

# Industrial Property

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# INTERNATIONAL UNION

## Arrangement of Madrid

concerning the International Registration of Trade Marks  
(Nice text of 1957)

*Ratification by the Netherlands and Switzerland*

(11<sup>th</sup> May and 2<sup>nd</sup> October, 1962)

The following communication has been received from the  
Swiss Federal Political Department:

(Translation)

“In compliance with the instructions dated 4<sup>th</sup> October, 1962 of the Swiss Federal Political Department, the Swiss Embassy has the honour to inform the Ministry of Foreign Affairs that the Netherlands and the Swiss Confederation have deposited in Paris on the 11<sup>th</sup> May, 1962 and 2<sup>nd</sup> October 1962, respectively, their instruments of ratification in respect of the Arrangement of Madrid concerning the International Registration of Trade Marks of 14<sup>th</sup> April, 1891, as last revised at Nice on 15<sup>th</sup> June, 1957.

The Embassy adds that, according to a note dated 15<sup>th</sup> May, 1962, copy of which is enclosed<sup>1)</sup>, the Embassy of the Netherlands in Berne has informed the Political Department that the Netherlands Government has invoked the benefits of Article 3<sup>bis</sup> of this Arrangement.»

# LEGISLATION

## INDONESIA

### Act

concerning Trade Names and Trade Marks

(No. 21, of 11<sup>th</sup> October, 1961)

#### Article 1

Registration and official publication of trade names and trade marks are made through the Office for Industrial Property<sup>2)</sup> (*Kantor Milik Perindustrian*).

#### Article 2

(1) The exclusive right to use a particular trade mark to distinguish goods produced by a company, or goods of an individual or a firm, from the goods of other individuals or firms, shall be granted to everyone who uses this trade mark for this purpose for the first time in Indonesia.

The exclusive right to use the trade mark refers only to goods of the same kind bearing this trade mark, and is valid

<sup>1)</sup> Not published here. (*Ed.*)

<sup>2)</sup> Hereinafter called “Office”.

for only three years after the trade mark was used for the last time.

(2) Until there is proof to the contrary, any person who applies for the first time for registration of a particular trade mark in accordance with the conditions set out in Articles 4 and 5 shall be regarded as the first user of the mark concerned.

If this trade mark is not used in Indonesia by the applicant within six months of the above-mentioned registration, or of a registration in accordance with paragraph 3, the above-mentioned provision, or the provision contained in paragraph 3, is no longer applicable.

(3) Any person who, according to the provisions of Articles 4 and 5, files an application for the registration of a trade mark at the Office during the time in which the goods bearing this mark are being displayed by him in an official national exhibition, or in an exhibition officially recognized in Indonesia as national, shall be regarded as having used this mark in Indonesia during the time the mark was being displayed at this exhibition, provided that an application for registration of this mark is filed within six months of the opening of this exhibition.

As evidence of the date on which the trade mark was displayed, the Office may require the submission of a legalized document, prepared by the committee of this exhibition, or, with the approval of the Office, by another recognized authority.

#### Article 3

(1) The registration of a trade mark for more than one person or company using the mark in question is permissible only if the persons or companies have common rights in the firm producing the goods or trading in them, or if they are agreed to have common rights in the firm.

(2) In the above-mentioned case, the Office may require as evidence the submission of an official copy of the document or a similar attestation.

#### Article 4

(1) Applications for registration of a trade mark must be filed at the Office in writing, in duplicate, written in Indonesian. The following should be attached:

- (a) a sample of the goods using the trade mark, or at least clear details of the goods;
- (b) a printers' plate of this trade mark;
- (c) ten copies of the trade mark concerned.

(2) The following fees are payable for each trade mark at the time of filing the application:

- (a) application fee: 300 rupiah;
- (b) examination fee, determined according to the classification of the goods, as contained in the list of classes of goods in the appendix to this Act; for each class of goods: 200 rupiah;
- (c) registration fee: 500 rupiah.

(3) When an application for registration of a trade mark is refused, the above-mentioned registration fee shall be repaid. Application and examination fees shall not be repaid.

(4) Further provisions regarding requirements for applications, printers' plates for copies of the mark, and the amount of the examination fees for each trade mark, shall be made by the Office.

(5) Applications for registration of trade marks can also be filed by a person who has been fully empowered, in writing, by the applicant.

#### Article 5

(1) Designs or texts which are already generally known, or which are contrary to morality or public order, shall not be entered as trade marks in the general register of the Office.

(2) Moreover, it is not permissible to register trade marks which

1. do not have any distinctiveness, or which consist only of numbers and/or letters, or of descriptive accounts of the method, time and place of production, the quantity, form, purpose, volume, price or weight of the goods;
2. consist of flags or State emblems, coats of arms, names, abbreviations of international concerns or emblems of the regional administration in Indonesia, or resemble them, unless the consent of the party with rights hereto has been given;
3. have the form of a certification or hall-mark of a State organisation, unless the consent of the party with rights thereto has been given.

#### Article 6

If an application for registration of a trade mark does not comply with the provisions of Articles 4 and 5, the Office has to inform the applicant in writing that he must comply with these provisions or withdraw his application within a period determined by the Office.

If the applicant does not comply with these provisions, or does not withdraw his application, the request for registration of a trade mark is to be refused.

#### Article 7

(1) Except in the cases defined in Articles 6 and 9, the trade marks for which applications for registration are made in accordance with the provisions of Articles 4 and 5 shall immediately be entered by the Office in the Office's general register, with the addition of the date of receipt of the application, as well as the date and registration number of the trade mark.

(2) Registrations of trade marks are legally valid from the date of entry in the general register.

(3) For the purpose of legalization of the registration, the two copies of the written application, mentioned in Article 4, are simultaneously marked with the date and registration number under which the trade mark is entered in the general register.

(4) One copy of this application form is then given back to the person who has filed the application, whilst the other is kept at the Office.

#### Article 8

The Office publishes in the supplement to the official Gazette (*Tambahan Berita Negara*) of the Indonesian Republic reproductions of the printers' plates mentioned in Article 4 of every registered trade mark, with details of the goods bearing these marks as well as the full name and address of the applicant and, if the colour of the trade mark forms a distinguishing feature of the trade mark, details of the colour of the trade mark.

#### Article 9

(1) An application for registration according to the provisions of Articles 4 and 5 is refused by the Office if the trade mark concerned, in its entirety or in substance, is similar to a mark already registered for goods of the same type, in the name of another person.

The applicant for registration of a trade mark shall immediately be informed in writing, by the Office, of this refusal, with details of the reasons.

(2) Any person whose application for registration of a trade mark is refused according to Article 6 or Article 9, paragraph 1, may file a written application, signed by the applicant himself or by his proxy, with the District Court (*Pengadilan Negeri*) in Djakarta, to have this trade mark registered.

Applications to the District Court are to be made by the applicant within three months of the date of his being informed of refusal of the trade mark.

#### Article 10

(1) If a trade mark registered in accordance with Article 7 is similar, in its entirety or in substance, to the trade mark of another person who in accordance with Article 2 has the rights of this trade mark for goods of the same type, or if the registered trade mark bears the name or the trade name of another person, this person may, without prejudice to other legal means, file with the District Court an application, signed by the applicant himself or by his proxy, for the registration of this trade mark to be annulled. This application must be made within nine months of the publication provided for in Article 8.

(2) Applications for annulment may still be filed after the end of the term named in paragraph 1, if the right of the applicant is based on a confirmed court decision.

(3) If a registered trade mark contravenes the provision of Article 5, a public prosecutor may, within nine months of registration, request the District Court in Djakarta to have this trade mark registration annulled.

(4) A public prosecutor may also request the District Court to annul a registration if the goods bearing a certain trade mark do not correspond to the sample or the details given by the applicant in accordance with Article 4, paragraph 1 (a).

#### Article 11

The Office is to be informed immediately in writing by the Secretary of the District Court in Djakarta of any appli-

cation based on Articles 9 or 10, and of any request made by a public prosecutor according to Article 10.

#### Article 12

There can be no appeal against decisions made on action taken according to Articles 9 or 10.

#### Article 13

(1) Any person who, at the time of filing an application for registration of a trade mark according to Article 4, has no fixed address within the territory of the Indonesian Republic, must choose a temporary address in the territory of the Indonesian Republic and designate a proxy in Indonesia to act in his name.

(2) From that time, all exchange of correspondence is to be sent to the chosen address.

#### Article 14

(1) The Office shall be informed in writing of the decisions of the District Court in Djakarta by the Secretary.

(2) After a final decision of the District Court in Djakarta, the Office registers the trade mark in accordance with Article 3, or makes an entry regarding invalidity in the appropriate column of the general register in which this trade mark was entered.

(3) When the applicant has paid the registration fees in accordance with Article 4, paragraph 2 (c), the Office registers the trade marks. If these registration fees are not paid within three months of confirmation of the decision of the District Court, the application for registration of the trade mark is to be regarded as withdrawn.

#### Article 15

Copies of decisions according to Article 14 and court decisions in civil or penal cases, in so far as they concern trade marks, are to be sent immediately by the Secretary of the District Court to the Office.

#### Article 16

(1) The Office is responsible for the publication of:

- (a) the annulment of a trade mark registration published in accordance with Article 8;
- (b) the termination of validity of a trade mark registration on the grounds contained in Article 18;
- (c) the transfer of rights to a trade mark registered in accordance with Article 7 and noted in accordance with Article 20.

(2) The provisions referred to in this Article shall be published in the supplements to the *Official Gazette* of the Indonesian Republic.

#### Article 17

(1) The general register referred to in Article 7 may be examined free of charge by the public on the premises of the Office.

(2) Any person may obtain for himself, against payment of a sum determined by the Office, a copy or an extract from the general register.

(3) Against payment of a fee of 30 rupiah, any person may obtain written information regarding the contents of the general register.

If more extensive research is required, a fee of 300 rupiah is payable for such information.

#### Article 18

(1) The validity of a trade mark registration expires:

- (a) after termination at the request of the person whose name is entered as proprietor of the registered trade mark;
- (b) upon admission by the proprietor himself of the trade mark, or upon a judge's decision, that the trade mark concerned has not been used by the registered user within six months of registration;
- (c) upon admission by the proprietor himself of the trade mark, or upon a judge's decision, that the trade mark concerned has not been used for three years or longer;
- (d) after ten years have elapsed since the date of registration of the trade mark according to Article 7, if registration has not been renewed within this period, or if renewal has not been repeated before a similar period has elapsed;
- (e) after the registration has been annulled by a Court decision.

(2) The termination of validity of a trade mark for any of the reasons mentioned in paragraph 1 is to be entered, the reasons being indicated, in the column provided therefor in the general register.

#### Article 19

(1) Registration of a trade mark according to Article 7 shall be renewed if the authorized person has complied with the provisions of Article 4 before the period stated in Article 18, paragraph (1) (d), has elapsed, and if the registration complies with the provision of Article 5.

(2) If the Office does not oppose the renewal of a trade mark registration, the written application for renewal of registration of the trade mark, to be legalized, must be marked with the date and number of renewal.

(3) Renewal of registration of a trade mark is made by the Office by entering the above-mentioned date and number in the appropriate column in the general register in which the trade mark was entered.

(4) Renewal of a trade mark registration is effective from the date on which the renewal is effected in accordance with paragraph (2); that date also appears in the general register.

(5) When the registration of a trade mark registered in accordance with Article 7 has been renewed, a copy of the written application referred to in paragraph (2) of this Article shall immediately be sent to the applicant.

(6) The provisions of Article 8 are also application in cases of renewal of a trade mark registration.

(7) The Office can refuse renewal of a trade mark registration if the mark contravenes the conditions of Article 5 and the provisions of Article 6 are applicable; in this case Article 9, paragraph (2), and Article 11, as well as other Articles of this Act having reference thereto, are applicable.

## Article 20

(1) The transfer to another person of the right to register a trade mark registered in accordance with Article 7 is only permissible if the whole or part of the company producing the goods using this trade mark, or trading with the goods, is also transferred to that other person.

(2) Evidence of the case referred to in paragraph (1) is to be given to the Office by the submission of an official extract from the relevant document.

(3) Upon the written request of both parties, or only of the party that has acquired these rights, the transfer of these rights shall be noted with the registration of the trade mark, if adequate evidence of the transfer of rights concerning the trade mark is provided by means of the extract mentioned in paragraph (2) of this Article.

(4) The fee for noting the transfer of rights upon registration of a trade mark registered according to Article 7 shall be 450 rupiah, and shall be payable at the time of the request for this record to be made.

## Article 21

Changes of name or address of the person whose name has been registered as proprietor of a trade mark shall be noted free of charge at the written request of this person.

## Article 22

This act is not applicable to trade marks produced by the Government.

## Article 23

At the date this Act comes into operation, regulations of a similar kind become invalid.

## Article 24

This Act may be cited as "Trade Mark Act, 1961" (*Undang-undang Merek 1961*), and comes into operation one month after publication<sup>1)</sup>.

In order that all shall be informed of this, it shall be arranged for this Act to be published in the Statute Book of the Republic of Indonesia.

## APPENDIX

## to Trade Names and Trade Marks Act

(Art. 4, para. 2)

*List of classes of goods*

Classes 1 to 34 ... (The classification of goods printed in the *Blatt für Patent-, Muster- und Zeichenwesen*, 1954, p. 357 f., is essentially the same as that being applied in Indonesia.)

Class 35: "Ketjap", "tautjo", "trasi", "Petin", "krupuk", "emping" (Indonesian food products and sauces).

## COMMENTS

on Act No. 21 regarding trade names and trade marks, 1961

*General*

This Act governs the special rights concerning use of a trade mark and registration of trade marks.

The exclusive right to use a particular mark depends, according to this Act, on the first use of the trade mark. The person who has had a trade mark registered for the first time is regarded as the first user of this trade mark, unless another person proves that he is the actual user of this trade mark.

It follows that in a dispute as to the rights to a particular trade mark, the person who is proved as having used it for the first time has the rights to the trade mark. If no proof can be provided as to the first use of the trade mark, the person who first had the trade mark registered shall be regarded as having the rights to the trade mark.

This provision is not applicable if, within six months of registration, this person has not brought on to the market any of the goods for which the trade mark was registered.

Any person who has displayed particular goods with a particular trade mark in a national exhibition organized by the Government, or in an exhibition officially recognized as national, shall be regarded as having used this trade mark from the time he exhibited the goods with this trade mark, provided he applies for registration within the term of six months. This is not applicable if he does not bring the goods bearing this trade mark on to the market within six months of the date of registration of the trade mark.

Registration of trade marks with the Office is voluntary; persons using trade marks are not forced to register them.

Application for registration of trade marks shall be written in Indonesian, and a printers' plate of this trade mark and a few copies of the mark concerned shall be attached. Together with these applications, samples of the goods using the trade mark, or at least details of the goods, shall be supplied, for the protection of users.

Charges must also be paid — application, examination and registration fees. The application fee is 300 rupiah, registration fee 500 rupiah; the amount of the examination fee, on the other hand, depends on the number of classes of goods for which a trade mark is requested: it is 200 rupiah for each class of goods. The class of goods is determined on the basis of the branch of industry.

Applications for registration of a trade mark are refused if the trade mark in question resembles, in its entirety or in substance, the trade mark of another person, registered for goods of the same type.

Designs or texts which have become generally known, or which have no distinctiveness, or which are not real trade marks, shall likewise not be registered as trade marks.

The same applies to trade marks which are obviously used in bad faith.

On the other hand, there are signs which can only be registered with the consent of the authorized party.

Registered trade marks are published in the supplement to the *Official Gazette* of the Indonesian Republic, and may

<sup>1)</sup> Came into operation 11<sup>th</sup> November, 1961.

be examined by the public in the general register of the Office.

Within the term prescribed in each particular case, and, more specifically, within three months of the date of refusal to register a trade mark, an opportunity is given the person whose application for registration has been refused by the Office to appeal to the District Court in Djakarta.

If a certain trade mark has been registered in the name of one person, and another person considers that he has a right to the trade mark because he is in fact the first user in Indonesia, the latter can apply to the District Court in Djakarta for the registration to be annulled.

Similarly the public prosecutor may request the District Court in Djakarta to annul a registered trade mark if it clearly contains signs, designs or texts that should not have been registered as a trade mark.

In order to conform with the other provisions of this Act, the time allowed for filing applications for annulment is limited to nine months.

Registrations of trade marks are valid for ten years, beginning from the date of registration of the trade mark, and can be renewed successively for the same period, before expiry of the ten-year term.

The validity of registration of a trade mark also expires, apart from through failure to renew after expiry of the above-named ten-year term, on the following grounds:

- (a) on termination upon the request of the proprietor himself of the registered trade mark, or upon the request of the person who has obtained the rights, through transfer of the rights;
- (b) on the declaration of the registration of a trade mark as being invalid, on the basis of a court decision;
- (c) on account of the registered trade mark not having been used for three years, whether it be on the basis of the person's own admission, or on that of a court decision;
- (d) on account of the proprietor of the trade mark not having used the trade mark concerned within six months of registration, whether it be on the basis of the admission of the proprietor himself of the registered trade mark, or on that of a court decision.

Further, the registration of a trade mark, or the rights transferred to another person — provided that the transfer was made together with the enterprise — can be terminated by the proprietor of the registered trade mark.

#### *By Articles*

*Article 1.* — No comments.

*Article 2.* — No comments.

*Article 3.* — In accordance with the principle that the right to use a trade mark is limited to the enterprise producing the goods, or to a trading enterprise using this trade mark, the registration of a trade mark in the name of several parties is only made if these parties also have a right in the enterprise concerned.

*Article 4.* — No comments.

*Article 5.* — This Article enumerates signs that may not be registered as trade marks:

- 1 (a) designs or texts that are already generally known, such as the design of a human skull and crossbones for poison, the words "Merdeka", "Pantjasila", etc., which have always been known and are used in the broadest context amongst the community, may not be used for the private requirements of individuals. In the public interest, such signs must be freely available for use amongst the community;
- (b) the use of signs which, in public opinion, are contrary to morality, and signs which threaten law and order, especially those which might mislead the purchasers, shall be forbidden;
- 2 (a) in accordance with the special characteristic of a mark as a sign distinguishing the goods of one person or firm from the goods of other people or firms, a mark which has no distinctiveness may not be used as a trade mark, as, for example, the design or colour of the article itself, or the picture of a bottle or container used to contain these goods, and similar items.

Numbers and letters have no distinctiveness as trade marks, because they are commonly used to specify the goods concerned;

- (b) the use of official symbols of a State, a government, or an international organization, as a trade mark without the consent of the party authorized to use the sign will make a bad impression on the buyers of these goods. For this reason, the use of such signs as trade marks should be avoided. The type and form of application for consent shall comply with the existing regulations.

*Article 6.* — An application for registration of a trade mark must be in accordance with the requirements regarding an application for registration (Art. 4) and also with the requirements regarding the trade mark (Art. 5). Applicants for registration of a trade mark who do not comply with these requirements have the opportunity of complying with these requirements within a definite period, or of withdrawing their applications.

*Articles 7 to 10.* — No comments.

*Article 11.* — In order that the Office might have sufficient time in which to acquaint itself with the problems concerning a trade mark that has already been registered, the Secretary of the District Court indicates each time an application for registration or termination is made.

*Article 12.* — The legal appeals to which reference is made in Article 12 are those at a higher level, that is, an appeal to the High Court of Justice against a decision of the District Court. Since the decisions of the District Court in cases of registrations of trade marks that have been refused by the Office are mainly based on clear facts, there is no need for an appeal to a higher court.

*Article 13.* — No comments.

*Articles 14 and 15.* — All court decisions in cases regarding trade marks are communicated by the Secretary of the

High Court to the Office, so that the substance of the decision regarding termination or registration of a trade mark can be published in the supplement to the *Official Gazette* of the Indonesian Republic.

*Article 16.* — No comments.

*Article 17.* — The public may learn of the trade marks registered by the Office through the announcements in the supplements to the *Official Gazette* of Indonesia, or see them at the Office itself.

The public may also ask for written information about trade marks entered in the general register, or ask for information as to whether a particular mark is similar, in its entirety or in substance, to a trade mark already registered.

*Article 18.* — No comments.

*Article 19.* — The requirements for the first registration of trade marks and the requirements for the renewal of trade mark registrations are the same.

*Article 20.* — In accordance with the provision that any person who has had a trade mark registered shall bring on to the market goods with this trade mark, a person who is the proprietor of a registered trade mark may not transfer his rights to the trade mark without transfer of the enterprise. If he merely wishes to abandon his trade mark, he should apply for termination, and the other person may file an application for a new registration of this trade mark in his name, in so far as he complies with the other requirements and conditions.

*Article 21.* — No comments.

*Article 22.* — Does not refer to the trade marks of State enterprises. The marks used by State enterprises are subject to these general provisions, unless the trade marks are in fact determined by the Government.

*Articles 23 and 24.* — No comments.

## CORRESPONDENCE

(Translation)

### Letter from the Federal Republic of Germany

By Dr. Friedrich-Karl BEIER, Munich

































## BOOK REVIEWS

**Der Rechtsschutz berühmter Marken**, by *M. Elsaesser* (*The protection of famous marks*). Published by Chemie S. à r. l., Weinheim/Bergstrasse.

M. Elsaesser's work is based on a study of case law relating to famous marks, the evolution of which is systematically described. The author has the particular merit of having subjected to a close critical examination the problems of legal theory and of suggesting his own solutions without neglecting to take into consideration the practical aspects of his subject. All those interested in the problem of famous marks will find in this work a host of ideas, suggestions and a number of clarifications.

A. K.

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