

Trademark Law
(2019, Pyidaungsu Hluttaw Law No. 3)
The 10th Day After the Full Moon of Pyatho, 1380 M.E.
(January 30, 2018)
Pyidaungsu Hluttaw hereby enacts this Law.

Chapter I
Title, Commencement and Definition

1. (a) This Law shall be called the **Trademark Law**.
- (b) This Law shall come into force on the date which is prescribed in the notification issued by the **President**.
2. The following expressions contained in this Law shall have the meanings provided hereunder:
 - (a) **Union** means The Republic of the Union of Myanmar.
 - (b) **Central Committee** means the Central Committee of Intellectual Property Rights formed under this Law.
 - (c) **Ministry** means the Ministry of Commerce of the Union government.
 - (d) **Relevant Ministry** means the Ministry of Information, Ministry of Industries, Ministry of Agriculture, Livestock, and Irrigation, or the Ministry of Education of the Union government.
 - (e) **Agency** means the Intellectual Property Rights Agency formed under this Law.
 - (f) **Department** means the department authorized by the Ministry to carry out matters related to intellectual property rights.
 - (g) **Registrar** means the Director-General of the Department handling matters related to the registration of intellectual property rights.
 - (h) **Examiner** means an officer whose position is equivalent to an Assistant Director or above in the Department carrying out examinations related to the registration of intellectual property rights.
 - (i) **Intellectual Property Rights** means the right granted by law to protect inventions made by one's own intellect. This expression includes copyright, patent rights, industrial design rights, trademark rights, and other types of intellectual property rights.
 - (j) **Mark** means any visible mark, which includes names, letters, numbers, illustrated parts, or combinations of colors, or one such mark combined with another, in order to distinguish a particular good or service from other goods or services. It includes trademark, service mark, collective mark and certification mark.
 - (k) **Trademark** means a mark that distinguishes the goods of one enterprise from those of another in the course of trade.
 - (l) **Service mark** means a mark that distinguishes the services of one enterprise from those of another in the course of trade.
 - (m) **Collective mark** means a mark owned by a collective organization, such as a society, association, or socioeconomic organizations, or cooperative of industrialists, manufacturers, or traders. This expression includes marks which distinguish the goods or services of the members of said organizations from those of others.
 - (n) **Certification mark** means a mark which certifies the use, under the supervision of the owner of said mark, in connection with the origin, quality, type and other distinguishing characteristics of the goods or services of a mark.

- (o) **Geographical indication** means an indication which identifies any goods as originating from a particular country, territory or a region, where a given quality, reputation or other distinguishing characteristics of the goods is indicative of its geographical origin.
- (p) **Well-known mark** means a mark that is well-known, in accordance with the stipulated standard, in the Republic of the Union of Myanmar.
- (q) **Trade name** means a name or a specification used to distinguish one undertaking from another.
- (r) **Owner of a registered mark** means a person or a legal entity recognized and registered in the Department's registration records as the owner of the mark.
- (s) **Right holder** means a person or a legal entity who is the owner of a registered trademark, the owner of a well-known mark, the owner of a geographical indication, the owner of a trade name or is a transferee of the rights relating to a registered mark or is a licensee of the rights relating to a registered mark.
- (t) **Member State** means any Member State of any conventions, treaties, or agreements relating to intellectual property rights in which the Union is a Party, or any Member State of relevant international or regional organizations.
- (u) **Intellectual Property Rights Court** means either a court which has been established by the Supreme Court of the Union, in accordance with the law, to adjudicate matters related to intellectual property rights or a court which has been granted the jurisdiction and mandate of such court. **Right of priority** means the right of priority described in Section 31 of this Law.
- (v) **Right of priority for trade exhibitions** means the right of priority related to trade exhibitions described in Section 32 of this Law.

Chapter II Objectives

3. The objectives of this Law are as follows:
- (a) To promote investment, trade and commerce by protecting marks;
 - (b) To protect the interests of the owners and right holders of marks;
 - (c) To establish a fair market competition system and to create a safe environment for consumers by prohibiting the entry of mark counterfeiting and counterfeit goods into the market;
 - (d) To improve the quality of regional products of Myanmar and to promote the economic development of people in these regions by penetrating the global market through protection of geographical indications.

Chapter III Formation of the Central Committee and its Functions and Duties

4. The Union Government:
- (a) in order to supervise and conduct matters related to intellectual property rights, must form an Intellectual Property Rights Central Committee as described below:

(1) Vice-President	Chair
(2) Union Minister of the Ministry	Vice-Chair
(3) Deputy Ministers of Relevant Ministries	Members
(4) Deputy Ministers or Directors-General of other suitable ministries	Members

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| | (5) No more than four experts on intellectual property rights | Members |
| | (6) Two representatives from non-governmental organizations | Members |
| | (7) Person appointed by the President of the Union | Secretary |
| | (8) Director-General of the Department | Co-Secretary |
- (b) may reorganize the Central Committee formed under subsection (a) as it sees fit.
5. The duties of the Central Committee are as follows:
- (a) Formulating intellectual property rights policies, strategies, and work plans in order to develop intellectual property rights businesses in the Union;
 - (b) Supervising and directing the implementation of intellectual property rights policies, strategies, and work plans;
 - (c) Providing direction on promoting national economic development, promoting foreign investment, and developing small and medium enterprises through the intellectual property rights system;
 - (d) Promoting the training and education of human resources required for the development of businesses related to intellectual property rights;
 - (e) Coordinating with relevant government departments, governmental organizations, other organizations, and private businesses in order to develop the intellectual property rights system and to properly exercise and conduct the intellectual property rights system;
 - (f) Promoting contact and coordination with domestic and foreign organizations in order to secure technical assistance and other necessary assistance;
 - (g) Carrying out intellectual property rights related duties as assigned by the Union Government.

Chapter IV

Formation of the Agency and Its Duties

6. The Central Committee:
- (a) with the approval of the Union Government, must form the Intellectual Property Rights Agency as described below:

(1)	Secretary of the Central Committee	Chair
(2)	Directors-General related to the Agency from the Ministry and relevant ministries	Members
(3)	No more than eight experts on intellectual property rights	Members
(4)	No more than five representatives from non-governmental organizations	Members
(5)	Director-General of the Department	Secretary
(6)	Persons in charge of the divisions of the Department	Co-Secretaries
 - (b) may reorganize the Agency formed under subsection (a) as it sees fit.
7. The Chair of the Agency shall be considered as an official with the same rank as a deputy minister.
8. The Agency must shall perform the following functions:
- (a) coordinate work related to trademark rights;
 - (b) implement the trademark rights policies, strategies and work plans and human resources training and education matters prescribed by the Central Committee in order to develop the trademark rights system;
 - (c) research and report to the Central Committee so that the Union can participate as a member of trademark rights conventions, treaties and agreements;
 - (d) implement according to the provisions contained in the conventions, treaties, and

- agreements relating to trademark rights, in which the Union is a Party;
- (e) cooperate with relevant trademark rights related domestic organizations, international organizations, regional organizations and Members States;
 - (f) with the approval of the Central Committee, form working groups necessary for taking action against trademark rights related infringements and prescribing the duties of such groups;
 - (g) with the approval of the Central Committee, form working groups necessary for carrying out trademark rights related matters and prescribing the duties of such groups;
 - (h) provide protection to high quality local products in order to promote economic development of businesses of people in local regions;
 - (i) make decisions on the appeals against the Registrar's decision;
 - (j) prescribe the fees under this Law with the approval of the Union Government via the Central Committee;
 - (k) approve the office seal, which will be used to authorize various matters related to the registration of trademark rights;
 - (l) submit work reports and other necessary reports to the Central Committee;
 - (m) submit annual progress report on work done on trademark rights related matters to the Central Committee;
 - (n) carry out intellectual property rights related functions assigned by the Central Committee from time to time.

Chapter V

Duties and Functions of the Department

9. The Department shall perform the following functions:
- (a) make announcements on trademark rights related registration matters;
 - (b) maintain registration records related to trademark rights;
 - (c) supervise the work of divisions formed and established according to the different intellectual property rights fields;
 - (d) carry out intellectual property rights related functions assigned by the Agency from time to time.

Chapter VI

Appointment of Registrars and Examiners and Stipulation of their Duties and Functions

10. The Ministry may appoint, according to reports from the Agency, the Registrar and necessary Examiners for carrying out functions related to intellectual property rights in the Department.

11. The duties and functions of a Registrar are as follows:
- (a) supervising matters related to the application for registration and examination of marks;
 - (b) coordinating the Examiners' reports in the course of performing mark registration related work;
 - (c) making decisions on matters related to the registration of a mark;
 - (d) performing intellectual property rights related duties as assigned by the Central Committee and the Agency.

12. The functions and duties of an Examiner are as follows:
- (a) reviewing the applications for the registration of marks and geographical indications;

- (b) examining objections and counter-objections regarding the application for the registration of a mark and submitting his findings together with his remarks to a Registrar;
- (c) with the Registrar's approval, summoning and examining persons necessary for performing functions related to the registration of marks and requesting documentary evidence;
- (d) submitting the application for a mark together with his findings and remarks on whether the registration of said mark should be allowed to the Registrar after scrutinizing the aforementioned application;
- (e) performing intellectual property rights related duties assigned by the Agency, Department, and Registrars.

Chapter VII

Marks not Eligible for Registration

13. Any of the following characteristics of a mark constitutes absolute grounds for refusal and the aforementioned mark is not eligible for registration:

- (a) lack of distinctiveness;
- (b) containing only marks or indications of a good's or service's type, related information, quality, quantity, intended use, value, origin, time of manufacture, or other characteristics;

Exceptions - If one of the following circumstances applies to the provisions in subsections (a) and (b), there are no grounds for refusal of the registration of the mark in question.

- (1) If the mark's distinctiveness is known among consumers due to its use before the date of application for mark registration;
- (2) If the applicant, in good faith, is exclusively using the mark continuously within the commercial area of Myanmar.
- (c) may be detrimental to public order, reputation, beliefs, the Union's reputation, or traditions valued by ethnic minorities;
- (d) becoming common usage in contemporary expressions or becoming a part of traditions and is becoming used practically in the commercial area;
- (e) in relation to subsection (b), misleading the public or commercial area;
- (f) directly copying or imitating or misleading, without the approval of relevant authorities, all or part of a country's flag, ceremonial appearance, other marks and symbols, a legal mark indicating the management or guarantee by a State, or a mark of quality guarantee, or a multilateral international organization's ceremonial appearance, flags, or other marks, names, including said organization's acronyms, full name, or any part;
- (g) use of marks and signs separately protected under the international agreements in which the Republic of the Union of Myanmar is a Party.

14. If any of the following applies to a mark, then it constitutes relative grounds for refusal and the mark is ineligible for registration.

- (a) if the mark misleads consumers through its use by being identical or similar to any other person's registered mark or mark for which registration or right of priority has been applied for beforehand for identical or similar goods and services for said marks;
- (b) if it uses, without the consent of a relevant person or legally formed organization, a mark which may be harmful to the individual rights of any person or the name

- and reputation of a legally formed organization;
- (c) if it is a mark which may infringe upon the intellectual property rights of any other person;
- (d) if the registration of a mark is applied for without good faith;
- (e) if a mark registration application is made for a mark that misleads consumers by not only being identical or similar to a well-known mark but is also used in identical or similar goods or services;
- (f) if a mark registration application is made for a mark that is identical or similar to a registered well-known mark but the goods or services are not identical or similar but may indicate that there is a connection between the owner of the well-known mark and the goods or services that the mark in question is being used for and such use may be harmful to the interests of the owner of the well-known mark.

Chapter VIII

Application

15. In order to enjoy the rights of a registered mark under this Law, any applicant may apply to the Registrar for the registration of a mark in accordance with the prescribed regulations.
16. The applicant for the registration of a mark:
- (a) may write the registration application in Myanmar or English.
 - (b) must translate the Myanmar language application into English or vice versa if the Registrar requests so.
 - (c) must write a statement that the translation under subsection (b) is true and correct and sign it.
17. The applicant for the registration of a mark shall:
- (a) include the following in the application:
 - (1) an application for registration;
 - (2) name and address of the person or legally formed organization applying for registration;
 - (3) name, citizenship scrutiny card number, and address of the agent or representative if the applicant entrusts an agent or representative with this matter;
 - (4) a clear and complete description of the mark;
 - (5) name and type of goods and/or services for which a request for registration is made and the category of international mark classification to which it belongs;
 - (b) In addition to the requirements in subsection (a), the following must be attached to the application if necessary:
 - (1) if the application is made for a legally formed organization, the registration number, type and country of said organization;
 - (2) if the applicant requests the right of priority, an application for the right of priority together with sufficient evidence proving that he has the right of priority, and description;
 - (3) if the applicant requests the right of priority for trade exhibitions, an application for the right of priority for trade exhibitions together with sufficient evidence proving he has the right of priority for trade exhibitions, and description;
 - (4) if the mark is registered at the documents registration office, documentary evidence proving such registration;

- (5) other requirements stipulated by the Agency and the Department from time to time.
18. The date on which the Department has received a complete application under subsection (a) of section 17 and the stipulated fee, is deemed as the date of submission of the application for registration in the Union.
19. The Registrar:
- (a) If applications for the registration of identical or similar marks are submitted on different dates by more than one person and disputes arise over said applications, must permit only the first applicant who has submitted an application that meets stipulations to register his mark.
 - (b) If the applicants requested right of priority or right of priority for trade exhibitions according to applications made under subsection (a) and disputes arise over said applications, must permit only the applicant with the earliest right of priority date who has submitted an application that meets stipulations to register his mark.
20. If more than one applicant request the registration of identical or similar marks on the same date or if the right of priority dates are the same:
- (a) The Registrar must direct the applicants to negotiate this matter amongst themselves and to resubmit the name of the applicant whom will register his mark within the prescribed period.
 - (b) According to the Registrar's directions, the applicants must report the name of the applicant, whom all the other applicants nominate for the registration of his mark, to the Registrar.
 - (c) If the applicants cannot reach an agreement although the Registrar has instructed them to do so according to subsection (a), they must follow the decision made using the prescribed method.
21. (a) An applicant for the registration of a mark:
- (1) may, after paying the prescribed fee, apply to the Registrar if he wishes to amend the application, translation, and documentary evidence due to text errors or other errors which may be corrected, before the Registrar makes a decision regarding the acceptance or refusal of an application or before the Agency makes a decision on the appeal case against the decision of the Registrar.
 - (2) may apply for the withdrawal of the application for the registration of a mark.
 - (3) may, after paying the prescribed fee, request the Registrar for amendment by separating any application which includes multiple goods or services into more than one new application or to limit or decrease, without increasing, the submitted list of goods or services.
- (b) the date of submission of the separate registration applications made under item (3) of subsection (a) shall be the date of submission of the original application.
22. The Registrar may allow the amendments after the application under section 21 has been examined according to stipulations.

Chapter IX

Examination, Objection, and Registration

23. With regards to an application for the registration of a mark, the Examiner must:
- (a) submit the application, which has been made according to stipulations, together with his remarks to the Registrar after examining whether the application meets

- any of the provisions set out in section 13 and whether it contains the points set out in section 17;
- (b) with the Registrar's approval, notify the applicant, whose application did not meet the stipulations, to revise the application as needed after examining whether the application meets any of the provisions set out in section 13 and whether it contains the points set out in section 17. If the applicant fails to revise his application within 30 days of receipt of notice, then the application will be considered withdrawn.
 - (c) if necessary revisions to the application are received under subsection (b), the Examiner must reexamine the application and submit the application to the Registrar, together with his remarks.
24. In order to register a mark, the applicant:
- (a) may request, if the following conditions are met, for the registration of a mark when the failure to comply within the stipulated period of time results in the loss of rights connected to the relevant mark application:
 - (1) submitting a request within 60 days from the date of withdrawal due to the failure to comply within the stipulated period;
 - (2) attaching all explanations, information or requirements with regards to the failure to comply within the stipulated period;
 - (3) describing sufficient reasons for the failure to comply within the stipulated period in the request;
 - (4) paying the prescribed fee.
 - (b) If a request to restore the rights related to the request under subsection (a) was made during the period of appeal, the Registrar must suspend the request under subsection (a).
25. A Registrar:
- (a) may allow the registration of a mark, after examination, if the request to register a forfeited mark, where there is a loss of right related to a mark application, is made again under subsection (a) of section 24.
 - (b) must make a public announcement, in accordance with stipulations, regarding the application made in line with sections 13 and 17 in order to notify the public and allow for objections to be made.
26. When a person wants to make an objection regarding an application for the registration of a mark, he may submit an objection form to the Registrar after paying the prescribed fee, within 60 days from the date of announcement on grounds that the application fulfills any of the requirements under sections 13 and 14.
27. Upon receipt of the objection, the Registrar must notify the applicant within the prescribed period so that the applicant can provide a defense against the objection.
28. With regards to applications for the registration of marks, a Registrar:
- (a) may allow the registration of the mark stated in the application if there are no objections submitted within 60 days from the date of public announcement.
 - (b) if objections are submitted, may allow or refuse the registration of a mark after examining whether such objection meets the provisions of sections 13 or 14.
 - (c) must enter the allowance or refusal of the mark registration into the registration records and notify the applicant. In addition, he must announce the outcome to the public in a manner that is consistent with stipulations.
 - (d) must issue the registration certificate of the mark to the applicant if the registration of said mark is permitted.
29. An owner of a registered mark may:

- (a) , after paying the prescribed fee to the Department, request the Registrar to issue a certified copy of the registration certificate of the mark in cases of damage or loss of the original.
 - (b) , after paying the prescribed fee, request the Registrar to revise writing errors and other errors which can be corrected under this Law, as well as nationality and address, in the registration records.
30. The Registrar:
- (a) must issue the certified copy of the registration certificate of the mark after examining the request made under subsection (a) of section 29.
 - (b) may allow the revision request made in subsection (b) of section 29 after examining such request.

Chapter X

Right of Priority

31. If a person who has initially applied for registration of mark in a Member State of the Paris Convention or the World Trade Organization or the transferee of said person applies for the registration for identical goods or services and identical mark in the Republic of the Union of Myanmar within six months from the date of the initial application, the aforementioned date of application must be considered as the date of application and the right of priority must be granted from such date.

32. If the applicant requests the registration of a mark, displayed at an international trade exhibition authorized or recognized by a Member State of the Paris Convention or the World Trade Organization, to the Department within six months from the first day of displaying the goods or services, then the first day of display shall be considered as the date of application and the right of priority for trade exhibitions for the aforementioned mark shall be granted from such date.

33. The term of right of priority for trade exhibitions shall not exceed the term for the right of priority, starting from the date applied for under section 31.

Chapter XI

Term of Mark Registration and Renewal

34. The term of a registered mark shall be 10 years from the submission date of the registration application. After this period, the applicant may renew the term of registration for 10 years at a time.

35. If the owner of a mark wishes to renew the term of mark registration, he must carry out according to the following:

- (a) the renewal of the term of registration must be applied for within six months prior to the expiration of the term by paying the prescribed fees.
- (b) after the expiration of the term of registration, the renewal application can be made within the grace period of six months. If the renewal application is submitted within this period, the applicant must pay the prescribed registration fee and overdue fee.

36. The Registrar must:

- (a) allow the renewal application for the term of registration for a mark if it meets the stipulated requirements. The renewal term is effective starting from the date of expiration of the previous term.

- (b) examine the application for the renewal of the term of registration and grant the renewal for a term of 10 years if the application meets the criteria for renewal and make a public announcement in a manner that is consistent with stipulations.
- (c) record the renewal of the term of registration and payment of the prescribed fee in the registration records.
- (d) suspend the registration of the registered mark if the owner of the registered mark has not paid the renewal fees within the grace period of six months.
- (e) record the suspension of the registration of the registered mark in the registration records and make a public announcement in a manner according to stipulations.

Chapter XII

Rights Relating to a Registered Mark

37. If the owner of a mark complies with the provisions in Chapter XI, he shall enjoy the registered mark-related rights stipulated in this chapter for the term of the registration.

38. The right holder shall, without prejudice to the provisions in sections 39 and 40,:

- (a) Enjoy the following as an exclusive right:
 - (1) a right to prevent, in accordance with this law, the use by any other person, without his consent in the course of trade, of an identical or similar mark for identical or similar goods or services if such use misleads the public.
 - (2) the right to pursue criminal action, civil action or both against those who infringe on the rights relating to a registered mark.
 - (3) under the following conditions, a right to prevent the use of a mark identical or similar to a registered, well-known mark for different goods or services, without the consent of owner of the mark, in the course of trade:
 - (aa) if it indicates that there is a connection with the owner of a registered well-known mark and the goods or services for which said mark is used;
 - (bb) if it is harmful to the interests of such registered mark owner.
- (b) The rights of a registered mark may be transferred or licensed, in accordance with the provisions in chapters XIII and XIV, to any other person.

39. An owner of a registered mark is not entitled to prevent another person's use, in relation to the following, in good faith for industrial or commercial business:

- (a) owner's name or address;
- (b) indications of type, related information, quality, quantity, intended use, value, origin, manufacturing period or other characteristics of the goods or services;
- (c) descriptions of intended use of goods or services, particularly descriptions of the intended use of accessories or spare parts.

40. The owner of a registered mark is not entitled to prohibit the use of his mark for goods delivered to a market by himself or another person who has his consent.

41. Regardless of any provisions in section 40, the owner of a registered mark is entitled to prohibit the sale of his goods, in accordance with existing laws, if the conditions of the goods have changed or have been damaged after they have been delivered to the market.

Chapter XIII

Transfer of Rights Relating to a Registered Mark

42. (a) An applicant for the registration of a mark may apply to the Registrar to record the

transfer of his application, in accordance with stipulations, to any person or legally formed organization.

- (b) The owner of a registered mark may apply to the Registrar to transfer ownership of the mark, in accordance with stipulations, to any other person or legally formed organization.

43. The Registrar must, upon the request of the applicant for mark registration, the transferee in subsection (a) of section 42, the owner of the mark, or the transferee in subsection (b) of section 42, record the change in ownership of the mark and make a public announcement in the stipulated manner after the prescribed payment has been made.

44. Regarding the transfer of ownership of a registered mark, the transfer is not effective if there is no application submitted to the Registrar to enter the transfer into record.

Chapter XIV Granting Licenses for Registered Marks

45. An owner of a registered mark may grant a license for use of the mark to any person or legally formed organization after setting the terms and conditions.

46. An owner of a registered mark or the licensee may submit certified copies of the grant of license and pay the prescribed fee to the Registrar to request the entry of the grant of license into the registration records.

47. The Registrar shall enter the grant of license to the registration records according to section 46 and make a public announcement in a manner that is consistent with stipulations.

48. The Registrar must cancel the record of licensing if the owner of a registered mark or the licensee applies for such cancellation according to stipulations. Afterwards, he must make a public announcement in the prescribed manner to inform the public.

49. Regarding the granting of license of a registered mark, such grant is not effective unless an application has been submitted to the Registrar to enter said grant into record.

Chapter XV Announcing the Invalidation of Mark Registration and Cancellation

50. (a) At the request of any stakeholder, the Registrar must announce that a registered mark is invalid if there is sufficient evidence that it is not in accordance with the definition in subsection (j) of section 2 or that the mark is not eligible to be registered because it constitutes any of the grounds for refusal under section 13.

- (b) At the request of any stakeholder, the Registrar must announce that a registered mark is invalid if there is sufficient evidence that the mark is not eligible to be registered because it constitutes any of the relative grounds for refusal under section 14.

- (c) The Registrar must make an announcement about the invalidation of a registered mark upon receipt of the final decision or judgement of the Court regarding the application to announce the invalidation of such mark.

- (d)
 - (i) A request for an invalidation announcement under subsection (a) may be made at any time.
 - (ii) Unless the registration was made without good faith, a request for an invalidation announcement under subsection (b) can only be made within five years from the date of registration.

- (e) If the grounds for invalidation only applies to some of the goods or services of the registered mark, the invalidation announcement must be made for only the

- registration relevant to such goods or services.
- (f) The Registrar must enter the invalidation announcement into the records and notify the owner of the mark of such invalidation announcement in addition to making a public announcement.
51. (a) Upon the request of any stakeholder regarding the use of the mark, the Registrar must cancel the registration of a mark if it is found to meet any of the following conditions:
- (1) Goods or services related to the registered mark are not used within three years from the date of application to the Registrar and there is no sufficient reason for the failure of such use;
 - (2) The use of the mark has been suspended for three consecutive years and there is no reason for such suspension;
 - (3) The mark includes indications of a good's type, related information, quality, quantity, intended use, value, origin or manufacturing date, or may become a commonly used phrase in contemporary usage or customary expression or exclusively includes indications, which are used practically in the trade area.
- (b) The use of marks according to subsection (a) includes the following:
- (1) use in a different form without modifying the special characteristics of the registered mark;
 - (2) use in Myanmar, including adhering a mark on goods intended for export or adhering a mark on the packaging of said goods.
- (c) If evidence is required to prove the use of a mark, including the period of use of a mark, nature and area of use under this Law, then the burden of proof lies with the owner of the mark.
- (d) If the grounds for cancellation applies to only some of the goods or services of a registered mark, the registration relevant to only these goods or services shall be cancelled.
- (e) When the registration of a mark is cancelled, it shall be deemed legally terminated.
- (f) The Registrar must notify the owner of the mark of the cancellation and make a public announcement after entering the cancellation of the mark into the registration records.
52. The use of a mark which has been cancelled or a mark, which the Registrar refuses to register due to fulfilling subsection (c) of section 13, by any person is prohibited.

Chapter XVI

Geographical indication

53. Any legally formed organization, representing the following persons within the area where the related goods are produced, must apply to the Registrar for the registration of the geographical indications, in accordance with stipulations:
- (a) manufacturers who produce goods using natural products or natural resources;
 - (b) producers of agricultural products;
 - (c) manufacturers who produce handicrafts or industrial products;
 - (d) authorities from relevant government departments and governmental organizations in the Republic of the Union of Myanmar who represent the persons described in subsections (a) to (c).
54. (a) The registration of geographical indications must be applied for in accordance with the following stipulations:

- (1) applicant organization or representative's name, nationality and address;
 - (2) geographical indication for which the application is submitted for;
 - (3) region of origin of the geographical indication in question;
 - (4) goods which are indicated as geographical indication.
- (b) The following must be attached to said application:
- (1) distinguishing characteristics, quality, or reputation of the goods;
 - (2) a good's accurately defined quality, reputation or relation between its characteristics, origin and production process;
 - (3) other stipulated matters.
- (c) The stipulated registration fee must be paid when applying.
55. The geographical indication is ineligible for registration if it meets any of the following conditions:
- (a) it does not conform to the definition of a geographical indication stated in subsection (o) of section 2;
 - (b) the goods for which the geographical indication is used has become common usage or customary in the Republic of the Union of Myanmar;
 - (c) it is a geographical indication that is contrary to public order, morale or public policy.
56. Any stakeholder or relevant department or organization may apply to the Registrar to make an invalidation announcement or cancel the registration for a geographical indication for the following reasons:
- (a) it does not conform to the definition of a geographical indication stated in subsection (o) of section 2;
 - (b) failure to ensure conformity with the requirements in subsection (b) of section 54 and related requirements;
 - (c) a foreign geographical indication which is not protected or for which protection has been terminated in the foreign country of origin or which is no longer used in said country;
 - (d) it is a geographical indication which is contrary to public order, morale or public policy.
57. (a) A registered geographical indication may be used in the course of trade only by producers who carry out their activities in the region described in the registration for the goods described in said registration. Such goods must meet the quality, reputation or other characteristics stipulated in the registration records.
- (b) For homonyms in geographical indications, protection shall be granted only if there is a significant difference, in practice, between the name of the geographical indication which is already registered and that of the geographical indication which is registered later. Protection shall be rendered by considering the need to treat relevant producers fairly and to not mislead consumers.
- (c) The right holder of a registered geographical indication is entitled to prohibit the following:
- (1) use of a geographical indication in any manner by falsely describing that a product is from the region stated in said geographical indication even though it is from another place of origin in order to deceive the public;
 - (2) any use of a registered geographical indication which creates unfair competition;
 - (3) the use of a disputed geographical indication for goods that are not from the region indicated in said geographical indication for indicating the origins of goods, for use after translating said geographical indication, or

for the use of a geographical indication together with the description of the type, group, form, imitation or similar descriptions.

- (d) Though the region, zone or territory of a good is accurately described, other geographical indications, which mislead the public by incorrectly stating that the goods are produced from another region, shall not be granted rights under subsections (a) and (c).
58. (a) The Registrar must examine whether an application is in conformity with the provisions of sections 53, 54 and 55. If all requirements are fulfilled, he must publicize the information and facts contained in the application in the manner prescribed.
- (b) Provisions relating to the objection of registration of a mark shall be applied as necessary to the objection of registration of a geographical indication.
- (c) The Registrar must register a geographical indication if he does not receive an objection or if he refuses such objection.
59. The term of a registered geographical indication shall receive protection under this Law as long as its distinguishing characteristics, quality or reputation for which protection was initially granted exists.
60. (a) If the registration of a mark is applied for after the application for the registration of a geographical indication has been submitted in accordance with this Law, the Registrar must refuse the mark registration application which violates section 57 or where the mark will be used for an identical good.
- (b) Registered marks shall be announced as invalid if they fulfill the conditions of subsection (a).
- (c) Notwithstanding any provisions relating to the registration of geographical indications, a mark, which has been registered or applied for registration in good faith before the submission of the registration application for a geographical indication, is permitted to be used continuously even if it violates section 57 provided that it does not fulfill the provisions in Chapter XV. In such cases, the Registrar shall allow the use of geographical indication as if it were the use of the mark related to it.
61. (a) The relevant department and organizations shall supervise the protected geographical indications. They may assign some of the supervision work to another person.
- (b) Supervision shall include the following:
- (1) consistency between the descriptions of the products registered as geographical indications and the relevant products;
 - (2) the use of the names of registered geographical indications in the market.
- (c) The stakeholders shall pay the expenses for supervision required to ensure conformity with the descriptions of the products.
62. Regarding the violation of the rights of geographical indications, action must be taken according to the provisions on taking action against the violation of rights of a mark if the stipulations in addition to the provisions in this Law are violated.

Chapter XVII

Trade Name

63. (a) Although a trade name is not registered, it shall be protected regardless of whether it is included as part of a mark or not.

- (b) If a name or a description is, by means of nature or use, contrary to public order or morals, in particular, if the nature of business described by such a name deceives the commercial area or the public, such name or description shall not be used as a trade name.
- (c) The trade name shall be protected if the use of an identical or similar mark as said trade name as another trade name or another mark, without any authorization, misleads the public.

Chapter XVIII **Applying for International Registration**

64. After the Republic of the Union of Myanmar has entered into the International Trademark Registration System Treaty as a Party, those who wish to register a mark using the international registration system may apply to the Registrar from within Myanmar or abroad, in accordance with stipulations.

Chapter XIV **Appeal**

- 65. (a) Any person who is not satisfied with any decision made under this Law by a Registrar may appeal to the Agency within 60 days from the date of announcement of this decision.
 - (b) In an appeal under subsection (a), the Agency may confirm, revoke, or amend the decision of the Registrar or give instructions in order to gather more evidence.
 - (c) If the evidence under subsection (b) has been submitted additionally, the Agency may confirm, revoke, or amend the Registrar's decision.
66. Any person who is not satisfied with a decision made by the Agency may appeal for review to an intellectual property rights court, which has been granted jurisdiction by the Supreme Court, within 90 days from the date when the notice of such decision was received.

Chapter XX **Establishment of Intellectual Property Rights Courts**

67. The Supreme Court of the Union:
- (a) may establish intellectual property rights courts in suitable areas to adjudicate over criminal and civil cases related to matters of intellectual property rights and appoint judges to these courts.
 - (b) may grant the judges, appointed under subsection (a), jurisdiction and mandate in order to adjudicate cases related to intellectual property rights.
 - (c) may grant the jurisdiction and mandate of the intellectual property rights courts to suitable courts in order to adjudicate cases related to intellectual property rights before the establishment of the intellectual property rights courts under subsection (a).
 - (d) must stipulate the jurisdiction and mandate of the intellectual property rights courts which have the authority to handle the appeals and revisions of the judgments, orders and decisions of intellectual property rights courts.
 - (e) must grant jurisdiction and mandate to an intellectual property rights court suitable for adjudicating the application under section 66.

Chapter XXI
Protection of Registered Mark Rights by the Customs Department

68. If a right holder has sufficient evidence to suspect that goods accused of bearing counterfeit marks are imported, are in the process of being imported or will be imported into the territory of Myanmar, he may apply to the Director-General of the Customs Department, in accordance with stipulations, to issue an order to suspend the flow of such goods into trade routes.

69. (a) The Director-General of the Customs Department:

- (1) shall notify the applicant whether the application is accepted or refused within 30 days from the date of receipt of the application under section 68;
- (2) must postpone his decision by giving notice to an applicant that he has to provide additional information within 15 days from the date of issue of the notice if the application does not contain sufficient information for examination.
- (3) may specify a guarantee to be given, in accordance with stipulations, to the Customs Department by the applicant when the application is received.
- (4) shall clearly state the reason for refusal if the application is refused.

(b) If the right holder does not request for a shorter period of time, then the activities under subsection (a) shall be effective for up to six months.

70. (a) If the Director-General of the Customs Department has sufficient evidence to assume that the imported goods use counterfeit marks after the application submitted under section 69 is accepted or after such evidence is found during the Custom Department's examination, the unrestrained entry of these goods into trade routes shall be suspended and the applicant and importer shall be notified immediately of such suspension.

(b) In order to prove that such goods are using counterfeit marks and that the claim of the applicant is true, the Director-General of the Customs Department must allow the applicant and the importer of the suspended goods to adequately examine said goods without disclosing confidential information.

71. (a) Unless, within 15 days after the applicant has been notified of the suspension, the applicant has informed the Director-General of the Customs Department that he has commenced legal procedures to determine the merits of the case or unless the intellectual property rights court has informed the Director-General of the Customs Department that temporary action for the suspension of unrestrained entry of these goods is delayed, such goods shall be released from suspension. In appropriate cases, such period may be extended for another 15 days by the decision of the Director-General of the Customs Department before the expiry of 15 days in such stipulated period.

(b) In the case of perishable goods, the stipulated period is three days.

72. After a notice of suspension has been received, the importer may apply to an intellectual property rights court with relevant jurisdiction. The court must amend, revoke or confirm the suspension period within 30 days from the date of application for reexamination.

73. If the intellectual property rights court decides that the goods indeed use counterfeit marks, the importer must pay the Customs Department for the expenses of storing, destroying or removing such goods. When the Director-General of the Customs Department does not receive such expenses from the importer, the right holder shall be responsible for such expenses and he shall be entitled to reclaim any expenses thus liable from the importer.

74. If the intellectual property rights court decides that the goods do not use counterfeit marks, the applicant shall pay the amount determined by the intellectual property rights court to the importer for damages due to the wrongful suspension and temporary custody of such goods.

75. The provisions contained in this Chapter shall not apply to goods bearing counterfeit marks which are brought as passenger luggage intended for personal use, not for commercial purposes, by the importer or imported goods stipulated in the rules.

76. The Director-General of the Customs Department may cooperate with the World Customs Organization or the Directors-General of the customs departments of other countries through exchanging information regarding goods accused of using counterfeit marks.

Chapter XXII

Authority of Intellectual Property Rights Courts regarding Infringements upon the Rights of Registered Marks

77. (a) The right holder may, according to the provisions in sections 79 and 80, apply for a miscellaneous suit to the intellectual property rights court for provisional measures orders through civil action for damages.

(b) The right holder may apply to the intellectual property rights court for criminal action or civil action.

78. The intellectual property rights court:

(a) must deem that a mark protected under this Law is violated if any person, besides the right holder of the mark, exercises any right under section 38 in Myanmar without the consent of the owner.

(b) must deem that the use, without consent, of an identical or similar to an unregistered well-known mark for identical or similar goods or services as misleading the public.

79. (a) If an application is submitted according to subsection (a) of section 77, an intellectual property rights court may issue one or more of the following provisional measure orders for civil remedies with regards to the infringement of mark rights:

(1) a suitable order to prevent the entry of products which infringe upon mark rights, including imported goods where duties have been paid to the Customs Department, into Myanmar's commercial area;

(2) a suitable order to maintain the original condition of evidence relating to alleged infringement upon mark rights;

(3) a suitable order to amend, cancel or confirm the suspension order issued by the relevant Customs Department.

(b) The Intellectual Property Rights Court may request the following from the applicant in order to conduct provisional measures:

(1) sufficient proof that the applicant is the right holder and any evidence that his right is being infringed upon or is likely to be infringed upon.

(2) sufficient security to prohibit abuse of the provisional measure process.

(c) The Intellectual Property Rights Court may direct the applicant to provide any information to distinguish the alleged infringing goods in order to carry out the interim order under subsection (a).

(d) Without prejudice to subsection (b) of section 80 and upon the request of the respondent, the intellectual property rights court shall withdraw or terminate the effectiveness of the provisional measure orders made under subsection (a) of subsection 79 and subsection (a) of section 80 if it has not commenced civil litigation, in order to make a final decision on damages incurred from the date the

provisional measure orders are first conducted, within a reasonable period stipulated by the court or in case of no such stipulation, within thirty (30) days from the issue date of the provisional measure order.

- (e) Upon the request of the respondent, the Intellectual Property Rights Court may order the applicant to pay the respondent a reasonable amount for damages due to the withdrawal of the provisional measure order, the failure or actions of the applicant which lead to the cessation of effectiveness of such order, or where it is found that there is no infringement or there is not likely to be any infringement upon mark rights.
80. (a) The Intellectual Property Rights Court may make provisional measure orders *in absentia* under any of the following conditions:
- (1) any delay which can cause irreparable damage to the right holder;
 - (2) actual threat that the evidence will be destroyed and lost.
- (b) When carrying out an interim order *in absentia*, the Intellectual Property Rights Court:
- (1) must notify the respondent about the provisional measure order immediately after the actions in said order are carried out.
 - (2) must completely carry out the actions in said order if the respondent fails to comply within the period prescribed by the Intellectual Property Rights Court or, in the absence of such prescription, 30 days from the date of issuance of the notice.
- (c) At the request of the respondent, both sides must be heard within a reasonable time in order to amend, cancel or approve of the provisional measures.
81. (a) With regards to the infringement of mark rights, an Intellectual Property Rights Court may issue one or more of the following orders without prejudice to any civil-related laws and the Code of Civil Procedure in a suit under subsection (b) of section 77:
- (1) an appropriate order to prevent the infringement of mark rights, including the prevention of imported goods, which violate mark rights and for which duties have been paid to the Customs Department, from entering the commercial area of Myanmar;
 - (2) (aa) an order for the infringer to pay a sufficient sum to the right holder to compensate for the damages suffered by the right holder due to the infringement of mark rights or, in appropriate cases, the amount of damages set beforehand by the right holder or the profits enjoyed by the infringer or both;
 - (bb) an order to pay an appropriate amount for the right holder's expenses, including court fees and attorney fees;
 - (3) an order to destroy or remove the mark rights infringing goods from the trade routes market, without paying damages, in order not to harm the right holder;
 - (4) an order to destroy or remove the equipment mainly used to produce the mark rights infringing goods from the commercial area.
- (b) The Intellectual Property Rights Court shall consider the proportionality between the order and the degree of infringement of mark rights as well as the interests of other stakeholders when issuing an order under sub-subsections (iii) and (iv) of subsection (a).
82. The Intellectual Property Rights Court may order the right holder to pay the respondent

compensation in addition to court fees, including attorney fees, and other expenses, in cases where the right holder falsely claims, without good faith, that his mark rights have been infringed on.

83. (a) The Intellectual Property Rights Court may, without prejudice to the provisions of existing laws, issue an order requiring the other Party to submit evidence while protecting confidential information for appropriate cases under the following conditions:

- (1) when the right holder has submitted sufficient evidence to adequately support his claims;
- (2) when it is clearly described that sufficient evidence relating to such claims is in the possession of the defendant.

(b) When there is insufficient grounds in infringement cases, the Intellectual Property Court may, of its own volition, confirm, refuse, or make preliminary and final decisions based on information, including mutual accusations, made by the grieved party and the infringer against each other, after holding a hearing between the Parties based on their evidence and accusations, under the following situations:

- (1) refusal in obtaining the necessary information;
- (2) failure to deliver the necessary information within a reasonable period;
- (3) significantly hindering procedures related to taking action;

84. When the Intellectual Property Rights Court sets the amount of a fine for an offence prosecuted under this Law, it may issue an order to pay all or a part of such fine to the grieved party as damages.

85. When criminal and civil actions are taken against the same cause of action in court, and the intellectual property rights court issues a judgment, an order and a decree to indemnify the damages in the civil suit, the amount paid as damages shall be set off from the fine passed under section 84.

86. With regards to action taken against the infringement of mark rights, the Court may use provisions in the Evidence Act, the Criminal Procedure Code, the Civil Procedure Code, and other related laws that are in effect if there are no specific provisions in this law.

Chapter XXIII Offences and Penalties

87. (a) Whoever is found guilty of any of the following offences for commercial purposes without the consent of the right holder shall be punished with a prison sentence of no more than three years, a fine not exceeding five million (5,000,000) kyats, or both:

- (1) counterfeiting a mark;
- (2) using a counterfeit mark for goods or in relation with services;
- (3) keeping any object or equipment mainly used to make a counterfeit mark or mainly used to use a counterfeit mark in goods.

(a) Whoever is found guilty of any of the following offences shall be punished with a prison sentence of no more than two years, a fine not exceeding five million (5,000,000) kyats, or both:

- (1) trading in and distributing goods using counterfeit marks or keeping such goods in possession for the purpose of trading and distribution;
- (2) importing goods using counterfeit marks into Myanmar or exporting such goods from Myanmar.

88. Whoever commits and is convicted of any of the acts in section 87 and has been convicted of

the same offense previously shall be sentenced to prison for a minimum period of three (3) years to a maximum period of ten (10) years and, in addition, a fine not exceeding ten million (10,000,000) kyats may be imposed.

89. Whoever is convicted of using flags or symbols, which receive special protection under international agreements where the Republic of the Union of Myanmar is a Party, as a mark for commercial purposes shall be punished with imprisonment of not more than three (3) years, a fine not exceeding five million (5,000,000) kyats, or both.

90. Whoever is convicted of removing, destroying, altering, or adding to a registered mark with the intention of harming the owner of said mark, shall be punished with imprisonment of no more than one (1) year, a fine not exceeding three million (3,000,000) kyats, or both.

91. Whoever is convicted of any of the following acts may be punished with imprisonment of no more than one (1) year, a fine not exceeding two million (2,000,000) kyats, or both:

- (a) issuing or causing to issue a counterfeit registration certificate of a mark;
- (b) making or causing to make a false entry in the mark registration records without good faith.
- (c) violating the prohibition in section 52.

92. Whoever is part of or abets any of the offences under this Law shall be punished according to the provisions for the offence committed.

Chapter XXIV Miscellaneous

93. Before this law comes into effect, in accordance with the Registration Act,:

- (a) An owner of a mark registered at the Deeds and Documents Registration Office or an owner of a mark which is not registered but is actually used must submit a registration application, in accordance with this Law, in order to enjoy the rights relating to registered marks.
- (b) Whether a mark has been registered or not registered, a mark that is actually used in the markets of the Union shall enjoy the right of priority for the goods or services for which said mark is used for the duration of the stipulated period.

94. Regardless of the provisions in any other existing law:

- (a) registration of a mark must be carried out according to this Law.
- (b) Any offense regarding a mark must be punished according to this Law only.

95. In making a decision using the power granted to him by this Law, the Registrar has the right to allow a hearing, according to stipulations, for a person who may suffer from such decision.

96. A copy of the registration certificate of a mark, which is signed, sealed and certified by the Registrar, and supporting documents are allowed to be submitted as evidence in relevant intellectual property rights courts.

97. The Intellectual Property Rights Court may order the storage as public property, destruction or another method of disposal, which it sees fit, of objects and equipment mainly used in the offense including goods using counterfeit marks.

98. In order to carry out the provisions in this Law, the Ministry must take charge of the office work of the Central Committee and the Agency in addition to bearing the costs.

99. The Ministry, with the Union Government's approval, must stipulate the honoraria and fees of the Central Committee members, Agency members, and working group members whom are not public servants.

100. The office term of the Union-level persons under this Law is the same as the President's office term.

101. In order to carry out the Agency’s work, the Ministry may establish and assign the Department and divisions according to the different intellectual property rights fields.

102. The mark rights under this Law are not applicable to the non-commercial use of any product bearing a mark, for the public good during a State emergency and disaster, by any government department and legally formed organization.

103. The offences under this Law are deemed as cognizable offenses.

104. Any dispute arising between persons relating to mark disputes may be settled by peaceful negotiation between both Parties, arbitration, or litigation.

105. The Central Committee and Agency established under this Law shall be considered as applicable to all intellectual property rights laws.

106. For the purpose of carrying out the provisions of this Law:

- (a) the Supreme Court may issue judiciary-related rules, regulations, order announcements, orders, directives, and procedures.
- (b) the Ministry and relevant Ministries:
 - (1) may issue rules and regulations with the approval of the Union Government.
 - (2) may issue order announcements, orders, directives and procedures.
- (c) The ministry in charge of customs affairs may issue customs-related rules and regulations with the approval of the Union Government.
- (d) The Agency and Department may issue order announcements, orders, directives, and procedures with the approval of the Ministry.

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I hereby sign under the Constitution of the Republic of the Union of Myanmar.

Sd./ Win Myint
President
Republic of the Union of Myanmar