

THE TRADEMARK LAW

The Pyidaungsu Hluttaw Law No. 3, 2018 Day 11th Waning day of Pyatho Month of M.E year 1380

(Year 2019, January Month, 30th Day)

The Pyidaungsu Hluttaw here by enacts this law

CHAPTER I

Title, Commencement and Definition

1. (A) This law shall be called the Trademark Law.
- (B) This law shall take effect on such date as the Union President may, be notification, appoint.
2. The following words expressions contained in this law shall have the meanings given here under.
 - a) **The state** means the Republic of the Union of Myanmar.
 - b) **The Central Committee** means Central Committee for Intellectual Property Rights organized according to this law.
 - c) **The Ministry** means Ministry of Commerce.
 - d) **Relevant Ministry** means Ministry of Information, Ministry of Industrial, Ministry of Agricultural, Livestock and Irrigation, Ministry of Education.
 - e) **Agency** means Agency for Intellectual Property Rights organized under this law.
 - f) **Department** means Department to perform the Intellectual Property Rights matters was assigned by the Ministry.
 - g) **Registrar** means Assistant Director General who carries out the functions of the registration of Intellectual Property.
 - h) **Inspector** means Assistant Director and above high-level officials who perform the functions of registrations and inspection of the related matter.
 - i) **Intellectual Property Rights** means right which is legally protected for the creations made by self knowledge. In this expression, copyright, creative right, Industrial design right, Trade mark right and other kinds of Intellectual Property rights are included.
 - j) **Mark** means any visually perception sign in particular words including personal names, letters, numerals, figurative elements three dimension forms and combinations of colors as well as any combinations of such signs capable of distinguishing the goods or services of are undertaking from those of other undertakings; In this expressions, Trademark, Service mark, Collective mark and Certification mark are included.
 - k) **Trademark** means any mark capable of distinguishing the goods of one from those other undertakings in trade.
 - l) **Service Mark** means any mark capable of distinguishing services of one undertaking from those of other undertakings in trade.
 - m) **Collective Mark** means any mark that owned by an organization mark such as a co-operative, an association or a federation of industries, producers or

traders and that distinguishes the goods and services of the members of the collective entity from the goods and service of other undertakings.

- n) **Certification Mark** means any mark capable of distinguishing the goods or service certified by the owner of the mark in relation to origin, quality, standard or other characteristics from other goods or service not so certified;
- o) **Geographical Indication** means any indication which identifies goods as originating in the territory of a country or a region or a locality in that territory where a given quality, reputation or other characteristics of the goods is essentially attributable to its geographical origin.
- p) **Well-Known Mark** means any mark that is well known in the relevant sector of the public in the Union in accordance with the criteria.
- q) **Trade Name** means the name or designation identifying and distinguishing name among the enterprises.
- r) **Owner of the mark** means any natural person or legal entity as the owner of a registered mark in the register of the department.
- s) **Right Holder** means any nature person or Legal entity which is to be regarded as the mean or license of a registration mark, the owner of a well-known mark, the owner of a geographical indication, Trade Name and the owner of a trademark.
- t) **Intellectual Property Court** means the Court legally established by the Union Supreme Court under the laws to adjudicate the Intellectual Property cases or the courts which are assigned the jurisdiction and Power of the Court.
- u) **Member State** means any member of conventions, treaties and agreements of international organizations and regional organizations relating to intellectual properties of which the union is a member.
- v) **Right of Priority** means the right of priority contained in Section 31.
- w) **Right of Exhibition Priority** means right of Trade fair priority contained in Section 32.

Chapter II Objectives

3. The objectives of this law are as follows;

- a) To develop more in investments, trade and Commerce by given the protecting the mark.
- b) To give protection to the interests of the owner of the marks and right holder.
- c) To build a fair market competition, to create the safe atmosphere of the consumers and prohibit the entering of the counterfeit commodities into the market.
- d) To promote the quality of the state production by protecting the geographical indication to develop further of the local peoples economy to enter the international market.

Chapter III
Formation of central committee, and functions & duties

4. The Union Government
- (A) Shall Form the intellectual property central committee to supervise intellectual Property work as follows;
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| (1) Vice-President | Chairman |
| (2) Union minister of the economic and trade ministry | Vice-Chairman |
| (3) Deputy ministry of the related ministries | Member |
| (4) Deputy Ministers or Director Generals of Other proper ministries | Member |
| (5) Not more than four persons of the intellectual property Professionals' | Member |
| (6) Two representatives of the NGOs | Member |
| (7) Assignee by the President | Secretary |
| (8) Director General of the Department | Associate Secretary |
- (B) The Central Committee formed under the sub-section (a) may be reformed as necessary.
- (5) The functions and duties of the Central Committee are as follows;
- (a) To lay down the Patent Policies, Strategies, Work plans to develop the intellectual property works of the state.
- (b) Perform and supervise the National Patent policies, Strategies and work plans.
- (c) To encourage the state economic development, promote the foreign investments and develop the small medium-business, by patent system, give directions.
- (d) To develop the patent works and encourage the training and nurturing of the necessary human resources.
- (e) To develop the patent system and perform the patent system effectively, co-ordinate the related government developments, other organizations & individual businessmen.
- (f) To get technology and other necessary aids, encourage the communication among the internal and foreign organizations.
- (g) Perform the patent functions and duties given properly by the Union Government.

Chapter IV
Formation of Agency and, Functions & Duties

6. The central committee.
- (a) Shall term the intellectual Property Agency with the agreement of Union Government as follows.
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| 1. Secretary of the Central | Committee Chairman |
| 2. Agency and related Director Generals Of ministry and related member ministries | Member |
| 3. Not more than eight persons of the members of relevant technical professionals; | Member |
| 4. Not more than five members of the representatives of the NGO's; | Member. |
| 5. Director General of the Department | Secretary. |
| 6. Departmental Officials of Departs | Associate Secretary |

- (b) May reorganize the Agency formed under subsection (a) as necessary.
- (7) Chairman of the Agency shall be presumed as a Deputy Minister Level.
- (8) Functions and Duties of the agency are as follows.
- a) Coordination among the Trademark Rights Works.
 - b) Perform and achieve the National Trade Mark policies, Strategies, Work plans and nurturing of the human resources, laid down by the central committee to develop the trademark copy right system effectively.
 - c) Study and submit to the Central Committee & suggest the state to become a member of the trademark related conventions and agreements.
 - d) In accordance with the trademark conventions, treaties and agreements, as a member state, the Agency shall perform and achieve the provisions.
 - e) Coordinate with the Internal related organizations, international organizations, and local organizations and members states.
 - f) To take action against the infringement of the trademark rights, form the necessary work force and assign the duties accordance with the agreement of **Central Committee**.
 - g) To perform the functions of the trademark related works; form the necessary Task Force and assign the duties according to the agreement of **Central Committee**.
 - h) Protect the high quality of local products of the union to develop the economics of the local people.
 - i) Decide and judge on the appeal of the decision of the registrar.
 - j) Prescribe the fees according to this law with the agreement of Union Government through the **Central Committee**.
 - k) Approving and prescribing a seal to be used by in granting the registration trademark
 - l) Submit the work reports and other necessary reports to the central committee.
 - m) Submit the annual report of the Trademark right to the central committee.
 - n) Perform intellectual properties related works given by **the Central Committee** at proper manner.

CHAPTER V

The Function & Duties of the Department

The functions and duties of the department are as follows: -

- a) Notify the registration of Trademark.
- b) Maintain the registration lists of the Trademark.
- c) Supervise the performances of the divisions established of according to jurisdiction of intellectual properties.
- d) Perform the trademark assignments given by the Agency at proper manner.

CHAPTER VI

Appointment of Registrar and Inspector and prescribed functions and duties

10. The ministry may appoint registrar and necessary inspectors as submitted by agency and assign duties to perform in the department.
11. The functions and duties of registrar are as follow;
 - a) Supervising the functions & examinations relating to the registration of marks;
 - b) When performing the functions and duties of registration of marks, coordinate in accordance with the submission of the inspector.
 - c) Give decision related to the functions of the mark registration.
 - d) Perform the functions and duties given by the central committee and agency.
12. The functions and duties of the inspector are as follows:-
 - a) Examining the application for registration of marks and geographical indication.
 - b) After examining the objection and defense performing the functions of the application for registration of marks, submit the findings to the register with the opinion and remark.
 - c) When performing the functions and duties relating to the registration of marks, asking the necessary persons and inspecting the documentations.
 - d) After examining the application for registration of mark, submit it to the registrar with opinion and remark to grant it or not.
 - e) Perform the functions and duties of intellectual property were assigned by Agency, Department and Registrar.

CHAPTER VII

Non-Registrable Marks

- (13) A mark that falls under any of the following grounds **should be presumed**, as a strong reason and the mark shall not be granted registration.
 - a) Lacks distinctiveness
 - b) Consist exclusively by of goods or kind of services to designate the kind, quality, intended purpose, value, place of origin, the time of production or other signs or indication.

Proviso: If the facts of the sub-section (a) and sub-section (b) falls under any of the following grounds the registration of mark shall not be denied.

 - a) As the mark has been used by the applicant before the application date, the mark was a well-known mark among the consumer.
 - b) The application used this mark exclusively and continuously by the applicant in the trade field of the Union.
 - c) Affecting adversely of public orders morality, faith and conscience or venerated cherished culture of the Union and seared custom of the native of the country.
 - d) Becoming the general usage or custom in the contemporary usage and provincial usage in the trade field.
- (e) Relating sub-section (d) cheating the public or trade field to be deceived.

- (f) Total or partial reproduction or imitation of the reproduction of a flag adopted by a state, an armorial beastie and emblem, official sign or hallmark indicating control And warranty adopted by a state, other armorial bearings flags, other emblems, abbreviations, and names of international and inter governmental organization and unless authorized by the authorities of the state.
 - (g) Using emblems with particular protection under international treaties to which the Union is a contracting party.
14. A mark that falls under any of the following grounds **shall be relevancy** to be refused as a ground and the mark shall be refused to be registered.
- a) If it is identical or similar to an earlier mark registered in the name of different person, the goods or in respect of which registration has been requested are identical or similar to the goods or services for which earlier mark has been registered and the use of the sign would cause a likelihood of confusion with that mark.
 - b) Without the permission of the relevant person or organizations, using the mark affecting the person rights of a person; or the name and reputation of the legal organization.
 - c) The mark affecting the infringement of IPRS of the other person.
 - d) Not filing in good faith for registration of the mark.
 - e) If it is identical or similar to a well-known mark, the goods or services in respect of which registration of sign is applied for are identical with or similar to the goods or services for which the well-know a mark is used and the use of the sign would cause a likelihood of confusion with that mark.
 - f) If it is identical or similar to a registered well-knows mark, the goods or services in respect of which registration of the sign is applied for are dissimilar to the goods or services for which the well-known mark is registered, the use of the sign would indicate a connection between the goods or services for which it is used and the owner of the interests of the owner of the well-known mark.

CHAPTER VIII Application

- 15 In order to register a mark for the intellectual properties rights, an application shall be filed to the registrar in accordance with the stipulations by any person who files the application for the registration.
16. The Applicant shall provide as follow:
- a) May prepare the application for registration either in Myanmar Language or English Language.
 - b) On requesting by the Registrar, the application in Myanmar Language shall be translated into English language or the application in English language be translated into Myanmar language.
 - c) If the translation is under sub-section (b), the translation shall be certified and signed by the applicant.
17. (A) The applicant for the registration of a mark shall state the following elements.
- 1. A request of be registration.
 - 2. Name and address of the applicant or legally organized organization.
 - 3. Where the applicant is a representative, the name, N.R.C No and address.
 - 4. The full exposition of the mark.

5. The names of the goods and/or services for which the registration is rough according to the classes of the international classification.
- (B) The elements contained in sub section (a) and the following elements shall be attached if necessary.
1. If the applicant is applying on behalf of the legally formed organization, organization register, number, classification and name of the country.
 2. Where the applicant requested for priority, evidence in support of the priority and request of priority.
 3. Where the applicant requested for the priority of exhibition, evidence in support of priority and request of priority right.
 4. If the applied mark is has been registered at the documentary Registered Office, evidence document in support of registration.
 5. Other necessities proscribed by the agency and department at the proper time.
18. If prescribed fees are paid and sufficient with the specification under section 17 sub-sections (a), the date of the receipt of the registrar shall be presumed to be the date of the application filed at the Union.
- 19 The registrar may-
- a) If the persons more than one are filing the application for the identical or similar mark on the different dates, are disputed with the other application, the person who file the application at the earliest time according to the stipulations shall be granted to be registered.
 - b) If the application is under sub-section (a) and such application request priority right or priority right of exhibition, the applicant is disputed with the other application the person who filed the application with the earliest priority date according to the stipulations shall be granted to be registered.
- 20 If the persons more than one person are filing application on the identical or similar marks at the same date or request the equal property date.
- a) The registrar shall direct all the applicants to discuss among them and resubmit the one to be registered in the prescribed time.
 - b) The applicants shall resubmit the person who is discussed and recognized as the agreed person to be registered according the direction of registrar.
 - c) If the applicants are directed under subsection (a) and not agree among them they shall follow the decision according to stipulations.
- 21 (a) The applicant for the registration of a mark.
- 1) May prior to the grant or rejection made by the Registrar in respect of the application or during the period appealed upon the decision of the Registrar to the agency subscribing the prescribed fees, apply to amend application, translation, clerical error in the even dental document and other mistake to be allowed to amend, to the registrant.
 - 2) May withdraw the application with respect to registration of mark.
 - 3) After subscribing the prescribed fees may request the registrar to divide any application listing several goods or services into more than one applications or extend or limit or reduce the list of goods or services.
- (b) In submitting to decide any application as new application under the sub-section (a) (3) the original date of the application shall be presumed to be the filing date.

- 22 The registrar may examine the application under section 21 according to the stipulation and grant the amendment.

Chapter IX

Examination, Objection and Registration with respect to an application for the registration of a mark the Registrar

- 23 Relating the registration of marks, the registrar may-
- a) May after examining whether involved with the elements of section 13 or whether elements of section 17 are fulfilled, the application which conforms to the stipulations shall be submitted to the registrar with opinion and remark.
 - b) May, after examining whether involved with the element of section 13, or whether element of section 17 are fulfilled, the application which does not conform to the stipulations shall be informed to the applicant with the permission of the registrar to amend it as necessary, if the applicant does not amend the application within 30 days of receiving it, the application shall be presumed to be given up.
 - c) If the necessary amendments of the application are received, examine the application and submitted the application to the Registration with opinion and remark.
- 24 The applicant for the registration of a mark;
- (a) If the fail to follow within the limitation and the rights related the application is lost and correspond with the following element the application may be refilled to the Registrar.
 - 1) Because of failing to follow within the limitation, submit a request within 60 days of given up date
 - 2) All the explanations information or necessities about the failing to follow within limitation are attached and submitted.
 - 3) Sufficient reason for failing to follow within the limitation is expressed in the request.
 - 4) Fees are already paid.
 - (b) Of the right related to the application under sub section (a) is requested to be given back within the appealing period, the Registrar shall suspend.
25. **The Registrar**
- a) If the right of mark of application is to be lost and reapply the given up mark to be registered under section 24, subsection (a) the request may be examined and granted.
 - b) The application which corresponds with the section 13 and section 17 shall be published according to the stipulations to the notice of public and to object as they wish.
26. After sub scribing the prescribed fees, the person who wishes to object the application for registration of mark may submit objection with any ground under the section 13 and 14 within 60 days from the date of publication to the Registrar.
27. If the Registrar received the objection the notice shall be given to the applicant within limitation to defend the objection.
- 28 With respect to an application for the registration of a mark the Registrar.
- a) If there is no objection submitted within 60 days of the publication of notice to the public, the application for the registration of the mark may be granted.

- b) If there is an objection submitted examine the objection whether it is conformed to the stipulations under section 13 and 14, and may grant or reject it.
 - c) After the grant or rejection has been recorded in the register, informed it to the applicant. And also publish the grant or rejection it to the notice of public according to the stipulations.
 - d) If the registration is granted; the certificate of registration of the mark shall be issued to the applicant.
29. The owner of the mark;
- a) May apply to the Registrar after subscribing the prescribed fees to reissue a certified copy if the original certificate has been damaged or lost.
 - b)
 - c) May apply to the Registrar after subscribing the prescribed fees; to correct the clerical error and other mistakes that can be allowed to be amended or to correct nationality and address recorded in the Register.
- 30 The Registrar
- a) After examining the application under section 29, sub-section (a) the certified copy of the certificate of the registration of the mark shall be issued.
 - b) After examining the application under section 29, sub-section (b), the amendment may be allowed.

CHAPTER X Right of Priority

- 31 Any person who has duly filed an application for the registration of a mark in any state that is party to the Paris Convention or member of the world Trade Organization or his agent in title shall file an application for the registration of the same mark in the department, in respect of goods or services or mark which are identical with or contained within those which the foreign application has been filed enjoy the right of priority during a period of six months from filling date of the first application.
- 32 In respect of goods or services which are identical with the mark or services showed at the international trade affair in any state to the Paris Convention or member of the World Trade Organization file an application for the registration to the department within a period of six months from the date of opening of trade fair the right of priority of exhibition shall be enjoyed.
33. The right of priority of exhibition shall not be more than right of priority period received from the date of filing the application under section 31.

Chapter XI Term of Registration and Renewal of Term

34. The term of registration mark shall be 10 years from the date of filing the application. After expiry of 10 years term of registration, the registration may be extended for a term of 10 years at a time.
35. The owner of the mark desirous of extending the term shall perform as follow.
- a) Within 6 months prior to expiry of the term subscribing the prescribed fees and shall apply to extend the term.

- b) If the application is filed after the term of registration, it is entitled to apply within six months given as special right. In so doing, shall subscribe the prescribed registration fees and late fees.
36. The registrar
- a) Shall permit the renewal of the term registration if the application accords with the provisions. The extension of the term the registration shall be effective from the expired date of former term of registration.
 - b) After examination the application for renewal if it accords with the stipulations extend the renewal term of 10 years and publish it in the manners prescribed.
 - c) The extension of the term of registration and paying the fees shall be recorded in the registration list.
 - d) If the owner of the mark failed to subscribe the fees after expiring of the grace period of 6 month the registered mark shall be lapsed.
 - e) Shall publish the reference of the registration of mark that has an lapsed in the manners prescribed after it has been recorded in the registration list.

CHAPTER XII

IPRS Rights of Registered Mark

37. The rights of registered mark contained in this chapter shall be enjoyed after the owner of mark followed the provisions of Chapter (11).
38. Without prejudice to the provisions contained in section 39 and 40, the owner of the mark is entitled;
- (a) As an exclusive right,
 - 1) May prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs for goods or services which are identical or similar, where such use would result confusion among the public, according to the law.
 - 2) Right to file litigation against the infringer of the rights of registered mark in criminal or civil action or both.
 - 3) If the condition corresponds with the following, using in the course of trade any sign at in identical with or similar to the registered well-known mark for goods or services without consent of him, he may be entitled to prohibit from using his mark.
 - (aa) When it is likely to indicate a connection between the goods or services for which it is used and the owner of the registered well-known mark,
 - (bb) It if it is the likely to suffer the interest of the owner.
 - (b) May transfer or license the rights of mark which is registered to the other person according to the provision contained in the chapter (13) and (14).
39. The owner of the registered mark shall not be entitled to prohibit a third party from using in good faith for industrial or commercial purpose in the following matters.
- a) His own name and address.
 - b) Indications of records or services concerning kind, related matter, quality, quantity, the intended use fullness, value, original place, the time of production or indications of other signs.
 - c) The intended purpose of the use of goods or service, in particular indications in respect of the intended purpose of accessories or spare parts.

- 40 The owner of the registered mark shall not be entitled to prohibit a third party from using his mark in relation to the goods which have been put on the market by the owner himself or by a third party with his consent.
- 41 Notwithstanding anything contained in section 40, the owner of the registered mark may when the condition of the goods has been changed or impaired after they have been put on the market, consequently prohibit the sale of the said goods in conformity with the existing law.

CHAPTER XIII
Transfer of the Rights of Mark

- 42 (a) The applicant who is applying to register a mark may apply to the registrar according to stipulations to record the transfer of his application to any person or legally formed organization.
- (b) The owner of the mark may apply to the registrar according to the stipulations to record the transfer of his registered mark ownership to any person or legally formed organization.
- 43 The registrar shall record any transfer in the ownership at the request of the applicant who is applying to register a mark or receiver of the transfer under section 42, sub-section (a), subscribing the prescribed fees and shall publish it according to the stipulations or receive of the transfer under section 42, subsection (b), to the public notice.
- 44 A transfer in the ownership of a registered mark shall have no effect if there is no application of transfer of registered mark ownership to the registrar to record.

CHAPTER XIV
License of the Registered Mark

- 45 The owner of mark may license a person or an legal organization to use this registered mark by stipulating the terms and conditions.
- 46 The owner of the mark or licensees may apply to the registrar to record the license attached with certified copy of licensed document after subscribing the prescribed fees.
- 47 The registrar shall record the application under section 46 and publish it according to the prescribed procedure.
- 48 Upon request by the owner or the licensees to cancel the registered license at the registrar according to stipulations the registrar shall cancel it from the record and publish the cancellation to the public notice according to the prescribed procedure.
- 49 If there is no application to the registrar to record the license, the license contract shall have no effect.

CHAPTER XV
INVALIDATION AND CENCELLATION OF REGISTRATION OF MARK

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- a) Upon request by any interested person, the Registrar shall declare that registration of a mark is invalid if it is proven that the mark does not comply with the definition provided in **section 2, subsection (j)** or that the mark

should not have been registered because of any of the absolute grounds **listed in section 13.**

- b) Upon request by any interested person the Registrar shall declare that the registration of a mark is invalid if it is proved that the registered mark should not have been registered because of any of the relative grounds of refusal listed in section 14.
- c) If the registrar received the final determination or decision of the court to declare that the registration of a mark is invalid, he shall declare that the registration of the mark is invalid.
- d) (1) The request of the Declaration under sub-section (a) may be applied at any time
(2) If the registration is not dishonest, the request for the declaration of invalid may be applied within 5 years from the date of registration.
- e) Where grounds for invalidation exist in respect of only some of the goods or services for which the mark is registered, the registration shall be invalidated in relation to the registration.
- f) After recording the declaration of invalidation of a registered mark the Registrar shall inform it to the owner of the mark and shall publish it to the notice of the public.

51.

- a) Upon request of any interested person for using the mark, the registrar shall cancel the registration of a mark it is found to get involved with any followings.
 - 1) The mark has not been put to use in relation to the goods or services for which it is registered within a period of three years from the date of application for registration and there are no justified reasons for such failure to use.
 - 2) Use of the registered mark has been suspended for an uninterrupted period of three years, and there are no justified reasons for such failure to use.
 - 3) The registered mark came to consist exclusively of indications which may serve in trade, to designate kind, related matters, quality, quantity, intended usefulness, value, place or origin, or the time of production or of indications that have become in the current language or in the practices of trade.
- b) In the use of mark under sub-section (a) includes the followings
 - 1) Use in a form differing in elements that do not alter the distinctive character of the registered mark.
 - 2) Affixing the mark to goods or to the packaging of goods in the State for export purpose.
- c) When it is required to prove the use to which including a mark has been put, including the duration nature, scope of the use, the burden of proof shall be with the mark owner.
- d) Where grounds for cancellation exist in respect of only some of the goods or services for which the mark is registered the registration shall be cancelled in relation to them.
- e) If the registration of a mark is cancelled, the registration is presumed to have been ceased legally.
- f) If the registrar shall record the cancellation of the registered mark, the owner of the mark shall be informed for the cancellation and a reference there to be published to the notice of public.

52

No person shall use the mark refused for registration or cancelled the registration by the Registrar for it involved the section 13, sub section (c).

Chapter XVI Geographical Indication

53. Any legal entity representing the following persons of the locality in which the relevant good is produced, desirous of registration a geographical indication shall apply to the registrar for registration in conformity with the stipulations.
- a) Persons who produce goods of natural products or natural resources;
 - b) Producers of agricultural products;
 - c) Producers who make handicraft or industrial products;
 - d) On behalf of the persons under sub-section (a) to (c), authorities of relative government department, government organizations.
- 54.
- a) In applying for the registration of a geographical induction, the application shall correspond with the followings;
 - 1) Name, nationality and address of the applied entity or representative
 - 2) The geographical indication for which registration in sought,
 - 3) The applied area to which the geographical indication applies.
 - 4) The good designated by the geographical indication.
 - b) The application should be accompanied by the followings.
 - 1) The specific characteristic of the good or quality or its reputation;
 - 2) The link between the prescribed specific quality, its reputation or characteristic and original area and technology of production;
 - 3) Other prescribed particulars;
 - c) It shall pay the registration fees when apply.
55. The geographical indication that involves any of the following points shall not be entitled for registration;
- a) Not complying with definition of geographical indication in section 2 sub-section (o);
 - b) Being a generic term or customary in common language of the good that are to use such geographical indication in the Union.
 - c) Being a geographical indication which is contrary to public order or good morals or public policy.
- 56 Any interested person related department or any organization many apply to the registrar foe declaration of invalidation or cancellation of the registration of the geographical indication on the following grounds;
- a) Not complying with the definition of geographical indication in section 2, sub-section (o)
 - b) In order to comply with the related necessities lay down under the section 54, sub-section (b), not able to continue performing surely.
 - c) Foreign geographical indication which is not or cease to be protected to be in their country of origin or which have fallen into disuse in that country.
 - d) Being a geographical indication which is contrary to public order or good morals or public policy.
- 57
- a) Producers carrying on their activity in the geographical area specified in the Register shall have the right to use a registered geographical indication in the course of trade with respect to the products specified in the Register, provided that such products possess the quality, reputation or other characteristics specified in the Register.

- b) In the case of homonymous geographical designations, protection will be accorded to each indication provided that there is a sufficient distinction in practice between the harmony registered subsequently and the name already on the register, taking into account the need to treat the producers concerned in an equitable manner and that consumer are not misled.
- c) The right holder of the registered geographical indication shall have the rights to prevent the following matters;
 - 1. The use of any mean in the presentations of the goods to be originated in a geographical area other than the true place of origin in a manner in which mislead the public at to the geographical indication of the goods.
 - 2. Any use of registered geographical indication which constitutes an act of unfair competition.
 - 3. Any use of a geographical indication indentifying for originating in the place indicated by the geographical indication or the geographical indication is used is used in transaction or accompanied by expression such as kind, group, type, imitation or the like.
- d) Although the geographical area or place was presented accurately, misleads the public as to the goods of the other area of the geographical indications shall not be entitled to rights under sub-section (a) and (c)

58.

- A. If the application complies with section 53, 54, 55 the Registrar shall publish the contents of the application and specifications as prescribed in the regulation.
- B. In objecting the registration of geographical indication, may use the regulations of objection of the mark as necessary.
- C. If there is no objection or the objection is rejected shall register the geographical indication.

59 The term of registered geographical indication shall receive the protection as long as the specific characteristics, quality and reputations which grant the protection of it exist.

60.

- A. After applying a geographical indication to be registered and to register a mark, the registrar shall reject the registration of used mark because of infringing the section 57 or in relation to the similar product.
- B. The registered marks which are involved with the section (a) the marks shall be declared as invalid.
- C. Although before applying the geographical indication to be registered, bona fide registered or applied mark has been infringed section 57 and has been used, and not involved with the provisions of chapter 15, although what has been in the geographical indication, it can be used continuously for the products. The registrar shall allow the geographical indication used for the matters as related to the use of mark.

61.

- A. Related department and organization shall supervise the protected geographical indications. Some of the works of supervision may be transferred to the other person.
- B. The supervision shall include the followings: -
 - 1. The complying of specifications of the registered geographical indication and related products.
 - 2. The names of the registered geographical indications used in the market.
- C. To comply with the specifications of product, the expense for the supervision shall be paid by interested persons

62. For the infringing of the rights of geographical indication if the provisions of the law and specifications as are infringed, shall take action according to the actionable procedure.

Chapter XVII Trade Name

63.

- (A) A trade name shall be protected whether the trade name is involved or not in involved as a part of a mark although the trade name is not registered.
- (B) A name or designation shall not be used as a trade name if by its nature or use to which it may be put, it is contrary to public order or morality and if particular, it is liable to deceive trade circles or the public as the nature of the enterprise, identified by that name.
- (C) A trade name shall be protected against any unauthorized use of or identical or similar sign whether used as a trade name or a mark if that use is to mislead the public.

Chapter XVIII International Application for Registration

- 64 If the person who wishes to apply for registration from inside the country or outside the country after the state has joined the international convention of registration of mark system and want to practice international registration, may apply to the registrar in accordance with the regulations.

Chapter XIX Appeal

65

- (A) Any person dissatisfied with any decision made under this law by the Registrar may appeal to the agency within 60 days after the decision is declared.
- (B) The agency may on under sub-section (a) confirm, set aside or revise the decision of registrar or direct to take further evidence.
- (C) If the appeal is submitted after taking for further evidence under sub-section (b) the agency may confirm, set aside or revise the decision of the registrar.

- 66 Any person dissatisfied with the decision made by agency **may within 90 days** from the date of receiving notice of such decision to the Intellectual Property court which is authorized jurisdiction by the Union Supreme Court according to the existing laws.

Chapter XX Establishment of IP Court

67. The Supreme Court of Union-

- A. May establish IP courts and appoint the judges at any appropriate place to adjudicate on criminal or civil action about IP matters.

- B. May confer the jurisdiction and powers to the judges appointed under sub-section (a) to adjudicate on copy right matters.
- C. May before establishing the IP Court under sub-section (a) confer the jurisdiction and powers of IP court to the appropriate court to adjudicate on copy right matters.
- D. Shall prescribe the jurisdiction and powers of the IP courts that have jurisdiction on appeal, revision cases against any judgment, order and decision passed by the IP courts.
- E. Shall confer the jurisdiction and powers of the IP Court to the appropriate court to adjudicate the applications under section 66.

Chapter XXI

Protection of the copy right of the mark by Custom Department

- 68 The right folder who has sufficient grounds for suspecting that the mark to fraudulent on being accused as such, has been imported or is being imported or will be imported inside the territory of the state, may submit the application in accordance with stipulations is director general of the custom department is issue suspension order on the said goods not to access treaty through the trade route.
- 69.
- A. The Director General of the Custom Department;
 - 1. Shall inform to the applicant under section 68 whether his application is admitted or dismissed within 30 days after receiving the application.
 - 2. If the data is not complete to scrutinize give notice of his decision to the applicant to add further data within 15 days after the issue of notice and sent back the application; And then adjourn the application.
 - 3. May prescribe any surety at the custom department according to the stipulation when the application is received.
 - 4. Shall describe a clean reason if the application is dismissed.
 - B. If the applicant does not request for the shorter period, the functions under sub-section (a) shall be effective for six months.
- 70
- A. After the Director General has admitted the application under section 69 or under the finding of custom department, there are evidence that the goods are imported by using the false mark, he shall stay the granting of entering freely into the trade route, The stay shall be informed immediately to the applicant and importer.
 - B. The Director General of the Custom Department shall allowed the applicant and importer to prove that the good is using the false mark and the request of the applicant is true, and permit them to make sufficient examination of the staying goods without leaking out the secret data.
- 71.
- A. If the applicant does not inform to the Director General of the Custom Department that he begins to take action to decide the truth of the cases or the IP Court is delaying taking temporary action on for the stay of goods flowing, within the 15 days of the notice informed the goods shall be exempted. The prescribed limited period may be extended for 15 days more before the limitation ended by the decision of Director General of Custom Department.
 - B. If the goods are easily perishable, the time limit is three days.
72. If the importer dissatisfied with the stay order after receiving the stay order notice, may submit application to the jurisdictional IP court. The IP court shall modify revoke or confirm the terms of suspension within 30 days from the date of request for the right of revision.

73. If the IP court decides that the goods are using the false mark the importer shall pay the costs of destruction storage and disposal of the goods. If the Director General of Custom Department is not able to recover the said costs the applicant shall be obliged to pay the costs and the applicant shall be entitled to recover any costs from the importer.
74. If the IP court decides that the goods are not using false mark, the applicant shall pay the amounts which are damages due to mistaken stay and temporary storage as decided by the IP court to the importer.
75. The provisions under this chapter shall not be applicable to the goods not as commercial purpose but as traveler baggers intending for personal use or the imported good as prescribed in the rules.
76. The director general of the Custom Department may exchange information, coordinate with the world custom organization or Director General of the Custom Department of other country in relation with the accused goods using false mark.

Chapter XXII

Jurisdiction of IP court in case of trademark infringements

- 77 (a) The right holder may apply to the IP court for the damage according to the previsions under section 79 and 80 to take action temporarily injunction by way of civil miscellaneous case.
- (b) The right holder may apply to the IP court to take action by criminal law or civil law.
- 78 (a) The IP court shall, If the other person who is not the owner of the mark, practice any right under section 38 in the Union without the permission of owner of the mark, it shall be presumed that he infringes the protected mark under this law.
- (b) Using the identical or similar unregistered well-knowing symbol of a mark for the identical or similar goods or services without permission is deemed to be able to mislead the public.
- 79 (a) If the application is filed in case of Trademark infringements under section 77, sub-section (a) the IP court may decide any following actionable order or more than one to take action and remedy according to civil law.
1. The order as it may think fit to protect the infringement of right of mark including the import goods cleaned by the custom from getting access to the trade route of the state.
 2. The order as it may think fit to maintain as status of the evidence related to the alleged infringement of the right of mark that is accused.
 3. The order that is to modify, to object and to approve the suspicion or run issued by the relevant custom office.
- (b) The IP court may request the applicant to perform the following factors for the provisional action.
1. To submit any appropriate sufficient evidence in order to ensure that the applicant is the right holder or such rights are being infringed or thee is a potential for infringement.
 2. To deposit for sufficient surety is order to prevent the abuse of provincial performing.

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- (c) When performing provincially according to the IP Court order, the IP court may direct the applicant to submit any further required information so as to identify the goods that is being accused of infringement.
 - (d) From the day the IP court had started provincial performing on request, in order to make a final decision upon the aggrieved, if the litigation by way of civil action has not started within the period defined by the IP Court or if there is no defined period, within 30 days from the date that gives the order for provincial performing, the IP Court may revoke or set aside on the request of the respondent, who in relation to the provincial performing laid down according to section 79 sub-section (a) and section 80 sub-section (a) without prejudice to section 80(b).
 - (e) Where the provincial measures or are revoked by the IP Court, where there is due to any act or omission or where it is subsequently found that there has be not infringement or threat of infringement of trademark, the IP Court may have the authority to order the applicant, upon request of the defendant, to provide the defendant appropriate compensation for any prejudice caused by these measures.
- 80 (a) The IP court may determine the ex-parte provisional orders under any following conditions.
- (1) Where any delay is likely to cause irreparable loss to the right holder.
 - (2) Where there is a credible risk of evidence being lost and destroyed.
- (b) When the IP Court are adopted on the ex-parte basic;
- (1) The defendant shall be given notice without delay at the immediate time of executions.
 - (2) Within the limited period of the IP court or if not within the 30 days from the date of notice issued, the notice given person does not obey, the measures may be executed successfully.
- (c) Upon the request of the defendants, shall hear the two sides and the retrial shall be held in the reasonable time to revise, cancel or confirm the provisional measures.
- 81 (a) Without prejudice to the civil law and civil procedure code, the IP court may decide a following order or more than an order under section 77 sub-section (b).
- (1) Prohibitory order of the infringement of copy right including the protection of the infringement of copyright including the protection of the infringement of copyright imported goods after custom clearance to prevent into the channels of commerce of the Union.
 - (2) (aa) To order the payment of the infringement to the right holder of damages adequate to compensate for the prejudice suffered by right holder because of the copy right infringement in appropriate cases the court may order the payment of reestablished damage or the profits enjoyed by the infringer or both to order of repay.

(bb) Order to pay the appropriate costs including legal costs and attorneys fees of the right holder.
 - (3) Order that without compensation of any sort disposed of outside the channels of commerce in such a manner as to avoid any harm to the right holder or destroyed.
 - (4) Order that the materials and implements of the predominant to be destroyed or disposed of outside the channel of commerce.
- (b) When considering one of the orders under sub section (a) small sub-section (3) and (4) the IP court considers the proportionately the seriousness of the infringement and shall take into account the interest of the third parties.

- 82 A right holder who has a abused enforcement procedure is liable to compensate a respondent who had been wrongfully restrained for the injury suffered because of such abuse. In addition, order the right holder to pay the respondents appropriate expense, legal costs including attorney fees and other express.
- 83 (a) Without prejudice to the provisions of existing law the IP court may order that this evidence, subject in appropriate cases to conditions which ensure that protection of confidential information to produce to the other client.
- (1) When the right holder has presented reasonably available evidence sufficient to support his claims.
- (2) When the right holder has specified evidence relevant to substantiation of its claims which lies in the control of the other client.
- (b) If a party to infringement proceedings infringed voluntarily and without good reason, the IP court may make preliminary and final determinations affirmative or negative in the following conditions the IP court, on the basis of information including complaint or allegations presented by the party adversely affected by the denial of access to information presented to it subject to providing the points an opportunity to be heard on the allegations or evidence.
- (1) Refuses access to necessary information;
- (2) Cannot provide necessary information within a reasonable period;
- (3) Significantly impedes a procedure relating to an enforcement action;
84. In any offence prosecuted under this law the IP court has imposed a fine, it may pass order to pay in whole or in part of such fine to an aggrieved person as damages.
- 85 If both criminal and civil cases are prosecuted on the basis of the same matter the IP court shall set-off the money as given as compensation from fine imposed under 84 when passing the judgment, order and decree to pay money for damages in civil case.
- 86 If it is not provided expressly in this law is request of taking action against the infringement of right of mark the previous contain is the code of evidence not, criminal produce and civil produce may be applied and exercised by IP court.

Chapter XXIII Offences and Penalties

- 87 (a) Whoever commits any of the following acts for the commercial purpose without consent of the right holder shall, on conviction be punished with imprisonment for a term not exceeding three years or fine not more than kyats 50 Lakhs or with both.
1. Making a counterfeit false mark.
 2. Applying a false mark to counterfeit uses in connection with goods or services.
 3. Possessing any material or implements, the predominant use of which to be counterfeit a mark, apply a false mark to goods.
- (b) Whoever commits any of the following acts for the commercial purpose shall, on conviction be punished with imprisonment for a term not exceeding two years or fine not more than kyats 50 Lakhs or either both.
1. Using the counterfeit mark of goods are sold and distributed or take in possession to be sold and distributed.
 2. Importing and exporting the goods with a forged mark, to the state or from the state.

88. Any person whoever has been punished for the infringement of any act under section 84 and found guilty and punished with imprisonment as for a term at least 3 years at to mostly 10 years and fine with not exceeding kyats 100 Lakhs.
89. Whoever uses a sign of to flag or emblem with particular protection under international treaties to which the Union is a contracting party as the mark for commercial purpose shall, on conviction be punished with imprisonment for a term not exceeding three years or with fine not exceeding kyats 50 lakhs or with both.
89. Whoever removes, destroys, deforms, or makes addition with intention to adversely affect the owner of the mark shall on conviction be punished with imprisonment for a term not exceeding one year or with fine not exceeding kyats 30 lakhs or with both.
90. Whoever commits any of the following acts, on conviction be punished with imprisonment for a term not exceeding one year or with fine not exceeding kyats 20 lakhs or with both.
- (a) Issuing or causing to issue a false certificate of the registered mark.
 - (b) Entering or causing to enter incorrect data in the register of marks.
 - (c) Violation of prohibition contained in section 52.
92. Whoever accompany or abet in committing any crime under this law shall be punished with the same sentence prescribed for the offence.

Chapter XXIV Miscellaneous

93. Before this law in force, according to the registration act.
- A. The owner of the mark who has registered at the registered at the registration office or although not being registered but really using the state market of the right holders, derives to attain rights of registered mark, it shall file an application according to this law.
 - B. Whether it has registered or not, the marks which are really using in the state market shall enjoy the right of priority is respect of the doing it during the limited time.
94. Notwithstanding anything contained in other existing law.
- a) Registration of mark shall be carried and is accordance with this law.
 - b) Action shall be taken only under the law for any offence related to mark contained in this law.
95. When the registrar exercising the authority assigned, decide with discretion and allow any persons to give arguments according to stipulation if he is to be suffered.
96. A person has the right to submit any copy of certificate of registered mark and document certificate sealed by the registrar as evidence in the relevant IP Court.

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97. IP Court may regarding for the goods with the forge marks, including material and tools related to the crimes, pass an appropriate management order so as to capture them as public finance, to seize, to destroy or to conduct with any other means.
98. In implementing the provisions contained in this law the Ministry may take responsibility and perform the office works of the central committees and agency and pay the expenses.
99. With the agreement of the Union Government the ministry shall prescribed the award money and costs for the member of the central committee, agency member and member of work force who are not public servants.
100. The term of the post of the Union level is same as the term of the Union President.
101. The Ministry may form and assign the department and its local divisions to perform the functions and duties of agency.
102. Infringements upon the rights of mark contained in the law shall not apply for business of government department and any legal entities and shall not take effect an using of any good with the marks for the bring to of the in a situation of the state's emergency and of the masters of public danger.
103. The offences under this law shall be defined as the cognizable offences
104. Mark disputes among the persons may be resolved by compromise friendly between two sides or by the decision of the arbitration or by taking action.
105. Forming under this law, the central committee and agency shall be presumed to be applicable to all the IP laws.
106. In implementing the provisions contained in this law.
- (a) Supreme Court of the Union may issue rules, regulation, disciplines notification, order, directives and procedure relating to justice.
 - (b) The Ministry and related Ministry.
 - 1) May issue rules, regulations and disciplines with the agreement of the Union Government.
 - 2) May issue notification, order, directive and procedure.
 - (c) Performing the works of custom, the Ministry may issue rule, regulation, and discipline of custom with the agreement of Union Government.
 - (d) The agency and department may issue the notification, order, directives and procedures with the agreement of the ministry.

I hereby sign according to the constitution of the Republic of the Union of Myanmar.

(sd) Win Myint

The president of the state

The republic of the Union of Myanmar

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