

LAW FOR TRADEMARKS IN AFGHANISTAN - No. 100

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Art. 1 - Trademarks are composed of figures and signs use for distinguishing the industrial, commercial, agricultural and farm products such as design, pictures, letter-heads, signature words on textile margins, cover signs, etc., used as means of distinguishing and differentiating products.

Art. 2 - Each and every mark mentioned in the above Article may be adopted for distinguishing and differentiating the merchandise the manufactured and agricultural products or the products of and area.

Art. 3 - The adoption of Trademarks except in cases where the Government may have it compulsory, is by option.

Art. 4 - Individuals have the right of exclusive use of a trade mark which may have already been registered in the Commercial Court.

Art. 5 - The proprietors of commercial, industrial and farming or organization in Afghanistan, either domestic or foreign subjects, may benefit from the provisions of this law.

Art. 6 - Persons whose commercial, industrial or agricultural organisations be located outside Afghanistan may benefit from the provisions of this law when they get their trademarks registered in Afghanistan and also when the country where those organisations are located supports Afghan trademark according to agreement with Afghanistan or its own internal law.

Art. 7 - The following mark may not be used as trademarks or parts thereof:

1 - The National and Royal flags of Afghanistan and , similarly all flags whose use be prohibited by the government.

2 - *Adytum* and pulpit.

3 - Pictures of the King.

4 - Words and phrases that could be confused with the officials of Afghanistan, such as "Shahi = Kingdom", "Saltanati = Royal", "Dolati = Government", "Hokoomati = Government or state", and those similar words and phrases.

5. Signs of official organizations such as: (*serh miasht*), the Red Crescent, the Red Cross, etc.

6 - Marks against modesty, morality and public order.

Art. 8 – Persons, either of private or legal status, who want to register trademarks may approach, personally or through a representative and legal attorney, the Registration Bureau of the Commercial Court and according to separate application form, apply for registration.

Immediately on the receipt of the application form at the Registration Bureau, its contents are entered in a special book and a receipt is given.

Art. 9 - The Official in charge for the Registration Bureau accepts or refused the application within 15 days from the receipt of it. In case that the application for registration of trademark is refused by the Bureau concerned, the reason for it should be clearly stated. In that case the applicant may refer to the Commercial Court within 10 days of the notification.

Art. 10 - If application for registration of a trademark is accepted by the Bureau concerned or after notification of the refusal of application a final decision, on the application of the applicant, be issued by the Central Commercial of Court (Commercial Court of Kabul) regarding its acceptance, the Registration Office would be bound to register the trademark within 10 days and to deliver the formal registration certificate to the applicant.

Art. 11 - In the following two cases the Registration Office may refuse the application for registration of trademarks:

A - When that trademark be contrary to the provisions of Article 7 of this law.

B - When a trademark be already registered in the name of another person, or its similarity to an already registered trademark be such as to cause doubt.

Art. 12 - The following particular in registering and entering each trademark are essential:

A - Date of registration (day, month and year) in words.

B - Name, occupation, place of residence and nationality of the owner of trademark and in case that the application of registration may be made through an agent or representative should also be registered.

C - Name and specifications of the products for distinction and recognition of which the trademark may have been selected.

D - Brief description of the trademark specifying parts thereof if any.

E - Payment of the Registration Fee.

Art. 13 - Any changes occurring in the trademark or in the kind of product for the distinction and recognition whereof the trademark has been specified should be registered separately according to the provision of this law. Otherwise those would not be protect-able.

Art. 14 - The trademarks are transferable, and their transfer to third parties would be valid when it is registered separately according to the provision of this law.

Art. 15 - The registration of trademarks and any changes happening in them according to the provisions of this law are published in one of the official newspaper, on the applicant's expense, within 15 days of the date of registration. And on the request of the owner of the trademark these may also be published by other printed sources.

Art. 16 - The trademarks which are registered are protected from the date of presenting the application form at the Bureau concerned.

Art. 17 - The period of validity of registration of a trademark is ten years at the termination of which the owner of the trademark may apply for its renewal. Each application for the renewal of registration secures the exclusive right of use of that trademark for further ten years.

Art. 18 - The ownership of the trademarks related to the person who has used them in the first instance, except that it is proved contrary in the court.

Art. 19 - The right of ownership of a trademark lapses in the following cases:

1 - Cessation of trade, industry and farming (activities) which may be linked which the ownership of specific trademark.

2 - Sale of the right of ownership of a trademark to another person.

3 - Non-renewal of the registration at the end of the prescribed period

4 - Order of the Court nullifying the right of ownership.

Art. 20 - The registration fee for trademarks is as follows:

A - Registration of the application form - 100 Afghanis.

B - Registration of a trademark without considering the categories of manufacture and products - 1000 Afghanis.

C - If the trademark consists of one category, in addition to the registration fee mentioned in paragraph B - 200 Afghanis for each class.

Art. 21 - The following persons may take exception about the trademark applied for or already registered.

1 - The persons who claim that that mark is their own trademark.

2 - Those whose trademark is as similar to the mark as to cause doubt among the users. In both above mentioned case, the objector who has not got his trademark already registered should, while making, the objection, apply for its registration according to the provision of this law. And pay the registration fees and other related expenses beforehand.

Art. 22- If objection is made against the trademark of the applicant is made is registered, the matter must be communicated within 15 days to the applicant. If that person does not withdraw his claim, the objector may approach the Commercial Court within 60 days. Meanwhile, the registration actions shall remain suspended. If the objector does not approach the Commercial Court within the period of two months, or after recourse, he does not follow his claim, the trademark shall be registered in the name of the person against whom the objection is made. And the objector would not have the right to reclaim the right of registration.

Art. 23 - In the event of an objection has been made about a registered trademark, the objector should bring an action in the Commercial court concerned and demand its cancellation.

Art. 24 - The method of action relating to trademark disputes would be according to the Rules of the Commercial Courts.

Note: The purports of the final order of the court will be published in one of the official newspaper on the convicted person's expense. The Winning party may claim such expenses among the damages from the losing party.

Art. 25 - In the event of the objector proving the fact that the trademark has been constantly uses in the first instance by him before the application of registration, the Court would order the trademark to be registered in his name and, if the trademark under dispute had already been registered in the registration office, the Court would order the cancellation of the previous registration and the trademark would be newly registered in the name of the objector.

Art. 26 - If objection is made regarding the registration of transfer of trademark or the registration of change of trademark or regarding the change of manufactures and products for the distinction and recognition whereof that trademark was specified, the above-mentioned provisions relating to objection shall be applied.

Art. 27 - The time limit for hearing every kind of claims against registration of trademarks is three years. Persons who do not make an objection until three years from the date of registration their claims would be unheard-able after that date.

Art. 28 - In connection with the trademark claims, the party who has bore losses, may claim from the opposing party the losses which he may have incurred in such cases.

Art. 29 - Persons who intentionally or with bad faith use the right of ownership of trademarks belonging to others, besides being subjected to the provisions of Article 28 above, shall also be sentenced to pay cash fine and undergo imprisonment for specific period.

Art. 30 - This Law shall become valid after the date of its publication.

Art. 31 – The Ministry of Commerce is entrusted to enforce the provision of this Law. This Law has been approved among other laws enacted by the Government.