

**Information sheet for drafting an affidavit to prove the use of an opposition mark in the opposition procedure before the German Patent and Trademark Office:**

- It is necessary to show that the signatory has the necessary information about the use of the opposition mark. Therefore, the **function of the signatory** (e.g. sales manager) should be indicated.
- The affidavit must be **signed personally**. It is not admissible to sign the affidavit as a representative in the name of the trademark owner. Further, it is not necessary and not advisable to type the affidavit on the company's letterhead.
- The affidavit must indicate precisely for **which goods respectively services** the opposition mark has been used.
- The affidavit must indicate that the opposition mark has been **used in Germany**. All information with regard to use of the opposition mark must refer to the use of the opposition mark in Germany only.

However, due to a bilateral treaty between Switzerland and Germany a use of the opposition mark in Switzerland might be considered as well.

- It is absolutely necessary that the affidavit comprises information about the **extent of the use** of the opposition mark in Germany. In general, it is sufficient to indicate sales figures. Please note that it is not necessary to indicate the exact sales figures. It is rather sufficient to indicate lower limits (e.g. "more than DM 100.000,-" or "more than 50.000 packages").
- It has to be indicated in which **time period** the opposition mark has been used in Germany. It is necessary that the opposition mark has been used within the last five years before the publication of the registration of the opposed trademark and within the last five years before the signing date of the affidavit.
- The affidavit must show **how** the opposition mark has actually been used, i.e. in which graphical representation. This can be done by referring to enclosed samples.
- The affidavit must indicate the **person who actually used** the opposition mark. If this person is not identical with the registered trademark owner, the affidavit must indicate the legal relationship (e.g. trademark license, affiliated company) between the trademark owner and the person who actually used the mark.

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*The above information is no legal advice and without any obligation. We strongly recommend to ask for professional advice.*