

Trademarks

Why protect trademarks?

A trademark is absolutely the identifying feature of a goods or service. For that reason, trademarks represent valuable capital in which a lot of money and time are often invested for the building-up and maintaining of market recognition.

What are the practical advantages?

Trademark protection gives the owner the exclusive right to use a mark for identifying goods or services and to make it available to others (for example, through licensing). The trademark owner can prohibit others from using a similar or identical sign for similar or identical goods or services as long as there is a risk of confusion.

What is a trademark?

Legally speaking, a trademark (or mark) is a sign that is capable of distinguishing the goods or services of one business from those of other businesses. Trademarks can be very diverse.

Forms of marks

Trademarks can be registered as words (e.g., Victorinox), combinations of letters (e.g., ABB), combination of numbers (e.g., 501), graphic representations (e.g., the SBB logo), three-dimensional shapes (e.g., Toblerone), slogans (e.g., “Cats would buy Whiskas”) or as a combination of all these elements. Acoustic melodies (e.g., a product jingle) can also be protected.

Types of marks

Individual marks for single companies for one good or service (e.g., Coca Cola).

Collective marks which indicate the legal affiliation of a company (or its goods or services) to an organization (such as the Pharmacists Association).

Guarantee marks which indicate a guarantee of certain characteristics or qualities (e.g., the sign for organic farm production in Switzerland).

No protection

Signs that belong to the public domain cannot be monopolized; for example, signs such as single letters of the alphabet or numbers, abbreviations that stand for something and descriptive logos (such as “4 x 4”,

“GTI”), as well as simple geometric figures.

A trademark must be used within five years of its registration.

National and international insignia may only be used as trademarks by institutions or enterprises directly affiliated with the federal government already using the identifying insignia. As a rule, single colors cannot be protected. Exceptions are colors that have become accepted as a trademark for the goods or services for which they are claimed (e.g., violet for Milka chocolate; see also “Accepted trademarks”, below).

Duration of protection

A trademark is protected for a ten-year term from the date of registration and can be renewed indefinitely for periods of ten years at a time.

Registration in Switzerland

Trademark protection must be applied for. A completed application form, including the classification of goods and services being claimed for protection, and a good reproduction of the trademark must be submitted to the Federal Institute of Intellectual Property in Bern. The application forms can be downloaded at www.ipi.ch or ordered per telephone at +41 (0)31 325 25 25. It is possible to register a trademark electronically at <https://e-trademark.ige.ch>. Once registered, the trademark is published electronically or in the Swiss Commercial Gazette.

When new trademarks infringe on an already registered mark:

The examination procedure for registering a trademark does not include searching for already registered marks. This is the responsibility of the applicant, which is why we recommend conducting a preliminary search in the trademark register. For further information, go to www.ip-search.ch.

International registrations

Several options are open for internationally registering a trademark:

The Madrid System

This application procedure makes it possible to extend the protection granted under Swiss law to other countries or organizations which have signed an international agreement referred to as the Madrid Protocol. The extension of protection can be requested at the Federal Institute of Intellectual Property.

The Community Mark

A simple application for trademark registration at the Office for Harmonization in the Internal Market (OHIM) in Alicante, Spain includes protection in every country of the European Union. Protection in the European Community can be applied for through extension under the Madrid System.

Special types of trademarks

Accepted trademarks: Descriptive signs can be protected if they have achieved general acceptance as a trademark for the goods or services of a particular company by the public (e.g., Valser for mineral water).

Public domain: Trademarks can mutate to generic indications through years of market presence and thereby lose their protection (for example, “cellophane” for plastic food wrap).

Trademarks of wide repute: Famous trademarks, such as Ferrari, Coca-Cola or Cartier are protected from exploitation by third parties even for classes of goods and services they are not registered for.

Internet domain names: Assigning and registering domain names for the country codes .ch and .li is the responsibility of the SWITCH Foundation (www.switch.ch). Domain names can also be registered as trademarks under the usual conditions.

Indications of Source: Certain goods or services are distinguished from others by the geographical origin indicated, NOT by the manufacturer. There is a difference between indications of direct source (e.g., Swiss chocolate), indirect source (e.g., William Tell) and qualified geographical indications of origin (e.g., “Geneva” for watches).

Appellations of Origin: Protected or controlled appellations of origin (AOC's) (e.g., Tête de Moine) or geographical indications (GI's) (e.g., “Bündner Fleisch”) are registered at the Federal Office for Agriculture. To be registered as a mark element, they must fulfill certain conditions.

Designs

Types of designs

Industrial designs, “modèle déposé”, design samples, integrated circuits, topographies.

Why protect designs?

Design touches our senses, affects our emotions, creates identity, distinguishes one thing from another. Design has become one of the decisive marketing factors for these reasons, and counterfeiting designs has become one of the preferred forms of product piracy.

What are the practical advantages?

The designs protection law prohibits other people from using the same

or similar design for commercial purposes. “Use” means manufacturing, storing, offering, putting on the market, importing, exporting, or transporting a design as well as simply possessing it for these purposes.

What is a design?

The legal definition of design includes the exterior form of a product or some part of it. Form is characterized by the arrangement of lines, contours, colors and surfaces or by the material used. In short: Only the exterior form of an object is protected by design rights. Examples are: consumer items such as cutlery and toothbrushes; industrial designs such as locomotives or production installations; detail designs such as watch faces, fabrics, or part of the chassis of an automobile.

No protection

Designs which cannot be protected are those which are exclusively a result of the technical realization of a function (for example, the threads on a screw) or which go against a federal law (such as the protection of insignia), a national agreement or public policy or morality. Design protection also explicitly does not include methods of production (for example a particular way of manufacturing clothing), utilitarian purposes (such as a flow chart) and technical functions. Such things are protected under the patent law.

Duration of protection

A design can be protected for a maximum of 25 years (five terms of five years each). A term begins on the day of filing the application.

Filing in Switzerland

To register a design in Switzerland, the application for deposit must be filled out and submitted to the Federal Institute of Intellectual Property in Bern along with at least one illustration of the design which is suitable for reproduction. The application form can be downloaded at www.ipi.ch or ordered by telephone at +41 (0)31 325 25 25. Applications may be filed electronically to design@ipi.ch. After the design has been registered it is published electronically or in the Swiss designs gazette, “mod. dép.”.

International deposits

Designs can be registered in other countries two ways:

Applying directly to the country

Be aware that the legal basis, filing formalities and examination and granting procedures vary from country to country.

Designating several countries in one application

When a design is deposited at the World Intellectual Property Organization (WIPO) in Geneva, one or more countries may be specified for protection as long as they are signatory states to the Hague Agreement. Switzerland is a member of this agreement. In addition, designs can be protected in all EC territories by applying for Community design protection at the Office for Harmonization in the Internal Market (OHIM) in Alicante, Spain.

Protecting topographies

Types: Micro chips, IC-protection, integrated circuits, semiconductors. Semiconductor designers can protect their topographies against theft. According to the legal definition, a topography is the three-dimensional disposition resulting from the adjacent layers of material which create a semiconductor. Only the exterior form of a topography is protected, not the electronic function of the semiconductor. More information about topographies can be found under www.ipi.ch.

Patents

Why protect inventions?

Patents are rewards and incentives for research and development in all fields of technology. They encourage technical innovation and contribute to the growth and spread of technical knowledge. They are proof of the innovative strength of an enterprise and can be carefully used to advantage in tough competitive markets.

What are the practical advantages?

A patent gives its holder the right to prevent third parties from commercially using (i.e., manufacturing, selling or importing) the invention described in the patent without express permission. The patent owner may, however, transfer the rights to someone else either by selling the patent or by licensing it.

What is an invention?

Legally, an invention is something that uses technology to solve a technical problem.

Not patentable

Ideas, concepts, discoveries, scientific theories and mathematical solutions, game rules, lottery systems, teaching methods and organizational work procedures, diagnostic procedures, therapies and surgical procedures (whether used on humans or animals), plant sorts, animal breeds and primarily biologically-based procedures used for breeding plants or animals are all not patentable.

Computer programs are also not patentable (however, inventions based

on a computer program, such as electronic steering, are eligible). Finally, any invention, the use of which would be contrary to public policy or morality (for example, procedures to clone humans) is not patentable.

Duration of protection

Inventions may be protected for a maximum of 20 years beginning from the date on the patent application. The first term of protection is five years; annual maintenance fees (“renewal fees”) are due thereafter.

Filing for a patent in Switzerland

Patent protection must be applied for. This includes completing the application form (can be downloaded at www.ipi.ch or ordered per telephone at +41 (0)31 325 25 25), describing the invention, making at least one formal patent claim and enclosing relevant drawings. The technical documentation must be in German, French or Italian. The application must be submitted to the Federal Institute of Intellectual Property in Bern. When the patent has been granted, it is published electronically or in “+pat+”, the Swiss patent gazette.

Does an invention show a new and inventive step?

The patent examination procedure in Switzerland does not include this criterion. Therefore, it is highly recommended that a prospective applicant clear it up before applying – either with a patent attorney or directly through the Institute of Intellectual Property’s search services at www.ip-search.ch.

International filing

There are several ways to get a patent in other countries:

Directly applying in a country

Be aware that the legal system, application formalities, and examination and granting procedures vary from country to country.

European applications

A European patent can be applied for either directly at the European Patent Office in Munich or, for companies based in Switzerland or Liechtenstein, at the Institute of Intellectual Property in Bern. One application/filing can grant protection in over 30 different countries, including Switzerland.

International applications

The World Intellectual Property Organization (WIPO) in Geneva offers an international patent application process which is based on the Patent Cooperation Treaty (PCT). With a PCT application, an invention can be protected in up to 123 treaty states. Information and filing for Switzerland and Liechtenstein can be done at the Federal Institute of

Intellectual Property in Bern.

Copyright

What is copyright?

Copyright protects literary and artistic works. Only the form of the work, not its content is protected, i.e., the object of the protection is the work and not the idea or the concept expressed by the work. To illustrate, under the copyright law, a scientific treatise on Albert Einstein's theory of relativity is protected as a literary work but the theory as such is not protected.

What are the practical advantages?

The author (i.e., the originator of the work) can determine whether, when and how his work may be used. This includes, in particular, the following rights:

Right to reproduce: the right to reproduce the work in any way (manufacture of copies), independently of whether the original work is changed or not (such as internet downloads of music in MP3 format).

Right to distribute: the right to offer copies of a work, to disseminate, or to put on the market in any way.

Right to make accessible: the right to make a work accessible to the public through a communication network such as the internet for purposes of screen viewing, printing, downloading, etc.

The fees for patenting an invention are independent from the type of application or the number of countries designated for protection. The only variable cost is that for the translation of the patent documentation (although, international negotiations, such as for the European Patent, have recently found ways of greatly reducing them).

Works with scientific or technical content such as technical drawings, plans, maps or three-dimensional models.

Architectural works.

Visual and audiovisual works such as photographs and films.

Choreographed works and pantomimes.

Protecting Software

Computer programs are protected by copyright. However, things such as punch card systems and accounting systems, program languages or principles of problem-solving, such as algorithms which form the basis of a software, are not protected.

No protection

Ideas, achievements, concepts or instructions are not protected, even

when they are original. Laws, ordinances and other official texts such as decisions, protocols and reports by authorities and public administrations, means of payment (i.e., systems for making payments), patent documents and published patent applications are excluded from copyright protection.

Term of protection

In Switzerland, copyright protection lasts 70 years from the date of death of the author; the exception is for computer programs which are protected 50 years after the date of death.

Right to perform and present: the right to publicly present, produce, perform or to make perceivable in any other way.

Right to broadcast: the right to broadcast a work over the radio, television or similar type of installation.

Right to rebroadcast: the right to further transmit a broadcasted work with the help of technical installations which are different from the broadcaster's original data carrier (for example, cable TV).

Right to adapt: the right to decide whether, when and how a work shall be adapted and whether it may be used as the basis for the creation of a new work (i.e., derived works, such as translations).

What are works?

“Works”, in terms of copyright, are creations which have an individual nature. In particular:

Literary works of any kind, from novels to scientific treatises, magazine articles and marketing brochures.

Musical and other acoustic works.

Works of the visual arts (painting, sculpture, graphics) and applied design (artistic objects with a use). The latter can be protected under both copyright and design law.

Collecting societies

Collecting societies collectively represent the rights of creators; particularly in cases of mass utilizations, where it wouldn't be possible to individually collect remuneration (for example, video cassette or DVD rentals). The collecting societies are under federal supervision by the Federal Institute of Intellectual Property and the Federal Arbitration Board for the Exploitation of Authors' Rights and Neighboring Rights.

Copyright

Generating protection

Copyright protection begins the moment a creation comes into existence.

No formalities, filing or registration is necessary. There is no

register of copyright titles, such as for designs or trademarks.

Related rights

Related rights (also referred to as neighboring rights) concern the rights of performers, producers of phonograms and videograms and broadcasting organizations. These rights are distinct from copyright but they are based primarily on the copyright system. They last 50 years after the performance of a work by the performer, the production of the phonogram or videogram or with the transmission of the broadcast.

International copyright

Every legal system is basically national. The Swiss system only protects copyright and related rights in Switzerland. However, there are several international treaties which regulate protection at an international level (such as the Bern Convention for the Protection of Literary and Artistic Works and the Rome Convention). In order to know what protection is offered in another country, a Swiss would need to find out if the country is a signatory state to the same treaty as Switzerland.

Contact

The Federal Institute of Intellectual Property in Bern is the federal authority for all questions regarding intellectual property rights. It is also the center for all industrial property rights in Switzerland (also for patents in Liechtenstein) and, depending on the procedure, for international registrations. The Institute examines national applications, grants protective rights and administers the various registers.

For information about intellectual property rights:

Federal Institute of Intellectual Property

Einsteinstrasse 2

CH-3003 Bern

Telephone +41 (0)31 325 25 25

Fax +41 (0)31 325 25 26

E-Mail info@ipi.ch

Online information: www.ipi.ch

This website also has:

A list of trademark and patent attorneys in Switzerland

Links to important related organizations such as the European Patent Office, the World Intellectual Property Organization (WIPO) and the Office for Harmonization in the Internal Market (OHIM).

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