

Use of the “SWISS MADE” Indication of Source (Origin)

General information

Article 47, paragraph 1 of the Swiss Law on the Protection of Trademarks and Indications of Source (Trademark Law; SR 232.11), dated August 28, 1992, defines indications of source as direct (geographic name) or indirect (Swiss Cross, Matterhorn, etc.) references to the geographical origin of goods or services. This includes references to the nature or properties of goods (such as “Swiss Quality” or the designation “Dôle” or others), which relate to their origin.

Article 47 Paragraph 3 prohibits the use of:

- a. incorrect indications of source;
- b. designations that could be confused with inapplicable indications of source;
- c. names, addresses or trademarks connected with goods or services of foreign origin where this could be deceptive.

Origin of Goods (Trademark Law, Art. 48)

The origin of goods is generally determined by the place of manufacture or by the origin of the basic materials or components used for manufacturing (Trademark Law, Art. 48, para. 1).

In addition, other conditions may have to be met, in particular, compliance with manufacturing principles and quality requirements (e.g., for watches or for agricultural products) that are customary or mandatory in the originating region (Trademark Law, Art. 48, para. 2).

There are no generally accepted regulations in Switzerland that determine under which conditions it would be permissible to label goods with specific indications of geographic origin. One exception relates to watches; there is an ordinance concerning the use of the Swiss name for watches dated December 23, 1971 (SR 232.119), which was issued by the Federal Council based on the Trademark Law. The Foodstuffs Ordinance of March 1, 1995 (SR 817.02) also contains a few provisions relating to indications of origin intended to prevent deception regarding origin (e.g., for cheese).

In principle, the name “Switzerland,” as well as designations such as “Swiss,” “Swiss quality,” “Made in Switzerland,” “Swiss Made” or others containing the Swiss name, can only be used for products manufactured in Switzerland. This also applies to the translation of any of these terms into any other language.

Currently, more and more products are being sold which are not 100% Swiss-manufactured. In such cases, actual legal practice is based on the rules laid down in Article 48 of the Trademark Law and a 1968 ruling issued by the trade court of St. Gallen, reiterated in 1992 (Schweizerische Juristen-Zeitung 1972, p. 207, and St. Gallische Gerichts- u. Verwaltungspraxis 1992, No. 39). These court rulings outline the conditions for the legal use of

the designation “Swiss Made” and similar designations, especially for goods not manufactured in Switzerland in their entirety¹:

“Products are considered Swiss products if they are fundamentally local products or if they have been completely manufactured in Switzerland. In the case of products that have been only partly manufactured in Switzerland, the rule applies that the Swiss portion of the production cost (including basic materials, semi-finished products, accessories, wages and production overhead excluding distribution costs) must be at least 50%. However, this 50% portion is not the sole criterion for determining the Swiss origin of a product. The origin of the essential components and the manufacturing process through which a product obtains its characteristic features, and – in borderline or doubtful cases – the origin of the intellectual property embodied in the product and the special circumstances in the respective industry must also be taken into due consideration.”

Accordingly, there are two conditions that must be fulfilled for goods to be legally labeled as being of Swiss origin:

- **The Swiss portion of the production cost must be at least 50%.**
- **The most important part of the manufacturing process must have taken place in Switzerland.**

The “most important part of the manufacturing process” is that part of the process that results in a completely new product. The determining factor here is that the original characteristics of the goods are lost through the manufacturing process, and the possible application of the goods is different from that of the basic materials of foreign origin used in their manufacture.

In addition, the origin of goods is determined by the place where they are produced, not by where the idea for producing these goods was conceived. A product manufactured in Switzerland under a foreign license will still be Swiss in origin, while a product manufactured abroad using Swiss recipes or Swiss methods will still be foreign in origin.

Origin of Services (Trademark Law, Art. 49)

The origin of services is determined by the registered office of the person providing the service, or

the nationality or domicile of the person exercising actual control over the policy and management of the business (Art. 49, para.1).

In addition, further conditions may also be required, namely the compliance with the principles that are usual or prescribed for providing the service or the traditional association of those persons who provide the service with the country of origin (Art. 49, para.2).

¹ This principle does not hold for goods for which there are special rules (such as watches or cheese).

Finally, it should be noted that is ultimately up to the courts to rule on this question. They are in no way bound by the opinion of any public office.