



**The new “Swissness” legislation: a brief overview of the major changes**  
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According to a «Swissness » worldwide study by htp St. Gallen, Switzerland comes within the top two countries when it comes to identify **top quality, exclusivity, tradition, reliability and respect.**

Consumers are ready to pay a 20% premium for a Swiss products and services, 40% premium for luxury goods and in some case more than 100% for Swiss watches.

-> Need for new Swiss regulations to safeguard the exclusivity of the “Swiss Made” label

The new 'Swissness' legislation strengthens protection for the 'Made in Switzerland' designation and the Swiss cross. It helps prevent and curb their misuse, so that the value of the 'Swiss' brand can be preserved in the long term.

The new 'Swissness' legislation will come into force on **January 1<sup>st</sup>, 2017.**

Major legal changes in the:

- Trademark Protection Act** (*Loi sur la protection des marques et indication de provenance*)
- Coat of Arms Protection Act** (*Loi sur la protection des armoiries publiques*)
- Ordinance governing the use of the appellation «Switzerland» or Swiss» for watches** (Ordonnance réglant l'utilisation du nom «Swiss» pour les montres)

Present status under existing laws:

## Use of ‘Swiss’ as an indication of source

The use of indications such as ‘Swiss Made’, ‘Made in Switzerland’ or ‘Swiss Quality’ at the following conditions:



- On products: allowed if not misleading. Not misleading if 50% of production costs are related to Switzerland and if essential part of the manufacturing process is made in Switzerland (more restrictive for watches).
- In relation with services: the company headquarters is located in Switzerland.
- In a trademark: allowed if the specification of goods is limited to goods “*coming from Switzerland*”. Allowed for services, provided that the trademark owner is domiciled in Switzerland.

Present status under existing laws:



### Use of Swiss cross

- Swiss cross on goods: cannot be used on goods for commercial purpose (as an indication of origin), but only for a purely decorative purpose (e.g. red t-shirts with big Swiss cross, balloons, paper lanterns). Only exception was Victorinox and Wenger for historical reasons.
- Swiss cross in relation with services: allowed if not misleading.
- Swiss cross contained in a trademark: Swiss cross allowed only for services, if the company is domiciled in Switzerland. As such it cannot be monopolized. Other distinctive elements must be contained in the trademark.

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Present status under existing laws:



### **Enforcement**

- Customs seizures, criminal prosecution by cantonal authorities or civil prosecutions from competitors (unfair competition).
- In reality, nothing more than a warning letter in most cases.

New law as from January 1st, 2017:

## Swiss indication of source

The use of indications such as ‘Swiss Made’, ‘Made in Switzerland’ or ‘Swiss Quality’ at the following conditions:



- Natural products (mineral water, fruits, vegetables, milk, etc.): must be extracted or harvested in Switzerland.
- Processed foodstuff (processed food): at least **80%** of raw material weight must come from Switzerland with the exception of goods being logically (eg. cacao for Swiss chocolate, pineapples) or momentarily not produced in Switzerland (eg. food products containing strawberries). The processing that gives a product its essential characteristics must come from Switzerland. 100% of Swiss milk for cheese).
- Industrial goods: at least **60%** of the total production costs must be realized in Switzerland. However, the 60% will now include costs linked to R&D, quality control or certification. Exceptions for natural products not found in Switzerland (eg. precious metals, steel), materials not available in sufficient quantities and additives of minor importance. The activity that the product its essential characteristics must take place in Switzerland (e.g. assembly of machine).

More restrictive for watches: Swiss movement (60% Swiss value), casing-up and final inspection in Switzerland

New law as from January 1st, 2017:



## Swiss indication of source

The use of indications such as ‘Swiss Made’, ‘Made in Switzerland’ or ‘Swiss Quality’ at the following conditions:

- Swiss services: can be used by the (service) company headquarters is domiciled in Switzerland.

A branch office or subsidiary can also use the ‘Swiss’ indication of source for services only if actually controlled and managed by its headquarters domiciled in Switzerland.

If not ‘Swiss Made’, possibility promoting specific activities: ‘Designed in Switzerland’, ‘Swiss Research’, ‘Smoked in Switzerland’, etc. The word ‘Swiss’ must not be written more prominently in terms of color, size and character type than the rest of the indication. In these cases, the Swiss cross cannot be used.

New register for geographical trademarks (including for non-agricultural products) maintained by the Federal Institute for Intellectual Property. Useful for trade associations to protect “Gruyère” for cheese or “Switzerland” for watches as geographical trademarks. Purpose: extension of these trademark via the Madrid System (WIPO international trademarks).

New law as from January 1st, 2017:

## Use of Swiss cross

Use of Swiss cross for commercial purpose (as an indication of source) will become legal. Not anymore limited to services, provided that not misleading. Prohibited in particular severe cases under “violation of public policy” (e.g. damage to the reputation of Switzerland or potentially interferes with its diplomatic relations).

The Swiss cross can be contained as an element of a trademark, if not misleading.

However, the use of the Swiss coat of arms remains reserved for the Confederation. Need for specific authorization from the Federal Department of Justice and Police to use the federal or cantonal coats of arms. Exceptions for companies who have been using it for decades.





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New law as from January 1st, 2017:



## Enforcement

Criminal law: custodial sentence of up to one year or a monetary penalty. If offers acts commercially, the act is punishable with a custodial sentence of up to five years and a monetary penalty (max. CHF 1,080,000).

The Federal Institute for Intellectual Property will be entitled to file charges in the name of the confederation and bring civil action before a court as of January 1<sup>st</sup>, 2017. Civil actions will also be authorized for trade associations and consumer protection organizations.

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Where can I find more information about it ?

Swiss Federal Institute of Intellectual Property IPI:

<https://www.ige.ch/en/indications-of-source/swissness.html>

Federation of the Swiss Watch Industry FH:

<http://www.fhs.ch/fre/swissness.html>

Office fédéral de l’agriculture OFAG:

<https://www.blw.admin.ch/blw/fr/home/instrumente/swissness.html>

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Thank you!



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