



REPORT (2017)

PROTECTION OF MARKS, UNFAIR COMPETITION AND DESIGNATION OF ORIGIN IN SPAIN FOR NON- AGRICULTURAL PRODUCTS. CURRENT SITUATION

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1. INTRODUCTION

Some companies in the ceramic sector are carrying out advertising campaigns that confuse the consumer, where they are using terms such as "marble ceramics" ("cerámica de mármol"), "marble tiles" ("azulejos de mármol", where "azulejos" is usually used for ceramic products, so it is contradictory) or others easily recognizable as natural stone products due to the terminology used.

In 2002, the FDP (Spanish Natural Stone Association) won the claim submitted to the Autocontrol Jury (see image 1), with the consequent withdrawal of such advertising by the ceramics sector. However, for some time now, and as we mentioned in the previous paragraph, these deceptive advertising actions are happening again (see Annex I. Examples of the current situation).



Image 1. The FDP won the battle of advertising to pottery (La FDP gana la batalla de la publicidad a la cerámica). www.construmet.net/publico/noticias/muesNoticia.jsp?id_noticia=5815

Currently, there are other laws or ways of claiming that could be applied in the search of greater continuity in the fulfilment of this type of resolutions. Therefore, given the reiteration of these infractions, it is worth considering these other ways of claiming at the national level for a greater guarantee and security in the protection of natural stone products, which will be analysed in this report.

2. REGULATIONS

2.1. Trademarks or trade names

- Law 17/2001, of December 7, of Trademarks.

2.2. Competition and publicity

- Law 3/1991, of January 10, on Unfair Competition.
- Law 29/2009, of December 30, which modifies the legal regime of unfair competition and advertising to improve the protection of consumers and users.
- Law 34/1988, of November 11, General on Advertising.
- Law 7/2010, of March 31, General on Audio-visual Communication (LGCA).

3. POSSIBLE LEGAL ROUTES OR COMPLAINT ORGANIZATIONS

In the Spanish case, those responsible for enforcing the laws are different national, regional or local bodies, as well as the judicial way. They are the following:

3.1. Protection of trademarks or trade names

Steps to follow: firstly, requirement to the responsible and if this route does not work, will be sued for trademark infringement. In this way, we can go to the Courts of Justice to claim what happened through the civil or criminal procedure depending on the case.

Another option is arbitration if the parties renounce a court to resolve their differences:

Purpose of the Arbitration: Articles 28. 1 and 2 of the Trademark Law: *"Disputes over trademark registration may be submitted to Arbitration. Only about relative prohibitions: Arts. 6.1.b, 7.1.b, 8 and 9 of the Trademark Law"*.

Consequently, the product must be previously protected as a registered trademark. *"The registration of the trademark gives its owner the exclusive right to use it in economic traffic (Article 34.1 of Law 17/2001 of Trademarks)"*

In Spain, there are currently two (October 2014):

- Marmol de Macael (Marble from Macael).
- Piedra natural de Castilla y Leon, Pinacal (Natural Stone from Castilla and Leon, Pinacal).

3.2. Unfair competition

The claim would consist of an ordinary trial (regardless of the amount) in the Commercial Court of the domicile of the defendant and, if the defendant did not have it in Spain, would be the place where the act of unfair competition or its effects, at the choice of the plaintiff (art. 52.1.12 of the LEC). The process also has a series of specialties in terms of preliminary proceedings, the burden of proof and precautionary measures that will be the subject of other proceedings.

The laws in relation to unfair competition *“still differ significantly from one Member State to another. For example, different national, regional or local bodies (e.g. in Spain), or private consumer associations (e.g. Germany) are responsible for enforcing these laws, which implies different costs, procedures and formal requirements”*.¹

3.3. Misleading advertising

- OMIC. Municipal Consumer Information Centre (Oficina Municipal de Información al Consumidor).

- Online Claims. The Advertising Jury is an independent body that resolves the claims by applying the Code of Advertising Conduct and the other Codes, including current legislation. The claim can be made online via the following link:

http://www.autocontrol.es/dominios_como.shtml²

4. CONCLUSION

The Denomination of Origin or Geographic could be a solution in the future, however, nowadays this is not possible for products such as Natural Stone (*see Annex II. Comments and clarifications*) and waiting for a possible new European directive and after its national transposition, it can become really harmful to the sector.

¹ COM(2014) 469 final. Opinion of the European Economic and Social Committee on the Green Paper — Making the most out of Europe's traditional know-how: a possible extension of geographical indication protection of the European Union to non-agricultural products (page 13). <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2014:0469:FIN>

² Asociación para la Autorregulación de la Comunicación Comercial (Association for the Self-regulation of Commercial Communication). Since its birth, AUTOCONTROL belongs to European Advertising Standards Alliance (EASA), which is an organization that encompasses all European self-regulatory advertising agencies and is made up of 38 self-regulatory bodies (most of EU countries, as well as international organizations such as Switzerland, Canada, South Africa, ...) and 16 organizations from the European advertising industry. With its membership of the European Alliance, AUTOCONTROL participates in the EASA system for the resolution of cross-border disputes, which allows any consumer in the European Union to submit a matter to the competent advertising self-regulatory body abroad through the counterpart body in their own country.

Consequently, establishing a comparison with the denominations of origin, if we opt for trademarks or commercial names, in this respect it is worth highlighting what is mentioned in the COM(2014) 469 final³ (page 14):

“Trade mark protection also has its limits. It gives its owner the right to exclude all others from using the trade mark. The trade mark (name, logo, etc.) chosen does not have to have any link with the products or their origin. In contrast, a protected GI aims to provide a guarantee to consumers that goods are produced in a certain place and have specific qualities as a result.”

On the other hand, about unfair competition, the following should be mentioned in the same European communication⁴:

*“Directive 2005/29/EC defines the unfair commercial practices which are prohibited in the European Union (EU) and the other 3 EEA countries. Article 6 emphasises that **a commercial practice must be regarded as misleading if it contains false information which deceives or is likely to deceive the average consumer notably with regard to the main characteristics of the product, such as geographical or commercial origin.** Article 11 provides specific redress, as Member States and other EEA countries must ensure that adequate and effective means exist to combat such practices. These means must include provisions allowing persons or entities having a legitimate interest (consumers and competitors) to take legal action against these unfair practices and/or to bring these practices before an administrative authority.”*

Therefore, in the absence of a new and more complete regulation on the subject of Denomination of Origin, in the Spanish case the most immediate way to claim would be through the aforementioned of the Autocontrol Jury, which includes a claim previously won in 2002 through the FDP. Moreover, due to this fact, compliance could be urged instead of filing a second claim in the face of deceptive publicity acts.

³ COM(2014) 469 final. Opinion of the European Economic and Social Committee on the Green Paper — Making the most out of Europe's traditional know-how: a possible extension of geographical indication protection of the European Union to non-agricultural products (page 14). <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2014:0469:FIN>

⁴ COM(2014) 469 final. Opinion of the European Economic and Social Committee on the Green Paper — Making the most out of Europe's traditional know-how: a possible extension of geographical indication protection of the European Union to non-agricultural products (page 13). <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2014:0469:FIN>

ANNEX I. EXAMPLES OF THE CURRENT SITUATION

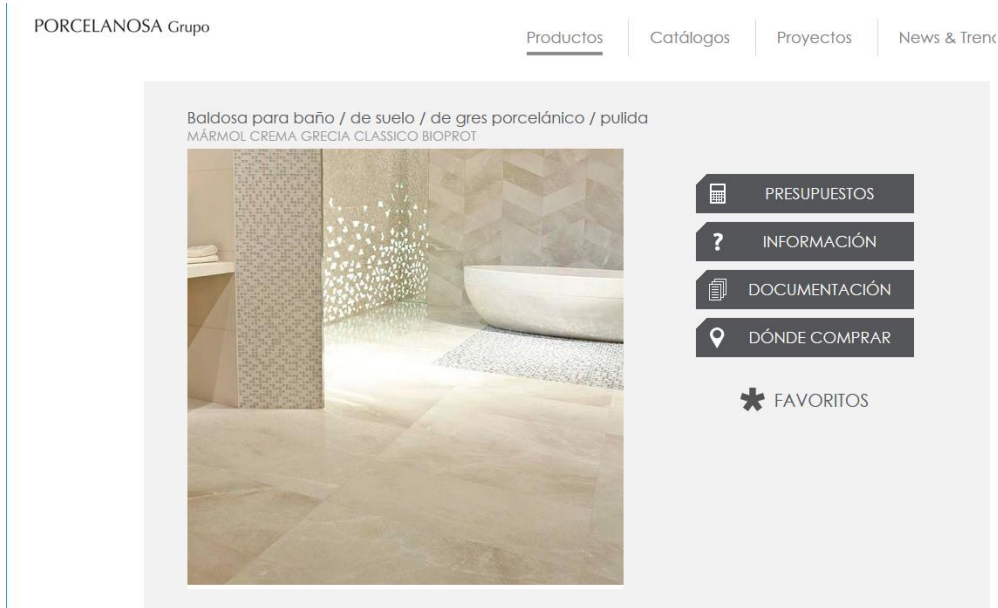


Image 2 (December, 2017). <http://www.archiexpo.es/prod/porcelanosa-grupo/product-12-1320633.html>

PORCELANITE^{DOS} EMPRESA PRODUCTOS AMBIENTES PORCELANITE 3D DESCARGAS NOTICIAS CO

Nuevos mármoles en Porcelanite

SUELOS DE MÁRMOL

- ✓ El diseño del mármol es un clásico.
- ✓ Fácil limpieza.
- ✓ Olvídate del mantenimiento.
- ✓ Tendrás paredes y suelos como el primer día.
- ✓ Nuestros azulejos y pavimentos reproducen fielmente cada tipo de mármol.

Serie 7020 paredes de mármol con columnas motivos decorativos

Serie 7020 finísimo mármol con dibujos florales

Cerámica de mármol de alto brillo.
La superficie cerámica de este tipo de mármol da un brillo característico a la piedra pulida. Utilice cerámica de mármol para el baño u otras estancias. Disfrute de azulejos de mármol con una elegante combinación de baldosas y azulejos.

Revestimiento: serie 7020
Pavimento: serie 6500

Mármoles: en cerámica.

VENTAJAS DE LA CERÁMICA IMITACIÓN MÁRMOL:

- ✓ El diseño del mármol es un clásico que se combina con el diseño más actual. La decoración del baño se distingue con esta combinación.
- ✓ La cerámica es mas facil de limpiar.
- ✓ Te olvidarás del mantenimiento. Las piezas conservan su brillo.

SUELOS DE MÁRMOL



- ✓ Tendrás paredes y suelos como el primer día. El mármol es un material delicado. Usando cerámica imitación mármol evitas el desgaste por golpes o rozaduras.
- ✓ Nuestros acabados en pisos y paredes imitan cada tipo de mármol.



[5010 suelo de cerámica símil mármol estilo clásico](#)

[5000 suelo de cerámica símil mármol estilo rústico](#)

TIPOS Y COLORES DEL MÁRMOL:

Mármol Travertino



Elegante mármol usado por gran parte de los monumentos e iglesias de la antigua Roma. Porcelanite Dos lo hace llegar a tu hogar en forma de [cerámica imitación mármol](#). La resistencia y la elegancia del mármol en la cerámica tradicional.

Series tipo Mármol Travertino
[4002 revestimiento y suelo mármol](#)
[2002 revestimiento y pavimento mármol](#)
[2004 revestimiento y suelo imitación mármol](#)
[7011 revestimiento y suelo mármol Travertino](#)

Mármol Carrara



El mármol de Carrara se caracteriza por su color muy blanco y escasas vetas. Las [paredes y suelos con cerámica imitación mármol](#) y azulejos o baldosas son adecuados en decoración de cuartos de baño y diseño habitaciones de interior. En Porcelanite te brindamos la cerámica imitación mármol Carrara en varias series:

Series tipo Mármol Carrara
[4006 revestimiento y suelo mármol](#)
[5002 revestimiento y pavimento mármol](#)

Mármol nacarado



[Mármoles con brillos nacarados o superficie de marfil](#), para revestimientos y suelos. Superficie perlada y hermosas piezas complementarias al mármol. Los diseños antiguos para la decoración de suelos interiores, las baldosas azulejos con rodapiés y cenefas decorativas, completan estas series:

Series tipo Mármol nacarado
[5002 pavimento porcelánico imitación mármol](#)

Mármol veta envejecida



[Cerámica aspecto mármol con vetas envejecidas](#), el catálogo cerámico de estas series tiene hermosas piezas complementarias florales. Las piezas cerámicas decorativas forman cuadros cerámicos en los revestimientos de las estancias, sean cuartos de baño, salones o cocinas.

Series tipo veta envejecida:
[4007 revestimiento y suelo porcelánico](#)

Mármol rústico



Fabricamos [revestimiento y pavimento combinados de colores naturales, en un estilo rústico](#), simulando la piedra y el mármol de con cenefas en zig zag y motivos frutales, ambientes clásicos y acogedores, es cerámica, siéntela.

Series tipo Mármol Carrara
[320 suelo pavimento pasta roja rústico](#)
[328 suelo pavimento pasta roja rústico](#)

Mármol Alto Brillo



[Cerámica marmolada de alto brillo](#). La superficie cerámica de este tipo de mármol da un brillo característico a la piedra pulida. Cerámica de diseño para el baño u otras estancias, con una elegante combinación de baldosas y azulejos.

Series tipo Mármol Alto Brillo
[1804 suelo pavimento porcelánico brillo](#)

AMBIENTES CERÁMICOS EN LOS QUE EL MÁRMOL ES PROTAGONISTA: ESTILOS CLÁSICOS, RÚSTICOS O CONTEMPORÁNEOS.



[321 suelo de cerámica símil mármol para cocinas estilo rústico](#)



[7011 suelo de cerámica símil mármol para baños modernos](#)



[7011 suelo de cerámica símil mármol para salones contemporáneos](#)

» inicio » [marmol](#)

Image 3 (December, 2017).

Gres porcelánico efecto mármol



El encanto de los mármoles más insólitos para crear pavimentos y revestimientos de efectos atornasolados. Gres porcelánico de efecto mármol. Descubre todas las colecciones de Marazzi.

Seleccionar un filtro para afinar la búsqueda

Espacio	Color	Efecto	Formatos	Tipo
Seleccionar Espacio	Seleccionar Color	Efecto Mármol	Seleccionar Formatos	Seleccionar Tipo

Nuestras colecciones "Efecto Mármol"



Pinch

Pinch reinterpreta fielmente los detalles, los colores y el dinamismo gráfico que han convertido en único ...



Preview

Atmósferas elegantes y sobrias en un "crossover" de decoraciones y contaminaciones estilísticas que se entrelazan con ...



Elegance

Un proyecto que mezcla lo contemporáneo y lo tradicional, lo minimal y lo clásico. Diseño lineal ...



History

History está realizada en gres porcelánico imitación mármol en tres colores cálidos (marfil, avorio, nogue) y ...



Evolutionmarble Rivestimento

Ya en estilo clásico, ya contemporáneo, el mármol aporta siempre un indudable aire de elegancia incluso ...



Allmarble

Los Azulejos Allmarble representan una sofisticada interpretación de una selección de mármoles preciados Lasa, Statuario, Raffaello



Allmarble20

Colocado mediante cola o sobre grava, el gres de efecto mármol de 20 mm de grosor ...



Marbleline

Un programa completo de cerámica para pavimento y revestimiento coordinados, que interpreta el mármol con una ...

"In general, marble tiles contain veins that give each piece a unique appearance, so that there are no two identical slabs. In addition, their colours and designs are very varied. White marble, for example, often has grey veins that make it a very luminous material. For its part, the cream-colored marbles are warmer."



Image 5 (December, 2017). <http://azulevgrupo.com/es/blog/por-que-elegir-ceramica-de-marmol-para-tu-hogar>




















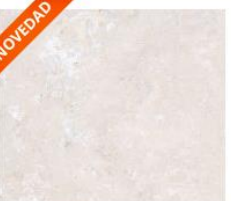
 <p>Porcelánico mármol ÓNICE BEIGE BRILLO 1ª 60x60</p> <p>17,35€/m² 13,85€/m²</p> <p>Info Comprar </p>	 <p>Porcelánico mármol ÓNICE CREMA BRILLO 1ª 60x60</p> <p>17,35€/m² 13,85€/m²</p> <p>Info Comprar </p>	 <p>SUBLIME WHITE MATE MOSAICO 1ª 30x30 PORC.</p> <p>13,35€/pieza 10,25€/pieza</p> <p>Info Comprar </p>	 <p>TRIBOR BIANCO MATE 1ª 39x79 Rect.</p> <p>22,20€/m² 17,95€/m²</p> <p>Info Comprar </p>
 <p>CREMA MARFIL BRILLO 1ª 45x45 Porc.</p> <p>11,95€/m²</p> <p>Info Comprar </p>	 <p>CREMA MARFIL BRILLO 1ª 60x120 PORC. RECT.</p> <p>30,95€/m²</p> <p>Info Comprar </p>	 <p>CREMA MARFIL MATE 1ª 60x120 PORC.</p> <p>30,95€/m²</p> <p>Info Comprar </p>	 <p>NOVEDAD PAVIMENTO OCEAN BRILLO 1ª 60x60 PORC.</p> <p>19,95€/m² 15,95€/m²</p> <p>Info Comprar </p>
 <p>NOVEDAD</p>	 <p>NOVEDAD</p>	 <p>NOVEDAD</p>	 <p>NOVEDAD</p>

Image 6 (December, 2017).

Anima Fuori Gamma Lucidato | Dark Emperador de Caesar

ARCHITONIC ID 1275448



SOLICITUD	CONTACTO	DESCARGAR	ENCONTRAR DISTRIBUIDORES
PRECIO	DIRECCIÓN	CATÁLOGO PDF	ESPAÑA
CATÁLOGO	TELÉFONO		ESTADO
LISTA DE DISTRIBUIDOR	E-MAIL		CIUDAD
TEXTO PARA LICITACIÓN	PÁGINA WEB		BUSCAR
CAD	MOSTRAR EN EL MAPA		

REFERENCIAS

Producto: Anima Fuori Gamma Lucidato | Dark Emperador
Familia: Anima
Fabricante: Caesar >
ID de Architonic: 1275448
País: Italia
Año de lanzamiento: 2014

Grupos fabricante :
Pavimentos de exterior-Floor panels >
Pavimentos-Suelos de cerámica >
Cerámica-Planchas >
Grupos:
Pavimentos de exterior-Floor panels >
Pavimentos-Suelos de cerámica >
Cerámica-Planchas >

Image 7 (December, 2017). https://www.interazulejo.com/porcelanicos-interior-porcelanico-interior-imitacion-marmol-c-20_18_90.html

SOLUCIONES TÉCNICAS


FACHADAS VENTILADAS	PAVIMENTOS ELEVADOS	PELDAÑOS Y PIEZAS COMPLEMENTARIA...	PAVIMENTOS ANTIDESLIZANTES	MÁRMOL CERÁMICO ALTO BRILLO
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MÁRMOLES

Productos caracterizados por su alto brillo con todas las prestaciones del porcelánico. Producto con dos acabados superficiales:

TITÁN

Producto con alto brillo sin tratamiento superficial posterior a su proceso de cocción



Ver Serie Titán entera

Image 8 (December, 2017). <http://www.vivesceramica.com/productos/soluciones-tecnicas/soluciones/marmol-ceramico-alto-brillo.html>

ANNEX II. COMMENTS AND CLARIFICATIONS

Denomination of Origin and Geographical Indication

In the future, another way of claiming would be through the Geographical Indication of Origin, however, this possibility does not exist. Currently, Law 6/2015, of May 12, on Protection of Denominations of Origin and Geographical Indications of supra-autonomous territorial scope is applicable only for agricultural and food products⁵, where protection is regulated from production to commercialization, including presentation, advertising and labelling; while it is true that recent communications from the EU are aimed at opening a path for non-agricultural products (COM(2014) 469 final)⁶, like for example natural stone⁷.

Regarding the claim route in this area, it would be carried out through the Regulatory Council of the Qualified Denomination of Origin. It is an agency in charge of regulating and standardizing the actions of the agents assigned to a Denomination of Origin, as well as being responsible for their effective compliance. The main mission of a Regulatory Council of a Denomination of Origin is to defend the own denomination of origin and its interests, to apply the regulatory precepts that are determined to control the quality and guarantee the origin of the protected products, as well as to promote the products covered by the appellation of origin. Therefore, once this regulation for non-agricultural products has been modified and extended, this will be the most convenient way of claiming due to its scope of application.

⁵ "A denomination of origin is requested for the granite of Guadarrama, the famous Spanish stone berroqueña" ("Solicitan denominación de origen para el granito de Guadarrama, la famosa piedra berroqueña española"). <https://www.labrujulaverde.com/2016/05/solicitan-denominacion-de-origen-para-el-granito-de-guadarrama-la-famosa-piedra-berroquena-espanola>

⁶ COM(2014) 469 final. Opinion of the European Economic and Social Committee on the Green Paper — Making the most out of Europe's traditional know-how: a possible extension of geographical indication protection of the European Union to non-agricultural products. <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2014:0469:FIN>

Examples of unfair competition mentioned in this EU communication (page 12):

- "Evocation of the protected name by unrelated products, for example the wording 'Belgian stone' for fake *Pierre bleue de Belgique* (stone), Turkish marbles marketed under the denomination 'Botticino Royal' and 'The New Botticino';
- or evocation of the protected name by products that are not the same type of product, e.g. Chinese granite, Indian slate and limestone from other countries that use the name 'natural stone from Castile and Leon' (*Piedra Natural de Castilla y León*)."

⁷ Public consultation on a possible extension of geographical indication protection of the European Union to non-agricultural products — Making the most out of Europe's traditional know-how. http://ec.europa.eu/internal_market/consultations/2014/geo-indications-non-agri/index_en.htm

Geographical indications for non-agricultural products. <http://ec.europa.eu/growth/industry/intellectual-property/geographical-indications/non-agricultural-products/>