



Argentine Republic – National Executive Branch
2019 – Exports Year

Report

Number: IF-2019-91443336-APN-INPI#MPYT

CITY OF BUENOS AIRES
Tuesday, October 8, 2019

Reference: ANNEX II - Administrative Resolution on Non-use Trademark Cancellation Actions

ANNEX II

Annex IV Resolution 183/18

NON-USE TRADEMARK CANCELLATION ACTION PROCEDURE

ARTICLE 1° - Non-use cancellation actions shall only proceed against registered trademarks which have met more than FIVE (5) years of validity.

The non-use cancellation actions at the request of one of the parties shall only proceed whenever the party invokes that a legal right is violated.

Ex officio non-use cancellation actions shall only proceed whenever the following conditions are verified :

- a) The trademark has not been used within the prior five years of use;
- b) It's owner has not filed the Mid-Term Sworn Declaration established by Article 26 of the Trademark Law;
- c) It is not a well-known trademark pursuant to the Paris Convention and TRIPS; and
- d) That the owner does not possess an identical registered trademark in a class related or linked to it; or if he/she has said trademark, the owner did not file the sworn declaration of use either when he/she should have done so.

Non-use partial cancellation actions may only be filed as of June 12, 2023.

ARTICLE 2° - NON-USE CANCELLATION ACTIONS IN THE CONTEXT OF A TRADEMARK APPLICATION OPPOSITION. In cases wherein a motion for -non-use cancellation action is initiated in the context of an opposition, the latter shall be resolved in the Administrative Resolution Proceeding of Oppositions.

ARTICLE 3° - NON-USE CANCELLATION ACTIONS AT THE REQUEST OF ONE OF THE PARTIES.

REQUIREMENTS. Trademark expiration request must contain:

- a) Name and address of the applicant;
- b) Name and address of the trademark owner;
- c) The affected legal right;
- d) Identification of the trademark which non-use cancellation action is requested, the facts on which the request is based together with the evidence of the legal right; and
- e) Payment of the corresponding fee.

ARTICLE 4° - REJECTION. The TRADEMARK OFFICE may reject the non-use cancellation action in the following cases:

- a) The application does not comply with any one of the requirements set forth in the above article;

- b) The non-use cancellation action has been previously resolved within the last 5 years;
- c) The application is filed and/or resolved within the administrative resolution procedure of oppositions.
- d) In the case of a partial expiration, it has been filed before FIVE (5) years of the incorporation of said legal concept into the trademark legislation.

ARTICLE 5° - PROCEDURE. Once the the non-use cancellation action is initiated, notice shall be served to the Trademark Registration Owner so that he/she may file a reply, within the term of FIFTEEN (15) working days, accompanying the evidence of his/her right.

In case of ex-officio non-use cancellation, the Trademark Office must verify that all requirements are met for the appropriateness of the motion, and said Office must notify the owner, within identical term, with the same purpose. Once the notice has been answered or once the term for answering it has expired, the Trademark Office shall resolve according to the proceedings, resolving on the merits of the case, the facts and grounds alleged by the parties.

ARTICLE 6° - APPEALS. All resolutions dictated within the non-use cancellation action proceeding by the Trademark Office may be appealed by the means established in the Administrative Proceedings Law (text in force, 2017), or the one succeeding it in the future. As regards the final resolution, there shall be no requirement to exhaust all available administrative remedies in order to directly lodge an appeal pursuant to Article 26 of Law N° 22.362.

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Date: 2019.10.08 15:11:09 -03:00

Mónica María Real
General Secretary
National Institute of Industrial Property

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