

Trademark Law of Iraq

Trademarks & Indications Law Law No. 21 for the Year 1957 With Amendments

Pursuant to law No. 21/1957 and its amendments, the Iraqi legislator regulates the protection of trademarks. The provisions of this law are the same ones as in the Egyptian, the Libyan and the Kuwaiti trademarks laws. They indicate clearly the trademarks capable of registration, their registration procedures, offences related to trademarks and the decisions concerning them.

We, Faisal II, King of Iraq, after perusal of Article 26 (a) of the constitution and with the approval of the Senate and the Chamber of Deputies, do hereby sanction the following law order the promulgation thereof:

Chapter I General Provisions

Article 1

In this law the following words shall have the meanings shown against them:

"Minister" - Minister of Economics.

"Registrar" - Registrar of Trademarks.

"Register" - Register of Trademarks.

"Court" - The court of First Instance.

"Mark" - Any distinctive shape of words, signatures, figures, letters, design, symbols, addresses, seals, drawings, engravings or combinations, thereof if used upon or intended to be used upon any goods or in connection therewith as indicant that the goods belong to the proprietor of such trademarks b virtue of manufacture, selection, dealing with or offering for sale.

Article 2

1) There shall be kept at the Ministry of Economics a Register in the custody of the Registrar, wherein shall be recorded all the marks, the names and addresses of their proprietors, descriptions of their goods, declarations of assignments, transfers, and cessions affecting them. The public shall be entitled to inspect the Register and receive certified copies thereof on payment of the prescribed fees.

2) The existing Register shall be deemed to be supplementary to the Register provided for in this Article. The validity of any entry in respect of any mark recorded in that register shall be determined in accordance with the law which was in force at the date of such entry. Such marks shall obtain their original dates and shall be deemed to be marks registered under this law.

Article 3

A mark shall be deemed to be the property of the person who registered it. The proprietorship of the mark may not be contested if the proprietor used it for five consecutive years from the date of completion of registration.

Article 4

Anyone desirous of using a mark for distinguishing goods of his own production, manufacture, working, or selection, or goods in which he trades or offer for sale or intends to trade in, may apply for the registration thereof in accordance with the provisions of this law.

Article 5

For the purpose of this law, the following shall not be registrable as marks:

1) Marks devoid of any distinctive character or which are used in trade to describe the kind, nature, quantity or place of production of the goods, or marks which in the ordinary language of Iraq indicate any of such matters.

2) Marks, expressions, or designs which are injurious to public morals or contrary to public order and

which the Registrar considers to conflict with the public interest.

3) Marks which are identical with, or similar to the flags, coats of arms, decorations and medals of Iraq or of any foreign State, or of the United Nations or of any Agency thereof.

4) Marks which are identical with, or similar to, the insignia of the Red Cross, Red Crescent, Geneva Cross, or Red Star.

5) The name, title, portrait, or armorial bearing of a person except with his written consent.

6) Figures, letters and words which are calculated to deceive the public or which lead the public to believe in the genuineness of untrue descriptions in respect of the goods.

7) Marks which are calculated to lead the public to believe in the genuineness of untrue declarations as to the origin and qualities of the goods as well as marks containing a fictitious, imitated, or counterfeit business name.

8) Declarations in respect of titles of honor which the applicant for registration cannot legally prove his title there to, or which contain statements calculated to lead to the belief that the proprietor thereof enjoys sublime patronage without any supporting written evidence.

9) Marks similar to a mark belonging to other persons for the same article, if it is calculated to deceive, or cause confusion to the public.

10) Geographical names where the use thereof is likely to cause confusion to the source or origin of the goods,

11) Marks which the office of Israel boycott decides to be identical to or resembling on Israeli Mark, emblem or symbol.

Chapter II

Registration Procedure

Article 6

An application for the registration of a mark shall be filed with the Registrar in the manner and according to the conditions prescribed in regulation made under this law.

Article 7

A mark shall be permitted to be registered in respect of one or more articles or in one or more classes of the products in the schedule of classification of goods annexed to the regulation made under this law.

Article 8

Where before any publication is made two or more persons apply simultaneously for the registration of the same mark or of identical or similar marks in respect of goods or articles of the same class of products, the Registrar may suspend all such applications until the production to him of a renunciation by the disputants in favor of one of them duly attested or a final judgment from the court.

Article 9

The Registrar may impose limitations or modifications as he may deem necessary for the better specification, description, mode or place or user of the mark, or such other matters, for preventing confusion with any other mark already registered, or for any other reason as he may think fit. In case of refusal or conditional acceptance, the Registrar shall notify the applicant, in writing, of the grounds, of his decision and of the relevant facts. If the applicant shall not, within thirty days, comply with the limitations imposed by Registrar he shall be deemed to have abandoned his application.

Article 10

Decisions issued by the Registrar (except those stipulated in para. 3 of Article 24 of the Law) will be subject to appeal to the court within 30 days from the date of notification of the decision.

Article 11

1) In the event of the acceptance of the mark in principle, the Registrar shall publish, in three consecutive numbers of the bulletin of the directorate General of Commerce, an advertisement to that effect.

2) Any interested person may, within ninety days from the date of the last advertisement, file a written notice of opposition against the registration of the mark.

3) The Registrar shall serve a copy of the notice of opposition on the applicant for registration who shall, within thirty days, send a written reply to the opposition. If no reply is received within the said

period, the applicant shall be deemed to have abandoned the application.

Article 12

- 1) Before giving a decision on the opposition, the Registrar shall, if requested to do so, hear both of the parties.
- 2) The Registrar may decide either to accept the registration or to reject it. In the former event, he may impose any limitations he may deem necessary.
- 3) If there is reason to believe that the opposition is not serious, the Registrar may, notwithstanding the opposition, give a reasonable decision to proceed with the registration.

Article 13

The proprietor of a registered mark may apply at any time to the Registrar to alter or add to such mark in manner not substantially affecting its identification. The Registrar shall give a decision approving the registration of such alteration in principle, in accordance with the provisions prescribed for decisions on original applications for registration of mark. The decisions shall be notified to the interested parties and shall be subject to opposition as aforementioned.

Article 14

The registration shall have a retroactive affect as from the date of filing the application.

Article 15

The proprietor of a mark shall, on completion of registration thereof, be given a certificate containing the particulars prescribed in the regulation.

Article 16

Where registration of a mark is not completed within six months from the date of the application by reason of default on the part of the applicant the Registrar may inform the applicant, in writing, to complete the registration within the period prescribed in the regulation made under this law. Otherwise he shall be considered as having abandoned the application.

Chapter III

Transfer Of Ownership & Pledge On Marks

Article 17

The ownership of a mark shall be transferable and the mark shall be pledged or seized together with the business dealing in the goods carrying that mark.

Article 18

- 1) In the absence of any agreement to the contrary, the transfer of a business includes the mark, where a business is transferred without the mark, the transferor shall continue, unless it is agreed to the contrary, to manufacture, produce and trade in the products in respect of which the marks is registered.
- 2) If for any reason, a person cease to carry on his business and such cessation results in the devolution of ownership of the mark on more than one person, and the successors desire the apportionment of the ownership of the mark, the Registrar shall be permitted to apportion it between the persons who prove to be actually carrying on that business, subject to any limitations, conditions and modifications which the Registrar may deem fit.

Chapter IV

Cancellation & Renewal

Article 19

The transfer of ownership, pledge, and seizure of a mark shall not be proof against third parties except after advertisement and registration.

Article 20

1) The duration of protection of a mark shall be for fifteen years, renewable from time to time by the proprietor for like periods upon application made during the last year in the manner prescribed in the regulation and payment of the prescribed fee.

2) Where a trademark has been removed from the register by reason of non-payment of the renewal fees, such removal shall not nevertheless preclude the mark from remaining in the name of its proprietor for one year following the date of such removal provided that it may be registered during this period if the Registrar is satisfied that there has been no effective use of the mark which has been removed during the two years immediately preceding its removal or that no deception or confusion would be likely to arise from the use of the mark presented for registration by reason of any prior use of the mark which has been removed.

Article 21

Any interested person shall be entitled to apply to the court for the cancellation of the registration of any mark, relying in his application upon the grounds that its registration had been obtained unlawfully, or that there was bad intention in its use or if it had not been used during the two years following the date of its registration unless such non-use may be proved to be due to uncontrollable cause or lawful excuse.

Article 22

No canceled mark may be registered for a like period in a name other than that of its proprietor until after the lapse of at least one year from the date of its cancellation.

Article 23

The cancellation and renewal of registration shall be advertised in the manner prescribed in the regulation.

Article 24

1) The Registrar as well as any interested person shall apply to the court for the cancellation of a mark registered contrary to the law.

2) The Registrar shall be allowed to cancel any trademark which he considers to be conflicting with the public interest or which the Boycott of Israel Office in Iraq decided to be identical or resembling an Israeli mark, emblem or symbol and refuse its registration if not already registered.

3) Decisions issued by the Registrar according to para 1 of this Article and para 2 of Article 5 of this law are subject to appeal to the Minister within 30 days from the date of notification of the decision and those concerned may object the Minister's decision, the Council of Ministers within 15 days from the date of notification and the Council decision in this respect is final.

Article 25

Where, for any reason whatsoever, proprietorship in a mark devolves upon a person, such person shall apply to the Registrar to register in his name. The Registrar shall register the mark in the name of that person and shall record the means of devolution.

Article 26

The Registrar may, whenever there is justification, make any alteration in the register if this alteration is designed to correct a mistake or to complete a technical deficiency. In the case of fault in the registration, assignment or transmission of any registered trademark the Registrar shall refer the matter to the court for an order for correction.

Article 27

1) Subject to any limitations or condition on the Register, the registration of a person as a proprietor mark shall entitle such person to the exclusive use of such mark on in connection with the goods in respect of which it is registered, if such registration is in conformity with the provisions of the law.

2) Provided that where two or more persons are registered as proprietors of the same or substantially the same trademark or marks in respect of the same goods, no rights of exclusive use (except in so far as

their respective rights shall have been defined by the Registrar or by the court) shall be acquired by any such person as against any other by the registration thereof, but each of such persons shall have the same rights as if he were the sole registered proprietor thereof.

Article 28

The Registrar shall be entitled to, upon application by the owner of a registered mark, in the manner prescribed:

- 1) Strike out any error in the registered name or address of the owner of the mark.
- 2) Enter any change occurring in the name or address of the person registered as owner of the mark.
- 3) Strike out any of the goods in respect of which the trademark has been registered.
- 4) Enter any disclaimer or any memorandum connected with any mark where that disclaimer or memorandum does not increase the rights created by the existing registration of the mark.
- 5) Cancel the entry of any mark recorded in the Register in his name.

Article 29

1) The Minister may from time to time, make orders as he may deem necessary, empowering the Registrar to amend the register whether by making new entries or expunging or altering certain entries in so far as may be required to obtain uniformity in the description of goods or classes of goods mentioned in it and relating to the registered trademark.

2) The Registrar shall not, in the exercise of any of the powers conferred upon him by the Minister as aforesaid, make any amendment in the register which will result in the addition of other goods in respect of which the mark has been registered, nor shall he be entitled to date the registration of a mark of any goods with a date prior to the date of registration.

3) The proprietor of a registered mark shall be notified of any amendment connected therewith and such amendment shall be published in the bulletin. Any person aggrieved by such amendment may file a notice of opposition with the Registrar.

Article 30

The Registrar shall have the right to appear before the court and state his opinion in every notice of opposition filed with the court. He shall also appear before the court if the court requires him to do so, or shall file an appropriate statement signed by him stating what he considers necessary as to the details of the proceedings taken in the case or any other matters connected therewith and which have bearing on his duties as a Registrar.

Chapter V

Trade Indications

Article 31

Any statement or details which have reference either directly or indirectly to the following, shall be deemed to be a trade description.

- 1) Nature, number, quantity, measure, weights and strength of the goods.
- 2) Country of manufacture.
- 3) Method of manufacture and production.
- 4) Ingredients entering in the composition.
- 5) Name and description of their producer and manufacturer.
- 6) Whether there are any patents, or commercial or industrial privileges, prizes, or characteristics in respect thereof.
- 7) Name of shape in which the goods are ordinarily known.

Article 32

Every trade indication must be true in all respects whether it is placed on the goods themselves, or on the premises or stores or in their firm names, or on packages, invoices, letters, advertising materials and the like, which are used in offering the goods to the public.

Article 33

The name or firm name of the vender shall not be placed on goods imported from a country other than that in which the sale is concluded unless accompanied by a precise statement written in conspicuous letters specifying the locality in which they were produced.

Residents of a locality having particular fame in the production of manufacture of certain products, who trade in similar products imported from elsewhere shall not place on the latter products their marks if such action is calculated to deceive the public as to the source of those products unless satisfactory measures are taken to prevent any confusion.

Medals, diplomas, prizes, and titles of honor of any kind whatsoever shall not be mentioned except in respect of products entitled to such awards or in respect of persons and trade names to whom they were awarded or their successors in title on condition that an accurate statement is given as to date and kind thereof and the exhibitions or tournaments in which they were granted.

Any person participating with others in exhibiting products may not use for his own goods the awards granted to the common exhibits unless he shows clearly the source and nature of such awards.

Article 35

Whosoever:

- 1) Contravenes the provisions of Chapter Five of this law, or
- 2) Counterfeits or imitates a mark registered under this law in a manner likely to deceive the public or willfully uses a counterfeit or imitated mark, or
- 3) Willfully places on his products a mark which is the property of another person, or
- 4) Willfully sells, offers for sale or circulation, or possesses for sale products bearing a counterfeit or imitated mark or a mark which, to his knowledge, has been unlawfully placed thereon, shall, upon conviction be punished with imprisonment for a term not exceeding three years and with a fine not exceeding two hundred Iraqi Dinars or with either of such penalties.

Article 36

Whosoever:

- 1) Uses an unregistered mark of those prescribed in paragraphs 2 to 11 of Article 5 of this law, or
- 2) Contrary to reality puts on his marks or commercial papers any references calculated to lead to the belief that the marks are registered whereas in fact they are not registered, shall upon conviction, be punished with imprisonment for a term not exceeding one year and with a fine not exceeding one hundred Dinars or with either of such penalties.

Article 37

The proprietor of a mark may, at any time even before the institution of any civil or criminal action, obtain, upon application supported by an official certificates establishing the registration of his mark, an order (from the examining magistrate or from the court which has the jurisdiction to hear and determine the offence or damages) to take provisional measures, more particularly to seize the instruments and tools used in the commission of the offence as well as the products, goods, firm name, wrapping materials, papers etc., which bear the mark the subject matter of the offence; provided the applicant shall provide the necessary guarantee fixed by the examining magistrate or the appropriate court, guaranteeing the losses which may be sustained by others as a result of that measure.

Seizure may also be ordered upon goods imported from abroad. The measures prescribed in this article shall be null and void if, within ten days from date of taking them, no civil or criminal suit is brought against those against whom they were taken.

Article 38

The court competent to hear any civil or criminal action shall be permitted to order the confiscation and sale of the seized articles and the recovery from the sale price the damages awarded or fines imposed or order the disposal thereof in the manner it may deem advisable.

The court may also order the publication of the judgment at the expense of the adjudged person. Likewise, the court may order the destruction of the illegal trademarks or the products bearing such marks as well as the wrappings, packing material, firm names, etc. It may also order the destruction of the instruments and tools used in the commission of the offence.

Chapter VII

General Provisions

Article 39

Provisions may be replaced by special regulations for ensuring the necessary provisional protection to marks placed on products or goods exposed in exhibitions which will be held in Iraq provided that such arts are protected in their own countries.

Article 40

The Trademark Law No. 39 of 1931, as well as its amendments and the regulations made thereunder are hereby repealed.

Article 41

This law shall come into force one month after its publication in the Official Gazette.

Article 42

The Ministers of Economics and Justice are to implement this law.

Done at Baghdad this 25th day of Shawal 1376, A.H.
corresponding to 25th day of May 1957, A.D.
Published on 16 June, 1957. Comes into effect on 16 July, 1957.