

acquisition or use of the said secret without his consent by third parties, and in a manner contrary to proper trade practice, insofar as:

(a) the information is secret in the sense that, as a whole or in terms of the exact configuration and composition of the elements thereof, it is not generally known or readily accessible to persons forming part of the circles that usually handle the type of information concerned;

(b) the information has an actual or potential commercial value attributable to its remaining secret;

(c) in the particular circumstances, the person who legally has the information under his control has taken reasonable steps to keep it secret.

The information constituting an industrial secret must always be related to the nature, characteristics or purpose of the products, production methods or processes, or the manner or forms of distribution or marketing of goods or rendering of services.

73. For the purposes of this Decision, information that is public property, is obvious to a person skilled in the art or has to be disclosed by legal provision or court order shall not be considered an industrial secret.

Information that is supplied to any authority by a person possessing it shall not be considered public property or disclosed by legal provision where the person supplies it for the purpose of obtaining licenses, permits, authorizations, registrations or any other official instruments.

74. The information considered an industrial secret shall exist in the form of documents, electronic or magnetic media storage means, optical discs, microfilm, motion picture film or other similar carriers.

75. The protection afforded under Article 72 shall last for as long as the circumstances provided for therein continue to obtain.

76. Any person keeping an industrial secret may transfer it to a third party or authorize a third party to use it. The authorized user shall be under the obligation not to disclose the industrial secret by any means, unless otherwise agreed with the person who has transferred the said secret to him or authorized him to use it.

Agreements for the transfer of technology or technical assistance or the provision of basic or detailed engineering know-how may include confidentiality clauses to protect the industrial secrets embodied therein. The said clauses shall specify the aspects that are considered confidential.

77. Any person who, for reasons connected with his work, employment, responsibilities or instructions or with the conduct of his profession or business relations, has access to an industrial secret, and has been warned of the confidentiality thereof, shall abstain from making use of it

and revealing it without just cause and without the consent of the person who keeps the said secret or that of the authorized user thereof.

78. Where a Member Country makes it a condition for the approval of the marketing of pharmaceutical goods or agrochemicals involving the use of new chemicals that experimental or other data be supplied that have not been published and are necessary for the verification of the safety and efficacy of the said products, the Member Country shall protect the said data where the generation thereof entails considerable effort, except where the publication of the data is necessary for the protection of the public, or where measures are taken to ensure the protection of the data against any improper use in trade.

79. No one other than the person who has supplied the data referred to in the foregoing Article may, without the latter's authorization, invoke that data in support of an application for the approval of a product during a period of not less than five years following the date on which the Member Country granted approval for the marketing of the product to the person who produced the data.

The provisions of the foregoing paragraph shall not prevent a Member Country from arranging summary approval procedures for such products on the basis of bioequivalence or bioavailability studies.

80. Where a Member Country relies on marketing approval granted in another country, the period of exclusive use of the information supplied with a view to obtaining the approval referred to in the foregoing Article shall be calculated from the date of the first marketing approval.

Chapter V Marks

Section I Requirements for the Registration of Marks

81. Signs that are perceptible, sufficiently distinctive and susceptible of graphic representation may be registered as marks.

A mark shall be understood to be any perceptible sign capable of distinguishing on the market goods or services that are produced or marketed by one person from the identical or similar goods or services of another person.

82. Those signs may not be registered as marks that:

(a) cannot constitute marks according to the foregoing Article;

(b) consist of the everyday shape of goods or their packaging, or of shapes or characteristics dictated by the particular function of the product or service concerned;

(c) consist of shapes that afford a functional or technical advantage to the product or service to which they are applied;

(d) consist solely of a sign or statement that may serve in business to designate or describe, in relation to the goods or services for which they are to be used, their species, quality, quantity, purpose, value, place of origin or time of production, or impart other details, characteristics or information;

(e) consist solely of a sign or statement which, in everyday language or in business circles within the country, is the common or usual designation for the goods or services concerned;

(f) consist of a color in isolation, without any demarcation to give it a specific shape;

(g) are contrary to the law, morality, public policy or proper practice;

(h) are liable to deceive business circles or the public, in particular as to the source, nature, manufacturing methods, characteristics or qualities of the goods or services concerned, or their suitability for their purpose;

(i) reproduce or imitate a protected appellation of origin, consist of a national or foreign geographical designation that is liable to be misleading in relation to the products or services to which it is applied or, in use, to mislead the public as to the origin, source, qualities or characteristics of the goods for which the marks are used;

(j) reproduce or imitate the name, coat of arms, flag or other emblem, initials or designation or abbreviated designation of any State or any international organization that has been officially recognized, without the permission of the competent authority of the State or of the international organization concerned; in any event, such signs shall be registrable only where they constitute a subsidiary element in relation to the main distinctive sign;

(k) constitute signs denoting conformity with technical standards, except where the registration thereof is applied for by the national body responsible for standards and quality requirements in Member Countries;

(l) reproduce coins or banknotes that are legal tender on the territory of the country, or of any country, or securities and other business documents, seals, impresses, imprints or tax stamps in general;

(m) consist of the denomination of a protected plant variety or of a variety essentially derived therefrom.

83. Those signs may likewise not be registered as marks that have any of the following impediments in relation to third-party rights:

(a) they are identical, or so similar as to mislead the public, to a mark filed for registration or registered earlier by a third party for the same products or services, or for products and services with respect to which the use of the mark might mislead the public;

(b) they are identical or similar to a protected trade name in accordance with the domestic legislation of the

Member Countries, insofar as they might, under the circumstances, mislead the public;

(c) they are identical or similar to a registered advertising slogan, insofar as they might, under the circumstances, mislead the public;

(d) they constitute a total or partial reproduction, imitation, translation or transcription of a distinctive sign that is commonly known to the sectors concerned in the country in which registration is sought or in subregional or international business, subject to reciprocity, and belongs to a third party; this prohibition shall be applicable, without regard to sectoral considerations, both where the use of the sign is intended for the same goods or services as are covered by the well-known mark and in those where it is intended for different goods or services.

This provision shall not be applicable where the applicant is the lawful user of the well-known mark;

(e) they are confusingly similar to a well-known mark, without regard to the type of product or service for which registration is sought.

This provision shall not be applicable where the applicant is the lawful user of the well-known mark;

(f) they consist of the full name, surname, pseudonym, signature, caricature or portrait of a natural person different from the applicant or identifiable by the general public as being such a different person, except where proof is given of the consent of that person or of his heirs, in accordance with the formalities laid down by the corresponding domestic legislation;

(g) they are the titles of literary, artistic or scientific works and the names of fictional or symbolic characters that are covered by copyright belonging to a third party, except where his consent has been obtained.

84. In order to establish whether a mark is well known, due account shall be taken, in particular, of the following criteria:

(a) the extent to which it is known to the consuming public as the distinguishing mark of the goods or services for which it was granted registration;

(b) the scale and scope of the dissemination and advertising or promotion of the mark;

(c) the age of the mark and the constancy of its use;

(d) analysis of the production and marketing of the goods identified by the mark.

85. In order to facilitate the protection of well-known marks, the competent national offices shall establish an appropriate system of notification and information.

86. Where the mark consists of a geographical name, the product may not be marketed without there being a visible and clearly legible mention thereon of its place of manufacture.

Section II
Registration Procedure

87. The application for the registration of a mark shall be filed with the competent national office concerned and shall provide the following particulars:

- (a) the identity of the applicant;
- (b) a clear and full description of the mark to be registered;
- (c) a mention of the goods or services of the class in which the registration of the mark is applied for;
- (d) proof of payment of the prescribed application fee.

Failure to comply with any of the requirements specified in this Article shall cause the competent national office to regard the application as not having been accepted for processing, in which case no filing date shall be assigned to it.

88. The following documents shall be filed with the application:

- (a) such powers of attorney as are necessary;
- (b) a clear and full description of the mark filed for registration, with a view to the publication thereof;
- (c) a copy of the first application for registration where priority is claimed, with an express mention thereof;
- (d) a reproduction of the mark where it contains graphic elements;
- (e) any other requirements laid down by the domestic legislation of the other Member Countries.

89. The applicant for registration of a mark may amend his initial application only with respect to minor features. He may also delete or limit the main products or services specified.

The competent national office may, at any stage in the processing, request the applicant to make alterations to the application. The said request for alterations shall conform to the provisions of Article 91 of this Decision.

In the cases provided for in this Article, the application may not be amended by alteration of the sign or by addition to the main products or services specified.

90. When the application has been accepted for processing, the competent national office shall, within 15 working days following filing, examine whether it complies with the conditions of form specified in this Chapter.

91. If it emerges from the examination that the application does not comply with the conditions of form specified in this Chapter, the competent national office shall notify the applicant so that he may remedy the defects within a period of 30 working days following notification. This period may be prolonged once, for 30 further working days, without the application losing its priority.

If the defects are not remedied within the period allowed, the application shall be rejected.

92. If the application for registration meets the conditions of form laid down in this Chapter, the competent national office shall order a single publication thereof.

93. Within 30 working days following such publication, any person having a legitimate interest may submit comments on the registration applied for.

For the purposes of this Article, it shall be understood that both the owner of an identical or similar mark, for goods or services in relation to which the use of the other mark would be liable to mislead the public, and the person who first applied for registration of the mark in any of the Member Countries likewise have an interest in submitting comments in other Member Countries.

94. The competent national office shall disallow comments in any of the following cases:

- (a) the comments have been submitted at the wrong time;
- (b) they are based on an application bearing a date later than that of the application for registration of a mark to which they relate;
- (c) they are based on conventions or treaties not applicable in the Member Country in which the application for the registration of a mark is being processed;
- (d) the prescribed processing fees have not been paid.

95. Once the comments have been allowed, having been found not to be in any of the cases specified in the foregoing Article, the competent national office shall notify the applicant so that, within 30 working days following the said notification, he may present his arguments if he sees fit.

On expiration of the period referred to in this Article, the competent national office shall rule on the comments and on the grant or refusal of registration of the mark, and shall notify its ruling to the applicant in a duly reasoned decision.

96. On expiration of the period specified in Article 93 without any comments having been submitted, the competent national office shall proceed to carry out the examination of registrability and to grant or refuse registration of the mark. This fact shall be communicated to the person concerned in a duly reasoned decision.

97. Registration may be granted for a mark that has been used on goods or in connection with services at an officially recognized exhibition held within the country where it is applied for within six months following the date on which the said goods or services were first presented under the said mark. In that case the application may be considered filed as from the date of such presentation.

The facts referred to in this Article shall be attested by a certificate issued by the competent body responsible for the exhibition, which shall mention the date on which the mark was first used in connection with the goods or services concerned.

98. The registration of a mark shall have a term of 10 years following the date of grant and may be renewed for successive 10-year periods.

99. The renewal of the registration of a mark may be requested of the competent national office within six months prior to the expiration of registration. Nevertheless, the owner of the mark shall be allowed a six-month period of grace as from the expiration date of the registration for requesting renewal, which request shall be accompanied by proof of the appropriate payments, if the domestic legislation of the Member States so provides. During the said period, the registration of the mark or the pending application shall remain in full force.

Renewal shall not require proof of use of the mark, and shall be granted automatically on the same terms as the expiring registration. However, the owner's right subsequently to renounce some or all of the goods or services covered by the said mark shall not be affected thereby.

100. No comments shall be allowed against an application filed within six months following the expiration of the period of grace referred to in the foregoing Article, in respect of the same mark, by the person who was the last owner thereof if they are based on a third party's registration that had previously coexisted with the mark applied for.

101. The Member Countries shall use the Nice International Classification of June 15, 1957, including its revised and updated versions.

Section III Rights Conferred by Registration

102. The right to the exclusive use of a mark shall be acquired by registration of the said mark with the competent national office concerned.

103. The first application for registration of the mark validly filed in a Member Country, or in another country that grants reciprocal treatment to applications from Member Countries of the Cartagena Agreement, shall confer on the applicant or his successor in title a right of priority, with a duration of six months from the filing date of the said application, for applying for registration of the same mark in any of the Member Countries of the Cartagena Agreement. The said application may not claim use in connection with goods or services different from or additional to those contemplated in the first application.

104. Registration of the mark shall confer on its owner the right to proceed against any third party who, without his consent, performs any of the following acts in relation to goods or services identical or similar to those for which the mark has been registered:

(a) using or affixing the mark, or a sign similar to it, in such a way as might mislead the public or create situations that might be prejudicial to the owner of the mark;

(b) selling, offering for sale, storing or marketing goods bearing the mark, or offering services thereunder;

(c) importing or exporting goods bearing the mark; or

(d) using, in business dealings, a sign identical or similar to the registered mark in connection with goods or services different from those for which the mark has been registered, where the use of the sign in connection with those goods or services might mislead or confuse the public, might unjustly harm the owner's economic or business interests, or might dilute the distinctive force or commercial value of the said mark; or

(e) any other act which, by its nature or purpose, could be considered comparable or capable of assimilation to those mentioned in the other subparagraphs of this Article.

105. Provided that it is done in good faith and does not constitute use as a mark, a third party may, without the consent of the owner of the registered mark, make use on the market of his own name, address or pseudonym, a geographical name or any other precise statement concerning the nature, quality, purpose, value, place or origin or time of production of his goods or rendering of his services, or other characteristics thereof, provided also that such use is confined to identification or information purposes and is not liable to mislead the public as to the source of the goods or services.

The registration of the mark shall not confer on its owner the right to prohibit a third party from using the mark to publicize, offer for sale or advertise the existence or availability of lawfully marked goods or services, or from using it to advertise the compatibility or suitability of spare parts or accessories that may be used with goods bearing the registered mark, provided that such use is made in good faith, is confined to the purpose of informing the public and is not liable to mislead or confuse as to the corporate origin of the goods concerned.

The owner of the registered mark may bring such actions as are available against third parties who use, in business dealings and without his consent, an identical or similar mark or sign to distinguish identical or similar goods or services, where such identicalness or similarity will mislead the public.

106. The right conferred by registration of the mark shall not entitle the owner thereof to prohibit a third party from making use of the said mark in relation to the branded goods of the said owner, his licensee or any other person authorized for the purpose, where the goods have