



**ARGENTINA TRADEMARK AND TRADE NAME LAW**

**CHAPTER I**

**TRADEMARKS**

***SECTION I***

**Right of trademark ownership**

**ARTICLE 1.-** The following may be registered as trademarks to distinguish goods and services: one or more words with or without conceptual content; drawings; emblems; monograms; engravings; stampings; seals; images; bands; combinations of colors applied in a particular location on goods or packaging; wrappings; packaging; combinations of letters and numbers; letters and numbers on account of their special design; advertising slogans; distinctive embossments and any other sign with such capacity.

**ARTICLE 2.-** The following shall not be considered trademarks and may not be registered:

- a) Names, words and signs constituting the necessary or usual designation of the good or service to be distinguished or that describe its nature, function, qualities or other characteristics;
- b) Names; words; signs and advertising slogans that have been incorporated into general use prior to filing for registration;
- c) The shape of a good;
- d) The natural or intrinsic color of the good or a single color applied to the same.

**ARTICLE 3.-** The following may not be registered:

- a) A mark that is identical to one previously registered or applied for in order to distinguish the same goods or services;
- b) Marks similar to others already registered or applied for in order to distinguish the same goods or services;
- c) National or foreign appellations of origin. By “appellations of origin” is to be understood the name of a particular country, region, place or geographical area that serves to designate a good originating from one of them whose qualities and characteristics are due exclusively to the geographical environment. A name that refers to a specific geographical area for the purposes of certain goods shall also be considered an appellation of origin;



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- d) Marks that may mislead as to the nature, properties, merit, quality, manufacturing techniques, function, origin, price or other characteristics of the goods or services to be distinguished;
- e) Words, drawings and other signs that are contrary to morality and decency;
- f) Letters, words, names, badges or symbols that are used or reserved for use by the nation, provinces, municipalities or religious or health organizations;
- g) Letters, words, names or badges, symbols used by foreign countries and international organizations recognized by the Government of Argentina;
- h) The name, pseudonym or likeness of a person, without his/her consent or that of his/her successors down to and including the fourth degree;
- i) The designations of activities, including names and company names that describe an activity in order to distinguish goods. However, distinctive acronyms, words and other signs forming part of such designations may be registered to distinguish goods or services;
- j) Advertising slogans that lack originality.

**ARTICLE 4.-** Ownership of a trademark and exclusivity of use shall be obtained by means of its registration. In order to be the owner of a trademark or exercise the right to oppose its registration or of its use, the applicant or opponent must have a legitimate interest.

**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.-** Anyone wishing to obtain the registration of a trademark, must file an application including his/her name, real domicile and a special electronic domicile according to the conditions set forth in the implementing amendment, the description of the mark and the indication of the goods and/or services to be distinguished by the mark.

**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 or 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 implementing authority shall, if the legal formalities have been met, publish the application for one (1) day in the Trademark Gazette at the cost of the petitioner. Within thirty (30) days of publication, the National Institute of Industrial Property shall conduct a prior art search in respect of the mark applied for and shall rule on its registrability.

**ARTICLE 13.-** Oppositions to the registration of a mark shall be filed before the National Institute of Industrial Property within the thirty (30) days elapsing as from the publication under Article 12.

**ARTICLE 14.-** Oppositions to the registration of a mark shall be filed electronically before the National Institute of Industrial Property, indicating the name, real and electronic domicile of the opponent and the grounds of the opposition.

**ARTICLE 15.-** The applicant shall be notified of any oppositions lodged and any observations on the application.



**ARTICLE 16.-** Once three (3) months have elapsed from the notification of the oppositions provided for in Article 15, had the applicant not obtained the withdrawal of the oppositions, the National Trademark Administration will resolve in administrative instance on the merit of those oppositions still in force.

**ARTICLE 17.-** The opposition resolution process will be set forth by the implementing authority, and shall contemplate at least the possibility for the opponent to expand on the grounds of the opposition, the applicant's right to reply to it, and the right of both parties to offer evidence. The procedure shall be in accord with the principles of celerity, simplicity, and procedural economy

The resolutions of oppositions made by the National Trademark Administration shall only be appealable by bringing a direct action before the Federal Courts of Appeals in Civil and Commercial Matters of Buenos Aires within thirty (30) working days from their notification date. The legal action shall be initiated before the National Institute of Industrial Property who shall forward it to the Courts in the conditions set forth in the implementing regulation.

**ARTICLE 18.-** In the trials relating to oppositions to the registration of trademarks that were pending before the Courts or that were concluded without informing their result, the National Institute of Industrial Property shall be able to assess their status directly in the Judicial Power website and decide consequently.

**ARTICLE 19.-** (Article derogated by Art. 69 of Law No. 27.444)

**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.-** A decision to refuse registration based on causes different from those of Article 17 may be impugned before the Federal Justice in Civil and Commercial Matters.



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The action shall be heard under ordinary-law procedures and must be brought, within thirty (30) working days of notification of the refusal action.

**ARTICLE 22.-** Access to the files of pending or registered trademarks shall be public and unrestricted.

### ***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.-** The following marks shall be null and void:

- a) those registered in breach of the provisions of this Law;
- b) those registered by anyone who knew or should have known that the marks belonged to a third party;
- c) those registered for the purpose of trading, by persons who habitually register marks for that purpose.

The National Institute of Industrial Property, through the National Trademark Administration, *ex officio* or upon a party's request, shall decide in administrative instance the nullity of trademarks referred to in subsection a) of this article.

A resolution on the nullity of a trademark shall only be appealable, within thirty (30) working days from its notification date, by bringing a direct action before the Federal Courts of Appeals in Civil and Commercial Matters of Buenos Aires; which must be filed in the National Institute of Industrial Property.

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

**ARTICLE 26.-** The National Institute of Industrial Property, *ex officio* or upon a party's request, in accordance with the regulations to be implemented, shall declare the lapsing of the trademark, and even its partial lapsing, in relation to products or services in connection



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with which it had not been used in the country within the five (5) years preceding the date of institution of the caducity action, unless the non-use was on account of *force majeure*.

A resolution on the caducity of a trademark shall only be appealable, within thirty (30) working days from its notification date, by bringing a direct action before the Federal Courts of Appeals in Civil and Commercial Matters of Buenos Aires; which must be filed in the National Institute of Industrial Property.

A trademark that is registered and not used in one class or for certain products or services shall not lapse if said mark was used to market a similar or related product or to provide a similar or related service to said certain products or services, even if they are included in other classes, or if it forms part of the designation of an activity related to the former.

Furthermore, once the fifth year of registration has elapsed, and before the end of the sixth year, its owner must file a sworn declaration as to the use of the trademark done until that moment.

## **CHAPTER II**

### **DESIGNATIONS**

**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**

### **OFFENSES**

#### **SECTION I**

##### **Punishable acts and proceedings**

**ARTICLE 31.-** A penalty of imprisonment for a term of three (3) months to two (2) years, with the possible addition of a fine of four thousand (\$ 4.000) to one hundred thousand (\$ 100.000) pesos, shall be imposed on the following persons:

- a) anyone who forges or fraudulently copies a registered trademark or designation;
- b) anyone who uses a registered mark or designation that is forged or fraudulently copied trademark or belongs to a third party without said party's authorization;
- c) anyone who offers for sale or sells a registered trademark or designation that is forged or fraudulently copied or belongs to a third party without said party's authorization;
- d) anyone who offers for sale, sells or otherwise markets goods or services with a forged or fraudulently copied registered trademark.

The National Executive Power shall adjust the amount of the aforementioned fine annually, as the circumstances may require.

**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 proceeds of the fines provided for in Article 31 and the sales to which reference is made in Article 34 shall be used as general income.

## ***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;





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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**

### **IMPLEMENTING 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 goods 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 preservation and safe-keeping of the administrative proceedings corresponding to trademarks shall be conducted according to the provisions of Decree 1.131/16 or of the decree replacing or modifying it in the future.

**ARTICLE 47.-** The National Institute of Industrial Property, in its capacity as implementing authority, is empowered to issue implementing regulations to the present law, regarding the proceedings of trademarks, in all matters tending to their facilitation, to the elimination of obsolete requirements, and to expediting and simplifying the registration process.

To that effect, it shall be able to modify the process described in the second section of the present law; limit the examination of applications to absolute prohibitions or to those related to public order, subordinating relative prohibitions to being brought-up by third parties; establish the publication for the lodging of oppositions by third parties after the granting of the trademark; subordinate the validity of the certificate to what the National Institute of Industrial Property resolves in the case of oppositions that may be received, as well as regarding the expiration of the priority term of the Paris Convention in light of unknown priorities at the moment of the granting, among others.

## **CHAPTER V**

### **TRANSITORY PROVISIONS AND DEROGATIONS**

**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.



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**ARTICLE 49.-** This law shall enter into force thirty (30) days after its publication in the Official Gazette.

**ARTICLE 50.-** Regulations governing this law shall be issued within sixty (60) days of its enactment.

**ARTICLE 51.-** Laws No. 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. 126,065/138, 21,533/139 and 25,812/45 are hereby repealed.

**ARTICLE 52.-** Let it be disseminated, published, transmitted to the National Official Registry and placed in the archives.