

THE FUTURE OF THE SWISS FLAG AS A TRADEMARK...

On June 19, 2007 took place the Swiss Label General Meeting during which the Federal Councillor Christoph Blocher focused his speech on the trademarks referring to the concept of "Swiss origin", like for example the Swiss cross, the expressions "made in Switzerland" or "Swiss made".

According to the Federal Councillor, since said trademarks are used more and more as a marketing argument the current regulation needs clear modifications and clarifications in order to avoid and fight the misuse of precious distinctive signs that illustrate the Swiss quality and reputation built throughout centuries. Therefore, the Federal Council is expected to decide by the end of the year on holding consultations with a view to amending legislation.

The debate is launched and this is the occasion to give a brief overview of the current situation regarding the use of the Swiss emblems.

A) International law

According to the Paris Convention for the Protection of Industrial Property of March 20, 1883, with effect in over 165 countries as well as to the WTO Agreement of September 19, 1994 on the Trade Related Aspects of Intellectual Property Rights (TRIPS), the registration as trademark of coat of arms or emblems such as the Swiss flag is illegal and prohibited. National offices in charge of the [registration](#) of trademarks are, therefore, not authorized to accept the filing of these signs.

Not only is the registration as a trademark *per se* forbidden but also the deceptive [use](#) of the sign. In fact, the main function of a trademark is indicating to consumers the origin of the goods and/or services and when the products are actually not manufactured in Switzerland or by a Swiss company, the use of the Swiss cross can be considered as misleading.

The Swiss Institute of Intellectual Property (IGE) is active in the fight against such misuse and provides information in a targeted way principally to the Swiss embassies abroad and to the customs administration, but also to individuals. In the majority of cases, official warnings are sent to the offenders.

B) Swiss national law

In Switzerland, the use of the Swiss cross is currently regulated by the Federal Law on the Protection of Coat of Arms dated 1931 according to which the Swiss coat of arms is a symbol of the sovereignty of the State and, as such, under its exclusive control. It [can](#)



not be registered as a trademark for goods and shall **not be used on products for commercial purposes** by companies or persons not linked to the State.

For the time being, the registration of the Swiss flag as a trademark (alone or in combination with other elements) as well as its use for commercial purposes is forbidden by the national law. **Only non commercial uses** on products like souvenirs are authorized.

However, depending on the issue of the debate started on the occasion of the Swiss Label General Meeting the law might be amended in the coming months and the use of the Swiss cross permitted also for commercial purposes provided that the goods bearing the mark be produced or manufactured in Switzerland.