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Great Britain. Extension of term. A patent concerned with colour television. Extension granted on the grounds of war loss and later on the grounds of inadequate remuneration, because colour television was not due to start until 1970. with the result that the term of the patent would ultimately exceed 32 years (London. Chancery Division, April 18. 1962) 258

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Registrability. Registration of "Chin Chin" (alcoholic beverages) not capable of registration in Part A. The words described are a form of salutation not necessarily confined to drinking occasions (London. Board of Trade. February 12, 1965) 262

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Italy. Transformation of a trademark into a generic term. The fact that an invented word, registered as a trademark, has become of common use to designate products of a certain kind is not, in itself, sufficient to dispossess the owner of his exclusive right (Supreme Court, May 15, 1935; the same view held by the Court of Appeals of Milan, June 26, 1956) 57

Transformation of a trademark into a generic term. The only ease of degeneration of a trademark into a generic term is when several manufacturers use the word mark and it has lost in the mind of the public any reference to the original product and has become a generic denomination. The owner of the trademark cannot invoke an exclusive right to it because he would be profiting from the reputation enjoyed by his competitors for their products (Rome, Supreme Court, August 2, 1956) 57

Sweden. Symbols which may or may not be used as trademarks. "Bjorntrad" trademark. Is spite of the fact that the word has been introduced into encyclopaedias and dictionnaries the Court was not satisfied that the word has turned into a generic word (Stockholm, Administrative Court, 1957) 60

Switzerland. The development of a trademark into a generic term is not effected until all participating circles (manufacturers, merchant and the buying public) do no longer regard it as belonging to a particular manufacturer or trader (Lausanne, Federal Court, September 30, 1958) 58

(c) **Family and geographical names.**

Austria. Marks liable to deceive. "Rimini-Ronds" cancelled, on the ground of its deceptive character. It could be interpreted as a simple geographical indication of origin. It becomes deceptive in character from the moment when the proprietor is established in Vienna (Vienna, The Patent Court, November 23, 1960) 94

Great Britain. Rectification of Register. "Welsh Lady" held capable of becoming distinctive. Emblem used since 1900 but not registered until 1958. The applicants for rectification began to use a similar device in 1954. The application for rectification refused on the ground that the emblem was distinctive of the registered proprietor's goods (London, Chancery Division, March 13, 1964) . . . 263

Registrability. Registration of "Santos-Dumont" in Part A of the Register refused on the grounds that it was not an invented word but merely a collocation of two surnames, albeit that one was a surname current in Spain and the other in France. Registration in Part B allowed because of surnames which were rare in England was "inherently capable of distinguishing" (London, Board of Trade, March 21, 1963) 261

Registrability. Registration of "Luxmore" (small domestic utensils, etc.) refused. Luxmoore was a surname not infrequent in the West of England (London, Assistant Comptroller, Patent Office, November 28, 1963) 261

(e) **Free marks (Freizeichen).** Pages

Austria. Free signs. "Gervais" not registrable as a trademark, because considered in Austria, for more than 50 years, as a free sign, designating a particular kind of cheese (Vienna, The Patent Court, May 30, 1962) 93

2 A. Goods for which a mark may or may not be registered

Austria. Marks liable to deceive. The action for cancellation, by reason of the deceptive character of the mark, can only be admitted when the mark impugned contains, in itself, an inexact indication as regards the goods in respect of which it has been deposited, and is liable to deceive consumers, thus risking also to injure the interests of the said consumers (Vienna, Patent Office, September 27, 1955) 93

If the mark enjoys world reputation, the recollection of it which the consumer retains will be very keen and precise and the risk of confusion between the two marks in question will be correspondingly reduced (Vienna, Patent Office, October 16, 1958) 90

5. Termination of rights

(a) **Conflicting marks, other than those classified under 2 B above.**

Austria. The manner in which the same figurative device is depicted, from a graphic point of view, allows for several perceptible differences, with the result that the marks showing the same device need not be regarded as being similar (Vienna, Patent Office, October 9, 1956) . . . 94

The following marks are considered as similar and capable of causing confusion: "Nervaletsen" — "Nervan" (1956); "Acesella" — "Acella" (1956); "Okal" — "Togal" (1956); "Lalvos" — "Leevos" (1957); "Dephloxan" — "Perphloxan" (1957); "Lysoforte" — "Leysol" (1957); "Koladin" — "Cordalin" (1957); "Quintine" — "Quittin" (1957); "Felux" — "Felix" (1957); "Permanit" — "Permutit" (1957); "Teka" — "Dexa" (1958); "Isodine" — "Isoptin" (1958); "Eco" — "Erco" (1958); "Butylon" — "Butolan" (1959); "Charmina" — "Charmella" (1959); "Unita" — "Unixa" (1959); "De Lindeboom" — "Linde" (1959); "Vita" — "Gelvita" (1959); "Vegominal" — "Veganin" (1959); "Vegoman" — "Veganin" (1959); "Novadrin" — "Novalgin" (1959); "Metafol-Noxol" — "Metafol" (1958); "Loramin" — "Laramin" (1960); "Tussiletten" — "Perbussetten" (1960); "Graziella" — "Graziosa" (1960); "Dormanal" — "Dominal" (1960); "Lano Wax" — "Lino" (1961); "Alderton" — "Atergon" (1960); "Orodiur" — "Oricur" (1961); "OKs" — "Vox" (1961); "Bri-lon" — "Phrilon" (1961); "Nezon" — "Zeozon" (1961); "Bonita" — "Bolvita" (1961); "Marcel Guerlain, maison fondée en 1923, Paris" — "Guerlain" (1961); "Hesotin" — "Helkodin" (1962) (Vienna, Patent Office, Patent Court) . . 91

Two compound marks are not of such a nature as to cause confusion when the sole element which they have in common is not capable of protection. The danger of confusion must always be assessed according to the overall impression that the two marks in question produce upon the average purchaser (Vienna, The Patent Court, March 23, 1957) 90

Trading styles incorporated in mixed marks are of less interest to the average buyer than the other elements included in the marks, except in the case of very well known trade names, additions serving to identify the proprietor of the mark are accordingly not determining when it is a matter of deciding whether the mixed marks are of such a nature as to lead to confusion (Vienna, The Patent Court, May 14, 1957) 90

The question of the resemblance of products under consideration must be appreciated in the light of the way in which these products are seen by interested parties (Vienna, The Patent Court, May 16, 1957) 92

Only common elements, if they are characteristic, create the overall impression produced by the two marks in question, which, from that point of view, can be confused (Vienna, The Patent Court, May 24, 1957) 90

Within the framework of an application for cancellation it is only necessary to know whether the marks concerned have been deposited in respect of products which are identical or of a similar nature, and not whether the same products are effectively manufactured or put into circulation by the parties in dispute (Vienna, The Patent Court, December 13, 1957) 92

The following designations have not been regarded as similar: "Pyrabutol" — "Pyramidon" (1958); "Unitas" — "Unixa" (1959); "Perdilaton" — "Dilatol" (1960); "Aco" — "Axo" (1961); "Taxi-Kola" — "Afri-Cola" (1961) (Vienna, Patent Office) 92

Trademarks "La vache qui rit" (The cow which laughs) and "La vache sérieuse" (The serious cow), accompanied by representations of a cow and of the head of a cow, similarity not recognized, with an observation that the Austrian law of trademarks has no provision for the protection of figurative devices (Vienna, The Patent Court, May 31, 1958) 94

The trade name "Robba Rocco" and the trademark "Roba" must be considered as being of such a nature as to lead to confusion from the moment when the initial name "Rocco" is deprived of distinctive character (Vienna, The Patent Court, September 16, 1958) 92

If the mark enjoys world reputation, the recollection of it which the consumer retains will be very keen and precise and the risk of confusion between the two marks in question will be correspondingly reduced (Vienna, Patent Office, October 16, 1958) 90

The circumstances in which a mark has been created do not have to be taken into account when it is a matter of assessing whether such mark possesses a sufficiently distinctive character, or if it is more or less capable of confusion with other marks (Vienna, Patent Office, November 18, 1958, confirmed by the Patent Court) 91

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A word-mark should be considered as resembling a device, and liable to cause confusion, when the image of the device cannot be designated other than by the word constituting the verbal portion of the mark (Vienna. Patent Office, January 22, 1959) 90

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When the two word-marks in question are brief, the risk of confusion must be assessed in exactly the same manner as if more lengthy marks were involved (Vienna, Patent Office, October 25, 1960) 91

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To what extent a foreign enterprise can, by virtue of its trading name, request cancellation of a mark with which it comes into conflict. One of the conditions essential to the success of such an application is the justification, on behalf of the person making application, of some form of legal interest (Vienna, The Patent Court, March 22, 1961) 93

An exception claiming the dismissal of the application for cancellation on the ground that the proprietor of the earlier mark must lose his right to sole action if there had been prolonged tolerance of the later mark, is not recognized (Vienna, The Patent Court, July 5, 1961) 91

From the legal point of view, it is of little importance, for the purpose of answering the question whether or not in a given case, confusion has already effectively arisen. Two marks are not similar and do not lend themselves to confusion if the sole element they have in common is not itself capable of protection (Vienna, The Patent Court, September 13, 1961) 91

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7. International law in trademark matters

(b) International Law under Conventions. Union Convention of Paris (assimilation to nationals, right of priority, "telle quelle" protection). Madrid Agreement for the International Registration of Trademarks.

Austria. Article 6bis of the Convention of the Paris Union: Protection of well-known unregistered marks. The aforesaid provision does not permit a claim for special protection in favour of well-known, but registered marks (Vienna, Patent Office, October 9, 1956) 94

Article 6 A of the Convention of the Paris Union: "Telle quelle" trademarks. The principle of the protection of the mark "telle quelle" only relates to the form not the contents of the mark (Vienna, Patent Office, January 30, 1957) 94

The deposit of an international mark effected after the expiration of the term of protection of 20 years which the same mark previously enjoyed does not have the same effect as a renewal. In such a case, the mark in question is submitted (in Austria) to fresh examination as to its admissibility (Vienna, Patent Office, May 8, 1959) . . . 94

Madrid Agreement (Trademarks). Article 5 (1) of the Madrid Agreement relates solely to the refusal of protection which national authorities are entitled to withhold from an international mark, on one of the grounds specified in Article 6 of the Convention of the Paris Union. The refusal of protection as regards an international mark does not have an effect which is absolute and unlimited in time (Vienna, Patent Office, December 14, 1960, confirmed by the Patent Court) . . 94

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The trade name "Robba Rocco" and the trademark "Roba" must be considered as being of such a nature as to lead to confusion from the moment when the initial name "Rocco" is deprived of distinctive character (Vienna, The Patent Court, September 16, 1958) 92

To what extent a foreign enterprise can, by virtue of its trading name, request cancellation of a mark with which it comes into conflict. One of the conditions essential to the success of such an application is the justification, on behalf of the person making application, of some form of legal interest (Vienna, The Patent Court, March 22, 1961) 93

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Carl Zeiss Foundation in German Democratic Republic and Carl Zeiss Foundation in Federal Republic of Germany. In the absence of recognition no effect could be given to the statute of the German Democratic Republic which established the Council of Gera and that accordingly the latter was not-existant for the purpose of proceedings in the English Courts. A further appeal lodged in the House of Lords (London, Court of Appeal, December 17, 1964) 264

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