
Romania: New Trademark Law Introduces Sweeping Amendments to Important Provisions

By [Sahil Yadav](#)

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Graphical Representation of Marks No Longer Required

Romanian law previously required that a mark be capable of graphic representation to be eligible for trademark protection. Under the new law, a trademark may consist of any sign including, importantly, sounds, provided that it is capable of distinguishing the goods or services of the applicant from those of third parties and is represented in a form in which the Trademark Office is clearly able to establish the scope of protection.

Class Headings to Be Interpreted Literally and a New Procedure Introduced to Extend Coverage for Registrations

If an existing registration covers class headings, the new law requires that the class heading be construed literally and not provide the owner with coverage for the entire class. However, the new law also introduces a procedure for owners of registrations which cover class headings to extend protection of the registration to cover additional goods/services based on the Nice Classification. Owners can file a declaration to claim additional goods/services before September 30, 2020.

New Examination Procedures

- The Trademark Office now must examine an application based on absolute grounds within seven days of filing of the application (as opposed to thirty days under the old law).
- After the Trademark Office examines an application on absolute grounds, any third party can file an observation based on absolute grounds within two months from publication of the application.
- The new law also adds a new absolute ground for refusal or invalidity. A mark will not be granted registration if it is similar or identical to a designation of origin and geographical indication, a traditional term for wine, a traditional specialty guarantee (food), or a plant variety.
- If an application is provisionally refused based on lack of distinctiveness, an applicant may now show acquired distinctiveness based on use of the mark after the date of the application (as opposed to only being able to show acquired distinctiveness based on use of the mark before the application date under the old law).

New Deadlines

The new law has reduced several deadlines from two or three months to thirty days:

- the filing of priority documents and payment of the official fee for claiming priority should be completed within thirty days of the application filing date;
- the deadline for filing a response to a provisional refusal is now thirty days (with a possibility of a three-month extension);
- the deadline to reply to official notifications issued by the Trademark Office, including notices to remedy deficiencies in an application, is now thirty days; and

- the deadline to provide the Trademark Office with proof of payment of the examination fee is now thirty days from the filing date of the application.

New Registration Provisions

- A registration is now deemed to have been finalized, (1) if no opposition is filed, on the date on which the opposition period lapses; and (2) if an opposition is filed, the date on which an opposition is withdrawn or the date on which a final decision in the opposition is issued.
- As of July 13, 2020, all trademark applicants with applications for which a decision of acceptance was issued but a certificate of registration was not requested, must request the certificate within thirty days or risk the registration being cancelled.
- *New opposition procedures*

New Opposition Procedures

- If the application is accepted, the Trademark Office will issue a grant decision. A third party may file a notice of opposition within two months of the publication of the grant decision (before, oppositions were due within two months of the publication of the application).
- The Trademark Office will also now grant a two-month cooling-off period to afford the parties an opportunity to reach an amicable settlement, and this period can be extended by another three months, if requested jointly by the parties.
- Should the parties not settle, the opposer will be granted a thirty-day period to file arguments and evidence in support of opposition, and the applicant will then be granted a thirty-day period to file arguments in reply and request proof of use from the opposer. If the applicant requests proof of use, the opposer will be granted a two-month period to file proof of use, and the applicant will be granted a thirty-day period to respond to the proof of use.
- The opposition may be suspended if the opposer's underlying registration is actively under dispute.
- The Trademark Office must make a decision in the opposition within two months of completion of the adversarial proceedings.
- *New trademark infringement and revocation provisions*

New Trademark Infringement and Revocation Provisions

- A trademark owner will now be entitled to prevent its mark from being used as a trade name or part of a trade name, or in comparative advertising in an unlawful way, or on packaging, labels, tags, security or authenticity features or devices.
- A trademark owner will also now be entitled to prevent third parties from importing goods into Romania in the course of trade without releasing such goods for free circulation in Romania.
- The defendant can request proof of use of the plaintiff's trademark in an infringement action and the action will be rejected if the plaintiff does not file sufficient evidence of use.
- Effective January 14, 2023, the Trademark Office will handle applications for revocation and declaration of invalidity of trademarks in addition to the Bucharest Tribunal, and the applicant will be free to choose between the two forums.

Our Comments

The changes introduced by Law 112/2020 are a welcome step towards modernization of Romania's trademark legislation, making it commensurate to the digital age. Additionally, the rights of trademark owners have been enhanced with the introduction of protections against use of their marks as trade names and the like. Finally, with the shortening of certain deadlines and the imposition of shorter time limits on the Trademark Office to examine applications and adjudicate oppositions, it should be quicker to obtain a registration or a decision in an *inter-partes* proceeding.