

RECENT DEVELOPMENT OF INDUSTRIAL PROPERTY RIGHTS IN CHILE

SEBASTIAN OBACH*

I. CURRENT LEGAL SITUATION

The Chilean Trademark Law is contained in Decree Law No. 958 of June, 1931, which also includes legal provisions concerning registration and protection of patents and industrial models. In addition to the Trademark Law, Supreme Decree No. 1947, which came into force in July, 1928, established Trademark Law Regulations and detailed provisions for the application of the law. On January 8, 1982, Decree No. 1947 was annulled and replaced by Supreme Decree No. 2, which contains the current Trademark Regulations.

The Trademark Law has not been revised since 1931, and only the Regulations were amended in 1982 as mentioned before, mainly in connection with procedural aspects of the law.

II. CHANGES IN ADMINISTRATIVE PROCEDURES AND JURISPRUDENCE

From an administrative viewpoint, during the last few years, some changes regarding registry procedure, opposition and maintenance of trademarks have occurred.

In accordance with the procedure for registration of a new trademark set forth in the old Regulations, when an application was filed, the Trademark Department had to perform a preventive search, basically aimed to establish the following:

- the applicant had to qualify as manufacturer, dealer or owner of the company which wanted to register the trademark;
- the trademark did not fall under the cases of prohibition of registration established in Article 23 of the Trademark Law; and
- the mark was not registered or was not being used in Chile for

* Partner, Sargent and Krahn, Santiago, Chile; law degree received from the School of Law at the University of Chile; member of the Chilean Bar Association, Chilean Industrial Property Association and Interamerican Industrial Property Association; member of Legal Department of Banco Osorno y La Union and of Price Waterhouse 1971-1981; Lecturer or Economic Law at the University of Chile, 1978-1984.

at least one year before the application by a person different from the applicant.

When Decree No. 1947 was annulled in 1982 and replaced by Supreme Decree No. 2, the requirement for a preventive examination by the Trademark Department was eliminated. As a result, today the Department rejects applications *ex officio* only when they clearly violate the formal prohibitions contained in the law. For example, a trademark will be rejected when it is generic, of common use or when owners of other marks decide to file opposition.

The absence of a preventive examination has meant that trademark applications which do not infringe on formal aspects of the law can achieve registration fairly quickly, particularly compared to the registration periods of other countries in which examinations are conducted. As a general rule, a trademark is registered within forty-five to sixty days after the corresponding application has been filed with the Trademark Department unless oppositions are filed, in which case the normal period for registration (or rejection) does not take more than six or seven months.

In cases where an application must also be approved by other government departments, such as trademarks of classes 3 and 5 which require a preventive examination by the Health Authorities (Instituto de Salud Publica), the period for registration or rejection of the trademark fluctuates between six and nine months, depending on whether opposition is filed.

During the last few years, changes in the jurisprudence of both the Trademark Department and of Chilean courts have also taken place. The most relevant issues as regard the changes in jurisprudence are discussed below:

A. The Concept of Use of a Trademark in Order to File Opposition or Annulment Claims

In accordance with our legal system, the property of a trademark is acquired through its registration with the Trademark Department and not by the use of the mark. In turn, in order to obtain a trademark registration, it is not necessary to prove prior use of the mark in Chile or abroad. Accordingly, as a general rule, a similar or identical trademark on which opposition is based must belong to the opponent and must be duly registered with the Trademark Department. Notwithstanding the above, the past Trademark Regulations provided that if a person was using a non-registered mark identical or closely similar to a new mark for which protection was

sought, the first person was entitled to file an opposition to the new application. In the event that the opposition was successful, the opponent was required to file his mark for registration within fifteen days from the date of the favorable decision.

As mentioned, the provisions of the Trademark Regulations contained in Decree No. 1947 are no longer in force and the current Regulations do not provide for filing an opposition based on the previous use of a mark. However, during the last few years, the Trademark Department has been accepting opposition based on marks which are being used in Chile or abroad and which are not registered in our country. In these cases, the Department bases its authority on the provisions of Articles 22 and 23, subdivisions f) and k) of the Trademark Law. These provisions prohibit the registration of trademarks which lack novelty and fantasy, and which may lead to confusion and deceit with respect to the source or origin of the products or services covered by the mark. In these cases, however, and due to the absence of an express and clear provision in the law allowing opposition, the Department requires the opponent to produce full and clear evidence through documents that the mark is well known in Chile or abroad. For example, brochures, advertising material of the products which carry the trademark, invoices, sale orders, videotapes, films or cassettes may be offered by the opponent. Some recent judgments of the Trademark Department on this matter are as follows: Resolution No. 36005 "CALVIN KLEIN" which rejected an application based on an opposition filed by Calvin Klein Co. that the opponent company proved to be the owner of the mark, even though it had not registered the mark in class 18; Resolution No. 31867 "PESCAYSEN" which rejected an application based on proof by the opponent that it created the expression "PESCAYSEN" to distinguish a fishing company and related activities. In this case, the Department indicated that if the new application was accepted, consumers would be confused and misled with respect to the origin and quality of the products since it would be assumed that all products came from the same company; Resolution No. 31190 "NORDEN" which rejected the new application stating that

with the full documentation filed with the record of the case, it has been proved beyond doubt that NORDEN laboratories, a North American company, well known in our country where its veterinary pharmaceutical products are commercialized, particularly vaccines, is the owner of this mark, so that the newly filed trademark, besides from the fact that it lacks novelty to the appli-

cant, if its registration is granted, consumers will be led to misunderstanding a connection to the real origin and quality of the products, since it would be assumed that all of them proceed from the same North American company;

Resolution No. 26659 "LINACITA" in which the Department ruled that

based on the documentation filed with the record of the case, [the opponent] is the creator of this expression, which although he has not registered in Chile, he has traded his products in our country using such expression, and therefore if the registration is granted to a different person it will induce misunderstanding and deceit.

In Resolution No. 23348 "BAYER", to distinguish a drugstore in the province of Valparaiso, the well known company Bayer AG filed an opposition against this application, claiming that it was the owner of the trademark "BAYER" and that it had registered that mark in many classes, including class 5 for pharmaceutical products. In addition, the company indicated that it had also registered the mark to distinguish an industrial establishment and, therefore, a commercial establishment carrying this same name necessarily would lead the customers to believe that it was a business which belonged to the German company. The Trademark Department, however, rejected the opposition of Bayer AG and accepted registration of the applicant mark, indicating that

with the documentation filed, it was proved by the applicant that he has named his drugstore in the city of Valparaiso with the expression BAYER since 1943, so that it is not inappropriate to grant the requested registration, considering that, in practice, both [the applicant's and the opponent's] marks have coexisted and have had no problems with respect to confusions by the consumers.

This decision is relevant since the Trademark Department granted priority to the applicant using the trademark "BAYER" to distinguish a drugstore in the city of Valparaiso, Chile, since 1943, rather than to Bayer AG which had popularized its trademark "BAYER" over many years in our country and which had also registered this mark in many classes, including classes closely related to the pharmaceutical establishment as is the case of class 5. This decision points out the problem which may arise in Chile if the owner of a registered or widely known trademark allows the use of his trademark by other companies or persons. In that case, the use of the mark may give trademark rights to persons other than the

real owners of the mark.

B. The Concept of Generic, Indicative and Common Use Trademarks

In accordance with Article 23 of the Trademark Law, the following cannot be registered as trademarks: expressions generally used to indicate gender, species, nature, origin, nationality, source, destination, weight, value, quality, shape and color; signs which are of common use in commerce to designate a certain class of products; signs which do not have a novel and special character with respect to the group of products to which they must be applied; expressions formed by words which merely describe the products; technical or scientific denominations; and words or phrases which form part of the common and usual language. Our Trademark Law and its current Regulations do not contain definitions or provisions regarding marks which may be qualified as indicative, generic or of common use.

The former Trademark Regulations contained some useful rules which guided the Trademark Department and our courts in applying the provisions of Article 23. For example, the Regulations established that if a trademark had roots or words indicating gender, species or the nature of the product, which in combination with other letters or words formed in its whole a fantasy expression, the applicant mark had to be formed in such a way that the first elements of generic or indicative character constituted the least part of the expression. Even in this case, the Department could reject the trademark registration if, in its opinion, the new mark formed by the combination of these expressions could limit the free competition of products pertaining to the same class. Similarly, the Regulations established those words or phrases considered to be incorporated into common and usual language. When such a word or phrase was generally used to designate a particular species of products, the owner could request the trademark registration if the proprietor of the trademark had contributed with his advertising to create such reputation. Until approximately two or three years ago, the criteria used by the Trademark Department to interpret these provisions were not very strict, and trademarks which contained elements which were generic, indicative or of common use were accepted for registration. At present and for approximately two years, the criteria of the Department have become more strict, and trademark applications mainly containing elements considered generic,

indicative or of common use are being consistently rejected. In other cases, the Department accepts the application but without protection for the words of indicative, generic or of common use contained in the trademark.

Examples of the restrictive criteria presently applied by the Trademark Department are Resolution No. 33632, which rejected an application for "PRODIARNE" because the mark was formed by two expressions which were of common use, descriptive and indicative of the product of class 29; Resolution No. 34150, which rejected an application for "MARVELKLEEN" because the applicant mark was formed by expressions which were of common use, generic and descriptive and indicative of the products of class 3; Resolution No. 34858, which rejected an application for "CHOCTOF" in class 30 indicating that such mark was formed by the contraction of expressions of common use ("CHOCOLATE" and "TOFFEE"); Resolution No. 35170, which rejected an application for "PAOLA BELLE" in class 3, indicating that this expression was not original or novel; Resolution No. 35765, which rejected an application for "QUESS" in class 29 because it corresponded to the contraction of the commonly used expression "queso"; Resolution No. 35766, which rejected an application for "OPTIPAN" in class 30 indicating that such mark was formed by expressions "OPTI" and "PAN", both generic and indicative words.

The new strict criteria also restricts marks in foreign language which, in the opinion of the Department, correspond to expressions that are also well known in Chile and therefore not original. Examples are Resolution No. 35761 "MEMO-STOCK" of class 16; Resolution No. 35897 "JELLY BEANS" of classes 29 and 30; Resolution No. 35700 "CASUAL WEAR" of class 25; Resolution No. 35392 "COOLER" of class 32; Resolution No. 25663 "SUPER TICKET" of class 16; and bar and restaurant services of class 42.

C. Advertising Phrases

In accordance with Article 22 of our Trademark Law, propaganda phrases also have the right to be registered as trademarks provided they have a certain degree of originality and novelty. As a result, the Trademark Department during the last few years has requested that the phrase indicate the source of the product of services covered by the propaganda phrase or the house-mark of the applicant company, or that the phrase include a trademark already

registered. These requirements arise from the circumstance that, generally, advertising phrases are formed by expressions or words that, considering each one separately, are expressions of common and ordinary use which do not have any original or vowel character so as to merit registration.

III. PROPOSED MODIFICATIONS TO THE TRADEMARK LAW

As mentioned earlier, the Chilean Trademark Law is contained in a statute dated 1931 which does not contain provisions to satisfactorily cover new industrial and trade situations. The most important omissions in this connection are described below:

a) The law does not properly recognize the value of use of a trademark for purposes of obtaining registration. As was mentioned above, in Chile, a trademark is acquired only through registration with the Trademark Department. Notwithstanding this, the prior use of a mark, even if it had not been registered in our country, constitutes a valuable background for purposes of filing an opposition. Our Trademark Department has begun to accept these oppositions even where the use of the mark has taken place outside Chile. The Trademark Law, however, does not recognize the value of such use for these purposes and thus the practice of the Department is somehow beyond the text of the law.

b) The law does not contain provisions with respect to appeals of decisions of the Trademark Department. In accordance with our trademark procedures, applications for new trademarks are filed with a public official called the Trademark Registrar (Conservador de Marcas). The Registrar performs a first review of the application, particularly for purposes of determining if the application infringes on any of the formal prohibitions contained in the Trademark Law. For example, review may be for the purpose of determining if the application consists of a generic, indicative or common use expression, or if the mark clearly attempts against fair commercial practices or very well-known marks which are already registered. If the applied for trademark does not fall within any of these prohibitions and no opposition is filed, the Trademark Registrar immediately accepts the mark for registration. On the contrary, in the event that the application infringes on any of these prohibitions, the Registrar recommends the rejection of the application to the Head of the Trademark Department who in turn resolves the matter. There is no procedure for appeal from or review of this decision.

If oppositions are filed, the Registrar transfers the application to the Legal Department for a report on the legal grounds of the opposition. Subsequently, the docket is forwarded to the Head of the Trademark Department who then issues its decision whether to accept the opposition. Against this last decision no appeal may be filed and only a complaint remedy before the Supreme Court of Justice is available.

Annulment claims are first filed before the Head of the Trademark Department, and subsequently appeals are filed before a special court called the Arbitration Council. The Council is comprised of three members, the Chairman of the Consejo de Defensa del Estado (the public entity in charge of the legal defense of the Government), an officer of the Trademark Department and an individual appointed by the appellant. Appeal from the Arbitration Council's decision may be filed with the Supreme Court.

These procedures have many defects, especially the nonexistence of a formal appeal before the courts from the decisions of the Head of the Trademark Department. This is particularly true in cases where no opposition has been filed and therefore the applicant cannot file a complaint before the Supreme Court. In cases where opposition is filed, the situation is also anomalous, since although in this case it is possible to resort to the Supreme Court, such recourse does not correspond to an appeal, but only to a special and limited legal remedy based on the disciplinary character of the complaint remedy.

Likewise, the *sui generis* integration of the Arbitration Council is another procedural imperfection of our law, since practice has demonstrated that in the judgments rendered by the Arbitration Council, the official appointed by the Trademark Department always confirms the previous decision made by the Head of the Trademark Department and, in turn, the individual appointed by the appellant always votes in favor of the appeal. Therefore, in practice, the only member of this Council who really acts independently for purposes of resolving the appeal is the Chairman of the Consejo de Defensa del Estado.

c) Another serious imperfection of our Trademark Law lies in the low penalty for trademark infringements. In effect, individuals who infringe on the provisions of the law, whether using or imitating a trademark already registered, counterfeiting such trademark or in general using any other means to deceive consumers in connection with the real ownership of the trademark or source of the products

or services carrying the mark, are only penalized with fines of a nominal amount. In addition to the fines, the owner of the infringed trademark may file criminal claims to attach the products carrying the infringing mark and subsequently destroy the products. In the event of a second infringement, the law authorizes the judge to apply prison penalties which vary between sixty-one days and three years in addition to the confiscation of the goods carrying the fraudulent mark.¹

As indicated, our law does not establish a prison penalty for the first infringement, but only on a second infringement. In case of a first infringement, the only available punishment consists of the seizure or confiscation of the products carrying the infringing mark. This remedy, however, does not always constitute effective punishment or dissuasion for future infringers due to the fact that judges are reluctant to grant this kind of remedy, mainly because they lack specialization and experience with trademark legislation. This situation is aggravated due to the fact that this remedy has a practical effect only if the judge grants the injunction as soon as the claim is filed. If such a request is delayed, the infringers may either hide the products carrying the infringing mark or quickly sell and dispose of the products so that when the injunction is granted, the products already are out of the market and thus the remedy is ineffective.

d) Another deficiency of our Trademark Law lies in the fact that the law does not require that trademark licence agreements be registered with the Trademark Department. In accordance with our legal system, the registration of Trademark Licence Agreements is not compulsory, regardless of whether they contain a royalty payment. In cases in which compensation is agreed on, the contract must be registered only with the Central Bank of Chile so as to obtain access to foreign currency to remit payments. But, such a registration requirement is not extended to the Trademark Department. Notwithstanding the above, the license contract can be voluntarily registered with the Trademark Department by either the licensor or the licensee.

We believe that the requirement for registering this kind of contract with the Trademark Department would be beneficial for the following reasons:

1. See GENERAL SECRETARIAT ORGANIZATION OF AMERICAN STATES, A STATEMENT OF THE LAWS OF CHILE IN MATTERS AFFECTING BUSINESS (L.P. Vigiz & I. Stancil-Rokotov 4th ed. 1977).

- 1) It would publicize the real owner of the trademark.
- 2) It would facilitate trademark registration by the real owner and would reduce the cases in which registration is sought by the licensee claiming protection of the trademark.
- 3) It would facilitate the proof of use of the trademark in Chile in order to file opposition and annulment claims based on such use.
- 4) It would be a valuable antecedent for a subsequent registration of the license agreement with the Central Bank to allow remittances of royalty payments pursuant to license contracts previously approved by the competent authority in trademark matters.

The Government of Chile is aware of the defects of our current law and at present the Trademark Department is studying two projects to amend the law. One is being prepared by the Ministry of Justice with the assistance of the Chilean Industrial Property Association and the other is being prepared by the World Intellectual Property Organization (WIPO). A brief discussion of the relevant features of the proposed modifications to the law follows.

A. Project of the Ministry of Justice

1. The proposed legislation maintains the current system to register and protect trademarks to the extent of the rights arising from the formal registration with our Trademark Department.
2. The project clarifies and improves the procedural aspects of the law in cases of prohibition of registering marks.
3. The project maintains the current system in the registration of a mark as a voluntary act. However, the project innovates in certain areas such as marks related to special food products for children and ill people and pharmaceutical, medical, biological and veterinary preparations in which cases the registration of the mark becomes mandatory.
4. The project also establishes the long needed appeal remedy before the Courts of Appeals of Santiago from the decisions of our Trademark Department. The project is not clear, however, on whether the appeal remedy will be available from all kinds of decisions of our Trademark Department or only from those following an opposition procedure. We are hopeful that the proposed legislation will contemplate this remedy from all kinds of decisions of the Trademark Department.
5. A very important aspect of the project deals with an increase in the penalties for fraud in the use of trademarks. As explained earlier, under the current law, the penalties for fraud in trademarks

are very low, and only on a recommission of the same crime does the law impose prison penalties. Under the proposed legislation, the cases that constitute fraud would increase including several situations not considered by our 1931 law. Additionally, the penalty for these crimes is increased. For example, the project contemplates an increase in prison penalties from sixty days to five years—plus heavier fines and the seizure and destruction of the products carrying the fraudulent mark.

B. Project of WIPO

This project involves a large and comprehensive change in our law and follows a standard model of Industrial Property Law recommended by WIPO with adaptations modelled after the Chilean legal system. The main aspects of this project are as follow:

1. The project establishes an entity known as the National Council for Industrial Property in charge of establishing the general policies and principles for the application of trademarks. This entity would be formed of relevant authorities which have connections with trademarks, such as the Minister of Finance, officers of the Central Bank, the National Planning Office, the Scientific and Technological Bureau, Business Associations and representatives of the Industrial Property Association.

2. In addition to the National Council, the project establishes the Trademark Department which would report to the Council and would be in charge of the application of the law, such as the filing of applications, opposition, registrations of marks, renewals, and so on.

3. The project aims to increase the public knowledge of trademark matters by providing for the regular publication of a bulletin containing new applications, decisions of the Trademark Department and of the courts, amendments to the Trademark Law, etc.

4. The project indicates that the Trademark Department should finance itself through charges and taxes to be levied on the trademark procedures, such as on applications, renewals, appeals, etc. This point in the project will eventually represent an increase in the cost of trademarks in Chile due to the fact that, at present, no taxes or other government charges are imposed on those procedures.

5. The project maintains the system whereby the ownership of a mark is acquired through registration with the Trademark Department. However, the registration would be granted to the person

who first started using the mark or to the person who first files the application if the mark had not yet been used at the time of filing the application.

6. The project defines the use of a mark as beginning when the pertinent products or services are traded or are available in sufficient quantity considering their market conditions, the size and dimensions of the market and the nature of the products and services. This proposed definition is important due to the fact that our current law does not define the concept of use of the mark, especially for purposes of cancellation actions.

7. The project establishes the preventive examination of applications by the Trademark Department to determine whether the mark infringes on a prohibition in the law or is similar to an existing registered mark or to an application. This aspect of the new legislation is important because, as explained earlier, the Trademark Department currently is not making satisfactory examinations of new applications.

8. The project allows for filing opposition based on marks which are being used but not registered in the country, but requires that the opponent mark be filed for registration jointly with or before the opposition.

9. The project discusses in detail agreements for the licensing of marks and establishes the obligation to register the contracts with the Trademark Department. Unless the contract is registered, it will not be valid in Chile and no payment or remittance of royalties will be allowed. If the license relates to a manufacturing process, the project requires that the contract provide for a quality control of the manufactured products and carrying the mark under the license agreement.

10. The project clarifies the situations that allow for a cancellation or annulment claim and extends the current statute of limitations to file such claims to five years counted since the registration date of the mark or to three years counted since the mark started being used, whichever is later. In addition, the draft provides that no statute of limitations will apply if the registration of the mark was obtained in bad faith. Likewise, the project establishes a cancellation action based on nonuse of a mark for a period of five years, unless the lack of use of the mark is due to just cause which is duly proven. The cancellation action is also provided for in cases of dilution of the mark, that is, when the mark has become a generic name for the products or services carrying the mark.

11. The proposed legislation also deals with situations of unfair competition and discusses in detail the transactions which qualify as such, that is, operations of whatever nature which are capable of producing confusion or error with respect to the trade or business of another company.

The Chilean Government is currently carefully studying both projects because it is well-known that the Trademark Law needs revision and updating of many concepts, especially those dealt with in the WIPO project. We do not believe new legislation on this matter will be enacted in the near future, but are hopeful that the changes to the law will take place.

IV. THE PARIS CONVENTION AND BILATERAL TREATIES

Chile is not a party to the Paris Convention and therefore our experience with this treaty is practically nonexistent. Nor is Chile a party to other bilateral treaties on this matter. The issue of the Paris Convention has been discussed for some time in our country. Recently at a seminar on different topics of trademarks organized by WIPO in Chile, the Head of the Trademark Department explained that the reasons for not enforcing the treaty in our country were, basically, administrative problems concerning the coordination of the different government offices affected by Convention provisions.

We have learned, however, that the Trademark Department is reluctant to promote joining the Convention also due to other reasons, namely that the system of preferences for registration is deemed to benefit companies from the industrialized countries more than Chilean companies. Chile does not have many companies registering marks outside Chile and therefore the need to protect Chilean marks abroad is not significant.

We feel this argument is debatable due to the fact that owners of trademarks should be granted effective protection in all countries, regardless of whether they trade their products abroad or not. Further, and due to the lack of foreign currency that our country suffers from as a result of the international economic crisis of the last few years, the Chilean Government is dramatically promoting the export of Chilean products. Therefore, the need for Chilean exporters to protect Chilean marks outside our country is growing. Joining the Paris Convention would certainly increase the possibility of protection for these exporters. The Trademark Department also feels that it is understaffed to administer the preferences for regis-

tration of marks (24 members in all, including staff working in the Patent Office) and it has no computer to facilitate this process. These problems may be overcome in the near future because the government is considering imposing a charge on all procedures of the Trademark Department. Therefore, the office expects to obtain revenues sufficient to cover the cost of more staff and the purchase of a computer.

However, we do not see any firm commitment from the current authorities of the Trademark Department to join the Paris Convention and therefore we believe it will still take some years before our country adheres to the Convention.

V. BIOGENETIC PRODUCTS

Our Trademark Department does not have any provisions on this matter nor on the more broad concept of biotechnological products. The only provisions related to this matter are in a separate statute which contains the Law on Seeds. This law requires that trademark applications related to seed varieties be reviewed and registered with a specialized agency of the Ministry of Agriculture dealing with seed classification, so as to protect the standards of purity and quality of seeds. If a new application fails to obtain a favorable prior registration with the Ministry of Agriculture, it is later rejected also by the Trademark Department.

VI. PROTECTION OF COMPUTER TECHNOLOGY

In recent years, the issue of protection of computer software has been highly debated. More specifically, the debate surrounds the kind of protection to grant to this technology. The Trademark Department rejects registration of computer software under the provisions of the Trademark Law, claiming that a software program does not fall into any of the categories which qualify as trade or service marks, that is, a word, a sign, a letter, a number, a phrase or any combination of these elements.

Until September, 1985, software programs were permitted to be copyrighted under our Intellectual Property Law, assimilating these programs into a literary work. In October, 1985, the government enacted Law No. 18443 which amended our Intellectual Property Law and expressly granted civil and criminal actions to protect computer software. Basically, penalty fines range between US \$120 to US \$1,190 and a prison penalty between 61 and 540 days.

Further, the software copyrighted abroad also enjoys protection

in Chile granted under the Interamerican Convention for Intellectual Property and in the World Convention for Author's Rights. Chile is a party to both of these Conventions.

VII. TRADE SECRET LICENSING PROTECTION

Our Trademark law does not contain any provision on this matter. However, in accordance with the provisions of Article 284 of our Criminal Code, individuals who fraudulently violate agreements related to secrets of manufacturing processes of companies in which they work or at which they have been employed in the past can be punished with prison penalties ranging from sixty days to three years. The application of this penalty does not require that the manufacturing process be registered under a patent, the only requirement being that the individual must have previously agreed not to disclose the secret of the manufacturing process.