



PHARMACEUTICALS EXPORT PROMOTION COUNCIL OF INDIA

(Set up by Ministry of Commerce & Industry, Govt., of India)

Date: 3rd December, 2012

Opportunity in Myanmar

Myanmar's re-entry into the global community has been fast tracked by recent visits from world leaders Barack Obama and John Key. The country's strategic location and economic potential offer a unique opportunity for international partnership. However, a secure investment infrastructure is required.

Robust protection of intellectual property rights is essential for those seeking to sell their trade marked goods and services in Myanmar. Presently, there is no acknowledgement of these rights or their international applicability.

Trade Marks

Myanmar does not have specific trade mark legislation. However, some general laws can offer limited protection and remedy for infringement and might provide inroads for developing a more comprehensive framework in the future.

Under the Registration Act 1909, a trade mark owner can register a Declaration of Ownership. This Declaration will be published in the local newspaper as a cautionary note to others not to infringe on the trade mark owner's registration.

A Declaration of Ownership will not create proprietary rights in a trade mark. Use and reputation of the mark must be shown to prevent infringement. This is similar to the protection afforded by the common law in other jurisdictions. A Declaration of Ownership is prima facie evidence of these factors, which can be used in actions or claims under passing off, the Specific Relief Act and the Merchandise Marks Act. However, even if rights in a trade mark are recognised, others can use the mark in connection with dissimilar goods.

Patents and Industrial Design

There is no legislation specific to patents and industrial design. However, use and reputation can be established through a Declaration of Ownership under the Registration Act. Relief is also available under the Specific Relief Act.

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Copyright

Myanmar recognises copyright in literary and dramatic works under the Copyright Act 1914. To claim copyright in published material, the work must be published in Myanmar. For unpublished works, the work must be created in Myanmar or the author must be a citizen of Myanmar.

Experts consider the Copyright Act an insufficient safeguard. An alternative strategy of protection is to trade mark specific elements of a work, such as logos, designs, phrases and symbols. However, this has its limitations as outlined above.

Myanmar recognizes that intellectual property protection must be implemented if it is to attract the powerful international investment necessary for its advancement. In the next year, the Myanmar Parliament is expected to introduce legislation to protect trade marks, patents, copyright and industrial design. Myanmar can benefit from its knowledge of the existing intellectual property systems of neighbouring jurisdictions and it has ensured compliance with the values and clauses of international instruments, such as the TRIPS Agreement.

The future is now for Myanmar. The country offers both opportunities and challenges for those seeking to expand their brand into this new frontier. We at Baldwins are excited to offer our intellectual property expertise to those who would like to explore this potential.

Source: Lexology

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