that the opposition is unjustified, it shall pass the decision refusing the opposition and shall deliver it to both the applicant and the person filing the opposition. The procedure on the application for granting of the trade mark shall be continued after the decision on refusing of the opposition is final.

If the competent authority determines that the opposition is justified, it shall pass the decision refusing the application in total or the decision refusing the application in part for certain goods and/or services and shall furnish it to both the applicant of the application and of the opposition. The procedure on the application for granting the trade mark for the goods or services for which the protection has not been refused shall be continued after the decision on refusal of the application for certain goods and/or services has been made final.

The Agreement of the Parties during the Procedure on the Opposition

Article 37

The applicant of the application for granting the trade mark and the person filing the opposition may, by means of the request mutually signed, and submitted during the course of the procedure for the examination of the opposition, ask the competent authority to withhold the procedure for 24 months, at the most, in order to attempt to peacefully settle the dispute.

If, within the time limit referred to in paragraph 1 of this Article, the applicant of the application and the person filing the opposition, inform the competent authority on the peaceful dispute settlement, and on the fact that the applicant has given up the opposition, the competent authority shall pass the decision on the suspending of the procedure regarding the opposition.

Suspension of the Procedure Following the Application

Article 38

If the application meets the requirements for granting the trade mark and if the opposition has not been submitted or if the decision on rejection or refusal of the opposition is final, the competent authority shall invite the applicant to pay the prescribed fee for the first 10 year term of protection and the costs for the publication of the trade mark and to furnish the proof of the payment of the prescribed fees.

If the opposition has been partially approved, the competent authority shall invite the applicant to pay the prescribed fee and the costs referred to in paragraph 1 of this Article for the goods and/or services for which the opposition has been refused.

If the opposition referring to part of the goods and/or services is approved by means of the final decision, the competent authority shall invite the applicant to pay the prescribed fee and costs referred to in paragraph 1 of this Article for the goods and/or services for which the opposition has not been submitted.

If the applicant of the application for granting the trade mark or the person authorized by him, do not furnish the proof on payments, referred to in paragraphs 1, 2 and 3 of this Article, within the set time limit, it shall be considered that the application is withdrawn.

In case referred to in paragraph 4 of this Article, the competent authority shall pass the decision on suspending the procedure.

In the case referred to in paragraph 5 of this Article, the applicant may, provided that prescribed fee is paid, ask for the restitution in integrum in the time limit of three months from the date of the receipt of the decision on the suspension of the procedure.

Entry into Register of Trade marks

Article 39

If the applicant furnishes the evidence of the payment, referred to in Article 38 paragraph 1 of this Law, the competent authority shall enter the granted right, along with the prescribed data, into the Register of Trade marks and shall issue a trade mark registration certificate to the proprietor of the right.

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

A trade mark registration certificate shall contain, in particular: the trade mark registration number and the date of recording of the trade mark in the Register of Trade marks; data on the trade mark proprietor; image of the protected trade mark; a list of the goods and/or services the trade mark refers to; the date of lapse of the trade mark.

The competent authority shall prescribe the particulars of the content of the trade mark registration certificate, as referred to in paragraph 1 of this Article.

Publication of the Granted Right

Article 40

Granted right, referred to in Article 39 of this Law, shall be published in the official publication of the competent authority.

In the official publication of the competent authority, in particular, the following data shall be published: the trade mark registration number; the date of entry of the trade mark in the Register of Trade marks; data on the trade mark proprietor; the date of lapse of the trade mark; image of the trade mark; a list of the goods and/or services that the trade mark refers to.

The competent authority shall prescribe the particulars of the data, referred to in paragraph 2 of this Article, which shall be published in the official publication of the competent authority.

IV. INTERNATIONAL REGISTRATION OF THE TRADE MARKS

Application for the International registration of a Trade mark

Article 41

The proprietor of the trade mark and/or the applicant may file an application for the international registration of trade mark.

The application for the international registration of the trade mark referred to in paragraph 1 of this Article shall be submitted to the competent authority.

The application for the international registration of the trade mark shall be subject to the payment of the prescribed fee.

Initiating Procedure for the International Registration of a Trade mark

Article 42

The procedure for the international registration of trade mark shall be initiated by submitting an application for the international registration of trade mark.

The application for the international registration of trade mark shall be submitted with the following attached to it:

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

The application referred to in paragraph 1 of this Article shall contain in particular: data on the applicant; the application number or the registration number of the trade mark which constitutes grounds for the international registration; data about the claimed priority right; image of the sign; a list of the goods and/or services that the sign refers to in the French language; a designation of the countries in respect of which protection is sought.

The competent authority shall prescribe the particulars of the application referred to in the paragraph 1 of this Article, and shall determine the annexes to be submitted along with the application, as well as prescribe their contents

Examination of a Regularity of a Sign for the International Registration of a Trade mark

Article 43

The application for the international registration of a trade mark shall be deemed regular if it contains the data referred to in the Article 42 of this Law and the other prescribed data.

If the application for the international registration of a trade mark is not regular, the competent authority shall state the reasons and invite the applicant in writing to remedy the deficiencies within the time limit set by the competent authority.

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

If the applicant fails to act upon the request within the set time limit, the competent authority shall pass the decision rejecting the application.

In the case referred to in the paragraph 4 of this Article, along with the payment of the prescribed fee, the applicant may ask for the restitutio in integrum in the time limit of three months from the date of the receipt of the decision on the suspension of the procedure.

Procedure Following the Request for the International Registration of a Trade mark

Article 44

If the application for the international registration of the trade mark is regular within the meaning of Article 43 of this Law, the competent authority shall pass a decision inviting the applicant to pay the fee for the international registration of the trade mark within the time limit specified by the competent authority, and to submit evidence of payment.

Upon submission of the evidence of payment by the applicant, the competent authority shall send the application for the international registration of the trade mark to the World Intellectual Property Organization.

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

In the case referred to in the paragraph 3 of this Article, the competent authority shall pass the decision on suspension of the procedure.

In the case referred to in the paragraph 4 of this Article the applicant may, provided that the prescribed fee is paid, request the restitution in integrum within the time limit of three months from the date of the receipt of the decision on suspension of the procedure.

Connection of a International Registration of a Trade mark with the Serbian Trade mark or Application for the Registration of a Trade mark

Article 45

The competent authority shall notify the World Intellectual Property Organization of any changes to the application or registration of a trade mark constituting grounds for the international registration of the trade mark, if such changes also impact the international registration of that trade mark.

Special Provisions on the Opposition to the International Registration of the Trade mark

Article 46

During the course of the procedure on opposition to the international registration of the trade mark, the publication of the domestic trade mark application shall be replaced with the

publication of the international registration of the trade mark or the publication of the territorial extension of the international registration of the trade mark in the Official Gazette of the International Bureau of the World Intellectual Property Organization.

The time limit for submitting the opposition to the international registration of the trade mark starts from the first day of the month following the month marked on the Official Gazette of the International Bureau of the World Intellectual Property Organization in which that particular international registration of the trade mark has been published.

If the opposition is regular, the competent authority shall send the notification of temporary refusal of the protection to the International Bureau of the World Intellectual Property Organization.

Territorial Extension of an International Trade mark

Article 47

The proprietor of an international trade mark may file a request with the competent authority for the territorial extension of the international trade mark.

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

The request, referred to in paragraph 1 of this Article, shall contain, in particular: data on the applicant; the number of the international trade mark, a designation of the countries to which the extension refers.

The competent authority shall prescribe the particulars of the request referred to in paragraph 1 of this Article, and shall determine the annexes to be submitted along with the request, as well as prescribe their contents.

The Use of the International Trade mark

Article 48

For the purposes of proving the use of the international trade mark, in the procedure of declaration of invalidity of a trade mark, procedure of revocation due to non-use, procedure on opposition and in the procedure following the legal suit due to infringement, the date, shall be taken to be the date of lapse of the one year term, counting from the date of notification of the International Bureau of the World Intellectual Property Organization, concerning the request for the extension of protection of the internationally registered trade mark, for the territory of the Republic of Serbia, in accordance with the Law on confirmation of Protocol Relating to the Madrid Agreement Concerning the International Registration of Trade marks (“Official Gazette of FRY-international agreements”, No. 2/97).

If, after the expiry of the one year term, referred to in paragraph 1 of this Article, the procedure with regard to protection of the internationally registered trade mark for the territory of the

Republic of Serbia has not reached the final decision, the date of the international registration shall be taken to be the date of passing of the final decision of the competent authority of the Republic of Serbia on partial or complete granting of protection, which has been directed to the International Bureau of the World Intellectual Property Organization.

IV. CONTENT, ACQUISITION AND THE SCOPE OF RIGHTS

Scope of Rights of the Trade mark Proprietor

Article 49

The proprietor of the trade mark has the exclusive right to use a sign protected by a trade mark for designating the goods and/or services the trade mark refers to.

The proprietor of the trade mark trade markis entitled to prohibit other persons the unauthorized use of:

- 1) a sign identical to his previously protected sign for goods and/or services identical to the goods and/or services that the trade mark is registered for;
- 2) a sign identical to his previously protected sign for the similar goods and/or services or a sign similar to his previously protected mark for identical or similar goods and/or services, if there is a likelihood that due to that identicalness or similarity confusion may be caused in the relevant part of the public, which includes also the likelihood of bringing that sign in connection with the previously protected sign.

Within the meaning of paragraph 2 of this Article, the proprietor of the trade mark has right to prohibit following:

- 1) affixing the protected sign to the goods, its packaging or labeling instruments (labels, stickers, bottle stoppers, and the like);
- 2) offering the goods or putting them on the market, or stocking them for those purposes, under the sign, or offering or supplying services thereunder;
- 3) import, export, reload, storage or transit of the goods under the protected sign, regardless the fact if the goods are intended for the domestic market;
- 4) use of the protected sign on business papers and in advertising..
- 5) use of the protected sign in comparative advertising in a manner contrary to the legislation.

The rights referred to in paragraphs 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 sign who is known in the Republic of Serbia, in the meaning of Article 6bis of the Paris Convention for the Protection of Industrial Property.

The Right to Prohibit the Preparatory Acts Related to the Use of Packaging or Other Means

Article 50

Where the risk exists that the packaging, labels, tags, security or authenticity features or devices or any other means to which trade mark is affixed, could be used in relation to goods and that such use would constitute an infringement of the right of the proprietor of the trade mark, under Article 49 of this Law, the proprietor of trade mark shall have the right to also prohibit the following acts if carried out in the course of trade:

- 1) affixing a sign identical with, or similar to, the trade mark on packaging, labels, tags, security or authenticity features or devices, or any other means to which the mark may be affixed;
- 2) offering or placing on the market, or stocking for those purposes, or importing or exporting, packaging, labels, tags, security or authenticity features or devices, or any other means to which the mark is affixed.

Reproduction of the Protected Sign in a Dictionary

Article 51

If the reproduction of a protected sign in a dictionary, encyclopaedia or similar reference work, in print or electronic form, gives the impression that it constitutes the generic name of the goods or services for which the sign is registered, the proprietor of trade mark may request from the publisher, without delay, and in the case of works in printed form at the latest in the next edition of the publication, to ensure that reproduction of that sign is accompanied by an indication that it is a registered sign. (the symbol "®").

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

Trade mark Registered in the Name of an Agent or Representative

Article 52

Where a trade mark is registered in the name of the agent or representative of a person who is the proprietor of that trade mark, without the proprietor's consent, the latter shall be entitled to do either or both of the following: oppose the use of the trade mark by his agent or representative; demand the assignment of the trade mark in his favour.

Provisions of the paragraph 1 of this Article shall not apply where the agent or representative justifies his action.

Exhaustion of Rights

Article 53

The proprietor of the trade mark is not entitled to prohibit the use of the sign protected by a trade mark, in relation to goods marked with it, which have been put on the market anywhere in the world by the proprietor of the trade mark or another person authorized by the proprietor.

Provision of paragraph 1 of this Article shall not apply where there exist legitimate reasons for the proprietor to oppose further commercialisation of the goods, especially where the condition of the goods is changed or impaired after they have been put on the market.

Limitation of Rights

Article 54

The proprietor of the trade mark cannot prohibit other person to place, in the course of trade, his goods/or services, that are marked with the identical or similar signs, on the market, if that sign represents his company's name or a designation, acquired in good faith, before the granted priority date of trade mark.

The proprietor of the trade mark shall not be entitled to prohibit third party to use, in accordance with honest practices in the course of trade:

- 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) sign protected under the trade mark, in cases where its use is necessary to indicate the purpose of the goods and/or services, in particular as accessories or spare parts.

The proprietor of the trade mark shall not prohibit a third party from using in the course of trade, an earlier right which only applies in a particular locality if that right is recognised by the law of the Republic of Serbia and the use of that right is within the limits of the territory in which it is recognised..

Limitations of Rights of Users of a Collective Trade mark or Warranty Trade mark

Article 55

If the object of protection of a collective trade mark or guarantee trade mark is a sign that implies a specific geographical locality where the goods and/or services marked by it originated from, the user of a collective trade mark or guarantee trade mark shall not be entitled to prohibit a third party others to use such sign in accordance with honest practices or to prohibit its use to authorized users of identical or similar registered indication of geographical origin for the identical or similar types of goods and/or services.

Special provisions on the Scope of Rights of a Famous Trade mark

Article 56

The proprietor of the trade mark shall not prohibit other persons to use the identical or similar sign for marking goods and/or services of a different type, except in the case of a famous trade mark.

The proprietor of the famous trade mark, referred to in the Article 6 paragraph 6 item 4 of this Law, is entitled to prohibit other persons not having his written consent to use the identical or similar sign for marking goods and/or services not similar to those for which the trade mark has been registered if such illicit use of that sign would generate unfair benefit from the acquired reputation of the famous trade mark, or would be detrimental to its distinctive character or the reputation.

Acquisition and Validity of a Trade mark

Article 57

The trade mark shall be acquired by the record into the Register of Trade marks and shall be effective as of the filing date of the application.

Extension of a Duration of a Trade mark

Article 58

The duration of a trade mark 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 trade mark can be submitted by the proprietor of the trade mark or a person authorized by Law and/or a contract.

The request for the renewal of the validity of a trade mark shall be submitted along with the payment of the prescribed fee at earliest six months preceding to the expiry of the registration period.

If the fee referred to in the paragraph 1 of this Article is not paid before the expiry of the registration period, the request for the renewal can be submitted and the prescribed fee can be paid in the additional time limit of six months after the date of the expiry of the registration period, provided that the prescribed additional fee is paid.

The competent authority shall notify the proprietor of the trade mark about the expiry of the registration period at earliest six months preceding to the expiry of the registration period, but should not be held responsible in case of omission.

When the request for the renewal of validity of a trade mark is submitted or when the prescribed fee is paid only in respect of certain goods and/or services for which the trade mark has been registered, the registration shall be renewed only for those goods and/or services.

The renewal of the validity of a trade mark is in force from the day following the date of the expiry of the current registration period.

The renewal of the registration period is recorded into the Register of Trade marks.

The request for the renewal of the validity of a trade mark referred to in the paragraph 1 of this Article shall include in particular: an indication specifying the trade mark registration number and the date of expiry of the trade mark; data on the proprietor of the trade mark; data on the payment of the fee for the renewal of the validity of the trade mark.

The competent authority shall prescribe the particulars of the request referred to in the paragraph 1 of this Article and shall determine the annexes to be submitted along with the request, as well as prescribe their contents.

The Duty of the Proprietor of Trade mark

Article 59

The proprietor of the trade mark has to put the trade mark in genuine use.

Division of a Trade mark

Article 60

A trade mark that has been registered for several goods and/or services (henceforward referred to as "initial registration") may be divided at any time, upon the request of the proprietor of the trade mark, into two or more registrations by separating the list of goods and/or services.

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

A special decision shall be passed on a division of a trade mark, specifying the number of the initial registration, number or numbers of the new trade mark(s), the sign 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 trade mark(s).

Separated trade mark(s) shall be recorded into the Register of Trade marks, and a trade mark registration certificate shall be issued to the proprietor of the right.

The provisions of paragraphs 1 to 4 of this Article shall not apply to collective or guarantee trade marks.

The request referred to in the paragraph 1 of this Article shall contain, in particular: the trade mark registration number; data on the trade mark proprietor; a representation of the sign; an indication of the class numbers under the International Classification of Goods and Services remaining in the initial registration, and the class numbers under the International Classification of Goods and Services to which the divisional trade mark or trade marks refer.

The competent authority shall prescribe the particulars of the application referred to in the paragraph 1 of this Article, and shall determine the annexes to be submitted along with the request, as well as prescribe their contents.

VI. CHANGES IN THE APPLICATION OR TRADE MARK REGISTRATION

Change of Name and Address of the Right Proprietor

Article 61

Upon the request of the proprietor of the trade mark or the applicant, the competent authority may pass the decision on recording the change of the name and address of the proprietor of the trade mark or the applicant in the appropriate register of the competent authority.

On the basis of a single request referred to in the paragraph 1 of this Article the record of the change of name and address of the right proprietor may be requested in respect of several trade marks or several applications, provided the registration numbers or application numbers have been indicated in the request.

If the request for recording the change of name and address of the right proprietor 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 referred to in the 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.

In the case referred to in the paragraph 5 of this Article along with the payment of the prescribed fee, the applicant may request the restitution in integrum.

The request for recording the change referred to in paragraph 1 of this Article shall include, in particular: the trade mark registration number or the application number; data on the proprietor of the trade mark or the applicant; an indication of the type of change;

The competent authority shall prescribe the particulars of the request for recording the change referred to in the paragraph 1 of this Article, and shall determine the annexes to be submitted along with the request, as well as prescribe their contents.

Restriction of the List of Goods and/or Services

Article 62

The competent authority, upon the request of the proprietor of the trade mark, may pass 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, that can not be shorter than 8 days.

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 referred to in the paragraph 2 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.

In the case referred to in the paragraph 4 of this Article, along with the payment of the prescribed fee, the applicant may request for the restitution in integrum.

The request for registering the change, referred to in paragraph 1 of this Article, shall include in particular: the trade mark registration number or the application number; data on the proprietor of the trade mark or the applicant; an indication specifying the type of change;

The competent authority shall prescribe the particulars of the request, for recording the change referred to in the paragraph 1 of this Article, and shall determine the annexes to be submitted along with the request, as well as prescribe their contents.

Assignment of Rights

Article 63

The trade mark or right arising from the application, may be assigned to other person or other persons in respect of all or certain goods or services.

The assignment of a trade mark, or right arising from the application may be based on an assignment contract, a change of status of the proprietor of the trade mark or the applicant, or on a court or administrative decision.

The assignment of rights pursuant to paragraph 2 of this Article shall be recorded in the Register of Trade marks of the competent authority, upon the request of the proprietor of the trade mark or applicant or assignee.

The record of the assignment of rights pursuant to paragraph 2 of this Article in the Register of Trade marks of the competent authority, shall produce legal effect in relation to third parties.

The record of the assignment of rights pursuant to paragraph 2 of this Article in the Register of Trade marks of the competent authority shall be subject to a special decision.

Collective trade mark and guarantee trade mark can not be the subject to assignment of rights.

Assignment Contract

Article 64

The assignment contract shall be drawn up in writing and it must contain: the date of signing; name and surname or company name; domicile or residence or seat of the contractual parties; the trade mark registration number or the number of the trade mark application and the amount of compensation, if stipulated.

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

The record of the assignment of a trade mark, or the rights arising from the application which refers only to certain goods or services, shall not be granted if the goods or the services being assigned are essentially similar to the goods or services encompassed within the trade mark or the application of the assignor.

Any issue related to the contract on the assignment of the rights, not regulated by this Law, shall be subject to legislation regulating obligations.

License

Article 65

The proprietor of the trade mark or the applicant may, on the basis of a license agreement, grant the right to use the trade mark, or the rights arising from the application, in respect of all or certain goods or services.

In the case that there are more proprietors of the same trade mark, or more applicants for the same trade mark application referred to in the paragraph 1 of this Article, for the license contract to be concluded the agreement of all parties is necessary, unless agreed otherwise among them.

The license contract, referred to in the paragraph 1 of this Article, shall be drawn up in writing and must contain: the date of the signing; name and surname or company name; domicile or residence, or business seat of the contractual parties, the trade mark registration number or the number of the trade mark application; the term of validity of the license and the scope of license.

The license contract, referred to in the paragraph 1 of this Article, shall be recorded in the Trade mark Register upon request of the proprietor of the trade mark or the applicant or assignee.

The record of the license contract, referred to in the paragraph 1 of this Article, in the Trade mark Register shall produce legal effect in relation to the third parties.

The record of the license contract referred to in the paragraph 1 of this Article, in the Trade mark Registry shall be subject to passing of a special decision.

The collective trade mark and guarantee trade mark cannot be the subject of license contracts.

Any issue, related to the licensing of rights to use the trade mark or the right arising from the application, not regulated by this Law, shall be subject to legislation regulating obligations.

Infringement of Provisions of a License Contract

Article 66

The proprietor of the trade mark, who is the assignor of license, may invoke the rights arising from the trade mark against the licensee infringing the provisions of the license contract with regard to the duration of the license, the form covered by the registration in which the trade mark may be used trade mark, the scope of the goods or services for which the licence is granted, the territory in which the trade mark may be affixed trade mark or the quality of the goods manufactured or of the services provided by the licensee. .

Pledge

Article 67

A trade mark, or the right arising from the application, may be subject of a pledge, on the basis of a pledge contract, court decision, and a decision of other administrative authority, and the like, in respect of all or certain goods or services.

The pledge contract, referred to in the paragraph 1 of this Article, shall be drawn up in writing and it must contain: the date of signing; name and surname or company name; domicile or residence, or the seat of the contractual parties, as well as the debtor, if it is not the same person; the trade mark registration number or the number of the trade mark application and data on the claim secured by the right of pledge.

The pledge pursuant to paragraph 1 of this Article, shall be recorded in the appropriate register of the competent authority upon the request of the trade mark proprietor or applicant or pledger.

The record of the pledge pursuant to paragraph 1 of this Article, in the appropriate register of the competent authority, shall be subject to passing a special decision.

The pledgee shall acquire the security interest, upon record in the appropriate register of the competent authority.

Collective trade marks and guarantee trade marks cannot be the subject of pledge.

Any issue, not regulated by this Law, shall be subject to regulations regulating non-possessory lien, pledge, obligations, and proprietary right.

The following data shall be recorded in the register of the competent authority, in particular: data on the pledger and debtor, when they are not the same person, as well as data about the pledgee; the trade mark registration number or the number of the trade mark application; data on the claim secured by the pledge, including an indication of the basic and the maximum amounts.

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

The competent authority shall closely prescribe the particulars of the type of data, referred to in the paragraph 8 of this Article, to be recorded in the register of the competent authority.

Registration Procedure for Record of the Assignment, License and Pledge

Article 68

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

The request, referred to in the paragraph 1 of this Article, shall be submitted, with the following:

- 1) evidence of legal grounds for the requested record;
- 2) power of attorney if the procedure for the record of the assignment, license or pledge is initiated through a representative;
- 3) evidence of payment of the fee for the decision passed on the basis of the request for the record of the assignment, license or pledge.

Record of the assignment of several trade marks or applications may be requested on the basis of a single request referred to in the paragraph 1 of this Article, provided that the former right proprietor and the new right proprietor are the same in respect of every trade mark or application and that the registration numbers or the application numbers are indicated in the request.

Record of a license or a pledge, in respect of several trade marks or applications, may be requested on the basis of a single request, referred to in the paragraph 1 of this Article, provided that the right proprietor and the licensee or pledgee are the same, in respect of each trade mark or application, and that the registration numbers or application numbers are indicated in the request.

The request, referred to in the paragraph 1 of this Article, shall contain in particular: the trade mark registration number or the application number; data on the proprietor of the trade mark or the applicant; an indication specifying that record is sought for the assignment of the trade mark or the rights arising from the application, or an indication of the rights for which the record is sought.

The competent authority shall prescribe the particulars of the request, referred to in the paragraph 1 of this Article, and shall determine the annexes, to be submitted along with the request, as well as prescribe their contents.

Formal Examination of a Request for the Entry into the Register of the Transfer of Rights, License and Pledge

Article 69

A request for the record of an assignment, license or pledge shall be deemed regular if it contains the data referred to in Article 68 of this Law.

If the request for the record of the assignment, license or 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, that cannot be shorter than 8 days.

Upon a reasoned request by an applicant for the record of the assignment, license 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 pass a decision rejecting the request.

In the case referred to in the paragraph 4 of this Article, upon payment of the prescribed fee, the applicant may request for the restitution in integrum.

Procedure for the Entry of Assignment, License and Pledge into the Register

Article 70

If the request for the record of an assignment, license or pledge is formally regular, within the meaning of Article 69 of this Law, the competent authority shall examine whether the legal grounds, the request is based on, can fulfill all the prescribed requirements for the record of an assignment, license or pledge.

If the legal grounds that the request for the record of an assignment, license and pledge is based on, do not fulfill the prescribed requirements, or if the data indicated in the request do not match with the data in the registers, the competent authority shall notify the applicant, in writing, about the reasons why the record cannot be granted and shall invite the applicant to make a statement regarding those reasons, within the time limit set by the competent authority.

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

The competent authority shall pass a decision refusing a request for the record of an assignment, license or pledge, if the applicant fails to make a statement, within the set time limit, regarding the reasons why the record cannot be granted, or if the applicant makes a statement but the competent authority still considers that record cannot be granted.

Trade mark as a Subject Matter of Judicial Enforcement

Article 71

A trade mark may be levied in execution. Appropriate provisions of the regulations regulating the execution and security interest procedure shall be applied accordingly on the procedure of execution.

Upon the request of one of the parties, or of the competent authority conducting the execution procedure, the fact that the trade mark is subject of the procedure of levy of execution shall be recorded in the Register of trade marks..

The entry into register, from paragraph 3 of this Article, shall be deleted or changed upon the request of one of the parties, the public prosecutor, or of the competent authority conducting the procedure of enforcement.

VII. REVOCATION OF RIGHTS

Revocation of Trade mark

Article 72

A trade mark shall be terminated upon expiry of the ten-year period for which the prescribed fee has been paid, unless its validity has been extended.

A trade mark may be terminated prior to expiry of the period referred to in the paragraph 1 of this Article:

- 1) if the proprietor of the trade mark abandons his right on the day following the day of furnishing the statement of abandonment to the competent authority;
- 2) on the basis of a court decision or a decision by the competent authority, in cases set out in this Law on the day specified in the mentioned decision;
- 3) if the legal person that is the proprietor of the trade mark ceased to exist, or if the natural person who is the proprietor of the trade mark has died on the day of the cessation, or the day of death respectively, except where the trade mark has been transferred to the successors in rights of such persons.

Collective trade mark and guarantee trade mark shall also be revoked if the competent authority, while examining the changes of the general act on the collective trade mark or the guarantee trade mark, determines that the requirements prescribed by the Article 32, paragraph 1 of this Law have not been met.

In the cases referred to in the paragraph 2 items 1) and 3) and paragraph 3 of this Article, the competent authority shall pass a special decision.

The Right of the Third Party

Article 73

If a certain right has been recorded into the Register of Trade marks on behalf of a third party, the proprietor of the trade mark may not abandon his trade mark without the written consent of the person on whose behalf such right has been recorded.

If the proprietor of the trade mark does not pay the fee, within the prescribed time limit for the extension of the validity of the trade mark, and if a certain right has been recorded in the Register of Trade marks on behalf of a third party, the competent authority shall notify such third party that the prescribed fee has not been paid, and that he may pay it, within the time limit referred to in the Article 58 of this Law.

VIII. DECLARATION OF INVALIDITY OF A TRADE MARK

Conditions for the Declaration of the Invalidity of a Trade mark

Article 74

A trade mark may be declared invalid, in whole or for certain goods and/or services, if it is determined that, at the time of its registration, the requirements for trade mark registration, prescribed by Articles 4, 5, 6 and 7 of this Law, have not been met.

Collective trade mark and guarantee trade mark may be declared invalid if it is determined that the general act on collective trade mark, and the general act on guarantee trade mark, or the changes thereof, did not meet, or do not meet the requirements prescribed by the Article 32, paragraphs 1 and 2 of this Law.

Authorized Person for the Initiation of a Procedure for the Declaration of Invalidity of a Trade mark

Article 75

The trade mark may be declared invalid, during the whole period of protection, at the application of the interested party, or at the application of the public prosecutor.

The application for declaring trade mark invalid, on the basis of Articles 6 and 7 of this Law, may be submitted only by the proprietor of the earlier right or the person authorized by him.

When the the proprietor of an earlier trade mark has acquiesced in the use of a later trade mark while being aware of such use, for the period of five successive years, that proprietor shall no longer be entitled on the basis of the earlier trade mark to apply for a declaration that the later trade mark is invalid in respect of the goods or services for which the later trade mark has been used, unless registration of the later trade mark was applied for in bad faith.

In the case pursuant to in the paragraph 4 of this Article, the proprietor of a later trade mark shall not be entitled to oppose the use of the earlier right.

Acquiring Distinctiveness of a Earlier Trade mark or Explicit Agreement for the Registration of the Proprietor of a Earlier Trade mark

Article 76

A trade mark may not be declared invalid, on the basis of Article 5, paragraph 1, items 3), 5) and 6) of this Law, if prior to application for declaring the trade mark invalid it has acquired distinctiveness due to its use.

A trade mark may not be declared invalid even if it has been registered contrary to the provisions of Articles 6 and 7 of this Law, if the proprietor of the earlier right has explicitly consented to its registration.

The Use of the Earlier Trade mark During the Procedure upon the Application for the Declaration of Invalidity of Trade mark

Article 77

A trade mark may not be declared invalid, on the basis of Article 6 paragraph 1, items 1), 2) and 4) of this Law, if the earlier trade mark with no proper reason was not put to genuine use in the Republic of Serbia, for marking of the goods and/or services for which it has been registered and

which are cited as justification for application, in the period of five years preceding to the application application for the declaring the trade mark invalid, unless the applicant filing the application for the latter trade mark, was acting in bad faith or the proprietor of the earlier trade mark proves that the proper reasons for non-use existed.

If the earlier trade mark of the applicant was used only with respect of certain goods and/or services for which it has been registered, it shall be considered, for the purpose of application of the paragraph 1 of this Article, that it has been registered only for those goods and/or services.

The proprietor of the earlier trade mark shall prove the use of his trade mark upon the request of the proprietor of the latter trade mark provided that on the date of filing the application for declaring the trade mark invalid, the earlier trade mark has been registered for at least a period of five years.

If the evidence, referred to in the paragraphs 1 and 8 of this Article, is not furnished, the application for declaring the trade mark invalid -shall be refused.

When on the date of submitting the application, or of the priority of the latter trade mark, the five-year period during which the earlier trade mark had to be put to genuine use has expired, the proprietor of the earlier trade mark shall, along with the evidence referred to in the paragraphs 1 and 2 of this Article, furnish the evidence of genuine use of the earlier trade mark, during the five-year period preceding the date of the submitting the application or of the priority of the latter trade mark or the evidence of proper reasons for non-use.

The Lack of the Distinctiveness or the Reputation of the Earlier Trade mark that Impedes the Declaration of the Invalidity

Article 78

An application for a declaration of invalidity on the basis of an earlier trade mark shall not succeed at the date of application for invalidation if it would not have been successful at the filing date or the priority date of the later trade mark for any of the following reasons:

- 1) the earlier trade mark liable to be declared invalid pursuant to Article 5 paragraph 1 items 3-5) of this Law has not yet acquired a distinctive character as referred to in Article 5 paragraph 2 of this Law;
- 2) the application for a declaration invalidity is based on the Article 6 paragraph 1 item 2) of this Law, and the earlier trade mark had not yet become sufficiently distinctive to support a finding of likelihood of confusion within the relevant part of the public, which includes the likelihood of bringing that sign to the connection with the earlier trade mark, as referred to in Article 6 paragraph 1 item 2) of this Law;
- 3) the application for a declaration of invalidity is based on the Article 6 paragraph 1 item 4) of this Law and the earlier trade mark had not yet acquired the reputation, as referred to in Article 6 paragraph 1 item 4) of this Law.

Initiating Procedure for the Declaration of Invalidity of a Trade mark

Article 79

The procedure for declaring the trade mark invalid is initiated by the written application for the declaring of the trade mark invalid.

The application referred to in the paragraph 1 of this Article, shall contain in particular: data on the applicant of the application; data on the proprietor of the trade mark; the registration number of the trade mark for which the invalidation is sought; the reasons for which invalidation is sought; an indication specifying whether invalidation is sought for the trade mark as a whole or only with regard to certain goods and/or services.

The competent authority shall prescribe the particulars of the application, referred to in the paragraph 1 of this Article, and shall determine the annexes to be submitted along with the application, as well as prescribe their contents.

Examination of the Formal Requirements of the Application for a Declaration of the Trade mark Invalid

Article 80

The application for declaring the trade mark invalid shall be considered regular if it includes the data referred to in the Article 79 of this Law.

The application for declaring the trade mark invalid may be submitted only on the basis of one or more of the earlier rights.

If the application for declaring the trade mark invalid is not regular, the competent authority shall invite the applicant in writing, along with stating the reasons, to remedy the deficiencies, within the time limit of 30 days.

Upon a reasoned request by the applicant, and upon payment of the prescribed fee, the competent authority shall extend the time limit, referred to in the paragraph 3 of this Article, by the period of time the competent authority deems appropriate.

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

In the case, referred to in the paragraph 5 of this Article, upon payment of the prescribed fee, the person filing the application may request the restitutio in integrum.

Procedure Following the Application for the Declaration of invalidity of a Trade mark

Article 81

The competent authority shall furnish the regular application to the proprietor of the trade mark and invite him to submit a reply, within a time limit of 30 days, from the date of receipt of the invitation.

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

After the completion of the procedure, based on the application for a declaration of the trademark invalid, the competent authority shall pass a decision declaring the trade mark invalid, as a whole or in respect of only certain goods and/or services, or a decision rejecting the application.

If the trade mark has been declared invalid, it shall be deemed not to have had, as from the outset, the effects, within the scope for which it has been declared invalid.

IX. SPECIAL CASES OF TRADE MARK REVOCATION

Revocation of Trade mark due to Non-Use

Article 82

At the request of an interested party, the competent authority may pass a decision on revocation of a trade mark, as a whole, or in respect of certain goods and/or services, if the proprietor of the trade mark, or a person authorized by him, fails, without a justified reason, to put to genuine use the trade mark 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 trade mark was registered, or from the day of its last use. During the procedure for revocation of a trade mark due to its non-use, the proprietor of the trade mark, or a person authorized by him, must prove that the trade mark has been used.

Use of the trade mark, within the meaning of the paragraph 1 of this Article and Article 77 of this Law, shall also constitute use of the sign protected by the trade mark, in a form differing in elements which do not alter the distinctive character of the sign, as well as the use of the protected sign on goods or packaging of goods, intended exclusively for export.

Use of the trade mark, with the consent of the proprietor of the trade mark, or by person authorized to use a collective trade mark or a guarantee trade mark, shall be deemed to be the use by proprietor of the trade mark.

Justified reason for non-use a trade mark referred to in the paragraph 1 of this Article, shall be deemed to be circumstance occurring independently of the will of the proprietor of the trade mark and which represents an obstacle to the use of the trade mark, such as a decision of a state authority, an import prohibition or any other prohibition affecting goods or services protected by the trade mark.

Advertising the protected sign without possibility of acquiring the goods or using the services comprised shall not be considered the use of the trade mark.

Payment of fees for extending the validity of the trade mark or conclusion of contracts on assignment of rights, license and pledge shall not be considered the use of the trade mark.

The competent authority shall not pass a decision on revocation of a trade mark due to its non-use, if the use of the trade mark had begun or was continued, after the expiry of the uninterrupted period of five years of non-use of the trade mark and before submission of a request for revocation of the trade mark, due to its non-use, except if the commencement or continuation of

the use of the trade mark occurred after the proprietor of the right had become aware that a request for the revocation of his trade mark will be submitted and if the use had begun or was continued, within a period of three months, preceding to the submission of a request for the revocation of a trade mark.

Date of Revocation of Trade mark Due to Non-use

Article 83

In the case referred to in Article 82 of this Law, trade mark shall be terminated on the date of the application for the revocation of trade mark due to the non-use.

Revocation of Trade mark in Other Cases

Article 84

The competent authority may, at the request of an interested party, pass a decision on revocation of a trade mark as a whole or in respect of only certain goods and/or services also in the following cases:

- 1) if the sign protected by a trade mark, as a result of acts or inactivity the proprietor of the trade mark or his successor in rights, has become the common name in the trade for a product or service in respect of which it is registered;
- 2) if the sign protected by a trade mark, as a result of the use made of it by the proprietor of the trade mark, his successor in rights or the person authorized by him, it is liable to mislead the public as to the geographical origin, type, quality or other characteristics of the goods and/or services;
- 3) if the sign, protected by a trade mark, has become contrary to public order or the accepted moral principles.

Collective trade mark and guarantee trade mark may also be terminated if they are being used contrary to a general act on collective trade mark or guarantee trade mark.

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

Additional Reasons for the Revocation of the Collective Trade mark

Article 85

Collective trade mark shall be terminated in the following cases:

- 1) the proprietor does not take reasonable steps to prevent the mark being used in a manner that is incompatible with the conditions of use laid down in the regulations governing use, including any amendments thereto mentioned in the Register of Trade marks;;
- 2) the manner in which the mark has been used by authorised persons has caused it to become liable to mislead the public in the manner referred to in Article 32 paragraph 2 of this Law;

- 3) an amendment to the regulations governing use of the mark has been mentioned in the register in breach of Article 16, unless the proprietor of the mark, by further amending the regulations governing use, complies with the requirements of that Article..

Initiating Procedure for the Revocation of a Trade mark

Article 86

The procedure for the revocation of a trade mark, for reasons specified in Articles 82 and 84 of this Law, shall be initiated on the basis of a written request.

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

The competent authority shall prescribe the particulars of the request, referred to in the paragraph 1 of this Article, and shall determine the annexes to be submitted along with the request, as well as prescribe their contents.

Examination of the Regularity of the Request for the Revocation of a Trade mark

Article 87

The request for the revocation of a trade mark shall be regular if it contains the data referred to in Article 86 of this Law.

If the request for the revocation of a trade mark 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 person filing the request for the revocation of a trade mark, and upon payment of the prescribed fee, the competent authority shall extend the time limit, referred to in the paragraph 2 of this Article by a period of time it deems appropriate.

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

In the case referred to in the paragraph 4 of this Article, and upon payment of the prescribed fee, the person filing the request may submit the request for the restitutio in integrum.

Procedure Following the Request for the Revocation of Trade mark

Article 88

The competent authority shall furnish a regular request to the proprietor of the trade mark and invite him to submit a reply within 30 days from the date of receipt of the invitation.

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

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

The Effect of Revocation of a Trade mark and the Declaration of Trade mark Invalid with Regard to the Court Decision and Treaties

Article 89

A declaration of a trade mark invalid or the revocation of the trade mark shall not produce any effect on court decisions, relating to establishing infringement of rights, which were legally binding at the moment of the adoption of the above mentioned decision, nor on concluded assignment or licensing contracts, if and to the extent such contracts have been executed, provided the plaintiff or the proprietor of the trade mark have acted in good faith.

In the procedures for a declaring the trade mark invalid, and in special cases of revocation of a trade mark, the competent authority may schedule an oral hearing.

X. CIVIL LAW PROTECTION

Infringement of Right

Article 90

Any unauthorized use of a protected sign by anyone taking part in the channels of commerce, within the meaning of Articles 49, 50, 51 and 52 of this Law, and Article 56 paragraph 2 of this Law shall constitute infringement of right.

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

Right to File Infringement Action

Article 91

An infringement action may be brought by the proprietor of trade mark, applicant, licensee, user of collective trade mark, with the consent of the proprietor of the collective trade mark, and user of guarantee trade mark, with the consent of the proprietor of guarantee trade mark.

The licensee may bring proceedings for infringement of a trade mark only if its proprietor consents thereto, unless otherwise stipulated in the license contract.

The holder of an exclusive license, who has formally informed proprietor of the trade mark about the infringement of the trade mark, or the right arising from the trade mark application, may

bring proceeding for infringement if the proprietor of the trade mark or the applicant does not himself bring infringement proceedings, within the time limit of thirty days, as of the date of the receipt of the notification.

The licensee, user of the collective trade mark or of the guarantee trade mark is entitled to intervene in infringement proceedings, brought by the proprietor of the trade mark or the applicant, for the purpose of obtaining compensation for damage suffered by him. .

If, defendant requests that the proprietor of the trade mark prove that, in the time period of five years preceding the time the infringement action is brought , the trade mark has been put to genuine use , in connection with the goods or services in respect of which it is registered , the court has the obligation to instruct the defendant to initiate procedure before the competent authority, pursuant to Article 82 of this Law.

The court shall, on the basis of an action as provided in paragraph 1 of this Article, refuse the litigation claims provided that, at the request of the defendant, it is established that the trade mark of the plaintiff was not used, as provided in the Article 82 of this Law.

If it is determined that the trade mark of the plaintiff has been used, with respect to only certain goods and/or services for which it has been registered, the court will pass a decision taking into consideration only those goods and/or services for which the plaintiff has proven use.

The Action Against Infringement

Article 92

In the case of the infringement of rights, in an action against infringement, the plaintiff may claim in particular:

- 1) determination of infringement of right;
- 2) prohibiting of infringing acts or acts which represent a serious threat that the right could be infringed, as well as the prohibition of the repetition of such or similar acts, under the threat of due pecuniary penalty to be paid by the plaintiff;
- 3) compensation of damages;
- 4) the publication of the verdict at the expense of the defendant;
- 5) confiscation or the permanent exclusion from the channels of commerce or the destruction or change without any compensation of the object used for the infringement of right;
- 6) prohibiting of disposing, confiscation or destruction, without any compensation, of the materials and objects which were used in the production of objects used for the infringement of right;

While considering the litigation claims, from paragraph 1, item 5) and 6) of this Article, the court takes into consideration the proportion between the seriousness of damage of right and litigation claim, as well as the interests of the third parties.

The action against infringement may be filed also against the person whose services have been used while infringing the right (the intermediary).

The plaintiff is entitled to the compensation of the pecuniary and non-pecuniary damage.

While determining the amount of the compensation of the damage referred to in the paragraph 4 of this Article, the court shall take into consideration all the circumstances of the particular case, especially the negative economic consequences suffered by the plaintiff, including the lost profit, as well as the profit that the damaging party realized by the infringement of right.

The court may, when the circumstances of the case justify it, adjudge to the plaintiff the lump size compensation of damage, that cannot be lower than the compensation that would have been received for the particular type of use of the subject matter of protection, had that use been lawful.

If the infringement of right has not been done intentionally or by the gross negligence, the court may adjudge to the plaintiff the compensation of damages in the amount of the profit that the defendant has realized by the infringement of right.

The Procedure Following the Action

Article 93

An action against infringement may be filed within a period of three years, as from the day on which the plaintiff became aware of the infringement and the infringer, but not later than five years from the day of infringement, or the last performed infringement, when it is the case of the continual infringement of rights.

The procedure following the action against infringement, referred to in the paragraph 1 of this Article, is urgent.

The procedure following the action against infringement of right, arising from the application, shall be suspended, by the Court, until the final decision of the competent authority regarding the application is passed.

If, before the competent authority or the court, the procedure pursuant to Articles 74, 82, 84, 104 and 105 of this Law has been initiated, the court proceeding following infringement action, pursuant to in the Articles 91 and 92 of this Law, must suspend the procedure, until the final decision of the competent authority or court is passed.

The court procedure, following the action pursuant to in the paragraph 1 of this Article, shall be subject to application of the provisions of the law, regulating civil procedure.

The Acquisition of Evidence

Article 94

If the party in the procedure, which made probable its claims, invokes the evidence possessed or controlled by the adverse party, the court shall order the adverse party to furnish the mentioned

evidence, taking into consideration the application of the regulations concerning the handling of confidential information.

Under conditions, referred to in the paragraph 1 of this Article, in the case that the right has been infringed during the performing of the business activities, the court shall, at the application of the plaintiff, order the defendant to furnish the banking, financial and business documents, possessed or controlled by him, taking into consideration the implementation of the regulations concerning the handling of confidential information.

Provisional Measure

Article 95

At the proposal of a person who makes it probable that his right has been infringed within the meaning of the Article 90 of this Law, or is about to be infringed, the court may order a provisional measure:

- 1) the seizure or removal of infringing objects from the channels of commerce;
- 2) the seizure or the prohibition of the disposal of materials and objects, which were used specifically or predominantly in the production of objects infringing the right, or are predominantly intended for the production of objects infringing the right;
- 3) the prohibition of undertaking the actions infringing the right or presenting a serious threat that the right shall be infringed.

The provisional measure may, under the same conditions, be ordered against a person whose services were used while infringing the right (intermediary).

At the proposal of the person who makes it probable that his right has been infringed, or is about to be infringed, and who makes probable the existence of circumstances that would hinder or significantly aggravate the compensation of damage in the case of the infringement of right, the court may, apart from the provisional measures referred to in the paragraph 1 of this Article, also determine the provisional measures:

- 1) seizure of the movable and immovable property of the person against whom the adjudging of provisional measure is proposed;
- 2) prohibition of the payment of money from the account of the person against whom the adjudging of the provisional measure is proposed.

For the sake of adjudging and enforcement of the provisional measure, referred to in the paragraph 3 of this Article, the court may order the furnishing of banking, financial, business or other documents and data or order enable the access to those documents and data.

The person against whom the provisional measure, referred to in the paragraph 1, item 2) and 3) and paragraph 3, item 2) of this Article, as well as the order from paragraph 4 of this Article, was adjudged, and who does not act in accordance with the adjudged provisional measure, or the

order, shall be punished, in accordance with the provisions of the law regulating the procedure of enforcement and precautionary measures.

The Procedure for Adjudging the Provisional Measure

Article 96

The court may adjudge the provisional measure immediately after the receipt of the proposal for adjudging of the provisional measure and without previous declaration given by the alleged infringer, and especially if there is a threat, that due to the postponing, the proponent sustains irreparable damage.

The decision adjudging the provisional measure, in the case referred to in the paragraph 1 of this Article, shall be furnished to the parties in the procedure with no delay, and at least after the enforcement of the measure.

When the provisional measure is adjudged before the initiation of the civil procedure, the legal action, for the sake of the justification of the measure, must be filed within the time period of 30 days, as of the day of passing the decision adjudging the provisional measure.

The court procedure following the proposal for adjudging the provisional measure shall be subject to implementation of the provisions of the law regulating the procedure of enforcement and precautionary measures.

The Abolishment of the Provisional Measure and the Compensation of Damages

Article 97

If, within the time limit referred to in the Article 96 paragraph 3 of this Law, the legal action is not taken, the court shall, at the proposal of the person against whom the provisional measure was adjudged, suspend the procedure following the provisional measure and abolish the undertaken actions.

If the procedure following the provisional measure is suspended, and the undertaken actions are abolished in compliance with this Article, or if the court determines that the infringement of right has not occurred, or that there was no serious threat that the right shall be infringed, the party, against whom the provisional measure was adjudged, is entitled to the compensation of damages which were caused by the provisional measure.

The court may condition the passing of the provisional measure with depositing a certain appropriate amount of money as the means for precaution, in the case of causing damages, as referred in the paragraph 2 of this Article.

The Appropriate Application of the Law Regulating Enforcement and Precautionary Measures

Article 98

To the issues concerning procedure following the proposal for adjudging the provisional measure, that are not regulated by this Law, the provisions of the Law regulating the enforcement and precautionary measures shall apply.

The Securing of the Evidence

Article 99

At the proposal of the person that makes probable that his right has been infringed or that it is about to be infringed, the court may, in the course or before the civil procedure, order the securing of the evidence taking into consideration the regulations concerning the handling of trade secret.

Securing of the evidence in the meaning of this Law shall be considered the following:

- 1) taking the detailed description of the products infringing the right, with or without taking specimens from those products;
- 2) seizure of the product, or part of the product infringing the right, and, if that is justified, seizure of the documents, material and objects used in the production or putting into channels of commerce the objects infringing the right;
- 3) inspection of the premises, vehicles, books, documents, interrogation of witnesses and expert witness.

The Procedure of Securing of Evidence

Article 100

The court may adjudge the securing of evidence immediately after the receipt of the proposal for the securing of evidence, without the declaration of the alleged infringer, and in particular if there is a threat that, due to the postponing, the proponent suffers irreparable damage or that some evidence cannot be verified or that its later verification may be hindered.

The decision ordering the securing of evidence, in the case referred to in the paragraph 1 of this Article, shall be furnished to the parties in the procedure, with no delay, at the latest after the enforcement of the measure.

When the securing of evidence is determined before the initiation of the civil procedure, the action due to the infringement of right must be filed in the course of 30 days from the date of passing a decision on the securing of evidence.

The Abolition of the Securing of Evidence and the Compensation of Damages

Article 101

If the legal action is not filed in the time period referred in the Article 100 paragraph 3 of this Law, the court shall, at the proposal of the alleged infringer, suspend the procedure and abolish the enforced actions.

If the procedure of securing the evidence is suspended and the enforcement actions are abolished, or if the court determines that the infringement of right has not happened or that there existed no serious threat that the right shall be infringed, the alleged infringer is entitled to the compensation of damages that occurred by the securing of evidence.

The court may condition the securing of damages by depositing a certain sum of money as precautionary measure in the case of compensation for any damage, referred to in the paragraph 2 of this Article.

The Appropriate Implementation of the Law Regulating Civil Procedure

Article 102

The issues concerning procedure for securing of the evidence, that are not regulated by this Law, shall be subject to the provisions of the Law regulating the civil procedure.

The Obligation to Provide Information

Article 103

The court may order the person that performed the infringement of right to provide information about the origin and distributive channels of goods and/or services performing the infringement of right, including data on persons participating in the infringement of right, as well as to furnish the documents connected to the infringement of rights.

Apart from persons, referred to in the paragraph 1 of this Article, the court may order furnishing of information, on the following persons:

- 1) with whom goods that infringe the right have been found, during the performance of business activity;
- 2) who use services infringing the right, during the performance of business activity;
- 3) who provide services, during the performance of business activity, infringing the right;
- 4) who, by the persons referred to in the items 1)-3) of this paragraph, have been referred to as the persons included in the production or distribution of goods or providing of services infringing the right.

Data from paragraph 1 of this Article, are taken to be in particular:

- 1) data on the producers, distributors, suppliers and other persons that were previously included in the production or distribution of goods or providing of services, as well as the salesmen for whom the goods were intended;
- 2) data on the amount of produced, delivered or ordered goods or services, as well as the prices of such goods or services.

If the persons, referred to in the paragraphs 1 and 2 of this Article, due to justified reasons do not act in accordance with the order of the court, and do not furnish the requested information, they will not be responsible for the damage caused in such a way.

Legal Action for the Challenge of a Trade mark

Article 104

If an application was filed contrary to the principle of a good faith and honesty, or if the sign 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, person whose legal interest has been violated, may request the court to declare him an applicant, or the right proprietor.

Article 105

Any natural or legal person who, in commercial activity, uses a sign for marking of goods and/or services, for which another person has filed an application for trade mark registration or has registered that sign in his name, for marking of the identical or similar goods and/or services, may request the court to declare him an applicant or the right proprietor, providing such a person proves that the sign in question was well-known, within the meaning of Article 6bis of the Paris Convention for Protection of Industrial Property, before the defendant has filed his application or registered a trade mark.

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

The action, referred to in the paragraph 1 of this Article, may not be filed if 5 years have expired from the day the trade mark was recorded into the Register of Trade marks.

Recording of the Judicial Decision in the Trade mark Register

Article 106

If the court adopts the claim, referred to in the Article 104, or in Article 105 of this Law, it shall, after the decision in question has become final, furnish it to the competent authority, which shall record the plaintiff in the appropriate register - as the applicant or as the proprietor of trade mark.

The Expiry of the Right of the Third Party

Article 107

Any rights that any third party may have acquired from the former applicant, or the proprietor of the trade mark, referred to in the Articles 104 and 105 of this Law, shall be terminated as of the day of record of the new applicant or proprietor of the trade mark in the appropriate register of the competent body.

Revision

Article 108

Revision is allowed against the final decisions passed in the second degree in the legal disputes referring to the infringement of rights and the challenging of the trade mark.

XI. PENAL PROVISIONS

Responsibility for the Corporate Offence

Article 109

A business company, or another legal person who has infringed a trade mark, or the right arising from the application, in the manner referred to in the Article 90 of this Law, shall be sanctioned on grounds of corporate offence with a pecuniary compensation of between RSD 300,000 and 3,000,000.

The responsible person in a business company, or in another legal person, shall be sanctioned for the acts referred to in the paragraph 1 of this Article, on grounds of corporate offence with a pecuniary compensation 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, referred to in the paragraph 1 of this Article, shall be forfeited seized, 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 referred to in the paragraph 1 of this Article shall be published.

Responsibility for Misdemeanor

Article 110

An entrepreneur, who has infringed a trade mark or the right arising from an application, in the manner referred to in the Article 90 of this Law, shall be sanctioned on grounds of misdemeanor with a pecuniary compensation of between RSD 50,000 and 500,000.

A natural person shall be sanctioned for the acts, referred to in the paragraph 1 of this Article, with a pecuniary compensation of between RSD 10,000 and 50,000.

The infringing objects in the misdemeanor and the objects used for the perpetration of the misdemeanor, referred to in the paragraph 1 of this Article, shall be forfeited, while the infringing objects in the misdemeanor shall also be destroyed.

Article 111

A legal person who acts without authorization as representative in exercising rights under this Law (Article 12) shall be sanctioned on grounds of misdemeanor with a pecuniary compensation of between RSD 100,000 and 1,000,000.

The responsible person in a legal person shall be sanctioned for the acts, referred to in the paragraph 1 of this Article, on grounds of misdemeanor with a pecuniary compensation of between RSD 10,000 and 50,000.

A natural person who acts without authorization as a representative in the exercising rights under this Law (Article 12) shall be sanctioned on grounds of misdemeanor with a pecuniary compensation of between RSD 10,000 and 50,000.

XII. TRANSITIONAL AND FINAL PROVISIONS

Implementation of the Law

Article 112

The trade marks valid on the date of this Law entering into force shall remain in effect and they shall be subject to the provisions of this Law.

The provision of Article 12 paragraph 3 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 trade mark applications filed after entry into force of this Law, as well as on other procedures related to trade marks initiated after entry into force of this Law.

From the date of the accession of the Republic of Serbia to the European Union, the provision of the Article 53. paragraph 1 of this Law, relating to the exhaustion of rights, shall be implemented in the case when the proprietor of trade mark or the person authorized by him has put on the market the goods marked by the trade mark on the territory of the European Union or the European Economic Area.

Time Limit for Passing the By-law

Article 113

Bylaws for the enforcement of this Law shall be adopted within the time period of nine months from the date of this Law entering into force.

Until the adoption of the bylaws provided for by this Law, the provisions of the bylaws adopted on the basis of the Law on Trade marks („Official Gazette of RS”, No. 104\09, 10\13 and 44\18-other law) shall apply except for the provisions contrary to this Law.

Continuity in Maintaining the Register of Trade marks

Article 114

The Register of Trade marks and Register of Applications established by the Law on Trade marks („Official Gazette of the RS”, No. 104\09, 10\13 and 44\18-other law), shall continue to be maintained as the Register of Trade marks pursuant to this Law.

The Register of Representatives established by the Law on Patents („Official Gazette of RS”, No. 99\11, 113\17 – other law and 95\18) shall continue to be maintained pursuant to the Law it was established by and to this Law.

The Cease of the Effect of the Law

Article 115

On the date of this Law entering into force, the validity of the Law on Trade marks („Official Gazette of the RS”, No. 104\09, 10\13 and 44\18-other law) shall cease.

Entry into Force

Article 116

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”.