



Intellectual Property - Mexico

Pharmaceutical Trademarks: The Health Law Pitfall for Applicants

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The Health Law regulates the requirements for commercializing pharmaceutical products in Mexico. On the basis of the same law, most Mexican trademark examiners have implemented a criterion for the registration of pharmaceutical trademarks: if a more recent trademark does not differ by at least three letters from an earlier mark and both marks cover similar goods, registration of the more recent mark will not be granted.

The distribution and sale of pharmaceutical products is subject to authorization by the Ministry of Health, which approves the distribution, sale, importation and manufacture of medicines and pharmaceutical products by issuing a health product registration.

Article 23 of the law provides that in order to obtain registration, a trademark must differ by at least three letters from previous authorized trademarks. Although the law is not binding in trademark matters (as it is not included in the Law of Industrial Property), examiners are applying it discretionally for the sake of consistency, reasoning that if they grant trademarks without a three-letter difference, the ministry will not issue a registration for the product bearing the mark.

Nonetheless, this approach is unsupported in statute, since no regulations link the provisions of the Industrial Property Law and the Health Law, and is clearly out of step with international and Mexican practice. The criterion is not applied in any of the other 44 international classes of the Nice Classification. For example, the Mexican Institute of Industrial Property has set a precedent in Class 12 (which covers vehicles and automobiles) by allowing the coexistence of several trademarks that do not differ in this way.

However, the problem remains that a successful applicant for a pharmaceutical trademark may be unable to use the mark. Therefore, before launching a product, pharmaceutical companies should bear this problem in mind in order to save money and time and prevent possible disputes with third parties.

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