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Portuguese Supreme Court clarifies status period for annulment

João Paulo Mioludo (CMS Rui Pena & Arnaut) · Wednesday, March 16th, 2016

Throughout the years the correct interpretation of article 266, paragraph 4, of the Portuguese Industrial Property Code (PIPC) was unclear. This provision states that *annulment actions must be filed within the 10-year period beginning on the date of issue of the registration grant order, without prejudice to the right to apply for annulment of a trademark registered in bad faith, which is imprescriptible*. It was generally held that this provision seemed to inexplicably combine different legal institutes, the prescription and the limitation dates, which have very different legal treatment in the scope of the Portuguese legal framework.

The expiry of the prescription period does not end the corresponding right, but, instead, enables the defending party to successfully oppose its use or exercise. On the other hand, the expiry of the limitation period effectively finishes the corresponding right, as the limitation period is intended firstly to provide certainty and security and only secondly to protect personal interests of the opposing parties.

The application of these legal regimes has a serious impact on the deadline calculation, as the interruption or suspension of the prescription period only occurs with the effective summoning of the defending party, (article 323°, paragraph 1 of the Portuguese Civil Code (PCC) and article 259°, paragraph 2 of the Portuguese Civil Procedure Code (PCPC)) and, otherwise, the limitation period cannot be suspended or interrupted, (article 328 of the PCC). This meant that the interested party had to file the corresponding action before the competent court to avoid that the limitation period would produce its effects, as defined by article 331°, paragraph 1 of the Portuguese Civil Code and article 259°, paragraph 1 PCPC.

Considering these legal regimes, the deadline provided by article 266, paragraph 4 PIPC would then have to be considered as a limitation period, however, the Portuguese legislator was deeply unfortunate when decided to use the wording “imprescriptible”, thus leading to avoidable risks of misinterpretation.

Eventually, such wording could be interpreted as avoiding the application of article 298, paragraph 1 PCC, which determines that when not specifically provided by law, a deadline is considered to be a limitation period and not a prescription period. This consideration further affects the eventual application of article 279°, subparagraph e) PCC, which determines that when a limitation period ends on judicial vacations, the deadline is postponed until the court's recession.

The Portuguese Supreme Court of Justice on 22 October 2015 issued a decision which finally clarified the correct interpretation of the provision, in the scope of Case 273/13.9YHLSB.L1.S1. The Supreme Court's decision clearly stated that the 10-year period must be qualified as a limitation period and not as a prescription period. Additionally, the Supreme Court of Justice decided that the wording "imprescriptible" should not be interpreted as providing any information concerning the applicable regime but, instead, to determine that when a registration is done in bad faith, the annulment action is not subject to a specific deadline.

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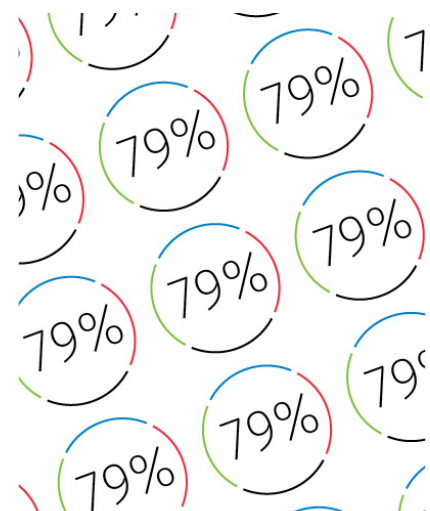
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