

CASTRO SAMMARTINO, PIERINI, ROICH & VAISMAN

Attorneys and Counselors at Law
Tte. Gral. J. D. Perón 679, 3rd Floor
(C1038AAM) - Buenos Aires - Argentina
Tel. Fax: +54 11 4326-5868/5875, 4328-6151
E-mail: info@csprv.com.ar
Web: www.csprv.com.ar

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INDUSTRIAL AND INTELLECTUAL PROPERTY RIGHTS IN ARGENTINA

Argentina's protection of industrial and intellectual property rights is based upon Section N° 17 of the National Constitution.

A. Trademarks and Trade Names

Trademark Act 22,362 governs trademarks and trade names in Argentina.

It establishes the right to the exclusive use and exploitation of a trademark for a ten-year period after the same is obtained by registration with the Intellectual Property National Institute (*Instituto Nacional de la Propiedad Intelectual* or INPI).

The trademark registration may be renewed indefinitely for 10-year periods, subject to its effective use during the five years prior to its expiration date.

The trademarks registration is made in classes as per the International Classification of Goods and Services.

Registration is made on a "first-in-time, superior-in-right" process. However, renowned trademark registrations have been revoked due to lack of good faith of "speculative" registrants.

Trademarks (symbols or signs) must have

the following characteristics in order to be registered: (i) identify or distinguish a product or service; (ii) not be similar to previously registered trademarks; and (iii) not infringe Argentine laws.

No restrictions to register trademarks are imposed upon natural or legal persons based on their nationality or residence.

B. Patents and Utility Models

Inventions are governed by the Patents and Utility Models Act 24,481.

Inventions that may be patented according to the above-referred Act are those products or processes that are a human creation and which permit a person to transform matter or energy to obtain a benefit of the same.

The "invention" must be novel, inventive and capable of an industrial application or use in order to be patentable. It is worth noting that pharmaceutical reformulations may be patented under the law, provided that they have said characteristics.

Patents in Argentina are granted for 20 years as of the date of application before the INPI and the same cannot be renewed nor extended. The patent holder has to pay the pertinent fees established by law in order to maintain a valid patent.

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The patent holder has the exclusive right to impeach third parties from (i) producing the patented product and from selling or importing the same, and (ii) using the patented production procedure and from selling or importing the products produced as a result of the same using the patented production procedure.

If the patent holder fails to exploit the patented invention (i) during three years as from the date when the patent was granted or (ii) during four years as from the date of the patent application - except force majeure - or if the patent holder interrupts the exploitation of the same for more than one year, anyone may request the authorization to use and exploit the invention without the authorization of the patent holder.

Concerning utility models, the law grants protection to any new arrangement, shape of tool, work instrument, device or object of an industrial nature, to the extent the same is novel in Argentina and improves its function. The INPI may grant utility model certificates for a non-renewable term of 10 years.

C. Industrial Designs and Models

The shape or appearance of an industrial product may be protected if registered pursuant to Decree 6673/63. Said protection grants the owner of a model or design the exclusive right to prevent third parties from using the registered design or an imitation of the same, whether industrially or commercially.

Registration may be granted for five years provided that there is no prior publication in Argentina or abroad. The term may be renewed for two equal periods as long as said extension is requested no later than six months prior to the expiration of the pertinent five-year term.

Once a design or a model registration has been filed abroad, the same design or model registration must be filed in Argentina within the following six months from the date of filing of the design application.

D. Copyrights

Protection of copyrights in Argentina is ruled by Intellectual Property Act 11,723, which grants protection to scientific, literary, artistic or educational works regardless their process of reproduction. Abstract ideas cannot be patented since patentable works must be expressed in a tangible, material form and must contain a minimum degree of originality and uniqueness.

The Intellectual Property Act grants lifelong copyrights to the author, and to his/her successors thereof, for 70 years as of the author's death. With respect to photographic works, the term after the author's death is reduced to 50 years, and for cinematography works said term commences as of the death of the last person participating in the production thereof.

Having proved compliance with copyright formalities in the country of publication, foreigners may register their work and be granted copyright protection in Argentina.

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Software (object and source code) is also protected under the Argentine Copyright regime. The Intellectual Property Law explicitly states that registration is required for that purpose, although the Berne Convention (which should prevail in case of conflict with local legislation, Argentina being a party thereof) establishes that copyright protection is granted as of the publication of the work. Registration is made with the Software and Information Technology Services Chamber.

E. Internet Domain Names

Argentine "NIC" is the entity -operating under the scope of the Ministry of Foreign Affairs- in charge of ".ar" Argentine internet domain names.

Although there is no specific legislation in this regard, NIC Argentina has established the basic terms and conditions for internet domain name registration.

The basic terms and conditions for internet domain name registration set forth by NIC Argentina state that such registration shall be made online at www.nic.ar on a first-come first-served basis. The applicant must complete a form with his/her personal information and declare under oath that the information submitted is accurate, that the application does not violate third party rights, and that the domain name is not being registered for illegal purposes. If any of these statements are false, NIC Argentina may reject applications or revoke registration.

The term of registration of a domain name

extends for twelve (12) months and can be indefinitely renewed.

NIC Argentina will not perform as a mediator or arbitrator in any conflict between registrants, applicants or third parties regarding the use or registration of a domain name. Furthermore, NIC Argentina does not guarantee the legality of a registered domain name. The registrant is the only party liable vis-à-vis third parties with regards to the registration of a domain name.

Transfers of domain names must be performed before a notary public who shall state that the parties transferring and acquiring the internet domain name have sufficient authority to perform those acts. Such transfer will be valid once the transferor submits a domain name cancellation petition due to transfer and the transferee submits a registration petition due to the transfer.