



The new “Swissness” legislation

5 December 2016

Swissness

Introduction

- ❑ Swiss goods and services are valued by consumers;
- ❑ Consequently, consumers can be charged a higher price for Swiss quality over other like products from origins unknown.
- ❑ This “Swissness” premium can account for up to:
 - 20% of the sales price for agricultural products and typical Swiss products;
 - 50% for luxury goods (source cited by the Swiss Federal Institute of International Property).
- ❑ Legislation was adopted by Parliament on 21 June 2013 to avoid wrongful use and maintain the “Swissness” premium.
- ❑ The Federal Council opened the consultation process for the execution ordinance of the “Swissness” legislation in 2014.
- ❑ This legislation comes into force on 1 January 2017.

Swissness

Existing law

- ❑ The determination of the origin of goods depends on where it was manufactured or by the origin of the base materials and components used.
- ❑ For services, a Swiss indication of origin is permitted when the service provider is domiciled in Switzerland or when the director is a Swiss citizen.
- ❑ The use of the Swiss coat of arms (Swiss cross in triangular shaped shield) is not allowed for business purposes on products and packaging.
- ❑ Enforcement is difficult and rare and the present imprecise rules are often ignored by the market.

Swissness

New law

- ❑ The “Swissness” legislation is based upon:
 - Federal Act on the Protection of Trademarks and Indications of Origin (amended).
 - Federal Act on the Protection of the Swiss Coat of Arms and other Official Signs (amended).
 - Trademark Protection Ordinance (amended) and the three following new execution ordinances:
 - Ordinance on the Use of the Swiss Indication of Origin for Foodstuffs;
 - Ordinance on the Register of Protected Designations of Origin and Geographical Indications for Non-Agricultural Products;
 - Ordinance on the Protection of the Coat of Arms and other Official Signs.
 - Ordinance on the Use of the Swiss name for Watches (amended).

Swissness

Indication of origin

- ❑ Swiss origin is determined by different criteria, depending on the category.

Natural products:

- Agricultural products (e.g. apples) are classified as Swiss if they are harvested in Switzerland;
- Meat is considered Swiss if the animals spent the majority part of their life in Switzerland; and
- Other products are Swiss if obtained from animals kept in Switzerland (e.g. eggs).

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Foodstuffs

- ❑ Processed products may only be labeled as Swiss if:
 - A minimum of 80% of the raw materials originate from Switzerland. This proportion is increased to 100% of the weight of the raw materials for milk and milk based products;
 - Processing from which a foodstuff obtains its essential characteristics must have taken place in Switzerland.
- ❑ The following principles are applicable to the calculation:
 - Switzerland's self-sufficiency rate is taken into account;
 - Natural products not existing in Switzerland (for example cocoa) or which are temporarily unavailable for reasons completely independent of the producers can be excluded from the above calculation.
- ❑ Swiss water may be included in the calculation for beverages when it is a primary ingredient. Otherwise, it is not taken account for the calculation.
- ❑ For advertising purposes the indications of source law (e.g. "Swiss Made") may be optionally used. In parallel, the foodstuffs law still provides the obligation to declare the country of production and the raw materials of a food product on its label for reasons of public health protection and providing information to consumers.

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Industrial products

- ❑ An industrial product may be labeled as Swiss if:
 - At least 60% of the manufacturing costs occur in Switzerland; and
 - The activity constituting the essential characteristics takes place in Switzerland (i.e. manufacture or research). If the activity is research only, then a 'physical' manufacturing step must be carried out in Switzerland.

Services

- ❑ The country of origin can only be indicated as Swiss if the domicile as well as the place of effective management of the service provider is located in Switzerland;
- ❑ Letter-box companies do not create a sufficient connection to Switzerland.

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Watches

- ❑ The amended version of the Ordinance on the Use of the Swiss Name for Watches includes the following key points:
 - References to Switzerland may only be used for Swiss watches and clockwork (like before);
 - A minimum of 60% of manufacturing costs of a watch (or clockwork) must take place in Switzerland;
 - The technical development must be carried out in Switzerland;
 - Smart watches are now included in the definition of the term “watch”.

Use of Swiss cross

- ❑ Under the new law, the Swiss cross may be used not only for Swiss services (like before), but also for the designation of Swiss goods.
- ❑ The mere decorative use of the Swiss cross is still allowed (e.g. a red T-shirt with a large white cross as its motif).
- ❑ The Swiss coat of arms (Swiss cross in triangular shaped shield) can only be used by state administrative entities.

Swissness

New Geographical mark

- ❑ The new “Swissness” legislation provides for the creation of a register of geographical indications for non-agricultural products (e.g. “Geneva” for watches).

Geographical trademarks

- ❑ The new regulations provide for the possibility of registering designations of origin and geographical indications as a geographical mark in a federal register (e.g. “Valais Raclette”).

Enforcement

- ❑ No prior approval for the use of the Swiss indication of origin and the Swiss cross required;
- ❑ There are civil and customs remedies for the unlawful use of the Swiss indication of origin and the Swiss cross.
- ❑ The Swiss Federal Institute of Intellectual and Property (IPI) will be able to file charges in the name of the confederation and bring civil action before a court.
- ❑ Civil actions will also be authorized for trade associations and consumer protection organizations.

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Mr. Kohler's practice focuses on corporate and commercial law including mergers & acquisitions (M&A) and contract law.

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Prior to joining the firm in 2015, Mr. Kohler practiced at various leading firms in Switzerland.

He provided Swiss legal advice to high net worth individuals and multi-national luxury goods corporations.

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