

ARGENTINA TRADEMARK AND TRADE NAME LAW No. 22,362

of 26th December, 1980

CHAPTER I

TRADEMARKS

SECTION 1

Property rights over trademarks

ARTICLE 1.- The following may be registered as trademarks to distinguish products and services: one or more words with or without conceptual meaning; drawings; emblems; monograms; engravings; stampings; seals; images; bands; combinations of colors applied at a specific location on the product or on the packages; wrappings; packages; the combination of letters and of numbers; letters and numbers on account of their special design; advertising slogans; contours having the capacity to distinguish and any other sign with such capacity.

ARTICLE 2.- The following are not considered as marks and cannot be registered:

- a) The names, words and signs constituting the necessary or habitual designation of the product or service to be distinguished, or which were descriptive of its nature, function, qualities or other characteristic;
- b) Names; words; signs and advertising slogans which had been incorporated into general use prior to filing for registration;
- c) The form given the products;
- d) The natural or intrinsic color of the products or a single color applied to them.

ARTICLE 3.- The following cannot be registered:

- a) A mark which were identical to one which were registered, or the registration of which were filed previously to distinguish the same products or services;
- b) Marks which are similar to others already registered, or whose registration were filed, to distinguish the same products or services;
- c) The national or foreign denominations of place of origin. By denomination of place of origin is to be understood the name of a country, or a region, of a specific geographic place or area which serves to designate a product having its origin in such, and the quality and characteristics of which are exclusively on account of the geographic medium. Denomination of place of origin is also considered that which makes reference to a specific geographic area for the purposes of certain products;
- d) Marks which are susceptible of inducing error with respect to the nature, properties, virtues, quality, manufacturing techniques, function, origin, price or other characteristics of the products or services to be distinguished;
- e) The words, drawings and other signs contrary to morals and good customs;
- f) The letters, words, names, distinctive elements, symbols, which the Nation, provinces, municipalities, religious and health organizations use or may use;
- g) The letters, words, names or distinctive elements, symbols which the foreign nations and international organizations recognized by the Argentine government use;
- h) The name, pseudonym or portrait of a person, without his consent or that of successors up to and including the fourth degree;
- i) The designation of activities, including the names and trade names, descriptive of an activity, to distinguish products. Nevertheless, the acronym, words, and other signs having a distinctive capacity, forming part of same, maybe registered to distinguish products or services;
- j) The advertising slogans which lack originality.

ARTICLE 4.- The ownership of a trademark and its exclusive use are obtained by means of its registration in order to be the owner of record of a trademark or exercise the right of opposition to its registration or of its use, a legitimate interest is required on the part of the applicant or of the adversary,

ARTICLE 5.- The term of duration of the registered mark shall be ten (10) years. It may be renewed indefinitely for equal periods if the same were used, within five (5) years prior to each date of expiry, in the marketing of a product, in the supply of a service, or as part of the designation of an activity.

ARTICLE 6.- The assignment of the registered trademark is valid with respect to third parties, once registered in the National Institute of Industrial Property (INPI).

ARTICLE 7.- The assignment of sale of the combined tangible and intangible assets of a business establishment, includes that of the trademark, unless there stipulations to the contrary.

ARTICLE 8.- The rights of priority for the ownership of a trademark shall be granted by the day and hour when the application were filed, without detriment to what was established in international treaties approved by the Argentine Republic.

ARTICLE 9.- A trademark may be registered jointly by two (2) or more persons. The owners of record must act jointly to license, assign and renew the trademark; any of them may object to the registration of a trademark, bring the actions under this law in their defense and use it, unless there stipulations to the contrary.

SECTION 2

Formalities and process of registration

ARTICLE 10.- Whoever were to wish to obtain the registration of a trademark, must file an application for each class in which it were requested, including his name, his real domicile and a special domicile constituted in the Federal Capital, the description of the mark and the indication of the products or services which it is to distinguish.

ARTICLE 11.- The special domicile to which Article 10 refers, constituted by a person domiciled abroad, is valid to establish the jurisdiction and to notify the judicial complaints on account of nullity, recovery or lapsing of that mark, and for all other notifications to be made with respect to the process of registration. Nevertheless, in the case of judicial complaints for nullity, recovery or lapsing, the judge may extend the term to respond to them and oppose exceptions, on account of the real domicile of the defendant.

ARTICLE 12.- Once the application for registration has been filed, the Supervising Authority, if it were to find that the legal formalities had been met, shall cause it to be published for one (1) day in the Trademark Gazette at the cost of the petitioner. Within the thirty (30) days of application having been made, the National Institute of Industrial Property shall carry out the search of the records for the trademark application and shall issue an opinion with respect to its capacity to be registered.

ARTICLE 13.- The oppositions to the registration of a mark must be lodged before the National Institute of Industrial Property within the thirty (30) days elapsing as from the publication under Article 12.

ARTICLE 14.- The objections to the registration of a mark are to be made in writing indicating the name and real domicile of the adverse party and the grounds of the objection, which may be extended on responding to the demand, in the courts. In this document, a special domicile is to be set up within the Federal Capital which shall be valid to notify the judicial complaint brought by the applicant.

ARTICLE 15. The party making the application shall be notified of the objections lodged and the observations the application merits.

ARTICLE 16.- One year having elapsed as from the notification under Article 15, the application shall be declared abandoned in the following cases:

- a) If the applicant and the adverse party have not reached an agreement enabling an administrative resolution to be taken and the former had not brought legal action within the term shown;
- b) If, the legal action having been brought by applicant, its prescription had taken place.

ARTICLE 17.- The legal action to obtain withdrawal of the opposition shall be initiated before the National Institute of Industrial Property. Within the ten (10) days of the demand having been received, the Institute shall send same and the elements annexed to it, to the Federal Justice in Civil and Commercial Matters of the Federal Capital, together with the copy of the administrative proceedings of the trademark objected to. The respective judicial process shall be handled according to the rules of plenary action.

ARTICLE 18.- The participating judge shall advise the National Institute of Industrial Property as to the results of the action brought, to obtain the withdrawal of the opposition for the purposes which may correspond.

ARTICLE 19.- By means of opposition, the applicant and the adverse party may renounce the legal process by mutual agreement, and, within the period of one (1) year established in Article 10, communicate this to the National Institute of Industrial Property. In this case a resolution shall be issued, which cannot be appealed against, once both parties have been heard and the relevant evidence produced. The regulations shall establish the applicable procedure.

ARTICLE 20.- When renewal of the registration is filed, this shall be proceeded to as established in Article 10 and, in addition, a sworn statement shall be presented in which it shall be affirmed whether the mark was used in the period made down in Article 5, at least in one of the classes, or if it were used as a name, and the product, service or activity shall be shown, as may correspond. Once the resolution approving registration or renewal shall have been issued, the applicant shall be issued the corresponding certificate.

ARTICLE 21.- The resolution rejecting registration may be impugned before the Federal Justice in Civil and Commercial Matters. The action shall be handled according to the rules of plenary action and must be brought, within the thirty (30) business days of notification having been made of the resolution of the rejection, before the National Institute of Industrial Property, which shall act in accordance with what is laid down in Article 17

In the event that the action were not brought within the term established, the application shall be declared abandoned.

ARTICLE 22.- The files on trade marks which have been registered or are pending are public. Any interested party may request, at his cost, the partial or total copy of a file in which a definitive resolution has been handed down.

SECTION 3

Extinction of rights

ARTICLE 23.- The property rights over a trademark are extinguished:

- a) By the disclaimer of its owner of record;
- b) Through the expiry of the validity term, when registration shall not have been renewed;
- c) Through the legal declaration of nullity or lapsing of the registration.

ARTICLE 24.- Registered trademarks are null:

- a) in infringement of what is stipulated in this law;
- b) for those who, on filing the application, knew or should have known, that the trademark belonged to a third party;
- c) on account of their being traded by whoever habitually carries out the activity of registering trademarks for this purpose.

ARTICLE 25.- The action of nullity prescribes after ten (10) years.

ARTICLE 26.- At the request of the party, the lapsing shall be declared of that trademark which had not been used within the country within the five (5) years previous to the date of initiation of the action, unless this were on account of force majeure. Lapsing does not take place in the case of a registered trademark not used in one class if this same mark were used in the marketing of a product or in a supply of a service, included in the other classes, or if this formed part of the designation of an activity.

CHAPTER II

TRADE NAMES

ARTICLE 27.- The name or sign with which an activity is designated, profit making or not, constitutes a property for the purposes of this law.

ARTICLE 28.- The property of the designation is acquired with its use and solely in relation to the branch of activity in which it is used and must not be susceptible to confusion with those already existing in this same branch.

ARTICLE 29.- All person having a legitimate interest may object to the use of a trade name. The respective action prescribes one year after the third party commenced to use it publicly and ostensibly or from when the plaintiff had knowledge of its use.

ARTICLE 30. The right to the name is extinguished with the cessation of the activity named.

CHAPTER III

ILLICIT ACTS

SECTION 1

Punishable acts and actions

ARTICLE 31.- The following shall be punished with imprisonment of three (3) months to two (2) years, and furthermore, a fine may be applied of A 1,368,000 to A 206,1 89,000 (Resolution 198190)

- a) whoever were to forge or fraudulently issue a registered trademark or trade name;
- b) whoever were to use a forged, fraudulently issued trademark or trade name one belonging to a third party without their authorization;
- c) whoever were to place on a sale or were to sell a registered trademark or trade name which were forged, fraudulently imitated or belonging to a third party without their authorization;

d) whoever were to place on sale, sell or in any other manner market, products or services with a registered trademark which were forged or fraudulently imitated
The National Executive Power shall annually update the amount of the fine foreseen on the basis of the change taking place in the wholesale price index officially published by the National Institute of Statistics and Census.

ARTICLE 32.- The penal action is public and the general stipulations of Book 1 of the Penal Code are applicable insofar as they are compatible with this law.

ARTICLE 33.- The Federal Justice in Criminal and Correctional Matters has jurisdiction to hear the penal actions, which shall follow the proceedings of correctional litigation; and the Federal Justice has in the civil actions which shall follow the formalities of plenary actions.

ARTICLE 34.- The injured party, whatever the channel chosen, may request

- a) The confiscation and sale of the goods and other elements with the infringing trademarks;
- b) The destruction of the trademarks and trade names in infringement and of all the elements which carry them if they cannot be detached from the latter.

The judge, at the request of the party, shall order the publication of the sentence at the cost of the infringer if the latter had been sentenced or defeated in litigation.

ARTICLE 35.- In the civil actions which are brought to obtain the cessation of the use of a trademark or of a trade name, the plaintiff may demand from the defendant real guarantee, in the event that the latter were not to interrupt the use put in question. The judge shall establish this guarantee in accordance with the apparent right of the parties and may demand counter guarantees.

If real guarantee were not supplied, the plaintiff may request the suspension of the production and the attachment of the objects in infringement, granting, in the event it were requested, sufficient guarantee.

ARTICLE 36.- The right to all claims by civil litigation prescribes after three (3) years shall have elapsed after the commission of the infringement or after one (1) year to elapse as from the day in which the owner of the trademark had knowledge of the act.

ARTICLE 37.- The sums generated by the fines under Article 31 and the sales to which reference is made in Article 34 shall be channeled to general revenues.

SECTION 2

Precautionary measures

ARTICLE 38.- Any owner of a registered trademark to whose attention is brought the news of the existence of objects with trademarks in infringement according to what is laid down in Article 3 1, may request before the judge having jurisdiction:

- a) The attachment of the objects;
- b) Their inventory and description;
- c) The confiscation of one of the objects in infraction.

Without detriment to the powers of the judge to order these measures on his own initiative, he may request sufficient guarantee from the petitioner when in his opinion the latter were to lack sufficient net worth to respond, in the supposed case of having requested the embargo without right.

ARTICLE 39.- Whoever were to hold objects in infringement must accredit and report as to

- a) the name and address of whoever sold them to him or obtained them, and the date on which this occurred, exhibiting the respective invoice or purchase ticket;
- b) the quantity of units manufactured or sold and their price, exhibiting the respective invoice or sales ticket;

c) the identity of the persons who sold or delivered the objects in infringement. All this is to be recorded in the memorandum to be drawn on taking the measures under Article 38.

The refusal to supply the reports under this Article, as also the absence documentation which were to serve as commercial voucher with respect to the Objects in infringement, shall authorize the presumption that their holder is a participant in the falsification or fraudulent imitation.

These reports may be extended or completed in the courts both at the initiative of the interested party himself as at the request of the judge, who may make notification to this effect for a specific term.

ARTICLE 40.- The owner of record of a registered trademark may request the precautionary measures under Article 38, even when no offense were to have occurred with respect to a similar or illegitimately employed trademark. If the corresponding action were not brought within the fifteen (15) working days of the carrying out of the embargo or confiscation, the latter may be left without effect at the petition of the owner of the objects attached or confiscated.

ARTICLE 41.- The owner of record of a registered trademark consisting of an advertising slogan may request the measures under Article 38 only with respect to the objects which carry the infringing advertising slogan.

CHAPTER IV

Supervising Authority

ARTICLE 42.- The Supervising Authority of this law is the National Institute of Industrial Property, depending from the State Secretariat of Industrial Development of the Ministry of Economy, which shall resolve with respect to the granting of the trademarks.

ARTICLE 43.- The National Institute of Industrial Property shall register the applications for registration and renewal in the order in which they were filed to it. To this end, it shall carry a Book rubricated and with its pages numbered by the Secretariat of State for Industrial Development. In this book shall be recorded the date and hour of submission, their number, the trademark filed, the name and domicile of the applicant and the products or services to be distinguished.

ARTICLE 44.- The certificate of registration shall consist in an affidavit of a of the National Institute of Industrial Property.

ARTICLE 45.- The registration, renewal, reclassification, assignment, abandonment and rejection of trademarks, as also their extinction through disclaimer or legal resolution and the amendment of the name of their owner of record shall be published by the National Institute of the Industrial Property.

ARTICLE 46.- The National Institute of Industrial Property is to preserve copy of the files or their attested to copies. The original files may only be destroyed when copy of same have been obtained and kept.

ARTICLE 47.- The formalities which are carried out before the National which shall be established by the regulation. Such amounts shall be updated as foreseen for fines, under Article 31 "in fine".

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Transitory stipulations and derogation

ARTICLE 48.- The trademarks registered prior to the coming into effect of this law and the expiry of which takes place after six (6) months shall have elapsed from such date, shall be reclassified at the time of their renewal in accordance with the nomenclature which the regulations shall establish, or previously, at the request of their owner of record.

ARTICLE 49.- This law shall enter into effect at the thirty (30) days of its publication in the Official Gazette.

ARTICLE 50.- The regulations governing this law shall be issued within sixty (60) days of its approval.

ARTICLE 51.- Let repeal be made of Law Nos. 3,975 and 17,400, Articles 2, 3, 5, 6, 7 and 8 of Decree-Law 12,025/57, the decree of November 3, 1915 on shields and flags and decree Nos. 126,065138, 21,533139 and 25,812/45.

ARTICLE 52.- Let it be communicated, published, given to the National Institute of the Official Registered and filed.

Videla

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