



**Ecuador**  
Equateur  
Ecuador

## **Report Q203**

in the name of the Ecuadorian Group

### **Damages for infringement, counterfeiting and piracy of Trademarks**

Civil actions are contemplated by Ecuadorian law in the case of infringements of intellectual property rights, and criminal actions plus indemnification for damages if the event has been characterized as a felony. Thus, we will transcribe the exact wording of the articles of that law relating to the topics concerned.

#### **CIVIL ACTIONS**

**Article 288:** Infringement of any of the intellectual property rights established in this Law shall give rise to civil and administrative actions, without prejudice to criminal actions if the case has been characterized as a felony.

**Article 289:** The following events can be demanded in case of an infringement of rights recognized by this Law:

- a) Cessation of the infringing acts;
- b) Definitive seizure of the goods or other objects resulting from the infringement; definitive removal of commercial channels for goods constituting an infringement as well as destruction thereof;
- c) Definitive seizure of devices and the means used to perpetrate the infringement;
- d) Definitive seizure of devices and the means used to store copies;
- e) Indemnification for damages;
- f) Redress in any other manner of the effects brought about by a violation of rights; and
- g) Total value of court costs.

The rights established in international treaties in force in Ecuador may also be demanded, particularly those set forth in the Trade Related Aspects on Intellectual Property Rights Agreement (TRIPS) of the World Trade Organization.

#### **CRIMINAL ACTIONS**

**Article 319:** Taking into consideration the value of the damages caused, whoever stores, manufactures, uses for commercial purposes, offers to sell, sells, imports or exports violating intellectual property rights shall be imprisoned from three months to three years and fined with US\$ 1,314.45 (one thousand three hundred fourteen dollars of the United States of America and 45/100):

- a) A product protected by a patent of invention or utility model obtained in this country;
- b) A product manufactured through a procedure protected by a patent of invention obtained in this country;

- c) A product protected by an industrial drawing or model registered in this country;
- d) A plant variety registered in this country as well as its reproduction, propagation or multiplication material;
- e) An outline scheme (topography) registered in this country, a semiconductor circuit embodying said outline scheme (topography), or an item incorporating said semiconductor circuit;
- f) A product or service using a non-registered mark identical or similar to a notorious or highly renowned mark registered in this country or abroad;
- g) A product or service using a non-registered mark identical or similar to a trademark registered in this country;
- h) A product or service using a non-registered geographic mark or indication identical or similar to a geographic indication registered in this country.

In the case of (g) and (h) above, the products or services using the non-registered sign must be identical or similar to the products or services protected by the geographic marks or indications registered in this country.

**Article 320:** The same penalty referred to in the preceding article shall be applied to those who, violating intellectual property rights, do the following:

1. Disclose, acquire or use trade secrets, industrial secrets or confidential information;
2. In products or services or commercial transactions, use geographic marks or indications registered in this country that imitate notorious or highly renowned distinctive signs registered in this country or abroad that may reasonably be confused with the original signs; and
3. In products or services or commercial transactions, and for purposes of differentiating products or services that may take the place of the original ones, use geographic marks or indications constituting an imitation of distinctive signs registered in this country that can reasonably supplant the protected signs.

**Article 321:** Taking into consideration the value of the damages caused, those who infringe intellectual property rights using trade names on which they had acquired no rights and which are identical to trade names publicly and notoriously known in this country or trademarks registered in this country, or notorious or highly renowned trademarks registered in this country or abroad, shall be imprisoned from one month to two years and fined from US\$ 657.22 (six hundred fifty seven dollars of the United States of America and 22/100) to US\$ 6,572.25 (six thousand five hundred seventy two dollars of the United States of America and 25/100).

The same penalty specified above shall also be applied to those who infringe intellectual property rights using distinctive appearances that are identical or similar to distinctive appearances publicly and notoriously known in this country.

**Article 322:** Taking into consideration the value of the damages caused, those who infringe intellectual property rights shall be imprisoned from one month to two years and fined from US\$ 657.22 (six hundred fifty seven dollars of the United States of America and 22/100) to US\$ 6,572.25 (six thousand five hundred seventy two dollars of the United States of America and 25/100) when they:

- a) Manufacture, sell or store labels, seals or containers comprising highly renowned or notorious trademarks registered in this country or abroad;
- b) Manufacture, sell or store labels, seals or containers comprising marks or appellations of origin registered in this country; and
- c) Remove, tear out, replace or use labels, seals or containers comprising legitimate trademarks in order to use them on products of a different origin.

The same penalty shall apply to those who store, manufacture, use for commercial purposes, offer to sell, sell, import or export items containing false indications on the nature, origin, manufacturing system, quality, characteristics or fitness for use of the products or services concerned, or containing false indications about awards and other distinctions.

**Article 323:** Taking into consideration the value of the damages caused, those who infringe intellectual property rights shall be imprisoned from three months to three years and fined from US\$ 1,314.45 (one thousand three hundred fourteen dollars of the United States of America and 45/100) to US\$ 13,144.50 (thirteen thousand one hundred forty four dollars of the United States of America and 50/100) if they store, manufacture, use for commercial purposes, offer to sell, sell, import or export falsified products identified with highly renowned or notoriously known trademarks registered in this country or abroad, or with trademarks registered in this country.

The same penalty specified in the preceding article shall be applied to those who fill in with false products the containers identified with another trademark.

**Article 324:** Taking into consideration the value of the damages caused, those who infringe copyrights or similar rights shall be imprisoned from three months to three years and fined from US\$ 1,314.45 (one thousand three hundred fourteen dollars of the United States of America and 45/100) to US\$ 13,144.50 (thirteen thousand one hundred forty four dollars of the United States of America and 50/100) when they:

- a) Alter or mutilate a work, even by removing or altering electronic information on the regime of applicable rights;
- b) Register, publish, distribute, disclose or reproduce as its own, in whole or in part, any work belonging to others;
- c) Reproduce a work;
- d) Publicly make known works, videograms or phonograms in whole or in part;
- e) Introduce into the country, store, offer to sell, sell, rent or otherwise circulate or make available to third parties any illegal reproductions of works;
- f) Reproduce in whole or in part a phonogram or videogram and, generally, any protected work, as well as performances of interpreters or artists, whether or not imitating the external characteristics of the original, as well as those who introduce into the country, store, offer to sell, sell, rent or otherwise circulate or make available to third parties any illegal reproductions of works, phonograms or videograms where information on the regime of applicable rights has been altered or removed.

**Article 325:** Taking into consideration the value of the damages caused, those who infringe copyrights or similar rights shall be imprisoned from one month to two years and fined from US\$ 657.22 (six hundred fifty seven dollars of the United States of America and 22/100) to US\$ 6,572.25 (six hundred seventy two dollars of the United States of America and 25/100) when they:

- a) Reproduce a number of copies of any work greater than the number authorized by the rightsholder;
- b) Introduce into the country, store, offer to sell, sell, rent or otherwise circulate or make available to third parties any reproductions of works in numbers exceeding the numbers authorized by the rightsholder;
- c) Retransmit through any medium broadcasts from radio organizations; and
- d) Introduce into the country, store, offer to sell, sell, rent or otherwise circulate or make available to third parties any devices or other systems for purposes of deciphering or decoding codes or signs, or otherwise deceive or break the technical protections applied by the rightsholder.

Article 326: Those who illegally obstruct, fail to fulfill or impede the execution of a preventive or precautionary order shall be imprisoned from one month to two years and fined from US\$ 657.22 (six hundred fifty seven dollars of the United States of America and 22/100) to US\$ 6,572.25 (six hundred seventy two dollars of the United States of America and 25/100).

**Article 327:** The following are aggravating circumstances in addition to those set forth in the Criminal Code:

- a) If the infringer has been made aware of the infringement of the right;
- b) If the items resulting from the infringement may cause harms to health; and
- c) If the infringement is perpetrated with respect to unpublished works.

**INDEMNIFICATION FOR DAMAGES:**

**Article 303:** An indemnification for damages shall include the losses suffered and loss of profits caused by the infringement. The amount of income not obtained shall be determined taking into account the following criteria, among others:

- a) The benefits that the rightsholder would have obtained if the infringement had not occurred;
- b) The benefits obtained by the infringer as a consequence of the infringement;
- c) The price, remuneration or royalty that the infringer would have had to pay to the rightsholder for lawful exploitation of the infringed rights; and
- d) Any reasonable expenses, including professional fees, incurred by the rightsholder in connection with the dispute.