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Wine law

Grapevines and wine have existed on earth since old times and they have been cultivated and produced in our country with excellent results for centuries. The trilogy composed by the weather, soil and grapevine stocks plus many peoples effort have gained great national and international prestige to the wine industry. Presently large quantities of wine are exported and substantial investments have been made in technology and to improve its elaboration in order to achieve a better quality as well as to increase the size of vineyards, thus reverting the decreasing tendency prevailing in past decades.

Different laws have regulated this activity due to its socio-economic importance. Since colonial times regulations were applied mainly to restrict the development of the wine industry in order to protect Spain from domestic wine and spirituous liquor competition, or to encourage other kind of plantations, fight alcoholism, protect the economic interest of vineyard owners, tax the activity, etc. This situation just changed in the 1970's and more liberal laws were approved.

Currently, is in force Law N° 18.455 which establishes regulations for the production of wine, elaboration and commercialization of ethyl alcohol, alcoholic beverages and vinegar. Ministry of Agriculture Decree N° 78 regulates the aforementioned law, and Ministry of Agriculture Decree N° 464 establishes a Wine Zoning or Appellation of Origin for the wines made in the country.

Under the examination of these three legal in-

stitutions, we may state that there is a Wine Law, based on the five procedures, namely: production, elaboration, marketing, administration and appellation of origin.

1. Production.

This is the process when sugar substances are transformed into ethyl alcohol, having the red wine a different process of elaboration from white and rose wines. At this stage, the only requirement is to use fresh or tanned Vitis vinifera grapes to obtain wine. It is strictly prohibited to denominate "wine" to the resulting product of hybrid varieties so as to protect the quality of Chilean wines and to complied with the regulations established by the legislator which indicate which are the substances and manipulations that are allowed in this process, since wine is a product that will be consumed by the people, being strictly prohibited the use of non authorized raw materials and additive.

2. Wine Making.

This is the stage at which this product is given the necessary purity and balance to be bottled and commercialized. Only the handling and use of substances permitted by law can be used, determining which products are not suitable for consumption as they have been altered (those products that have undergone physical or chemical changes that have caused them to lose their proper characteristics), adulterated (those which have been tampered with or added prohibited substances or additives or that otherwise different from those authorized), or falsified (those in which during the production or making process have used unauthorised raw materials have been used) Finally, legislation indicates which are those wines regarded as



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“special” according to the organoleptic characteristics of each, namely: generous wine, wine with gas, champagne, liquorice wine and aromatized wine.

3. Wine Marketing.

Different measures that must be observed by dealers are established in order to prevent illegal commercialization, protect consumers or guarantee commercial freedom, these provisions are divided in two groups:

a) The requirements that products destined for consumption must comply with are: products must be bottled and packed in sealed and labelled containers, showing their exact amount alcohol not less than 11.5%, except for generous wines or liquorice wines which have their own particular composition.

b) Information for Consumers is the information that labels should show both for local and import-export products (imported bulk raw materials or imported wines in sealed units for consumption). Among this information the alcohol percentage, quantity as name or nature of the product should be indicated.

4. Administration.

It has been intense since the beginning of this activity which started during Chile Colonial Period, by means of all the laws that have been enacted in order to regulate alcoholic beverages. This fourth institution becomes evident by the action of the Servicio Agrícola y Ganadero (SAG), the Chilean Agricultural and Livestock Agency, which is empowered to enforce Law N° 18.455, its Regulation and Decree N° 464. This process deals with:

The supervision of different entities related to wine making, production and marketing, specially counselling the planting, implanting and clearing of vineyards; sample analysis; supervision of wine production, making and packing facilities; supervision of liquor stores,

wholesale establishments and other distribution establishments, such as supermarkets, bars, restaurants, etc.; supervision of the transportation of products and the commercialization of imported products, to supervise all this proceeding SAG may request police support .

There are penalties in case someone tries to obtain legal protection, that will be penalised with penalties and fines as well as an administrative procedure to penalise said infringements, being said fines for the State's benefit, notwithstanding the felon's civil and penalty liabilities.

5. Appellation of Origin.

They are the result of the existence of a quality product that is protected by a law that defines and regulates its production, preparation and commercialization, and which different laws have mistaken for appellation of origin, being the latter those that serves to indicate the geographical origin of the product, without establishing requirements intended to insure higher quality.

This fifth institution starts from remote times and is intended to protect both the consumer and the person that prepares the wine, either by preventing the imitation of products, unfaithful competition from other producers with products of less quality and lower prices, lack of quality and authenticity, as the legislation establishes the elements a product must have to be able to be awarded an appellation of origin as well as the penalties in the event of improper use. The importance of this institution lies in the fact that since wine is a product easy to be imitated or falsified, thus this gives greater security to the consumer, who like more better wines made from noble grapevine stocks and this institution provides certification that wines are produced under rigorous standards in order to safeguard the prestige of the product, facilitates the presence in the market

of characteristic wines, improves their marketing, contributes to increase their demand resulting from the consumer's confidence and encourages wine producers to plant or experiment with new grapevines in areas having wine zoning.

From the definition of the appellation of origin given by our current Legislation, it is inferred that they are a collective right, unprescriptible, one that requires official recognition and has two sources: those indicated by legislation and those created by Supreme Decree, being the latter, in our opinion, the true appellation of origin since it contains the elements required to compose them.

- a) **Wine Zoning or Appellation of origin:** A wine with appellation of origin must indicate the regions or their respective sub-regions where it comes from as well as the percentage of grapes provided by such area.
- b) **Human factors:** Wine should be packed within the national territory, commercialized in units for consumption. In addition, it should indicate the requisites that a product is to comply with to bear the phrase "Bottled in Origin".
- c) **Natural factors:** Wine must be produced with certain grapevine stocks, with indication of the grapevine stock and varieties used as well as harvest year.

Although the legislation does not regulate certain matters, it is interesting to note the present interest to protect wine quality, interest that should increase in the future, given the optimistic actual projections that should result in the improvement of legal bodies.

These five institutions define the rules of the Wine Law, which, when seen as a whole, comprises an independent juridi-

cal discipline, since appellations of origin are a result of the administration, they as well are the result of commercialization which, in turn, results from production and preparation of wine, all the five being necessary to establish this independent Law.

S&K

Carmen Paz Alvarez

Web Page Protection

The explosive growth of the Internet has led a number of companies to partially or totally market or advertise their services and products through this means. The image distinguishing these companies on the Internet, in addition to their trademarks and trade names, is their web pages, which differ from one another in their particular graphic and design features.

As a result of the above, the increasing interest to safeguard the investment in the design and creation of the companies' web pages, which can be accomplished by obtaining copyrights against their reproduction and usage, is then very much understandable.

As provided by current legislation, it is possible to conclude that web pages, insofar as they are original creations, are works protected by Copyright Law N°17.336, which protects creator's rights as of the moment they create said works. On the other hand, the deposit of works at the Intellectual Property Department allows to set a date in connection with their creations, and it becomes an important proof to evidence their authorship when litigating against third parties using or reproducing said web page without the appropriate authorization.

Further, the deposit of the web page may be very useful as far as trademark issues are concerned. In fact, trademarks can be advertised on the net making it easier to prove their use in commerce. This last aspect will become relevant in the future, since a Bill amending Industrial Property Law N° 19.039 is currently being discussed in Congress and, as far as trademarks are concerned, it establishes, among other things, the obligation to use a trademark once its registration has been awarded.

In short, being the web page the element that identifies a company on the Internet, it is widely advisable to protect copyrights safeguarding their use and reproduction through the aforementioned deposit. S&K

María Luisa Valdés
Isabel Sáinz

Linkage between Patents and Sanitary Registrations.

On November 28, 2001, the Chilean Health Institute (ISP) issued the much awaited Resolution Nr. 14, establishing the guidelines for the recordal of patents with the sanitary registration of the product covered by said patent or application. The Resolution also establishes the possibility of recording with the said sanitary registration a patent which covers a process for its preparation and/or a particular use.

I. Timing

This recordal can be requested either at the beginning or during the prosecution of the application for sanitary registration and once the sanitary registration has been granted.

II. Requirements

The applicant must submit a certified copy of the patent(s) that will be recorded with the corresponding sanitary registration(s).

The corresponding application for recordal should use the forms produced by ISP either for application or amendment of a sanitary registration, as the case might be.

Finally, the applicant should pay an official tax of Chilean pesos \$313.800, approximately US\$500 per recordal.

The ISP has no fixed terms to prosecute the application for recordal, however, once this one is approved, it should issue a specific resolu-

tion amending the sanitary registration accordingly.

III. Direct Effects

The two main effects of recording a patent with a sanitary registration will be the following:

a) The ISP will formally notify any subsequent applicant seeking sanitary registration for an equivalent product, about the existence of the patent(s) recorded with the original sanitary registration, and will also notify said original sanitary registrant about the new sanitary application.

The ISP will also formally notify current owners of sanitary registrations and/or pending sanitary applications for equivalent products, about this recordal in the original sanitary registration for such product.

b) After filing the application for this recordal, the registrant can request authorization, which will be automatically granted by ISP, to amend the legends of the packages of the products including the indications "patent of invention". This legal marking is relevant since it is an essential requirement to exercise the patent infringement actions contemplated in the Chilean Industrial Property Law.

IV. Legal Consequences

While this resolution of ISP does not imply that said institution will deny and/or cancel a sanitary registration, solely upon the basis of a patent or application recorded with the sanitary registration for the original product, which was the aspiration of the research based industry, it is valuable at least in the following respects:

a) It may have a deterrent effect on new applicants for sanitary registrations of equivalent products, who may prefer to avoid problems and suspend the prosecution of their applications.

b) If they opt to continue with the prosecution and eventually commercialize the products in Chile, they will not be entitled to claim innocent infringement.

c) Patents will be informed from the outset about any application for sanitary registration for an equivalent product, and will have sufficient time to warn the applicant and, if necessary, to prepare for a potential infringement litigation. S&K

Juan Pablo Egaña

Generics on the Net

Much has been discussed about the convenience of awarding, as a domain name, generic expressions that somehow refer to services or specific goods, as in the case of "automobiles", "engineer" or "insurance". In general, different countries' legislation has not set forth restrictions to free registration on the net of such denominations, which has generated a series of discussions regarding the convenience or inconvenience of awarding certain people the monopoly of these words, excluding third parties from the use of same, in particular if they are common use expressions, or corresponds to words that are indicative or generic of certain goods or specific services.

Unlike the above, as regards industrial property, and more specifically, with respect to trademarks, the international legislation, as well as that of Chile, has set forth a prohibition or exclusion from protection relating to generics or commonly used expressions. Thus, in our country, Law N°19.039 Article 20 letter e), currently in effect, expressly stipulates the prohibition of said awarding.

The possibility of extending such prohibition to domain names has been discussed in many academic and professional circles. Furthermore, it has been discussed whether the fact of registering them in the name of a given person would not actually violate the principles that our legislation generally intends to protect. Thus, Article 1 paragraph 5 of Chile Po-

litical Constitution establishes that it is the States duty to promote the harmonic integration of the nations sectors and guarantee the individual his/her right to be an actor in national life with equal opportunities.

The doubt arises as to whether awarding a private individual, on a monopolistic basis, a word that belongs to the entire community, would constitute a violation of the right to participate with equal possibilities. In addition, it is discussed whether such awarding would not violate Article 19 clause 21 of the Republics Political Constitution, which consecrates the principle of economic, production, commerce and work freedoms.

Said provision guarantees every individual the right to carry out economic activities that are not against morals, public order and national security, observing the legal norms regulating them. The above pretends that regulatory norms do not restrict, limit or prohibit the exercise of constitutional rights, since this is an exclusive faculty of the law. Now then, given that the awarding of the domain name results from an agreement between the parties thereto, it might be understood that the principle of economic freedom is being indirectly infringed, since the signing of said agreement between private individuals deprives the rest of the community of the possibility of being identified on the net by a commonly used expression, and therefore, one that is of public domain, by giving it to a particular person.

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Patricio de la Barra

On Line Search, a New Service.

By making use of a database that is analogically identical to that of the Industrial Property Department, Sargent & Krahn now is able to provide its clients with the possibility of getting informed, free of charge, and via Internet, of the status of prosecution of their trademarks.

Indeed, this new service allows its users to check the status of prosecution of a trademark application as well as its special characteristics, being particularly useful in the case of trademarks, labels and logos, which are displayed with the particular designs and colors they are made of.

This way, users are able to carry their search saving money and time. This system also allows to check the status and characteristics of domain names applied for or registered by third parties, on the local domain.cl.

The system implemented to offer this service is called "Weekmark Net" and is available at <http://www.weekmark.cl>, which may be accessed after a password has been granted, at the request of our clients.

To obtain information on how to get this password and operate the Weekmark Net system, please contact to :weekmark@weekmark.cl.

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