

Trademark Law in Myanmar: Understanding Exclusive Rights and Legitimate Uses

In Myanmar's dynamic business landscape, trademarks serve as invaluable assets for businesses seeking to establish brand identity and consumer trust. The Myanmar Trademark Law grants trademark owners comprehensive rights to maintain the exclusivity of their marks and protect their brand reputation. However, it also introduces essential exceptions to strike a balance between trademark owners' rights and legitimate uses in the market. In this article, we explore the provisions outlined in Sections 38, 39, 40, and 41 of Myanmar's Trademark Law, shedding light on the rights granted to trademark owners and the exceptions to these rights.

A Set of Exclusive Rights to The Owner of a Registered Mark

Exclusive Right to Prevent Misleading Use: The first and fundamental right granted to the owner of a registered mark is the exclusive right to prevent any other person, without their consent, from using an identical or similar mark for identical or similar goods or services in the course of trade if such usage misleads the public. This provision serves as a powerful tool to combat trademark infringement and protect consumers from confusion arising due to similar marks.

Right to Pursue Legal Action: In addition to the exclusive right to prevent misleading use, trademark owners are granted the right to pursue legal action against those who infringe on the rights related to their registered mark. This includes the right to pursue both criminal and civil action, or a combination of both, against infringing parties. Such legal action empowers trademark owners to seek remedies, damages, and redress for any violations of their trademark rights, acting as a strong deterrent against potential infringements.

Right to Prevent Use of Similar Marks for Different Goods or Services: The Trademark Law goes beyond protecting marks within the same category of goods or services. Under specific conditions, trademark owners of well-known marks are granted the right to prevent the use of an identical or similar mark for different goods or services, even without their consent. This provision aims to protect the reputation and distinctiveness of well-known marks, as using such marks for different goods or services may lead to dilution or misrepresentation. To exercise this right, the following conditions must be met:

(a) Connection with the Registered Well-Known Mark: The use of the similar mark must indicate a connection with the owner of the registered well-known mark and the goods or services for which the similar mark is used. This condition ensures that any association with the well-known mark is intentional and not misleading.

(b) Harmful to the Interests of the Registered Mark Owner: The use of the similar mark must be shown to be harmful to the interests of the owner of the registered well-known mark. This ensures that the reputation and value of the well-known mark are not negatively affected by any unauthorized use.

Transfer and Licensing of Rights: Section 38(b) states that the rights of a registered mark can be transferred or licensed to any other person in accordance with the provisions outlined in chapters XIII and XIV of the Trademark Law. This provision grants flexibility to trademark owners in managing their intellectual property assets. They can choose to transfer ownership of the mark to another entity or grant a license to use the mark to other parties, as long as it complies with the relevant provisions of the law.

Exceptions to Exclusive Rights of Registered Mark Owners

Section 39 introduces specific exceptions that permit others to use a registered mark without infringing on the exclusive rights of the owner. These exceptions aim to strike a balance between trademark protection and legitimate uses in the market:

Use of Owner's Name or Address: The Trademark Law permits others to use the owner's name or address in good faith for industrial or commercial purposes. This exception ensures that legitimate businesses can refer to the rightful owner's name or address without facing infringement claims.

Use of Descriptive Information: In good faith for industrial or commercial business, others are allowed to use indications of type, related information, quality, quantity, intended use, value, origin, manufacturing period, or other characteristics of goods or services. Additionally, descriptions of intended use, including accessories or spare parts, can be used without encroaching on trademark rights. This provision facilitates legitimate product or service descriptions in the market.

Additional Exceptions to Exclusive Rights

Section 40 provides further exceptions to the exclusive rights of a registered mark owner.

Use of Mark for Goods Delivered to the Market: Trademark owners are not entitled to prohibit the use of their mark for goods delivered to the market by themselves or with the consent of another person. This exception ensures the smooth flow of goods in the market without hindrance from trademark owners.

Prohibition of Sale of Damaged Goods

Section 41 introduces an additional exception to protect consumer interests:

Prohibition of Sale of Damaged Goods: The owner of a registered mark is entitled to prohibit the sale of their goods if the conditions of the goods have changed or have been damaged after being delivered to the market. This measure prevents consumers from being misled by damaged or substandard products bearing the registered mark.

Final thoughts

Myanmar's Trademark Law provides a robust legal framework to safeguard the rights of trademark owners and maintain the integrity of registered marks. While trademark owners enjoy exclusive rights to prevent misleading use, pursue legal action against infringement, and protect their brands, the law also introduces essential exceptions. These exceptions allow legitimate uses of marks, such as using owner's names or providing descriptive information, while ensuring consumer interests are protected and trademarks remain distinctive. By understanding the provisions and exceptions outlined in the Trademark Law, trademark owners can confidently protect their brands and enforce their rights, ensuring a fair and thriving marketplace for all stakeholders.

**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