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TRADEMARK NON-USE CANCELLATION ACTION WILL SOON TAKE EFFECT IN CHILE

On May 9th, 2022, the reform to Law No. 19,039 on Industrial Property came into force in Chile, which incorporated, among other relevant amendments, the obligation imposed on holders of trademark registrations to use such trademarks in order to avoid being exposed to the cancellation of their registrations. In accordance with that reform, **as of May 9th, 2027, the cancellation action for lack of use will become available with respect to those trademarks registered or renewed as of May 9th, 2022, given that the five-year legal term from their grant or renewal will have lapsed.**

The new regulation introduced into Chilean legislation a long-awaited mechanism in trademark matters, since the use requirement as a condition for maintaining a registration represents the generally accepted standard in the international context. Therefore, it will be possible to request the total or partial cancellation of a trademark registration when, after five years have lapsed from its grant, the trademark has not been subject to genuine and effective use within the national territory to distinguish the goods or services for which it was granted, or when such use has been uninterruptedly suspended for the same period.

Main aspects

The cancellation action for non-use considers, among others, the following main aspects:

• Cancellation may be total or partial. Consequently, if the trademark has been used only with respect to some of the goods or services covered by the registration, the cancellation may be limited to those goods or services for which genuine and effective use in Chile is not proven.
• The burden of proving use lies with the holder of the registration. Effective use may be proven by any means of evidence admitted under Law No. 19,039, although there is currently no clarity as to the quantity and nature of the evidence that will be deemed sufficient by

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the authority.
• Use carried out by the holder of the trademark registration, or by a third party with the holder's consent, is considered effective use.
• Cancellation for non-use will not be declared ex officio, but only at the request of a party having a legitimate interest in it, through the exercise of the cancellation action.
• To maintain the validity of a registered trademark, its holder may demonstrate the existence of valid reasons for not having used it, based on obstacles beyond the holder's control, such as import restrictions or other official requirements imposed with respect to the protected goods or services.
• The possibility is provided to file a counterclaim for cancellation due to lack of use in opposition and nullity proceedings.

Applicable regime based on registration date

With respect to trademarks granted or renewed as of May 9th, 2022, the cancellation action for non-use may be exercised once five years have lapsed from the grant of the registration or its renewal. Consequently, for those trademarks registered or renewed as of that date, the action will become available as of May 9th, 2027.

With respect to trademarks granted before May 9th, 2022, the five-year term to exercise the cancellation action for lack of use is counted from the first renewal of the registration occurring as of May 9th, 2022.

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