INTABulletin

The Voice of the International Trademark Association

October 15, 2016 Vol. 71 No. 18 **Back to Bulletin Main Page**

# ARGENTINA: Foreign Trademarks Protected against Bad Faith Registrations

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Division I of the Federal Court of Appeals in Civil and Commercial Matters of the City of Buenos Aires confirmed the lower court's decision in *Velasco Baquedano, Juan Ignacio v. Agrícola San José de Peralillo S.A.* on April 5, 2016. The decision allowed an opposition filed by the defendant, owner of the marks ANTU and ANTU NINQUÉN in Chile and other countries but not in Argentina.

The plaintiff filed a complaint requesting that the opposition filed against his trademark application for ANTU in Class 25 be declared ungrounded. He said that he was well-known in the wine industry and that at the time of filing the opposition, the defendant had no local rights on ANTU.

The defendant argued that it had registered the marks ANTU and ANTU NINQUÉN for wines in Chile and the United States, and ANTU in the European Union, before the plaintiff's application. The company said that the ANTU NINQUEN wine was exported from Chile to 21 countries, having received awards from 2005 to 2011. The company also claimed that it had opposed the plaintiff's mark as it was a slavish imitation of their mark.

The Court of First Instance rejected the complaint. On appeal, the Federal Court of Appeals held that notoriety required two elements: broad knowledge of the sign (to be known by all the public and not only by the purchaser of the relevant market) and people spontaneously connecting the sign with the product.

The Court of Appeals ruled that the notoriety of the opposing mark had been proven. Moreover, it added that, upon conducting an Internet search of the keywords "ANTU wines," it found several articles and photos of the products sold by the defendant, and an even larger number of articles and photos in the case of the mark ANTU NINQUÉN.

The court added that the marks were identical and protected wines. It mentioned that the *Mapuche* word ANTU (related to the sun) was not commonly used and people could be confused regarding the origin of the products.

The Court of Appeals concluded that it was reasonable to accept that the plaintiff must have known of the existence of the foreign mark ANTU, pointing out that such knowledge constituted an act of unfair competition.

Finally, the court held that, on account of the circumstances of the case and regardless of the local and foreign renown and reputation of the mark, the plaintiff had tried to copy the foreign trademark ANTU, adding that the plaintiff had illegally attempted to register the trademark ANTU in order to unlawfully benefit from its prestige and renown.

The case is an example of the protection granted by Argentine courts to foreign marks that have not been locally registered against bad faith registration attempts.