

Directive (EU) 2015/2436 of the European Parliament and of the Council of 16 December 2015 to approximate the laws of the Member States relating to trade marks (Recast) (Text with EEA relevance)

CHAPTER 2

SUBSTANTIVE LAW ON TRADE MARKS

SECTION 3

Rights conferred and limitations

Article 16

Use of trade marks

1 If, within a period of five years following the date of the completion of the registration procedure, the proprietor has not put the trade mark to genuine use in the Member State in connection with the goods or services in respect of which it is registered, or if such use has been suspended during a continuous five-year period, the trade mark shall be subject to the limits and sanctions provided for in Article 17, Article 19(1), Article 44(1) and (2), and Article 46(3) and (4), unless there are proper reasons for non-use.

2 Where a Member State provides for opposition proceedings following registration, the five-year period referred to in paragraph 1 shall be calculated from the date when the mark can no longer be opposed or, in the event that an opposition has been lodged, from the date when a decision terminating the opposition proceedings became final or the opposition was withdrawn.

3 With regard to trade marks registered under international arrangements and having effect in the Member State, the five-year period referred to in paragraph 1 shall be calculated from the date when the mark can no longer be rejected or opposed. Where an opposition has been lodged or when an objection on absolute or relative grounds has been notified, the period shall be calculated from the date when a decision terminating the opposition proceedings or a ruling on absolute or relative grounds for refusal became final or the opposition was withdrawn.

4 The date of commencement of the five-year period, as referred to in paragraphs 1 and 2, shall be entered in the register.

5 The following shall also constitute use within the meaning of paragraph 1:

- a use of the trade mark in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered, regardless of whether or not the trade mark in the form as used is also registered in the name of the proprietor;
- b affixing of the trade mark to goods or to the packaging thereof in the Member State concerned solely for export purposes.

6 Use of the trade mark with the consent of the proprietor shall be deemed to constitute use by the proprietor.