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Ordinance on the Use of Swiss Indications of Source for Cosmetic Products

of 23 November 2016 (Status as of 1 January 2017)

The Swiss Federal Council,

on the basis of Article 50 paragraph 2 of the Trade Mark Protection Act of 28 August 1992¹,

ordains:

Art. 1 Subject matter and scope

¹ This Ordinance regulates the use of Swiss indications of source for cosmetic products.

² In the absence of specific provisions in this Ordinance, the provisions of the Trade Mark Protection Ordinance of 23 December 1992² apply.

Art. 2 Definitions

In this Ordinance:

- a. *cosmetic products* means cosmetic products in accordance with the Swiss legislation on foodstuffs and utility articles;
- b. *bulk product* means the substances and mixtures of substances used in a cosmetic product before it is filled into the primary packaging, or before it is combined with the applicator;
- c. *applicator* means a device that forms part of a cosmetic product or its packaging and that is used, in particular, to apply the cosmetic product;
- d. *research, development and production costs* means the manufacturing costs under Article 4, excluding cost of materials;
- e. *primary packaging* means the packaging material that is used to store a cosmetic product and thereby comes into direct contact with the cosmetic product.

AS 2016 4521

¹ SR 232.11

² SR 232.111

Art. 3 Principle

The Swiss indication of source for a cosmetic product is considered to be correct if:

- a. at least 60 per cent of the manufacturing costs are incurred in Switzerland;
- b. at least 80 per cent of the research, development and production costs are incurred in Switzerland; and
- c. the following activities take place in Switzerland or at the location specified in Switzerland:
 1. the manufacture of the bulk product,
 2. filling the primary packaging with the cosmetic product or combining the bulk product and the applicator to make a ready-to-use cosmetic product, and
 3. the quality controls and certifications which are required by law or uniformly regulated in the economic sector.

Art. 4 Relevant manufacturing costs

¹ In the calculation of the manufacturing costs, only the following costs are taken into account:

- a. the costs of research and development, in particular the costs of testing the stability of a cosmetic product, of testing the compatibility of packaging, of microbiological challenge testing and of transferring laboratory processes into industrial production (upscaling costs);
- b. the costs of manufacturing the bulk product, including the cost of materials;
- c. the costs of filling the primary packaging with the cosmetic product and of combining the bulk product with an applicator to form a ready-to-use cosmetic product;
- d. the costs incurred in connection with manufacturing a cosmetic product in compliance with provisions regarding health protection, consumer information and safety assessment, particularly the costs of preparing a dossier on the safety assessment, for the authorisation, registration or notification of a cosmetic product, and of maintaining a product information file, unless these costs must be incurred abroad;
- e. the costs for quality controls and certifications under Article 3 letter c number 3.

² Excluded from the calculation under paragraph 1 are, in particular:

- a. the costs of tests primarily used for the purpose of marketing the cosmetic product;
- b. the costs of packaging and applicators, unless the costs in question are those specified under paragraph 1 letters a and c;
- c. the transport costs for the cosmetic product;

- d. the costs of storing the cosmetic product;
- e. the costs of commercialising the cosmetic product, as well as marketing and customer service costs.

Art. 5 Indications concerning specific activities

¹ If a cosmetic product as a whole does not fulfil the requirements for using the Swiss indication of source, an indication concerning the specific activities related to the manufacture of the product may be used if the activity in question takes place exclusively in Switzerland or at the location specified in Switzerland.

² The indication of geographical origin of the specific activity may not give the impression that it is referring to the origin of the cosmetic product as a whole.

³ The Swiss cross and other indirect Swiss indications of source, or signs which could be confused with these indications, may not be used in connection with the indication concerning specific activities.

Art. 6 Indications of source for individual materials

¹ If a cosmetic product as a whole does not fulfil the requirements for using the Swiss indication of source, an indication of source for individual materials may be used if:

- a. the materials in question give the cosmetic product its name or essential characteristics and originate entirely from Switzerland; and
- b. in the manufacturing process of the cosmetic product, the activities under Article 3 letter c take place in Switzerland or at the location specified in Switzerland.

² The Swiss indication of source may not appear in larger print than the specific designation of the cosmetic product.

³ The Swiss cross and other indirect Swiss indications of source, or signs which could be confused with these indications, may not be used.

⁴ The indication of geographical origin of individual materials may not give the impression that it is referring to the origin of the cosmetic product as a whole.

Art. 7 Mandatory indication of the origin of goods

¹ Where a cosmetic product does not fulfil the requirements for using the Swiss indication of source but mandatory provisions stipulate that the product or its packaging must indicate Switzerland as the country of origin or must bear another indication of Swiss origin if it is to be placed on the market, the following applies:

- a. The indication may not be highlighted, particularly in terms of colour, text size or graphic design.
- b. The indication must be incorporated into the other mandatory indications on the cosmetic product or its packaging.
- c. The Swiss cross and other indirect Swiss indications of source, or signs which could be confused with these indications, may not be used.

² With regard to cosmetic products intended for export, if mandatory provisions apply in the country of destination which are not compatible with the provisions under paragraph 1, then the provisions of the country of destination take precedence.

Art. 8 Information on the availability of materials in Switzerland

The industry may provide information to manufacturers of cosmetic products by maintaining a list with information on the availability of materials for the manufacture of cosmetic products.

Art. 9 Commencement

This Ordinance comes into force on 1 January 2017.