

VENEZUELA



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1. Case Report	
Topic:	The Venezuelan Trademark Office had established that the denomination "CLARA PILSEN" it is a generic and descriptive denomination.
When:	November 2005
Where:	Caracas – Venezuela.
What Happened:	<p>A resolution rejecting an appeal filed by CERVECERÍA UNION - CERVIUNIÓN against the <i>ex-officio</i> rejection of a trademark application for CLARA PILSEN, covering goods in international class 32 ("beers, gaseous mineral water and other nonalcoholic drinks ") was noted in the National Intellectual Property Gazette last November.</p> <p>The grounds for the rejection were its generic condition (PILSEN), and the use of words that indicate characteristics or own qualities of the product to protect (CLARA= shandy).</p> <p>In this sense, the resolution indicates that:</p> <p>"The trademark application is a conjunction of the words CLARA (shandy) and PILSEN of which, the first it is not more than characteristics or qualities and intrinsic of the beer, which can be related to the color clear, blondes by a side or dark and/or black by the other, as far as word PILSEN we have that such is a type of beer known by different meanings like PILSEN, PILSENER or PILS, and in addition it represents a geographic zone, in the Czech Republic where it was made for the first time, and with the years it became a generic word that indicated the elaboration of certain components of a beer, marked by rich plaster water characteristics, and the type of leavenings used, which is the reason why the denomination PILSEN being a generic word, cannot give to distinctiveness to the applied sing... "</p> <p>This way, the national PTO has made it clear that PILSEN turns out to be a generic word to protect beers, because such word is at the moment, of common use for these types of products, therefore it could not be monopolized by any person, being good news for the Trademark Community. The evaluation given in this case by the Trademark Office, to avoid attempts to register generics in such a competitive business as it is the case in Venezuela with the beer industry, where all competitors commercialize LIGHT, DRAFT or ICE versions of their respective brands.</p>

2. Case Report	
Topic:	Resolution of PROCOMPETENCIA on the non-existence of advantage of the other competitor's effort in advertising campaigns
When:	December 2005
Where:	Caracas, Venezuela
What Happened:	The telecommunication company Corporación Digitel, announced to its competitor in the market of mobile or standard phone service, Telcel, C.A. by the presumed accomplishment of the practice of unfair competition prohibited by the Venezuelan law, relative to the advantage of the other competitor's effort or reputation when supporting its advertising and promotions for the launching of the new mark MOVISTAR, on the creation of Digitel to identify its services with expressions finished with the personal pronoun "ME".

	<p>The Antitrust and Unfair Competition Venezuelan Authority, Procompetencia solved this case by the Resolution No. SPPLC/0074-05 dated December 28, 2005 based on the following arguments:</p> <p>The presumed infringer is capable of developing economic activities. Telcel is one of the 5 companies in Venezuela that operates in the mobile phone services sector, it is clear then that it develops economic activities.</p> <p>The activity which makes it essentially unfair, in this case, Procompetencia decided that even though a similarity in the idea exists to use the reflexive "ME", the graphical presentation of both campaigns appears to the consumers with elements that differentiate them significantly. Consequently, the possibility of causing confusion for the consumers does not exist.</p> <p>In relation to the unfair imitation by illegal advantage of the other competitor's reputation, additionally to the competitor unfairness, it is required that it has obtained a remarkable saving of its costs. Procompetencia considered that it does not fulfill this prohibited practice since it was demonstrated clearly that Telcel incurred a million dollar investment surpassing US\$ 10,000,000,000.</p> <p>Also, Procompetencia considered that even though similarity in the use of reflexive "ME" in the advertising campaign of Telcel and Digitel exists, this similarity was not by an advantage or imitation of the Telcel advertising initiative, since this advertising idea was designed at global level for 13 Latin American countries, by Telefónica Móviles.</p> <p>Procompetencia decided that there was not sufficient evidence elements that they were allowed to corroborate that Telcel incurred in the unfair competition practice prohibited by the Venezuelan law, specifically by the commercial policy of advantage of the other competitor's effort.</p>
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3. Case Report	
Topic:	Recent Supreme Court decision condemning the infringement of the copyrights of a photographer
When:	December 13, 2005
Where:	Caracas, Venezuela
What Happened:	<p>Last December 13th, 2005 the Venezuelan Supreme Court ruled condemning the National Museum of Science to pay damages to a photographer, based on the infringement of his economic and moral rights, by means of the non authorized use of his photographs.</p> <p>The lawsuit emerged since the Science Museum, after a verbal agreement with the photographer for the utilization of 150 photos for a period of one year of Venezuela's landscapes, in a traveling exhibition in Venezuela and France, and they used them for almost three years and without making any payment to the author, configuring a Copyright infringement.</p> <p>The author also claimed the violation of his moral right of authorship as well as the right to protect the integrity of the work, since the photos were modified in order to be included in a brochure without his consent. In addition, the name of the author was not mentioned with the photography neither in the exhibition nor in the brochures, but in the general credits and acknowledgements of the exposition, which was considered by the Court as an infringement of the right of authorship.</p> <p>The decision of the Supreme Court condemned the National Science Museum to pay the corresponding amount of money that they should have paid for the utilization of the photos, along with an indemnity for the infringement of the moral rights. In addition, the Court also ordered the publication of the decision</p>

	both on the web site of the museum and in a larger circulation newspaper.
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4. Case Report	
Topic:	Resolution of the National Tax and Customs Authority (SENIAT) about the observance of the IP Rights in the importation and transit of goods in Venezuela
When:	November 15, 2005
Where:	Caracas, Venezuela
What Happened:	<p>Last November 15, 2005 was published an Administrative Resolution of the National Tax and Customs Authority (SENIAT) about the “Observance of the Intellectual Property Rights in the importation and transit of goods”.</p> <p>The object of this resolution is to regulate the actions that the right owners and the customs authorities must follow before presumption of an IP right infringement.</p> <p>It establishes that the Customs Authorities will be able to take part when, goods that violate or could violate IP rights are detected:</p> <ul style="list-style-type: none"> • During the immediate control; • In duty free and tax free zones and Customs Warehouses; and • Further control activities. <p>Also, it establishes that the IP right owners will be able to request to the Customs Authorities the preventive retention of the goods, when they have valid reasons to suspect the transit or importation of goods that violates their rights.</p> <p>One of the most important elements of this resolution is that the Customs Authorities are entitled to demand the agreement, license or any document that evidences the lawfulness of the goods entering the country, and in the case of not presenting any of these documents they can precede to the retention of such goods.</p> <p>After the retention the interested parties have ten days for taking the pertinent actions, and if no action is taken, the Authorities will proceed to the confiscation of such goods for its destruction or donation after removing any distinctive sign or design that infringes the IP right owner.</p> <p>At last, it establishes the creation of the “Register of Intellectual Property Goods Importers” for facilitating the Customs control and transit of legal trade goods.</p>

5. Case Report	
Topic:	New Law against Contraband Crimes
When:	December 2, 2005
Where:	Venezuela
What Happened:	<p>Last December 2, 2005, the “Law against contraband crimes” was published in the Official Bulletin which contains a disposition regarding the protection of Intellectual Property rights, considering the contraband of these goods as an aggravated crime.</p> <p>This Law defines contraband as actions or omissions for avoiding or trying to avoid the intervention or any kind of control of the Customs Authorities in the importation, exportation or transit of goods in Venezuela.</p> <p>The Article 4.19, which set the case considered as aggravated contraband, establishes a sanction of four to eight years, which can be raised to half, to</p>

	any person that enters, transits or exits the National Territory goods containing counterfeited trademarks or pirate goods, according to the definitions of the Trade-Related Aspects of Intellectual Property Rights (TRIPS).
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6. Case Report	
Where:	Venezuela
What Happened:	<p>Being that the Radio and TV Social Liability Act, passed in December of 2004, established that at least eighty five percent of the advertising broadcasted by National TV and Radio must be National Production, but without setting the parameters for qualifying the commercials as national or foreign production.</p> <p>So in September of 2005, was published the reform to the Technical Normative which developed the dispositions of the Law, that determined the criteria for qualifying the TV and Radio commercials as national Production.</p> <p>In the first place, only the commercials that contain 6 of the 8 “national elements” established in the Law: Venezuelan capital, locations, scripts, directors, authors, artistic personnel, technical personnel and cultural values. Also, and additionally to the presence of these elements, no more than the 30% of the total capital of the production can be invested in the “foreign” elements.</p> <p>Also, this normative established that the Advertising Agencies are the responsible subjects for making this qualification, by means of a technical file.</p> <p>At last, this normative establishes that the 85% percent of national advertising broadcasted thru Radio and TV will be calculated based on the total of commercials broadcasted by each advertiser in each TV and radio stations during a calendar year.</p> <p>Although the spirit of this disposition is to incentive the national production, it ends up being discriminating of the foreign companies, who are limited to use the commercials of regional campaigns and have to start producing commercials in Venezuela, based on this very strict and complicated criterion.</p>

7. Case Report	
Where:	Venezuela
What Happened:	<p>The Venezuelan baseball season 2005-2006 had kind of a rough start, at least regarding TV broadcasting.</p> <p>Being that the Radio and TV Social Liability Law banned all kind of advertising related to alcohol, including placement advertising, and before the “warning” to TV channels of possible fines, both the Venezuelan Professional Baseball League and the major official teams’ sponsor (the well-known beer mark POLAR) agreed to replace any mention of beer marks, not only in the player’s uniforms, but in the billboards around the stadiums, and substitute them with the phrase “All for baseball”, with which the seven teams sponsored by POLAR played the rest of the season .</p> <p>The issue emerged from the qualification made by the “<i>Directorio de Responsabilidad Social</i>” (the authority in charge of verifying the application of the disposition of the Radio and TV Social Liability Law) of the sponsorship activity as a modality of placement advertising. In consequence the appearance of the beer marks in the uniforms, and around the stadiums was considered as a forbidden activity according to the dispositions of the Law. However the problem did not stop there, being that the TV stations have to be extra careful in the broadcasting of the games.</p> <p>Being that several international events that are going to take place in</p>

	<p>Venezuela during 2006 and 2007 (especially the Baseball Tournament “<i>Serie del Caribe</i>” that took place last February, and the Soccer cup “<i>Copa America de Futbol</i>” in 2007) the “<i>Directorio de Responsabilidad Social</i>” decided to reform the Technical Normative which regulates the advertising activity, adding an article named “Placement advertising in international sport events taking place and broadcasted in National territory”, published in the Official Bulletin No. 38.352, of January 06th, 2006.</p> <p>In general, this disposition accepts the prohibition of alcohol advertising in sport events or activities carried out and broadcasted in Venezuela, being that the foreign participants are sponsored by beer marks, but in return the radio and TV services must have to transmit informative health messages, at the beginning of each event and every fifteen minutes during the transmission.</p> <p>However, this disposition also establishes that this exception would not apply, when the advertising belong to Venezuelan advertisers or when such publicity appears in the uniforms, equipments, teams or any sport organization that represent Venezuela in International sport events.</p> <p>Even though this “tailor made” disposition made possible the transmission of the “<i>Serie del Caribe</i>” games, it is also a fact that it arbitrarily discriminates against national companies and does not solve the main issue: when establishing important restriction to the advertising activity, this Law did not take in consideration the impact of the contribution that the private companies makes every year as permanent sponsors, for the development of many sport activities, even when it comes from producers subject to a mayor level of control from the State, such as alcohol.</p>
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8. Case Report	
Topic:	New Resolution of the Health Department regarding advertising for tobacco products
Where:	Venezuela
What Happened:	<p>Last February 8, 2006 was published a Resolution of the Venezuelan Health Department which established new regulation about the advertising for tobacco products. Among its most important dispositions are:</p> <ul style="list-style-type: none"> • The prohibition of placing any kind of exterior advertising that incites promotes or stimulates the consumption of tobacco products; • A term of 90 days after its publication in the Official Bulletin, for removing all kind of exterior advertising material that incites promotes or stimulates the consumption of tobacco products located at sport, cultural, recreational or educational centers; • In places where the exterior advertising for tobacco products is allowed, the warning images and texts made by the Health Department must be included, taking up at least the 33% of the advertising material.