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THE NOTARIAL ACT AS A MEANS OF PROOF WITHIN THE SCOPE OF INTELLECTUAL PROPERTY OFFICES

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Rodrygo Kanevassi Murakami

ABSTRACT

The article discusses the importance of the notarial act as a means of proof in the field of intellectual property, highlighting its role in the documentation of legal facts with public faith. In addition, it explores notarial and registration services, their hybrid nature (public and private), and the legal regime that governs these services in Brazil.

Keywords: Notarial Act. Intellectual Property.

INTRODUCTION

This article aims to analyze the importance of the use of the notarial act (a kind of notarial act through which the notary narrates in his notebook in an impartial, objective and detailed manner legal facts witnessed or verified in person, with the purpose of pre-constituting evidence) within the scope of intellectual property institutes.

The notarial act is considered a means of evidence, according to article 384 of the Code of Civil Procedure (Law No. 13,105/15). Violations of intellectual property, due to the dynamism that reigns in business and consumer relations, require an institute capable of documenting, with public faith, constituting a means of proof for possible legal action.

Notary and registry services have played well the role of preventive protection of subjective rights, notably due to the relative presumption contained in the acts drawn up (public faith).

THE NOTARIAL AND REGISTRATION SERVICE

Notary and registration services are those of technical and administrative organization intended to ensure the publicity, authenticity, security and effectiveness of legal acts, as provided for in article 1 of Law No. 8,935/94 (Law of Notaries and Registrars).

Since the Constitution of the Republic of 1988, notarial and registration services have been exercised on a private basis, by delegation of the Public Power (article 236, *caput),* which demonstrates the total break with the previous regime, in which notary offices were part of the administrative structure of the State (as bodies of the Direct Administration).

The Greater Text also required the holding of a public examination of tests and titles for entry into the notarial and registration activity, not admitting that any service remains vacant for more than six months (article 236, § 3).

In view of their own configuration, notarial and registry services have a *sui generis legal nature,* insofar as, on the one hand, they have a public character of a state function and, on the other hand, demonstrate the private nature of their exercise.

That is, it has a hybrid legal regime, so that it is governed "by public (administrative) law, which coexists, without antagonism, with a private portion, corresponding to the private object of notarial and registry law and to the management of each service unit, which is governed by private law".[1]

[1] RIBEIRO, Luís Paulo Aliende. Regulation of the Notarial and Registry Public Service. São Paulo: Saraiva, 2009, p. 48.

In the part that concerns public law, the notarial and registry service configures a true public function, that is, that exercised by public agents (notaries and registrars are considered public agents, in the category of private individuals in collaboration with the public power) in the pursuit of the public interest.

At this point, it applies the entirety of the legal-administrative regime, formed, mainly, by the principles of the supremacy of the public interest and the unavailability of the public interest, in addition to the constitutional principles of Public Administration (legality, impersonality, morality, publicity and efficiency – article 37, *caput,* of the 1988 Constitution).

Notary and registration services are considered public services, since they are remunerated through emoluments, which have the nature of a public service fee (article 145, item II, of the 1988 Constitution).

Luís Roberto Barroso distinguishes various forms of public service provision, inserting notarial and registration services as an autonomous category in relation to the others. Check out his lesson[2]:

> (i) The first regime is the one in which only the Public Power, with exclusivity, can provide certain services, which is typical of the inherent public services (such as national defense, diplomacy, public security, provision of jurisdiction, legislative activity, among others). There is no question, at least in the current ideological stage, of private individuals assuming this kind of service.
> (ii) The second possibility constitutes the general rule in matters of public services, provided for in article 175 of the Constitution and reproduced when several specific services are provided. Under this regime, the State can directly exploit the service or delegate its execution to private individuals through concession, permission or authorization, always through bidding. The decision in this regard will be in the infra-constitutional sphere.
> (iii) The third possibility provided for by the Constitution is that of the joint provision of the service by the State and by private individuals. In this case, however, unlike what happens with the general rule of article 175, the execution of services by the private sector will depend, at most, on a license - a binding administrative act - once the legal requirements are met. This is the case of education (FC, art. 209), health (FC, art. 199) and social security (FC, art. 201 et seq.). The Constitution itself delegates the provision of these services to private individuals and the infra-constitutional legislator may not obstruct this faculty.
> (iv) The last constitutional regime on the provision of public services is the one in which the Constitution assigns to the private individual, directly, through public tender, and to the exclusion of the Public Power, the performance of the activity. This is what happens with notarial and registry services, under the terms of article 236 of the Charter in force.

Although of a public nature (given that the ownership of the service subsists with the Government), the exercise of the notarial and registration activity is performed in a private character, under the full responsibility – civil, criminal and administrative/disciplinary – of the notary or registrar.

[2] BARROSO, Luís Roberto. Invalidity of direct exercise by the State of Notarial and Registry Services. Interpretation in accordance with the Constitution of article 1,361, § 1, of the new Civil Code. Available at: <http://www.irtdpjbrasil.com.br/NEWSITE/Barroso.htm>. Accessed on: June 23, 2024.

As provided for in article 21 of Law No. 8,935/94 (Law of Notaries and Registrars), the administrative and financial management of notarial and registration services is the exclusive responsibility of the respective holder, including with regard to costing, investment and personnel expenses, and it is up to him to establish rules, conditions and obligations related to the assignment of functions and remuneration of his agents in order to obtain the best quality in the provision of services.

In this aspect, the hiring of employees is exclusive to the head of the delegation, who must bear, in turn, all administrative, labor and tax expenses, which would not happen if we were before the Public Administration.

The notary public and the registrar are considered public agents in the private modality in collaboration with the Public Power. From this premise, some important legal consequences can be extracted, recalled by Luiz Guilherme Loureiro[3]:

a) Notaries and registrars, although they perform state activity, are not holders of effective public offices;
b) They are not part of the structure of the civil service and are not remunerated by the public coffers (the remuneration is made by the private individuals who use the services);
c) They are not subject to the rule of article 40, paragraph 1, II, of the 1988 Constitution, which deals with compulsory retirement, as already settled by the Federal Supreme Court in the judgment of Direct Action of Unconstitutionality 2.602/MG.[4]

Therefore, notaries and registrars perform true public functions delegated by the State (holder of the service). They perform an activity in their own name, at their own risk (exercise in a private capacity), but always aiming at the public interest, the collectivity.

Summarizing the reasoning set forth so far, Justice Carlos Ayres Brito, of the Federal Supreme Court, in the judgment of Direct Action of Unconstitutionality 3.151-1/MT, had the opportunity to record:

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[3] LOUREIRO, Luiz Guilherme. Public Records: *Theory and Practice.* 4th ed. Rio de Janeiro: Forense, 2013, p. 1-2.

[4] DIRECT ACTION OF UNCONSTITUTIONALITY. PROVISION N. 055/2001 OF THE CORREGIDOR-GENERAL OF JUSTICE OF THE STATE OF MINAS GERAIS. NOTARIES AND REGISTRARS. LEGAL REGIME OF PUBLIC SERVANTS. IRRELEVANCE. CONSTITUTIONAL AMENDMENT NO. 20/98. EXERCISE OF ACTIVITY IN A PRIVATE NATURE BY DELEGATION OF THE PUBLIC POWER. INAPPLICABILITY OF COMPULSORY RETIREMENT AT SEVENTY YEARS OF AGE. UNCONSTITUTIONALITY. 1. Article 40, § 1, item II, of the Constitution of Brazil, as amended by EC 20/98, is restricted to the effective positions of the Union, the Member States, the Federal District and the Municipalities - including autarchies and foundations. 2. The services of public registries, notaries and notaries are exercised on a private basis by delegation of the Public Power - a non-private public service. 3. Notaries and registrars exercise state activity, however they do not hold effective public office, nor do they hold public office. They are not public servants, not reaching the compulsoriness imposed by the aforementioned article 40 of the CB/88 - compulsory retirement at seventy years of age. 4. Direct action of unconstitutionality upheld.

> I – notarial and registry services are activities proper to the Government, for the clear reason that, if they were not, there would be no sense for the reference that the Major Law expressly makes to the institute of delegation and to private persons. That is: public landlord activities, certainly, but obligatorily exercised in a private character (FC, art. 236, *caput*). Not optionally, as is now the case with the provision of public services, as long as the option for the private route (which is an indirect route) is made by force of law of each federated person who entitles such services;
> II – legal activities of the State are taken care of, and not simply material, whose provision is transferred to private individuals by delegation (already pointed out). Not by conduit of the mechanisms of concession or permission, regulated by *the caput* of article 175 of the Constitution as contractual instruments for the privatization of the exercise of this material (non-legal) activity in which public services are constituted;
> III – the delegation that stamps their functionality does not translate, in any way, into contractual clauses. On the contrary, it is expressed in statutes unilaterally dictated by the State, which makes use of commands conveyed by laws and respective regulatory acts. Moreover, it is a delegation that can only fall on an individual, and not on a company or commercial person, since the Federal Magna Carta deals with a company or commercial person on the subject of concession or permission of public service;
> IV – in order to become a delegate of the Public Power, such a natural person must gain qualification in a public examination of tests and titles, not by adjudication in a bidding process, governed by the Constitution as a necessary antecedent of the concession or permission contract for the performance of public service;
> V – we are dealing with state activities whose private exercise is under the exclusive supervision of the Judiciary, and by an organ or entity of the Executive Branch, knowing that it is by an organ or entity of the Executive Branch that the immediate inspection of the concessionaires or permittees of public services takes place. Conversely, it is through organs of the Judiciary that the presence of the State is marked to confer legal certainty and liquidity to inter-party relations, with this well-known difference: the usual mode of action of the Judiciary is under the sign of litigation, while the invariable mode of action of extrajudicial services does not enter this delicate sphere of litigation between subjects of law;
> VI – finally, notarial and registry activities are not included in the scope of those remunerated by "tariff" or "public price", but in the circle of those that are guided by a table of fees, which are attached to general rules that are issued by necessarily federal law. Characteristics that are completely different, it should be repeated, from those that are inherent to the regime of public services.

Pursuant to article 236, § 1, of the 1988 Constitution of the Republic, the law shall regulate the activity, discipline the civil and criminal liability of notaries, registry officers and their representatives, and define the supervision of their acts by the Judiciary.

In the infra-constitutional sphere, the referred law is Law No. 8,935/94 (called the Law of Notaries and Registrars), which states, in article 1, that notarial and registration services are those of technical and administrative organization intended to ensure the publicity, authenticity, security and effectiveness of legal acts.

Thus, although the function performed is public, the immediate object of action of notaries and registrars is private law (subjective interests of the parties), to the extent that, for example, the notary public legally formalizes the will of the parties, instrumentalizing it to produce legal effects.

Vitor Frederico Kumpel and Carla Modina Ferrari[5] add:

> However, the main working instrument of the notary public is, without a doubt, the Civil Code and the vast special and extravagant legislation that accompanies it, which does not exclude the autonomous character of the notarial activity, with its own and distinct characteristics, concerning the branch of private law, which requires a serious and in-depth study on the subject.

The notary (or notary) and the registrar (or registration officer) are legal professionals endowed with public faith to whom the exercise of notarial and registration activities is delegated (article 3 of Law No. 8,935/94).

The requirement of the law course for the performance of the functions gives authenticity to the actions of the holders of the delegations, insofar as it only instrumentalizes or registers legal acts and transactions in accordance with the legislation in force, insofar as the control of legality constitutes a primary function. It is what confers qualified confidence and effectiveness, with a presumption of truth, to what these professionals, in the exercise of their functions, declare or practice.[6]

Entry into the activity depends on a public examination of tests and titles, which will be carried out by the Judiciary, with the participation, in all its phases, of the Brazilian Bar Association, the Public Prosecutor's Office, a notary and a registrar (article 236, § 3, of the 1988 Constitution c/c article 15, *caput,* of Law No. 8,935/94).

Candidates who do not have a bachelor's degree in law may apply for the public competition if they have completed, by the date of the first publication of the notice of the competition for tests and titles, ten years of practice in notarial or registration services (article 15, paragraph 2, of the Law of Notaries and Registrars). The rule brings an exception to the need to have a bachelor's degree in Law as a requirement for granting the delegation.

As we have highlighted, although the activity performed is a public function[7], its exercise is entirely private. With regard to representatives, article 20, *caput,* of Law No. 8,935/94 provides that notaries and registration officers may, for the performance of their duties, hire clerks, among them choosing substitutes, and assistants as employees, with freely adjusted remuneration and under the regime of labor legislation.

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[5] KUMPEL, Vitor Frederico; FERRARI, Carla Modina. Notarial and Registry Treaty. v. 3. São Paulo: YK Editora, 2017, p. 55.

[6] NETO, Mario de Carvalho Camargo; OLIVEIRA, Marcelo Salaroli de. Civil Registry of Natural Persons: *General Part and Birth Registration.* São Paulo: Saraiva, 2014, p. 56.

[7] It is worth noting the thought of Leonardo Brandelli, who observes: "Finally, it should be noted that notarial law ultimately regulates state intervention in the sphere of voluntary development of law. The State regulates, through its agent, the legal relations established between individuals, aiming at security, legal certainty and social peace. Therefore, notarial law is public law and not private". BRANDELLI, Leonardo. General Theory of Notarial Law. 2nd ed. São Paulo: Saraiva, 2007, p. 103.

In each notarial or registry service there shall be as many substitutes, clerks and assistants as are necessary, at the discretion of each notary or registry officer. It is not up to the Judiciary, the body responsible for inspecting the services, to determine the number of employees in the service, which is exclusively attributed to the respective holder. They must only forward the names of the substitutes to the competent court, but without any possibility of control.

The only caveat is the provisions of Resolution No. 20, of August 29, 2006, of the National Council of Justice, according to which it is forbidden to hire, as an agent, by an extrajudicial delegate, a spouse, partner or relative, natural, civil or related, in the direct or collateral line up to the third degree, of a magistrate in any way entrusted with the internal affairs activity of the respective services of notes and records (Article 1, *caput*).

The sole paragraph continues and also prohibits the hiring of a spouse, partner or relative, natural, civil or related, in the direct or collateral line up to the third degree, of a Judge who is a member of the Court of Justice of the State in which the respective notarial or registration service is performed.

The prohibition extends up to two years after the termination of the correctional bond and reaches hires made in any circumstances that characterize an adjustment to circumvent the resolution rule (article 2).

The objective of the National Internal Affairs Office of Justice was to ensure the incidence of the constitutional principles of morality and impersonality in the provision of notarial and registry services.

The clerks may perform only the acts that the notary or the registry officer authorizes and, among them, the holder will choose their substitutes, who may, simultaneously with the notary or the registry officer, perform all the acts that are proper to him, except, in the notary publics, to draw up wills (article 20, §§ 3 and 4). of Law No. 8,935/94).

In the State of São Paulo, there is a regulation different from the Federal Law, to the extent that, according to the Service Standards of the General Internal Affairs Office of Justice of São Paulo, substitutes may perform all the acts proper to the notary public and, even, regardless of the absence and impediment of the holder, draw up wills (Chapter XVI, item 6.1).

This understanding stems from the interpretation of article 1,864, item I, of the Civil Code, according to which it is an essential requirement for the public will to be written by a notary public or to be a legal substitute in his or her notebook, according to the testator's statements, who may use a draft, notes or notes.

Kumpel and Ferrari, in the same vein, write[8]:

> Here, it should be noted that even the will, initially provided for as a private act of the notary, no longer bears this peculiarity, in view of the rule of article 4 of article 20 of Law No. 8,935/1994. Despite allowing the substitute to draw up a will restrictively, only in cases of absence or impediment of the notary, the rule of article 1,864, I, of the Civil Code, in a different and purposeful way, does not distinguish one or the other for the competence of the notarial act, thus giving a new legal connotation, more comprehensive and systemic, allowing the substitute, even if the notary public is present at the service, he or she must draw up a public will.

Also with regard to employees, article 20, paragraph 5, of Law No. 8,935/94 provides that among the substitutes, one of them will be designated by the notary or registration officer to answer for the respective service in the absence and impediment of the holder. It is the so-called legal substitute of the service, who is responsible for the conduct of the service in the event of extinction of the delegation, and the provisions of article 39, paragraph 2, of the same law do not apply[9].

In view of the legal nature of notaries and registrars, that is, that of public agents in the private modality in collaboration with the public power, much is discussed about their civil liability (duty to indemnify in the face of the commission of an unlawful act).

The subject is regulated in article 22 of Law No. 8,935/94, which was amended by Law No. 13,286/16: "Notaries and registry officers are civilly liable for all damages they cause to third parties, through fault or willful misconduct, personally, by the substitutes they designate or clerks they authorize, ensuring the right of recourse".

Although much discussed in doctrine and jurisprudence, the Federal Supreme Court settled the matter in the judgment of Extraordinary Appeal No. 842,846, on February 27, 2019, with recognized general repercussion (Topic 777), establishing the following thesis: "The State is objectively liable for the acts of notaries and official registrars who, in the exercise of their functions, cause damage to third parties, the duty of recourse against the responsible party is established, in cases of intent or fault, under penalty of administrative improbity".[10]

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[8] KUMPEL, Vitor Frederico; FERRARI, Carla Modina. *Op. cit.,* p. 287.

[9] Law No. 8,935/94, article 39, § 2: Once the delegation to a notary or registration officer is extinguished, the competent authority will declare the respective service vacant, designate the most senior substitute to answer for the file and open a competition.

[10] SUMMARY: ADMINISTRATIVE LAW. EXTRAORDINARY APPEAL. GENERAL REPERCUSSION. MATERIAL DAMAGE. HARMFUL ACTS AND OMISSIONS OF NOTARIES AND REGISTRARS. TOPIC 777. DELEGATED ACTIVITY. CIVIL LIABILITY OF THE DELEGATE AND THE STATE AS A RESULT OF DAMAGES CAUSED TO THIRD PARTIES BY NOTARIES AND REGISTRY OFFICERS IN THE EXERCISE OF THEIR FUNCTIONS. EXTRAJUDICIAL SERVICES. ARTICLE 236, PARAGRAPH 1, OF THE CONSTITUTION OF THE REPUBLIC. STRICT LIABILITY OF THE STATE FOR THE ACTS OF NOTARIES AND OFFICIAL REGISTRARS WHO, IN THE EXERCISE OF THEIR FUNCTIONS, CAUSE DAMAGE TO THIRD PARTIES, ENSURING THE RIGHT OF RECOURSE AGAINST THE RESPONSIBLE PARTY IN CASES OF INTENT OR FAULT. POSSIBILITY. 1. Notarial and registry services are exercised on a private basis, by delegation of the Public Power. Notaries and official registrars are private individuals in collaboration with the

Therefore, the responsibility of notaries and registrars is equivalent to the liability of public agents, that is: a) the State responds objectively; b) recourse action against the notary and the registrar, who only responds subjectively, under the terms of article 22 of the LNR. Therefore, it is not possible to bring a direct action against the notary and the registrar.

public power who exercise their activities in nomine of the State, based on delegation expressly prescribed in the constitutional fabric (art. 236, CRFB/88). 2. Notaries and official registrars exercise a function equipped with public faith, which is intended to confer authenticity, publicity, security and effectiveness to declarations of will. 3. Entry into the notarial and registration activity depends on a public examination and the acts of its agents are subject to inspection by the Judiciary, as expressly determined by the Constitution (art. 236, CRFB/88). Because they exercise a bundle of state powers, the holders of extrajudicial services qualify as public agents. 4. The State is objectively liable for the acts of notaries and official registrars who, in the exercise of their functions, cause damage to third parties, establishing the duty of recourse against the person responsible, in cases of intent or fault, under penalty of administrative improbity. Precedents: RE 209.354 AgR, Rel. Min. Carlos Velloso, Second Panel, DJe of 4/16/1999; RE 518.894 AgR, Judge Ayres Britto, Second Panel, DJe of 9/22/2011; RE 551.156 AgR, Judge Ellen Gracie, Second Panel, DJe of 3/10/2009; AI 846.317 AgR, Rel. Minª. Cármen Lúcia, Second Panel, DJe of 11/28/13 and RE 788.009 AgR, Judge Dias Toffoli, First Panel, judged on 08/19/2014, DJe 10/13/2014. 5. Notarial and registry services, by virtue of being exercised in a private capacity, by delegation of the Public Power (art. 236, CF/88), are not subject to the discipline that governs legal entities governed by private law that provide public services. This interpretative alternative, in addition to disregarding the system of applicability of constitutional norms, contradicts the literality of the text of the Charter of the Republic, according to the diction of article 37, § 6, which refers to "legal persons" providing public services, while notaries and notaries are civilly liable as natural persons delegating public service, as provided for in article 22 of Law No. 8,935/94. 6. The Constitution itself determines that "the law shall regulate the activities, discipline the civil and criminal liability of notaries, registry officers and their representatives, and define the supervision of their acts by the Judiciary" (art. 236, CRFB/88), and it is not up to this Court to carry out an analogous and extensive interpretation, in order to equate the legal regime of the civil liability of notaries and official registrars to that of legal entities governed by private law that provide public services (art. 37, § 6, CRFB/88). 7. Strict liability depends on an express normative provision and does not admit of extensive or expansive interpretation, given that it is an exceptional rule, which is not subject to presumption. 8. Law 8.935/94 regulates article 236 of the Federal Constitution and establishes the statute of notarial and registry services, stating in its article 22 that "notaries and registry officers are civilly liable for all damages they cause to third parties, due to fault or willful misconduct, personally, by the substitutes they designate or clerks they authorize, the right of recourse is ensured. (Text given by Law No. 13,286, of 2016)", which constitutes unequivocal subjective civil liability of notaries and registration officers, legally established. 9. Article 28 of the Public Records Law (Law 6,015/1973) contains an express command regarding the subjective liability of registration officers, as well as article 38 of Law 9,492/97, which establishes the subjective liability of Notaries of Protest of Titles for their own acts and those of their representatives. 10. Indeed, the activity of protest registrars is analogous to that of notaries and other registrars, and there is no discretion that authorizes different treatment for only a certain activity of the notarial class. 11. Constitutional general repercussion that is based on the objective thesis that: the State is objectively responsible for the acts of notaries and official registrars who, in the exercise of their functions, cause damage to third parties, establishing the duty of recourse against the responsible party, in cases of intent or fault, under penalty of administrative improbity. 12. In the present case, in the case of damage caused by an official registrar in the exercise of his function, the strict liability of the State of Santa Catarina applies, establishing the duty of recourse against the responsible party, in cases of intent or fault, under penalty of administrative improbity. 13. Extraordinary appeal KNOWN and DENIED to recognize that the State is objectively liable for the acts of notaries and official registrars who, in the exercise of their functions, cause damage to third parties, establishing the duty of recourse against the person responsible, in cases of intent or fault, under penalty of administrative improbity. Thesis: "The State is objectively responsible for the acts of notaries and official registrars who, in the exercise of their functions, cause damage to third parties, establishing the duty of recourse against the person responsible, in cases of intent or fault, under penalty of administrative improbity".

THE NOTARIAL ACT AS A MEANS OF PROOF

The notarial act is a kind of notarial act through which the notary narrates in his notebook in an impartial, objective and detailed manner legal facts witnessed or verified in person, for the purpose of pre-constituting evidence.

Article 6 of Law No. 8,935/94 establishes that notaries are responsible for legally formalizing the will of the parties; intervene in legal acts and transactions to which the parties must or want to give legal form or authenticity, authorizing the drafting or drafting of the appropriate instruments, preserving the originals and issuing reliable copies of their content and authenticating facts.

Article 7, item III of the aforementioned law provides that notaries are exclusively responsible for, among others, drawing up notarial minutes. In other words, it consists of the documentation of legal facts (any events in life that have relevance to the Law).

The notarial act is considered a means of proof (article 384 of the Code of Civil Procedure), so that the existence and manner of existence of some fact can be attested or documented, at the request of the interested party, through minutes drawn up by a notary public and that the data represented by image or sound recorded in electronic files may be included in the notarial act.

The notarial act is not to be confused with the public deed, although both are protocol acts, recorded in the notary's note books. The purpose of the minutes is the documentation of legal facts (absence of manifestation of will), while the deed has as its object legal acts and transactions.

In the minutes, the notary's performance is authenticating, while in the deed, it is constitutive/translative. In the minutes, the notary is its author, documenting what he witnesses with his senses, with public faith, recording the facts for the protection of rights, without any value judgment or legal advice activity, while in the public deed the notary describes a business action of the parties, registering a legal relationship and advising them, in an impartial manner, for the search for the best legal deal to be concluded.

As for the formal requirements, the notarial act must contain the place, date, time of its drawing up and, if different, the time when the facts were witnessed or verified by the Notary Public name and qualification of the applicant; detailed narration of the facts and signature and public sign of the Notary Public (item 139 of Chapter XVI of Volume II of the Service Standards of the General Internal Affairs Office of Justice of São Paulo).

It may also contain the signature of the applicant and any witnesses; be written in different places, dates and times, as the facts follow one another, with a faithful description of what was witnessed and verified, and respect for the chronological order of events and

the territorial circumscription of the Notary Public contain reports or technical reports from professionals or experts, who will be qualified and, when present, will sign the act and contain images and documents in color to be printed in the book itself, or by a detailed and detailed description that evidences the content found, as applicable.

It is possible to draw up the notarial act when the object narrated constitutes an unlawful fact. In fact, this aspect, together with the nature of a means of proof, reveal the importance of this institute in the field of intellectual property.

Intellectual property is a branch of business law that studies the immaterial assets of the entrepreneur for the exploitation of organized economic activity for the production or circulation of goods and services. These intangible assets are so important that the Brazilian legal system grants them a special legal protection disciplined in Law No. 9,279/96.

Business Law is characterized by informalism due to the dynamism of business activity, which requires agile and flexible means for the realization and dissemination of commercial practices. In other words, events within this branch of law occur immediately, producing the desired legal effects, but, at the same time, generating violations of rights, such as intellectual property rights.

The main intellectual property is the trademark, defined as a visually perceptible distinctive sign (article 122 of Law No. 9,279/96). The trademark can be of three types, namely: I - product or service trademark: the one used to distinguish a product or service from another identical, similar or similar one, of different origin; II – certification mark: the one used to attest to the conformity of a product or service with certain standards or technical specifications, notably as to the quality, nature, material used and methodology used; and III – collective trademark: the one used to identify products or services originating from members of a given entity (article 123).

Law No. 9,279/96, in articles 189 and 190, defines the following crimes against the trademark:

> Article 189. Anyone who commits a crime against trademark registration who:
> I - reproduces, without the owner's authorization, in whole or in part, a registered trademark, or imitates it in a way that may induce confusion; or
> II - alters another person's trademark already affixed to a product placed on the market.
> Penalty - detention, from 3 (three) months to 1 (one) year, or fine.
> Article 190. Anyone who imports, exports, sells, offers or exposes for sale, conceals or has in stock commits a crime against trademark registration:
> I - product marked with a trademark illicitly reproduced or imitated, of others, in whole or in part; or
> II - product of its industry or commerce, contained in containers, containers or packages containing the legitimate trademark of others.
> Penalty - detention, from 1 (one) to 3 (three) months, or fine.

Reproducing, without the owner's authorization, a trademark, registering it or imitating it in a way that may induce confusion is considered a crime. Generally, these crimes are committed through the Internet or social networks (Instagram, Facebook and WhatsApp) and the evidentiary delay is made difficult in view of the disappearance of information in digital media. Any type of complaint about the use of someone else's brand, the administrator of the social network deletes the posts, without any punishment, especially in the criminal sphere.

It is in this context that the notarial act gains prominence to the extent that the notary will attest, with public faith, the legal facts witnessed by him or verified with his senses. It will access the website where the improper use of the trademark is recorded and will record, in its note book, the images and files that violate intellectual property, serving as a very effective means of proof due to the public nature of the notarial activity delegated under the terms of the Federal Constitution of 1988.

The use of the notarial act as a means of proof has been expanded by the legislator along with the phenomenon of dejudicialization. It is a requirement for the instruction of the extrajudicial adverse possession procedure (article 216-A, item I, of Law No. 6,015/73, added by Law No. 13,105/15); for the extrajudicial compulsory adjudication procedure (article 216-B, paragraph 1, item III, of Law No. 6,015/73, added by Law No. 14,382/22), among others.

CONCLUSION

The notarial act is considered a highly effective means of proof due to the public faith deposited in the notary public who prepares it. Notary and registration services, as of the Federal Constitutional Law of 1988, began to be exercised in a private capacity, by delegation of the Public Power. Thus, he maintained the public character of the function exercised.

Intellectual property offices, especially trademarks, are considered today as one of the best means that companies have to add value to their business. They are important business assets for economic and social development, especially for the competitive environment in which they operate.

The improper use of a trademark or the imitation of another person's trademark are considered crimes of difficult procedural instruction due to the disappearance of data and information in digital media.

It is concluded that the use of the notarial act plays a fundamental role as a means of proving the improper use of intellectual property institutes, due to the dynamics of business relations.

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