

Trademark Appeal Process in Myanmar: How to Exercise Your Right to Appeal?

In Myanmar, the appeal process for intellectual property (IP) subject matters, particularly trademarks, is governed by Sections 65 and 66 of the Trademark Law. These sections outline a hierarchical structure with two levels of appeal, time limits for lodging appeals, and the scope of authority vested in each appeal authority. This article aims to provide an overview of the critical considerations that stakeholders should be aware of when seeking to challenge decisions made under Myanmar's Trademark Law.

Hierarchical appeal process

The appeal process is organized hierarchically, providing a well-defined route for dissatisfied individuals to challenge decisions related to trademarks. The first level of appeal involves appealing to the **Intellectual Property Rights Agency** (“**Agency**”) from any decision made by a Registrar. The Agency serves as an intermediate authority that reevaluates the Registrar's decision based on the appellant's arguments and evidence.

In the event that a party is not satisfied with the Agency's decision, they can escalate the appeal to the second level, which is the **Intellectual Property Rights Court** (“**Court**”). The Court, granted jurisdiction by the Supreme Court, conducts a review of the Agency's decision, offering an additional layer of impartiality and higher judicial oversight to the appeal process.

Time limits for appeals

Time limits play a crucial role in the appeal process, ensuring that disputes are addressed promptly and efficiently. For appeals to the Agency (Section 65), any dissatisfied person must submit their appeal within 60 days from the date of announcement of the Registrar's decision. This timeframe emphasizes the need for swift action on the part of the appellant.

Similarly, for appeals to the Court (Section 66), the appeal must be made within 90 days from the date the notice of the Agency's decision was received. This deadline further emphasizes the importance of adhering to strict timelines in order to pursue the matter to the second level of appeal.

Myanmar's Trademark Law is silent on extension of the above appeal deadlines.

Scope of authority at each level

The Agency's authority on appeal (Section 65) is comprehensive, allowing it to confirm, revoke, or amend the decision made by the Registrar. Moreover, the Agency can issue instructions to gather more evidence during the appeal process, indicating a considerable degree of discretion in handling appeals. This authority ensures that the Agency has the necessary tools to reevaluate decisions in light of new information and arguments presented during the appeals.

Effect of additional evidence

Section 65(b) provides the provision for submitting additional evidence during the appeal process. This offers appellants the opportunity to present new information that might have a material impact on the decision. The Agency has the authority to reconsider its decision based on this evidence and may confirm, revoke, or amend the Registrar's decision as deemed appropriate. This ensures a fair and equitable review of the case.

Lodging appeals by any person

The Trademark Law explicitly states that “*any person*” who is dissatisfied with a decision can appeal to the respective authority. This inclusivity implies that the right to appeal is not limited to specific parties and is open to all stakeholders affected by a trademark-related decision. This provision facilitates access to justice and promotes fairness in the appeals process.

Judicial review available

The availability of an intellectual property rights court for the second level of appeal (Section 66) highlights the existence of a formal avenue for judicial review of decisions made by the Agency. This adds an additional layer of impartiality and oversight in the appeals process, instilling confidence in the fairness of the overall trademark dispute resolution mechanism.

Limited details on appeal grounds

One notable aspect of the appeal process in Myanmar's Trademark Law is the absence of explicit grounds on which appeals can be made. This lack of specificity may lead to challenges in determining the criteria for lodging appeals and the basis on which decisions are reviewed. As a result, it becomes essential for parties to carefully craft their arguments and present them coherently to the appeal authorities.

Final thoughts

The appeal process for trademark-related decisions in Myanmar is structured to provide a fair and efficient resolution mechanism. The hierarchical appeal structure, time limits for appeals, and the roles and powers of each appeal authority (Agency and intellectual property rights court) are fundamental aspects that stakeholders should consider when seeking to challenge decisions made under Myanmar's Trademark Law. The inclusion of a judicial review process and the availability of lodging appeals by any person further enhance the overall fairness and accessibility of the appeals system. However, stakeholders must be mindful of the limited details on appeal grounds, which require careful and well-supported arguments during the appeals process.

At KENFOX, we recognize the significance of trademarks as valuable assets for businesses operating in Myanmar. As a leading intellectual property law firm with a deep commitment to delivering exceptional trademark services, we aim to guide our clients through the intricacies of the trademark appeal process in this dynamic jurisdiction. With expertise in Myanmar's Trademark Law, we offer a comprehensive overview of the appeal proceedings, illuminating the hierarchical structure, time limits, and scope of authority vested in each appeal authority.

By Nguyen Vu QUAN
Partner & IP Attorney

Contact

KENFOX IP & Law Office

Building No. 6, Lane 12/93, Chinh Kinh Street, Nhan Chinh Ward, Thanh Xuan District, Hanoi, Vietnam

Tel: +84 24 3724 5656

Email: info@kenfoxlaw.com / kenfox@kenfoxlaw.com