



## Country Guides

Essential Information on Trademark Protection Worldwide

### GERMANY

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This guide provides a basic profile of this jurisdiction's trademark law and practice and is not intended to take the place of professional advice given with full knowledge of the specific circumstances of each case and proficiency in the law of this jurisdiction such as might be provided by a local trademark attorney.

For more information about particular areas of practice, please see INTA's companion online publications: [International Opposition Guide](#), [Trademark Cancellations](#), [Practitioner's Guide to Madrid Agreement and the Madrid Protocol](#).

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#### I. GENERAL

##### A. Rights Afforded by Registration

- Registration is required to establish rights in a trademark; this is a "first to file" jurisdiction. Only signs that have acquired a certain level of reputation ("Verkehrsgeltung") through use in commerce are protected without registration ("Benutzungsmarke").
- Use of an unregistered mark for any goods or services is legal.
- The following legislation regarding plain packaging has been enacted in this jurisdiction: Based on EU Directive 2014/40/EU, the so-called Tobacco Products Directive, Germany has enacted a German "Tobacco Products Act," which came into force on May 20, 2016.

##### B. Time Frame for Obtaining Registration

- The approximate time from application to registration (for a regular prosecution, without opposition) is: three to four months.

##### C. Advantages of Registration

- The benefits of registering a trademark include the following:
  - it is the sole means of obtaining rights or title to the trademark;
  - it provides prima facie evidence of ownership and validity;
  - it provides regional, national and/or local protection;
  - it allows use of "Registered Trademark" or other suitable terms or abbreviations to demonstrate ownership of the trademark;
  - it allows the registrant access to bring actions in particular courts;
  - it helps to deter others from unlawfully using the trademark;

- enforcement of an unregistered trademark is more difficult and more costly than enforcement of a registered trademark;
- it encourages licensees and provides the opportunity to generate royalties through licensing.

The risk of not registering a trademark is that others may register an identical or similar mark that could impede the ability to use or register the mark in Germany.

## II. PRE-FILING

### A. Registrable Trademarks

• The following signs that can be reproduced graphically and are capable of distinguishing the goods or services of one person or entity from another are registrable as a trademark:

- words;
- names;
- devices;
- certain three-dimensional shapes;
- colors;
- slogans;
- sounds;
- smells (olfactory trademarks);
- trade dress/get-up;
- holograms;
- motion;
- taste;
- touch.

For general information about non-traditional marks, see:

Fact Sheet: <https://www.inta.org/fact-sheets/nontraditional-trademarks/>

For information about protecting trade dress, see: [https://applications.inta.org/apps/tradedress\\_presentation/](https://applications.inta.org/apps/tradedress_presentation/)

- The special requirements for the registration of three-dimensional shapes are: Under the new EU Trademark Regulation (Regulation EU 2015/2424), a three-dimensional trademark or shape mark may be registered by submitting either a graphic reproduction of the shape, including computer-generated imaging, or a photographic reproduction. The graphic or photographic reproduction may contain different views. Where the representation is not provided electronically, it may contain up to six different views. Thus, if it is provided electronically, there is no limit for a certain number of pictures and one may consider new ways of representing three-dimensional shapes, such as animated GIFs, or even videos, 360° views, etc.
- The special requirements for the registration of colors are: specification of the colors via an internationally approved color classification system (i.e., Pantone, RAL); regarding combinations of colors, indication of the systematic composition of the colors.
- The special requirements for the registration of sounds are: A sound mark shall be represented by submitting an audio file reproducing the sound or by an accurate representation of the sound in musical notation.
- The special requirements for the registration of smells are: in practice, with difficulty, to represent the smell graphically. Note that it is not sufficient to describe the smell only by a chemical formula.
- There are no special requirements for the registration of trade dress.
- The special requirements for the registration of holograms are: When applying for a hologram mark, the mark shall be represented by submitting a video file or a graphic

or photographic reproduction containing the views that are necessary to sufficiently identify the holographic effect in its entirety.

- The special requirements for the registration of motion are: A motion mark shall be represented by submitting a video file or by a series of sequential still images showing the movement or change of position. Where still images are used, they may be numbered or accompanied by a description explaining the sequence.
- The special requirements for the registration of taste are: in practice, with difficulty, to represent a taste graphically.
- The special requirements for the registration of touch are: a precise description of the relevant features of the object that activates the act of perception, e.g., by precisely indicating the proportions.
- Marks registered in black and white or grayscale are construed broadly to protect the mark both as registered and in other color combinations.
- In addition to regular trademark registrations, the following types of trademarks are registrable:
  - collective marks;
  - certification marks;
  - well-known marks;
  - service marks.
- Retail services are registrable provided that the nature of the retail services is clearly identified.
- The following are not registrable as trademarks:
  - marks contrary to moral standards or public order;
  - generic terms;
  - names, flags or symbols of states, nations, regions or international organizations;
  - non-distinctive trademarks, absent a showing of acquired distinctiveness (secondary meaning).
- Geographical indications (GIs) are protected in this jurisdiction.
- GIs are protected by way of:
  - special laws for the protection of geographical indications or appellations of origin (Regarding agricultural products and foodstuffs, there is a European Union Regulation in place (Council Regulation (EC) No. 510/2006) protecting particular GIs. In addition, GIs related to other product fields are protected under the national trademark laws.);
  - trademark laws, in the form of collective marks or certification marks;
  - laws against unfair competition.
- The following products or categories are subject to GI protection in this jurisdiction: names of locations, areas, regions, countries and other indications or signs that are used in business to designate the geographical origin of goods/services (Sec. 126(1) MarkenG).

## **B. Searching**

- While conducting a private pre-filing search is not mandatory, it is recommended in that it can:
  - save the applicant the time, effort and cost entailed in developing, adopting and applying to register a trademark in which someone else has prior rights;
  - disclose additional potentially conflicting trademarks, e.g., prior unregistered rights such as those gained at common law;
  - show that "best efforts" have been made to avoid any conflict with existing prior rights (This can be used as a defense against damage claims, as any infringement would not have been committed culpably.).
- The national office is accessible online at the following URL: <http://www.dpma.de>.

- The official register can be searched online. The link to the DPMA (Deutsches Patent- und Markenamt, the German Patent and Trademark Office) Register, with information in English, can be found at: <https://register.dpma.de/DPMAREgister/marke/uebersicht?lang=en>.

### C. Use

- An applicant does not benefit from pre-filing use of a trademark.
- When a mark is not registered, use of that mark may provide the following benefits:
  - Courts may protect unregistered marks in some exceptional cases.
  - Special protection against infringement may be available for a famous and/or well-known mark that is not registered.
  - Protection against infringement may be available for marks with substantial and longstanding use that are not registered.
- Famous and/or well-known marks are protected via the following mechanism(s):
  - a determination by the court resulting from an action for infringement.

### D. International Treaties

- Germany is a signatory to the following international treaties relating to intellectual property:
  - Paris Convention;
  - Trademark Law Treaty;
  - Singapore Treaty;
  - Madrid Agreement;
  - Madrid Protocol;
  - Nice Agreement;
  - Vienna Agreement;
  - Lisbon Agreement.

## III. FILING

### A. Requirements

- If the applicant is not domiciled in this jurisdiction, a local address for service must be provided.
- Joint applicants are permitted in this jurisdiction.
- Neither actual use nor intent to use is required for application. However, after five years of non-use, a mark is subject to an action for cancellation for non-use, which can be brought by any third party.
- The following information is required to COMPLETE an application:
  - name and address of applicant;
  - state or country of incorporation;
  - representation of trademark (a depiction of the mark an applicant seeks to register) (necessary for device marks and other nontraditional marks);
  - list of goods/services;
  - official filing fee;
  - priority claim, where priority of an earlier application is claimed.
- While ALL of the items noted in the list immediately above are required to COMPLETE an application, ONLY THE FOLLOWING ITEMS from that list are required in order to SECURE A FILING DATE:
  - name and address of applicant;
  - state or country of incorporation;

- representation of trademark (a depiction of the mark an applicant seeks to register);
- list of goods/services;
- official filing fee.
- The list of goods and services in this jurisdiction may specify:
  - the relevant class heading;
  - the relevant local subclass and/or subgroup;
  - a list of names commonly used in the trade for the specific goods or services of interest;
  - the relevant entire (long) alphabetical class listing.
- The relevant entire (long) alphabetical class listing is appropriate to use in applications for:
  - goods and/or services.
- The following number of copies of the trademark must be submitted: one.
- Although not a filing requirement, a power of attorney might need to be submitted during prosecution in the following circumstances:
  - only if requested by the Office.
- In this jurisdiction, the following types of registrations are available:
  - regional (European Union Trade Marks (EUTMs));
  - national;
  - international.
- This jurisdiction is a party to both the Madrid Protocol and the Madrid Agreement and may be designated in international applications.
- This country is a member of the European Union; a European Union Trade Mark registration (formerly a Community Trade Mark registration) is effective in this jurisdiction. (See the entry for European Union.)
- No other multinational regional registrations are available in this jurisdiction.
- An international application is subject to different registrability requirements and examination procedure than a locally filed application. (See the entry for the Madrid System.) The requirements for the registration of a trademark under the Madrid System (International Registration) are similar to the requirements in the jurisdiction concerned, i.e., Germany. The difference is mainly that WIPO does not examine the mark for genericness or descriptiveness, as WIPO relies on the national examination in that respect.
- Applications can be filed online at the following URL: <https://direkt.dpma.de/marke/>.
- The official file cannot be accessed online.
- Applications are not officially searched as to prior trademarks.

## **B. Priority**

- If an applicant's home country is a signatory to the Paris Convention, the filing date of its home application can be claimed as the filing date in this jurisdiction, provided that its home application was filed within the fixed period of six months preceding the application in this jurisdiction.
- If an applicant's home country is a member of the World Trade Organization, it should be possible to claim the home filing date. (Consult a local trademark attorney.)
- An International Registration can be based on a national application or registration in this jurisdiction.

## **C. Classification**

- This jurisdiction uses the Nice Classification System.
- If a trademark covers more than one class of goods and/or services, one application can cover multiple classes of goods or services.

- For a multi-class application, the applicant must pay class fees on a per-class basis.

#### **D. Representation**

- An application to register a trademark may be filed directly in this jurisdiction by:
  - the applicant, even if not a citizen of or domiciled in the jurisdiction (under certain circumstances);
  - a trademark representative/attorney/agent, even if not a citizen of or domiciled in the jurisdiction, if he or she is a citizen of one of the member states of the European Economic Area (EEA) and fulfills special requirements regarding professional admissions.

### **IV. APPLICATION**

#### **A. Publication**

- The filing particulars of an application are made available to the public.
- The filing particulars are made available to the public:
  - through publication and online.
- The following application details are made available to the public:
  - mark;
  - name of applicant;
  - address of applicant;
  - application number;
  - application date;
  - goods/services;
  - priority claim information;
  - representation of trademark.

#### **B. Examination**

- Applications are examined in respect of:
  - formalities: i.e., for compliance with the filing requirements;
  - classification: i.e., to ensure that the goods or services fall within the class(es) listed in the application;
  - clarity: i.e., that descriptions are clear and understandable;
  - descriptiveness: i.e., to check whether a trademark functions solely to provide information about the goods and services affiliated with the trademark;
  - distinctiveness: i.e., to ensure that trademarks are capable of being represented graphically and of distinguishing the goods or services of one individual or organization from those of other individuals or organizations;
  - deceptiveness: i.e., to check whether a trademark is of such a nature as to deceive the public (for instance, as to the nature, quality or geographic origin of the goods or services). The application will not be refused ex officio due to the existence of prior conflicting marks (with the exception of notorious marks).
- This jurisdiction does not have disclaimer practice (i.e., a practice whereby the applicant must disclaim any exclusive right to an element of a trademark that is not distinctive).
- The order of the application process is as follows:
  - examination, registration, publication. This order applies for German trademarks; for EUTMs, the order is examination, publication, registration.

#### **C. Prosecution**

- Accelerated examination may be requested.
- A reason for acceleration is not required.
- A fee for acceleration is required.
- The following rights are established by a pending application:
  - the filing date of the application establishes a home filing date for purposes of priority;
  - the pending application can be used in a third-party opposition proceeding against a subsequent (later-filed) conflicting application;
  - the pending application establishes prima facie proof of ownership of a trademark.

#### **D. Opposition**

- Opposition is available.
- Opposition is conducted post-grant.
- The following can be grounds for opposition:
  - proprietary rights, such as an earlier conflicting registration;
  - rights under Article 6bis of the Paris Convention (notorious or well-known mark);
  - rights under Article 6septies of the Paris Convention (registration in the name of the agent or other representative of the proprietor of the mark);
  - rights under Article 8 of the Paris Convention (trade names);
  - the mark consists of a geographical indication (GIs are considered as prior rights that may be invoked in opposition proceedings.);
  - Third-party trademarks can also be challenged on the basis of absolute grounds (descriptiveness, lack of distinctiveness, deceptiveness, etc.), as well as on the basis of other prior rights (design rights, copyrights, rights in a personal name). However, those challenges cannot be made in opposition proceedings, but only in separate invalidation/cancellation proceedings either before the German Patent and Trademark Office or before the competent courts.
- A registration is published for opposition purposes upon grant of registration.
- The opposition period begins on the following date: the date of publication of the grant of registration.
- The opposition period ends on the following date: three months after the date of publication.
- The following parties may initiate an opposition:
  - the owner of an earlier right.
- Oppositions cannot be filed online.

#### **E. Proof of Use**

- Proof of use is not required prior to the issuance of a registration or the issuance of a notice of allowance/acceptance.

### **V. ASSIGNMENT, LICENSING, AND OTHER CHANGES TO TRADEMARK RECORDS**

#### **A. Assignment**

- An application can be assigned.
- A registration can be assigned.
- An assignment of an application must be made for the entire territory covered by the application.
- An assignment of a registration must be made for the entire territory covered by the registration.



- An assignment of an application can be for some or all of the goods or services listed in the application.
- An assignment of a registration can be for some or all of the goods or services listed in the registration.
- Goodwill need not be included in an assignment of an application.
- Goodwill need not be included in an assignment of a registration.
- An assignment document for an application requires:
  - name of assignor;
  - address of assignor;
  - name of assignee;
  - address of assignee;
  - details of the trademark being assigned;
  - signature by assignor;
  - signature by assignee.
  - Note, however, that the "requirements" listed above are not actually mandatory. The German civil law follows the principle that no form requirements must be complied with unless explicitly provided for by the law. Trademarks can be assigned without any specific form, i.e., even by way of an oral agreement; however, a written agreement is recommended for documentation purposes. EUTMs must be assigned in writing.
- An assignment document for a registration requires:
  - name of assignor;
  - address of assignor;
  - details of the trademark being assigned (i.e., the registration number);
  - goods and services being assigned;
  - signature by assignor;
  - signature by assignee.
  - Note, however, that no written form requirement applies. An assignment can be agreed upon even by way of an oral agreement (see above).
- Legal verification of a written assignment document of an application is not required.
- Legal verification of a written assignment document of a registration is not required.
- An assignment of an application need not be recorded to be effective. Recordation is advisable, however, because the mark is then readily available for enforcement (opposition or legal action).
- An assignment of a registration need not be recorded to be effective. Recordation is recommended, however, because the mark is then readily available for enforcement by opposition or legal action.

## **B. Licensing**

- An application can be licensed. While licensing of a trademark application is not prohibited, the effects of such license are questionable. Additionally, compliance with European Union competition law should be observed if a license agreement is likely to affect trade between European Union member states.
- A registration can be licensed. Compliance with European Union competition law should be observed if a license agreement is likely to affect trade between European Union member states.
- In this jurisdiction, registered trademark users (as opposed to licensees) cannot be recorded.
- A license of an application can be made for a portion of the territory covered by the application.
- A license of a registration can be made for a portion of the territory covered by the registration.



- A license of an application can be for some or all of the goods or services listed in the application.
- A license of a registration can be for some or all of the goods or services listed in the registration.
- A license of an application can be exclusive (only one licensee, with the owner excluded).
- A license of an application can be sole (only one licensee and the owner).
- A license of an application can be non-exclusive (multiple licensees and the owner).
- A license of a registration can be exclusive (only one licensee, with the owner excluded).
- A license of a registration can be sole (only one licensee and the owner).
- A license of a registration can be non-exclusive (multiple licensees and the owner).
- Use by a related company of a mark that is the subject of an application need not be licensed.
- Use by a related company of a registered mark need not be licensed.
- A license of an application can be made with a time limitation.
- A license of a registration can be made with or without a time limitation.
- A license document for an application requires:
  - name of licensor;
  - address of licensor;
  - name of licensee;
  - address of licensee;
  - details of the trademark to be licensed (at least the application number);
  - goods and services being licensed;
  - term of the license;
  - territory of the license;
  - signature by licensor;
  - signature by licensee.
  - Quality control provisions are not compulsory but are recommended.

It is to be understood, however, that a license can be validly agreed upon without a license document.

- A license document for a registration requires:
  - name of licensor;
  - address of licensor;
  - name of licensee;
  - address of licensee;
  - details of the trademark to be licensed (at least the registration number);
  - goods and services being licensed;
  - territory of the license;
  - simple signature by licensor (see below for execution requirements);
  - simple signature by licensee (see below for execution requirements).
  - Note, however, that the written form is not mandatory for a license agreement.
- Legal verification of a written agreement to license an application is not required.
- A license of an application need not be recorded to be effective. A license cannot be recorded at the German Patent and Trademark Office, but one may wish to file a copy of the license agreement and to have it put into the official file of the trademark registration concerned. This may be helpful for purposes of evidence in subsequent proceedings. If an EUTM is licensed, recordal of a license is not compulsory, but

possible. Recording a license is, however, recommended, because the license would have an effect vis-à-vis third parties only after recordal.

- A license of a registration need not be recorded, but recordation could help in enforcement, to demonstrate use of the mark. For EUTMs, recordal of a license is not compulsory, but possible. Recording a license is, however, recommended, because the license would have an effect vis-à-vis third parties only after recordal.
- The license for a renewed registration need not be re-recorded.
- Legal verification of a written agreement to license a registration is not required.

### **C. Other Changes to Trademark Records**

- The requirements for the recordal of name changes, mergers, and other important corporate updates on trademark records are as follows:
  - deed of assignment, without further formalities.
- The requirements regarding the recordal of updated addresses on trademark records are as follows: Only a simple request for a change of address is necessary, without specific further requirements. However, should the address submitted prove to be wrong, the trademark can be cancelled.
- The requirements for recording liens against trademark records, such as security interests, are as follows: filing the respective court decision on the lien with the German Patent and Trademark Office.

## **VI. REGISTRATION**

### **A. Requirements**

- A fee is not required for issuance of the registration.
- The following documentation is required for issuance of the registration:
  - none.

### **B. Rights**

- The following rights are established by registration:
  - the exclusive right to use the registered trademark;
  - the right to oppose subsequent conflicting applications;
  - the right to bring a cancellation action against a subsequent conflicting registration;
  - the right to sue for infringement against confusingly similar third-party trademark use;
  - the right to license third parties to use the trademark;
  - the right to apply for seizure by customs authorities of counterfeit goods being imported into this jurisdiction;
  - the right to obtain damages for infringement;
  - the right to sue for infringement if a transliterated version of the owner's mark is later used by a third party (provided that the transliterated version is considered to be confusingly similar);
  - the right to oppose and/or cancel subsequent applications for transliterated versions of the registered trademark by third parties (provided that the transliterated version is considered to be confusingly similar).
- The Roman alphabet is used to represent the official language(s) of this jurisdiction. Registration and/or use of the transliterated version of a mark can be employed unless it is perceived as posing a risk of confusion.
- A trademark becomes incontestable, that is, the validity of the registration cannot be challenged, after the following time period:

- A trademark cannot be challenged for lack of distinctiveness, descriptiveness or common use if the request for cancellation is filed later than 10 years after the registration of the mark.
- The territorial limit of registration is: for national German trademarks: Germany, including the former East Germany; for EUTMs: the territory of the European Union, and so far, including Great Britain.

### C. Term

- The initial term of a registration is:
  - 10 years.
- The beginning of the term of a registration is calculated from:
  - the application date. Renewal is due on the last day of the month in which the renewal date falls.

### D. Marking Requirements

- Marking is not compulsory for registered trademarks, but is advisable because: it can inform others of the registered status of the mark.
- Any marking should be in the form(s) mentioned below. Please consult a local trademark attorney in case of doubt.
  - ®.
- The use of ® is legally recognized. The use of that symbol is not required by the law, nor does the law provide for specific consequences of such use. However, it may help in proving use "as a trademark."
- The legal consequences of false or misleading marking are: Misleading marking is considered an act of unfair competition. If unfair competition is found (for use of misleading or false marking), competitors could initiate court proceedings (even preliminary injunctions) requesting that the use of such marking be stopped. Even damages (lost profits, reimbursement of attorney fees) could be requested, but the more important issue is the injunction.

## VII. POST-REGISTRATION

### A. Use Requirements

- Attack on the ground of non-use is available.
- To avoid being attacked on the ground of non-use, a trademark must be used within the following period of time: five years from the registration date or, if an opposition was filed, within five years of the termination of the opposition. Note that the five-year period of non-use, which makes the mark vulnerable for cancellation, may also apply later than the first five years after registration. For example, where a mark is not used within years 6 to 11 (or 7 to 12, etc.) after registration, it may be subject to cancellation for non-use.
- To satisfy the use requirement, the amount of use:
  - must be on a commercial scale.
- Use of the trademark must occur in:
  - this jurisdiction. German national trademarks therefore need to be used in the German territory; EUTMs need to be used in a relevant part of the European Union, whereas use in one European Union member state should be sufficient. This does not mean that use must be in every single angle of the territory, but it should be a relevant part, and be of more than merely local presence.
- The consequences of a trademark's not being used are as follows: It is vulnerable to cancellation for non-use after five years of non-use, and non-use may be brought as a defense in trademark infringement cases or in opposition proceedings based on a (non-used) mark.

- Periodic statements of use or other mandatory filings by the trademark owner setting forth use of the trademark are not required.
- An action for non-use of a trademark can be brought by: anyone.
- Non-use can be excused under the following circumstances:
  - compelling circumstances beyond the owner's control, which would include import restrictions or other government policies.
- Resumption of use of a trademark prior to the filing of an action to revoke or cancel that trademark may cure non-use if preparation for the resumption of use began before the registrant was aware that an action had been or was about to be filed. Article 58 of the European Union Trade Mark Regulation (EUTMR) requires the following in this regard: The commencement or resumption of use within a period of three months preceding the filing of the application or counterclaim that began at the earliest on expiry of the continuous period of five years of non-use shall, however, be disregarded where preparations for the commencement or resumption occur only after the proprietor becomes aware that an application or counterclaim may be filed.
- Use of a registered trademark in a modified form would not affect the enforceability of a registration and is allowed if the difference is slight and provided that the modification does not materially alter the distinctive character of the trademark. Consult a local trademark attorney.
- Amendment of a registration to conform to a modified form is not possible. Depending on the circumstances, a new application to register the modified trademark might be necessary. Consult a local trademark attorney.

## **B. Cancellation**

- Cancellation is available against registrations.
- The following can be grounds for cancellation:
  - proprietary rights, such as an earlier conflicting registration;
  - the mark is descriptive, i.e., it consists of a sign or indication that may serve in trade to designate the kind, quality, quantity, intended purpose or value of goods or of rendering of services or other characteristics of goods or services;
  - the mark is not distinctive;
  - the mark is misleading, deceptive or disparaging;
  - the mark is functional;
  - breach of copyright;
  - rights under Article 6bis of the Paris Convention (notorious or well-known mark);
  - rights under Article 6ter of the Paris Convention (protection of armorial bearings, flags and other State emblems);
  - rights under Article 6septies of the Paris Convention (registration in the name of the agent or other representative of the proprietor of the mark);
  - rights under Article 8 of the Paris Convention (trade names);
  - registered design rights;
  - rights in a personal name;
  - the mark is generic, i.e., the mark consists exclusively of signs or indications that have become customary in the current language or in the bona fide and established practices of the trade;
  - the mark consists of a geographical indication;
  - the mark is against public policy or principles of morality;
  - the application for or registration of the mark was made in bad faith;
  - a lapse in use.
- There is a deadline for bringing a cancellation action. The deadline exists only for certain absolute grounds, such as descriptiveness.

- The deadline for bringing a cancellation action is: 10 years from the registration date, for absolute grounds (see comments above).
- The following parties may bring a cancellation action:
  - anyone can bring a cancellation action before the German Patent and Trademark Office based on absolute grounds (Sec. 54(1) MarkenG);
  - anyone can bring a cancellation action in an ordinary court for reasons of lapse (Secs. 55(2) No. 1, 46 MarkenG);
  - the owner of a prior right can bring a cancellation action in an ordinary court for reasons of this prior right (Sec. 55(2) No. 2 MarkenG).
- Cancellation actions cannot be filed online.

### C. Renewal

- The following documentation is required for renewal: None; payment of the renewal fees suffices for renewal. However, it is advisable to file a renewal application in addition to paying the renewal fees, in order to obtain a renewal certificate. Renewal certificates are issued only if a renewal application is filed.
- The first renewal date of a registration is:
  - 10 years from the application filing date.
- Subsequent renewals last for the following period of time:
  - 10 years from the renewal date of the registration.
- The renewal pre-payment period is:
  - no more than the following number of years before the renewal date: one year.
- There is a grace period for renewing registrations once the renewal date has expired.
- The grace period after the renewal date has expired is:
  - 6 months.
- The penalty for late renewal is:
  - the registration lapses.
- Renewal cannot be effected online.
- At the completion of renewal, a new registration number is not issued.

## VIII. CUSTOMS RECORDATION

- Trademarks that are registered in this jurisdiction can be recorded with the customs authority, the name of which is: Zoll - Zentralstelle für Gewerblichen Rechtsschutz; see <http://zgr-online.zoll.de> for further information.
- Recordation with the customs authority can be accomplished online at the following URL: <http://zgr-online.zoll.de>.

## IX. DOMAIN NAMES

- Any domain name may be protected as a trademark, provided that it meets the general requirements for registration, such as distinctiveness.
- The following approved registrars can register a domain name in this jurisdiction: In principle, any registrar can be chosen, provided the registry for the particular top-level domain accepts these registrars. Apart from that, it is not necessary to use certain "approved registrars."
- Availability of domain names in this jurisdiction can be searched through the following website(s): In principle, the availability of a domain name is to be researched in the WHOIS database of the concerned registry of the top-level domain at issue. Regarding the German country code top-level domain (.de), availability can be researched through the following website: <https://www.denic.de/en/>. However, owing to the requirements in the General Data Protection Regulation, a legal interest in obtaining WHOIS data has to be shown.

- The Country Code Top-Level Domain (ccTLD) for this jurisdiction is: ".de."
- To obtain a domain name under the ccTLD in this jurisdiction, the following is required:
  - an address for service in Germany.
- Domain name registrations can be assigned.
- Domain name registrations can be licensed.
- A domain name registration may be contested in this jurisdiction through the following mechanisms:
  - a Uniform Domain-Name Dispute-Resolution Policy (UDRP) proceeding, filed through an ICANN-approved domain-name dispute resolution service provider (see <http://www.icann.org/en/help/dndr/udrp>). UDRP proceedings are not available for the German ccTLD .de; however, UDRP proceedings can be initiated with regard to all other TLDs that incorporate the UDRP.
  - the following other mechanisms, whether local dispute resolution mechanism or otherwise: Domain name registrations in Germany, in particular .de domain names, would have to be contested in regular court proceedings, based on infringement of a trademark, trade name, rights in a personal name or unfair competition. To have the domain name locked during proceedings or even during negotiations, the so-called dispute entry can be filed with the ccTLD registry.
- One may institute a UDRP proceeding with the following ICANN-approved domain-name dispute resolution service providers to contest a domain name registration in this jurisdiction:
  - World Intellectual Property Organization (WIPO);
  - Asian Domain Name Dispute Resolution Centre;
  - National Arbitration Forum;
  - The Czech Arbitration Court Arbitration Center for Internet Disputes;
  - Arab Center for Domain Name Dispute Resolution (ACDR).
  - One may use these services provided that the policy for a respective TLD accepts resolution of a domain name dispute by any of these service providers. As mentioned above, the German ccTLD .de is not subject to the UDRP, so that none of these providers could be used with regard to a .de domain name.
- Once a registration lapses as a result of failure to renew, it cannot be revived or restored. It would have to be re-registered. If, however, a third party has registered the domain name in the meantime, it would no longer be available. A strict "first come, first served" system applies with regard to .de domain names (unless registration of the domain name is considered to be infringing).
- The application to register a domain name as a trademark will not be examined for conflicts with prior trademarks.

Please note that .de domain name registrations will not be examined as to earlier trademarks. A strict "first come, first served" system applies. However, if a domain name is to be registered as a trademark, it will be treated as any other trademark application and therefore not be examined for conflicts with prior rights.

- An earlier-filed domain name registration cannot create rights effective against a later-filed trademark application filed by another unless the use of the domain name has established an intellectual property right, such as a trade name right.
- In general, the courts apply the same principles to domain name disputes as are applied to trademark disputes. In principle, German courts do not allow a claim for transfer of a domain name based on trademark infringement. In these cases, only cancellation of a domain name can be requested. Transfer of a domain name is available only for cases where registration of the domain name is considered an infringement of a well-known mark, a personal name or a trade name, or an act of unfair competition.

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