

PORTUGAL



Law and Practice

Contributed by:

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SÉRVULO

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SÉRVULO is a leading Portuguese full-service law firm with 25 years' experience and a multidisciplinary team of over 120 lawyers. Its legal expertise, rooted in academic research and practical know-how, enables the firm to provide innovative, tailor-made solutions to major private and public entities across Portuguese-speaking markets. Based in Lisbon, **SÉRVULO** ensures comprehensive international coverage through strategic global partnerships, the **SÉRVULO LATITUDE** network, membership in international law firm alliances, and dedicated

foreign desks. **SÉRVULO**'s IP team has extensive experience in trade marks, licensing and transfer of IP rights, as well as legal representation in disputes within these areas. The team is also recognised in the life sciences sector, with expertise in patent and trade mark litigation in the pharmaceutical industry. In the field of copyright, it assists domestic and international clients with contract negotiation for creation, use and licensing, with a focus on information technology and the music industry.

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PORTUGAL LAW AND PRACTICE

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1. Trade Mark and Copyright Law

1.1 Governing Law

In Portugal, trade marks and copyrights are primarily governed by statutory law.

The law governing trade marks is set out in the Industrial Property Code (*Código da Propriedade Industrial*), published by Decree-Law 110/2018 of 10 December 2018.

Copyright in Portugal is governed by the Copyright and Related Rights Code (*Código do Direito de Autor e dos Direitos Conexos- CDADC*), published by Decree-law 63/85 of 14 March 1985.

As a member of the EU, Portugal is bound by Regulation (EU) 2017/1001 of 14 June 2017 on the European Union trademark, as well as all EU regulations that govern copyright law.

Portugal does not recognise common law trade marks or copyrights, as intellectual property protection is based on formal registration or automatic rights under statutory provisions.

1.2 Conventions and Treaties/Rights of Foreign IP Holders

Portugal is a member of key international treaties governing trade marks and copyrights, including the Paris Convention for the Protection of Industrial Property, the Madrid System for International Trademark Registration, the Berne Convention for the Protection of Literary and Artistic Works, and the TRIPS Agreement. Additionally, as an EU member state, Portugal follows EU regulations and directives on intellectual property, ensuring harmonised protection and enforcement of foreign trade marks and copyrights.

2. Trade Mark Ownership, Protection and Rights

2.1 Types of Trade Marks

Portugal recognises different types of trade marks and other source-identifiers, including the following.

- Trade marks for goods and services: any sign capable of distinguishing a company's goods or services, including words, logos, letters, numbers, sounds, colours, product packaging and videos. Surnames and personal names can be registered if they acquire distinctiveness, but unauthorised use may be refused if it harms a person's reputation.
- Collective marks: used by associations to differentiate the goods or services of their members from those of non-members.
- Certification or guarantee marks: owned by an entity that sets quality standards for products or services but does not engage in their production or supply.
- Geographical indications and designations of origin: protect names of regions or places linked to products with qualities attributed to their origin.

As for trade dress and product marks, product packaging and design can be protected if they serve as distinctive signs. However, functional aspects are not registrable.

Industrial designs are not automatically protected as trade marks but can be protected separately under industrial design law.

Portugal provides specific protection for well-known trade marks and prestigious (famous) trade marks. Trade marks are considered well known if widely recognised in Portugal and benefit from protection against identical or similar

marks that could create confusion or association with the original owner. This applies to both identical and related goods/services. As for prestigious marks, even if a mark is used for unrelated products or services, it cannot be registered if it takes unfair advantage of or harms the distinctive character or reputation of a prestigious mark previously registered in Portugal or the EU.

Foreign well-known marks can also be protected in Portugal under Article 6 bis of the Paris Convention, provided they meet the criteria of notoriety in the country.

2.2 Essential Elements of Trade Mark Protection

To qualify for trade mark protection in Portugal, a sign must be distinctive, capable of graphical representation or one which allows the determination of the protection granted and does not fall under any grounds for refusal. It should be possible to differentiate the goods or services of one entity from those of another.

Acquired distinctiveness or secondary meaning can be proven if a mark, despite lacking inherent distinctiveness, has become recognisable through continuous and extensive use in commerce. Factors considered include:

- duration, extent and geographical scope of use;
- market share and sales volume under the mark;
- advertising and promotional efforts;
- consumer surveys and evidence of recognition; and
- judicial or administrative decisions recognising the mark's distinctiveness.

If proven, a mark that was originally non-distinctive may be granted registration.

2.3 Trade Mark Rights

Trade mark owners in Portugal are granted exclusive rights over their registered marks, as outlined in the Industrial Property Code. These rights include the following.

- Exclusive use: the owner has the sole right to use the mark for the designated goods and services.
- Right to prevent use by third parties: unauthorised use of identical or confusingly similar marks for identical or related goods/services can be prohibited.
- Right to oppose and invalidate: the owner may oppose conflicting applications and seek invalidation of infringing registrations.
- Right to license and transfer: the trade mark can be licensed or assigned to third parties.
- Right to take legal action: owners can enforce their rights through civil and criminal proceedings against infringement or counterfeiting.

These rights persist for the duration of the registration, typically ten years, and are renewable indefinitely. However, they may be lost if the trade mark is not genuinely used within five consecutive years, becomes generic or is invalidated due to legal grounds.

2.4 Use in Commerce

To prove trade mark use, it must be shown that the defendant has used the sign as a trade mark and not in a purely descriptive manner. The use must be genuine, not token, symbolic or solely for maintaining registration, and it should be in the registered form or in a variation that does not alter its distinctive character. Genuine use is assessed based on actual commercial exploitation of the mark for the registered goods or services. The mark must be used within Portugal or the EU (for EU trade marks) and must establish a presence in the relevant market. Use must

commence within five years of registration and continue without prolonged interruptions, unless justified by valid reasons.

2.5 Notices and Symbols

Use of symbols is optional. Possible markings are the ® symbol, *Marca Registada* or MR.

Using the ® symbol without a registered trade mark may constitute unfair competition or false advertising under the law.

2.6 Related Rights

A logo, as a trade mark, may also be protected by copyright or related rights, provided that it meets the requirements of copyright protection with respect to the originality of an intellectual creation in the literary, scientific and artistic fields, regardless of their genre, form of expression, merits, method of communication and purpose.

When a trade mark is a surname, moral rights, as protected under Copyright Law, must be carefully considered. Surnames can be registered as trade marks if they are distinctive and not misleading. However, their registration must respect the moral rights of individuals who bear the name. Additionally, the authorisation of the person whose name or image is included in the trade mark, unless that person is the applicant itself, is required for registration.

The existence of previous copyright protection over a similar work might be grounds for a trade mark application refusal as well as grounds for a revocation action.

3. Copyright Ownership, Protection and Rights

3.1 Types of Copyrightable Works

Portuguese copyright law protects a broad range of intellectual creations, including literary works (books, articles, speeches), musical compositions (with or without lyrics), dramatic and choreographic works, audiovisual productions (films, TV shows and radio programmes), artistic works (paintings, sculptures, photographs, architecture), and scientific works. Additionally, software and databases that exhibit creativity and originality are protected.

Industrial designs may also receive copyright protection if they are original and possess artistic value, independent of protections available under industrial property law.

3.2 Essential Elements of Copyright Protection

For a work to qualify for copyright protection, it must be an original intellectual creation. This means it must reflect the personal imprint of its creator and not be a mere copy of existing material. Copyright protection arises automatically upon the creation of the work, and it is not dependent on formal registration, publication or public disclosure.

Although the CDADC does not explicitly mandate fixation, copyright protection generally requires that the work be expressed in a form that can be perceived or reproduced, whether tangible or otherwise perceivable, even if only temporarily. Purely abstract ideas or concepts without concrete expression do not qualify for protection.

3.3 Copyright Authorship

The author is the person who creates the intellectual work. The law presumes authorship based on the name indicated on the work or announced upon public disclosure.

In cases where a work is created under an employment contract or commissioned by another party, authorship remains with the creator unless an agreement states otherwise. If no agreement exists, the creator retains copyright, but the employer or commissioner may have certain usage rights.

Only human authors can claim copyright. Works generated by AI, animals or other non-human entities do not qualify for copyright protection.

When a work is created collaboratively by multiple individuals, each author holds rights over the work as a whole unless individual contributions can be separately distinguished. If contributions are separable, each author retains individual rights over their portion while sharing rights over the unified work. In the absence of an agreement, ownership is presumed to be equal among collaborators.

3.4 Copyright Rights

The rights of copyright owners include economic rights (patrimonial) and moral rights (non-patrimonial).

- Economic rights: copyright grants the owner exclusive control over the reproduction, distribution, public performance, adaptation and other forms of exploitation of the work. These rights allow the owner to license, sell or authorise third parties to use the work commercially.
- Moral rights: in addition to economic rights, copyright law recognises moral rights, which

ensure that the author retains the right to be identified as the creator, to prevent modifications that harm the integrity of the work, and to object to uses that may damage their reputation. Moral rights cannot be transferred or waived and continue even after economic rights are assigned.

3.5 Term of Protection and Termination

Copyright protection lasts for the life of the author plus 70 years. In the case of works with multiple authors, protection continues until 70 years after the last surviving author's death. For corporate works and anonymous or pseudonymous works, the term is generally 70 years from the date of publication or disclosure.

Copyright protection expires automatically once the term ends, at which point the work enters the public domain. Once a work is in the public domain, it can be freely used by anyone without permission.

While economic rights expire, moral rights continue indefinitely and can be exercised by heirs or the state to protect the integrity and authenticity of the work.

3.6 Collective Rights Management Systems

Portugal has collective management organisations (CMOs) that represent authors, composers, artists and producers in managing copyright rights. These organisations oversee the licensing of copyrighted works, collect royalties from users (such as broadcasters, streaming services and public venues) and distribute revenue to rights holders. These CMOs also enforce copyright protections and take legal action against infringement on behalf of their member.

Besides other requirements, these entities must be registered within the Portuguese General Inspection for the Cultural Activities. Law 26/2015 of 14 April 2015 regulates the incorporation, organisation, functioning and duties of the authorship rights and related rights' collecting societies, which will be the right holders' representatives, ie, the authors' representatives, but also the performers and phonograms and video producers.

3.7 Copyright Registration

Copyright protection is automatic, provided the work meets the legal requirements for protection, and does not require registration. However, voluntary registration can serve as evidence of ownership in case of disputes, ensuring a presumption of authorship.

The registration of a literary, artistic or scientific work should be requested by the owner(s) of the rights or by their representative(s) at the Portuguese General Inspection for the Cultural Activities (IGAC).

Any individual or legal entity, including foreign applicants, may voluntarily register a work. There is no requirement for foreign applicants to have local legal representation. However, it is highly advisable for non-residents to engage a legal representative, particularly when navigating contractual transfers, licensing agreements or legal disputes.

Additionally, all documentation must be submitted in Portuguese or accompanied by a certified translation, ensuring clarity and compliance with national regulations.

3.8 Copyright Application Requirements

To apply for copyright registration in Portugal, the applicant must submit a formal request to

the IGAC, either online, by email, post or in person. The application must include a completed form with the applicant's identification, details of the work and proof of authorship. A copy of the work must also be provided in an appropriate format, such as a manuscript for literary works, sheet music or a recording for musical compositions, and code or an executable file for software. Collective or derivative works require additional documentation proving legal rights. The IGAC reviews the submission, and if any required elements are missing, the applicant has 30 days to correct them.

Currently, the fee to file a registration application for literary and artistic works is of EUR60 (online) and EUR80 (paper).

3.9 Refusal of Registration

The IGAC can refuse copyright registration if:

- the work does not meet the criteria for protection, such as lack of originality, failure to qualify as a literary, scientific or artistic creation, or it consists of mere ideas, concepts or facts (which are not copyrightable);
- the application is incomplete or incorrect, including: missing required documents, failure to prove authorship or ownership, incorrect or misleading information;
- the work falls within an excluded category, such as: official government texts (laws, regulations, judicial decisions), news reports or simple factual information, political speeches or public debates; or
- there is a conflict with an existing registration, where another party has already registered a similar or identical work with a prior claim.

Applicants can appeal a refusal of registration by first submitting a written appeal to the IGAC with additional evidence or corrections for re-

evaluation. If the IGAC upholds the refusal, the applicant may escalate the matter to the courts.

3.10 Related Rights

A copyrighted work may also be eligible for trade mark protection if used in commerce to identify goods or services. However, copyright and trade mark laws serve different purposes and do not overlap entirely. Copyright law does not protect generic elements, while trade mark law requires distinctiveness.

Copyright can coexist with related rights such as performance rights (eg, performers of music) or producers' rights (eg, producers of phonograms or audiovisual works).

4. Trade Mark Registrations and Applications

4.1 Trade Mark Registration

Trade mark protection requires registration before the National Institute of Industrial Property (INPI). Unregistered trade marks do not enjoy legal protection unless they fall under special cases, such as well-known marks under international conventions.

Trade mark rights are acquired through registration, following the first-to-file principle. However, prior users of an unregistered mark have a six-month priority period to oppose later applications and file for registration.

The same standards apply to all types of trade marks, including word marks, figurative marks, three-dimensional marks, sound marks and certification/collective marks.

4.2 Trade Mark Register

Portugal maintains a publicly accessible trade mark register, managed by INPI. This register includes national, EU and international trade marks effective in Portugal.

The register can be accessed online through the INPI's official website. It allows anyone to search for existing trade marks to check if their mark is available for registration, or to examine the details of already registered trade marks, such as the trade mark owner, application number, registration date, goods and services for which the mark is registered, and other related data.

It is strongly recommended and normal practice to search for prior trade marks - whether registered or unregistered - before submitting an application for trade mark registration. This helps applicants avoid potential conflicts with existing marks and increases the likelihood of the mark being accepted for registration.

4.3 Term of Registration

A trade mark registration lasts for ten years from the application date.

It can be renewed indefinitely for successive ten-year periods.

Renewals must be requested within six months before expiry. If the deadline is missed, renewal is still possible within six months after expiration by paying additional fees.

If the mark is not renewed within this grace period, it is considered lapsed and may only be re-registered as a new application.

In Portugal, there is no requirement for proof of continued use of the trade mark at the time of renewal.

4.4 Application Requirements

The trade mark application must be filed with INPI and contain:

- the applicant's name, address and tax identification number (if resident in Portugal);
- graphic representation of the mark (or another form of representation that allows its precise identification);
- a list of goods and services, classified under the Nice Classification;
- a declaration of priority, if claiming a priority right from an earlier foreign application;
- authorisation for names, portraits, symbols or official emblems included in the mark; and
- regulation of use for collective and certification marks.

Multi-class applications are allowed, meaning a single application can cover multiple categories of goods/services.

Applicants do not need a representative to file an application. Nevertheless, when an application is submitted by an attorney or other representative, a Power of Attorney must be filed with the application.

The current filing fees at the INPI for an application including one class are EUR145.56 for online filing and EUR291.12 for paper filing. Each additional class costs EUR36.90 for online filing and EUR73.80 for paper filing.

4.5 Use in Commerce Prior to Registration

There is no requirement for prior use of a trade mark before registration in Portugal.

However, genuine use may be required within five years of registration to maintain rights and if

that use cannot be proven, then the trade mark may be subject to cancellation.

4.6 Consideration of Prior Rights in Registration

The INPI examines prior trade marks and can refuse applications based on earlier conflicting rights.

The examination considers earlier registered trade marks, trade names, company names, well-known marks and protected geographical indications.

4.7 Revocation, Change, Amendment or Correction of an Application

Amendments are allowed during the registration process but only to:

- limit the goods/services covered; and
- correct errors in the applicant's name, address or other clerical mistakes.

Material changes that alter the mark's identity are not allowed.

Applicants can voluntarily withdraw their application at any time.

4.8 Dividing a Trade Mark Application

Applicants may split a trade mark application into two or more divisional applications.

Each divisional application retains the original filing date and priority rights.

4.9 Incorrect Information in an Application

If incorrect information is provided in an application the applicant may request correction of clerical errors. If the error is substantial (such as

false ownership claims), the INPI may refuse the application or cancel the registration.

The INPI has the power to request corrections or reject applications containing false or misleading information.

4.10 Refusal of Registration

The INPI may refuse the application outright. This may happen if the application does not contain the required information or is contrary to public order and good customs.

Absolute grounds for refusal include the following.

- Lack of distinctiveness: signs that do not allow clear differentiation between goods or services of different businesses.
- Graphical representation issues: signs that cannot be graphically represented in a clear and precise manner.
- Descriptive or generic signs: marks that exclusively consist of indications related to product characteristics, such as quality, quantity, purpose or geographic origin.
- Common or customary terms: words or expressions that have become common in everyday language or trade practices.
- Deceptive marks: signs that could mislead consumers regarding the nature, quality or origin of goods or services.
- Public order and morality: marks that contain offensive, immoral or unlawful expressions or figures.
- Use of national or international symbols: unauthorised use of official emblems, flags, religious symbols or elements protected by international agreements (such as Article 6 ter of the Paris Convention).
- Geographical indications and designations of origin: signs that infringe protected appella-

tions of origin, traditional wine terms or other EU-protected agricultural indications.

- Imitation of official distinctions: the unauthorised use of official badges, decorations, or similar symbols.
- National flag protection: marks consisting exclusively of, or incorporating, the Portuguese national flag in a way that misleads consumers, suggests official endorsement or damages the flag's prestige.

If an application is refused on these grounds, the applicant has the right to respond and argue against the refusal within the prescribed time-frame.

4.11 The Madrid System

Portugal is a member of the Madrid System, allowing for international trade mark registrations through WIPO (World Intellectual Property Organization).

International applications can be filed through the INPI, and the procedure is similar to national registrations.

The INPI can refuse international registrations if they do not comply with national legal requirements; it is necessary to inform WIPO when this occurs.

5. Trade Mark Procedure for Inter Partes Proceedings

5.1 Timeframes for Filing an Opposition or Cancellation

An interested party may oppose a trade mark application within two months of its publication in the Industrial Property Bulletin. This period may be extended by an additional month upon request by the opponent.

A trade mark cancellation request may be filed at any time during the trade mark's validity, whereas a revocation action must be initiated within five years from the date of the granting decision of the trade mark in question.

The owner of an earlier trade mark loses the right to seek the invalidation of a later trade mark registration if it is proven that they have knowingly tolerated the coexistence of both marks for five consecutive years after becoming aware of the later registration. In such cases, their right to challenge the mark is barred by the principle of tolerance.

5.2 Legal Grounds for Filing an Opposition or Cancellation

Common grounds for opposition include the likelihood of confusion with an earlier trade mark, bad faith registration and unfair competition. Notwithstanding, an opposition may also be based on any of the refusal grounds recognised by the IP Office and can extend beyond trade marks to include other prior rights, such as geographical indications, trade names, company names, copyrights and other intellectual property rights.

A trade mark cancellation may be based on absolute grounds for refusal, such as the lack of distinctive character or the inclusion of unlawful or immoral elements. If a trade mark was granted despite failing to meet these fundamental requirements, it may be subject to cancellation.

A trade mark may be revoked on many of the same grounds as an opposition, including the imitation of a prior trade mark for identical or similar goods or services where there is a likelihood of confusion. Revocation may also be sought if the registered trade mark violates earlier intellectual property rights or copies or mimics

a particular trade dress or label already used in prior trade marks. Additionally, the unauthorised reproduction of a well-known (notorious) trade mark can also justify revocation.

Furthermore, the trade mark is subject to expiration (termination) in cases where:

- the renewal fees have not been paid;
- the trade mark has not been seriously used for a continuous period of five years for the goods or services it was registered for, without a valid justification;
- the trade mark has become the generic designation in commerce for the relevant goods or services due to the way it has been used by its owner; or
- the trade mark has become misleading to the public regarding the nature, quality or origin of the goods or services.

5.3 Ability to File an Opposition or Revocation/Cancellation

Oppositions and revocation/cancellation proceedings may be initiated by any interested party who can substantiate how they would be harmed if the contested trade mark were granted or maintained. This includes, for example, the owner of a prior trade mark that could be infringed by the later registration (or, in the case of revocation, is already being infringed).

Oppositions may be filed directly by the opponent without the need for legal representation. However, revocation and cancellation proceedings must be submitted through a qualified representative, such as an Industrial Property Official Agent, an attorney or a solicitor.

The current official fees set by the Industrial Property Office for filing an opposition are EUR61.51 for online submissions and EUR123.02 for paper

submissions. The same fees apply when filing a request for a trade mark expiration (termination) declaration, as referenced in **5.2 Legal Grounds for Filing an Opposition or Cancellation**. For revocation or cancellation proceedings, the applicable fees are EUR228.56 for online filings and EUR457.12 for paper filings. Attorney fees are variable.

5.4 Opposition or Revocation/Cancellation Procedure

A trade mark opposition must be filed with the INPI within two months of publication, with the possibility of a one-month extension upon request. The trade mark applicant has the right to contest the opposition and is granted the same two-month period, also extendable by one month, to submit a response.

As part of its defence, the applicant may request that the opponent provide proof of genuine use of its earlier trade mark. If such a request is made, the INPI will notify the opponent to submit evidence of use. Failure to do so or the submission of insufficient proof will result in the rejection of the opposition.

The procedure is entirely document-based, with no oral hearings. Both parties may present arguments and supporting evidence before a final decision is issued. If the opposition is upheld, the trade mark is refused; otherwise, it proceeds to registration. The final decision may be partial, applying only to some of the goods or services designated in the application.

Revocation and cancellation actions relating to trade marks are brought before the INPI unless a counterclaim of revocation is raised during a judicial proceeding, in which case the courts have jurisdiction.

Partial revocation or cancellation is possible when the grounds affect only some goods or services, allowing the remaining registration to remain valid.

5.5 Legal Remedies Against the Decision of the Trade Mark Office

Decisions issued by the INPI regarding the granting or refusal of trade marks, as well as decisions concerning cancellation, revocation or expiration of trade marks, are subject to appeal before the Portuguese Intellectual Property Court, located in Lisbon. The appeal must be filed within two months from the date of publication of INPI's final decision in the Industrial Property Bulletin.

If an opposing party is involved, they are summoned by the Court and granted a period of 30 days to submit their response. The INPI, however, is never considered an opposing party in these proceedings.

5.6 Amendment in Revocation/Cancellation Proceedings

The trade mark owner can voluntarily waive some or all of their rights during the process. If this happens, the party requesting revocation is notified and must decide whether to proceed or withdraw.

5.7 Combining Revocation/Cancellation and Infringement

If a revocation is requested as a counterclaim within an infringement action before the Intellectual Property Court, both matters will be closely connected and addressed together. However, if a revocation request for the same trade mark has already been submitted to the INPI, it cannot be filed again as a counterclaim in ongoing proceedings before the court.

Infringement proceedings take place before the Intellectual Property Court, while revocation cases are typically handled by the INPI, except in the specific circumstances mentioned above. Since revocation proceedings at the INPI follow a more streamlined administrative process and do not require an oral hearing, they generally reach a final decision more quickly than court-based infringement cases.

5.8 Measures to Address Fraud

There are no specific procedures exclusively for revoking or cancelling trade marks obtained through fraud. However, a trade mark registered fraudulently is considered to have been filed in bad faith, which is a recognised legal ground for trade mark cancellation under Portuguese law. Also, specific dispositions are foreseen for applications on trade marks by franchisees that include possibility of annulment of registration or reversion to the franchisor.

6. Assignments and Licensing

6.1 Assignment Requirements and Restrictions

The assignment of trade mark rights must be done in writing and requires registration with the INPI to be enforceable against third parties. The transfer can be total or partial, meaning it may apply to all or only some of the goods or services covered by the trade mark. However, if the trade mark includes a personal name, company name or trade name, a specific clause is required in the assignment agreement for it to be valid. Trade mark rights are transmissible upon death, meaning heirs can inherit them, unless otherwise stipulated.

Copyrights can also be transferred either wholly or partially, covering specific forms of use des-

ignated in the contract. Unlike trade marks, copyright transfers do not require registration but must be in writing. A partial transfer must clearly define the rights granted, their duration, location and price, and requires notarised signatures. If the transfer is temporary and no duration is specified, the law presumes a maximum of 25 years, or ten years for photographic or applied art works. A total and permanent transfer of economic rights is only valid if done through a public deed. However, moral rights (such as the right to be credited as the author) cannot be transferred and always remain with the original creator. Copyrights are transmissible upon death, passing to heirs under the same conditions.

6.2 Licensing Requirements or Restrictions

Trade mark rights can be licensed in full or in part, either exclusively or non-exclusively, for a specific region or the entire country, and for any duration up to the validity of the trade mark. Unless otherwise stated, a licence is presumed to be non-exclusive. An exclusive licence prevents the trade mark owner from granting further licences but does not stop them from using the trade mark themselves unless explicitly agreed. The licence agreement must be in writing and, while registration at the INPI is not mandatory, it ensures legal enforceability against third parties. A licensee may not transfer their rights without the trade mark owner's consent, and sublicensing is only permitted if explicitly allowed in the contract. Otherwise, sublicensing can only be made with the trade mark owner's written consent.

As for copyright, authors and their successors may authorise third parties to use, publish or distribute their work, but such authorisation does not constitute a transfer of ownership. Copyright licences must be in writing and specify the per-

mitted forms of use, duration, location and price. If no duration is specified, exclusive rights expire if the work remains unused for seven years. Licensees must pay fair and proportional remuneration, and authors retain the right to request additional compensation if future revenues from the work greatly exceed initial estimates. Furthermore, exclusive licensees and rights holders are legally required to provide periodic financial and usage reports to authors, ensuring transparency in the commercial exploitation of the work.

6.3 Registration or Recording of an Assignment or Licence

Trade marks' assignments and licences must be recorded at the INPI to be enforceable against third parties. If they are not recorded, the agreement remains valid only between the parties involved but does not provide protection against claims from others. The registration is published in the Industrial Property Bulletin, providing official notice of the transaction.

Copyright assignments and licences do not require registration but must be in writing. However, certain transactions are subject to registration for enforceability against third parties, including transfers, modifications and encumbrances. Licensees must provide financial reports to ensure authors receive fair compensation.

7. Initiating Trade Mark and Copyright Lawsuits

7.1 Timeframes for Filing Infringement Lawsuits

Trade mark and copyright infringement claims are subject to general civil law time limitations. The statute of limitations for civil compensation

claims is typically three years from the date the rights holder became aware of the infringement.

For criminal offences, the rules differ for trade marks and copyright. In trade mark infringement cases, criminal proceedings depend on a formal complaint by the rights holder, which must be filed within six months of the offence. In contrast, copyright infringement cases do not require a complaint to initiate criminal proceedings. However, the statute of limitations for copyright-related crimes is generally five years from the date of infringement. Once this period expires, obtaining criminal liability becomes significantly more challenging.

7.2 Legal Claims for Infringement Lawsuits and Their Standards

In the case of trade marks, infringement claims can be pursued through civil and criminal proceedings. Civil remedies include injunctions to prohibit unauthorised use, damages for economic harm, and the seizure of counterfeit goods. Infringement typically involves the unauthorised use of a registered trade mark in a way that creates confusion with the rightful owner's brand. While unregistered trade marks do not enjoy the same level of protection, unfair competition laws may offer remedies if the unauthorised use leads to confusion or exploitation of reputation. Additional claims include dilution by blurring or tarnishment, particularly if a well-known trade mark's distinctiveness is weakened. Portuguese law also addresses cybersquatting, allowing the cancellation or transfer of domain names that unlawfully use protected trade marks.

For copyright, unauthorised use of a work is classified as usurpation or counterfeiting, both of which are subject to civil and criminal liability under the CDADC. Usurpation covers any unauthorised use of a copyrighted work, while coun-

terfeiting refers specifically to the reproduction of another's work without permission. Liability extends to those who distribute, sell, import or export unauthorised copies. Additionally, moral rights protect the author's right to claim authorship and to object to distortions or modifications that harm their reputation. Remedies include injunctions, damages and seizure or destruction of infringing copies.

Portuguese law protects copyright management information, prohibiting its unauthorised removal or alteration when it facilitates infringement. Those who manipulate or misuse this information to enable infringement may be held liable. Rights holders and collective management organisations can enforce these protections, request disclosure of distribution networks involved in infringement, and seek legal remedies through the courts.

7.3 Factors in Determining Infringement

For trade mark infringement, courts consider factors such as similarity between the marks, similarity of goods/services, likelihood of confusion, reputation of the earlier mark and intent of the infringer. For copyright infringement, courts assess substantial similarity, access to the original work and the nature of the unauthorised use. These factors are set out in Portuguese law and influenced by EU regulations. Please refer to **7.2 Legal Claims for Infringement Lawsuits and Their Standards** for more detail.

7.4 Prerequisites and Restrictions to Filing a Lawsuit

There are no mandatory prerequisites like mediation before filing a trade mark or copyright lawsuit in Portugal. However, sending a formal warning letter is common practice and may help avoid litigation.

7.5 Lawsuit Procedure

Trade mark and copyright infringement lawsuits are filed before the Intellectual Property Court in Lisbon. Criminal cases may also be brought before general criminal courts for offences such as counterfeiting or unauthorised reproduction.

The copyright holder - whether an individual, a legal entity or a collective management organisation - can initiate legal proceedings. These organisations can act in court on behalf of authors, performers and producers.

Costs typically include lawyer fees, court fees, expert reports and notarisation of evidence. Legal representation is required in most cases. The legal process follows standard civil procedures, starting with a formal claim, followed by a defence submission, hearings and judgment.

Foreign copyright owners can bring claims in Portugal, even without registration, as protection is automatic. However, foreign trade mark owners must register their mark in Portugal or the EU to enforce their rights. Collective management organisations can also act on behalf of international right holders.

7.6 Declaratory Judgment Proceedings and Other Protections for Potential Defendants

An alleged infringer may seek a declaratory judgment to assert that their use does not infringe a trade mark or copyright without any pre-requisite.

7.7 Small Claims

Portugal does not have a dedicated small claims court for intellectual property disputes. However, most trade mark cases under the jurisdiction of the Portuguese Intellectual Property Court, along

with certain copyright cases, may be referred to an Arbitration Court.

7.8 Effect of Trade Mark and Copyright Office Decisions

Decisions made by the INPI are administrative and can be challenged in court. Since infringement decisions are issued by the Intellectual Property Court, while INPI's administrative decisions pertain to matters outlined in **5.5 Legal Remedies Against the Decision of the Trade Mark Office**, there is no direct correlation between them in terms of infringement.

7.9 Counterfeiting and Bootlegging

Counterfeiting includes the unauthorised reproduction, imitation or use of registered trade marks and copyrighted works. Trade mark counterfeiting involves manufacturing, distributing or selling goods with counterfeit marks, while copyright counterfeiting includes unauthorised reproduction or distribution of protected works. Criminal penalties include imprisonment and fines, and civil remedies allow for injunctions, damages and seizure or destruction of counterfeit goods.

Bootlegging, referring to the unauthorised recording, reproduction or distribution of performances without the consent of the rights holder, is also prohibited. This applies to live concerts, theatrical performances and other public exhibitions. Unauthorised commercial exploitation of these recordings can lead to criminal liability, with penalties including imprisonment and fines, and destruction of illegal recordings.

8. Litigating Trade Mark and Copyright Claims

8.1 Special Procedural Provisions for Trade Mark or Copyright Proceedings

Portugal has a specialised Intellectual Property Court, which has exclusive jurisdiction over trade mark and copyright disputes, including infringement claims, validity challenges and enforcement matters. It is divided into three sections, each with a single judge ruling on cases, without jury involvement. If technical or scientific issues arise, the judge may appoint a technical advisor, though this is rare in trade mark and copyright cases. While proceedings follow general civil litigation principles, specific provisions allow for urgent interim measures, such as injunctions, to prevent ongoing infringement. Judges are assigned randomly to cases, and parties have no influence over their selection.

8.2 Effect of Registration

A registered trade mark is legally presumed valid, placing the burden of proof on the defendant in revocation or invalidity claims.

Despite registration, if a trade mark owner has allowed the alleged infringing mark to coexist for a period of five years (see **5.1 Timeframes for Filing an Opposition or Cancellation**) or if the mark is particularly susceptible to challenges based on lack of genuine use, any defence relying on that trade mark will be significantly weakened.

8.3 Costs of Litigating Infringement Actions

The costs of a trade mark or copyright infringement action in Portugal depend on court fees, attorney fees, expert opinions and potential damages assessments. Court fees vary based on the claim value, and legal representation is

mandatory. Expenses rise with interim measures like injunctions or complex evidence requiring expert reports.

9. Defences and Exceptions to Infringement

9.1 Defences to Trade Mark Infringement

Common defences against trade mark infringement include:

- no likelihood of confusion (lack of identity/similarity of goods or lack of identity/similarity between trade marks);
- lack of genuine use (if the trade mark owner has not used the mark for five consecutive years, it may be challenged);
- acquiescence (owner knowingly tolerates the alleged infringement for five years); and
- trade mark invalidity (it can be raised as a counterclaim in infringement proceedings, particularly when based on bad faith registration, violation of competition laws or the use of a sign that is merely descriptive or generic.)

9.2 Defences to Copyright Infringement (Fair Use/Fair Dealing)

Portuguese law does not have a general fair use doctrine but provides specific statutory exceptions where copyrighted works may be used without the owner's consent. These include private and non-commercial use, criticism or review, educational or scientific purposes, and temporary reproductions essential to technological processes. The law requires that such uses be proportionate and that the author's name and the source of the work be properly acknowledged.

Parody and satire are not explicitly defined as exceptions to copyright infringement in Por-

tuguese law. However, they may fall under the broader fair dealing principles that permit limited use of works for criticism or commentary, as long as they do not mislead the public or unfairly harm the original creator's interests. The insertion of quotes or summaries of other works do not infringe any authorship in the work provided that it is used in justified measure and accompanied by a sufficient acknowledgement.

9.3 Exhaustion

Trade mark rights are exhausted within the European Economic Area (EEA) once a trade marked product is lawfully placed on the market by the rights holder or with their consent. After this, the owner cannot prevent further distribution, unless the product has been altered, impaired or there are legitimate reasons to oppose resale.

As for copyright, the licit acts of disposition, through a first sale or any other mean of transfer of the property, exhaust the right for distribution of the original or of copies of a work in the EU.

10. Remedies

10.1 Injunctive Remedies

Trade mark and copyright owners can seek preliminary and permanent injunctions to prevent both ongoing infringement and imminent threats of infringement. Courts may grant urgent injunctive relief even in the absence of concrete infringement if there is a well-founded risk of violation. Claimants must demonstrate the existence or likelihood of a violation and that failure to act could cause irreparable harm.

Available measures include seizure of infringing goods, freezing of assets and orders prohibiting further infringement.

The court has discretion in granting these measures, considering factors such as the urgency, the severity of the alleged violation and the balance of hardships between the parties. If the injunction is later found to be unjustified, the applicant may be liable for damages.

In principle, defendants may invoke any available defences available, in preliminary injunction proceedings.

10.2 Monetary Remedies

Courts award compensation and determine damages by evaluating the infringer's unlawful profits, the direct financial losses and lost profits of the rights holder, and the expenses related to enforcement and investigation. If precise damages cannot be established, the court may award a reasonable sum based on hypothetical licensing fees and enforcement costs. Although punitive damages are not applicable, compensation for reputational harm and other non-economic losses may be granted. Additionally, failure to comply with an injunction can result in additional court-imposed penalty payments.

10.3 Attorneys' Fees and Costs

During the proceedings, litigation costs are generally borne by each party, but the losing party can be ordered to reimburse court fees, a compensation for attorney's fees, and additional costs the parts may have incurred during the proceedings (technical advisory, translations, etc).

10.4 Ex Parte Relief

Trade mark and copyright owners can seek ex parte measures (without notifying the defendant) if there is an imminent risk of irreparable harm or destruction of evidence. This includes urgent seizure of infringing goods or freezing of assets. After an ex parte order, the defendant is notified

and may challenge the measure by presenting counterarguments or new evidence.

10.5 Customs Seizures of Counterfeits or Parallel Imports

Portugal is bound by EU regulations concerning customs seizure of counterfeit goods and unauthorised parallel imports that infringe intellectual property rights.

Trade mark or copyright owners must submit a formal application to customs, providing details on genuine goods and evidence of infringement. Once the application is approved, customs officials have the authority to suspend the release or detain suspected goods. The rights holder is notified and must confirm within ten business days whether they believe the goods infringe their rights and whether they consent to their destruction under customs supervision. If no agreement is reached, the rights holder must initiate enforcement proceedings. The application may be run to EU platform on customs seizures.

11. Appeal

11.1 Appellate Procedure

Trade mark and copyright infringement decisions from the Intellectual Property Court (first instance), which has exclusive jurisdiction over these matters, can be challenged before the Appeal Court (*Tribunal da Relação*). Further appeals may be made to the Supreme Court of Justice (*Supremo Tribunal de Justiça*), but only on matters of law, not on factual findings and under extraordinary circumstances.

Appeals must be lodged within 30 days of the decision, following general civil procedure rules. The appellant must demonstrate errors in law or procedural irregularities. In urgent cases, such as

preliminary injunctions, shorter deadlines apply (15 days to file an appeal). Appeals generally do not suspend enforcement of the decision unless specifically requested and granted by the court.

11.2 Timeframes for Appealing Trial Court Decisions

For deadlines to file an appeal, refer to **11.1 Appellate Procedure**.

The Lisbon Court of Appeal typically decides within six months to a year, depending on complexity and backlog.

12. Additional Considerations

12.1 Emerging Issues

In Portugal, AI is increasingly intersecting with trade mark and copyright law, though there is no specific national legislation directly addressing AI-generated content. The EU's Artificial Intelligence Act (AIA), approved in 2024, is expected to influence Portugal's regulatory approach, particularly in establishing rules for the development, use and commercialisation of AI systems. One key issue is the legal status of AI-generated works - currently, Portuguese copyright law requires human authorship for protection, mean-

ing works created solely by AI are unlikely to receive copyright protection under existing laws.

There have been no landmark national decisions on AI-related IP disputes, but Portuguese courts, in alignment with EU law, tend to consider precedents from the Court of Justice of the European Union (CJEU) and relevant international cases. As AI technology advances, legal discussions in Portugal are expected to evolve, particularly regarding liability, ownership and infringement risks related to AI-generated content.

12.2 Trade Mark and Copyright Use on the Internet

There is no special legislation concerning the use of trade marks on the internet.

As for copyright, national legislation is aligned with Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market and the Digital Services Act. Online platforms must remove infringing content upon notice but are not liable unless they fail to act. Service providers must act in accordance with the principles of necessity and proportionality, ensuring that legal uses of copyrighted works remain available online.

Trends and Developments

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PORTUGAL TRENDS AND DEVELOPMENTS

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