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INTELLECTUAL PROPERTY

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What is protected by intellectual property rights?

All creations produced by the human intellect. Such protection is provided by special regulations that grant the respective owner with the rights of exclusive use.

Intellectual property is divided into two main categories:

- Industrial
- Copyrights

What is protected by industrial property?

Industrial property protects intellectual creations such as inventions, utility models, industrial designs, and trademarks, among others. Industrial property rights are recognized through its registration. In Colombia, the registration of intellectual creations is carried out through the Superintendence of Industry and Commerce (SIC, Superintendencia de Industria y Comercio), the authority responsible for industrial property issues.

Industrial property rights are land rights only applicable in Colombia.

In Colombia, industrial property is controlled by two regulations:

- Supranational Regulation: the Andean regulation, notably Decision 486 of the year 2000.
- The Internal legislation: the SIC memo, the 2011 Law 1455 through which the Protocol Concerning the Madrid Agreement Regarding the International Registration of Brands and its Regulations, the 2012 Decree 19, the Commerce Code, the Criminal Code, among other applicable regulations were approved in Colombia.

What is protected by the distinctive signs?

Distinctive signs are representations used by businesspeople in their commercial activities in order to identify themselves and the products and/or services offered by them. They also serve to differentiate themselves from competitors. They may include brands, commercial slogans, trade names, business logos, and geographical indications.

Brands

Signs used to distinguish products or services in the market, which are susceptible to graphic

representation. They may consist of various types:

According to their perception capability:

- Nominative brand: consists of letters, numbers, and words.
- Figurative brand: composed only of a logo that cannot be pronounced.
- Mixed brand: composed of a nominal element and a logo, or a nominal brand written with special calligraphy.
- 3-D brand: which has the three dimensions (width, height, and length).
- Scented brand: protects a specific aroma.
- Sound brand: composed of a sound.
- Color brand: composed of a color delimited by a shape.

According to their function:

- Trade brand: indicates a specific business origin.
 - Collective brand: identifies products or services of a collective.
 - Certification brand: identifies the quality or the special characteristics.
- According to its recognition:
- Common brand: receives no special consumer recognition.
 - Notary brand: receives special recognition amongst its consumers.



Commercial slogans

Signs composed of a word, phrase, or caption that are used to complement a brand. Their main purpose is to act as a reminder. To be registered, they should comply with the same requirements as brands.

Trade names

Distinctive signs identifying an entrepreneur in the market with respect to their competitors. As opposed to the brand or the commercial slogan, they do not identify a product or a service but the entrepreneur commercializing or producing them.

Business logos

Signs that identify a commercial establishment which, when seen from the outside, help consumers to physically identify it. The Business logo rights are acquired and maintained with their use in the market.

Geographical indications

Provide protection to the geographical origin of certain products that have special characteristics and are recognized by consumers. Two types of geographical indications can be protected in Colombia:

- Indication of origin: an expression, image, or sign

What rights does the brand owner have after registration?

- 10-year brand protection, renewable every 10 years.
- Exclusive use of the brand and its commercial exploitation related to the brand's products and/ or services.
- Preventing third parties from using or exploiting the distinctive sign without authorization.

which helps to recall and name a specific location.

- Designation of origin: a geographical indication used to name a product from a specific geographical area. The product's quality, reputation, and other characteristics are derived exclusively from the geographical environment.

What are new creations and how do they operate?

Refers to creations of the human being that provide solu-



tions to technical problems and can be protected by invention patents or utility model patents. In addition, all products created by human beings, whose differentiating element is their external appearance, can be protected by industrial designs.

Invention patents

Industrial property rights that allow its holder to prevent third parties from reproducing the patented element (products or processes). Patents grant an exclusion right that arises from an agreement between the State and the applicant, provided it meets some requirements:

- Novelty: there is nothing similar.
- Inventive level: the differences with existing technologies are not obvious.
- Industrial application: can be used or reproduced in an industry.

An invention patent provides protection during 20 years from the day the patent application is filed before the Superintendence of Industry and Trade, after it is approved by such entity.

Utility model patents

Protect products allowing for a better or different operation, utilization, or fabrication of the product and provide some new advantages.

They should meet the following two requirements:

- Novelty: there is nothing similar and the differences with previous technologies give it a technical or improved advantage.
- Industrial use: it can be used or reproduced in an industry.

Utility model patents provide protection for a period of 10 years from the date the application is submitted to the SIC.

Rights granted by the patent:

Prevent third parties from manufacturing, using, or importing the product or procedure covered by the patent.

In order for an invention patent or utility model patent to continue operating during their term of duration (20 and 10 years respectively), the annual maintenance charges must be paid.

Industrial designs

According to Decision 486 of 2000, an industrial design is the particular appearance of a product that results from the formation of a number of lines or color combinations, or by any external two-dimensional or three-dimensional shapes, outline, texture, or material, without changing the aim of product.

Industrial designs should meet the following requirement:

- Novelty: there is nothing similar.

Rights granted by an industrial design

An industrial design registration is valid for 10 years from the day the application is filed with the SIC.

How do the priority claims of brands, patents, and industrial designs work?

The priority system is established in article 4 of the 1883 Paris Agreement and is included in the Andean legislation in Article 9 of Decision 486. Priority rights allow the protection of the industrial property rights in various countries, keeping the first application submission date.

Industrial property rights are negotiable and transferable through various forms, such as sales contracts, hand overs, license agreements and the royalties that come with them.

- Hand overs: An agreement should be made whereby the parties agree on the hand over. However the document should be registered with the SIC in order for it to be opposable to third parties.
- Licenses: With a license, the holder authorizes another person, called the licensee, to lawfully use such industrial property rights according to the terms stated.
- Charges and forced sales: An industrial property asset is a movable property that comprises the company

assets, so that it can be used as collateral to support obligations, and if necessary, can be seized and auctioned by court order.

How does the regulation of industrial or business secret work?

Business secret include all the information that is secret. Hence, information that has not been disclosed or that is not generally known or easily accessible by third parties, that can be used in com-

mercial activities and that gives a competitive advantage over its competitors.

The requirements are that:

- The information must be secret.
- The information must have some commercial value, as it is secret.
- Reasonable steps have been taken to keep such information as secret.

The owner of the industrial or business secret will be protected against the disclosure, ac-



quisition or use of the secret in a manner contrary to fair trade practices by third parties.

Industrial or corporate secrets have no duration determined by the law, their duration is determined by meeting the requirements already mentioned. They are protected by Decision 486 of 2000 from the Andean Community Commission and by Law 256 of 1996, among others.

How do copyright and associated rights work?

The copyright protects all original creations (understanding as original when the author has print his personal stamp) of an artistic, literary, or scientific nature which may be disclosed or distributed in any way. The work is protected from its creation. According to Decision 351 of 2000, the author can only be a natural person and there may be several types of work:

- Original: no adaptations or changes were made to other work already created.

- Derived: the result of a change made to pre-existing work.
- In collaboration: where two or more people produce the work at their own initiative and risk.
- Collective: done by several authors, through initiative and guidance of a natural or legal person who coordinates, disseminates, and publishes it under his or her name.

The term of protection for natural persons is the author's life plus 80 years after his or her death (Article 21 of Law 23 of 1982). For legal persons, the term of protection is 70 years as of the end of the calendar year of the first authorized work publication.

Rights granted to the authors and the rights holders

- **Moral rights:** they protect the author's personal interests on the work. Therefore, they are rights that cannot be sold, waived and are perpetual rights. The Colombian legislation includes the following: paternity right, integrity right, authors right, modification right, and withdrawal right.
- **Patrimonial rights:** through these, the author or rights

holder can authorize or prohibit third parties from exploiting their work. The Colombian legislation includes the following: reproduction, public communication, distribution, and transformation. They may be transferable through different modalities, by cause of death or due to a legal provision. Among the different forms of transmission of patrimonial rights, there are two that may be of interest: contract for the hand over of economic rights and commissioned work.

How do rights granted to performers and phonographic producers —and related rights— work?

The performing artists and phonographic producers are the holders of related rights since they are responsible for distributing certain types of work. The rights granted to performers and phonographic producers are:

- The performing artists may authorize or prohibit their interpretations from being publicly transmitted live, authorize or prohibit the recordings of their work, and may receive a fee if their work is broadcast publicly.
- The phonographic producers may authorize or prohibit the reproduction and distribution of their records, and receive a fee for the use of their records.



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