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# **Trademark Registration Law**

## **Chapter 1 General Provisions**

### **Article 1:**

This law has been enacted in order to regulate affairs related to trademarks registration, identification and distinction of goods, products or industrial, commercial, telecommunications and agricultural services as well as to regulate affairs related to their use.

### **Article 2:**

Trademarks consist of (one or more) names, words, signatures, letters, figures, drawings, symbols, titles, seals, pictures, inscriptions, advertisements or packs or any other mark or a combination thereof.

### **Use of Trademarks**

#### **Article 3:**

Use of each one of the trademarks specified in Article 2 is optional except for those cases where the Ministry of Commerce and Industry or the Central Registration Office (Trademarks Registration Section) has made their use mandatory.

#### **Article 4:**

A person desiring to have the exclusive use of a trademark for distinguishing goods of his own production, manufacture, selection, or in respect of which he issued a certificate, or goods in which he trades or intends to trade, may apply for the registration of such trademark in accordance with the provisions of this law.

#### **Article 5:**

The owners of a commercial, industrial, telecommunications, agricultural, professional or service organization in Afghanistan, whether domestic or foreign, can enjoy the benefits of these Articles provided their respective trademarks have been registered pursuant to these Articles.

**Article 6:**

The following symbols may not be used or registered as trademarks:

- 1- National flag, State emblems and other symbols pertaining to domestic or foreign organizations or institutions, international organizations or institutions, or any foreign county unless their use is authorized in writing.
- 2- Adytum and pulpit or any marks which are identical or similar to symbols of a purely religious nature.
- 3- The pictures of national leaders and high-ranking authorities of the State.
- 4- Words and phrases that could be confused with the government departments of Afghanistan.
- 5- Marks of official organizations such as: the Red Crescent, the Red Cross, or any other similar symbols as well as any mark which is an imitation thereof.
- 6- Any marks repugnant to chastity, morality and public order.
- 7- A mark which is not distinctive in character or property or where the mark consists of names commonly given by tradition to goods, products or services, or familiar drawings and ordinary pictures of goods and products. Such marks may be used generally, but may not be used or registered, and shall not be given any protection, as a trademark.
- 8- Geographical names where the use thereof may cause confusion as to the origin or source of the goods, products or services.
- 9- The name, surname, photograph or emblem of a third party, unless he/she or his/her heirs' prior consent to use has been obtained.
- 10- Marks which may mislead the public or which contain false or deceptive information as to the origin, source, or any other characteristics of the goods, products or services, as well as marks containing an imaginary, imitated or forged trade name.
- 11- Marks containing imaginary, imitative or forged names.
- 12- Marks related to juristic or legal entities and the use of which is prohibited.
- 13- Use of company marks published and disseminated in Afghanistan unless authorized by their owners.

14- Marks related to identical goods or services or similar registered trademarks or symbols.

15- Marks which are used for specific purposes. identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion.

## **Chapter 2**

### **Proprietorship and Registration of Trademarks**

#### **Proprietorship of a Well-Known Mark**

##### **Article 7:**

The proprietor of a well-known mark may enjoy the rights conferred by the provisions of these Articles, even if such mark is not registered in Afghanistan. The Central Registration Office (the Trademarks Section) shall be obligated to reject any trademark application similar to any such well-known international mark, unless the applicant is the owner or an agent of the owner of the well-known mark.

#### **Registration**

##### **Article 8:**

Persons or entities may apply for registration of a trademark either personally or through their respective legal representatives.

The Central Registration Office (the Trademarks Section) shall be obligated to enter the contents of trademarks into the registration book and give or send it to the applicant.

If the application for trademark registration was filed in a state that treats Afghanistan on reciprocal terms, the applicant or its successors acquiring the rights, may, within a period of six months following the date of filing, submit to the Trademark Office in Afghanistan a similar application concerning the same trademark and governing the same goods, products or services of the previous application in accordance with the terms and conditions stipulated in these Articles and their relevant regulations. In such a case, priority shall be determined based on the date of the application filed in the foreign country.

## **Admission or Rejection of the Application**

### **Article 9:**

1) The Central Registration Office (the Trademarks Registration Section) shall be obligated to review the applications from the point of view of their form, nature and their compatibility with the provisions of the present law and shall either accept or reject the application within 30 days from the day of the receipt of the application.

In case of rejection, the Central Registration Office shall be obligated to clearly mention the reasons for rejection. In such a case, the applicant may, within 15 days seek the remedy and resubmit his application to the Central Registration Office (the Trademarks Registration Section) or appeal the rejection to the local commercial court.

2) Where the applicant for registration did not take action concerning rebuttal of the reasons or did not resort to the court within the period set forth in sub-article (1) of the present Article, he/she shall be deemed as to have abandoned his/her application.

3) The Central Registration Office, shall, under the following circumstances as well, be obligated to reject the application for trademarks registration:

Where the trademark is repugnant to the provision of Article 7 of the present law.  
Where the trademarks have been registered previously under the name of a third person and/or are identical to the previously registered trademarks.

## **Application for Registration**

### **Article 10:**

The following must be strictly observed when registering each of the trademarks:

- 1- The registration date, including (day, month and year) in words.
- 2- Name, occupation, address of the residence and citizenship of the applicant for trademarks registration; and where the application for registration is made by his/her legal representative, the same information shall also be given concerning his/her legal representative.
- 3- Name, description and nature of goods, products and/or services for which the trademark is used.
- 4- Explanation of symbols and expressions used in the trademark and definition of their components, if any.
- 5- Full payment of the entire payable registration fees.

## **Registration of Changes**

### **Article 11:**

- 1) Where changes are made to a registered trademark, or to the goods, products or services for which the trademark has been registered, such changes shall be registered separately in the Central Registration Office (in the Trademarks Registration Section) taking into account the provisions of the present law, otherwise they shall not be valid.
- 2) The owner of the registered mark may request in writing the insertion of any additions or modification to his/her mark provided they do not substantially affect the registered mark or its identity. Similarly, he/she may take action concerning omission of goods, products or services which constitute the subject matter of the trademark.
- 3) Any other changes to the registered mark or the goods, products or services to which the trademark relates shall take place on the basis of new application for registration of trademarks.

## **Correction of Print Error in Trademark Registration**

### **Article 12:**

Where a trademark is reproduced in a dictionary, encyclopedia or a similar reference work without indications that it is registered, and where it is likely to give the impression that it constitutes the generic name of the goods, products or services for which the trademark is registered, the publisher shall, at the request of the proprietor, correct such fault in the next edition.

## **Non-registration in the Name of an Agent or Representative**

### **Article 13:**

The agent or representative of the owner of the trademark cannot register the trademark in his/her own name without agreement of the owner.

## **Using the Name and Address of the Owner of the Trademark**

### **Article 14:**

The owner of a trademark cannot prevent other individuals or entities from using in the course of trade his/her own name or address, indications concerning the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of the goods or of rendering of the services, or other characteristics of the goods, products or services, provided such use conforms to lawful practices in industrial or commercial matters and permission of the owner has been obtained in this regard.

## **Transfer of Trademarks**

### **Article 15:**

Trademarks are transferable and the transfer shall be valid if recorded separately with the Central Registration Office (Trademarks Registration Section) pursuant to these Articles and their relevant regulations.

## **Publication of the Registered Trademark**

### **Article 16:**

1) The owner of the trademark shall be obligated to submit the registered trademark and the changes therein on his own expense within 15 days of the registration thereof for publication in the Official Gazette as well as in other media.

2) The registered trademark, which is sent for publication in the Official Gazette, shall contain the following information:

Trademark Registration Date

Trademark Display

Application Date

List of goods, products or services relating to the trademark

Classification of goods, products and services

Name and citizenship of the owner of the trademark and names of agents, (if any)

Occupation

Country and address of the office of notary public of the owner of trademark

Changes relating to the trademark and the rights being requested by the applicant.

Other instances foreseen in the present law.

3) The Central Registration Office (Trademarks Registration Section), may, upon request, furnish the applicants with a copy of the list of trademarks against payment of a fixed amount of fee.

## **Trademarks Protection**

### **Article 17:**

The trademarks shall be protected from the date of the submission of the application to the Central Registration Office (Trademarks Registration Section).

## **Validity Period of Trademarks Registration**

### **Article 18:**

1) A registered trademark shall be valid for a period of ten (10) years, which may, upon request by the owner, be extended for successive 10-year periods.

2) The owner of the trademark shall, within six months prior to expiry of the period set forth under sub-Article (1) of the present Article, be obligated to submit his/her

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application for renewal to the Central Registration Office (Trademarks Registration Section).

3) The owner of the trademark cannot, during the course of renewal, bring changes in the registered trademark or in the list of goods, products or services for which the trademarks has already been registered.

### **Ownership of the Trademark**

#### **Article 19:**

The ownership of a trademark belongs to the person that used it for the first time, unless proven otherwise by a court.

### **Termination of Ownership of the Trademark**

#### **Article 20:**

The right to ownership of the trademark shall terminate in the following cases:

- 1) Cessation of trade, industry, agriculture and services, which may relate to ownership of specific trademarks.
- 2) Sale or other transfers of the right of ownership to a third party in accordance with provisions of law.
- 3) Failure to apply for renewal of the trademark registration right within six months of expiration of the registration according to Article 19 of the present law.
- 4) Where it is proved that the trademark has not been used for three consecutive years, the relevant commercial court may issue an order concerning termination thereof, unless the owner of the trademark (the first person) provides justification for the non-use thereof within the specified period of time. Under such circumstances, the trademark shall, upon application by the person in whose name the trademark has been registered, be registered taking into account the provision set forth in sub-Article (2) of Article (9) of the present law.

### **Production and Supply in a Specific Geographical Area**

#### **Article 21:**

- 1) Where a specific geographical area has been registered as part of the trademark, the owner thereof shall be obligated to manufacture goods and products or render services in the same geographical area.
- 2) Persons or entities cannot, by using various means, introduce or designate any goods, products and services in a manner contrary to the factual relevant geographical area in order to mislead the public.
- 3) Persons or entities who embark on manufacturing goods, products or rendering of services in the well-known geographical area cannot use the geographical address in respect of similar goods, products or services being manufactured or delivered in other

areas in such a manner as to show as if the said goods, products or services have been manufactured and rendered in the same geographical area.

### **Use of Famous Names**

#### **Article 22:**

Persons or entities may use such geographic indications as are used in commercial terminology to describe relevant goods, products or services unless such common geographic indications are found to be misleading according to the provision set forth under Article (27) of the present law.

## **Chapter 3 Objections**

### **How to Object to Trademark Registration**

#### **Article 23:**

- 1) The persons concerned may submit their objections in writing or through the registered post to the Central Registration Office (Trademarks Registration Section) in relation to trademark registration within (30) days of the publication thereof in the Official Gazette.
- 2) The Central Registration Office (Trademarks Registration Section) shall, within (15) days of the receipt of the objection, be obligated to furnish the applicant for the registration of the trademark against whom the objection has been raised with a copy thereof.
- 3) Where the applicant for registration does not withdraw his/her application within (30) days of being notified of the objection by the Central Registration Office (Trademarks Registration Section), the person objecting may, within (60) days, lodge a complaint with the relevant commercial court. The registration process shall be suspended during this period.
- 4) Where the objecting person fails to take recourse to the court within the time prescribed under sub-Article (3) of this Article, or does not pursue his/her application, in such a case the trademark shall be registered in the name of the person who has applied for registration and the person objecting shall not be eligible for reimbursement of any paid registration fee.

### **Court Decision**

#### **Article 24:**

The concerned commercial court shall, while hearing the application of the parties to the dispute, make a decision concerning admission or rejection of the registration in view of the reasons being provided.



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## **Use of the Trademark**

### **Article 25:**

Where the objecting person has proved that the trademark being objected to has been continuously used by him/her, in such a case the commercial court shall issue an order concerning registration of the trademark in his/her name. Where the trademark has already been registered in the name of the person applying for registration, its registered name shall be deleted and the commercial court shall issue order concerning registration of the trademark in the name of the objecting person.

## **Period of Limitations of the Lawsuit**

### **Article 26:**

The period of limitations for hearing the lawsuit related to registration of trademark shall be one year, and the claim of those who fail to object thereto within the said period following the registration date of the trademark shall not be valid.

## **Chapter Four Punishments**

### **Violations**

#### **Article 27:**

1) A person shall, on account of the following violations, be convicted, as the circumstances may warrant, to make compensation in proportion to the damages being incurred:

Use of a false or forged trademark which has already been registered with the Central Registration Office (Trademarks Registration Section) in accordance with the provisions of the present law in such a way as to mislead the public.

Deliberate use of a forged or imitated trademark.

Use of a trademark belonging to a third party for his/her own commercial products without the consent of the owner thereof.

Deliberate sale, supply for sale, distribution or possession of goods, products or services bearing a forged, imitative or unlawful mark.

Use of a mark set forth under Article 6 of the present law.

Mention of medals, diplomas, rewards or grades of distinction in respect of goods, products or services which may not relate thereto, or in respect of commercial institution or entity, which it may not have acquired in fact.

Use of distinctions being granted to the goods, products to be displayed in exhibition, or common services unless the source and nature of the said distinctions are clearly indicated.

Use of geographical indications of a famous area in manufacturing goods, products or fixed services on the goods, products or services in such a manner as to indicate as if such

goods, products or services have been manufactured and created in the said area, and resulting in misleading the public.

2) In case of repeated violations as provided for in sub-Article (1) of the present Article, the violator shall be incur double damages or a term of imprisonment not less than 6 months and not exceeding one year.

#### **Claiming Compensation of Damages**

##### **Article 28:**

The person incurring losses may, on account of falsification of a trademark, ask for prohibition on the use thereof and claim compensation of losses from the perpetrator.

#### **Sequestration of Goods and Shutting Down of the Work Site**

##### **Article 29:**

The competent court shall, in addition to convicting the violator of punishments provided for in the present chapter, order sequestration of goods and the products constituting subject matter of the violation, sums acquired as the result of the violation, means being employed in perpetration of violation, as well as closing down of the work site for a period of six months, and in case of repeated violation, stoppage of work permanently.

### **Chapter 5 Miscellaneous Provisions**

#### **Registration Fee**

##### **Article 30:**

- 1) The owner shall be obligated to pay the trademark registration fee the amount of which shall be determined by the Council of Ministers.
- 2) The amounts provided for in sub-Article (1) of the present Article shall be deposited in the State revenue account with the banks.

#### **Adoption of Rules**

##### **Article 31:**

The Ministry of Commerce and Industries may adopt rules, by-laws and procedures for better implementation of the present law.

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**Date of Enforcement**

**Article 32:**

The present law shall come into force beginning with the date on which it has been approved and shall be published in the Official Gazette, and with the enforcement hereof, the Trademarks Rules and Regulations published in the Official Gazette # 100 of 1339 shall be deemed abolished.

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