

(non-official Translation)

**Ministerial Decision No. (353) of 1995 Pertaining to
Implementing By-law on Intellectual Property Right Law**

“Trademarks”

The Minister of Industry and Trade¹,

having perused:

- Republican Decree on Law No. (20) of 1991 on the Council of Ministers;
- Republican Decree on Law No. (116) of 1992 on the Organizational By-law of the Ministry of Supply and Trade²; and
- Republican Decree on Law No. (19) of 1994 on Intellectual Right

Resolves:

Definitions:

Article (1)

For the purpose of this by-law, the terms below shall be understood hereinafter as follows:

- a. **Ministry:** the Ministry of Industry and Trade³, which is the competent authority for trademarks registration;
- b. **Minister:** the Minister of Industry and Trade;
- c. **General Registrar:**⁴ the Director General of Trade Registry;
- d. **Competent Department:**⁵ the Industrial Property Protection Department;
- e. **Trademarks Register:** set of records kept in the competent department, which contains all information and particulars written down in the records;
- f. **Fees:** charges and fines shown in the table attached to the by-law, they shall not be amended except by a ministerial decision;
- g. **Application Forms:** forms used by the department for registration procedures and approved by the registrar;
- h. **Court:** the court in charge of considering cases and disputes on trademarks;
- i. **Law:** the Republican Decree on Law No. (19) of 1994 on Intellectual Property Right;
- j. **Grievance Committee:** the committee established by a ministerial decision to resolve grievances addressed thereto as a result of an objection, by an applicant for a trademark, against the general registrar’s decision concerning the refusal of a trademark registration application; and

¹ The term used in the original text is “Minister of Supply and Trade”; this, however, has been changed and therefore the minister is currently referred to as “Minister of Industry and Trade”.

² See footnote # (1).

³ See footnote # (2).

⁴ This definition has been amended pursuant to the Ministerial Decision No. (275) of 2002, and the new one reads: “the Director General of the competent department”.

⁵ This definition has also amended pursuant to the Ministerial Decision No. (275) of 2002, and the new one reads: “the General Department for the Protection of Trade Intellectual Property and Patent”.

- k. **Bulletin:** the official publication for publishing trademarks.

Deposit and Registration Procedures

1. Consideration

Article (2)

Fees shall be collected against the application of the trademark registration. The consideration shall be made after receiving the payment receipt and registering it. The competent department shall grant the applicant a confirmation of the date of application for consideration.

Article (3)

The date of payment for the application is considered to be the date of the application with which the registration commences to be effective.

Article (4)

The applicant shall record the particulars of the trademark registration application in the respective form and shall attach the following documents to the application:

- a. The receipt of application fees.
- b. A certificate proving the applicant's registration in the trade registry or in an equivalent agency outside the Republic of Yemen.
- c. An official letter of attorney.
- d. Six copies of the trademark identical to the original to be attached to the application form.
- e. Any document or information which the general registrar considers necessary to be submitted so as to substantiate facts.

Article (5)

Documents written in a foreign language must be accompanied by an Arabic translation from a certified translation bureau.

2. Examination

Article (6)

As the result of consideration, the application subject to examination shall be registered in the application deposit register. If an application is incomplete in terms of data or documents, the applicant shall be notified; if the applicant does not respond within 30 days from notification, he shall be considered as if he has waived his right for registration.

Article (7)

A trademark shall be examined on the basis of its substance and appropriateness for registration, in accordance with the provisions of the law. The examiner's report along with the opinion of the director of the competent department shall be recorded in writing in the specified form to be submitted to the general registrar who shall issue a decision on

the application for trademark registration, i.e. “either to approve the application, to make amendments to the trademark, or to decide on its inappropriateness for registration”.

Article (8)

The application approved for registration shall be published in the bulletin.

Article (9)

When the approval of an application is pending until one or more conditions are fulfilled in accordance with the general registrar’s decision, the application shall be treated in the same way as the one approved for publication, once the condition(s) is fulfilled within the period determined by the general registrar; and this period should not exceed 30 days as of the date of issue.

Article (10)⁶

In accordance with the provisions of Article (93) provided for in the law, in case an applicant objects to the general registrar’s decision, which requires the inappropriateness of the trademark for registration (or its approval is based on amendments to be made to the trademark), the applicant may file a grievance to the grievance committee within 20 days after being notified of the decision. If the committee’s decision is incompatible with the general registrar’s, the committee’s decision shall be the one in force. In case that the committee upholds the general registrar’s decision, the applicant may challenge the decision before the competent court.

Article (11)

The general registrar shall issue a decision to settle down the objection submitted by other parties regarding a trademark registration within the legal period for objection after hearing the two parties or one thereof if so requested. The decision is subject to challenge before the competent court within 20 days as of the date of notification. The general registrar may issue a reasoned decision to continue with registering the trademark if the objection is not based on serious reasons.

3. Registration

Article (12)

After the period determined for objection to a trademark registration comes to an end, an applicant must pay the trademark registration fees. The competent department shall record registration data in the trademark register which should include:

- a. trademark’s number and from;
- b. application date and registration date;
- c. description of a trademark;
- d. trademark-targeted products and services and classification;
- e. production or service project for which a trademark was registered;

⁶ Article (10) has been amended pursuant to the Ministerial Decision No. (275) of 2002; therefore the amended article reads: “an applicant may file a grievance to the grievance committee regarding the general registrar’s decision within a month as of the date of publishing the general registrar’s decision in the bulletin or as of the date of receiving the decision, whichever earlier. The grievance committee shall issue its decision on the grievance within a month as of the date of the grievance submission. The applicant may challenge the committee’s decision before the competent court within a month as from the date of the decision publication in the bulletin or as from the date of receiving the decision, whichever earlier.”

- f. particulars of the trademark holder;
- g. additions and modifications made to a trademark;
- h. modifications that a trademark holder may request for registration in the register;
- i. assignment and pawn of a trademark and use licenses thereof; and
- j. renewal or cancellation of registration.

Article (13)

An applicant for trademark registration shall be considered as waiving his right if six months have passed while he has not completed the registration or deposit procedures pertaining to the cases the law does not specify a period for their implementation.

The registration shall be published in the bulletin. The trademark holder shall be granted an official registration certificate which shall be consistent with the approved form and include the following data:

- a. copy of the trademark;
- b. number of the trademark;
- c. application date and registration date;
- d. name, nationality, and residence of the trademark holder; and
- e. trademark-targeted products and services and classification.

Modifications and Additions Made to Registered Trademark

Article (14)

Addition or modification occurred to a registered trademark shall be submitted through the specified form. The competent department shall consider this application in accordance with the terms and conditions relating to registration applications. Any modification or addition to a registered trademark must not substantially affect its essence. An addition or modification shall be recorded in the original registration certificate by the competent department.

Article (15)

A registered trademark holder must request the registration of the following data in the register when a change occurs thereto:

1. any change occurs in the name, occupation, nationality, and address of a right holder;
2. change to a correspondence address; and
3. change to the area address where a production or service project, for which the trademark was registered, is located; the competent department shall issue a confirmation certificate according to the specified form.

Article (16)

Any change occurring to the data of a registered trademark referred to in the previous article shall be published in the bulletin.

Renewal of Trademark Registration

Article (17)

A registered trademark holder who wishes to renew the period of protection must apply for renewal within the last year of the protection period. The competent department shall notify the trademark registration certificate holder of the deadline of the protection duration determined for the trademark within the period specified in the law.

Article (18)

A trademark holder or his/her official proxy shall apply for the renewal of a trademark registration through the specified form; the application shall be accompanied by a copy of the registration certificate and receipt of the renewal fees. Renewal shall be made without any additional examination; and any objection by other parties is not permitted. The renewal of the trademark registration shall be published in the bulletin. The trademark holder shall accordingly be granted a certificate pursuant to the official form.

Article (19)

The holder of a trademark registration certificate who wishes to cancel the registration completely or cancel some of the products or services for which the trademark was registered, shall apply for cancellation to the competent department, using the specified form, taking into consideration the circumstances where licenses for trademark use were registered; the cancellation shall be published in the bulletin.

Assignment and Pawn of Trademark

Article (20)

In accordance with the provisions of Article (100) stipulated in the law, a registration certificate holder may assign the trademark by the property transfer of the trademark or may pawn it.

Article (21)

An assignee, pawnee, or official proxy shall apply for recording the assignment of a trademark or the pawn thereof in the specified form; documents attesting the assignment or pawn shall be attached to the application.

Article (22)

The competent department shall record in the register an assignment or pawn and add particulars of the new holder or pawnee and the reason behind the assignment or pawn, date, as well as the period in case of pawn.

Article (23)

The assignment and pawn of a trademark shall be published in the bulletin which contains the following data:

- a. trademark number and its registration date;
- b. trademark-targeted products and services;
- c. name of ex-holder or pawnor;
- d. name, nationality, and address of a new holder or pawnee; and

- e. date of assignment or pawn, and date of its record in the register.

A new holder or pawnee shall be granted a certificate confirming the registration of a trademark's assignment or pawn in the trademark register.

Article (24)

A pawn shall be cancelled upon a trademark holder's request to the competent department; documents attesting the exhaustion of a pawn shall be attached to the application. The cancellation shall be published in the bulletin provided that the announcement contains the issue number and date of the bulletin in which the pawn and other related data was published.

Trademark Use Licenses

Article (25)

- a. In accordance with the provisions of Article (98) of the Law, a registration certificate holder may, under a written and approved contract, authorize a person or more to use the trademark in respect of all or part of trademark-targeted products or services. Meanwhile, the trademark holder may use it himself/herself unless otherwise stated in the contract. The license duration must not exceed the legal duration specified for the protection of the trademark itself.
- b. The beneficiary of license must apply for the registration of the trademark license to the competent department. The license shall have no effect towards others except after publishing and recording it in the register.

Article (26)

A license holder shall not be entitled to waive the right of license to others or shall not grant a sub-license unless otherwise stated in the contract.

Article (27)

A trademark use license shall be cancelled if requested by the trademark holder or license holder provided that evidence of the contract cancellation or termination shall be attached to the application.

Article (28)

The department has to notify the other party to the license of the content of the application filed for cancellation. In case the other party does not object the cancellation within 30 days as of notification, (s)he shall be considered to have consented.

Article (29)

In case of an objection, the general registrar shall settle it with an administrative decision. The decision shall be subject to challenge before the competent court within 20 days as from notification.

Article (30)

The cancellation of the license shall be published in the bulletin.

Final Provisions

Article (31)

If a trademark is registered without determining a specific colour or to a part thereof, its registration shall be deemed all-inclusive colours.

Article (32)

If a trademark subject to registration for a Yemeni national is written in a foreign language, it has to be written in Arabic (oral or translated) along with the foreign language.

Article (33)

Every procedure issued by a decision from the competent court shall be recorded in the register.

Article (34)

If a trademark includes elements lacking a distinguishing characteristic or components that cannot be registered separately as a trademark, the general registrar may give instructions on the exclusion of such elements or their non-protection.

Article (35)

In case of applying for a trademark registration renewal, it shall not be permissible to make changes to a trademark or to add products or services to the ones the trademark has already been registered for.

Article (36)

The bulletin to be assigned for the publication of trademark announcements shall be identified by a ministerial decision.

Article (37)

Annexes attached to this by-law shall be deemed an integral part thereof; they are as follows:

a. Annex (1):

Table of fees and fines which have to be collected for measures which are to be conducted in accordance with the provisions of the law and by-law.

b. Annex (2):⁷

Classification List of products and services for the purpose of trademarks registration; if there is a doubt in relation to the category any product or service belongs to, the general registrar shall settle it.

⁷ An amendment has been made to Annex (2) pursuant to the Ministerial Decision No. (17) of 2005; the amendment reads: "the international goods and services classification for the purpose of trademarks registration issued under Niece Convention concluded on 15 June, 1957 and its amendments as reference for goods and services classification for the purpose of trademarks registration, shall be used."

Article (38)

This decision shall be enforced as from its issuance, and implementers shall be notified thereof. This decision shall be published in the official gazette.

Issued in the Ministry:

Dated: 14/5/1416 Hijri

Corresponding to: Oct. 8th, 1995

Annex (1)
 (Amended) Table of Fees and Fines Pertaining to Trademark Registration Procedures
 under Decision No. 263 of 1999

S/N	Required Procedures	Fees Due (YR)
1	Application for filing a trademark for each set of products or services belonging to one category.	3000
2	Trademark registration	9000
3	Application for recording the changes provided for in Article (15) of the by-law.	3000
4	Application for addition or modification on a registered trademark	4500
5	Application for having access to the trademarks register or obtaining an output or copy of the data therein or approval of the certificate issued by the department	1500
6	Obtaining a document in lieu of a lost one	6000
7	Objection to trademark registration	6000
8	Response to an objection	3000
9	Application for registering the assignment of a trademark or the pawn thereof: a. if an application is filed within 6 months as from the date of assignment or pawn. b. if an application is filed 6 months after the date of assignment or pawn.	7500 7500 + delay fine of 50% of registration fees annually
10	Application for registering a trademark use license: a. if an application is submitted within 6 months as of signing the contract by parties. b. if an application is submitted 6 months after the parties signed the contract.	7500 7500 + delay fine of 50% of registration fee annually
11	Application for cancellation	3000
12	Application for renewing a trademark registration: a. if an application for renewing a trademark registration is submitted within the last year of the protection period. b. if an application is submitted within 3 months after the termination of the protection period.	12000 12000+ delay fine of 25% for 1 st month, 50% for 2 nd month, 100% for 3 rd month