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Trademarks Law No. 40 Of 1956

Pursuant to Law No.40, 1956 and its amendments, the Libyan legislator regulates the protection of trademarks. Its provisions define the true nature of the trademark, the marks which are not registrable, registration procedures, the expiry of marks property and their mortgage, registration renewal and cancellation, the disputes concerning trademarks registration and property and how to solve these disputes as well as defining the officials' authorities for the implementation of the provisions of this Law.

We, Mahmoud Abu Hidmah and Abdul Majeed Kubar, the deputies to the King of United Kingdom of Libya pursuant to the royal decree dated 3rd August, 1956 the Senate and the House of Representatives have passed the following law, which we have sanctioned and do hereby promulgate.

Part I: General Provisions

Article 1

For the purposes of this Law, the terms commercial trademarks shall include names of any distinctive form, signature, words, letters, figures, drawings, tokens, titles of places, stamps, seals, devices, embossed engravings or any other mark or group of marks employed or intended to be employed in order to distinguish the products of any industrial undertaking or for use in any agricultural or forestry projects, mining products or any other goods what-so-ever or in order to indicate the place of origin of the products or goods, their kind, grade, guarantee or method of preparation.

Article 2

A. An office for the registration of trademarks shall be established in the Ministry of National Economy wherein a register shall be kept for the aforesaid registration subject to the provisions of this law and any regulation issued thereunder.

B. Applications for registration shall be submitted to the Provincial Nazareth of Finance and Economy who shall refer such applications with their observations and date and hour of receipt thereof to the registration office. On conclusion of the registration of the trademark, the office shall forward the registration patent to the Nazareth concerned for transmission to the holder.

Article 3

Any person registering a trademark shall be deemed to be the sole proprietor of such mark. He shall be entitled to exclusive use thereof with regard to the products or goods for which it was registered. The ownership of a trademark shall not be a subject of dispute where it has been used by the person who had registered it for a continuous period of at least five years from the date of registration in the course of which no claim against it has been adjudged to be valid.

Article 4

The following persons shall be entitled to register their own trademarks:

1. Any industrialist, producer or merchant of Libyan nationality.
2. Any industrialist, producer or merchant residing in Libya or has an actual place of business therein.
3. Any industrialist, producer or merchant who is a subject of a state dealing with Libya on a basis of reciprocity or is a resident thereof or has an actual place of business therein.
4. Associations or groups of industrialists or producers or merchants established in Libya or in any of the aforementioned states provided that they may be considered entitled to corporate existence.
5. Public departments

Article 5

The following shall not be entitled to registration as trademarks or elements thereof:

- Marks having no distinctive signs of authenticity or consisting of signs or titles which are by custom assigned to the products themselves or to any ordinary drawing or pictures thereof.
- Any amendment, design or sign which is inconsistent with good morals or public order.
- Public emblems and imitations thereof, flags and other symbols of the state or of any other state dealing with Libya on a basis of reciprocity.
- Official signs and stamps used by the aforesaid states for the control or security of goods where the trademark containing such signs or stamps is intended for use on goods of the same or a similar kind.
- Marks which are identical with or similar to symbols of purely a religious character.
- Symbols of the Red Crescent or the Red Cross or other similar symbols and marks which are mere imitations thereof.
- Pictures or mottos of any other person unless the use thereof is approved by him.
- Descriptions of honorary titles to which the applicant can not prove his legal title.
- Marks which may mislead the public or which contain any mis-statements about the origin or description of the products, likewise marks which contain a fictitious imitative or forged commercial name.

Part II: Proceedings of Registration

Article 6

Applications for the registration of trademarks shall be submitted to the trademarks office subject to the methods and conditions provided for under the implementing regulations of this law.

Article 7

Trademarks may be registered only for one or more of the items or products as fixed under the implementing regulations of this Law.

Article 8

Where two persons or more apply at the same time for the registration of the same or nearly identical trademarks in respect of the same item of products, such application shall be rejected until one of them submits a duly authenticated deed of relinquishment from the other disputants or a res judicata judgment in his favor.

Article 9

The Trademarks Registration Office shall, where necessary, reject the registration of any trademarks or modification thereof, in order to define such marks and render them clearly and more distinctive for the purpose of avoiding misconception or mistaking them for other previously registered marks. In the event of rejection or qualified acceptance the office shall notify the applicant by registered mail of the grounds for its decision and the facts relating thereto. The applicant shall be deemed to have relinquished his claim where he fails, within a period of six months to fulfill the conditions required by the office.

Article 10

The applicant may file a complaint against a decision of the registration office within thirty days as from the date of receipt thereof. This period shall be deemed to run notwithstanding that the applicant had even declined receipt of the registered letter addressed to him by the office. The aforesaid complaint shall be submitted to an administrative committee to be formed by the Minister of National Economy, including therein a member delegated from the Department of Legislation and Litigation of the Ministry of Justice. All decisions of this committee shall be deemed final.

Article 11

In the event of acceptance of the trademark, the office shall bring it to public notice subject to the methods provided for under the implementing regulations to this Law. Within the period fixed under the implementing regulations, any person concerned may submit to the office a written notification of his objection to the registration of the trademark together with the grounds thereof. The office shall serve on the applicant for registration a copy of the notification of objection. The applicant for registration shall submit to the office his written response on the objection within the term prescribed under the executive regulations. The office shall publish its decision regarding the grant or rejection of registration; it may, however, qualify the grant of registration by any conditions. Exceptions against decisions of the office may be raised before the Federal Supreme Court and objections may also lie before this court against decisions of the committee provided for under Article 10.

Article 12

Any proprietor of a previously registered trademark may, at any time, submit an application to the registration office requesting the adoption of any modification of or addition to this trademark provided that such modification or addition shall not amount to a substantial change of the mark. The office shall pass its decision thereon in accordance with the provisions laid down for decisions relating to original applications for registration. The aforesaid decision shall be appealable subject to the same aforesaid methods.

Article 13

Registration shall be effective from the date of submission of the application. Registration shall be published according to the methods prescribed under the executive regulations of this Law.

Article 14

On completion of registration of the trademark, its proprietor shall be granted a certificate containing the following data:

- Serial number of the mark.
- Date of application and date of registration.
- Commercial name or the name, surname, domicile and nationality of the mark's proprietor.
- A true copy of the trademark.
- Description of the products or goods to which the trademark shall apply.

Article 15

Any person may request transcripts or copies of the register.

Part III: Transfer of Titles to Trademarks & Mortgage Thereof

Article 16

A trademark shall not be subject to mortgage or attachment, nor shall its title be transferred save in favour of the commercial firm or enterprise whose products are distinguished by such trademark.

Article 17

Transfer of ownership of a commercial concern or enterprise shall entail transfer of all marks registered in the name of the transfer or which may be deemed closely connected to the concern or enterprise unless otherwise is agreed. Where ownership of the commercial concern or enterprise has been transferred exclusive of the relative trademark, the enterprise may continue to produce and trade in the same products in relation of which such trademark was registered unless otherwise is agreed.

Article 18

Transfer of title to a trademark or mortgage thereof shall not be used as evidence against third parties until after it has been duly entered in the register and published according to the methods prescribed by the executive regulations.

Part IV: Renewal & Cancellation

Article 19

The protection period of a registered trademark shall be ten years. The holder of a title to the registered trademark may obtain a renewal of such period if he submits an application for renewal during the last year, subject to the provisions of Article 6. Likewise, further renewals may be granted at the end of each succeeding period subject to the same procedure. In the course of the first month immediately following the expiry of the period of legal protection, the registration office shall notify the proprietor of the trademark in writing of the expiry of the period of protection. Such notification shall be forwarded by registered mail to the address shown in the register.

Wherein no application for renewal has been tendered by the proprietor of the trademark within the three months commencing from the date of expiry of protection thereof, the office shall ex officio cancel the trademark from the register.

Article 20

The court of first instance may, upon the application of any person concerned, order the cancellation of registration where it is satisfied that the trademark in question has not been seriously used for five consecutive years unless the proprietor of the marks shows a reasonable cause for non-use.

Article 21

Where cancellation of registration of a trademark has been duly entered, such trademark shall not be registered in favor of other persons, for use in relation to the same products save after a period of three years from the date of cancellation has elapsed.

Article 22

The cancellation of the registration or its renewal should be published in the manner which the implementing regulations shall stipulate.

Article 23

The implementing regulations to this Law shall provide for the temporary protection necessary for trademarks used on any products or goods displayed in industrial and agricultural exhibitions held in Libya provided that such trademarks are entitled to protection in their respective countries of origin and notwithstanding that the products and goods have come from states which are signatories like Libya to any conventions on this subject.

Part V: Offences & Penalties

Article 24

Any person shall be liable to a term of imprisonment not exceeding two years and of a fine ranging from L£ 300 or to one of these penalties if he commits any of the following offences namely:

1. Counterfeits a trademark which has been registered according to the law or imitates it in order to mislead the public or uses a counterfeited or forged trademark.
2. Uses on his products any trademark owned by another person.
3. Sells or offers for sale or circulation or holds for sale or introduces into the country for commercial purposes a counterfeited or forged trademark or any products carrying a counterfeited, forged or unlawful trademark or, in any other way has caused the circulation of the aforesaid trademark or products.

Article 25

Any person who:

1. In the cases provided for under paragraphs B, C, D, F, I and J Article 5 uses any unregistered trademark, or
2. Unlawfully writes on his trademark or trade papers any statement conveying the belief that it has been duly registered, shall be liable to a term of imprisonment for a term not exceeding one year and a fine ranging from L£ 100 or to one of these penalties.

Article 26

The proprietor of a trademark, on application substantiated by an official certificate purporting the registration of his trademark, shall be liable to a term of imprisonment for a term not exceeding one year and a fine ranging from L£ 35 to L£ 100 or to one of these penalties.

A. An inventory list and a detailed description shall be made of the machinery and equipment used or which had been used in committing the crime together with the products, goods or addresses of shops or envelopes or papers or otherwise which bear the mark in question as well as the goods imported from abroad.

B. The seizure of the objects mentioned in the preceding clause may not be imposed unless the applicant submits a deposit estimated by the judge as an initial remedy to the seized object. After the imposition of the seizure, the sufficiency of the deposit provided by the applicant may be made pursuant to the provisions of the civil and commercial code of procedures. The order passed by the judge may include the delegation of one expert or more to help the bailiff in his work.

The precautionary measures taken by the proprietor of the trademark shall be considered void unless initiated within the ten days following the date of bringing the aforesaid civil or penal action. The time limit should be observed. The defendant shall serve his action to the applicant and the court's clerks with whom the deposit is kept and a claim for compensation within ninety days from the date of expiry of the scheduled term included in the preceding paragraph if the applicant fails to institute his action or from the date of the issue of the conclusive judgment. In both cases, the deposit may not be paid to the applicant save after the issue of the final judgment or after the scheduled date for the institution of the action has elapsed.

Article 27

The court shall be entitled, in any civil or penal action, to pass judgment providing for the confiscation of any goods attached or shall be attached in order that the proceeds of sale thereof shall be discounted from the damages or fines awarded or disposed of in any way which the court may deem appropriate. The court may also order the publication of the adjudication in one or more newspapers at the expense of the party against whom judgment has been recovered. It may also order the destruction of illegal trademarks or where necessary, order the destruction of any products, containers, packing equipment, addresses, catalogues, and any other things which carry the aforesaid marks as well as any machines and instruments which are mainly used in forgery. The court may order all the foregoing even in the case of acquittal.

Article 28

Subject to the provisions of international agreements to which Libya is a party, the provisions of Articles 24 to 27 of this Law shall be applicable to any trademarks registered abroad and entitled to the protection of the said agreements.

Article 28 - Bis

The controllers of finance and economy in the governorates who are nominated as finance superintendents shall have the capacity of the bailiff to detect the crimes contained in this law and the relevant regulations.

Part VI: Transitory Provisions

Article 29

Such trademarks as are used on the date of the coming into force of this Law and are duly registered within six months of the said date shall for the purposes of Article 3 be deemed to have been registered at the commencement of this Law. Whereas trademarks which were registered pursuant to the provisions of decree No.929 of 1942 before 24th December 1951 shall, for the purposes of Article 3, be deemed to have been registered of the date on its first registration and shall continue to enjoy full protection provided that registration shall be renewed subject to the provisions of this Law within six months from the date of its commencement.

Article 30

The Minister of National Economy shall issue implementing regulations for the application of this Law which shall particularly provide for the following:

1. Organization of the office of registration of trademarks and the keeping of the relevant register.
2. Methods and conditions relating to administrative measures.
3. Division of all products for the purpose of registration into categories according to kind and quality, methods and conditions relating to publication as provided for under this Law.
4. Fees payable for the delivery of devices and certificates.
5. Determination of fees relating to the various businesses and entries and specification of the procedure provided for by this Law where necessary.

Article 31

Without prejudice to the provisions of Article 3, the trademarks registration office and any person concerned shall be entitled to apply for a judgment cancelling any marks which might have been unjustly registered. On receiving a judgment of cancellation *res judicata*, the office shall accordingly cancel the marks intended and the court may, on the motion of the office or person concerned, order the addition of any statement to a closed registration or order the addition, deletion or amendment of any matter therein, where registration has been unjustly done or where it was inconsistent with reality.

Article 32

Any provisions of Articles 338, 339 and 340 of the penal code which are inconsistent with this Law are hereby repealed. Likewise, Articles 76 to 81 of the commercial code and all other provisions which are inconsistent with the provisions of this Law are also repealed.

Article 33

The Minister of National Economy shall implement this Law which shall take effect within six months from the date of publication in the Official Gazette. The said Minister shall promulgate the regulations necessary for its execution.

Given at Qasr Al-Khould on 4th Muharram, 1376 AH
corresponding to 11th August, 1956 AD.
Mahmoud Bin Hidmah and Abdul Majeed Kubar