

COLOMBIA

Response to Question 1 : Colombia has made provision for the application of a number of existing intellectual property standards.

MARKS

Article 136(g) of Decision 486 of the Commission of the Andean Community provides that «signs, whose use in trade may unduly affect a third party right, may not be registered, in particular when they consist of the name of indigenous, Afro -American or local communities, denominations, words, letters, characters or signs used to distinguish their products, services, or the way in which they are processed, or constitute the expression of their culture or practice, except where the application is filed by the community itself for with its express consent.»

In Colombia, a case has been presented in which the mark has been rejected as a result of the exception mentioned above. This example will be submitted as an annex at the end of the survey.

PATENTS

Article 3 of Decision 486 of the Andean Community establishes that «the member countries shall ensure that the protection granted for industrial property subjects shall safeguard and respect their biological and genetic heritage, as well as the traditional knowledge of their indigenous, Afro -American or local communities. As a result, the grant of patents relating to inventions developed from material obtained from said heritage or knowledge shall be subject to the material having been acquired in accordance with the community, national and international legal order. Member countries shall recognize the right and entitlement of indigenous, Afro -American or local communities to take decisions on their collective knowledge.»

“The provisions of this Decision shall be applied and interpreted so as not to contravene those of Decision 391, with the amendments in force.”

In order to meet the requirements of Article 3, Article 26(h) and (i) of the same decision provide that the application for obtaining a patent shall be filed with the competent national office and shall contain the following:

“(h) where appropriate, the copy of the access contract, when the products or procedures for which a patent is requested have been obtained or developed from genetic resources or their derived products, from whichever of the member countries is the country of origin.”

Response to Question 27 : As regards patents, the main problem in guaranteeing that the protection granted shall safeguard and respect the biological and genetic heritage as well as the traditional knowledge of indigenous, Afro -American or local communities, is the determination of the place of origin of the resource which serves as a basis for the invention and thus the difficulty in establishing whether the copy of the access contract and/or of the document accrediting the license or authorization for use of the traditional knowledge contained in the documents, which should accompany the patent application, should be submitted.

COLOMBIA(ANNEX)

TAIRONACULTURECASE

Overview

The case basically consists of the application for registration as a mark of the expression Tairona, which coincides with an indigenous culture that inhabited Colombian territory.

Description of Traditional Culture

The Taironas were a pre-Hispanic Colombian culture which inhabited the lowlands of the foothills of the Sierra Nevada of Santa Marta. Their dense population lived in large villages, many of which are worthy of the name of cities.

The main basis of subsistence was large-scale maize cultivation, but also cassava, pumpkins, beans and a large number of fruit trees were grown. Another important source of food was the sea and, in a number of regions, beekeeping was practiced. The Taironas practiced vertical control of environmental aspects and each river basin appeared to contain various redistribution centers in the form of cities.

At the beginning of the sixteenth century, a large number of Tairona populations had settled around two important urban centers and two federations therefore began to be established in the form of two small incipient opposing States; one center was Bonda, located in the flat part, close to which was Santa Marta, and the other was Pocigüica, located on the steep slopes and dominating the areas at the head of the rivers Frío and Don Diego. Rivalries existed between both centers; it is noted that a powerful class of priests were engaged in more or less open warfare with the civil chiefs. However, as is obvious the Tairona had not achieved the complete consolidation of a centralized government.

Secondly, the first large villages, which used extensive construction of flint foundations, were preferably built in defensive positions, although part of the population lived in low-lying areas. Thirdly, the search for the oldest phases of Tairona culture has been in vain; the architectonic complex appeared more suddenly around the eleventh or twelfth century, without any clear local precedents. This lack of continuity brings to mind the possibility that the Taironas are of Central American origin and that they reached the coast of Santa Marta by sea, since all the signs of migration overland are absent. Also the current Kogi culture contains many ideological elements which recall a Meso-American origin and are essentially Maioid in nature.

Tairona ceramics of the protohistoric period are very elaborate. Characteristic are certain receptacles with shiny black surfaces, small vessels with four supports, cups and large plates. The decoration is generally modeled and cut, and almost never painted. Many plastic features are combined with the receptacles, representing animals such as cats, marsupials, bats, birds and reptiles.

Some of the Tairona-Kogi cosmological and religious concepts show a universe formed by various horizontal strata superimposed with the world, i.e. the Sierra Nevada, in the center. The Sun and the Moon are divinities which were created by the Magna Mater in order to establish and maintain cyclical order in the world. The observance of this order, i.e. of the cycle of

solstices and equinoxes, together with the formulation of an agricultural and ceremonial calendar, was the responsibility of the priests who constructed their temples and ceremonial centers on the basis of these astronomical and meteorological phenomena.

The archaeological remains of Tairona culture, which were badly damaged by looters, continue to offer great surprises. The investigations conducted in the first few decades of this century revealed a number of villages where the houses had stone foundations: series of roads, containing walls, cultivation terraces and drainage channels. This complex is now known by the name of the Lost Buritic City 200, and is an important tourist attraction¹.

Decision

Considering that the denomination applied for the mark TAIRONA for distinguishing Class 30 products in the Nice International Classification coincided with the name of the indigenous culture which inhabited Colombian territory and of which relics still exist, as already noted in the previous paragraph, it was considered that the title with which they are distinguished was protected as part of its heritage and of the country as such. In that regard, only representatives of this culture or persons with the authorization of those representatives are entitled to request the expression in question for use as a distinctive sign and, in this particular case, as a mark.

Rights and remedies

It should be stated that the decision taken was not based on any opposition raised by representatives of the culture, governmental organization or third party concerned, but as part of the formal study conducted by the administration in the light of Decision 486 of the Commission of the Andean Community, which contains the rules governing the subject. In that regard:

Article 136(g) of Decision 486 of the Commission of the Andean Community states that signs may not be registered as marks, which consist of the name of indigenous, Afro-American or local communities, denominations, words, letters, characters or signs used to distinguish their products, services or the way in which they are processed, or which constitute the expression of their culture or practice, except where the application is filed by the community itself for with its express consent.

An important and integral feature of the country is the Tairona culture and the significance of its history in terms of the different ways of life and customs, knowledge, degree of artistic and scientific development, as well as traditions and customs, *inter alia*, of its people. All the above represent for the country an invaluable heritage which is worthy of protection and respect by society, thereby making it necessary to achieve consistency with the global vision and the mechanisms that have been developed to provide them with the guarantees allowing them to be preserved, especially if consideration is given to human groups which are weak and have a strong tendency to die out, thereby generating a necessary interest on the part of the different States which, together, ensure that they are protected and maintained.

However, industrial property has not been neglected and according to Decision 486 of the Commission of the Andean Community those characters, denominations or symbols specific to the indigenous communities relating to our region, such as those of Afro-American character (descendants of the African negroes who were transported to America) or local communities do not form part of the series of features that may be appropriated by individuals

with a view to their use as trademarks, thereby protecting and maintaining them in an environment which ensures that they are respected.