

Protection of IP

Costa Rica

I. TRADE MARKS AND COMMERCIAL NAMES**I.1 INTRODUCTION**

In 2000, the Costa Rican legislature ratified the World Intellectual Property organization treaties and extensively modified its intellectual property laws to comply with those international treaty agreements by passing the following laws:

- (i) Law No. 7968, approving the WIPO Treaty on Copyright Law (WCT);
- (ii) Law No. 7967, approving the WIPO Treaty on Performances and Phonograms (WPP);
- (iii) Law No. 1919, reforming the Copyright Law and the Law on Industrial Property and Inventions;
- (iv) Law No. 7978, Law of Trade marks and other distinctive Marks;
- (v) Law No. 7982, approving the Central American Treaty on the Protection of Industrial Property; and
- (vi) Law No. 7975, Law on Trade and commercial Secrets.

I.2 TRADE MARKS

A trade mark is generally synonymous with a brand name, as trade marks and brand names identify a certain product or service coming from a particular company. In Costa Rica, trademark protection is governed by Law No. 7978 Law on Trade marks and Other Distinctive Signs (*Ley de Marcas y Otros Signos Distintivos*), which came into effect on February 1, 2000 through the Protocol to the Centro American Agreement on the Protection of Industrial Property and the Paris Convention for the Protection of Industrial Property.

The law defines a trade mark as any word, name, symbol, or any other graphic or material representation which distinguishes the products, goods, or services of one person or entity from those of the same class but which belong to another. As such, the critical element in a trade mark is that it identifies and distinguishes one product from another.

The law also applies to trade names and slogans. A trade name is a name used to identify a particular commercial business or enterprise. A slogan is any phrase, design, or print, which is used to attract the attention of the public to a particular product, company, or service.

The law allows the registration of any word, name, symbol, or any other graphic or material representation, which uniquely distinguishes products, goods or services.

A trade mark registration lasts for ten (10) years from the date of registration. The registration may be renewed for additional ten year periods. Once a certificate of registration is issued, it establishes ownership of the trade mark, trade name, or slogan. The owner then has the right to prohibit its use by third parties, to prohibit the importation of goods bearing the mark and to request enforcement and damages for the infringement of their mark.

The current trade mark law added a layer of protection which was lacking from previous legislation by extending protection to trade marks and brands that are well known in the international market place. In order to prevent the unlawful use of well known trade marks and brands, the law authorises the Registrar to reject or cancel the registration. It also prohibits the use of any trademark, trade name or service mark that constitutes a reproduction, imitation or translation of a well known name which is being used to promote identical or similar products and services which would be susceptible to confusion among the public.

1.3 COMMERCIAL NAMES

A business or company carrying on a commercial activity in Costa Rica may register with the Intellectual Property Office their commercial name. The exclusive right to a commercial name is acquired by its use in the commercial market place and expires with the extinction of the company or commercial establishment that uses it. By registering the commercial name the holder has the right to take action against any third party that uses any sign in commerce which identifies the commercial name which is protected.

2. COPYRIGHT PROTECTION

The protection of artistic and literary property includes written material such as books and articles as well as recordings and other forms of artistic expression.

Copyright refers to the rights granted by law to an author or originator of certain literary, or artistic productions, whereby that individual is invested, for a limited period, with the sole and exclusive privilege of reproducing copies of the work and publishing and selling them.

In Costa Rica, copyright law is governed by Law No. 6683 of October 14, 1982, *Ley de Derechos de Autor y Derechos Conexos*, as amended

Copyright protection extends to expressions and not to ideas, procedures, methods of operation, or mathematical concepts as such. In general terms, copyright protection can be requested to protect a range of works, including literary works, musical compositions, photographic work, graphic and sculptural works, motion pictures, computer programming, and sound recordings.

A copyright work is automatically protected for the author's life, plus an additional seventy (70) years after the author's death. If the copyright holder is not a physical person then the copyright lasts for seventy years (70) from the end of the year in which the work was originally published or disseminated to the public. In the case of a joint-work prepared by two or more authors the seventy year period begins to run upon the death of the last surviving co-author.

For this period, the copyright owner has the exclusive right to do and to authorize others to:

- (a) edit or reproduce the copyright work,
- (b) translate the copyright work into other languages or dialects,
- (c) adapt the copyright work for use in phonograms, video, movies or similar media,
- (d) communicate or transmit the copyright work directly or indirectly to the public
- (e) make the copyright work available to the public,
- (f) distribute the copyright work,

- (g) transmit the copyright material by radio or other public transmission, including cable, fibre optics, microwave, satellite or any other means
- (h) import the copyright material without authorisation
- (h) use any other means or processes on the copyright material known or which may be known in the future.

In the past it has been difficult for copyright holders to effectively enforce their rights against third parties through the Costa Rican judicial system. In order to bring the enforcement procedures in line with those of the World Intellectual Property Organization Treaties signed by Costa Rica, the legislature passed Law No. 8039 on October 12, 2000, Law for the Procedures to Protect Intellectual Property Rights (*Ley de Procedimientos de Observancia de Los Derechos de Propiedad Intelectual*).

The law provides administrative and civil remedies for copyright violations, including criminal sanctions. In addition, the law confers upon the Intellectual Property Office the power to grant precautionary relief, including injunctions prohibiting the dissemination and reproduction of copyright material and the confiscation of false or illegal merchandise.

3. PATENTS

A patent is a contractual agreement between an inventor and the government of Costa Rica. It grants the inventor the exclusive right to make, use and sell his invention for a specific term of years. In return for the patent rights, the inventor discloses the complete invention to the public in order to promote the progress of science. In Costa Rica, patent law is governed by law No. 6867 of April 25, 1983 on Patents of Invention, Industrial Designs and Utility Models as amended by Law No. 7979, which became effective on January 11, 2000.

Costa Rican law recognizes three types of patents:

- (i) Patents for Inventions;
- (ii) Improvement Patents;
- (iii) Confirmation Patents.

As stated above, patents for inventions are issued for a period of twenty years. The law does not allow for the extension of the term of the patent.

The law requires that the patent be commercially exploited in a permanent and stable manner in Costa Rica so that it will meet market demands within four years from the date the application is submitted or three years from the date the patent is granted, whichever is longer. If the supply to the market is interrupted for a period of a year or more, then the patent may be revoked.

4. INDUSTRIAL AND COMMERCIAL SECRETS

A law to protect industrial and commercial secrets in Costa Rica is a relatively new concept. The law addressing this topic came into effect in January 2000 with the publication of Law 7975, Law on Confidential Information (*Ley de Informacion No Divulgada*). The law is designed to prevent confidential information regarding commercial and industrial secrets from being passed

on, acquired or used by third parties without consent. The information must be within the parameters established by the law to be protected. The law does not cover information which is in the public domain or information which is obvious to a technician well versed in the subject matter. The law allows confidentiality agreements to be entered into between parties to a commercial relationship to prevent disclosure of confidential information.

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