

Legal 500

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Italy

Trademark Disputes

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This country-specific Q&A provides an overview of trademark disputes laws and regulations applicable in Italy.

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Italy: Trademark Disputes

1. To represent a client before Court in respect of a potential trademark infringement matter, do you require a Power of Attorney – and if so, what are the execution formalities required by your courts?

Under Italian law, to represent a client before a Court a Power of Attorney is needed. The Power of Attorney must be signed by the client (meaning, in case of legal entity, its legal representative) and the signature must be authenticated by the appointed lawyer or by a public notary. If the Power of Attorney is signed in a country other than Italy, additional requirements (such as the apostille or legalisation) may be required.

2. Is it a requirement in your jurisdiction to send a cease and desist letter to a potential infringer before commencing proceedings for infringement? What are the consequences for a trademark owner who chooses not to send a pre-action letter?

Under Italian law, it is not mandatory to send a cease-and-desist letter before commencing legal proceedings. Therefore, there are no consequences for a trademark owner who chooses not to send a cease-and-desist letter before starting a proceeding for infringement.

That clarified, except in cases where it may be counterproductive (for instance, when there is a risk that the infringer, warned of imminent legal action, will conceal or destroy evidence of the infringement), sending a cease-and-desist letter prior to a Court case is common practice in Italy.

3. In your jurisdiction, is there a risk that a pre-action letter could give rise to claim against the trademark owner for unjustified threats? What steps should a trademark owner take to ensure any cease and desist letter does not expose the trademark owner to any liability.

Under Italian law a pre-action letter may constitute the criminal offence of extortion pursuant to Article 629 of the Criminal Code, if it contains open threats and said

threats are such as to override the will of the person subjected to them. If the threats do not achieve such an effect, the less serious offence of arbitrary exercise of one's own reasons, provided for by Article 393 of the Criminal Code, may occur.

Considering that pre-actions letters are usually sent through lawyers, also the rules contained in Code of Conduct for Lawyers shall be considered. In particular, pursuant to Article 65, the lawyer may order the other party to perform obligations under threat of actions, bankruptcy petitions, complaints, lawsuits or other initiatives, informing it of the consequences thereof, but shall not threaten disproportionate or vexatious remedies or initiatives. Indeed, threatening disproportionate or vexatious remedies or initiatives may lead to the application of disciplinary sanctions.

Based on the above, pre-actions letters may contain threats of legal remedies or initiatives, but said remedies or initiatives shall not be disproportionate or vexatious.

4. Is it mandatory for the parties to have attempted mediation or other alternative dispute resolution proceedings prior to commencing infringement proceedings?

To attempt mediation or other alternative dispute resolution procedures prior to commencing an IP infringement proceeding before the competent Court is not mandatory under Italian law.

However, pursuant to Article 5 *quater* of the Legislative Decree no. 28/2010 which regulates mediation for the settlement of civil and commercial disputes, the Judge, also during the appeal proceedings, having considered the nature of the case, the state of the proceedings, the conduct of the parties and any other relevant circumstances, may order, by a motivated decision, that a mediation procedure be carried out.

The mediation ordered by the Judge is a condition for the admissibility of the Court proceedings, meaning that if the mediation has not taken place, the Judge shall declare the action inadmissible.

5. Are claims for trademark infringements heard before a general commercial Court or a specialist Court focused on Intellectual Property disputes? Are trademark infringement claims decided by a judge or by a jury?

Pursuant to the provisions contained in the Legislative Decree no. 168/2003, intellectual property disputes (independently on the specific kind of IP asset enforced) fall within the competence of sections of the ordinary civil courts, which are specialized in business matters.

Said specialised sections are established in the Courts of first and second instance located in the Italian regional capitals. However, in the Region Valle d'Aosta there are no specialised sections, whereas in the Regions Lombardy, Trentino and Sicily there are specialised sections also in cities (namely, Brescia, Bolzano and Catania) other than the regional capitals.

Furthermore, for disputes in which companies having their registered office abroad (including those with a permanent place of business in Italy) are party, only the Courts located in the following cities have jurisdiction: Bari, Cagliari, Catania, Genova, Milan, Naples, Rome, Turin, Venice, Trento and Bolzano.

With reference to the second question a distinction must be made between urgency proceedings and merit proceedings. Indeed, in case of urgency proceedings, the first instance phase is decided by a single Judge, while the appeal phase is decided by a panel of Judges.

Instead, merit proceedings (both in the first instance and in the appeal phase) are decided by a panel of Judges; however, first instance proceedings are characterized by the fact that a single Judge (so-called investigating Judge) manages the entire proceedings to the decision.

Lastly, proceedings before the Supreme Court, which can be started for a limited number of grounds (i.e. for grounds concerning jurisdiction, infringement or misapplication of rules of law, nullity of the second instance decision or proceedings and failure to examine a fact decisive for the proceedings which was the subject of discussion between the parties) are always decided by a panel.

6. Is there a time limit for commencing trademark infringement proceedings once the facts giving rise to the infringement are known to the trademark owner. After how long would such a

claim be time-barred?

Pursuant to the general rule contained in Article 2946 of the Civil Code, except where the law provides otherwise, rights are extinguished by prescription with the lapse of ten years.

Pursuant to Article 2947 of the Civil Code, claims having as subject matter requests of compensation for damages based on tort liability are subject to a 5-year limitation period. Pursuant to the same Article such a period runs from the day on which the event occurred; nevertheless, based on the interpretation provided by majority case law, the limitation period must be considered as running from the time when the injured party, with the use of ordinary diligence, was able to have knowledge of the tort, the damage and the relative causal link.

Based on the above, while the time limit for asking a Court to order the infringer to pay compensation for damages is equal to 5 years, the time limit for asking a Court to issue injunctions related to trademark infringements is equal to 10 years. However, if the request of injunctions is formulated as a matter of urgency, the legal action shall be commenced as soon as possible.

The limitation period can be extended indefinitely by means of cease-and-desist letters, which have the effect of determining the commencement of a new limitation period.

7. In your jurisdiction does the law protect unregistered trademarks of any kind, including by way of unfair competition or protection of trade dress. What are the criteria for their subsistence?

Under Italian law unregistered trademarks are expressly regulated by Article 2571 of the Civil Code and Article 12 of the Industrial Property Code.

More precisely, pursuant to Article 2571 of the Civil Code, a person who has used an unregistered trademark has the right to continue using it, notwithstanding the registration obtained by others, to the extent that he has previously used it.

Pursuant to Article 12 of the Industrial Property Code, occurring certain circumstances (i.e. the identity or similarity of the goods or services and likelihood of confusion on the part of the public, which may also consist of a likelihood of association between the two signs) a trademark that is identical or similar to an unregistered sign cannot be registered, if the unregistered

sign is already known at a level which is not exclusively local.

Therefore, based on the above rules, a distinction must be made between unregistered trademarks whose notoriety is not exclusively local and unregistered trademarks whose notoriety is exclusively local: indeed, while in the first case, occurring the above mentioned circumstances, the proprietor is entitled to start an invalidity action against anyone who registers a trademark similar or identical to his own sign, in the second case, the proprietor may only continue to use his own sign within the limits of its previous use.

8. In your jurisdiction will the Court hear claims for registered trademark infringement in parallel with claims for unfair competition, infringement of trade dress or other misleading advertising, or does a claimant need to bring such claims in a separate cause of action?

According to the Italian law, claims for trademark infringement and claims for unfair competition can be submitted to the competent Court together. Likewise, claims for misleading advertising can be submitted to the competent Court together with intellectual property and/or unfair competition claims.

Trade dress is not specifically regulated under Italian law. Therefore, depending on the case, infringements of trade dress may be qualified as IP infringements (for example, if the packaging can be protected as a shape mark) or as unfair competition conducts pursuant to Article 2598 of the Civil Code. Cumulative application of IP rules and rules governing competition is also possible.

9. In your jurisdiction, do your Courts share jurisdiction with your Trade Mark Office, such that parties need to seek to seize the forum they prefer first in time, or does the Court take precedence and intervene to stay or transfer any live Registry proceedings (for example relating to invalidity or revocation of registered trade mark) which may overlap with an issued infringement claim and related counterclaim?

Italian Courts have exclusive jurisdiction on infringement claims. Instead, they share competence with the Italian Office for Patents and Trademarks (hereinafter also the "Office") for invalidity and revocation proceedings. Indeed, parties are free to decide if starting invalidity and

revocation proceedings before the competent Court or before the Office.

Rules aimed at governing a possible overlap between proceedings before the Office and proceedings before the Courts are contained in the Industrial Property Code.

Based on these rules:

- The action of invalidity or revocation of a registered trademark started before the competent Court cannot be proceeded if, on an application concerning the same object, the same facts and the same parties, a decision on the invalidity or revocation has been pronounced by the Office for Patents and Trademarks or a proceeding concerning the invalidity or revocation is pending before the Office (Article 122, paragraph 4 *bis*);
- The application for invalidity or revocation filed with the Office for Patents and Trademarks cannot be proceeded if, on an application concerning the same object, the same facts and the same parties, a decision has been issued, or a proceeding is pending before the Office or the judicial authority (Article 184 *bis*, paragraph 9);
- The application for invalidity or revocation filed with the Office for Patents and Trademarks cannot be proceeded also if it has been presented at the same time as a request, concerning the same object, the same facts and the same parties, proposed before the judicial authority (Article 184 *bis*, paragraph 9);
- If an application for invalidity or revocation is filed with the Italian Office for Patents and Trademarks pending an administrative or judicial proceeding related to the object of the application, the exam and decision of the application can be suspended until the pending administrative or judicial proceeding is defined with a final administrative measure or decision. In this case, the applicant may request the continuation of the suspended proceeding, with a request to be presented to the Italian Patent and Trademark Office within the peremptory deadline of three months from the time when the administrative measure or the decision becomes final. Otherwise, the proceedings on the request for revocation or nullity are extinguished (Article 184 *bis*, paragraph 10).

10. Where the defendant has a counterclaim for invalidity or cancellation of the registered trademark being asserted against it (either on the basis of earlier rights or as a result of non-use by the trademark proprietor), does the counterclaim become part of the infringement action, so that

both issues are heard by the same Court within a single action, with the Court making a determination at its conclusion, or are the validity issues bifurcated and heard in separate parallel proceedings? If in your jurisdiction validity issues are bifurcated, what are the practical consequences of this from a timing perspective? For example, does this mean that a Court will stay the infringement claim and proceed with the validity attack first to avoid finding a trademark infringed, only to have a separate Court find the trademark invalid at a later date?

Under Italian law, where the defendant has a counterclaim for invalidity or cancellation of the registered trademark being asserted against it, the counterclaim may be raised within the infringement action, so that the claim for infringement and the counterclaim for invalidity or cancellation are heard and decided by the same Court within a single proceeding.

In order for the counterclaim to be heard and decided by the Court together with the claim for infringement, it is necessary, however, that the counterclaim is included in the statement of defence through which the defendant takes position on the infringement issue and that such statement of defence is filed with the Court at least 70 days before the hearing indicated in the writ of summons.

Furthermore, raising a counterclaim for invalidity or cancellation of the registered trademark within an infringement proceeding, is possible only if the infringement proceeding is a proceeding on the merits. Indeed, pursuant to Italian law, invalidity or cancellation issues cannot be treated within urgency proceedings.

Lastly, bifurcation is also possible under Italian law: for example, if the defendant decides to raise a claim for invalidity or cancellation when the deadline for submitting such a claim within the infringement action is elapsed, the defendant can commence an independent proceeding. However, if the two proceedings are started before the same Court, their joinder may be ordered.

11. If the main objective in commencing infringement proceedings is to secure an injunction, is a claimant required to state how much their claim is worth at the point their claim is issued?

Under Italian law, to commence a legal proceeding, it is always necessary to pay a contribution to the Ministry of Justice. The amount of such a contribution is determined based on the economic value of the claimant's requests, if they can be quantified. Instead, if the claimant's requests cannot be quantified (for example, when they are aimed at obtaining injunctions), the contribution is indicated by the law in a fixed amount. In case of IP disputes said amount is equal to Euro 518,00 for urgency proceedings and Euro 1.036,00 for proceedings on the merits.

12. Is it possible to seek a preliminary injunction in your jurisdiction? If so, what is the criteria a trademark owner needs to establish and is there a bond or other undertaking in damages payable to compensate the defendant if the Court finds no infringement following a substantive hearing?

Yes, under Italian law, it is possible to seek a preliminary injunction provided that the following two requirements occur: (i) the likely existence of the right enforced and the relative infringement (so-called *fumus boni iuris*); and (ii) the existence of a pending or imminent infringement (so-called *periculum in mora*).

Pursuant to Article 669 *undecies* of the Code of Civil Procedure, together with the decision granting injunctions, the Court may require the applicant to provide a deposit to cover potential compensation for damages.

13. Is a licensee (whether exclusive or non-exclusive) of a registered trademark entitled to commence proceedings for trademark infringement? Does the trademark proprietor need to be joined as a party to the proceedings, and does it have an effect whether the licensee is registered before the local Trademark Registry?

A licensee (whether exclusive or non-exclusive) of a registered trademark may commence proceedings for trademark infringement, if he is entitled to do so by the license agreement.

Otherwise, Article 122 *bis* of the Industrial Property Code applies.

According to said Article, the licensee may initiate an action for trademark infringement only with the consent of the trademark owner. However, the exclusive licensee may initiate such an action if, after formal notice, the

trademark owner fails to bring an infringement action within a reasonable period. Furthermore, the licensee may intervene in an infringement action initiated by the trademark owner to claim compensation for the damages it has suffered.

In order for the licensee to start legal proceedings, it is not necessary that the license is registered in the Registry held by the Office for Patents and Trademarks.

14. Where the claim for trademark infringement is premised on similarity between the defendant's mark and the trademark owner's registered mark, does the proprietor need to demonstrate that confusion has occurred or simply that there is a risk of confusion? What is the minimum standard required to secure a finding of infringement?

Pursuant to Article 20, paragraph 1, of the Industrial Property Code, the owner of a registered trademark has the right to make exclusive use of the trademark and therefore, *inter alia*, the right to prohibit third parties, without his consent, from using in economic activity a sign similar to the registered trademark, for identical or similar products or services, if due to the identity or similarity between the signs and the identity or affinity between the products or services, a risk of confusion could arise for the public, which may also consist of a risk of association between the two signs.

Based on the above rules, the trademark owner does need to demonstrate that confusion has occurred, but only that there is a risk of confusion.

The Italian law does not provide minimum standards for obtaining a finding of infringement. Indeed, the occurrence of a risk of confusion is assessed by the Court based on a case-by-case analysis.

15. In your jurisdiction what type of disclosure or discovery is typically ordered by the Court in respect of trademark infringement actions from both parties?

Italian Courts cannot order disclosure *ex officio*, as a circumstantiated party request is always required.

Disclosure in IP proceedings is regulated by Articles 121, paragraphs 2 and 2 *bis*, and 121 *bis* of the Industrial Property Code.

Pursuant to Article 121, paragraph 2, where a party has provided serious indications of the validity of its claims and has identified documents, elements or information held by the other party that confirm these indications, it may obtain that the Court order their submission or request the information from the other party. It may also obtain that the Court order the other party to provide the elements for identifying the persons involved in the production and distribution of the goods or services that constitute an IP infringement.

Pursuant to Article 121, paragraph 2 *bis*, in the event of an infringement committed on a commercial scale through acts of piracy (i.e. blatant counterfeiting of registered trademarks, designs and models and infringements of others' IP rights carried out maliciously in a systematic manner), the Court may also order, at the request of a party, the production of banking, financial and commercial documents in the possession of the other party.

Pursuant to Article 121 *bis*, the Judge may order, upon justified and proportionate request from the applicant, that information be provided on the origin and distribution networks of goods or provision of services that violate an IP right by the author of the violation and by any other person who (a) has been found to be in possession of infringing goods on a commercial scale or has been caught using infringing services on a commercial scale; (b) has been caught providing on a commercial scale services used in infringement activities; (c) has been indicated by the subjects referred to in letters a) or b) as a person involved in the production, manufacture or distribution of such products or in the provision of such services.

16. What type of expert evidence is permitted by the Court in your jurisdiction? Does the Court accept consumer surveys and are there specific rules about how consumer surveys are conducted. Do the parties need to request prior permission from the Court to adduce survey evidence?

According to Article 61 of the Code of Civil Procedure, when the assessment of technical issues is necessary for the decision, the Judge may appoint an expert having technical competence in the field concerned. If appropriate in relation to the complexity of the investigation, the Judge may also appoint a panel of experts.

When an expert or a panel of experts is appointed by the

Court, the parties are entitled to appoint their own experts.

The Court appointed expert shall carry out, together with the parties' experts, any necessary technical investigations and, once the investigations are completed, shall submit to the parties' experts a draft technical report on which the parties may comment. Then, the Court appointed expert shall file a final technical report, that takes into consideration the parties' comments.

In trademark infringement proceedings, Courts usually make recourse to technical experts to quantify the damages suffered by the trademark owner.

As for consumer surveys, there are no statutory rules that specifically govern them. Therefore, if commissioned independently by the parties, they are considered documental evidence and as such they can be produced in Court without need of any prior permission. Alternatively, consumer surveys may be ordered by the Judge at the request of a party or *ex officio* and in such a case they are carried out according to the rules governing the technical assessments examined above.

In order for consumer surveys to be considered reliable and therefore useful for the decision, it is necessary that they are conducted by using rigorous methods and that these rigorous methods are acknowledged in the same survey. Moreover, the reference sample of people to be interviewed must be as large as possible but, at the same time, must be identified having regard to the specific goods and services being surveyed. Lastly, in the identification of the reference sample, the adoption of discriminatory criteria based on gender, cultural level and geographical origin must be avoided.

17. Does evidence submitted by your client in trademark infringement proceedings have to be accompanied with a statement of truth or other similar declaration?

No, evidence submitted in legal proceedings does not have to be accompanied by a statement of truth or similar declarations.

18. In your jurisdiction is it possible for a claimant to seek summary judgment of an infringement claim? What are the legal criteria for a Court to grant summary judgment?

Under Italian law, the summary proceeding is a special

type of trial on the merits regulated by Articles 702 *bis*, 702 *ter* and 702 *quater* of the Code of Civil Procedure and characterised by a simplified investigation phase. However, since summary proceedings may be started only in cases where the Court sits in monocratic composition, it is not possible to commence such kind of proceeding in relation to infringement claims.

19. How long does it typically take to reach judgment in a trademark infringement action from issue of the claim, through to first instance decision? What is the lower and upper range of legal costs for such an action?

Reaching a first instance decision in a trademark infringement action usually take between three to six months, in the event of an urgency proceeding, and between two to four years, in the event of a proceeding on the merits. In both cases, the duration depends on the complexity of the case and on the investigation activities carried out.

As for the costs, please refer to the answer under no. 11. As for the fees, they must be agreed between client and lawyer. In the lack of an agreement, rates indicated in the Ministerial Decree no. 55/2014 apply. Said rates vary depending on the economic value of the claims and the complexity of the case.

20. Following a first instance decision, is it possible for either party to appeal the decision? What are the grounds upon which an appeal can be lodged? Is it necessary to request permission to appeal, or are appeals automatically permissible? If either party file an appeal, is the enforcement of the first instance decision stayed pending the outcome of the appeal?

Both first instance decisions issued within urgency proceedings and first instance decisions issued within merit proceedings may be appealed. In both cases, an appeal may be lodged if the first instance Judge wrongly interpreted the facts under dispute or breached legal provisions.

No permission is required to appeal.

First-instance decisions are immediately enforceable, and the enforceability is not suspended while an appeal is pending. However, in relation to urgency proceedings, when for unexpected reasons the decision may cause serious damage, the second instance Judge may order

the suspension of the enforcement or make it subject to the provision of an adequate security. In relation to merit proceedings, upon request of the losing party, the second instance Judge may suspend in whole or in part the enforceability, with or without security, if the appeal appears to be manifestly well founded or if serious and irreparable damage may result from the enforcement of the judgment.

21. If the parties have been involved in a dispute before the local Trademark Office, what relevance does this have on later infringement proceedings? For example where trademark owner (A) may have already sought to oppose the registration of a third party (B's) mark in proceedings before the local Trade Mark Office, is the trademark owner estopped from seeking invalidity of a registered trade mark where its opposition failed where the invalidity action is based on the same grounds as the unsuccessful opposition?

Article 122 of the Industrial Property Code, according to which the action of invalidity or revocation of a registered trademark started before the competent Court cannot be proceeded if, on an application concerning the same object, the same facts and the same parties, a decision has been pronounced by the Office for Patents and Trademarks or a proceeding is pending before the Office, refers only to decisions issued by the Office and proceedings pending before the Office in relation to invalidity or revocation claims. No reference is made to a possible overlap with decisions previously issued by the Office in opposition procedures. Therefore, the fact that a trademark owner failed in an opposition against the registration of a third party's trademark before the Office should not prevent the trademark owner from subsequently seeking the invalidity of the registered trademark in Court.

22. In your jurisdiction, does the Court consider both liability and quantum within the same proceeding, or will any damages be assessed after the Court has reached a decision on liability? How are damages for trademark infringement proceedings typically assessed in your jurisdiction?

Under Italian law, the Court may consider both liability and quantum within the same merit proceeding (the sole

in which a party can obtain compensation for damages) and decides the two issues with a sole decision.

However, pursuant to Article 278 of the Code of Civil Procedure when the liability has already been ascertained, but the quantum is still controversial, the Court, at the request of a party, may pronounce only a general conviction to perform the obligation to pay and order that the trial shall continue for the quantification. With the same decision and again upon request of a party, the Court may also order the debtor to pay a provisional payment, within the limits of the amount for which it considers that proof has already been obtained.

As for the assessment of damages, reference must be made to Article 125 of the Industrial Property Code and to the provisions of the Civil Code mentioned therein.

In particular, pursuant to the above mentioned Article 125, damages arising from IP rights infringements are assessed based on the rules contained in Articles 1223, 1226 and 1227 of the Civil Code, according to which (i) compensation for damages includes both damages and loss of profits; (ii) if damages cannot be proved in their specific amount, they are determined by the Court through an equitable assessment, provided that at least their occurrence has been demonstrated by the interested party; (iii) if the creditor's conduct contributed to cause damages, the compensation for damages is reduced considering the seriousness of said conduct, as well as the extent of the arising consequences.

Furthermore, damages arising from IP rights' infringements are assessed by considering any relevant aspect, including not only the negative economic consequences suffered by the IP rights' owner, but also any unfair profit made by the infringer and, in some cases, other elements such as the moral prejudice.

The Court is entitled to quantify the damages in a total amount determined by considering statements and evidence filed by the parties, as well as the arising assumptions. In such a case, any loss of profit awarded must not be lower than the royalties that the infringer would have paid, if he had obtained a license from the IP rights owner.

In any case, the IP rights owner can request the return of the incomes made by the infringer as an alternative to the compensation for loss of profit or if the amount of said incomes exceed such compensation.

23. In addition to an injunction and damages,

what other remedies are available in your jurisdiction?

In addition to injunctions and compensation for damages, upon request of the IP rights' owner, the Court may order (i) the destruction of the infringing goods; (ii) the assignment of the infringing goods (and/or the machines or tools used to make them) to the claimant; (iii) the seizure of all infringing goods (and/or the machines or tools used to make them); (iv) the publication of the judgment in newspapers and magazines or on the infringer's website; (v) the payment of penalties for any further infringement.

24. Following a decision on the merits, is the winner entitled to recover all or a portion of its legal costs incurred in bringing or defending the proceedings. If legal costs are recoverable, what is the procedure involved and how does the Court assess the level of legal costs which should be reimbursed by the losing party.

Pursuant to Article 91 of the Code of Civil Procedure, as a general rule, the Court condemns the losing party to reimburse the winning party of the legal costs incurred.

However, pursuant to Article 92, the Court may exclude the recovery of costs incurred by the successful party if it considers them excessive or unnecessary and it may, irrespective of the party's losing the case, order a party to reimburse the costs which it has caused the other party to incur by breach of its duty of loyalty.

Furthermore, if the parties are both unsuccessful or in the event of absolute novelty of the matter at hand or of a change in the case law with respect to the leading issues, the Court may award the costs to all the parties, in part or in full. If the parties have settled, the costs are to be set off unless the parties have agreed otherwise.

The Court assesses the level of legal costs to be reimbursed by the losing party based on the tariffs and parameters established by Ministerial Decree no. 55/2014.

25. Once the Court has issued a judgment, how long typically does the losing party have to comply with the Court's judgment including any final injunction issued? What are the consequences for failing to comply and how would the winning party seek enforcement of its judgement.

Once a decision is issued by the Court, the losing party must comply with it immediately unless the Court has set a specific deadline.

In the event the losing party does not spontaneously comply with the decision, the winning party must start enforcement procedures according to the provisions contained in the Code of Civil Procedure. Said procedures vary depending on the kind of obligation to be enforced (obligation to pay, obligation to perform or not perform a certain activity), but are all treated as judicial procedures.

Furthermore, non-compliance with injunctions can lead to the application of economic penalties for each infringement or for each day of non-compliance, if said penalties have been set in the decision.

In addition, not complying with a Judge order is a criminal offence based on Article 388 of the Criminal Code. With specific reference to IP matters, this Articles states that whoever eludes the enforcement of a Court order prescribing injunctive or corrective measures for the protection of industrial property rights shall be punished by imprisonment of up to three years or a fine of between Euro 103 and Euro 1,032.

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