## Intellectual Property - Switzerland

### Protection of 'Made in Switzerland' designations and Swiss cross strengthened

Contributed by **FRORIEP**

November 18 2013

In today's globalised economy, the economic value of the Swiss origin of goods or services can be considerable. The word 'Swiss' represents values such as quality, reliability and tradition, both domestically and abroad. It therefore comes as no surprise that free riders often wrongfully use the Swiss brand and Swiss insignia in an attempt to benefit from the positive connotations of Swiss origin.

The use of geographical indications, including the use of Swiss designations, is regulated to a certain extent under the existing legal framework. Further, the use of the Swiss cross on goods is generally prohibited, although this is not seriously enforced.

In June 2013, after six years of preparatory work, both chambers of Parliament passed what has become known as the 'Swissness bill', with the aim of bolstering the Swiss market and the reputation of Swiss products abroad. This bill sets new standards for the use of the Swiss brand. It provides for a new legal framework, which will require the amendment of the Trademark Act and the Act on the Protection of Public Coats of Arms and Other Public Insignia. If everything goes smoothly, the new legal framework will enter into force before the end of 2015.

In future, how much Swiss value will need to be in a product for it to be lawfully labelled as Swiss made? If the new criteria are fulfilled, the new bill will allow the use of not only the designation 'Swiss', but also the Swiss cross, for both goods and services.

The new bill distinguishes between food, industrial goods and services.

Regarding food, according to Article 48(b)(2) of the new Trademark Act, at least 80% of the weight of raw materials available must originate from Switzerland (100% in case of dairy products). Additionally, all relevant production steps must occur in Switzerland (Article 48(b)(5)). If only partial production has occurred in Switzerland, no matter how complete that particular stage of production, the product can be advertised with a Swissness claim regarding the respective production step. However, the use of the Swiss cross is excluded (Article 47(3*ter*)).

The law provides for two exceptions to the 80% rule. It does not apply to:

- goods that cannot be produced in Switzerland (Article 48b(3)(a)); or
- goods that are temporarily unavailable in the necessary quantities in Switzerland (Article 48b(3)(b)).

If raw materials are not available in Switzerland in sufficient quantities, the respective percentage of availability is calculated on the basis of the respective level of self-supply in Switzerland (Article 48b(4)). The details of the calculation must be determined by the Federal Council in a new ordinance. Further exceptions include:

- a designation already listed in the official register of the Federal Office for Agriculture (Article 48(d)(a)); and
- a designation already established in the relevant public's perception.

Regarding industrial products, the Swissness bill requires that:

- at least 60% of the manufacturing costs for a Swiss product be incurred in Switzerland (Article 48(c)(1));
- the product have obtained its relevant characteristic traits in Switzerland; and
- at least one of the relevant manufacturing steps have occurred in Switzerland (Article 48(c)(4)).

The manufacturing costs comprise research and development, raw materials and

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production. Manufacturing costs exclude administrative and distribution costs.

The new bill provides two exceptions to the 60% rule. Excluded from the calculation are:

- costs for raw materials that cannot be produced in Switzerland; and
- costs for raw materials that are unavailable in Switzerland in sufficient quantities.

In these cases the use of the Swiss cross is excluded (Article 47(3*ter*)).

Finally, with regard to services, the new law requires that:

- the company offering services be domiciled in Switzerland (Article 49(1)(a)); and
- the actual place of business be in Switzerland (Article 49(a)(b)), a letterbox domicile is insufficient.

According to Article 49(2), subsidiaries of Swiss companies abroad are allowed to offer their services in Switzerland when they make use of the parent company's name (eg, Swiss Re and Credit Suisse)

Other measures introduced by the new bill include:

- a registry for designations used for non-agricultural products;
- improved protection in civil proceedings – for example, Article 51(a) provides for a reversal of the burden of proof (ie, the person using the geographic designations must prove that its use is legitimate);
- stricter criminal measures; and
- more efficient international protection.

The new Swissness bill is likely to succeed in bringing greater clarity to future use of a 'Made in Switzerland' designation and the Swiss cross for goods and services, and will also allow stricter measures to be taken against offenders in Switzerland and abroad.

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