

Protection of IP

Portugal

I. TRADE MARKS**I.1 INTRODUCTION**

Portuguese legislation regarding trade marks is harmonised with Community rules. The relevant legislation is contained within the Industrial Property Code, approved by Decree-Law n° 36/2003.

As far as trade marks are concerned, the Industrial Property Code has expressly adopted the Community exhaustion system.

According to article 259° of the Industrial Property Code, the rights provided by a trade mark registration do not allow the trade mark owner to prevent its use to cover products commercialised in the Community under such trade mark by the owner or with his consent, except if there are legitimate grounds justifying the owner's opposition to the subsequent commercialisation of the products, namely when the condition of such products is changed or altered after their introduction onto the market.

The Industrial Property Code also allows the migration of a Community Trade Mark into a National Trade Mark according to the EU Regulations, as well as the international extension of a National Trade Mark according to the Madrid Convention.

The Industrial Property Code also permits the use of expressions in foreign languages.

I.2 REGISTERED TRADE MARKS

A trade mark may consist of a sign or set of signs which are capable of being represented graphically, namely words, including personal names, designs, letters, numerals, sounds, the shape of the product or its packaging. Trade marks may also consist of advertising slogans for products or services, irrespective of copyright, provided that they have distinctive character.

Apart from grounds of refusal based on its non-distinctive character and other EU common grounds, registration shall be refused if any or all of the elements contain, among others, (i) flags, coats of arms, shields, seals and other emblems belonging to the Portuguese State, (ii) heraldic insignias and other distinctions of honour to which the applicant has no right, (iii) personal names or pictures without the consent of the persons concerned or in discredit of such persons, (iv) signs with symbolic meaning, namely religious symbols; (v) signs that infringe copyright or other IP rights or that are intended to confuse or mislead consumers and (vi) expressions or figures that are contrary to morality or public order.

The Portuguese Industrial Property Code also gives protection to well-known and high renowned trade marks.

Registration implies only a legal presumption of the novelty or difference of the trade mark in respect of previously registered trade marks.

Registration lasts for 10 years and can be renewed indefinitely, subject to the filling of a declaration of intention to use every five years.

1.3 ONLINE REGISTRATION OF TRADE MARKS

According to Regulation n° 1359/2007, of 15th October, trade mark registrations can be done online, through www.empresaonline.pt.

It is also possible to obtain a pre-approved trade mark, preregistered in the name of the State in about fifty minutes. The procedure starts with the choice of the trade mark (from a list of 200 pre-granted trade marks) and ends with the delivery of the trade mark property title. This procedure, however, is restricted to a certain number of Nice classes.

1.4 UNREGISTERED TRADE MARKS

Any person who uses a free or unregistered trade mark for a period not exceeding 6 months shall enjoy, during this period, a right of priority for effecting the registration thereof and may oppose applications filed by others during such period.

2. PATENTS

2.1 INTRODUCTION

The Portuguese Industrial Property Code adopted, among others, Directive 98/44/CE, of July 6, concerning biotechnological inventions, Regulation (EC) No 1610/96 concerning the creation of a supplementary protection certificate for plant protection products and Council Regulation (EEC) No 1768/92 of 18 June 1992 concerning the creation of a supplementary protection certificate for medicinal products.

New inventions involving an inventive step are patentable if they are capable of industrial application. New processes for obtaining products, substances or compositions that are already known are also patentable.

An invention is considered to be new if it does not form part of the state of the art. The state of the art comprises everything which, in Portugal and elsewhere, was made available to the public before the date of the patent application by means of a description, by use or by any other means.

Surgical or therapeutical methods of treatment of humans or animals and diagnostic methods are not patentable.

The Portuguese Industrial Property Code addresses the issue of employee's rights insofar as it grants the right to a patent made during the performance of a labour contract to the employer, and grants the right to a special remuneration to the employee, provided that certain conditions are met.

The term of a patent is 20 years from the date of the respective application.

The Portuguese Industrial Property Code also addresses the issue of compulsory licenses.

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