

SUB-SECTION 2 - TRADEMARKS

ARTICLE 17.23 - Trademark classification

Each Party shall adopt or maintain a trademark classification system that is consistent with the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, done at Nice on 15 June 1957, as amended on 28 September 1979.

ARTICLE 17.24 - Signs of which a trademark may consist

A Party shall not require, as a condition for registration of a trademark, that a sign be visually perceptible, nor deny registration of a trademark solely on the grounds that the sign of which it is composed is a sound.

ARTICLE 17.25 - Rights conferred by a trademark

Each Party shall provide that the owner of a registered trademark has the exclusive right to prevent third parties that do not have the owner's consent from using in the course of trade identical or similar signs for goods or services which are identical or similar to those goods or services in respect of which the owner's trademark is registered, where such use would result in a likelihood of confusion. In the case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed.

ARTICLE 17.26 - Registration and opposition procedure

1. Each Party shall provide for a system for the examination and registration of trademarks in which each final refusal taken by the competent authorities shall be communicated in writing to the relevant party, duly reasoned and subject to judicial appeal.
2. Each Party shall provide for the possibility to oppose the registration of a trademark.¹

ARTICLE 17.27 - Electronic trademarks database

1. Each Party shall provide a publicly available electronic database of trademark applications and trademark registrations.
2. Each Party recognises the importance of providing a system for the electronic application and maintenance of trademarks.

¹ For greater certainty, each Party may provide for opposition before or after registration.

ARTICLE 17.28 - Well-known trademarks

Each Party shall provide for protection of well-known trademarks, as referred to in Article 6bis of the Paris Convention and Article 16(2) and (3) of the TRIPS Agreement. Each Party shall give consideration to the Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks, adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of WIPO at the Thirty-Fourth Series of Meetings of the Assemblies of the Member States of WIPO on 20 to 29 September 1999.

ARTICLE 17.29 - Exceptions to the rights conferred by a trademark

Provided that such exceptions take account of the legitimate interests of the owners of the trademarks and of third parties, each Party:

- (a) shall provide for the fair use of descriptive terms¹ as a limited exception to the rights conferred by trademarks; and
- (b) may provide for other limited exceptions to the rights conferred by trademarks.

ARTICLE 17.30 - Collective and certification marks

- 1. Each Party shall provide that trademarks include collective marks and may provide that trademarks include certification marks.
- 2. Each Party may provide that signs that may serve as geographical indications are capable of protection under its trademark system.

ARTICLE 17.31 - Cancellation²

- 1. Each Party shall provide that its competent authority, upon request, has the authority to cancel a trademark, if within a period of time determined by the law of that Party, the trademark has not been used³ in the relevant territory in connection with the goods or services in respect of which it is registered, and, subject to that Party's law, there are no proper reasons for non-use.
- 2. Each Party shall provide that its competent authority, upon request, has the authority to cancel a trademark if, after the date on which the trademark was registered:

¹ For greater certainty, the fair use of descriptive terms may include terms to indicate the geographical origin of the goods or services.

² For greater certainty, a Party may define cancellation as revocation or removal.

³ A Party may require that the use is of genuine character or made in a quantity or manner corresponding to commercial use or is in good faith. A Party may further decide to disregard the commencement or resumption of use just before the filing of the cancellation request.

- (a) it has become the common name in the trade for a good or service in respect of which it is registered;¹ or
- (b) it is liable to mislead the public, including as to the nature, quality or geographical origin of those goods or services for which it was registered.²

ARTICLE 17.32 - Bad faith applications

Each Party shall provide that its competent authority, upon request, has the authority to invalidate a trademark where the application for registration of the trademark was made in bad faith. Each Party may also provide that a trademark shall not be registered where the application for registration of the trademark was made in bad faith.

¹ For greater certainty, a Party may require that the trademark may only be cancelled if it has become common in consequence of acts or inactivity of the proprietor.

² For greater certainty, a Party may require that the trademark may only be cancelled if it has become misleading in consequence of the use made of it by the proprietor or with the proprietor's consent.