

English is not an official language of the Swiss Confederation. This translation is provided for information purposes only and has no legal force.

**Federal Act
on the Protection of the Swiss Coat of Arms
and Other Public Signs
(Coat of Arms Protection Act, CAPA)**

of 21 June 2013 (Status as of 1 January 2017)

The Federal Assembly of the Swiss Confederation

on the basis of Article 122 of the Federal Constitution¹,
and having considered the Dispatch of the Federal Council dated
18 November 2009²,

decrees:

Chapter 1 Swiss Public Signs

Section 1 Definitions

Art. 1 Swiss cross

The Swiss cross is a white, upright, free-standing cross depicted against a red background, whose arms, which are all of equal size, are one-sixth longer than they are wide.

Art. 2 Swiss coat of arms

¹ The Coat of Arms of the Swiss Confederation (the Swiss coat of arms) is a Swiss cross in a triangular shield.

² The example depicted in Annex 1 defines the shape, colour and proportions.

Art. 3 Swiss flag

¹ The Swiss flag shows a Swiss cross on a square background.

² The example depicted in Annex 2 defines the shape, colour and proportions.

³ The following remain reserved:

- a. the Navigation Act of 23 September 1953³;

AS 2015 3679

¹ SR 101

² BBI 2009 8533

³ SR 747.30

- b. the Civil Aviation Act of 21 December 1948⁴;
- c. the Armed Forces Act of 3 February 1995⁵.

Art. 4 Other emblems of the Confederation

The Federal Council shall designate other emblems of the Confederation; these include, in particular, the federal signs indicating control and guarantee.

Art. 5 Coats of arms, flags and other emblems of the cantons, the communes and other public authorities recognised under cantonal law

The coats of arms, flags and other emblems of the cantons, the communes and other public authorities recognised under cantonal law are determined by cantonal law.

Art. 6 Official designations

The following terms are considered official designations:

- a. «Confederation»;
- b. «federal»;
- c. «canton»;
- d. «cantonal»;
- e. «commune»;
- f. «communal»;
- g. any other terms that imply a Swiss authority or an official or semi-official activity.

Art. 7 National figurative or word signs

Signs that refer to national symbols such as Swiss landmarks, heroic figures, sites or monuments are considered national figurative or word signs.

Section 2 Use

Art. 8 Coats of arms

¹ The Swiss coat of arms, those of the cantons, the communes and other public authorities recognised under cantonal law, the characteristic elements of cantonal coats of arms in connection with a coat of arms shield and signs that could be confused with them may only be used by the public body to which they belong.

⁴ SR 748.0

⁵ SR 510.10

² Paragraph 1 also applies to word signs that refer to the Swiss coat of arms or the coat of arms of a canton, a commune or other public authority recognised under cantonal law.

³ The signs referred to in paragraphs 1 and 2 may not be licensed or assigned.

⁴ The use of coats of arms under paragraph 1 by persons other than the public body entitled to use them is permissible in the following cases:

- a. as illustrations in dictionaries, reference works, scientific works or similar works;
- b. for the decoration of festivals and events;
- c. for the decoration of objects of artistic craftsmanship such as cups, heraldic stained glass and commemorative coins for festivals and events;
- d. as an element of the Swiss patent mark under the provisions of the Patents Act of 25 June 1954⁶;
- e. in collective or guarantee marks that have been filed by a public body and may be used by private persons in accordance with the regulations governing the use of the mark;
- f. where there exists a right to continued use under Article 35.

⁵ The cantons, communes and other public authorities recognised under cantonal law may allow the use of their respective coats of arms by other persons in other cases.

Art. 9 Official designations

¹ Official designations and terms with which they could be confused may only be used on their own by the public body to which they belong.

² The use of designations under paragraph 1 by persons other than the public body entitled to use them is only permissible when such persons are carrying out an official or semi-official activity.

³ Designations under paragraph 1 may be used in conjunction with other word or figurative elements to the extent that such use is neither misleading nor contrary to public policy, morality or applicable law.

Art. 10 Flags and other emblems

Flags and other emblems of the Confederation, cantons, communes and other public authorities recognised under cantonal law, as well as signs that could be confused with them may be used to the extent that such use is neither misleading nor contrary to public policy, morality or applicable law.

Art. 11 National figurative and word signs

National figurative and word signs may be used to the extent that such use is neither misleading nor contrary to public policy, morality or applicable law.

⁶ SR 232.14

Art. 12 Public Swiss signs and public foreign signs

The use of coats of arms, flags and other public Swiss emblems that may be used under this Act may not be prohibited for the reason that the sign in question could be confused with a public sign of a foreign state.

Art. 13 Use of signs as indications of source

Where signs under Article 8 paragraphs 1 and 2, 10 and 11 are understood by the relevant public to be an indication of the geographical origin of goods and services, they are considered to be indications of source within the meaning of the Trade Mark Protection Act of 28 August 1992⁷ (TmPA) and are subject to Articles 47–50 TmPA.

Section 3 Prohibition on Registration**Art. 14**

¹ A sign whose use is prohibited under Articles 8-13 may not be registered as a trade mark, design, business name or name of an association or foundation or as an element of such.

² The prohibition on registration also applies to those cases in which use is permissible under Article 8 paragraphs 4 and 5.

³ Excluded from the prohibition on registration are signs for which the Federal Department of Justice and Police has granted a right to continued use under Article 35.

Chapter 2 Foreign Public Signs**Section 1 Use and Authorisation****Art. 15** Use

¹ Coats of arms, flags and other foreign state emblems or signs that could be confused with them, as well as national figurative and word signs of foreign states, may only be used by the state to which they belong; Article 16 remains reserved.

² The state entitled to use the signs under paragraph 1 may use them to the extent that such use is neither misleading nor contrary to public policy, morality or applicable law.

³ Coats of arms, flags and other emblems of other foreign public bodies, in particular of communes, may be used to the extent that such use is neither misleading nor contrary to public order, morality or applicable law.

⁷ SR 232.11

⁴ Where signs under paragraphs 1 and 3 are understood by the relevant public to be an indication of the geographical origin of goods and services, they are considered to be indications of source within the meaning of the TmPA⁸ and are subject to Article 48 paragraph 5 and Article 49 paragraph 4 TmPA.

Art. 16 Authorisation

¹ A public body may authorise third parties to use its signs. Article 15 paragraphs 2–4 remain applicable.

² Such authorisation is, in particular, constituted by:

- a. proof by the competent foreign authority of the identical registration of the sign as a trade mark, design, business name or name of an association or foundation by means of a corresponding registration certificate;
- b. any other proof from the competent foreign authority authorising the use or registration of the sign as a trade mark, design, business name or name of an association or foundation.

Section 2 Prohibition on Registration

Art. 17

A sign whose use is prohibited under Article 15 may not be registered as a trade mark, design, business name or name of an association or foundation or as an element thereof.

Chapter 3 Electronic List of Protected Public Signs

Art. 18

¹ The Swiss Federal Institute of Intellectual Property (IPI) shall maintain an electronic list:

- a. of Swiss public signs;
- b. of public signs notified to it by foreign states.

² It shall make this list accessible to the public.

³ The cantons shall notify the IPI of the signs referred to in Article 5.

Chapter 4 Legal Protection

Section 1 Protection under Civil Law

Art. 19 Reversal of the burden of proof

Any person who uses a public sign must prove that he or she is allowed do so.

Art. 20 Action and right to bring action

¹ Any person who suffers infringement of or threat to their economic interests due to the unlawful use of a public sign may request the court to:

- a. prohibit an imminent infringement;
- b. remedy an existing infringement;
- c. require the defending party to provide information on the origin and quantity of items in its possession that unlawfully bear the public sign and to name the recipients and disclose the extent of any distribution to commercial customers;
- d. establish the unlawful nature of an infringement if it continues to have an offensive effect.

² Actions brought under the Code of Obligations⁹ for damages, satisfaction and handing over of profits in accordance with the provisions concerning agency without authority remain reserved.

Art. 21 Right to bring action by associations and consumer organisations

Actions under Article 20 para. 1 may be brought by:

- a. professional and trade associations authorised by their articles to safeguard the economic interests of their members;
- b. organisations of national or regional importance dedicated to the protection of consumers by virtue of their articles.

Art. 22 Right to bring action by a public body and the IPI

¹ A public body entitled to use a public sign may bring an action under Article 20 paragraph 1 against any unlawful use of its protected signs under Articles 1–7 and Article 15.

² The IPI may bring an action concerning the protection of signs under Articles 1–4 and Article 7, or of official designations under Article 6, insofar as their use implies a reference to a national authority or an official or semi-official activity.

³ The cantons shall determine who may bring an action concerning the protection of signs under Article 5 or of designations under Article 6 insofar as their use implies a cantonal or communal authority or an official or semi-official activity.

⁹ SR 220

Art. 23 Forfeiture

¹ The court may order the forfeiture of items which unlawfully bear a public sign or a sign that could be confused with it and of equipment, devices and other means that primarily serve their manufacture.

² The court decides whether the public sign must be made unrecognisable or whether the items must be rendered unusable, destroyed or used in a specific way.

Art. 24 Sole cantonal instance

The cantons shall designate the court that has jurisdiction for the entire territory of the canton as the sole instance for actions under civil law.

Art. 25 Preliminary measures

Any person requesting preliminary measures may, in particular, request that the court orders measures to:

- a. secure evidence;
- b. establish the origin of items unlawfully bearing a public sign;
- c. preserve the existing state of affairs; or
- d. provisionally enforce claims to enforce injunctive relief and remedy.

Art. 26 Publication of the judgment

The court may order, at the request of the successful party, that the judgment be published at the expense of the other party. The court determines the form and scope of publication.

Art. 27 Notification of decisions

The court shall provide the IPI with full official copies of its decisions after they have been issued, including decisions regarding preliminary measures and decisions on dismissal, without delay and free of charge.

Section 2 Protection under Criminal Law**Art. 28** Unlawful use of public signs

¹ Any person who wilfully and unlawfully commits any of the following acts is liable to a custodial sentence not exceeding one year or a monetary penalty:

- a. affixes domestic or foreign public signs protected under this Act or signs that could be confused with them to items, or who sells, makes available, imports, exports or carries in transit or otherwise places on the market items marked in this way;

- b. uses the signs under letter a on office signs, in advertisements, prospectuses, business papers, internet sites or the like;
- c. uses the signs under letter a for services or advertises services with such signs;
- d. uses an official designation or a designation that could be confused with it;
- e. uses a domestic or foreign national figurative or word sign.

² If the offender acts for commercial gain, the penalty is a custodial sentence not exceeding five years or a monetary penalty. The custodial sentence shall be combined with a monetary penalty.

³ Article 64 TmPA¹⁰ remains reserved.

Art. 29 Offences committed within a business

Articles 6 and 7 of the Federal Act of 22 March 1974¹¹ on Administrative Criminal Law apply to offences committed within a business by subordinates, agents or representatives.

Art. 30 Forfeiture

Even in the event of an acquittal, the court may order the forfeiture or destruction of items that unlawfully bear a sign protected under this Act, as well as facilities, equipment and other means primarily used for their manufacture.

Art. 31 Criminal prosecution

¹ Criminal prosecution is a matter for the cantonal authorities

² The IPI may file a complaint with the competent prosecution authority and exercise the rights of a private claimant in proceedings.

Chapter 5 Assistance provided by the Customs Administration

Art. 32

¹ With regard to assistance provided by the Customs Administration, Articles 70–72h TmPA¹² apply by analogy.

² A request for assistance may be filed by any person who is entitled to bring a civil action under Articles 20, 21 or 22.

¹⁰ SR 232.11

¹¹ SR 313.0

¹² SR 232.11

Chapter 6 Final Provisions

Art. 33 Implementation

The Federal Council shall enact the implementing provisions.

Art. 34 Repeal and amendment of current law

The repeal and amendment of the current law is regulated in Annex 3.

Art. 35 Right to continued use

¹ In derogation from Article 8, coats of arms and signs that could be confused with them that have been used until the entry into force of this Act may be used for a period of not more than two years following this date.

² The Federal Department of Justice and Police may, on reasoned request, permit the continued use of the Swiss flag or the sign that could be confused with it where justified by particular circumstances. The request must be submitted at the latest within two years of the entry into force of this Act.

³ Particular circumstances exist where it is shown that:

- a. the Swiss coat of arms or a sign that could be confused with it has been used for at least thirty years by the same person or his or her legal successor, uninterruptedly and without challenge, in order to identify goods manufactured or services provided by him; and
- b. there is a legitimate interest in continuing such use.

⁴ For service trade marks, particular circumstances exist where it is shown that:

- a. the Swiss coat of arms or a sign that could be confused with it is an element of a trade mark registered or for which registration was applied for before 18 November 2009; and
- b. there is a legitimate interest in continuing such use.

⁵ For coats of arms of the cantons, the communes and other public authorities recognised under cantonal law, the competent cantonal authority may, on request, authorise their continued use. The relevant provisions are governed by cantonal law.

⁶ Such continued use must not lead to any deception with regard to the geographical origin within the meaning of Article 47–50 TmPA¹³, with regard to the nationality of the user, the business, the company, the association or the foundation, or with regard to the commercial relations of the person making use of the sign, such as, in particular, alleged official relationships to the Confederation or to a canton. The right to continued use may only be inherited or sold together with the business or the part of the business to which the sign belongs.

Art. 36 Distinctive signs not previously registered

If, at the time of entry into force of this Act, applications for registration of trade marks and designs are pending that would have been excluded from registration under the previous law but may be registered under the new law, then the date of filing of the application shall be considered to be the date of entry into force of this Act.

Art. 37 Referendum and commencement

¹ This Act is subject to an optional referendum.

² It enters into force together with the Amendments of 21 June 2013¹⁴ of the TmPA¹⁵.

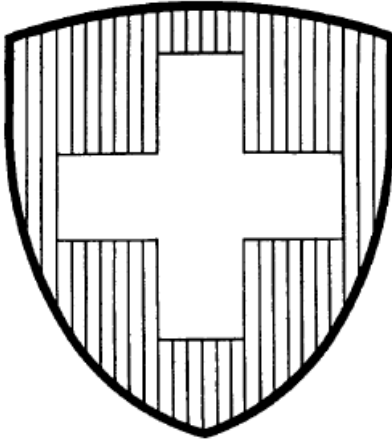
Commencement date: 1 January 2017¹⁶

¹⁴ AS 2015 3631

¹⁵ SR 232.11

¹⁶ Federal Council Decree of 2 Sept. 2015

The Swiss coat of arms



Definition of the colour red:

CMYK 0 / 100 / 100 / 0

Pantone 485 C / 485 U

RGB 255 / 0 / 0

Hexadecimal #FF0000

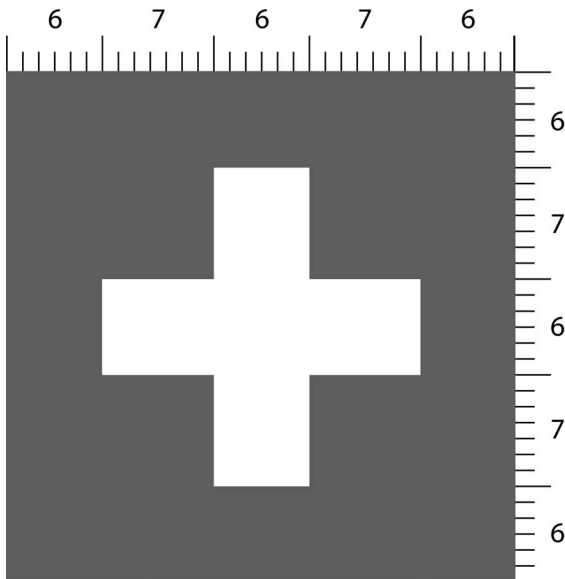
Scotchcal 100 -13

RAL 3020 Traffic red

NCS S 1085-Y90R

Annex 2
(Art. 3)

The Swiss flag



Definition of the colour red:

CMYK 0 / 100 / 100 / 0

Pantone 485 C / 485 U

RGB 255 / 0 / 0

Hexadecimal #FF0000

Scotchcal 100 -13

RAL 3020 Traffic red

NCS S 1085-Y90R

Repeal and Amendment of Current Law

I

The following enactments are repealed:

1. Federal Act of 5 June 1931¹⁷ for the Protection of Public Coats of Arms and other Public Signs;
2. Federal Decree of 12 December 1889¹⁸ concerning the Swiss Federal Coat of Arms.

II

The enactments below are amended as follows:

...¹⁹

¹⁷ [BS 2 935; AS 2006 2197 Annex No 25, 2008 3437 No II 13]

¹⁸ [BS 1 147]

¹⁹ The amendments may be consulted under AS 2015 3679.

