

(2) A trademark right covering designated goods that are the object of reclassification of goods but not indicated in a registration application under Article 46bis(2) is extinguished on the date on which the designated goods indicated in the application are reclassified and registered under Article 46*quinquies*.

CHAPTER VI

PROTECTION OF OWNER OF A TRADEMARK RIGHT

Article 65 Injunction etc. against an Infringement

(1) The owner of a trademark right or an exclusive licensee may request a person who is infringing or is likely to infringe on the trademark right or exclusive license to discontinue or refrain from the infringement.

(2) The owner of a trademark right or exclusive licensee who is acting under paragraph(1) of this Article may demand the destruction of the infringing articles, the removal of the facilities used for the act of infringement, or other measures necessary to prevent the infringement.

Article 66 Acts Considered to be an Infringement

The following acts are considered to be infringements of a trademark right or an exclusive license:

- (i) acts of using a trademark identical to the registered trademark of another person on goods identical or similar to the designated goods, or using a trademark similar to the registered trademark of another person on goods identical or similar to the designated goods;
- (ii) acts of delivering, selling, counterfeiting, imitating or possessing a trademark identical or similar to the registered trademark of another

person to use or cause a third party to use the trademark on goods identical or similar to the designated goods;

- (iii) acts of manufacturing, delivering, selling or possessing instruments to counterfeit or imitate a registered trademark of another person or to cause a third party to counterfeit or imitate the trademark.
- (iv) acts of possessing goods to assign or deliver, that are identical or similar to the designated goods on which a trademark identical or similar to the registered trademark of another person is indicated.

Article 67 Presumption etc. of the Amount of Damages

(1) Where the owner of a trademark right or an exclusive licensee claims compensation from a person who has intentionally or negligently infringed a trademark right or exclusive license for damages caused by the infringer's transfer of infringing articles, the amount of damages is calculated as the number of transferred articles multiplied by the profit per unit of the articles that the owner of the trademark right or exclusive licensee might have sold in the absence of the infringement. However, the compensation must not exceed an amount calculated as follows: the estimated profit per unit multiplied by the number of articles that the trademark right owner or licensee could have produced subtracted by the number of articles actually sold. If the owner of the trademark right or exclusive licensee was unable to sell the article for reasons other than infringement, a sum calculated according to the number of articles subject to the reasons must be deducted.

(2) Where the owner of a trademark right or an exclusive licensee claims compensation for damages from a person who has intentionally or negligently infringed the trademark right or the exclusive license, the profits gained by the infringer from the infringement are considered to be the amount of damage suffered by the owner of the trademark right or exclusive licensee.

(3) Where the owner of a trademark right or an exclusive licensee claims compensation from a person who has intentionally or negligently infringed the trademark right or exclusive license due to damages caused by the infringement, the amount of money that the owner or exclusive licensee

would normally be entitled to receive by using the registered trademark may be claimed as the amount of damages suffered.

(4) Notwithstanding paragraph (3) of this Article, where the amount is in excess of the amount referred to in paragraph (3), the excess amount may also be claimed as compensation for damage. When awarding damages in such cases, the court may consider whether the person who infringed the trademark right or the exclusive license was willful or grossly negligent.

(5) In litigation related to the infringement of a trademark right or exclusive license, where the court recognizes that the nature of the facts of the case make it difficult to provide evidence proving the amount of damage that has occurred, notwithstanding paragraphs (1) to (4), the court may determine a reasonable amount based on an examination of the evidence and on a review of all the arguments.

Article 68 Presumption of Intent

A person who has infringed a trademark right or an exclusive license on a trademark marked with an indication of trademark registration in accordance with Article 90 is presumed to have known that the trademark was registered.

Article 69 Measures for Recovering the Business Reputation of the Owner of a Trademark Right etc.

Upon a request of the owner of a trademark right or an exclusive licensee, the court may, in lieu of damages or in addition to damages, order a person who has injured the business reputation of the owner of the trademark right or exclusive licensee, by intentional or negligent infringement of the trademark right or exclusive license, to take necessary measures to restore the business reputation of the owner or exclusive licensee.

Article 70 Submission of Documents

In litigation related to the infringement of a trademark right or an exclusive

license, the court may, upon the request of either party, order the other party to submit documents necessary for the assessment of damages caused by the infringement, unless the person who possesses the documents has justifiable reasons for refusing to submit them.

CHAPTER VII

TRIAL

Article 70bis Trial against Decision of Refusal

Any person dissatisfied with a decision to refuse registration of a trademark, to refuse supplementary registration of designated goods, to refuse to renew the term of a registered trademark or to refuse to registration of the reclassification of goods (referred to as "a decision of refusal") may request a trial within thirty days of the date of receiving a certified copy of the decision of refusal.

Article 70ter Trial against a Decision to Reject an Amendment

Any person dissatisfied with a decision to reject an amendment under Article 17(1) may request a trial within thirty days of the date of receiving a certified copy of the decision.

Article 71 Invalidation Trial of a Trademark Registration

(1) In the following cases, an interested person or an examiner may demand a trial to invalidate a registered trademark or the supplementary registration of designated goods. In such a case, if two or more designated goods are covered by the trademark registration, a request for an invalidation trial may be made for each of the designated goods: