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LEGAL ALERT

Illegal commerce: Court of Appeal of Santiago orders the Municipality of Santiago to take action

On March 3, 2023, the Court of Appeal of Santiago granted a constitutional petition for protection ("recurso de protección") filed by a bookstore chain against the Municipality of Santiago for not adopting adequate and effective measures to prevent the installation of street vending in Ahumada Street. This judgment is an important step in the fight against unregulated street vending and the negative consequences it causes, among others, the sale of counterfeit products that infringe the industrial property rights of trademark owners.

The claimant argued that the failure of the Municipality of Santiago to adopt specific measures that contribute to the eradication of street vending corresponds to an illegal omission that affects its constitutional guarantees. The claimant's main argument is that the street vending that has been set up on Ahumada street obstructs the visibility of its commercial premises and hinders easy access to it, as well as constituting acts of unfair competition that the defendant allows by not exercising its legal oversight powers in this matter.

The Second Chamber of the Court of Appeal of Santiago, composed of the judges Héctor Plaza Vásquez and Jessica González Troncoso, and the member-attorney Óscar Torres Zagal, in a split decision, granted the petition for protection filed by the claimant. The Court found that illegal street vending affects the right to "develop any economic activity," as enshrined in article 19 N° 21 of the Political Constitution of the Republic, as such vending hinders free access to the claimant's commercial premises and obstructs its visibility, thereby affecting the aforementioned constitutional guarantee. The Court further recognized that the disturbance cannot be exclusively attributed to an action or omission of the Municipality of Santiago, making it appropriate to evaluate this phenomenon from a multisystemic perspective.

According to our point of view, the Court's ruling calls for institutions such as Customs, the Internal Revenue Service, the police, the Governorship, the Intendancy, the Regional Ministry of Health, and affected private entities to work together to eradicate illegal commerce.

Considering the above, the Court of Appeal of Santiago ordered the creation of a working group with the various entities involved in the prevention and combat of illegal commerce in the area (Ministry of the Interior and Public Security, National Service for the Prevention and Rehabilitation of Drug and Alcohol Consumption, and other relevant entities) with the purpose of coordinating actions to suppress informal commercial activities that take place on the aforementioned street in the commune of Santiago.

Furthermore, the Court of Appeal of Santiago established a deadline of forty-five days from the date the judgment became final for the Municipality of Santiago to provide a detailed report on the agreements reached by the working group and the specific measures adopted to guarantee and protect the constitutional rights of the claimant.

This ruling consolidates efforts to combat illicit trade and counterfeiting. The decision issued by the Court of Appeal of Santiago is directly related to the entry into force of Law No. 21,426 on Illegal Trade of the Ministry of the Interior and Public Security, which strengthens the investigative and oversight powers of various authorities in this area, such as municipalities. In this regard, among other things, the Law on Illegal Trade gave municipal inspectors powers to oversee street vendors, authorizing them to require those engaged in such trade to display the corresponding municipal or sanitary permits, as well as documents proving the origin of the products being sold. Additionally, it expressly regulated the duty of municipalities to establish in their respective regulations the places where street vending may be exercised.

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