



Supreme Court: Industrial Property Regulations do not contravene international treaties

In a session of March 10, 2021, the Second Chamber of the Mexican Supreme Court of Justice analyzed the provisions for the expiration of trademark registration. This is according to the Rules for the Industrial Property Law, to determine if they infringed the trademark regulations contained in the North American Free Trade Agreement and the Agreement on Trade-Related aspects of Intellectual Property Rights (TRIPS).

This arises from the revision of the constitutional claim (Amparo) 1227/2020, in which it was analyzed whether article 62 of the Rules for the Industrial Property

Law could exceed the power to regulate contained in article 89 of the Federal Constitution, as well as determining if said precept contravenes the aforementioned treaties.

Article 62 of the Rules for the Industrial Property Law establishes the time when a trademark is considered to be in use for the purposes of the Law (at that time the Industrial Property Law and now of the Federal Law of Protection of Industrial Property, until a new Rules are issued).

In this regard, the Chamber of the Mexican Supreme Court of Justice explained that

both, national and international rules, regulate the expiration of trademark registration based on non-use over a maintained period of time.

However, only the Mexican provision specifies the components needed to show the use of the brand, based on the idea that the products or services must be available in the market in the amount and the mode that corresponds to the uses and customs of the commerce.

In conclusion the Chamber determined that article 62 of the Rules for Industrial

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Property law does not contradict the analyzed treaties, because the distinction contained in the Regulations: "it is intended to prevent acts tending to simulate the use of a trademark to improperly perpetuate its validity, causing obstacles to commercial development; an objective under international treaties".

If you have any questions on this matter or any, other related to intellectual property rights, please contact our experts referred to in this document.

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