

November 12, 2012

Draft Amendments in Track Changes

Trademarks Law

Chapter 1

General Provisions

The Basis

Article 1:

This law has been enacted in the light of the provisions of Article 11 of the Constitution of Afghanistan.

Objective

Article 2:

The objectives of this law are as follows:

1.

Types of Trademarks

Article 4:

| Trademarks shall include (one or more) names, words, signatures, letters, [numerals](#), figures, [combinations of colors](#), drawings, titles, seals, pictures, inscriptions, advertisements, templates orals,

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 ~~publicities~~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.
11. Marks containing an imaginary, imitated or forged commercial name.
12. Marks related to natural or legal persons and the use of which is prohibited.
13. Trademarks of companies publicized and disseminated in Afghanistan, unless authorized by their owners.
14. Identical or confusingly similar signs for goods or services which are identical or similar to those

3. Name, description and nature of goods, products and/or services for which the trademark is intended to be 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 13:

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 Business Registry (in the Trademarks Registration Section) taking into account the provisions of this 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.

Trademarks are transferable and the transfer shall be valid if recorded separately with the Central Business Registry (Trademarks Registration Section) in accordance with the provisions of this law and the relevant regulations.

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 22:

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 in accordance with the provisions of paragraph (2) of Article (20) of this Law.
4. When registration is formally cancelled by the commercial court based on a petition by an interested party and on a showing of at least three uninterrupted years of non-use of the mark by the owner. No cancellation on these grounds may take place if the mark owner shows valid reasons for non-use, including circumstances arising independently of

the trademark is given for identification and recognition purposes, the provisions set forth for objections shall be applicable.

Court Decision

Article 28:

1. The relevant commercial court shall, while hearing the application of the parties to the dispute, take decision concerning admission or rejection of the registration in view of the reasons being provided.
2. The final decision of the court shall be published in an official newspaper the cost of which shall be borne by the prevailing party. The prevailing party may request such costs as remedy of losses from the losing party.

Use of the Trademark

Article 29:

Where the objecting person proves that the trademark being objected to, has been continuously used by him/her, in such a case the commercial court shall issue 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 omitted and the commercial court shall issue order concerning registration of the trademark in the name of the objecting person.

Time Limits for ~~on Filing an~~ Objection

Article 30:

1. The time limit for initiating an objection against a registered mark shall be two years from the date of publication.
2. In the case of a well-known mark, the time limit for initiating an objection against a registered mark shall be five years from the date of publication.

3.

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

Confiscation of Goods and Shutting down of the Work Site

Article 33:

The competent court shall, in addition to convicting the violator of punishments provided for in this chapter, order confiscation 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