Portuguese Industrial Property Code

(Decree-Law 110/2018, December 10, amended by Decree-Law 9/2021, January 29)

Article 1

Industrial property has the function of guaranteeing fair competition by granting private rights over the various technical processes for producing and developing wealth.

Article 208

A trademark may consist of a sign or set of signs capable of being represented graphically, such as words, including names of persons, drawings, letters, numbers, sounds, color, the shape of the product or its packaging, or a sign or set of signs that can be represented in such a way as to clearly and precisely determine the object of the protection granted to its owner, provided that they are suitable for distinguishing the products or services of one company from those of other companies.

 Article 209

1 - The conditions of the previous article are not met:

a) Trademarks devoid of any distinctive character;

b) Signs consisting exclusively of the shape or other characteristic imposed by the very nature of the product, the shape or other characteristic of the product necessary to obtain a technical result or the shape or other characteristic that confers substantial value on the product;

c) Signs consisting exclusively of indications which may be used in trade to designate the kind, quality, quantity, destination, value, geographical origin, time or means of production of the product or the provision of the service, or other characteristics thereof;

d) Trademarks consisting exclusively of signs or indications which have become customary in everyday language or in the loyal and constant habits of commerce.

2 - The generic elements referred to in points a), c) and d) of the preceding paragraph which are included in the composition of a trademark shall not be considered to be the exclusive use of the applicant, except when, in commercial practice, the signs have acquired distinctive effectiveness.

3 - At the request of the applicant or complainant, the INPI, I. P., shall indicate in the granting order which elements of the trademark are not for the exclusive use of the applicant.

Article 211

The right to register a trademark belongs to anyone who has a legitimate interest in it, namely:

a) Industrialists or manufacturers, to mark the products of their manufacture;

b) Traders, to mark the products of their trade;

c) Farmers and producers, to mark the products of their activity;

d) Creators or craftsmen, to mark the products of their art, craft or profession;

e) Those who provide services, to mark their activity.

Article 214

1 - A collective trademark is a specific sign belonging to an association of natural or legal persons, whose members use it, or intend to use it, to distinguish the products or services of the association's members from those of other entities.

2 - The registration of a collective mark gives its owner the right to regulate the marketing of the respective products, under the conditions established by law, the articles of association or internal regulations.

3 - (…)

Article 231

1 - In addition to the provisions of article 23, the registration of a trademark shall be refused when it:

a) Consists of signs that cannot be represented graphically or in such a way as to clearly and precisely determine the object of the protection granted to its owner;

b) Is made up of signs devoid of any distinctive character;

c) Consists exclusively of signs or indications referred to in Article 209(1)(b) to (d);

d) Contradicts the provisions of articles 208, 211 and 224.

2 - The registration of a trademark consisting exclusively of signs or indications referred to in article 209(1)(a), (c) and (d) shall not be refused if, before the date of the application for registration and as a result of the use made of it, it has acquired a distinctive character.

3 - A trademark containing all or some of its elements shall also be refused registration:

a) Symbols, coats of arms, emblems or distinctions of the State, municipalities or other public or private entities, national or foreign, the emblem and denomination of the Red Cross, or other similar bodies, as well as any signs covered by article 6-ter of the Paris Union Convention for the Protection of Industrial Property, unless authorized;

b) Signs with a high symbolic value, namely religious symbols, unless authorized, when applicable, and except when they are customary in everyday language or in the loyal habits of the trade of the goods or services for which the trademark is intended and are accompanied by elements that give it distinctive character;

c) Expressions or figures that are contrary to the law, morality, public order and good customs;

d) Signs that are likely to mislead the public, particularly about the nature, qualities, usefulness or geographical origin of the product or service for which the trademark is intended;

e) Signs or indications that contravene the provisions of national legislation, European Union legislation or international agreements to which the European Union is a party, which grant protection to designations of origin and geographical indications;

f) Signs or indications that contain, in all or some of their elements, traditional terms for wine that are protected by European Union legislation or by international agreements to which the European Union is a party;

g) Signs or indications containing, in all or some of their elements, traditional specialties guaranteed which are protected by European Union legislation or by international agreements to which the European Union is a party;

h) Signs or indications which contain, in all or some of their elements, plant variety names which are protected by European Union legislation or by international agreements to which the European Union is a party.

4 - Registration of a trademark consisting exclusively of the National Flag of the Portuguese Republic or some of its elements shall also be refused.

5 - A trademark containing, among other elements, the National Flag shall also be refused registration if it is likely to:

a) Misleading the public as to the geographical origin of the goods or services for which it is intended;

b) Mislead the consumer into believing that the products or services come from an official entity;

c) Bringing the National Flag or any of its elements into disrepute or disrepute.

6 - When invoked by an interested party, the recognition that the application for registration was made in bad faith shall also constitute grounds for refusal.

Article 232

1 - The following are also grounds for refusing to register a trademark:

a) The reproduction of a trademark previously registered by another party for identical products or services;

b) The reproduction of a trademark previously registered by another party for similar products or services or the imitation, in whole or in part, of a trademark previously registered by another party for identical or similar products or services, which may mislead or confuse the consumer or who understands the risk of association with the registered trademark;

c) The reproduction of a logo previously registered by someone else to distinguish an entity whose activity is identical to the goods or services for which the trademark is intended;

d) The reproduction of a logo previously registered by another to distinguish an entity whose activity is similar to the goods or services for which the trademark is intended or the imitation, in whole or in part, of a logo previously registered by another to distinguish an entity whose activity is identical or similar to the goods or services for which the trademark is intended, if it is likely to mislead or confuse the consumer;

e) The reproduction or imitation, in whole or in part, of a designation of origin or geographical indication that merits protection under the terms of this Code, European Union legislation or international agreements to which the European Union is a party, and whose application was filed before the date of submission of the trademark application or, where applicable, before the date of the respective priority claimed, subject to its subsequent registration;

f) Infringement of other industrial property rights;

g) The use of names, portraits or any other expressions or figurations, without the authorization of the persons to whom they refer and, if they are deceased, of their heirs or relatives up to the 4th degree, or, even if obtained, if they are disrespected or brought into disrepute;

h) Recognition that the applicant intends to engage in unfair competition or that such competition is possible regardless of the applicant's intention.

2 - When invoked by an interested party, this shall also constitute grounds for refusal:

a) The reproduction or imitation of a trade name, company name and other distinctive signs, or only a characteristic part thereof, which do not belong to the applicant, or which he is not authorized to use, if it is likely to mislead or confuse the consumer;

b) Infringement of copyright;

c) Infringement of the provisions of article 212.

3 - In the case provided for in point c) of the previous paragraph, instead of refusing registration, its total or partial transfer to the holder may be granted, if the holder has requested it.

4 - For the purposes of this article and the following articles, a previously registered trademark shall mean any national, European Union or international trademark registration which takes effect in Portugal.

5 - The provisions of paragraphs a) to d) of no. 1 shall cover applications for the registrations mentioned therein, subject to their subsequent registration.

Article 234

The registration of a trademark shall be refused when:

a) The reproduction of an earlier trademark that is well known in Portugal, if it is applied to identical products or services;

b) The reproduction of an earlier trademark that is notoriously known in Portugal, if it is applied to related products or services, or the imitation or translation, in whole or in part, of an earlier trademark that is notoriously known in Portugal, if it is applied to identical or related products or services, whenever it can be confused with it or if, from this application, it is possible to establish an association with the owner of the notorious trademark.

2 - Those interested in refusing to register the trademarks referred to in the previous paragraph may only intervene in the respective proceedings after they have applied for registration of the trademark that gives rise to and justifies their interest.

Article 235

Without prejudice to the provisions of the previous article, the application for registration shall also be refused if the trademark, even if it is intended for goods or services that have no identity or affinity, is a translation of, or is the same as or similar to, an earlier registered trademark that enjoys prestige in Portugal or in the European Union, if it is a European Union trademark, and whenever the use of the later trademark seeks to take undue advantage of the distinctive character or prestige of the trademark, or may harm them.

Article 238

1 - A registered trademark shall be deemed to have been imitated or usurped by another, in whole or in part, when, cumulatively:

a) The registered trademark has priority;

b) Both are intended to mark identical or similar goods or services;

c) They are so similar graphically, figuratively, phonetically or otherwise that they easily mislead or confuse the consumer, or involve a risk of association with a previously registered trademark, so that the consumer cannot distinguish them except after careful examination or comparison.

2 - For the purposes of point b) of the previous paragraph:

a) Products and services that are in the same class of the Nice classification may not be considered related;

b) Products and services that are not in the same class of the Nice classification may be considered related.

3 - Imitation or partial usurpation of a trademark is considered to be the use of a certain fancy name which is part of another's previously registered trademark.

Article 247

Registration lasts for 10 years from the date of submission of the application, and may be renewed indefinitely, in whole or in part, for equal periods.