



Islamic Republic Of Afghanistan
Ministry of Justice

OFFICIAL GAZETTE

Extra Ordinary Issue

Law on Trade Marks Registration

Date: 1st September, 2009

ISSUE NO: (995)

Decree of the President of Islamic Republic of Afghanistan

On Promulgation of the Law On Trade Marks Registration

No: (111)

Date: 27 August, 2009

Article 1:

Base on the(16th) sub- article order of the 64th Article of the Constitution ; I promulgate the Law On Trade Marks Registration based on the approvals of the Lower House numbered (138) of 11 May , 2009 and of the Upper House numbered (122) of 1 June , 2009 of the National Assembly which is of (5) Chapters and (36) Articles.

Article 2:

The decree is in effect from the date of promulgation and shall be published along together with the Approval of the National Assembly (Lower House & Upper House)

Hamid Karzai,

President of the Islamic Republic of Afghanistan

Approval of the Lower House

Law On Trade Marks Registration

S.N (138)

Date: 11 May, 2009

Under the shade light of the of 97th Article of Constitution, the Lower House of Afghanistan approved the Law On Trade Marks Registration on Tuesdays General Meeting of 11 May , 2009 which is in (5) Chapters and (36) Articles.

Mohammad Yunis Qanoni

President of the Lower House

Approval of the Upper House

Law On Trade Marks Registration

NO: (122)

Date: 31 May, 2009

Under the shade light of the of 97th Article of Constitution, the Upper House of Afghanistan approved the Law On Trade Marks Registration on General Meeting of 31 May , 2009 which is in (5) Chapters and (36) Articles.

Sayed Hamid Gelani,

First vice Chair

Upper House

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In the Name of Allah, the Most Merciful and Compassionate

**Law On
Trade Marks Registration**

**Chapter One
General Provisions**

Basis

Article 1:

This law has been enacted in the light of provision of article 11th of Afghanistan Constitution.

Goals:

Article 2:

The objectives of this law are:

1. To regulate affairs related to trademarks registration
2. Use of trade mark for identification and distinction (goods, products or industrial commercial services, telecommunications and agricultural services)

Terms

Article 3:

Terms in this law have the following meanings:

- 1- Trademark: is a mark/sign or mixture of marks which can distinguish goods and services from goods and services
- 2- Well-Known Mark: Is mark used in two or more countries
- 3- Registration Fee: Is an amount payable to the government's account by the owner of a trademark for the registration of his/her trademark at the central registration office (division of trademarks registration)

- 4- Transfer of Trademark: Is an action in which ownership of a trademark is transferred from one person to another and include sale, donation, inheritance etc
- 5- Owner of Trademark: Is a person who legally posses a trademark (registered, sale, donated, inherited etc to him/her) and there is no legal obstacle in his possession
- 6- Use of Trademark: Is the exclusive use of a trademark by its owner

Types of Trade Marks

Article 4:

Trademarks consist (one or more than one) name, word, signature, letter, figure, drawing, title, seal, picture, inscription, advertisement, symbol or other marks or a combination thereof.

Use of Trademarks

Article 5:

Use of trademarks mentioned in Article 4 is optional except when the ministry of Commerce and Industry or the Central Registration Office (Trademarks Registration Section) has made their use mandatory.

Application for Registration of Trademarks

Article 6:

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.

Implementing Laws Provisions

Article 7:

The owners of commercial, industrial, telecommunications, agricultural, professional or service organizations in Afghanistan, whether domestic or foreign, can use the benefits of law; in case their respective trademarks have been registered pursuant to the provisions of this law.

Prohibition of Use or Registration

Article 8:

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 create confusion 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 heir's 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 natural or legal persons 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 that their use is identified for specific purposes.

Chapter Two

Ownership/Proprietorship and Registration of Trademarks

Proprietorship of a Well-known Mark

Article 9:

The proprietor of a well-known mark may enjoy the rights conferred by the provisions of this law, 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 a representative of the owner of the well-known mark.

Registration

Article 10:

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 in to 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 filling, 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 11:

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 of application, 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 paragraph (1) of this 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.

1. In case the trademark is repugnant to the provision of Article 9 of this law
2. In case 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 12:

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 in case they are available.
- 5- Full payment of the entire payable registration fees.

Registration of Changes

Article 13:

- (1) When changes occur in the commercial specifications of goods, productions or services which were necessary for their recognition, they will be registered separately in the central office (division of commercial specifications). Otherwise they will not be valid.
- (2) The owner can demand the change of specifications in written provided it will not affect the trademark and identity. He/she can also seek the omission of goods, productions or services which characterize the trademark.
- (3) Any other changes in the registered marks or goods, productions or services related to commercial trademark shall be processed based on a new request for the registration of a commercial mark.

Correction of Mistake in the Printing Registered Trademark

Article 14:

When a commercial mark, prior to registration, is published again in a dictionary or encyclopedia, and there is a possibility of it to be the common name of goods, productions or services on which a commercial mark has been registered, the publisher must, based on the owner's request, rectify the mistake in a future publication.

Non-registration in the Name of an Agent or Representative

Article 15:

A representative or advocate of the owner of a trademark cannot register the trademark in his name without the permission of the owner.

Using the Name and Address of the owner of the Trademark's

Article 16:

The owner of a trademark can, during the commercial course, prohibit legal and actual persons from using his/her name, address or signs and specifications of the quality, quantity, objectives, cost, geographic source, date of production or delivery of services and other specifications of goods, productions and services unless the use of it will be legitimate according to industrial and commercial methods and a permit is taken from the owner.

Transfer of a Trademark

Article 17:

A trademark is transferable and will be considered valid when, according to the provisions of this law and other related rules, it is registered separately in the central registration office (division of trademark registrations).

Dissemination of a Registered Trademark

Article 18:

- (1) The owner of a trademark is obliged to present, on his own cost, for publication in the official gazette a registered trademark and changes in it within 15 days of registration and can publish it in other mass media outlets.
- (2) A registered trademark sent for publication in the official gazette must contain the following:
 - 1) Date of registration
 - 2) Display of the trademark
 - 3) Date of request
 - 4) List of goods, productions and services related to the trademark
 - 5) Ranking of goods, productions and services
 - 6) Name and nationality of the owner of the trademark and the name of a representative (in case available)
 - 7) Occupation
 - 8) Country and address of the office of the registration of trademark documents
 - 9) Changes in the trademark and requested rights, from the requesting person
 - 10) Other issues as anticipated by this law
- (3) The central registration office (division of trademark registration) can, after payment of a certain fee, give an applicant a copy of the registered trademark specifications.

Protection of the Trademark

Article 19:

From the date of an application's submission at the central registration office (division of trademarks registration) a trademark will be under support.

Validity Period of a Trademark

Article 20:

- (1) The validity of a registered trademark is 10 years, and this period can be renewed upon the request of the owner of a trademark.
- (2) The owner of a trademark must submit request for the renewal of the period of a trademark, at the central registration office (division of trademarks registration), six months before the expiration of the date prescribed in the part (1) of this article.
- (3) The owner of a trademark cannot alter, while renewing the validity period of a trademark, the trademark or its list of goods, properties, productions and services upon which the trademark was previously registered.

Ownership of the Trademark

Article 21:

A trademark will be the possession of a person who first used it unless it is proved otherwise in a court.

Termination of the Ownership of the Trademark

Article 22:

Ownership of a trademark ends in the following conditions:

- (1) Putting off trade, industry, agriculture and services which relate to the ownership of a trademark
- (2) Sale or transfer of any kind of the ownership rights of a trademark
- (3) Not submitting a request to renew the validity period of a trademark within six months prior to the expiration as prescribed in part (2) of article 20 of this law
- (4) When proved a trademark is not used for three years consecutively a commercial court can, based on the request of the beneficial person in whose name a trademark is registered, retake the order unless owner of the trademark (first person) present logical justifications for the non-usage of the trademark for three consecutive years. In this situation, according to article 12 of this law registration should take place.
- (5) Issuance of a verdict of annulment by an authorized court

Production or Delivery in a Well-Known Geographical Area

Article 23:

- (1) When a famous geographic location is registered inclusive of a trademark the owner will have to produce goods, material and deliver services in the same geographic location

- (2) Legal and actual persons cannot, for the sake of deceiving people use or introduce different material, productions and services in a way which do not correspond to its actual geographic sign
- (3) Legal and actual persons, that produce goods or productions or deliver services in a geographic location which has special fame, cannot use the trademark in a manner which implies the production of goods, production or services has taken in the same famous geographic location

Use of Famous Names

Article 24:

Legal and actual persons can use famous geographic names which are used in commercial terms for branding of materials, products or services unless the naming will be deceptive as per article 31 of this law.

Chapter Three

Objections

Right of Objection

Article 25:

The following persons can file an objection about a trademark which has been requested or registered:

- (1) A person who alleges a trademark is his own trademark
- (2) A person to whose trademark a trademark is so similar that can be mistaken by users

Procedures of Objection

Article 26:

- (1) Benefiting persons or their representatives can submit a written objection at the central registration office (division of trademarks registration) within 30 days after publication of the trademark in the official gazette
- (2) The central registration office (division of trademarks registration) is responsible to send a copy of the written objection to the owner of an objected trademark within 15 days after an objection is received
- (3) If the requesting person, within 30 days after a warning of objection is sent to him/her from the central registration office (division of trademarks registration), does not retake his request the objecting person can, within 60 days, complain to commercial court. During this period the course (process) will be registered as delayed.

- (4) If an objecting person fails to appear at the court within the period mentioned in part (3) of this article, or does not pursue his complaint, the trademark will be registered in the name of the requesting person and the objecting person will not be entitled to claim a refund of the paid registration fee.

Procedures for the Transfer or Change of a Trademark

Article 27:

If an objection is about the registration of a trademark's transfer, registration of a trademark's change or registration of change in the productions to which a trademark is aligned procedures of objections will be implemented.

Court's Decision

Article 28:

- (1) During assessment of a complaint a relevant commercial court will decide about the approval or cancellation of a registration.
- (2) The court's verdict shall be published in an official newspaper at the cost of a claimant. The claimant can seek the refund as damages from the convicted.

Use of a Trademark

Article 29:

If a protestor proves that a trademark is continuously used by him/her the commercial court will issue a verdict for the registration of the trademark in his/her name. If a trademark is already registered in an applicant's name, the registered name will be deleted and the commercial court will issue a verdict on re-registration of the trademark in claimant's name.

Processing Time of an Objection

Article 30:

Course of time for the hearing or processing of a lawsuit against a registered trademark shall be one year. Persons who do not lodge a lawsuit against the registration of a trademark within this period their objections will not be hearable.

Chapter Four

Penalties

Violations

Article 31:

(1) In case of violation of the following conditions, according to the situation and damages caused, compensation shall be paid:

- A) Forging or counterfeiting a trademark which has already been registered at the central registration office (division of trademarks registration), or use of a trademark to deceive people.
- B) Deliberate use of a forged or imitated trademark.
- C) Pasting the trademark of a third person in commercial products without permission of its owner.
- D) Deliberate sale, offer to sale, dissemination or possession of goods, products or services containing fake, imitated or illegal trademark.
- E) Use of marks mentioned in article 8 of this law.
- F) Mentioning medals, diplomas, gifts or honorary ranks in good, products or services which do not belong to them, or using the commercial names of institutions when memberships are not attained.
- G) Using special privileges/concessions given to exhibiting goods or products and to joint services unless their sources and nature are clearly mentioned.
- H) Using marks of famous geographic locations in products, goods or the services of a product in a manner which deceives people.

(2) In case of repeated violation of provisions mentioned in part (1) of this article, a violator shall pay double the cost of damages or shall be incarcerated for no less than six and no more than 12 months.

Claiming a Compensation

Article 32:

A person receiving damage due to forgery in a trademark can request it not to be used and demand compensation from the doer.

Confiscation of Goods and Closure of Activities' Site

Article 33:

An authorized court, in addition to issuance of penal verdicts specified in this chapter, can, where necessary, order the confiscation of goods and products relating to a crime and the amounts earned from it and the tools used for it and can also order closure of locations where the activities took place for six months and in case of repetition order permanent closure of the activities.

Chapter Five

Miscellaneous Rules

Registration Fee

Article 34:

- (1) An owner is responsible to pay specified amounts in return for application papers and registration of a trademark as registration fees, the amounts will be determined the Ministers' Council.
- (2) Amounts mentioned in part (1) of this article shall be paid to the government's account in the bank.

Enactment of Regulations

Article 35:

For better implementation of this law, the ministry of commerce and industries can draft and enact, after appropriate procedures, regulatory measures, law and procedures.

Date of Enforcement

Article 36:

This law is promulgated after signature [of the President] and shall be published in the official gazette and with its promulgation the trademarks law published in official gazette No. 100 of 1960 shall be nullified.