PINTÓ RUIZ & DEL VALLE
Lawyers & Economists

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TAX

THE SPANISH TAX AUTHORITIES START PASSING 5% LIQUIDATIONS ON SMEs NOT STRUCTURED AS A «COMPANY»

As the result of a ruling by the Spanish Central Economic Administrative Court of 29 January 2009, passed in an extraordinary appeal for review for criterion unification, the Spanish State Tax Administration Agency has begun a liquidation campaign of the 5 % that exists between the reduced rate which applies to «companies covered by the small companies system» of Article 108 of the Spanish Corporate Tax Law; this reduced rate is 25 %, whereas the general rate of this tax is 30 %, although it is true to say that this tax has no opening for disciplinary measures.
The reason for this lies in the fact that Article 108 refers this special system only to «companies» and not to companies in general that meet the requirements in this provision; consequently, given the above ruling, it is concluded that this beneficial system does not apply to equity companies or mere asset holders, as these do not constitute a "company". These companies may also be understood to include companies with property equity covered by the rental system that do not have the suitable and now typical structure of premises and employee.

INDUSTRIAL PROPERTY

PANDORA LOSES THE LEGAL BATTLE AGAINST ITS COMPETITORS

On 2 May, Barcelona County Court dismissed an action filed by Pandora Jewelry A/S and its Spanish distributor, City Time S. L., against Artestone S. L. – defended by our colleague Ana Padial – and Relojería Electrónica S. L., for making imitations of its most well-known bracelets and a series of charms.
Mercantile Court Number 8 of Barcelona found in favour of the two defendant companies, but Pandora appealed before the Court, which has now dismissed the appeal and confirmed the first instance ruling.
Pandora states that it is "intellectual creator" of the "Pandora bracelet", which consists of a gold or silver chain to which small pieces or charms of different shapes and materials are attached, making each bracelet unique.
Pandora lodged an official complaint that the two defendant companies were manufacturing and selling another bracelet which deliberately copied its bracelet, both in its design and in terms of the pieces that comprise it, which, according to the claimants, led to confusion and takes advantage of the reputation and effort of their brand.
Artestone's representation presented a market study in which the interviewees were asked to draw the outline of a ghost and a tortoise; as a result, the interviewees drew shapes that bore a close resemblance to the designs sold by Pandora in its charms. Consequently, on the basis of this study, the court stated that these charms depict objects from everyday life; in particular, the court established that "although it is a clear copy, the design of these objects does not correspond to any recognised shapes, without them being uniquely competitive." Also relevant was the fact that only 14 % of the women interviewed associated the claimants' bracelet and charms with their Pandora brand.
In short, the Court considered that neither the bracelet as a whole nor its more significant elements were "uniquely competitive", and which led to a risk of confusion through imitation, nor did it constitute undue use of Pandora's prestige.

MARCILLA AND NESPRESSO: COPY OR INNOVATION

The appearance on the Spanish market of coffee capsules identified by the Marcilla brand, compatible with Nespresso machines, may lead to a legal battle between two great multinationals, Sara Lee and Nestlé.
Unlike the exclusivity of Nespresso, which only sells its products in its own outlets and on the Internet, Marcilla sells its capsules in supermarket chains and this is the advantage for Sara Lee, as the price difference between the two is practically minimal.
In France and the Netherlands, Sara Lee is now selling "compatible" capsules for Nespresso machines, which has led Nestlé to file an action in France to defend its industrial property rights.
The fact that the Marcilla capsules can be used in Nespresso machines means that their shape adapts to the recess in these machines, and therefore the shape appears to be the same. However, the capsules are significantly different in their appearance: Nespresso presents its product in aluminium with a layer that protects the coffee, whereas Marcilla presents them wrapped in a little bag made from transparent plastic with holes, which gives off a strong smell of coffee.
With regard to the technical side, without having the documents presented in the French legal proceedings, it is complicated to predict whether there has been an infringement of the patent or not, which is why we must wait until these courts give their ruling.
To protect its system, Nestlé will have to present the corresponding actions, country by country, through which it can request a pronouncement regarding the infringement of its industrial property rights, and so retain the monopoly on the coffee capsules.
Nestlé will probably wait for the ruling being debated in France before filing any kind of legal action in Spain and so have a greater chance of success, although it would seem more logical if Nestlé opted for the judicial application for precautionary measures and this way try and prevent the sale of the product while the legal proceedings are being conducted.

CIVIL

COMMENT ON EXTENDING THE DEADLINE FOR ADAPTING FOUNDATION REGULATIONS TO BOOK THREE OF THE CATALAN CIVIL CODE, REGARDING ORGANISATIONS

The general speed of things today speeds up legislative activity – whether we like it or not – in a similar way, so much so that enacted laws undergo reforms very soon after coming into effect and the reforms are expanded or rectified with reforms to the reform. This is the case of the Bankruptcy Law, when, following an initial reform, a second was carried out and a third is now under way, which is currently at the admission of amendments stage before the legislative body. In this climate, in which the target of the regulation – and also and more specifically lawyers – should proceed carefully, calmly and be clearly informed, and in which the Third Book of the Catalan Civil Code now exists, aimed at regulating organisations, including Associations and Foundations, which ordered the adaptation of the corresponding statutes to the "ius cogens" provisions of the Law, establishing to this effect an "a quo" deadline for their completion. Of greater importance is the fact that this deadline is to be extended because this Autonomous Government is proposing a new adaptation of the content of this book to the current situation. The Catalan Government Justice Department has drawn up the Draft Bill which amends Temporary Provision One of Law 4/2008, of 24 April 2008, of Book Three of the Catalan Civil Code, regarding organisations, which consists of extending the deadline to 31 December 2012 for adapting the regulations of foundations and associations. Therefore, the advice is to remember this extension to the deadline for reform and adaptation, unless someone hastens the current reform where the regulations will have to re-adapted immediately to the new legislation.

PINTÓ RUIZ & DEL VALLE

Professor Massimo Coccia will be honouring us by working with our firm from 1 September 2011 to 30 June 2012 in the role "of counsel". Professor Coccia lectures at the Italian universities of Rome and Viterbo and is the founder of the Coccia De Angelis & Associati firm with branches in Rome and Milan, the website of which is <http://www.cdaa.it>. He is also a practising lawyer specialising in competition law and sports law, an arbitrator for the Court of Arbitration for Sport (CAS) and author of numerous publications.

We are sure that his extensive experience, in-depth knowledge of law and excellent prestige will contribute greatly and significantly enrich our lawyers' knowledge, enabling us to provide our clients with the best possible service.

Welcome aboard.

ARBITRATION

COMMENT ON LAW 11/2011, OF 20 MAY 2011, REGARDING THE REFORM OF LAW 60/2003, OF 23 DECEMBER 2003, CONCERNING ARBITRATION AND REGULATION OF INSTITUTIONAL ARBITRATION IN THE GENERAL ADMINISTRATION OF THE STATE

The purpose of this clarification is to highlight the important enactment of Law 11/2011, of 20 May 2011, regarding the reform of the so-called Arbitration Law, which emphasises the regulation of the "appointment and judicial removal" of arbitrators attributed with competence in the Civil and Criminal Courts of the Supreme Courts of Justice, insofar as execution is limited to the Court of First Instance.

Of special importance is the brand new configuration of the definite possibility that capital trading companies can submit disputes in which they are involved for arbitration, with a strengthened "quorum" for the constitution of such a submission to arbitration.

No less new a feature is the requirement of taking out civil liability insurance to cover the liability derived from the actions of the arbitrators. This point should be high priority for those who accept the post.

Also established are regulations concerning the progress of the procedure, which includes the new feature of setting a deadline of six months in which to award the provisions of new Article 37 enacted to this effect. Also of interest in new Article 39, which covers all matters leading to the correction, clarification, fulfilment and extra-limitation of the award, are the means with which to correct these dysfunctions, and the greater determination of the content of the appeal for annulment.

All this includes the appraisal of Additional Provision One regarding «Legal controversies in the General Administration of the State and its public bodies».

There is not a shadow of a doubt that the new reform will be reflected both in the Civil Proceedings Act (CPA) of 1881 (whose antiquated Article 955 will be amended), and the current CPA, which will be included in the regulation of cautionary measures and, finally, in the ever-changing Competition Law, primarily with regard to Articles 8 and 52.

We must therefore call for the utmost attention to these reforms which are growing in importance.

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