

LAW No. 380**THE PRESIDENT OF THE REPUBLIC OF NICARAGUA**

Informs the people of Nicaragua that:

THE NATIONAL ASSEMBLY OF THE REPUBLIC OF NICARAGUA

In use of its powers;

HAS ISSUED

The following:

LAW OF TRADEMARKS AND OTHER DISTINCTIVE SIGNS**CHAPTER I****GENERAL PROVISIONS**

Art.1 **Purpose of the Law.** The purpose of the present Law is to establish the provisions that govern the protection of trademarks and distinctive signs.

Art.2 **Definitions.**

Competent authority: Competent jurisdictional body according to the Nicaraguan legislation.

Denomination of origin: Geographical indication that identifies a product as originating from: a country, a region, a locality or a specific place whose quality, reputation and other characteristics are essentially attributable to its geographical origin, including human and natural factors. A denomination of origin will also be considered to be that which constitutes the denomination of a product that, without being a geographical name, indicates a geographical origin when applied to such product, whose quality, reputation and other characteristics are essentially attributable to its geographical origin.

Emblem: A figurative or composite sign that identifies a company or an establishment.

Commercial advertisement expression or sign: All slogans, advertisements, mottos, phrases, word combinations, designs, engravings, or any other similar medium, provided that it is original and characteristic, and is used for the purpose of calling the attention of consumers or users to a specific product, service, company, establishment or commercial output.

Geographical indication: Name, expression, image or sign that designates or evokes a country, a region, a locality or a specific place.

Mark: Any visible sign suitable for distinguishing products or services.

Collective mark: A mark owned by a collective entity, which brings together persons authorized to use the mark.

Certification mark: A mark applied to products or services with characteristics or qualities certified by the owner of the mark.

Commercial name: Denominative sign which identifies a company or establishment.

Dominion name: A sequence of alphanumeric signs, which corresponds to a numeric address on the Internet or on another similar public communications network.

Registry: Registry of Intellectual Property.

Sign: Visible sign which identifies a specific commercial establishment.

Distinctive sign: A sign which constitutes a mark, a commercial name, a sign, an emblem or a denomination of origin.

Well-known distinctive sign: A sign known within the pertinent sector of the public or by the business circles in the country or internationally, regardless of the form or means by which it became well known.

CHAPTER II

MARKS IN GENERAL

Art.3

Signs that can constitute marks. Marks may consist of, amongst other things, words or group of words, slogans, advertising phrases, letters, numbers, monograms, figures, portraits, labels, shields, prints, vignettes, edges, lines and stripes and combinations and provisions of colors. They can also consists of the form, presentation or conditioning of products or their packaging or wrappings, or of the means or premises for the retailing of the respective products or services.

A mark may consist of a national or foreign geographical name, as long as it is sufficiently arbitrary and distinctive with respect to the products or services to which it is applied, and that its use not be likely to cause risk of confusion regarding the origin, source, qualities or characteristics of the products or services to which it is to be applied, or be associated with well-known geographical names, so as to take unfair advantage of such geographical indication.

Art.4 Nature of the products or services. The nature of the product or service to which a mark is to be applied shall never be an obstacle to the registration of a mark.

Art.5 Priority regarding the right to register a mark. Questions that arise regarding which of two or more registration applications should be given priority would be decided taking into account the date and time of the filing of each application. In order to determine precedence as to the right to register a mark, the right of priority corresponding to the interested party would be applied in all cases, as well as any lawful agreement between parties or legal disposition determining a different priority or a better right to the registration.

There is no prejudice against the rights resulting from the fame of the mark as per this Law and applicable international treaties.

Art.6 Right of priority. The party who filed an application for the registration of a mark before a national, regional or international office with which the country is linked by any treaty or pact by which a right of priority is recognized with the same effects as those provided for in the Paris Convention for the Protection of Industrial Property, as well as the assignee of such party, will have a right of priority to file in the country an application for the registration of the same mark with respect to the same products and services.

The right of priority will last six months, from the day following the filing of the priority application; it will be governed by the provisions of the Paris Convention for the Protection of Industrial Property and, complementarily, by this Law and its rules and regulations.

An application filed in the country based on a right of priority will not be rejected, revoked nor annulled by acts that occurred during the priority term, perpetrated by the applicant, or a third party, and such acts will not give course to the acquisition of any third party right with respect to the object of the application.

Multiple or partial priorities may be claimed for one application, that may arise from two or more applications filed in the same office or in different offices. In such case, the priority term will began from the date of the oldest priority.

Art. 7 **Inadmissible marks for intrinsic reasons.** No sign included in any of the following cases will be registered as a mark:

- a) a sign that lacks sufficient distinctive characteristics with respect to the product or service to which it will be applied;
- b) a sign contrary to the Law, public order or moral;
- c) a sign that consists of the usual or common form of the product to which it is applied or its packaging or container, or in a form necessary or imposed by the nature of the corresponding product or service;
- d) a sign that consists of a form or sign that gives a functional or technical advantage to the product or service to which it is applied;
- e) a sign that consists exclusively of a usual sign or an indication that, in common or technical language, is used to designate the product or service to which it is applied
- f) a sign that designates, or describes or qualifies the characteristics, qualities or other data corresponding to the product or service that it seeks to identify
- g) colors by themselves
- i) signs likely to give rise to confusion or errors regarding the geographical origin, nature, method of production, qualities, suitability for use or consumption, quantity or any other characteristic of the product or service to which it is applied;
- j) a sign that consists of a geographical indication that does not conform to the provisions of the second paragraph of Art.3 of the present Law;
- k) a sign that constitutes a total or partial reproduction or imitation of a shield, flag or other emblem, acronyms, denomination or abbreviation of denomination of any State or international organization;
- l) a sign that includes a total or partial reproduction or imitation of an official sign or of a guarantee or control sign of any State or national or foreign, departmental, provincial or municipal public entity, without the authorization of the competent authority;
- m) a sign that consists of a denomination of a vegetable variety protected as such in the country or outside the country, if the sign is to be used on products or services related to such variety or if its use would be likely to give rise to confusion or association with it;
- n) a sign that reproduces coins or bills in legal circulation in the territory of any country, securities or any other commercial

documents, seals, stamps, tax stamps or fiscal species in general, or,

o) a sign that includes or reproduces medals, prizes, diplomas or other elements that would imply the obtention of rewards with respect to the corresponding product or service, unless such rewards have truly been granted to the party applying for the registration or his/her/its assignee, and such fact is duly credited at the moment of applying for the registration.

Notwithstanding the provisions of sections e), f) and g), a sign can be registered as a mark when the party applying for its registration or his/her/its assignee has been using it in the country, and, through such use, the sign has acquired sufficient distinctive capability with respect to the products or services to which it is applied.

Art. 8 Inadmissible marks due to third party rights. It will not be possible to register as a mark a sign, which use would affect a prior third party right. It is understood that a prior third party right is affected in any of the following cases, amongst others:

a) The sign is identical to a registered mark or a mark pending registration in the country, by a third party, from a prior date, to distinguish the same products or services.

b) The sign is identical or similar to a registered mark or a mark pending registration in the country by a third party, from a prior date, to distinguish the same or different products or services, if its use can cause confusion or association with such mark.

c) The sign is identical or similar to a commercial name, a sign or emblem belonging to a third party from a prior date, and its use can cause confusion or association with such commercial name, sign or emblem.

d) The sign constitutes a total or partial reproduction, imitation, translation, transliteration or transcription of a well-known distinctive sign belonging to a third party, regardless of the products or services to which the sign is applied, when its use can cause confusion or association with such well-known distinctive sign, or the dilution of its distinctive force or its commercial or advertising value or would lead to an unfair enjoyment of the fame of the sign.

e) The sign would affect the right to the personality of a third party, especially if it is the name, signature, title, hypocorism, pseudonym, image or portrait of a party different from the one applying for the registration, unless the consent of such party or, if the party has passed away, of those that have been declared his/her heirs, is duly credited.

f) The sign would affect the right to the name, image or prestige of a juridical person or local, regional or national community, unless the express consent of the competent authority of such person or community, is duly credited.

g) The sign contains a denomination of origin, protected for the same products or for different products, when its use may cause confusion or association with the denomination or would lead to an unfair enjoyment of its fame.

h) The sign causes prejudice to a copyright, industrial property right or third party right, protected by a figure different from the ones governed by the present Law.

i) The sign for which registration has been applied is identical or similar to a sign that has been used in good faith in the national territory by a third party, for the identification of the same products or services.

CHAPTER III

TRADEMARK REGISTRATION PROCEDURE

Art. 9 **Registration application.** A trademark registration application shall be filed before the Registry and must include the following elements:

- 1) A petition, including
 - 1.1) Name and address of the applicant;
 - 1.2) Place of organization and legal residence of the applicant, if it is a juridical person;
 - 1.3) Name of legal representative, if any;
 - 1.4) Name and address of the attorney in the country, if one has been appointed; the designation of an attorney is necessary when the applicant has no domicile or establishment in the country;
 - 1.5) The mark for which registration is being applied, if it were a denominative mark, without special spelling, form or color;
 - 1.6) A list of the products or services for which the registration of the mark is being requested, divided by classes as per the International Product and Services Classification, indicating the number of each class; and,

- 1.7) The signature of the applicant or his/her/its attorney.
- 2) Four reproductions of the mark if it has any special spelling, form or color or if it were a figurative, composite or three-dimensional mark, with or without color.
- 3) The Power of Attorney or the document establishing the representation, as the case may be.
- 4) Required documents or authorizations in the cases established in Arts. 7 and 8 of the present Law, when pertinent.
- 5) The name of the country of nationality of the applicant, if he/she/it is national of a country, the name of the country in which the applicant has his/her/its residence or legal domicile, if any, and the name of the country in which the applicant has an actual and effective industrial or commercial establishment, if any;
- 6) Receipt of the established charge.

Art.10

Rights Based on Foreign Application. If the applicant wishes to claim a right of priority, he/she/it must make an express declaration to be presented together with the registration application or within two months from the date of the filing of such application. The priority declaration must include the following data for each application for which a priority is claimed:

- a) The office in which the priority application was filed,
- b) The date of filing of the priority application, and
- c) The number of the priority application, if a number was assigned.

In order to establish a right of priority, a copy of the priority application, certified by the authority that received it, including the reproduction of the mark and the list of the corresponding products and services, shall be filed together with the registration application or within three months from the date of filing of same, as well as a certificate of the date of presentation of the priority application issued by such authority. These documents shall be accompanied by their corresponding translation, when necessary, and do not need to be legalized.

If the applicant wants to claim the right established in Art.6 of the Paris Convention for the Protection of Industrial Property, he/she/it must indicate this fact, and file, together with the application or within three months from the date of filing of same, a registration certificate of the mark in the country of origin, with the corresponding translation. These documents do not need to be legalized.

Art. 11 **Date of filing of the application.** The date of filing of the application will be the date on which the Registry received it, provided that it includes the following elements:

- a) An express request for the registration of a mark.
- b) Sufficient information to identify the applicant.
- c) The mark which registration is being requested, if it were only a denominative mark, or a reproduction of the same, if it has any special spelling, form or color, or if it is a figurative, combined or three-dimensional mark, with or without color.
- d) A list of the products or services for which the registration of the mark is being requested.
- e) The corresponding receipt.

If the application lacks any of the above elements, the Registry will notify the applicant requesting him/her/it to correct the omission. The application will be considered as non-filed until the omission is corrected.

Art. 12 **Amendment of the application.** The applicant may amend or correct the application at any time during the proceedings. No modification or correction will be admitted if it implies a change in the mark or an enhancement of the list of products or services of the original application, but such list may be reduced or limited. The established charge will be imposed on the modification or correction.

Art.13 **Division of the application.** The applicant may divide the application at any time during the proceedings in order to separate into two or more applications the products or services included in the list of the original application. No division will be admitted if it implies an enhancement of the list of products or services of the original application, but such list may be reduced or limited.

Art. 14 **Examination of the form.** The Registry will examine if the application complies with the requisites of Articles 10 and 11 of the present Law, and with the corresponding regulatory provisions.

If an omission or deficiency is detected, the applicant will be notified, giving him/her/it a term of two months to make the correction, with the warning that, if the correction is not made, the application will be considered to be abandoned by reason of the law and will be filed by administrative initiative.

Art. 15 **Publication of the application.** After the corresponding examinations have been made in accordance with Articles 16 and 17 of the present Law, The Registry will order the application to be published once in the Official Gazette within a period of fifteen days at the expense of the interested party.

The advertisement for publication in the Official Gazette shall contain:

- a) The name and domicile of the applicant;
- b) The name of the legal representative or attorney, as the case may be;
- c) the date of filing of the application;
- d) The number of the application;
- e) The mark for which registration is being applied; and,
- f) The list of products or services for which the registration of the mark is being requested, and the corresponding Class or classes.

Art. 16 Opposition to the registration. Any interested party may file an opposition to the registration of a mark within a period of two months from the first publication of the advertisement announcing the application. The opposition must indicate the legal and factual grounds on which it is based, presenting or offering to present the corresponding evidence.

If the proofs are not presented with the opposition, they shall be presented within the term of thirty calendar days from the date of filing of the opposition.

The applicant will be notified of the opposition, and he/she/it may answer it within a period of two months from the date of the notice. After this period, the Registry of Intellectual Property will decide on the application, even if the opposition has not been contested. The term for settling the opposition will be two months from the day after the date on which the term for contesting the opposition begins.

The parties may agree upon the appointment of arbiters or arbitrators to settle an opposition. To that effect, the pertinent provisions of Title XIII, Volume Three of the Arbitration Trials, and Articles 958-990 of the Code of Civil Procedures, will apply.

Art. 17 Voluntary abandonment of applications and oppositions. Every party who files an application or opposition before the Registry, may abandon it voluntarily regardless of the status of the corresponding proceedings. Upon such voluntary abandonment, the application or opposition would be considered as not filed.

The resolution giving course to the voluntary abandonment, will extinguish the actions of the applicant or opponent, whichever the

case may be, leaving things as they were before the filing of the voluntary abandonment petition.

Notwithstanding the above, any party that voluntarily abandons an opposition will not be able to file another opposition against the same registration application based on the same causes, or demand the nullity of the registration.

Art. 18

Examination of questions of Law and resolution. Once the term for filing oppositions has expired, the Registry will examine whether the mark falls within any of the prohibitions of Art.7. It will also examine whether the mark falls within any of the cases established in sections a) and h) of Art.9 due to the existence of a previous registration or application in the country. The Registry may examine by administrative initiative, on the basis of the information at its disposal, whether the mark falls within any of the prohibitions of Art.9, all of the present Law.

Once the examination of questions of Law has been completed, the Registry will notify the interested party via a motivated resolution, of the acceptance or rejection of the application.

Should the mark fall within any of the prohibitions, the Registry will notify the applicant of this fact, indicating the motives for the rejection. The applicant shall reply within a period of two months, from the date of the notice.

If the applicant does not file a reply to the notice within the given period, or if in any case the requirements for the granting of the registration are not met, the Registry would reject the registration via a reasoned resolution.

If the causes of the rejection only affect some of the products or services included in the application, or if the opposition filed is limited to some products or services, the registration may be rejected only for those products or services or granted with an express limitation for certain products or services. The resolution may also establish other conditions related to the use of the marks when necessary to avoid confusion or association, or any other prejudice to the owner of the prior right.

Art. 19

Certificate of Registration and Publication. The Registry will issue a certificate stating the ownership and the duration of the mark for which registration has been applied, which will be published in the Official Gazette or in the Registry's official means of publication.

Art. 20

Co-ownership. The co-ownership of applications or registrations related to marks will be governed by the following rules, except when the co-owners have made another agreement:

- a) The modification, limitation or voluntary abandonment of an application must be done in conjunction;

- b) The assignment of the application or of the registration must be done by common agreement between the co-owners, but each co-owner may assign separately his/her/its share, enjoying all the other preference rights during the term of one month from the date on which the co-owner notifies the other co-owner(s), of his/her/its intention to assign his/her/its share;
- c) A license for the use of the mark may only be granted by common agreement.
- d) The total or partial voluntary renunciation, limitation or cancellation of a registration will be done by common agreement between the co-owners; and,
- e) Each co-owner may use the mark individually, informing the other co-owner(s) of such use.

The provisions of the Civil Law would apply to the co-ownership in all respects not covered by the present article.

CHAPTER IV

DURATION, RENEWAL AND MODIFICATION OF A REGISTRATION

- Art. 22 **Term of the registration and renewal.** The registration of trademark expires ten years after the date it was granted. The registration may be renewed indefinitely for consecutive periods of ten years starting from the previous expiration date.
- Art. 22 **Procedure for the renewal of a registration.** The renewal of a registration will be made by filing the corresponding application with the Registry of Intellectual Property. The application must contain the following:
- a) Name and address of the owner;
 - b) the mark and the registration number;
 - c) Name and address of the attorney in the country, if any,
 - d) Special or general power of attorney
 - e) If the applicant wishes to reduce or limit the products or services included in the registration to be renewed, a list of the reduced or limited products or services; in every case, products or services will be grouped by classes according to the International Product and Services Classification, indicating the number of each class; and,
 - f) The receipt of payment of the designated tax.

The period of a renewal can only correspond to one registration and (the corresponding application) must be filed within a period of one year before the expiration date of the registration. It can also be filed within a grace period of six months after the expiration date. In such cases, an extra charge must be paid in addition to the pertinent renewal tax. During the grace period, the registration will be in full force.

The renewal of the registration of a mark becomes effective at the expiration date of the registration, even if the application for renewal is filed within the grace period.

Once the requirements established in the present article have been met, the Registry of Intellectual Property will record the renewal without further proceedings. The renewal will not be subjected to an examination concerning questions of Law or to publications.

Art.23 **Modification during the renewal.** At the time of the renewal, no changes may be made in the registration of the mark, neither may the list of products or services it covers be enhanced, but such list may be reduced or limited.

The record of the renewal will indicate any reduction or limitation in the list of products or services denoted by the mark.

Art.24 **Correction and limitation of the registration.** The owner of a registration may request at any time the modification of the registration in order to correct an error. The correction would not be admitted if it implies an essential change of the mark or an enhancement of the list of products or services it covers.

The owner of a registration may request at any time the reduction or limitation of the list of products or services covered by the registration. When a third party right appears recorded with respect to the mark, the reduction or limitation can only be recorded with the prior presentation of a statement signed by such third party before a Notary Public, consenting to the reduction or limitation.

Payment of the designated tax will have to be made in connection with any request for correction, reduction or limitation of a registration.

Art.25 **Division of a registration.** The owner of a registration may request at any time the division of the registration of the mark with the purpose of separating into two or more registrations the products or services covered by the initial registration.

After the division, each separate registration will be independent but they will retain the date of granting and expiration of the initial registration. The corresponding renewals will be made separately.

Payment of the designated tax will have to be made in connection with any request for division of a registration.

CHAPTER V

CONTENT OF THE RIGHT GRANTED BY THE REGISTRY

- Art.26 **Exclusive rights.** The owner of a registration of a mark acquires the right to prohibit third parties from using the mark, and to exercise before the corresponding jurisdictional bodies the pertinent actions and measures against any party that violates his/her/its rights. The owner of a registered mark can prevent any third party from carrying out the following actions:
- a) Applying or placing the mark or an identical or similar distinctive sign on products for which the mark has been registered, or on products related to the services for which the mark has been registered, or on the containers, wrapping packaging of such products.
 - b) Suppressing or modifying the mark for commercial purposes after it has been placed or applied to the products referred to in the above section.
 - c) Manufacturing labels, containers, wrapping, packaging or other materials that reproduce or bear the mark, as well as marketing or holding such materials.
 - d) Filling or reusing for commercial purposes containers, wrapping or packaging bearing the mark.
 - e) Using commercially a sign identical or similar to the mark with respect to any products or services when such use may cause confusion or association with the owner of the registration, with the understanding that the use of an identical sign for identical products or services will probably cause confusion.
 - f) Using commercially a sign identical or similar to the mark with respect to any products or services when such use may cause the owner of the registration unfair economic or commercial harm due to the dilution of the distinctive force or the commercial or advertising value of the mark, or an unfair enjoyment of the prestige of the mark or its owner.
 - g) Publicly using an identical or similar sign to the mark, even for noncommercial purposes, when such use may cause a dilution of the distinctive force or the commercial or advertising value of the mark, or an unfair enjoyment of the prestige of the mark or its owner.

Art. 27 **Acts that constitute commercial use of a sign:**

- 1) To introduce commercially, sell, put up for sale or distribute products or services using the sign.
- 2) To import, export, store or transport products using the sign.
- 3) To use the sign in advertising, publications, commercial documents or written or oral communications, regardless of the means of communication used and without prejudice to the applicable rules regarding publicity.
- 4) To adopt or use the sign as a domain name, electronic mail address, name or designation in electronic media or other similar media used in electronic communications.

Art.28 **Limitations on the right to the mark.** The registration of a mark will not make it lawful for a third party to be prevented from using commercially:

- a) His/her/its name or his/her/its address or the name of his/her/its commercial establishments;
- b) Instructions or information pertaining to the characteristics of the products or services he/she/it produces or markets; amongst others, those relating to its quantity, quality, use, geographical origin or price; and,
- c) Instructions or information regarding the availability, use, application or compatibility of the products or services he/she/it produces or distributes; in particular, with respect to parts, spare parts or accessories.

These exceptions would apply as long as such use is made in good faith in the exercise of lawful industrial or commercial activities, and is not likely to cause confusion or association regarding the corporate origin of the products or services of the third party.

Art.29 **Exhaustion of the Exclusive right.** The registration of the mark does not grant to its owner the right to prohibit a third party the use of the mark in connection with the lawfully market products that may have been introduced commercially in any country, by the same owner or by another party with his/her/its consent, or economically connected with him/her/it, as long as the containers or packaging that were in immediate contact with such products had not been modified, altered or harmed in any way.

To the effects of the preceding paragraph, it is understood that two persons are economically connected when one of them could exercise directly or indirectly on the other a decisive influence with respect to the exploitation of the mark, or when a third party may exercise such influence on both persons.

CHAPTER VI

ASSIGNMENT OF A MARK AND LICENSE TO USE IT

Art.30 **Assignment of marks.** The rights to a registered mark or of a mark in the process of being registered may be assigned by an act between living persons or by succession. The assignment must be made in writing. In order for the assignment to have legal effect on third parties, it must be recorded in the Registry. Such recording will be subject to the established fees.

Art.31 **Free assignment of the mark.** The rights to a mark may be assigned regardless of the company or the part of the company of the owner of the right, and with respect to one, some or all the products or services for which the mark is registered. When the assignment is limited to one or some of the products or services, the registration will be divided, and a new registration will be created in the name of the assignee.

At the request of an interested party or of a competent authority, an assignment and the corresponding recording may be declared null and void if the change in the ownership of the right is likely to give rise to confusion or association regarding the corporate origin of the respective products or services.

Art.32 **License to use a mark.** The owner of the rights to a registered mark or of a mark in the process of being registered may grant in writing to a third party the license to use the mark.

The license to use a mark will have legal effect on third parties from the date of the filing of the corresponding application with the Registry.

In the absence of any stipulation to the contrary in a Licensing agreement, the following rules will apply:

a) The licensee will have the right to use the mark during the term of the registration, including its renewals, in the entire territory of the country and with respect to all products or services for which the mark is registered.

b) The licensee shall not assign the license nor grant sub-licenses.

c) When a license is granted as an exclusive license, the licensor shall not grant other licenses with respect to the same territory, the same mark and the same products or services, nor shall he/she/it use the mark in such territory with respect to such products or services.

Art.33 **Quality control.** At the request of any interested party or of a competent authority and after hearing the owner of the registration of the mark, the Judge may cancel the recording of a license agreement and prohibit the use of the mark by the licensee when, due to the lack of adequate control on the part of the owner of the registration, such use causes or may cause confusion, deception or harm to the public, or becomes detrimental to the competition within the market.

CHAPTER VII

TERMINATION OF THE REGISTRATION OF THE MARK

Art.34 **Nullity of the registration.** At the request of any interested party, and after hearing the owner of the registration of the mark, the competent judicial authority will declare the registration of the mark null and void following the corresponding judicial proceeding if such registration was made in breach of some of the prohibitions established in Arts.8 and 9 of the present Law. In case of a breach of Art.8 of this law, the nullity may also be requested by a competent authority.

The registration of a mark shall not be declared null and void on the basis of provisions that are no longer applicable at the time when the nullity is to be decided. When the cause of the nullity is only relevant with respect to one or some of the products or services for which the mark was registered, the nullity would be declared only for such products or services, which would be removed from the pertinent list included in the registration of the mark.

A request for nullity on the basis of a breach of Art.9 of the present Law, must be filed within a period of five years from the date of the respective registration. The nullity action shall not prescribe when the corresponding registration was made in bad faith.

The request for nullity may be filed as a defense or as a counterclaim in any action based on a violation of a registered mark.

A nullity action based on the better right of a third party to obtain the registration of a mark, shall only be filed by the party claiming such right. A nullity action would be admitted if the interested party did not file an opposition in due course.

Art.35 **Cancellation due to generalization of the mark.** At the request of any interested party, the competent judicial authority will cancel the registration of a mark or limit its scope when its owner has provoked or tolerated the mark becoming a common or generic sign to identify or designate one or some of the products or services for which it is registered.

It is understood that a mark has become a common or generic sign when in the commercial media and for the public such mark has lost its distinctive character as an indication of the corporate origin of the product or service to which it is applied. To this effect, the following factors must come together in connection with the mark:

- a) The necessity for the competition to use the sign in view of the absence of another name or sign adequate to identify or designate in the market the respective product or service;
- b) The generalized use of the mark by the public and in the commercial media, as a common or generic sign of the respective product or service; and,
- c) The ignorance of the public that the mark indicates a specific corporate origin.

Art.36 **Cancellation of the registration for lack of use of the mark.** At the request of any interested party and after hearing the owner of the registration of a mark, the competent judicial authority will cancel the registration of a mark when it has not been used during the three uninterrupted years preceding the cancellation action. The cancellation request will not be admitted until after a period of three years from the date of the initial registration of the mark in the country.

The cancellation of a registration for lack of use of the mark may also be requested at the time of answering an objection by the registration or during an opposition, annulment or violation proceeding, when the objection or the action is based on a registered mark that has not been used in accordance with this Law. The cancellation shall be decided by the authority that handles the corresponding proceeding or action.

When the first use of the mark occurs after three years from the date of registration in the country, such use would only prevent the cancellation of the registration if it took place at least three months before the date on which the cancellation request is filed.

When the lack of use affects only one or some of the products or services for which the mark is registered, the cancellation of the registration shall be solved by reducing or limiting the list of the products or services included in the registration, eliminating those in connection with which, the mark has not been used.

Art.37 **Definition of use of the mark.** For the purpose of the cancellation action against the registration for lack of use, it will be understood that a mark is being used when the products or services covered by same have been marketed or are available under such mark, in quantities and in the form that occur normally, taking into consideration the size of the market, the nature of the respective products or services, and the ways in which such marketing is being done.

Use of the mark will also be assumed when the mark is used in connection with products to be exported from the national territory or in connection with services rendered abroad from the national territory.

The use of a mark by a Licensee or by another authorized party, will be considered as carried out by the owner of the registration, for all purposes related to the use of the mark.

A registered mark must be used in the market exactly as it appears in the registration; nevertheless, the use of the mark in a form different to the form in which it appears in its registration only with respect to details or elements that are not essential and which do not alter the identity of the mark, will not be cause for the cancellation of the registration, nor will it diminish the protection conveyed by the registration.

Art.38 **Provisions related to the use of the mark.** The registration of a mark will not be canceled for lack of use when this is due to justifiable reasons.

Justifiable reasons for the lack of use of a mark will be considered to be those that are due to circumstances beyond the control of the owner of the mark and that constitute an obstacle to the use of same, such as restrictions to import and other official requirements imposed on the products or services protected by the mark.

Art.39 **Evidence of the use of the mark.** It is up to the owner of the registration of the mark to prove the use of the mark.

The use of the mark will be acknowledge by any means of proof admissible by law that demonstrates that the mark has been actually used.

Art.40 **Voluntary cancellation of the registration.** The owner of the registration of a mark may at any time request in writing from the Registry the cancellation of such registration. Payment of the designated tax will have to be made in connection with the cancellation request.

If there are any security rights or garnishments or any other restraints on ownership rights recorded in connection with a mark, on behalf of a third party, the voluntary cancellation would only be admitted with the written consent of the third party with his/her

signature authenticated by a notary public, or by order of the competent authority.

CHAPTER VIII

COLLECTIVE MARKS

Art.41 **Applicable provisions.** The provisions of Chapter II of the present Law, will be applicable to collective marks, with the special reservations contained in this Chapter.

Art.42 **Registration application of a collective mark.** The registration application of a collective mark must indicate that its purpose is a collective mark and include three copies of the rules of use of the mark.

The rules of use of such mark must specify the characteristics that will be common to the products or services for which the mark is to be used, the conditions and ways in which the mark may be used and the parties that will be entitled to use it. It will also have to contain provisions that will ensure and guarantee that the mark is used in accordance with its written rules of use and the pertinent sanctions for the failure to comply with such rules of use.

Art.43 **Examination of the application of a collective mark.** The examination of the registration application of a collective mark must include the verification of the requirements regarding its rules of use.

Art.44 **Registration of a collective mark.** Collective marks will be registered in the Trademark Registry. The corresponding registration must include a copy of the rules of use of the mark.

Art.45 **Changes in the rules of use of the mark.** The owner of a collective mark shall inform the Registry of all changes made to its rules of use.

Changes in the rules of use of the mark will be recorded after payment of the designated tax, and will only have effect from the moment of their filing with the Registry.

Art.46 **License of the collective mark.** A collective mark cannot be the subject of a license of use in favor of a party different from those authorized to use the mark in accordance with its rules of use.

Art.47 **Use of the collective mark.** The owner of a collective mark may use the mark as long as it is also used by the persons authorized to do so in accordance with the rules of use of the mark.

The use of a collective mark by the persons authorized to do so, will be considered as carried out by the owner of the registration.

Art.48 **Nullity of the registration of a Collective mark.** At the request of any interested party, and after hearing the owner of the registration of the mark, the competent judicial authority will declare null and void the registration of a collective mark in any of the following cases:

a) The mark was registered without complying with the requirements pertaining to its rules of use.

b) The rules of use of the mark are contrary to the Law, public order or morality.

Art.49 **Cancellation of the registration of the Collective mark.** At the request of any interested party, and after hearing the owner of the registration of the mark, the competent judicial authority will cancel the registration of a collective mark in any of the following cases:

a) If for more than a year the collective mark is used only by its owner and not by the persons authorized according to the rules of use of the mark; or,

b) If the owner of the collective mark uses or lets the mark be used in a way that goes against the provisions of its rules of use, or in a manner likely to deceive the commercial media or the public concerning the origin or any other characteristic of the products or services for which the mark is used.

CHAPTER IX

CERTIFICATION MARKS

Art.50 **Applicable provisions.** The provisions of Chapter II of the present Law will be applicable to certification marks, with the reservations of the special provisions contained in this Chapter.

Art.51 **Ownership of the certification mark.** A national or foreign company or institution, whether public or private, or a governmental, national, regional or international entity competent to carry out activities pertaining to Certification of quality, may own a certification mark.

Art.52 **Formal requirements for the registration.** The registration application of a certification mark must be accompanied by the pertinent rules of use of the mark which will establish the characteristics guaranteed by the presence of the mark and the way in which the quality control is to be exercised before and after authorizing the use of the mark. The rules of use will be approved by the competent administrative authority, depending on the

corresponding product or service, and will be recorded together with the mark.

Art.53 **Duration of the registration.** When the owner of the registration of a certification mark is a government agency, the registration will have an indefinite duration, lapsing with the dissolution or disappearance of the owner. In all other cases, the registration will be subject to renovations.

The registration of a certification mark may be canceled at any time at the request of its owner.

Art.54 **Use of the Certification mark.** The owner of a certification mark will authorize the use of the mark to any person whose product or service, as the case may be, complies with the conditions established in the rules of use of the mark.

The certification mark cannot be used in connection with products or services produced, rendered or marketed by the owner of the registration of the mark.

Art.55 **Liens or encumbrances and assignment of the Certification mark.** A certification mark cannot be the subject of any charge or encumbrance, nor of a lien nor any other precautionary measure or execution of judgment.

A certification mark can only be assigned with the entity which owns the registration. In case of dissolution or disappearance of the entity which owns the certification mark, this may be assigned to another suitable entity with the authorization of the competent governmental authority.

Art.56 **Reservation with respect to expired certification marks.** A certification mark whose registration lapses without being renewed, will be canceled at the request of its owner or declared null and void, or which is not being used any more due to the dissolution or disappearance of its owner, cannot be used or registered as a distinctive sign by any party different from its owner for a period of ten years, from the expiration, cancellation, nullification, dissolution or disappearance, as the case may be.

CHAPTER X

ADVERTISING EXPRESSIONS OR SIGNS

Art.57 **Application of the provisions relating to marks.** With the exception of the provisions of Chapter II of the present Law, and with the reservations of the special provisions contained in this Chapter, (the provisions relating to marks) will be applicable to the provisions of commercial advertising.

Art. 58 **Causes of unregistrability.** The advertising expressions or signs will be unregistrable only in the following cases:

a) If they are included in any of the provisions established in sections b), c), e), h), i), j), k), l), n), o), of Art.8 of this Law;

b) If they are equal or similar to other advertising expressions or signs, already registered or which registration is being applied, or which are in use, by a third party;

c) If they include a distinctive sign belonging to a third party without the necessary authorization;

d) Those whose use in the market would be likely to create confusion regarding the products, services, company or establishment of a third party or that are included in any of the prohibitions established in sections e), f), g), i) u j) of Art.8 of the present Law; or,

e) Those whose use in the market would constitute an act of Unfair competition.

Art.59 **Scope of the Protection.** The protection granted by the registration of an advertising expression or sign includes the expression or sign as a whole, and it does not extend to its parts or elements separately.

Once an advertising expression or sign has been registered, it will be protected for an indefinite time, but its existence depends, as the case may be, on the mark or commercial name to which it refers.

CHAPTER XI

COMMERCIAL NAMES

Art.60 **Acquisition of the rights to a commercial name.** The exclusive rights to a commercial name are acquired by its first use in the market and terminate when the name is abandoned or the activities of the company or establishment that uses it, stop.

Art.61 **Protection of a commercial name.** The owner of a commercial name can prevent any third party from using in the market a distinctive sign identical to the commercial name protected, or a similar distinctive sign when this is likely to cause confusion or be associated with the company of the owner or with its

products or services, or cause unfair economic or commercial harm, give rise to an unfair enjoyment of the prestige of the name or the company of the owner of the registration.

The provisions of Articles 28,29 and 30 of the present Law will be applicable to commercial names, as appropriate.

Art.62 Registration of commercial name. The owner of a commercial name may register it with the Registry. Such registration will have a declarative effect.

The registration of a commercial name will have an indefinite duration, expiring with the company or establishment that uses it. The registration may be canceled at any time at the request of the owner of same.

The registration of a commercial name with the Registry will be effected without prejudice to the provisions relating to the registration of merchants and of corporations and partnerships and trading companies in the corresponding public registries, and without prejudice to the rights resulting from such registrations.

Art.63 Commercial names that are inadmissible. No sign included in the following cases may be registered as a commercial name:

- a) Names consisting, in whole or in part, of a sign against morality or public order;
- b) Its use is likely to cause confusion in the commercial media or in the public with respect to the identity, nature, activities, line of business or any other aspect of the company or establishment designated with that name; or,
- c) Its use is likely to cause confusion in the commercial media or in the public regarding the corporate origin, origin or other characteristics of the products or services that the company produces or markets.

Art.64 Procedure for the registration of commercial name. The registration of a commercial name, as well as the amendment and nullification of the registration, will be carried out according to the procedures established for the registration of marks, as appropriate, on payment of the designated tax. The Registry will examine if the commercial name violates the provisions of the preceding article.

The classification of products and services used for marks, will not be applicable to the registration of commercial names.

Art.65 Assignment of commercial names. The assignment of a registered commercial name will be recorded with the Registry following the procedure applicable to the assignment of marks, as appropriate, on payment of the same tax.

The commercial name can only be assigned with the company or establishment that uses it, or with such part of the company or establishment, that uses it.

CHAPTER XII

SIGNS AND EMBLEMS

Art.66 **Protection of the sign of an establishment.** The protection and registration of signs of establishments will be governed by the provisions relating to commercial names.

When a sign is used as a distinctive sign of a single location or different locations in the same area of the country, the protection granted in case of conflict may be limited with respect to the territorial area in which such sign is known by the public.

Art.67 **Protection of emblems.** The protection and registration of emblems will be governed by the provisions relating to commercial names.

CHAPTER XIII

GEOGRAPHICAL INDICATIONS IN GENERAL

Art.68 **Use of geographical indications.** No geographical indication can be used in the market in connection with a product or service if it is false or misleading with respect to the origin of the product or service, or when its use may cause confusion in the public with respect to the origin, source, quality or any other characteristic of the product or service.

Art.69 **Use in advertising.** No indication likely to give rise to error or confusion as to the geographical origin of the products or services can be used in advertising or in the commercial documentation related to the sale, display or offer of the products or services. Nor will the use in the registration of marks containing expressions such as: "class", "type", "style", "imitation" or other similar expressions, be permitted.

Art.70 **Indications relating to the merchant.** Any merchant may indicate his/her/its name or his/her/its place of residence on the products he/she/it sells, even if these products come from a different country, as long as it is presented with an accurate indication, in sufficiently prominent characters, of the country or place of manufacture or of production of the products, or any other indication sufficient to avoid any error regarding the true origin of same.

CHAPTER XIV

DENOMINATION OF ORIGIN

Art.71 **Registration of denominations of origin.** The Registry will register a national denomination of origin at the request of any formally organized entity, which represents two or more producers, manufacturers or artisans, whose production or manufacturing establishments are located in the region or in the

locality to which the denomination of origin pertains. A denomination of origin will also be registered at the request of a national competent authority.

Foreign producers, manufacturers or artisans, as well as competent authorities of foreign jurisdictions, may register the denominations of origin corresponding to them, when such registration is established in any treaty to which Nicaragua is a party or when in the corresponding foreign jurisdiction Nicaraguan denominations of origin receive a treatment equivalent to the one established in the present Law.

Art.72 Registration prohibitions. It will not be possible to register as a denomination of origin signs that:

- a) do not conform to the definition of denomination of origin established in Art.2 of the present Law;
- b) are contrary to morality and public order or that may give rise to error in the public as to the geographical origin, nature, means of production or manufacture, characteristics or qualities, or suitability for use or consumption of the respective products; or,
- c) are the common or generic denomination of any product. A denomination is considered common or generic when it is considered as such by the persons familiar with such types of product as well as by the general public.

It will be possible to register a denomination of origin made up of one or more generic or descriptive elements related to the respective product, but the protection will not extend to those elements, per se.

Art.73 Registration application. The registration application of a denomination of origin shall indicate:

- a) the name, the address and the nationality of the applicant or applicants, as well as the place where their development, production or manufacturing establishments are located;
- b) the denomination of origin for which registration has been applied;
- c) the geographical area of development, production or manufacturing of the product designated by the denomination of origin;
- d) the products designated by the denomination of origin; and,
- e) a description of the essential qualities or characteristics of the products designated by the denomination of origin.

The registration application of a denomination of origin will be subject to the previously designated tax, except when the registration is applied for by a public authority. With respect to application filed by foreign public authorities this exception will be subject to the provisions of the applicable Treaty or, in the absence of same, the pertinent reciprocity.

Art.74 Registration proceeding. The registration application of a denomination of origin will be examined with the purpose of verifying:

a) the compliance with the requirements of Art.71 of the present Law and of the corresponding regulatory provisions; and

b) that the denomination which registration is being applied does not fall within any of the prohibitions established by Art.72 of the present Law.

The proceedings related to the examination, publication and registration of the denomination of origin will be governed by the pertinent provisions relating to the registration of marks.

Art.75 Granting of the registration. The resolution granting the registration of a denomination of origin, and the corresponding entry, shall indicate:

a) the demarcated geographical area of development, production or manufacturing of the product, whose producers, manufacturers or artisans will have the right to use the denomination;

b) the products to which the denomination of origin will be applied; and,

c) the main qualities or characteristics of the products to which the denomination of origin will be applied.

Art.76 Duration and modification of the registration. The registration of a denomination of origin will have an indefinite duration.

The registration of the denomination of origin may be modified at any time should there be a change in any of the items referred to in the previous article of the present Law. The modification will be subject to the procedure established for the registration of the denominations of origin, in whatever is pertinent.

Art.77 Right to use the denomination. Only the producers, manufacturers or artisans that work within the demarcated geographical area indicated in the registration will be able to use commercially the denomination of origin registered for the respective products.

All producers, manufacturers or artisans that work within the demarcated geographical area, including those that were not amongst the ones that applied for the registration originally, will have the right to use the denomination of origin with respect to the products indicated in the registration, as long as they comply with the provisions that govern the use of the denomination.

Only the producers, manufacturers or artisans authorized to use a registered denomination of origin will be able to use with it the expression "DENOMINATION OF ORIGIN".

The actions related to the right to use a registered denomination of origin shall be exercised before the respective Courts.

The provisions of Arts. 28, 29 and 70 of the present Law, are applicable to registered denominations of origin, as appropriate.

Art.78 Nullification of the registration. At the request of any interested party or competent public authority, the Judge will declare the nullity of the

registration of a denomination of origin if it is established that it falls within the prohibitions established in Art.72 of the present Law.

At the request of any interested party or competent authority, the Judge will cancel the registration of a denomination of origin if it is established that the denomination is used commercially in a manner that does not correspond to what the respective registration indicates, as per Art. 75 of the present Law.

CHAPTER XV

DENOMINATION OF THE FAME OF THE DISTINCTIVE SIGNS

Art.79 **Principle of protection.** A well-known distinctive sign will be protected against non-authorized use in accordance with the provisions of this Chapter, without prejudice to the other applicable provisions of the present Law and others related to the protection against unfair competition.

Art.80 **Criteria of fame.** In order to determine the fame of a distinctive sign, all relevant circumstances will be taken into account, and, in particular, the following factors, amongst others:

- a) the level of knowledge of the sign amongst the members of the pertinent sector within the country;
- b) the duration, scope and geographical extension of the use of the sign, inside or outside the country;
- c) the duration, scope and geographical extension of the promotion of the sign, inside or outside the country, including the advertising and presentation at trade shows, expositions or other events, of the establishment, activity, products or services to which the sign is applied;
- d) the existence and how long it has been in existence of any registration or registration application of the distinctive sign, in the country or abroad;
- e) the exercise of actions in defense of the distinctive sign, and in particular all decisions made by any local or foreign authority, in which the fame of the sign is recognized; and,
- f) the value of any investment made to promote the distinctive sign, or to promote the establishment, activity, products or services to which the sign is applied.

Art. 81. **Requirements that cannot be demanded for the fame of a Sign.** The factors mentioned in the previous article, jointly or separately, may be sufficient to determine the fame of a sign. Likewise, a sign may be recognized as well-known, even if it does not comply with the above mentioned criteria, if the authority took into consideration other relevant factors.

In no case will any of the following be a condition to recognize the fame of a distinctive sign:

- 1) that it is registered or in the process of registration, in the country or abroad;
- 2) that it has been or is being used in the market in the country or abroad;
- 3) that it is well-known abroad, except when it is not well-known in the country for other reasons; or,
- 4) that it is well-known by the general public in the country.

Art.82 Pertinent segments to determine fame. The following segments, amongst others, will be considered as relevant for determining the fame of a distinctive sign:

- a) Actual or potential consumers of the products or services to which the sign is applied;
- b) Parties that participate in the marketing channels of the type of products or services to which the sign is applied; and,
- c) Corporate circles that are active in the lines of business related to the type of establishment, activity, products or services to which the sign is applied.

For the purpose of recognizing the fame of a sign it will be enough that it be generally recognized within one of the pertinent segments of society.

CHAPTER XVI

ACTIONS

Art.83 Action against the use of a well-known sign. The legitimate owner of a well-known distinctive sign will be able to bring an action to prevent the third parties from using the sign and to exercise before the pertinent jurisdictional bodies the corresponding actions and measures. Such owner or legitimate holder may prevent any third party from carrying out with respect to the sign any of the actions indicated in Art.26 of the present Law.

Art.84 Determination of non-authorized use. The following will be considered use of the well-known distinctive sign: The use of same in its entirety or the use of an essential part thereof or a reproduction, imitation, translation or transliteration of the sign likely to cause confusion regarding the establishments, activities, products or services identical or similar to those applied to the well-known sign.

The following will also be considered use of the well-known distinctive sign: the use of same in its entirety or the use of an essential part thereof or of a reproduction, imitation, translation or transliteration of the sign, even regarding establishments, activities, products or services different from the ones to which

the well-known sign is applied, or for non-commercial purposes, if such use may bring about any of the following effects:

- a) Possible confusion or association with the owner or legitimate holder of the sign, or with his/her/its establishments, activities, products or services.
- b) Economic or commercial damage to the owner or legitimate holder of the sign by way of a dilution of the distinctive force or commercial or advertising value of the sign.
- c) Unfair enjoyment of the prestige of the sign, or the renown of its owner or legitimate holder.

It will be understood that there is use of a well-known distinctive sign, regardless of the means of communication used, including when it is used as a domain name, electronic mail address, name or designation in electronic media or other similar means used in electronic communications.

The action against the non-authorized use of a well-known distinctive sign will prescribe in five years from the date on which the owner or legitimate holder of the sign learned of such use, unless this was initiated in bad faith, in which case the action will not prescribe. This action will not affect the action corresponding to damages and losses according to the general laws.

Art.85 Cancellation and assignment of a domain name. When a well-known distinctive sign is improperly registered in the country as part of a domain name or of an electronic mail address of a non-authorized third party, upon request of the owner or legitimate holder of such sign, the authority that made the respective registration will cancel or modify the registration of the domain name or electronic mail address, as long as the use of such name or address is likely to have any of the effects mentioned in the previous article of the present Law.

The action of cancellation or modification established in the previous paragraph will prescribe in five years from the date on which the impugned domain name or electronic mail address was recorded, or from the date on which its use in the electronic media began, whichever comes later, except when the registration was made in bad faith, in which case the action will not prescribe. This action will not affect the action that may correspond to damages and losses as per the general laws.

Art.86 Relevance of bad faith. When settling an action related to the non-authorized use of a well-known mark, it will be possible to take into account the good or bad faith of the parties in the adoption and use of such mark.

PROCEDURES

Art.87 Representation. When the applicant or the owner of a registration covered by this Law resides outside the country, he/she/it shall be represented by an attorney who must be a lawyer residing in the country.

If the legal capacity of the attorney is already established in the registration, the application shall only indicate the date and the reason for the presentation of the power of attorney and the number of the file in which it was established.

In serious and urgent cases, qualified by the Registrar of Intellectual Property, the representation by an unofficial agent, who must be a lawyer, will be admitted, as long as the aforementioned can give sufficient guarantee, qualified by the Registrar of Intellectual Property, that he/she will be able to deal with the outcome of the matter, should the interested party not approve of what , he/she did on his/her/its behalf.

Art.88 Grouping of petitions. The application for the modification or correction of two or more registrations or pending registration applications may be filed in a single petition, as long as the modifications or corrections are the same for all of them.

The application for registration of assignments relating to two or more registrations or pending registration applications may be filed in a single petition, as long as the assignor and the assignee are the same for all of them. This provision will apply, as appropriate, to the registration of licenses of use.

The petitioner must identify each of the registrations or applications for which the modification or correction is to be made. The corresponding fees will be paid depending on the number of registrations or applications affected.

Art.89 Appeal. Appeals may be filed against resolutions issued by the Registry within a period of three days from the notification of the resolution. The appeal will be decided according to the provisions of the Code of Civil Procedures.

CHAPTER XVIII

REGISTRATIONS AND PUBLICATIONS

Art.90 Registration and publication of resolutions. The Registry will record in the Book or other appropriate means and will publish in the Official Gazette or other means of official publication, the final resolutions and decisions relating to registrations, modifications of ownership and/or validity; and other decisions that affect the information included in the registration.

Art.91 Consultation of the records of the Registry. The records of industrial property subject of the present Law are open to the public. Any party may

obtain simple or certified copies of any registration after having paid the established fee.

Art.92 **Consultation of files.** Any party may consult at the Registry the file relating to any registration application, and may obtain simple or certified copies of any document included in same after having paid the established fee.

CHAPTER XIX CLASSIFICATIONS

Art.93 **Classification of products and services.** For the purpose of the classification of the products and services for which the marks are to be registered, the International Classification of Products and Services for the Registration of Marks, established by the Nice Accord of 1957, with its current revisions and updates, will apply. The Registry will settle any doubt regarding the Class under which a product or service shall be classified.

The classification assigned to a product or service will not determine the similarity or difference to other products or services included in the same class or in another class.

Art.94 **Classification of figurative elements.** For the purpose of the classification of the figurative elements of marks, the Registry will apply the terms of the International Classification of Figurative Elements of Marks, established by the Vienna Accord of 1973, with its current revisions and updates.

CHAPTER XX RATES AND FEES

Art.95 **Rates of Industrial property.** The rates charged by the Registry are the following:

For registration application of a mark:

- | | |
|---|---------------|
| - Basic | \$ CA. 100.00 |
| - Complementary for each class of the
Classification of Products and Services | \$ CA. 50.00 |
| - For registration application of a commercial
name, emblem, expression or sign
of commercial advertising or denomination of
origin, | \$ CA. 100.00 |

For the renewal of a registration of a mark:

- For each class \$CA. 100.00

Surcharge for renewal within the grace period:

- Within the first month: 30% additional

- After the first month: 100% additional

- For each fractional application in the case of
division of a registration application of a mark \$CA. 50.00

- For registration application of the voluntary
cancellation of a registration or voluntary reduction
or limitation of the list of products or services \$CA. 40.00

- For registration application of a modification,
correction, change in the regulations of a mark,
assignment or license of use or change of name \$CA. 40.00

- For each fractional registration in the case of
division of a registration of a mark \$CA. 40.00

- Certifications \$CA. 20.00

- For issuance of a copy of a registration
certificate \$CA. 15.00

- Written proof or evidence \$CA. 20.00

-For corrections and modifications of
pending applications \$CA 30.00

-For complementary or fractional
corrections and modifications \$CA 20.00

-For corrections and modifications
in each class. \$CA 15.00

For search of records by mark:

- in each class \$CA. 15.00

- by owner \$CA. 20.00

- by figurative element \$CA. 20.00

The amount determined in Central American pesos will be paid in national currency, as per the official rate fixed by the Central Bank of Nicaragua on the date of the transaction.

The funds available for charges made at the Registry of Intellectual Property will be used to improve the infrastructure, for training of personnel, for the acquisition of office equipment and the promotion of laws.

CHAPTER XXI

ACTIONS STEMMING FROM VIOLATION OF RIGHTS

Art.96 Replevin of the right to register a distinctive sign. If the registration of a distinctive sign was applied for or obtained by a party that did not have the right to obtain it or in prejudice of another party that also had such right, the affected party may claim his/her/its right before the competent judicial authority with the purpose of having the pending application or registration assigned to him/her/it or to be recognized as co-applicant or co-owner of the right. In the same action, this party may claim indemnification for damages and losses.

This action prescribes in five years from the date of granting of the registration or four years from the date of first use of the sign in the country by the party that obtained the registration, whichever expires first. The action will not prescribe if the party that obtained the registration did so in bad faith.

Art.97 Action for violation of a right. The owner of a right protected by virtue of the present Law may initiate an action before the competent judicial authority against any party that carries out, without his/her/its consent, an action that implies the violation of such right. He/she/it may also act against a party that executes acts that clearly show that a violation is being planned.

In the case of co-ownership of a right, any of the co-owners may initiate an action against a violation without the consent of the others, unless there is an agreement to the contrary.

The action may also be initiated by an association, federation, labor union or other entity that represents interested industrialists, producers or merchants, as long as it is legitimized for such purpose.

Art.98 Measures in actions against violations of rights. In an action against violation of a right protected by this Law, one or more of the following measures may be ordered, amongst others:

- a) Cessation of the acts that constitute the violation.
- b) Indemnification for damages and losses.
- c) The seizure or judicial attachment of the products consider a violation of the rights, including containers, packaging, labels, printed or advertising materials

and other materials resulting from the violation, as well as the materials and means whose main purpose is to commit the violation.

d) The prohibition to import or export the products, materials or means mentioned in section c).

e) The attribution of ownership of the products, materials or means mentioned in section c), in which case the value of the goods will be assigned to the amount of the indemnification for damages and losses.

f) The measures necessary to prevent the continuation or repetition of the violation, including the destruction of the products, materials or means mentioned in section c).

g) The publication of the verdict in favor of petitioner and its notification to the interested parties, at the expense of the violator.

In the case of products showing a false mark, the suppression or removal of the mark will not be enough for such products to be allowed onto the market, except in exceptional cases duly qualified by a Judge, or if the owner of the mark has given his/her/its express consent.

The products that display illicit distinctive signs, the advertising material that makes reference to such signs and the materials and means that were used to commit a violation, will be retained or seized by the competent custom or police authorities, as the case may be, awaiting the result of the corresponding judicial proceedings.

The Judge may, at any time during the proceedings, order the plaintiff to give information concerning the persons that may have participated in the production or marketing of the products or services considered a violation of the rights.

Art.99 Estimate of the indemnification for damages and losses. The indemnification for damages and losses will be estimated as per the following criteria, amongst others:

a) The loss of profits suffered by the owner of the right as a result of the violation;

b) The amount of the benefits obtained by the violator as a result of his/her/its actions;

c) The price that the violator would have paid for a contractual license, taking into account the commercial value of the violated right and the contractual licenses already granted.

Art.100 Prescription of the action against violation of a right. The action against violation of a right granted in accordance with this Law will prescribe in two years from the date the owner had knowledge of the violation, or five years from the date the violation was committed for the last time, whichever expires first.

Art.101 Actions against the improper use of geographical indications. Any competent authority or interested party, and in particular the producers,

manufacturers, artisans and consumers may act, jointly or individually, for all effects related to the compliance of the provisions of Arts.68 and 69 of the present Law.

Art.102 **Criminal sanctions for violation of rights.** Any party that, without the consent of the owner of the respective right, carries out intentionally any of the following actions, will be subject to between three to six years of imprisonment, or a fine not greater than twenty-five thousand Central American pesos (\$CA25,000.00), or both penalties:

- a) Using commercially a registered mark, or a mere copy or an imitation of same, with respect to the products or services distinguished by it.
- b) Using commercially a protected commercial name or sign or emblem.
- c) Using commercially with respect to a product or service, a false geographical indication or one likely to deceive the public with respect to the origin of such product or service, or with respect to the identity of the producer, manufacturer or merchant of the product or service.
- d) Using commercially with respect to a product a false or deceptive denomination of origin, regardless of whether or not the true origin of the product is indicated, a translation of the denomination is used or whether same is used together with expressions such as “type”, “gender”, “manner”, “imitation” or other analogous terms.

Art.103 **Action against typified crimes.** Crimes covered by this Law are prosecutable by any competent authority or previous denunciation by an interested party, including any representative entity or organization of any sector of the production or of consumers.

The criminal action will prescribe exactly four years from the time the crime was last committed, whichever expires first.

CHAPTER XXII

UNFAIR COMPETITION

Art.104 **General clause.** Any action carried out in the exercise or because of a commercial activity that is contrary to honest commercial procedures and practices, is considered unfair.

Art.105 **Acts of unfair competition connected to industrial property.** The following, amongst other, are acts of unfair competition:

- a) Acts capable of creating confusion or risk of association with respect to the products, services, company or establishment of another party.

b) The use or propagation of false indications or allegations capable of denigrating or harming the reputation of the products, services, company or establishment of another party.

c) The use or propagation of indications or allegations, or the omission of true information, when these actions were likely to create error with respect to the origin, nature, mode of manufacturing, capability of use or consumption, quantity or other characteristics of the party's own products or services or of another party.

d) The use of a product marketed by a third party for the purpose of molding, tracing, copying or in any other way, obsequiously reproducing such product with the purpose of taking advantage parasitically and with commercial purposes of the results of the efforts or the prestige of a third party.

e) The use as a mark of a sign whose registration is prohibited by Art.7, sections b), h), i), j), k), l), m), n) and o) of the present Law.

f) The commercial use of a sign whose registration is prohibited by Art.8, sections b), d), e), g), and h) of the present Law.

Art.106 Action against an act of unfair competition. Without prejudice of what is established in the following paragraph, any interested person may request before a competent Court, the verification and declaration of the illicit nature of an alleged act of unfair competition.

Any interested party may initiate an action against an act of unfair competition. Besides the person directly harmed by the act, the action may be exercised by any association or organization representative of a professional, business or consumer sector when the interests of their members are affected.

The provisions of Arts.97, 98, 99 and 102 of the present Law are applicable, in what pertains to civil or criminal actions initiated against acts of unfair competition. The pertinent provisions of the common Law relating to torts, are also applicable.

Art.107 Prescription of the action against unfair competition. The action against unfair competition prescribes within a period of two years from the date the owner had knowledge of the act of unfair competition, or within a period of five years from the date the act was committed for the last time, whichever comes first.

CHAPTER XXIII

PROCEEDINGS FOR THE REGISTRATION OF ASSIGNMENTS, LICENSES, CHANGES OF COMMERCIAL NAMES AND CANCELLATIONS

Art.108 Content of the application for registration of assignments. In order to obtain the registration of the assignment of a mark, commercial name, advertising sign or expression, the interested party shall file before the Registry of Intellectual Property an application containing:

- a) Precise designation of the authority to which the application is directed;
- b) The name, corporate name or denomination, nationality, place of residence and other personal information of the assignor and the assignee of the mark, commercial name, advertising sign or expression and the name, profession and place of residence of the attorney or legal representative, as the case may be;
- c) Indication of the mark, commercial name, advertising expression or sign which is being assigned, and of the number, volume, folio and date of entry where it was recorded;
- d) Title by which the assignment is being made;
- e) Post Office box or exact address to receive notifications, in the city in which the Registry of Intellectual Property is located;
- f) Concrete expression of what it being requested; and
- g) Place and date of the application and signature of the applicant or of the attorney or legal representative, as the case may be.

The application to which the present article refers may be made by the assignor and the assignee simultaneously, or by one of them.

Art.109 Required documentation. The following items shall be filed together with the application to which the previous article refers:

- a) The legally issued power of attorney, if the application is made by an attorney, unless the legal capacity of the attorney is already established in the Registry, in which case the date and the reason for the presentation of the application and the number of the file in which it was established shall be indicated in the application. When the interested party considers it convenient, he/she/it may request the return of the power of attorney and that a certified copy of same be kept in the corresponding file;
- b) Receipt of payment of the corresponding rights, as per Art. 95;
- c) The document by which the assignment was executed, properly authenticated and legalized, unless it was executed in one of the countries that have signed the Central American Economic Integration Treaty, in which case legalization will not be necessary;
- d) Three facsimiles of the distinctive sign to be found in the respective Registrations Book or in the Book of Models were this to exist

Art.110 Accumulation of assignments in one application. The registration of the assignment of various marks, or other distinctive signs may be requested in one application.

Art.111 Examination of the application. Once an application has been filed, the Registrar will proceed immediately to verify if it complies with the requirements indicated in the present Law. If the results of the examination are negative, the Registrar will reject the application indicating the reasons for the rejection.

Art.112 **Resolution.** If the application is in order, the Registrar will issue at once a resolution declaring the assignment to be completed and ordering the making of the pertinent marginal annotations and that the Resolution be recorded in the Book of Resolutions.

Art.113 **Delivery of the Certificate.** Once the corresponding proceedings have been completed, the Registrar will issue and deliver to the assignee the corresponding Certificate.

Art.114 **Content of the application for the registration of licenses.** In order to obtain the registration of a license to use a mark, the interested party shall file before the Registry of Intellectual Property, an application containing:

- a) Precise designation of the authority to which it is directed;
- b) The name, corporate name or denomination, nationality, place of residence and other personal information of the owner and the owner of the license and the name, profession and place of residence of the attorney or legal representative, as the case may be;
- c) Precise indication of the mark subject of the license and indication of the number, folio and volume on where it is registered;
- d) The type of license, its duration and the territory it covers;
- e) Post Office box or exact address, in the city where the Registry of Intellectual Property is located, to receive notifications;
- f) Concrete indication of what is being requested; and
- g) Place and date of the application and signature of the applicant or of the attorney or legal representative, as the case may be.

The application to which the present article refers may be made by the owner of the mark and by the owner of the license simultaneously, or by one of the parties.

Art.115 **Required documents.** The following items must be filed with the application to which the previous article refers:

- a) The legally issued power of attorney, if the application is made by an attorney, unless the legal capacity of the attorney is already established in the Registry, in which case the date and the reason for the presentation of the application and the number of the file in which it was established shall be indicated in the application. When the interested party considers it convenient, he/she/it may request the return of the power of attorney and that a certified copy of same be kept in the corresponding file;
- b) Receipt of payment of the corresponding rights.
- c) The actual license agreement.

Documents granted in countries that have not sign the Treaty of Central American Economic Integration, must be duly legalized.

Art.116 Examination of the application. Once an application has been filed, the Registrar will proceed at once to verify if it complies with the requirements indicated in Arts. 108 and 109 of the present Law. If the results of the examination are negative, the Registrar will reject the application indicating the reasons for the rejection.

Art.117 Resolution. If the application filed is in order, the Registrar will issue a resolution ordering the recording of the corresponding entry in favor of the licensee and that the pertinent marginal annotations be made.

Art.118 Content of the License Certificate. Once the recording of the License has been completed, the Registrar will issue and deliver to the owner of the license a Certificate containing the following requirements:

- a) Complete name of the Registry;
- b) Name, corporate name or denomination, nationality and place of residence of the owner of the mark;
- c) Name, corporate name or denomination, nationality and place of residence of the licensee;
- d) Express indication of the mark or marks included in the license and of the number, folio and volume of the registration;
- e) Indication of whether or not the license is exclusive with respect to a certain territory or area;
- f) Duration of the license; and
- g) The place and the date on which the Certificate is issued and the seal and the signature of the Registrar. Said Certificate may include all the marks included in the license.

Art.119 Registration of change of commercial name. The natural or juridical persons that have changed or modified their commercial name, corporate name or denomination in accordance with the law, have the right to request from the Registry to write a note on the change or modification in the margin of each of the entries corresponding to marks or other distinctive signs they own.

Art.120 Content of the application. In order to obtain the notes in the margin mentioned in the preceding article, the interested party shall file before the Registry, an application containing:

- a) Precise designation of the authority to which it is directed;
- b) The name, corporate name or denomination, nationality and place of residence of the applicant and the name, profession and place of residence of the attorney or legal representative, as the case may be;
- c) Precise indication of the marks or other distinctive signs owned by the interested party, and the number, folio, volume and Book in which they are registered;

- d) Post Office box or exact address, in the city in which the Registry of Intellectual Property is located, to receive notifications;
- e) Precise indication of what is being requested, and
- f) Place and date of the application and signature of the applicant and of the attorney or legal representative, as the case may be.

Art.121 Required documents. The application requesting the registration of a change of a commercial name, corporate name or denomination, must include the power of attorney in the form established in section a) of Art.109 of the present Law, receipt showing payment of the corresponding tax and, also, the actual document or documents in which the change or modification to which the application refers, is evidenced. Documents granted in countries that have not signed the Treaty of Central American Economic Integration, must be duly legalized.

Art.122 Examination of the application. Once an applications has been filed, the Registrar will proceed at once to verify if it complies with the requirements indicated in Arts. 108 and 109 of the present Law. If the results of the examination are negative, the Registrar will reject the application indicating the reasons for the rejection.

Art.123 Resolution. If the application is in order, the Registrar will issue a resolution authorizing the change of commercial name, corporate name or denomination and ordering that a note be made at the margin of the corresponding entries indicating the change or modification. The Registrar will also order that a similar note in the margin be made in the entries relating to the marks, signs or advertising expressions owned by the natural or juridical person whose name, corporate name or denomination has been modified.

Art.124 Content of the note in the margin. The note in the margin to which the preceding provision refers, shall contain:

- a) Precise indication that the commercial name, corporate name or denomination has been changed or modified;
- b) The commercial name, corporate name or denomination as it stands after being changed or modified; and
- c) The place and date of the note and the seal and the signature of the Registrar.

Art.125 Delivery of the Certificate. Once the above proceedings have been completed, the Registrar will issue and deliver to the interested party a Certificate of the notes made in connection with the change or modifications of the commercial name, corporate name or denomination of the interested party. Said Certificate may contain all of the changes made.

Art.126 Requirements of the application for cancellation. When the owner of a mark, commercial name, emblem, sign, advertising expression or sign wishes to obtain the cancellation of its registration, according to the provisions of Art.40, he/she/it shall file before the Registry an application containing the same

requirements established in Art. 108. Said application must be filed together with the documents indicated in sections a) and b) of Art.109, of the present Law.

Art.127 Proceeding. With respect to the application for cancellation of a registration, the Registrar will proceed, in general, in the same way established for the registration of assignments of marks and other distinctive signs.

Art.128 Cancellation of the registration and publication of the corresponding notice. The Registrar will order, in the corresponding resolution, that the registration be cancelled, that a note be made in the margin of the corresponding entry and that a notice be published, once, at the applicant's expense, containing:

- a) The name, corporate name or denomination, nationality and place of residence of the party making the voluntary cancellation;
- b) Precise indication of the mark, or distinctive sign whose registration was canceled; and
- c) The reason for the cancellation and a model of the mark, or distinctive sign.

Art.129 Cancellation of registration due to nullity declared by a competent Court. The same proceedings established in the three preceding articles will be followed in order to obtain the cancellation of the registration of a mark or other distinctive sign when the nullity of the corresponding registration has been declared by a competent Court of Justice, in which case, the corresponding application of cancellation must be accompanied by a Certified copy of the respective resolution.

CHAPTER XXIV

REGISTRY OF INTELLECTUAL PROPERTY

Art.130 Competency of the Registry of Intellectual Property. The Registry of Intellectual Property, as a dependency of the Ministry of Development, Industry and Commerce, will be in charge of the administration of Intellectual Property. The Registry of Intellectual Property will be directed by a Registrar who shall be a Lawyer.

The interested party may file a petition for revision, reinstatement and reform before the Registry of Intellectual Property, as well as appeal before said Registry, said appeals would be transacted in the Ministry of Development, Industry and Commerce, as established in Article 89 of the present Law and in the Code of Civil Procedures for the purpose of its respective filing, processing and resolution.

Art.131 Substitute Registrars. The Registry will have, besides its Director, a maximum of two substitute Registrars, with the same qualifications as the Registrar.

Art.132 Attributions and duties of the Registrar.

- 1) To admit or reject all applications or documents filed, should they not comply with the provisions of the present Law.
- 2) To issue ex officio or at the request of an interested party:
 - a) Certifications of documents in the Registry, or its records.
 - b) The registration of a mark or other distinctive sign; of a patent, utility model or industrial design; the protection of copyrights and related rights; the right of the obtainer, as well as of any other function of the Registry of Intellectual Property.
 - c) The certificate of a right of Intellectual Property protected by the Registry.
- 3) To authorize with his/her signature and seal, the documents issued by the Registry.
- 4) To make and issue decisions on issues within its competency, when required by any judicial, administrative or contentious-administrative authority.
- 5) To hear and judge oppositions.
- 6) To authorize publications of the Registry.
- 7) To organize and guide the workload of the registry and to make the suggestions he/she may consider pertinent for the operation of same.
- 8) To inform on any difficulty or obstacle that may obstruct or delay the efficient application of law in matters of Intellectual Property.

Art.133 Substitute Registrar. There shall be a maximum of two substitute Registrars, who would substitute the Registrar in case of sickness, leave of absence, temporary absences or other similar events. They will also be in charge of the examination of applications, the signature of advertisements for publication in the official Gazette, and will be authorized by the Registrar to sign the Registry's entries, certificates, administrative files, resolutions and any other documents issued by the Registry, as well as the control of the computer system of the Registry.

Art.134 Secretary. The Registry shall also have a Secretary, who must be at least a Law student; as well as the necessary personnel capable of carrying out the corresponding functions and attributions.

Art.135 Attributions and duties of the Secretary.

- a) To receive all briefs filed before the Registry, putting a note at the bottom of each brief, certifying the date and hour of the presentation.
- b) To hand out receipts for the applications and documents delivered to him/her or of those for which the party that filed them, requests a receipt.

- c) To authorize with his/her signature all resolutions, registrations and certifications issued by the Registrar.
- d) To receive and dispatch correspondence.
- e) To make notifications.

All other attributions and duties indicated by the laws of Intellectual Property or the Registrar.

Art.136 Functions of the Registry of Intellectual Property. The following are the functions of the Registry of Intellectual Property:

- a) To coordinate with the different Departments of the Ministry of Development, Industry and Commerce, as well as with the many public and private, national, foreign and international institutions, in charge of the promotion and protection of the rights of Intellectual Property.
- b) To handle and, as the case may be, issue patents of invention, registrations of utility models, industrial designs, marks and other distinctive signs, titles of ownership, deposit or registration of copyrights and related rights, and other rights granted by the laws of Intellectual Property.
- c) To administer the laws as well as the rules and regulations which make up the legal framework of Intellectual Property in Nicaragua.
- d) To designate experts to provide the necessary technical opinions required by the laws of Intellectual Property.
- e) To order the publication in the official Gazette, as well as to disseminate the information derived from patents, registrations, authorizations and publications granted as well as any other related to the rights of Intellectual Property.
- f) To disseminate, advise and provide service to the public in matters of Intellectual property, as well as the scope of the provisions contained in the different laws of Intellectual Property.
- g) To enter into by express delegation of the Minister of Development, Industry and Commerce, cooperation, coordination and settlement pacts or agreements with public or private, national or foreign institutions, with the purpose of promoting activities related to Intellectual Property.
- h) To carry out studies on the situation of Intellectual Property in the international arena and to participate in international meetings, forums, congresses, and conferences related to matters of Intellectual Property.
- i) To act through the Ministry of Development, Industry and Commerce, as an advisory body in matters of Intellectual Property for the different governmental institutions, as well as to give advice to social and private institutions.
- j) To participate in the training of specialized human resources in the different disciplines of Intellectual Property, through the formulation and execution of training, instruction and specialization programs and courses for the professional, technical and auxiliary staff.

k) To participate in conjunction with the divisions of the Ministry of Development, Industry and Commerce, in negotiations within the scope of its attributions.

l) To formulate and execute its institutional annual plan, as well as the corresponding evaluation of same.

m) To provide all other services and carry out the necessary activities for the proper performance of its faculties in accordance with this law and other applicable legal provisions .

Art.137 Prohibitions to the Registrar and the rest of the Registry personnel. The Registrar and the personnel under his/her command, shall not take steps or measures, directly or indirectly, on behalf of third parties before the Registry. All actions of the Registry's personnel shall be carried out in accordance with the law, and with impartiality.

Art.138 Public nature of the Registry. The Registry of Intellectual Property is open to the public and may be consulted by any person during the hours it is normally open to the public.

No official or employee of the Registry shall charge any emolument for services provided to the interested parties in the fulfillment of his/her duties and attributions; nor for allowing applicants to obtain simple copies of the Registry's record entries, documents, files, written records or indexes, except the fees established by the law.

Art.139 Control visits. The Ministry of Development, Industry and Commerce will adopt the necessary measures for an official to visit the Registry of Intellectual Property annually, with the purpose of verifying the state of the books and files, as well as of everything observed and carried out during the visit.

The official shall write a summary of his/her findings, sending copies to the Registrar and the Minister of Development, Industry and Commerce.

Art.140 Filing of applications and documents. The applications and all types of documents presented before the Registry, shall be kept on file.

Art.141 Organization. The Registry shall be divided at least into the following specific Sections (Directions):

- 1) Marks and Other Distinctive signs.
- 2) Patents and new technologies.
- 3) Copyrights and related rights.
- 4) Obtaining of Vegetable varieties

Each of the Sections (Directories), based on the complexity of the task, will be organized in departments.

The heads of the Sections (Directions) shall be lawyers and notaries, except for patents and new technologies and vegetable varieties, who shall be engineers.

Art.142 Access to the documents of the Registry. The files, books, registrations and other documents found in the records of the Registry of Intellectual Property shall not be taken out of the Registry. All judicial, administrative or contentious-administrative proceedings or consultations requested by authorities or private individuals, and which require the presentation of said documents, shall be executed in the Registry under the responsibility of the Registrar.

At the request of an interested party, the Registrar may return a document filed by such party before the Registry of Intellectual Property in connection with a certain proceeding, and which is not necessary to keep. The return shall be made leaving in the respective file a certified photocopy of said document, at the expense of the interested party.

CHAPTER XXIV

PRECAUTIONARY MEASURES

Art.143 Adoption of precautionary measures. The party who initiates or is about to initiate an action based on the violation of a right established by this Law, may request before the competent authority the immediate provision of precautionary measures, with the purpose of preventing the commission of the violation, avoiding its consequences, obtaining or keeping evidence or securing the effectiveness of the action or the indemnification for damages and losses.

The precautionary measures may be requested before the initiation of the action, simultaneously with same or after its initiation.

The following precautionary measures may be ordered, amongst others:

- a) The immediate cessation of the acts which constitute the violation.
- b) The seizure or the judicial attachment of the products, containers, packaging, labels, printed or advertising materials and other materials bearing the sign which is the object of the alleged violation, and of the principal materials and means used to perpetrate the violation.
- c) The suspension of the import / export of the products, materials or means mentioned in the previous section.

Art.144 Guarantees and conditions in cases of precautionary measures. A precautionary measure shall only be ordered when the party requesting it

establishes his/her/its legitimacy to act, and the existence of the violated right, and files evidence that convincingly show the commission of the violation or its imminence, and that the delay in applying the measure may cause major or irreparable damage. The measure shall not be ordered if the party requesting it does not provide sufficient caution or guarantee, at the Judge discretion.

The party requesting a precautionary measure with respect to specific merchandise shall provide the necessary information and a sufficiently detailed and precise description of the merchandise for them to be easily identified and recognized.

The party requesting precautionary measures shall be responsible for the damages and losses resulting from the execution of such measures, if same lapse, lose their effect, or are revoked by action or omission on the part of the requesting party, or if it is determined later that there was no violation or imminence of violation of a right of industrial property.

Art.145 Measures without previously hearing the other party. If precautionary measures were executed without previously hearing the other party, the other party will be notified at least immediately after the execution.

All precautionary measures executed before the initiation of the action to settle the merits of the case, and without previously hearing the other party, will be without effect by reason of the law, if such action is not initiated within the term of fifteen working days from the execution of the corresponding measure.

Art.146 Revision of the precautionary measure. The party that was affected by a precautionary measure may bring a petition before the Judge to reconsider the executed measure, to which effect the Judge will hold a hearing. The Judge may modify, revoke or confirm the measure.

When the affected party wishes to continue his/her/its activities, provided that this will not cause irreparable damage to the owner of the violated right, the precautionary measure may be replaced by a caution or any other guaranty that the Judge may consider sufficient, to be offered by the alleged violator.

CHAPTER XXV

MEASURES ON THE BORDER

Art.147 Competency of the Customs. The precautionary measures or any other measure which must be executed at the border, will be executed by customs authorities at the moment of importation, exportation or transit of the violating products, and of the main materials or means used to commit the violation.

Art.148 Suspension of importation or exportation. The owner of a right protected by this Law, who has good or sound reason to suppose that the importation or exportation of goods that violate his/her right, is being prepared, may request that the competent Judge order customs to suspend the

importation or exportation at the moment of their clearance. The conditions and guarantees applicable to precautionary measures are applicable to such request and to the order issued by the Judge.

Once the applicable conditions and guarantees have been complied with, the Judge will order or deny the suspension, notifying the petitioner.

The party requesting the measures at the border shall provide customs authorities with the necessary information, as well as a precise description, sufficiently detailed, of the goods, so these may be easily identified and recognized.

Once the suspension has been executed, customs authorities will immediately notify the importer or exporter of the merchandise and the party that requested the measure.

Art.149 Duration of the suspension. After ten working days from the date the suspension was notified to the party that requested the measure, without any notification having been made from this party to customs authorities indicating that the corresponding judicial action on the merits of the case has been initiated, or that the Judge has dictated precautionary measures to extend the suspension, this will be lifted and the retained merchandise will be cleared. In cases where it is justified, this term may be extended for ten additional working days.

When the suspension is ordered as a precautionary measure, the term established for such measures will be applied.

Once the judicial action on the merits of the case has been initiated, the party affected by the suspension may bring a petition before the Judge to reconsider the suspension, to which effect the Judge will hold a hearing. The Judge may modify, revoke or confirm the suspension.

The party that requested measures at the border will be responsible for the damages and losses resulting from the execution of such measures, if same are lifted or revoked by action or omission on the part of the requesting party, or if it is determined later that there was no violation or imminence of violation of a right of industrial property.

Art.150 Right of inspection and information. For the purpose of justifying the extension of the suspension of the merchandise retained by customs authorities, or to sustain an action against a violation, the Judge will allow the owner of the right to inspect such merchandise. The same right will be extended to the importer or exporter of the merchandise. When allowing the inspection, the Judge may provide whatever is necessary to protect any confidential information, when pertinent.

Once the existence of a violation has been established, the name and address of the consignor, of the importer or exporter, and of the consignee of the merchandise, and the quantity of the merchandise affected by the suspension, will be notified to the plaintiff.

Art.151 **Measures against false products.** In the case of products bearing false marks, which had been seized by customs authorities, it will not be permitted, except under exceptional circumstances, that such products be re-exported in the same state, or that they be subjected to different customs proceedings.

CHAPTER XXVI

TEMPORARY PROVISIONS

Art.152 **Pending applications relating to marks.** The registration or renewal applications of marks which were pending on the date of enforcement of the present Law, will continue to be handled in accordance with the previous legislation, but the registrations and renewals granted will be governed by the provisions of the present Law.

Art.153 **Registrations in force.** The marks and other distinctive signs registered in accordance with the previous legislation, will be governed by the provisions of the present Law and by the corresponding regulatory provisions.

Art.154 **Actions initiated previously.** The actions initiated before the enforcement of this Law, will continue to be handled, until their resolution, according to the provisions under which they were initiated.

CHAPTER XXVII

FINAL PROVISIONS

Art.155 **Regulation.** The present Law will be regulated in accordance with the provisions of Article 150 of the Political Constitution.

Art.156 **Derogations.** The present Law annuls any provision against it and notice of termination of the Central American Convention for the Protection of Industrial Property, of June first, ninety hundred and sixty eight, is hereby given.

Art.157 **Legal effect.** The present Law will become effective ninety days after its publication in the Official Gazette.

Given in the city of Managua, in the Sessions Hall of the National Assembly, the fourteenth day of the month of February of the year 2001. **OSCAR MONCADA REYES.** President of the National Assembly.- **PEDRO JOAQUIN RIOS CASTELLON.** Secretary of the National Assembly.