

# Czech Republic

Contributing firm  
**PATENTSERVIS Praha as**



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## **Legal framework**

The Czech Republic is a member of the World Intellectual Property Organisation (WIPO) and party to the following multilateral international treaties concerning trademark protection:

- the Paris Convention for the Protection of Industrial Property;
- the Madrid Agreement Concerning the International Registration of Marks;
- the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks;
- the Trademark Law Treaty;
- the Nice Agreement Concerning the International classification of Goods and Services;
- the Vienna Agreement Establishing an

International Classification of the Figurative Elements of Marks; and

- the Singapore Treaty on Trademark Law.

At national level, trademarks are governed by the Trademarks Act (441/2003 Coll).

## **Unregistered marks**

A rights holder is not entitled to prevent third parties from using the trade name of an unregistered mark if such use accords with commercial practice, good-faith trade practices and the rules of competition. A rights holder must tolerate the use of an unregistered mark if the right to the unregistered mark was acquired before the trademark application was filed and does not have merely 'local reach'. The term 'local reach' should be interpreted not solely in terms of land use, but particularly in terms of the extent of use of the unregistered mark in the course of trade in terms of quantity and quality.

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There is no specific time or quantity limit, but the holder of the unregistered mark must prove long-term and continuous use of the unregistered mark.

### Registered marks

A trademark application can be filed by a natural or legal person. Power of attorney is required, but can be filed separately. No notarisation or legalisation is required.

Under the Trademark Act, a trademark may consist of any sign that is capable of being represented graphically, particularly words, including personal names, colours, designs, letters, numerals and shapes of goods or their packaging, provided that such sign is capable of distinguishing the goods or services of one undertaking from those of another undertaking.

The following shall not be registered:

- a sign which is not capable of serving as a trademark within the meaning set out above;
- a sign which is devoid of distinctive character;
- a sign which consists exclusively of signs or indications which may serve, in trade, to designate the kind, quality, value, geographical origin or other characteristics of goods and services;
- a sign which consists exclusively of signs or indications which have become customary in language or in good-faith and established trade practices;
- a sign which consists exclusively of the shape which results from the nature of the product;
- a sign which is contrary to public policy or accepted principles of morality, or which contains signs of high symbolic value (mainly religious symbols, badges, emblems and escutcheons other than those mentioned in Article 6ter of the Paris Convention);
- a sign which is of such a nature as to deceive the public as to the nature, quality or geographical origin of the goods and services; and
- a sign whose use is contrary to provisions of other laws or which is contrary to the obligations of the Czech Republic under international treaties.

Further, a trademark application will be rejected where it is obvious that it was not filed in good faith.

### Procedures

#### Examination procedure

A trademark application can be filed directly by the applicant (if the applicant is a Czech citizen) or by an authorised representative at the Czech Industrial Property Office (CIPO). The application must include:

- the trademark wording or a picture of the mark;
- the name and seat of the applicant;
- the class(es) and list of goods (a multi-class application is possible); and
- a signed power of attorney.

The CIPO first carries out a formal examination to ensure that the application contains all necessary information and that the fees have been paid. It then proceeds to a substantive examination with the objective of finding any priority identical trademarks in the National Trademarks Register, the International Trademarks Register or the Register of Community Trademarks which have been applied for or registered by another party.

Once these procedures are complete, the mark is published in the Czech *Industrial Property Bulletin*.

#### Opposition

An opposition can be filed within three months of the date of publication. If an opposition is filed, the CIPO sends the opposition to the applicant, which has two months to respond (this period can be extended). The CIPO actively decides after checking the opposition and the applicant's response, and issues an official decision – usually within eight to 10 months.

It is possible to appeal an opposition decision, in which case the CIPO will then issue a final decision.

#### Registration

If no opposition is filed, the CIPO records the trademark in the Trademarks Register and issues a registration certificate. This process takes approximately six months. The trademark is valid for 10 years from the application date.

#### Removal from register

A trademark application or registration may be affected by certain procedures filed with the

CIPO, although each such procedure has a time limit:

- An observation can be filed at any time between the date of application and the date of registration.
- An opposition can be filed within three months of the date of publication.
- A request for invalidity can be filed within five years of the date of registration.
- A request for revocation can be filed at any time once five years have passed since the date of registration.

A special procedure is surrender, which is available only to a rights holder or its representative.

### **Observation**

At any time before a trademark is recorded in the register, any person may make observations in writing to the CIPO based on Section 4 or 6 of the Trademark Law (ie, that the mark for which registration is sought is identical to an earlier trademark owned by a third party or cannot be registered because it is excluded from protection). The CIPO shall consider any such observations in deciding whether to register the trademark.

The CIPO must inform the applicant of the observations and the outcome of its decision, and the applicant may submit any comments on the observations within the period specified by the CIPO. The CIPO shall inform the party that filed the observations of the outcome of its decision.

Observations cannot be filed on the same grounds as an opposition.

### **Revocation**

The CIPO can revoke a trademark in proceedings started at the request of a third party if the mark has not been properly used within a continuous five-year period for the goods and/or services in respect of which it is registered and there are no valid reasons for non-use. Use which commenced or was resumed following five years of non-use of the mark in the three-month period before filing of the revocation request shall be disregarded where the preparations for such commencement or resumption occurred only after the rights holder became aware that a

request for revocation might be filed.

The trademark can be revoked if, through the activity or inactivity of the rights holder, the mark has become the common name in the trade for the product or service for which it is registered.

Finally, a mark can be revoked if its use by the rights holder or with its consent in respect of the goods or services for which is registered is liable to mislead the public as to the nature, quality or geographical origin of those goods or services.

A request for revocation may be filed by any party, but it must be justified and supported by evidence. It cannot be filed earlier than five years after the registration date.

If a court declares the use of a trademark to be an act of unfair competition, the CIPO shall revoke the mark, provided that a request for revocation is filed within six months of the date of the court decision. This period cannot be extended and non-observance cannot be remedied.

If grounds for revocation exist only in respect of some of the goods or services for which the trademark is registered, the CIPO shall revoke the mark in respect of only those goods or services.

### **Invalidity**

If a trademark has been registered in breach of Section 4 or 6 of the act, an invalidity procedure can be started at the request of a third party or at the initiative of the CIPO. A trademark shall not be declared invalid if it has acquired distinctiveness through use for the goods or services for which it is registered after registration.

If a trademark is declared invalid, it shall be deemed never to have been registered. A trademark may be declared invalid even after the rights holder has surrendered it or after the registration has lapsed. Further, a trademark can be declared invalid for all or part of the goods or services for which it was registered.

An application for revocation or a declaration of invalidity must be filed in writing, contain the relevant grounds and be supported by evidence.

The CIPO shall invite the rights holder to present its response to the action for revocation or a declaration of invalidity. If the rights holder

fails to do so, the CIPO shall decide based on the application alone.

### **Surrender**

A rights holder may surrender its rights to a trademark in writing in respect of some or all of the goods or services for which it is registered. The surrender shall take effect from the date of delivery of the rights holder's declaration to the CIPO; the CIPO issues no official decision in this regard.

The rights holder may not only surrender the mark for some or all of the goods or services, but may also file a written declaration with the CIPO to limit the scope of protection in respect of an element of the mark. The CIPO shall decide on the limitation of the scope of protection, taking into account the requirements set out in the Trademark Act.

The limitation of the scope of protection cannot be withdrawn.

### **Renewal**

A trademark is registered for 10 years from the application date. A request for renewal may be filed no earlier than 12 months before expiry of the registration and no later than the date of expiry. No documents are required in connection with renewal. The time limit for filing a request for renewal cannot be extended and non-observance cannot be remedied. However, a request for renewal may be filed within six months of the expiry of the registration, although in this case the fee payable is doubled.

The fee for renewal is a flat rate – that is, the amount is not affected by the number of classes of goods or services.

The renewal takes effect from the date of expiry of the trademark registration. The CIPO will register the renewal in the Trademarks Register and publish it in the *Official Journal*.

If the rights holder does not request renewal of the registration, the trademark will lapse on the last day of validity.

### **Searches**

Searches for trademarks are carried out by the CIPO in the national trademarks system and the ROMARIN database, which comprises all trademarks registered under the Madrid Agreement at WIPO in Geneva. Searches can

be performed based on the wording of the trademark, its representation or bibliographic data, including the international classification of figurative elements (Vienna Agreement) and the international classification of goods and services (Nice Agreement).

### **Enforcement**

Enforcement of a registered trademark is reasonably straightforward because the rights holder need prove only the mark's existence and unauthorised use. It is also simple to estimate damages, unjust enrichment or appropriate satisfaction, as the court can determine the amount using the licence analogy method. If there is international infringement of trademark rights, the rights holder can demand up to twice the usual licence fee.

If the rights in a registered trademark are infringed or appear likely to be infringed, the rights holder can apply to the court for an order prohibiting the infringement or impending infringement, and ordering that the consequences of the infringement be remedied.

It is possible to rely on criminal penalties for the infringement of trademark rights, but in practice this is ineffective.

The dispute process takes about three years.

### **Ownership changes and rights transfers**

A trademark can be assigned, transferred, licensed out or used as the object of a pledge. Such actions take effect against third parties once they have been entered in the Trademarks Register.

### **Assignment/transfer of rights**

A trademark may be assigned in respect of some or all of the goods or services for which it is registered. Assignment shall be carried out in writing by means of a contract. Any party to the contract may request the entry of the assignment or transfer in the Trademarks Register; or in the case of a transfer, entry may be requested by the legal successor to the rights holder.

### **Licence**

The right to use a trademark may be licensed out by means of a licence agreement concluded pursuant to the law for some or all of the goods or services for which the trademark is registered. The licence may be exclusive or non-exclusive.

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The licence agreement becomes effective against third parties on its entry in the Trademarks Register, and any party to the agreement may request entry in the register. The requirements for requesting entry of the licence agreement in the register concerning the parties to the proceeding and the respective trademark shall be laid down in the implementing regulation.

### **Pledge**

A trademark may be given as security, levied in execution and levied in bankruptcy proceedings or in compulsory settlement proceedings.

Upon request, the CIPO shall enter the facts mentioned above in the Trademarks Register. The requirements of the request for the entry concerning the parties and the respective trademark shall be laid down in the implementing regulation.

### **Change of name/seat or merger**

A change of name or seat must be filed in writing, but no evidence is required.

### **Related rights**

The subject of a three-dimensional (3D) trademark may also be protected as an industrial design (eg, a bottle); similarly, an industrial design which loses priority can be protected as a 3D trademark.

Alternatively, a picture or a 3D trademark can be protected by copyright. In case of conflict, the author of a copyrighted work must prove when it was created.

### **Online issues**

A trademark can be used on the Internet under the same conditions as any other use and therefore enjoys the same protection online.

Disputes regarding the online use of a trademark can be resolved either in court or through arbitration proceedings. [WTR](#)

Examination/registration		
Representative requires a power of attorney when filing? Legalised/notarised?	Examination for relative grounds for refusal based on earlier rights?	Non-traditional marks registrable?
Yes/No ✓ / ✓ / ✗	Yes ✓	No ✗

Unregistered rights		Opposition
Protection for unregistered rights?	Specific/increased protection for well-known marks?	Can a registration be removed for non-use? Term and start date?
Yes ✓	Yes ✓	Yes: three months after publication. ✓

Removal from register		
Can a registration be removed for non-use? Term and start date?	Are proceedings available to remove a mark that has become generic?	Are proceedings available to remove a mark that was incorrectly registered?
Yes: five years. ✓	Yes ✓	Yes ✓

Enforcement		
Specialist IP/trademark court?	Punitive damages available?	Interim injunctions available? Time limit?
Yes ✓	No ✗	Yes: no limit. ✓

Ownership changes	Online issues	
Mandatory registration for assignment/licensing documents?	National anti-cybersquatting provisions?	National alternative dispute resolution policy (DRP) for local ccTLD available?
Yes ✓	Yes ✓	Yes ✓

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Jana Remišová is a registered patent and trademark attorney. She graduated from the Patent Institute in 1996. She holds a master's from the Metropolitan University, with a specialisation in intellectual property.

She worked for the predecessor of PATENTSERVIS in the trademark field since 1978 and is an experienced trademark specialist. She is a member of the International Trademark Association.