Andean Outlook

A recurring feature
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A review and commentary on recent developments in the law of the Andean Community (Colombia, Venezuela, Ecuador, Perú and Bolivia) that relate to the field of licensing.

LICENSES IN THE ANDEAN COMMUNITY

Licenses are agreements applicable to patents and trademarks, whereby the licensor, being the proprietor of the patent or trademark enhances his production of goods or services and their distribution to new markets, while the licensee assumes consideration, namely payment of a royalty for benefiting from the trademark or working the patent.

In general terms, license contracts entered into in the Andean Community (Colombia, Venezuela, Ecuador, Perú and Bolivia) must abide by the community provisions on transfer of technology, foreign investment and industrial property, and national provisions on restrictive commercial practices on free competition.

Decision 291 of 1991 contains the Common Regime on Capital Investment and Transfer of Technology1. In the Andean Community, Decision 486 of 2000 contains the Common Regime on Industrial Property and each member country has established its specific regulations on commercial practices restrictive of free competition.

I. COMMON REGIME ON CAPITAL INVESTMENT AND TRANSFER OF TECHNOLOGY: DECISION 291.

Decision 291 requires that contracts on technology import contain, at least, the following clauses:

a) Identification of the parties, with express designation of their nationality and domicile;

b) Identification of the mode of transfer of the technology being imported;

c) Contractual value of each one of the elements involved in the transfer of technology; and

d) Designation of the term of duration.

It prohibits, additionally, for purposes of registration of such contracts, that they contain the following clauses:

Finally, and except in extraordinary cases, duly qualified by the national competent body of the receiving country, clauses shall not be admitted when prohibiting or limiting in any manner the export of products manufactured on the basis of the relevant technology.

II. Common Regime on Industrial Property: Decision 486

Decision 486 of 2000, applicable in Colombia, Venezuela, Ecuador, Perú and Bolivia since December 1, 2000, is the provision containing the Common Regime on Industrial Property in the Andean Community.

Some of the topics dealt with in the community provision may be summarized as follows:

a. Patent Licensing

Decision 486 of 2000 contemplates that the proprietor of a patent granted or in the application process grants a license to one or more third parties for working the relevant invention.

However, it requires that every license for actual work of a patent granted be registered with the respective national competent office, so as to ensure that the license may be enforceable against third parties.

In any event, the national competent authority will not register license agreements for actual working of patents when not adjusted to the legal provisions of the Common Regime for Treatment of Foreign Capitals and on Trademarks, Patents, Licenses and Royalties, or when not adjusted to community or national provisions on commercial restrictive practices of free competition.

b. Regime on Compulsory Licenses.

Decision 486 of 2000 introduced some modifications to the compulsory license regime previously regulated by Decision 344 of 1993.

Compulsory licenses are granted for industrial production of a product, subject matter of a patent or the integral use of the patented process when the term of three years (counted from the grant of the patent) or four years (counted from the application date thereof—whichever occurs later) has expired and no actual work

1 Court of Justice of the Andean Community. Proceeding 2-IP-90, Sent. Sep. 20/90.Transfer of Technology

of the patent has been made in the member country where the license is applied for, or if the working of the invention has been suspended for more than one year.

A compulsory license shall not be granted when the proprietor may justify the lack of action through legitimate excuses, including force majeure or unpredictable event.

What is novel in the regulation of Decision 486 of 2000 on this aspect is that a compulsory license will solely be granted to whomever applies for one, would have previously tried to obtain a contractual license form the proprietor of the patent, under reasonable commercial terms and conditions, and such attempt would have not succeeded within a prudential period.

The community provision sets forth that the national competent office shall establish the scope or the extent of the license, the period of duration, the purpose of the license and the amount of consideration to be acknowledged to its proprietor.

It also seems relevant to point out that a prior declaration by a member country about the existence of reasons of public interest, emergency or national safety and solely while such reasons prevail, can at any time a patent be submitted to a compulsory license. Compulsory licenses granted in the Andean Community shall always be subject to the following limitations:

- They shall not be exclusive and no sub-licenses shall be granted;
- Licenses may solely be transferred with the portion of the enterprise or intangible equity that allows its being worked industrially, expressed in writing and registered with the national competent office. Otherwise they shall be legally ineffective;
- They may be revoked without prejudice to the adequate protection of the legitimate interest of the parties who obtained authorization for a license, if the circumstances that gave origin thereto have disappeared and are not likely to reappear;
- The scope and duration shall be limited by virtue of the purposes for which they were granted;
- For patents relating to protection of semiconductor technology, the compulsory license shall solely be authorized for non-commercial public use, or to remedy or rectify any practice that would have been declared contrary to free competition by the national competent authority;
- Adequate remuneration will be contemplated, according to the circumstances of each case; and

g) That utilization be mainly for supplying the internal market.

c. Licenses for Integrated Circuits Layout Designs

Pursuant to Decision 486 of 2000, the proprietor of a registration of integrated circuits layout designs granted or in the process of being granted, may grant a license to one or more third parties for use of the relevant layout design. This constitutes a novelty vis-a-vis the prior community legislation, since no regulation existed for integrated circuits layout designs.

An integrated circuit layout design is, pursuant to the community provision, the three-dimensional arrangement, expressed in any manner of a product, in its final or intermediate form, whose elements, of which at least one is an active element, and any or all interconnections, form an integral part of the body or surface of a piece of material destined to perform an electronic function.

The decision establishes that a layout design will be protected when being novel, namely when resulting from the intellectual effort of its designer, and not being common in the integrated circuits industry.

In any event, the community provision establishes that every license granted for commercial use of the layout design shall be registered with the national competent office and the absence of registration shall render the license inefficacious vis-a-vis third parties. To such effect the license shall be in writing.

d. Trademark Licensing

The proprietor of a trademark registered or in the process of being registered, may grant a license to one or more third parties for the commercialization of the relevant trademark.

The license to use the trademark shall be registered with the national competent office and the lack of registration shall render the license inefficacious vis-a-vis third parties.

For purposes of registration, the license shall be in writing and any interested person may apply for registration of a license.

The national competent authority shall not register license agreements or transfers of trademark registrations when not adjusted to the Common Regime of Treatment of Foreign Capitals and on Trademarks, Patents, Licenses and Royalties, or to community and national provisions on commercial practices restrictive of free competition.

When a change occurs with respect to the name or address of the proprietor of a mark registration during the term of enforceability of the license, the proprietor of the registration should report it to the national competent office.

Otherwise, any notice sent pursuant to the data appearing on the registration shall be deemed valid.

e. Trade Name Licensing

Decision 486 of 2000, applicable in Colombia, Venezuela, Ecuador, Perú and Bolivia was quite generous when regulating the trade name and permitted explicitly its being the subject matter of a license.

It established additionally that licenses on trade names should solely be registered with the national competent office if national provisions so require.

The foregoing represents a change in connection with prior legislation—Decision 344 of 1993—that had provisions of a much more general character and made no mention of the possibility of granting licenses.

Decision 486 of 2000 defined the trade name as any sign identifying an economic activity, an enterprise or a commercial establishment.

It likewise determined that the exclusive right in a trade name is acquired through its first use in trade and terminates when use of the name ceases or when the activities of the enterprise or the establishment cease.

The community provision added that the proprietor of a trade name could prevent third parties from using in trade an identical or similar sign, when such use could cause confusion or the risk of association with the enterprise of the owner or with its/his/her products or services.

The registration of a trade name in the Andean Community is simply of a declarative character and each Andean country shall regulate the manner to do it.

The registration of a trade name shall be enforceable during 10 years renewable for similar periods, and no trade names shall be registered when falling under any of the following cases:

a) when consisting, totally or partially in a sign contrary to morality or public order;

b) when its use may cause confusion in trade circles or among the consumers with respect to the identification, nature, activities, commercial character or any other aspect of the enterprise or the establishment designated by such name;

c) when its use may be liable for causing confusion in trade circles or among the public on the entrepreneurial source or other characteristics of the products or services of the enterprise; or

d) when there exists a prior application or registration of a trade name.

Finally, Decision 486 establishes that the transfer of a registered or deposited trade name shall be recorded with the national competent office pursuant to the procedure applicable to trademark transfers.

III. PROVISIONS ON COMMERCIAL PRACTICES RESTRICTIVE OF FREE COMPETITION.

a. Columbia

Colombia is one of the countries most advanced in regulating restrictive commercial practices in the Andean area.

Its Political Constitution of 1991 states that, "The state, as provided by law, shall prevent any obstruction or restriction of economic freedom and shall avoid or control any abuse of their dominant position in the national market by persons or companies."

Another article of the National Constitution establishes that, "The law shall regulate criminal proceedings to protect collective rights and interests related to public property, space, safety, and health or to administrative morality, the environment, free economic competition, and other matters of a similar nature as set forth in the law."

The above-quoted provisions are determining, because the remaining development of the legislation (which is quite extensive on the subject matter) depends on them. We will emphasize only Law 155 of 1959 and Decree 2153 of 1992. \

1. Prohibited practices or agreements.

Pursuant to Law 155 of 1959, agreements or contracts are prohibited when their purpose is to directly or indirectly limit production, supply, distribution or consumption of national or foreign raw materials, products, commodities or services and in general all types of practices and procedures or systems tending to limit the free competition and to maintain or to determine inequitable prices.

However, the government may authorize the entering into of contracts or agreements that, not withstanding the fact that they limit free competition, defend the stability of a basic sector for the production of goods or services of interest for the economy in general.

Contracts, agreements or transactions prohibited by law are absolutely null and void due to illicit purpose.

2. Agreements contrary to free competition.

Pursuant to Decree 2153 of 1992, among others, the following are deemed to be contrary to free competition:

- Those whose purpose or effect is the direct or indirect fixing of prices.
- Those whose purpose or effect is determining sale or commercialization conditions discriminating against third parties.
- Those whose purpose or effect is the distribution of markets among producers or distributors.
- Those whose purpose or effect is the allocation of production or supply quotas.
- Those whose purpose or effect is the distribution or

limitation of supply sources of productive inputs.

- Those whose purpose or effect is to limit technological developments.
- Those whose purpose or effect is to subordinate the supply of a product to acceptance of additional obligations that, due to their nature, would not constitute the subject matter of the business, without prejudice to what has been established in other provisions.
- Those whose purpose or effect is to refrain from producing a good or service or to affect their levels of production.
- Those whose purpose is an act of collusion in a public bid or offer or those whose effect is the distribution of contracts, offers or the establishment of bidding conditions.
- Those whose purpose or effect is to prevent third parties from having access to markets or to commercialization channels.

3 . Acts contrary to free competition.

Pursuant to Decree 2153 of 1992, the following constitute acts contrary to free competition:

- Infringing provisions on advertising, contained in the regulations on consumer protection.
- Influencing upon an enterprise to attain a price increase of its products or services or so that it refrain from its intention to reduce prices.
- Refusing to sell or render services to an enterprise or discriminate against it when it may be understood as a retaliation against its price policy.

However, the following conducts will not be held as contrary to free competition:

- Those whose purpose is cooperation in research and development of new technology.
- Agreements on compliance with provisions on technical standards and measuring not adopted as compulsory by the competent body when not limiting the access of competitors into the market.
- Those referring to processes, methods, systems and manners of utilization when not limiting the access of competitors into the community market.

4. Abuse of dominant position.

The following conducts constitute abuse of dominant position:

- Reduction of prices below costs when aimed at eliminating one or several competitors or preventing their access or expansion.
- Application of discriminating conditions with regard to equivalent transactions that place consumers or suppliers in a disadvantageous situation vis-a-vis another consumer or supplier of analogous conditions.
- Those whose purpose or effect is subordinating the supply of a product to acceptance of additional obligations that, due to their nature, would not constitute the corporate purpose of the business, without prejudice to other enforceable provisions.
- The sale to a purchaser under conditions different from those conditions offered to another purchaser when intended to diminish or eliminate competition in the market.
- The sale or provision of services somewhere within the Colombian territory, at a price different from that at which they are offered in another part of the Colombian territory, when the intention or effect of such practice is to diminish or eliminate competition in that part of the country and the price does not correspond to the structure of the costs of the transaction.

5. Control to economic concentrations.

Pursuant to Law 155 of 1959, enterprises engaged in the same productive, supplying, distributing or consuming activity concerning a specific article, raw material, product, commodity or service whose assets individually or jointly reach $10,000 or more, shall be obliged to inform the national government about any transactions planned for the purpose of merging, consolidating or integrating into one another, whichever may be the juridical mode of consolidation, merger or integration.

The National Government shall object the transaction if it tends to produce an undue restriction of free competition.

It may be inferred that a juridical-economic concentration tends to produce undue restriction of free competition, whenever:

- It has been preceded by private agreements between the enterprises for the purpose of unifying and imposing prices upon raw material producers or consumers, or for distributing among themselves the markets, or for limiting the production, distribution or the rendering of the service; or
- When conditions of the corresponding products or services in the market are such that the merger, consolidation or integration of the enterprises that produce or distribute them may determine inequitable prices in prejudice of competitors or consumers.

6. Functions of the Superintendency of Industry and Commerce. Decree 2153, 1992.

The Superintendency of Industry and Commerce exercises the following functions:

- It monitors compliance with provisions on promotion of competition and restrictive commercial practices and takes cognizance of claims or complaints filed in connection with facts affecting competition within markets and duly processes those particularly significant.
- It imposes the relevant sanctions for infringement of provisions on restrictive commercial practices.
- It urges from natural and legal persons the supply

of data, reports, books and commercial documents required for the adequate development of its functions.

- It performs inspection visits for the purpose of verifying compliance with legal provisions whose control is under its jurisdiction and adopting the cor responding measures pursuant to law.

b. Perú

In Perú, the entity in charge of monitoring and enforcing free competition is the National Institute for Defense of Competition and of Protection to Intellectual Property (NDECOPI).

1. Principal provisions.

Legislative Decree No. 701 of 1991 provides for the elimination of monopolistic, controlling and practices restrictive of free competition.

Law No. 26876: Electrical Sector Anti-Trust Law.

Supreme Decree No. 017-98-ITINCI: Regulatory of the law that establishes control of entrepreneurial concentrations in the electrical sector: service of process.

2. Prohibited acts and conduct.

Acts and conduct relating to economic activities constituting abuse of a dominant position in the market are prohibited, as well as those limiting, restricting or distorting free competition in such a manner that they may generate damages for the general economic interest, within the national territory.

3. Abuse of the dominant position in the market.

It is deemed that abuse of the dominant position in the market exists when one or more dominant enterprises act in an undue manner for the purpose of obtaining benefits and damaging others in a manner that would not have been possible, had their dominant position not existed.

4. Practices restrictive of free competition.

Practices restrictive of free competition are understood to be agreements, decisions, recommendations, parallel performances or concerted practices among enterprises that produce or may produce the effect of restricting, preventing or deceiving competitors.

The following are practices restrictive of free competition:

- The distribution of markets or of supply sources;
- The distribution of production quotas;
- The concerted arrangement of product quality when not adjusted to national or international technical standards affecting consumers negatively; and
- Applying to commercial relationships inequitable conditions with respect to equivalent services, which may place some competitors in an unfavorable situation vis-a-vis others.

The grant of discounts and bonuses corresponding to generally accepted commercial practices is not deemed to constitute a practice restrictive of free competition if it is granted due to specific compensating circumstances, such as advance payments, amounts, volumes of transactions or other reasons awarded on a general basis in all cases where similar conditions are present.

5. Procedure.

The related procedure is a unique one, divided into the following stages: The initiation of the investigation; terms and time for contesting and submission of evidence; a probationary period; appeal and proceedings at the Court; and, as the case may be, the criminal action.

Additionally, the Commission of Free Competition of INDECOPI may impose pecuniary sanctions on infringers, taking into account the following factors:

- The scope and extent of restriction of competition.
- The size of the market affected.
- The market quota of the relevant enterprise.
- The effect of the restriction of competition upon effective or potential competitors, upon other portions of the economic process and upon consumers and users.
- The duration of the restriction of competition.
- The reiteration in the performance of prohibited conducts.

c. Venezuela

Since 1992 there has been a provision in Venezuelan law intended to promote and protect the exercise of free competition (Official Gazette No. 34.88 of January 12, 1992), which is being submitted to study for amendment.

The entity in charge of controlling compliance with the law is the Superintendency for the Promotion and Protection of Free Competition.

1. Main provisions.

Constitution of the Republic of Venezuela. Amendments No. 1 and 2. Temporary Provisions.

Law to Promote and Protect the Exercise of Free Competition of January 13, 1992.

Guidelines for the Evaluation of Franchise Agreements. Extraordinary Official Gazette No. 5.431 of January 7, 2000.

Guidelines for the Evaluation of Transactions of Economic Concentration. Official Gazette No. 36.819 of November 1, 1999.

Internal Regulation of the Superintendency for the Promotion and Protection of Free Competition. Official Gazette No. 35.329 of November 7, 1997.

Regulation No. 2 of the Law for the Promotion and Protection of the Exercise of Free Competition. Official Gazette No. 35.963 of May 21, 1996.

2. Law for the promotion and protection of the exercise of free competition

This law pursues the promotion and protection of the exercise of free competition and efficiency to the benefit

of producers and consumers in Venezuela.

The Superintendency for the Promotion and Protection of Free Competition (Pro-Competencia) is the body created for controlling the fulfillment of the law and it is administratively attached to the Ministry of Industry and Commerce.

In general terms, the law establishes a general prohibition of the conducts and decisions that may prevent, restrict, deceive or limit free competition.

Additionally, there are specific prohibitions concerning practices restrictive of competition such as horizontal agreements, vertical practices, abuse of dominant position, boycotting and economic concentrations restrictive of free competition.

3. Horizontal agreements.

Horizontal agreements are regulated by law. They are defined as pacts entered into between competitors that end up weakening or restricting free competition between enterprises acting in similar markets.

Horizontal agreements may be manifested in the following manner:

- Fixing of prices: Economic agents or offerers fix their prices on mutual agreement instead of establishing prices independently and competing,
- Restriction of production: Economic agents share the market in such a manner that a group of consumers is serviced through one single supplier.
- Predatory pricing: One or more offerers set the price of a product or service below costs so as to induce other competitors to vacate the market.

4. Authorized vertical practices.

These are anti-competitive agreements between agents located at different levels of the commercialization chain (producers, distributors, wholesale vendors and retail vendors). Although they restrict competition, there exists the possibility of their being efficient. For that reason, they must be evaluated by Pro-Competencia prior to being approved pursuant to the provisions of Regulation No. 1 of the Law.

Vertical practices may be identified in the following manner:

- Agreements of exclusive distribution: Agreements established between the producer-distributor or distributor-retail vendor with the purpose of attaining exclusive rights to the sale of a product or service offered by the producer-distributor. These may be efficient and require the authorization of Pro-Competencia.
- Establishment of resale prices: When a distributor or retail vendor sells goods at the prices established by the supplier-distributor.
- Discriminating prices: When an offerer establishes several prices for a good offered to various clients under similar circumstances.
- Tied-up sales: When an offerer conditions the sale of a good to the purchase of any other or to the rendering of a service.

5. Monopolies.

Law hinders the establishment of new monopolistic structures and monitors very closely those already existing prior to the enactment of the law, since it has already been determined that enterprises in this position are more likely to perform anti-competitive practices that turn into abuses of dominant positions.

Likewise, law prohibits and punishes specifically any abuse in which enterprises that enjoy a dominant position in a specific market impose prices, with absolute independence from their competitors, commercializing exceedingly competitive conditions to their clients and distributors. In this sense, law prohibits as being restrictive of free competition the following conduct:

- Imposition and fixing of prices, unjustified limitation of production or of distribution, unjustified refusal to sell, discriminating treatment and imposition of tied-up sales.
- Concerning mergers and acquisition of enterprises, making transactions of economic concentration (mergers and acquisitions) between agents engaged in a similar activity and that originate a restrictive effect upon free competition or increase a dominant situation on the whole or on part of the market (Article 11).

d. Ecuador

1. Provisions.

The Political Constitution of the Republic of Ecuador states:

Article 244. Within the system of socially oriented free market economy the state shall take upon itself to:

2. Promote the development of activities and competitive markets. Encourage the free competition and sanction according to law, monopolistic practices and any other that hinder and distort it;

Other laws on the subject matter are the following:

2. Law on modernization of the state.

Prohibits the existence of monopolies in any form and authorizes third parties to establish activities or render services of like or similar nature.

Without prejudice to the provision contained in the preceding paragraph, concessions, licenses or permits may be granted under conditions of regulated exclusiveness, only during a specified period, under the authorization of the president of the republic or of the competent body in the event of sectional governments. When the concession of a public service implies a dominant position in the market, the proprietor may not be the owner by himself nor through third parties, concerning collective communication media or financial institutions. Each of these activities shall be developed

in an exclusive manner by their managers or proprietors.

3. Structural legal organization for defense of consumers.

This law establishes in its article 51 that, "without prejudice to what in such respect criminal laws have established, speculation is absolutely prohibited. Likewise, any other unfair practice is prohibited which tends to, or causes indiscriminate rise in prices of goods and/or services."

It also determines that the following constitute abusive market practices, and are thoroughly prohibited for suppliers:

- To condition the sale of goods to the purchase of other goods or to the contracting of a service, except when for operation of the law the consumer must fulfill any requirement;
- Refusal to wait on consumers when stock permits;
- Sending to consumers any unsolicited service or product. Under such hypothesis, any goods or services so delivered shall be deemed "free of charge sample";
- Fraudulently take advantage of a consumer's age, health condition, level of instruction or capacity in order to sell him/her a good or service;
- Place in the market products or offer the rendering of services non-compliant with technical and quality standards issued by competent bodies;
- Apply readjustment formulas different from legal or contractual ones;
- Omit establishing terms for fulfillment of obligations, or leave it to his/her own criterion; and
- Round up terms for rendering effective the collection of interests, fines or other economic sanctions in credit cards, bank loans and other similar practices.

4. Intellectual property law.

The intellectual property law of Ecuador establishes that proprietors of industrial property rights and plant variety obtentors may grant licenses to third parties for their use and work through written contracts. Those contracts shall not contain clauses restrictive of commerce or create unfair competition.

Sub-licenses shall require express authorization from the proprietor of the rights.

Additionally, the law deems to be unfair competition any fact, act or practice contrary to honest use or custom in the development of economic activities.

For defining honest use, the criteria prevailing in the national commerce shall apply; notwithstanding, when relating to acts or practices performed in the context of international transactions, or having connection points with more than one country, the criteria on honest use prevailing in international trade shall apply.

5. Law of companies.

The establishment and operation of companies contrary to public order, mercantile laws and good habits is prohibited, as is the establishment and operation of those lacking a real purpose and a licit negotiation and those tending toward monopoly of supplies or of any branch of industry, through commercial practices oriented towards such ends.

Other provisions dealing with the subject matter are: Law for Economic Transformation of Ecuador (of the Amendments to the Special Telecommunications Law) and the Law for the Promotion of Investment and Citizenship Participation (of the amendments to the Hydrocarbon Law)

e. Bolivia

Of the entire group, Bolivia is the country with the fewest provisions on the subject matter. Only the Code of Commerce regulates, through articles 66 to 71, the topic of unfair competition.

In this sense, we find that restrictive commercial practices are analyzed from the point of view of prohibited uses, the acts that constitute unfair competition and the applicable procedure.

Utilization of trademarks, countermarks, signs, containers, drawings or indications that might induce the public to confusion about the quality, origin, or quantity of the goods offered or sold, constitutes a crime.

The author of unfair competition acts is deemed to be the person who infringes on trademarks, patents, trade names, signs or industrial secrets, who uses means or methods tending to discredit the products or services of a competitor or alters them for the purpose of deceiving, who utilizes a denomination of origin or imitates and takes advantage of the qualities of a third party product to its/his/her own benefit, utilizes praise or exaggeration that may induce the public to error.

Also, the author of acts of unfair competition is deemed to be whoever bribes employees of another enterprise in an attempt to drive away the clientele or maneuver to deprive their competitors from technicians and trustworthy employees, or uses fraudulent means or systems for disorganizing the trading market and puts into practice any other procedure in detriment of other entrepreneurs, being contrary to law and mercantile usage.

The damaged parties may resort to the competent court through summary proceedings seeking that the denounced act be suspended and the destruction of the physical material used and public rectification in the event of untrue or false representations.

The damaged party may also sue to claim payment of damages and the grant of guarantees to respond for unfair competition acts.

Non-compliance with the penalties may give way to fines.

IV. REGISTRATIONS

At least in Colombia, license agreements shall be approved and registered with two national authorities:

- With the Ministry of Foreign Trade for exchange and taxation purposes (even when not including payment of royalties).
- With the Superintendency of Industry and Commerce, for purposes of enforcement or advertisement against third parties from the perspective of industrial property.

Enforceability of license agreements is a critical topic due to the increasing number of filings in demand of trademark cancellation for non-use.

V. QUALITY OF THE PRODUCTS OFFERED.

It is worthwhile to point out that each one of the member countries of the Andean Community has established some specific requirements for protecting consumers in aspects relating to the quality of the goods offered, through license agreements.

In the Colombian case, for example, the Commercial Code establishes that the license agreement shall contain stipulations guaranteeing the quality of the products or services produced or rendered by the beneficiary of the license.

Similarly, the Colombian Commercial Code obliges the proprietor of the trademark to exercise effective control on quality and it/he/she shall be severally responsible vis-a-vis third parties for potential damages caused.

At the request of any person, or ex officio, the office in charge of controlling quality and standards shall take the appropriate steps to guarantee such quality and shall impose the required sanctions.