

LAW FOR TRADE MARKS AND TRADE SECRETS AND PROTECTION FROM ILLEGAL COMPETITION

CHAPTER ONE

TRADE MARKS AND REGISTRATION PROCEDURES

SECTION ONE

Article 1: Trade Mark is whatever has a distinguished look that can be visually recognised, be it words, signatures, personal names, characters, digits, drawings, symbols, addresses, stamps, engravings, set of colors, visual elements or any other mark, or a group of, used or intended for use in differentiating a merchandise, commodity or service, in order to indicate the trade mark's owner, on account of manufacturing, testing, trading or offering it for sale.

Article 2: The followings are not trade marks, and should not be registered as such:

1. Marks that are void of any distinguished feature, or marks comprising of details that are not more than the familiar and customary used names for commodities, products or drawings and normal pictures of commodities and products.
2. Any expression, drawing or mark that is indecent or violates the public system.
3. Marks that are identical to coat of arms, flags, other logo or name, a short name or initials, official mark, or approved stamp of any country or international or official organisation, or any other organisation constituted in accordance with international conventions, or if it was a counterfeit of, or included in its elements, unless otherwise authorised by the authority concerned of that country, or organisation.
4. Marks that are identical or similar to absolute religious symbols.
5. Marks that may mislead the public or business sectors, specially if it is related to geographical origin of the products or services, or include misleading information about the products' origin, or its other features or characters, in addition to marks containing a false trade name.
6. Third parties' name, title, photo or logo, unless its use is approved in advance.
7. If the mark is identical or similar as to confuse, or it is tantamount to a translation of a trade mark or name known in the Sultanate of Oman, in respect of similar or identical goods or services related to another project, or if it is known and registered within the Sultanate of Oman, in respect of goods or services that are not similar or identical to these for which the mark is being registered, provided that the use of the mark in respect of these products or services, in the latter situation, should indicate a relation between these products or services and the owner of the known mark, and this use may endanger the interest of the owner of the known mark.
8. If the mark is identical to the mark of another owner that has already been registered in the register, or to an application that has preceded the application to register the mark concerned, in respect to the deposit date or priority date, in relation to the same goods and services, or closely related goods and services, or if it was similar to the extent that it may mislead or confuse.

Article 3: Whomever wishes to use a mark to distinguish a product of his production or selection, traded in, offered for sale or intended for sale, may apply for registration in accordance with the provisions of this law.

Article 4: Whomever has registered a trade mark shall be considered the sole owner, unless it was registered in bad intention. It is not permitted to dispute the ownership of a trade mark if whomever has registered it has used it for at least five continuous years from the registration date, without facing any litigation regarding its validity.

SECTION TWO

Article 5: A register shall be prepared at the Department of Trade Marks & Intellectual Property, Ministry of Commerce and Industry, called The Trade Marks Register, in which all trade marks, their owners, addresses, description of products and any development such as assignment, transfer or cession, shall be registered. The public shall have the right to view this register and obtain a certified copy, against fees as specified in the executive bylaws.

Article 6: Head of the said department shall have the authorities vested with the registrar, in accordance with the following provisions.

Article 7: Registration application shall be submitted to the Department of Trade Marks & Intellectual Property, in accordance with the status and conditions stipulated in the executive bylaws, provided that the application shall include an illustration of the trade mark, and a list of products or services for which the trade mark is being registered, and that applicable classification/s are listed from international classifications.

This application shall be subject to the payment of fees stipulated for these applications, the application may include a declaration requesting priority for a previous application deposited by the applicant in a country member in the World Trade Organisation or Paris convention, and shall have priority over others in accordance with the provisions stipulated in the bylaws.

Article 8: If two people or more applied at the same time to register the same trade mark, or similar trade marks, for similar or identical products or services, the registrar shall suspend all the applications until a certified assignment is submitted from the opponents for the benefit of one of them, or a final verdict is issued by the Commercial Court.

Article 9: The registrar may impose any suitable restrictions or amendments in order to specify and clarify the trade mark in a way that prevents it from being confused with another registered, or deposited trade mark, or for any other reason deemed suitable.

Article 10: In the event the registrar refused a trade mark, or suspended the registration of restriction and amendments, the applicant should be informed in writing of the reasons for this decision.

Article 11: Applicant may plead before the Commercial Court, against any decision issued by the registrar, to refuse or attach a provision on a registration, within thirty days from being notified of this decision, the Court may support, dismiss or amend the decision.

In the event the applicant did not plead on time, and did not implement the provisions attached by the registrar within this time, it is considered as waiver for registration.

Article 12: In the event the registrar accepts the trade mark, and prior to its registration, it should be made public through any medium stipulated in the executive bylaws of this law.

Within two months from the date of publication, whomever is concerned may object in writing to the registrar. The registrar should convey a copy of this objection to the applicant who should, within two months from being notified, submit a written reply for this objection, in the event this reply does not arrive on time, it is considered that the applicant has waived the application.

Article 13: The registrar shall settle the objection after hearing both, or one party, if it is requested. The registrar shall issue a decision to accept, or reject the registration.

In the first instance, the registrar may decide any suitable provisions, whomever is concerned may plead the decision before the Commercial Court within thirty days from being notified, and the Commercial Court may decide to support, dismiss or amend the decision, although the registrar, in spite of the objection, may issue a justifiable decision to continue with the registration in the event the objection to the registration is not supported by significant reasons.

Article 14: When the trade mark is registered, the effect of registration shall be applicable as from the date of the application, and the trade mark owner shall receive a registration certificate that includes:

- A) Trade mark's serial number.
- B) Application and registration dates.
- C) Trade mark owner's name, title, residence and nationality.
- D) Identical copy of the trade mark.
- E) List of products, commodities or services assigned for the trade mark.

Article 15: Owner of a pre-registered trade mark may apply to the registrar to include any addition or amendment on the trade mark, that does not affect its inherent fundamentals. The registrar shall issue a decision to that effect in accordance with the provisions stipulated for original registration applications, and is subject to pleading in the same manners.

SECTION THREE: RENEWAL AND REMOVAL

Article 16: Protection period resulting from registering a trade mark is ten years, trade mark owner may continue this protection through an application for renewal, submitted during the last year, in accordance with the conditions and provisions stipulated in this law and its executive bylaws. During the second month after the end of the protection period, the registrar shall inform the trade mark owner, in writing, at the address listed in the register, in the event of six months lapsing from the date of end of protection period, and the trade mark owner did not submit a renewal application, then the registrar will automatically remove the trade mark from the register.

Article 17: Without prejudice to article four, the registrar, and whomever is concerned, may have the right to request a verdict to remove the trade marks that have been registered without any right, and the registrar shall remove the registration when a final verdict from the Commercial Court is submitted.

The Commercial Court, on the basis of an application from the registrar or whomever is concern, may decide to add any list which was registered without any right or not consistent with the truth.

Article 18: The Commercial Court, on the basis of a request from whomever is concern, may order to remove the registration if it was established that it was not used seriously for five consecutive years, unless the trade mark owner submitted justifications for not using it.

Article 19: The renewal of registration should be made public by any medium specified by the executive bylaws.

Without prejudice to the provisions of articles (16 & 24) of this law, the registrar may publish a list of trade marks registration, removal or any alteration to registered trade marks.

Article 20: In the event of removing a trade mark on the basis of non renewal, it is not permitted to be re-used by others for the same or similar products and services unless after three years from the date of its removal from the register.

Article 21: It is not permitted to transfer, mortgage or seize the trade mark ownership unless it is with the shop, or project, that it is being used to distinguish its products and services, unless otherwise agreed.

In all events, the transfer or mortgage of the trade mark ownership does not constitute a presumption for others unless after being registered in the trade marks register, and made public by any medium stipulated by the executive bylaws.

Article 22: The transfer of ownership of a shop or project using trade marks includes the transfer of trade marks closely related to this shop or project, unless otherwise agreed.

In the event of transferring the ownership of a shop or project, without transferring the ownership of the trade mark itself, the assigner of ownership may continue in manufacturing the same products, or providing the same services, for which the trade mark was registered, unless otherwise agreed.

SECTION FOUR: CONTRACTS AND LICENSES

Article 23:

A) Trade mark owner may license any natural or juristic personality to use it for all, or some, of the products or services, for which the trade mark was registered. Trade mark owner have the right to license others to use the same trade mark, or use it by himself, unless otherwise agreed. License period should not exceed the protection period.

B) Beneficiary of license shall have the rights authorised by the trade mark registration, and the contract should include the followings:

1. Definition of area and period of using the trade mark.
2. Conditions required for effective quality control on the products or services.
3. Undertakings imposed on the beneficiary of the license to refrain from all actions that may damage the trade mark.

C) License contract should be drafted and approved in conformity with regulations.

D) License should be registered in the trade marks register. The license shall not have any effect on others until after being registered and made public, in accordance with the procedures and conditions stipulated in the executive bylaws.

E) License beneficiary may not assign or sub-contract the license unless otherwise agreed.

F) License registration may be removed from the register on the basis of a request from the trade mark owner, or beneficiary, after submission of proof of end or termination of the license contract.

Registrar shall inform the other party of the request to remove the license registration, who may object in accordance with the provisions and conditions stipulated in the executive bylaws.

CHAPTER TWO BUSINESS INFORMATION

Article 24: It is considered as business information any clarification directly or indirectly related to:

1. Number, quantity, measurements, measure, weight or capacity of merchandise.
2. Region or country where the merchandise was made or produced.
3. Process of production or manufacturing.
4. Elements included in its formation.
5. Name or features of producer or manufacturer.
6. Existence of patents or other forms of industrial ownership rights or any other concessions, awards or commercial or industrial characteristics.
7. Name or form generally attributed to, or performed by some merchandise.

Article 25: Business information should be correct on all counts, be it placed on the products itself, or on shops, stores, addresses, packaging, manifest, letters, advertising mediums, etc. as used to present the merchandise to the public.

Article 26: It is not permitted to post dealer's name and address on products imported from a country, other than the place of sale, unless it is closely associated with an accurate and visible information about the country, or region, where it was produced.

It is not permitted for persons living in famous areas for producing, or manufacturing, certain products, and are dealing in similar products imported from other regions, to post their trade marks on these products, if this may mislead the public in relation with the products' origin, even if these trade marks do not include their names and addresses, unless suitable measures are taken to prevent any confusion.

Article 27: It is not permitted for the manufacturer to use the name of a region, where he has a main plant, for products produced for him in another region, unless this name is closely associated with the latter region to prevent any confusion.

Article 28: It is not permitted to list awards, medals, diplomas or any other type of honorary degrees, other than for products that are subject to these characteristics, and for persons and business addresses, to whom it was granted

or assigned, provided that the information should clearly include the date and type of these awards, and exhibitions or competitions that has awarded it.

Whoever has participated, with third parties, in exhibiting his products, may not use the distinctions awarded for other exhibited products, unless the origin and type of these distinctions are clarified.

Article 29: In the event that the quantity, measurements, measure, weight, capacity or origin of these products, or elements included in its structure, are considered factors on which its value depends, then the Ministry of Commerce and Industry may decide to prohibit the import or sale of these products, or offer it for sale, unless it has one or more of these information.

The Ministry of Commerce and Industry shall issue a decision to clarify how these information should be posted on the products, and alternative procedures if this was not possible, provided that these information are in Arabic.

CHAPTER THREE PENALTIES

Article 30: It is punishable by imprisonment for no more than two years and/or a fine not exceeding Rial Omani three thousand, anyone who:

1. Forged a trade mark registered in accordance with the law, or imitated it in a way as to confuse the public, and anyone, in bad faith, used a forged or imitated trade mark.
2. Knowingly sold, offered for sale or for circulation, or acquired with the intention to sell products with forged, imitated or illegally posted trade mark.
3. In bad faith, used a trade mark that is identical, or similar to a known trade mark, registered or otherwise, to the extent that it may lead to confusion, provided that, for known and unregistered trade mark, the products, or services, should be consistent or similar.
4. In bad faith, violated the provisions of trade information.
5. Intentionally violated the provisions related to illegal competition and the protection of trade secrets.

Article 30 (bis): Protection Against Illegal Competition:

It is not permitted for natural and juristic personalities to perform any act of competition that may violate honest industrial or commercial practices, and in particulars:

- A) Acts that may create confusion with a firm, product or services, when proceeding with any industrial or commercial activity.
- B) Litigate without justification, and incorrectly, against any commercial or industrial product, as to discredit its reputation, good will and trust.
- C) Use any information or claims, when proceeding with any industrial or commercial activity, that it may mislead the public, in relation with the characteristics of these products or service.

Article 30 (ter): Trade Secrets Protection:

It is prohibited for natural and juristic personalities, possessing trade secrets, to reveal it, against honest business practices. Commercial or industrial activity is considered a secret if its nature was unknown, its commercial value is derived from its secrecy, reasonable procedures have been taken to maintain its secrecy, or it was not possible for ordinary person, in the same field, to obtain it.

It is considered as revealing trade secrets, capitalizing on information submitted to the authorities concerned in order to obtain necessary approval to market pharmaceuticals or agricultural produce that include new chemicals, if there was a noticeable effort to achieve it. The authorities concerned shall protect undisclosed test or other data, submitted to them for seeking marketing approval for pharmaceuticals or agricultural chemical products, against unfair commercial use, and protect such data against disclosure, except where necessary to protect the public.

Article 31: At any time, even prior to any commercial or criminal legal action has been lodged, and on the basis of a petition, supported by the trade mark's official registration certificate, the trade mark owner may obtain a judicial writ to take necessary precautions, and in particular, seizure of machinery or any equipment used, or may have been used, in committing the offence, in addition to the products, merchandises, shop address, packaging materials, packing, etc. on which the trade mark, or information, the subject of the crime, has been posted on.

This seizure may be performed upon the import of products from abroad, the writ may also include the appointment of expert/s to assist the appointed confiscator, and oblige the applicant to submit a guarantee.

Article 32: Seizure procedures stipulated in the preceding article are considered null and void if it was not followed, within eight days from the date of sequester, by a compensation claim, or informing the criminal prosecution officer concerned against whom these procedures were taken.

Article 33: Competent court, in any commercial or criminal case, may decide to confiscate any materials seized, or to be seized later, and deduct its value from compensation or penalties, or to dispose of it in any other way as decided by the court.

The court may also order the destruction of illegal trade marks, and when necessary, may order the destruction of products, packaging, packing, shop address, catalogues, and any other material carrying these trade marks, or any other illegal markings, in addition to the destruction of machinery and equipment specifically used in the counterfeit. The court may decide on all these matters even in the case of not guilty verdict.

The court may decide to publish the verdict in the Official Gazette, and charge the convicted with expenses.

CHAPTER FOUR

CLOSING PROVISIONS

Article 34: Natural or juristic personalities, having industrial or commercial capacity, or otherwise, who are assuming control of specific products or services, or inspecting it in relation with its origin, composure, manufacturing process, performance, characteristics, authenticity or any other feature, may apply to register a specific trade mark to indicate the performance of control or inspection, when the Minister of Commerce and Industry considers this license is for the public interest.

The registration of such a trade mark carries all the effects stipulated in this law, provided that it cannot be assigned without a special permission from the Minister of Commerce and Industry.

Article 35: The executive bylaws of this law shall stipulate the provisions suitable to ensure temporary protection for trade marks that are posted on products or commodities exhibited in public or international exhibitions held in Oman, or in any country that treats Oman in reciprocity. The Minister of Commerce and Industry shall decide these exhibitions by a ministerial decision.

Article 36: It is considered valid and applicable, in accordance with this law, the provisions of international multilateral and bilateral conventions and agreements, where the Sultanate of Oman is a member, or it may become a member, that regulate the rights of the citizens of members countries in these conventions and agreements, or having similar treatment in relation to trade marks and information.

Article 37: Foreigners shall have the same rights guaranteed by this law for Omani citizens, provided that they are citizens of, or residents within, countries that treat Omani citizens in reciprocity.

Article 38: The Ministry of Commerce and Industry shall issue the executive bylaws for this law, to clarify the provisions in details, and in particular:

1. Regulate the control of trade mark registration, and keeping the registers and its records.
2. Status, provisions and dates related to registration procedures.
3. For registration purpose, divide all the products to categories, in accordance with its type and nature.
4. Fees for issuing copies and certificates, and for all other functions and endorsements stipulated in this law for every procedure to be implemented.

Article 39: Officials appointed by a decision from the Minister of Commerce and Industry shall have the right for inspection and control in relation with the implementation of the provisions of this law, and they may take procedures as stipulated in the executive bylaws.