

C. 8664

PAC No. 1 (Notion of Country Name)

Country names, the translation or transliteration of that names and the use of that names in abbreviated form or as an adjective are not automatically excluded from trademark law protection according to the Austrian Trademark Act.

PAC No. 2 (Non-registrable if considered descriptive)

Section 4 subsection 1 clause 4 of the Austrian Trademark Act provides that signs, which solely consist of a country name, are excluded from registration as trademarks, if from the perspective of the consumers that country name may serve, in trade, to designate the geographical origin of the goods or services.

PAC No. 5 (Invalidation and Opposition Procedures)

If a registered trademark, which contains or consists of a country name, is considered descriptive, devoid of distinctive character or misleading, anybody can file a request for invalidation (Section 33 of the Austrian Trademark Act). This request must be based on absolute grounds for refusal under Section 4 subsection 1 of the Austrian Trademark Act (clause 4: descriptiveness, clause 3: devoid of distinctive character, clause 8: misleading). Currently, the Austrian Trademark Act does not foresee a possibility to file an opposition against a trademark application based on absolute grounds for refusal.

PAC No. 6 (Use as a Mark)

Neither the Austrian Trademark Act nor the Austrian Act Against Unfair Competition provides specific rules in regard to the misuse of country names. The use of misleading geographical indications in commerce falls within the jurisdiction of the ordinary courts. Section 2 of the Austrian Act Against Unfair Competition governs that a commercial practice shall be regarded as misleading, if it contains false information (i.e. about the origin of the goods and services) or otherwise is able to deceive the consumers.