

Enforcing Industrial Design Rights in Myanmar

Industrial design rights play a crucial role in safeguarding the unique and creative aspects of a product's appearance. These rights grant creators exclusive control over the visual attributes of their designs, ensuring fair competition and encouraging innovation. This guide outlines the procedures and measures available under Myanmar's Intellectual Property Rights Court to protect and enforce industrial design rights effectively.

1. Seeking Remedies for Infringement of Industrial Design Rights

Filing a Suit for Provisional Measures: Design right holders seeking protection against infringement can apply for provisional measures through a civil action in the Intellectual Property Rights Court, as outlined in Sections 67(a) and (b).

Provisional Measures Orders

Preventive Measures: Upon allegations of registered industrial design rights infringement, the Intellectual Property Rights Court, following applications in accordance with Section 67(a), may issue orders to prevent the infringement and entry of infringing products into Myanmar's commercial domain. This includes imported products that have been cleared by the Customs Department, as stated in Section 68(a)(1).

Preservation of Evidence: To maintain the integrity of evidence related to alleged infringements, the Court may issue orders to preserve the original condition of products, as stated in Section 68(a)(2).

Necessary Submissions: Applicants seeking provisional measures must provide evidence establishing their right holder status and the infringement or likelihood of infringement, as per Section 68(b)(1). Additionally, submission of appropriate securities may be required to prevent the misuse of provisional measures, as outlined in Section 68(b)(2).

Identification of Infringing Products: Applicants may be requested to provide further information to identify alleged infringing products during the execution of provisional measures, as stated in Section 68(c).

Revocation and Cessation of Provisional Measures: Should no action be initiated for a final decision within a reasonable period following the issuance of provisional measures, the Intellectual Property Rights Court may revoke or cease the measures upon the respondent's request, as detailed in Section 68(d).

Compensation for Unjustified Measures

If provisional measures are revoked due to applicant failures or upon finding that the registered design right is not infringed, the Court may order compensation to the respondent for damages resulting from such measures, as per Section 68(e).

Ex Parte Provisional Measures Orders

In cases of potential irreparable harm or evidence loss, the Intellectual Property Rights Court may issue ex parte provisional measures orders, as stated in Section 69(a).

Notification and Compliance

The Court must notify the respondent immediately after executing provisional measures, and if compliance is not achieved within a stipulated period, the measures may be fully carried out, as outlined in Section 69(b)(1) and (2). Both parties have the right to be heard for the amendment, cancellation, or confirmation of provisional measures, as per Section 69(b)(3).

2. Remedies for Infringement of Industrial Design Rights

2.1 Preventive Orders: To curb infringement, the Intellectual Property Rights Court may issue orders preventing the entry of infringing products into Myanmar's commercial area, even if duties have been paid, as detailed in Section 70(a).

2.2 Compensation and Damages: In cases of proven infringement, the Court may order the infringer to pay compensation for damages, determined by factors such as profits gained and losses suffered by the right holder, as per Section 70(b).

2.3 Expenses and Fees: The Court may order the infringer to cover expenses incurred by the right holder, including legal and attorney fees, as outlined in Section 70(c).

3. Final Decisions and Evidence Preservation

3.1 Preservation of Evidence: Upon the right holder's request, the Court may order the destruction of infringing goods or equipment used in their creation, to prevent further infringement, as detailed in Section 71(a)(1) and (2).

3.2 Factors for Consideration: The Court must consider various factors when deciding on the issuance of prevention orders and methods of destruction, including consequences, proportionality, and environmental impact, as per Section 71(b).

4. False Accusations and Presentation of Evidence

4.1 Compensation for False Accusations: If a false accusation of design rights infringement is made without good faith, the Court may order the applicant to compensate the respondent for wrongful prevention, along with legal and other expenses, as stated in Section 72.

4.2 Presentation of Evidence: Under suitable circumstances, the Court may order the other party to present evidence confidentially, provided that the right holder presents sufficient evidence and such evidence is in the possession of the other party, as per Section 73(a).

4.3 Preliminary and Final Decisions: The Court has discretion to make preliminary and final decisions based on allegations and arguments made by both parties, considering circumstances such as refusal to provide information or hindering procedural measures, as outlined in Section 73(b).

5. Supplementary Measures

Utilizing Existing Laws: In cases related to registered industrial design rights, where specific provisions are lacking, the Intellectual Property Rights Court may use provisions from the Evidence Act, Code of Civil Procedure, and other relevant existing laws to issue orders, as per Section 74.

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