

Council Regulation (EC) No 40/94 of 20 December
1993 on the Community trade mark (repealed)

TITLE VI

SURRENDER, REVOCATION AND INVALIDITY

SECTION 5

**PROCEEDINGS IN THE OFFICE IN RELATION
TO REVOCATION OR INVALIDITY**

Article 55

Application for revocation or for a declaration of invalidity

1 An application for revocation of the rights of the proprietor of a Community trade mark or for a declaration that the trade mark is invalid may be submitted to the Office:

- a where Articles 50 and 51 apply, by any natural or legal person and any group or body set up for the purpose of representing the interests of manufacturers, producers, suppliers of services, traders or consumers, which under the terms of the law governing it has the capacity in its own name to sue and be sued;
- b where Article 52 (1) applies, by the persons referred to in Article 42 (1);
- c where Article 52 (2) applies, by the owners of the earlier rights referred to in that provision or by the persons who are entitled under the law of the Member State concerned to exercise the rights in question.

2 The application shall be filed in a written reasoned statement. It shall not be deemed to have been filed until the fee has been paid.

3 An application for revocation or for a declaration of invalidity shall be inadmissible if an application relating to the same subject matter and cause of action, and involving the same parties, has been adjudicated on by a court in a Member State and has acquired the authority of a final decision.

Article 56

Examination of the application

1 On the examination of the application for revocation of rights or for a declaration of invalidity, the Office shall invite the parties, as often as necessary, to file observations, within a period to be fixed by the Office, on communications from the other parties or issued by itself.

2 If the proprietor of the Community trade mark so requests, the proprietor of an earlier Community trade mark, being a party to the invalidity proceedings, shall furnish proof that, during the period of five years preceding the date of the application for a declaration of invalidity, the earlier Community trade mark has been put to genuine use in the Community in connection with the goods or services in respect of which it is registered and which he cites as justification for his application, or that there are proper reasons for non-use, provided the earlier Community

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Changes to legislation: There are currently no known outstanding effects for the Council Regulation (EC) No 40/94 (repealed), SECTION 5. (See end of Document for details)

trade mark has at that date been registered for non-use, provided the earlier Community trade mark has at that date been registered for not less than five years. If, at the date on which the Community trade mark application was published, the earlier Community trade mark had been registered for not less than five years, the proprietor of the earlier Community trade mark shall furnish proof that, in addition, the conditions contained in Article 43 (2) were satisfied at that date. In the absence of proof to this effect the application for a declaration of invalidity shall be rejected. If the earlier Community trade mark has been used in relation to part only of the goods or services for which it is registered it shall, for the purpose of the examination of the application for a declaration of invalidity, be deemed to be registered in respect only of that part of the goods or services.

3 Paragraph 2 shall apply to earlier national trade marks referred to in Article 8 (2) (a), by substituting use in the Member State in which the earlier national trade mark is protected for use in the Community.

4 The Office may, if it thinks fit, invite the parties to make a friendly settlement.

5 If the examination of the application for revocation of rights or for a declaration of invalidity reveals that the trade mark should not have been registered in respect of some or all of the goods or services for which it is registered, the rights of the proprietor of the Community trade mark shall be revoked or it shall be declared invalid in respect of those goods or services. Otherwise the application for revocation of rights or for a declaration of invalidity shall be rejected.

[^{F16} A record of the Office's decision on the application for revocation of rights or for a declaration of invalidity shall be entered in the Register once it has become final.]

Textual Amendments

- F1** Substituted by [Council Regulation \(EC\) No 422/2004 of 19 February 2004 amending Regulation \(EC\) No 40/94 on the Community trade mark \(Text with EEA relevance\)](#).

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