

Plain Packaging Questionnaire

National Group: MEXICO

Title: Plain Packaging Questionnaire

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Questions

Please answer the following questions. For each of questions 1) – 10) below, please answer in relation to your country's national laws including any constitutional law.

- 1) If the general conditions of registrability are met, does the product or service in relation to which a trade mark is used or proposed to be used have any affect on the ability to:**
 - (a) Register the trademark;**

A trademark under the provisions of the Mexican Industrial Property Law, is a visible sign which distinguishes products or services, namely the distinctiveness of the trademark means that such sign shall be capable of identifying specific products or services, among others from the same type.

If the general conditions of registrability are duly complied, the product or service for which protection is sought by means of a trademark indeed has certain impact on the capability to register said trademark. In other words, depending on the

specific product and/or services, a certain trademark may be considered as descriptive or indicative, given that the Industrial Property Law provides that the designation of a trademark shall not allude to the kind, quality, quantity, composition, purpose, value or place of origin of the products or services; nor, reproduce the technical or commonly used names of products or services for which the protection is sought.

Nonetheless, under certain circumstances it is possible to obtain a trademark registration for a designation which was initially considered to lack of distinctiveness; this, by means of the “secondary meaning” principle; namely, when a trademark acquires distinctiveness and then the same is capable of maturing into a registration.

A trademark may be registered in connection to any good or service.

(b) Use it once so registered?

If the general conditions of registrability are duly complied and once the trademark has been successfully registered, the same can be used in relation to the products or services to which the same is applied, the only condition is that such use shall be consistent with what the trademark was originally applied for, and without alteration that may affect its distinctiveness.

Besides holding a trademark registration, some products/services require additional government authorizations for its use; i.e. the authorization to use a name in connection to a medicine is granted by COFEPRIS, which is an entity party of the Ministry of Health, so a trademark in connection to a medicine in class 05 may not be used if the authorization for the name was not previously granted by COFEPRIS.

2) What rights derived from trademark registration?

In Mexico, a trademark registration grants the following rights:

- The right of exclusive use of the trademark by its owner for the products/services for which it was registered (article 87 of the Mexican Industrial Property Law).
- The right to renew the trademark registration for periods of 10 years (article 95 of the Mexican Industrial Property Law).
- The right to use the legend “registered trademark”, the letters M.R. or the symbol ® (article 131 of the Mexican Industrial Property Law).
- The right to restrict the use of the trademark by third parties (article 136 of the Mexican Industrial Property Law).
- The right to collect royalties for the use of the trademark registration by third parties by means of license agreements, sub-license agreements and franchises.

- The right to assign the relevant trademark (article 143 of the Mexican Industrial Property Law).
- The right to initiate legal actions against the unauthorized use of the trademark registration by third parties.
- The right to initiate legal actions against identical or confusingly similar trademark registrations -granted by the Mexican Trademark Office- to protect similar or identical products and/or services.

The registration of a trademark registration involves the right to its exclusive use and its exclusive commercial exploitation, through the Mexican territory; also a trademark registration should prevent that any third party obtains an identical or confusingly similar trademark to cover the same or related goods/services; it would allow its owner to take legal actions against infringers or counterfeiters. It is not possible to enforce a trademark without holding a registration.

3) What rights exist in relation to a sign used as a trademark but not registered? What is the basis of any such right?

In case that a “sign” used as a trademark is deemed to be confusingly similar to a trademark registration, the owner of the relevant “sign” shall have the right to apply for its registration within three years following the day on which the trademark registration was published in the Industrial Property Gazette, as long as he had been continuously using such “sign” in Mexico or abroad for the same or similar products and/or services prior to the “filing date” or “first use date” of the application of the registered trademark, in which case he shall first apply for and obtain a declaration of invalidity of said registration (article 92, item II and 151, item II of the Mexican Industrial Property Law).

However, as an exemption, the Mexican Industrial Property Law provides that if the owner of the relevant “sign” used as a trademark does not apply for its registration before the Mexican Trademark Office, he may keep using it without infringing the exclusive rights of the trademark registration’s owner.

The Mexican IP Law, states that *“Industrialists, traders or service providers may use trademarks in industry or trade or in the services that they provide. However, the right to its exclusive use shall be obtained through their registration before the MPTO”*. So, strictly speaking any use of a sign without registration is not protected by Mexican Laws.

Mexico is a registration orientated country, however, earlier use in Mexico and/or abroad has legal consequences and benefits.

The law states that a trademark registration may be cancelled on the following grounds *“A trademark is identical or confusingly similar to another that has been used in Mexico or abroad prior to the filing date of the application in respect of the*

registered trademark and has been applied to the same or similar products or services, provided that the person who asserts the stronger right by virtue of prior use proves uninterrupted use of the trademark in the country or abroad prior to the filing date or, where applicable, prior to the date of first declared use by the person who has registered it”, as you may note in such action the use of a trademark constitutes the legal standing, nevertheless this action lapses 3 years term counted from the publication date of the trademark registration in the Industrial Property Gazette (IPG).

On the other hand, a trademark registration should not be enforceable against a party that started using in Mexico an identical or confusingly similar trademark prior to the filing date of the registered trademark or to the date of first use stated therein.

4) Is it possible to:

- (a) obtain; or**
- (b) maintain;**

Registration for a trademark that is not:

- (i) used; or**
- (ii) intended to be used?**

In Mexico, use of a mark or the declaration that the mark is intended for use are not conditions for obtaining its registration. A trademark application that is approved by the Mexican Institute of Industrial Property (Mexican Patent and Trademark Office) after undergoing formal and substantial examination will be registered without need of proving use or declaring that its use is intended.

The applicant, however, may claim a date of first use when filing a trademark application. The purpose of this date is to establish that from such date the mark has been uninterruptedly used in Mexico with anticipation to its filing. Therefore, a third party may not challenge the corresponding trademark registration on the grounds of prior use, unless such use is prior to the claimed date of first use –rather than prior to the filing date as it happens in the case of marks in which no date of first use was claimed-. The downside of declaring a date of first use when filing a trademark application is that the owner of the mark will be constrained to have enough evidence to demonstrate the accuracy of such date in the event that a third party claims such date is false.

On the other hand, use is mandatory for maintaining a trademark registration in Mexico. If a registered mark is not used within a three-year timeframe, its registration will become vulnerable to a non-use cancellation action that a third party could file, for instance, to obtain registration of an identical or confusingly

similar trademark. When faced with such actions, the defendant must demonstrate that the mark has been used in the Mexican market for the past three years preceding the non-use cancellation action, or that there are circumstances outside the control of the owner of the mark that have constituted an obstacle for such use, or else, the trademark registration will be cancelled. For this purpose it is necessary to submit evidence of use such as invoices, brochures, catalogues, data sheets, magazines, or newspapers, which prove effective use of the trademark.

Furthermore, if use of a trademark is interrupted for three consecutive years, such trademark is not eligible for having its registration renewed, unless there are circumstances outside the owner's control that forbid use of the mark. For example, restrictions to imports may justify the lack of use of the mark for renewing a trademark registration.

Unlike other jurisdictions, in Mexico, use of the mark in connection with a single product suffices for maintaining registration and the owner has no burden whatsoever to exclude from the description the goods or services that are not being used with the mark. For example, if a trademark covers "*cigarettes and matches*", use of the mark solely in connection with "*matches*" will suffice for maintaining the trademark registration covering both "*cigarettes and matches*". There are no such things as partial cancellations in Mexico, as long as the mark is used with a single one of the products it covers its registration will be maintained.

The Regulations to the Industrial Property Law state that use of a mark must be continuous. They also establish that the products distinguished by it should be out in commerce in such quantities and fashion as are consistent with trade practices. Case-law has interpreted these regulations in the sense that a mark is in use when the goods or services are available in the market, including the possibility of internet purchases made from Mexico.

There are particular cases in which the renewal of a trademark registration that cannot be supported by effective use can be done. In this regard, under article 135 of the Industrial Property Law, if the same mark is registered to cover various products or services in the form of different registrations, it will be sufficient that the mark is used in connection with one of the registrations to benefit the remaining ones in their renewal. In other words, if the trademark "ABC" is registered in classes 3, 5 and 35, but is only used in connection with class 3 goods, this use will benefit classes 5 and 35 for the purposes of their renewal.

In Mexico a trademark may be filed and registered without establishing any prior use. A trademark registration is in force for 10 years counted from its filing date and can be renewed indefinitely.

However, a trademark registration which its use was suspended for three or more consecutive years should not be renewed. On the other hand, a trademark which

its use was suspended for three years would be vulnerable to a cancellation action on grounds of lack of use filed by any third party.

It is possible to renew a trademark that has never been used if the goods/services covered by it are subject to government authorizations/prohibitions.

5) If yes to 4) above, are the rights derived from such trademark registration the same or different to registered trademarks that are used?

The rights derived from a trademark registration that is used and those derived from a registration that is not used or is intended to be used are the same and they may be equally enforced. Under the Industrial Property Law, the exclusive right to use a trademark is obtained through its registration and the referred law places no limitations on the ability of a trademark registration holder to exercise rights because of lack of use of the mark.

However, as stated above, a trademark that is not used within a three-year term becomes vulnerable to a non-use cancellation action, which could be triggered by an attempt to enforce the rights granted by a trademark registration. For example, if the owner of a trademark that is not in use attempts to enforce its rights, then the alleged infringer may bring a non-use cancellation action to cancel the trademark registration and avoid being sanctioned for the infringement.

Thus, enforcing the rights of a trademark that is not in use may be complicated due to the possibility of the infringer bringing a non-use cancellation action. In practice, when a potential infringement issue arises, it is important to verify that the infringed trademark is in use, to ensure that this risk is minimized.

All the trademark registrations provide the same protection.

6) Are rights in unregistered trademarks dependent on use? Whether yes or no, please explain the basis for your answer.

Mexico does not recognize common law rights or the like, since the right to the exclusive use of a mark is only acquired through registration. Therefore, the user of an unregistered trademark cannot assert exclusive rights against third parties.

It should be noted, however, that Mexico is not purely a first to file or a first to use system; it is a so-called mixed system because while only the registration of a mark provides an exclusive right to use a mark, use of a mark, even without registration, can provide certain rights to the user, such as the following:

- a) A Mexican registration will have no effect against a third party who in good faith used the same trademark, a confusingly similar one, on the same or similar products or services, in Mexico, if it started to use the trademark before the

filing date or first use date stated in the application of the mark claiming a better right. In practice, this means that prior use of a trademark can provide some degree of protection against an infringement action, so as long as the potential infringer has enough evidence to demonstrate that such use occurred uninterruptedly in Mexico and with anticipation to the filing date or claimed date of first use of the infringed trademark registration.

b) A trademark registration can be cancelled if it is identical or confusingly similar to another trademark that was used in Mexico or abroad before the filing date of the application, if the person or entity claiming the right of prior use proves said use without interruption in Mexico or abroad. In other words, the prior user of a trademark may challenge a registration that covers an identical or confusingly similar trademark. However, this claim may only be submitted within a three-year term counted from the publication of the challenged trademark registration in the Industrial Property Gazette.

c) A trademark that is in use can achieve a well-known or famous status, when it is known to a sector or a majority of the Mexican consumer public, as a result of the commercial activities performed under the mark, either in Mexico or abroad. Such trademark would enjoy an enhanced protection and constitute an obstacle for the use and registration of identical or confusingly similar trademarks, even if left unregistered.

However, these rights cannot be granted to an unregistered trademark that is not in use, since they are dependent upon such use of the mark. As a matter of fact, in accordance with recent case-law from the Federal Tax and Administrative Justice Tribunal (Trial No. 117/08-EPI-01-9, decided by the Specialized Chamber in Intellectual Property Matters April 1, 2009), a trademark exists from the moment it is used. Therefore, a trademark that is not used at all could not grant any rights, although this does not exclude the fact that the mark may be subject to other forms of IP protection, such as copyright for example.

The Mexican IP Law, states that *“Industrialists, traders or service providers may use trademarks in industry or trade or in the services that they provide. However, the right to its exclusive use shall be obtained through its registration before IMPI”*.

A trademark registration should not be enforceable against a party that started using in Mexico an identical or confusingly similar trademark prior to the filing date of the registered trademark or to the date of first use stated therein, so use of an unregistered trademark creates rights only when the use started before the filing date of a registration or the date of first use established in said registration.

7) Is there any basis to restrict the use of:

(a) A registered trademark; or

No

(b) A sign used as a trademark?

A sign used as a trademark can be restricted ex officio by IMPI or by other government agencies, depending of the products/services covered.

If yes, please explain any relevant laws or precedents.

8) Is there any basis for the state or any state-controlled body to expropriate?

- (a) a registered trademark;**
- (b) a sign used as a trademark; or**
- (c) the rights deriving from either (a) or (b)?**

If yes, please explain any relevant laws or precedents.

In Mexico, IMPI is the administrative authority in Industrial Property matters, IMPI is not entitled to expropriate any trademark registration or signed used as a trademark.

However IMPI is entitled to initiate *“The action for invalidity, lapse or cancellation of the registration of a trademark shall be made for administrative purposes by the MPTO, either ex officio or at the request of a party or the Federal Public Prosecutor, where there is an interest on the part of the Federal Government. Lapse [...] shall not require an administrative action on the part of the Institute”.* (Art. 188 of the Industrial Property Law)

9) If yes to 7) or 8) above, do public interest considerations provide any basis for such restriction or expropriation ("Restriction/Expropriation")? If yes, please explain any applicable public interest considerations, and any relevant laws or precedents.

The above-mentioned faculties IMPI are stated in Law provisions.

10) If yes to 7) or 8) above, are trademarks different from other intellectual property rights in this regard?

Yes, Mexico has a special law to regulate trademark matters with specific assumptions different from other property rights. However, that same legislation (Industrial Property Law) provides the grounds for patent compulsory licenses, which do not exist in the trademark field.

There are various restrictions to the use of a trademark which protects tobacco products in advertising and sponsorships, since pursuant chapter III of the General Law for the Tobacco Control, it is forbidden to promote such products in any other media than printed matter addressed to adults in magazines, direct printed mail or in recreational sites restricted to adults. It is also forbidden to use a tobacco trademark on any promotional items, thus, even if such items were protected by any Copyright registration, their owners were not able to obtain profits or advertise their products through them.

- 11) If yes to 7) or 8) above, are any treaties or other international obligations relied on to provide a basis for such Restriction/Expropriation (as applicable)? If yes, please explain the international obligations, and how those obligations are reflected in or received into your country's law.**

Due to the ratification of the FCTC, the General Law for the Tobacco Control and its regulations were published in 2008 and 2009. This law and its regulations provide very specific restrictions to the selling and distribution of the tobacco products, plus the regulations regarding the mandatory labelling of the products (which affect the graphic appearance of the trademark applied to products). In addition, pursuant to article 39 of said regulations, it was forbidden to include in the tobacco packages the words *low tar, light, ultralight, soft, extra and mild* or any other phrase that creates the false assumption that the product is less harmful. This affected the trademarks bearing such words, since they are not able to use them in their products anymore.

- 12) Is your country a signatory to the WHO Framework Convention on Tobacco Control ("FCTC")? If yes, has your country ratified the FCTC?**

Mexico is part of the WHO Framework Convention on Tobacco Control ("FCTC") and it was ratified on May 28, 2004 and entered into force on February 27, 2005. (http://www.who.int/fctc/signatories_parties/en/index.html)

- 13) If yes to 12) above, has the FCTC been implemented in your country? If yes, please explain its legal impact, if any, including by reference to the Guidelines for Implementation of Articles 11 and 13 of the FCTC.**

Yes, the WHO Framework Convention on Tobacco Control (FCTC) has been implemented in Mexico since February 27, 2005 (date of entry in force of the same in our country).

This implementation resulted in changes in the fight against smoking in Mexico. The first results are noticeable in the creation of the National Office for the Control of Tobacco (NOCT), the approval of the Mexican Tobacco Control Law (MTCL), the

signing of Secretarial Agreement of Pictograms and Health Warnings and the increase of taxes on tobacco products.

In 2008, the Health Department of Mexico ordered the creation of the NOCT. In January 2011 the NOCT was formally incorporated to the organizational structure of the National Center for the Prevention and Control of Addictions (NCPA) of the Health Department of Mexico. The main functions of the NOCT are promoting public health policies on smoking; it is also responsible for the implementation of the FCTC, the MTCL, the Regulations and Secretarial Agreement for incorporating pictograms and sanitary legends to packets and packages of tobacco products.

The national legislation in the field of packaging and labeling of tobacco products (article 11 of FCTC) is regulated in Article 18 of the MTCL, which establishes that all the packages, outer packages and labeling thereof of tobacco products shall bear legends and warning pictograms or pictures that show the harmful effects of the consumption of tobacco products.

In compliance with the provisions of MTCL, in Mexico the sanitary messages containing warning legends and pictographs are formulated and approved by the Health Department of Mexico; the same are printed on a rotating way and directly on the packaging; they are high-impact preventive, clear, visible, readable and should not be obstructed; they shall occupy 30% of the front face, 100% of the rear face and 100% of one of the lateral sides of the pack; the pictograms shall occupy 30% of the front of the pack and are placed on top of the same, in 100% of the rear face and in the 100% of lateral side are incorporated warning captions, a telephone number for prevention information, cessation and treatment of diseases or effects of the consumption of tobacco products, information on their contents, emissions and risks in accordance with the applicable provisions.

The terms, descriptive elements, trademarks, logos or any other sign that can cause the false impression that a particular tobacco product is less harmful than another, are prohibited. There are also prohibited terms such as "low tar", "light", "ultra light" or "mild". Also for their duly circulation in the country it is necessary to include the statement "For sale exclusively in Mexico" in the packaging and labeling of tobacco products.

In compliance with the provisions of MTCL, in December 24, 2009 was published in the Official Journal of the Federation the Secretarial Agreement through which were announced arrangements for the formulation and incorporation of the legends, images, pictograms, health messages and information that are incorporated into packaging and labeling of tobacco products.

Regarding the application of Article 13 of the FCTC, in Mexico the Chapter II of the MTCL relative to the Advertising, Promotion and Sponsorship, establishes the following:

It is prohibited to perform any type of sponsorship, as a strategy to position the elements of a tobacco trademark, or in order to promote the purchase and the consumption of the tobacco products.

The marketing and promotion of the tobacco products must be only directed to older people through adult magazines, personal email communications or inside the establishments focused to older ages.

The industry, the owners and administrators of the establishments in which the tobacco promotion or publicity takes place, must demonstrate the legal age of the purchasers of the same.

It is prohibited to employ incentives that encourage the purchasing of tobacco products and there must not be distributed; sold or given away, directly or indirectly any gift or souvenir that shows the name or the design of the tobacco products.

The internal communications distributed to employees of the tobacco industry would not be considered as publicity or promotion.

14) Is the FCTC received directly into your country's domestic law or is domestic legislation required to give it effect in your country's law?

It is important to mention that according to the recent amendment to article 1 of our Constitution, the interpretation of the law must be according with the International Treaties (such as the FCTC Convention), provided that such treaties are not contrary to the Mexican Constitution. As above, in connection with such reform, the FCTC, regarding the principle pro homine, could be applicable directly.

Nevertheless, as a matter of regulation and adaptation to specific local necessities, the Mexican Government created and published the Mexican Tobacco Control Law and Regulation for the effective implementation of the referred International Treaty, which applies as a Federal Law with effects in the entire Mexican territory. In absence of a particular legal provision the Mexican Health Law shall apply.

15) If there is presently a legal basis in your country for permitting any Restriction/Expropriation, please answer the following questions in relation to both registered trademarks and unregistered trademarks (if your country recognizes/protects the latter).

Yes, our Law permits restrictions for specific cases, but for expropriation of trademarks our Mexican legislation is silent in such respect.

- (a) What are the parameters for such Restriction/Expropriation? For example, the nature of any stated public interest considerations, the proportionality of the proposed measure to the Restriction/Exploration.**

In Mexico, our Supreme Law only provides the expropriation of lands and water when the causes are specifically for public utility, and by compensation (paragraph first and second of article 27).

However, regarding the restrictions in Mexico, article 4 of our Industrial Property Law foresees that the Mexican Institute of Industrial Property shall not grant trademark registrations when are contrary to public order and/or good morals or against any legal law.

Also, domestic laws have implemented trademark restrictions in connection with the use, marketing, advertising, merchandising or distribution of products that are considered as noxious by the Health Department of Mexico, in light of the provisions of Mexican Health Law.

- (b) Is it relevant that such Restriction/Expropriation only applies in relation to a particular class of products, eg tobacco products, foods deemed to be unhealthy or alcohol?**

There exist more severe restrictions for products for human consumption considered as noxious for health such as tobacco products, foods deemed to be unhealthy or alcohol; nonetheless, there also exist some restrictions for diverse products and services marketed and provided in Mexico.

In Mexico exists the Federal Commission for Protection against Sanitary Risks (FCPSR [COFEPRIS]) which is a decentralized body of the Health Department of Mexico, by which products for human consumption are regulated and controlled. Such Authority is responsible to review that all the information that is provided by producers to consumers regarding products for human consumption is verifiable and true. The FCPSR is in charge of approving the commercialization of products for human consumption in México, if the revision of FCPSR is not approved, such products cannot be marketed in our country. For some products such as medicines, herbal remedies, etc. it grants sanitary registrations. The FCPSR also has the function of reviewing if the advertising and promotion of products for human consumption is true and if the information is verifiable.

Also in Mexico exists the Mexican Official Standards (NOMs) which establishes rules, specifications, guidelines or requirements issued by the various Departments of the Mexican State, through which it is regulated among other things, various

aspects of the marketing, production, provision, packaging, labeling, process, operation, installation and distribution of products and/or services in Mexico. The Federal Office for Protection of Consumers (FOPC) is the organism in Mexico responsible of verify that the producers duly comply with these guidelines. The FOPC also has the function of promoting a culture of responsible consumption through the protection of the consumers by regulating and controlling the relations between producers and consumers, regulating the prices of the products of similar nature and by ensuring that the advertising provided to the consumers is not misleading.

- (c) What are the financial consequences for the state and the trademark rights holder respectively? For example, is a rights holder entitled to or eligible for any compensation in respect of the Restriction/Expropriation? If yes, what type of rights holders are so entitled or eligible? If not, why is no compensation available?**

Up to date there is no compensation in case of restrictions to use a trademark in Mexico, when such limitation is implemented by the Mexican Government to protect the public health as superior human right.

As we mentioned above, the expropriation only apply for particular cases, namely, for lands and water when the causes are specifically for public utility.

- (d) If compensation is available, how is it calculated?**

N/A

- (e) Does a trademark rights holder affected by Restriction/Expropriation have any other claims or remedies against the state? If yes, please explain the basis and nature of any claims or remedies.**

In our country exists the Constitutional Appeal (Amparo) that operates as a defense to violations to human and constitutional rights derived from acts of the Mexican Government.

However, for these particular restrictions the Supreme Court has pronounced several criteria denying the constitutional protection due to the fact that such restrictions are not contrary to the Constitution and the same are implemented so as to protect the public health as superior human right.

- (f) In the event of Restriction/Expropriation, could a trademark remain registered?**

Yes, as long as the trademark does not fall in a violation to the provisions of Mexican law.

As previously commented, expropriation shall apply only for particular cases, namely, for lands and water when the causes are specifically for public utility, and by compensation.

However, the Mexican Industrial Property Law states that a trademark registration shall be null when the same was granted in violation of the provisions of the referred law, that is, that were granted contrary to public order and/or good morals or against any legal law.

Technically and legally speaking, our Mexican Industrial Property Law establishes that the action for invalidity or cancellation of the registration of a trademark shall be made by the Institute, either ex officio or at the request of a party or the Federal Public Prosecutor, where there is an interest on the part of the Federal Government.

(g) If yes, what is the consequence of any Restriction/Expropriation on a well known trademark that was registered prior to the Restriction/Expropriation?

The owners of well known trademarks are also compelled to comply with the law and are subject to the applicable restrictions, even though they were granted prior to the implementation of such restrictions.

Moreover, a well known trademark registration could be subject of invalidity if the same was granted in violation of our law.

16) If there is presently no legal framework in your country permitting Restriction/Expropriation, please answer the following questions in relation to both registered trademarks and unregistered trademarks (if your country recognizes/protects the latter).

(a) What legislative changes would be necessary in your country to implement a plain packaging regime for a specific class or classes of products such as those previously mentioned? For example, amendments to existing domestic trademark legislation, changes to your country's constitution, multilateral or supranational treaty obligations.

It would be necessary to be part to an International Treaty and/or amendments to national laws.

(b) Could a plain packaging regime be implemented in your country without providing compensation to affected trademark rights holders? If no, what type of rights holders would be entitled to or eligible for compensation? If yes, why would no compensation be payable?

Yes, it could be implemented without providing compensation so as to protect the public health as superior human right.

(c) Would a trademark rights holder affected by Restriction/Expropriation have any other claims or remedies against the state? If yes, please explain the basis and nature of any claims or remedies.

Yes, the trademark owners may resource to the Amparo trial based on lawfulness grounds.

SUMMARY

Mexico's trademark system is basically one that required registration and trademarks may be registered in connection to any good or service. The use of trademark or the declaration that the mark is intended for use, are no conditions for obtaining its registration.

The right to the exclusive use of a mark is only required through registration; however, signs that are used but not registered provide certain rights to the user. There are some restrictions for granting a trademark, i.e., when they are against the public order, the moral or against any other law. Moreover, it can be cancelled by IMPI when there is an interest on the part of the Federal Government.

Mexico joined FCTC in 2004 and since then it has created the NOCT and approved the Mexican Tobacco Control Law and in such grounds trademarks can be restricted if they can cause the false impression that a particular tobacco products seems less harmful. However trademarks cannot be, at the time being, expropriated.

A plain packaging regime could be implemented through amendments to our National legislation.

RESUMEN

El sistema marcario mexicano es básicamente uno que requiere registro y las marcas pueden ser registradas en relación a cualquier tipo de producto o servicio. El uso de la marca o la declaración de intención de uso no son condiciones para obtener el registro.

El derecho al uso exclusivo de la marca se obtiene mediante su registro; sin embargo, los signos no registrados pero usados pueden otorgar ciertos derechos a su usuario. Existen algunas restricciones para otorgar una marca, por ejemplo, que sean en contra del orden público, la moral o en contra de cualquier otra ley. Más aún, una marca puede ser cancelada cuando exista algún interés del Gobierno Federal.

México se unió al FCTC en 2004 y desde entonces se ha creado la NOCT y se Ley General para el Control del Tabaco y basado en ella las marcas

pueden ser restringidas cuando usen elementos que hagan considerar que un tipo de tabaco es menos dañino que otro. Por el momento las marcas no pueden ser expropiadas,
Un régimen de de empaquetado genérico podría ser implantado a través de modificaciones a nuestra legislación nacional.

RÉSUMÉ

Le système de la marque mexicaine est essentiellement celle qui nécessite une inscription et les marques peuvent être déposées dans le cadre de tout produit ou service. L'utilisation de la marque ou énoncé de l'utilisation prévue ne sont pas des conditions d'enregistrement. Le droit à l'usage exclusif de l'enregistrement de la marque est obtenu grâce à son enregistrement, toutefois, les signes non enregistrés mais utilisés, peuvent accorder certains droits à l'utilisateur. Il existe certaines restrictions pour accorder une marque, par exemple, qui sont ou contre à l'ordre public, la morale ou contre toute autre loi. De plus, une marque peut être annulée s'il y a un intérêt du gouvernement fédéral.

Mexique rejoint la CCLAT en 2004 et depuis lors, a créé le Bureau National pour le Contrôle du Tabac et à agréé la Loi Mexicaine de Contrôle du Tabac et marques sur cette base peut être restreint lors de l'utilisation des éléments qui ne considèrent qu'un type de tabac est moins nocif que les autres. Pour l'instant, les marques ne peuvent être expropriées. Un régime de l'emballage neutre pourrait être mis en œuvre par des modifications à notre législation.

ZUSAMMENFASSUNG

Eine Registrierung der Marke ist gemäss des mexikanischen Markengesetzes im Grunde erforderlich und Marken können fuer jede Art von Produkten und Dienstleistungen eingetragen werden. Die Benutzung der Marke oder die beabsichtigte Verwendung dieser, sind nicht Bedingung einer Registrierung.

Das exklusive Benutzerrecht einer Marke wird erst durch die Eintragung dieser erworben; obwohl die nicht registrierten Schutzrechte, die aber verwendet werden, dem Benutzer besondere Rechte zukommen lassen können.

Es bestehen einige Einschränkungen um eine Marke registriert zu bekommen, zum Beispiel, wenn diese gegen die öffentliche Ordnung, Moral oder gegen existierende Gesetze verstossen. Darüberhinaus,

kann eine Marke auch storniert werden, wenn dies im Interesse der Bundesregierung ist.

Mexiko trat 2004 der FCTC bei und kurz darauf wurde dann das NOCT entworfen, das nun das allgemeine Gesetz zur Tabakkontrolle ist. Dieses Gesetz kann die Registrierung einer Marke einschränken, wenn Argumente benutzt werden, die berücksichtigen, dass bestimmte Tabaksorten weniger schädlich sind als andere. Momentan können Marken nicht enteignet werden.

Durch eine Modifizierung unserer nationalen Legislation könnte eine generelle Form der Verpackung eingeführt werden.