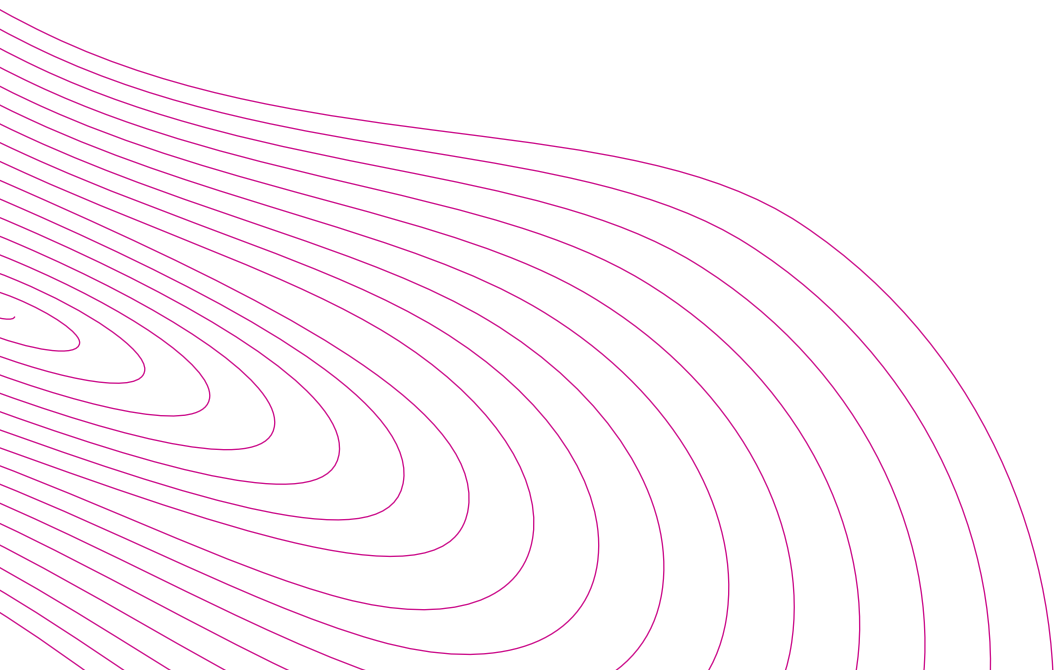




STATE OFFICE
FOR
INVENTIONS AND TRADEMARKS



LAW no. 84/1998

ON TRADEMARKS AND GEOGRAPHICAL INDICATIONS
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CHAPTER I

General Provisions

Art. 1

- (1) Rights in trademarks and geographical indications shall be recognized and protected on the territory of Romania in accordance with the provisions of this Law.
- (2) The present Law shall be applicable to trademarks in respect of goods and services, as individual trademarks, collective marks or certification marks, which are the subject of registration or of an application for registration in Romania, as a consequence of European protection or by international route, as well as to geographical indications.
- (3) Foreign natural persons or legal entities having their residence or place of business outside the territory of Romania shall also enjoy the provisions of this Law, in accordance with the international conventions on trademarks and geographical indications to which Romania is a party.

Art. 2

Trademarks may consist of any sign, such as: words, personal names included, or designs, letters, numerals, colours, figurative elements, the shape of goods or of packaging thereof or sounds, provided that such signs are capable of:

- a) distinguishing the goods or services of one enterprise from those of other enterprises and
- b) being so represented in the Trademark Register as to enable the competent authorities and the public to determine the clear and precise subject matter of protection granted to their owner.

Art. 3

For the purposes of this Law, the following terms and expressions shall have the meanings set out below:

- a) *trademark registration* - the way of acquiring rights in a trademark under this Law or the international conventions and treaties to which Romania is a party;
- b) *earlier trademark* - registered trademark, as well as a trademark filed for registration in the Trademark Register, provided that it is subsequently registered;
- c) *European Union trademark* - trademark registered under the Regulation (EU) 2017/1001 of the European Parliament and the Council of 14 June 2017 on the European Union Trademark, published in the Official Journal of the European Union (JOEU), L 154 of 16 June 2017;

- d) *well-known trademark* - a trademark that is widely known to the segment of the public concerned in respect of the goods or services to which it applies, without being required either registration or use thereof in Romania for the trademark to be opposable;
- e) *collective mark* - the mark which is described as such when it is applied for and which is capable to distinguish the goods or services of the members of an association which owns the rights in the mark from goods or services belonging to other persons;
- f) *certification mark* - a mark indicating that the goods or services for which it is used are certified by the owner as to the material, method of manufacturing goods or mode of providing services, quality, accuracy or other characteristics and which is capable to distinguish said goods or services from the goods or services which are not so certified;
- g) *geographical indication* - name serving to identify a product that originates in a country, region or locality of a State, where a certain quality, reputation or other specific characteristics may be essentially attributed to that geographical origin;
- h) *applicant* - person in whose name an application for trademark registration is filed;
- i) *owner* - natural person or legal entity established under public or private law in whose name a trademark is registered in the Trademark Register; within the meaning of this law, other entities which have the capacity, in their own name, to have rights and obligations of any kind, to make contracts or accomplish other legal acts and to sue and be sued are also deemed to be legal entities;
- j) *professional representative*, hereinafter referred to as representative - industrial property attorney who may also have the capacity of representative in proceedings before OSIM;
- k) *OSIM* - the State Office for Inventions and Trademarks
- l) *Trademark Register* - database, maintained by OSIM, including the trademarks registered in Romania, as well as all data recorded in respect of said registrations, irrespective of the carrier on which said data are stored;
- m) *Geographical Indications Register* - data collection, maintained by OSIM, including the geographical indications registered in Romania, as well as all data recorded in respect of said registrations, irrespective of the carrier on which said data are stored;
- n) *Paris Convention* - the Convention for the Protection of Industrial Property concluded in Paris on 20 March 1883, as revised and amended, ratified by Romania through the Decree No 1177/1968, published in the Official Bulletin No. 1 of 6 January 1969;

- o) *countries of the Paris Union* - countries to which the Paris Convention applies and that constitute the Union for the Protection of Industrial Property;
- p) *Madrid Agreement* - the Madrid Agreement for the International Registration of Marks of 14 April 1891, as revised in Stockholm on 14 July 1967, ratified by Romania through the Decree No 1176/1968 and published in the Official Bulletin No 1 of 6 January 1969;
- q) *Madrid Protocol* - the Protocol relating to the Madrid Agreement for the International Registration of Marks of 27 June 1989, ratified by Romania through the Law No. 5/1998, published in the Official Gazette of Romania, Part I, No.11 of 15 January 1998;
- r) *Nice Classification* - the classification established through the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, revised at Stockholm, on 14 July 1967, and at Geneva, on 13 May 1977, and amended on 2 October 1979, accessed by Romania through the Law No 3/1998 on Romania's accession to the agreements establishing an international classification in the industrial property field;
- s) *European Union Trademark Regulation* - Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union Trademark, hereinafter referred to as European Union Trademark Regulation;
- ș) *enterprise* - any entity involved in an economic activity, irrespective of its legal nature or financing.

CHAPTER II

Protection of Trademarks

Art. 4

- (1) The right to a trademark shall be acquired and protected by registration with OSIM.
- (2) European Union trademarks shall benefit from protection on the territory of Romania in accordance with the provisions of the European Union Trademark Regulation.

Art. 5

- (1) Registration shall be refused or, if registered, shall be liable to be declared invalid, for the following absolute grounds:
 - (a) signs that can not constitute a trademark, within the meaning of Art. 2;

- (b) trademarks which are devoid of any distinctive character;
- (c) trademarks which consist exclusively of signs or indications which have become customary in the current language or in the *bona fide* and established practices of the trade;
- (d) trademarks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin or the time of production of the goods or of rendering of the service, or other characteristics of the goods or services;
- (e) trademarks which consist exclusively of the shape of the good or of other feature which results from the nature of the goods themselves or which is necessary to obtain a technical result or which gives substantial value to the goods;
- (f) trademarks which are liable to mislead the public as to the geographical origin, the quality or nature of the goods or services;
- (g) trademarks which are excluded from registration pursuant to the European Union legislation, to the national legislation or to the international agreements to which the European Union or Romania are party, providing for protection of designations of origin and geographical indications;
- (h) trademarks which are excluded from registration pursuant to the European Union legislation or to the international agreements to which the European Union is party, providing for protection of traditional terms for wine;
- (i) trademarks which are excluded from registration pursuant to the European Union legislation or to the international agreements to which the European Union is party, providing for protection of traditional specialties guaranteed;
- (j) trademarks which consist of, or reproduce in their essential elements, an earlier plant variety denomination registered in accordance with the European Union legislation, the national legislation or the international agreements to which the European Union or Romania are party, providing protection for plant variety rights and referring to plant varieties of the same species or of closely related species.
- (k) trademarks which contain, without the consent of the owner, the likeness or surname of a person of repute in Romania;
- (l) trademarks which contain signs of high symbolic value, in particular religious symbols;
- (m) trademarks contrary to public policy or to accepted principles of morality;

- (n) trademarks which contain, without the permission of the competent authorities, reproductions or imitations of armorial bearings, flags, State emblems, signs, official hallmarks of control and warranty, coats of arms belonging to countries of the European Union and which are governed by Article 6^{ter} of the Paris Convention;
 - (o) trademarks which contain, without the permission of the competent authorities, reproductions or imitations of armorial bearings, flags, other emblems, abbreviations, initials or denominations which are governed by Article 6^{ter} of the Paris Convention and which belong to international intergovernmental organizations to which one or more countries of the European Union are party.
 - (p) trademarks which contain, without the permission of competent authorities, badges, emblems, coats of arms, escutcheons, heraldry of public interest, other than those covered by Article 6^{ter} of the Paris Convention.
- (2) Registration shall not be refused or, if registered, shall not be liable to be declared invalid under the provisions of paragraph (1), letters (b), (c) or (d) if, prior to the date of the application for registration or before the date of the application for declaration of invalidity, as the case may be, the mark has acquired a distinctive character following the use which has been made of it.
 - (3) Provisions of paragraph (2) shall also apply where the distinctive character was acquired after the date of application for registration but before the date of registration of the mark concerned.

Art. 6

- (1) Registration of a trademark shall also be refused or shall be liable to be declared invalid, as the case may be, for the following relative grounds:
 - (a) where it is identical with an earlier trademark, and the goods and services for which registration is applied or the trademark has been registered are identical with the goods and services for which the earlier trademark is protected;
 - (b) where, because of its identity with or similarity to the earlier trademark and because of identity or similarity of the goods or services covered by the two trademarks, there exists a likelihood of confusion in the public perception, the likelihood of association with the earlier trademark included.
- (2) Within the meaning of paragraph (1), earlier trademarks mean:
 - (a) European Union trademarks, trademarks registered in Romania or trademarks registered under international agreements and having effects in Romania, with a date of application for

- registration earlier than the date of application for registration of the trademark concerned or of the priority claimed in respect thereof, as the case may be;
- (b) European Union trademarks for which seniority is duly claimed, in accordance with the provisions of European Union Trademark Regulations, even where that trademark has lapsed or surrendered;
 - (c) trademark registration applications referred to under letters (a) and (b), subject to their subsequent registration;
 - (d) trademarks which, on the date of the application for registration of the trademark or on the date of the claimed priority, as the case may be, are well-known in Romania, within the meaning of Art. 6 bis of the Paris Convention.
- (3) Registration of a trademark shall also be refused or, if registered, it shall be liable to be declared invalid, if:
- (a) it is identical with or similar to an earlier trademark registered in Romania or in the European Union, within the meaning of paragraph (2), irrespective of whether the goods and services for which it is applied or registered are identical with, similar to or not similar to those for which the earlier trademark is registered, where the earlier trademark has a reputation in Romania or, in case of the European Union trademark, in the European Union, and where, by the use of the later trademark without due cause, unfair advantage would be taken of the distinctive character or the reputation of the earlier trademark or it would be detrimental thereto;
 - (b) an application for registration of a designation of origin or a geographical indication had already been submitted in accordance with the national or the European Union legislation prior to the date of the application for the registration of the trademark or to the date of the priority claimed for the application, subject to its subsequent registration, and the designation of origin or the geographical indication confers on the person authorized to use it the right to prohibit the use of a subsequent trademark in Romania;
 - (c) rights to a sign were acquired prior to the date of the application for the registration of the trademark or, where appropriate, to the date of the priority claimed for the application for the registration of the trademark and said sign confers on its owner the right to prohibit the use of a subsequent trademark in Romania;
 - (d) the agent or the representative of the trademark owner applies for the registration of the trademark in his own name and without the owner's authorization, unless the agent or the representative justifies his action;

- (e) there is an earlier right, other than those referred to under letter (c) and paragraph (2) above, in particular a right to a name, a right of personal portrayal, a copyright or an industrial property right;
 - (f) the trademark is liable to be confused with an earlier trademark protected abroad, provided that, at the date of filing of the application, the applicant was acting in bad faith.
- (4) Registration of a trademark shall not be refused or liable to be declared invalid, as the case may be, where the owner of a right referred to under paragraph (2) or paragraph (3) letters (a), (c), (e) or (f) agrees with the registration of the subsequent trademark.

Art. 7

- (1) The nature of the goods or services for which registration of a trademark is requested in no way represents an obstacle to the registration of the trademark.
- (2) Where grounds for refusal of registration exist in respect of only some of the goods or services for which registration was sought, refusal of registration shall only cover those goods and services.

CHAPTER III

Trademark Registration Application

Art. 8

The right to the trademark shall belong to the applicant which was the first to file the trademark application registration, under the conditions laid down by the law.

Art. 9

- (1) The application for trademark registration filed with OSIM, drawn up in Romanian and containing the details provided for in paragraph (2), shall constitute the *regular filing of the trademark*.
- (2) The application for trademark registration shall contain the following:
 - (a) an express request for the registration of a trademark;
 - (b) information identifying the applicant and, where appropriate, the representative;
 - (c) a representation of the trademark in accordance with the requirements set out in Art. 2 (b);
 - (d) the list of goods and/or services in respect of which the trademark registration is applied for;
 - (e) proof of payment of the trademark registration application filing and publication fee.

- (3) In addition to the requirements set out under paragraph (2) above, the application shall include express mentions concerning:
 - (a) the colour or colours claimed as a distinctive element of the trademark;
 - (b) the trademark type, if it is a three-dimensional trademark or a trademark of other type than the word or figurative ones;
 - (c) a transliteration or translation of the trademark or of elements thereof, when the trademark consists, fully or in part, of characters, other than the Latin ones, or numerals, other than the Arabic or Roman ones, or of one or several words in other language than Romanian.
- (4) The application shall relate to one trademark only and shall be submitted under the conditions provided for by the implementing regulations^{*)} to this Law.
- (5) The applications for registration filed under the Madrid Agreement or the Madrid Protocol shall meet the conditions established by said treaties.
- (6) The trademark registration application may be filed with OSIM Registry, by mail or electronically, under the conditions set forth by the implementing regulations to this Law.

Art. 10

- (1) The goods and services for which protection is sought shall be identified by the applicant with sufficient clarity and precision to enable the competent authorities and economic operators to determine the extent of the protection sought.
- (2) The goods and services in respect of which trademark registration is applied for shall be classified in conformity with the system of classification established by the Nice Classification. The goods and services shall be grouped by classes, each group being preceded by the number of the class to which it belongs, in the order of the classes.
- (3) The use of general terms or of the general indications comprised in the class headings of the Nice Classification, shall be interpreted as including all the goods or services covered by the literal meaning of the indication or term concerned.
- (4) Goods and services shall neither be regarded as being similar to each other on the ground that they appear in the same class nor be regarded as being dissimilar on the ground that they appear in different classes under the Nice Classification.

^{*)} See Government Decision no. 1134/2010 for approving the Implementing Regulations to the Law 84/1998 on Trademarks and Geographical Indications, published in the Official Gazette of Romania, Part I, No 809 of 3 December 2010.

Art.11

- (1) The owners of trademarks registered in respect of an entire class heading in the Nice Classification may declare that, on the date of filing the application for trademark registration, their intention was to claim protection for goods and services beyond those covered by the literal meaning of the heading of said class, provided that such goods and services are included in the alphabetical list of that class in the edition of the Nice Classification in force on the date of filing the application for trademark registration.
- (2) The declaration referred to under paragraph (1) shall be filed with OSIM up to the date of 30 September 2020 and it shall clearly and precisely state which are the goods and services, other than those covered by the literal meaning of the class heading, to which the owner intention initially referred. OSIM shall amend the Trademark Register accordingly.
- (3) The declaration referred to in paragraph (1) shall not affect application of Art. 26, paragraph (4), Art. 55, paragraph (1) (a) and Art. 59 paragraph (1).
- (4) In case no declaration is filed within the time limit provided under paragraph (2) above, at the expiry of said time limit, the trademarks are only deemed to refer to those goods and services covered by the literal meaning of the heading of the relevant class.
- (5) Where the Trademark Register is modified in accordance with the provisions of paragraph (2), the exclusive rights conferred by the trademark shall not prevent third parties from the continued use of a trademark, provided that the use in respect of said goods or services:
 - (a) started before the amendment of the Register; and
 - (b) did not infringe the owner's rights in considering the literal meaning of goods and services entered in the Register at that time.
- (6) Amendment of the list of goods and services referred to under paragraph (2) shall not entitle the trademark owner to oppose to a later trademark or to apply for invalidation of a later filed trademark if:
 - (a) the later filed trademark was already in use or an application for trademark registration for goods and services was already filed before Register amendment; and
 - (b) trademark use in respect of the goods and services concerned did not infringe or would not have infringed the owner's rights considering the literal meaning of goods and services entered in the Register at that time.

Art. 12

- (1) The date of the regular filing shall be the date on which the application for registration of a trademark containing all the elements referred to in Art. 9, paragraph (1) has been filed with OSIM.
- (2) Where an application for registration of a trademark has been duly filed for the first time in another Member State of the Paris Union or Member of the World Trade Organization, the applicant may claim the date of the first filing by means of an application for registration of the same trademark in Romania, on condition that the latter application should be filed with OSIM within 6 months of the date of the first filing.

Art. 13

- (1) Where the applicant displayed certain goods and services under a certain trademark within an international official or officially recognized exhibition, within the meaning of the Convention on International Exhibitions signed in Paris on 22 November 1928 and ratified by Romania through the Law No. 246/1930, as revised on 30 November 1972, which was organized on the territory of Romania or another Member State of the Paris Convention, and if an application for the registration of the trademark under which such goods and services were displayed has been filed with OSIM within 6 months of the date of the first exhibition display, the applicant shall be entitled to a priority right as from the date of introduction of said good in the exhibition.
- (2) The 6-month period referred to in paragraph (1) shall not extend the priority period referred to in paragraph (2) of Article 12.

Art. 14

- (1) The priority rights referred to in Art. 12 and Art. 13 shall be claimed at the time of filing an application for trademark registration; they shall be supported by priority documents and shall be subject to payment of the prescribed fee.
- (2) The priority documents shall be filed and the prescribed fee shall be paid within 30 days, at the most, following the date of the application for registration of the trademark.
- (3) Failure to comply with the time limit referred to in the paragraph (2) above, shall entail non-recognition of the claimed priority.

Art. 15

- (1) The registration of a trademark may be applied for individually or collectively by any person, either directly or through a representative, under the conditions provided by the Law and by the implementing regulations thereto^{*)}.

^{*)} See footnote under Art.9, paragraph (4).

- (2) Applicants not having either their domicile, or their place of business or any real and effective industrial or commercial establishment on the territory of the European Union or the European Economic Area shall be compelled to be represented by a representative, except for the procedure of filing the application for trademark registration.

Art. 16

- (1) The applicant for trademark registration shall communicate, at the date of the application or within 30 days of the date of filing the application with OSIM, the proof of payment of the filing and examination fee, in the amount prescribed by the law.
- (2) In case of failure to comply with the payment of the fees in due time, the applicant shall be deemed to having renounced trademark registration and the application shall be refused.

Art. 17

- (1) An applicant for registration of a trademark or owner of a registered trademark that relates to more than one good or service may request to OSIM to divide the initial application or the trademark registration into two or more applications or registrations, while indicating the goods or services in the divisional applications or registrations, upon payment of the prescribed fee.
- (2) Divisional applications or registrations shall maintain the filing date of the initial application and, where appropriate, shall enjoy the benefit of the priority right obtained in accordance with paragraph (2) of Art. 12 or paragraph (1) of Art. 13.
- (3) Where the application for trademark registration is already published by virtue of Art. 19 paragraph (1) or Art. 25 paragraph (4), the division and the divisional application shall be published in the Official Industrial Property Bulletin. Publication shall not open a new period for filing oppositions or observations.
- (4) Division may be requested with OSIM at any moment during the procedure of trademark registration or after that.
- (5) Request for division shall not be admissible:
 - (a) if made before the filing date of the application for trademark registration has been accorded;
 - (b) if made within the period for filing an opposition referred under Art. 26, paragraph (1);
 - (c) if it results in the division between the goods or services subject to opposition, up to such time as a decision to settle the opposition is final or opposition is withdrawn;

- (d) if it results in the division between the goods or services subject to an application for invalidation or revocation of rights, up to the final decision settling the same;
 - (e) after a levy of execution is entered in the Trademark Register, up to its cancellation.
- (6) The applicant for or the owner of the registered trademark shall be required to file the documents requested by OSIM in order to divide the initial application or registration and to pay the prescribed fee within 30 days as from the date of the request for division. Failing that, OSIM shall note that the applicant or owner has renounced division of the initial application or registration.

CHAPTER IV

Trademark Registration Procedure

Art. 18

- (1) Within 7 days as from the date of receipt of the application for registration of a trademark, OSIM shall examine whether the conditions set out in Art. 9 paragraph (1) have been complied with and, if so, shall accord the application a filing date.
- (2) If the application does not satisfy the conditions set out in Article 9 paragraph (1), OSIM shall notify the applicant of the irregularities in the application and shall afford him a period of 30 days to correct them. If the applicant corrects, within the prescribed time limit, the irregularities notified by OSIM, the filing date shall be the date on which the application for registration was corrected in accordance with Art. 9 paragraph (1). If such is not the case, the application shall be refused.

Art. 19

- (1) The application for trademark registration which complies with the requirements set out under Art. 9 paragraph (3) and Art. 10 paragraphs (1) and (2) shall be published electronically within 7 days of the date on which the filing date has been accorded, under the conditions provided by the implementing regulations to this Law.
- (2) Applications for registration of trademarks which are obviously contrary to public order or morality shall not be published.
- (3) If the application does not satisfy the conditions set out in Article 9 paragraph (3) and Art. 10 paragraphs (1) and (2), OSIM shall notify the applicant of the irregularities in the application and shall afford him a period of 30 days to correct them. If the applicant corrects, within the

prescribed time limit, the irregularities notified by OSIM, the application for trademark registration shall be published, under the conditions provided for under paragraph (1). If such is not the case, the application shall be refused.

Art. 20

- (1) Within a time limit of 2 months as from the date of publication of the trademark registration application, according to Art. 19, any natural person or legal entity and any group or body representing manufacturers, producers, suppliers of services, traders or consumers may submit to the office written observations in respect of the application for trademark registration, based on the absolute grounds for refusal referred to under Art. 5, paragraph (1).
- (2) Persons and groups or bodies, as referred to under paragraph (1), shall not be parties to the trademark registration proceedings.
- (3) Observations referred to under paragraph (1) shall be communicated to the applicant who may comment thereupon.

Art. 21

- (1) Within a time limit of 6 months following publication, subject to payment of the prescribed examination fees, OSIM shall carry out substantive examination of the application for trademark registration, according to the law, and decide to accept trademark registration, wholly or in part, or to refuse registration.
- (2) OSIM shall examine:
 - (a) the capacity of the applicant, pursuant to Art. 3, letters (h) and (i), as the case may be;
 - (b) the conditions set out under Art. 14 paragraphs (1) and (2), where priority is claimed in the application;
 - (c) the grounds for refusal set out under Art. 5 paragraph (1) and submitted observations, where appropriate.
- (3) Failure to observe the time limit set out under paragraphs (1), OSIM shall refund the collected fees.

Art. 22

- (1) Where a non-essential element of the trademark is devoid of distinctive character and if said element could give rise to doubts as to the scope of trademark protection, OSIM shall request that the applicant states, within 30 days of notification date, that he disclaims any exclusive right on said element. The statement shall be published together with the registered trademark.
- (2) In the absence of the statement provided for under paragraph (1), the application for trademark registration shall be admitted in part or refused, as the case may be.

Art. 23

- (1) Examination of grounds for refusal in respect of well-known trademarks shall be based on certain criteria, such as:
 - (a) the degree of initial or acquired distinctiveness of the well-known trademark in Romania;
 - (b) the duration and extent of use of the well-known trademark in Romania in respect of the goods and services referred to in the application for registration;
 - (c) the duration and extent of promotion for the well-known trademark in Romania;
 - (d) the geographical area of use of the well-known trademark in Romania;
 - (e) the degree of recognition of the well-known trademark on the Romanian market by the sector of the public concerned;
 - (f) the existence of identical or similar trademarks for identical or similar goods or services belonging to a person other than the person who claims his mark is well known.
- (2) In examining the grounds for refusal, in accordance with the criteria set out in paragraph (1) above, OSIM may request public authorities, public institutions and private law legal entities for documents attesting to the notoriety of the trademark in Romania.

Art. 24

Where a ground for refusal, referred to under Art. 6, is applicable only to certain goods and services in respect of which trademark registration has been applied for, registration shall be refused for said goods and services only.

Art. 25

- (1) If the examination of the application carried out in accordance to the provisions of Art. 21 shows that the conditions prescribed by the law are satisfied, OSIM shall decide to register the trademark.
- (2) If the application does not satisfy the conditions prescribed for registration of a trademark, OSIM shall notify the applicant and shall afford him a period of 30 days for submitting his observations or withdrawing his application. Such period may be extended for another 30-days period, upon request by the applicant accompanied by payment of the prescribed fee.
- (3) On expiry of the period referred to in paragraph (2) above, OSIM shall decide, as appropriate, to register the trademark, to refuse the application or to note that the application has been withdrawn.

- (4) The application for trademark registration admitted in accordance with the provisions of paragraphs (1) and (3) shall be published in the Official Industrial Property Bulletin, in electronic format, in view of opposition.
- (5) If the application for trademark registration is refused under paragraph (3) above, the decision of refusal shall be published when it is final.

Art. 26

- (1) Within a time limit of 2 months as from the date of publication of registration of the trademark application, according to Art. 25 paragraph (4), any interested person can oppose to registration of the trademark on the relative grounds for refusal under Art. 6.
- (2) Oppositions shall be made in writing, shall comprise the legal basis and the reasons and shall be accompanied by payment of the legal fee.
- (3) Opposition may be based on one or more earlier rights, provided that all such rights belong to the same owner.
- (4) Upon request by the applicant, proof shall be made to OSIM by the earlier trademark owner who has made the opposition, that:
 - (a) during a period of 5 years preceding the publication date or the priority date of the application for trademark registration, the earlier trademark has been effectively used on the territory of Romania in connection with the goods and services in respect of which it is registered;
 - (b) there are justified reasons for the non-use of said trademark.
- (5) Provisions of paragraph (4) are only applicable if the earlier trademark was registered at least 5 years prior to the date of filing or the date of priority of the application for registration of the trademark in respect of which opposition has been made.
- (6) The opponent shall prove the use referred to under paragraph (4) within two months, at the most, of the date of receiving the notification from OSIM. In the absence of such proofs of use, the opposition shall be rejected.
- (7) Where the earlier trademark is a European Union trademark, the effective use of the EU trademark shall be determined in accordance with Art. 18 of the European Union Trademark Regulation.
- (8) If the earlier trademark has been used in relation to only part of the goods or services for which it is registered, it shall, for the purpose of the examination of the opposition, be deemed to be registered in respect of that part of the goods or services only.
- (9) Where the conditions prescribed under paragraph (2) above are not complied with, the opposition shall be deemed not to have been filed.

Art. 27

- (1) OSIM shall inform the applicant for trademark registration on the opposition made, granting a period of two months in order to allow for the possibility of a friendly settlement. Upon common request by the parties, said period may be extended with another period which shall be expressly indicated by the parties and which cannot exceed 3 months.
- (2) If, within the period granted according to paragraph (1) above, the parties cannot come to an agreement, OSIM shall notify the opponent, giving him a time limit of 30 days to submit his arguments and evidence in support of the opposition made.
- (3) OSIM shall communicate the documents filed in support of the opposition, according to the provisions of paragraph (2), to the applicant for trademark registration and shall grant him a time limit of 30 days to submit his point of view regarding the opposition grounds.
- (4) In the absence of the applicant's point of view, the opposition shall be settled based on the filed documents.
- (5) Proofs of use filed under Art. 26 paragraph (4) shall be communicated to the applicant who, within 30 days of communication, may submit his point of view thereupon.
- (6) Opposition shall be settled based on all arguments and documents filed by the parties, while observing the time limits granted by OSIM in this respect.
- (7) The documents filed within the opposition procedure shall be filed in as many copies as needed for communication to the parties plus one copy for OSIM.

Art. 28

- (1) The opposition made in respect of the registration of the trademark shall be settled by a Board within the Trademark and Geographical Indications Division of OSIM, under the implementing regulations^{*)} to this Law.
- (2) Within two months, at the most, of the expiry of the time limit provided for under Art. 27 paragraphs (2) or (3), as the case may be, the Board shall make a reasoned decision concerning the settlement of the opposition, which shall be communicated to the parties within 30 days and which may be appealed against in accordance with the procedure referred to under Art. 97 paragraph (1).

^{*)} See the footnote under Art. 9, paragraph (4).

Art. 29

- (1) Opposition settlement may be suspended in the following cases:
 - (a) if it is based on an application for trademark registration, prior to a final decision on the registration thereof;
 - (b) if there is evidence that the opposed trademark is subject to an invalidation or revocation action, up to the final settlement of the case.
- (2) The reasoned decision of suspension shall be communicated to the parties and may be appealed against within 30 days of communication, in accordance with the procedure referred to under Art. 97 paragraph (1).
- (3) During suspension, the applicant or the opponent may request the opposition settlement to be resumed, if the suspension reason has ceased to exist.

Art. 30

- (1) The applicant may, at any time, withdraw his application for registration or restrict the list of goods or services. Where the trademark has already been published, withdrawal or restriction shall be published in the Official Industrial Property Bulletin.
- (2) The application for registration of a trademark may be amended, at the request of the applicant, only in order to correct the name or address of the applicant, wording or transcription errors or other obvious mistakes or to make other corrections that do not substantially affect the trademark or that do not extend the list of goods or services. In case such amendments refer to the trademark representation or the list of goods and services and are brought after the publication of the application for trademark registration, as provided by Art. 19 and Art. 25 paragraph (4), the application shall be published as amended.
- (3) In case of publication of the application amended in the conditions set out by paragraphs (1) and (2) above, provisions of Art. 26 paragraph (1) shall apply accordingly.
- (4) Any amendment requested by the applicant and which substantially affects the trademark or the list of goods or services, shall be the subject of a new application for trademark registration.

Art. 31

During the registration procedure, OSIM may request the applicant to provide such explanations and documents as it deems necessary, if there is any doubt as to the exactness or the content of the elements of the application for trademark registration.

Art. 32

- (1) OSIM shall enter in the Trademark Register the trademarks admitted for registration, in respect of which the registration procedure is completed and shall issue the trademark registration certificate, subject to payment of the legal fee, within 30 days of the date of notifying the owner about completing the trademark registration procedure. The date of completing the trademark registration procedure shall be entered into the register.
- (2) The trademark registration procedure shall be deemed to be completed on the date on which the trademark registration application admitted for registration may no longer be subject to opposition or, where an opposition has been made, on the date on which the decision concerning the opposition is final or the opposition is withdrawn. Provisions of this paragraph shall also apply to international trademark registration applications.
- (3) Failure to pay the legal fee within the time limit provided for in paragraph (1), the owner shall be deemed to have renounced registration of the trademark. Renunciation shall be entered in the Trademark Register and shall be published in the Official Industrial Property Bulletin.
- (4) The trademarks entered in the Trademark Register in accordance with the provisions of paragraph (1) shall be published in the Official Industrial Property Bulletin.
- (5) The Trademark Register has public character.

CHAPTER V

Duration, Renewal and Amendment of Trademark Registration

Art. 33

- (1) Registration of a trademark shall take effect on the date of the regular filing of the trademark and shall subsist for a period of 10 years.
- (2) Upon request by the owner, the registration of a trademark may be renewed at the end of each 10-year period, on payment of the prescribed fee.
- (3) The request for renewal of a registration may be made by the owner of the trademark or by any other person authorised to do so by law or by contract, within a time limit of at least 6 months before expiry of registration, under the implementing regulations to this Law^{*)}.

^{*)} See the footnote under Art. 9, paragraph (4).

- (4) Renewal of a registration shall take effect as from the day immediately following the expiry of the current term of protection.
- (5) The fee for the renewal of a registration shall be due on the date of the request for renewal. The renewal may be requested and the fee may be paid within 6 months following the expiry date of the current term of protection, on payment of the prescribed additional fee.
- (6) Failure to pay the fee in accordance with paragraph (5) shall lead to the trademark owner's loss of rights.
- (7) OSIM shall inform the owner of the trademark of the expiry of the registration at least six months before the said expiry; however, the office shall not be held liable if it fails to give such information.

Art. 34

- (1) The request for renewal of a trademark registration shall contain:
 - (a) an explicit request for renewal of the registration;
 - (b) particulars identifying the owner and, where appropriate, the name and place of residence or business of his representative;
 - (c) the registration number of the trademark in the Trademark Register;
 - (d) the date of the regular filing of the application for registration of the trademark.
- (2) If the owner requests renewal in respect of only some of the goods and services entered in the Trademark Register, he shall be required to state the name of the goods or services for which he requests renewal of the trademark registration.

Art. 35

- (1) If OSIM ascertains that the conditions laid down by this Law for renewal of the trademark registration have not been satisfied, it shall communicate that fact to the owner who shall have a period of 30 days as from the date of receipt of the communication for making his reply. If he does not reply within the prescribed period, the request for renewal of the trademark shall be refused.
- (2) The person requesting renewal may appeal against the refusal decision in accordance with the procedure set out in Article 97 and within the period of time provided for thereby.

Art. 36

- (1) Renewal of a trademark registration shall be entered in the Trademark Register and published in the Official Industrial Property Bulletin within 3 months as from the date of filing the request for renewal with OSIM.
- (2) OSIM shall issue a trademark registration renewal certificate.

Art. 37

- (1) Throughout the term of protection of a trademark, the owner may request to OSIM, on payment of the prescribed fee, to make non-essential alterations to certain elements of the trademark, on condition that the alterations do not essentially affect the trademark or the distinctive character of the trademark. The list of goods and services shall not be extended.
- (2) OSIM shall enter in the Trademark Register the alterations made in accordance with paragraph (1) and shall publish the trademark as altered.

Art. 38

Throughout the entire term of protection of the trademark, its owner may request to OSIM, on payment of the prescribed fee, to enter in the Trademark Register changes occurred in the name, address or headquarters of the owner. Changes entered in the Register shall be published in the Official Industrial Property Bulletin.

CHAPTER VI

Rights Conferred by a Trademark

Art. 39

- (1) The registration of a trademark shall confer on its owner an exclusive right in that trademark.
- (2) Without prejudice to the rights of owners acquired before the filing date or the priority date of the registered trademark, the owner of that registered trademark shall be entitled to request, by an infringement action, that the competent judicial body prohibits third parties not having his consent from using in the course of trade:
 - (a) any sign which is identical with the trademark, in respect of goods or services which are identical with those for which the trademark is registered;
 - (b) any sign in respect of which, because of its identity with or similarity to the trademark and because of the identity or similarity of the goods or services on which it is affixed, there is a likelihood of confusion on the part of the public, including the likelihood of association between the sign and the trademark;
 - (c) any sign which is identical with or similar to the trademark, in respect of goods or services which are identical with, similar or not similar to those for which the trademark is registered, where the latter has a reputation in Romania and where use of that

sign without due cause takes unfair advantage of, or is detrimental to, the distinctive character or the reputation of the trademark.

- (d) any sign which is identical with or similar to the trademark and is used for other purpose than distinguishing the goods or services, where use of that sign without due cause takes unfair advantage of, or is detrimental to, the distinctive character or the reputation of the trademark.
- (3) In application of paragraph (2), the owner of the trademark may request that third parties should be prohibited from performing, in particular, the following acts:
- (a) affixing the sign to the goods or to the packaging thereof;
 - (b) offering the goods, putting them on the market or stocking them for such purposes under that sign, or offering or supplying services thereunder;
 - (c) importing or exporting goods under that sign;
 - (d) using the sign on business papers or in advertising;
 - (e) using the sign as a trade or company name or part of a trade or company name;
 - (f) using the sign in comparative advertising in a manner that is contrary to the Law No 158/2008 on Deceiving Advertising and Comparative Advertising, as republished.
- (4) Where the risk exists that the packaging, labels, tags, security or authenticity features or devices, or any other means to which the trademark is affixed, could be used in relation to goods or services and that use would constitute an infringement of the rights of the owner of a trade mark under paragraphs (2) and (3) above, the owner of that trademark shall have the right to prohibit the following acts if carried out in the course of trade:
- (a) affixing a sign identical with, or similar to, the trademark on packaging, labels, tags, security or authenticity features or devices, or any other means to which the trademark may be affixed;
 - (b) 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.
- (5) Without prejudice to the rights of owners acquired before the filing date or the priority date of the registered trademark, the owner of that registered trademark shall also be entitled to prevent all third parties from bringing goods to the territory of Romania, in the course of trade, without being released for free circulation in Romania, where such

goods, including the packaging thereof, come from third countries and bear, without authorization, a trademark which is identical with the trademark registered in Romania in respect of such goods, or which cannot be distinguished in its essential aspects from that trademark.

- (6) The entitlement of the trademark owner pursuant to paragraph (5) shall lapse if, during the proceedings to determine whether the registered trademark has been infringed, initiated in accordance with Regulation (EU) No 608/2013 of the European Parliament and of the Council of 12 June 2013 concerning customs enforcement of intellectual property rights and repealing Council Regulation (EC) No 1383/2003, evidence is provided by the declarant or the holder of the goods that the owner of the registered trademark is not entitled to prohibit the placing of the goods on the market in the country of final destination.

Art. 40

- (1) In an infringement action based on the provisions of Art. 39 above, upon request of the defendant, the owner of an earlier trademark shall furnish proof that, during the five-year period preceding the date of bringing the action, the trademark has been put to genuine use for the goods or services in respect of which it is registered and which are cited as justification for the action, or that there are proper reasons for non-use of the trademark, provided that the registration procedure of the earlier trademark has, at the date of bringing the action, been completed for not less than five years. If such is not the case, the action shall be rejected.
- (2) If the earlier trademark has been used only for some of the goods or services in respect of which it is registered, it shall be deemed to be registered in respect of only those goods or services.
- (3) In infringement actions based on the provisions of Art. 39, the owner of a trademark shall not be entitled to prohibit the use of a later registered trademark where that later trademark would not be invalidated pursuant to Art. 56 paragraph (3), Art. 58 and Art. 59.
- (4) In infringement actions based on the provisions of Art. 39, the owner of a trademark shall not be entitled to prohibit the use of a later registered EU trademark where that later trademark would not be declared invalid pursuant to Art. 60 paragraphs (1), (3) or (4), Art. 61 paragraphs (1) or (2) or Art. 64 paragraph (2) of the European Union Trademark Regulation.
- (5) Where the owner of a trademark is not entitled to prohibit the use of a later registered trademark pursuant to paragraph (3) or (4), the owner of that later registered trademark shall not be entitled to prohibit the use of the earlier trademark, even though that earlier right may no longer be invoked against the later trademark.

Art. 41

If the reproduction of a trademark in a dictionary, encyclopedia 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 trademark is registered, the publisher of the work shall, at the request of the owner of the trademark, ensure that the reproduction of the trademark is, without delay, and, in the case of works in printed form, at the latest in the next edition of the work, accompanied by an indication that it is a registered trademark.

Art. 42

- (1) Where a trademark is registered in the name of the agent or representative of a the trademark owner, without the owner's consent, the latter shall be entitled to do at least one of the following:
 - (a) oppose the use of the trade mark by his agent or representative;
 - (b) demand the assignment of the trade mark in his favour.
- (2) Paragraph (1) shall not apply where the agent or representative justifies his action.
- (3) In the case provided under paragraph (1) (b), the request for assignment shall be filed pursuant to Art. 6 paragraph (3) (d), instead of a request for invalidation.

Art. 43

- (1) The owner of a trademark may only request the prohibition referred to in Art. 39 after publication of the trademark registration under Art. 32, paragraph (4).
- (2) The applicant may claim damages for the acts referred to under paragraph (1), committed after trademark publication pursuant to Art. 19, under the general provisions of law.

Art. 44

- (1) Right in a trademark shall be exhausted, and the owner shall not be entitled to prohibit other persons the use thereof in respect of goods put on the market in the European Union and the European Economic Area, under said trademark, by the owner himself or with his consent.
- (2) The provisions of paragraph (1) shall not apply if there exist legitimate reasons for the owner to oppose further commercialization of the goods, particularly where the condition of the goods is changed or impaired after they have been put on the market.

Art. 45

- (1) The owner of a trademark may not request that third parties be prohibited from using in the course of trade:
 - (a) the name or address of the third party, if it is a natural person;

- (b) signs or indications which are not distinctive or which concern the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of the goods or of rendering of the service or other characteristics of the goods or services;
 - (c) the trademark, for the purpose of identifying or referring to goods or services as those of the owner of that trademark, particularly where the use of the trademark is necessary to indicate the intended purpose of a product or service, in particular as accessories or spare parts.
- (2) Provisions of paragraph (1) shall apply with the proviso that the elements referred to under letters (a) - (c) thereof are used in accordance with honest practice in industrial or commercial matters.

CHAPTER VII

Transfer of Rights in a Trademark

Art. 46

- (1) Rights in a trademark may be transferred by assignment, license, merger or by succession, based on a court decision or in any other way provided for by the law in respect of transfers of property rights.
- (2) Levy of execution against the owner of the trademark carried out in accordance with the law shall also be deemed to be a transfer of rights.
- (3) Recordal of the transfer of rights in respect of a trademark under dispute shall be suspended up to the date of a final court decision in respect thereof.

Art. 47

- (1) Rights in a trademark may be assigned separately from the transfer of the business in which the trademark is incorporated. Assignment shall be effected in writing and signed by the parties to the contract, on pain of nullity, unless it results from a court decision or contractual obligation.
- (2) Assignment of rights in a trademark may be effected for all or a part of the goods or services in respect of which the trademark is registered; an assignment, even in part, shall not limit the use of the trademark for the goods or services to which it applies to a given territory.

- (3) Transfer of the whole of the patrimony of the trademark owner shall include transfer of the rights in the trademark, unless there is agreement to the contrary or circumstances clearly dictate otherwise. The transfer of certain elements of the owner's patrimony shall not affect his capacity as owner of the right in the trademark.
- (4) Identical or similar trademarks belonging to the same owner that are used for identical or similar goods or services may be assigned only as a whole and only to one person, on pain of nullity of the instrument of assignment.

Art. 48

- (1) The request for recordal of the assignment shall include data of identification of the trademark, of the new owner, of the goods and/or services to which the assignment relates and shall be accompanied by the document attesting to the change of ownership of the trademark. Beside these, the request shall also include, if appropriate, information on the identification data of the new trademark owner's representative.
- (2) OSIM shall refuse to enter the assignment in the Register if it is obvious that public is misled as to the nature, quality or geographic origin of the goods or services in respect of which the trademark is registered, unless the assignee accepts to restrict the trademark assignment to the goods and services in respect of which it is not likely to mislead.
- (3) Upon request of one party, made in accordance with paragraph (1), and on payment of the prescribed fee, OSIM shall enter the assignment in the Trademark Register and publish it in the Official Industrial Property Bulletin. Assignment may be invoked against third parties as from the date of its publication.
- (4) Where the conditions prescribed for the recordal of the assignment are not complied with, OSIM shall communicate to the requesting party the irregularities ascertained within 30 days of filing the request referred to under paragraph (1) above. If said irregularities are not corrected within two months of the receipt of the communication from the Office, the request for recordal of the assignment shall be refused.
- (5) In case of an assignment in part, any pending request made by the initial owner shall be effective for the trademark resulting from the partial assignment, as well. Where the request is subject to payment of fees and they have already been paid by the initial owner, additional fees shall not be due by the new owner in respect of the same request.

Art. 49

- (1) The owner of a trademark may, under a licensing contract, authorize third parties to make use of the trademark on the whole or a part of the territory of Romania for all or a part of the goods or services in respect of which the trademark is registered. Licenses may be exclusive or non-exclusive.
- (2) The owner of a trademark may invoke the rights conferred by that trademark against a licensee who contravenes the provisions of his licensing contract with regard to its duration, the form covered by the registration in which the trademark may be used and the nature of the goods or services for which the license is granted, the territory in which the trademark may be used, or the quality of the goods manufactured or of the services provided by the licensee under the trademark for which the license has been granted.
- (3) Throughout the term of the trademark licensing contract, the licensee shall be required:
 - (a) to use, for the goods on which the trademark is affixed, only the trademark that is the subject of the licensing contract, whilst remaining free to affix on such products signs which show that he is the manufacturer;
 - (b) to add the term "*under license*" to the trademark affixed on the products that are the subject matter of the license, pursuant to the contract.
- (4) Licenses shall be entered in the Trademark Register at the request of the trademark owner or of the licensee, accompanied by the attesting document, on payment of the prescribed fee, and shall be published in the Official Industrial Property Bulletin, pursuant to the procedure provided for by the implementing regulations to this Law. A license may be invoked against third parties as from the date of its publication.

Art. 50

- (1) Unless otherwise provided in the licensing contract, the licensee may not institute infringement proceedings without the consent of the trademark owner.
- (2) The holder of an exclusive license may institute infringement proceedings if, after having notified the trademark owner of the infringing acts of which he has obtained knowledge, the latter has not acted within the time limits prescribed by the licensee.
- (3) Where infringement proceedings are instituted by the owner, any of the licensees may intervene in the proceedings in order to obtain compensation for damage occasioned by the infringement of the trademark.

- (4) Failure to register a license with OSIM shall not affect:
 - (a) the validity of the trademark registration which is the subject-matter of the license or with regard to the trademark license protection;
 - (b) the intervention in an infringement case instituted by the owner or the grant of damages within said proceedings, as a consequence of the infringement of a trademark which is the subject-matter of the license.
- (5) License registration shall not be a condition for the trademark use by the licensee to be deemed to be equivalent to the trademark use by the owner, within the proceedings relating to obtaining the trademark, maintaining the same in force or defending the rights therein.
- (6) Paragraphs (1) - (3) shall also apply to the persons authorized to use a collective mark.
- (7) Where the persons authorized to use a collective mark have been prejudiced by the unauthorized use thereof, the owner of the collective mark shall be entitled to demand damages on their behalf.

Art. 51

- (1) A trade mark may, independently of the undertaking, be the subject of rights in rem or of levy of execution.
- (2) Rights in rem and levy of execution shall be entered in the Trademark Register at the concerned person's request accompanied by the attesting document, on payment of the prescribed fee for recordal of transfers of rights, pursuant to the procedure provided for by the implementing regulations to this Law.
- (3) Where the trademark owner is subject to insolvency proceedings, it shall be mentioned by OSIM in the Trademark register, at the concerned person's request accompanied by the attesting document.

Art. 52

Art. 46-51 shall apply accordingly to trademark applications, as well.

Art. 53

Recordals in the Trademark Register made pursuant to Art. 46 - 52 may be modified or cancelled, on payment of the prescribed fee, at the concerned person's request accompanied by the suitable attesting documents.

CHAPTER VIII

Exhaustion of Rights in a Trademark

Art. 54

- (1) The owner may surrender his trademark in respect of some or all of the goods or services for which it is registered.
- (2) The surrender of a trademark shall be declared to OSIM in writing by the trademark owner or by the person authorized by him and the rights in the trademark shall lapse, with respect to the goods and services to which the trademark applies, as from the date on which surrender is entered in the Trademark Register.
- (3) If a license has been registered, surrender of a trademark shall be entered only if the owner of the trademark proves that he has notified the licensee of his intention to surrender the trademark.
- (4) Where security or levy of execution have been entered in the Trademark Register, surrender of a trademark shall only be entered if the security beneficiary consents thereto or after the recordal of the levy of execution is cancelled.

Art. 55

- (1) Any concerned person may apply, at any time during the term of protection of the trademark, for revocation of the owner's rights conferred by the trademark, if:
 - (a) within a continuous period of 5 years, as from the date of completing the registration procedure, the trademark has not been put to genuine use on the territory of Romania in connection with the goods or services in respect of which it is registered and there are no proper reasons for non-use;
 - (b) after the date of registration, the trademark has become, in consequence of acts or inactivity of the owner, the common name in the trade for a product or service in respect of which it is registered;
 - (c) after the date of registration and in consequence of the use made of it by the owner or with his consent, the trademark is liable to mislead the public, particularly as to the nature, quality or geographical origin of the goods or services in respect of which it is registered;
 - (d) if the trademark has been registered by a person not having the capacity required by Article 3 (h) and (i).

- (2) The following shall be considered genuine use of a trademark:
 - (a) use of the trademark in a form that differs in certain respects from that of the registered trademark, but which does not impair its distinctive character, irrespective of its being registered on behalf of its owner or not;
 - (b) impossibility of using the trademark due to circumstances beyond the control of the trademark owner, for example restrictions on import or other provisions by public authorities in respect of the goods or services to which the trademark applies;
 - (c) affixing of the trademark on goods or their packaging, exclusively for the purposes of export;
 - (d) use of the trademark by a third party with the consent of the owner or by any person entitled to use a collective mark or a certification mark, where it is considered by the trademark owner himself to be a use of the trademark.
- (3) The rights of the owner may not be revoked if, in the time between expiry of the period referred to in paragraph (1) (a) and the submission of the request for revocation, the trademark has been subject to genuine use. However, if the beginning or resumption of use of the trademark takes place within the 3 months preceding submission to the courts of the request for revocation, use of the trademark shall not be taken into consideration if preparation for the beginning or resumption of use occur only after the owner becomes aware that the request for revocation may be filed.
- (4) The burden of proof of use of the trademark shall rest with the trademark owner and proof may be furnished by any means.
- (5) Revocation shall take effect as from the date of submission of the application for revocation to the court. An earlier date on which one of the revocation reasons occurred may be established at the request of one of the parties.
- (6) The trademark shall be cancelled from the Trademark Register and notice thereof shall be published in the Official Industrial Property Bulletin.

Art. 56

- (1) Any concerned person may apply, during the term of protection of the trademark, for invalidity of the registration of a trademark, on any of the following grounds:
 - (a) the trademark was registered contrary to the provisions of Art. 5 paragraph (1);

- (b) the trademark was registered contrary to the provisions of Art. 6 paragraphs (1) or (3);
 - (c) the registration was applied for in bad faith.
- (2) Invalidity of a trademark registration may be applied for on the basis of one or more earlier rights, provided that they all belong to the same owner.
- (3) Invalidity applied for on the basis of an earlier trademark shall not be admitted if it would not have been admitted on the date of filing or of priority of the latter trademark application, based on one of the following reasons:
 - (a) the earlier trademark, liable to be invalidated for one of the reasons referred to under Art. 5(1)(b) - (d), had not yet acquired a distinctive character as referred to in paragraph (2) thereof;
 - (b) invalidity is applied for based on Art. 6 paragraph (1)(b) and the earlier trademark had not yet become sufficiently distinctive to support a finding of likelihood of confusion within the meaning thereof;
 - (c) invalidity is applied for based on Art. 6 paragraph (3)(a) and the earlier trademark had not yet acquired a reputation within the meaning thereof.
- (4) Invalidation of trademark registration shall be effective as from the date of the regular filing of the trademark concerned.

Art. 57

Invalidity of trademark registration pursuant to Art. 56, 66 or 73, as well as revocation of trademark owner's rights pursuant to Art. 55, 65 or 74 may be applied for:

- (a) by judicial way, to the Law Court of Bucharest: or
- (b)^{*)} by administrative way, to OSIM.

Art. 58

- (1) The owner of an earlier trademark, as referred to under Art. 6 paragraph (2) or of a sign or earlier right, as referred to under paragraph (3) (a), (c) or (e) of the same article, who has acquiesced for a continuous period of 5 years in the use, in Romania or in the European Union, as the case may be, of a subsequently registered

^{*)} Art. 47'(b), which became Art. 57 (b) in the republished form, shall enter into force on 14 January 2023, pursuant to Art. III, paragraph (1) of the Law No 112/2020 amending and completing the Law 84/1998 on Trademarks and Geographical Indications, as published in the Official Gazette of Romania, Part I, No 603 of 9 August 2020.

trademark, while being aware of this use, shall no longer be entitled to apply for invalidity nor oppose the use of the later trademark for the goods and services in respect of which such later trademark has been used, unless the registration of the later trademark was sought in bad faith.

- (2) In the case referred to under paragraph (1), the owner of the subsequently registered trademark may not oppose the use of the earlier trademark or sign, even if the earlier trademark may no longer be invoked against the later trademark.

Art. 59

- (1) In invalidity proceedings of a trademark registration invoking the existence of a registered trademark having an earlier filing date or priority date, upon request of the owner of the later trademark, the owner of the earlier trademark shall furnish proof that, during the 5-year period preceding the date of applying for invalidity, the earlier trademark has been put to genuine use, pursuant to Art. 55, for the goods or services in respect of which it is registered and which are cited as justification for invalidity, or that there are proper reasons for non-use of the trademark, provided that the registration procedure of the earlier trademark has, at the date of applying for invalidity, been completed for not less than 5 years.
- (2) Where, at the filing date or priority date of the later trademark, the 5-year period in which the earlier trademark should have been put to genuine use, in accordance with Art. 55, had expired, the owner of the earlier trademark shall, in addition to the proof referred to in paragraph (1) above, furnish proof that the earlier trademark has been put to genuine use during the 5-year period preceding the filing date or priority date of the later trademark or that there are proper reasons for non-use.
- (3) Failure to furnish the proof referred to in paragraphs (1) and (2) above, the request for invalidity based on the existence of an earlier trademark shall be rejected.
- (4) Where the earlier trademark has only been used, pursuant to Art. 55, for some of the goods or services for which the trademark is registered, the trademark shall be deemed, for the purpose of examination of the request for invalidity, to have been registered only for those goods or services.
- (5) Paragraphs (1) - (4) shall also apply when the earlier trademark is a EU trademark, in which case its genuine use shall be established pursuant to Art. 18 of the European Union Trademark Regulation.

Art. 60

- (1) Where a ground for revocation or invalidity of a trademark exists in respect of only some of the goods or services for which that trademark has been registered, revocation or invalidity shall cover those goods or services only.
- (2) Where seniority of a national trademark or of a trademark registered under international agreements is invoked in respect of a EU trademark, invalidity or revocation of the owner's rights in respect of the trademark providing the basis for the seniority claim may be established after the moment at which the trademark was surrendered or allowed to lapse, provided that the invalidity or revocation could have been declared at the time the trademark was surrendered or allowed to lapse. In such a case, the seniority shall cease to produce its effects.

Art. 61

- (1) Invalidity of a trademark or revocation of the owner's rights in respect of the trademark applied for to OSIM, by administrative way, shall be settled by a specialized board of OSIM, the members of which shall only have competence in settling invalidity or revocation requests, without being involved in any other trademark procedure carried out in OSIM and without interfering with the activity of the Board of Appeal of OSIM, said board consisting of three members with legal expertise, pursuant to the procedure provided for by the implementing regulation to this Law.**)
- (2) The reasoned decisions of the board referred to in paragraph (1) above shall be communicated to the parties within 3 months of pronouncement and may be appealed against to the Law Court of Bucharest within 30 days of communication.
- (3) The decision of the Law Court of Bucharest settling the appeal referred to in paragraph (2) above shall only be subject to appeal to the Court of Appeal of Bucharest.

**) Art. 49' which became Art. 61 in the republished form, shall enter into force on 14 January 2023, pursuant to Art. III paragraph (1) of the Law No 112/2020 amending and completing the Law 84/1998 on Trademarks and Geographical Indications, as published in the Official Gazette of Romania, Part I, No 603 of 9 August 2020.

CHAPTER IX

Collective Marks

Art. 62

- (1) Associations of manufacturers, producers, suppliers of services or traders which, under the terms of the law governing them, have the capacity in their own name to have rights and obligations, to make contracts or accomplish other legal acts, and to sue and be sued, as well as legal persons governed by public law, may apply to OSIM for the registration of collective marks.
- (2) The applicant for registration of a collective mark shall be required to file, together with the application or, at the latest, within 30 days as from the date of the notification transmitted by OSIM, regulations governing use of the collective mark. The application shall comply with the provisions of Art. 9 and 10.
- (3) In the regulations governing the use of the collective mark, the applicant shall specify the persons authorized to use the collective mark, the conditions of membership of the association, the conditions of use of the mark, the grounds on which a member of the association may be prohibited from using the mark and the sanctions that may be applied by the association.
- (4) The regulations governing the use of the collective mark may require that the collective mark may be transmitted by its owner only with the consent of all members of the association.

Art. 63

- (1) In addition to the grounds for refusal of an application for registration of an individual trademark, except for Art. 5 paragraph (1)(d) regarding signs or indications which may serve, in trade, to designate the geographical origin of the goods or services, an application for registration of a collective mark shall be refused if:
 - (a) the applicant does not have the capacity required by Art. 62 paragraph (1);
 - (b) the requirements of Art. 3 letter (e) and Art. 62 paragraphs (2) or (3) are not satisfied;
 - (c) the regulations governing the use of the mark are contrary to public order or to accepted principles of morality.
- (2) The application for registration of a collective mark shall also be refused if the public is liable to be misled as regards the character or the significance of the mark, in particular if it is likely to be taken to be something other than a collective mark.

- (3) The application shall not be refused where the applicant satisfies the requirements set out in paragraphs (1) and (2) as a consequence of amendments to the regulations governing the use of the collective mark.
- (4) Within two months of publication of the application for registration of a collective mark, any natural person or legal entity and any group or body representing manufacturers, producers, suppliers of services, traders or consumers may submit to the office written observations in respect of the application for trademark registration, based on the absolute grounds of refusal referred to under Art. 5 paragraph (1) and the grounds of refusal referred to under paragraphs (1) and (2) above.
- (5) Persons and groups or bodies, as referred to under paragraph (4), shall not be parties to the trademark registration proceedings.
- (6) After publication of the collective mark and of the regulations governing the use thereof, the owner of an earlier trademark, of a well-known trademark or of an earlier right to personal portrayal or name, of a protected geographical indication, of a protected design or a copyright or any other concerned person may submit with OSIM a notice of opposition to the registration of the collective mark, within the time limit laid down under Article 26 paragraph (1).
- (7) A collective mark consisting of signs or indications which may serve, in trade, to designate the geographical origin of the goods or services shall not entitle the owner to prohibit a third party from using, in the course of trade, such signs or indications, provided that third party uses them in accordance with honest practices in industrial or commercial matters. Such a mark may not be invoked against a third party who is entitled to use a geographical name.

Art. 64

- (1) The owner of a collective mark shall be required to communicate to OSIM any amendment to the regulations governing the use of the mark.
- (2) Amendments to the regulations governing the use of the mark shall take effect only as from the date of its entry in the Trademark Register. The amendment shall not be entered in the Register if the amended regulations do not satisfy the conditions set out in Art. 62 paragraphs (2) and (3) and Art. 63 paragraphs (1) and (2).

Art. 65

- (1) In addition to the grounds for revocation referred to under Art. 55 paragraph (1), any person concerned may apply, at any time during the term of protection of the mark, for revocation of the rights conferred by the collective mark:

- (a) if the owner has used the mark in other conditions than those provided for by the regulations or the amendments thereto, as entered in the Register, or has not taken steps to prevent such use;
 - (b) if the use of the mark by the persons authorized to do that has caused it to become liable to mislead the public, in the meaning of Art. 63 paragraph (2);
 - (c) if the amendments to the regulations governing the use of the collective mark were entered in the Register in disregard of the provisions of Art. 64 paragraph (2), unless, as a consequence of a new amendment of the regulations, the owner of the mark meets the conditions set out by said article.
- (2) Art. 55 paragraphs (2) - (6) shall apply accordingly.

Art. 66

- (1) Any concerned person may apply for invalidity of the registration of a collective mark, on any of the grounds set out in Art. 56 paragraph (1) except for the provisions of Art. 5, paragraph (1)(d) regarding signs or indications which may serve, in trade, to designate the geographical origin of the goods or services or if the mark has been registered in disregard of the provisions of Art. 63 paragraphs (1) and (2).
- (2) Art. 63 paragraph (3) shall apply accordingly.
- (3) The requirements referred to under Art. 55 paragraph (1)(a) are deemed to be met when a collective mark is put to genuine use by any person authorized to use it.

Art. 67

Unless otherwise provided by this Law, collective marks shall be subject to the provisions on individual trademarks.

CHAPTER X

Certification Marks

Art. 68

- (1) Any natural or legal person, including institutions, authorities and bodies governed by public law, may apply to OSIM for registration of a certification mark, provided that such person does not carry on a business involving the supply of goods or services of the kind certified.
- (2) A certification mark shall not be registered unless the applicant is competent to certify the goods or services for which the mark is to be registered.

Art. 69

- (1) The applicant for registration of a certification mark shall be required to file, at the same time as his application for registration, submitted in accordance with Art. 9, or at the latest within 30 days as from the date of notification transmitted by OSIM:
 - (a) the regulations governing the use of the certification mark;
 - (b) authorization for, or a document attesting the legal exercise of certification activities or, where appropriate, proof of registration of the certification mark in his country of origin.
- (2) The regulations shall specify the persons authorized to use the mark, the elements and characteristics that are to be guaranteed by the mark, the manner in which the competent certification authority must verify those characteristics and supervise the use of the mark, the fees payable for the use of the mark and the procedures for settling disputes.
- (3) Any natural person or legal entity who supplies goods or provides services may be authorized to use a certification mark, subject to compliance with the provisions of the regulations governing its use.
- (4) The owner of a certification mark shall authorize the persons entitled to use the mark for goods or services exhibiting common characteristics guaranteed by the regulations governing its use.
- (5) Art. 19 shall apply accordingly.

Art. 70

- (1) In addition to the grounds for refusal of an application for registration of an individual trademark, except for Art. 5, paragraph (1)(d) regarding signs or indications which may serve, in trade, to designate the geographical origin of the goods or services, an application for registration of a certification mark shall be refused if the requirements of Art. 3 letter (f) and of Art. 68 and 69 are not complied with.
- (2) A certification mark consisting of signs or indications which may serve, in trade, to designate the geographical origin of the goods or services shall not entitle the owner to prohibit a third party from using, in the course of trade, such signs or indications, provided that third party uses them in accordance with honest practices in industrial or commercial matters. Such a mark may not be invoked against a third party who is entitled to use a geographical name.

Art. 71

- (1) Within two months of publication of the application for registration of a certification mark, any natural person or legal entity and any group or body representing manufacturers, producers, suppliers of services,

traders or consumers may submit to the office written observations in respect of the application for trademark registration, based on non-compliance with the conditions set out by Art. 3 (f), Art. 5, paragraph (1) and Art. 68.

- (2) Persons and groups or bodies, as referred to under paragraph (1), shall not be parties to the trademark registration proceedings.

Art. 72

- (1) After publication of the mark registration and the regulations governing its use, the owner of an earlier trademark, of a well-known trademark or of an earlier right to personal portrayal or name, of a protected geographical indication, of a protected design or copyright, or any other concerned person, may, within the time limits laid down in Art. 26 paragraph (1), submit a notice of opposition against registration of the certification mark, with OSIM.
- (2) If the users of a certification mark fail to comply with the regulations, the owner may withdraw their authorization to use the mark or may apply other sanctions laid down in the regulations.

Art. 73

- (1) Any concerned person may apply, at any time during the term of protection of the mark, for invalidity of the registration of a certification mark, if:
 - (a) any of the grounds under Art. 56 paragraph (1), except for Art. 5, paragraph (1)(d) regarding signs or indications which may serve, in trade, to designate the geographical origin of the goods or services, is applicable;
 - (b) the mark has been registered in disregard of the provisions of Art. 3 letter (f);
 - (c) the mark has been registered in disregard of the requirements of Art. 68 and Art. 69 (1) - (3).
- (2) The requirements referred to under Art. 55 are deemed to be met when a collective mark is put to genuine use by any person authorized to use it.

Art. 74

- (1) Any concerned person may apply, at any time during the term of protection of the certification mark, for revocation of the owner's rights conferred by the trademark, if:
 - (a) within a continuous period of 5 years, as from the date of completing the registration procedure, the mark has not been put to genuine use on the territory of Romania in connection with the goods or services in respect of which it is registered and there are no proper reasons for non-use.

- (b) after the date of registration, the mark has become, in consequence of acts or inactivity of the owner, the common name in the trade for a product or service in respect of which it is registered;
 - (c) after the date of registration of the mark and in consequence of the use made of it by the owner or with his consent, the mark is liable to mislead the public, particularly as to the nature, quality or geographical origin of the goods or services in respect of which it is registered.
- (2) Art. 55 paragraphs (2) - (6) shall apply accordingly.

Art. 75

- (1) Rights in a certification mark may not be transferred by the owner of the mark.
- (2) Transfer of rights in a certification mark shall be decided by Government decision.

Art. 76

If a certification mark ceases to be protected, it may not be the subject matter of an application for registration, nor used prior to expiry of 10 years as from the date of the termination of protection.

Art. 77

- (1) Unless otherwise provided by this Law, certification marks shall be subject to the provisions on individual trademarks.
- (2) The prescribed fees applicable to collective marks shall be applicable to certification marks, as well.

CHAPTER XI

International Registration of Trademarks

Art. 78

The provisions of this Law shall apply to international registrations made under the Madrid Agreement or the Madrid Protocol, which have effects extended to Romania, unless otherwise provided in those instruments.

Art. 79

An application for international registration of a trademark entered in the Trademark Register, in accordance with the Madrid Agreement, as well as an application for international registration of a trademark filed or entered in the Trademark Register, in accordance with the Madrid Protocol, shall be examined by OSIM against payment of the prescribed fee.

CHAPTER XII

European Union Trademark

Art. 80

- (1) A European Union trademark application or a European Union trademark may be converted into a national trademark application in accordance with the provisions of Art. 139 - 141 of the European Union Trademark Regulation, subject to payment of the fee prescribed by the law for the examination of a national application.
- (2) OSIM shall inform the applicant on the requirements of payment of filing and publication fees and of appointment of a representative, where it is compulsory, and shall accord a time limit of two months as from the date of communication to do so.
- (3) Failure to comply with the conditions referred to in paragraph (2) above, the application shall be refused.

Art. 81

Art. 103 - 105 and Art. 107 shall also apply to the infringement of a European Trademark owner rights.

Art. 82

- (1) Disputes on European Union trademarks, in cases in the jurisdiction of the European Union trademark courts under the European Union Trademark Regulation, shall be brought to the Law Court of Bucharest, as a first instance court.
- (2) For the purpose of enforcement, in Romania, of the decisions of the European Union Intellectual Property Office which are enforceable under Art. 110 paragraph (1) of the European Union Trademark Regulation, the verification of authenticity shall be the competence of the Law Court of Bucharest.

CHAPTER XIII

Geographical Indications

Art. 83

- (1) Geographical indications of products shall be protected in Romania by their registration with OSIM, in accordance with this Law or with the international conventions to which Romania is party and may be used only by those persons who manufacture or market the products for which they have been registered.
- (2) Geographical indications protected now or in the future under bilateral or multilateral agreements concluded by Romania shall not be subject to the registration procedure established by this Law.
- (3) The list of geographical indications recognized in Romania under the agreements referred to in paragraph (2) shall be entered by OSIM in the Register of Geographical Indications and shall be published in the Official Industrial Property Bulletin.

Art. 84

- (1) The associations of producers pursuing production activities in the geographical area shall be entitled to apply to OSIM for registration of a geographical indication, in respect of the products stated in the application.
- (2) Registration of a geographical indication may be applied for with OSIM, either directly or through a professional representative, and shall be subject to payment of the prescribed fee.
- (3) The application for registration of a geographical indication shall contain the elements provided for by the implementing regulations^{*)} to this Law.
- (4) Within 3 months as from the date of filing the application, OSIM shall examine the application and the compliance with the conditions set out in Art. 86 and 87.

Art. 85

- (1) The application for registration of a geographical indication shall be published under the conditions laid down by the implementing regulations to this Law.
- (2) Within 2 months of publication of the application, any concerned person may oppose to registration of the geographical indication.

^{*)} See footnote under Art.9, paragraph (4).

- (3) The opposition to the registration of a geographical indication shall be settled in accordance with the provisions set out for trademarks.

Art. 86

OSIM shall register geographical indications and give the applicant the right to use them, after the central specialized public authority or the competent authority of the applicant's country of origin, as the case may be, has certified:

- (a) the geographical indication for which registration is sought;
- (b) the products that may be marketed under that indication;
- (c) the geographical area of production;
- (d) the characteristics that the products must exhibit and the manufacturing conditions they must comply with in order to be marketed under that indication.

Art. 87

Geographical indications shall not be registered if:

- (a) they do not comply with the provisions of Art. 3 letter (g);
- (b) they are the generic name of goods;
- (c) they are liable to mislead the public as to the nature, origin, manufacturing methods and quality of the goods;
- (d) they are contrary to public order or to accepted principles of morality.

Art. 88

- (1) If the application satisfies the requirements of the law, OSIM shall decide to register the geographical indication in the Register of Geographical Indications and to give the applicant the right of using the same.
- (2) The right to use a geographical indication, obtained by registration, shall belong to the members of the association entered on the list communicated to OSIM.

Art. 89

- (1) The geographical indication shall be entered in the Register of Geographical Indications within 2 months as from the date of the decision to register the geographical indication.
- (2) The entry of a geographical indication in the Register of Geographical Indications and the issuance of the geographical indication registration certificate granting the applicant the right to use it shall be subject to payment of the prescribed fees.

Art. 90

Registration of a geographical indication in the name of an association of producers shall not prevent registration of the same indication by any other association having the capacity required under Article 84.

Art. 91

- (1) The term of protection of geographical indications shall begin on the date on which the application was filed with OSIM and shall be without limit in time.
- (2) The right to use a geographical indication shall be granted to the applicant for a period of 10 years, renewable an unlimited number of times, if the conditions under which the right has been obtained remain applicable.
- (3) The application for renewal shall be subject to payment of the prescribed fee.

Art. 92

Persons authorized to use a geographical indication for certain goods shall be entitled to use it in the course of trade, only for those goods, in business papers, advertising or brochures and they may affix on such products the mention *registered geographical indication*.

Art. 93

- (1) It shall be prohibited for non-authorized persons to use a geographical indication or an imitation thereof, even if the true origin of the products is shown or if terms such as *kind, type, imitation* and the like are added.
- (2) Persons authorized by OSIM to use a geographical indication for wines or spirits may prohibit the use of such indication by any other person, for wines and spirits that do not come from the region suggested by the geographical indication concerned, even where the true origin of the product is expressly mentioned or the geographical indication is used in a translated form or accompanied by terms such as *kind, type* and the like.

Art. 94

The central specialized public authority may, *ex officio* or at the request of any concerned person, carry out verifications of the products marketed under a registered geographical indication.

Art. 95

The right to use a geographical indication may not be transferred.

Art. 96

- (1) Throughout the term of protection of a geographical indication, any concerned person may apply to the Law Court of Bucharest for invalidity of the registration if the geographical indication has been registered contrary to the provisions of Art. 86 and 87.
- (2) In the event of failure to comply with the quality criteria and the specific characteristics of the products of the region to which the geographical indication refers, the central specialized public authority or any other concerned person may apply to the Law Court of Bucharest for revocation of the rights of the persons authorized by OSIM to use the registered geographical indication.
- (3) The final decision of the Law Court of Bucharest shall be communicated to OSIM by the person concerned. OSIM shall cancel the geographical indication in the Register of Geographical Indications and shall publish the cancellation in the Official Industrial Property Bulletin within 2 months of its notification.

CHAPTER XIV

Defense of Rights in Trademarks and Geographical Indications

Art. 97

- (1) OSIM decisions in respect of trademark registration applications as well as in respect of geographical indication registration applications may be appealed against with the Office by any concerned person, within 30 days of communication, on payment of the prescribed fee.
- (2) OSIM decisions concerning the entry of transfers of rights in the Trademark Register may be appealed against with the Office by any concerned person within 30 days of communication or, where appropriate, of publication.
- (3) Appeals lodged in accordance with the provisions of paragraphs (1) and (2) shall be settled by a Board of Appeal within the Legal Directorate of OSIM, according to the procedure provided for in the implementing regulations to this Law.

Art. 98

Where a trademark registration, renewal or entry of changes in the Trademark Register represents an obvious clerical error, within 2 months as from the date of registration or entry, as the case may be, OSIM may revoke registration, renewal or entry in a reasoned manner; revocation shall be published in the Official Industrial Property Bulletin.

Art. 99

- (1) The reasoned decision of the Board of Appeal shall be communicated to the parties within 3 months of pronouncement and may be appealed against to the Law Court of Bucharest within 30 days of communication. The decisions of the Law Court of Bucharest may only be appealed against before the Court of Appeal of Bucharest.
- (2) Decisions given in cases referred to in Art. 39, 57 (a) and 96 may be further appealed.

Art. 100

In the proceedings carried out by OSIM under this Law, parties to the proceedings or their representatives shall designate an official address for all official communication with the office.

Art. 101

- (1) At the request of the judicial body, OSIM shall be required to communicate to that body acts, documents and information required for settling the dispute submitted to it.
- (2) Owners must be summoned in every dispute concerning trademarks.

Art. 102

- (1) The unlawful performance of the following acts shall constitute an offence liable to imprisonment of between 3 months and 2 years or a fine:
 - (a) infringement of a trademark;
 - (b) marketing of goods under a trademark that is identical with or similar to a trademark registered for identical or similar goods;
 - (c) marketing of products under a geographical indication indicating or suggesting that the product concerned originates from a geographical region, other than its true region of origin.
- (2) *Trademark infringement* shall mean the carrying out or use of a sign by third parties, in their commercial activity, without the owner's consent, if said sign:
 - (a) is identical with the trademark, in respect of goods or services identical with those for which the trademark is registered;
 - (b) given the identity with or similarity to the trademark or given the identity or similarity of the goods or services to which the sign is affixed with the goods or services for which the trademark is registered, would produce a likelihood of confusion in the public perception, including the likelihood of association between the trademark and the sign;

- (c) is identical with or similar to the trademark, in respect of goods or services differing from those for which the trademark is registered, where said trademark has a reputation in Romania and where use of that sign without due cause could take unfair advantage of the distinctive character or the reputation of the trademark or could cause prejudice to the trademark owner.
- (3) *Marketing* shall mean offering the goods, putting them on the market or stocking them for such purposes under that sign, or offering or providing services thereunder, as well as importing, exporting or conveying them in transit thereunder.
- (4) The acts referred to in paragraph (1) shall not constitute infringement if carried out prior to the date of publication of the trademark.
- (5) In the case of offences referred to under paragraph (1) (a), reconciliation of parties shall remove criminal liability.

Art. 103

- (1) Where the owner of industrial property rights in respect of a trademark or geographical indication or any other person exercising, with the owner's consent, the industrial property right is able to credibly prove that his industrial property right in respect of a trademark or geographical indication is the subject of a current or imminent unlawful act which is likely to cause him irreparable prejudice, he may ask the judicial body to order precautionary measures.
- (2) The judicial body may order, in particular:
 - a) the infringement to be prohibited or provisionally ceased;
 - b) the appropriate measures to be taken for preserving the evidence.Provisions of the Government Emergency Ordinance no 100/2005 on the enforcement of industrial property rights, approved with amendments through the Law 280/2005, with the subsequent amendments and completions shall be applicable.
- (3) Applicable procedural provisions are comprised in the provisions of the Civil Procedure Code relating to precautionary measures in the field of intellectual property rights.
- (4) Precautionary measures may also be ordered against an intermediary whose services are used by a third party with the purpose of infringing a right protected under this Law.

Art. 104

For the prejudice caused by the performance of the acts referred to in Art. 102, the persons found guilty may be required to pay damages, in accordance with the general rules of law.

Art. 105

- (1) The judicial body may require the plaintiff to furnish any evidence at his disposal to prove that he is the holder of the right that has been infringed or the infringement of which has been unavoidable.
- (2) Where the evidence in support of the plaintiff's claims are under the control of the defendant, the judicial body may order the defendant to furnish the evidence, subject to a guarantee of confidentiality of information, in accordance with the law.
- (3) The judicial body may order the plaintiff to pay to the defendant any damages caused as a result of an abusive institution of proceedings in relation to a protected trademark or protected geographical indication.

Art. 106

The owner of a trademark or, where appropriate, the concerned specialized central public authority, may request the judicial body to require the infringer to provide recent information on the origin and distribution channels of merchandise to which trademarks are unlawfully affixed and information on the identity of the manufacturer or trader and on the quantity of merchandise manufactured, delivered, received or ordered.

Art. 107

Customs competence concerning the enforcement of rights in respect of trademarks and geographical indications shall belong to the National Agency for Fiscal Administration, in accordance with the law.

CHAPTER XV

Duties of the State Office for Inventions and Trademarks

Art. 108

OSIM is the specialized body of the central public administration, the sole authority on the territory of Romania in respect of providing protection of trademarks and geographical indications in accordance with this Law.

Art. 109

In the field of trademarks and geographical indications, OSIM has the following duties:

- (a) to record, examine and publish applications for trademark registration;
- (b) to examine trademarks registered or submitted for registration with the World Intellectual Property Organization, under the Madrid Agreement or the Madrid Protocol, in order to recognize or refuse protection thereof on the territory of Romania;
- (c) to record and publish applications for registration of geographical indications and grant them protection on the territory of Romania;
- (d) to issue trademark registration certificates;
- (e) to issue registration certificates for geographical indications and grant the right of use for such indications;
- (f) to establish and keep the Trademark Register and the Register of Geographical Indications;
- (g) to issue priority certificates for trademarks;
- (h) to carry out anticipation searches prior to trademark registration;
- (i) to maintain, preserve and develop the national collection of trademarks and geographical indications and set up a computerized database in this field;
- (j) to maintain relations with similar public bodies and with regional industrial property organizations; to represent Romania in the specialized international organizations;
- (k) to develop cooperation with the European Union Intellectual Property Office, as well as with other intellectual property offices in view of convergence of practices and instruments concerning trademark examination and registration;
- (l) to issue the official publication on trademarks and geographical indications of products and exchange publications with similar foreign national offices and with the international bodies and organizations working in this field;
- (m) to inform the European Commission on the national regulations adopted to transpose the Directive (EU) 2015/2436 of the European Parliament and of the Council of 16 December 2015 to approximate the laws of the Member States relating to trademarks (recast), published in the Official Journal of European Union (OJEU) L No 336 of 23 December 2015;
- (n) to carry out other functions, as provided by law.

Art. 110

- (1) In the exercise of its duties, as provided for by this Law, OSIM shall request and process personal data.
- (2) In the meaning of this Law, processing of personal data shall be subject to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), published in the Official Journal of European Union (OJEU) L No 119 of 4 May 2016.

CHAPTER XVI

Transitional and Final Provisions

Art. 111

- (1) Applications for the registration of trademarks in respect of which no decision has been taken prior to the date of entry into force of this Law shall be subject to the provisions of this Law.
- (2) Prior to the entry into force of this Law, the Government shall approve the relevant Implementing Regulations^{*)}.

Art. 112

- (1) This Law shall enter into force within 3 months as from its publication in the Official Gazette of Romania, Part I^{**)}.
- (2) The following shall be repealed as of that date:
 - Law No. 28/1967 on Trademarks and Service Marks published in Official Bulletin No. 114 of December 29, 1967;
 - Decree No. 77/1968 of the Council of Ministers on the application of Law No. 28/1967, published in Official Bulletin No. 8 of January 27, 1968;
 - Decree No. 1057/1968 of the Council of Ministers approving the Regulations on the structure, organization and operation of the commission for the settlement of disputes concerning trademarks and service marks, published in Official Bulletin No. 66 of May 17, 1968;

^{*)} See footnote in Art. 9, paragraph (4).

^{**)} Law No 84/1998 was published in the Official Gazette of Romania, Part I, No 161 of 23 April 1998.

- Decree No. 2508/1969 of the Council of Ministers defining the nature of and sanctions for infringements of the statutory provisions concerning inventions, innovations and improvements, as also trademarks and service marks, published in Official Bulletin No. 159 of December 31, 1969;
- any other provisions contrary to this Law.

*

This Law transposes the *Directive 2008/95/EC of the European Parliament and the Council of 22 October 2008 to approximate the laws of the Member States relating to trademarks* (codified version), published in the Official Journal (OJ) L 299 of 8 November 2008.

NOTE:

We reproduce below Art. II and Art. III of the Law No 112/2020 amending and completing Law 84/1998 on Trademarks and Geographical Indications, as published in the Official Gazette of Romania, Part I, No 603 of 9 August 2020, which are not comprised in the Law 84/1998 as republished and which still apply as provisions of the amending law:

Art. II

- (1) Filed applications for registration of trademarks and for registration of geographical indications that undergo examination procedure, shall follow the procedure set out by the law in force on the date of filing to OSIM in view of registration.
- (2) As from the date of the entering into force of this Law, Art. I point 26 shall also apply to trademarks admitted for registration but not entered into the Trademark Register for failure to pay the fees.^{***)}

Art. III

- (1) This Law shall enter into force on the third day following that of its publication in the Official Gazette of Romania, Part I, except for Art. I point 47 referring to Art. 471 (b)^{****)} and Art. I point 51 referring to Art. 491^{*****)} of the Law No 84/1998 on Trademarks and Geographical Indications, as republished, with the subsequent amendments, as amended and completed through this Law, which shall apply from 14 January 2023.
- (2) Within two months of publication of this Law in the Official Gazette of Romania, the Implementing Regulations to the Law No 84/1998 on Trademarks and Geographical Indications, approved by Government Ordinance No 1134/2010, as published in the Official Gazette of Romania, Part I, No 809 of 3 December 2010, shall be modified accordingly.

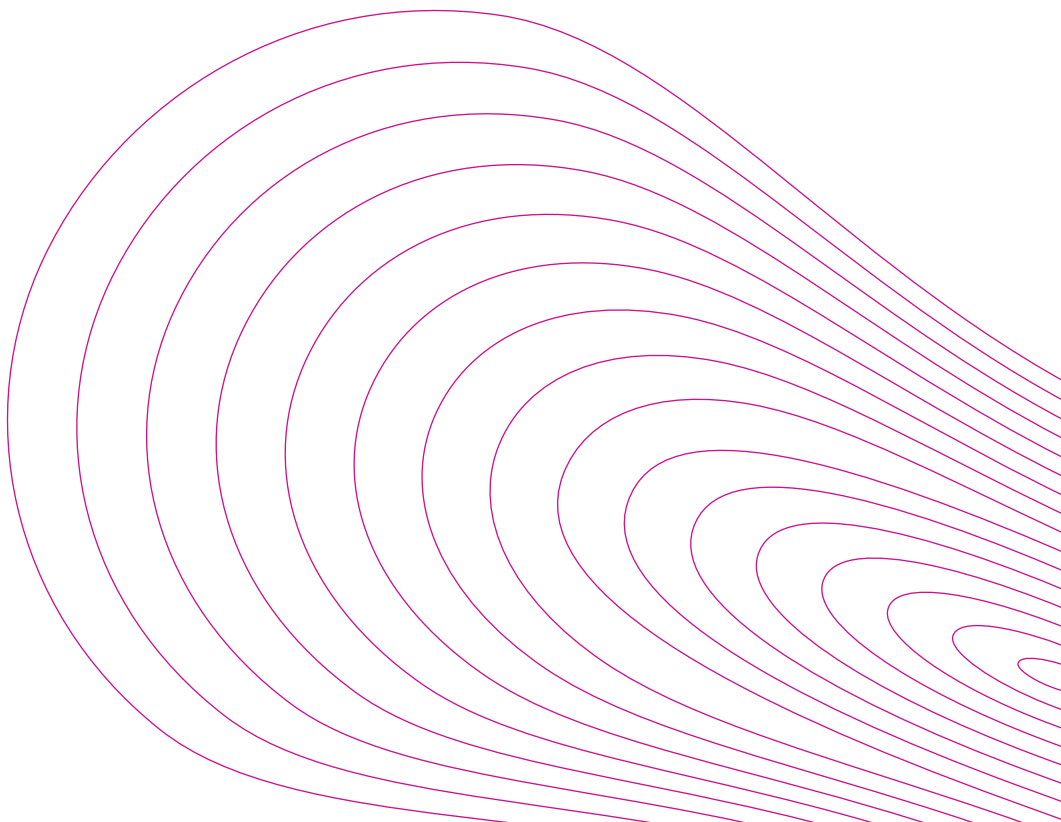
*

^{***)} Ref. Art 29 which became Art. 32 in the republished form of the Law 84/1998;

^{****)} Which became Art. 57 (b) in the republished form of Law 84/1998;

^{*****)} Which became Art. 61 in the republished form of Law 84/1998.

This Law transposes the *Directive (EU) 2015/2436 of the European Parliament and of the Council of 16 December 2015 to approximate the laws of the Member States relating to trademarks* (recast), published in the Official Journal (OJ) L 336 of 23 December 2015.



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