

## Registering trademarks in Peru and its Andean community benefits

*Registering a trademark in Peru not only gives any person or company the opportunity to protect their trademarks in the Peruvian market, but also gives them an important and useful advantage to manage and protect their trademarks in the Andean Community territory.*

In Peru, the Distinctive Signs Agency of the National Institute for the Defense of Competition and Protection of Intellectual Property ("INDECOP"), is the governmental entity responsible to protect the Intellectual Property Rights.

In that sense, a sign is protected as a trademark when the requester obtains its corresponding registration before the Distinctive Signs Agency of "INDECOP". Thus, since that moment its owner is intitled to protect it from its unrightfully use in the market. Once the trademark is granted, Peruvian law recognizes its ownership retroactively back to the day the trademark application was filed.

In this regard, registration is highly recommended, because protects the owner of a trademark by prohibiting any third party from using an identical or even similar sign in trading, where such use could cause confusion or a risk of association with the undertaking of the owner or with its goods or services. Moreover, the trademark owner may initiate legal actions against any third party using its trademark without authorization. It means, that the person or company that registers a trademark has an exclusive rights over it.

It is important to mention, that in Peru any person or company can file a trademark application even if they are not incorporated nor have a permanent establishment, with the only requirement to appoint a legal representative to act on behalf of the requester of the trademark to be filed.

Among the international treaties Peru is part of, the Andean Community, together with Bolivia, Colombia and Ecuador is a relevant one. The Industrial Property matters of the members of Andean Community are regulated under the Andean Decision 486, which is a Common Industrial Property Regimen, including trademarks, in full force and effect since 2000. Upon said Decision, the members have committed themselves to standardize their legislation in order to have a similar and appropriate protection for industrial property rights.

In the trademark field one of the most important benefits to be part of Andean Community is that all the members have the right to submit an opposition against any application submitted in other country member, based on the register of one similar o same trademark or prior requested of it in other country member. Therefore, not only a trademark owner but also the requester of an earlier application filed before the corresponding national authority are allowed to file an opposition against the registration of a same or similar trademark in another country member.

For example, if a trademark is registered in Peru and someone is trying to register the same or similar trademark in Colombia (or other country member), the owner/requester of the trademark registered in Peru could file an opposition against the application submitted in Colombia. The only requirement to apply for this right is that the owner of the trademark registered in Peru has to prove its legitimate interest in the Colombian market, through the filing of trademark application in Colombia together with the opposition submitted.

Another important benefit of registering a trademark in Peru, is that the register of a trademark allows the owner to claim a priority in a future register of it in another country member of the Andean Community. This claim has to be invoked within the 6 months' period of the filing of the trademark application.

Likewise, another advantage in the trademark field of being part of the Andean Community is that the requester of a trademark can claim as a date of filing, the date which the trademark was exhibited for first time in an official convention, as long as the requester claims this right within the 6 months period from the date of the exhibition was done in the official conference.

Sincerely,

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