

Trademark invalidation and cancellation in Myanmar – Critical Considerations

Myanmar, a nation with a rich cultural heritage and a burgeoning economic landscape, has made remarkable strides in strengthening its legal framework for trademarks. With the enactment of the Trademark Law, the country has demonstrated a commitment to protecting and preserving the integrity of registered marks. At the heart of this legislation lie Sections 50, 51, and 52, pivotal provisions that tackle crucial aspects like invalidation, cancellation, and the prohibition of the use of canceled or refused marks. Together, these sections play a pivotal role in empowering stakeholders, fostering fair competition, and ensuring transparency within Myanmar's trademark system. In this article, we will focus on the details of each section and examine their significance in safeguarding trademark rights in Myanmar.

1. Trademark Invalidation in Myanmar

Section 50 of Myanmar's Trademark Law focuses on the invalidation of registered marks that fail to meet legal requirements or fall under specific grounds for refusal. The key aspects of this section are as follows:

- *Request for Invalidity:* Stakeholders can request an announcement of invalidity for a registered mark if there is sufficient evidence demonstrating that the mark does not meet the provided definition or falls under any grounds for refusal specified in Section 13.
- *Relative Grounds for Refusal:* Stakeholders can also request an announcement of invalidity if the mark conflicts with existing trademarks or geographical indications, as stipulated in Section 14.
- *Legal Formalization:* The Registrar is required to announce the invalidation of a registered mark if a final decision or judgment is received from the Court regarding the application for invalidation. This ensures that the process of invalidation is legally recognized.
- *Time Limits:* Subsection (a) allows stakeholders to make a request for invalidation at any time. However, Subsection (b) imposes a five-year limit from the date of registration, except in cases where the registration was made without good faith.
- *Targeted Invalidation:* If the grounds for invalidation apply only to specific goods or services associated with the registered mark, the invalidation announcement should only affect the registration relevant to those goods or services. This allows for focused invalidation without affecting the entire registration.
- *Transparency and Public Announcement:* The Registrar must enter the invalidation announcement into the records and notify the mark owner, in addition to making a public announcement. This ensures transparency and informs the public about the change in the mark's status.

2. Trademark Cancellation in Myanmar

Section 51 addresses the conditions under which a registered mark can be canceled, emphasizing the necessity for genuine use and distinctiveness. The key elements of this section are as follows:

- *Grounds for Cancellation:* Stakeholders can request the cancellation of a registered mark if the goods or services related to the mark are not used within **three years** from the date of application to the Registrar, and there is no sufficient reason for the lack of use. Similarly, if the use of the mark has been suspended for three consecutive years without a valid reason, cancellation can be sought. Furthermore, if the mark contains elements hindering its distinctiveness or becoming commonly used in trade, it may also be subject to cancellation.
- *Inclusive Use:* The use of a mark, as per Subsection (a), encompasses using the mark in a different form while retaining its special characteristics or adhering it to goods intended for export or their packaging within Myanmar.
- *Burden of Proof:* The responsibility to demonstrate the genuine use of the mark, including the period, nature, and area of use, lies with the owner of the mark. This ensures that the party seeking to maintain the registration must provide evidence of legitimate use.
- *Targeted Cancellation:* If the grounds for cancellation apply only to specific goods or services covered by the registered mark, the registration relevant to those specific goods or services shall be canceled. This allows for focused cancellation without affecting the entire registration.

- *Legal Termination:* When the registration of a mark is canceled, it is legally terminated, and the mark loses its trademark protection in Myanmar.
- *Transparency and Public Announcement:* Similar to the invalidation process, the Registrar must notify the mark owner and make a public announcement after entering the cancellation into the registration records. This ensures transparency and informs the public about the change in the mark's status.

3. Prohibition of Use of Cancelled or Refused Marks

Section 52 serves to protect the interests of legitimate trademark owners by prohibiting the use of marks that have been canceled or refused registration due to meeting the grounds for refusal stated in Subsection (c) of Section 13. The key aspect of this section is as follows:

Prohibition of Use: This section explicitly prohibits any person from using a mark that has been canceled or refused registration due to falling under the specified grounds for refusal. By imposing this prohibition, Myanmar aims to prevent unauthorized use of ineligible marks and to avoid confusion in the marketplace.

Final thoughts

Trademark invalidation and cancellation are critical aspects of Myanmar's Trademark Law, ensuring the protection and integrity of registered marks. The inclusion of Sections 50, 51, and 52 in Myanmar's Trademark Law signifies a commitment to strengthening trademark protection in the country. These provisions grant stakeholders the power to request the invalidation of marks that do not meet legal requirements, facilitate the cancellation of marks that are not genuinely used or contain hindering elements, and prohibit the unauthorized use of marks that have been canceled or refused registration. As a renowned firm specializing in trademark services, KENFOX is committed to assisting businesses in navigating the complexities of trademark law in Myanmar. By adhering to the provisions outlined in Sections 50, 51, and 52, stakeholders can empower their brands, promote fair competition, and foster transparency within the trademark system. With our expertise and comprehensive services, businesses can confidently navigate the dynamic marketplace, secure their valuable trademarks, and thrive in the competitive landscape of Myanmar.

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